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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Children's Services
Division:	Office of the General Counsel
Contact Person:	Helen Rodgers UBS Tower, 7 th Floor 315 Deaderick Street
Address:	Nashville, Tennessee 37243
Phone:	615-741-1404
Email:	Helen.Rodgers@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Donovan Haynes UBS Tower, 12 th Floor 315 Deaderick Street
Address:	Nashville, Tennessee 37243
Phone:	615-741-8422
Email:	Donovan.Haynes@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	UBS Tower, 12 th Floor		
Address 2:	315 Deaderick Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	03/17/17		
Hearing Time:	9:00 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to the hearing by U.S. Mail to: Tennessee Department of Children's Services, Helen Rodgers, Assistant General Counsel, 7th Floor UBS Tower, 315 Deaderick Street, Nashville, TN 37243 or electronically to Helen.Rodgers@tn.gov. For further information, please contact Ms. Rodgers at the above address or email Helen.Rodgers@tn.gov.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only ONE Rule Number/Rule Title per row.)

SS-7037 (July 2014)

Chapter Number	Chapter Title
0250-07-09	Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records
Rule Number	Rule Title
0250-07-09-.01	Definitions
0250-07-09-.02	Scope of Rules
0250-07-09-.03	Release to Covered Educational Entities
0250-07-09-.04	Prohibited Releases
0250-07-09-.05	When Rights Under this Chapter Attach
0250-07-09-.06	Standards and Criteria for Review of Classification of Reports of Child Abuse/Neglect as "Substantiated"
0250-07-09-.07	Right to Notice and Opportunity for Formal File Review
0250-07-09-.08	Alleged Perpetrators with Current Access to Children; Emergency Notification
0250-07-09-.09	Right to Notice and Opportunity for an Administrative Hearing
0250-07-09-.10	Stay of Administrative Proceedings
0250-07-09-.11	Conduct of Administrative Hearing
0250-07-09-.12	Child Abuse Registry Review Committee

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

0250-07-09

Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records

Rule 0250-07-09-.01 Definitions is amended by deleting the text of the rule and substituting instead the following language, so that as amended, the rule shall read:

- (1) "Abuse" exists when a child victim is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caregiver.
- (2) "Adult" means any person eighteen (18) years of age or older.
- (3) "Child victim" means a person under the age of eighteen (18) years of age or a delinquent youth in the Department's custody under the age of nineteen (19).
- (4) "Child sexual abuse" shall have the same meaning as set out in T.C.A. § 37-1-602(a) (2016 and as amended).
- (5) "Commissioner's designee" means the person designated by the Commissioner of the Tennessee Department of Children's Services to act pursuant to this rule.
- (6) "Covered Educational Entities" means the Department of Education, any local board of education, and any Local Educational Agency (LEA).
- (7) "Covered Individual" means any individual who is currently employed by or conditionally offered employment with one of the Covered Educational Entities.
- (8) "Department" means the Tennessee Department of Children's Services.
- (9) "Minor Perpetrator" means a perpetrator of any form of child abuse or neglect who was under the age of eighteen (18) at the time of substantiation and case closure. A minor perpetrator will follow all procedures for perpetrator throughout these Rules unless otherwise specifically noted.
- (10) "Neglect" means the actions or omissions of a parent, relative, guardian, or caregiver which subject a child victim to actual or threatened harm, including, but not limited to, conduct which leads to a child

suffering from any of the conditions listed in the definition of "dependent and neglected child" set out at T.C.A. § 37-1-102(b)(12) (2016 and as amended).

- (11) "Record" includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, or electronic mails.
- (12) "Severe child abuse" shall have the same meaning as set out in T.C.A. § 37-1-102 (2016 and as amended).
- (13) "Substantiated" means the classification assigned to an individual determined to be a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The term substantiated also encompasses synonymous terms set out in rules, policy, and statute, including, but not limited to, "indicated", "founded", or other terms signifying the individual was determined to be the perpetrator of child abuse or neglect.
- (14) "Unsubstantiated" means the classification assigned to an individual who is not determined to be a perpetrator of abuse, severe child abuse, child sexual abuse or neglect. The term unsubstantiated encompasses synonymous terms set out in rules, policy, and statute, including, but not limited to, "unfounded" or other terms signifying the individual has not been determined to be the perpetrator of child abuse or neglect.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.02 Scope of Rules is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the rule shall read:

