

# Taking a Closer Look: Fair Hearings with the Massachusetts Department of Children and Families (DCF)

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*A guide to navigating the DCF fair hearing process for low-income litigants, survivors, self-represented individuals, and advocates.*

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## **Introduction to Fair Hearings**

A fair hearing at the Department of Children and Families (DCF) is a hearing before a neutral hearing officer, employed by DCF. You can have a fair hearing to appeal certain decisions that DCF made about you or your family that you disagree with.

**If you have a lawyer who is helping you with DCF, you should talk with your lawyer about your fair hearing.**

## **What is the Department of Children and Families (DCF) and what does it do?**

In Massachusetts, the Department of Children and Families (DCF) is the agency whose role is to keep children safe from abuse and neglect. It investigates reports of child abuse and neglect, works with families where the children are at home, removes children from their homes, and runs the state's foster care system. DCF makes many different kinds of decisions about children and families. For more information about DCF, see [Introduction to the Massachusetts Department of Children and Families \(DCF\)](#).

## **What do I do if I disagree with a decision that DCF has made about my family?**

**If you have a case in court with DCF**, you should have a lawyer, and it would be best to talk with that lawyer about what to do.

**If you do not have a court case with DCF**, you might still be able to appeal a DCF decision you do not like. To “appeal” something means that you are asking a new person to take a second look at a decision and determine whether it was the right decision. There are different ways to appeal a DCF decision depending on the kind of decision.

## **What decisions can I appeal in a fair hearing?**

There are many types of decisions that you can appeal through a fair hearing, but the rules about which decisions can be appealed are complicated. Make sure to read the regulations carefully (or ask for help in understanding them) at [110 CMR 10.06-10.07](#). If you do not understand the regulations, these [definitions of terms and abbreviations](#) might help.

The most common types of decisions that DCF reviews at a fair hearing are decisions that DCF makes about a family after someone makes a report of abuse or neglect of a child (also called a “[51A report](#)”). These decisions are the “support” and “substantiated concern” determinations.

Other decisions that DCF may review in a fair hearing include:

- The improper suspension, reduction, or termination of a service your family is receiving from DCF (with exceptions, see 110 CMR 10.06(3))
- If you are a biological parent: the change of a goal determination made at a Foster Care Review meeting (see 110 CMR 10.06(2) and 110 CMR 6.10(12))
- If you are seeking to become a foster or pre-adoptive parent: the Department's denial of your application to become a foster or pre-adoptive parent (with exceptions, see 110 CMR 10.06(7))
- If you are a foster parent: the Department's removal of a foster child from your home (with exceptions, see 110 CMR 10.06(4)(a)), or the termination or non-renewal of your foster care license (see 110 CMR 10.06(4)(b))
- If you are a pre-adoptive or adoptive parent: the denial of an application to become a pre-adoptive placement or the removal of a child from a pre-adoptive placement (see 110 CMR 10.06(5))
- If you are a young adult (ages 18-22) who was in the Department's custody at the age of 18: the Department's denial of your request for services (see 110 CMR 10.06(10))
- The listing of an individual's name on the Department's Registry of Alleged Perpetrators (with exceptions, see 110 CMR 10.06(12)(a))

**Note:** This is a limited list, and does not include every type of decision that you could potentially appeal through a fair hearing. If you do not see the decision that you would like to appeal on this list, it does not mean that you cannot have a fair hearing. Similarly, if you do see the decision you would like to appeal on the list, it does not guarantee that you can have a fair hearing. **If you are not sure if you can have a fair hearing, request one anyway!** DCF will then make a decision about whether you can have one. If you cannot have one, DCF will let you know, and you can try to [appeal the decision in some other way](#).

### **What if I want to challenge something that I cannot appeal through a fair hearing?**

You can file a grievance. For more information on the DCF grievance process, see [What can I do if I disagree with a DCF decision?](#)

### **How do I ask for a fair hearing?**

You can ask for a fair hearing by:

- filling out an online [Fair Hearing Request form](#) available at [www.mass.gov/fair-hearing-unit](http://www.mass.gov/fair-hearing-unit), or

- writing a letter to the fair hearing unit and sending it by mail, fax, or email. You also have to send a copy of the letter to the Area Office that made the decision.

[Appendix 1: Requesting a Fair Hearing](#) has detailed information about the steps to take when requesting a fair hearing. It also has an example of how to fill out the online Fair Hearing Request form.

### **What is my deadline to request a fair hearing?**

In most cases, you must send your request for a fair hearing within 30 calendar days of the date of the decision that you're appealing.

If DCF is required to give you a decision in writing, then the 30 days begins on the date you received the written notice of the decision. Once you have decided to file for a fair hearing, don't wait until the end of the 30 days. Start the process as soon as you can. If you did not get written notice of the decision, you should request a fair hearing and say in the request that you did not receive written notice.

### **What else do I need to do when I request the fair hearing?**

You should also request the information and documents from DCF that it used to make the decision. For support and substantiated concern decisions, this information and the documents include:

- the 51A and 51B reports, and
- the Risk Assessment tool that the DCF investigator filled out for you and your family.

For more information about 51A and 51B reports and the Risk Assessment Tool, see [“What are the terms and abbreviations that DCF uses in fair hearings?”](#)

You can also request:

- “dictation” (the running notes that DCF workers are required to take on their work in a case) and
- the family assessment if DCF has completed one.

The Risk Assessment tool can be difficult to get, but DCF **should** give it to you.

[Appendix 2: Requesting Documents to Prepare for a Fair Hearing](#) has step-by-step instructions and sample letters for requesting relevant documents, including the Risk Assessment tool completed on you and your family.

## **Once I request a fair hearing, will DCF review the decision on its own before the fair hearing?**

Sometimes, though it is relatively uncommon, the Area Director will review a case and reverse DCF's decision before a fair hearing ever happens. To reverse a decision, they need very obvious evidence that DCF made a mistake or missed something.

If you think you have strong evidence that DCF did not consider when it made the original decision, write a letter to the Area Director. Ask the Area Director to review your request, and ask them to consider that evidence. Explain more about the evidence and what happened in your letter. You can also ask for a meeting with the Area Director. [Appendix 3: Requesting Area Office Review of its Decision](#) has instructions for requesting a review and meeting. It also has a sample letter.

