

CLEARING YOUR NAME

**A step-by-step guide through the
New York State Central Register
of Child Abuse & Maltreatment**

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INTRODUCTION

This is a step-by-step guide on how to find out if there are records of child abuse, neglect, or maltreatment against you in the New York State Central Register (SCR), whether that information is available to future employers or licensing agencies that deal with the care of children, and how to get those records sealed. If you were ever investigated by the Administration of Children's Services (ACS) or any other child protective services -- even if your child was not taken away from you and the case was closed -- there may be a report against you in the SCR. If you apply for a job with children, want to be a foster parent, want to adopt, or want custody of your own children, you need to find out your SCR status and clear your name.

Reports of child abuse and neglect in New York State are made to the SCR. The SCR staff decide whether a report should be investigated. If so, they forward the report to the local child protective service. In New York City, this is ACS, previously called the Child Welfare Administration (CWA), Special Services for Children (SSC), and the Bureau of Child Welfare (BCW). ACS has sixty days to complete the investigation of the report, which may include interviewing the children, making home visits, and speaking with family, friends, doctors, and teachers. The result of the investigation will be that the SCR report is either "indicated," "substantiated" (some believable evidence of child abuse or neglect), or "unfounded" (not enough evidence that the report was true).

Indicated or substantiated reports. If ACS finds some believable evidence that the report is true, ACS will mark the report as "indicated" or "substantiated." Indicated or substantiated reports are kept at the SCR until the youngest child named in the report is 28 years old. Then they are expunged (erased from SCR records). Child care employers, foster care and adoption agencies may be notified of indicated reports. Thus, an indicated report may affect your ability to get a job in child care, to volunteer to work with children, to become a foster parent, or to adopt a child. In addition, the police, district attorneys, child welfare agencies, and the judges will have access to this information (for example when custody issues are decided).

Unfounded reports. If ACS finds that there is no believable evidence that the report is true, it will mark the report as "unfounded". The report will be kept at the SCR but it will be sealed. It is only available to the police or to ACS or other child protective services. A sealed report is not available to employers or licensing agencies that deal with the care of children. A sealed case will be expunged (erased from SCR records) 10 years after it was made.

STEP ONE - Get your records

The first step is to find out if you have a record of child neglect or maltreatment in the SCR. If you have ever been investigated by the Administration of Children's Services (ACS), there is a good chance that you have a record. This is true even if ACS did not take your children away from you and even if you won your case in Family Court.

To find out, you must write to the SCR and ask if the SCR has any records about you. [Letter 1 is a form letter.] In addition to asking if there are any records about you, you should request that the SCR seal or expunge (erase) the records. You should also request a hearing if OCFS denies your request to seal or expunge the records. Send this letter Return Receipt Requested so that you have a record of your request, and be sure to keep a copy of the letter.

You also need to get the case record of ACS's investigation of you. The case record will tell you what ACS discovered in investigating you, and will tell you ACS's reasons for its decision. You should send a letter to ACS that you have signed in the presence of a notary public requesting all records regarding you and your family. [Letter 2 is a form letter.]

You should also get your records from any hospital, clinic, or doctor that concerns your case. For example, you should request medical records from any place where you received treatment or are presently receiving treatment for drugs, alcohol, or mental health issues. You might need to show your progress in treatment at the hearing and you should request these documents now so you are prepared. You should also request any medical records regarding the child listed in the report. It is usually best to request these records in person. You need to request the records right away because it can take a long time to receive them. You should keep copies of your letters so that you have a complete record.

STEP TWO - What if OCFS Says That Your Request is Too Late ?

You might receive a letter from OCFS informing you that your request is untimely (too late). People who want to clear their names must start the process within ninety days of receiving a letter saying that their names are in the SCR. Perhaps you received that letter many months after ACS placed your name in the SCR. Perhaps you never received that letter at all. If the SCR sends you a letter that says your request is late, you must write to OCFS and explain those facts. [Letter 3 is a form letter.]

You should also attach to your letter to OCFS a copy of the memo from OCFS dated September 27, 1988. [A copy is with this document.] The memo is a policy notice that OCFS should not deny late requests because ACS has to prove that they sent the notice within ninety days. This might help to convince OCFS to consider your request. Remember to keep a copy of your letter that you mail to OCFS.

STEP THREE - You Receive Your Records

You have received a letter from OCFS with your records from the SCR. The letter will tell you that OCFS has given you copies of their documents in response to your request. You need to examine your records to determine what they say. The records will tell you if you have any reports against you and whether each report has been marked “indicated” or “substantiated” or “unfounded.” You might have more than one report. Each report will have a separate case number. You will have one overall CASE ID NUMBER. You need to use this number on all of your letters and communications with OCFS and ACS.

