

Complaints and Hearings

Rhode Island Department of Children, Youth and Families

Policy: 100.0055

~~Effective Date: October 8, 1984 Revised Date: January 18, 2000 Version: 3~~

~~The Department of Children, Youth and Families (DCYF) has a responsibility to promote, safeguard, and protect the social well-being and development of children of the State through a comprehensive program which is consistent with § 42-72-2 of the General Laws of Rhode Island.~~

~~The Department has a responsibility to inform all persons receiving services or persons seeking to receive services, licensees or prospective licensees and any person “indicated” as a result of a child abuse and/or neglect investigation of the right to an agency appeal to the Department Hearing Officer or, if they are not satisfied with the agency’s decision, of their subsequent right of appeal to the appropriate judicial forum.~~

~~The Department Hearing Officer provides an opportunity for any of the above-named to be heard through a formal procedure for review of any agency decision when efforts at resolution within the respective divisions have not been successful. Dissatisfaction may arise in the administration of the program for a variety of reasons and this agency provides a method for receiving complaints from individuals and an appeal process. **However, an attempt should be made to resolve appeals at the level where the decision was made through a discussion with the staff member who made the decision and/or the staff member’s supervisor or administrator.**~~

~~A complaint is defined as any oral or written request for remedy made to a DCYF staff person in the field or office or to supervisory or administrative staff, concerning the administration of agency policies and programs, in which the legal rights, duties or privileges of a specific person are required by law to be determined by the Department. Such complaints may include but are not necessarily limited to:~~

- ~~• Visitation.~~
- ~~• Placement or removal of children from foster homes.~~
- ~~• Disagreement in case planning.~~
- ~~• Claims of discrimination based on age, handicap, sex, race, religion, national origin or color.~~
- ~~• Licensing issues.~~
- ~~• Certification issues.~~
- ~~• Indicated child abuse or neglect findings.~~

Related Procedures

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Supervisory and Divisional Appeals

Procedure From Policy 100.0055: Complaints and Hearings

- A. ~~Complaints received either in the field or the office are referred to the appropriate supervisor for follow-up and resolution. The supervisor shall confer with the complainant and the staff person within ten (10) working days of the receipt of the complaint. In the event that the supervisor's decision is adverse to the complainant, the supervisor shall advise the complainant that he/she has the right to request a hearing before the chief executive of the applicable division.~~
- B. ~~Upon receipt of a complaint and request for hearing, a divisional chief executive shall schedule a hearing within ten (10) working days. At the divisional hearing the responsible staff person or supervisor shall provide a statement outlining the Department's decision that is the subject matter of the administrative appeal and the rationale for the decision. The complainant is then afforded an opportunity to make a statement of information in rebuttal, explanation or mitigation and to set forth the requested remedy.~~
- C. ~~The division chief executive shall render a written decision within ten (10) working days and send such decision to the complainant, the complainant's legal representative if any, and the staff person. If the decision is adverse to the complainant, the complainant shall be advised of the right to appeal to the Director's Hearing Officer and that such appeal must be in writing and must be filed within thirty (30) days of receipt of division decision.~~
- D. ~~Supervisory or Divisional Appeals may be waived to the next higher level in those instances where the supervisor or the division chief executive participated in making the decision which is being appealed.~~

