

Memorandum

To: House Judiciary
From: Leslie Wisdom, DCF General Counsel
Re: Children's hearsay statements in other states
Date: February 13, 2018

We have reached out to other New England states to understand whether reliable hearsay evidence is admissible in administrative appeals of child abuse and neglect findings. All five of the states that we reached out to responded that each state utilizes reliable children's hearsay statements in this context. Each state approaches this topic in its own unique way and so a summary is provided below.

Maine

Maine's procedures for administrative hearings of appeals of child abuse and neglect substantiations provide:

Oral or written evidence of statements of any child are admissible without the testimony of the child, except that statements written by a child, made for purposes of the appeal, are not admissible. The hearing officer may rely on a child's statement to the extent of its probative value. The hearing officer shall not draw any negative inference from a party's inability to cross-examine the child about the child's statements.

Maine Department of Health and Human Services, Office of Child and Family Services, Procedure 10-148, Chapter 201, section XI(G)(2), page 15, available at

<https://www1.maine.gov/dhhs/ocfs/documents/Substantiation%20Rules-2016Update.pdf>.

Maine's administrative procedures also provide that only adult witnesses may testify at these hearings (see section XVI(B)(3)(b)). In addition, the Maine administrative procedures also provide:

c) The hearing officer may admit and consider oral or written evidence of statements made by any child that are offered by an adult witness. The hearing officer may rely on such evidence to the extent of its probative value. The only exception is statements by a child that were made solely for the purpose of the administrative hearing, such statements are not admissible.

g) The Maine rules of evidence are not strictly followed in administrative hearings. Generally, evidence shall be admitted if it is relevant and is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence which is irrelevant or unduly repetitious may be excluded.

Maine Department of Health and Human Services, Office of Child and Family Services, Procedure 10-148, Chapter 201, section XVI(B)(3), page 23, available at

<https://www1.maine.gov/dhhs/ocfs/documents/Substantiation%20Rules-2016Update.pdf>

Connecticut

The Connecticut policy on the conduct of child abuse/neglect substantiation hearings is very specific on the topic of the testimony from children who have been allegedly abused or neglected. This policy prohibits the testimony of these children in administrative substantiation hearings:





The abused or neglected minor child who is the subject of the substantiation shall not testify in a substantiation hearing.

A minor child who is not the subject of the substantiation may be called as a witness at the discretion of the hearing officer, after the party calling the child presents an offer of proof as to why the child's testimony is necessary and material to the case and not duplicative of other evidence.

Connecticut Department of Children and Families, Conduct of Substantiation Hearing Policy 22-12-7, available at <http://www.portal.ct.gov/DCF/Policy-Homepage/Chapter-22/Chapter-22>

In these hearings, Connecticut policy provides that "any oral or documentary evidence may be received" and that the hearing officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. *Id.*

Massachusetts

The Massachusetts Department of Children and Families administrative hearings do not follow the rules of evidence. Please see 110 C.M.R. §10-21, available at <http://www.mass.gov/eohhs/docs/dcf/regs/110cmr10.pdf>

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient and attorney-client privileges. Only evidence which is relevant and material may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

According to counsel in Massachusetts, the use of hearsay in these administrative hearings has been affirmed in Massachusetts through case law.

Rhode Island

In Rhode Island, reliable hearsay evidence may be introduced in an administrative hearing process. According to counsel in Rhode Island, the submission of reliable hearsay evidence is not dispositive of the factual issue and often times, additional testimony is also presented. In administrative appeal hearings on findings of child abuse or neglect, Rhode Island Department of Youth, Children and Families Policy 100.0055 (http://sos.ri.gov/documents/archives/regdocs/released/pdf/DCYF/DCYF_1053_.pdf) provides:

The rules of evidence as applied in the civil cases in the Courts of this State shall be followed, except as provided in R.I.G.L. §42-35-10. In addition, the Hearing Officer may in his or her discretion permit as evidence any statement by a child under the age of thirteen (13) years old about a prescribed act of abuse, neglect, or misconduct by a parent or guardian, if that statement was made spontaneously within a reasonable time after the act is alleged to have occurred, and if the statement was made to someone the child would normally turn to for sympathy, protection or advice.

New Hampshire

New Hampshire's Child Protection Act provides that in any hearing under this act, a court is not bound by the technical rules of evidence and may admit evidence which it considers relevant and material. New Hampshire R.S.A. §169-C:12, available at <http://www.gencourt.state.nh.us/rsa/html/xii/169-c/169-c-mrg.htm>

