

CLEARING YOUR NAME

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

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INTRODUCTION

This is a step-by-step instruction on how to find out if there is a report of child abuse and maltreatment against you in the New York State Central Register(SCR) and whether that information is available to future employers or licensing agencies that deal with the care of children. If you were ever investigated by Child Protective Services (CPS) in New York City called Administration for Children Services (ACS) – **even if your child was not taken away from you and the case was closed** – there may be a report against you in the SCR. If you are applying for a job with children, want to be a foster parent, to adopt, or want custody of your own children, you need to find out your SCR status and clear your name.

Reports of child abuse and neglect are made to the SCR. The SCR decides whether a report should be investigated and, if so, forwards it to the local child protective service. In New York City, this is ACS, previously called the Bureau of Child Welfare (BCW), Special Services for Children (SSC), and Child Welfare Association (CWA). CPS has sixty days to complete the investigation of the report, which can include interviewing the children at home, making home visits, and speaking with family, friends, doctors, and teachers. The result of the investigation will be that the SCR report is either “indicated” (some believable evidence of child abuse or neglect) or “unfounded” (not enough evidence that the report was true).

Indicated reports. If CPS finds that there is some believable evidence that the report is true, it will mark the report as “indicated.” Indicated reports are kept at the SCR until the youngest child named in the report is 28 years old. Child care employers and foster care and adoption agencies may be notified of indicated reports. Thus, an indicated report may affect your ability to get a job in child care, to become a foster parent, or to adopt a child. In addition, the police, district attorneys, child welfare agencies, and the courts will have access to this information (for example, when custody issues are decided).

Unfounded reports. If CPS finds that there is no believable evidence that the report is true, it will mark the report as “unfounded.” The report will be maintained at the SCR, but will be SEALED or AMENDED. This means that it is only available to the police or to ACS when they are investigating another report of child abuse or neglect involving you or your children. A sealed report is not available to employers or licensing agencies that deal with the care of children. A sealed case will be expunged (erased from SCR records) after 10 years.

STEP ONE - *Get your records*

The first step is to find out if you are the subject of a report of child neglect or maltreatment. If you have ever been investigated by CPS, there is a good chance that you are the subject of such a report. This is true even if your children were not removed from your home and you won your case.

To find out, you must write to the SCR and ask if you are the subject of a report of suspected child abuse or maltreatment. **[Letter 1 is a form letter.]** In addition to asking if you are the subject of a report, you should request that, if you are the subject of a report of child neglect or maltreatment, such a report be sealed or expunged (erased). You should also request a hearing in the event that OCFS denies your request to seal or expunge the report. Send this letter return receipt requested so that you have a record of your request, and be sure to keep a copy of the letter for your records.

You also need to get your case record from CPS in order to get the investigation file. The file will tell you what was discovered in the course of CPS's investigation of you and will tell you ACS's position as to what happened. You should send a letter to CPS that you have signed in the presence of a notary public requesting all of your records regarding you and your family. **[Letter 2 is a form letter for New York City Cases.]**

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

You should keep copies of your letters so that you have a complete record.

STEP TWO - *OCFS Tells You Your Request For Amendment is Too Late*

You have received a letter from OCFS informing you that your request is untimely (too late). People who want to clear their names have to start the process within **90 days** of receiving notice that their names are in the SCR. If the SCR sends you a letter that your request is late, you must write to OCFS and tell them if you never received notice from CPS that you are the subject of a report of child abuse or maltreatment. **[Letter 3 is a form letter.]** You can go on to step three, if OCFS does not turn you down.

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

STEP THREE - *You Receive Your Records*

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

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

STEP FOUR - *You Have An Unfounded Report Against You.*

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

STEP FIVE - *You Have An Indicated Report Against You.*

You have now received your records from the SCR. You have been told that you were the subject of a report of child abuse and neglect and that the report was determined to be “indicated.” [**Letter 5 is an example.**] Your name will be kept on the SCR until the youngest child named is 28 years old. Child care employers, foster care and adoption agencies will be told about all “indicated” reports against you. An indicated report may harm your chances of getting a job in child care, becoming a foster parent, or adopting children. Law enforcement agencies, child welfare agencies, and the courts will have access to this information (for example, when custody issues are decided).

