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| MEMORANDUM **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** |

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| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr. DFPS Commissioner** |
| SUBJECT: | **Agenda Item #\_\_: Recommendation to propose rule changes to 40 TAC, Chapter 700, Subchapter D relating to Child Protective Services Investigations in Schools** |
| DATE: | **April 22, 2016** |

## BACKGROUND AND PURPOSE

The Child Protective Services Division (CPS) proposes changes to Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter D, to amend rules concerning the process for investigating reports of child abuse and neglect by school personnel and volunteers that occur on school grounds, at events sponsored or approved by the school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity. The primary purpose is to comply with legislative changes from the most recent legislative session.

Senate Bill 206, the Department of Family and Protective Services' (DFPS) Sunset legislation from the 84th Legislature, 2015, amended Texas Family Code §261.406(b) regarding entities that must be notified when DFPS completes an investigation of alleged abuse or neglect of a child by school personnel or volunteers in a school setting. Prior law mandated that upon completion of a school investigation, DFPS must send a copy of the investigation report to the Texas Education Agency (TEA), the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director (unless the principal or director is alleged to have committed the abuse and neglect), to allow those officials to take appropriate action. The statute was amended to limit DFPS's duty to only providing notification of the completed report to TEA. The rationale for the change was that the notice requirement was unnecessarily burdensome for CPS caseworkers and that other provisions in the Family Code already contained more appropriate reporting provisions to ensure proper steps are taken to notify any entity within the school hierarchy as necessary to protect a child from potential harm. The entities other than TEA may still receive copies of the completed report upon request.

