

Allegations of Maltreatment Against Foster Parents

Safety for All Children in Foster Care

Regina Deihl, J.D.

Foster parents, like all child welfare professionals, have an obligation to ensure the safety of the children in their homes. Children who have been separated from their parents because of abuse, neglect or abandonment often have special needs that require their foster parents to respond to challenging behaviors and to provide stability during a crisis in the child's life. In addition, foster families often experience increased scrutiny and may be more likely to be the target of maltreatment allegations than other families in their communities.ⁱ In maintaining a professional role in the child welfare system, foster parents must, first and foremost, ensure the safety and well-being of each child in their home.

Each state and U.S. territory designates individuals who are required by law to report suspected incidents of child abuse, such as doctors, teachers, day care providers, and others. In many places, foster parents are *mandated reporters* (individuals required by law to report suspected or actual instances of child abuse).ⁱⁱ Being a mandated reporter means that a foster parent must report all incidents of suspected or actual child abuse to appropriate authorities.

MALTREATMENT REPORTS IN FOSTER CARE

How Common is Abuse in Foster Care?

The most common perpetrators of child abuse are a child's parents. Abuse in foster care is rare. National data indicates that the percentage of substantiated child abuse reports involving a foster parent or residential facility staff member in 2002 averaged approximately one-half of one percent of all substantiated maltreatment reports.ⁱⁱⁱ In addition, the number of states that met federal compliance targets for abuse in foster care is improving. In 2000, 16 states met the national standard, whereas in 2002,

23 states met the national standard.^{iv} Many of the allegations of abuse made against foster parents are not substantiated. In one investigation of complaints against certified foster family homes and foster family agencies in California, for instance, 27% of allegations were substantiated, 25% were inconclusive, 23% were unfounded, and 25% were still pending.^v

Why Do Allegations Occur?

Foster parents may be at a heightened risk for an allegation of child abuse for a variety of reasons: 1. foster families are held to stricter standards than biological parents 2. foster families sometimes attract attention and are more closely scrutinized by their communities, especially since the media often portray foster families in a negative light 3. foster children and their biological families often know how to make abuse reports and that the foster child may be removed from the foster family if they do and 4. child welfare agencies are concerned with being sued in the event that a child is harmed in foster care and this may affect the way they react to an allegation of abuse or neglect in a foster home.^{vi}

In addition, since foster families do not have the same legal rights as biological families, behavior that would not result in agency removal of children from their biological parents may well result in removal of children from a foster family home.

What Can be Done to Prevent Allegations of Abuse?

Since their status as foster parents may put them at higher risk of being accused of abuse than other families for reasons that do not relate to the care the child is actually receiving, allegations of abuse against foster parents are likely to continue to occur.^{vii} Even so, there are some precautions foster parents can, and should take to minimize the chances of being the subject of a child abuse report.

THREE POSSIBLE CONSEQUENCES OF MALTREATMENT REPORTS

Reports of maltreatment of a foster child may result in three different outcomes: 1. suspension or revocation of the foster parent's foster care license (in some states called a *certificate*), 2. placement of the foster parent's name on a child abuse central registry list, and 3. criminal prosecution of the foster parent for child abuse. In rare instances, a foster parent might also be named in a civil lawsuit based on a maltreatment report.

Minimizing the Risk of Allegations of Abuse

- Find out as much information as possible before deciding whether or not to provide care for a child, including whether the child has a history of making allegations of abuse against prior caregivers.
- Do not take any child you do not feel confident you can adequately parent.
- Work with the child welfare agency to ensure that the child's needs are being met while in foster care.
- Understand and follow all laws and regulations on caring for foster children. Request and review current information on licensing regulations and policies.
- Develop family rules and expectations in consultation with the child welfare agency and ensure that all family members follow them.
- Do not leave a child who has been sexually abused alone with anyone of the same gender as the abuser.
- Keep a daily log and record any unusual events, behavior, comments, reactions before or after visitation with family members, school issues, medical/dental/therapy appointments and all discussions with other professionals about the child's progress and needs (including social workers, Court Appointed Special Advocates (CASAs), attorneys, mental health professionals, etc.) Promptly report any unusual incident or injury to the child's social worker.
- Maintain a cordial and professional working relationship with the child's birth parents and other members of the child welfare team.
- Participate in training for foster and adoptive parents on caring for children who have been abused or neglected.

Civil liability issues are beyond the scope of this chapter, and will be covered in a future chapter.

Several different agencies may be involved in investigating a single maltreatment complaint. Foster parents who are experiencing a maltreatment report should be clear about what agency is conducting each part of the investigation, what is happening at each stage of the investigation and what the possible outcomes are for each investigation. This can be a complicated process because *all three outcomes may be based on the same alleged maltreatment incident.*

For example, a foster parent accused of physically abusing a foster child may find herself facing: 1. a licensing violation procedure initiated by the licensing division of the child welfare agency resulting in the agency suspending or revoking her foster care license, 2. a report of child abuse by the child abuse and neglect investigations division of the child welfare agency resulting in the agency placing her name on a statewide child abuse central registry, and 3. a criminal complaint initiated by a law enforcement agency resulting in criminal prosecution for child abuse.

Foster parents should know which agency does each kind of investigation, the various ramifications of each of the outcomes and of their rights in each situation.

In addition, foster parents who have biological or adopted children or are legal guardians for children are subject to the same laws as other parents. The child welfare agency may remove any biological or adopted child from their home who they believe is being abused or neglected. In that case, juvenile court proceedings for child abuse and neglect may also take place.

Do the Various Agencies Coordinate Their Investigations?

Generally speaking, investigations of licensing violations are handled by the licensing division of the child welfare agency. Child abuse allegations, however, may be handled by a different part of the agency. Law enforcement agencies usually conduct their own investigation for possible criminal violations. In addition, there may be other agencies, such as a private foster care agency, that conducts an investigation. Ideally, all of the agencies involved in investigating a report of maltreatment should coordinate their actions to minimize the disruption to the child, the foster parents, the birth parents and others involved in the investigation.^{viii} Research shows, however, that this does not always occur.^{ix} Foster

parents should ask for information on which agencies will be doing investigations, whether they will be coordinating their efforts and what the process is for making decisions about each part of the investigation.

Licensing Deficiencies or Violations

Children who are separated from their parents because they have been abused or neglected are placed by court order in the care and custody of the child welfare agency. Foster parents derive their ability to care for the child from the agency that has legal custody of her and who, in turn, places the child in a licensed foster care facility, such as a foster family home or a group or residential treatment facility. In order to receive (or retain) a foster care license, the foster parent (sometimes called a *licensee* in the licensing regulations) must meet various licensing requirements.

Abuse or neglect in a foster home is both child abuse under the law as well as a violation of the foster parent's licensing agreement with the agency. A child welfare agency may choose to suspend or revoke the license of a foster parent with a licensing violation. Or, the agency may choose to allow the foster parent to retain his or her foster care license if the foster parent agrees not to engage in the prohibited behavior again (agrees not to spank a child again, for example) or to fix some deficiency in the physical structure of the foster home. Agreements to take some action to correct a licensing violation or deficiency are often called *corrective action plans*.

Foster parents who are accused of maltreating a child and who experience suspension or revocation of their foster care license usually have certain *administrative remedies* (rights to challenge an agency action) to dispute the licensing complaint. In general, agencies have administrative procedures that allow the foster parent to receive notice of the complaint, access to a series of agency procedures to challenge the agency's action in suspending or revoking the foster care license, and, ultimately, access to the courts for a hearing on whether or not the agency action was proper. In many states, these administrative procedures are set out in a code of regulations. States often have a manual of policies and procedures that provides information on how licensing investigations are conducted and how foster parents can participate in them.

Licensing investigations may also be triggered by deficiencies that have nothing whatsoever to do with an allegation of abuse or neglect, but instead are based on some other problem in the foster

home (for example, the home did not have an operable smoke detector). Agency licensing decisions usually involve some or all of the following steps:

- A licensing investigator comes to the foster home to investigate a licensing deficiency or violation or observes one during a regularly scheduled visit.
- The foster parent is given a form noting the violation or deficiency on it (in the case of a violation based on child abuse or neglect, the foster parent probably will not be told who made the complaint. This is to encourage people who are aware of abuse or neglect in foster family homes to report it to authorities).
- In some cases, if the foster parent enters into an agreement to remedy the violation or deficiency, the agency will allow the foster parent to maintain her foster care license.
- The foster parent should be given information by the agency on the administrative process available for challenging the agency's decision about the licensing violation or deficiency.

