

**Chapter 110-03 WAC
ADMINISTRATIVE HEARINGS**

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WAC

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GENERAL PROVISIONS

WAC 110-03-0010 Purpose and scope. (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of children, youth, and families (DCYF).

(2) This chapter:

(a) Where appropriate, establishes rules encouraging informal dispute resolution between DCYF and persons or entities who disagree with the department's actions; and

(b) Regulates all hearings involving DCYF.

(3) The rules of this chapter are intended to implement and supplement chapter 43.216 RCW; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules of procedure adopted by the office of administrative hearings (OAH), chapter 10-08 WAC. If a provision of this chapter is broader or conflicts with a more specific provision in another applicable rule or law, the more specific rule or law applies.

(4) This chapter and any amendments to this chapter apply to cases pending before OAH or a review judge at the time of adoption unless the amendment or rule specifically states otherwise. An amendment to this chapter does not require that issues already addressed by OAH or a review judge be readdressed to comply with the amendment, unless the amendment expressly says otherwise.

(5) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine whether a hearing right exists, including the APA and DCYF program rules and laws.

(6) Specific DCYF hearing rules contained in other chapters within this title will prevail over the rules in this chapter.

(7) Effective July 1, 2019, this chapter, not chapter 388-02 or 170-03 WAC, applies to all cases from programs administered by DCYF in which DCYF or its predecessor agencies issued a written notice of an appealable decision, including written notices issued before July 1, 2019. A petition for review of an initial order filed before July 1, 2019, will be reviewed by the body to which the petition was filed.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0010, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no appeal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a pre-hearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

"Documents" means papers, letters, writings, or other printed or written items.

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax transmission, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service; or

(v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile, or subsidy overpayments to child care providers the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provisions of superior court civil rule 60 as a guide to determine what may be considered good cause.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose

of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

"Initial order" is a decision made by an ALJ that may be reviewed by a review judge at any party's request.

"Judicial review" means a superior court's review of a final order.

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

"Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF offices and divisions.

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

"Rule" means a state agency regulation found in the Washington Administrative Code (WAC).

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service;

(v) Legal messenger service; or

(vi) By any other method authorized by chapter 10-08 WAC.

(b) Service for each method, respectively, is complete when:

(i) Personal service is made;

(ii) Mail is properly stamped, addressed, and deposited in the United States mail;

(iii) Fax produces proof of transmission;

(iv) A parcel is delivered to a commercial delivery service with charges prepaid; or

(v) A parcel is delivered to a legal messenger service with charges prepaid.

(c) A party cannot serve documents by email, unless agreed in advance by the receiving party.

(d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.

"Stay" means an order temporarily halting the effective date of a DCYF action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0020, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to determine when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday, or federal or state legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and federal and state legal holidays.

(4) The deadline ends at 5:00 p.m. Pacific Time on the last day.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0030, filed 12/19/19, effective 1/19/20.]

INITIATING AN ACTION

WAC 110-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing to appeal an action by DCYF only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. There is no good cause exception to the requirement to timely request a hearing.

(2) Some DCYF programs may require a party to complete an agency review process before requesting a hearing. The notice of DCYF action that DCYF sends a party will include information about this requirement.

(3) A party has a specific, limited time to request a hearing. The deadline for the request is set by statute or department rule. In cases where the department sends a notice of DCYF action, information about how, where, and when to request a hearing will be provided in the notice.

(4) A challenge to an appealable DCYF action is heard in an administrative hearing by an ALJ employed by OAH. Not all DCYF actions may be challenged through the hearing process.

(5) If a party properly requests a hearing that is authorized under subsection (1) of this section, OAH will schedule a hearing and serve written notice of it on the parties.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0040, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0050 Requesting a hearing. (1) A request for a hearing for DCYF actions must be made as provided in the notice sent by DCYF. The request for hearing can be made by the party requesting the hearing or by the party's representative.

(2) The hearing request must include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DCYF action;

(c) Any assistance needed by the requesting party, such as an interpreter or accommodation for a disability; and

(d) A copy of the notice from DCYF stating the appealable action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0050, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0060 Filing the request for hearing. (1) When a written request for a hearing is required, a party must file the request with OAH by one of the methods described in the definition of "file" in WAC 110-03-0020. Documents must be filed in a manner that shows proof of receipt.

