POLICIES AND PROCEDURES OF THE OFFICE OF INSPECTOR GENERAL

This operating procedure describes uniform policies and procedures for the Units within the Office of Inspector General.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

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Inspector General

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

Deleted Chapter 6, entitled “Civil Rights Section” and added new Chapter 6, entitled “Whistle-blower’s Act;” updated statutory requirements for complaints filed against IG staff; updated Whistle-blower procedures; and, added Accreditation Guidelines under Investigation’s Section.
# TABLE OF CONTENTS

## Chapter 1 – GENERAL
- Purpose and Scope ................................................................. 1-1
- Legal Authority ........................................................................ 1-2
- Mission .................................................................................... 1-3
- Organizational Make-up ......................................................... 1-4
- Use of Badges and Credentials .............................................. 1-5
- Training .................................................................................. 1-6
- Dress Code ............................................................................... 1-7
- News Media Inquiries ............................................................ 1-8
- Criminal Investigation ............................................................ 1-9
- Accreditation Management .................................................... 1-10

## Chapter 2 – STANDARDS OF CONDUCT
- Standards ................................................................................ 2-1
- Code of Ethics ......................................................................... 2-2
- Equal Employment Opportunity Policy .................................. 2-3
- Non-Discrimination Policy ...................................................... 2-4
- Non-Retaliation Policy .............................................................. 2-5
- Harassment Policy .................................................................. 2-6
- Americans With Disabilities Act ............................................. 2-7
- Requirements .......................................................................... 2-8
- Reporting Misconduct ............................................................ 2-9
- Reporting Suspected Abuse, Neglect, Abandonment or Exploitation ............................................. 2-10
- Attendance and Leave ............................................................. 2-11
- Travel ..................................................................................... 2-12
- Equipment ............................................................................... 2-13
- Duty Hours ............................................................................. 2-14

## Chapter 3 – INVESTIGATIONS SECTION
- Purpose .................................................................................... 3-1
- Scope ...................................................................................... 3-2
- Legal Authority ....................................................................... 3-3
- Processing Complaints ............................................................ 3-4
- Documenting .......................................................................... 3-5
- Control Numbers ..................................................................... 3-6
- The Investigative Process ....................................................... 3-7
- Types of Investigations ............................................................ 3-8
  - Investigation ......................................................................... 3-8a
  - Management Review ............................................................ 3-8b
- Whistle-blower Cases .............................................................. 3-9
- Writing Investigative Reports ............................................... 3-10
- Investigations and Complaint Tracking System ..................... 3-11
- Correspondence ..................................................................... 3-12
- Investigations ......................................................................... 3-13
- Notification of Testifying ....................................................... 3-14
- Prior to Testifying .................................................................... 3-15
- Release of Investigative Files or Documents ......................... 3-16
- Including Written Response in Final Investigation Report for Some Investigations ..................... 3-17
- Allegations of Misconduct by the Office of Inspector General or Its Employees ....................... 3-18
Chapter 6 – WHISTLE-BLOWER’S ACT

Purpose ........................................................................................................................................... 6-1
Filing for Whistle-blower Protection ............................................................................................. 6-2
Action Prohibited .......................................................................................................................... 6-3
Remedies ....................................................................................................................................... 6-4
Reporting Suspected Wrongdoing ............................................................................................... 6-5

Chapter 1

GENERAL

1-1. Purpose and Scope. This operating procedure establishes uniform policies and procedures for the Office of Inspector General (OSIG).

1-2. Legal Authority. Section (§) 20.055, Florida Statutes (F.S.) authorizes the OSIG to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. The duties and responsibilities of the OSIG include the following:

a. Provide direction for, supervise, and coordinate audits, investigations, case reviews, and management reviews relating to the programs and operations of the Department.

b. Conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

c. Keep the Department Secretary informed concerning fraud, waste, abuses, and deficiencies relating to programs and operations administered or financed by the Department. Recommend corrective action concerning fraud, waste, abuses, and deficiencies, and report on the progress made in implementing corrective action.

d. Other duties include: Receive and process complaints, public records requests pertaining to complaints and conduct reference checks based on the investigative database.

1-3. Mission – Enhancing Public Trust in Government. In carrying out the OSIG's investigative duties and responsibilities specified in §20.055, F.S., the Office of Investigations (OSII) shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. The OSII staff shall:

a. Receive complaints and coordinate all activities of the Department as required by the Whistle-blower's Act pursuant to §112.3187 ~ §112.31895, F.S.

b. Receive and consider complaints that do not meet the criteria for an investigation under the Whistle-blower’s Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as deemed appropriate. This includes complaints involving alleged violations of state or federal law or violation of rules, regulations, procedures, or contractual matters.

c. Report expeditiously to the Florida Department of Law Enforcement (FDLE) or other law enforcement agencies, as appropriate, when there are reasonable grounds to believe a violation of criminal law has occurred.

d. Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the OSIG. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

e. Submit final reports of investigation timely to the Department Secretary and delegated authorities, except for Whistle-blower’s Act investigations, which shall be conducted and reported pursuant to §112.3187 ~ §112.31895, F.S.
1-4. **Organizational Makeup.** The Office of Inspector General is divided into three sections: Investigations, Audit and Appeal Hearings.

   a. **Investigations.** The Chief of Investigations (COI) supervises the OSII section which consists of Operations Center (OC) at Headquarters (also known as the central office) and four Regional Investigation offices (Tallahassee, Orlando, Tampa and Ft. Lauderdale). A Regional Investigator Supervisor (RIS) supervises each region office and reports directly to the COI at the discretion of the IG and the COI.

   b. **Audit.** Director of Audit supervises the OSIA section located at headquarters (Tallahassee).

   c. **Appeal Hearings.** The Chief of Appeal Hearings supervises Hearing Officers at headquarters (Tallahassee) and at regional offices.

1-5. **Use of Badges and Credentials.**

   a. The Department shall issue credentials containing a photograph identification card to each individual who is officially employed in the Department’s Inspector General’s office. These credentials will be used to gain access to Department buildings, all restricted areas within the Department, and for identification purposes while individuals are performing the official duties of the position. The credentials will not be used for any other purpose. The credentials are not to be defaced, modified or reproduced. Staff are individually responsible for safeguarding the credentials issued to them.

   b. Badges are issued to investigators to facilitate investigative work by placing emphasis on the nature of the Inspector General’s office and by adding a professional style to the initial contact between the investigator and the Department, other law enforcement and investigatory agencies, contract providers, and the public. If the badge and credentials are not properly used, these purposes will be defeated at the outset. The following procedures shall be strictly followed in the use of badges:

      (1) Badges are to be displayed, **ONLY** upon request, for introduction to a person with whom he/she has OFFICIAL BUSINESS to transact. When displaying the badge, the investigator shall state his/her name, position as an investigator with the Department’s Inspector General’s office, and the purpose of the contact. In some cases, the success or failure of the investigator’s endeavor will depend largely on the initial introduction. It should be accomplished in a quiet, polite, and professional manner.

