

**CHAPTER 407**  
**DEPARTMENT OF HUMAN SERVICES, ADMINISTRATIVE SERVICES DIVISION**  
**AND DIRECTOR'S OFFICE**

**DIVISION 45**  
**OFFICE OF INVESTIGATIONS AND TRAINING**

**Abuse Reporting and Protective Services in Children's Residential  
Care Agencies, Day Treatment Programs, Therapeutic Boarding Schools,  
Foster Care Agencies, and Outdoor Youth Programs**

**407-045-0800**

**Scope**

These rules (OAR 407-045-0800 to 407-045-0980) prescribe standards and procedures for investigating, assessing, and providing protective services in certain therapeutic or treatment programs, when abuse or neglect of a child is reported to have occurred. Specifically, these rules govern children's residential care agencies, day treatment programs, therapeutic boarding schools, foster care agencies, and outdoor youth programs (hereafter, "children's care providers" or "CCPs"). These rules also set forth the nature and content of the abuse investigation, the protective services report, and review rights and procedure.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.205-418.327, & 419B.005-419B.050

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

**407-045-0810**

**General Policy and Applicability**

- (1) Every child deserves safe, respectful, and dignified treatment provided in a caring environment. All CCPs governed by these rules, and their staff, shall conduct themselves in such a manner that children are free from abuse.
- (2) In these rules, the term "abuse" is defined in some detail because of the unique vulnerabilities of children served by CCPs and the nature of the settings where abuse may occur. All forms of abuse are prohibited. CCPs and their staff must always be aware of the potential for abuse in interactions with children.
- (3) These rules govern reports of abuse or neglect in which the CCP, or its staff, is reported to be responsible. All such reports shall be investigated by the Department of Human Services's (Department) Office of Investigations and Training (OIT).
- (4) OIT shall evaluate each case based on available facts and on the individual circumstances of the child, including the child's particular vulnerabilities.

- (5) Nothing in these rules relieves any mandatory reporter, including a CCP, from reporting abuse or neglect alleged to have been caused by other individuals, including but not limited to family members. Those reports shall continue to be investigated by the Department's Children, Adults and Families Division (CAF) or by law enforcement.

Stat. Auth: ORS 409.050, 418.005 & 418.189

Stats. Implemented: ORS 418.189 & 418.205-418.327

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

## **407-045-0820**

### **Definitions**

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" includes but is not limited to:

- (a) Any assault, as defined in ORS Chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
- (b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
- (c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS Chapter 163.
- (d) Sexual abuse, as defined in ORS Chapter 163.
- (e) Sexual exploitation which includes but is not limited to:
  - (A) Contributing to the sexual delinquency of a minor, as defined in ORS Chapter 163, and any other conduct which 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, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in 163.665 and 163.670;
  - (B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

- (C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS Chapter 167.
  - (f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.
  - (g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
  - (h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.
  - (i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.
  - (j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.
- (2) "Child" means an unmarried individual under 18 years of age.
  - (3) "Children's care provider (CCP)" means a licensed residential care agency, day treatment program, foster care agency, therapeutic boarding school, or outdoor youth program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.
  - (4) "Day treatment program" means a licensed CCP that provides day treatment services.
  - (5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.
  - (6) "Department" means the Department of Human Services.
  - (7) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to 418.782.
  - (8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.
  - (9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or

inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a “substantiated” or a “not substantiated” conclusion.

