February 22, 2016

 The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.401 - 700.412, concerning school investigations, in Chapter 700, Child Protective Services (CPS). The primary purpose of the revisions is to comply with legislative changes from the most recent legislative session. Senate Bill (SB) 206, enacted during the 84th Regular Session of the Texas Legislature, 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 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, minor edits were made to update and "clean-up" the current rules.

 The amendment to §700.401: (1) clarifies that CPS investigates abuse and neglect in a school setting as defined in §700.402(a)(2) of this title (relating to What do the terms used in this subchapter mean when Child Protective Services investigates reports of child abuse and neglect in a school?); (2) updates the rule to a question and answer format; and (3) updates the name of the department to the Department of Family and Protective Services.

 The amendment to §700.402: (1) clarifies 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) deletes terms and definitions that are already defined in Subchapter E of this chapter (relating to Intake, Investigation, and Assessment Investigations); (3) updates the definition of school personnel and volunteers to persons who have access to children in a school setting and are providing services to or caring for children (4) clarifies 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); (5) updates the definition of a reporter as the person who makes a report of child abuse or neglect to DFPS or a law enforcement agency; (6) adds the definition for alleged victim; (7) updates the rule to a question and answer format; and (8) reorganizes the structure of the rule.

 The amendment to §700.403: (1) deletes the definition of "reasonable physical discipline" as it is already defined in Subchapter E of this chapter; (2) rewrites subsection (b) 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; (3) adds a new subsection (c) 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; (4) updates the rule to a question and answer format; and (5) updates a citation in subsection (a).

 The amendment to §700.404: (1) updates the rule to a question and answer format; (2) updates a citation in subsection (a)(1); and (3) updates the name of the department to the Department of Family and Protective Services in subsection (a)(6).

 The amendment to §700.405: (1) updates the rule to a question and answer format; and (2) and clarifies 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 or neglect occurring in a school setting.

 The amendment to §700.406: (1) updates the rule to a question and answer format; (2) clarifies that in addition to a CPS supervisor, an Investigation Screener may also review intake reports and approve or change the initial priority and action recommended for the report; and (3) changes Child Protective Services (CPS) 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.

 The amendment to §700.407 updates the rule to a question and answer format.

 The amendment to §700.408: (1) updates the rule to a question and answer format; (2) clarifies that investigative action and supervisor approval of an investigation must be completed within 30 *calendar* days and 10 *calendar* days respectively; (3) adds a citation from rule §700.507 of this title (relating to Response to Allegations of Abuse or Neglect.) in subsection (d) to clarify when an investigation may be closed administratively; and (4) updates an incorrect citation in subsection (d).

 The amendment to §700.409: (1) clarifies that interviews and examinations conducted in a school investigation must follow all applicable standards; (2) clarifies that appropriate school personnel must be notified when the investigator interviews and examines a child on school premises; (3) updates the rule to a question and answer format; and (4) updates the name of the department to the Department of Family and Protective Services in subsection (a).

 The amendment to §700.410 are non-substantive and include updating the rule to a question and answer format.

 The amendment to §700.411: (1) updates the rule to clarify that 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; (2) adds new subsection (b) 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; (3) new subsection (c) clarifies that when the overall investigation disposition is "reason -to-believe in an investigation in a school under the jurisdiction of 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; (4) new subsection (d) clarifies that after the completion of an investigation of a school that is not under the jurisdiction of 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 this chapter (relating to Release Hearings) prior to releasing the results of the investigation; (5) changes Child Protective Services (CPS) to Department of Family and Protective Services (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; (6) updates the department's name to the Department of Family and Protective Services in subsection (e); and (7) updates the rule to a question and answer format.

