

Allegations of Maltreatment



Cecilia Fiermonte
American Bar Association
Center on Children
and the Law

Regina Deihl
Legal Advocates for
Permanent Parenting

Dianne Kocer
Karen Jorgenson
National Foster
Parent Association

With Support of
National Resource Center for Family-Centered Practice and Permanency Planning
Hunter College School of Social Work
A Service of the Children's Bureau/ACF/DHHS

Legal Resource Manual for Foster Parents

Seminar Module Four: Allegations of Maltreatment

*from Legal Resource Manual for Foster Parents
Allegations of Maltreatment*

OBJECTIVE:

The objective of this seminar is to provide the participants with information about:

- 1) Their rights when maltreatment allegations have been made against them, and
- 2) How to respond to an investigation of maltreatment allegations

CAUTION TO THE TRAINER:

It is advised that this training be conducted by an attorney versed in child welfare issues. Participants may have questions about a personal situation. The answers to those questions may go beyond the scope of the included materials. The trainer is cautioned to not try to answer questions beyond material included here or in the *Legal Resource Manual for Foster Parents*. It will be helpful to the participants if the trainer knows specifics of the laws in the jurisdiction in which the training is being held. At various locations throughout the curriculum, there are notations suggesting what specific information the trainer would be advised to research in preparation for doing this training.

LENGTH OF TRAINING:

3 hours

MATERIALS/EQUIPMENT:

- * PowerPoint Presentation or overhead projector
- * LCD projector, if using PowerPoint
- * Computer for PowerPoint
- * Screen
- * Flip chart and markers
- * Masking tape
- * Index cards
- * *Legal Resource Manual for Foster Parents*
- * Handouts

“This curriculum, developed by the National Foster Parent Association, is based on the *Legal Resource Manual for Foster Parents*, authored by Cecilia Fiermonte, J.D., American Bar Association Center on Children and the Law and Regina Deihl, J.D., Legal Advocates for Permanent Parenting. The information in the manual and this curriculum is based on laws in effect in September, 2004. Participants should be advised that federal and state laws can change at any time. This information is not a substitute for legal advice or counsel. For questions related to specific cases, participants should contact an attorney in their state with experience in child abuse and neglect cases.”

LEARNING OUTCOMES:

Participants will be able to:

- 1) Identify five ways to help prevent maltreatment allegations.
- 2) List three possible outcomes of an allegation of child maltreatment.
- 3) Name two possible licensing actions an agency can take and how each can be dealt with by foster parents.
- 4) Discuss the purpose of child abuse registries, the purpose of and protections conferred by Child Abuse Prevention and Treatment Act (CAPTA) and the 14th Amendment to the U.S. Constitution.
- 5) Identify the most important thing to remember if you are arrested.
- 6) State what shift in roles takes place with the agency during an investigation and at least three steps to protect the foster family during an investigation.
- 7) Identify two things that can be done to help the child who is the focus of an allegation of maltreatment or neglect.
- 8) List three things foster/adoptive parent associations can do to help.

Trainer Preparation:

- ___ 1. Read chapter three of the *Legal Resource Manual for Foster Parents*, or the Reference Notes sections included in the curriculum.
- ___ 2. Review overheads or PowerPoint presentation.
- ___ 3. Reproduce handouts.
- ___ 4. Obtain equipment.
- ___ 5. The Reference Notes are intended as material for the presenter to impart to the attendees. Please be sure to incorporate the information.
- ___ 6. Research state/local laws and/or regulations in areas identified in the curriculum.
- ___ 7. Review the PowerPoint slides. They provide a comprehensive outline of the material. Material is available in the *Reference Notes* to expand upon the slides.



is used to call your attention to information you will want to obtain about your particular state prior to the training

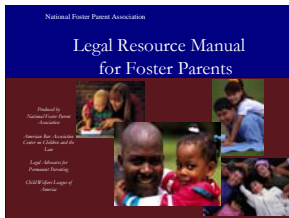
Slide #1



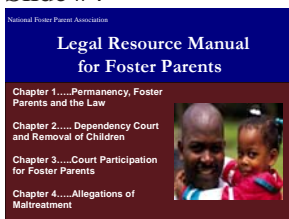
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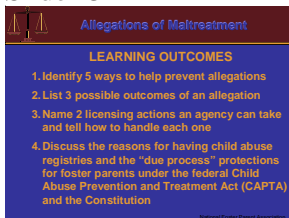
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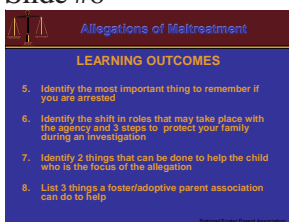
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Slide #5



Slide #6



I. INTRODUCTION

- A. (Slide #1-2) Welcome
- B. (Slide #3) Explain that this training is module four of a four-part series of trainings based upon the *Legal Resource Manual for Foster Parents*. Explain that the purpose of the manual, and of the trainings, is to educate foster parents about various agency and legal processes, giving them the knowledge and confidence they need to become active participants in the system.
- C. (Slide #4) Display a copy of the manual and identify the four chapters of which it is composed.
 - 1. Permanency , Foster Parents and the Law
 - 2. Dependency Court and Removal of Children
 - 3. Court Participation for Foster Parents
 - 4. Allegations of Maltreatment
- D. (Slide #5-6) Learning Outcomes

Using the slides, tell the participants that you expect that by the end of the session they will be able to...

 - 1. Identify five ways to help prevent allegations of child abuse.
 - 2. List three possible outcomes of an allegation.
 - 3. Name two possible licensing actions an agency can take and how to handle each one.
 - 4. Discuss the purpose of child abuse registries and the due process protections for foster parents under CAPTA , and the 14th Amendment to the U.S. Constitution.
 - 5. Identify the most important thing to remember if you are arrested.
 - 6. Identify the shift in roles that may take place with the agency and at at least three steps to take to protect the foster family during an investigation.
 - 7. Identify two things that can be done to help the child who is the subject of the allegation.
 - 8. List three things foster/adoptive parent associations can do to help.

REFERENCE NOTES

1. When children are removed from their home and placed in foster care, their world is thrown off balance. Even though they are leaving a home where they were neglected or abused, they are often scared, ashamed and nervous about the unknown.

2. Good foster parents help to restore the balance to the child's world. It is foster parents who comfort the child, determine his needs, provide support, and, often love. Foster parents are the players in the system who are often unseen, laboring behind the scenes to make a home for the child. That can mean getting the child enrolled in school, taking him to doctors, making sure he has contact with his family. Countless day-to-day needs are met by foster parents. Foster children often become part of the family, confiding in their foster families and turning to them for support.

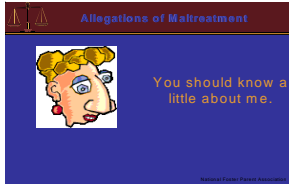
3. Foster parents, like all child welfare professionals, have an obligation to ensure the safety of the children in their homes. Children who have been separated from their parents because of abuse, neglect or abandonment often have special needs that require their foster parents to respond to challenging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

4. This training is intended to educate foster parents about the agency administrative process involved in processing allegations of maltreatment. This is an important topic since many foster parents will experience an allegation of child abuse if they foster for an extended period of time.

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

Slide #7



Slide #8



- E. (Slide #7) Personal Background: Tell the group a little about yourself, your job, your training, what experiences you bring to the following discussion.
- F. (Slide #8) Read, or paraphrase, the four paragraphs in the **Reference Notes** page 5.

