

DECLARATION OF EMERGENCY

Department of Children and Family Services

Child Welfare

**Criminal Background and State Central Registry Checks;
Risk Assessment Evaluation; State Repository, Central Registry
and Administrative Appeal
(LAC 67:1. 203, 301, 303, 305, 307, 309 and 311)
(LAC 67:V.1103, 1105 and 1111)**

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953 (B) to repromulgate LAC 67:I, Chapter 3; and to amend LAC 67:I, Section 203 and LAC 67:V, Subpart 3, Chapter 11, Sections 1103, 1105, and 1111.

The department adopted a rule which repealed Chapter 3, Sections 301, 303, 305, 307, 309, and 311 effective July 1, 2018 (*Louisiana Register, Volume 44, Number 6*). The department has determined that it is necessary to delay this action. Therefore, effective July 1, 2018, the repeal of Sections 301, 303, 305, 307, 309, and 311 is being delayed until August 1, 2018. This action shall be effective July 1, 2018, and shall remain in effect for a period of 31 days.

Part I, Chapter 2, Section 203 and Part V, Chapter 11 Sections 1103, 1105, and 1111 are being amended to update the effective date for implementation for certain provisions. This action shall be effective July 1, 2018, and shall remain in effect for a period of 120 days.

The department considers emergency action necessary to ensure appropriate decision making with justified (valid) determinations of child abuse and neglect prior to the implementation of Children's Code Article 616.1.1.

Title 67

SOCIAL SERVICES

Part I. General Administration

Chapter 2. Criminal Background and State Central Registry

Checks

§203. Conditions of Employment

A. - A.2. ...

3. If the potential employee's name is recorded on the state central registry subsequent to January 1, 2010 and prior to ~~July~~ August 1, 2018, they shall not be denied consideration for employment until the potential employee has exhausted their right to an administrative appeal and thereafter the potential employee's name is confirmed to be listed on the state central registry.

4. If the individual's name is recorded on the state central registry as a perpetrator of child abuse or neglect subsequent to ~~July~~ August 1, 2018, they shall not be employed or considered for employment by the department in positions whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys.

B. Any current employee of the department whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and whose name is recorded subsequent to January 1, 2010 and prior to ~~July~~ August 1, 2018, shall not be terminated from their position in the department until the employee has exhausted their right to an administrative appeal and thereafter the employee's name is confirmed to be listed on the state central registry. If the employee's name is recorded on the state central registry subsequent to ~~July~~ August 1, 2018, they shall be terminated from their current position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care

of a child, or performance of licensing surveys by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:997 (June 2018), amended LR 44:

Chapter 3. Risk Assessment Evaluation

§301. Introduction

A. The Department of Children and Family Services (DCFS) maintains a central registry of all justified (valid) reported cases of child abuse and neglect.

B. In accordance with R.S. 46:51.2, no person shall be hired, promoted, or transferred by the department to a position for which duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys until:

1. the department has conducted a search of the state central registry of justified (valid) abuse or neglect and has determined that the individual's name is not recorded therein subsequent to January 1, 2010; or

2. if an individual's name is recorded on the state central registry subsequent to January 1, 2010, a risk evaluation panel has determined in writing that the individual does not pose a risk to children.

C. Any prospective employee or current employee whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and who discloses or it becomes known that their name was recorded subsequent to

January 1, 2010 on the state central registry with a justified (valid) finding of abuse or neglect, may request a risk assessment evaluation in accordance with the following.

1. In accordance with LAC 67:I.305, the prospective employee will have 10 calendar days to make his request for a risk assessment evaluation from the date of receipt of written notification that his name appears on the state central registry and of the risk assessment evaluation process. The application process shall be terminated for a prospective employee and he may not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys in the future, unless it is determined that he does not pose a risk to children.

2. In accordance with LAC 67:I.305, a current employee will have 10 calendar days to make a request for a risk assessment evaluation from the date of receipt of written notification that his name appears on the state central registry and of the risk assessment evaluation process. When the employee fails to make such a request, and:

a. he is currently in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, performance of licensing surveys, termination proceedings will begin immediately after the 10 calendar days have elapsed; or

b. if he is not currently in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, performance of licensing surveys but is applying for such a position, he will remain in his current position and shall not be considered for the new position. The provisions in this

Chapter pertaining to a prospective employee are applicable to this employee.

3. If a prospective employee requests a risk assessment evaluation within the required time frame and there is a determination that the individual does not pose a risk to children, the prospective employee may reapply for employment and be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys.