These procedures usually include:

- √ An opportunity to provide the agency with additional information relevant to the violation or deficiency.
- √ A meeting or series of meetings with agency personnel to challenge the agency finding of a licensing violation. In general, meetings with lower level personnel at the agency are required before the foster parent is allowed to meet with higher level agency supervisors or managers at the district or state level.
- √ In situations in which a foster care license is suspended or revoked, the availability of an administrative law procedure to dispute the suspension or revocation of the foster care license. These administrative procedures are usually conducted by an administrative law judge (often referred to as an *ALJ*). The procedures generally require the child welfare agency to present evidence of the violation or deficiency that led to suspension or revocation of the foster care license. The foster parent is also allowed to present evidence that she believes shows that the violation did not occur or that there are other circumstances that affect whether or not her foster care license should be suspended or

revoked. At the conclusion of the hearing, the ALJ either issues a verbal ruling at the hearing or issues a written ruling within a certain timeframe.

√ Agencies or foster parents who are dissatisfied with the decision of the ALJ may have a right to bring the matter before a court to determine whether or not the ALJ's decision was correct. In most instances, the decision of the ALJ will be given great deference by the court and is unlikely to be disturbed unless the decision was *arbitrary and capricious* (lacking any reasonable basis). In most cases, it will not be practicable for a foster parent to challenge the ALJ's decision in court without hiring an attorney to do so.

Child Abuse Reports and Registries

The federal Child Abuse Prevention and Treatment Act (CAPTA) provides funding to states to improve their intake, assessment, screening, and investigation of reports of child abuse.^x The purpose of CAPTA is to help states ensure the safety of all children in their state. Passed by Congress in 1974, and amended several times since then, CAPTA provides states with funding to maintain records of child abuse and neglect reports. In order to be eligible for these federal funds, states must meet certain legal requirements. One of the requirements is that states must have “provisions or procedures for the reporting of known and suspected instances of child abuse and neglect.”^{xi}

Federal Child Abuse Prevention and Treatment Act (CAPTA)

The federal government and the states clearly have an interest in protecting children from harm. But, *alleged perpetrators* (individuals, including foster parents, who have been accused of maltreating a child) also have an interest in protecting their reputations and sometimes have a *liberty interest* (a legally protected right) to continue working in their chosen profession and to be paid for their work with children. These interests are so highly valued that they are protected by the U. S. Constitution.

Balancing Important Interests: Keeping Children Safe While Protecting the Rights of Persons Accused of Child Abuse or Neglect

States must carefully balance these important interests by passing laws, or instituting rules, regulations, or procedures that address the intent of CAPTA. The intent of CAPTA is to protect children from abuse and neglect. At the same time, states must provide procedural protections for foster parents and others who are accused of maltreating a child. These procedural protections must meet the minimum standards required by CAPTA as well as

Tips for Handling Foster Care Licensing Deficiencies or Violations

- Keep a current copy of your state's licensing laws and regulations on hand and refer to it frequently. Request and attend training on state and local foster care licensing requirements.
- Request information in writing about agency protocols and procedures on how licensing deficiencies and violations are handled and the process for handling disagreements with an agency finding of a deficiency or violation.
- Work with agency staff to settle any licensing violation concerns. Immediately comply with any corrective action plan you enter into with the agency to resolve licensing deficiencies or violations. Provide the agency with documentation in writing that the violation or deficiency has been eliminated.
- If you are cited for a licensing violation, request a written notice of the specific violation and written information on the process available for challenging it.
- If you believe you have been unfairly cited for a licensing violation, pay close attention to any applicable time limits to request a meeting with agency staff or to file a request for an administrative or fair hearing. *Strict timelines apply to administrative actions. Be certain you know and follow all applicable filing rules and that you meet all deadlines.*
- If the matter cannot be resolved at the local agency level and your foster care license is in jeopardy, you may decide to request an administrative hearing (sometimes called a *fair hearing*) with an ALJ. You may be entitled to obtain copies of the information the agency will rely on in making its presentation to the ALJ, depending on your state's laws and regulations. You may also be required to provide the agency, in advance, with information you will use in your defense. (The procedure of exchanging information in advance of a hearing is often referred to as *discovery* and is intended to avoid surprise information from emerging at the hearing and to encourage settlement of disagreements). In addition, you will have certain rights at the hearing, which usually include the right to be represented by an attorney if you hire one, the right to have a record made of the hearing, the right to present evidence, and the right to make arguments to the ALJ.
- Consider whether or not to consult an attorney with experience in child welfare matters. If you do not know an attorney experienced in this area of the law, contact your local bar association, legal aid office, foster and adoptive parent association, your foster family agency, a non-profit attorney referral service, or a reliable private attorney in your community for a referral.

the requirements that courts have decided are necessary to meet the basic level of fairness under the Due Process Clause contained in the Fourteenth Amendment to the U. S. Constitution.

CAPTA provides funds for states to develop, strengthen, and refine central registries where reports of child abuse and neglect are stored. As a result, every state has developed procedures for maintaining records of these reports.^{xii} These records are usually maintained in a central location, often called a central registry. Approximately 42 states and the District of Columbia have statutes authorizing the establishment of a statewide central registry. Several states only require, however, that local child welfare agencies collect and maintain child abuse and neglect records.^{xiii}

Access to the information contained in child abuse reports is generally governed by strict confidentiality rules, but there are a number of different people who have access to the information for various reasons. Caseworkers may rely on the information to identify a child's history of maltreatment, to develop a plan for intervention, to reveal patterns of re-reporting and re-abuse on the same child, or to assess risk in reports.^{xiv} Researchers sometimes use the information to identify tendencies in child abuse cases or to analyze the characteristics of children who are more likely to be reported to the registry. Licensing workers at child welfare agencies use the information in the registries to ensure that adults with documented histories of child abuse are not allowed to become foster or adoptive parents.^{xv}

Because each state maintains its own method of collecting the reports, usually in a central registry, practices vary from state to state. States differ in what information is included in the registry and who is able to access the information. In general, the kinds of information maintained may include the name of the child who is the subject of the report, the names of parents or guardians of the child, the names of any siblings of the child, the name of the alleged perpetrator who committed the abuse, and the outcome of the particular abuse investigation. There is wide variation on what information is in the registry.^{xvi}

Although central registries serve a number of important functions, it is also important that persons accused of child abuse or neglect have procedural protections to ensure that their rights are not infringed. Foster parents who are accused of maltreating a child in their home and are subject to an investigation by the child welfare agency for suspected child abuse or neglect have

certain rights flowing from CAPTA and from the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution.

RIGHTS FLOWING FROM CAPTA AND THE U.S. CONSTITUTION

CAPTA

CAPTA requires that foster parents who have an allegation of maltreatment made against them be told at the first telephone or face-to-face contact with the agency worker what the general nature of the allegation is.^{xvii} State law usually prevents the agency worker from telling the foster parent who made the allegation. This protects the identity of the reporter and encourages people to report suspected child abuse or neglect.

Because the agency may not have much information at the beginning of an investigation, foster parents may receive little information and CAPTA does not specify what details the foster parent is entitled to receive. The law does not require agencies to provide foster parents with any special kind of advisement or “Miranda-type” warning (reading constitutional rights to a criminal defendant) – even in cases where the alleged maltreatment may ultimately result in criminal charges. This is because a child abuse or licensing investigation is not, in itself, a criminal charge.

The investigator will simply inform the foster parent that she is looking into a report of alleged physical abuse of a specific child, a report of sexual abuse, a failure to adequately supervise a child or some other specific type of maltreatment.^{xviii} In addition, CAPTA requires that agency representatives be provided with training about their legal duties in order to protect the rights of children and families in the investigation of child abuse and neglect.^{xix} Broadly speaking, this training should include the handling of maltreatment reports of adult caregivers in foster family homes.^{xx}

CAPTA also requires states to have procedures in place to promptly *expunge* (erase) any records for background checks or employment that are determined to be unsubstantiated or false, although child welfare agencies are allowed keep those reports in their casework files to help in making future risk and safety assessments.^{xxi} Approximately 37 states and the District of Columbia have statutes providing for the expungement of agency

and central registry records. When a record is *expunged*, old or inaccurate records are removed from the registry.

Terms Used to Classify Reports Vary

States vary in the way they classify records. In situations where there has been no determination of abuse or neglect, states use terms like “unfounded,” “not indicated,” “unconfirmed,” and “unsubstantiated.” Terms like “founded,” “indicated,” and “substantiated,” are used to refer to situations where there has been a finding that the foster parent abused or neglected the child. Foster parents need to know what terms are used in their own state and what the definitions of the terms are.^{xxii}

States also vary on how long unfounded or undetermined reports are kept on registries before they are expunged. In some states, unfounded reports must be removed immediately whereas in other states, they can stay on the registry for up to ten years.^{xxiii} Unfounded reports are used only in subsequent agency investigations and cannot be used for employment or background checks. A few states do not allow unfounded reports to be put on their registry at all.^{xxiv}

Many states have specific procedures in place that allow a person whose name is reported to the registry to challenge the findings. If the challenge is successful, the person’s name is removed. The length of time founded or indicated reports may stay on their registry also varies from state to state.