Transition Statement: Children who have been abused or neglected are often difficult to parent. Their life experiences may 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. Prevention of allegations of child abuse begins at this point. 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.

REFERENCE NOTES

Children's Bureau

Child Maltreatment 2001

Perpetrator Relationship to Victim, 2001 (Child File)

State	Parent	Nonparent Perpetrator							Unknown or Missing	Total Perpetrators
		Other Relative	Foster Parent	Residential Facility Staff	Child Day Care Provider	Unmarried Partner of Parent	Legal Guardian	Other		
Alabama	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Alaska	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Arizona	5,707	499	9	24	Blank Cell	219	35	8	5	6,506
Arkansas	5,378	895	20	Blank Cell	48	54	18	20	2,057	8,490
California	115,095	7,972	702	Blank Cell	Blank Cell	93	641	6,466	7,548	138,517
Colorado	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Connecticut	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Delaware	1,559	138	10	Blank Cell	Blank Cell	148	Blank Cell	16	75	1,946
District of Colum	2,667	206	18	Blank Cell	3	Blank Cell	Blank Cell	153	325	3,372
Florida	32,619	2,915	240	64	710	3,090	158	2,444	183	42,423
Georgia	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Hawaii	4,714	301	89	48	Blank Cell	Blank Cell	33	368	56	5,609
Idaho	3,561	210	9	2	9	81	14	37	193	4,116
Illinois	34,900	6,992	401	55	1,253	3,569	Blank Cell	2,346	244	49,760
Indiana	20,877	2,189	74	38	47	1,499	39	2,943	1,479	29,185
Iowa	12,336	645	47	77	702	696	Blank Cell	694	1,227	16,424
Kansas	6,784	699	59	1	Blank Cell	Blank Cell	Blank Cell	Blank Cell	1,829	9,372
Kentucky	16,210	1,026	107	Blank Cell	46	1,009	1	668	485	19,552
Louisiana	10,716	1,605	47	61	22	22	7	891	713	14,084
Maine	5,494	432	23	6	6	492	10	37	1,250	7,750
Maryland	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Massachusetts	36,621	1,744	161	129	75	3,271	219	920	461	43,601
Michigan	33,494	1,080	138	4	33	Blank Cell	Blank Cell	2,097	495	37,341
Minnesota	9,677	835	53	14	101	691	19	241	899	12,530
Mississippi	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Missouri	7,637	729	65	119	106	703	Blank Cell	838	637	10,834
Montana	2,070	198	5	1	9	93	1	98	149	2,624

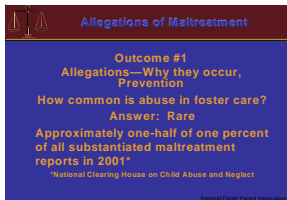
Slide #9



Allegations of Maltreatment

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...

Slide #10



Allegations of Maltreatment

Outcome #1
Allegations—Why they occur,
Prevention

How common is abuse in foster care?
Answer: Rare

Approximately one-half of one percent of all substantiated maltreatment reports in 2001*

*National Clearinghouse on Child Abuse and Neglect

II. OUTCOME NUMBER ONE: Allegations, Why They Occur, Prevention

A. How common is abuse in foster care?

1. (Slide #9-10) It is rare. National data indicates that the percentage of substantiated child abuse reports involving a foster parent or residential facility staff member in 2001 averaged approximately one-half of one percent of all substantiated maltreatment reports. (National Clearinghouse on Child Abuse and Neglect)
2. Many allegations of abuse in foster care are unsubstantiated.

Note: The **Reference Notes**, ps. 7 and 9 represent child abuse data collected by the Federal Children's Bureau. It is from 2001, the latest year for which the statistics are available. It may be interesting for the participants to have the data from their state. The nationwide numbers indicate that 80.9 percent of perpetrators of abuse were the birth parents, while 1/2 of one percent of the perpetrators were foster parents or residential facility staff members.

It should be said that any abuse is too much, and that foster parents are held to a higher standard because of their role in providing a safe haven to a child who has been removed from his or her home for reasons of abuse or neglect.

REFERENCE NOTES

State	Parent	Nonparent Perpetrator							Unknown or Missing	Total Perpetrators
		Other Relative	Foster Parent	Residential Facility Staff	Child Day Care Provider	Unmarried Partner of Parent	Legal Guardian	Other		
Nebraska	3,053	277	12	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	861	4,203
Nevada	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
New Hampshire	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
New Jersey	7,681	560	105	119	94	428	Blank Cell	173	214	9,374
New Mexico	7,766	854	1	1	1	374	24	321	6	9,348
New York	95,126	5,667	858	72	789	Blank Cell	232	1,919	71	104,734
North Carolina	33,020	1,628	88	131	332	Blank Cell	Blank Cell	1,402	Blank Cell	36,601
North Dakota	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Ohio	36,510	3,921	Blank Cell	83	319	2,433	Blank Cell	4,504	1,369	49,139
Oklahoma	17,585	1,073	331	Blank Cell	154	24	153	1,219	238	20,777
Oregon	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Pennsylvania	2,949	640	48	60	614	425	45	541	Blank Cell	5,322
Rhode Island	3,302	196	36	45	32	Blank Cell	Blank Cell	412	25	4,048
South Carolina	13,380	789	29	20	55	618	29	363	10	15,293
South Dakota	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Tennessee	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Texas	45,055	6,432	92	35	322	3,021	Blank Cell	2,034	178	57,169
Utah	9,544	1,145	22	15	45	686	36	1,508	551	13,552
Vermont	740	114	1	7	3	Blank Cell	Blank Cell	337	35	1,237
Virginia	8,649	763	Blank Cell	Blank Cell	Blank Cell	1	Blank Cell	275	1,960	11,648
Washington	6,693	Blank Cell	330	Blank Cell	309	44	8	487	266	8,137
West Virginia	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Wisconsin	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell	Blank Cell
Wyoming	947	57	9	10	17	19	7	73	7	1,146
Total	660,116	65,426	4,239	1,241	6,256	23,803	1,729	36,853	26,101	815,764
Percent	80.9	6.8	0.5	0.2	0.8	2.9	0.2	4.5	3.2	100.0
Number Reporting	36	35	34	27	29	27	21	34	34	36

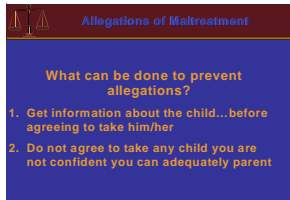
This table categorizes the perpetrators by their relationship to the victim. It lists, in the first column, the name of every State. The next eight columns list the relationships in the following order: Parent, Other Relative, Foster Parent, Residential Facility Staff, Child Care Provider, Unmarried Partner of Parent, Other, and Unknown or Missing. The last column lists the total perpetrators in each State for a grand total of 815,764 among 36 reporting States.

Slide #11

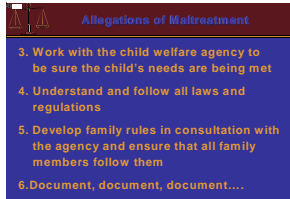


Handout:
Preventing Allegations

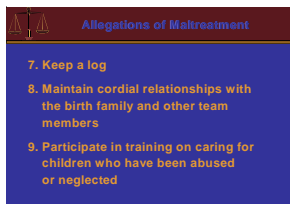
Slide #12



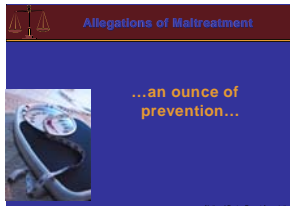
Slide #13



Slide #14



Slide #15



B. Why do allegations of child abuse occur?

1. Brainstorm a few responses from the group.
2. (Slide #11) Using the slide, supplement the discussion with the following:
 - a. Foster families are held to stricter standard.
 - b. Foster families are closely scrutinized by the community in light of negative media portrayals.
 - c. Normal affection may be misconstrued.
 - d. Children in care and birth families frequently know that this is likely to get the child removed from the foster family.
 - e. Child welfare agencies concerned with lawsuits if child is harmed in care. This may affect the way they react to an allegation of child abuse.
 - f. Abuse or neglect may have occurred.