      (2) Abuse of the badge will be grounds for immediate disciplinary action. Stated briefly, “abuse” means the use of the badge for personal gain in a frivolous manner.

      (3) If an investigator should lose his/her badge, a report of the loss and related circumstance is to be submitted immediately to the Inspector General through the Chief of Investigations.

1-6. **Training.** It is the responsibility of each supervisor to ensure that all subordinates attend mandatory training for Department employees as required by the Department.

1-7. **Dress Code.** All personnel are expected to maintain a standard of personal grooming and dress consistent with the prevailing policy or professional business norm. Dress-down days at a Department facility housing OSII personnel may be observed by compliance with the dress code in effect at that facility. If a business meeting is scheduled on a dress-down day, the dress-down day will not be observed.

1-8. **News Media Inquiries.** Unless the IG delegates the authority, staff are not agree to an interview by the news media or otherwise release information or materials to the news media. If contacted by a news media representative, staff members must inform the representative that all releases are handled
by the Office of Communications (Headquarters) and provide the telephone number to the representative.

1-9. Criminal Investigation. To the extent statutory guidelines permit, information will be shared with law enforcement during the course of the investigation.

1-10. Accreditation Management. Accreditation Management is management system and orientation program that provides for the administration, maintenance, and follow-up of the investigation accreditation process. All members of the investigative unit will be familiar with the accreditation process.

a. Responsibilities. The Accreditation Manager is empowered with functional staff authority and has direct access to the COI, Supervisors, Managers, Investigators, and all other members whose expertise or authority is needed for the successful operation of the accreditation process.

   (1) Manual. Each staff member under the Investigations unit will be provided an Accreditation Guideline Manual. It will be the responsibility of the COI to periodically review the manual and submit recommended changes to the Accreditation Manager.

   (2) Continued Compliance. It is the responsibility of the COI to ensure continued compliance with all standards.

   (3) Proof of Compliance. Members of the investigations unit will provide proofs of compliance when requested by the Accreditation Manager. The specific nature of the proof of compliance needed is defined by the Accreditation Manager in accordance with applicable accreditation standards.

b. Accreditation Familiarization. Orientation to the accreditation process is provided to all investigation members.

   (1) New Members. Each new staff member will receive accreditation training during their introductory period. The Accreditation Manager or his/her designee will provide the training to include:

   (a) History and background of accreditation;

   (b) Goals and objectives;

   (c) Involvement of and impact upon the department;

   (d) Advantages of attaining accreditation; and,

   (e) The actual accreditation process.

   (2) Investigations Staff. All members will receive familiarization associated with reaccreditation through memos and updates during both the self-assessment and the on-site review.
Chapter 2

STANDARDS OF CONDUCT

2-1. Standards. The OSIG staff shall maintain the highest standards of professional and ethical behavior at all times while representing the Department. The standards contained herein shall be supplemental to those specified in the Florida Administrative Code, CFOP 60-55, Chapter 1, “Standards of Conduct and Standards for Disciplinary Action for Department Employees,” and pamphlet CFP 60-1, “Employee Handbook.” The standards listed below shall be considered as examples and are not an inclusive listing. Violations may result in corrective or disciplinary action. Staff shall:

   a. Exercise honesty, integrity, objectivity, and diligence in the performance of their duties and responsibilities;

   b. Exhibit loyalty in all matters pertaining to the affairs of the State, the Department, and the OSIG;

   c. Not knowingly be a party to any conflict of interest or illegal or improper activity;

   d. Not accept anything of value (as defined in CFOP 60-5, Chapter 5, “Code of Ethics for Public Officers and Employees”) which would impair or be perceived as impairing professional judgment in the performance of assigned duties; and,

   e. Inform their supervisor within 24-hours if they are arrested, receive notification of any action that could result in criminal prosecution, or are identified as a subject in an abuse report (in accordance with the January 29, 1999, directive from the Director for Human Resources to Headquarters Employees entitled “Central Office Requirements for Reporting Arrests and Allegations of Criminal Activity;” CFOP 215-6, “Incident Reporting and Client Risk Prevention;” and pamphlet CFP 60-1, Chapter 4, “General Policies”).

2-2. Code of Ethics. The Code of Ethics for public officers and employees serves to promote and protect the integrity of government by presenting restrictions against conflicts of interest, as well as establishing a means of disclosure for specified financial interest by public officials. It is incumbent upon the OSIG staff to become knowledgeable concerning their personal responsibility in these areas. Each employee should become familiar with the contents of §112.311 ~ §112.326, F.S., entitled “Code of Ethics for Public Officers and Employees,” and CFOP 60-5, Chapter 5, “Code of Ethics for Public Officers and Employees.”

2-3. Equal Employment Opportunity Policy. The Department and OSIG assures each applicant and employee Equal Employment Opportunity without regard to age, race, color, sex, religion, national origin, political opinions or affiliations, marital status, or disability, except when such requirement constitutes a bona-fide occupational qualification necessary to perform the tasks associated with the position.

2-4. Non-Discrimination Policy. No person shall, on the basis of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be subjected to unlawful discrimination.

2-5. Non-Retaliation Policy. No person shall be retaliated against, harassed, intimidated, threatened, coerced or discriminated against for making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing or for opposing alleged unlawful discriminatory practices prohibited by federal laws.
2-6. **Harassment Policy.** Harassment based on sex, race, religion, national origin, age, disability, marital status, or color will not be tolerated.

2-7. **Americans with Disabilities Act (ADA).** People with disabilities are afforded the same access to programs, services, and employment provided to all citizens. Staff are to ensure all meetings, conferences, hearings, training, interviews, eligibility determinations, programs, services, and activities are held in facilities that are accessible.

2-8. **Requirements.** All OSIG staff shall:

   a. Treat customers, the public and staff with courtesy, respect and dignity, and present a positive image.

   b. Keep their supervisor fully informed of their whereabouts, activities, pertinent issues, upcoming events and potential problems.

   c. Demonstrate effective oral and written communication skills in daily work.

   d. Support the unit, organization, and Department, and work with others in an effort to accomplish the goals of the unit, organization, and Department.

   e. Adhere to established safety procedures and practices in the work area.

2-9. **Reporting Misconduct.** OSIG staff who have reason to believe that criminal misconduct or a violation of the Code of Ethics may have been committed by another Department employee, a former Department employee, or any other individual whose acts might affect the Department, shall report this knowledge to the COI through the respective RIS. A written complaint on an OSIG staff member shall be made as follows:

   a. A written complaint involving OSIG personnel shall be submitted to the COI or directly to the IG in addition to the Department’s Secretary and to the Governor’s Chief Inspector General.

   b. A written complaint involving the COI shall be reported to the IG, the Department’s Secretary and to the Governor’s Chief Inspector General.

   c. A written complaint involving the IG shall be submitted to the Department’s Secretary and the Governor’s Chief Inspector General.

