

ANNUAL SURVEY OF PENNSYLVANIA ADMINISTRATIVE
LAW: HUMAN SERVICES: A SURVEY OF QUESTIONING
HOW PENNSYLVANIA'S NOTICE AND OPPORTUNITY TO
BE HEARD IS AFFECTED THROUGHOUT CHILD
PROTECTIVE SERVICES, AS SEEN IN *J.F. V. DEPARTMENT
OF HUMAN SERVICES*

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I. INTRODUCTION

One of the most fundamental rights of society is the right to due process. The Due Process Clause of the Fourteenth Amendment states that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . .”¹ Due process provides individuals with protection of notice and the opportunity to be heard.² Due process is also required at each stage of litigation, including the appeals process.³ Strict abidance of the Due Process Clause guarantees that the government will not impact its citizens in a threatening or demeaning manner.⁴

Pennsylvania’s Department of Human Services (DHS) is responsible for overseeing all child-related institutions,⁵ such as residential licensing or treatment programs, and supervising

¹ U.S. CONST. amend. XIV, § 1.

² Adelphia Cablevision Assocs. of Radnor, L.P. v. Univ. City Hous. Co., 755 A.2d 703, 712 (Pa. Super. Ct. 2000) (citing Allstate Ins. Co. v. Fioravanti, 299 A.2d 585, 589 (Pa. 1973)).

³ Quigley v. Unemployment Comp. Bd. of Rev., 255 A.3d 914, 922 (Pa. Commw. Ct. 2020).

⁴ *Magna Carta: Muse and Mentor*, LIBRARY OF CONGRESS, <https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/due-process-of-law.html> (last visited Oct. 6, 2022).

⁵ Our Lady of Victory Cath. Church v. Dep’t of Hum. Servs., 153 A.3d 1124, 1128 (Pa. Commw. Ct. 2016).

Pennsylvania's child welfare system.⁶ The Department's mission is to aid "Pennsylvanians in leading safe, healthy, and productive lives through equitable, trauma-informed, and outcome-focused services . . ." while providing helpful resources.⁷ In the case of *J.F. v. Department of Human Services*, the court was faced with the question of whether a founded report of child abuse is an adjudication and, if so, whether a perpetrator who enters into an Accelerated Rehabilitative Disposition (ARD) program is entitled to an opportunity to be heard.⁸ Section 6341 of Pennsylvania's Domestic Relations Code provides that any person who makes an appeal shall "have the right to a timely hearing to determine the merits of the appeal."⁹ The effects of section 6341 can be seen in *J.F.*, where the court ultimately held that the DHS's decision to charge an individual, J.F., with a "founded" report of child abuse constituted an adjudication by a commonwealth agency and thus J.F. was entitled to an administrative hearing regarding the founded report.¹⁰ This issue implicated the following statutes: Pennsylvania's Domestic Relations statute, Title Two, and Pennsylvania's Rules of Criminal Procedure on Accelerated Rehabilitative Disposition.¹¹

Part II of this survey discusses the background of the case, starting with the relevant statutes and cases. Part III then analyzes *J.F. v. Department of Human Services* by providing the relevant facts, procedural history, holding, rationale, and dissent. Part IV evaluates and reaffirms the court's holding. It also addresses the potential future problems that may have arisen out of this case, had it been decided differently. Part V summarizes the key points discussed in this survey.

⁶ *DHS Priorities*, DEP'T. OF HUM. SERVS., <https://www.dhs.pa.gov/about/Pages/Priorities.aspx> (last visited Sept. 10, 2022).

⁷ *About DHS*, DEP'T. OF HUM. SERVS., <https://www.dhs.pa.gov/about/DHS-Information/Pages/Learn-About-DHS.aspx> (last visited Sept. 10, 2022).

⁸ *J.F. v. Dep't of Hum. Servs.*, 245 A.3d 658, 669 (Pa. 2021).

⁹ 23 PA. CONS. STAT. § 6341 (2022).

¹⁰ *J.F.*, 245 A.3d at 673-74.

¹¹ 23 PA. CONS. STAT. §§ 6303, 6341, 6368; 2 PA. CONS. STAT. § 504; PA. R. CRIM. P. 314-19.