4. If a current employee requests a risk assessment evaluation within the required time frame, as a condition of continued employment in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, the current employee shall be directly supervised by another paid employee of the department, who has not disclosed nor has it become known that their name appears with a justified (valid) finding on the state central registry prior to January 1, 2010; or, found not to pose a risk by the risk evaluation panel. Under no circumstances may the employee with the justified finding be left alone and unsupervised with the children pending the disposition of the risk evaluation panel that they do not pose a risk to children.

5. If the risk evaluation panel finds the prospective employee or current employee does pose a risk to children and the prospective employee or current employee chooses not to appeal the finding, the prospective employee may not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, and

termination proceedings shall begin on the current employee, unless his current position does not include those duties.

6. If the risk evaluation panel finds the individual does pose a risk to children and the prospective employee appeals the finding within the required timeframe, the prospective employee may not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys. If the current employee appeals the finding within the required timeframe he shall continue to have direct supervision in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys at all times by another paid employee of the department who has not disclosed nor has it become known that they have a justified (valid) finding on the state central registry prior to January 1, 2010; or found not to pose a risk by the risk evaluation panel, until there is a final ruling rendered by the DCFS appeals unit or the appropriate district court that the current employee does not pose a risk to children. Supervision may end effective with such a final ruling from the DCFS appeals unit and/or the appropriate district court. If the DCFS appeals unit and/or the appropriate district court upholds the risk evaluation panel finding that the individual does pose a risk to children, a prospective employee shall not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and termination proceedings for a current employee in a position with those duties will begin immediately upon the receipt of the notice of this final ruling.

D. No person whose duties include supervisory or disciplinary authority over children or direct care of a child may volunteer or become a service provider as provided in LAC 67:V.1103 for DCFS until:

1. the department has conducted a search of the state central registry of justified (valid) abuse or neglect and has determined that the individual's name is not recorded therein subsequent to January 1, 2010; or

2. if an individual's name is recorded on the state central registry subsequent to January 1, 2010, a risk evaluation panel has, previous to his application to volunteer or become a service provider as provided in LAC 67:V.1103, determined in writing that the individual does not pose a risk to children.

E. In accordance with R.S. 46:1414.1, 15:1110.2 and 17:407.41 any owner, operator, current or prospective employee, or volunteer of an early learning center or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education who discloses that he is currently recorded on the state central registry for a justified (valid) finding of abuse or neglect shall be entitled to a risk evaluation provided by the department to determine whether the individual poses a risk to children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:3247 (December 2013), LR 42:860 (June 2016), Repealed LR 44:998 (June 2018), effective July 1, 2018, repromulgated LR 44:

§303. Risk Evaluation Panel and/or Risk Evaluation Coordinator

A. A risk evaluation panel (panel) is established to conduct risk assessment evaluations for an individual as listed in LAC 67:I.301.B, C and E whose name appears on the state central registry to determine if that individual poses a risk to children.

B.1. Members of the panel shall be designated pursuant to Paragraph B.2 and consist of:

- a. the risk evaluation panel coordinator;
- b. a child welfare manager responsible for in home services;
- c. a child welfare manager responsible for out of home services;
- d. a regional child welfare administrator;
- e. a child welfare manager responsible for continuous quality improvement, except for panel reviews relating to DCFS prospective or current employees;
- f. a program child welfare manager for licensing for panel reviews relating to owners, operators, current or prospective employees, or volunteers of specialized providers and juvenile detention facilities; and
- g. any others designated as deemed necessary to convene an appropriate panel.

2. The panel members listed in Paragraph B.1 shall be designated by the DCFS secretary, or his designee.

3. The risk evaluation panel coordinator shall be a non-voting member of the panel.

C. The duties of the panel shall include:

- 1. conducting an assessment of an individual listed in LAC 67:I.301.B, C and E whose name appears on the state central registry and has requested a risk evaluation to determine whether that individual poses a risk to children;

2. providing written notification of the decision to the individual; and

3. retaining all records of decisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:3248 (December 2013), LR 42:861 (June 2016), Repealed LR 44:998 (June 2018), effective July 1, 2018, repromulgated LR 44:

§305. Risk Assessment Evaluation Process

A. The risk evaluation panel will determine if the individual listed in LAC 67:I.301.B, C and E poses a risk to children based on the information available in the DCFS case record, licensing record if applicable, and any supplemental information provided by the employee.