## **What are the terms and abbreviations that DCF uses in fair hearings?**

### **110 CMR 10**

These are the numbers of the Massachusetts regulations about DCF fair hearings. Regulations are rules that agencies have to follow. [You can access Massachusetts' regulations about DCF online.](#)

### **51A/51A report**

A report that someone makes to DCF saying that they think that a child may be abused or neglected. (It is called a "51A" because 51A is the section of the law that talks about these reports: Massachusetts General Law chapter 119, Section 51A, which is also written as M.G.L. c. 119, § 51A.)

### **51B/51B report**

A report that documents the investigation that happens after DCF "screens in" a report of abuse or neglect of a child (or a "51A report"). The investigator writes the 51B report during and after the investigation. It explains DCF's final decision to "support" (substantiate), find a "substantiated concern," or "unsupport" (unsubstantiate) the allegations. (It is called a "51B" because 51B is the section of the law that talks about these reports: Massachusetts General Law chapter 119, Section 51B, which is also written as M.G.L. c. 119, § 51B.)

### **Allegation**

A claim that someone has done something wrong.

### **APM**

DCF Area Program Manager

## **Appellant**

The person who has requested the fair hearing.

## **Contributing factors**

Things that DCF believes make it more likely that a child will experience neglect in the future. For example, DCF may consider domestic violence, substance misuse, significant trauma that affects caretaking, housing instability, gang involvement, and disabilities as contributing factors.

## **DCF**

Department of Children and Families

## **Mandated reporter**

A person who is required by law to tell DCF if they suspect a child has been abused or neglected. Some common examples are teachers, doctors, and police officers, but there are many other professionals who are required to report suspected abuse or neglect.

## **Response worker**

The DCF worker who investigates the allegation of abuse or neglect (also called a 51A report). They are sometimes called an investigator.

## **Risk Assessment tool**

A list of questions the DCF investigator answers about you and your family during an investigation. The questions are scored. Based on that score, families are identified as low, moderate, high, or very high risk. You often do not know that DCF has filled out the tool or the assigned score.

It's important to know that the Risk Assessment tool was not designed to predict whether a parent presents a risk of abusing or neglecting their child. It was designed to predict whether a parent is at risk of being reported to and investigated by DCF again.

## **Screen in/out**

DCF's decision about whether to investigate a report of abuse or neglect. "Screen out" means DCF will not investigate it. "Screen in" means it will.

## **Support/Unsupport/Substantiated Concern**

**Support:** DCF found enough information to decide that:



- the child's caretaker abused or neglected the child or is at high risk of abusing or neglecting the child and
- the caretaker's actions or inactions put the child in danger or at high risk for future harm.

**Unsupport:** DCF found that it does not have reasonable cause to believe a child has been abused or neglected by their caretaker(s).

**Substantiated concern:** DCF found enough information to decide that:

- the child's caretaker neglected the child,
- the caretaker's actions or inactions put the child at moderate risk for future harm, and
- that there are other "contributing factors" that make the caretaker more likely to neglect the child in the future.

## **The Fair Hearing**

### **Where does the fair hearing take place?**

DCF now schedules all fair hearings to be online. If you prefer an in-person hearing, you can request one, and DCF will schedule your hearing to be held in person. In-person fair hearings take place in a conference room at the Area Office that made the decision.

### **Who runs the fair hearing?**

Fair hearings are run by a Hearing Officer who reviews the DCF decision, rather than someone who was involved in making the decision you disagree with. While the Hearing Officer does work for DCF, the Hearing Officer's job is to take a fresh look at the situation.

### **Who will be at the fair hearing?**

Usually, the people at a fair hearing include:

- the Fair Hearing Officer,
- you,
- whoever you bring (see more on that below),
- the DCF worker who made the decision, and
- the DCF supervisor of the worker.

For appeal of a support or substantiated concern decision, usually, the DCF worker who conducted the investigation (who DCF calls a response worker) and that

worker's supervisor, who signed the 51B, attend. If you have an ongoing DCF worker (a worker who begins working with you after the investigation is completed), the ongoing worker may also attend but usually does not.

A lawyer for DCF usually does not attend. DCF does not usually have witnesses.

Sometimes, the worker who made the decision or the supervisor will not be present. If neither are present, another person from the Area Office may be there instead. It is likely that that person will not be familiar with your case. Remember, you are the expert!

### **What happens at the start of the fair hearing?**

The Hearing Officer will begin to record the hearing. The Hearing Officer will explain the process and have everyone introduce themselves. The Hearing Officer will then swear in anyone who will be providing information at the hearing. Swearing in means asking if the person agrees to tell the truth to the best of their ability.

The Hearing Officer will make sure everyone has all the documents that were submitted before the hearing. You can find out more about what documents you might want to submit in the section "[How do I share documents that support my side of the story?](#)" below.

### **Who will present information at the hearing and how do they present it?**

**First, the Hearing Officer asks DCF to present its information.** Either the DCF worker or supervisor (or the alternate DCF representative) will talk about the decision and the reason for it. In fair hearings about support or substantiated concern decisions, the worker or supervisor will most likely read through the 51A and the 51B reports. Sometimes, the worker or supervisor remembers things well; sometimes, they do not. The worker or supervisor may summarize or emphasize things in a way you do not agree with.

**After they are done, you can ask them questions.** DCF can have other witnesses, but they usually do not. Sometimes, a DCF ongoing worker may come to the hearing to talk about the information that they have.

**After that, it is your turn to present.** You can tell your story or read a statement if you have one. You can introduce any witnesses you brought with you, and ask them to read their statement or ask them any questions. DCF will be able to ask you or your witness questions, but they often do not. The Hearing Officer might ask you or your witnesses a few clarifying questions. At the hearing, you can also refer to documents you have shared with the Fair Hearing Office before the hearing. See the section "[How do I share documents that support my side of the story?](#)" below.