C. Ask, “What can be done to prevent allegations of abuse?” (Slides #12-14)

1. Brainstorm and record ideas on flip chart.
2. Using the slides, supplement the discussion with the information included in the **Reference Notes** on p. 11.
3. Distribute the handout, “Preventing Allegations” and suggest they add it to their *Legal Resource Manual* binder, if they have a copy. Otherwise, suggest they start a binder of legal information.

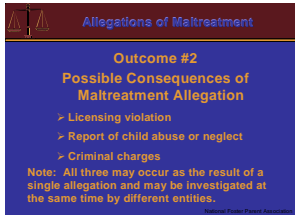
Transition Statement: As the expression goes, (Slide #15) **an ounce of prevention is worth a pound of cure.** However, we all know that all the preventative practices available to a foster parent will not completely insulate them from an allegation of child abuse. We are going to explore the three possible consequences of a maltreatment allegation in the order of severity.

REFERENCE NOTES

PREVENTING ALLEGATIONS

1. Find out as much information as possible before deciding whether or not to take in a child, including whether the child has a history of making allegations of abuse against prior foster parents.
2. Do not take any child you do not feel confident you can adequately parent.
3. Work with the child welfare agency to ensure that the child's needs are being met while in foster care.
4. Understand and follow all laws and regulations on caring for foster children.
5. Develop family rules and expectations in consultation with the child welfare agency and ensure that all family members follow them.
6. Do not leave a child who has been sexually abused alone with anyone of the same gender as the abuser.
7. Keep a daily log and record any unusual events, behaviors, comments, reactions before and after visits 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.
8. Maintain a cordial and professional working relationship with the child's biological parents and other members of the child welfare team.
9. Participate in training for foster and adoptive parents on caring for children who have been abused or neglected.

Slide #16



**III. OUTCOME NUMBER TWO:
Consequences of Maltreatment Allegation**

Note: See **Reference Notes** p. 13 for expanded information.)

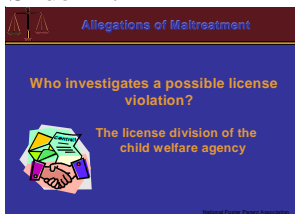
(Slide #16) Tell the participants that each of these three consequences may occur as the result of a single complaint and each may be investigated by a different agency. The three are:

1. Licensing violation,
2. Report of child abuse,
3. Criminal charges.

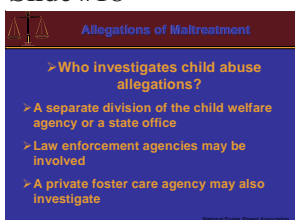
B. Who will investigate?

1. (Slide #17) Licensing violations are usually investigated by the licensing division of the child welfare agency.
2. (Slide #18) Child abuse allegations
 - a. Another division of the agency. or a state office investigates.
 - b. Law enforcement agency may be involved.
 - c. A private foster care agency may also be involved.
 - d. All investigative agencies should coordinate but research shows this does not always occur.

Slide #17



Slide #18

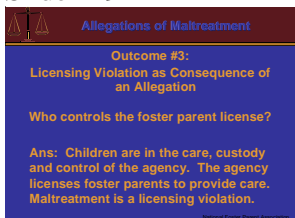


**IV. OUTCOME NUMBER THREE:
Licensing Deficiency or Violation**

A. (Slide #19) Licensing Violation as Consequence of Allegation of Maltreatment

1. Agencies control foster parent licenses
 - a. Children in care are in the care, custody and control of the child welfare agency.
 - b. Foster parents are licensed by the agency to provide the actual care.
 - c. Licensee (foster parent) must meet various state licensing requirements.
 - d. Abuse or neglect of a child in their care is a violation of the licensing agreement.

Slide #19



REFERENCE NOTES

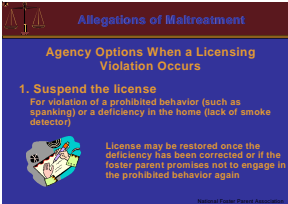
LICENSING DEFICIENCIES OR VIOLATIONS

Children who are separated from their parents for abuse or neglect are placed 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 him or her and who, in turn, places the child in a licensed foster care 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*.

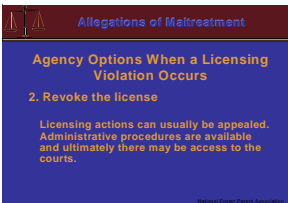
Foster parents who are accused of maltreating a child and who experience suspension or revocation of their foster care license usually have certain *administrative remedies* (right to challenge an agency action) to dispute the licensing complaint. In general, agencies have administrative procedures that 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 will probably 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,

Slide #20

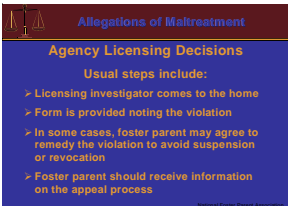


Slide #21



 Note to trainer: Try to obtain the appeal procedure available to your audience. If it is available, it is suggested that you note the steps on a flipchart prior to the training.

Slide #22



2. Say, “Agencies have a couple of options for a licensing violation, depending upon the allegation. Some licensing violations are more serious than others. What they choose depends upon the severity of the allegation.”

- a. (Slide #20) They can suspend a license...
 - 1) For violation of a prohibited behavior (such as spanking), **or**
 - 2) Deficiency in the physical structure of the house (such as absence of a smoke detector).
 - 3) License may be restored by fixing the deficiency or promising not to engage in the prohibited behavior again.

b. (Slide #21) They can revoke the license in more serious cases.



- 3. Tell the participants that licensing actions can usually be appealed.
 - a. Ask for a show of hands of those who know how to appeal a licensing action.
 - b. Administrative procedures are generally available.
 - c. Many states define the appeal process in a code of regulations.
 - d. Trainer: If you have obtained the appeal procedure for this audience, go over the steps with the group, noting each step on a flip chart and skip “d” below.
 - e. (Slide #22) Agency licensing decisions usually involve a series of steps. Some or all of the following steps may be involved:

- 1) A licensing investigator comes to the home to investigate a licensing deficiency or violation.
- 2) A form is provided noting the violation, though not who made the complaint in the case of abuse or neglect.

3) If the foster parent agrees to remedy the

REFERENCE NOTES

the agency will allow the foster parent to maintain his or 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*). These 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 he or she believes shows that the violation did not occur or that there are other circumstances that affect whether or not their foster care license should be suspended or revoked. At the conclusion of the hearing, the ALJ either issues a verbal ruling at the hearing and/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 an attorney.

Handout:
Tips for Handling
Foster Care
Licensing Deficiencies
or Violations

violation, the agency may choose not suspend or revoke the license.

- 4) Foster parent should be given information on the agency’s appeal process, if the license is suspended.
- 4. Distribute the handout: “Tips for Handling Foster Care Licensing Deficiencies or Violations” (**Reference Notes** facing page) and go over the tips. Note especially the bolded information.