(2) The request must be filed using the OAH address information provided in the notice of DCYF action, or by fax at 360-664-8721.

(3) OAH is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

(4) OAH can be contacted by phone at 360-407-2700 or (toll free) 800-583-8271.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0060, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0080 Service of notice and documents. (1) Whenever service is required under this chapter, it must be made as described in the definition of "serve" or "service" in WAC 110-03-0020.

(2) Service on DCYF should be made at the address provided in the notice of DCYF action.

(3) Documents must be served in a manner that shows proof of service, as provided in WAC 110-03-0090.

(4) A party must serve all parties, and a party's representative if the party is represented, at the same time the party files a document with OAH or BOA, or when otherwise required by law.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0080, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0090 Proof of service. A party may prove that an opposing party was served with documents by providing any of the following:

(1) A sworn statement by the person who served the document;

(2) The certified mail receipt signed by the recipient;

- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0090, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0100 Representation. (1) The party requesting the hearing may represent themselves or may have another person act as a representative.

(a) A representative may be either an attorney or a lay representative including, but not limited to, a friend, relative, community advocate, or paralegal.

(b) Current DCYF employees may not represent a party other than DCYF. Unless DCYF gives permission, no former DCYF employee may be a representative for a party other than DCYF, if that employee was actively involved in the party's case while working for DCYF, or if that employee was actively involved in the party's case while working for the department of early learning (DEL) or the department of social and health services (DSHS) on or before June 30, 2018.

(2) The representative must provide OAH and the other parties with the representative's name, address, and telephone number as soon as practically possible once the decision for representation is made. If the representative is an attorney, the attorney must file a written notice of appearance in the case. If the party's representative is not an attorney, the party must also provide a written statement to DCYF authorizing the release of the party's information to the representative.

(3) After notice of representation has been properly provided, a represented party will be considered served by service on the representative.

(4) A party must notify OAH and DCYF if a representative is no longer representing the party. Withdrawal of an attorney representative is accomplished by the attorney filing a notice of withdrawal with OAH. Withdrawal of a lay representative is accomplished by the party providing written notice to OAH, or by oral notice on the record, that the former lay representative is no longer representing the party.

(5) If the party chooses to be represented or advised by an attorney or lay representative, DCYF will not pay for that attorney's or lay representative's services, as provided under RCW 34.05.428.

(6) A request for representation as an Americans with Disabilities Act (ADA) accommodation may be made to OAH under WAC 10-24-010.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0100, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0110 Appointment of an interpreter in the hearing process. (1) If a party or witness has LEP, OAH will provide an interpreter during the hearing at no cost to the party or witness.

(2) If OAH is notified that a party is a LEP person, all notices concerning hearings must:

- (a) Be written in the party's primary language; or

(b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0110, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0120 Interpreter qualifications. (1) OAH must provide a qualified interpreter pursuant to chapters 2.42 and 2.43 RCW to assist any LEP party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Neither relatives of any party nor DCYF employees may be used as interpreters.

(4) The ALJ must make a determination at the beginning of the hearing, on the record, if an interpreter can accurately interpret all communication to and from the person requesting the service. This determination will be based on:

(a) The stated needs of the person with LEP;

(b) The interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings;

(c) The interpreter's understanding of the basic vocabulary and procedures involved in the proceeding; and

(d) The interpreter's impartiality.

(5) The parties and their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If, at any time before or during the hearing, the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0120, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0130 Waiver of interpreter services. (1) A party who is eligible for appointment of a qualified interpreter under chapter 2.42 or 2.43 RCW may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record. When the request is made by a hearing-impaired party represented by counsel, the party's counsel must consent to the waiver.

(3) The ALJ must make a determination that the waiver has been knowingly, voluntarily, and intelligently made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the proceedings.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0130, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0140 Requirements that apply to the use of interpreters. (1) Interpreters must:

- (a) Use the interpretive mode that the parties, the LEP person, the interpreter, and the ALJ consider the most accurate and effective;
 - (b) Interpret statements made by the parties, witnesses, and the ALJ;
 - (c) Not disclose information about the hearing without the written consent of the parties unless required by law; and
 - (d) Not comment on the hearing or give legal advice.
- (2) The ALJ must allow enough time for all interpretations to be made and understood.
 - (3) If a party is hearing impaired, the ALJ may record a video of the hearing to be used for verifying the official transcript of the proceedings.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0140, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0150 Requirements that apply to decisions involving LEP parties.