2-10. **Reporting Suspected Abuse, Neglect, Abandonment, or Exploitation.** All OSIG staff are mandated by §39.201, F.S. to report suspected abuse, neglect, abandonment, or exploitation to the Florida Abuse Hotline (FAH). This includes hearsay information the staff member believes has not been or will not be reported to the FAH.

2-11. **Attendance and Leave.** Staff shall request leave for any anticipated absence to their respective supervisors with as much notice as possible prior to taking leave. Requests for sick leave will be approved in accordance with current personnel rules and operating procedures.

2-12. **Travel.** To obtain reimbursement for official travel, staff will follow the directions contained in CFOP 40-1, “Official Travel of DCF Employees and Non-Employees.” This includes maintaining Vicinity/Map Mileage Log and other forms in accordance with Department rules and policies. The original Vicinity/Map Mileage Log will be maintained by the traveler or as the supervisor designates.

2-13. **Equipment.** Staff shall be responsible for pagers, cell phones, laptop computers, and all other Department equipment issued to them. Department equipment shall be maintained in proper working
order and used only for its intended purpose in accordance with established procedures. (Reference CFP 60-1, “Employee’s Handbook,” CFOP 50-4, “Computer Software Policy,” CFOP 50-13, “Internet/Intranet Policy,” CFOP 70-6 “Unauthorized Use of State Telephones, State Owned or Leased Cellular Telephones, State Telephone Credit Cards, and Third Party Billing,” CFOP 80-2 “Property Management,” etc.). Staff shall secure and care for all Department equipment issued to them and protect the equipment from abuse, damage, neglect, or loss. Equipment that becomes damaged or lost will be reported immediately to their Chief/Director of their respective section or the IG.

2-14. Duty Hours. Staff will submit his/her regularly scheduled work hours to the appropriate supervisor. Lunch periods and breaks will be in accordance with the Employee Handbook. Staff are expected to adhere to the approved schedule, unless a change is approved by their supervisor, and to follow Department policies regarding the use of leave.

Chapter 3

INVESTIGATIONS SECTION

3-1. Purpose. This operating procedure establishes uniform policies and procedures for the Investigations Unit (OSII), Office of the Inspector General (OSIG), Department of Children and Families (Department).

3-2. Scope.

   a. Each investigator represents the Inspector General (IG) and has been delegated the full authority by the Department Secretary to conduct independent investigations in compliance with the policies and procedures contained herein, to enter facilities, and to secure and review all records, data, and other information of the Department. Investigators are not law enforcement officers, do not have arrest or search powers, and cannot conduct custodial interviews. Investigators are not involved in the administering of disciplinary action that is based upon the findings of Inspector General investigations.

   b. The Regional Investigative Supervisor (RIS) and the Chief of Investigations (COI), with the concurrence of the IG, will recommend the hiring and termination of staff in compliance with CFOP 60-25, Chapter 1, “Recruitment and Selection” and CFOP 60-55, Chapter 1, “Standards of Conduct and Standards for Disciplinary Action for Department Employees.”

3-3. Legal Authority. Pursuant to Section 20.055(6), Florida Statutes, the IG shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. In carrying out the investigative duties and responsibilities, the IG shall:

   a. Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the IG or the IG’s office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

   b. Receive complaints and coordinate all activities of the Department as required by the Whistle-blower’s Act pursuant to Sections 112.3187-112.31895, F.S. Consider the complaints, which do not meet the criteria for an investigation under the Whistle-blower’s Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the IG deems appropriate.

   c. Report expeditiously to the Florida Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the IG has reasonable grounds to believe there has been a violation of criminal law.
3-4. **Processing Complaints.** Complainants are generally persons who have a personal interest in the matter they are reporting and are to be treated with respect and dignity at all times.

   a. Each complaint received in the OSIG is reviewed for investigative need and tracked to completion. Allegations within each complaint are screened to determine whether the facts suggest possible misconduct by a Department or contractor employee. Complaints that represent management issues or concerns that will be resolved through management intervention will be referred to the appropriate Department or office, such as circuit administration, other Department managers, or other state agencies for investigation or review.

   b. Allegations of significant waste, fraud, abuse, employee misconduct, malfeasance, or misfeasance may be assigned for investigation.

   c. Complaints and requests for investigations are received via telephone, letters, faxes, emails, and in person. Requests come from a variety of sources such as:

      (1) The Governor’s Chief Inspector General and other state Offices of Inspectors General;

      (2) Legislators;

      (3) The Department’s Secretary, managers, administrators, and employees;

      (4) State Hotlines;

      (5) Department clients; or,

      (6) The public.

   d. When feasible, the complainant should be thoroughly interviewed to obtain all available and relevant information.

   e. All complaints within the Department’s IG’s jurisdiction will be reviewed at the beginning of the complaint process for possible Whistle-blower status. If Whistle-blower protection is requested on behalf of the complainant, a Whistle-blower form will be completed in accordance with Chapter 112, F.S., and sent to the Governor’s Chief Inspector General’s office. Designation as a Whistle-blower ensures that the complainant’s identity is protected when reporting violations of federal, state, or local laws, rules, or regulations that create and present substantial and specific danger to the public’s health, safety, or welfare and includes acts of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. The Governor’s Chief Inspector General makes the final determination regarding granting or denying Whistle-blower status.

   f. All responses to Management Inquiries will be assessed for sufficiency to assure that resolution or correction has occurred. If the response adequately addresses the allegations, the complaint is closed and the complainant is advised of the outcome to the extent confidentiality guidelines permit. If a response does not adequately address the allegation(s), the responding entity will be asked to respond again until the allegation(s) is addressed satisfactorily. If at any time a complaint response suggests that further investigation is necessary, the complaint is referred to the appropriate IG regional office for full investigation. When deemed necessary, allegations regarding policy violations or inappropriate application of Department policies may be referred to the appropriate policy unit for expert consultation.

   g. Generally, the IG does not investigate allegations regarding contract employees where the allegation does not directly involve a violation of state rule or state statute of the provider’s contractual
Staff may accept such complaints and recommend that the matter be referred to the appropriate office, agency, or provider for further handling. (See CFOP 180-4 for the types of incidents and allegations that require mandatory reporting.)

3-5. **Documenting.** A complaint received by this office shall be documented in the Investigations and Complaint Management System (ICMS).

3-6. **Control Numbers.** A sequential control number for each complaint is automatically assigned in the ICMS.

3-7. **The Investigative Process.** IG staff will conduct investigations within timeframes established by the COI and IG. This includes:

   a. Reviewing records, contracts, and other source documents for accuracy.
   
   b. Interviewing witnesses.
   
   
   d. Preparing memos and written communication, as required.
   
   e. Serving as liaison with local law enforcement.
   
   f. Providing testimony, as required.
   
   g. Briefing managers on investigative matters.
   
   h. Prioritizing assigned investigations, as appropriate.
   
   i. Maintaining case management and tracking records thoroughly, timely, and consistently.
   
   j. Adhering to the Whistle-blower statutes and complying with confidentiality requirements.
   
   k. Serving as members of investigative teams, committees, work-groups, and task forces, as assigned.
   
   l. Conducting IG presentations to Department and provider employees.