B. The individual requesting the risk assessment evaluation will not be present for the evaluation.

C. The prospective or current employee of DCFS or any owner, operator, current or prospective employee, or current or prospective volunteer of a specialized provider or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education is responsible for providing the following documentation to the risk evaluation panel to be used in conjunction with the information in the case record in making a risk determination:

1. evidence of a rehabilitation effort since the justified (valid) incident of abuse or neglect such as but not limited to employment, education, or counseling;

2. information about the individual's anticipated job responsibilities or current responsibilities; and

3. evidence of the individual's present fitness to work with children, including three letters of recommendation, one of which must be from a former employer.

D. The prospective or current employee of DCFS or any owner, operator, current or prospective employee, or current or prospective volunteer of a specialized provider or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education must submit the information within 10 calendar days of the request for a risk evaluation by mailing to:

Louisiana Department of Children and Family Services
Attention: Risk Evaluation Panel
627 North Fourth St., Third Floor
Baton Rouge, LA 70802

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:3248 (December 2013), LR 42:861 (June 2016), Repealed LR 44:998 (June 2018), effective July 1, 2018, repromulgated LR 44:

§307. Risk Determination Criteria

A. A person determined to be a perpetrator of an incident of abuse or neglect may not automatically be denied a position or be allowed to retain a position which allows access to children.

B. The panel shall determine if an individual poses a risk to children based on the information available in the DCFS case record, licensing record if applicable, and any supplemental information provided by the prospective or current employee whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care

of a child, or performance of licensing surveys, or a prospective/current volunteer.

1. The following information shall be used by the panel to make its determination including, but not limited to:

a. the nature of the abuse or neglect with which the individual was identified, including whether the abuse or neglect resulted in serious injury or death to a child or children;

b. the circumstances surrounding the commission of the abuse or neglect, including the age of the perpetrator and the children, that would demonstrate likelihood of repetition;

c. the period of time that has elapsed since the abuse or neglect occurred and whether prior incidents of child abuse or child neglect have been determined justified against the individual;

d. whether the abuse or neglect involved single or multiple child victims or whether there were more multiple allegations over a period of time to indicate a pattern of behavior;

e. the relationship of the incident of child abuse or neglect to the individual's current or conditional job responsibilities within the department or facility;

f. evidence of rehabilitation such as employment, education, or counseling since the justified incident of abuse or neglect; and

g. letters of recommendation one of which must be from a former employer whenever possible.

C. An individual determined to be a risk to children is prohibited from requesting a risk assessment evaluation for 24 months from the date of the original notice of decision issued by the risk evaluation panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:3248 (December 2013), LR 42:862 (June 2016) Repealed LR 44:998 (June 2018), effective July 1, 2018, repromulgated LR 44:

§309. Appeals Process

A. The risk evaluation panel shall provide the individual who is the subject of the evaluation the decision of the panel in writing.

B. The notice of decision shall contain information regarding the individual's right to appeal and request for a fair hearing.

C. The individual may file a request for an administrative appeal within 30 days of the mailing of the notice of the determination with the DCFS Appeals Unit. Administrative appeals for prospective employees or current employees of DCFS are conducted by the DCFS Appeals Unit. If the request for an administrative appeal is made by a current or prospective owner, employee or volunteer of a specialized provider or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education, within 30 days of the mailing of the notice of the determination, that request shall be sent by the Appeals Unit to the Division of Administrative Law.

D. All decisions rendered by the administrative law judge within the DCFS appeals unit or the division of administrative law are final and such decisions shall exhaust the individual's administrative appeal rights.

E. Within 30 calendar days after the mailing date listed on the notice of the final decision by the DCFS appeals unit or the division of administrative law, or if a rehearing is requested, within 30 calendar days after the date of the decision thereon, the individual may obtain judicial review by filing a petition for review of the decision in the Nineteenth Judicial District Court or the district court of the domicile of the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, Repealed LR 44:998 (June 2018), effective July 1, 2018, repromulgated LR 44:

§311. Correction or Expungement of Central Registry Entries

A. Notwithstanding any other provisions, a panel determination shall not be used to prohibit an individual from being considered for employment when the justified (valid) finding that served as the basis for the risk assessment evaluation is:

1. corrected either pursuant to *Children's Code* article 616 or by DCFS; or
2. expunged either pursuant to LAC 67:V.1103 or LAC 67:V.1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, LR 42:862 (June 2016), Repealed LR 44:998 (June 2018), effective July 1, 2018, repromulgated LR 44:

Part V. Child Welfare

Subpart 3. Child Protective Services

Chapter 11. Administration and Authority

1103. State Central Registry

A. - B.1.b ...

B.2. Individuals who have been placed on the SCR as a perpetrator of abuse or neglect as the result of an investigation determined to be justified/valid prior to ~~July~~ August 1, 2018, will have the right to an administrative appeal pursuant to LAC 67:V.1111. Information on such determinations will not be released until the individual has exhausted their right to an administrative appeal, unless otherwise allowed by law. Once the individual has exhausted their administrative appeal rights, if an SCR clearance has been received by DCFS, the clearance will be completed and information released consistent with the administrative hearing decision and as permitted for the purpose of the clearance request.