- (1) When an interpreter is used at a hearing, the ALJ must explain on the record that decisions are written in English and that OAH will provide an interpreter for a sight translation of the decision at no cost to the party needing interpreter services.
- (2) OAH must provide the party needing interpreter services information about how to obtain those services. Information about how to access interpreter services must be attached to or included in the decision or order. The individual who provides the interpreter services does not need to be the same individual who provided the interpreter services at the hearing.
- (3) OAH or the review judge must provide a copy of a decision or order to an interpreter for use in sight translation.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0150, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0160 Notice of hearing.

- (1) When a hearing is requested, OAH serves the parties and their representatives, including all persons who have filed written petitions to intervene, with a written notice of the hearing date. The notice must be served not fewer than seven business days before the hearing date.
- (2) The notice of hearing will include:
 - (a) The names, mailing addresses, and telephone numbers of all parties to whom notice is being given and, if known, the names and addresses of their representatives;
 - (b) The date of the hearing request;
 - (c) The official file or other reference number and the name of the proceeding;
 - (d) If DCYF intends to appear, the mailing address and telephone number of the office designated to represent DCYF;
 - (e) The name, mailing address, and telephone number of the ALJ who will preside, if known;
 - (f) The date, time, place, and nature of the hearing;
 - (g) The legal authority and jurisdiction for the hearing, including a reference to the particular sections of the statutes and rules involved; and
 - (h) A short and plain statement of the matters asserted by the agency.

(3) OAH will also include information with the notice of hearing stating:

(a) If a party fails to attend or participate, either personally or through a representative, in a prehearing conference or a hearing, the party may lose the right to a hearing and an order of default or an order dismissing the case may be entered against the party;

(b) If an LEP party, witness, party's representative, or individual assisting an LEP party needs an interpreter under WAC 110-03-0110 and 110-03-0120, OAH will provide a qualified interpreter at no cost to the requesting individual. The notice will include information on how to request interpreter services;

(c) Whether the hearing will be held by telephone or in person and how to request a change in the way it will be held;

(d) How to inform OAH of any special accommodation needs for a party or witness; and

(e) How to contact OAH if a party or witness has a safety concern.

(4) The ALJ and the parties may agree to shorten the amount of notice required by any rule.

(5) Any party may request that the hearing be rescheduled if OAH does not provide the amount of notice required by these rules.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0160, filed 12/19/19, effective 1/19/20.]

PREHEARING PROCEDURES AND MISCELLANEOUS PROVISIONS

WAC 110-03-0165 Intervention. (1) An ALJ or other presiding officer may grant a petition for intervention pursuant to RCW 34.05.443.

(2) A request to intervene will be handled as a prehearing motion. The ALJ may allow intervention if:

(a) The intervenor is not a party to the matter but has a substantial interest in the outcome of the matter and the interest of the intervenor is not adequately represented by a party; or

(b) Other good cause exists.

(3) If intervention is granted, the intervenor, though not a party, must comply with this chapter as a party to the proceeding would, unless otherwise limited in the order granting intervention.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0165, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0170 Prehearing conferences. (1) One or more prehearing conferences may be required and conducted by an ALJ before a hearing. A prehearing conference may be set on the initiative of the ALJ or upon request of a party.

(2) OAH will send notice of the time and date of a prehearing conference to all parties and their representatives at least seven business days before the date of the prehearing conference except when:

(a) An ALJ converts a scheduled hearing into a prehearing conference; or

(b) The only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 110-03-0250.

(3) The ALJ must reschedule the hearing if necessary to comply with the prehearing notice requirement.

(4) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(5) Attendance by the parties and their representatives at all scheduled prehearing conferences is mandatory. A party may lose the right to participate during the hearing if that party or that party's representative does not attend the prehearing conferences. A party's appeal may be dismissed if a party or that party's representative did not attend the prehearing conferences.

