

years prior to ORR's retention of the auditor.

(d) ORR, the care provider, or the care provider's agency must not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to ORR's retention of the auditor, with the exception of contracting for subsequent audits.

§411.113 Audit contents and findings.

(a) Each audit must include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the care provider facility under review.

(b) Audit reports must state whether care provider facility policies and procedures comply with all standards.

(c) For each of these standards, the auditor must determine whether the audited care provider facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary must indicate, among other things, the number of provisions the care provider facility achieved at each grade level.

(d) Audit reports must describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited care provider facility and must include recommendations for any required correction action.

(e) Auditors must redact any personally identifiable information of UCs or staff information from their reports but must provide such information to ORR upon request.

(f) ORR must ensure that aggregated data on final audit reports is published on ORR's Web site, or is otherwise made readily available to the public. ORR must redact any sensitive or confidential information prior to providing such reports publicly.

§411.114 Audit corrective action plan.

(a) A finding of "Does Not Meet Standard" with one or more standards must trigger a 90-day corrective action period.

(b) The auditor and ORR must jointly develop a corrective action plan to achieve compliance.

(c) The auditor must take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a care provider facility.

(d) After the 180-day corrective action period ends, the auditor must issue a final determination as to whether the care provider facility achieved compliance with those standards requiring corrective action.

(e) If the care provider facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it achieved compliance.

§411.115 Audit appeals.

(a) A care provider facility may file an appeal with ORR regarding any specific audit finding that it believes to be incorrect. Such appeal must be filed within 90 days of the auditor's final determination.

(b) If ORR determines that the care provider facility stated good cause for re-evaluation, the care provider facility may commission a re-audit by an auditor mutually agreed upon by ORR and the care provider facility. The care provider facility must bear the costs of the re-audit.

(c) The findings of the re-audit are considered final.

PART 412—INVESTIGATIONS OF ALLEGATIONS OF CHILD ABUSE AND NEGLECT

Sec.

412.001 Definitions.

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§412.001 Definitions.

ACF means the Administration for Children and Families, Department of Health and Human Services.

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Administrative closure means that ORR has determined that it will not make a finding regarding an allegation of child abuse or neglect. ORR may make a determination of administrative closure both before and after an investigation begins. Reasons for administrative closure of an intake report before investigation may include, but are not limited to, lack of jurisdiction to conduct an investigation of the allegation, transfer of the report to another jurisdiction or agency, duplication of an already existing report, an allegation not rising to the level of child abuse or neglect, or an allegation is otherwise outside the scope of this rule, as described at § 412.100(c). Reasons for a disposition of administrative closure after investigation may include, but are not limited to, inability to contact the child, insufficient information to proceed with the investigation, or transfer of the report to another jurisdiction or agency.

Allegation means a written or oral report to ORR of suspected child abuse or neglect.

Alleged perpetrator means a person who is alleged to have abused or neglected a child within the scope of this part as described at § 412.100(a) and (c).

Appeal and review process means the appeal to an Administrative Law Judge (ALJ) of the HHS Departmental Appeal Board (DAB), and review by the Assistant Secretary for ACF of the disposition that an allegation of child abuse or neglect was substantiated at Tier I or Tier II.

Attorney of record has the same definition as provided under 45 CFR 410.1001.

Care provider facility has the same definition as provided under 45 CFR 410.1001.

Child abuse and neglect means any act or failure to act which results in death, serious physical or emotional harm, sexual abuse, or exploitation of a child; or an act or failure to act which presents an imminent risk of serious harm to a child including but not limited to physical abuse, verbal or emotional abuse, sexual harassment, sexual abuse, inappropriate sexual behavior, neglect, and medical neglect.

Child advocates has the same definition as provided under 45 CFR 410.1001.

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Contractor means an entity that receives a contract as provided under 45 CFR 75.2.

Days means calendar days, unless otherwise stated.

Disposition means a finding by ORR at the conclusion of an investigation that an allegation of abuse or neglect is substantiated at Tier I, substantiated at Tier II, not substantiated, unfounded, or administratively closed.

Emergency or influx facility (EIF) has the same definition as provided under 45 CFR 410.1001.