II. BACKGROUND

To gain an understanding of the background against which the court decided *J.F.*, the relevant statutes and prior cases need to be discussed. The relevant statutes include the Definitions of Child Protective Services, Amendment or Expungement of Information, Investigation of Reports, Hearing and Record Requirements, and several sections from Pennsylvania's Rules of Accelerated Rehabilitative Disposition. The cases that are important to analyze include *J.G. v. Department of Public Welfare*¹² and *R.F. v. Department of Public Welfare*.¹³

A. Child Protection Service Laws

Section 6303 defines child abuse in many different forms.¹⁴ One form is described as “intentionally, knowingly or recklessly . . . [c]ausing serious physical neglect of a child.”¹⁵ There is serious physical neglect when there is “repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child’s developmental age and abilities”¹⁶ or “[t]he failure to provide a child with adequate essentials of life, including food, shelter or medical care.”¹⁷

When DHS conducts an investigation of child abuse, it categorizes the report as “indicated,” “founded,” or “unfounded.”¹⁸ There is an indicated report if the report reveals “ ‘substantial evidence of the alleged abuse by a perpetrator . . . based on’ . . . ‘an admission of the acts of abuse by the perpetrator.’ ”¹⁹ There is a founded report if the perpetrator accepts an ARD and the acceptance

¹² *J.G. v. Dep’t of Pub. Welfare*, 795 A.2d 1089 (Pa. Commw. Ct. 2002).

¹³ *R.F. v. Dep’t of Pub. Welfare*, 801 A.2d 646 (Pa. Commw. Ct. 2002).

¹⁴ 23 PA. CONS. STAT. § 6303(b.1) (2018).

¹⁵ *Id.* § 6303(b.1)(7).

¹⁶ *Id.* § 6303(a).

¹⁷ *Id.*

¹⁸ *J.F. v. Dep’t of Hum. Servs.*, 245 A.3d 658, 660 (Pa. 2021) (quoting 23 PA. CONS. STAT. § 6368(n)(1) (2014)).

¹⁹ *Id.* (quoting 23 PA. CONS. STAT. § 6303(a) (2018)).

relates to the same facts regarding the child abuse.²⁰ Lastly, there is an unfounded report if it is neither indicated nor founded.²¹

If DHS finds an indicated or founded report, the perpetrator is given notice, which includes informing the individual that his or her opportunity to work with children is hindered and that his or her name will be added to a statewide child abuse database.²²

Section 6341 provides that when there is an indicated report, the perpetrator may apply for an administrative review and a hearing.²³ However, when there is a founded report, section 6341 does not provide the same level of clarity regarding the appeals process.²⁴ The section is silent as to how a perpetrator may challenge the decision or request a hearing.²⁵

B. Hearings

Section 504 of title II discusses hearings and their requirements.²⁶ The section states that an adjudication is not valid unless the individual has been given reasonable notice and has received an opportunity to be heard.²⁷ The testimony must be recorded, and the court must keep records of such proceeding.²⁸

C. Accelerated Rehabilitative Disposition

An ARD is a pretrial disposition in which a district attorney agrees to suspend criminal proceedings, pending the defendant's successful completion of the program.²⁹ An individual's program is determined on a case-by-case basis, but many programs include common requirements, such as community service, drug and alcohol

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 661.

²³ *Id.* (quoting 23 PA. CONS. STAT. § 6341(a)(2) (2014)).

²⁴ *J.F. v. Dep't of Hum. Servs.*, 245 A.3d 658, 661 (Pa. 2021).

²⁵ *Id.*

²⁶ 2 PA. CONS. STAT. § 504.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *J.F.*, 245 A.3d at 661-62.

counseling, and the payment of fees.³⁰ If the program is not completed, the case may proceed before the court.³¹ When a judge grants, denies, or terminates an ARD, the holding is deemed interlocutory and is not appealable.³²

D. Cases

Precedent has highlighted that “an administrative adjudication of suspected child abuse is of the most serious nature.”³³ Therefore, with this serious charge, society has a right to protect the individual’s property and reputation.³⁴ Commonwealth agencies are, accordingly, not bound by evidentiary rules within their hearings.³⁵ Instead, all relevant evidence may be heard.³⁶

In the case of *J.G. v. Department of Public Welfare*, a child portrayed injuries that resembled shaken baby syndrome and the Child Protective Services (CPS) report found there to be a founded report of child abuse.³⁷ J.G. timely appealed the finding, which was later denied by the Bureau, who claimed that a founded report of child abuse does not mandate a right of appeal.³⁸

Upon review, the court cited to section 504 of the Administrative Agency Law and highlighted that “ ‘[n]o adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.’ ”³⁹ The court held that the mother was entitled to a hearing to determine “whether the adjudication . . . constitute[d] sufficient evidence . . . ”⁴⁰

³⁰ *Everything You Need to Know About “ARD”*, REHMEYER & ALLATT, <https://www.arjalaw.com/blog/2015/04/22/everything-you-need-to-know-about-ard/> (last visited Sept. 25, 2022).

