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LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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DEPARTMENT OF HUMAN SERVICES

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CONTACT: Tina Strahan
503-510-1084
Tina.Strahan@odhsoha.oregon.gov

201 High Street, SE
Suite 500
Salem, OR 97301

Filed By:
M Tina Strahan
Rules Coordinator

RULES:

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AMEND: 407-046-0110

REPEAL: Temporary 407-046-0110 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Updates the definition of "child" for a child in care to ORS 418.257 per Senate Bill 93 (2023) that amended ORS 419B.005.

CHANGES TO RULE:

407-046-0110

Child-In-Care Abuse Rules: Definitions

Unless the context indicates otherwise, the following definitions apply to these rules OAR 407-046-0100 through 407-046-0200:¶¶

(1) "Abuse" has the same meaning as defined in ORS 418.257 and 419B.005. (See OAR 407-046-0170 (2) and (3))¶¶

(2) "Abuse determination" means the determination OTIS makes after an investigation under these rules (OAR 407-046-0100 through 407-046-0200) that a report of abuse is substantiated, unsubstantiated, or inconclusive as described in OAR 407-046-0170.¶¶

(3) "Abuse investigation report" means the report the OTIS investigator completes as provided in OAR 407-046-0180 on a report of abuse that is determined to require an investigation under OAR 407-046-0130 (1)(b).¶¶

(4) "Alleged victim" means the child-in-care who is reported, alleged, or determined to be subjected to abuse under these rules (407-046-0100 through 407-046-0200).¶¶

(5) "Business days" means all consecutive calendar days, not counting Saturdays, Sundays and legal holidays as defined in ORS 187.010.¶¶

(6) "Children's Care Licensing Program" or "CCLP" means the Department of Human Service's program that licenses and oversees child-caring agencies.¶¶

(7) "Child" means an unmarried person who:¶¶

(a) Is under 18 years of age; or¶¶

- (b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency in care, as defined in ORS 418.205.¶
- (8) "Child-caring agency" has the same meaning as defined in ORS 418.205.¶
- (9) "Child-in-care" as defined in ORS 418.257 means a person under 21 years of age who is residing in or receiving care or services from:¶
- (a) A child-caring agency or proctor foster home (CCA certified foster home);¶
- (b) An ODHS certified foster home subject to ORS 418.625 to 418.645 (Child Welfare foster home); or¶
- (c) A developmental disabilities residential facility (ODDS group home, ODDS host home, and ODDS foster home).¶
- (10) "Department" means the Oregon Department of Human Services (ODHS).¶
- (11) "Developmental disabilities residential facility" means a residential facility or foster home for children who are 17 years of age or younger and receiving developmental disability services that is subject to ORS 443.400 to 443.455, 443.830 and 443.835.¶
- (12) "Indian child" as defined in 25 U.S.C. § 1903(4) means any unmarried individual who is under age 18 and either:¶
- (a) Is a member or citizen of an Indian tribe; or¶
- (b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.¶
- (13) "Investigation" as defined in ORS 419B.005(4) means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse. "Investigation" does not include screening activities conducted upon the receipt of a report.¶
- (14) "Law enforcement agency" has the same meaning as defined in ORS 419B.005(5).¶
- (15) "Legal guardian" means the child-in-care's parent, unless a court appoints another person or agency to act as the individual's guardian.¶
- (16) "ODDS foster home" means a developmental disability child foster home as defined in ORS 443.830 and certified under OAR chapter 411, division 346.¶
- (17) "ODDS group home" means the distinct method for the delivery of home and community-based services in a 24-hour residential setting by a provider certified and endorsed according to the rules in OAR chapter 411, division 323.¶
- (18) "ODDS host home" means a residential training home per ORS 443.400 that is a community-based family home setting licensed by the Department according to the rules in OAR chapter 411, division 348 to provide home and community-based services to children with intellectual or developmental disabilities. ODDS host homes are community homes featuring an in-residence caregiver serving in a parental role with the support of additional staff to deliver intensive care and support to children in a family home environment.¶
- (19) Office of Developmental Disabilities Services or "ODDS" means the Department of Human Services Office of Developmental Disability Services.¶
- (20) "OTIS investigator" means a Department: Office of Training, Investigations and Safety (OTIS) employee who is authorized and receives OTIS approved training to screen or investigate reports of abuse under OAR 407-046-0100 through 407-046-0200.¶
- (21) "OTIS response" means how OTIS will respond to a report of abuse that is determined at the conclusion of the OTIS screening process.¶
- (22) "Proctor foster home" is defined in ORS 418.205 and means a foster home certified by a child-caring agency that is not subject to ORS 418.625 to 418.470.¶
- (23) "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts. (ORS 419B.150)¶
- (24) "Reasonable suspicion" for purposes of complying with ORS 419B.023 (Karly's Law) means a reasonable belief given all the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.¶
- (25) "Redacted" means information deemed confidential under state or federal law that has been protected from view.¶
- (26) "Reporter" means an individual who makes a report of suspected child abuse to the Department.¶
- (27) "Respondent" means the adult or entity alleged to have committed abuse.¶
- (28) "Screening" means the process used by OTIS to determine the response to reports that are determined to be the responsibility of OTIS.¶
- (29) "Serious bodily injury" means any significant impairment of the physical condition of an individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.¶
- (30) "Severe harm" as defined in ORS 419B.150 means:¶
- (a) Life threatening damage; or¶
- (b) Significant or acute injury to a person's physical, sexual, or psychological functioning.¶

(31) "Sex trafficking" as defined in ORS 419B.354(1)(b) means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of an individual under the age of 18 for the purpose of a commercial sex act or the recruitment, harboring, transportation, provision, or obtaining of a person over the age of 18 using force, fraud, or coercion for the purpose of a commercial sex act.¶

(32) "Suspicious physical injury" has the same meaning as defined in ORS 419B.023 (Karly's Law).