## **Presenting a “Case” at the Fair Hearing**

### **What do I have to show at a fair hearing for DCF to change its decision?**

In general, you have to show that DCF violated the law, its regulations, or policies. Or you have to show that DCF acted “without a reasonable basis or in an unreasonable manner in making its decision.” This is the language DCF uses to mean that you have to show that DCF did not have a good reason to make the decision they made, or that there was not a good reason for the way DCF acted in your case.

You also have to show that the DCF’s decision resulted in “prejudice” to you or your family. This means that the decision was harmful to you in some way or will be in the future. For certain decisions, like a support or substantiated concern finding, DCF knows that it is harmful to you so you do not have to show the harm.

### **What do I have to show at a fair hearing in order for DCF to change a support or substantiated concern decision against me?**

What you have to prove at a fair hearing in order to change a support of substantiated concern is more specific and complicated. DCF will talk first. DCF must show why it decided there is reasonable cause to believe you abused or neglected your child. When you go next, you have to show that the information DCF presented at the fair hearing, when put together with the information you present, does not show reasonable cause to believe that you abused or neglected your child.

Another way to persuade the fair hearing officer to change DCF’s support or substantiated concern decision is to show that DCF violated its regulations or policies, which resulted in the decision against you.

### **What is the best way for me to present information at the fair hearing?**

#### **Ask the DCF worker questions**

When DCF presents their side of the story at the beginning of the fair hearing, you can ask them questions when they are done. These questions could be about why they didn’t contact a collateral, why they made a certain assumption, why they talked with you only once, or information they left out that supports your side of the story. This is also a good opportunity to ask questions about the investigation if you are appealing a support or substantiated concern case. Try to have the questions written down. The questions can be pointed, but try to be respectful! If DCF does not have an answer to your question, you should move on to your next question. Don’t spend time arguing with this person.

## **Present your argument**

When it is your turn to present your side of the story at the fair hearing, you can present the argument you prepared in advance. See information on [Preparing for a Hearing](#) below. You can even read a statement if you have one. You can also talk about any issues that you don't think were talked about enough yet. If you're referencing the 51A or 51B reports, try to use page numbers so that the Hearing Officer can follow what you're saying. If the DCF representative is interrupting you to disagree, you can calmly ask them to stop, or ask the Hearing Officer to ask them to stop. If DCF or the Hearing Officer asks you any questions, do your best to answer honestly. If you do not know the answer to a question, don't guess the answer. Say that you do not know.

## **Try to stay calm**

Try your best to stay calm and relaxed during the hearing. It is stressful, and it's okay if you get emotional during it, but try not to directly express anger at the DCF representatives at the hearing, or the Hearing Officer, or get into conflicts with them. You can ask to take a break to get a drink of water or use the restroom. If you have any questions, you should ask the Hearing Officer.

Fair hearings can be a complicated process, but the information here can help you through it.

## **Will the fair hearing officer believe everything that DCF workers say?**

The hearing officer is supposed to be a neutral decider. But, it is important to note that as part of the hearing rules, the hearing officer will give a lot of weight to the opinions of DCF social workers.

## **What are some examples of situations where DCF violates its regulations and policy when it makes a support or substantiated concern decision?**

There are a few rules that DCF often breaks in the process of investigations. These include:

- Not contacting collaterals (other people like friends, teachers, doctors or other professionals who know something about the situation) or not following up with those people;
- Not investigating/resolving discrepancies and contradictions between accounts;

- Discriminating against someone for being disabled; for example, assuming that someone with a disability cannot adequately care for their child;
- Failing to provide reasonable accommodations that a person needs due to their disability;
- Failing to provide an interpreter when the DCF worker does not speak the first language of the person being interviewed;
- Showing a lack of understanding or respect for the culture which the person they are interviewing comes from; and
- Failing to understand the role that poverty plays in the lives of the families being investigated.

### **Can the hearing officer consider “hearsay” at a fair hearing? Or in other words, will the hearing officer let me tell them what someone told me?**

Unlike in a courtroom, a hearing officer can consider hearsay. That means that if a person not at the hearing said something to you, a DCF representative, or any witness, the hearing officer can consider what that person said in making a decision. The hearing officer decides how reliable the information is.

### **What should I do at the end of the fair hearing?**

It’s a good idea to ask the hearing officer to “leave the hearing record open” for about 10 days in case you find any more evidence after the hearing. If the record closes at the end of the hearing, the hearing officer will not accept any more documents you wish to submit. If the record stays open, you can email the additional documents to the fair hearing officer.

## **Preparing for a Hearing**

### **What can I do to get ready for a hearing about a support or substantiated concern decision?**

As soon as you have requested the hearing, you can:

- Make sure that you have the 51A report and the 51B report, [and other relevant parts](#) of your DCF record. If not, request them.
- Go through the 51A report, 51B report, and other documents.
- Identify people who can support your side of the story.
- Figure out your strategy, consider writing a statement, and practice it.
- Write down questions that you want to ask DCF at the fair hearing.
- Collect any evidence/documents you have to show the hearing officer.

2 weeks before the hearing, you can:

- Make sure you know the correct date and time for the hearing. Adjust your work schedule and arrange childcare as needed.
- Test out your phone or computer to make sure that you can get onto an online WebEx meeting. If you have asked for an in-person hearing, make sure that you have transportation to the Area Office.
- Request any accommodations that you need to access the hearing, including contacting a friend, family member, or supportive professional to see if they can attend with you to give you support.

A few days before the hearing, you should:

- Email or fax any documents (exhibits) you want to use at the fair hearing to the fair hearing office.
- Receive from the fair hearing office copies of any documents (exhibits) DCF intends to use at the fair hearing.

See [Appendix 4: Checklist to Prepare for Fair Hearing](#) for a detailed checklist.

### **How do I figure out a strategy for the fair hearing?**

Using the [above explanation](#) of what you have to prove during a fair hearing, think about what you want to argue to the hearing officer during the hearing. You should write your argument down and practice with a friend or family member to make it as clear as you can.