- (1) These Rules establish procedures to review substantiated cases and to release the identity and other related information of a perpetrator in substantiated reports of any form of abuse or neglect.
- (2) A release pursuant to these Rules shall be for purposes of protecting children from any form of child abuse or neglect and for purposes directly connected with the administration of T.C.A. §§ 37-1-401 et seq., 37-1-601 et seq., 49-1-1101 et seq., and 71-3-501 et seq.
- (3) These Rules shall not apply when the Department intends to release or has released any information about an individual who is an alleged perpetrator of any form of abuse or neglect to any of the following:
 - (a) Any state or federal law enforcement agency investigating a report of known or suspected child abuse or neglect or any crimes involving children;
 - (b) Any state District Attorney, Attorney General, or United States Attorney or their authorized assistant involved in investigating or prosecuting crimes against children;
 - (c) Any state or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
 - (d) Treatment professionals treating the child, his or her family, or the perpetrator;
 - (e) Department employees for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws, including disclosure to other individuals for authorized purposes;
 - (f) Any state or federal social service or other agency investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;
 - (g) Any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
 - (h) The court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative

proceeding or before any board or hearing officer for the purpose of protecting a child or children from any form of abuse or neglect, except when such court, administrative hearing, board, or hearing officer, other than the Department, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;

- (i) The Department of Education and the Department of Human Services pursuant to T.C.A. §§ 37-5-512(a)(2) and (3) (2016 and as amended) regarding an individual who is the subject of an ongoing or completed investigation;
- (j) A foster care agency contractor to determine if an individual is a suitable placement for a DCS custodial child;
- (k) The Department of Intellectual and Developmental Disabilities, the Department of Mental Health and Substance Abuse Services, or any other department of state government with whom the Department has developed an appropriate Memorandum of Understanding for the purpose of determining whether children are appropriately cared for;
- (l) An agency for the purposes of complying with the Department's employee and contractor background check policies;
- (m) An adoption and child placing agency for the purpose of complying with Hague Accreditation Standards;
- (n) An out-of-state entity for the purpose of complying with Adam Walsh Child Protection and Safety Act or other applicable federal or state law;
- (o) An out-of-state entity for the purpose of determining whether a placement is suitable for a child pursuant to the Interstate Compact for the Placement of Children;
- (p) An agency for the purposes of determining whether a kinship care placement is appropriate; or
- (q) Any agency or entity that is provided access under state or federal law.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.03, currently Prohibited Releases, is amended so that the title of the rule shall now be Release to Covered Educational Entities. Additionally, Rule 0250-07-09-.03 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) This Rule shall apply only to child abuse and neglect investigation information mandated by T.C.A. § 49-5-413(e) (2016 and as amended) to be released to Covered Educational Entities relative to a covered individual, in which case this rule's procedures apply notwithstanding any language to the contrary contained elsewhere within these rules.
- (2) The Department shall offer the due process procedures set out in Rule 0250-07-09-.05(1), including the opportunity for a hearing pursuant to Rule 0250-07-09-.09, to any Covered Individual who has ever been found by the Department to have committed any form of child abuse or neglect and who has not previously waived or exhausted his or her due process rights to a hearing. When the Covered Individual's due process rights have been waived or fully concluded, the Department shall disclose its final finding to any relevant Covered Educational Entity.
- (3) In the case of any covered individual whose investigation has not been concluded or any Covered Individual whose due process rights have not yet been offered or are otherwise pending, the Department shall conduct an emergency file review pursuant to Rule 0250-07-09-.08. If the emergency file review results in a finding that the covered individual poses an immediate threat to the health, safety, or welfare of children, the Department shall disclose that threat to the relevant covered educational entity.

- (4) If the Department's proceedings under these rules have been stayed pursuant to Rule 0250-07-09-.10 due to pending criminal charges against a covered individual, the Department shall notify the Covered Educational Entity of the pending criminal charge.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, 37-5-512(a), and 49-5-413(e).