Statutory/Other Authority: ORS 409.050, 418.005

Statutes/Other Implemented: ORS 183.310, 418.257 - 418.259, 443.400 - 443.455, 409.050, 418.005, 418.205 - 418.327, 418.747, 419B.005 - 419B.050, 409.185, 418.519 - 418.532, Senate Bill 93 (2023 OL Chapter 267)

AMEND: 407-046-0170

REPEAL: Temporary 407-046-0170 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Changes the definition of "mental injury" for the purposes of child abuse investigations due to Senate Bill 93 (2023) that amended this term in ORS 419B.005, as of September 1, 2023. Also, minor correction as allowed under ORS 183.335 (7) for a change prescribed by law, 2023 Senate Bill 316 (OL Chapter 9, sections 28 & 29) grammatical fix for other sexual conduct defined in ORS 419B.005.

CHANGES TO RULE:

407-046-0170

Child-In-Care Abuse Rules: Abuse Determination

(1) Abuse Determination Requirements.¶

(a) Except as provided in OAR 407-046-0160 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 407-046-0130.¶

(b) When making an abuse determination the standard of proof is reasonable cause to believe.¶

(c) Based on the available evidence after conducting an investigation, the possible abuse determinations are:¶

(A) "Substantiated", which means there is reasonable cause to believe the abuse occurred.¶

(B) "Unsubstantiated", which means there is no evidence the abuse occurred.¶

(C) "Inconclusive", which means there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred. The "Inconclusive" determination may only be used in the following circumstances:¶

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or¶

(ii) After completing the investigation, there is insufficient information to support an abuse determination of substantiated or unsubstantiated and the alleged victim is unable or unwilling to provide consistent information; or there is conflicting information from collateral contacts.¶

(2) Except as provided in section (4) of this rule, abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, includes, but is not limited to:¶

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.¶

(b) Mental injury (~~psychological maltreatment~~), which shall include only cruel or unconscionable acts or statements made, or threatened to be made, or permitted to be made by the respondent that has a direct effect on the child. ~~The respondent's behavior, intentional or unintentional, must be related to the observable and substantial impairment of~~ to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional, or social well-being and functioning.¶

(c) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Neglect includes each of the following:¶

(A) Physical neglect, which includes each of the following:¶

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.¶

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.¶

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety.

When the OTIS investigator is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.¶

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.¶

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.¶

(D) Desertion, which includes the respondent leaving the child with another person and failing to reclaim the child, or respondent failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.¶

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The respondent's behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.¶

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means

that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:¶¶

(A) Head injuries;¶¶

(B) Bruises, cuts, lacerations;¶¶

(C) Internal injuries;¶¶

(D) Burns or scalds;¶¶

(E) Injuries to bone, muscle, cartilage, and ligaments;¶¶

(F) Poisoning;¶¶

(G) Electrical shock; and¶¶

(H) Death.¶¶

(e) Sexual abuse, which includes:¶¶

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.¶¶

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.¶¶

(C) Sex trafficking.¶¶

(f) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other abuse.¶¶

(3) Except as provided in section (4) of this rule, abuse of a child-in-care, for the purpose of making an abuse determination on a report subject to ORS 418.257, includes, among others, the following:¶¶

(a) Abandonment, including desertion or willful forsaking of a child-in-care, or the withdrawal or neglect of duties and obligations owed a child-in-care by a, child-caring agency, proctor foster parent, ODDS licensed group home, ODDS host home, ODDS foster parent, other individual, or an employee, volunteer, or contractor of a child-caring agency, proctor foster home, ODDS licensed group home, ODDS host home, or ODDS foster home.¶¶

(b) Financial exploitation.¶¶

(A) Financial exploitation includes:¶¶

(i) Wrongfully taking the assets, funds, or property belonging to or intended for the use of a child-in-care.¶¶

(ii) Alarming a child-in-care by conveying a threat to wrongfully take or appropriate moneys or property of the child-in-care if the child-in-care would reasonably believe that the threat conveyed would be carried out.¶¶

(iii) Misappropriating, misusing, or transferring without authorization any moneys from any account held jointly or singly by a child-in-care.¶¶

(iv) Failing to use the income or assets of a child-in-care effectively for the support and maintenance of the child-in-care.¶¶

(B) Financial exploitation does not include age-appropriate discipline that may involve the threat to withhold, or the withholding of, privileges.¶¶

(c) The use of involuntary seclusion of a child-in-care in violation of of ORS 418.521 or 418.523.¶¶

(d) Neglect:¶¶

(A) Neglect includes:¶¶

(i) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of a child-in-care; or¶¶

(ii) The failure of a child-caring agency, proctor foster parent, ODDS licensed group home, ODDS host home, ODDS foster parent, other person, or an employee, contractor, or volunteer of a child-caring agency, proctor foster home, ODDS licensed group home ODDS host home, or ODDS foster home to make a reasonable effort to protect a child-in-care from abuse.¶¶

(B) For purposes of this subsection, "services" includes, but is not limited to, the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of a child-in-care.¶¶

(e) Physical abuse, which includes:¶¶

(A) Any physical injury to a child-in-care caused by other than accidental means, or that appears to conflict with the explanation given of the injury; or¶¶

(B) Willful infliction of physical pain or injury upon a child-in-care.¶¶

(f) Sexual abuse:¶¶

(A) Sexual abuse includes:¶¶

(i) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,163.415, 163.425, 163.427, 163.465, 163.467, or 163.525;¶¶

(ii) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language;¶¶

(iii) Any sexual contact between a child-in-care and an employee of a child-caring agency, proctor foster home, ODDS licensed group home, ODDS host home, ODDS foster home, or other person responsible for the provision of care or services to a child-in-care;¶

(iv) Any sexual contact between a person and a child-in-care that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; and¶

(v) Any sexual contact that is achieved through force, trickery, threat, or coercion.¶