3-8. **Types of Investigations.** The IG may conduct an investigation during which all leads are comprehensively addressed and followed. Management reviews may be conducted when the office receives multiple or serious allegations suggesting that management is not addressing internal problems or that a systemic problem exists.

   a. **Investigation.** Complaints that may lead to an investigation are received directly from complainants, outside agencies, or intra-Department referrals. Allegations that may warrant an IG investigation include the following:

      (1) Allegations of suspected or confirmed breaches of confidentiality by a state employee or contractor employee unless inadvertent and self-reported.

      (2) Allegations of falsification of official records, not including minor leave discrepancies or errors. Alleged falsification of client records or travel vouchers by a Department employee requires some investigation by OSII to determine if there is sufficient reason to suspect that criminal law has
been violated. If during the investigation, information is obtained that constitutes reasonable grounds to believe there has been a violation of criminal law, a law enforcement agency will be notified.

3. Allegations of creating false or fictitious client files.

4. Allegations of misuse of position, employees, equipment, or supplies for personal gain or profit.

5. Allegations of intentional violations of rules, regulations or policy, which result in serious damage or are detrimental to the Department.

6. Allegations of failure to report known or suspected neglect or abuse of a client.

7. Allegations of contracting or purchasing improprieties, by agency or contractor staff, that result in improper expenditures of public funds, etc.

b. Management Review. The IG or COI may initiate a management review when multiple or serious allegations are received indicating management is not addressing problem areas or that a systemic problem exists. Such reviews are conducted in accordance with internal management review guidelines and require the approval of the IG. Findings are reported and recommendations for correction are made to senior management. Corrective measures are requested and tracked to completion.


a. Whistle-blower protection ensures that the complainant’s identity is protected when reporting violations of federal, state, or local laws, rules, or regulations that create and present substantial and specific danger to the public’s health safety, or welfare and includes acts of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

b. RI or RIS conducting a Whistle-blower investigation must ensure that all investigators assisting in the Whistle-blower investigation understand related confidentiality issues. Everyone outside OSIG who assists in a Whistle-blower investigation must sign an Advisory of Confidentiality stating, “I, __________, was advised by the undersigned investigator that all information received by the Inspector General pursuant to Sections (§)112.317 - 112.31895, Florida Statutes (F.S.), is confidential and exempt from §119.07(1), F.S., during an active investigation, and that disclosing such information may constitute the commission of a first-degree misdemeanor, punishable as provided in §775.082 or §775.083. F.S.”

3-10. Writing Investigative Reports. Reports shall be written in accordance with the guidelines outlined in the Investigations Accreditation Guideline Manual.

3-11. Investigations and Complaint Tracking System. This resource was established to serve as an automated management tool for tracking all IG correspondence, public records requests and investigations. The system contains a wide variety of fields, allowing quick retrieval of complaint and investigative information. In addition, various reports are produced using the system. The overall efficiency of the system is dependent upon the timely and accurate input of data by the investigations unit. Staff are required to adhere to the timeframes established for timely and accurate data input.

3-12. Correspondence. All IG correspondence is logged into the Investigations and Complaint Management System. A control number is automatically generated upon entry of a correspondence. The correspondence is reviewed, assigned, and provided a due date. The correspondence is tracked through completion.
3-13. **Investigations.** A specific case number will be automatically assigned to each investigation when entered into the Investigations and Complaint Management System. General information is entered and reviewed by the COI. The COI assigns the case to a specific region who will then assign the case to a specific investigator. The investigator is responsible for updating the case file as the investigation progresses. The case Status section should be updated by the Regional Inspector (RI).

NOTE: Detailed instructions regarding the Investigations and Complaint Management System are located in the Investigations Accreditation Guideline Manual.

3-14. **Notification of Testifying.** Upon receipt of a subpoena or summons to testify at a hearing, trial, or deposition, the investigator will notify his/her supervisor. The document will be forwarded to the Office of General Counsel for coordination with the other involved attorneys.

3-15. **Prior to Testifying.** The subpoenaed or summoned investigator should meet with the designated general counsel or the district legal counsel, as appropriate, before testifying for a briefing on testifying. In addition to reading the applicable investigative file, the subpoenaed or summoned investigator should review all relevant documents and be fully prepared to testify.

3-16. **Release of Investigative Files or Documents.** All requests for release of IG investigative files, documents, or reports MUST be processed through the public records custodian (OMC II) or the OMC II’s supervisor, who will request a legal review (if needed) of the material by the Office of General Counsel prior to release.

3-17. **Including Written Response in Final Investigation Report for Some Investigations.** In accordance with Section 20.055(6) (e), Florida Statutes (F.S.), at the conclusion of each investigation in which the subject of the investigation is a specific entity contracting with the state or an individual substantially affected, as defined by this statute, and if the investigation is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit the findings to the subject that is a specific entity contracting with the state or an individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. Such response and the inspector general's rebuttal to the response, if any, shall be included in the final investigative report.

3-18. **Allegations of Misconduct by the Office of Inspector General or Its Employees.** In accordance with Section 20.055(8), Florida Statutes (F.S.), the inspector general in each agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the office of the inspector general or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in this section. For agencies solely under the direction of the Governor, the inspector general shall also provide the complaint to the Chief Inspector General.
Chapter 4
INTERNAL AUDIT SECTION

4-1. **Purpose and Scope.**

a. To conduct financial, performance and compliance audits of all systems, processes, programs, operations, functions and financial activities, as required by Section 20.055, Florida Statutes (F.S.), in accordance with the International Professional Practices Framework (IPPF), as published by the Institute of Internal Auditors and/or the Government Auditing Standards, as published by the Government Accountability Office.

b. To ensure consistent application of administrative policies and procedures.

c. To ensure on-going scrutiny of financial operations and internal controls.

d. To provide Departmental management information necessary on which to base operational and programmatic decisions.

4-2. **Legal Authority.** Section 20.055(5), Florida Statutes (F.S.), in carrying out the audit duties and responsibilities of this act, each Inspector General shall review and evaluate internal controls necessary to ensure fiscal accountability of the state agency.

4-3. **Definitions.**

a. **Audit Plan** refers to a documented plan that shows the individual audits that will be conducted each year and the related resources that will be devoted to the respective audits. This plan will change as the business environment changes.

b. **Audit Report** refers to a document that presents the results of an audit.

c. **Auditor General** refers to the legislative Auditor General established by Section 11.42, F.S.

d. **Director of Auditing** refers to the position that provides general supervision of internal auditing activities, as defined in Section 20.055 (5), F.S.

e. **Department** refers to the Florida Department of Children and Families (DCF).

f. **Government Auditing Standards** refers to the professional criteria by which an internal auditing Department should carry out its assigned responsibilities when auditing federal programs, activities, and functions.

g. **Internal Audit** refers to an independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. **Office of Internal Audit (OIA)** refers to the Audit Section of the Inspector General’s office.

h. **Office of the Inspector General** refers to the office established in each agency to provide a central point of coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.

i. **Office of Program Policy Analysis and Government Accountability (OPPAGA)** refers to an evaluation unit of the Florida Legislature under the oversight of the Joint Legislative Auditing Committee.
j. Secretary refers to the Department head of the Florida Department of Children and Families.

k. The Professional Practices Framework (PPF) refers to the professional criteria by which an internal auditing Department should carry out its assigned responsibilities. The PPF comprises the official definition of internal auditing, the International Standards for the Professional Practice of Internal Auditing (the standards), the Code of Ethics, Practice Advisories, and development and practice aids. These standards are available online at http://www.theiia.org.