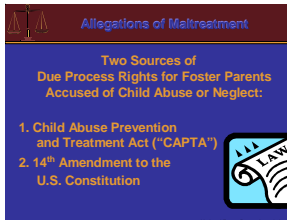
Slide #23



- B. (Slide #23) Say, “Foster parents who are accused of child abuse or neglect have certain due process rights. These rights are of such fundamental importance that they are necessary to assure basic fairness and justice.”

Transition Statement: There is a need to strike a balance between keeping children safe while still protecting the rights of people accused of child abuse or neglect. There are two major sources of due process rights for foster parents accused of child abuse or neglect: (Slide #24) the Child Abuse Prevention and Treatment Act (CAPTA) and (click) the 14th Amendment to the U.S. Constitution.

Slide #24



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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.
- ❑ **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 violation and written information on the process to challenge 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.**
- ❑ **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. 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 to consult an attorney with experience in administrative law actions. 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 for a referral, or a reliable private attorney in your community for a referral.



Trainer Note:
Reference Notes beginning on the facing page are for your reference and should be read in advance of training.

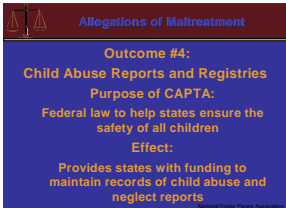
**V. OUTCOME NUMBER FOUR:
Consequences of Maltreatment Allegation-
Child Abuse Report and Registry**

- A. Ask if anyone knows what CAPTA is.
1. (Slide #25) Answer: A federal law designed to help states ensure the safety of all children in their states.
 2. It provides states with funding to maintain records of child abuse and neglect reports.
 3. (Slide #26) Requirement: States must have “provisions and procedures in place for the reporting of known and suspected instances of child abuse and neglect.”
 - a. All states have procedures for maintaining records of abuse/neglect reports, usually a central registry.
 - b. Uses made of the registry
 - 1) Caseworkers use the information to identify a child’s history of maltreatment, patterns of re-abuse, or to assess risk.
 - 2) Researchers use it to identify trends and characteristics of children likely to be reported.
 - 3) Licensing workers use the information to ensure that adults with histories of child abuse are not allowed to become foster or adoptive parents.
 - 4) Registries serve an important function in protecting children. It is also important that persons accused have procedural protections.
 4. (Slide #27) State that CAPTA is designed to protect children but also mandates that states protect the due process rights of people accused of child abuse or neglect. Point out that it is important to keep in mind that not all people who are accused of child abuse actually abused a child.

B. Rights flowing from CAPTA

Distribute the handout, “Rights Flowing from CAPTA” and

Slide #25



Slide #26



Slide #27



Handout:
Rights Flowing From
CAPTA

REFERENCE NOTES



CHILD ABUSE REPORTS AND REGISTRIES

Federal Child Abuse Prevention and Treatment Act (CAPTA)

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. 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.

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

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 in continuing to work 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 United States Constitution. States must carefully balance these important interests by passing laws, or instituting rules, regulations, or procedures that address both the intent of CAPTA to protect children from abuse and neglect while, at the same time, providing 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 the requirements that courts have decided are necessary under the Constitution in order to meet the basic level of fairness under the Due Process clause.

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. These records are usually maintained in a central location, often called a central registry. Approximately forty-two states and the District of Columbia have statutes authorizing the establishment of a statewide central registry. Several states only mandate by law that agencies, usually public social service agencies, collect and maintain child abuse and neglect records.

Access to the information 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. 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

discuss the following major rights which flow from CAPTA and a few rights it does not provide for:

1. Agencies must tell individuals accused of child abuse or neglect, at the initial time of contact, about the complaints or allegations against them, in a way that protects the rights of the person who informed the agency of the alleged maltreatment.
2. It requires that agency representatives be provided with training about their legal duties, which should include the handling of maltreatment reports by adult caregivers in a foster home.
3. CAPTA requires states to have procedures to promptly erase any records from the central registry when the allegation is determined to be unsubstantiated or false.
2. It does not specify what details the foster parent is to receive about an allegation.
3. CAPTA does not require a Miranda-type warning, even in cases where criminal charges may result.
4. States use different terms when there has not been a determination of abuse or neglect. They include: Unfounded, Not Indicated, Unconfirmed, and Unsubstantiated. Where a finding has been made that abuse occurred, terms such as the following are used: Founded, Indicated, Substantiated. Foster parents should know the terms used in their states and the definitions for those terms.
 - a. Also note that states have varying amounts of time that an unfounded report can stay on the registry, from immediate removal to up to ten years. Unfounded reports can only be used for subsequent agency investigations, not for employment or background checks.
 - b. States are required to have a process in place by which a foster parent officially found to have



*Trainer Note: It is important to research the terms and definitions used in the state in which the training is being done, and how long an unfounded or undetermined report is kept on the registry. The National Clearinghouse on Child Abuse and Neglect maintains state-specific information on expungement of registry reports.



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welfare agencies may 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.

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 findings of a particular abuse investigation. There is wide variation on what information is in the registry.

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 United States Constitution.

Rights Flowing From CAPTA

CAPTA requires that foster parents who have an allegation of child abuse 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. 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. 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. Broadly speaking, this training should include the handling of maltreatment reports by adult caregivers in foster family homes.

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. Approximately thirty-seven 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

MATERIALS/NOTES**OUTLINE/INSTRUCTOR ACTIVITY**

committed child abuse or neglect can challenge the finding.

- c. Minimum standards for the process must include:
 - 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.

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inaccurate records are removed from the registry.

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. 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. Unfounded reports are used only for 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.

Many states have 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 the 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 others wait an additional five or ten 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). The National Clearinghouse on Child Abuse and Neglect Information maintains state specific information on expungement of registry reports of child abuse and neglect.

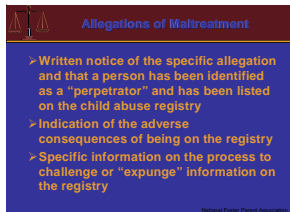
In addition, CAPTA requires states to have a process in place by which a foster parent who is officially found to have committed child abuse or neglect can challenge the finding. The federal child welfare policy manual explains that states can decide what type of process to use. States can choose to 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.

Slide #28

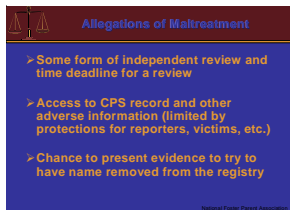


Slide #29

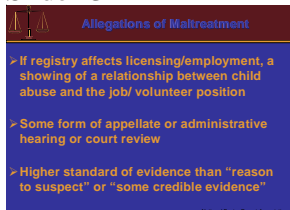


Handout: ABA Model Protections

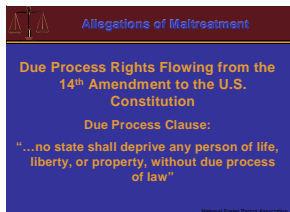
Slide #30



Slide #31



Slide #32



- C. (Slide #28) Tell the participants that the American Bar Association Center on Children and the Law has developed a model list of procedural protections, based on CAPTA and the 14th Amendment to the U.S. Constitution, for how child welfare agencies should handle reports of abuse or neglect that result in an individual's name being placed on the child abuse registry. See **Reference Notes** on the facing page.
1. Distribute the handout, "ABA Model Protections to Protect Rights of Those Accused of Child Abuse or Neglect."
 2. (Slides #29-31) Go over the items on the list. Explain that these protections are not designed to insulate abusers. It is important that rights of children and innocent people be protected.
 3. Ask if there are questions on the model protections. If there are questions that are legal in nature, please defer.
 4. Suggest that they incorporate this handout into their binders, folders or *Legal Resource Manual*, if they have one, and to work with their foster/adoptive parent association to implement the provisions within their states.
- D. (Slide #32) Tell the participants that protections flow not only from provisions in CAPTA, but from the Due Process Clause of the 14th Amendment to the U.S. Constitution. Quote the clause as follows: "...no state shall deprive any person of life, liberty, or property, without due process of law."