Some state statutes are silent about when a founded report will automatically be removed. In other states, an adult found to have abused or neglected a child must wait until the child becomes a legal adult before the perpetrator’s name is automatically expunged. Still other states wait an additional 5 or 10 years after the child becomes an adult before the perpetrator’s name is expunged. States often require that there be no additional report of abuse by the same foster parent in order to have a report expunged. Some states allow records to be expunged at any time if the foster parent shows *good cause* (a substantial reason that constitutes justification for the name to be removed).^{xxv} The National Clearinghouse on Child Abuse and Neglect Information maintains state specific information on expungement of registry reports of child abuse and neglect.^{xxvi}

CAPTA Minimum Standards

CAPTA also requires states to have a process in place by which a foster parent who is officially found to have committed

child abuse or neglect can challenge the finding.^{xxvii} The federal child welfare policy manual explains that states can decide what type of process to use. States can choose to have the process through an internal child welfare agency procedure or through the courts or some other external mechanism. However, the process must meet certain minimum standards:

1. The process must afford the foster parent an opportunity for due process.
2. The office or individual hearing the appeal cannot be involved in any other stage of the case.
3. The office or individual established to hear the appeals must have the authority to overturn a previous finding of child abuse or neglect.
4. Foster parents must be given written notice of their right to appeal, and the method by which they can appeal, at the time they are notified of the official finding of child abuse or neglect.^{xxviii}

Procedural Due Process Rights Flowing from the Constitution

In addition to the rights foster parents have under the general federal CAPTA legislation that applies to anyone accused of maltreating a child, including a foster parent, courts in some places have determined that placing a foster parent's name on a child abuse central registry means that they have rights under the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution. The Due Process Clause of the Fourteenth Amendment says that no state can "deprive any person of life, liberty, or property, without due process of law."^{xxix} In general, the constitution requires states to provide sufficient procedures — called "procedural due process" — before taking an action that has the effect of terminating an interest the person has in life, liberty, or property that is protected by the constitution.^{xxx}

When the government takes an action that deprives a citizen of employment, a constitutional liberty or property interest may be involved. Some courts have held that child care workers, including foster parents, have a liberty interest in continuing to work with children and that the constitution requires agencies to follow certain procedures if they want to deprive a foster parent of that right. Since placement of a foster parent's name on a child abuse central registry would impair his or her ability to continue working with children, some courts have decided what procedural due process rights foster parents must be given when a child welfare

List of Model Protections by the American Bar Association Center on Children and the Law

CAPTA provides general information on what kinds of procedures must be in place to protect the rights of people whose names are reported to child abuse central registries. In addition, the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution requires that certain protections be in place in certain situations. To help states in developing and passing laws safeguarding the rights of people accused of child abuse or neglect, including foster parents, the American Bar Association Center on Children and the Law has developed a list of basic procedural protections that should be in place when child welfare agencies process reports of abuse or neglect that result in an individual's name being placed on a child abuse registry. They are:

- (1) Written notice of the specific allegations and that a person has been identified as a perpetrator and has been or will be listed on the central registry.
- (2) An indication of the adverse consequences of being listed on the central registry.
- (3) An explanation of the right to challenge or expunge information that specifically describes the process.
- (4) The state or county must have some form of independent review and may have a time deadline for holding the review hearing.
- (5) The foster parent must be allowed some meaningful access to the Child Protective Services Agency record and to adverse material. This access is limited by protections for reporters, child victims, victim treatment information, and those whose safety could be endangered.
- (6) An opportunity to present evidence in support of expungement.
- (7) If the central registry is to affect employment or licensing, there must be a showing of a relationship between the maltreatment and the job or volunteer work.
- (8) Some form of appellate or administrative hearing or judicial review.
- (9) Inclusion of the information in the central registry should only be based on a higher standard of evidence than "reason to suspect or believe" or "some credible evidence."

agency decides to place the foster parent’s name on a child abuse registry.

Courts have looked at a number of procedural due process protections that foster parents should be aware of:

Appropriate Standard of Proof

Agencies that investigate allegations of maltreatment should have a *standard of proof* (a level of evidence necessary to decide whether or not the allegation is true) that is used in deciding whether or not to substantiate a child abuse report. Many states use a “some credible evidence” or “any credible evidence” standard. Some courts have decided that if an indicated finding is going to be disclosed to licensing agencies or employers, the “some credible evidence” is not a high enough standard. This is because it could lead to innocent people having their names put on a child abuse registry since it only requires the agency to present the “bare minimum” of credible evidence to support the allegations and does not require the agency to weigh evidence tending to show that the abuse did not happen.

Those courts were also concerned that studies showed that 75% of people who tried to have their names removed were ultimately successful once the agency was required to prove the charges by a higher standard, a “fair preponderance of the evidence” standard (it is more likely than not that the person abused or neglected the child). In one case, a court held that if the agency used a low “credible evidence” standard of proof (instead of the higher “preponderance of the evidence” standard), the constitution required the agency to strictly comply with its own time deadlines and to have a higher standard of proof if the accused person appealed.^{xxxii}

Proper Notice

In an ongoing *class action* case (a case where representatives of a group of people with an interest in a certain issue file a lawsuit to address a problem that all members of the group have), a federal court found that the notices being provided to people accused of maltreating a child were unconstitutional. By the time of the court’s decision, though, the agency was already providing more complete notices. The notices gave information on the allegations that it determined were indicated, the length of time the indicated report would be kept by the agency, and a statement that if a person wanted a review of the agency’s decision, it had to be requested within 60 days of when they got a notice saying the agency had

completed its investigation. The Court said these changes were a step in the right direction, but the court decided to stay involved to make sure the new procedures were being used to give consistent and adequate notice to people who were accused of child abuse.^{xxxii}

In order to understand the details of what the foster parent is being accused of, and to prepare to challenge a substantiated finding, foster parents need access to the information the child welfare agency relied on in making a decision to substantiate a report of child abuse. In the class action lawsuit above, the court held that when the agency files provided to the foster parent were so heavily *redacted* (some information blacked out) that it seriously limited the foster parent’s ability to present their case, there was a constitutional violation. This does not mean that foster parents should get *all* the information in the agency’s file, but that they should get the information they need to prepare to challenge a substantiated finding. Foster parents will generally not have access to the name of the person who made the allegation.^{xxxiii}

Access to Information About the Allegation

In the same case, the court was concerned about the long delays many people experienced in trying to expunge the indicated findings against them. Noting that one of the requirements of due process is for a hearing within a reasonable period of time, the court found long delays in the process were unconstitutional. The court concluded that if people who are accused of child abuse are able to get a hearing under a preponderance of the evidence standard within 90 days of a request for appeal, it would consider that a “marked improvement.”

Prompt Access to a Hearing

In a subsequent decision in the same case, the court held that foster parents do not have a right to an *expedited* (accelerated) review process *before* their names can be placed on the child abuse registry.^{xxxiv} That the part of the decision is being appealed to a higher court.

What Administrative Procedures Do States Usually Have in Place to Make Sure Foster Parents’ Rights Are Protected?

In order to be fair and to comply with the federal CAPTA requirements and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, child welfare agencies must have a process for investigating reports of child abuse and neglect and for a review of decisions that a foster parent maltreated a

child. Foster parents need to know and understand how to use administrative processes before an allegation of maltreatment happens. Below are some general guidelines on how investigations are usually conducted and how to seek review of *adverse* (unfavorable) findings. It is important for foster parents to be prepared with specific information on how the process works in their state.

Agency Process and Investigation

Initial Call Reporting Abuse or Neglect

Child abuse reports usually begin when a person contacts a local child welfare agency, a statewide toll-free number, or a law enforcement agency to report suspected child abuse or neglect. Individuals with substantial contact with children in their jobs are often *mandated reporters* (persons required by law to report suspected child abuse or neglect).

Mandated reporters are protected from being sued for reporting suspected child abuse or neglect as long as they acted in good faith in reporting it, even if the report turns out not to be true. There can be sanctions for individuals who report abuse or neglect when they know it did not happen.^{xxxv} Foster parents are often mandated reporters and may be required to contact authorities if they suspect child abuse or neglect. In approximately 18 States, any person who suspects child abuse or neglect is required to report it.^{xxxvi}

Child welfare agencies that receive reports of possible child abuse or neglect either “screen in” or “screen out” the reports. A report is screened in if there is enough information to suggest that the situation meets the definition of abuse or neglect under that state’s law. If the report suggests that there may have been abuse or neglect or a licensing violation in a foster family home, the agency will investigate within a set period of time (anywhere from an immediate response to several days) depending on how serious the situation is and the time requirements in that state.

The agency should avoid any conflicts of interest to ensure that the investigation is carried out in an unbiased and impartial way. In general, a conflict of interest may be present when the circumstances suggest a reasonable possibility that the agency, or the individual investigator cannot perform the investigation in an evenhanded way. For that reason, the individual caseworker who placed the child in the foster home or has a direct personal relationship with the foster family, the suspected abuser, or the

child alleged to have been abused should not be involved in the investigation.