 The amendment to §700.412: (1) updates the rule to a question and answer format; (2) updates a citation within the rule; and (3) changes Child Protective Services to 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.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

 Ms. Henderson also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that the public will have 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 §700.411, which requires 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 will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

 Ms. Henderson has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

 Questions about the content of the proposal may be directed to Sophia Karimjee at (512) 438-4358 in DFPS's Legal Division. Electronic comments may be submitted to Sophia Karimjee@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-540, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 700, Child Protective Services

Subchapter D, School Investigations

TAC Section Number(s) §§700.401- 700.412

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

 30 Days After Publication

 The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide 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 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 amendment to §700.409 implements Texas Family Code §261.303. The amendment to §700.411 implements revised Texas Family Code §261.406(b).

§700.401. **What is the purpose of Subchapter D of this chapter?** [Purpose of Investigation in School Setting]. The purpose of this subchapter is to define abuse and neglect of children by school personnel or volunteers in **a school setting as defined by 700.402(a)(2) of this title (relating to What do the terms used in this subchapter mean when Child Protective Services investigates reports of child abuse and neglect in a school?** [Definitions]**)**; [,public or private schools] and to describe procedures for its report, investigation, and review by **the** Child Protective Services **division** of the Texas Department of **Family and** Protective [and Regulatory] Services pursuant to [Chapter 261,]Texas Family Code, **Chapter 261;**[,] and to describe related procedures.

§700.402. **What do the terms used in this subchapter mean when Child Protective Services investigates reports of child abuse and neglect in a school?** [Definitions.]

[The terms used in this subchapter shall have the meanings assigned to those terms in Texas Family Code, Chapter 261, and in Subchapter E of this chapter, unless the context clearly indicates otherwise or the term is otherwise defined below:]

 **(a) The following terms and definitions apply only to school investigations:**

 **(1) School personnel and volunteers--Persons who have access to children in a school setting and are providing services to or caring for the children. School personnel include but are not limited to school employ­ees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.**

 **(2) School setting--The physical location of a child's school or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services. This does not include:**

 **(A) 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 education services; or**

 **(B) school settings that are a part of childcare operations regulated by the Child Care Licensing division of the Texas Department of Family and Protective Services (DFPS).**

 **(b) The following terms and definitions apply to all Child Protective Services (CPS) investigations:**

 (1) Alleged perpetrator--A person who is alleged or suspected of being responsible for the abuse or neglect of a child.

 **(2)** **Alleged victim--A child who is alleged to be the victim of abuse or neglect.**

 **(3)** [(2)] Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

 [(3) CPS--Child Protective Services, a program within the Texas Department of Family andProtective Services.]

 [(4) Designated perpetrator--A person who has been determined by a prepon­derance of evidence to have been responsible for abuse or neglect of a child in a school setting.]

 [(5) Designated victim--A child who has been determined, based on a preponderance of the evidence, to have been abused or neglected in a school setting.]

 **(4)** [(6)] Preponderance of evidence--Evidence which is of greater weight or more convinc­ing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

 [(7)Reason-to-believe]--A finding that an allegation of abuse or neglect against school personnel or volunteers in a school setting is supported by a preponderance of the evidence.]

 **(5)** [(8)]Reporter--An individual who **makes a**[, on his own initiative, makes an unsolic­ited] report to [the Texas Department of Family andProtective Services(DFPS)] **DFPS** or to a duly constituted law enforcement agency[,] alleging the abuse or neglect of a child. If more than one individual makes **a** [an unsolicited] report alleging abuse or neglect of the same child, all such individuals shall have the designation of reporter.

 [(9)Ruled-out--A finding by a preponderance of the evidence that an allegation of abuse or neglect did not occur or was not committed by the alleged perpetrator.]

 [(10)School personnel and volunteers--Persons providing services or caring for children at a public or private school under the jurisdiction of the Texas Education Agency (TEA) who have access to children in a school setting, or persons in a private school setting who have responsibility for the care, custody, or control of children in a school setting, including school employ­ees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.]

