



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Children's Administration

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) October 1, 2008 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The new language is essential for Children's Administration to implement the legislature's intent in Substitute Senate Bill 5321 (Chapter 220, Laws of 2007). The new language is essential for amending the Child Protective Services (CPS) rules which establish findings for child abuse and neglect. The new language will establish a two-tiered findings system and new record expungement timeframes.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 388-15-005; WAC 388-15-077
 Suspended: None

Statutory authority for adoption: RCW 74.13.031; 74.04.050 & Chapter 26.44 RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-14-141 on July 1, 2008.

Describe any changes other than editing from proposed to adopted version:
No changes other than editing were made.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

August 22, 2008

NAME (TYPE OR PRINT)

Stephanie Schiller

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 28, 2008

TIME: 10:26 AM

WSR 08-18-040

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>2</u>	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted in the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>2</u>	Repealed	___

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-005 What definitions apply to these rules? The following definitions apply to this chapter.

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child as defined in RCW 26.44.020 and this chapter.

"Administrative hearing" means a hearing held before an administrative law judge and conducted according to chapter 34.05 RCW and chapter 388-02 WAC.

"Administrative law judge (ALJ)" is an impartial decision-maker who presides at an administrative hearing. The office of administrative hearings, which is a state agency but not part of DSHS, employs the ALJs.

"Alleged perpetrator" means the person identified in a CPS referral as being responsible for the alleged child abuse or neglect.

"Alternative response system" means a contracted provider in a local community that responds to accepted CPS referrals that are rated low or moderately low risk at the time of intake.

"Appellant" means a person who requests an administrative hearing to appeal a CPS finding.

"Child protection team (CPT)" means a multidisciplinary group of persons with at least four persons from professions that provide services to abused or neglected children and/or parents of such children. The CPT provides confidential case staffing and consultation to children's administration.

"Child protective services (CPS)" means the section of the children's administration responsible for responding to allegations of child abuse or neglect.

"Children's administration (CA)" means the cluster of programs within DSHS that is responsible for the provision of child protective, child welfare, foster care licensing, group care licensing, and other services to children and their families.

"Department" or "DSHS" means the Washington state department of social and health services.

~~"((Divisions of child care and early learning (DCCEL)))~~
Department of early learning (DEL) means the ~~((division of economic services))~~ Washington state agency responsible for licensing child care homes and child care facilities.

"Division of children and family services (DCFS)" means the division of children's administration that provides child protective, child welfare, and support services to children and their families.

"Division of licensed resources (DLR)" means the division of children's administration responsible for licensing group care and foster care facilities, and responding to allegations of abuse or neglect in such facilities.

"Finding" means the final decision made by a CPS social worker after an investigation regarding alleged child abuse or neglect.

"Founded" means the determination following an investigation by CPS that based on available information it is more likely than not that child abuse or neglect did occur.

"Inconclusive" means the determination following an investigation by CPS, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur. Beginning October 1, 2008 the department will no longer make inconclusive findings, but shall retain such findings made prior to that date as provided in these rules.

"Mandated reporter" means a person required to report alleged child abuse or neglect as defined in RCW 26.44.030.

"Preponderance of evidence" means the evidence presented in a hearing indicates more likely than not child abuse or neglect did occur.

"Screened-out report" means a report of alleged child abuse or neglect that the department had determined does not rise to the level of credible report of abuse or neglect and is not referred for investigation.

"Unfounded" means the determination following an investigation by CPS that based on available information it is more likely than not that child abuse or neglect did not occur or there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-077 What happens to unfounded CPS findings? (1) ((According to RCW 74.15.130 (2)(b), no unfounded, or inconclusive CPS finding of child abuse or neglect may be used to deny employment in a child care facility or to deny a license to care for children)) Beginning October 1, 2008 the department will no longer make inconclusive findings, but shall retain and destroy such findings made prior to that date as provided in these rules.

(2) ((According to RCW 26.44.020(19) no)) An unfounded, screened out or inconclusive allegation of child abuse or neglect may not be disclosed ((as part of a background check)) to a child placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

(3) ((According to RCW 26.44.031,)) At the end of three years from the receipt of a screened-out report that alleged child abuse or neglect, the department must destroy its records relating to that report.

(4) At the end of six years from the date of the ((report, the department must remove the unfounded finding from the department's records unless an additional child abuse and/or neglect report has been received regarding the same perpetrator during those six years)) completion of an investigation of a report of child abuse or neglect, the department must destroy records relating to unfounded or inconclusive reports, unless a prior or subsequent founded report has been received regarding the child who is the

subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before records are destroyed.

(5) The department shall retain records relating to founded reports of child abuse and neglect as required by DSHS records retention policies. If dependency is established under chapter 13.34 RCW as to a child who is subject of a report of child abuse or neglect, all records relating to the child or the child's parent, guardian, or legal custodian, including any screened-out, unfounded or inconclusive reports not destroyed prior to the establishment of dependency or received after dependency was established, shall be retained as required by DSHS records retention policies regarding dependency records.