³¹ *J.F.*, 245 A.3d at 662 (citing PA. R. CRIM. P. 318).

³² *Id.* (citing *Commw. v. Horn*, 172 A.3d 1133, 1137 (Pa. Super. Ct. 2017)).

³³ *Id.* at 669 (quoting *A.Y. v. Commw.*, 641 A.2d 1148, 1152 (Pa. 1994)).

³⁴ *Id.*

³⁵ *A.Y.*, 641 A.2d at 1150.

³⁶ *Id.*

³⁷ *J.G. v. Dep’t of Pub. Welfare*, 795 A.2d 1089, 1090-91 (Pa. Commw. Ct. 2002).

³⁸ *Id.* at 1091.

³⁹ *Id.* at 1092.

⁴⁰ *Id.* at 1093.

In *R.F. v. Department of Public Welfare*, the county found an indicated report of child abuse, but later changed the report to be founded.⁴¹ The Bureau further dismissed the father's request to expunge the charges without a hearing.⁴² Upon review, the Commonwealth Court of Pennsylvania, looking to section 504 of the Administrative Agency Law, held that the father was entitled to an administrative hearing to determine whether the child endangerment plea involved the same factual circumstances to serve as the basis for a founded CPS report.⁴³ The court reasoned that, although there is no provision for a right of appeal in the Child Protective Services Law (CPSL) regarding founded reports, the “‘statutory omission does not mean that a named perpetrator in a founded report does not have any right of appeal.’”⁴⁴

III. ANALYSIS: J.F. V. DEPARTMENT OF HUMAN SERVICES

A. *Factual and Procedural History*

According to the CPS report on July 6, 2017, J.F. left her fifteen-month-old twins alone in her house from 12:00 a.m. until 7:30 a.m.⁴⁵ Police located J.F. at 2:00 a.m. that morning, when they responded to a public drunkenness report.⁴⁶ When they found J.F., she was semi-conscious and was taken to the emergency room.⁴⁷ At 6:30 a.m., the officers were asked to check on the twins, who were unattended while the prior events took place.⁴⁸ An hour later, the officers arrived at J.F.’s residence, along with the children’s father, where they found the children unattended and sleeping.⁴⁹

The CPS report showed, and the mother acknowledged, that she left “‘[the children] home alone while she went to the bar to drink .

⁴¹ *R.F. v. Dep’t of Pub. Welfare*, 801 A.2d 646, 647-48 (Pa. Commw. Ct. 2002).

⁴² *Id.* at 648.

⁴³ *Id.* at 649.

⁴⁴ *Id.* (quoting *J.G. v. Dep’t of Pub. Welfare*, 795 A.2d 1089, 1092 (Pa. Commw. Ct. 2002)).

⁴⁵ *J.F. v. Dep’t of Hum. Servs.*, 245 A.3d 658, 662 (Pa. 2021).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 662-63.

⁴⁹ *Id.*

...,”⁵⁰ J.F. was charged with two counts of child endangerment for “‘causing serious physical neglect of a child,’ and more specifically, ‘repeated, prolonged, or egregious failure to supervise.’”⁵¹ DHS subsequently sent J.F. a notice that read: “‘YOU ARE LISTED IN THE STATEWIDE DATABASE FOR CHILD ABUSE AS A PERPETRATOR IN AN INDICATED REPORT OF CHILD ABUSE[.]’”⁵² The end of the notice provided that if J.F. disagreed, she had a right to review DHS’s finding.⁵³ Upon receiving the notice, J.F. filled out the “Request for Review or Hearing” form, choosing to skip an administrative review and, instead, go directly to a hearing.⁵⁴

In the meantime, J.F. entered into an ARD for two counts of endangering the welfare of her children.⁵⁵ The conditions of the ARD required J.F. to complete a drug and alcohol evaluation, perform community service, and pay a \$2,500 fee.⁵⁶