REFERENCE NOTES

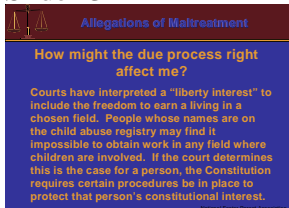
American Bar Association Center on Children and the Law Model Protections to Safeguard the Rights of Individuals Accused of Child Abuse or Neglect

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.”

Slide #33



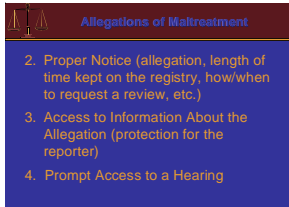
Slide #34



Slide #35



Slide #36



1. (Slide #33) *Due process of law* 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.
2. (Slide # 34) Use the slide to define how “liberty” interest may affect them. Specifically, that liberty interest has been interpreted to mean the freedom to earn a living in a chosen field. People whose names are on the child abuse registry may find it impossible to obtain work in any field where children are involved. If the court determines this is the case for a person, the Constitution requires certain procedures to be in place to protect that person’s constitutional interest.
3. Say, “Some courts have looked at a number of procedural due process issues for foster parents who are accused of child abuse.”
 - a. Appropriate standard of proof--This means the level of evidence necessary to decide whether or not the allegation is true.
 - b. (Slide #35) Many states use “some credible evidence” or “any credible evidence.”---This standard of proof is not appropriate.
 - 1) This requires just a bare minimum of credible evidence.
 - 2) Studies cited by the court indicated that 75% of the people who tried to have their names removed from the child abuse registry were successful when the agency was required to use a higher standard of proof, such as “a fair preponderance of evidence” (more likely than not.)
 - c. (Slide #36) Proper Notice (Allegations, length of time kept on the registry, how/when to request a

REFERENCE NOTES

Handouts:

Information/summary sheets to be reproduced in sufficient quantities that each person in a group can have a copy of the group's assigned area.

1. Initial Call
2. Notification of Allegation
3. Initial Investigation
4. Formal Investigation
5. Determination

Note to trainer: All the information in the above handouts is included in the Reference Notes ps. 29, 31-33, along with the answers to the summary sheet questions.

review, etc.)

- d. Access to information about the allegation (protection for the reporter)
- e. Prompt access to a hearing

Transition Statement: States must have administrative procedures for agencies to use in the investigation of allegations in order to comply with CAPTA and the Due Process Clause of the 14th Amendment. Tell the group that it's important that they know and understand how to use these administrative processes before an allegation is ever made.

F. Agency process and investigation

1. Ask the group what they know about their agency's process for investigating allegations.
2. Say, "We all know that, to protect children from harm, an agency must investigate every allegation of abuse or neglect, regardless of how much credibility they perceive to be in the charge." Ask the group if they know of someone who has been investigated as the result of an allegation. Ask a few to comment on the process:
 - 1) How fair they felt it was
 - 2) How they were treated
 - 3) How long the process took
 - 4) How it affected their family
 - 5) The implications, if any, for recruitment and retention of foster parents
3. Explain that everyone supports the need for the investigative process in order to protect children but that foster parents have rights that must be protected also.
4. Activity: Investigation Process
 - a. Say, "There are five steps in the investigative process. We're going to divide up into five groups.

REFERENCE NOTES

INVESTIGATION PROCESS

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 didn't happen. Foster parents are often mandated reporters and may be required to contact authorities if they suspect child abuse or neglect. In approximately eighteen states, any person who suspects child abuse or neglect is required to report it.

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 and 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 that 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, including 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. 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, biological 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 once 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 allegation of child abuse and neglect has been resolved.

Summary Sheet

1. Define “mandated reporters.” Ans: People who have substantial contact with children in their job and are required to report any suspected child abuse or neglect. How are they protected by law? Ans: Their identity is not divulged to those against whom the allegation is made.
2. Describe what happens when the child welfare agency receives a report of possible abuse.

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Each group is going to take a step, review some information about it and prepare a brief summary explaining what happens at that step. Each handout includes summary questions to help locate information that will be the most important to share with all the participants.”

- b. Divide into groups and have them select a reporter.
- c. Assign each group one aspect of the investigation, provide sufficient handouts so that everyone has one, and provide one summary sheet for the group. Also make available chart paper, masking tape, and markers. Instruct the groups to summarize their information on the chart paper.
- d. Give groups about 15 minutes to prepare.
- e. Groups should make presentations in the order of the process, beginning with the group having the “initial call.”
- f. Allow a few minutes following the activity for any discussion or questions.

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Ans: Either “screen in” or “screen out” the report. 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.

3. Who should not investigate an allegation? Ans: The individual caseworker or anyone with a direct personal relationship with the foster family, suspected abuser, or the child. Why? Ans: To avoid an actual or potential conflict of interest
4. T or F. The investigator should be anyone in the agency not associated with the foster parent. Explain your answer. Ans: F. The investigator should have special training.

Notification of Allegation

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. They may 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 may 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.

Summary Sheet

1. What should happen when a foster parent is first notified that an allegation has been made against them? In what form? Ans: They should be given information about what the allegation entails. In writing.
2. What information will a foster parent probably not be told? Ans: Who made the allegation
3. What is an agency not required to do? Ans: Give a Miranda warning
4. What must the foster parent do? Ans: Allow access to the child

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 from a foster family home 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

REFERENCE NOTES

sensitive to children and that conduct one interview that is audio or video taped for later use.

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 an 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 abused in the foster home, a formal investigation will probably take place.

Summary Sheet

1. What is the first determination an investigator must make? Ans: Whether or not the child is safe. Should children be automatically removed in all cases? Ans: No. Why or why not? Ans: It is not always necessary and to do so and to do so when unnecessary is very disruptive to the child's life.
2. T or F? The investigator may talk to the child prior to making the foster parent aware that there is an allegation. Ans: T
3. Investigators should be looking for two types of evidence, "inculpatory" and "exculpatory." Explain those terms. Ans: Inculpatory evidence is information tending to show that abuse or neglect occurred. Exculpatory evidence is information tending to show that the abuse or neglect did not occur.
4. What should a foster parent arrange for prior to his interview with the investigator, if possible? Ans: To have an attorney or support person with them
5. What are two possible outcomes of the initial investigation? Ans: Ends or goes forward

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

REFERENCE NOTES

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. 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 happened.

Summary Sheet

1. What happens during the formal investigation phase? Ans: 1) Investigator reviews the information, 2) The investigator determines the scope and direction of any further investigation, and 3) There may be more interviews.
2. Generally, how long does this phase take? Ans: A few months
3. What are the three possible outcomes? Ans: 1) Abuse did occur, 2) Did not occur, 3) Still unclear whether or not abuse occurred.

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 (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. 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 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. Other people will also usually receive information about the agency’s decision, including the person who made the report, the child’s biological parents, caseworkers at the agency 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.