In addition, it is important for the investigator to have specialized training in how the investigation should be conducted, including comprehensive instructions for evaluating how reliable the information uncovered during the investigation is, how to obtain independent confirmation of information, how to judge the consistency and credibility of a witness' statement, taking into consideration the witness' opportunity to observe, being sensitive to any interest a witness might have in the outcome of the investigation, and recognition of the age, developmental stage, and susceptibility to influence of any child witness.^{xxxvii} In addition, specialized training is necessary to ensure that the proper standard of proof is being applied to decide whether or not to substantiate a report of child abuse or neglect.

There are also requirements that agencies cross-report suspected child abuse or neglect to other agencies, such as law enforcement agencies, foster care licensing, the child's guardian ad litem, the juvenile court, and others. In addition, birth parents of children in foster care may be notified that there is an allegation that their child has been abused or neglected in foster care. An *administrative hold* (a procedure where the agency closes a foster home to new placements) may be put in place as soon as an agency receives a report of child abuse or neglect in a foster family home. In that case, the foster parent will not be asked to accept additional foster children for placement in her home until the allegations of child abuse and neglect have been resolved.



Foster Parent Tip: Be prepared in advance for the possibility that an allegation of abuse or neglect may happen to you. Make sure you know what agencies are involved in investigating allegations of maltreatment, what procedures are used in your state, what the standard of proof is for substantiating an allegation (some credible evidence, preponderance of the evidence, or some other standard), what terminology is used for maltreatment reports (for example, “substantiated,” “unfounded” or “inconclusive”) and what the process is for challenging placement of your name on a child abuse registry or for challenging a licensing violation or deficiency. Be aware of the timeframes that agencies use to respond to reports. Understand that the investigator(s) will likely be people that you do not know in order to avoid any conflicts of interest. Recognize that child welfare agency representatives may notify other agencies and the child's parents that an allegation of

abuse or neglect has been received about your treatment of your foster child.

Written Notification of Allegations

To comply with CAPTA and due process requirements, foster parents should receive written notification of the allegation of abuse or neglect when they are first contacted about it.^{xxxviii} They should also be given information about their rights in the investigation process. They will probably not be told who made the allegation in order to protect the identity of the reporter and to encourage people to report suspected child abuse and neglect. CAPTA does not specify exactly what details the foster parents are entitled to receive and state laws and procedures vary on what information is provided to foster parents.

The law does not require agencies to provide foster parents with any special kind of “Miranda-type” warning. In many places, child welfare agencies give the foster parent a standardized form with hand-written information on it about the allegation. Foster parents must allow the investigator to have access to the child to ensure his or her safety and well-being and, in most cases, to the *facility* (the foster parent’s home) to ensure that licensing requirements are being met.



Foster Parent Tip: Be sure to ask for any written documentation about the allegation when the agency representative first comes to investigate. Read the documents carefully and ask questions about anything you do not understand or agree with. Make sure you know whether the investigator is there to inquire about a licensing violation, a report of child abuse or neglect or both and whether there will be other investigations or agencies that will also be involved. Keep all documents in a folder and make sure you comply with any corrective action plan you agree to. Keep track of any timelines to challenge a licensing violation or allegation of abuse or neglect that you do not agree with.

Initial Investigation

In order to keep children safe, investigators must first determine if it is safe for the foster child to remain in the care of the foster family while the investigation proceeds. Children should not automatically be removed, in every instance, where the agency has received a report of maltreatment. In instances where the child’s safety can be assured, agencies should seek to avoid disruption for the child and the foster family.

The investigator initially examines all the available information about possible abuse or neglect. This usually includes seeing and

speaking with the child, usually outside the presence of the foster parent, speaking to other children in the home, talking with the foster parent and others in the home, and inspecting the home environment to determine whether the child is safe and well-cared for.

In some cases, the investigator may speak with the foster child at school or somewhere else even before the foster parent is aware that there is an allegation of maltreatment. In order to protect the child from the trauma of being interviewed multiple times about the same alleged abuse or neglect, some places have specialized units that are trained to be sensitive to children and that conduct one interview that is audio or video taped for later use.^{xxxix}

During the initial investigation, the investigator will want to understand the circumstances of what happened that caused the report to be made. The investigator should be looking for all the information that bears on whether abuse or neglect occurred. This would include *inculpatory evidence* (information tending to show that the abuse or neglect happened) and *exculpatory evidence* (information tending to show that the abuse or neglect did not happen).

Gathering of all the information, including the investigator's own observations, helps her understand exactly what happened and to evaluate all the information in the context of the totality of the circumstances. Some state laws or regulations specifically state that the foster parent has a right to have a attorney or another representative present during the initial interview if that can be arranged quickly (Illinois), or have a foster parent support person to emotionally support the foster parent (Oregon). In at least one state (Virginia), the foster parent may tape record the conversation with the agency investigator.

In a small percentage of cases, the investigator may determine at the initial investigation stage that abuse or neglect did not occur and the investigation should end. If, however, the investigator determines during the initial investigation that the foster child and, in some cases, the foster parent's adopted or biological children, are not safe in the home, the children will be removed. Generally speaking, the foster parent has a right to provide information and to give the investigator the names of *collaterals* (other people who may be able to provide additional information or to corroborate the foster parent's version of events). In order to

help the investigator get a more complete picture of the situation before making a determination whether or not a child has been maltreated in the foster home, a formal investigation will probably take place.



Foster Parent Tip: When an agency representative first informs you that an allegation of abuse or neglect has been made against you, it is natural to be upset and frightened. Understand that the agency's first responsibility is to make sure that the foster child is safe and do not take the agency's investigation of the allegation as a personal insult.

Make the foster child available in a private location so that the investigator can speak with the child. Before speaking with the investigator, contact a support person or attorney, if possible. Get the investigator's contact information and remember to ask for all the documentation that you are entitled to receive. During the first interview, provide the names and contact information of collaterals that can corroborate your version of the events.

Consider tape recording the interview if the investigator agrees. If not, take comprehensive notes during the discussion. If the agency decides to remove the foster child, or an adopted or biological child from your home, ask if visits can be arranged so that the child does not experience unnecessary trauma from the removal. Follow-up with information for the investigator after the initial interview, if necessary, and consider seeking legal advice on your rights in the investigation.

Formal (Follow-Up) Investigation

After the initial investigation, the investigator usually reviews all the information and determines the scope and direction of the follow-up investigation. This may include additional interviews with the child, the foster parent, the alleged perpetrator (if it is someone other than the foster parent), other adults living in the home, siblings, and others who may have important information about the situation. In addition, investigators may talk to potential witnesses, other family members, the child's parents, and professionals, such as agency caseworkers, therapists, teachers, child care providers and others. The investigator may also run a thorough background check on the alleged perpetrator of the abuse. During the investigation, the investigator should also coordinate with other agencies that are doing their own

investigations, such as agency licensing staff and law enforcement officials.

Investigations must be completed within certain timeframes. These timeframes vary from state to state, but generally the investigation should be finished within a reasonable time, usually a few months.^{xi} Once the investigation is completed, the investigator must decide whether the abuse or neglect occurred, did not occur, or in some states, that it is still not clear whether or not the abuse occurred.



Foster Parent Tip: Respond to the investigator’s requests for additional information, if necessary. Ask the investigator for a progress report on how the investigation is going and when you can expect a decision about whether or not the report will be substantiated. Make certain you understand whether multiple agencies (for example, licensing staff, private foster care agencies, and law enforcement agencies) are investigating the same incident and what each one’s process is and when you can expect a decision by each agency. Ask whether the agencies will be coordinating their decision making processes.

Determination of Whether or Not Child Abuse or Neglect Occurred

After collecting and reviewing all the information about the alleged abuse or neglect, the investigator will determine whether or not child abuse or neglect occurred. If the investigator decides that the child was abused or neglected, she will report it to the child abuse registry. In certain states, *inconclusive* findings (meaning it is not clear whether or not the child was abused or neglected) will also be reported. As noted earlier, states vary in the names they use to classify reports. Terms such as “founded,” “indicated,” “suspected,” and “substantiated” are used to describe a finding of abuse or neglect.^{xii} Terms such as “unfounded,” “not indicated,” “unconfirmed,” and “unsubstantiated” are used to describe situations in which there has been no determination of abuse or neglect.

A foster parent who has an abuse or neglect report allegation made against her should receive written notice of the agency’s final decision about whether or not the abuse or neglect happened as well as information on how to challenge the finding if she does not agree with it. In some places, if the report is unfounded, the agency will also contact all the people the investigator interviewed to let them know that the report was unfounded.^{xiii} Other people will also usually receive information about the agency’s decision,

including the person who made the report, the child’s birth parents, caseworkers for the child and other children in the home, the juvenile court, the child’s attorney or guardian ad litem as well as agency licensing staff or other agencies that are conducting their own investigations.



Foster Parent Tip: Read the notice from the agency about the final decision about whether you abused or neglected the child carefully. Be sure you understand whether the finding is that the child was abused or neglected, was not abused or neglected, or that it is still unclear whether or not the child was abused or neglected. As noted above, different states use different terms for similar findings. Make sure you know the definition of the agency finding that was made in your case. Ask for information on how you can challenge a finding if you do not agree with it. Pay careful attention to time deadlines and other paperwork requirements so that you know how and when to challenge the finding if you decide to do so.