- (10) “Legal finding” means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.
- (11) “Likely to endanger the health or welfare of the child” means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child’s particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.
- (12) “Maltreatment” means any action toward a child which carries a risk of harm to the child’s physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child’s health or welfare.
- (13) “Mandatory reporter” means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.
- (14) “Negligent treatment” means failure to perform duties or failure to take action required to protect the child’s health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child’s health or welfare.
- (15) “Not substantiated” means the preponderance of evidence establishes the alleged abuse did not occur.
- (16) “OIT” means the Department’s Office of Investigations and Training.
- (17) “OIT investigator” means an employee of the Department’s OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.
- (18) “OIT Substantiation Review Committee (OSRC)” means a group of three Department employees selected by the Department’s Deputy Director or designee, none of whom was

involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse and neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

- (19) “Outdoor youth program” means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental problems, or problems with abuse of alcohol or drugs. “Outdoor youth program” does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.
- (20) “Person” means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.
- (21) “Protective action” means a set of services or activities undertaken to address and meet a child’s safety needs after a report of abuse has been received by OIT.
- (22) “Residential care agency” means a licensed child-caring agency that provides services to children 24 hours a day.
- (23) “Substantiated” means that a preponderance of evidence establishes the alleged abuse occurred.
- (24) “Suspicious physical injury” is defined in ORS 419B.005 and includes but is not limited to burns or scalds; extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child’s developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.
- (25) “Therapeutic boarding school” means a licensed organization or a program in an organization that:
  - (a) Is primarily a school and not a residential care agency;

- (b) Provides educational services and care to children 24 hours a day; and
- (c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205-418.327, 418.747, 419B.005-419B.050 & 419B.328

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10; DHSD 6-2010(Temp), f. & cert. ef. 7-12-10 thru 1-8-11; DHSD 12-2010, f. 12-30-10, cert. ef. 1-1-11

#### **407-045-0830**

##### **Training of Children's Care Providers**

- (1) The Department shall provide training and consultation to CCPs to identify abuse and to prevent abuse from occurring.
- (2) The Department shall provide training to assist CCPs to understand the abuse investigation process and the CCP's responsibility in cooperating with the investigation.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.189 & 418.702

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0850**

##### **Responsibilities of the CCP**

- (1) CCPs and their staff are mandatory reporters governed by ORS 419B.005 to 419B.050. Mandatory reporters must immediately report when they have reasonable cause to believe any child with whom they have come in contact has suffered abuse or that any person with whom they have come in contact has abused a child. For purposes of reporting, the belief need only be a reasonable suspicion, and does not need to rise to the level of probable cause. All reports must be made verbally or in writing to the Department or to a law enforcement agency within the county where the individual making the report is located at the time of the contact.
- (2) Concurrent with reporting the suspected abuse or neglect of a child, CCPs shall immediately assess the safety of the child and take any action necessary to remove the child from danger and keep the child safe. CCPs shall cooperate with OIT in establishing a safety plan for the child who is the subject of the report, and for other children who may be at risk of abuse or neglect. In establishing a safety plan, CCPs may not take any actions beyond determining:

- (a) Whether the alleged victim is in danger or in need of immediate protective services, in light of the nature of the report; and
- (b) Whether any immediate personnel action needs to be taken.
- (c) When taking protective action as described in section (2) above, the CCP may not conduct an internal investigation without prior authorization from OIT. For purposes of this section, a prohibited internal investigation includes:
  - (A) Interviews with the alleged victim, witnesses, the accused person, or any other individual or witness who may have knowledge of the facts of the abuse allegation or related circumstances that include questions beyond those necessary for immediate protection of the child or other children; or
  - (B) Review of relevant evidence, other than the initial report or other documents necessary for immediate protection of the child or other children.
- (3) CCPs shall document all reports of suspected abuse or neglect of a child including, to the extent possible, the following information:
  - (a) The name, age, and present location of the child;
  - (b) The names and addresses of individuals, programs, or facilities responsible for the child's care;
  - (c) The nature and extent of the alleged abuse;
  - (d) Any information that led the individual making the report to suspect abuse had occurred;
  - (e) Any information that the individual believes might aid in establishing the cause of the abuse and the identity of the individual alleged to be responsible for the abuse; and
  - (f) The date of the incident.
- (4) Every CCP shall cooperate fully with OIT under these rules. Cooperation includes but is not limited to:
  - (a) Providing the investigator with access to the child, the facility, and to all potential witnesses; and
  - (b) Producing all records and reports requested, including but not limited to medical, psychiatric and psychological records and reports, and individual service or behavioral support plans for the child.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 419B.010-419B.015