### **What should I look for when I go through the 51A and 51B reports?**

To prepare for your fair hearing, go through your 51A/B reports (or any other supporting documents relating to a DCF decision) very carefully to understand what DCF thinks and how DCF arrived at its decision. Identify what specific things DCF thinks you did – both right and wrong – and what evidence DCF used to come to its conclusion. On a separate piece of paper, take notes on the evidence DCF used and the evidence that DCF missed. To do this, you can use [Appendix 5: Worksheet for Preparing for a Fair Hearing about a Support or Substantiated Concern Decision](#) or create your own.

Remember to focus on what DCF thinks is important about your case and about the investigation. This may or may not be the same as what you think is important. Try to think about DCF's perspective when considering how you will argue that DCF should have made a different decision.

- As you're going through the 51A/B report, take note of any differences between what happened and what DCF wrote.

- Is there anybody DCF was supposed to talk to but didn't?
- Is there anything DCF misunderstood?
- Is there anything DCF brought up during the investigation that did not have to do with the 51A?
- Did DCF talk to someone untrustworthy to get to their decision? If so, why are they untrustworthy?
- Did DCF fail to acknowledge steps that you took to address any problem that they identified?

### **What do I say or ask during the fair hearing about the Risk Assessment tool that DCF filled out on me?**

For examples of questions you can ask and a statement you can make about the Risk Assessment tool at your fair hearing, see [Appendix 6: Challenging the Risk Assessment Tool at Your Fair Hearing](#).

### **How do I identify people who can help me tell my side of the story at the fair hearing?**

Were there other people there when the incident happened who could back up your version of the story? The people who will be most persuasive are professionals you have worked with or people (professional or non-professional) who witnessed specific events that are at issue in your hearing. Members of your household or family are not considered as persuasive since it is assumed they will support you.

Especially if there were no other witnesses to the specific incident at issue who could back up your side of the story in a fair hearing, it may be a good idea to ask people who might be able to talk about other positive characteristics of yours that may be relevant to the fair hearing. For example, if you feel that DCF has called a certain characteristic or parenting skill of yours into question, are there people who know you well as a parent and could tell DCF about that characteristic or skill? Again, professionals who have worked with your family in a professional setting are ideal for this.

If circumstances have changed at all between the investigation and the hearing, you can bring evidence of those changed circumstances. For example, if you moved out of an abusive household or were able to get more childcare resources, you can let the hearing officer know. You can identify people who can share information about those changes.



### How can witnesses and other people who support my side of the story help me at a fair hearing?

Either ask your witnesses to prepare a statement they can bring to the hearing, or work with them to prepare a series of questions you can ask them during the hearing.

**Example:** Bethany had a 51A supported against her, saying she was not supervising her children closely enough at a public event. She called her former shelter worker, who had seen her parenting her children every day while she was in the shelter. The shelter worker came to Bethany's fair hearing and talked about how attentive Bethany was to her children's supervision and safety.

### How do I share documents that support my side of the story?

You should try to share any documents that you want the fair hearing office to see before the hearing. You can do this by emailing them to the fair hearing office at [dcffairhearingunit@state.ma.us](mailto:dcffairhearingunit@state.ma.us). You can also share documents after the hearing, but you have to request that the record stay open for 10 days at the end of the hearing, and you cannot refer to them during the hearing.



## Appendix 1: Requesting a Fair Hearing

### ***If you do it online:***

- Fill out the [Fair Hearing Request form](#), which you can find at [www.mass.gov/fair-hearing-unit](http://www.mass.gov/fair-hearing-unit). If you did not get a written decision, say that in the additional information box. See the sample completed form below.
- Upload a copy or a photo/screenshot of the letter notifying you of the decision that you are appealing.
- Once you fill out all the required fields, you will be able to click on a button to “sign” the form and submit it.
- Save the copy of the completed request form, which should be automatically emailed to you.
- You may still need to send a copy of your fair hearing request to the Area Director of the office where the decision was made.

*Required timing: **WITHIN 30 DAYS OF DECISION.** You should not wait until the last minute to begin this process.*

### ***If you do not do it online:***

- Write a letter that includes your name, address, telephone number, dates of birth for the children, the decision being appealed, the office that made the decision, the decision date, and a request to review the decision.
- If you would like to get copies by email of the documents that DCF plans to use at the hearing, write on your request that you consent to email communication with the DCF fair hearing office. This can be important because otherwise, you may not get these documents before the hearing.
- Send the letter and a copy of the decision:

<b><i>By mail to:</i></b> Department of Children and Families Fair Hearing Unit 600 Washington St. Boston, MA 02110	<b><i>By fax to:</i></b> DCF Fair Hearing Unit 617-261-7428 <i>Include a cover sheet, and keep the fax confirmation sheet.</i>	<b><i>By email to:</i></b> <a href="mailto:dcffairhearingunit@state.ma.us">dcffairhearingunit@state.ma.us</a> <i>Put “Fair Hearing Request” in the subject line. Attach your fair hearing request letter to your email, or copy and paste its contents into the body of the email and attach a copy of the decision you’re appealing.</i>
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- Send a copy of your request to the DCF Area Office

<b><i>By mail or fax:</i></b> <i>Find the area office mailing address or fax here:</i> <a href="https://www.mass.gov/orgs/massachusetts-department-of-children-families/locations">https://www.mass.gov/orgs/massachusetts-department-of-children-families/locations</a> <i>Mail: Put your return address on the envelope. Fax: Use a cover sheet and save confirmation.</i>	<b><i>By email:</i></b> <i>Copy the area director on the email to the fair hearing unit. Email addresses are not available online.</i>
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**If you do not hear back from the fair hearing office within 1 week, contact them at (617) 748-2030 or [dcffairhearingunit@state.ma.us](mailto:dcffairhearingunit@state.ma.us)**

# Commonwealth of Massachusetts

## Department of Children and Families

### Fair Hearing Request Form

tel. 617-748-2030/fax 617-748-2062

Complete this online form to request a Fair Hearing. If you are an Attorney filing on behalf of the Appellant, please attach a Notice of Appearance to this request and provide your information below.

Please note that only certain decisions of the Department can be appealed to the Fair Hearing Unit, pursuant to Department regulation 110 CMR 10.06. Requests submitted during business hours shall be considered filed on that day. Requests submitted after business hours, including weekends or holidays, shall be considered filed the next business day. Pursuant to Departmental regulation 110 CMR 10.10(2) the Appellant will be notified within 20 business days of receipt of the request whether a hearing has been scheduled.