CHALLENGING A FINDING OF ABUSE OR NEGLECT

Foster parents who believe that the agency finding that they abused or neglected their foster child was incorrect and that their name was improperly placed on the child abuse central registry can usually challenge the decision within a set time period.^{xliii} Different states have different ways to allow foster parents to challenge child abuse and neglect findings. Foster parents often have access to an internal review process at their local agency before resorting to a formal administrative procedure to challenge the agency’s decision. If the foster parent requests that the agency *amend* (change) the finding, the agency can do so if it believes that is the appropriate action.^{xliv}

Formal administrative challenges to an agency’s actions are often called *administrative hearings* or *fair hearings*. These kinds of “hearings” are not the same as court hearings. The *hearing officer* or *administrative law judge* (also known as an ALJ) acts as a neutral decision maker and has the authority to overturn the prior finding of abuse or neglect. The ALJ who conducts the

hearing has the power to administer oaths, take testimony, rule on evidence, and make agency determinations.

In the event that there is also an ongoing criminal or juvenile court case based on the same incident, the administrative procedure to challenge an agency finding of child abuse may be *stayed* (ordered to stop) until the criminal or juvenile court makes a court decision whether abuse or neglect happened.

If there is a court finding that a foster parent abused or neglected the child, that finding is conclusive evidence that child abuse or neglect occurred and the foster parent will not be able to get their name removed from the child abuse registry by going through an administrative procedure at the agency.^{xlv}

An administrative review hearing gives the foster parent a chance to have a neutral person listen to the foster parent's version of events and make a decision about whether or not the agency acted properly in placing the foster parent's name on the child abuse registry. Foster parents who want to challenge the agency's decision need to request a review in writing, and should pay close attention to the timeframe allowed to request the review.

The administrative process to challenge a finding of child abuse or neglect is usually similar to the administrative process to challenge an agency's suspension or revocation of a foster care license. The procedures are less formal than most courtroom hearings, and strict *rules of evidence* (rules that govern what information a court can allow to come into evidence in a court proceeding) do not usually apply.

At the hearing, the child welfare agency bears the burden of proving that the foster parent abused or neglected the child. The standard of proof the agency must meet in proving that the agency action was proper varies from state to state and may be different than the standard of proof the agency used to initially substantiate the child abuse report.^{xlvi}

The administrative processes that are available for foster parents to challenge an agency decision of abuse or neglect are not always clear and they vary widely from state to state. In addition, in some states, foster parents may not have access to a fair hearing or an administrative review process.^{xlvii} Foster parents should request information from their child welfare agency on the

exact process in their state. In general, foster parents have several rights in challenging the agency's decision.

Reasonable Time Deadline for the Challenge to be Heard

In order to meet the requirements of due process, a review of the agency's decision that a foster parent abused or neglected a foster child must happen within a reasonable timeframe after the foster parent requests it. In general, administrative challenges involving a hearing of some sort are scheduled within few months after a foster parent requests one.^{xlviii} In addition, at least one court has held that long delays in being able to get an administrative hearing is a denial of the foster parent's due process rights.^{xlix}

Meaningful Access to Information

In order to prepare for the administrative hearing, foster parents should generally be able to get access to most of the information the agency will rely on in making its argument to the ALJ that the finding of abuse or neglect was justified. The foster parent will also have to disclose information he or she will rely on to show that the agency decision was incorrect. (The procedure of exchanging information in advance of a hearing is often referred to as *discovery*.) The name of the person who made the report of abuse or neglect will generally not be available and some other confidential information may be redacted. Sometimes, a pre-hearing conference is held where the ALJ makes sure the parties have exchanged records or documents prior to the hearing, the names of any witnesses who will appear at the hearing, limits the issues that will be addressed at the hearing and tries to work out other arrangements to make the hearing go smoothly.¹

Right to Be Represented By Counsel

Foster parents who plan to challenge a substantiated or indicated report have a right to have an attorney of their choice represent them at the hearing. The agency that decided to substantiate the report will usually have an attorney to represent the agency. Foster parents may also be able to bring an authorized representative who is not an attorney that will help them present their case to the ALJ. If the foster parent hires an attorney, she will be responsible for paying the attorney's fees. Foster parents who plan to hire an attorney should make sure that the attorney has experience in handling child abuse and neglect proceedings.

Right to Present Evidence and Cross-Examine Witnesses

Foster parents have a right to present evidence about the events that led the agency to substantiate the finding of child abuse

or neglect. That could include submitting written documents as well as calling witnesses to support the foster parent's version of events. The foster parent (or her attorney if she has one) will also be able to *cross-examine* (question) opposing witnesses. The foster parent has a right to make arguments to the ALJ to show that the agency determination was incorrect.

Right to Confidentiality of Reports, Reviews, and Hearings

Reviews and hearings held to decide whether the agency acted properly in substantiating a child abuse report that may result in the foster parent's name being placed on a child abuse registry are private in most states in order to protect the foster parent's right to confidentiality. In addition, information on the child abuse registry itself is not generally available to the public.^{li} Release of information about whether or not a foster parent's name is on a central registry is available to licensing workers and potential employers of foster parents who want to work with children, as well as others.^{liii}

Right to Obtain a Copy of the Proceeding

Foster parents have a right to have a record made of the administrative hearing and to get a copy of the record. In some cases, the hearing may be audiotaped and transcribed only if the foster parent or another party requests and pays for it.^{liiii}

Right to a Decision Within a Certain Timeframe

Once the administrative hearing is over, the ALJ will issue a *ruling* (decision) within a certain timeframe. Sometimes, an ALJ will give a verbal ruling at the hearing. There should also be a written decision detailing the decision and the reasons for it.^{liv} If the ALJ finds that the agency was wrong in placing the foster parent's name on the child abuse registry, in most states it will be expunged.^{lv} States vary in how long a foster parent's name stays on the registry if she did not challenge the agency decision to include it on the registry. In many states, unsubstantiated reports stay on the child abuse registry for several years unless the foster parent successfully challenges it. In other states, names are deleted after passage of a certain number of years.

Right to a Court Review of the ALJ's Decision

Foster parents who receive an adverse decision at an administrative hearing can usually appeal the decision to a court.^{lvi} The court will give great deference to the ALJ's decision, however, and will not overturn it, unless the foster parent can show that the ALJ's decision was *arbitrary and capricious* (lacking any

reasonable basis). Asking a court to review an ALJ's decision is a complicated process and usually requires the assistance of an attorney. Certain timelines apply and foster parents who want to obtain court review of an ALJ's decision should immediately contact an experienced attorney for help.

Criminal Charges

In some very rare cases, a foster parent may be charged with a crime based on a child abuse or neglect allegation. These are normally extreme circumstances and require special handling. When the child welfare agency investigator believes that a crime has been committed, she will contact law enforcement officials. A criminal investigation begins when law enforcement officers (police) investigate a possible crime. The evidence collected by the police officer is reviewed by the prosecuting attorney (often called a *district attorney*) to determine if there is enough evidence to prosecute a crime.

If a foster parent is arrested on criminal charges, she will be read her *Miranda rights* (constitutional rights for criminal defendants). The foster parent does not have to speak with the police if she does not want to and can request an attorney. The law allows prosecutors to use a foster parent's statements against her in court if the foster parent chooses to speak to police about the alleged child abuse or neglect incident. A foster parent who is being questioned by police should ask to speak with an attorney before making any statements to police officers. If the foster parent cannot afford an attorney, the criminal court will appoint one to represent her in the criminal case. Statements the foster parent made to agency investigators before the police began questioning her may also be *admissible* (can be used as evidence against her) in a criminal trial.

A foster parent who is arrested for physical or sexual abuse or neglect of her foster child is entitled to certain constitutional protections, including the right to an attorney, the right to notice of the charges against her, the right to confront and cross-examine witnesses, the right to remain silent, the right to reasonable bail, the right to a jury trial, and the right to appeal decisions made by the jury or court.^{lvii} She may also have other rights, depending on her state's law.

The standard of proof for proving criminal charges against a foster parent is "beyond a reasonable doubt." Like any other

person charged with a crime, foster parents who are accused of a criminal act need a competent criminal defense attorney to represent them.

FOSTER PARENT PARTICIPATION IN THE INVESTIGATION OF MALTREATMENT ALLEGATIONS

Foster parents may have a higher chance of being accused of maltreating a child than other parents. No prevention strategy can completely eliminate the possibility that a foster parent will experience a maltreatment allegation at some point in her fostering career.^{lviii} Being prepared before an incident occurs helps lessen the fear and confusion that usually accompanies an allegation of abuse or neglect.