Rule 0250-07-09-.04, currently When Rights Under this Chapter Attach, is amended so that the title of the Rule shall now be Prohibited Releases. Additionally, Rule 0250-07-09-.04 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) Any report of abuse or neglect is confidential pursuant to T.C.A. §§ 37-1-409(a)(1), 37-1-612(a), and 37-5-107 (2016 and as amended).
- (2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.
- (3) Until an individual has exhausted all reviews, excluding the review set out in Rule 0250-07-09-.12, permitted by these Rules, the Department shall not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify the individual as a perpetrator of any form of abuse or neglect, unless such disclosure is necessary to comply with T.C.A. § 49-5-413(e) (2016 and as amended) or other applicable law.
- (4) Until an individual has exhausted all reviews permitted by these Rules, excluding the review set out in Rule 0250-07-09-.12, the Department shall not release any information from its records to identify the individual as a perpetrator of any form of abuse or neglect to any organization or person that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, 37-5-512(a), and 49-5-413(e).

Rule 0250-07-09-.05, currently Standard and Criteria for Review of Classification of Reports of child Abuse/Neglect as "Indicated", is amended so that the title of the Rule shall now be When Rights Under this Chapter Attach. Additionally, Rule 0250-07-09-.05 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) An individual whom the Department has classified in a substantiated report as a perpetrator of any form of abuse or neglect shall have the right to request a formal file review.
- (2) If at the conclusion of the formal file review the substantiation is upheld, with or without modification, the individual shall have the right to request an administrative hearing. An individual who fails to request a formal file review after proper notice waives their right to an administrative hearing.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.06, currently Right to Notice and Opportunity for Formal File Review, is amended so that the title of the Rule shall now be Standard and Criteria for Review of Classification of Reports of Child Abuse/Neglect as "Substantiated". Additionally, Rule 0250-07-09-.06 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

A report made against an alleged perpetrator shall be classified as substantiated if the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect. In determining whether there is a preponderance of the evidence to uphold the substantiation, the reviewer may consider, but is not limited to, the following factors:

- (1) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that abuse, or neglect occurred;

- (2) An admission by the perpetrator;
- (3) The statement of a credible witness or witnesses to the abusive or neglectful act;
- (4) The child victim's statement that the abuse or neglect occurred;
- (5) Physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;
- (6) Physical evidence that could impact the classification decision;
- (7) The existence of behavioral patterns that may be indicative of child abuse or neglect and corroborate other evidence of any form of abuse or neglect;
- (8) Circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.07, currently Alleged Perpetrators with Current Access to Children; Emergency Notification, is amended so that the title of the Rule shall now be Right to Notice and Opportunity for Formal File Review. Additionally, Rule 0250-07-09-.07 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) With the exception of minor perpetrators, within ten (10) business days after the Department has closed the case and classified an individual in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall begin the process of notifying the individual of the classification. The notification shall be made through a delivery system capable of tracking. The notification shall inform the individual that he or she may request a formal file review by the Commissioner's designee to determine whether the report has been properly classified as "substantiated".
- (2) If the substantiated perpetrator is a minor perpetrator, the Department shall notify the minor, the child's parent or guardian, Child Protective Services, Regional General Counsel, and any known Guardian Ad Litem or other attorney for the child. The minor perpetrator shall automatically receive a formal file review as set out below. The minor perpetrator will not receive the notice set out in Rule 0250-07-09-.07(4) since the formal file review shall be automatic. The Department shall notify the minor perpetrator of the opportunity to submit rebuttal evidence in accordance with Rule 0250-07-09-.07(6) and shall otherwise follow the procedures and timeframes outlined in Rule 0250-07-09-.07(7) through Rule 0250-07-09-.07(11).
- (3) The Department shall determine whether the emergency procedures of Rule 0250-07-09-.08 apply to the individual whom the Department has classified as a substantiated perpetrator of any form of abuse or neglect in a substantiated report.
- (4) The notice to obtain a formal file review shall contain, at a minimum, the following:
 - (a) That the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report investigated by the Department;
 - (b) That the individual may request a formal file review by the Commissioner's designee within twenty (20) business days of the date of service of the notice;
 - (c) That failure to submit a request for a formal file review within twenty (20) business days, absent a showing of good cause, shall result in the classified report becoming final and the individual shall waive any right to a formal file review; and

