

	<b>Department of Human Services</b> <b>CHILDREN, ADULTS &amp; FAMILIES</b>	<b>NUMBER: I-A.5.2.1</b> <b>Child Welfare Policy</b>
	<b>CLIENT SERVICES MANUAL I</b>	<b>SECTION: A. Client Rights</b>
	<b>ISSUED BY: Field Operations</b> <b>EFFECTIVE DATE: July 1, 2001</b>	<b>SUBSECTION: 5. Rights to a Hearing</b>
<b>SUBJECT: 2.1. Contested Case Hearings - Child Welfare Policy</b>		

Responsible Manager: Executive Assistant,  
Field Operations

Approval: \_\_\_\_\_  
Assistant Administrator,  
Field Operations

Interpretation: Executive Assistant,  
Field Operations

**REFERENCES:** ORS 183.310 - 500  
 OAR 137-003-0001-0092  
 OAR 137-003-0501 through 137-003-0700,  
 Attorney General's Model Rules  
 Child Welfare Policy I-G.3.1, Adoption Assistance, 413-130-120  
 Child Welfare Policy I-E.6.1, Title IV-E-FC & General Assistance  
 Americans with Disabilities Act  
 Civil Rights Act  
 Attachment A - Memo - Hearing Request

**PURPOSE** (as stated in OAR 413-010-0500, Contested Case Hearings)

The State Office for Services to Children and Families has adopted the Attorney General's Model and Uniform Rules, OAR Chapter 137, Division 1, in effect as of January 1, 2000.

**NOTE:** For cases not covered by the Contested Case Hearing rules, refer to the "Grievance Review" policy, I-A.5.1.

**DEFINITIONS**

**(1) "Approved Family for Adoption":** A family that has been selected for a child in accord with policy I-G.1.5, Adoption Placement Selection.

**(2) "Contested Case Hearings":** A quasi-judicial hearing that is required by ORS183.310(2) before an impartial hearing officer in which the complainant and/or his representative may present all pertinent facts and evidence in order to show why the action or inaction of the Department should be considered. As a result of the hearing, the hearings officer reports findings and recommendations to the agency director, who makes a final order on the matter.

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**(3) "Party":** An individual in a contested case entitled to a hearing and who is the recipient of the final order.

**(4) "Revocation":** An official action taken by Child Welfare to cancel a certificate approval or license.

## PROCEDURE

**(1) Basis for a Contested Case Hearing.** The right to a contested case hearing is limited to the following:

**(a)** A formal complaint of discrimination in violation of Section 601 of the U.S. Civil Rights Act and the Americans with Disabilities Act;

**(b)** Denial, revocation, suspension or termination of a DHS certificate of approval, registration or license to operate, where a certificate, registration or license is required by law or Child Welfare rule as a condition for the individual to engage in a profession, occupation, trade or business. This includes foster home certificates and private child-caring agency and private residential school licenses;

**(c)** Termination or denial of Title IV-E foster care payments to relatives (OAR 413-100-0000 through 413-100-0360);

**(d)** Denial, reduction or termination of payment of Title IV-E adoption assistance (OAR 413-130-0120);

**(e)** Denial or delay of the placement of a child for adoption when an approved family is available outside the state of Oregon.

**(f)** Denial of guardianship assistance.

**(g)** Recovery of overpayments.

### **(2) Notification:**

**(a)** Applicants for or holders of a certificate of approval to operate a foster home, private child-caring agency or private residential school shall be notified of their right to a hearing at any time the agency takes action to deny the application, refuse to renew a certificate (except for holders of a temporary or provisional certificate of approval), suspend or revoke a certificate;

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**(b)** At any time the agency takes action to deny the application, or reduce or terminate payments, recipients of Title IV-E relative foster care payments or Title IV-E adoption assistance payments shall be notified of their right to a hearing;

**(c)** When a branch is considering denial or revocation of a foster home certificate, the foster care program manager and branch manager or designee will determine if attorney general review of the written notice being sent to the providers is necessary. If necessary, consultation is available from central office foster care program staff;

**(d)** When central office program staff are considering the denial or revocation of a license to operate a private child-caring agency or private residential school, the central office program manager will decide in each instance whether an attorney general review of the written notice being sent to the providers is necessary;

**(e)** When Title IV-E relative foster care payments, guardianship assistance, or adoption assistance payments are denied, reduced or terminated, or when overpayments are recovered, the appropriate central office program manager, or designee, will decide in each instance whether an attorney general review of the written notice being sent to the recipient is necessary;

**(f)** Any time the agency denies or delays the placement of a child with an adoptive family from another state who had been approved in accord with policy I-G.1.5, the adoptive family shall be notified of their right to a hearing by the adoption program manager or designee;

**(g)** Written notification of the action to be taken will be made to the applicant or holder of the certificate or license by the appropriate program manager or designee;

**(h)** Content of Notice: A notice shall be served personally or by registered or certified mail on all parties. The notice shall conform to the requirements of the Attorney General's Model Rules 137-003-0505, and thus shall include:

**(A)** A statement of the party's right to hearing, or a statement of the time and place of the hearing;

**(B)** A statement of the authority and jurisdiction under which the hearing is to be held;

**(C)** A reference to the particular sections of the statutes and rules

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involved;

**(D)** A short statement of the matters asserted or charged;

**(E)** A statement that the party may be represented by counsel at the hearing;

**(F)** A statement that if the party desires a hearing, the agency must be notified within thirty days from the date of mailing the notice.