Summary Sheet

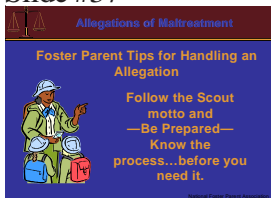
1. What happens at this stage? Ans: The agency makes a decision about whether the allegation is founded.
2. If it is determined that abuse occurred, what will happen next? Ans: In most states, name will be reported to the central registry.
3. List some terms used in various states to define the possible outcomes of an investigation. If you know, list the terms used in your state to define the three possible outcomes. Ans: Founded, indicated, unconfirmed, unsubstantiated, suspected, etc.
4. What information should the foster parent receive at the close of an investigation, and how should it be received? Ans: Agency decision and how to appeal it in writing.
5. Who else may be informed of the decision? Ans: The child’s biological parents, caseworkers at the agency, juvenile court, child’s attorney or guardian ad litem, as well as agency licensing staff or other agencies that are conducting their own investigations.

MATERIALS/NOTES

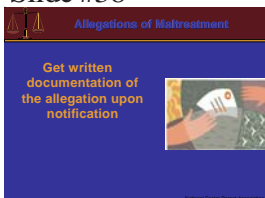
OUTLINE/INSTRUCTOR ACTIVITY

Handout:
Foster Parent Tips for
Handling an Allegation

Slide #37



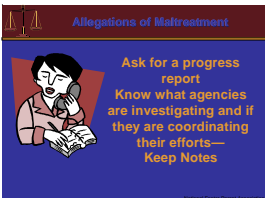
Slide #38



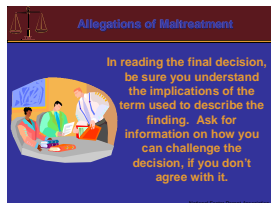
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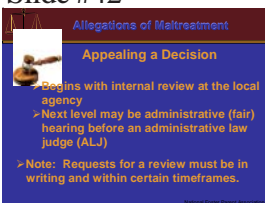
Slide #40




Slide #41



Slide #42



Note to Trainer: Substitute your state-specific information here for how the appeal process works. Include the timeframes.

5. Distribute the handout “Foster Parent Tips for Handling an Allegation.” Using the slides, discuss each of the tips as a review of the allegations process. See **Reference Notes** p.35 for expanded notes.
 - a. (Slide #37) Tell them to follow the Scout motto and be prepared for an allegation.
 - b. (Slide #38) Ask for written documentation of the allegation when the first agency representative comes to investigate.
 - c. (Slide #39) Cooperate, but contact a support person or attorney before speaking with an investigator, if possible.
 - d. (Slide #40) Ask for a progress report on how the investigation is going.
 - e. (Slide #41) Make sure you know the implications of the term the agency used in its finding. Ask for information on how to challenge it if you don’t agree with it.
6.  Appealing a Decision
 - a. Tell the group that states have different ways to challenge but the process is similar.
 - b. Timeframes vary from state to state.
 - c. (Slide #42) An appeal may begin with an internal review at their local agency.
 - d. The next level may be an *administrative hearing* or *fair hearing* held before an *administrative law judge (ALJ)* who acts as a neutral decision maker.
 - e. A request for a review needs to be in writing and within certain timeframes.
 - f. Note to the participants that if a criminal or juvenile court finds that a foster parent abused a child, the agency cannot remove the offender’s name from the child abuse registry.

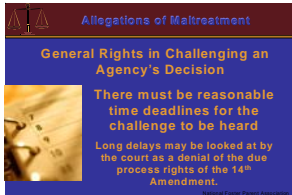
REFERENCE NOTES

FOSTER PARENT TIPS FOR HANDLING AN ALLEGATION INVESTIGATION

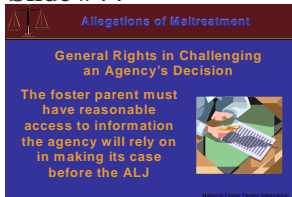
- ❑ 5a. Be prepared in advance for the possibility that an allegation of abuse or neglect may happen to you. Make sure you know what agencies are involved in investigating allegations of maltreatment, what procedures are used in your state, what the standard of proof is for substantiating an allegation (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.
- ❑ 5 b. 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 don’t 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.
- ❑ 5c. 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.
- ❑ 5d. Respond to the investigator’s requests for additional information. 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.
- ❑ 5e. Read the notice from the agency about the final decision 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. 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.

7. General Rights to Challenge a Final Agency Decision
 - a. Tell the participants that there are general rights that a foster parent has in challenging the agency’s final decision. (Note: Please use the expanded information in the **Reference Notes** on pages 37 & 39. The letter of the note corresponds with the list below.) They include:
 - b. (Slide #43) Reasonable time deadline for the challenge to be heard
 - c. (Slide #44) Meaningful access to information
 - d. (Slide #45) Right to be represented by counsel
 - e. (Slide #46) Right to present evidence and cross-examine witnesses
 - f. (Slide #47) Right to confidentiality of reports, reviews and hearings
 - g. (Slide #48) Right to obtain a copy of the proceeding
 - h. (Slide #49) Right to a decision within a certain timeframe
 - i. (Slide #50) Right to a court review of the ALJ’s decision

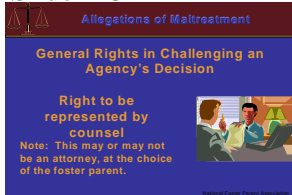
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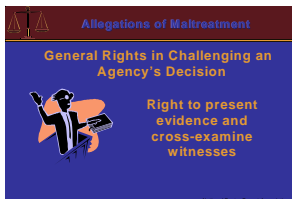
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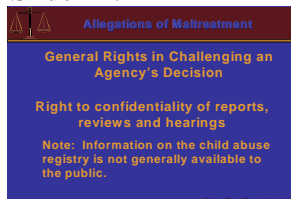
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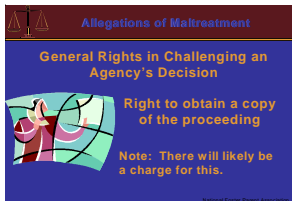
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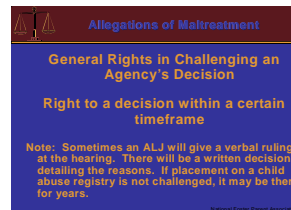
Slide #47



Slide #48



Slide #49



Slide #50



REFERENCE NOTES

GENERAL RIGHTS IN CHALLENGING AN AGENCY DECISION

7.b. 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. In addition, at least one court has held that long delays in being able to get an administrative hearing of a finding of child abuse is a denial of the foster parent's due process rights.

7.c. 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* (blacked out). 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.

7.d. Right to Be Represented By Counsel

Foster parents who plan to challenge a finding of child abuse or neglect have a right to have an attorney of their choice represent them at the hearing. The agency that decided to substantiate the finding of child abuse or neglect will also have a 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 put on their case to the ALJ. If the foster parent hires an attorney, he will be responsible to pay 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.

7.e. 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 might include written documents as well as calling witnesses to support the foster parent's version of events. The foster parent (or his attorney if he 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.

7.f. Right to Confidentiality of Reports, Reviews, and Hearings

Reviews and hearings held to decide whether the agency acted properly in placing the foster parent's name on the child abuse registry are private in most states in order to protect the foster parent's

Transition Statement: The third possible outcome of an allegation, though very rare, is that criminal charges will be filed. In that situation, the case will be handled like any other criminal case. If you have watched any of the Law and Order type shows on television, you will know what that process is. We will spend just a couple of minutes discussing that process because, fortunately, it is rare in foster care cases.