(B) For purposes of this subsection, "sexual exploitation," as defined in ORS 419B.005(1)(a)(E), includes, but is not limited to:¶

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct ~~which that~~ allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition ~~which that~~, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct ~~which that~~ is part of any investigation conducted pursuant to ORS 419B.020 or ~~which that~~ is designed to serve educational or other legitimate purposes; and¶

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.¶

(C) For purposes of this subsection, "sexual contact," as defined in ORS 163.305, means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.¶

(g) Verbal abuse:¶

(A) Verbal abuse includes threatening severe harm, either physical or emotional, to a child-in-care through the use of: ¶

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or¶

(ii) Harassment, coercion, threats, compelling or deterring conduct by threats, humiliation, mental cruelty, or inappropriate sexual comments.¶

(B) Verbal abuse does not include age-appropriate discipline that may involve the threat to withhold privileges.¶

(h) The use of restraint of a child-in-care in violation of ORS 418.521 or 418.523.¶

(4) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in sections (2) or (3) of this rule.

Statutory/Other Authority: ORS 409.050, 418.005

Statutes/Other Implemented: ORS 409.050, ~~ORS 443.400 - 443.455~~, 419B.005 - 419B.050, 409.185, 418.005, 418.257 - 418.259, 418.519 - 418.523, Senate Bill 93 (2023 OL Chapter 267)

AMEND: 407-046-0190

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: As required in 2023 Senate Bill 757 (effective 1-1-2024), updates OTIS rules to provide a copy of the respondent's notification for founded child abuse to their attorney, if applicable.

CHANGES TO RULE:

407-046-0190

Child-In-Care Abuse Rules: Notifications at the Conclusion of an Investigation

After an abuse determination is made and the abuse investigation report has been approved, OTIS must make and document the following notifications:¶

(1) OTIS must notify law enforcement of the abuse determination and may provide a unredacted copy of the abuse investigation report.¶

(2) OTIS must make diligent efforts to notify the reporter, if contact information was provided, of the following information:¶

(a) Whether contact with the child was made; and¶

(b) Whether OTIS determined abuse occurred¶

(3) OTIS must notify the respondent when:¶

(a) A report is determined to be "Unsubstantiated" or "Inconclusive" (see OAR 407-046-0170), OTIS must provide written notice to the respondent.¶

(b) A report is determined to be "Substantiated" (see OAR 407-046-0170), OTIS must send a Notice of Abuse Determination (as described in ORS 183.415) to the respondent by:¶

(A) Regular mail and certified mail with return receipt requested.¶

(B) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.¶

(C) A copy of the Notice of Abuse Determination must also be provided to the respondent's attorney, if applicable.¶

(4) When a report involves a child-caring agency or proctor foster home, the OTIS investigator must send the investigation report to personnel designated (CCA Notifications) to make notifications required in Oregon law and OAR 413-215-0136.¶

(5) When a report involves an ODDS licensed group home, ODDS host home, or ODDS foster home the OTIS investigator must make the following notifications:¶

(a) Appropriate personnel within the Department.¶

(b) The ODDS licensed group home or ODDS host home.¶

(c) The tribe (as provided under OAR chapter 413, division 115) when the OTIS investigator knows or has reason to know the alleged victim is an Indian child.¶

(d) Legal guardian of the child.¶

(e) If the report was "Substantiated" OTIS must notify:¶

(A) The Director of the Department;¶

(B) The Director of Child Welfare; and¶

(C) The Director of the Office of Developmental Disabilities Services.¶

(6) Others as required or otherwise authorized including, but not limited to:¶

(a) Disability Rights Oregon when a report of abuse is alleged to have occurred at a school or in an educational setting and the report involves a child with a disability. (ORS 419B.035(1).¶

(b) Teacher Standards and Practices Commission as provided in ORS 419B.035.¶

(c) ~~The Office of Child~~Department of Early Learning and Care when required by ORS 419B.020 or 419B.035.¶

(d) Any individual, administrative hearings officer, court, agency, organization, or other entity when determined necessary under ORS 419B.035(3).¶

(7) Any deviations from making required notifications must be approved by an OTIS supervisor and justification documented in the investigative report.

Statutory/Other Authority: ORS 409.050, 418.005, 419B.035

Statutes/Other Implemented: ORS 409.050, 443.400 - 443.455, 409.185, 418.257 - 428.259, 419B.005 - 419B.050, 418.005, Senate Bill 757 (2023 OL Chapter 188)

AMEND: 407-047-0205

REPEAL: Temporary 407-047-0205 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Updates the definition of "child" for a child in care to ORS 418.257 per Senate Bill 93 (2023) that amended ORS 419B.005. Also adds to the definition of "respondent" the term "public education program" as it applies to incidents of alleged abuse involving seclusion or restraint under certain conditions, as described in 2023 Senate Bill 790 (Section 2) for incidents on or after July 1, 2023.

CHANGES TO RULE:

407-047-0205

Investigations in Schools: Definitions

Unless the context indicates otherwise, the following definitions apply to these rules, OAR 407-047-0200 through 407-047-0300:

(1) "Abuse" has the same meaning as defined in 419B.005. (See OAR 407-047-0270(2))

(2) "Abuse determination" means the determination OTIS makes after an investigation under these rules (OAR 407-047-0200 through 407-047-0300) that a report of abuse is founded, unfounded or unable to determine as described in OAR 407-047-0270.

(3) "Abuse investigation report" means the report the OTIS investigator completes as provided in OAR 407-047-0270 on a report of abuse that is determined to require an investigation under OAR 407-047-0220(1)(b).

(4) "Agent" as defined in ORS 419B.019 means, a person who:

(a) Acts as an agent for an education provider in a manner that requires the person to have direct, unsupervised contact with children; and

(b) Interacts with a child because of the person's status as an agent for an education provider.