4-4. Specific Procedures.

a. Responsibility for Internal Auditing.

(1) In accordance with Florida Statutes, the IG, appointed by and directly responsible to the Secretary of the Department, will be responsible for the management of the internal audit function.

(2) The Director of Auditing, in coordination with the IG, will review and evaluate internal controls to ensure fiscal accountability, conduct audits, and prepare audit reports.

b. Administration.

(1) Organizations within the Department will be reviewed at appropriate intervals as determined by the Director of Auditing in consultation with the IG. An annual risk assessment will be conducted to identify areas of greatest risk and areas of concern to key Department managers. This assessment will become the basis of the annual audit plan.

(2) The primary consideration of the audit plan is to provide the greatest possible coverage of the Department’s vulnerable areas using the available audit resources. Audits will be scheduled for inclusion in an audit plan and will be conducted in accordance with applicable standards. Any special audit request will receive prompt consideration. The Secretary may direct the Inspector General to perform an audit. The scope and assignment of audits will be determined by the Director of Auditing in consultation with the IG, as necessary.

(3) As representatives of the Office of the Inspector General and in order to perform their duties, internal auditors are authorized to have full, free, and unrestricted access to all Departmental functions, records, property, and personnel.

(4) The auditor-in-charge will conduct an entrance conference with management of the audited activity. The purpose of this conference is to communicate the audit scope, objectives and logistics.

(5) The auditor(s) will conduct an exit conference with management of the audited activity. The exit conference will generally take place at the conclusion of audit fieldwork and prior to the issuance of the draft report. If an issue requires immediate attention, management will be notified during the course of the audit so that appropriate action can be taken.

(6) A draft report of preliminary and tentative findings and recommendations, where appropriate, will be sent out for comment. Responsible management will respond in writing to all findings within twenty (20) working days after receipt as required by Section 20.055, F.S. The response will be included as part of the audit report.

(7) In accordance with Section 20.055(5)(e), Florida Statutes (F.S.), at the conclusion of an audit in which the subject of the audit is a specific entity contracting with the state or an individual substantially affected, if the audit is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit the findings to the entity contracting with the state or the individual substantially affected, who shall be advised in writing that they may submit a
written response within 20 working days after receipt of the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.

(8) In accordance with Section 20.055(8), Florida Statutes (F.S.), the inspector general in each agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the office of the inspector general or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in this section. For agencies solely under the direction of the Governor, the inspector general shall also provide the complaint to the Chief Inspector General.

(9) The Office of Internal Audit will conduct follow-up inquiries to ensure corrective action is adequate to achieve satisfactory disposition of findings noted in audit reports.

(10) The Office of Internal Audit must be notified immediately of any work being conducted at any Departmental location by external auditors (Auditor General, OPPAGA, Federal Auditors). This notification should include complete information relating to the scope of work, opinions expressed and findings presented by the external auditors. A representative for the Office of Internal Audit will attend external audit entrance and exit conferences as appropriate.

(11) A draft report of preliminary and tentative findings and recommendations, where appropriate, will be sent out for comment. For Auditor General reports, management will respond in writing to all findings within thirty (30) calendar days after receipt as required by Section 11.45(4)(d), F.S. For OPPAGA reports, as required by Section 11.51(5), F.S., OPPAGA may request management to submit the written statement of explanation or rebuttal within fifteen (15) days after the receipt of the findings. If the response time is not requested to be within 15 days, management shall submit the response within thirty (30) days after receipt of the preliminary findings. The responses will be included as part of the final report. For Federal reports, management will respond in writing to all findings within thirty (30) calendar days after the date of the cover letter, or, if applicable, the postmark or receipt date.

(12) The Office of Internal Audit will be responsible for monitoring compliance with the Auditor General’s and OPPAGA’s recommendations within the Department and will coordinate any required follow-up responses.

c. Audit Operations Manual. The Director of Auditing will maintain technical instructions to be published under separate cover. These instructions will provide details on how the internal audit function of the Department achieves uniformity in its method of operating and in discharging its responsibilities. Technical instructions will contain the specific directions and application of auditing standards for the organization and administration of the Office of Internal Audit.
Chapter 5

APPEAL HEARINGS SECTION

5-1. Purpose. This operating procedure establishes responsibilities and procedures for the conduct of fair hearings under the jurisdiction of the Office of Appeal Hearings (OSIH). OSIH follows specific laws, regulations, and rules in its operations and this operating procedure includes parts of these rules and the procedure for implementing these rules. All information contained in this operating procedure is for the purpose of implementing these laws, regulations, and rules and may not be interpreted to amend or invalidate any law, regulation, or rule.

5-2. Program Scope.

a. The Department is required to provide an opportunity for a hearing to any applicant or recipient when the Department’s action, or failure to act, would adversely affect the individual’s or family’s eligibility for, or amount of, any type of financial assistance, Medicaid Program benefits, social services, or Food Stamp Program benefits; or where action on a claim for such assistance or service is unreasonably delayed. The Department may contract with a provider to provide services. These providers may have authority to take action and send notices of those actions to the applicant or recipient that affect the applicant’s or recipient’s eligibility for the service. Applicants or recipients will have the same opportunity to appeal actions taken by a provider in the place of the Department. Additionally, the Food Stamp and Cash Assistance Programs initiate administrative disqualification hearing requests for the purpose of disqualifying an individual from receiving program benefits and recovering funds lost to the program through intentional program violations.

b. OSIH is generally limited under § 120.80 F.S. to conducting hearings for the programs that were a part of the Division of Family Services prior to the 1974 reorganization of the Department. Subsequent to the reorganization, some of the programs that were a part of the old Division of Family Services have been transferred in whole or in part to other state agencies. The office continues to conduct hearings for these programs by agreements with the new agencies. These programs are generally federally funded assistance programs under the Social Security Act and the Food Stamp Act. The Department also administers a number of programs which are funded by general revenue and over which the office has no jurisdiction. Hearings for these programs are either completed informally within the Department or referred to the Division of Administrative Hearings within the Department of Management Services. OSIH holds hearings for the following programs which were a part of the Division of Family Services prior to the 1974 reorganization:

(1) Temporary Cash Assistance.

(2) Food Stamp Program.

(3) Special Supplemental Food Program for Women, Infants and Children (WIC).