Foster parents should ask for clear, printed materials and guidelines, written in the language they are most comfortable with, from their child welfare agency on how the agency investigates licensing violations or deficiencies and allegations of abuse or neglect by a foster parent before any allegation happens.^{lix}

Up-to-date training should be provided to foster parents on the specific procedures, including the specific forms and protocols the agency uses in investigating maltreatment reports. Foster parents should also know about local resources, including legal resources to call if a maltreatment allegation occurs.^{lx} Knowing in advance what to expect helps lessen some of the fear and confusion that inevitably accompanies an allegation of child abuse.^{lxi}

Be Prepared

Understand the Shift in Roles

When a child welfare agency receives a report that a foster parent may have abused or neglected a child in a foster family home, the agency's primary responsibility is to ensure the safety and well-being of the child. Some agencies interpret this responsibility to mean that the agency and the foster parent have different interests that prevent caseworkers from staying in contact with the foster parent. In addition, the agency is usually charged with doing a thorough investigation of the foster home. This can be confusing and frustrating for foster parents as well as agency caseworkers who have enjoyed a positive relationship. Foster parents who find themselves in this situation may suddenly feel

abandoned by the agency during a particularly stressful time.^{lxii}

Foster parents should understand that both the agency and the foster parent have an interest in having all the information come to light about what happened that caused an allegation to occur. Foster parents should protect their own interests while also understanding that the agency is in the difficult position of trying to find out the truth of what happened while still supporting the child, the birth parents, the foster parents, and their own agency interests under these difficult circumstances.

Foster parents should have a list of resources in their home in case an abuse or neglect allegation is made against them. In addition, foster parents should ask the agency for referrals for support as soon as an allegation is made. These supports may include formal referrals to programs that assist foster parents or informal referrals to other foster parents who have experienced an allegation and may be able to provide information about the process as well as emotional support.^{lxiii}

Take Practical Steps to Protect Yourself and Your Family

Foster parents who have been accused of abusing or neglecting a child need to take sensible, practical steps to protect themselves and their own families. This can be difficult to do during the emotional turmoil that an allegation of maltreatment usually entails. Nonetheless, foster parents should try to remain as calm as possible and focus on finding support, following through on the procedures available to participate in the investigation, preparing to challenge the finding if they do not agree with it, and maintaining consistency and stability within their own families.

Get Support

Foster parents undergoing an investigation of child abuse or neglect often experience stress, shock, isolation, a sense of community stigma, powerlessness and feelings of vulnerability.^{lxv} In some places, there are foster parents who provide emotional support and assistance to other foster parents who have been accused of abuse or neglect.

For example, in Washington State, foster parents have access to a foster parent liaison who assists them when the State Office of Children and Family Services is investigating an allegation of child abuse or neglect in a foster home. The liaisons are experienced foster parents and many have dealt with an allegation of abuse themselves. Whenever an allegation is made, the foster parent is given information on how to contact the liaison for help

Practical Hints

The following are some practical hints for foster parents experiencing a maltreatment investigation.^{lxiv}

- Maintain a professional attitude.
- Stay focused on understanding and following the procedures in place to resolve the maltreatment report.
- Maintain or start a log of every conversation or activity related to the investigation.
- Ask for all documents you are entitled to receive. Read all documents carefully and ask questions about anything you do not understand.
- Adhere to all timelines for the investigation and for challenging the finding if you don't agree with it.
- Provide information and documentation to the agency about the event that caused the report to be made.
- Reach out to your local foster and adoptive parent association and ask for support and assistance. Request assistance from the child welfare agency as well.
- Maintain your own family routine and do not isolate yourself from friends and family.
- Consider contacting an attorney experienced in child abuse and neglect proceedings to find out about your legal rights.
- Try to put the allegation in perspective. Understand that allegations are sometimes made against foster parents and be prepared to move on when it is over.

and support.^{lxvi} Some states have Foster Allegation Support Team volunteers to provide support and information when a foster parent is accused of maltreating a child.

Legal assistance is often difficult to obtain quickly once an allegation is made. Foster parents should identify legal resources in their community prior to an allegation occurring. Developing a list of attorneys who specialize in child abuse and neglect cases may provide foster parents with the information they need to retain the services of an attorney if they need legal assistance later during an investigation or if they want to challenge a child abuse or neglect finding.^{lxvii}

Move On

Foster parents who have experienced a report of maltreatment need to be able to move beyond the experience once the investigation and its aftermath is over. Foster parents naturally value their reputations as quality caregivers for children and may find it difficult to let go of the frustration and disappointment of being reported for child abuse or neglect where none occurred. Being able to put the experience in perspective, learning from the situation and being in a position to help others weather a similar crisis are all skills that help foster parents and their families resume normalcy and continue to be a resource for the children who need them.

Foster parents who have themselves experienced an allegation are often excellent resources for others who are in the process of being investigated. Being able to empathize with another foster parent who has been reported is a unique bond that foster parents can share. Improving the experience of others can be a valuable contribution that foster parents who have experienced an allegation of maltreatment can make to help others in a similar situation.^{lxviii}

Helping the Child

Children who have been abused or neglected are often difficult to parent. Their life experiences create insecurities that cause them to behave in ways that require special parenting skills. Foster parents should only agree to take a child that they are confident they can effectively care for, even if the child welfare agency wants to place a child in their home whose needs exceed the foster parents' skill level.

In order to decide whether or not to accept placement of a specific child, and to properly care for any child in their home,

foster parents need as much information as possible about the child and the important people in the child's life. Foster parents should request and be given all the available information about the child and his background and history, including whether he has made maltreatment reports about other foster caregivers. Foster parents should ask for the information in writing and maintain records on the child's progress and needs while in their home.

While information about a child's parents is often confidential, information about the child is not confidential from the child's foster parent. The laws on confidentiality requirements vary from state to state and can be complex. Foster parents should be able, however, to obtain any information they need to provide proper care for the child in their home.

Just as children are traumatized by removal from their birth parents, they can also experience grief and loss by being removed from their foster home. Foster parents should make every effort to avoid multiple moves for a child by working with agency caseworkers to avoid removing the foster child, if at all possible, during the investigation process.^{lxix}

If a child must be moved, efforts should be made to maintain contact with the child through visits, including visits with foster siblings who may continue to live in the foster family home. Ensuring continuing contact with the important members of the foster family may ease the anxiety the foster child and children remaining in the home experience when a move cannot be avoided.

When an allegation originates with the foster child, foster parents may feel angry and upset to be accused of wrongdoing when they are trying to provide quality care for the child. Children may make false allegations of abuse for a variety of reasons, including the desire to exercise control over their lives or a belief that accusing the foster parent of wrongdoing may result in the child being able to return to his birth family.

If the child makes a false allegation of abuse, foster parents must try to understand the child's misguided attempts to control the situation and refrain from blaming the child for the resulting investigation. In many cases, the relationship between the child and the foster parent can be strengthened when the foster parent is able to empathize with the child's position and continues to

provide support to the child even in the midst of an allegation investigation.

WHAT FOSTER AND ADOPTIVE PARENT ASSOCIATIONS CAN DO TO HELP

Improving the Process

Foster parents, like other system professionals, understand the need to thoroughly investigate allegations of maltreatment in foster family homes. The investigation process, however, must be clear and legally sound. Foster parents can work with child welfare agencies and other stakeholders to develop and implement reforms to ensure that an unambiguous process for handling allegations is in place and that appropriate constitutional safeguards protect the rights of everyone involved.^{lxx}

Efforts to clarify and improve the investigation of maltreatment allegations and licensing violations should include an emphasis on ensuring that independent decision makers handle complaint investigations; on clearly defining the standard of proof to be used; on assisting agencies with information on how investigations should be conducted (including how foster parents may participate in the process); on providing a clear, straightforward process for foster parents to follow in challenging placement of their names on child abuse registries; and on offering information and resources to foster parents before, during, and after a maltreatment investigation. Agency policies mandating the automatic removal of children from a foster family home during an investigation may need to be modified so that children are not unnecessarily separated from their foster families in every instance.^{lxxi}

Foster and adoptive parent associations can play a critical role in helping craft effective procedures that make sure children are safe while protecting the due process rights of foster parents accused of child abuse or neglect. Initiating task forces and workgroups to work with agency staff, attorneys and others to propose revisions to existing agency regulations and policies can be an effective method of changing current practice. In addition, associations can provide support to foster families undergoing a maltreatment investigation by setting up support groups and “buddy” systems to explain the investigation process to their members as well as maintaining a list of legal and other professionals with expertise in handling allegations of maltreatment against foster parents.^{lxxii} Finally, associations can advocate for

the establishment of ombudsman offices and advocacy centers that provide support for foster families on a range of topics, including managing maltreatment allegations.

“Plain English” Materials

Statutes and regulations about maltreatment investigations, licensing deficiencies, and child abuse registries can be complicated and difficult to find and interpret in many states. Foster and adoptive parent associations should work with agencies to write and distribute “plain English” informational brochures and materials, in various languages to accommodate all foster parents, that explain the processes the various agencies in each state use to investigate maltreatment reports and how foster parents can participate in those processes.^{lxxiii} Hands-on materials, including blank copies of the forms agencies use in documenting their investigations should be provided to all foster families as a matter of course. These materials should be made easily accessible to foster parents at association meetings, foster parent conferences, child welfare agencies and other places foster parents gather for training, support, and information.

