

We Were Falsely Accused Of Child Neglect; What Are Our Rights?

November 7, 2013 | by Michael Ascher

DYFS showed up at my door yesterday to investigate anonymous accusations made against me and my husband for neglect against my middle child. The investigator stated that the complaint said he was underweight, dirty, smelly and unkempt, and that we showed favoritism to our other children. The investigator stated that the anonymous accuser also said that he was always sad looking and no longer plays sports. We are horrified by the accusations but informed the investigator that our middle child has ADHD and some of the side effects of his medication include a change in personality to a calmer demeanor, reduced appetite and halitosis. His doctor is not concerned about his growth or weight. I feel so violated and there is defamation against our character. What are my rights?

Unfortunately, your question regarding DYFS (now DCPD) involvement is not an unusual one. Under the Title 9 statute, DCPD is duty bound to investigate all allegations of child abuse. Those allegations can be made anonymously. The Division has a specified period of time within which to make their initial investigation and then decide how to treat the referral.

Previously, following investigations, a referral was marked either “substantiated”, or “unfounded.” A substantiation finding meant that the Division felt the children had actually been harmed and a particular person has been identified as the abuser. That person’s name would be placed in a central registry. If you are substantiated, you have the right to file an administrative appeal of that decision. If an unfounded finding was made, then the individual’s name was not placed in the central registry. After the expiration of three (3) years, the contents of that referral were to be expunged.

In April 2013, the procedure changed. Both the substantiated and unfounded findings still exist, however, the Division decided to make two (2) new categories of findings. The first, “established” means that the Division found the existence of harm or risk of harm to the child and specifically

identified a person responsible for it but further found mitigating circumstances which would not result of the placement of an individual's name in the central registry. The second change was a "not established" finding which means that harm was found but not caused against any individual person. The finding would also not result in the placement of the individual's name in the central registry.

Unfortunately, the two (2) new categories, "established" and "not established" are not subject to Appeal which raises certain due process issues. Those referrals cannot be expunged after the expiration of three (3) years. Since DCPD (DYFS) records can be obtained by a Court Order, the existence of an "established" and "not established" may cause problems in the future. For example, if an individual is involved with a divorce, or a custody matter, the DCPD records are subject to disclosure even though no ability to contest the allegation was ever provided. The legality of the new system and its due process implications have not yet been tested by our Courts.

If an accusation is made, the Division has the duty to make an investigation. Even if the Division feels that there is no merit and the matter will be deemed unfounded, they must "close" out their investigation. School authorities and medical practitioners are duty bound to assist the Division during their investigation. You do not have the right to be present when your child is being interviewed by a DCPD caseworker. If you were to object to an interview or obstruct it, the Division then could file an application with the Court and obtain an Order for Investigation.

With regard to determining who made an accusation, any person who has a reasonable cause to believe that an act of abuse has been committed, has an affirmative duty to make such a report. Failure to report child abuse or neglect, subjects a person to prosecution for a disorderly offense. If a person does not have a reasonable cause to believe that an act of abuse or neglect has been committed and makes a report maliciously, our Courts have stated that the statute does not provide immunity from civil suit. If a person makes an intentionally unfounded allegation without probable cause, they would be subject to civil liability for the false or malicious referral. The Division itself and those who make referrals are afforded immunity from liability, however, that immunity is not absolute.

The Division does have an advocate that you can contact. Information regarding that contact is on the DCPD website. You may want to consult with an attorney experienced in DCPD matters to assure all of your rights are protected. That is especially important if anything but an "unfounded" finding is made.