(4) Medicaid Program both eligibility and services.

(5) Optional State Supplementation (OSS).

(6) Title IV-E Adoption Assistance, Foster Care Maintenance Payments, and Child and Family Services.

(7) Refugee Assistance Program (RAP).

(8) Child Support Enforcement activities limited to federal income tax interception and state collected payment distribution.
c. In addition to the hearings conducted under the exemption appearing in Florida Statutes s.120.80, the office also conducts nursing facility discharge hearings in accordance with Florida Statute s.400.0255 and 42 C.F.R. 431.200).

5-3. **Legal Authority.** Sections 120.80 and 409.285, Florida Statutes (F.S.), provide the general hearing authority for OSIH. Specific hearing authority for each program is as follows:

a. **Cash Assistance.** Chapter 65-2, Florida Administrative Code (F.A.C.) and 42 C.F.R 205.10.

b. **Food Stamp Program.** Chapter 65-2, F.A.C., Title 7 C.F.R. Section 273.15 (Fair hearings), Title 7 C.F.R. Section 273.16 (Disqualification for intentional program violations).

c. **WIC.** Title 7 C.F.R. Section 246.9.

d. **Medicaid.** Chapter 65-2, F.A.C. and Title 42 C.F.R. Section 431.200.

e. **OSS.** Chapter 65-2, F.A.C.

f. **Title IV-E Adoption Assistance, Foster Care Maintenance Payments, and Child and Family Services (45 C.F.R. 1335.30).**

g. **RAP.** Chapter 65-2, F.A.C. and Title 42 C.F.R. 400.

h. **Child Support.** Title 45 C.F.R. Part 303.

i. **Nursing Facilities.** Title 42 C.F.R. Section 483.12, and Section 400.0255 F.S.

5-4. **Organization and Administration.** OSIH is headquartered in Tallahassee. Hearing officers are located in the geographic areas in which they hold hearings.

5-5. **Program Office/Department Responsibilities.** OSIH holds hearings for individuals regarding specific program benefits or services. It is the responsibility of the involved central program offices or Department (e.g., ACCESS, Adult Protective Services, Family Safety, Agency for Health Care Administration, Department of Health, Department of Elder Affairs, and the Department of Revenue) to send notice to OSIH any time there is a change in law, regulation or rule that would affect an appeal.

5-6. **Right to Request a Hearing.**

a. Any applicant/recipient dissatisfied with the Department’s action or failure to act has a right to request a hearing. He may do so any time he believes a Department action or inaction is incorrect.

b. The Department may initiate a request for a Food Stamp/Cash Assistance administrative disqualification hearing when it believes an individual has committed an intentional program violation.

5-7. **Definition of Request for Hearing.** A request for hearing is defined as any clear written or oral statement to the Department that the applicant/recipient or his authorized representative wants an opportunity to present his case to a higher authority. The freedom to make such a request must not be limited or interfered with in any way.

5-8. **Date of Request.** The date of the request for a hearing is the date the request is received by the Department. The Department must date the request when received.

5-9. **Filing the Request.** A Request for Hearing may be made by the applicant/recipient or someone in his/her behalf. However, if the appeal is filed by someone other than the applicant/recipient, attorney, legal guardian, spouse, next of kin, the grantee relative in cash assistance, or a person allowed by the
Department as an authorized representative to participate in the eligibility determination, the person making the appeal must have written authorization of the applicant/recipient. Such written authorization must accompany the Hearing Request. Should the request be filed without the written authorization, the authorization must be provided in response to a request from the Department or hearing officer, prior to the appeal going forward. Without prior proper written authorization, the Department will treat a request for hearing as being made by someone not authorized to do so. Therefore, the appeal will be dismissed.

5-10. Time Limits in Which to Request Hearings.

   a. The right to appeal must be exercised within ninety (90) calendar days in all programs with the following exceptions:

      (1) The appeal period is limited to thirty (30) days for hearings requested in response to a notice of Cash Assistance overpayment.

      (2) Additionally, in the Food Stamp Program a household may request a fair hearing at any time within a certification period to dispute its current level of benefits.

   b. The time limit to request a hearing begins with the date the notice is mailed or hand delivered to the client. Should the appeal be based on a situation, which did not require an Department notice, the date begins with the date of verbal notification to the client regarding the situation under appeal.

   c. The time limitation does not apply when the Department fails to send required notification, fails to take action on a specific request, or denies a request without informing the appellant. If the notice is not mailed on the date on the notice, the time period commences on the date it is mailed.

5-11. Rejection of a Hearing Request. A hearing request may be rejected only by a hearing officer.

5-12. Submission of Request for Hearing.

   a. Any hearing request submitted to the circuit, written or oral must be input into the FLORIDA computer system by the circuit within three (3) working days, excluding holidays and weekends. If the circuit is unable to send the hearing request through the FLORIDA system the request may be mailed within three (3) working days. A copy of the Notice of Case Action when such notice exists should be forwarded to OSIH. Any material transmitted to OSIH, not previously sent to the claimant, will be provided the claimant at the same time it is provided to OSIH.

   b. Requests for Food Stamp/Cash Assistance administrative disqualification hearings are submitted by the Department of Children and Families or the Florida Department of Law Enforcement.

   c. When the request is received by OSIH directly from the claimant, OSIH will notify the circuit in order that appropriate district procedures may be followed.


   a. Upon request for a hearing, a circuit unit supervisory review of the issue being appealed is mandated by F.A.C. 65-2.049. The supervisor should schedule a conference with the individual. The supervisor should advise the individual the conference is optional and does not replace or delay the hearing process. Should an error be discovered during this process, immediate action must be taken to rectify it, and the appellant be advised. The supervisory interview may satisfy the appellant regarding his case. If so, the request for a hearing may be withdrawn in writing.
b. OSIH must be notified immediately when the review results in the change of status of the case. If the appellant is satisfied with this adjustment and/or explanation by the Department’s representative, the appellant will be given the opportunity to withdraw the request. If the appellant chooses to withdraw the appeal, he will be requested to make a written statement to this effect, stating the reason for the withdrawal. However, if the appellant declines to make a written statement, the Department’s representative will immediately notify OSIH in writing of the appellant’s decision. The hearing officer will contact the circuit if further action is required on the appeal.

5-14. Eligibility for Continued Benefits. All actions to reduce or cancel benefits or services will be reviewed in the circuit to determine whether or not the client’s appeal was filed within a time frame, which would require or allow the Department to continue benefits or services. The Department will take proper action to continue benefits or services as required or authorized by the various programs.

5-15. Access to Case Record Information. If requested, the circuit must provide the appellant or his representative adequate opportunity to examine the contents of the case file and all documents and records to be used by the Department at the hearing. This must be done at a reasonable time before the date of the hearing, as well as during the hearing. The Food Stamp Program specifically requires the Department to make available the contents of a case file, including the application form and documents of verification used by the Department to establish the household’s ineligibility or eligibility and coupon allotment, provided that confidential information is protected from release. If requested, the Department will provide free of charge a copy of relevant portions of the case file to the household or its representative. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to inspect or challenge will not be introduced at the hearing or affect the hearing officer’s decision.