HHS means the U.S. Department of Health and Human Services.

Inappropriate sexual behavior refers to inappropriate sexual, derogatory, or offensive conduct that does not rise to the level of sexual abuse or sexual harassment.

Intake report means an allegation of child abuse or neglect identified by ORR as describing child abuse or neglect of an unaccompanied child by an alleged perpetrator.

Legal service provider (LSP) has the same definition as provided under 45 CFR 410.1001.

Medical neglect means any failure to provide medical care or access to medical services that endangers the health of the child.

Multidisciplinary team is a group of individuals comprised of ORR staff that includes subject matter experts that provides input to ORR's Child Welfare Investigators by assessing reported allegations of child abuse and neglect at care provider facilities and making recommendations regarding the physical and behavioral healthcare needs of unaccompanied children potentially impacted by child abuse and neglect at these facilities.

Neglect refers to any failure to provide adequate food, water, clothing, shelter, or other necessities; punitive, careless, or unnecessary denial of access to other basic services such as education, legal aid, exercise, recreation, bathroom usage, and communication or correspondence with families, sponsors, or attorneys.

Not substantiated allegation means a disposition that there is not a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, but there is at

least some evidence that the unaccompanied child was harmed or placed at risk of harm, whether or not by the alleged perpetrator.

ORR means the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ORR Central Registry means a database maintained by ORR consisting of ORR findings of sustained perpetrators of child abuse and neglect at Tier I.

ORR Child Welfare Investigator means an ORR staff member who investigates reports of alleged abuse or neglect of children, renders the investigative disposition, and issues corrective action on behalf of ORR and performs other related work for ORR.

Physical abuse means physical harm to a child that includes, but is not limited to, bruises, cuts, sprains, welts, fractures, burns, lacerations, missing or broken teeth, muscle strains, or internal injuries; in addition to physical mistreatment such as whipping, punching, shoving, kicking, hitting, biting, shaking, dragging, throwing, stabbing, or choking a child, as well as the inappropriate use of restraints.

Preponderance of the evidence means proof, after assessing the totality of available information, that leads to the conclusion that the fact at issue is more probably true than not.

Sexual abuse has the same definition as provided under 45 CFR part 411.6.

Sexual harassment has the same definition as provided under 45 CFR part 411.6.

Sub-grantee means a person or entity that receives a subaward from a care provider facility to carry out activities and programs of ORR or the care provider facility pursuant to a grant or agreement with ORR or with a care provider facility (but does not include an individual that is a beneficiary of such program).

Substantiated allegation—Tier I means a disposition that there is a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and the investigation indicates one or more Automatic Tier I substantiating circumstances are found pursuant to §412.100(e)(7), or substantiation is warranted based on consideration of aggra-

vating and mitigating factors pursuant to §412.100(e)(8).

Substantiated allegation—Tier II means a disposition that there is a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and that based on consideration of aggravating and mitigating factors pursuant to §412.100(e)(8), the evidence does not warrant a finding of Substantiated Allegation—Tier I.

Substantiated perpetrator means a person against whom an allegation of child abuse or neglect has been substantiated by ORR at Tier I or Tier II, but who has not exhausted all applicable appeal and review processes for such allegations.

Sustained allegation means an allegation that was substantiated by ORR at Tier I or Tier II and:

(1) That was upheld pursuant to appeal and review processes, as described at §412.102; or

(2) For which the appeal was dismissed, including when the substantiated perpetrator waives their right to appeal by not making a timely request to the DAB ALJ or by waiving those rights as specified in §412.102(c).

Sustained perpetrator means a substantiated perpetrator at Tier I or Tier II:

(1) Whose child abuse or neglect finding was upheld in the appeal and review process; or

(2) Whose appeal and review process was dismissed, including due to waiving their right to appeal by not timely requesting an appeal to the DAB ALJ or by waiving those rights as specified in §412.102(c).

Unaccompanied child/children has the same definition as provided under 45 CFR 410.1001.

Unfounded allegation means a disposition that there is not a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and the evidence indicates that the unaccompanied child was not harmed or placed at risk of harm.