(5) "Alleged victim" means the child who is reported, alleged or determined to be subjected to abuse under these rules. (OAR 407-047-0200 through 407-047-0300)

(6) "Business days" means all consecutive calendar days, not counting Saturdays, Sundays and legal holidays as defined in ORS 187.010.

(7) "Child" means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is ~~under 21 years of age and residing in or receiving care or services at a child-caring agency in care,~~ as defined in ORS 418.2057.

(8) "Contractor" as defined in ORS 419B.019 means, a person who:

(a) Provides services to an education provider under a contract in a manner that requires the person to have direct, unsupervised contact with children; and

(b) Interacts with a child because of the person's status as a contractor for an education provider.

(9) "Department" means the Oregon Department of Human Services (ODHS).

(10) "Education Provider" has the same meaning as defined in ORS 339.370.

(a) Education Provider includes:

(A) A school district, as defined in ORS 332.002;

(B) The Oregon School for the Deaf;

(C) An educational program under the Youth Corrections Education Program;

(D) A public charter school, as defined in ORS 338.005;

(E) An education service district, as defined in ORS 334.003;

(F) Any state-operated program that provides educational services to students; or

(G) A private school.

(b) "Education Provider" does not include:

(A) The Oregon Youth Authority;

(B) The Department of Corrections;

(C) The Department of Education, except when functioning as an education provider on behalf of:

(i) The Oregon School for the Deaf;

(ii) An educational program under the Youth Corrections Education Program; or

(iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of Education.

(11) "Indian child" as defined in 25 U.S.C. § 1903(4) means any unmarried individual who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an

Indian tribe.¶

(12) "Investigation" as defined in ORS 419B.005(4) means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse. "Investigation" does not include screening activities conducted upon the receipt of a report. ¶

(13) "Law enforcement agency" has the same meaning as defined in ORS 419B.005(5).¶

(14) "Legal Guardian" means for an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the individual's guardian.¶

(15) "Licensed administrator" also known as "Chief administrator" means the person designated by the education provider's policies adopted under ORS 339.372 to receive reports of suspected child abuse and includes an alternate licensed administrator, if the designee is the respondent.¶

(16) "OTIS investigator" means a Department: Office of Training, Investigations and Safety (OTIS) employee who is authorized and receives OTIS approved training to screen or investigate reports of abuse under these rules, OAR 407-047-0200 through 407-047-0300.¶

(17) "OTIS response" means how OTIS will respond to a report of abuse that is determined at the conclusion of the OTIS screening process.¶

(18) "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts. (ORS 419B.150)¶

(19) "Reasonable suspicion" for purposes of complying with ORS 419B.023 (Karly's Law) means a reasonable belief given all the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.¶

(20) "Redacted" means information deemed confidential under state or federal law has been protected from view.¶

(21) "Reporter" means an individual who makes a report of suspected child abuse to the Department.¶

(22) "Respondent" means:¶

(a) The adult alleged in a report to have committed abuse; or¶

(b) A public education program as defined in ORS 339.285, for incidents occurring on or after July 1, 2023.¶

(23) "Screening" means the process used by OTIS to determine the response to reports that are determined to be the responsibility of OTIS.¶

(24) "School employee" as defined in ORS 419B.019, means a person who:¶

(a) Is an employee of an education provider; and¶

(b) Interacts with a child because of the person's status as an employee of an education provider.¶

(25) "Severe harm" as defined in ORS 419B.150 means:¶

(a) Life -threatening damage; or¶

(b) Significant or acute injury to a person's physical, sexual, or psychological functioning.¶

(26) "Sex trafficking" as defined in ORS 419B.354(1)(b) means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of an individual under the age of 18 for the purpose of a commercial sex act.¶

(27) "Suspicious physical injury" has the same meaning as defined in ORS 419B.023 (Karly's Law).¶

(28) "Volunteer" means as defined in ORS 419B.019, a person who:¶

(a) Acts as a volunteer for an education provider in a manner that requires the person to have direct, unsupervised contact with children; and¶

(b) Interacts with a child because of the person's status as a volunteer of an education provider.

Statutory/Other Authority: ORS 409.050, ORS 419B.019

Statutes/Other Implemented: ORS 419B.005 - 419B.050, Senate Bill 93 (2023 OL Chapter 267), Senate Bill 790 (2023 OL Chapter 581)

AMEND: 407-047-0270

REPEAL: Temporary 407-047-0270 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Changes the definition of "mental injury" for the purposes of child abuse investigations due to Senate Bill 93 (2023) that amended this term in ORS 419B.005, as of September 1, 2023. Also adds new definitions of child abuse in a public education program for use of seclusion or restraint and prohibits corporal punishment in alignment with ORS 339, amended by Senate Bill 790 (2023) for incidents on or after July 1, 2023.

CHANGES TO RULE:

407-047-0270

Investigations in Schools: Abuse Determination

(1) Except as provided in OAR 407-047-0260 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 407-047-0220.

(a) When making an abuse determination the standard of proof is reasonable cause to believe.

(b) Based on the available evidence after conducting an investigation, the possible abuse determinations are:

(A) "Founded," which means there is reasonable cause to believe the abuse occurred.

(B) "Unfounded," which means there is no evidence the abuse occurred.

(C) "Unable to Determine," which means there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred. "Unable to Determine" may only be used in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing the investigation, there is insufficient information to support an abuse determination of founded or unfounded; and the alleged victim is unable or unwilling to provide consistent information; or there is conflicting information from collateral contacts.

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, includes, but is not limited to:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury (~~psychological maltreatment~~), which shall include only cruel or unconscionable acts or statements made, or threatened to be made, or permitted to be made by the respondent that has a direct effect on the child. ~~The respondent's behavior, intentional or unintentional, must be related to the observable and substantial impairment of to a child if the acts, statements or threats result in severe harm to the child's~~ psychological, cognitive, emotional, or social well-being and functioning.