5-16. Ex Parte Communication. Ex parte communication between the hearing officer and either party to the hearing regarding the merits of the hearing is expressly prohibited by Section 120.66, F.S. Any information relative to the merits of the case provided to a hearing officer other than on record must be provided in written form and at the same time copied to the other party to the appeal or their attorney/representative if they have one.

5-17. Transportation for Appellant to Hearing. The circuit has the responsibility of assuring that the appellant has transportation to the hearing, if requested.


a. The appellant will be afforded an opportunity for a hearing after a reasonable notice of not less than fourteen (14) days; however, the fourteen day notice requirement may be waived with the consent of all parties.

b. Notice of not less than thirty (30) days is required for Food Stamp/Cash Assistance administrative disqualification hearings.

5-19. Content of Notice of Hearing. The notice must include:

a. A statement of the date, time and place of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. The name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing.
d. A statement that the Department will dismiss the hearing request if the appellant or his representative fails to appear for the hearing without good cause, except for Food Stamp/Cash Assistance administrative disqualification hearings in which event the hearing will be conducted.

e. The reference to the Department’s hearing procedures and other information that might provide the appellant with an understanding of the proceeding and may contribute to the effective presentation of the appellant’s case.

f. Statements explaining that the household or representative may examine the case file prior to the hearing.

5-20. **Group Hearings.** OSIH may respond to a series of individual requests for hearings by conducting a single group hearing. Hearings requested by more than one person may be heard at the same time only when the sole issue is one of state or federal law or policy, or change in state or federal law. In all group hearings, the procedures governing hearings must be followed. Each individual appellant will be permitted to present his own case or to be represented by his authorized representative.

5-21. **Consolidating Requests for Hearing.** If there are separate matters before the hearing officer that involve similar issues of law, the same Department fact or identity of parties, they may be consolidated. Any party to a matter before a hearing officer may request it be consolidated with another such matter; the hearing officer may, on his own initiative, order separate matters consolidated.

5-22. **Place of Hearing.** The hearing will be held in the circuit in which the appellant resides. In the interest of the appellant, the circuit will provide or arrange for a setting that is conducive to the appellant’s privacy and the fair hearing process. In cases in which the appellant is physically unable to attend the hearing, other arrangements such as a telephone hearing will be made.

5-23. **Discovery.** To the extent the rules of discovery in the Florida Rules of Civil Procedure are not inconsistent with Chapter 120, F.S., the rules of discovery of the Florida Rules of Civil Procedure will be applicable. The hearing officer may issue appropriate orders to effectuate the purpose of discovery and to prevent delay.

5-24. **Subpoenas.**

a. Subpoenas may be issued pursuant to the statutory authority of the Department in Chapter 120, F.S. The subpoena forms will be supplied by the Department and are available from the hearing office.

b. Subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing before the hearing officer, or for the purpose of taking the testimony of such witnesses or inspection of documents, will be issued upon written application of any party of record in a formal proceeding. Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena. Motions must set forth the grounds relied on to support the motion.

c. The service and completion of the subpoena must be in accordance with Chapter 120, F.S. Additionally, witness fees must be tendered in accordance with Section 120.58, F.S.

5-25. **Continuances and Postponements.**

a. The hearing officer, at his discretion, may grant a continuance of a hearing for good cause or upon stipulation of all parties of record.
b. In appeals related to the Food Stamp Program, the household may request and is entitled to receive a postponement of the scheduled hearing. Postponements will not exceed thirty (30) days and the time limit for action on the decision may be extended for as many days as the hearing is postponed.

5-26. Request for informal hearing. The hearing is a formal proceeding and will be conducted pursuant to the rules appearing in Section 65-2, F.A.C. et seq. At the request of the appellant, the hearing may be conducted as an informal proceeding pursuant to Section 120.57 (2), F.S.

5-27. Safeguarding Confidentiality. Federal regulations require that public assistance records shall be confidential. The hearings are only open to a party or witness, except as provided in federal regulation.

5-28. Request to Disqualify A Hearing Officer.

a. The hearing officers are members of the staff of OSIH and are impartial officials who have not been directly involved in the action in question.

b. Unless consented to by OSIH all motions to disqualify the hearing officer pursuant to Section 120.665, F.S. must be made at least five (5) days prior to the proceeding. A party may, however, move to disqualify at any time for the causes provided in Section 120.665, F.S., if he was previously unaware of the matter causing disqualification.

5-29. Representatives for the Appellant and the Department.

a. A person may be represented by an attorney, or other qualified representative, or may appear on his own behalf.

b. An authorized representative appearing at the hearing in place of the appellant is required to have a written statement from the appellant authorizing him to act in his behalf. If the representative does not have this statement by the time of the hearing, the request for hearing will be denied.

c. A representative of the department must attend the hearing. This representative must be prepared to present evidence necessary to resolve the issue under appeal and refer to the particular department rules, which were used in making the determination under appeal.

d. Food Stamp Program regulations allow the attendance of friends or relatives of the household if the household so chooses. The hearing officer has the authority to limit the number of persons in attendance if space limitations exist.

5-30. Opening and Closing Statements. Opening and closing statements may be presented.

5-31. Presentation of Evidence.

a. Oral evidence will be taken only by oath or affirmation.

b. Each party will have the right:

   (1) To present evidence relevant to the issue;

   (2) To bring witnesses;

   (3) To cross-examine witnesses on any matter relevant to the issue;

   (4) To impeach any witness, regardless of which party first called him to testify; and,
(5) To rebut the evidence presented against him, through the introduction of rebuttal evidence or testimony.

5-32. Motions. All motions must be made in writing unless made on the record during the hearing, and must fully state the action requested and the grounds relied on. The rules regarding filing written notice appear in Section 65-2.057(7), F.A.C.

5-33. Relevant Issues Presented at a Hearing.

   a. One of the major purposes of the fair hearing is to develop a full and complete record. By rule the hearing officer is required to request, receive and make a part of the record information determined necessary to decide the issues being raised. To do this the hearing officer must be actively involved in the evidentiary portion of the hearing. He may ask questions of the parties during the evidentiary presentation for the purposes of clarifying evidence and at the end of the presentation will conscientiously inquire into and explore any relevant facts not adequately covered. This is done on the behalf of both parties and ensures that both favorable and unfavorable facts and circumstances are made part of the record. Section 65-2.56, F.A.C., “Basis of Hearings,” provides for a hearing to include consideration of the following:

   (1) Any Department action, or failure to act with reasonable promptness, on a claim of financial assistance, social services, medical assistance, or Food Stamp Program benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination, or reduction in assistance.

   (2) Any Department decision regarding eligibility for financial assistance, social services, medical assistance, or Food Stamp Program benefits in both initial and subsequent determination, the amount of financial or medical assistance or a change in payments.

   b. The decision is made so as to determine whether the action by the Department was correct at the time the action was taken.