Verbal or emotional abuse means any criticisms, comments, behaviors, or threats that cause harm to a child's psychological, intellectual, or emotional functioning or self-esteem,

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which may be exhibited by a child's anxiety, loneliness, fear, sadness, withdrawal, aggression, or loss of trust with staff.

Volunteer has the same definition as provided under 45 CFR 411.

§ 412.100 Investigations of allegations of child abuse and neglect.

(a) *Purpose.* This part establishes standards, requirements and procedures for investigations by ORR of allegations of child abuse and neglect of an unaccompanied child in ORR custody alleged to have been committed by care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR, subject to § 412.100(c).

(b) *Severability.* The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid by a court of law, the remaining provisions shall continue in effect.

(c) *Applicability.* This part applies to:

(1) Care provider facilities housing unaccompanied children in States where the State agency responsible for investigating child abuse and neglect allegations will not investigate such allegations in ORR-funded care provider facilities; and

(2) Emergency or influx facilities (EIFs).

(d) *Reporting.* Care provider facilities to whom this part applies must have written policies and procedures that allow unaccompanied children, care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, families of unaccompanied children, legal service providers, child advocates, attorneys of record, and any other persons, to report allegations of child abuse and neglect to ORR directly, to the care provider facility, or to a designated entity or office that is not part of the care provider facility. The care provider facility written policies and procedures must:

(1) Provide unaccompanied children and other individuals with methods for reporting and inform them of how they can report an allegation of child abuse

and neglect to a designated entity or office that is not part of the care provider facility. Such entity or office must be able to receive allegations of child abuse and neglect and must immediately forward such allegations to ORR. The method for reporting must allow unaccompanied children to remain anonymous upon request.

(2) Ensure all the methods of reporting described at § 412.100(d)(1) are accessible for unaccompanied children with disabilities and with limited English proficiency.

(3) Ensure that unaccompanied children, staff, or others who report allegations of child abuse and neglect are protected against retaliation.

(e) *Investigations.* When receiving reports of allegations of child abuse and neglect and conducting investigations, ORR must ensure the health and safety of unaccompanied children while making every effort to reduce further trauma to the alleged victim(s).

(1) If ORR receives a report of an allegation of child abuse or neglect, it must generate an intake report and determine whether the report includes an allegation that, if found to be true, would meet the definition of child abuse and neglect in this part and is consistent with § 412.100(a) and (c). If so, ORR will assign the intake report for investigation. If not, ORR will administratively close the report.

(2) If ORR determines that an intake report is appropriate for investigation, ORR shall assign an ORR Child Welfare Investigator to make a prompt and thorough investigation of the report to obtain sufficient information to determine whether the allegation of child abuse or neglect is substantiated, either at Tier I or II, based on a preponderance of the evidence.

(3) ORR shall provide notification that an allegation of child abuse and neglect will be investigated by ORR to the alleged perpetrator; care provider facility; alleged victim; alleged victim's attorney of record (if the child has an attorney of record); and the alleged victim's parent(s), legal guardian(s), or sponsor(s) (as appropriate), unless ORR has evidence showing the parents, legal guardians, or sponsors should not be notified or the victim is

14 years old or older. If the alleged victim is 14 years old or older and ORR has determined that the alleged victim is able to make an independent decision, the alleged victim can affirmatively consent to disclosure.

(4) Upon notification that an investigation has been initiated, the care provider facility must take immediate responsive measures, for the protection of child welfare, and notify the alleged perpetrator, as appropriate, and ORR of such measures. These measures may extend throughout the pendency of an investigation, and during the pendency of the appeal and review process, as necessary and applicable.

(5) *Investigations process.* (i) ORR shall coordinate with any local or State law enforcement agencies, or other Federal agencies, as appropriate, during its investigation. ORR may pause or resume an investigation at its discretion, with input from law enforcement partners or other relevant investigatory bodies, as necessary.

(ii) A multidisciplinary team of ORR staff that includes subject matter experts, shall be established, as necessary, to provide input and an assessment of the reported allegation of child abuse or neglect to assist the ORR Child Welfare Investigator.