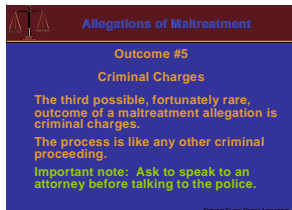
VI. OUTCOME NUMBER FIVE:

Criminal Charges (Slide #51)

- A. Police will investigate.
- B. The prosecuting attorney (also called *district attorney*) will determine if there is enough evidence to try the case.
- C. Arrest must include a reading of Miranda rights (constitutional protections for criminal defendants.)
- D. Most importantly, foster parents should ask to speak with an attorney before talking to the police.
- E. Criminal charges will require an attorney. If the foster parent cannot afford one, the court will appoint one.

Transition Statement: Statistically foster parents may have a higher chance of being accused of abusing a child than other parents. Though there are some strategies that can be used to minimize the chance of that happening, no prevention strategy can completely eliminate the possibility that a foster parent will experience a maltreatment allegation at some point in her fostering career. There are some strategies, however to make going through the investigation process less traumatic.

Slide #51



REFERENCE NOTES

right to confidentiality. Information on the child abuse registry is not generally available to the public. Release of information about placement of a foster parent's name on a registry is available to licensing workers and potential employers of foster parents who want to work with children, as well as others.

7.g. 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.

7.h. 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. If the ALJ finds that the agency was wrong in placing the foster parent's name on the child abuse registry, it will be expunged in most states. 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.

7.i. 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. 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.

Slide #52

Allegations of Maltreatment

Outcome #6
Foster Parent Participation in the Investigation of Maltreatment Allegations

> Understand the shift in roles that may take place with the agency

- Agency's main responsibility is to ensure well-being of the child
- Some agencies may interpret that responsibility to mean their interests are not the same as the foster parent. This may prevent caseworkers from further contact during the investigation

Handout:
Practical Steps to
Protect Yourself and
Your Family

Slide #53

Allegations of Maltreatment

Take Practical Steps to Protect Yourself and Your Family

> Maintain a professional attitude
> Stay focused on the procedures
> Maintain a log of every conversation or activity related to the investigation.

Note: The log should be in a notebook that is bound so that no pages can be added or deleted.

Slide #54

Allegations of Maltreatment

Practical Steps to Protect Yourself and Your Family

> Ask for all documents you are entitled to receive
> Read all documents carefully
> Ask questions!
> Adhere to timelines

Slide #55

Allegations of Maltreatment

Practical Steps to Protect Yourself and Your Family

8. Provide documentation to the agency about the event that caused the report
9. Reach out and ask for support.
10. Maintain family routine and don't isolate yourself
11. Maintain your perspective and prepare to move on when it is over

VII. OUTCOME NUMBER SIX:

Foster Parent Participation in the Investigation of Maltreatment Allegations

- A. Explain that it is important to **be prepared**
1. Ask for written materials from the agency on how it investigates licensing violations and allegations of child abuse...before it happens.
 2. Know local resources, including competent legal resources to call if, and when, an allegation occurs.
- B. (Slide #52) Understand the shift in roles that often takes place once an allegation is made.
1. The agency's primary responsibility to ensure the safety and well being of the child
 2. Some agencies may interpret that responsibility to mean that they have different interests than the foster parent that prevents caseworkers from continuing contact with the foster parent during the investigation.
 3. Foster parents should ask the agency for referrals for support as soon as an allegation is made.
 4. Foster parents need to protect their own interests, as well as understand that the agency must investigate and support the child, the birth parents, the foster parents, and the agency's own interests.
- C. (Slide #53-55) Take practical steps to protect yourself and your family.
1. Brainstorm things a foster family can do to protect themselves during a maltreatment investigation.
 2. Distribute the handout, "Practical Steps to Protect Yourself and Your Family."
 3. Use the slides to go over the points in the **Reference Notes** on p. 41.
 4. Suggest that the handout be added to their binder or file of information to keep.

REFERENCE NOTES

Practical Steps to Protect Yourself and Your Family

- 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. Keep the log by the phone to note calls made and received and the main points of the conversation. The log should be a bound notebook with pages that cannot be removed or added.
- Ask for all documents you are entitled to receive.
- Read all documents carefully.
- Ask questions about anything you don't 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/adoptive parent association and ask for support and assistance. Also request assistance from the child welfare agency.
- Maintain your own family routine and do not isolate yourself from your friends and family.
- Consider contacting an attorney experienced in child abuse and neglect proceedings to find out your legal rights in your state.
- 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.

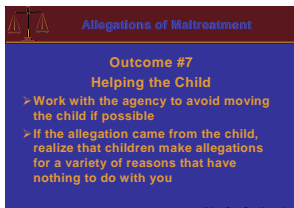
- D. Get support.
1. Some states have liaisons to provide support to foster parents when an allegation is made.
 2. Foster parent support groups are available in most areas. Get involved with that group early on in your fostering career. Don't wait for an allegation to occur.
 3. As mentioned before, know an attorney you will contact if an allegation is made against you. Tips on hiring an attorney are covered in the module on Court Participation (Chapter three of the Legal Resource Manual for Foster Parents.)

E. Move on.

Note to the group that moving on means putting the experience in perspective, learning from the situation and being a resource for others during a similar crisis. These are skills that help foster parents and their families to maintain their ability to resume normality and to continue to be a resource for the children who need them.

Transition Statement: Just as children are traumatized by removal from their biological parents, they can also experience grief and loss by being removed from their foster home. There are a few things foster parents undergoing an allegation investigation can do to help minimize the trauma for the child involved.

Slide #56



**VIII. OUTCOME NUMBER SEVEN:
Helping the Child**

- A. (Slide #56) Work with the agency to avoid moving the child, if possible.
- B. If the child must be moved, work with the agency to maintain contact with members of the family important to the child.
- C. If the allegation originates with the foster child:
 1. Understand that it is normal to feel upset.
 2. Realize that children sometimes make allegations for a

REFERENCE NOTES

variety of reasons that have nothing to do with you.

3. By empathizing with the child throughout the process, your relationship may actually be strengthened.

Transition Statement: As we have learned, many foster families will experience an allegation investigation during their fostering career. It is important for foster parents to have a support system in place when an allegation occurs. Foster/adoptive parent associations have a presence in most states. They can be a great source of help.

Slide #57



IX. OUTCOME NUMBER EIGHT: What Foster/Adoptive Parent Associations Can Do to Help (Slide #57)

A. Improve the process.

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.

1. Clearly define the standard of proof to conclude that an allegation is true.
2. Assist agencies in developing a clear process.

B. “Plain English” materials

1. Laws and regulations are often complicated and difficult to find and interpret.
2. Work with agencies to write and distribute “plain English” informational brochures and materials that explain the procedure used in processing an allegation of child abuse against a foster parent.

Handout:
Learning Together:
Allegation Training for
all Members of the
Child Welfare Team
(for reference)

REFERENCE NOTES

Learning Together: Allegation Training for All Members of the Child Welfare Team



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). 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 practical 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.