5-34. Rehearing or Reconsideration. A hearing officer will not grant a motion for rehearing or reconsideration, except following acceptance of a good cause claim in an administrative disqualification hearing.

5-35. Transcript. The proceeding is electronically recorded. On request of any party, the Department will make available a transcript of the recording at actual cost; or, at the option of the requesting party, a reproduction of the recording at actual cost. The method of recording will be at the option of the hearing officer. A party may provide, at its own expense, a record of the proceeding. If either party files a motion offering a transcript for the proceeding, the hearing officer may accept the transcript, reject it or return it for correction.

5-36. Proposed Orders. The parties or their representative will have an opportunity to submit a proposed findings of fact, conclusions of law, or proposed order to the hearing officer within fourteen (14) days after the hearing.

5-37. Good Cause Claims.

   a. Abandonment will be deemed to have occurred if the appellant or his authorized representative, without good cause, fails to appear at the hearing scheduled for such appellant. The circuit must transmit to the hearing officer, for his consideration, any claim of good cause the appellant may make to the circuit for his failure to appear at his scheduled hearing. The hearing officer will make
a determination of whether or not good cause existed; and if good cause is shown, the hearing will be rescheduled.

b. The Food Stamp/Cash Assistance administrative disqualification hearing process provides for the hearing to be held in the absence of the client; however, if the client can show good cause for failure to appear, the decision will be invalidated and the hearing reconvened.

5-38. Submission of Evidence after the Hearing. Requests may be made at the hearing to submit additional evidence. If granted by the hearing officer, the requesting party will be given a time period to submit the evidence with copies supplied to both the hearing officer and second party. The second party will also be given a time period to respond to the evidence. If additional evidence is sent to the hearing officer, after the record is closed, it will be marked as received but not used by the hearing officer to make a final decision.

5-39. Hearsay Evidence. In accordance with Chapter 120, F.S., the hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence, including hearsay which has substantial probative effect, must be admitted if it is the sort of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their affairs regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil action. However, hearsay evidence will not be sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege will be effective to the same extent that they now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence will be excluded.

5-40. Burden of Proof.

a. The burden of proof, except where otherwise required by statutes, rule or regulations, is on the party asserting the affirmative of the issue. The party which has the burden of proof presents its evidence first at the hearing. The burden is on the Department when the Department takes action, which would reduce or terminate benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden must establish his position by a preponderance of evidence to the satisfaction of the hearing officer.

b. The significant difference between the conduct of the Food Stamp/Cash Assistance Program administrative disqualification hearing and a fair hearing is that the Department is making the charge of intentional program violation and has the burden to prove by clear and convincing evidence that the individual intentionally committed a program violation.

5-41. Medical Issues. When the hearing involves medical issues such as those concerning a diagnosis, an examining physician’s report, or a medical review team’s decision, the hearing officer may consider it necessary to receive a medical assessment other than that of the person or persons involved in making the original decision. If so, the assessment will be obtained at the Department’s expense and made a part of the record.

5-42. Final Orders Issued by Hearing Officer. Orders issued by the hearing officers of OSIH are final orders and must be implemented immediately upon receipt by the Department staff.

5-43. Basis for Final Order. The final order must be based exclusively on evidence and other materials introduced at the hearing or materials submitted after the hearing upon agreement of all parties.

5-44. Structure of Final Order. The final order will be in writing and include a caption, time, and place of the hearing, statement of the issues, findings of fact, conclusions of law, decision and right to judicial review. These orders will adhere to the requirements of the Florida Administrative Procedure Act, Chapter 120, F.S. Federal regulations for the WIC Program and the Food Stamp Program require that
decisions of the hearing authority comply with federal law and that the pertinent federal regulation be cited in the decision.

5-45. Judicial Review of Final Orders. The final order issued by the hearing officer will be signed by the hearing officer and dated by the clerk of the Department on the date it is mailed. The period for judicial review will run from this date. The final order will include a notice, which provides the claimant with the opportunity for judicial review. Any request for judicial review received by circuit personnel must be forwarded immediately to the region legal counsel.

5-46. Time Standards for Issuing Final Orders. The final order will be rendered within ninety (90) days of request for all programs except the Food Stamp Program, in which case it will be rendered within sixty (60) days; in Child Support Enforcement distribution issues the final order will be rendered in sixty (60) days; and WIC, in which case it will be rendered within forty-five (45) days. The time limits can be extended by request of the petitioner. In Food Stamp Program hearings there is a 30-day time limit on the extension.

5-47. Corrective Action Included in Final Orders. In the final order, the hearing officer will authorize corrective action retroactively to the date the incorrect action was taken, unless inconsistent with legal authority.

Chapter 6
WHISTLE-BLOWER’S ACT

6-1. Purpose. In accordance with section 112.3187(2), Florida Statutes (F.S.), the Whistle-blower Act prevents agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employee or independent contractor that create a substantial and specific danger to the public’s health, safety, or welfare. It is further the intent to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

6-2. Filing for Whistle-blower Protection. In accordance with section 112.3187(7), F.S., employees and persons may file with the Office of Chief Inspector General, DCF Inspector General, the Florida Commission on Human Relations, or the Whistle-blower’s Hotline at 1-800-543-5353 for whistle-blower protection when they disclose information as described below:

   a. Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.

   b. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

6-3. Actions Prohibited.

   a. An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information.
b. An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person’s disclosure of information.

c. The provisions of this paragraph shall not be applicable when an employee or person discloses information known by the employee or person to be false.

6-4. Remedies.

a. Any employee with any state agency who is discharged, disciplined, or subjected to other adverse personnel action due to engaging in an activity protected by the whistle-blower act may file a complaint with the Florida Commission on Human Relations, in accordance with s. 112.31895, F.S.

b. Retaliatory action by supervisory/management personnel is prohibited even for disclosures that do not meet the criteria under the Whistleblower’s Act.

6-5. Reporting Suspected Wrongdoing.

a. All Department employees are responsible for reporting suspected wrongdoing in accordance with CFOP 180-4 to the Office of Inspector General. The Department will not tolerate or condone any attempt to conceal fraud or other illegal acts. A complaint of retaliation may be submitted directly to the Florida Commission on Human Relations.

b. Reports of suspected wrongdoing including retaliation for disclosing minor offenses may also be submitted through the use of the Inspector General’s automated web-based complaint form available on the Department’s home page under “Submit a Complaint” or by mailing a complaint directly to: Office of Inspector General, 1317 Winewood Boulevard, Building 5, 2nd Floor, Tallahassee, FL 32399-0700.
I hereby acknowledge receipt of a complete copy of CFOP 180-2, Policies and Procedures of the Office of Inspector General. I understand that it is my responsibility to review the operating procedure in detail and request any clarification needed from my supervisor.

I also understand that this signed acknowledgment of receipt will become a permanent part of my personnel file.

Print Name:_________________________________________________________

SIGNATURE:_________________________________________________________

DATE:____________________________