**(G)** A statement that if a hearing is requested, each party to the hearing will be given the information on the procedures, right of representation and other rights of the parties relating to the conduct of the hearing as required under ORS 183.413(2).

**(H)** A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

### **(3) Handling a Request for a Hearing:**

**(a)** Requests for a contested case hearing regarding foster home certificates of approval must be forwarded to the foster care manager or designee within two working days of receipt of the request. Requests for a contested case hearing regarding a residential care provider or IV-E payments should be forwarded to the appropriate program manager within two working days of receipt of the request. Oral request for a contested case hearing should be put in written form and forwarded to the appropriate manager within two working days of the oral request. In the case of a hearing regarding the denial of IV-E payments to a relative provider a pre-hearing conference will be scheduled with the central office program coordinator, the branch staff involved and the relative provider. The purpose of this pre-hearing conference is to:

**(A)** Permit the involved persons to discuss the decision;

**(B)** For the Department to explain specific reasons for the action;  
and

**(C)** For relatives to explain why they feel the action should not be taken.

**(b)** The Assistant Administrator, program manager or designees will log in

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the request, complete the Hearing Request Memo (see Attachment A), and forward copies to the Hearing Officer Panel.

(c) The hearing officer will contact the party requesting the hearing, his/her representative, if any, and appropriate Child Welfare staff to arrange a mutually agreeable time and place for the hearing.

**(4) Preparation for Hearing:**

(a) **Legal Assistance.** Legal assistance from the attorney general's office shall be requested by the branch manager or appropriate program manager immediately upon receiving notice that a contested case hearing has been requested, except for hearings regarding denial of IV-E relative payments. In those cases, lay representation is permitted, and the responsible program manager shall decide whether assistant attorney general representation is needed.

(b) **Written Report.** The Assistant Attorney General assigned to the case will advise the branch or program office staff if a written report or other documentation is needed in the preparation of the case.

**(5) Withdrawals, Postponements, Cancellations:**

(a) A request for a hearing may be withdrawn by the claimant either orally or in writing. An oral withdrawal must be acknowledged in writing. Two copies of the withdrawal or acknowledgment shall be forwarded by the program manager to the Hearing Officer Panel within three working days of its receipt by Child Welfare;

(b) A hearing may be postponed for good cause if the party presents the request in writing. The request will be forwarded to the appropriate program manager and to the Hearing Officer Panel within three working days of its receipt by Child Welfare;

(c) A hearing shall be considered a default if the party fails to appear at the hearing or the party or his/her representative requests an indefinite postponement of the hearing;

(d) When the party fails to appear, or requests an indefinite postponement, the agency shall enter an order which supports the agency's action after a prima facie case has been made on the record. The material on which the action is based shall be attached to and made a part of the order.

(e) If the agency designated the agency file as the record at the time the notice of proposed action was issued in accordance with OAR 137-003-0505 and no testimony or further evidence is necessary to establish a prima facie case, the agency file shall constitute the record. No hearing shall be conducted. The agency shall issue a final order by default in accordance with OAR 137-003-0670.

**(6) The Hearing Order:**

(a) A proposed order, including "findings of fact" and "conclusions" shall be served upon all parties by the hearing officer. At the same time the parties will be notified when written exceptions must be filed to be considered by the agency, and when oral arguments (if any) may be made.

(b) The director's office will forward the proposed order to the appropriate program manager for review;

(c) If the responsible program manager agrees with the proposed order, the director will be advised to sign the order;

(d) If, after reviewing the hearing record, the program manager disagrees with the "findings of fact" or "conclusion of law" section and the recommended action, the program manager shall propose revised content for the section, and prepare a memo explaining in detail the reasons for recommending the hearing officer be overruled. If exceptions have been filed, the program manager shall consider the exceptions in preparing a memo of recommendations to the director. The proposed order, the amended order, any exceptions filed, and the memo are then submitted to the administrator;

(e) A final order containing the elements outlined in the Attorney General's Model Rule 137-003-0665 shall be issued in the name of the director with notification of the party's right to judicial review of the order.

**(7) Judicial Appeal.** Parties dissatisfied with the final order may appeal directly to the Court of Appeals by filing a petition for review within 60 days of the service of the final order, pursuant to ORS Chapter 183.