(iii) During the investigation, the ORR Child Welfare Investigator must complete, at a minimum, the following actions:

(A) Upon receiving an intake report, review the intake report and the care provider facility's records on the alleged victim and alleged perpetrator, conduct background checks on the alleged perpetrator, interview the person who reported the allegation if this person was not interviewed during intake, immediately request preservation of any potential video and documentary evidence, and as needed, establish a plan for thoroughly investigating the allegation;

(B) Visit the care provider facility, as appropriate, to conduct a walkthrough of the facility and review video and documentary evidence;

(C) Make reasonable efforts to interview all individuals who have information relevant to the allegation of child abuse or neglect, including, but not limited to, the alleged perpetrator (as

appropriate), care provider facility staff, the alleged victim, sponsor(s), and the parent(s) or legal guardian(s) (as appropriate) of the alleged victim, and any other potential witnesses;

(D) Ensure that interviews conducted as part of the investigation are accessible for individuals with disabilities and with limited English proficiency and are properly documented either in writing or by audio or video recording;

(E) Gather all relevant information, including documents and audio or video evidence;

(F) Review any available evidence of past conduct contained in DCPI's records relating to the same alleged perpetrator, except for allegations that resulted in a finding of unfounded or administrative closure; and

(G) Assess the ongoing risk of child abuse or neglect to the unaccompanied children at the care provider facility and, as appropriate, request that the care provider facility implement a plan to mitigate the risk and ensure the safety of the children.

(6) After the investigation is complete, ORR may make any of the following dispositions based on the preponderance of the evidence for each reported allegation:

(i) Substantiated allegation—Tier I;

(ii) Substantiated allegation—Tier II;

(iii) Not substantiated allegation;

(iv) Unfounded allegation; or

(v) Administrative closure.

(7) *Automatic Tier I substantiating circumstances.* The existence of any one of the following circumstances in connection to a substantiated finding, by a preponderance of the evidence, of child abuse or neglect shall result in an automatic finding of Substantiated allegation—Tier I:

(i) The death or near death of a child as a result of child abuse or neglect;

(ii) Subjecting or exposing a child to sexual abuse or sexual harassment;

(iii) The infliction of injury or creation of a condition requiring a child to be hospitalized or to receive significant medical attention;

(iv) Repeated instances of physical abuse committed by the individual against any unaccompanied child in ORR care;

(v) Failure to take reasonable action to protect a child from sexual abuse or

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repeated instances of physical abuse under circumstances where the individual knew or should have known that such abuse was occurring; and

(vi) Depriving a child of necessary care (food, shelter, healthcare, supervision) which either caused serious harm or created a substantial risk of serious harm.

(8) *Aggravating factors and mitigating factors.* If ORR determines that there are no automatic Tier I substantiating circumstances under § 412.100(e)(7), ORR shall consider the following aggravating and mitigating factors together in determining if child abuse or neglect should be substantiated at Tier I or II. Consideration of aggravating and mitigating factors will be based on the totality of the circumstances and the interest of protecting child welfare:

(i) *Aggravating factors.* Aggravating factors shall be weighed together with any existing mitigating factors. Aggravating factors include any of the following:

(A) Violations of ORR behavior management requirements pursuant to § 410.1304;

(B) The individual's failure to comply with clearly established care provider facility policies, corrective action plans, or agreed-upon conditions;

(C) The tender age, delayed developmental status or other vulnerability of the child;

(D) Any significant or lasting physical, psychological, or emotional harm to the child;

(E) An attempt to inflict any significant or lasting physical, psychological, or emotional harm to the child;

(F) Evidence suggesting a repetition or pattern of abuse or neglect, including multiple instances in which child abuse or neglect was substantiated at Tier I or Tier II and not substantiated allegations if they demonstrate a pattern of abuse or neglect or harm.

(ii) *Mitigating factors.* Mitigating factors shall be weighed together with any existing aggravating factors. Mitigating factors include any of the following:

(A) Remedial actions taken by the individual before the investigation was concluded;

(B) Extraordinary, situational, or temporary stressors that caused the in-

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dividual to act in an uncharacteristically abusive or neglectful manner;

(C) The isolated or aberrational nature of the child abuse or neglect; and

(D) The limited, minor, or negligible physical, psychological, or emotional impact of the abuse or neglect on the child.