 [(11)School setting--The physical location of a child's school, or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services, and excluding school settings involving only children in facilities of the Texas Department of Mental Health and Mental Retardation (MHMR) when the facility contracts with the local school district to provide educational services, and excluding school settings involving only children in facilities regulated by the Texas Department of Family andProtective Services.]

 [(12) Unable to complete--A finding that CPS was not able to draw a conclusion regarding an investigation of an allegation of abuse or neglect against school personnel or volunteers in a school setting because the alleged victim:]

 [(A) could not be located to begin the investigation, or moved and could not be located to finish the investigation; or]

 [(B) was unwilling to cooperate with the investigation.]

 [(13) Unable to determine--A finding that an allegation of abuse or neglect can neither be supported nor ruled-out by a preponderance of the available evidence.]

 **(c) Terms used in this subchapter that are not defined in this subchapter shall have the meanings assigned to those terms in Texas Family Code, Chapter 261, and in Subchapter E of this chapter (relating to Intake, Investigation, and Assessment Investigations), unless the context clearly indicates otherwise.**

§700.403**. How does the Texas Department of Family and Protective Services define child abuse and neglect for purposes of a school investigation?** [Definition of Child Abuse and Neglect in School Investigations.]

 (a) For purposes of an investigation in a school setting, the terms abuse and neglect shall have the meaning assigned to those terms in the Texas Family Code[,] §261.001 (1) and (4), as those terms are further defined in **Subchapter E of this chapter (relating to Intake, Investigation, and Assessment Investigations)** [§700.501 of this title (relating to Terminology Used in Statutory Definitions of Child Abuse and Neglect and Person Responsible for a Child's Care, Custody, or Welfare)], unless the definition is clearly inapplicable to reports of abuse or neglect in school settings **or as otherwise provided in this section**.

 (b) Abuse and neglect in this context do not include **the following**:

 (1) (No change.)

 (2) actions that school personnel or volunteers at the child's school reasonably believe to be immediately necessary to avoid imminent harm to **the child** [self] or other individuals, if the actions**:**

 **(A)** are limited only to those actions reasonably believed to be necessary under the existing circumstances**; and**[. The actions]

 **(B)** do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, such as use of restraints or seclusion as a substitute for lack of staff; [or]

 (3) reasonable [physical] discipline. [Reasonable physical discipline is appropriate to the child's age and development and the reason for which the discipline is being administered and is without physical injuries that result in substantial harm or without genuine threat of substantial harm from physical injury to the child.]

 **(c) Notwithstanding subsection (b) of this section, if there are allegations in the report that otherwise meet the definition of "abuse" or "neglect" by school personnel in a school setting, those allegations will be investigated in accordance with this subchapter.**

§700.404. **When does the Texas Department of Family and Protective Services investigate a report of alleged abuse or neglect occurring in a school setting?** [Criteria for Accepting Reports and Conducting School Investigations.]

 (a) A report of alleged abuse or neglect occurring in a school setting will be assigned for investigation by Child Protective Services (CPS) if the following criteria are met:

 (1) the allegations must meet the definitions of abuse or neglect contained in §700.403 of this title (relating to **How does the Texas Department of Family and Protective Services define child abuse and neglect for purposes of a school investigation?** [Definition of Child Abuse or Neglect in School Investigations]);

 (2) - (5) (No change.)

 (6) the same allegations involving the school setting must not have already been investigated by the Texas Department of **Family** and Protective [and Regulatory] Services.

 (b) A report of alleged abuse and neglect which does not meet the criteria for investigation specified in this section shall be referred to an appropriate law enforcement entity or other investigating agency in accordance with Texas Family Code[,] §261.105.

 (c) (No change.)

§700.405. **Who must the Texas Department of Family and Protective Services notify when the agency receives a report of child abuse or neglect in a school setting?** [Notification to Law Enforcement Agencies of Reports of Abuse or Neglect in School Investigations.] T**he Texas Department of Family and Protective Services (DFPS)** [Child Protective Services (CPS)] must provide notification of all school-related reports of child abuse or neglect to the law enforcement entity with jurisdiction for criminal investigations in the geographical area where the alleged incident occurred, within the time frames set out in §700.506(1) of this title (relating to Notification of Law Enforcement Agencies).