Training

While written materials are useful, foster parents as well as agency staff and others involved in the investigation of child abuse and neglect in foster care would benefit from training on how the investigation process is handled in each state (and sometimes by local areas within a state).^{lxxiv} Training curricula should be designed with cross-training in mind for all members of the child welfare team. Training should incorporate information on the legal and practice aspects of the investigation process as well as provide concrete tools for both agencies and foster parents on the rights and responsibilities of various members of the team.

The training should clearly identify the agencies involved in the investigation of maltreatment, including private foster care and law enforcement agencies. Differentiating between licensing violations or deficiencies, child abuse or neglect reports and criminal prosecution should each be addressed in the training curricula. Training on civil liability and insurance coverage for foster families should also be available as an addition to the basic training curricula on maltreatment allegations.

Foster and adoptive parent associations can encourage collaborative work with agencies to provide such training to all staff and to include highlights from the training curricula in pre-

licensing trainings for foster parents. Talking with agency management about the heightened probability that foster parents may be reported for child abuse where none occurred as well as the effect of agency investigation procedures on the recruitment and retention of quality foster parents are key issues to bring to the attention of agency administrators. Most importantly, foster parents must promote stability for children and seek to avoid additional trauma for children who have already experienced the emotional upheaval of being separated from their birth families.^{lxxv}

Supports for Families

Foster parents who are reported for child abuse or neglect experience fear, confusion, and stress. Foster and adoptive parent associations can provide an essential support lifeline to foster parents during the investigation process and its aftermath.^{lxxvi} Providing easily accessible and non-judgmental emotional support can help sustain foster parents during an especially difficult time and may improve the likelihood that they continue to foster once the investigation is over. Having access to other foster parents who have experienced an allegation and have successfully managed the situation is invaluable to foster parents during the allegation investigation process.

Various programs are already in place across the country to support foster parents in these circumstances. In some places, Foster Allegation Support Team volunteers are in place to provide support and information when a foster parent is accused of maltreating a child. In Washington State, there is a First Intervention Retention Support Team (FIRST) foster parent liaison employed in each of six regions to assist foster parents who are interacting with the state agencies doing investigations of child abuse or neglect.^{lxxvii} In Santa Clara County, California, the child welfare agency has a foster parent advocate who provides support and assistance during an allegation of maltreatment.^{lxxviii} In many instances, these programs can arrange to have a support person available for meetings with the agency and offer information and other tangible forms of support to foster families undergoing an investigation.

Foster and adoptive parent associations should consider allegation information and support a basic service they offer to their members. Foster parents who are accused of maltreatment should not be ostracized by others, but should be supported with information and non-judgmental emotional support in the context of promoting the well-being of foster children. Publication of

available services should be sent to foster families by local foster and adoptive parent associations and agencies should be encouraged to refer foster parents to local support networks as soon as an allegation of maltreatment is made.^{lxxix}

LOOKING FORWARD: MAINTAINING A HEALTHY BALANCE



Maltreatment in foster family homes is an emotional topic. News media reports of children harmed in foster care rightly fuel the nation's concerns about the well-being of children and contribute to an image of foster parenting that does not reflect the quality of care provided by the vast majority of foster parents throughout the country. In addition, foster parents themselves are sometimes reluctant to raise issues related to the handling of maltreatment reports for fear of appearing to endorse child abuse or neglect at the hands of an uncaring and unscrupulous foster parent. Recruitment and retention of quality families to care for vulnerable children may also be affected by the public image of foster parents who do not treat their foster children as they should.

Foster parents need to acknowledge that maltreatment can and does occur in foster family homes, but take a professional attitude in addressing the reality that a report of maltreatment may occur even when a foster family has provided excellent care for their foster children.^{lxxx} Working with agencies to revise procedures to ensure that children are safe and well-cared for while having appropriate safeguards in place that avoid the unnecessary removal of children from stable, loving foster families and inappropriate labeling of their foster parents as child abusers are goals everyone can support.^{lxxxi}

Foster parents facing an allegation of maltreatment must understand the difficult position child welfare agencies experience in trying to assess and protect the safety of the foster child while maintaining a positive relationship with the foster family. Taking actions that minimize the risk that a maltreatment report will occur, preparing in advance for the possibility that one could arise, and investigating options for support and help from within and outside the agency allows foster parents to weather the stressful circumstances of having an allegation of maltreatment made against them.

Foster parents should support efforts to balance the need to vigorously investigate reports of maltreatment with the need to maintain healthy relationships between quality foster parents and

their foster children. Children benefit from stability in foster care and their foster parents are the source of that stability. Foster parents who maintain a professional, balanced approach to the handling of maltreatment reports improve the way reports are processed in their own cases, contribute to a change in the way cases are likely to be processed in the future, and promote a positive public image of foster parents.

-
- i Carbino, Rosemarie. (ed.) *Consequences of Child Abuse for Foster Families. A Report of a Symposium*. Madison, WI: Health and Human Issues, University of Wisconsin-Madison, 1991.
- ii National Clearinghouse on Child Abuse and Neglect Information, *State Statutes Search: Mandatory Reporters*. See <http://nccanch.acf.hhs.gov/general/legal/statutes/search/> for information on mandated reporters in each state. (Updated July 26, 2004).
- iii National Clearinghouse on Child Abuse and Neglect Information, *Child Maltreatment 2002: Chapter Three, Table 3-12*. See http://www.acf.hhs.gov/programs/cb/publications/cm02/table3_12.htm (Last updated March 22, 2004).
- iv *Id.*
- v Report to the Legislature on the Investigation of Complaints Against Certified Family Homes and Foster Family Agencies (June 2001).
- vi Carbino, *supra* note i.
- vii *Id.*
- viii Child Welfare League of America, *CWLA Best Practice Guidelines, Child Maltreatment in Foster Care*, Washington, DC (2003).
- ix McCormick, J. (2002). Masters Thesis. *Liability in the foster family agency setting: Implications for Policy and Practice*. (A536.C25 2002 M125). University of California, Long Beach, Long Beach, CA.
- x CAPTA, as amended, (42 U.S.C. 5010 et seq.), section 106(a)(1).
- xi CAPTA, as amended, (42 U.S.C. 5010 et seq.), section 106(b)(2)(A)(i).
- xii Jill D. Moore, Comment, *Charting a Course between Scylla and Charybdis: Child Abuse Registries and Procedural Due Process*, 73 N.C.L. Rev. at 2079 (1995).
- xiii National Clearinghouse on Child Abuse and Neglect Information, *State Statutes Search: Central Registries/ Establishment and Maintenance* See: <http://nccanch.acf.hhs.gov/general/legal/statutes/search/> for information on the establishment of central registries in each state. (Updated July 26, 2004).
- xiv National Clearinghouse on Child Abuse and Neglect Information, *Legal Issues and Laws, Due Process and Central Registries: An Overview of Issues and Perspectives, The Purpose and Many Uses of Central Registries*, See: <http://nccanch.acf.hhs.gov/general/legal/statutes/processthree.cfm>
- xv *Id.*
- xvi See, e.g., NY CLC Soc. Serv. § 422.3. (In New York, for example, the central register includes the following information: all the information in the written report; a record of the final disposition of the report, including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates and circumstances of any person requesting or receiving information from the register; and any other information which the commissioner believes might be helpful in the furtherance of the purposes of this chapter).
- xvii 42 U.S.C. § 5106a(b)(2)(A)(xviii).
- xviii U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Initiatives, New Child Abuse Prevention and Treatment Act (CAPTA) Requirements Concerning Parental Notification And Legal Rights. See: www.acf.hhs.gov/programs/cb/initiatives/capta/legalissues.htm
- xix 42 U.S.C. § 5106a(b)(1)(B)(2)(A)(xix).
- xx U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *supra*, note xviii.
- xxi 42 U.S.C. § 5106a(b)(1)(B)(2)(A)(xiii).
- xxii See, e.g., Cal Pen Code § 11165.12 (In California, for example, the following definitions control: (a) "Unfounded report" means a report which is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect (b) "Substantiated report" means a report which is determined by the investigator who conducted the investigation, based upon some credible evidence, to constitute child abuse or neglect (c) "Inconclusive report" means a report which is determined by the investigator who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect has occurred).
- xxiii See, e.g., HRS § 350-2 (d) (In Hawaii, for example, the department must maintain a central registry of reported child abuse or neglect cases and must promptly expunge the reports in cases if: 1) The department has found the reports to be unsubstantiated; or 2) The petition arising from the report has been dismissed by order of the family court after an adjudicatory hearing on the merits pursuant to chapter 587).
- xxiv See, e.g., Miss. Code Ann. § 43-21-257 (3) (In Mississippi, for example, the Department of Human Services must maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b)

the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. “Substantiated perpetrator” is defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life, as determined upon investigation by the Office of Family and Children’s Services).