- (d) That the request for a formal file review shall be submitted to the specific address listed in the notice.
- (5) The Department shall date-stamp all requests for formal file reviews on the date received.
- (6) The Department shall respond to a timely filed request for a formal file review within ten (10) business days of receipt by sending written notice of the individual's obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:
 - (a) That the individual may submit additional written or documentary information on his or her behalf to the address identified in paragraph 4(d) of this Rule;
 - (b) That the individual must submit the additional information within thirty (30) business days of the date of the notice;
 - (c) That if the information is not timely submitted, the formal file review shall proceed with the information provided in the file and that the individual's right to submit additional information shall be waived; and
 - (d) That the formal file review shall be completed within ninety (90) business days of the date of the notice.
- (7) Unless the emergency procedures in Rule 0250-07-09-.08 apply, during the twenty (20) business day period in which an individual may request a formal file review, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.
- (8) In conducting the formal file review, the Commissioner's designee shall determine whether a preponderance of the evidence available to the reviewer, including any submission by the alleged perpetrator, supports substantiation.
- (9) If the Commissioner's designee determines that a preponderance of evidence does not support substantiation, the report shall be reversed and it shall be classified as unsubstantiated. The Department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department. Within ten (10) business days of the date of completion of the formal file review, the Department shall send to the individual who was classified in a report of any form of abuse or neglect at his or her last known address written notice containing, at a minimum, the following:
 - (a) The formal file review has classified the report as unsubstantiated; and
 - (b) The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.
- (10) If the Commissioner's designee determines that the proof in the report supports a different conclusion than that reached by the Department, the report shall be modified and it shall be classified accordingly. The Commissioner's designee shall notify the individual of the outcome.
- (11) If the Commissioner's designee determines that a preponderance of the evidence supports substantiation, the report shall be upheld and it shall be classified as substantiated. Within ten (10) business days of the date of completion of the formal file review, the Department shall send to the individual who was classified in a report of any form of abuse or neglect at his or her last known address written notice containing at a minimum, the following:

- (a) That the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report investigated by the Department; and
- (b) That, after conducting a formal file review, the "substantiated" report was upheld.
- (c) That the individual may request a hearing within twenty (20) business days of the date of the notice before an administrative law judge by completing the form provided to the individual by the Department.
- (d) That if the individual requests a hearing, he or she shall complete the attached form and mail or fax it to the Department's Administrative Procedures Division.
- (e) That if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing.
- (f) That if the individual fails to timely request a hearing absent good cause, the Department will release its finding of abuse, severe child abuse, child sexual abuse, or neglect to any individual or organization consistent with these rules.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.08, currently Right to Notice and Opportunity for Administrative Hearing, is amended so that the title of the Rule shall now be Alleged Perpetrators with Current Access to Children; Emergency Notification. Additionally, Rule 0250-07-09-.08 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) The provisions of this Rule apply to individuals classified as perpetrators of any form of abuse or neglect in a substantiated report who pose an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
- (2) As soon as reasonably possible, the Department shall conduct an emergency file review to determine if an individual identified in a substantiated report as a perpetrator of any form of abuse or neglect poses an immediate threat to the health, safety, or welfare of a child or children to whom the individual has access.
- (3) In completing an emergency file review, the Commissioner's designee shall determine whether the indication should be upheld, and whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
 - (a) If both factors are met, the Department shall then follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.
 - (b) If no such immediate threat exists, the Department shall not immediately reveal the alleged perpetrator's identity.
- (4) As soon as reasonably possible, the Department shall notify in writing both the alleged perpetrator and the organization or person with whom the individual is associated, if the Commissioner's designee determines the alleged perpetrator poses an immediate threat to the health, safety, or welfare of a child or children to whom the individual has access.
 - (a) The notice shall contain the information set forth in Rule 0250-07-09-.07(10)(b); and
 - (b) A statement that the organization or person with which the individual is associated shall receive notice of the Department's determination. The notice shall contain the following:
 - 1. That the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and

2. That the individual has been notified of his or her rights to a hearing on the allegations, and that the organization or person shall be notified of the final decision regarding the allegations.
- (5) If the individual fails timely to request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's substantiated report regarding the individual shall then be available for dissemination, in accordance with these rules, to any associated organization or associated person and the individual's identity shall be placed in the registry.
- (6) If the individual timely requests a hearing, the Department shall follow the procedures set forth in Rule 0250-07-09-.09(4).