(f) *Confidentiality.* Records created and information gathered or obtained during an investigation are for internal purposes only, will not be shared or made public unless otherwise required or authorized by law, and may not be disclosed without prior ORR approval. All records must be maintained in an appropriate recordkeeping system with protections for the privacy and security of the individuals identified in the records.

(g) *Notifications of a Disposition.* (1) ORR must notify the alleged perpetrator of the disposition in writing within five days of making a disposition. ORR must also notify in writing the alleged victim, their parent(s) or legal guardian(s) (as appropriate), or sponsor(s), of the disposition within five days of making a disposition.

(2) If the disposition is substantiated at Tier I, the notification must state:

(i) The substantiated perpetrator will be considered a Tier I sustained perpetrator and their name and other details related to the relevant abuse or neglect findings will be placed on the ORR Central Registry, unless they seek an appeal of the disposition pursuant to § 412.102, and that once identified in the ORR Central Registry they will be prohibited from working or volunteering in any way on ORR-funded grants or contracts, and may not have access to or contact with any unaccompanied child in ORR custody;

(ii) The reasons for the Tier I substantiated perpetrator's placement on the ORR Central Registry in terms sufficient to put the perpetrator on notice of the conduct or incident(s) upon which it is based;

(iii) The Tier I substantiated perpetrator may appeal ORR's disposition pursuant to § 412.102, but that if the Tier I substantiated perpetrator either fails to timely submit a notice of appeal, or upon conclusion of the appeal

and subsequent review, if any, the disposition is upheld, the Tier I substantiated perpetrator will be added to the ORR Central Registry as a Tier I sustained perpetrator and the disposition will be reported to Federal, State, and local authorities, as appropriate; and

(iv) ORR's procedures for making the disposition.

(3) If the disposition is substantiated at Tier II, the notification must inform the Tier II substantiated perpetrator that they may appeal ORR's disposition pursuant to §412.102, but that if they either fail to timely submit a notice of appeal, or upon the conclusion of the appeal and subsequent review, if any, the disposition is upheld, the Tier II substantiated perpetrator will be designated as a Tier II sustained perpetrator and ORR's disposition will be retained in ORR records. ORR may use these records to determine patterns of child abuse and neglect and to inform future safety planning at care provider facilities. A Tier II sustained perpetrator will not be placed on the ORR Central Registry.

§412.101 Interventions and discipline.

(a) *ORR Central Registry.* (1) ORR will maintain an ORR Central Registry consisting of the names of Tier I sustained perpetrators for purposes consistent with §412.100(a) and (c). The ORR Central Registry will contain names and other identifying information for such persons, and details regarding any sustained allegations of child abuse and neglect against those persons.

(2) Subject to legal requirements regarding disclosure of information, as well as information sharing obligations with relevant State, local, or Federal authorities, the ORR Central Registry will not be public-facing, nor available to persons outside of ORR. The ORR Central Registry will only be used by ORR to identify Tier I sustained perpetrators, as defined in this part, and for ORR to use as part of the screening process by care provider facilities as described in §412.101(b).

(b) *Working and Volunteering Prohibitions and Mandatory ORR Central Registry Checks.* (1) The individuals listed in the ORR Central Registry shall be prohibited from working or volun-

teering in any way on ORR-funded grants or contracts and may not have access to or contact with any unaccompanied child in ORR custody unless ORR removes such individual from the ORR Central Registry.

(2) As part of the screening process for hiring decisions for staff, contractors or sub-grantees, or for screening volunteers, all care provider facilities, home study providers, and post-release service providers, whether or not located in States that investigate child abuse and neglect allegations at ORR care provider facilities, must check with ORR to confirm that an applicant is not listed in the ORR Central Registry.

(3) All care provider facilities, home study providers, and post-release service providers, whether or not located in States that investigate child abuse and neglect allegations at ORR care provider facilities, must also check all of their personnel against the ORR Central Registry at least once annually.