Child Abuse and Neglect Appeals

Procedure From Policy 100.0055: Complaints and Hearings

- A. ~~In the case of a complaint related to an indicated finding of child abuse or neglect, the complainant's initial statement of dissatisfaction with the decision and request for hearing shall be filed directly with the Department's Hearing Officer.~~
- B. ~~The Hearing Officer shall send a copy of the complaint and request for hearing to the CPS chief executive who may at his/her discretion consider the complaint and act thereon, if he/she deems appropriate.~~
- C. ~~At a hearing on such a complaint, the Hearing Officer must determine whether a preponderance of the evidence gathered during the investigation indicated that abuse or neglect occurred and whether or not the Child Protective Investigator complied with all policy and procedures relating to the conduct of such investigations.~~
- D. ~~No investigative findings made by the Department shall be deemed final and no final entry shall be made into the Central Registry with reference to any investigation when the right to appeal has been claimed unless and until such time as the appeal hearing has been conducted and a written decision is rendered.~~
- E. ~~During the pendency of a properly filed appeal and until the appeal process is completed and a decision rendered, the Department maintains a temporary record of the indication in RICHIST with the annotation of an appeal pending.~~
 - 1. ~~Hearing Officer informs the Chief of Management Information Systems (MIS) or designee that an appeal has been filed.~~
 - 2. ~~Chief of MIS or designee ensures that it is documented in RICHIST that the case is pending appeal.~~
- F. ~~The results of all appeals hearings shall be promptly reflected in the Central Registry.~~
 - 1. ~~Hearing Officer informs the Chief of MIS or designee of the results of the appeal.~~
 - 2. ~~Chief of MIS or designee ensures that results of appeal is documented in RICHIST.~~

The Formal Hearing

Procedure From Policy 100.0055: Complaints and Hearings

~~The Formal Hearing is conducted by the Department's designated Hearing Officer, who is appointed by the Director of the Department. The formal hearing is conducted consistent with the provisions of the Administrative Procedures Act. A hearing on an appeal of an indicated case of child abuse or neglect which was indicated prior to the effective date of this revised policy shall be conducted pursuant to the provisions of this revised policy. The Hearing Officer shall determine whether or not the investigation revealed sufficient probative evidence to prove by a preponderance of the evidence that child abuse or neglect occurred. The Department's Affirmative Action officer sits as the staff representative in the event the complaint is pursuant to claims of discrimination.~~

- ~~A. The Hearing Process begins when a written request for appeal is received by the Department's Complaints and Hearings Office. Upon receipt of this formal complaint, the Hearing Officer proceeds as follows:
 - 1. Distributes copies of the complaint to the Office of Legal Counsel and appropriate divisional chief executive or regional office.
 - 2. Hearings on appeal of revocation of a license and indicated findings of child abuse and/or neglect for an offense which constitutes an automatic disqualifier for employment in a child care position as defined by duly established Departmental policy, shall be concluded and a decision rendered within one hundred twenty (120) days of the filing of the appeal. Hearings on appeals of other issues, shall be concluded and a decision rendered within one hundred eighty (180) days of the filing of an appeal. These time frames may only be enlarged by agreement of the parties or for good cause.~~
- ~~B. Availability of Records – The appellant and/or legal counsel will be afforded an opportunity, at least two (2) weeks prior to hearing date, to receive a redacted copy of all records pertaining to the matter at issue. Notwithstanding the foregoing, the appellant shall not be entitled to view the reporter's name and/or any privileged information/matter, as defined by law, that is contained in said file. Departmental staff shall have a right to review any agency record that they relied upon in making the decision that is the subject of the administrative hearing.~~
- ~~C. Notice of Hearing – Official notice of the hearing is sent to the complainant or his/her legal counsel and the Department's Office of Legal Counsel. Responsibility for notifying witnesses and assuring their presence at the administrative hearing rests with the party calling such witnesses. Notification includes:
 - 1. Statement of the time, place and nature of the hearing.
 - 2. Statement of the legal authority and jurisdiction under which the hearing is held.
 - 3. Reference to the particular section of the statute, rules and/or policy involved.
 - 4. A statement of the issues involved.~~
- ~~D. Request for a Hearing remains in force until:~~

1. ~~The applicant withdraws the request in writing.~~
2. ~~The applicant or his/her representative fails to appear at the scheduled hearing without good cause. (At the discretion of the Department Hearing Officer, failure to appear at two (2) scheduled hearings may be presumed to be a waiver of the hearing.)~~
3. ~~Formal disposition is made by agreement and filed with the Hearing Officer.~~
4. ~~A hearing has been held and a decision rendered.~~