In addition to the proposed edit above, minor edits were made to update and "clean-up" the current rules.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| §700.401 | Amend | * The rule has been amended to clarify that Child Protective Services investigates abuse and neglect in a school setting as defined in rule § 700.402(a)(2). * Other non- substantive edits have been made, including updating the rule to a question and answer format and updating the name of the department to the Department of Family and Protective Services. |
| §700.402 | Amend | * The rule has been amended to: (1) clarify which terms and definitions only apply to school investigations and which terms and definitions apply to school investigations as well as investigations that are not conducted in a school setting; (2) clarify that school personnel and volunteers are persons who have access to children in a school setting and are providing services to or caring for the children; (3) clarify that a school setting for purposes of a Child Protective Services school investigation does not include school settings involving only children in facilities of the Texas Department of Aging and Disability Services and the Texas Department of State health Services when the facility contracts with the local school district to provide educational services and does not include school settings that are a part of childcare operations regulated by the Child Care Licensing division of the Texas Department of Family andProtective Services (DFPS); (4) add the definition of an alleged victim; and (5) update the definition of a reporter as the person who makes a report of child abuse or neglect to DFPS or a law enforcement agency . * Other non-substantive edits were made, including updating the rule to a question and answer format; deleting terms and definitions that are already defined in Subchapter E of this chapter; and reorganizing the structure of the rule. |
| §700.403 | Amend | * The definition for "reasonable physical discipline" has been deleted as it is already defined " in Subchapter E of this Chapter. * Subsection (b) was rewritten to clarify that any action that school personnel or volunteers take to avoid imminent harm to the child or others should not involve acts of unnecessary force or inappropriate use of restraints or seclusion. * A new subsection (c) was added to clarify that notwithstanding subsection (b) which concerns acts that are not considered abuse and neglect in a school setting, allegations that otherwise meet the definition of abuse or neglect will be investigated by the department. * Other non-substantive edits have been made, including updating the rule to a question and answer format and updating a citation in subsection (a). |
| §700.404 | Amend | Non-substantive edits have been made to this  rule including updating the rule to a question  and answer format, updating a citation in subsection (a)(1), and updating the  name of the department to the Department of  Family and Protective Services in subsection  (a)(6). |
| §700.405 | Amend | * The rule was updated to clarify that Child Protective Services is not the only division in the Department of Family and Protective Services that provides notice to law enforcement of a report of child abuse and neglect occurring in a school setting. * The rule was also updated to a question and answer format. |
| §700.406 | Amend | The following edits have been made to this rule:   * The rule was updated to a question and answer format; * The rule was updated to reflect that in addition to a Child Protective Services (CPS) supervisor, an Investigation Screener may also review intake reports and approve or change the initial priority and action recommended for the report; and * CPS was changed to the Department of Family and Protective Services (DFPS) to clarify that CPS is not the only division of DFPS that assigns priorities for investigations. |
| §700.407 | Amend | The rule was updated to a question and answer format. |
| §700.408 | Amend | Non-substantive edits have been made to this rule including updating the rule to a question and answer format, clarifying that investigative action and supervisor approval of an investigation must be completed within 30 *calendar* days and 10 *calendar* days respectively, adding a citation to rule § 700.507 in subsection (d) to clarify when an investigation may be closed administratively; and updating an incorrect citation in subsection (d). |
| §700.409 | Amend | * The rule has been amended to clarify the following: (1) interviews and examinations conducted in a school investigation must follow all applicable standards; and (2) appropriate school personnel must be notified when the investigator interviews and examines a child on school premises. * Other non-substantive edits have been made including updating the rule to a question and answer format and updating the name of the department to the Department of Family and Protective Services in subsection (a). |
| §700.410 | Amend | Non-substantive edits were made to the rule including updating the rule to a question and answer format. |
| §700.411 | Amend | * Subsection (a) of the rule has been updated to reflect that the Department of Family and Protective Services (DFPS) is only mandated to send a copy of the completed report of the investigation to the Texas Education Agency (TEA) and that DFPS will send a copy of the report to State Board for Education Certification, the president of the local school board or local governing body for the school, the superintendent of the school district, and the school principal only upon request. * A new subsection (b) was added to notify the entities other than TEA that they can find information on obtaining a redacted copy of the report from the DFPS public website. * New subsection (c) has been amended to clarify that when the overall investigation disposition is "reason-to-believe in an investigation in a school under the jurisdiction of the TEA, the report of the investigation must include information about the designated perpetrator's right to challenge the disposition through the Office of Consumer Affairs review process, in addition to an administrative review of the investigation findings. * New subsection (d) has been amended to clarify that after the completion of an investigation of a school not under the jurisdiction of the TEA, DFPS does not release the results of the investigation to persons having control over the designated perpetrator's access to children but instead follows the provisions in Subchapter F of Chapter 700 of this title (relating to Release Hearings) prior to releasing the results of the investigation. |
|  |  | * Other non-substantive edits have been made including (1) updating the rule to a question and answer format; (2) changing CPS to DFPS throughout the rule to clarify that CPS is not the only agency in DFPS that provides notification to school officials when a school investigation is closed; and (3) updating the department's name to the Department of Family and Protective Services in subsection (e). |
| §700.412 | Amend | Non-substantive edits have been made to this  rule including updating the rule to a question and answer format, updating a citation within the rule, and changing Child Protective Services (CPS) to the Department of Family and Protective Services (DFPS) to clarify that other divisions in DFPS are involved in notifying school and non-school entities when a school investigation is closed. |

## STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Department of Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The modifications to §700.409 is to implement Texas Family Code §261.303.

The modification to TAC §700.411 is to implement revised Texas Family Code §261.406(b).

## FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering this section.

(b) Public Costs and Benefits. For each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that the public will gain a better understanding of what constitutes abuse and neglect in a school setting and how DFPS investigates abuse and neglect in a school setting. In addition, the amendment to TAC §700.411, which will require DFPS to send a copy of the completed investigation report in a school investigation to TEA only rather than several other entities with the knowledge that the other entities already communicate with each other and still have the option of requesting the report, will allow caseworkers to spend more time on other pertinent issues. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business, does not impose new requirements on any business, and does not require the purchase of any new equipment or any increased staff time in order to comply.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for this rule. The agency is not required to complete a takings impact assessment regarding the proposed section(s).

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule change.

## STAKEHOLDER INPUT

The Department discussed the rule proposal with the Director of Educator Investigations at the Texas Education Agency during drafting. Additional stakeholder input will be obtained during the public comment period for the rules.

## RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

## ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.