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0860**

##### **Responsibilities of the Office of Investigations and Training**

- (1) When OIT receives a report of abuse, OIT shall notify a law enforcement agency within the county where the report was made. If the abuse is reported to have occurred in a different county, OIT must also cross-report to the law enforcement agency in the county where the reported abuse occurred.
- (2) OIT shall cross-report to law enforcement on the same day the OIT screener determines the report requires an immediate or a 24-hour response.
  - (a) Required same day cross-reports include but are not limited to reports of moderate to severe physical abuse, visible injuries to a child, sexual abuse, or the suspicious or unexpected death of a child. Same day reports may be cross-reported verbally, by electronic transmission, or by hand delivery.
  - (b) When a cross-report is verbal and OIT and law enforcement do not respond to the report together, OIT must send a completed screening report to law enforcement.
- (3) All other reports, including those investigated at screening but closed, must be cross-reported to law enforcement no later than ten days after the Department receives the report. The cross-report may be made by electronic transmission, hand delivery, or regular mail.
- (4) When OIT receives a report of alleged abuse or neglect, OIT shall notify the child's parent or legal guardian that an allegation has been made, unless notice is prohibited by law or court order or would compromise the child's safety or a criminal investigation. If the child is in the legal custody of the Department, OIT shall notify the child's assigned Department caseworker, if notice has not already been provided. If the child has been placed at the CCP through the Oregon Youth Authority (OYA), OIT shall notify OYA. If OIT has reason to believe the child is an Indian child, OIT shall notify the tribe within 24 hours from the time the report was received by the Department. In cases in which OIT finds reasonable cause to believe that a child has died as a result of abuse or where the death occurred under suspicious or unknown circumstances, OIT shall notify the appropriate law enforcement agency.

Stat. Auth: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005 & 419B.005-419B.050

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

**407-045-0870**

**Office of Investigations and Training Screening Decision Time Frames**

- (1) When the information received constitutes a report of abuse in which a child may be unsafe, OIT shall interview the child, conduct a site visit, or coordinate with CCP staff to assure that the child is safe within 24 hours after the report is received. If OIT plans to interview the child, OIT must notify the child's parent or legal guardian, unless notification is prohibited by law or court order or would compromise the child's safety or a criminal investigation.
- (2) When it has not been reported that the child is unsafe and there are no other indicators the child is unsafe, OIT may decide to open the case for investigation or to close it at screening. OIT must make the decision to open or close the case within five calendar days from the date the report is received by the Department. The OIT screener may request approval for an extension of time beyond five days if extenuating circumstances exist. Extensions may only be granted by the OIT Director or the Director's designee.
- (3) OIT shall screen all reports to identify the nature and cause of the reported abuse.
  - (a) In all cases, the screener shall evaluate whether the child is safe or unsafe, assess the need for protective action, request that protective action be taken and necessary services provided, and assess the need for further investigation.
  - (b) In conducting the screening process, OIT may:
    - (A) Coordinate in-person or by telephone with any CCP staff authorized to take protective action on behalf of the child;
    - (B) Conduct a site visit at the CCP;
    - (C) Interview the child or other witnesses;
      - (i) Prior to interviewing a child victim or child witness, OIT shall give notice of its intent to interview to the child's legal guardian, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation.
      - (ii) If OIT determines contact with the child should occur at the child's school, OIT shall comply with the requirements of ORS 419B.045.
    - (D) Gather and secure physical evidence as necessary;
    - (E) Take photographs of the child and obtain a medical assessment, as necessary, consistent with OAR 407-045-0880(2)(d) and (e) of this rule;