(6) Additional prehearing conferences may be requested by the parties or set by the ALJ to address procedural or other issues specific to the case.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0170, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0180 Purposes of prehearing conferences. (1) The purposes of the prehearing conferences are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference, the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation or safety issues;

(d) Agree to continue the hearing;

(e) Allow the parties to make changes in their own documents including, but not limited to, the DCYF notice of an appealable action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve a document containing the names and phone numbers of witnesses and copies of all documents and other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DCYF rule;

(k) Consider a motion for summary judgment or other motion;

(l) Determine any other procedural issues that may be raised by the parties; or

(m) Schedule child witness hearings.

(3) (a) If the parties resolve the dispute informally before the prehearing conference, DCYF must provide a written description of the agreed resolution to the persons involved, and the ALJ may consider the agreement before or at the prehearing conference.

(b) If all the issues are resolved, the parties may settle the matter by:

(i) Withdrawal by the appellant of the request for hearing to appeal DCYF action;

(ii) Withdrawal by the agency of the action that is the subject of the proceeding; or

(iii) Written stipulation (agreement) signed by each party and each party's representative, or the stipulation must be recited on the record at the hearing. If the ALJ accepts the stipulation, the ALJ will enter an order consistent with its terms. The entry of the order based on the stipulation will result in dismissal of the appeal consistent with the terms of the stipulated agreement.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0180, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0190 Prehearing conference order. (1) After the prehearing conference ends, the ALJ will serve a prehearing conference order describing:

- (a) The decisions made or actions taken during the conference;
 - (b) Any changes to DCYF's or any other party's initial documents;
- and
- (c) Any agreements reached.

(2) A party may object to the prehearing conference order by notifying the ALJ in writing within ten calendar days after the order is served. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing conference order, the order will determine how the hearing will be conducted, including whether it will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause by subsequent order.

(4) Prehearing conference orders are not appealable.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0190, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0200 Assignment and challenge of assignment of administrative law judge or review judge. (1) OAH assigns an ALJ at least five business days before the hearing. A party or a party's representative may learn which ALJ is assigned to the hearing by calling or writing to the OAH field office listed on the notice of hearing.

(2) A party may request a different ALJ under RCW 34.12.050 and 34.05.425.

(a) Under RCW 34.12.050, a party requesting a different ALJ must file a written motion of prejudice at least three business days before the hearing or at least three business days before any earlier stage of the proceeding at which the ALJ may issue a discretionary ruling;

(i) The motion of prejudice must include an affidavit stating the reasons that the party believes the assigned ALJ cannot fairly decide the case or other discretionary issue;

(ii) The party must file the request with the chief ALJ at the OAH headquarters and serve a copy of the request at the same time on all other parties and their representatives.

(iii) The first request for a different ALJ under RCW 34.12.050 will be automatically granted. Any subsequent request may be granted or denied in the discretion of the chief ALJ or the chief ALJ's designee.

(b) Under RCW 34.05.425, a party may also request that an ALJ or review judge be disqualified for bias, prejudice, conflict of interest, or any other good cause. A petition for disqualification is a written explanation requesting assignment of a different ALJ or review

judge. The party or the party's representative must file a petition by taking the following steps:

(i) File a written petition and an affidavit supporting the party's reasons for believing the assigned ALJ or review judge cannot hear the case fairly;

(ii) A party must promptly file the petition after receipt of notice indicating that the individual will preside or, if later, promptly upon discovery of facts establishing grounds for disqualification;

(iii) File the petition and supporting affidavit with OAH or BOA and serve a copy on all other parties and their representatives at the same time;

(iv) The ALJ or review judge whose disqualification is requested will decide whether to grant or deny the petition and must state the facts and reasons for the decision.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0200, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0210 Rules an ALJ or review judge must apply when making a decision. (1) The ALJ or review judge must first apply the DCYF rules adopted in the Washington Administrative Code.

(2) If no DCYF rule applies, the ALJ or review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and appellate court decisions.

(3) When applying DCYF program rules regarding the substantive rights and responsibilities of the parties, the ALJ or review judge must apply the DCYF program rules in effect on the date the DCYF issued a written notice of a DCYF action, unless otherwise required by other rule or law. If DCYF amends its notice of action, the ALJ or review judge must apply the rules in effect on the date the amendment was made, unless otherwise required by other rule or law.