(c) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Neglect includes each of the following:

(A) Physical neglect, which includes each of the following:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety.

When the OTIS investigator is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the respondent leaving the child with another person and failing to reclaim the child, or respondent failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The respondent's behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(F) Failure by a public education program as described in Section 2 of Senate Bill 790 (2023).

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation

given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:¶¶

(A) Head injuries;¶¶

(B) Bruises, cuts, lacerations;¶¶

(C) Internal injuries;¶¶

(D) Burns or scalds;¶¶

(E) Injuries to bone, muscle, cartilage, and ligaments;¶¶

(F) Poisoning;¶¶

(G) Electrical shock; and¶¶

(H) Death.¶¶

(e) Sexual abuse, which includes:¶¶

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.¶¶

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.¶¶

(C) Sex trafficking.¶¶

(f) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other abuse.¶¶

(g) For incidents on or after July 1, 2023:¶¶

(A) The restraint or seclusion of a child in violation of ORS 339.285, 339.288, 339.291, 339.303 or 339.308; or ¶¶

(B) The infliction of corporal punishment on a child in violation of ORS 339.250 (9).¶¶

(3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

Statutory/Other Authority: ORS 409.050, ORS 419B.019

Statutes/Other Implemented: ORS 419B.005 to 419B.050, Senate Bill 93 (2023 OL Chapter 267), Senate Bill 790 (2023 OL Chapter 581)

ADOPT: 407-047-0273

REPEAL: Temporary 407-047-0273 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: New rule for findings following an OTIS child abuse investigation in schools for incidents involving the use of seclusion or restraint that occurred on or after July 1, 2023, as directed by Sections 2 and 8 of Senate Bill 790 (2023).

CHANGES TO RULE:

407-047-0273

Investigations in Schools: Abuse Determinations Involving Seclusion or Restraint

For abuse determinations for incidents occurring on or after July 1, 2023 involving alleged abuse in the use of seclusion or restraint defined in OAR 407-047-0270.

(1) When OTIS finds the reported abuse is founded, OTIS shall determine that the public education program is responsible for the abuse if any of the following apply:

(a) The abuse involved the use of restraint or seclusion and the public education program failed to ensure that a sufficient number of personnel, appropriately trained in the use of restraint and seclusion, were available to comply with the individualized education programs, 504 Plans and behavior intervention plans of the students who were present in the setting where the abuse occurred at the time the abuse occurred.

(b) The abuse involved the use of restraint, seclusion or neglect and the public education program failed to:

(A) Provide the personnel involved with the restraint, seclusion or neglect with access to the student's individualized education program, 504 Plan or behavior intervention program or failed to provide the personnel with adequate training to appropriately perform health-related or personal care tasks; and

(B) The personnel were not aware of, and failed to provide the services and supports in the manner required by, the student's individualized education program, 504 Plan or behavior plan.

(c) The abuse involved the use of restraint or seclusion, a superior ordered personnel to impose the restraint or seclusion, and the personnel who imposed the restraint or seclusion reasonably believed that failure to comply with the order would result in termination or discipline.

(d) The abuse involved the use of restraint or seclusion and the public education program failed to ensure that the personnel who imposed the restraint or seclusion were appropriately trained in the use of restraint and seclusion:

(A) The personnel who imposed the restraint or seclusion reasonably believed that failure to impose the restraint or seclusion would lead to serious bodily injury of the student or others; and

(B) If the personnel imposed a restraint, it was not a type of restraint prohibited under ORS 339.288.

(2) OTIS may not substantiate an allegation of abuse against personnel of a public education program who have not been trained to the standard established in ORS 339.300 but who impose a restraint on a student if:

(a) The restraint is imposed in response to an imminent risk of serious bodily injury of any person;

(b) The person imposing the restraint does not act with reckless disregard for student safety; and

(c) The restraint does not impose a significant risk of impeding the student's breathing.

(3) Nothing in section (2) prohibits OTIS from finding that the public education program is responsible for abuse arising from the untrained personnel's inappropriate use of restraint.

Statutory/Other Authority: ORS 409.050, ORS 419B.019

Statutes/Other Implemented: ORS 419B.005 to 419B.050, Senate Bill 790 (2023 OL Chapter 581)

AMEND: 407-047-0290

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: As required in 2023 Senate Bill 757 (effective 1-1-2024), updates OTIS rules to provide a copy of the respondent's notification for founded child abuse to their attorney, if applicable.

CHANGES TO RULE:

407-047-0290

Investigations in Schools: Notifications at the Conclusion of an Investigation

After an abuse determination is made and the abuse investigation report has been approved, OTIS must make and document the notifications described in this rule.¶

(1) OTIS must notify law enforcement of the abuse determination and may provide a copy of the unredacted abuse investigation report.¶

(2) OTIS must make diligent efforts to notify the reporter, if contact information was provided, of the following information:¶

(a) Whether contact with the child was made, and¶

(b) Whether OTIS determined abuse occurred.¶

(3) OTIS must notify the legal guardian of the alleged victim when the alleged victim is currently a child.¶

(4) OTIS must notify the respondent when:¶

(a) A report is determined to be "Unfounded" or "Unable to Determine" (See OAR 407-047-0270), OTIS must provide written notice to the respondent.¶

(b) A report is determined to be "Founded" under OAR 407-047-0270, OTIS must send a Notice of Abuse Determination (as described in ORS 183.415) to the respondent by:¶

(A) Regular mail and certified mail with return receipt requested.¶

(B) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.¶

(C) A copy of the Notice of Abuse Determination must also be provided to the respondent's attorney, if applicable.¶

(c) The Notice of Abuse Determination must include information described in OAR 137-003-0505(1) and (2)(a) and ORS 183.415.¶

(5) OTIS must provide the education provider a copy of the unredacted abuse investigation as permitted by ORS 419B.035(1)(m).¶