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.09, currently Stay of Administrative Proceedings, is amended so that the title of the Rule shall now be Right to Notice and Opportunity for Administrative Hearing. Additionally, Rule 0250-07-09-.09 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) An individual whom the Department has classified in a substantiated report as a perpetrator of any form of abuse or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before an administrative judge of the Administrative Procedures Division of the Department
- (2) An individual shall request an administrative hearing within twenty (20) business days from the date of the notice of the outcome of the formal file review.
- (3) Unless the emergency procedures in Rule 0250-07-09-.08 apply, during the twenty (20) business day period in which an individual may request a hearing, the Department shall not disclose that the individual has been classified as the perpetrator of any form of abuse or neglect in a substantiated report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that an investigation involving child abuse or neglect has commenced. If the individual timely requests a hearing, the Department may only release a statement stating that a hearing concerning the individual pursuant to the child abuse laws of this State is currently pending.
- (4) If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rule 0250-05-04-.01.
- (5) The hearing will be held, and an initial order entered therein, within one hundred twenty (120) business days of the date of the notice required in Rule 0250-07-09-.07(11), unless:
 - (a) The time limit is extended or waived by agreement of the parties, or for good cause shown; or
 - (b) The proceedings are stayed pursuant to Rule 0250-07-09-.10.
- (6) If the individual fails to timely request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's substantiated report regarding the individual shall then be available for dissemination, in accordance with these rules, to any associated organization or associated individual and the individual's identity shall be placed in the registry.
- (7) An individual who fails to timely request a hearing may be granted a hearing provided that he or she shows good cause for failure to make a timely request.
- (8) Good cause is limited to a failure to receive the notice referred to in Rule 0250-07-09.07(11), severe illness, or some other circumstance that substantially prevented the individual from timely requesting a hearing.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.10, currently Conduct of Administrative Hearing, is amended so that the title of the Rule shall now be Stay of Administrative Proceedings. Additionally, Rule 0250-07-09-.10 is amended by deleting the text of the Rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) The Department shall stay all administrative proceedings under these Rules:
 - (a) If an individual whom the Department has classified in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect has been arrested or indicted on criminal charges that are derived from the same allegations that caused the Department to investigate; or
 - (b) If an individual whom the Department has classified in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative or civil proceedings that are derived from the same allegations that caused the Department to investigate.
- (2) If the arrest, indictment, or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of a final order by the Department, all proceedings under these Rules shall be immediately stayed pending final resolution, including appeals of the judicial or administrative proceedings. Provided, however, that the Department shall notify an individual in accordance with Rules 0250-07-09-.07, 0250-07-09-.08, or 0250-07-09-.09, as appropriate. The individual shall comply with the provisions of these Rules, as appropriate, in order to preserve his or her future rights to a hearing or to judicial review. During the stay, unless the emergency procedures in Rule 0250-07-09-.08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report until the proceedings referred to in paragraph (1) of this Rule become final. The Department may only release the fact that judicial or administrative proceedings involving allegations of abuse, severe child abuse, child sexual abuse, or neglect by the individual are pending before a specified court or administrative proceeding.
- (3) A criminal conviction and/or civil adjudication will be conclusive evidence the individual is the perpetrator classified in the substantiated report and the individual will have no right to a hearing provided for in Rule 0250-07-09-.09 in regard to that particular report and the Department may release information and the perpetrator as permitted under these Rules when:
 - (a) A criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. § 37-1-602(a)(3) (2016 and as amended), or any act which would constitute child abuse or neglect;
 - (b) The individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. §§ 37-1-602(a)(3) or 37-1-102(b)(21) (2016 and as amended); or
 - (c) Any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed any act against a child which would constitute abuse, severe child abuse, child sexual abuse, or neglect.
- (4) If the criminal, civil or administrative proceeding does not result in a conviction or in a finding as specified in paragraph (3) of this Rule, including pretrial diversion, this fact shall be admissible in the Department's administrative hearing, but may not be relevant to the issue of whether the report is properly classified as substantiated.
- (5) If administrative proceedings were stayed pursuant to this Rule, they shall resume at the point at which they were stayed if the alleged perpetrator so requests in writing to the address listed on the notification to stay proceedings, within thirty (30) days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse or neglect involving the alleged perpetrator or of any

disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails timely to make such a written request, he or she shall waive his or her rights to a hearing in regard to that report. The substantiated report and information regarding the perpetrator will be released as permitted under these Rules. If the Department learns the civil or criminal proceedings were resolved and thirty (30) days have passed since the resolution of the matter, the Department may reinstate due process at the point at which it was stayed and take the appropriate action.