Your information (Please provide as much information as possible. Mandatory fields have a red asterisk)

Section 1: Appellants			
<b>Appellant 1 (person requesting appeal)</b>			
First Name: *	Jenny	Last Name: *	Smith
Address: *	123 Rock Road	City: *	Rocktown
State: *	Massachusetts ▼	Zip Code: *	00001
Primary Phone: *	617-000-0000		
Email: *	jsmith12345@gmail.com	Preferred Language: *	English ▼
		Interpreter:	Yes <input type="radio"/> No <input type="radio"/>

Are you requesting reasonable accommodations for your fair hearing? If so, please describe reason for accommodation request:

Due to my anxiety, I would like to invite a support person to my hearing.

For information for people with disabilities, click [here](#) for resources

<b>Appellant 2 (if applicable)</b>			
First Name:		Last Name:	
Address:		City:	
State:	Massachusetts ▼	Zip Code:	
Primary Phone:			
Email:		Preferred Language:	Select... ▼
		Interpreter:	Yes <input type="radio"/> No <input type="radio"/>

<b>Attorney or Authorized Representative (if applicable)</b>			
First Name:		Last Name:	
Address:		City:	
State: Massachusetts ▼	Zip Code:	Primary Phone:	
Email:	Preferred language: Select... ▼	Interpreter: Yes <input type="radio"/> No <input type="radio"/>	

**Section 2: Decision Being Appealed**

**If more than one decision is being appealed, please specify the date of decision for EACH decision being appealed:**

Decision appealed: * Supported allegation of abuse or neglect ▼	Date of decision: * 3/5/2023
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If "Supported allegation of abuse or neglect" is selected, please list the child(ren) involved:

Robert T. Smith and Jessica L. Smith

If "Other" is selected, please provide detail:

DCF office that made decision: Park Street Area Office ▼

**If the decision was made by an agency other than DCF, Please provide name and address.**

Non DCF Agency Name:

Non DCF Agency Address:

**Additional Decision appealed**

Decision appealed: Select... ▼	Date of decision:
--------------------------------	-------------------

If "Supported allegation of abuse or neglect" is selected, please list the child(ren) involved:

If "Other" is selected, please provide detail:

DCF office that made decision: Select... ▼

**If the decision was made by an agency other than DCF, please provide name and address.**

Non DCF Agency Name:



Non DCF Agency Address:

Please attach a copy of the notice(s) DCF sent you regarding the decision(s) you are appealing.

Click to Attach Notice 1

Click to Attach Notice 2

Click here to add the letter DCF sent you with the decision you are appealing. You can take and attach a photo of the decision.

I,  Jenny Smith  (please type your name), hereby submit a request to the Department of Children and Families for a Fair Hearing in order to appeal the above decision(s). I acknowledge that, in accordance with 110 CMR 10.08, this form must be submitted to both the Fair Hearing Office and the area office where the decision was made within 30 calendar days of the decision date or receipt of written notice. By submitting this request, I/we consent to receiving electronic documents from the Fair Hearing Office.

Additional Information:

If you did not receive the decision you are appealing in writing (usually in a letter), write that here.

\* Click here to sign

Once you have clicked and signed here, you will be able to submit this request and a copy of this request will be emailed automatically to the email address you provided.

## Appendix 2: Requesting Documents to Prepare for a Fair Hearing

- Write a letter requesting the documents that you need to prepare for your fair hearing. See below for a sample letter. You can fill out and save [a letter with your specific information here](#).
- Address the letter to the Area Director of the Area Office that made the decision you are appealing. You do not need to know the Area Director's name.

*Required timing: 30 DAYS BEFORE HEARING. You should make this request as soon as possible, because by the time you find out the date of your hearing, it could be less than 30 days away. You can and you SHOULD send this document request the same day you are requesting your fair hearing.*

- Mail or fax this request to the office handling your case. You can find the mailing address or fax number of the office handling your case at <https://www.mass.gov/orgs/massachusetts-department-of-children-families/locations>
- Make a copy or take a picture of any letter that you send.

### ***Requesting the Risk Assessment tool (Support and Substantiated Concern Cases)***

- Write a letter requesting the Risk Assessment tool completed on you and your family during DCF's investigation. You can fill out and [save a letter with your specific information here](#).
- Address the letter to the Hearing Officer assigned to your case (the name of the Hearing Officer will be included in DCF's response to your fair hearing request).
- Email, fax, or mail this request to the Fair Hearing Unit.

<b><i>By mail to:</i></b> Department of Children and Families Fair Hearing Unit 600 Washington St. Boston, MA 02110	<b><i>By fax to:</i></b> DCF Fair Hearing Unit 617-261-7428 <i>Include a cover sheet and keep the fax confirmation sheet.</i>	<b><i>By email to:</i></b> <a href="mailto:dcffairhearingunit@state.ma.us">dcffairhearingunit@state.ma.us</a> <i>Put "Request for Additional Discovery for Hearing Number: [Hearing Number]" in the subject line. Attach your additional discovery letter to your email or copy and paste its contents into the body of the email and attach a copy of the decision you're appealing.</i>
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- Make a copy or take a picture of any letter that you send.

Below is a sample letter asking for documents that you will need to prepare for your fair hearing. The parts highlighted in yellow and in brackets would need to be changed based on the person making the request.

[Date ] \_\_\_\_\_

**Attn: Area Director**

[Name of Area Office that made the decision you are appealing] Area Office

Department of Children and Families

[Address of Area Office] \_\_\_\_\_

that made the decision you are appealing]

**Re: Request for 51 A/B Documents**

Dear Director:

I have requested a Fair Hearing with the Fair Hearing Unit.

At this time, I am requesting a copy of all 51A and 51B reports relevant to the decisions I am appealing through the Fair Hearing, as well as any supplementary notes or documents collected in the process of or relevant to the investigation, pursuant to 110 CMR 10.14 (2), for the purpose of preparing for my Fair Hearing. I understand these will be provided within 30 business days of this request or ten calendar days prior to the hearing, whichever is earlier.