Upon entry into ARD, J.F.’s status was changed from “indicated” to “founded,” and the administrative law judge (ALJ) dismissed J.F.’s appeal without a hearing.⁵⁷ The ALJ found that a hearing was unnecessary because J.F. admitted to leaving her children unsupervised and, further, the facts from the CPS report and the affidavit of probable cause met the definition of a “founded” report.⁵⁸ The DHS Bureau of Hearings and Appeals adopted the ALJ’s recommendation.⁵⁹

The Commonwealth Court of Pennsylvania determined, by applying the cases of *J.G.* and *R.F.*, that a founded report is a final determination that affects an individual’s personal rights.⁶⁰ Consequently, the founded report was, undoubtedly, an

⁵⁰ *Id.* at 663.

⁵¹ *J.F.*, 245 A.3d at 663.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 664.

⁵⁷ *J.F.*, 245 A.3d at 664.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 666.

adjudication.⁶¹ The court showed that it would have been improper to hold that the allegations in criminal complaints and affidavit statements are enough to take away a hearing opportunity.⁶² As a result, J.F. was entitled to a hearing on whether her report should be changed from indicated to founded.⁶³

B. Issue and Arguments

The Supreme Court of Pennsylvania was then asked to determine whether an individual accused of child abuse is “entitled to an administrative hearing on the facts of a founded report after her entry into an accelerated rehabilitative disposition program when the perpetrator admits that the factual circumstances leading to the criminal charges match those on which the founded report was based[.]”⁶⁴

i. DHS’s Argument

The Department of Human Services (DHS) contended that an opportunity to be heard was not required because the facts and admission resulting in J.F.’s entry into ARD were the same as the facts of the CPS child abuse report.⁶⁵ To support its contention, the Department asked the court to look at the plain language of the CPSL.⁶⁶ Specifically, DHS believed that a founded report was accurate and, unlike an “indicated” report, the CPSL does not explicitly provide a right of appeal for founded reports.⁶⁷ DHS also pointed to the legislative intent surrounding founded reports, showing that the definition was amended to include voluntary dispositions into ARD programs.⁶⁸ Finally, DHS argued that if the court were to permit a hearing, the court would be effectively rewriting the true definition of a founded report.⁶⁹

⁶¹ *Id.*

⁶² *Id.*

⁶³ *J.F.*, 245 A.3d at 666.

⁶⁴ *Id.* at 667.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 667-68.

⁶⁸ *Id.* at 668.

⁶⁹ *J.F.*, 245 A.3d at 668.

Pursuant to a plain-language reading of the CPSL, DHS averred, a hearing was not required because J.F.’s acceptance into the ARD program revolved around the same factual circumstances underlying both the child abuse reports and the child endangerment charges.⁷⁰ Further, J.F. never claimed the circumstances between the child abuse and her ARD program differed.⁷¹

ii. J.F.’s Argument

J.F., on the other hand, argued that there was not “a sufficient factual basis to determine if the criteria for child abuse ha[d] been met” and thus the court should not have denied an administrative hearing.⁷² J.F. showed that there was no court record from the entry into the ARD program, so there was no way to be sure as to what the factual allegations were, or, further, what was discussed.⁷³ J.F. believed that she deserved the opportunity to provide her account or explanation of the events that transpired and explain why she chose to enter into the ARD program.⁷⁴

J.F. asserted that “a founded report of child abuse is issued where there has been an adjudication of child abuse in a court of law.”⁷⁵ She argued that her charges did not constitute child abuse, that she did not put her children in serious or imminent risk, and that her acceptance into the ARD program should not have raised the seriousness or imminency of the alleged threats.⁷⁶

C. Majority Opinion

The court in this case looked at two issues: “whether a founded report of child abuse is an ‘adjudication of a Commonwealth agency,’ and if it is, whether the named perpetrator . . . [is] afforded an opportunity to be heard” when entering into ARD.⁷⁷ Prior to its review, the court noted that it “shall affirm the adjudication

⁷⁰ *Id.* at 667-68.

⁷¹ *Id.* at 668.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *J.F.*, 245 A.3d at 664.