Go to STEP SIX.

STEP SIX - *Administrative Review.*

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

For the administrative review, OCFS will look at CPS's records from its investigation of your family. You should have a copy of the written materials from CPS because you requested them. If you have not received a copy, write to CPS and request them again. This will give OCFS only CPS's side of what happened. You have right to submit additional information on your behalf. You should send any information that shows that the records are wrong. If you do not submit written materials for OCFS to consider, OCFS will consider only the CPS records. You should send this information as soon as possible because the review will be done quickly and you want to make sure they consider your additional information. You should send any information that goes against what CPS says happened. You can submit letters from friends, family members, or other witnesses, as evidence, but these letters should be signed in front of a notary public.

After the conclusion of the administrative review, OCFS will announce a decision. OCFS might determine that the report is unfounded. If so, OCFS will then change the report to unfounded and you will no longer have an indicated report of child abuse or neglect against you. In this case, you will not need to go to a hearing. CONGRATULATIONS!

OCFS may decide not to seal or expunge your records. If this happens, OCFS will automatically schedule a hearing for you.

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

Go to STEP SEVEN.

STEP SEVEN - *Scheduling The Hearing.*

You will get a hearing at OCFS for one of two reasons. Either OCFS has decided not to amend your report as you requested and your next step to try to get your report changed is through a hearing, or they have not completed their investigation of your case in 90 days, as they were supposed to. OCFS has referred your request for a hearing to the Bureau of Special Hearings of OCFS for a fair hearing to be scheduled. You should automatically receive notice of where and when the fair hearing will be held. If you do not receive the notice, contact the OCFS to follow up and schedule a date for the hearing. If you cannot attend the hearing on the date it is scheduled, you have the right to ask for a new, later date. You should make this request in writing unless there isn't enough time before the hearing. **[Letter 6 is a form letter.]** If you are only a few days away from the day of your hearing, you should call the number written on the notice immediately. You will also have to tell the CPS attorney the new date. You should call the CPS attorney and follow up by writing the CPS attorney a letter. Remember to keep copies of your letters to OCFS and CPS requesting to adjourn the hearing!

Go to STEP EIGHT.

STEP EIGHT - *The Hearing.*

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

1) If the inquiry is whether the abuse or neglect occurred, you will need to show that CPS was wrong and did not consider all of the evidence.

2) If the inquiry is whether the act or acts are relevant and reasonably related to the job you are applying for, the Administrative Law Judge will consider all evidence of rehabilitation. Rehabilitation is a showing by you of positive and successful efforts to fix a problem which resulted in the maltreatment or neglect. Examples of rehabilitation include parenting classes, therapy, work with vulnerable populations like the elderly, drug or alcohol treatment, job training, and separation from an abusive partner.

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

The ALJ will make a decision after the hearing. You will receive this decision in writing. You should keep a copy of the decision by the ALJ for your records. If you win, CONGRATULATIONS! If you lose, go to STEP NINE.

STEP NINE - *The Appeal.*

If you lose your hearing, you may challenge the decision by filing a petition in Supreme Court on the grounds that the determination was capricious, arbitrary, or not in compliance with the law. You must file a case in court and serve the State & CPS within four months of the decision. **You will need a lawyer to do this.**

[YOUR NAME AND ADDRESS]

[DATE]

Jeanne Sample
Director
New York State Central Register of Child Abuse
New York State Office of Children and Family Services
PO Box 4480
Albany, New York 12204-0480

Dear Ms. Sample:

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

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

Thank you for your consideration.

Very truly yours,

[YOUR NAME]

LETTER 1

[YOUR NAME AND ADDRESS]

[DATE]

Barbara Mandel, Esq.
Administration for Children's Services
220 Church Street
New York, New York 10013

Dear Ms. Mandel:

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

Thank you for your prompt assistance in this matter.