Please let me know if you have any questions or concerns.

Thank you, and please feel free to contact me by

☐ phone: \_\_\_\_\_

☐ other: \_\_\_\_\_

Best,

[Your Name] \_\_\_\_\_

Please send the documents to the following: ☐ email address: \_\_\_\_\_

☐ mailing address: \_\_\_\_\_  
\_\_\_\_\_



Below is a sample letter asking for documents that you will need to prepare for your fair hearing. This is how it would look when you have filled it out, except the parts in red would need to be changed to include your information.

6/2/23

**Attn: Area Director**

**Park Street** Area Office

Department of Children and Families

**50 B Park Street, Esquire Building**

**Dorchester, MA 02122**

**Re: Request for 51 A/B Documents**

Dear Director:

I have requested a Fair Hearing with the Fair Hearing Unit.

At this time, I am requesting a copy of all 51A and 51B reports relevant to the decisions I am appealing through the Fair Hearing, as well as any supplementary notes or documents collected in the process of or relevant to the investigation, pursuant to 110 CMR 10.14 (2), for the purpose of preparing for my Fair Hearing. I understand these will be provided within 30 business days of this request or ten calendar days prior to the hearing, whichever is earlier.

Please let me know if you have any questions or concerns.

Thank you, and please feel free to contact me by

☒ phone: **617-000-0000**

☐ other: \_\_\_\_\_

Best,

**Jenny Smith**

Please send the documents to the following: ☐ email address: \_\_\_\_\_

☐ mailing address:

**P.O. Box 123** \_\_\_\_\_

**Rocktown, MA 01111** \_\_\_\_\_

Below is a sample letter asking for the Risk Assessment tool that was filled out about you and your family during DCF's investigation. The parts highlighted in yellow and in brackets would need to be changed based on the person making the request.

Department of Children and Families

Attn: [Hearing Officer Name]

Fair Hearing Unit

600 Washington St.

Boston, MA 02111

[Date]

Re: Request for Additional Discovery for Hearing Number [Hearing Number]

Dear Officer [Last Name]:

I have requested a Fair Hearing. For the purpose of preparing for my Fair Hearing, I am requesting the Risk Assessment tool, completed by the Response Worker in my 51B Investigation.

Pursuant to 110 CMR 10.14 (1), I am entitled to review the whole record that was used by DCF when making its conclusion. According to 110 CMR 4.32, a Response Worker must conduct a risk assessment as part of their investigation. The Response worker's conclusion in a 51B Investigation is determined "based on the facts gathered during the response, the assessment of parental capacities, the results of the Risk Assessment tool, and clinical judgment." As the risk assessment is a part of the 51B record and was used in combination with other factors in the decision, I am challenging in this fair hearing, and since it is not DCF's practice to provide the risk assessment, I am requesting that the Fair Hearing Unit require that the [Area Office Name] Area Office provide it to me.

Please send the documents to the following:

☐ Email: \_\_\_\_\_

☐ Other: \_\_\_\_\_

Thank you, and please feel free to contact me if you have any questions or concerns by:

☐ Phone: \_\_\_\_\_

☐ Other: \_\_\_\_\_

Best,

[Your Name]



Below is a sample letter asking for the Risk Assessment tool that was filled out about you and your family during DCF's investigation. The parts in red would need to be changed based on the person making the request.

Department of Children and Families

Attn: John Doe

Fair Hearing Unit

600 Washington St.

Boston, MA 02111

6/2/23

Re: Request for Additional Discovery for Hearing Number 12345

Dear Officer Doe:

I have requested a Fair Hearing. For the purpose of preparing for my Fair Hearing, I am requesting the Risk Assessment tool, completed by the Response Worker in my 51B Investigation.

Pursuant to 110 CMR 10.14 (1), I am entitled to review the whole record that was used by DCF when making its conclusion. According to 110 CMR 4.32, a Response Worker must conduct a risk assessment as part of their investigation. The Response worker's conclusion in a 51B Investigation is determined "based on the facts gathered during the response, the assessment of parental capacities, the results of the Risk Assessment tool, and clinical judgment." As the risk assessment is a part of the 51B record and was used in combination with other factors in the decision, I am challenging in this fair hearing, and since it is not DCF's practice to provide the risk assessment, I am requesting that the Fair Hearing Unit require that the Park Street Area Office provide it to me.

Please send the documents to the following:

☒ Email: Jenny.Smith@gmail.com

☐ Other:

Thank you, and please feel free to contact me if you have any questions or concerns by:

☒ Phone: 617-000-0000

☐ Other:

Best,

Jenny Smith

### Appendix 3: Requesting Area Office Review of its Decision

Below is a sample letter to the Area Office that you can use to ask it to review a support decision

You can fill out and save [a letter with your specific information here](#).

More tips to consider if you decide to seek an Area Office review before your fair hearing:

- Make copies of anything you are sending before you send it because you will not be able to ask for it to be returned.
- Do not send evidence or information without explaining what it means and why it is important.
- Do not send evidence or information that could make you look bad to DCF. If you do not think you can do this, it is much better to wait until your fair hearing to present and explain this evidence.
- Remember to make copies or take a picture of the letter that you send requesting review.

Below is a sample letter asking for a review of a decision. The parts highlighted in yellow and in brackets would need to be changed based on the person making the request.

[Date]

**Attn: Area Director**

[Name of Area Office that made the decision you are appealing]

Department of Children and Families

[Address of Area Office that made the decision you are appealing]

**RE: Request for Review of [Type of decision you are appealing] Decision**

Dear Area Director:

At this time, I am requesting your review of the [type of decision you are appealing] decision about which I have requested a Fair Hearing.

I am attaching additional information and evidence below, which I believe was not considered, or was not considered adequately, by DCF when they made their decision.

- [List of evidence you are submitting. Be sure to explain each piece of evidence and include information on why it is important.]

• I am requesting a meeting with you to discuss this matter further.

Please let me know if you have any questions or concerns.

Thank you, and please feel free to contact me by

☐ phone: \_\_\_\_\_

☐ other: \_\_\_\_\_

Best,

[Your name]

---

Please send all mail to the following address:

Below is a sample letter asking for a review of a decision. This is how it would look when you have filled it out, except the parts in red would need to be changed to include your information.