- (6) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing to timely request same or by other action or inaction, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:
 - (a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;
 - (b) That the individual may reinstitute the administrative proceedings under these rules at the point they were stayed only if the individual requests such in writing to the Department at the address listed on the notice of stay which issued the original notice within thirty (30) days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court (unless the order or verdict is a conviction or guilty plea as specified in paragraph (3) above);
 - (c) If the individual fails timely to make such a written request, he or she shall waive his or her rights to an administrative hearing in regard to the report and be finally determined as a "substantiated" perpetrator of child abuse or neglect.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.11, currently Evidence; Standard of Proof at the Administrative Hearing, is amended so that the title of the Rule shall now be Conduct of Administrative Hearing. Additionally, Rule 0250-07-09-.11 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the Rule shall read:

- (1) The administrative hearing will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rule 0250-05-06.
- (2) The sole issue for the administrative judge to determine is whether the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect.
- (3) Unless the emergency procedures in Rule 0250-07-09-.08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of any form of abuse or neglect in a substantiated report until the individual has exhausted all of his or her appeal rights under these Rules, including judicial review of a final order by the Department. The Department may only release the fact that a hearing concerning the individual pursuant to the child abuse laws of the State is pending.
- (4) If the administrative judge concludes that a preponderance of the evidence does not support a conclusion that the individual committed the act of abuse or neglect, or if a reviewing court reverses a departmental determination of abuse or neglect, the report shall be classified as unsubstantiated. The Department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect. If the Department had previously disclosed to any organization or person that an individual was under investigation under the child abuse laws of Tennessee, the Department shall immediately notify that organization or person that the report was unsubstantiated. Nothing in this rule shall be construed to require expunction of any information from internal case records maintained by the Department.
- (5) The decision of the administrative law judge may be appealed in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

Rule 0250-07-09-.12 currently Reserved is amended so that the title of the rule shall now be Child Abuse Registry Review Committee. Additionally, rule 0250-07-09-.12 is amended by deleting the text of the rule and substituting instead the following language, so that, as amended, the rule shall read:

- (1) An individual who has been determined to be a perpetrator of abuse or neglect in a substantiated report may apply to have their substantiation(s) reviewed by the Child Abuse Registry Review Committee when:
 - (a) A year has passed since the final substantiated case was closed; and
 - (b) The perpetrator has waived or otherwise exhausted due process.
- (2) The individual must complete an application in accordance with applicable Departmental policy.
- (3) The purpose of the committee is not to reexamine the underlying facts of the substantiated report(s), but to provide an opportunity for the perpetrator to present rehabilitative or other remedial evidence which suggests the individual should no longer be listed as a perpetrator within Departmental records.
- (4) The committee shall decide whether the individual should remain classified as a perpetrator in Departmental records or if sufficient remedial evidence has been presented to justify the removal of that individual as a perpetrator.
- (5) If the committee decides the individual should remain classified as a substantiated perpetrator, the individual shall be allowed to re-apply after one (1) year from the date of the decision. Except for minor perpetrators, the individual shall only be allowed to apply for a review twice.
- (6) A minor perpetrator shall be allowed to apply once a year until their eighteenth (18th) birthday. Once a minor perpetrator reaches the age of majority, the procedure set out in Rule 0250-07-09-.12(5) shall apply and the minor perpetrator shall have the ability to request only two (2) further reviews.
- (7) The decision of the committee shall be considered discretionary and final.

Authority: T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112, and 37-5-512(a).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 01/12/17

Signature: *[Handwritten Signature]*

Name of Officer: Douglas E. Dimond

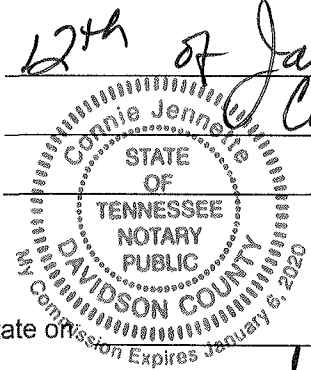
Title of Officer: General Counsel

Subscribed and sworn to before me on: 12th of January 2017

Notary Public Signature: *[Handwritten Signature]*

My commission expires on: _____

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Filed with the Department of State on 1/12/17

[Handwritten Signature]

Tre Hargett
Secretary of State

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