(c) *Disciplinary sanctions.* Care provider facilities must implement appropriate disciplinary or remedial measures where they or ORR find that care provider facility staff, contractors or sub-grantees of the care provider facility, or care provider facility volunteers engaged in conduct that does not rise to the level of a Tier I substantiated allegation, as defined at §412.001, but nevertheless raises child welfare concerns.

(d) *Referrals to State, Local, and Other Federal Agencies.* (1) ORR shall refer the names and other identifying information of Tier I sustained perpetrators to relevant State and local authorities and to relevant law enforcement agencies in the State in which the sustained allegation of child abuse or neglect occurred. Additionally, if a State or local authority or relevant local law enforcement agency outside of the State in which the Tier I sustained allegation occurred requests information about the sustained perpetrator, ORR will confirm whether a particular individual is on the ORR Central Registry.

(2) ORR will provide the names and other identifying information of Tier I sustained perpetrators to the Federal Bureau of Investigation and HHS Office

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of the Inspector General (OIG), consistent with any applicable agreements.

(3) ORR and care provider facilities shall not interfere with another State, local, or Federal authority or agency's investigation into allegations of child abuse and neglect.

§ 412.102 Appeal and review process.

(a) A substantiated perpetrator at Tier I or Tier II may appeal the disposition made by ORR to an Administrative Law Judge (ALJ) of the HHS Departmental Appeals Board (DAB) pursuant to § 412.102(c).

(b) *Notice of Opportunity for an Appeal.* (1) After ORR substantiates an allegation of child abuse and neglect at Tier I or Tier II, it will send a written notice to the substantiated perpetrator at Tier I or Tier II, in accordance with § 412.100(g), with notification that the allegation has been substantiated and that, unless they appeal the disposition by ORR, a Tier I substantiated perpetrator will be placed on the ORR Central Registry as a Tier I sustained perpetrator and a Tier II substantiated perpetrator's information will be retained as a Tier II sustained perpetrator in agency records.

(2) The written notice shall:

(i) Clearly describe the basis for ORR's disposition that substantiates the relevant allegations at Tier I or Tier II and shall explain the Tier I or Tier II substantiated perpetrator's right to appeal the disposition and the steps required to initiate the appeal.

(ii) Inform the substantiated perpetrator that they may appeal the ORR disposition before an ALJ.

(iii) Provide the substantiated perpetrator at Tier I or Tier II and their attorney, if any, with written information and instructions describing the appeal process.

(iv) Inform the substantiated perpetrator at Tier I or Tier II that if they do not submit a notice of appeal within 30 days of receiving the notice of disposition, the DAB will consider the substantiated perpetrator to have waived their opportunity to appeal and any subsequent review. If the appeal is determined to be waived, a Tier I substantiated perpetrator will be identified as a Tier I sustained perpetrator

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on the ORR Central Registry and a Tier II substantiated perpetrator's information will be retained as a Tier II sustained perpetrator in agency records.

(c) *Notice of Appeal and Dismissal of an Appeal.*—(1) *Notice of Appeal.* (i) If the substantiated perpetrator at Tier I or Tier II elects to appeal ORR's disposition that an allegation is substantiated at Tier I or Tier II, they must file a written notice of appeal with the DAB within 30 days of receipt of the written notice of ORR's disposition.

(ii) Within 30 days of receipt of the notice of appeal, ORR shall provide all evidence it used in making its disposition to the DAB.

(iii) ORR shall provide the substantiated perpetrator at Tier I or Tier II and their attorney, if any, all information used in making its disposition except any portion that ORR determines:

(A) Would compromise the safety and well-being of a child, the reporter, or any other person;

(B) Would reveal the identity of a child who furnished information with the understanding that their identity would be held in confidence;

(C) Would reveal the identity of any alleged perpetrator(s) involved in the same case who has an unfounded disposition; or,

(D) Is otherwise prohibited by State or Federal law or regulation. In the case of information being withheld, the substantiated perpetrator at Tier I or Tier II shall be advised of the general nature of the information and the reasons that it is being withheld.