xxv National Clearinghouse on Child Abuse and Neglect Information, State Statutes Search, Central Registry/ Reporting Records Expungement See: <http://nccanch.acf.hhs.gov/general/legal/statutes/search/> for information on the expungement of maltreatment reports in each state. (Updated July 26, 2004).

xxvi National Clearinghouse on Child Abuse and Neglect Information, State Statutes Search, *supra*, note xxv.

xxvii 42 U.S.C. § 5106a(b)(2)(A)(xv)(II).

xxviii Administration for Children & Families, Children’s Bureau, Child Welfare Policy Manual. See http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=165

xxix U.S. Const. Amend. XIV, sec. 1.

xxx National Clearinghouse on Child Abuse and Neglect Information, Legal Issues and Law, Issue Papers. See <http://nccanch.acf.hhs.gov/general/legal/statutes/processfive.cfm>

xxxi *Valmonte v. Bane*, 18 F. 3rd 992 (2d Cir. 1994); *In the Matter of Lee TT, In the Matter of Joel P.*, 87 N.Y.2d 699; 664.N.E.2d 1243; 642 N.Y.S.2d 181 (1996); *Dupuy v. McDonald*, 141 F. Supp.2d 1090 (N.D. Ill. 2001); *Lyon v. Dept. of Children and Family Services*, 209 Ill. 2d 264; 807 N.E.2d 423; 282 Ill. Dec. 799 (2004).

xxxii *Dupuy v. McDonald*, 141 F. Supp.2d 1090 (N.D. Ill. 2001).

xxxiii *Id.* at 1137, 1138.

xxxiv *Id.*; *Dupuy v. McDonald*, 2003 U.S. Dist. LEXIS 12019 (N.D. Ill. July 10, 2003) (*appeal filed Aug. 5, 2003*).

xxxv See, e.g. Conn. Gen. Stat. § 17a-101e (c) (In Connecticut, for example, any person who knowingly makes a false report of child abuse or neglect can be fined not more than two thousand dollars or imprisoned not more than one year or both).

xxxvi National Clearinghouse on Child Abuse and Neglect Information, Current Trends in Child Maltreatment Reporting Laws, Reporting Trends. See: <http://nccanch.acf.hhs.gov/general/legal/statutes/trendsb.cfm>

xxxvii Conversations with Diane Redleaf, Attorney, Lehrer & Redleaf, Chicago, Ill (April 2004). Diane L. Redleaf and Robert E. Lehrer are lead counsel in *Dupuy v. McDonald, supra*.

xxxviii National Clearinghouse on Child Abuse and Neglect Information, Due Process and Central Registries: An Overview of Issues and Perspectives, Are the Procedural Safeguards Sufficient to Protect the Constitutionally Implicated Interest?, American Bar Association Center on Children and the Law List of Procedural Protections. See: <http://nccanch.acf.hhs.gov/general/legal/statutes/processseven.cfm#backnotefortyfour>

ixl See, e.g., Va. Code § 63.2-1516 (In Virginia, for example, any person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment may tape record any communications between him and the child protective services personnel which take place during the course of the investigation or family assessment, as long as all parties to the conversation are aware the conversation is being recorded).

xl See, e.g., Va. Code § 63.2-1505(B)5 (In Virginia, for example, the local department must determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to the person being investigated. If there is written justification, the timeframe can be extended but cannot exceed sixty days).

xli National Clearinghouse on Child Abuse and Neglect Information, Legal Issues and Laws, State Statutes Search. See: <http://nccanch.acf.hhs.gov/general/legal/statutes/search/>

xlii Illinois Foster Parent Rights and Responsibilities, Rights of Subjects of Child Abuse and/or Neglect Investigations (2002) (In Illinois, for example, if a report is unfounded, the agency must send written notification to all persons interviewed during the investigation informing them that the report was unfounded. This is only done with the consent of the adult who was the subject of the investigation).

xliii See e.g., Wash. Rev. Code Ann. 26.44.125(3) (In Washington, for example, within twenty calendar days after receiving written notice from the Department that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the Department review the finding. The request must be in writing. If the request is not made, the alleged perpetrator may not further challenge the finding and has no right to agency review or to an adjudicative hearing or judicial review of the finding.)

xliv N.Y. Soc. Serv. Law § 422(8)(a)(i).

xlv See, e.g., NY CLS Soc. Serv. § 422(8)(b)(ii) (In New York, for example, a family court finding of abuse or neglect in regard to an allegation creates an irrebuttable presumption that the allegation is substantiated by some credible evidence).

xlvi See e.g., 89 Ill. Adm. Code 300.110 & 89 Ill. Adm. Code 336.100 (In Illinois, for example, the standard of proof for an indicated finding is “credible evidence,” but it is a “preponderance of the evidence” standard on appeal).

xlvii In California, for example, there is no statewide process for review of a foster parent’s name being placed on the Child Abuse Central Index, although there is an extensive administrative procedure for licensing revocation or suspension proceedings based on a child abuse or neglect incident.

xlviii See, e.g., NY Soc. Serv. Law 422(8)(b)(i) (In New York, for example, within 90 days of receiving a request, the department must schedule a fair hearing and provide notice of the scheduled hearing date to the subject, the statewide central register, and the child protective agency or the state agency that investigated the report).

xlix *Dupuy, supra, note xxxiv.*

l For example, make arrangements for an interpreter, if necessary. (See, e.g., 89 Ill. Adm. Code 336.110 (In Illinois, for example, the administrative law judge must address various issues at the pre-hearing conference, including whether there is a need for an interpreter for a party whose primary language is not English or who requires communication assistance).

li Michigan, however, lists licensing actions taken against foster parents on a public website at the state Family Independence Agency.

lii See, e.g., 89 Ill. Adm. Code 431.80 (In Illinois, for example, disclosure of records of child abuse investigations without the consent of the subject of the report includes Department staff doing background investigations, licensing, law enforcement, state’s attorneys investigating abuse, physicians examining the child suspected of being abused, the court, grand jury, and child welfare researchers).

liii See, e.g., 89 Ill. Adm. Code 336.100 (In Illinois, for example, hearings are recorded on audiotapes. However, any party wishing to have the proceedings recorded by a certified court reporter may do so at the party’s own expense).

liv See, e.g. Rev. Code Wash. (ARCW) § 26.44.125). (In Washington, for example, the agency must notify the foster parent in writing of the agency’s determination. The notification must be sent by certified mail, return receipt requested, to the person’s last known address).

lv See, e.g., N.Y. Soc. Serv. Law § 424-a(2)(d). (In New York, however, the central register record is not expunged if the Department does not prove by a fair preponderance of the evidence that the alleged perpetrator committed an act of child abuse or maltreatment. Instead, the failure of the Department to sustain the burden of proof at the hearing precludes the Department from notifying anyone who inquires that the alleged perpetrator was the subject of an indicated report).

lvi See, e.g., Ga. Code § 49-5-184(e) (In Georgia, for example, any party has a right to judicial review of a final administrative hearing decision).

lvii Inger J. Sagatun & Leonard P. Edwards, *Child Abuse and the Legal System* (Nelson-Hall Publishers: Chicago 1995) at 108.

lviii Carbino, *supra*, note i.

lix R. Carbino. *Dealing With the Effects of Child Abuse and Neglect Allegations: Suggestions for Foster Parents and Foster Parent Associations* (2001).

lx *Id.*

lxi Carbino, R. *Policy and Practice for Response to Foster Families When Child Abuse or Neglect is Reported*. Child Welfare. 71(6), November, 1992, 497-509.

lxii R. Carbino. *Advocacy for Foster Families in the United States Facing Child Abuse Allegations: How Social Agencies and Foster Parent Organizations Are Responding to the Problem*. Child Welfare. 70(2), March/April 1991, 131-149.

lxiii Carbino, *supra* note lix.

lxiv *Id.*

lxv Carbino, *supra* note i.

lxvi Conversation with Darlene Flowers, Executive Director, Foster Parents Association of Washington State (June 2004).

lxvii Carbino, *supra* note lix.

lxviii *Id.*

lxix Carbino, *supra* note lxii.

lxx Carbino, *supra* note lix.

lxxi Carbino, *supra* note lxii.

lxxii Carbino, *supra* note lix.

lxxiii Carbino, *supra* note lxi.

lxxiv *Id.*

lxxv Carbino, *supra* note lxii.

lxxvi *Id.*

lxxvii Conversation with Darlene Flowers, *supra* note lxvi..

lxxviii Conversation with Denise Marchu, Foster Parent Advocate, Santa Clara County Department of Family and Children's Services (July 2004).

lxxix Carbino, *supra*, note lxi.

lxxx Carbino, *supra* lix.

lxxxi Carbino, *supra* note lxii.

We would like to thank Rosemarie Carbino for use of *Dealing with the Effects of Child Abuse and Neglect Allegations: Suggestions for Foster Parents and Foster Parent Associations*