Very truly yours,

[YOUR NAME]

LETTER 2

[YOUR NAME AND ADDRESS]

[DATE]

Jeanne Sample
Director
New York State Central Register of Child Abuse
N.Y.S. Office of Children and Family Services
40 North Pearl Street
Albany, New York 12243

Dear Ms. Sample:

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

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

Thank you.

Very truly yours,

[YOUR NAME]

LETTER 3

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

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

TO: Mary Skidmore

DATE: September 27, 1988

FROM: Charles Carson (CF)

SUBJECT: Expungement Request over 90 Days
from Indication Notice

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

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

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

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

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

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

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

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

cc: Mary Jo Walsh



George E. Pataki
Governor

State of New York
Office of Children and Family Services
P.O. BOX 4480, ALBANY, NEW YORK 12204-0840

John A. Johnson
Commissioner

May 10, 2005

CERTIFIED MAIL

[REDACTED]

RE: [REDACTED]
Case ID: [REDACTED]
Call ID: [REDACTED]

Dear [REDACTED]

We are writing in response to your request for information from the New York State Child Abuse and Maltreatment Register. We are enclosing copies of the report you requested. The investigating district/agency has determined the report to be unfounded.

In accordance with the law, the record of the report has been legally sealed and may only be unsealed and made available under limited circumstances including: to a local child protective service or appropriate State agency investigating a subsequent report of abuse or maltreatment involving the same subject of the report, or child named in the legally sealed unfounded report, or the child's sibling; or to the subject of the report where the subject requests access to the unfounded report.

Additionally, Section 422.7 allows the Commissioner to prohibit the release of any information where it is found that the release of that information would be detrimental to the safety or interests of a person who has cooperated in the subsequent investigation.

If you have any questions in connection with this notification, please contact the New York State Office of Children and Family Services, State Central Register, P.O. Box 4480, Albany, New York 12204-0480.

Sincerely,
David R. Peters
State Central Register
Division of Development
and Prevention Services

LETTER 4



George E. Pataki
Governor

State of New York
Office of Children and Family Services
P.O. BOX 4480, ALBANY, NEW YORK 12204-0480

John A. Johnson
Commissioner

May 27, 2005



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

Dear Ms [REDACTED]

In response to your inquiry concerning a report made to the New York State Child Abuse and Maltreatment Register (SCR) in which your client is named as a subject, we are providing you with a copy of all information currently in the SCR. Any deletion that may appear has been made pursuant to Section 422(4) of the Social Services Law, which prohibits any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment unless written authorization has been given. Additionally, Section 422(7) of the Social Services Law allows the Commissioner to prohibit the release of any information where it is found that the release of that information would be detrimental to the safety or interests of a person who has cooperated in the subsequent investigation.

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

Upon completion of the administrative review you will be notified in writing of the review decision and the reasons therefore. If your record is not amended within 90 days of receiving your request, or if your request is denied after the administrative review, your request will be forwarded to the Bureau of Special Hearings for scheduling of a fair hearing.

Also enclosed for your information, are the guidelines for determining whether Indicated instances of child abuse and maltreatment are relevant and reasonably related to employment or licensure.

Sincerely,

David R. Peters, Director
State Central Register
Division of Development and Prevention Services

Enclosures: SCR Forms, guidelines
ccb

LETTER 5

[NAME AND ADDRESS]
[DATE]

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

Re: [YOUR NAME]
SCR# [YOUR NUMBER]

Dear Judge [NAME OF JUDGE]:

I am writing to request an adjournment of the fair hearing currently scheduled for [TIME] on [DATE]. This is my first request for an adjournment in this matter. I have not yet received the ACS case record. I contacted the City's attorney on this case, [NAME OF ACS ATTORNEY], and [HE/SHE] consents to our request for an adjournment.

[ACS ATTORNEY] is unavailable on [DATES UNAVAILABLE], and I am unavailable on [DATES UNAVAILABLE]. Thank you for your consideration.

Respectfully,

[YOUR NAME]

cc: [ACS ATTORNEY]

LETTER 6