(6) OTIS must provide the Teacher Standards and Practices Commission a copy of the unredacted abuse investigation if the Department believes the school employee, contractor, agent or volunteer is licensed or registered by the commission.¶

(7) OTIS must provide the Department of Education a copy of the unredacted abuse investigation if the Department believes the report of suspected abuse:¶

(a) Occurred in a school or was related to a school-sponsored activity; or¶

(b) Involves a child and a person who is a school employee, contractor, agent or volunteer.¶

(c) The notification must state the Department of Education is responsible for immediate notification to the appropriate education provider to ensure the safety of the child.¶

(8) Others as required or otherwise authorized including, but not limited to:¶

(a) Appropriate personnel within the Department.¶

(b) The tribe (as provided under OAR chapter 413, division 115) when the OTIS investigator knows or has reason to know the alleged victim is an Indian child.¶

(c) Disability Rights Oregon if the alleged abuse occurred at a school or in an educational setting that involves a child with a disability. (ORS 419B.035(1))¶

(d) Oregon Youth Authority: Professional Standards Office when the alleged abuse involves a youth under the jurisdiction of OYA, or the education provider is a Youth Corrections Education Program.¶

(e) ~~The Office of Child~~ Department of Early Learning and Care when required by ORS 419B.020 or 419B.035.¶

(f) Any individual, administrative hearings officer, court, agency, organization, or other entity when determined necessary under ORS 419B.035(3).¶

(9) Any deviations from making required notifications must be approved by an OTIS supervisor and justification documented in the investigative report.

Statutory/Other Authority: ORS 409.050, ORS 419B.019

Statutes/Other Implemented: ORS 419B.005 - 419B.050, Senate Bill 757 (2023 OL Chapter 188)

AMEND: 407-047-0410

REPEAL: Temporary 407-047-0410 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Updates the definition of "child" for a child in care to ORS 418.257 per Senate Bill 93 (2023) that amended ORS 419B.005. Also minor correction as allowed under ORS 183.335 (7), changing the name of the agency Office of Child Care to the Department of Early Learning and Care, as prescribed by 2023 House Bill 3558.

CHANGES TO RULE:

407-047-0410

Investigations in Child Care: Definitions

Unless the context indicates otherwise, the following definitions apply to these rules, OAR 407-047-0400 through 407-047-0500:¶

(1) "Abuse" has the same meaning as defined in ORS 419B.005 (see OAR 407-047-0470(2)).¶

(2) "Abuse determination" means the determination OTIS makes after an investigation under these rules (407-047-0400 through 407-047-0500) that a report of abuse is founded, unfounded or unable to determine as described in OAR 407-047-0470.¶

(3) "Abuse investigation report" means the report the OTIS investigator completes as provided in OAR 407-047-0480 on a report of abuse that is determined to require an investigation under OAR 407-047-0430(1)(a).¶

(4) "Alleged victim" means the child who is reported, alleged or determined to be subjected to abuse under these rules (407-047-0400 through 407-047-0500).¶

(5) "Business days" means all consecutive calendar days, not counting Saturdays, Sundays and legal holidays as defined in ORS 187.010.¶

(6) "Child" means an unmarried person who:¶

(a) Is under 18 years of age; or¶

(b) ~~Is under 21 years of age and residing in or receiving care or services at a child-caring agency in care,~~ as defined in ORS 418.2057.¶

(7) "Child Care" means each of the following:¶

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.¶

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single-family dwelling that has certification to care for a maximum of 16 children at any one time.¶

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single-family dwelling.¶

(d) A Regulated Subsidy Provider, which is a child care provider that is exempt from ~~Office of Child~~Department of Early Learning and Care licensing and that receives subsidy payments for child care on behalf of clients of the Department.¶

(e) Other facilities that are operating as a Registered Family Care Home, Certified Family Child Care Home, Certified Child Care Center, or Regulated Subsidy Provider without a certification or registration when a certification or registration is required by the ~~Office of Child~~Department of Early Learning and Care.¶

(8) "Caregiver" means any person in the child care who works directly with the children, providing care, supervision, and guidance.¶

(9) "Contractor" means a person who:¶

(a) Provides services to a child care provider in a manner that requires the person to have direct, unsupervised contact with children; and¶

(b) Interacts with a child because of the person's status as a contractor for a child care provider.¶

(10) "Department" means the Oregon Department of Human Services (ODHS).¶

(11) "Indian child" as defined in 25 U.S.C. § 1903(4) means any unmarried individual who is under age 18 and either:¶

(a) Is a member or citizen of an Indian tribe; or¶

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.¶

(12) "Household member" means an adult who lives in the child care and is not a child care caregiver, contractor, or volunteer.¶

(13) "Investigation" as defined in ORS 419B.005(4) means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse. "Investigation" does not include screening activities conducted upon the receipt of a report.¶

- (14) "Law enforcement agency" has the same meaning as defined in ORS 419B.005(5).¶
- (15) "Legal guardian" means for an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the individual's guardian.¶
- (16) "OTIS investigator" means a Department: Office of Training, Investigations and Safety (OTIS) employee who is authorized and receives OTIS approved training to screen or investigate reports of abuse under OAR 407-047-0400 through 407-047-0500.¶
- (17) "OTIS response" means how OTIS will respond to a report of abuse that is determined at the conclusion of the OTIS screening process.¶
- (18) "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts. (ORS 419B.150)¶
- (19) "Reasonable suspicion" for purposes of complying with ORS 419B.023 (Karly's Law) means a reasonable belief given all the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.¶
- (20) "Redacted" means information deemed confidential under state or federal law has been protected from view.¶
- (21) "Reporter" means an individual who makes a report of suspected child abuse to the Department.¶
- (22) "Respondent" means the adult alleged to have committed abuse.¶
- (23) "Screening" means the process used by OTIS to determine the response to reports that are determined to be the responsibility of OTIS.¶
- (24) "Severe harm" as defined in ORS 419B.150 means:¶
- (a) Life threatening damage; or¶
 - (b) Significant or acute injury to a person's physical, sexual, or psychological functioning.¶
- (25) "Sex trafficking" as defined in ORS 419B.354(1)(b) means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of an individual under the age of 18 for the purpose of a commercial sex act.¶
- (26) "Suspicious physical injury" has the same meaning as defined in ORS 419B.023 (Karly's Law).¶
- (27) "Volunteer" means a person who:¶
- (a) Acts as a volunteer for a child care; and¶
 - (b) Interacts with a child because of the person's status as a volunteer of a child care.
- Statutory/Other Authority: ORS 409.050
Statutes/Other Implemented: ORS 419B.005 - 419B.050, Senate Bill 93 (2023 OL Chapter 267)