E. ~~The Hearing—All matters heard by the Department Hearing Officer shall be recorded on tape. Any party wishing a transcript of the proceedings or any part thereof should make his/her own arrangements for certified stenographic services or a transcription. The hearing process includes:~~

1. ~~A statement by the Department's Hearing Officer outlining the reason for the hearing, the hearing procedures, the basis upon which the decision will be made and how the individual will be informed of the decision.~~
2. ~~At all administrative hearings filed under this section, involving the revocation and/or suspension of a license and/or the finding of a Child Protective Services investigation, the Department shall be represented by legal counsel and have the burden to prove its case by a preponderance of the evidence. In hearings on appeal of agency decisions other than as stated above, the burden of proof shall fall on the Appellant.~~
3. ~~The Department and appellant shall be afforded an opportunity to present evidence in support of its position that is the subject matter of the appeal.~~
4. ~~All witnesses presented by either party shall be sworn and subjected to direct and cross-examination. The rules of evidence as applied in civil cases in the Courts of this State shall be followed, except as provided in R.I.G.L. § 42-35-10. In addition, the Hearing Officer may in his or her discretion permit as evidence any statement by a child under the age of thirteen (13) years old about a prescribed act of abuse, neglect, or misconduct by a parent or guardian, if that statement was made spontaneously within a reasonable time after the act is alleged to have occurred, and if the statement was made to someone the child would normally turn to for sympathy, protection or advice.~~

F. ~~The Hearing Decision~~

1. ~~The decision is based upon the evidence presented at the hearing. The standard of proof will be a preponderance of the evidence. This is defined as evidence of a greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.~~
2. ~~The decision is rendered in writing within fourteen (14) calendar days from the last hearing date by the Department Hearing Officer.~~
3. ~~The decision includes, as required by R.I.G.L. § 42-92-1 et. seq., written findings and conclusions regarding the award of reasonable litigation expenses. These expenses will be awarded unless the Hearing Officer finds that the Department was substantially justified in actions leading to the proceedings and in the proceeding itself or, at the discretion of the Hearing Officer, special~~

~~circumstances made an award unjust. Requests for litigation expenses must be made on the record as part of the formal hearing or received in writing by the Hearing Officer no later than thirty (30) days following the termination of the proceedings.~~

- ~~4. Copies of the decision setting forth the issue, findings of fact supporting the decision, conclusions of law, the pertinent provisions in the law and/or agency policy, and the reasoning which led to the decision will be sent to the individual who issued the complaint and his/her legal counsel, the divisional chief executive, the Director of the Department, the Department Chief Legal Counsel and the Policy Administrator.~~
- ~~5. Implementation of any Departmental action required as a result of the decision will be the responsibility of the respective divisional chief executive. The action taken will be confirmed in writing and forwarded to the Department Hearing Officer within ten (10) days of receipt of the decision. If the Hearing Officer's decision requires a change in the finding of a Child Protective Services investigation within RICHIST, the RICHIST administrator will be responsible for implementing the change. A copy of the letter confirming the necessary action will be sent by the Hearing Officer to the appellant and his/her legal counsel.~~
- ~~6. The complainant may appeal the decision of the Hearing Officer to the appropriate judicial forum according to State statute and applicable rules of the Court. The decision of the Hearing Officer shall advise the complainant of his or her right of appeal to be affected by filing a petition for review in the appropriate court not later than thirty (30) days after mailing of the decision. The appealing party is responsible for filing a transcript of the Departmental hearing in the appropriate court and shall pay the costs to generate the transcript.~~

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TITLE 214 - DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

CHAPTER XXX - OLD REGULATIONS WHICH WERE NOT ASSIGNED

CHAPTER-SUBCHAP-PART

SUBCHAPTER XX - OLD REGULATIONS WHICH WERE NOT ASSIGNED

CHAPTER-SUBCHAP-PART

PART 1053 - COMPLAINTS AND HEARINGS

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