(4) When applying procedural rules, the ALJ or review judge must apply the rules that are in effect on the date the procedure is followed.

(5) The ALJ or review judge must apply the rules in this chapter beginning on the date each rule is effective.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0210, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0220 Challenges to validity of DCYF rules. (1) Neither an ALJ nor a review judge may decide that a DCYF rule is invalid or unenforceable. Only a superior or appellate court may decide this issue.

(2) If the validity of a DCYF rule is raised during the hearing, the ALJ or review judge may allow evidence and argument for later court review.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0220, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0230 Amendment to notice of DCYF action or a party's request for hearing. (1) The ALJ must allow DCYF to amend (change)

the notice of DCYF action before or during the hearing to match the evidence and facts.

(2) If DCYF amends its notice, it must do so in writing and serve a copy on OAH and the other parties and their representatives at the same time.

(3) The ALJ must allow an appealing party or the party's representative to amend a hearing request before or during the hearing to conform with an amended notice of DCYF action.

(4) If either DCYF or a party makes an amendment, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from DCYF's earlier notice of action or from the party's request for hearing.

(5) If the ALJ grants a continuance, OAH must serve a new hearing notice on all parties and their representatives at least seven business days before the new hearing date.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0230, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0240 Changes of address. (1) The parties and their representatives must contact DCYF and OAH as soon as possible to update any changed name, mailing address, or telephone contact information.

(2) Unless informed of a different mailing address by a party or representative before documents are mailed by OAH or DCYF to the address on record, proper notice will be presumed to have been given.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0240, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0250 Continuances. (1) Any party or party's representative may request a continuance either orally or in writing and must notify all other parties of the request at the same time the request is made.

(2) Before contacting the ALJ to request a continuance, a party and the party's representative are encouraged to contact the other parties to determine if they will agree to a continuance.

(3) The party or representative requesting a continuance must inform the ALJ whether the other parties and their representatives agree to the continuance.

(a) If the parties agree to a continuance, the ALJ may grant the request.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant the request for continuance.

(4) If a continuance is granted, OAH will serve written notice of the new hearing date and time.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0250, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default. (1) A party's failure to request a

hearing on a DCYF action within the time limit required by statute or rule results in the action becoming final and the loss of any right to a hearing. A final order resulting from a party's failure to timely request a hearing may not be vacated. There is no good cause exception for failing to timely request a hearing.

(2) An order of dismissal served on the parties and their representatives by an ALJ to end an adjudicative proceeding may be based on withdrawal of the hearing request by the appealing party, the appealing party's failure to appear or refusal to meaningfully participate in the proceedings, a request for dismissal based on a written agreement between the parties, or a request for dismissal made by DCYF.

(a) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to meaningfully participate, the DCYF action becomes the final agency action.

(b) If the hearing is dismissed pursuant to a written agreement between the parties, the parties must comply with the agreement.

(3) (a) If an appealing party fails to attend or refuses to meaningfully participate in a scheduled prehearing conference or hearing, an order of default may be entered.

(b) The order of default will include notice that the party against whom the default order was entered may file a written motion requesting that the order be vacated and the hearing reinstated.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a motion to vacate the default order within twenty-one calendar days of the date the order was served on the parties as provided under WAC 110-03-0270.

(d) After an order of default becomes a final order, the DCYF action will remain in effect and will be the final agency action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0260, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0270 Vacating an order of default or order of dismissal. (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal that is not due to a party's failure to timely request a hearing to appeal a DCYF action, as provided in WAC 110-03-0260(1).

(2) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

(3) A request to vacate an order of default or dismissal based on a party's failure to attend or refusal to meaningfully participate in a prehearing conference or hearing must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was served. The order becomes a final order if no request is received by that date.

(a) A request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(b) OAH will schedule a hearing on the request to vacate the order.

(c) At the hearing, the ALJ will receive brief statements and argument from the parties on whether there is good cause for an order of default or dismissal to be vacated.

(d) The ALJ will vacate an order of dismissal or order of default and will reinstate the hearing if the party requesting reinstatement shows good cause for the order to be vacated.

