

CHAPTER 75-03-18
PROCEDURES FOR APPEAL OF CHILD ABUSE AND NEGLECT ASSESSMENTS

Section

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75-03-18-01. Definitions.

1. "Assessing agency" means the human service zone where the report of suspected abuse or neglect is assessed, or, in certain instances, the department.
2. "Assessment" is the factfinding process designed to provide information which enables a decision to be made whether a child meets the definition of an abused or neglected child.
3. "Decision" means the determination made under North Dakota Century Code section 50-25.1-05.1 whether a child meets the definition an abused or neglected child.
4. "Department" means the North Dakota department of human services or its authorized agent.
5. "Subject" means a person responsible for the child's welfare as defined by North Dakota Century Code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; July 1, 2020; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-04.1, 50-25.1-05.4

75-03-18-02. Who may file an appeal.

1. The subject of an assessment of suspected child abuse or neglect who is aggrieved by the result of the assessment or child protection tier designation may file an appeal.
2. A staff member of child protection services shall notify the subject in writing of the decision resulting from an assessment, including the child protection tier designation. The staff member of child protection services who notifies the subject of the decision resulting from the assessment shall complete an affidavit of mailing that becomes a part of the assessment record in the form and manner prescribed by the department.
3. Written appeal procedures are available from the department upon request.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; September 1, 1997; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5

75-03-18-03. Request for appeal to be in writing - Where filed - Content.

A request for an appeal must be in writing on forms developed and provided by the department. The subject shall submit the written request for an appeal and formal hearing to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

The written request must include:

1. A succinct statement by the subject as to why the subject disagrees with the decision;
2. All reasons or grounds the subject disagrees with must be included in a single request for appeal; and
3. A statement of the relief sought by the subject.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; September 1, 1997.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-04. Time for filing request for appeal.

An appeal may not be filed before the date of an assessment decision or child protection tier designation and must be received by the department within thirty days after the documented date of the subject notification of the decision in accordance with procedures in chapter 75-01-03. Notification is considered to have occurred three days after the date on the affidavit of mailing. A postmark date is not accepted as the received date.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; September 1, 1997; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5

75-03-18-05. Informal meeting.

This chapter shall be construed to encourage informal, mutually consensual meetings or discussions between the subject and the assessing agency. Such informal review will not suspend or extend the time for filing an appeal pursuant to section 75-03-18-04.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1,1996; July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-06. Request for formal hearing.

Repealed effective November 1, 1994.

75-03-18-07. Formal hearing.

The formal hearing must be conducted in substantial conformity with applicable provisions of chapter 75-01-03.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; January 1, 1996, amendments voided by the Administrative Rules Committee effective August 8, 1996; amended effective September 1, 1997.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-07.1. Treatment of witnesses.

1. The hearing must be conducted according to any fair treatment standards adopted by the legislative assembly or the supreme court for the protection of witnesses or children in court proceedings.
2. If any child is to be called as a witness during the appeal hearing, whether for deposition, discovery, or for the hearing, the office of administrative hearings may appoint a guardian ad litem for the child witness. If the child witness is the victim and the party calling the victim is the subject and the victim's parent or guardian, the office of administrative hearings shall appoint a guardian ad litem for the child victim. A guardian ad litem's involvement is considered to be assisting in an investigation or child protection assessment.

History: Effective January 1, 1996; January 1, 1996, amendments voided by the Administrative Rules Committee effective August 8, 1996; amended effective September 1, 1997; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-03, 50-25.1-05.4

75-03-18-08. Hearing decision.

Repealed effective November 1, 1994.

75-03-18-09. Probable cause finding not directly reviewable.

Repealed effective November 1, 1994.

75-03-18-10. Confidentiality.

1. Information furnished at any informal conference, grievance meeting, and formal hearing is confidential and subject to the provisions of North Dakota Century Code sections 50-06-15, 50-25.1-11, and 50-25.1-14.
2. The identity of a reporter of any incident of suspected abuse and neglect may not be disclosed at any informal conference or at any grievance meeting conducted under this chapter or chapter 75-03-18.1.

History: Effective September 1, 1990; amended effective November 1, 1994; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4, 50-06-15, 50-25.1-11, 50-25.1-14

75-03-18-11. Evidence.

1. Any privilege of communication between husband and wife or between any professional person and that person's patient or client, except between attorney and client or involving members of the clergy acting as spiritual advisers, does not constitute grounds for the exclusion of evidence during an assessment of reported suspected child abuse or neglect, or during an appeal under this chapter or under North Dakota Century Code chapter 28-32.

2. Any statement, relied upon by the department made by a child who is a suspected victim of a report of suspected child abuse or neglect or who is a witness to the suspected abuse or neglect of another child may be introduced into evidence.
3. Copies of any statements or any records sought to be entered into evidence shall be redacted to protect any statutory confidentiality requirements.

History: Effective November 1, 1994; amended effective January 1, 1996; January 1, 1996, amendeds voided by Administrative Rules Committee effective August 8, 1996; amended effective September 1, 1997.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-03, 50-25.1-05.4

75-03-18-12. Effect of appeal.

Neither a request for appeal under this chapter nor an appeal from that decision under North Dakota Century Code chapter 28-32 shall be construed to suspend the requirement to provide services during the time of the appeal until such time as a final decision overturning the case decision has been made and not appealed.

History: Effective November 1, 1994; amended effective January 1, 1996; July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-13. Effect of reversal of case decision or appeal.

If an assessment decision is reversed on appeal under this chapter or under North Dakota Century Code chapter 28-32, a notation of the fact that the finding was reversed must be added to the record and the department may not place the subject on the child abuse information index.

History: Effective November 1, 1994; amended effective January 1, 1996; April 1, 2022; April 1, 2024.

General Authority: NDCC 50-25.1-05.4, 50-25.1-05.5

Law Implemented: NDCC 50-25.1-05.4, 50-25.1-05.5