6/2/18

**Attn: Area Director**  
**Park Street Area Office**  
Department of Children and Families  
**50 B Park Street, Esquire Building**  
**Dorchester, MA 02122**

**RE: Request for Review of Support Decision**

Dear Area Director:

At this time, I am requesting your review of the **support** decision about which I have requested a Fair Hearing.

I am attaching additional information and evidence below, which I believe was not considered, or was not considered adequately, by DCF when they made their decision.

- **A letter from my child's doctor stating that he was up to date medically. DCF misunderstood that my child had not been seen at the doctor in two years.**
- **A letter from my psychiatrist with information about the medications that I am prescribed. DCF concluded that I was taking medication that had not been prescribed to me.**

I am requesting a meeting with you to discuss this matter further.

Please let me know if you have any questions or concerns.

Thank you, and please feel free to contact me by

☒ phone: **617-111-2222**

☐ other: \_\_\_\_\_

Best,

**Jenny Smith**

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Please send all mail to the following address:

**P.O. Box 123**

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**Rocktown, MA 01111**

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## **Appendix 4: Checklist to Prepare For Fair Hearing**

### **As soon as you have requested the fair hearing:**

- .. Make sure you have the 51A and 51B reports and other relevant parts of your DCF record. If not, request them right away.
- .. Go through the 51A and 51B reports and other documents.
- .. Identify people who can support your side of the story.
- .. Figure out your strategy. Consider writing a statement that you can make at the hearing and practice it.
- .. Write down questions that you want to ask DCF at the fair hearing.
- .. Start collecting any evidence/documents that you have to show the fair hearing officer.

### **2 weeks before the hearing, you can:**

- .. Make sure you have the correct hearing date and time in your calendar!
- .. Adjust your work schedule as needed.
- .. Test out your phone or computer to make sure that you can get onto an online WebEx meeting. If you have asked for an in-person hearing, make sure that you have transportation to the Area Office.
- .. Arrange for childcare for that day. (If you are going in person, you'll need at least 4-5 hours to account for extra time and transportation. You cannot bring your children to the hearing, as nobody will be able to look after them.) If you are online, it will be very helpful to have someone else looking after your children, if possible, so you can focus on the hearing.
- .. Request any accommodations you need to access the hearing, whether in person or online. This can include physical accommodations and language interpreting. You may have made that request in your hearing request. If so, you may wish to confirm that they will give you the accommodations.
- .. Go through 51A/B reports and take notes, using the Worksheet in Appendix 5 or your own questions.
- .. Contact any witnesses to the incident in question. Ask if they would be willing to speak at your fair hearing or write an affidavit (signed statement of facts) about the incident.

- .. Contact any other people who would be helpful in vouching for you (providers, educators, or people who know you well as a caregiver).
- .. Ask your witnesses to prepare a statement, or work with them to prepare a series of questions you can ask them during the hearing.
- .. Contact a friend, family member, or supportive professional to see if they can attend with you for moral support.
- .. Continue collecting any evidence/documents you have to show the hearing officer.
- .. Be sure that you have your copy of the 51A/B reports.
- .. If applicable, collect evidence of changed circumstances (see above).
- .. Write down any questions you have to ask DCF or your witnesses during the hearing.
- .. Thoughtfully consider what you're going to say to DCF. You can write down a statement you want to make at the fair hearing if it is helpful to you.

**A few days before the fair hearing, you should:**

- .. Email or fax any documents ("exhibits") you want to use at the fair hearing to the fair hearing office. Email: [dcffairhearingunit@state.ma.us](mailto:dcffairhearingunit@state.ma.us) or fax: 617-261-7428.
- .. Receive copies of any documents (exhibits) DCF plans to use at the fair hearing from the fair hearing office.

**Note:** If you have submitted your fair hearing request online, DCF will send you documents by email. If you submitted your hearing request by fax or mail, DCF will send you documents by email only if you said in your request that you agree to receive electronic communications and provided an email address. Otherwise, DCF will send you documents by fax or mail. If you have not received the documents before the fair hearing, and you would like the documents emailed to you, contact the fair hearing office.

## Appendix 5: Worksheet for Preparing for a Fair Hearing about a Support or Substantiated Concern Decision

Instructions: Use your 51A/B reports to think about and answer the following questions. Simpler answers are better!

1. What did DCF say happened?

From page(s) #: \_\_\_\_\_ of 51A / 51B (circle one)

2. Who did DCF talk to about it?

From page(s) #: \_\_\_\_\_ of 51A / 51B (circle one)

a. Were these people good people for DCF to talk to about the incident?  
Why or why not?

From page(s) #: \_\_\_\_\_ of 51A / 51B (circle one)

b. Did these people give correct information? Why or why not?

From page(s) #: \_\_\_\_\_ of 51A / 51B (circle one)

3. What other evidence did DCF use to make its decision?

From page(s) #: \_\_\_\_\_ of 51A / 51B (circle one)

a. Do you agree with this evidence? Why or why not?

From page(s) #: \_\_\_\_\_ of 51A / 51B (circle one)

4. Who **didn't** DCF talk to who they should have?

From page(s) #:                      of 51A / 51B (circle one)

a. If DCF had talked to these other people, what would they have said?

From page(s) #:                      of 51A / 51B (circle one)

5. What could DCF have done differently during the investigation that would have helped them get to the correct answer?

From page(s) #:                      of 51A / 51B (circle one)

6. Do you have relevant evidence that DCF did not consider during the investigation?

From page(s) #:                      of 51A / 51B (circle one)

7. Do you think you were treated differently during the investigation because of your race, disability, or ethnicity? How?

From page(s) #:                      of 51A / 51B (circle one)

8. The definition of neglect is:

“failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. This definition is not dependent upon



location (i.e., neglect can occur while the child is in an out-of-home or in-home setting.)” *(See, 110 CMR 2.00)*

If DCF says you neglected your child/ren, does what DCF say you did fit this definition? If not, why not?