(e) The ALJ will deny a motion to vacate if the ALJ determines that good cause was not shown.

(f) Any motion to vacate an order of dismissal or default that is filed more than twenty-one days after the order of dismissal or default was served on the parties and their representatives will be denied.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0270, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0280 Stay of DCYF action. Unless specific program rules or law provide otherwise, the appealing party may request that an ALJ or review judge stay (stop) a DCYF action until there is a decision entered by the ALJ or review judge. Stay of summary suspension of child care license actions are governed by WAC 110-03-0290.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0280, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0290 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a child care license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 110-03-0040, 110-03-0050, and 110-03-0280 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license may obtain a stay of the effective date of the suspension only as set forth in this section.

(3) It is the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The licensee's request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension may be filed at any time until there is a decision entered by the ALJ on the merits of the suspension. The motion for stay, and documents and pleadings described in subsection (5) of this section, must be filed with the office of administrative hearings and served on the attorney general's office by noon on the seventh day before the stay hearing. Reply affidavits or declarations must be served on the licensee and licensee's attorney or representative, by noon on the day prior to the hearing.

(5) The motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay must be based on:

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The ALJ will not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion to offer oral testimony must be based on affidavits filed in support of or opposition to that motion.

(b) Oral testimony will only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) Upon receipt of a motion for a stay, the ALJ must schedule a hearing on the motion, to occur no sooner than seven business days from the date the request is received by OAH.

(8) The ALJ must not grant the motion for stay unless the ALJ makes specific findings that the stay is in the public interest and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury, more than economic hardship alone, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion for stay, will expedite the hearing and decision on the merits.

(10) The decision on the motion for stay is subject to review by the BOA at the request of either DCYF or the licensee. The request for review must be filed no later than seven business days after the decision is served on the parties by OAH.

(11) The review judge must promptly determine a request for review. The review judge's decision on the request for review of the ALJ's decision on a motion for stay is not subject to judicial review.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0290, filed 12/19/19, effective 1/19/20.]

HEARING PROCEDURES

WAC 110-03-0300 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) Parties and their witnesses may appear in person or by telephone conference as determined by the ALJ. An ALJ may require parties or their witnesses to appear in person if the ALJ determines there is a compelling reason and the compelling reason is stated in a hearing notice or prehearing order.

(3) The parties have the right to see all documents, hear all testimony, and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served on the parties and their representatives in advance of the hearing.

(5) All hearings must be recorded.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0300, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0310 Authority of the administrative law judge. (1)

The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing. The ALJ's authority is limited to determining whether the action taken by the department was justified based on the evidence presented during the hearing. The ALJ does not have authority to substitute or impose an alternative sanction, remedy, or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and admit relevant evidence;

(g) Close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause, pursuant to RCW 34.05.449(5);

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits or testimony following a finding that the additional evidence is necessary to complete the record, provided all parties are given a full opportunity for cross-examination, rebuttal, or both;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DCYF rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon the ALJ's motion or the motion of any party, order that multiple administrative proceedings be consolidated for the hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that the waiver:

(a) Is necessary to avoid manifest injustice to the unrepresented party; and

(b) Would not prejudice any other party.

(5) The ALJ must make findings of fact based on the preponderance of the evidence standard, unless otherwise required by law or rule.

(6) The ALJ's authority is limited to those powers granted by statute or rule. The ALJ has no inherent or common law powers.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0310, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0320 Procedures at the hearing. (1) At the hearing, the ALJ:

- (a) Explains the rights of the parties;
 - (b) Marks and admits or rejects exhibits;
 - (c) Sustains or overrules objections made by the parties, as provided by law;
 - (d) Ensures that a record is made;
 - (e) Explains that a decision is mailed after the hearing; and
 - (f) Notifies the parties of appeal rights.
- (2) The parties may:
- (a) Make opening statements to explain the issues;
 - (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
 - (c) Question the witnesses presented by the other parties; and
 - (d) Give closing arguments about what the evidence shows and what laws apply.
- (3) The record is closed at the end of the hearing if the ALJ does not allow more time to offer evidence.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0320, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0330 Evidence. (1) Evidence includes documents, objects, and testimony offered during the hearing to help prove a party's position.