AMEND: 407-047-0470

REPEAL: Temporary 407-047-0470 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Changes the definition of "mental injury" for the purposes of child abuse investigations due to Senate Bill 93 (2023) that amended this term in ORS 419B.005, as of September 1, 2023.

CHANGES TO RULE:

407-047-0470

Investigations in Child Care: Abuse Determination

(1) Except as provided in OAR 407-047-0460 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 407-047-0430.¶

(a) When making an abuse determination, the standard of proof is reasonable cause to believe.¶

(b) Based on the available evidence after conducting an investigation, the possible abuse determinations are:¶

(A) "Founded," which means there is reasonable cause to believe the abuse occurred.¶

(B) "Unfounded," which means there is no evidence the abuse occurred.¶

(C) "Unable to Determine," which means there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred. "Unable to Determine" may only be used in the following circumstances:¶

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or¶

(ii) After completing the investigation, there is insufficient information to support an abuse determination of

Founded or Unfounded and the alleged victim is unable or unwilling to provide consistent information or there is conflicting information from collateral contacts.¶

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, includes, but is not limited to:¶

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.¶

(b) Mental injury (~~psychological maltreatment~~), which shall include only cruel or unconscionable acts or statements made, or threatened to be made, or permitted to be made by the respondent that has a direct effect on the child. The respondent's behavior, intentional or unintentional, must be related to the observable and substantial impairment of to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional, or social well-being and functioning.¶

(c) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Neglect includes each of the following:¶

(A) Physical neglect, which includes each of the following:¶

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.¶

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.¶

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety.

When the OTIS investigator is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.¶

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.¶

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.¶

(D) Desertion, which includes the respondent leaving the child with another person and failing to reclaim the child, or respondent failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.¶

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The respondent's behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.¶

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:¶

(A) Head injuries;¶

- (B) Bruises, cuts, lacerations;¶
- (C) Internal injuries;¶
- (D) Burns or scalds;¶
- (E) Injuries to bone, muscle, cartilage, and ligaments;¶
- (F) Poisoning;¶
- (G) Electrical shock; and¶
- (H) Death.¶
- (e) Sexual abuse, which includes:¶
 - (A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.¶
 - (B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.¶
 - (C) Sex trafficking.¶
 - (f) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other abuse. ¶
- (3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

Statutory/Other Authority: ORS 409.050

Statutes/Other Implemented: ORS 419B.005 to 419B.050, Senate Bill 93 (2023 OL Chapter 267)

AMEND: 407-047-0490

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: As required in 2023 Senate Bill 757 (effective 1-1-2024), updates OTIS rules to provide a copy of the respondent's notification for founded child abuse to their attorney, if applicable.

CHANGES TO RULE:

407-047-0490

Investigations in Child Care: Notifications at the Conclusion of an Investigation

After an abuse determination is made and the abuse investigation report has been approved, OTIS must make and document the following notifications:¶¶

(1) OTIS must notify law enforcement of the abuse determination and may provide a unredacted copy of the abuse investigation report.¶¶

(2) OTIS must make diligent efforts to notify the reporter, if contact information was provided, of the following information:¶¶

(a) Whether contact with the child was made, and¶¶

(b) Whether OTIS determined abuse occurred.¶¶

(3) OTIS must notify the legal guardian of the alleged victim of the abuse determination.¶¶

(4) If not a respondent, OTIS must notify the owner, executive director, operator, central administrator, or designated authority of the child care.¶¶

(5) OTIS must notify the respondent when:¶¶

(a) A report is determined to be "Unfounded" or "Unable to Determine" (see OAR 407-047-0470), OTIS must provide written notice to the respondent.¶¶

(b) A report is determined to be "Founded" (see OAR 407-047-0470), OTIS must send a Notice of Abuse Determination (as described in ORS 183.415) to the respondent by:¶¶

(A) Regular mail and certified mail with return receipt requested.¶¶

(B) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.¶¶

(C) A copy of the Notice of Abuse Determination must also be provided to the respondent's attorney, if applicable.¶¶

(6) OTIS must notify Department of Education: ~~Office of Child~~ Early Learning and Care must provide a unredacted copy of the abuse investigation report.¶¶

(7) OTIS must notify the Department of Human Services: Self-Sufficiency Child Care Policy Unit must provide a unredacted copy of the abuse investigation report when the child care is a regulated subsidy program.¶¶

(8) Others as required or otherwise authorized including, but not limited to:¶¶

(a) Appropriate personnel within the Department.¶¶

(b) The tribe (as provided under OAR chapter 413, division 115) when the OTIS investigator knows or has reason to know the alleged victim is an Indian child.¶¶

(c) Disability Rights Oregon, when a report of abuse is alleged to have occurred at a school or in an educational setting and the report involves a child with a disability (ORS 419B.035(1)).¶¶

(d) The Office of Developmental Disabilities Services (ODDS), when a report involves a home certified by ODDS or a child receiving services from ODDS.¶¶

(e) The Teacher Standards and Practices Commission must be provided copy of the unredacted abuse investigation report if the Department believes the child care caregiver, household member, contractor, or volunteer is licensed or registered by the commission.¶¶

(f) Any individual, administrative hearings officer, court, agency, organization, or other entity when determined necessary under ORS 419B.035(3).¶¶

(9) Any deviations from making required notifications must be approved by an OTIS supervisor and justification documented in the investigative report.