9. The definition of abuse is:

“the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. Abuse is not dependent upon location (i.e., abuse can occur while the child is in an out-of-home or in-home setting.)” *(See, 110 CMR 2.00)*

If DCF says you abused your child/ren, does what DCF say you did fit this definition? If not, why not.

## Appendix 6: Challenging the Risk Assessment Tool at Your Fair Hearing

### Background Information

DCF has regulations it must follow when it is investigating a report that you have abused or neglected your child. Workers must:

- fill out a Risk Assessment tool about your family, and
- determine whether you present a risk to your child.

**But, DCF workers should not use the Risk Assessment tool to determine whether you present a risk to your child.**

This is because DCF's Risk Assessment tool was not designed for this purpose. DCF's Risk Assessment tool was not designed to predict whether a parent or caregiver presents a risk of abusing or neglecting their child (See Training Guide for DCF's Risk Assessment Tool 2019, p. 81). It was designed to predict whether a parent or caregiver **is at risk of being reported to and investigated by DCF again** (See Training Guide for DCF's Risk Assessment Tool 2019, p. 85).

For this reason, if a DCF worker used the Risk Assessment tool to determine that you pose a future risk of harm to your child(ren), you can challenge it. You can say it is an invalid basis for supporting or making a substantiated concern finding on an abuse or neglect report against you.

These are the DCF regulations that require the DCF worker to make a finding that a parent or caretaker presents a risk to a child in order to support or make a substantiated concern finding that they abused or neglected a child:

Under DCF's regulations, 110 CMR 4.32, to make a **support decision**, DCF must determine:

1. "There is reasonable cause to believe a child(ren) was abused or neglected, or was or is at substantial risk of being abused or neglected; and
2. **The actions or inactions by the parent(s) or caregivers(s) place the child(ren) in danger or present substantial risk to the child(ren)'s safety or well-being**, or a person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking."

To make a **substantiated concern decision**, the same regulations state that DCF must determine:

1. "There is reasonable cause to believe that a child(ren) was neglected; and
2. **The actions or inactions by the parent(s) or caregiver(s) create a moderate risk**, and there is a presence of contributing factors that increase the likelihood of the child(ren) being neglected.

## Challenging the Risk Assessment Tool at the Fair Hearing

Use the questions below to help determine if the DCF investigator used the Risk Assessment Tool to determine the future risk of harm to your child(ren) in making the Support or Substantiated Concern decision.

### Questions to ask the DCF Investigator about the Risk Assessment Tool

- a. Did you use the Risk Assessment tool to determine the risk that I present of future harm to my child(ren)?
  - i. If the DCF Worker Responds, “No:” Ask the fair hearing officer not to consider the Risk Assessment tool when they make their fair hearing decision. It is irrelevant because the DCF worker did not use it.
  - ii. If the DCF Worker Responds, “Yes:” Consider reading and submitting the statement below to the fair hearing officer.

### Statement on Why the Risk Assessment Tool Should Not be Considered (Support Decision)

Under DCF’s regulations, 110 CMR 4.32, to make a support decision, DCF must determine:

1. “There is a reasonable cause to believe a child(ren) was abused or neglected or was or is at substantial risk of being abused or neglected; and
2. The actions or inactions by the parent(s) or caregivers(s) place the child(ren) in danger or present substantial risk to the child(ren)’s safety or well-being, or a person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking.”

This means that to make the support decision against me, DCF had to make a finding about whether I presented a future risk of harm to my child(ren). As they stated today, they used the Risk Assessment tool to do this. However, this is an inappropriate use of this tool.

The Risk Assessment tool was not designed to predict whether a parent presents a risk of abusing or neglecting their child (DCF’s Risk Assessment Tool Training Guide 2019, p. 81). It was designed to predict whether a parent is at risk of being reported to and investigated by DCF again (DCF’s Risk Assessment Tool Training Guide 2019, p. 85).

According to the developers of DCF's Risk Assessment tool in its training materials, *"the [Risk Assessment tool] cannot predict who will maltreat a child. That would take a crystal ball....What the risk tool can do is classify families according to their likelihood of future DCF investigation, therefore allowing workers to target resources to families at the highest risk for subsequent referral and investigative contact"* (SDM Training Guide 2019, 84).

The Risk Assessment tool was used to either predict my behavior as a caregiver or measure the risk of actual maltreatment when determining whether to support a report of abuse or neglect against me and my family. This is a misuse of the tool, as stated by its developers. Since the Risk Assessment tool was inappropriately used to determine future risk of harm and considered in making the support decision against me, it should not be considered.

### **Statement on Why the Risk Assessment Tool Should Not be Considered (Substantiated Concern Decision)**

Under DCF's regulations, 110 CMR 4.32, to make a substantiated concern decision, DCF must determine:

1. "There is reasonable cause to believe that a child(ren) was neglected; and
2. The actions or inactions by the parent(s) or caregiver(s) create a moderate risk, and there is a presence of contributing factors that increase the likelihood of the child(ren) being neglected.

This means that to make the substantiated concern decision against me, DCF had to make a finding on whether I presented a future risk of harm to my child(ren). As they stated today, they used the Risk Assessment tool to do this. However, this is an inappropriate use of this tool.

The Risk Assessment tool was not designed to predict whether a parent presents a risk of abusing or neglecting their child (DCF's Risk Assessment Tool Training Guide 2019, p. 81). It was designed to predict whether a parent is at risk of being reported to and investigated by DCF again (DCF's Risk Assessment Tool Training Guide 2019, p. 85).

According to the developers of DCF's Risk Assessment tool in its training materials, *"the [Risk Assessment tool] cannot predict who will maltreat a child. That would take a crystal ball....What the risk tool can do is classify families according to their likelihood*

*of future DCF investigation, therefore allowing workers to target resources to families at the highest risk for subsequent referral and investigative contact” (DCF’s Risk Assessment Tool Training Guide 2019, p. 84).*

The Risk Assessment tool was used to either predict my behavior as a caregiver or measure the risk of actual maltreatment when determining whether to open a case against me and my family. This is a misuse of the tool, as stated by its developers. Since the Risk Assessment tool was inappropriately used to determine future risk of harm and considered in making the substantiated concern decision against me, it should not be considered.