⁷⁶ *Id.*

⁷⁷ *Id.* at 669.

unless . . . [it] is in violation of the constitutional rights of the appellant”⁷⁸ Further, the court provided that “[n]o adjudication of a Commonwealth agency shall be valid . . . unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.”⁷⁹

i. Is an Adjudication Proper?

An adjudication is defined as “[a]ny final order . . . by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding”⁸⁰

Prior cases have held that a founded report of child abuse qualifies as an adjudication because the perpetrator’s rights are affected.⁸¹ Effects of being identified as a perpetrator can include limitations on employment and volunteer opportunities within schools and childcare, exclusion from specific housing and educational programs, and restrictions from adoption or foster care, just to name a few.⁸² This loss of privileges results regardless of whether the agency’s report is “indicated” or “founded.”⁸³ Restrictions on employment, volunteer opportunities, and access to childcare facilities can detrimentally impact a parent’s ability to fulfill parental obligations.⁸⁴ These consequences, the court concluded, constituted an adjudication under the Administrative Agency Law.⁸⁵

Since the court concluded that there was a valid adjudication, it then turned to the second question of whether it was necessary to provide J.F. with the opportunity to be heard.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *J.F.*, 245 A.3d at 669.

⁸² *Id.* at 670-71.

⁸³ *Id.* at 671.

⁸⁴ *Id.*

⁸⁵ *Id.*

ii. Is J.F. Entitled to an Opportunity to be Heard?

The Commonwealth Court of Pennsylvania found that because there was a final determination, the individual's personal rights were affected.⁸⁶ When this happens, “[n]o adjudication . . . shall be valid . . . [without] notice of a hearing and an opportunity to be heard.”⁸⁷ “The court reasoned that though the CPSL ‘did not provide a mechanism for a perpetrator to challenge a founded report . . . “[t]his statutory omission does not mean that a named perpetrator in a founded report does not have any right of appeal.”’”⁸⁸ In this case, the founded report shows that J.F.’s acceptance into the ARD program, which was nonfinal, was made “without a record hearing, and without any factual determinations on the merits.”⁸⁹

It is important to note that in this case, there was an entry into an ARD program, which is different from a judicial adjudication. Within a judicial adjudication, a full and fair opportunity to be heard is present.⁹⁰ In contrast, there is not an opportunity to be heard within an entry into ARD.⁹¹ The founded report, therefore, cannot be deemed a valid adjudication without further action.⁹² The initial “pleading” in this case consisted of nothing more than J.F. checking a box, indicating her request for a hearing.⁹³ The court found that this was insufficient, noting that a hearing in front of the Bureau is the only appropriate place to conduct an initial pleading.⁹⁴ Since “there was no other appropriate forum for J.F. to be afforded a full and fair opportunity to be heard on the record, she should have been allowed the opportunity to challenge the founded reports of child abuse in an administrative hearing”⁹⁵ Therefore, founded

⁸⁶ *Id.* at 666.

⁸⁷ *J.F.*, 245 A.3d at 669 (citing *J.F. v. Dep’t of Hum. Servs.*, 204 A.3d 1042, 1049 (Pa. Commw. Ct. 2019) (quoting 2 PA. STAT. AND CONS. STAT § 504 (West 1978))).

⁸⁸ *Id.* at 665.

⁸⁹ *Id.* at 673.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 673.

⁹³ *J.F.*, 245 A.3d at 669. at 674.

⁹⁴ *Id.*

⁹⁵ *Id.*

reports that are based on a voluntary entry into accelerated rehabilitative dispositions are entitled to administrative hearings.⁹⁶

D. Dissent

The dissent in this case, like DHS, focused on the plain language, or rather, the lack of language, of the CPSL.⁹⁷ The dissent agreed with the finding of a founded report and reemphasized that there is a founded report if there is a finding of a child that has been abused.⁹⁸ The dissent, however, did not disagree that individuals deserve notice and an opportunity to be heard.⁹⁹ Rather, it highlighted that “the scope of the appeal is for the limited purpose of determining whether or not the underlying adjudication supports a founded report that the named perpetrator is responsible for the abuse and would not permit a named perpetrator to collaterally attack or otherwise challenge the underlying judicial adjudication.”¹⁰⁰

The dissent explained that the majority was mistaken when it awarded a hearing in every circumstance.¹⁰¹ Rather, the dissent averred, a hearing is not necessary when the facts show clear abuse. The dissent continued to explain that the circumstances that led up to both the ARD program and the child abuse reports arose out of the same acts, and therefore, because the charges were identical, admitting to one is admitting to both.¹⁰² Allowing a hearing in this case would seem to “constitute a collateral attack of the adjudication itself, which is not allowed.”¹⁰³ In this case, J.F. was the only perpetrator and thus her identity was not being challenged.¹⁰⁴ As a result, the dissent agreed that hearings are necessary in some circumstances, but ultimately concluded that those circumstances are limited and did not apply here.¹⁰⁵

⁹⁶ *Id.* at 671.