If your report is “unfounded,” go to STEP FOUR. If your report is “indicated,” go to STEP FIVE.

STEP FOUR - You Have An Unfounded Report Against You

You now have a letter that there are no indicated reports about you in the SCR. Congratulations! Your name is clear. You should keep a copy of the letter. [Letter 4 is an example.]

STEP FIVE - You Have An Indicated or Substantiated Report Against You

You have received your records from the SCR. The records say that you were the subject of a report of child abuse and neglect and that the report was determined to be “indicated” or “substantiated”. [Letter 5 is an example.] Your name will be kept on the SCR until the youngest child listed is 28 years old. The SCR will tell child care employers and foster care and adoption agencies about all “indicated” and “substantiated” reports against you. A report may harm your chances of getting a job in child care, becoming a foster parent, or adopting children. Law enforcement agencies, child welfare agencies, and judges will have access to this information (for example, in making custody decisions.)

Go to STEP SIX.

STEP SIX - Administrative Review

You have an “indicated” report of abuse against you and you have requested that it be expunged or amended (erased or changed). When you first made your request, OCFS automatically initiated an administrative review of the report and the basis for the finding.

For the administrative review, OCFS will look at ACS's records of its investigation of your

family. You should have a copy of the written materials from ACS because you requested them. (If you have not yet received a copy, write to ACS again.) The records will give OCFS only ACS's side of what happened. You have a right to submit additional information. You should send any information that shows that ACS is wrong. For example, you can submit letters from friends, family members, doctors, teachers, clergy, or other witnesses. You should send this information as soon as possible because the review will be done quickly and you want to make sure that OCFS considers it.

If you do not submit written materials for OCFS to consider, OCFS will consider only the ACS records at the administrative review.

At the administrative review, OCFS may decide the report is unfounded. If so, OCFS will then change its records and seal them. You will no longer have an indicated report of child abuse or neglect against you. Your name will be clear. CONGRATULATIONS!

However, at the administrative review, OCFS may decide not to seal your records. If that happens, OCFS will automatically schedule a hearing for you.

Remember to keep copies of everything you send to OCFS and everything that you receive from OCFS.

Go to STEP SEVEN.

STEP SEVEN - Scheduling The Hearing

You will get a hearing with an Administrative Law Judge at the Bureau of Special Hearings if OCFS does not amend and seal your records within 90 days. OCFS will send you a letter telling you the time and place of the hearing. If you do not receive the letter, you should contact OCFS to follow up and schedule a date for the hearing.

If you cannot attend the hearing on the date it is scheduled, you have the right to ask for a different date. You should make this request in writing if there is time. [Letter 6 is a form letter.] Otherwise, you should call the number written on the letter. Remember to keep copies of your letters to OCFS and ACS requesting to adjourn the hearing!

Go to STEP EIGHT.

STEP EIGHT - The Hearing

The hearing is like a trial. ACS will present witnesses who will testify against you, and you or your lawyer have the right to cross-examine those witnesses. You have the right to testify and present witnesses who will support you. The ACS lawyer will cross-examine you and your witnesses.

There are two issues at the hearing: 1) did you abuse or neglect your children; and 2) whether the abuse or neglect is “relevant and reasonably related” to working with children or caring for children.

1) ACS will present evidence that you did abuse or neglect your child. You must have evidence that either ACS was wrong. General definitions of “child abuse” and “child maltreatment” can be found on the New York State Office of Children & Family Services website (<http://ocfs.ny.gov/main/cps/critical.asp>).

2) If the inquiry is whether the act or acts are relevant and reasonably related to a job, the Administrative Law Judge will consider all evidence that, even though you had problems in the past, you are now rehabilitated. Rehabilitation is a successful effort to fix a problem which caused you to mistreat your children. Examples of rehabilitation include parenting classes, therapy, drug or alcohol treatment, job training, and separation from an abusive partner.

At the hearing you can bring witnesses who can testify about what really happened or how you have changed. You can also present any written information that supports your case. You have the right to be represented by a lawyer. However, you must find your own lawyer to represent you.

The Administrative Law Judge will make a decision after the hearing. You will receive the decision in writing. You should keep a copy of the decision by the Administrative Law Judge for your records. If you win, CONGRATULATIONS!

If you lose, go to STEP NINE.

STEP NINE - The Appeal

If you lose your hearing, you have the right to file a lawsuit in New York Supreme Court against ACS and OCFS. You will need a lawyer to do this.

Consult a lawyer immediately. You have only four months from the date of the decision to start the court case.