- (F) Take photographs of the facility as necessary or appropriate; and
  - (G) Receive, review, or copy records pertaining to the child or the incident, including but not limited to incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.
- (4) If OIT decides the information received does not constitute a report of child abuse or neglect as defined in these rules, the report shall be closed at screening. If the report is closed at screening, the screener shall document the information supporting the decision to close. If the child is in the legal custody of the Department, OIT shall notify the child's assigned caseworker of the decision to close the case. If the child has been placed in the CCP by OYA, OIT shall notify OYA. OIT shall notify the CCP and the individual who made the report that the report has been closed. All notices of the decision to close shall be made within three days of the decision.
- (5) If, after screening, OIT determines that the information constitutes a report of child abuse or neglect under these rules, it shall open the case for investigation. If OIT decides to investigate, OIT shall immediately notify the child's legal guardian, unless notification is prohibited by law or by court order, or could compromise the child's safety or a criminal investigation. OIT shall also notify the child's caseworker if the child is in the legal custody of the Department and shall notify OYA or the child's tribe, as applicable.
- (6) Whenever an OIT investigator takes photographs of physical injuries to a child who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the CAF caseworker assigned to the child. When conducting screenings or investigations in foster home settings, the investigator shall ascertain whether any other children living in the foster home are in the custody of the Department and if so, shall notify each child's caseworker that a report of abuse or neglect in the foster home is being investigated or screened, and the nature of the investigation.

Stat. Auth: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005, 419B.015, 419B.017 & 419B.020

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0880**

#### **OIT Investigative Process in Cases Opened for Investigation**

- (1) OIT shall conduct thorough and unbiased investigations of abuse allegations.
- (2) In conducting abuse investigations, the OIT investigator shall:
  - (a) Make in-person contact with the child;

- (b) Interview the child, any witnesses, the accused person, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;
  - (c) Review all relevant and material evidence;
  - (d) Take photographs as appropriate or necessary. If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must immediately photograph or have photographed the suspicious physical injury, pursuant to ORS 418.747; and
  - (e) If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must, pursuant to ORS 418.747, ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the child's medical needs. If a designated medical professional is not available, the investigator must ensure that an available physician conducts the medical assessment. The investigator must document the efforts made to locate the designated medical professional.
- (3) A person accused of abuse may have a peer consultant present during the OIT interview. Any individual providing peer support shall be obligated to maintain the confidentiality of information declared to be confidential under state or federal law. Peer supporters shall not be involved in the investigation as witnesses or potential witnesses. CCP certification or human resources staff shall not serve as peer supporters. An accused person wishing to have a peer supporter present during the interview shall notify the OIT investigator in advance of the scheduled interview and shall provide the investigator with the peer's name and job title.
- (4) When a law enforcement agency is conducting an investigation of the alleged abuse, the OIT investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:
- (a) There is potential for action by a licensing agency;
  - (b) Timely investigation by law enforcement is not likely; or
  - (c) When the law enforcement agency does not complete a criminal investigation.
- (5) During the investigation, if the investigator knows or has reason to believe the child is an Indian child, the investigator must give notice to the child's tribe within 24 hours that an investigation is being conducted, if the tribe has not already been notified.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.747, 419B.045 & 419B.005-419B.050  
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0890**

#### **Abuse Investigation and Protective Services Report**

- (1) When the investigation is complete, OIT shall issue a final decision stating whether the allegation is substantiated, not substantiated, or inconclusive, and shall prepare a written report which must include:
  - (a) A description of the allegation being investigated, including the date, location and time;
  - (b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;
  - (c) A summary of findings and conclusion concerning the allegation of abuse;
  - (d) A specific finding of substantiated, not substantiated, or inconclusive;
  - (e) A list of protective services provided to the child at the date of the report;
  - (f) A plan of action necessary to prevent further abuse of the child;
  - (g) Any additional corrective action required by the CCP and deadlines for completing the action;
  - (h) A list of any notices made to licensing or certifying agencies; and
  - (i) The name and title of the individual completing the report.
- (2) The report must be completed within 30 business days from the date the case was opened for investigation. The OIT Director or designee may authorize an extension of time for good cause shown.
- (3) The report and underlying investigatory documents are confidential and not available for public inspection. Except as provided in ORS 419B.035, names of witnesses and the alleged abuse victim are confidential unless the provisions of ORS 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and may not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contain “individually identifiable health information,” as that term is defined in ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 179.509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2. The Department shall make otherwise confidential

records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) and other federal and state confidentiality laws.