- (2) Evidence may include all or parts of original documents or copies of the originals.
- (3) If a witness cannot appear at the hearing, a statement signed by the witness under oath or affirmation may be offered as evidence; however, an ALJ may give more weight to testimony that provides opportunity for cross-examination by the other parties.
- (4) An ALJ's decision will be based only on admitted evidence.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0330, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0340 Introduction of evidence into the record. (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

- (a) They have good cause for missing the deadline; or
 - (b) The other parties agree to waive the deadline.
- (2) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. Hearsay evidence is admissible if in the judgment of the ALJ it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.
- (3) The ALJ may reject evidence, if it:
 - (a) Is not relevant;
 - (b) Repeats evidence already admitted;
 - (c) Is from a privileged communication protected by law; or
 - (d) Is otherwise legally improper.
 - (4) Evidence regarding character or reputation is admissible if the notice of DCYF action alleges the party against whom the action is

taken lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care. In all other proceedings, evidence regarding character or reputation is admissible as provided by law. In cases where such evidence is admissible, the ALJ must exercise reasonable control over the number of character witnesses to avoid duplication of testimony and evidence and needless consumption of time.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0340, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0350 Objections to evidence. (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0350, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0360 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence are correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter the stipulation into the record.

(3) A stipulation may be made before or during the hearing.

(4) Any party bound by a stipulation may be permitted to withdraw it, in whole or in part, at any time prior to closure of the hearing, by showing that the stipulation was made inadvertently or under a bona fide mistake of fact and that its withdrawal will not unjustly prejudice the rights of other parties to the proceeding.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0360, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0370 Exhibits. (1) Exhibits are documents or other objects that a party wants the ALJ to consider as evidence. If the ALJ admits an exhibit into evidence, it will be considered by the ALJ in reaching a decision in the case.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0370, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0380 Official notice. (1) Official notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code, or standard of practice.

(2) An ALJ may consider and admit evidence by taking official notice.

(3) If a party requests official notice, or if the ALJ intends to take official notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to official notice evidence.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0380, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0390 Witnesses. (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) Witnesses may include:

(a) A party: The appealing party or a DCYF representative; and

(b) Anyone a party or the ALJ asks to be a witness. This can include a person who has knowledge of relevant facts or an expert witness who is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Unless DCYF gives permission, no current or former DCYF employee may be an expert witness against DCYF if that employee was actively involved in the case while working for DCYF, or if that employee was actively involved in the case while working for the department of early learning (DEL) or the department of social and health services (DSHS) on or before June 30, 2018.

(4) The ALJ decides who may testify as a witness.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0390, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0400 Requiring witnesses to testify or provide documents. (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony or to provide books, documents, or other items.

(2) ALJs, DCYF, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf:

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena;

(b) There is no cost to the requesting party to have an ALJ prepare a subpoena, but the requesting party must pay for:

(i) Serving the subpoena;

(ii) Enforcing compliance with a subpoena; and

(iii) Witness fees required according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0400, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0410 Serving a subpoena. (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person at least eighteen years old.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign, under penalty of perjury, a written, dated statement that includes the following:

(a) The first and last name and age of the person served with the subpoena;

(b) The date and time the subpoena was served;

(c) The street address or location where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

(4) A DCYF employee may serve a subpoena consistent with this section, as long as the employee is not the agency representative or a prospective witness in the case.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0410, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0420 Testimony. (1) All testimony of witnesses, including parties, must be made under oath or affirmation.

(2) Direct examination. All witnesses may be asked questions by the party who calls the witness to testify. Each witness:

(a) May testify in person, or by telephone if approved by the ALJ;

(b) May request an interpreter from OAH at no cost to the parties;

(c) May be subpoenaed and ordered to appear according to WAC 110-03-0400.

(3) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(4) If a party has a representative, only the representative, not the party, may question the witness.

(5) The ALJ may also question witnesses.

(6) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the ALJ may reject all of the related testimony of that witness or make a negative inference from the refusal to answer the question.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0420, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0430 Burden of proof and standard of proof. (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless a rule or the law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden and standard of proof.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0430, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0440 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent DCYF from collecting an overpayment.