[YOUR NAME AND ADDRESS]

[DATE]

Ms. Sheila McBain, Director
New York State Central Register of Child Abuse
New York State Office of Children and Family Services
PO Box 4480
Albany, New York 12204-0480

Re: Case ID Number _____

Dear Ms. McBain,

My name is _____ and my date of birth is _____. My children's names and birthdates are _____. I am writing to ask if I am the subject of a report of suspected child abuse or maltreatment. I request that pursuant to Social Services Law § 422(7), you provide me with a copy of all records in your file regarding me and my family.

I also request, pursuant to Social Services Law § 422(8), that if I am the subject of an indicated report of suspected child abuse or maltreatment that you expunge, or amend and seal, all records of this report. If you decide not to expunge, or amend and seal, the report, I request that you provide me with a fair hearing to clear my name and to expunge or amend and seal the report.

Thank you for your consideration.

Very truly yours,

[YOUR NAME]

LETTER 1

[YOUR NAME AND ADDRESS]

[DATE]

Yolanda Harris, Esq.
Administration for Children's Services
150 William Street, 5th floor
New York, New York 10038

Dear Ms. Harris:

My name is _____ and my date of birth is _____. My children's names and birthdates are _____. I request copies of any and all records that ACS has regarding me and my children.

Thank you for your prompt assistance in this matter.

Very truly yours,

[YOUR NAME]

LETTER 2

[YOUR NAME AND ADDRESS]

[DATE]

Sheila McBain, Director
New York State Central Register of Child Abuse
N.Y.S. Office of Children and Family Services
P.O. Box 4480
Albany, New York 12204-4480

Re: Case ID Number _____

Dear Ms. McBain,

My name is _____ and my date of birth is _____. My children's names and birthdates are _____. I am the subject of a report of suspected child abuse or maltreatment. On [DATE OF LETTER], I wrote to you and requested a copy of all records regarding my family. I also requested expungement, administrative review, and a fair hearing. I received from you a letter dated [DATE OF LETTER] informing me that my request was too late.

I am writing to again request all records regarding my family and that you seal or expunge my records, or schedule a hearing. I never received a notice that there was an indicated report against me. I didn't know about the report until I got the letter from you. I have enclosed a memorandum which says that you should give people like me the benefit of the doubt.

Thank you.

Very truly yours,

[YOUR NAME]

LETTER 3

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

M E M O R A N D U M
DSS-524E

TO: Mary Skidmore

DATE: September 27, 1988

FROM: Charles Carson *CC*SUBJECT: Expungement Request over 90 Days
from Indication Notice

In order to deny a request for amendment or expungement based on the apparent failure of the subject to request amendment or expungement within 90 days of receipt of notice of indication, we need to know three things:

1. When did the subject receive the notice of indication?
2. What did that notice say regarding their right to request amendment or expungement (i.e. did the notice contain the 90 day limit and did it imply that they must request copies of the reports before they could request amendment or expungement)?
3. When did the subject first contact the SCR, what did they request at that time and when did they request amendment or expungement?

In regard to point (1) above, we must depend on the investigating agency (local CPS, SPCC, Dept. Regional Office or CQC) to provide proof that the subject received notification. The best ways to do this would be: sending the notice registered or certified mail; having it hand delivered and documenting this in the case record; or sending it regular mail and contacting the subject later to ensure that they received it. Lacking any clear proof on this point, we should not deny the request for amendment or expungement out of hand because we must be able to show (1) that the subject in fact received their notice and (2) when they received it.

In regard to point (2) above, we must again rely on the investigating agency to provide us with a copy of the notice letter so we can see what the subject was told. The letter (1) must say that they have 90 days from the date they receive the notice of indication to request amendment or expungement and (2) must not imply anything to the contrary. The most common problem here will be the form notice letter that has been in use which contains the 90 day statement but also says that amendment or expungement cannot be requested until copies have been received. What the notice says will determine whether the request received was timely and appropriate.

In regard to point (3) above, we will need to examine the letters sent by the subject to the SCR in light of the notice letter. If the notice letter contains the ambiguity about receiving copies before amendment or expungement can be requested, then the date they first requested copies or expungement

would be the date used to determine if their request was timely. If the notice letter is not clear that they must request within 90 days of receipt of the notice letter, we would be precluded from raising the timeliness-argument against the subject.

In summary, what it comes down to is that the subject must have been afforded appropriate procedural due process before we can deny a request based on lack of timeliness. This means that they must have received adequate and timely notice of indication and have clearly failed to act within 90 days of receipt of such notice. We should have a solid basis to believe this is the case before we deny requests for amendment or expungement based on lack of timeliness.