- (4) Except as provided in section (3) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child.
- (5) Subject to ORS 419B.035(3), the Department may make the protective services report or relevant materials, in redacted form, available to the CCP, any public agency that licenses or certifies the individuals working in a CCP, or to any person who was alleged to have abused or neglected the child. The Department may not disclose confidential information which is prohibited by state or federal law.
- (6) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 409.225, 418.015, 419B.005-050 & 419B.035

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0900**

##### **Right to Request Review of a Substantiated Finding of Abuse**

- (1) When OIT has substantiated that abuse of a child has occurred, the person against whom the finding has been made, or a CCP against whom the finding has been made, has the right to request an administrative review of the OIT decision following the procedure set forth in OAR 407-045-0940.
- (2) When OIT issues a substantiated abuse report, OIT shall also include written notice of the right to request an administrative review.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 419B.010 & 419.370

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0910**

##### **Providing Notice of an OIT Substantiation**

OIT must deliver a notice of an OIT substantiation of abuse or neglect to the person identified as the person substantiated in the OIT report or to a substantiated CCP. The notice must be delivered:

- (1) By certified mail, restricted delivery, return receipt requested to the last known address of the person or CCP; or
- (2) By hand delivery to the person or CCP. If hand delivered, the notice must be addressed to the person or to the OIT contact on record for a CCP and a copy of the notice must be signed and dated by the person or CCP representative acknowledging receipt and also signed by the person delivering the notice.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0920**

##### **Claim of Lack of Notice**

- (1) If a person or CCP believes they are entitled to a notice of OIT substantiation but has not received one, the person or CCP may contact OIT to inquire about a review of the disposition.
- (2) OIT must determine whether a notice of OIT substantiation was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by the returned receipt.
- (3) If a notice was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OIT must:
  - (a) Prepare and deliver a notice of waived rights for review; or
  - (b) Inform the person or CCP by telephone of the information required in the notice of waived rights for review. OIT must document the telephone call.
- (4) If no return receipt exists or if it appears that notice was not properly provided, OIT must deliver a notice of OIT substantiation as provided in these rules.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0930**

##### **Information Included in the Notice of an OIT Substantiation**

The notice of an OIT substantiation must include the following:

- (1) The case number assigned to the investigation that resulted in the OIT substantiation;
- (2) The full name of the person or CCP who has been identified as responsible for the child abuse as recorded in the OIT report;
- (3) A statement that the OIT investigation resulted in a substantiation, including a description of the type of child abuse or neglect identified;
- (4) A description of the OIT investigation, including a summary of findings and conclusions;
- (5) A statement that the person or CCP has a right to request a review;
- (6) Instructions for making a request for review, including the requirement that the person or CCP provide a full explanation why the person believes the OIT substantiation is wrong;
- (7) A statement that the Department may not review an OIT substantiation if a legal proceeding is pending and that the person or CCP may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the OIT substantiation;
- (8) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of the notice of OIT substantiation, as documented by a returned receipt.
- (9) A statement that the OSRC shall consider relevant documentary information, including the OIT report and accompanying exhibits, and information submitted with the request for review by the person or CCP requesting review.
- (10) A statement that the OSRC may not re-interview the victim; interview or meet with the person or CCP, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse; and
- (11) A statement that OIT shall send the person or CCP a notice of OSRC decision within 60 calendar days of receiving a request for review.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0940**