⁹⁷ *Id.* at 674.

⁹⁸ *Id.*

⁹⁹ *J.F.*, 245 A.3d at 676.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 677.

¹⁰² *Id.* at 675.

¹⁰³ *Id.* at 677.

¹⁰⁴ *Id.*

¹⁰⁵ *J.F.*, 245 A.3d at 677.

IV. EVALUATION

In this case, the majority reached the correct holding. One of the most fundamental rights that individuals have within our court system is due process, which entitles an individual to notice and an opportunity to be heard. Here, the Department of Human Services and the Administrative Law Judge attempted to show that J.F. waived her opportunity to be heard by completing an accelerated rehabilitative disposition. Although J.F.'s actions demonstrated clear negligence or child endangerment concerns, that should not have precluded her from being able to exercise her constitutional rights. To hold otherwise would not only punish the individual for seeking treatment that people believe he or she may need, but also would set a concerning precedent that would allow for the courts to have far too much discretion in being able to decide when an individual deserves an opportunity to be heard.

It is important to note that this court followed the precedent that was set forth in *J.G.* and *R.F.* Following *J.G.*, the court further stated the importance of an individual being afforded notice and an opportunity to be heard. J.F. should have, and did, receive a similar ruling because the mothers in each case had alleged founded reports of child abuse allegations. Since the mother in *J.G.* was awarded a hearing, similar interests would suggest that J.F. should also have been entitled to a hearing to determine whether the adjudication constituted sufficient evidence. Additionally, it was important, and necessary, for the court to follow both *J.G.* and *R.F.*, as they each held that although there is no set language regarding a right to appeal within the CPSL, a statutory omission does not mean that the right to appeal is prohibited. This argument depreciates both DHS's and the dissent's arguments of the necessity to focus on the plain language of the CPSL.

Lastly, it is important to note that the notice requirements are the same regardless of whether DHS finds an indicated or founded report. In both cases, the perpetrator is given notice, the individual's opportunity to work with children is hindered, and the individual's name is added to the national child abuse database. From there, the individual faces, among other things, restrictions on employment, volunteer activities, school and childcare access, and the right to foster or adopt. Although both indicated and founded reports

contain the same repercussions, they portray different levels of review available to individuals. Individuals who are founded with an indicated report may request review and a hearing, while individuals who are founded with a founded report are not entitled to any form of review.

If the state allows the same punishments for both findings, it is logical to allow the same appeals process. In contrast, if the court were to hold that a founded report does not require an administrative hearing, it would raise the issue that DHS may be incentivized to hold more reports to be founded instead of indicated. DHS would potentially be tempted to do so because holding a founded report would not subject its rulings to review or risk the possibility that a report would be overruled. Because everyone should be entitled to have their voice heard on the charges they are facing, it should not make a difference on the availability of a hearing that an allegation is implied or founded. Therefore, the majority was correct in holding that it should be implied that a founded report is entitled to review and a hearing.

V. CONCLUSION

In the case of *J.F.*, the court reaffirmed the notion and importance of notice and the opportunity to be heard, as seen in the Due Process Clause of the Fourteenth Amendment.¹⁰⁶ The court found that a named perpetrator report is “founded” when an individual voluntary enters herself into an accelerated rehabilitative disposition.¹⁰⁷ Although an individual is seeking rehabilitation, he or she is still entitled to an administrative hearing.¹⁰⁸

Therefore, the court did not discredit the DHS for a founded report of child abuse when *J.F.* left her children alone for several hours in the middle of the night while she went to a bar to drink.¹⁰⁹ Instead, the court held that each individual deserves an opportunity

¹⁰⁶ *Id.* at 674.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 666-67.

to be heard, regardless of whether the facts of the ARD are similar, if not the same, to the charge of child abuse.¹¹⁰

¹¹⁰ *Id.* at 674.