(2) *Dismissal of appeal.* (i) The ALJ shall dismiss an appeal when the substantiated perpetrator waives appeal by not submitting a notice of appeal within 30 days of receiving written notice of ORR's disposition, pursuant to § 410.102(b)(2)(iv), and does not demonstrate good cause for the untimely submission; or when the substantiated perpetrator withdraws the appeal, abandons the appeal, or does not have a right to ALJ review. If the appeal of a Tier I substantiated perpetrator is dismissed, they will be placed on the ORR Central Registry as a Tier I sustained perpetrator. If the appeal of a

Tier II substantiated perpetrator is dismissed, ORR will retain the information regarding the Tier II substantiated perpetrator as a Tier II sustained perpetrator in agency records.

(ii) Notwithstanding such dismissal, the DAB may in its discretion temporarily remove the designation of sustained perpetrator at Tier I or Tier II, which would result in ORR removing the individual who was designated as a sustained perpetrator at Tier I from the ORR Central Registry, for situations including, for example, where the ALJ determines that the sustained perpetrator at Tier I or Tier II has established good cause for exceeding the appeal timeframe.

(d) *Appeal of ORR's disposition.* (1) When a substantiated perpetrator at Tier I or Tier II appeals ORR's disposition to an ALJ pursuant to paragraph (c)(1)(i) of this section, ORR must transmit to the ALJ all of the evidence upon which the disposition was based.

(2) The evidentiary record must contain all documents and other materials, such as video or audio recordings, that were used by ORR in making its disposition. The ALJ may remand the case to ORR if the ALJ determines that the evidentiary record is insufficiently complete to decide whether ORR's disposition is supported by a preponderance of the evidence.

(3) The substantiated perpetrator at Tier I or Tier II may be represented by an attorney and may present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

(4) The substantiated perpetrator shall have the burden to show that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation at Tier I or Tier II, and to dispute whether any automatic Tier I substantiating circumstances existed (if applicable) or whether any aggravating factors or mitigating factors existed (if applicable). Both ORR and the substantiated perpetrator may present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof. The testimony of care provider facility staff shall be voluntary and failure to offer

such testimony will not be subject to disciplinary action.

(5) If the substantiated perpetrator submits a notice of appeal and the appeal is not dismissed by the ALJ pursuant to §412.102(d)(7), ORR must notify the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s) that that an appeal of ORR's disposition will be conducted by an ALJ. The alleged victim, other child witness(es), and family members of the alleged victim shall not be required to testify. Refusal to testify shall have no bearing on the determination as to whether abuse did or did not take place.

(6) The parties may direct and cross examine witnesses either during a live hearing or pursuant to a record review. The parties will be given an opportunity to file briefs or other written statements as to fact or law.

(7) The ALJ shall conduct a fair and impartial hearing and de novo review to determine whether the substantiated perpetrator met their burden of establishing that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation. The ALJ may either dismiss the case for untimeliness, withdrawal of the appeal, abandonment of the appeal, or because the individual does not have the right to appeal or because of other procedural defects, or will issue a written decision to uphold, modify, or reverse ORR's disposition.

(8) The ALJ shall serve a copy of the decision upon the parties and the Assistant Secretary for ACF. The ALJ's decision shall provide the sustained perpetrator at Tier I or Tier II and their attorney, if any, with instructions for requesting review by the Assistant Secretary for ACF. The ALJ also shall provide a copy of the decision to the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s). The complete record upon which the decision is based shall be made available to the Assistant Secretary.

(e) *Review of the ALJ's Decision.* (1) A substantiated perpetrator at Tier I or Tier II may request a review of the ALJ's decision within 30 days of receipt

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of the ALJ's decision, by filing a request for review with the Office of the Assistant Secretary for ACF.

(2) The Assistant Secretary for ACF has discretion, within 30 days after receiving a timely submission by a substantiated perpetrator of a request for review of an ALJ's decision under §412.102(e)(1) to review the ALJ's decision to dismiss a case for untimeliness or other procedural defects, and to affirm, modify, or reverse the ALJ's decision with regard to dismissal or ORR's disposition of the allegation. A review by the Assistant Secretary will determine whether the ALJ's decision was based on a material error of law or fact.