§700.406. **What priorities and time frames for initiating school investigations apply?** [Priorities and Time Frames for Initiating School Investigations.] **The Texas Department of Family and Protective Services** [Child Protective Services (CPS)] shall assign a priority to all reports accepted for investigation, and shall initiate an investigation within the corresponding time frame, as specified in §700.505 of this title (relating to Priorities for Investigation and Assessment). Prior to initiating an investigation, a **Child Protective Services** [CPS] supervisor **or an Investigation Screener** must review the intake report and either approve or change the initial priority and the action recommended for the report.

§700.407. **Which school personnel must be notified prior to initiating a school investigation?** [Notification to School Principal of Impending School Investigation.] Prior to conducting an investigation under this subchapter, Child Protective Services (CPS) must notify the school principal (or the principal's supervisor if the school principal is an alleged perpetrator) of the fact that a report has been assigned for investigation, the nature of the allegations contained in the report, and the date and time when the investigator plans to visit the school campus to begin the investigation. The CPS investigator must request that the school principal (or the principal's supervisor) not alert the alleged perpetrator or others regarding the report until the investigator has had an opportunity to interview the alleged perpetrator.

§700.408. **How does Child Protective Services conduct a school investigation?** [Conducting the School Investigation.]

 (a) (No change.)

 (b) (No change.)

 (c) The CPS investigator must complete the investigation, reach a disposition as to each allegation made in the report, and submit the investigation report and findings to a supervisor for approval within 30 **calenda**r days after initiating the investigation, unless an extension of time is approved by the worker's supervisor due to extenuating circumstances. The CPS supervisor must approve the investigation or return it to the investigator for further action, within **10** [ten] **calendar** days of receiving the investigative report. If the tenth day falls on a weekend or state holiday, the supervisor has until the next working day to complete the required review.

 (d) Notwithstanding any other provision in this section, an investigation may be closed administratively **as provided by §700.507 of this title (relating to Response to Allegations of Abuse or Neglect.) or** at any point during the investigation[,] if it becomes apparent after initiating the investigation that the allegations made in the report do not, in fact, meet one or more of the criteria for investigation specified in §700.404 of this title (relating to **When does the Texas Department of Family and Protective Services investigate a report of alleged abuse or neglect occurring in a school setting?** [Criteria for Accepting Reports and Conducting School Investigations]). If a case is closed administratively, all allegations in the case are given the disposition of "administrative closure."

§700.409. **What procedures apply when Child Protective Services conducts an interview or examination during a school investigation?** [Conducting Interviews or Examinations.]

 (a) School officials or other persons related to the school setting may not interfere with an investigation of a report of child abuse or neglect conducted by the Texas Department of **Family and** Protective [and Regulatory] Services, pursuant to Texas Family Code §261.303, Interference with Investigation**;** [:] Court Order. Interviews and examinations in a school investigation may take place on or off the school premises, as deemed appropriate by the Child Protective Services (CPS) investigator, **pursuant to all applicable standards.** [provided the] **The CPS** investigator **must notify appropriate school personnel** [notifies the school principal (or that individual's supervisor in the event that the principal is the alleged perpetrator)] prior to conducting an interview or examination on school premises. CPS may request that school personnel or volunteers not be present during the interview or examination of an alleged victim, an alleged perpetrator, an adult or child witness, or any other person who may have information relevant to the investigation if the investigator determines that:

 (1) - (2) (No change.)

 (b) (No change.)

§700.410. **How does Child Protective Services make dispositions and assign roles in a case after completing the investigation?** [Dispositions in School Investigations.]

 (a) [Dispositions.] At the conclusion of the investigation, Child Protective Services (CPS) must assign an individual disposition to each allegation of abuse or neglect, as well as an overall disposition to the investigation.