Statutory/Other Authority: ORS 409.050

Statutes/Other Implemented: ORS 419B.005 - 419B.050, Senate Bill 757 (2023 OL Chapter 188)

AMEND: 407-047-0680

REPEAL: Temporary 407-047-0680 from DHS 4-2023

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: Changes the definition of "mental injury" for the purposes of child abuse investigations due to Senate Bill 93 (2023) that amended this term in ORS 419B.005, as of September 1, 2023.

CHANGES TO RULE:

407-047-0680

Investigations of Third-Party: Abuse Determination

(1) Abuse Determination Requirements.¶

(a) Except as provided in OAR 407-047-0670 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation.¶

(b) When making an abuse determination, the standard of proof is reasonable cause to believe.¶

(c) Based on the available evidence after conducting an investigation, the possible abuse determinations are:¶

(A) "Founded," which means there is reasonable cause to believe the abuse occurred.¶

(B) "Unfounded," which means there is no evidence the abuse occurred.¶

(C) "Unable to Determine," which means there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred. "Unable to Determine" may only be used in the following circumstances:¶

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or¶

(ii) After completing the investigation, there is insufficient information to support an abuse determination of Founded or Unfounded and the alleged victim is unable or unwilling to provide consistent information or there is conflicting information from collateral contacts.¶

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, includes, but is not limited to:¶

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.¶

(b) Mental injury (~~psychological maltreatment~~), which shall include only cruel or unconscionable acts or statements made, or threatened to be made, or permitted to be made by the respondent that has a direct effect on the child. The respondent's behavior, intentional or unintentional, must be related to the observable and substantial impairment of to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional, or social well-being and functioning.¶

(c) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Neglect includes each of the following:¶

(A) Physical neglect, which includes each of the following:¶

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.¶

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.¶

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety.

When the OTIS investigator is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.¶

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.¶

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.¶

(D) Desertion, which includes the respondent leaving the child with another person and failing to reclaim the child, or respondent failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.¶

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The respondent's behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.¶

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that

may result from physical abuse include, but are not limited to:¶

(A) Head injuries;¶

(B) Bruises, cuts, lacerations;¶

(C) Internal injuries;¶

(D) Burns or scalds;¶

(E) Injuries to bone, muscle, cartilage, and ligaments;¶

(F) Poisoning;¶

(G) Electrical shock; and¶

(H) Death.¶

(e) Sexual abuse, which includes:¶

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.¶

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.¶

(C) Sex trafficking.¶

(f) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other abuse. ¶

(3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

Statutory/Other Authority: ORS 409.050

Statutes/Other Implemented: ORS 419B.005 to 419B.050, Senate Bill 93 (2023 OL Chapter 267)

AMEND: 407-047-0700

NOTICE FILED DATE: 11/02/2023

RULE SUMMARY: As required in 2023 Senate Bill 757 (effective 1-1-2024), updates OTIS rules to provide a copy of the respondent's notification for founded child abuse to their attorney, if applicable.

CHANGES TO RULE:

407-047-0700

Investigations of Third-Party: Notifications and Report Distribution

After an abuse determination is made and the abuse investigation report has been approved, OTIS must make and document the following notifications:¶

(1) OTIS must notify law enforcement of the abuse determination and may provide a unredacted copy of the abuse investigation report.¶

(2) OTIS must make diligent efforts to notify the reporter, if contact information was provided, of the following information:¶

(a) Whether contact with the child was made, and¶

(b) Whether OTIS determined abuse occurred.¶

(3) OTIS must notify the legal guardian of the alleged victim of the abuse determination when the alleged victim is currently a child.¶

(4) OTIS must notify the respondent when:¶

(a) A report is determined to be "Unfounded" or "Unable to Determine" (see OAR 407-047-0680), OTIS must provide written notice to the respondent.¶

(b) A report is determined to be "Founded" (see OAR 407-047-0680), OTIS must send a Notice of Abuse Determination (as described in ORS 183.415) to the respondent by:¶

(A) Regular mail and certified mail with return receipt requested.¶

(B) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.¶

(C) A copy of the Notice of Abuse Determination must also be provided to the respondent's attorney, if applicable.¶

(5) Others as required or otherwise authorized including, but not limited to:¶

(a) Appropriate personnel within the Department.¶

(b) The employer, contract holder, licensor, certifier, or other regulatory entity of the respondent when the respondent meets the definition of "third-party professional". An exception may be granted when the notification could compromise a child's safety or a criminal investigation.¶

(c) OYA's Professional Standards Office when a report involved an OYA foster home, facility or employee.¶

(d) The tribe (as provided under OAR chapter 413, division 115) when the OTIS investigator knows or has reason to know the alleged victim is an Indian child.¶

(e) Disability Rights Oregon, when a report of abuse is alleged to have occurred at a school or in an educational setting and the report involves a child with a disability (ORS 419B.035(1)).¶

(f) The Office of Developmental Disabilities Services (ODDS), when a report involves a child receiving services from ODDS.¶

(g) Teacher Standards and Practices Commission as provided in ORS 419B.035.¶

(h) ~~The Office of Child~~Department of Early Learning and Care when required by ORS 419B.020 or 419B.035.¶

(i) Any individual, administrative hearings officer, court, agency, organization, or other entity when determined necessary under ORS 419B.035(3).¶

(6) Any deviations from making required notifications must be approved by an OTIS supervisor and justification documented in the investigative report.

Statutory/Other Authority: ORS 409.050

Statutes/Other Implemented: ORS 419B.005 - 419B.050, Senate Bill 757 (2023 OL Chapter 188)