(3) If the Assistant Secretary affirms the ALJ's decision or does not modify or reverse the ALJ's decision within 30 days after receiving a timely review request pursuant to §412.102(e)(1), the ALJ's decision becomes the final decision of the Assistant Secretary and is binding on the parties.

(4) If the Assistant Secretary modifies or reverses the ALJ's decision pursuant to §412.102(e)(2), the Assistant Secretary's decision is final and binding.

(5) If at the end of the 30-day period in §412.102(e)(1), no timely request for review has been made, the Assistant Secretary has 30 days from that point to exercise discretion to review the ALJ's decision. If the Assistant Secretary does not modify or reverse the ALJ's decision, then the ALJ's decision becomes the final decision of the Assistant Secretary and is binding on both parties.

(6) The Office of the Assistant Secretary for ACF shall serve a copy of the final decision upon the parties involved. The Office of the Assistant Secretary for ACF also shall provide a copy of the final decision issued by the Assistant Secretary, based on review of the ALJ's decision under this paragraph (e), to the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s).

§412.103 Obligations of care provider facilities.

(a) *General requirements.* During any investigation by ORR, a care provider facility must:

(1) Permit ORR unrestricted access to the premises, any physical property on the premises, buildings, staff, and children in the physical custody of the care provider facility;

(2) Permit ORR to conduct interviews with children residing at the care provider facility, and without care provider facility staff, contractors, or sub-grantees of the care provider facility, or care provider facility volunteers present;

(3) Permit ORR to observe the activities of care provider facility staff, contractors, or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR;

(4) Promptly preserve any potential video or documentary evidence;

(5) Promptly provide access to and, upon request, copies of all files, records, reports, data, video recordings, and other information to ORR, either prior to or during the investigation;

(6) Promptly provide access to and contact information for care provider facility staff, contractors, or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through other contracts or grants with ORR;

(7) Submit complete and accurate responses to any written questions in a timely manner;

(8) Fully cooperate with ORR;

(9) Fully cooperate with any investigation of the same allegation by State, local, and Federal authorities and relevant law enforcement agencies.

(b) *Protection against retaliation.* Care provider facility staff, contractors, or sub-grantees of the care provider facility, and care provider facility volunteers must not retaliate against any person who in good faith reports or participates in an investigation of child abuse or neglect.

(c) *Obstruction, interference, delay of, or failure to permit an investigation.* Obstruction, interference, delay of, or failure of a care provider facility to permit or cooperate with any investigation under this part, including failure to protect unaccompanied children from retaliation pursuant to §412.103(b), may result in ORR taking

monitoring and enforcement measures including, but not limited to: remote monitoring of the care provider facility; on-site monitoring of the care provider facility; monitoring of the corporate offices to review internal policies and reporting structures, as well as supervisory response to events; limiting or stopping new placements of unaccompanied children at the care provider facility; removing all unaccompanied children from the care provider facility and placing them into other care provider facilities; issuing corrective actions; terminating the cooperative agreement or contract with the care provider facility; or imposing other such remedies for noncompliance applicable to HHS grant recipients and contractors.

(d) *Rights to legal representation, familial supports, and other supports.* During the course of an investigation, care provider facilities must provide unaccompanied children confidential access to attorneys of record and other legal service providers, in a manner consistent with requirements established

at 45 CFR 411.55 (as applicable) and 45 CFR 410.1309. Care provider facilities must provide unaccompanied children access to their families, including legal guardians, in a manner consistent with requirements established at 45 CFR 411.55 (as applicable) and 45 CFR 410.1309. Care provider facilities must provide unaccompanied children with access to their child advocates, in a manner consistent with the requirements at 8 U.S.C. 1232(c)(6) and 45 CFR 410.1308. Care provider facilities must also provide unaccompanied children access to health services (including specialists and mental health practitioners), individual counseling sessions, and crisis intervention (including access to outside victim services and rape crisis centers where appropriate) to most appropriately address unaccompanied children's needs, in a manner consistent with requirements established at 45 CFR 410.1307, 45 CFR 410.1311, 45 CFR 410.1302(c)(5), and 45 CFR 411.21 (as applicable).

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