#### **Requesting Review of an OIT Substantiation**

A person or CCP requesting a review must use information contained in the notice of OIT substantiation to prepare a written request for review. The written request for review must be

received by OIT within 30 calendar days of the receipt of the notice of OIT substantiation. If the request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:

- (1) Date the request for review is written;
- (2) Case number found on the notice of OIT substantiation;
- (3) Full name of the person or CCP;
- (4) The person's or CCP's current name (if it has changed from the name noted in section (3) of this rule);
- (5) A full explanation, responsive to the information provided in the Department's notice, explaining why the person or CCP believes the OIT substantiation is wrong and any additional information and documents the person or CCP wants considered during the review;
- (6) The person's or CCP's current street address and telephone number; and
- (7) The person's signature or the signature of a CCP employee authorized to sign on behalf of the organization.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0950**

#### **When Legal Findings Precludes Right to Request a Review and Providing Notice of Legal Proceeding**

- (1) If OIT has knowledge of a pending legal proceeding, the OSRC may not review the disposition until the legal proceeding is completed.
- (2) If OIT has knowledge of a pending legal proceeding, OIT must prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person or CCP that the Department may not review the substantiation until the legal proceeding is completed and may not take further action on the request.
- (3) If the completed legal proceeding results in a legal finding consistent with the OIT substantiation, the Department may not conduct a review. In that case, OIT shall provide a notice of legal finding to the person or CCP.
- (4) If the completed legal proceeding results in a legal finding which is inconsistent with the OIT substantiation, the person or CCP may, at the conclusion of the legal proceeding, re-

submit a request for review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0960**

##### **OIT Responsibilities Related to Notices and Reviews**

- (1) If a person or CCP asks to review Department records for the purpose of reviewing an OIT substantiation, state and federal confidentiality laws, including OAR 413-010-0000 to 413-010-0075 and 413-350-0000 to 413-350-0090, govern the inspection and copying of records.
- (2) OIT must maintain records to demonstrate the following, when applicable:
  - (a) Whether the Department delivered a notice of OIT substantiation;
  - (b) Whether the notice of OIT substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and
  - (c) The date a request for review was received by OIT.
- (3) The OIT Director or designee must maintain a comprehensive record of completed OIT substantiation reviews.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

#### **407-045-0970**

##### **OSRC Review**

- (1) The OSRC shall conduct a review and issue a notice of OSRC decision within 60 calendar days from the date OIT receives a request for review.
- (2) The OSRC shall operate as follows:
  - (a) The OSRC shall consider relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.

- (b) The OSRC may not re-interview the victim; interview or meet with the person or CCP staff, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse or neglect.
  - (c) All OSRC decisions must be decided by majority vote of the three participating committee members, all of whom must be present.
  - (d) The OSRC shall make a determination as to:
    - (A) Whether there is reasonable cause to believe that child abuse or neglect occurred; and
    - (B) Whether there is reasonable cause to believe that the person or CCP is responsible for the child abuse or neglect.
  - (e) The OSRC shall decide to either uphold the OIT substantiation, or change that conclusion to not substantiated or inconclusive.
- (3) Within 60 calendar days from the date the OSRC receives the request for review, the OSRC shall prepare and send to the requestor by certified mail or restricted delivery, with return receipt requested, a notice of OSRC decision that includes the following:
- (a) Whether there is reasonable cause to believe that child abuse occurred;
  - (b) Whether there is reasonable cause to believe that the person or CCP was responsible for the child abuse;
  - (c) Whether the OSRC is changing the OIT substantiation;
  - (d) If the OIT substantiation is changed, whether the changed conclusion is being changed to “not substantiated” or “inconclusive;” and
  - (e) A summary of the information used by the OSRC and its reasoning in reaching its decision.
- (4) OSRC shall send the notice of OSRC decision to the person or CCP, CAF, the OIT investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the OIT Director.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 8-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

**407-045-0980**

## **Retaliation Prohibited**

No individual, including a child who reports suspected abuse, shall be subject to retaliatory action by a CCP.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10