C.1. ...

2. Individuals in investigations in families who have been determined to be justified/valid as a perpetrator of child abuse and/or neglect for a tier 1, 2, or 3 finding, as defined in LAC 67:V.1103.A, subsequent to July 1, 2018, shall be provided written notice of the SCR and the rules governing maintenance and release of SCR records. As of August 1, 2018, t ~~he~~ written notice shall also inform the individual of their right to an administrative appeal pursuant to LAC 67:V.1111. The individual's name will not be placed on the SCR until the individual has exhausted his right to an administrative appeal. If the individual fails to request an administrative appeal within 30 days of the written notification of the justified/valid finding, withdraws their request for an administrative appeal, or the justified/valid finding is upheld by an administrative law judge, the individual's name will be immediately placed on the SCR.

D. - E. ...

F.1. Any person whose name is included on the SCR subsequent to ~~July~~ August 1, 2018, may file a rule to show cause against DCFS in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the individual's name should not be removed from the SCR. A perpetrator of a tier 1 justified/valid determination cannot be removed through this procedure. This rule to show cause may be filed for a perpetrator of a tier 2 justified/valid determination after nine years from the date of the case closure, or, four years from the date of the case closure for a perpetrator of a tier 3 justified/valid determination with the following circumstances:

- a. there was no child in need of care adjudication related to the justified/valid determination;
- b. no criminal charges are currently pending, associated with the incident, or criminal conviction for any offense listed in R.S. 15:587.1; and
- c. there have been no subsequent justified/valid determinations involving the individual as a perpetrator of child abuse or neglect.

F.2. - G.11. ...

AUTHORITY NOTE: Promulgated in accordance with the Children's Code, title VI, articles 615 and 616 and title XII, article 1173, R.S. 14:403(H), R.S. 46:51.2(A), R.S. 46:56, R.S. 46:1414.1, 42 USC 15601 et seq., 28 CFR 115.6., and 42 USC 9858f.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20:198 (February 1994), LR 21:583 (June 1995), LR 23:590 (May 1997), LR 26:790 (April 2000), LR 31:1609 (July 2005), LR 36:838 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare

Section, LR 42:862 (June 2016), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:998 (June 2018), amended LR 44:

§1105. Maintenance and Disclosure of Information on Reports and Investigations on the State Repository

A. - L.7. ...

M. Any person whose name is included on the SCR prior to ~~July~~ August 1, 2018 with a justified/valid determination may file a rule to show cause against DCFS in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the information on file should not be expunged. DCFS will expunge the petitioner's name and other identifying information from the SCR upon receipt of a court order to do so. Any expungement order issued by a court shall not take effect as to non-identifying statistical information on file until the three-year record retention period required by federal law for audit purposes has expired, counting from the month and year of the determination. During the three-year record retention period, such records bearing the non-identifying statistical information shall be sealed and accessible only to the financial auditors.

N. - O. ...

AUTHORITY NOTE: Promulgated in accordance with Louisiana Children's Code Article 616.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 26:96 (January 2000), amended LR 31:1608 (July 2005), LR 36:840 (April 2010), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:1000 (June 2018) amended LR 44:

§1111. Child Protective Services Administrative Appeal

A. ...

B. Individuals with justified/valid findings in an investigation prior to ~~July~~ August 1, 2018, will have the right to an administrative appeal of any/all of their DCFS findings of justified/valid. When a request for an SCR clearance is received by DCFS, or DCFS verifies that an individual has a justified/valid finding, and the individual is listed as a perpetrator with a justified/valid finding of abuse or neglect in an investigation prior to ~~July~~ August 1, 2018; the individual will be notified in writing of their right to an administrative appeal. The individual will have 30 calendar days from the date of the written notification to request an appeal through DAL.

C. Any individual notified of a DCFS justified/valid finding in an investigation subsequent to ~~July~~ August 1, 2018, will have the right to an administrative appeal of any/all of their DCFS findings of justified/valid. The individual will have 30 calendar days from the date of the written notification to request an appeal through the DAL.

D. - K. ...

AUTHORITY NOTE: Promulgated in accordance with Act 348 of 2017 and Children's Code Article 616.1.1.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Child Welfare, LR 44:1002 (June 2018), amended LR 44:

Marketa Garner Walters
Secretary