Concerning the case you mention in your 9/15/88 memo, I note that the county told us the notice letter was not certified. Our next question should be, what evidence do we have that the subject received it? Regarding the letter itself, do we know what it said and does it contain any ambiguities? Did the subject make any requests of the SCR prior to 7/28/88? With the answers to these questions, we can determine if it is legitimate to deny the subject's request based on lack of timeliness. Without this information, I don't believe we have enough to go on to deny the subject on such basis.

cc: Mary Jo Walsh



Office of Children and Family Services

CHILD ABUSE AND MALTREATMENT REGISTER

P.O. BOX 4480, ALBANY, NY 12204-0480

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Acting Commissioner

[Redacted]

January 2017
Re: Case ID:
Intake Stage ID:
Date of Intake:

Dear [Redacted]

This letter is to give you the results of the investigation into a report of suspected child abuse or maltreatment investigated by your local child protective services (CPS) office. The report was determined to be "unfounded." This means that CPS did not find believable proof (credible evidence) that you abused or maltreated a child.

Unfounded reports are legally sealed by the New York Statewide Central Register of Child Abuse and Maltreatment (SCR). This means that the SCR will keep a record of your unfounded report, but all the information will be kept confidential and not shared with any person or organization except for the very few circumstances that State law allows. For example, you may request a copy of the sealed report. A sealed report may also be made available to CPS or a State agency investigating a new report of child abuse or maltreatment involving you, the child, or the child's sibling. A sealed unfounded report is not available to employers or licensing agencies.

Sealed reports will be expunged, which means destroyed, ten years after the date of the report and will not be available to anyone in any circumstances. This will happen automatically and does not require any action by you.

Please note that each report is treated separately and the sealing of this particular report will not affect any other reports in which you may have been named as a subject or other person. Therefore, if you were previously advised that a different report had been "indicated," then that report will remain in the SCR and will not be sealed. If you are receiving services as the result of a different report, the result of finding this particular report unfounded will not change those services.

If you have any questions regarding this letter, please contact 1-844-337-6298 between 8 AM - 5 PM Monday through Friday, excluding holidays, or write to the Statewide Central Register and include a copy of this letter or the Case ID and Stage ID in your letter. Those ID numbers are located in the upper right-hand corner of this letter.

Sincerely,

Linda A. Joyce, Director
State Central Register
Division of Child Welfare
and Community Services

LETTER 4

#111

[Handwritten signature]



Office of Children and Family Services

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Acting Commissioner

2018

CERTIFIED MAIL

BENJAMIN BIFFIS
LANSNER & KUBITSCHKE, ATTORNEYS AT LAW
325 BROADWAY, SUITE 203
NEW YORK, NY 10007

Dear Benjamin Biffis:

This will acknowledge your request for amendment of a record on file in the SCR in which your client(s) are named as a subject(s). We have acted on this request by initiating an Administrative Review of the report and the basis for the findings. The enclosed documents are provided so that you can review them. You may submit additional information to support your contention that the record is inaccurate and should be amended. An amendment to the record may result in a change from the Indicated finding to Unfounded Legally Sealed, expunged, or may modify the contents of the Indicated record. Please feel free to send such information to: New York State Child Abuse and Maltreatment Register, PO Box 4480, Albany, New York 12204.

Upon completion of the Administrative Review, you will be notified in writing of the review decision and the reasons therefore. If your request is denied after the administrative review, your request will be forwarded to the Bureau of Special Hearings for scheduling of a fair hearing. Also enclosed for your information are the guidelines for determining whether Indicated instances of child abuse and maltreatment are relevant and reasonably related to employment or licensure.

As requested, we are providing you with a copy of all information currently in the SCR. Any deletion that may appear has been made pursuant to Section 422(4) of the Social Services Law, which prohibits any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment unless written authorization has been given. Additionally, Section 422(7) of the Social Services Law allows the Commissioner to prohibit the release of any information where it is found that the release of that information would be detrimental to the safety or interests of a person who has cooperated in the subsequent investigation.

Sincerely,

Sheila McBain, Director
State Central Register
Division of Child Welfare
and Community Services

Enclosures:

SM/ LL

Request ID: [REDACTED]
Subject Name: [REDACTED]
Case ID: [REDACTED]
Intake Stage ID: [REDACTED]

[YOUR NAME AND ADDRESS]

[DATE]

Honorable [NAME OF JUDGE]
Administrative Law Judge
NYS Office of Children and Family Services
Adam Clayton Powell State Office Building
163d West 125th Street
New York, NY 10027

Re: [YOUR NAME]
Case ID Number _____

Dear Judge [NAME OF JUDGE]:

I am writing to request an adjournment of the fair hearing which is scheduled for [TIME] on [DATE]. This is my first request for an adjournment. The reason I am asking for an adjournment is _____.

I am unavailable on [DATES UNAVAILABLE]. Thank you for your consideration.

Respectfully,

[YOUR NAME]

cc: [ACS ATTORNEY]

LETTER 6