 (b) [Assignment of allegation dispositions.] CPS uses the following allegation dispositions for investigations in school settings:

 (1) - (5) (No change.)

 (c) [Overall disposition.] The overall investigation disposition is the summary finding about the abuse or neglect that was investigated. The overall disposition is determined in the following manner:

 (1) - (5) (No change.)

 (d) [Overall role.] The overall role for the alleged perpetrator and alleged victim at the end of an investigation in the school setting is the summary finding about the person's involvement in the abuse or neglect that was investigated. An individual's overall role is determined as follows:

 (1) - (5) (No change.)

§700.411. **How does the Texas Department of Family and Protective Services provide notice to school officials when a school investigation is closed?** [Notification to School Officials of Findings in a School Investigation.]

 (a) After the Texas Department of **Family and** Protective [and Regulatory] Services **(DFPS)** has closed an investigation in a [public or private] school under the jurisdiction of the Texas Education Agency (TEA), **DFPS** [Child Protective Services (CPS)] is statutorily required to provide a report of the investigation, redacted to remove the identity of the reporter, to **TEA (Director of Education Investigations). On request, DFPS shall provide a redacted copy of the report to** the following:

 [(1) TEA (Division of Continuing Education, Services to Children, Youth and Families Unit);]

 **(1)** [(2)] State Board for Educator Certification;

 **(2)** [(3)] president of the local school board or local governing body for the school; [and]

 **(3) the superintendent of the school district; and**

 (4) (No change.)

 **(b) The four entities listed above can find information on obtaining a redacted copy of the report on the DFPS public website at** [**https://www.dfps.state.tx.us/policies/caserecord.asp**](https://www.dfps.state.tx.us/policies/caserecord.asp)**.**

 **(c)** [(b)] If the overall investigation disposition is "reason-to-believe[,]" **in an investigation in a school under the jurisdiction of TEA,** the report must include information about the designated perpetrator's right **to challenge the disposition through** an administrative review of the investigation findings (ARIF)**, and through the Office of Consumer Affairs (OCA) review process if the finding is upheld at the ARIF**. The report must also state that **DFPS** [CPS] will notify **TEA and any of** the above entities **that originally requested a copy of the report of the investigation** in the event that the dispositions are changed as a result of an ARIF **or other challenge.**

 **(d)** [(c)] **After the completion of an investigation of a school not under the jurisdiction of TEA,** [When the overall disposition in an investigation is "reason-to-believe" and the school is a private school not under the jurisdiction of TEA], **DFPS** [CPS] does not [automatically] release the results of the investigation to the entities listed in subsection (a) of this section**.**[, but must follow] **DFPS follows** the provisions in Subchapter F of Chapter 700 of this title (relating to Release Hearings) prior to releasing the results of the investigation to persons having control over the designated perpetrator's access to children. [When the overall disposition in an investigation is other than "reason-to-believe," CPS may release the findings to the appropriate school officials when the investigation is complete.]

 **(e)** [(d)] Notwithstanding any other provision in this section, notice need not be provided to a school official if a report of abuse or neglect is closed administratively prior to notification to any school official that a report was received by **DFPS** [the Texas Department of Protective and Regulatory Services].

§700.412. **How does the Texas Department of Family and Protective Services provide notice to non-school officials when a school investigation is closed?** [Notification of Findings to Non-School Officials in a School Investigation.]

In addition to the notification of findings required under §700.411 of this title (relating to **How does the Texas Department of Family and Protective Services provide notice to school officials when a school investigation is closed?** [Notification to School Officials of Findings in a School Investigation]), **the Texas Department of Family and Protective Services** [Child Protective Services (CPS)] must comply with the notification requirements contained in Texas Family Code, Chapter 261, and in §700.513 of this title (relating to Notification about Results).

 This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

 Issued in Austin, Texas, on .