

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

GUIDANCE DOCUMENT

“This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Nebraska Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.”

Pursuant to
Neb. Rev. Stat. § 84-901.03

EXPUNGEMENTS

The Division of Children and Family Services believes that the most important role we have in our work is keeping children safe. The Division wants to fairly and accurately represent information which could protect a child from future harm.

Requests for Expungement

A person whose name has been entered on the Central Registry may request that the entry be amended or expunged if they believe the entry is inaccurate or is being maintained in a way that is inconsistent with the Child Protection Act.

Pursuant to Neb. Rev. Stat. § 28-721, the Department may amend, expunge, or remove from the Central Registry any record upon good cause shown and upon notice to the subject of the report.

Individuals denied an expungement may request an appeal of the denial.

Expungement Review

1. The reviewer must find documentation of credible evidence that the abuse or neglect occurred, and the named perpetrator was the individual responsible.
2. The reviewer will also consider any information provided as to whether “Good Cause” exists to grant the expungement request.
3. If the expungement request is denied, the individual has the right to request an administrative hearing to have the information reviewed a second time by an administrative hearing officer.
 - a. Exhibits are prepared for the hearing using case narratives, photos of injuries, law enforcement reports, medical records and other information in the case file.
 - b. Exhibits are provided to:
 - i. The hearing officer;
 - ii. The individual requesting the expungement; and
 - iii. Any attorney representing him or her.
 - c. The CFS Specialist and others involved in the case may also be called to testify at the administrative hearing, with cross examination from the other parties. The hearing officer must be provided with credible evidence to show that it is more likely than not (preponderance standard of proof) that abuse or neglect occurred, and the individual whose name is on the Registry is the responsible party.
 - d. The hearing officer receives exhibits, reviews evidence and hears testimony before making a recommendation to the Director of the Division of Children and Families.
 - i. The Director makes the final decision about whether or not the individual’s name will be removed from the Registry.
 - ii. If the Director denies the expungement request, the individual has the right to appeal the decision to District Court.

EXPUNGEMENTS

Expungement “Good Cause” Reasons

There are a number of reasons an entry on Central Registry may be expunged for good cause. Some examples of good cause are:

1. No case file information can be located;
2. Documentation is not adequate to support the case status determination;
3. The entry was made when a different definition of abuse or neglect was in use;
4. There is not sufficient evidence to take the request to an administrative appeal hearing; or
5. Circumstances have changed and indicate that the issue that resulted in the Central Registry entry has been resolved. Relevant factors may include:
 - a. Seriousness of the incident;
 - b. Length of time since report;
 - c. Subject’s willingness to accept responsibility for the incident;
 - d. Subject’s follow through with recommended services;
 - e. Subject’s length of time he or she has been able to demonstrate acts of protection;
 - f. Evidence of changes made by the subject;
 - g. Extenuating circumstances that may have contributed to the incident;
 - h. Recommendation from the CFS Specialist and Supervisor; and
 - i. Whether or not the individual is viewed as a continuing danger to others.

Expungement for reasons #2, #3, #4 will be made after review of the adequacy of the documentation including documentation related to:

- a. The interview and/or observation of the alleged victim;
- b. The interview of the alleged perpetrator;
- c. Information from witnesses and collateral contacts; and
- d. Supporting evidence regarding injuries, such as descriptions, police photos and reports, medical reports, etc.

References:

Neb. Rev. Stat. § 28-721

Neb. Rev. Stat. § 28-723