

# Impact Of DCP&P Investigatory Findings And The Danger Of Their Future Use

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The Division of Child Protection and Permanency (DCPP) is New Jersey's child protective services agency (formerly "DYFS"). The Division functions to protect children from acts of abuse and neglect pursuant to the provisions of various statutes. *N.J.S.A. 9:6-8.9*, *N.J.S.A. 9:6-8.6-1* and *N.J.S.A. 9:6-8.21*. All acts of abuse and neglect must be reported. Private citizens or professionals who have reasonable cause to believe that a child has been subjected to abuse are duty bound to report situations where they have reasonable cause to believe the child has been subjected to child abuse. The failure to report an act of child abuse actually constitutes disorderly persons offense under statute. *N.J.S.A. 9:6-8.14*

Once a report is made, the investigatory process begins. The results of the investigation are entitled to statutory confidentiality. However, that confidentiality can be pierced for good cause shown. Abuse and neglect referrals are given emergent attention and an emergency caseworker is dispatched. During the investigation, caseworkers are duty bound to report suspected cases of abuse or neglect to the appropriate county prosecutor if the abuse is suspected. The investigative protocol requires that it be completed and administrative findings made within 60 days of receipt of the referral, however, extensions of 30 days may be sought.

Following the investigation, specific findings must be made and entered into the Division record. The Administrative Code provides the following four categories of findings:

1. An allegation shall be "substantiated" if the preponderance of the evidence indicates that a child is an "abused or neglected child" as defined in *N.J.S.A. 9:6-8.21* and either the investigation indicates the existence of any of the circumstances of *N.J.A.C. 3A:10-7.4* or substantiation is warranted based on consideration of the aggravating and mitigating factors listed in *N.J.A.C. 3A:10-7.5*.
2. An allegation shall be "established" if the preponderance of the evidence indicates that a child is an "abused or neglected child" as defined in *N.J.S.A. 9:6-8.21*, but the act or acts

committed or omitted do not warrant a finding of “substantiated” as defined in (c)1 above.

3. An allegation shall be “not established” if there is not a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.S.A. 9:6-8.21, but evidence indicates that the child was harmed or was placed at risk of harm.
4. An allegation shall be “unfounded” if there is not a preponderance of the evidence indicating that a child is an abused or neglected child as defined in N.J.S.A. 9:6-8.21.

When originally instituted in 2013, only the “substantiated” finding was subject to appeal. However, recent case law has provided for challenges to “established” and even “not established” findings. An individual does have the right to administratively challenge any finding with the ultimate resort to the Appellate Courts.

There is great significance to the existence of Division findings since they can be released to third parties and utilized in custody cases to the advantage of one parent over the other. Perhaps, more importantly, a substantiated finding results in the perpetrator’s name being placed in the Central Registry. Placement in that Registry makes the perpetrator subject to CARI checks by various institutions and employer. People who are subject to “CARI checks include childcare center employees, resource parenting applicants, kinship legal guardians, registered family childcare providers, provision of approved homes, professional guardians for the elderly, persons assuming care for children of incarcerated parents, adoption agency employees, court-appointed special advocate (CASA) volunteers, adoptive parent applicant, Department of Children and Family employees and juvenile justice commissioner employees. Contents of CARI information are also subject to inter-state production pursuant to the *Adam Walsh Child Protection and Safety Act*.

Findings of “established” and “not established” do not result inclusion in the Central Registry. However, they do present problems. An “unfounded” determination must be expunged in three (3) years, however, the Division rarely, if ever, removes “unfounded” findings from its record though they are not entitled to any weight in a subsequent administrative legal proceeding. The same is not true of either an “established” or “not established” finding. Neither of those findings can be expunged. That presents a significant problem to individuals determined to be “established” or “not established” since those findings are accessible based upon good cause shown in future litigation or other arenas. Indeed, in a court considering custody issues in the Family Part may release the Division’s findings pursuant to the provisions of *N.J.S.A. 9:6-8.10(a)(6)*. Pursuant to that statute, the court will conduct an

*in camera* review to determine the relevancy of the record subject to disclosure. *State v. Cusick*, 219 N.J.Super. 452 (App.Div. 1987) *cert. denied* 109 N.J. 54 (1988). The disclosure of an “established” finding is fraught with danger since by definition, it presents a finding that the perpetrator did, in fact, commit either an act of abuse or neglect, but due to the existence of mitigating factors, was not subject to the inclusion in the Central Registry. Thankfully, our Appellate Courts, have granted the right to appeal from “established” due findings to the prejudice that arises from their entry. That prejudice is apparent on its face.

A slightly different situation arises from a “not established” finding which by definition concludes that there was insufficient evidence to establish the existence of abuse or neglect. However, the finding also includes a finding of either harm or the risk of harm to the child. Our Appellate Courts now recognize that this apparently “favorable” finding is not what it seems. Even a “not established” finding permanently tars a parent with a finding that there was something to the allegation since there was evidence of harm or the risk of harm to the child. Again, pursuant to the provisions of even an Administrative Code, N.J.A.C. 3A10-8.1(b) even “not established” findings are indefinitely maintained. *D.C.P. & P. v. R.R.*, \_\_\_\_ N.J.Super. \_\_\_\_ (App.Div. 2018).

A review of the foregoing discloses that neither alleged perpetrators nor their attorneys can take the D.C.P.& P. investigation lightly. All findings of the Divisions are now subject to appeal since they have a potential prejudicial effect on the perpetrator to be used in future administrative or legal proceedings. The stain of “established” or “not established” findings is highly significant and cannot be overstated. The Division records, although facially confidential, are subject to disclosure. The potential of disclosure creates the risk of prejudice which must be considered and evaluated in each case.