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

Slide #58

Allegations of Maltreatment

Summary

Outcome #1 Identify 5 ways to help prevent allegations

Outcome #2 List 3 possible outcomes of an allegation

National Foster Parent Association

Slide #59

Allegations of Maltreatment

Summary

Outcome #3 Name 2 licensing actions an agency can take and tell how to handle each one

Outcome #4 Discuss the reasons for having child abuse registries and the "due process" protections for foster parents under the federal Child Abuse Prevention and Treatment Act (CAPTA)

National Foster Parent Association

Slide #60

Allegations of Maltreatment

Summary

Outcome #5 Identify the most important thing to remember if you are arrested

Outcome #6 Identify the shift in roles that may take place with the agency and 3 steps to take to protect your family during an investigation

National Foster Parent Association

Slide #61

Allegations of Maltreatment

Summary

Outcome #7 Identify 2 things that can be done to help the child who is the focus of the allegation

Outcome #8 List 3 things a foster/adoptive parent association can do to help

National Foster Parent Association

Slide #62

Allegations of Maltreatment

Additional modules in this series:

- ✓ Permanency, Foster Parent Roles and the Law
- ✓ Court Participation for Foster Parents
- ✓ Dependency Court and Foster Parent Rights When a Child is Removed

National Foster Parent Association

Slide #63

Allegations of Maltreatment

Thank you for your attention and participation

- C. Training to include the following:
(See **Reference Notes** p. 45 for expanded information.)
1. How the investigation process is handled
 2. Cross-training for all members of the child welfare team
 3. Legal and practical aspects of investigation process
 4. Rights and responsibilities of all members of the team
 5. Identification of agencies involved in investigations
 6. Differentiation in processes among licensing violations, maltreatment reports and criminal prosecution
- D. Supports for families
1. Foster/adoptive parent associations can provide an essential support lifeline to families undergoing a maltreatment investigation.
 2. Allegation information and support should be a basic service for members.

X. CONCLUSION

- A. (Slides #58-61) Using the slides, summarize outcomes for today's training.
- B. Read the wrap-up statement on the facing page.
- C. (Slides #62-63) Thank the group for their attention during this difficult, but important topic. Suggest that they approach their foster/adoptive parent association to discuss what they can do to assist foster parents during an allegation investigation. If they do not know their foster/adoptive parent association, they can call the National Foster Parent Association at 800-557-5238 for that information. Please also mention that the *Legal Resource Manual for Foster Parents* is available from NFPA or for free download at www.NFPAinc.org. Training in this series is also available from an NFPA certified trainer.
- D. Evaluation

REFERENCE NOTES

Wrap-up Statement

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. 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 is a goal everyone can support.

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.

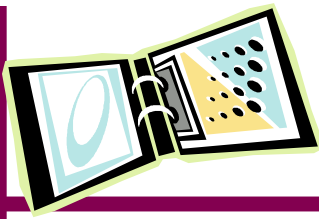
Foster parents should support efforts to balance the need to vigorously investigate maltreatment reports with the need to maintain healthy relationships between quality foster parents and their foster children. Children benefit from stability in foster care and their foster parents are the source of 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.

APPENDIX



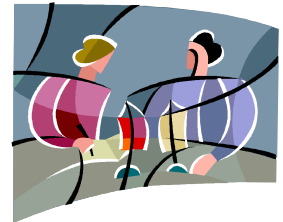
PREVENTING ALLEGATIONS

1. Find out as much information as possible before deciding whether or not to take in a child, including whether the child has a history of making allegations of abuse against prior foster parents.
2. Do not take any child you do not feel confident you can adequately parent.
3. Work with the child welfare agency to ensure that the child's needs are being met while in foster care.
4. Understand and follow all laws and regulations on caring for foster children.
5. Develop family rules and expectations in consultation with the child welfare agency and ensure that all family members follow them.
6. Do not leave a child who has been sexually abused alone with anyone of the same gender as the abuser.
7. Keep a daily log and record any unusual events, behaviors, comments, reactions before and after visits 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.
8. Maintain a cordial and professional working relationship with the child's biological parents and other members of the child welfare team.
9. Participate in training for foster and adoptive parents on caring for children who have been abused or neglected.



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.
- ❑ **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 violation and written information on the process to challenge 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.**
- ❑ **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. 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 to consult an attorney with experience in child abuse and neglect cases. 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 for a referral, or a reliable private attorney in your community for a referral.





RIGHTS FLOWING FROM CAPTA

CAPTA requires that foster parents who have an allegation of child abuse 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. 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. 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. Broadly speaking, this training should include the handling of maltreatment reports by adult caregivers in foster family homes.

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. Approximately thirty-seven 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.

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. 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. Unfounded reports are used only for 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.

Many states have 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 the 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 others wait an additional five or ten 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). The National Clearinghouse on Child Abuse and Neglect Information maintains state specific information on expungement of registry reports of child abuse and neglect.

In addition, CAPTA 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. 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.



American Bar Association Center on Children and the Law Model Protections to Safeguard the Rights of Individuals Accused of Child Abuse or Neglect

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.”

FOSTER PARENT TIPS FOR HANDLING AN ALLEGATION



a. 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 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.

b. 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 don’t 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.

c. 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.

d. Respond to the investigator's requests for additional information. 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.

e. Read the notice from the agency about the final decision 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. 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.

Practical Steps to Protect Yourself and Your Family



- 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. Keep the log by the phone to note calls made and received and the main points of the conversation. The log should be a bound notebook with pages that cannot be removed or added.
- Ask for all documents you are entitled to receive.
- Read all documents carefully.
- Ask questions about anything you don't 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/adoptive parent association and ask for support and assistance. Also request assistance from the child welfare agency.
- Maintain your own family routine and do not isolate yourself from your friends and family.
- Consider contacting an attorney experienced in child abuse and neglect proceedings to find out your legal rights in your state.
- 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.

Activity: Investigation Process

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 didn't happen. Foster parents are often mandated reporters and may be required to contact authorities if they suspect child abuse or neglect. In approximately eighteen states, any person who suspects child abuse or neglect is required to report it.

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 and 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 that 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, including 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. 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, biological 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 once 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 allegation of child abuse and neglect has been resolved.

Summary Sheet

1. Define "mandated reporters." How are they protected by law?
2. Describe what happens when the child welfare agency receives a report of possible abuse.
3. Who should not investigate an allegation? Why?
4. T or F. The investigator should be anyone in the agency not associated with the foster parent. Explain your answer.

Activity: Investigation Process

Notification of Allegation

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. They may 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 may 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.

Summary Sheet

1. What should happen when a foster parent is first notified that an allegation has been against them? In what form?
2. What information will a foster parent probably not be told?
3. What is an agency not required to do?
4. What must the foster parent do?

Activity: Investigation Process

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 from a foster family home 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.

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 an 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 abused in the foster home, a formal investigation will probably take place.

Summary Sheet

1. What is the first determination an investigator must make? Should children be automatically removed in all cases? Why or why not?
2. T or F? The investigator may talk to the child prior to making the foster parent aware that there is an allegation.
3. Investigators should be looking for two types of evidence, "inculpatory" and "exculpatory." Explain those terms.
4. What should a foster parent arrange for prior to his interview with the investigator, if possible?
5. What are two possible outcomes of the initial investigation?

Activity: Investigation Process

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. 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 happened.

Summary Sheet

1. What happens during the formal investigation phase? .
2. Generally, how long does this phase take?
3. What are the three possible outcomes?

Activity: Investigation Process

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 (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. 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 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. Other people will also usually receive information about the agency’s decision, including the person who made the report, the child’s biological parents, caseworkers at the agency 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.

Summary Sheet

1. What happens at this stage?
2. If it is determined that abuse occurred, what will happen next?
3. List some terms used in various states to define the possible outcomes of an investigation. If you know, list the terms used in your state to define the three possible outcomes.
4. What information should the foster parent receive at the close of an investigation, and how should it be received?
5. Who else may be informed of the decision?

Learning Together: Allegation Training for All Members of the Child Welfare Team



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). 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 practical 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.

- 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 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).

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.

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* c.1990-2004