(2) Equitable estoppel contains five elements, all of which must be proved by clear and convincing evidence:

(a) DCYF made a statement or took action or failed to take an action, which is inconsistent with its later claim or position regarding an overpayment;

(b) The appealing party reasonably relied on DCYF's original statement, action or failure to act;

(c) The appealing party will be injured if DCYF is allowed to contradict the original statement, action or failure to act;

(d) Equitable estoppel is needed to prevent a manifest injustice; and

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel described in subsection (2) of this section have been proved by clear and convincing evidence, DCYF is estopped or prevented from enforcing its claim for repayment of the overpayment.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0440, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0450 Closing the hearing record. (1) The hearing record is closed:

(a) At the end of the hearing if the ALJ does not allow more time to offer evidence or argument; or

(b) After the deadline set by the ALJ for offering evidence or argument has passed.

(2) Once the hearing record is closed, no more evidence may be taken without a determination by the ALJ of good cause.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0450, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0460 Timing of the ALJ's decision. (1) Except as provided in subsection (2) of this section, after the record is closed, the ALJ must write an initial order and serve the initial or-

der in writing within ninety calendar days, unless this period is waived or extended for good cause shown.

(2) The ALJ must issue an oral decision immediately following a parole revocation hearing and issue a final order within forty-eight hours of the hearing.

(3) The initial or final order may be served on a party by electronic distribution, with a party's agreement.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0460, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0470 Contents of the hearing record. (1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing orders;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders, and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) All final orders, initial orders, and orders on reconsideration;

(j) Matters placed on the record after an ex parte communication; and

(k) Staff memoranda or data submitted to the presiding officer, not inconsistent with RCW 34.05.455.

(3) OAH must send the official record of the proceedings to DCYF or its designee. The record must be complete when it is sent.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0470, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0480 Contents of the initial order. The ALJ's initial order must:

(1) Be correctly captioned, identifying DCYF, the name of the proceeding, and the docket number;

(2) List the names of all parties and representatives who participated in the proceeding;

(3) Contain numbered findings of fact based on the evidence in the record or officially noticed in the proceeding that the ALJ relied on in coming to a decision;

(4) Identify and explain findings based substantially on credibility of evidence or on demeanor of witnesses;

(5) Contain numbered conclusions of law and the reasons and basis for them, including citations of statutes and rules relied upon;

(6) Contain an order disposing of all contested issues, stating the result and remedy ordered;

(7) Contain a statement describing available procedures and time limits for requesting changes to the initial order or review by the BOA;

- (8) State when the decision becomes final; and
- (9) Include any other information required by law or DCYF program rules.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0480, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0490 Finality of the initial order. (1) Except as provided in subsection (3) of this section, the ALJ issues an initial order that becomes a final order:

(a) Twenty-one days after the date the initial order is mailed to the parties, when none of the parties has timely requested a review; or

(b) When a request for review is dismissed.

(2) The review judge issues the final order when a party timely requests a review of an initial order.

(3) The ALJ will issue a final order in administrative proceedings concerning juvenile parole revocation, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile, and subsidy overpayments to child care providers.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0490, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0500 Correcting clerical errors in ALJ's orders. (1) A clerical error is a mistake that does not change the result or intent of the order. Some examples of clerical errors are missing or incorrect words, numbers, or dates.

(2) If a party disagrees with an ALJ's initial or final order because of a clerical error, the party may ask for a corrected order from the ALJ by making the request in writing and filing it with the OAH office that held the hearing. A copy of the request must be served on the other parties and their representatives at the same time.

(3) A request to correct a clerical error must be made within ten calendar days of the date the order was served on the parties by OAH.

(4) When asking for a corrected order, a party must clearly identify the clerical error.

(5) When a party requests a corrected order, the ALJ must either:

(a) Serve a corrected order on all parties within three business days of receipt of the party's request for correction; or

(b) Deny the request within three business days of receiving it.

(6) If a party does not file a petition to request review of an initial order, regardless of whether a clerical error is corrected or the request for correction is denied, the initial order becomes final twenty-one calendar days after the original initial order was served.

(7) Requesting correction of an initial order does not change the time requirements for filing a written petition for review of the initial order under WAC 110-03-0520.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0500, filed 12/19/19, effective 1/19/20.]

POSTHEARING PROCESS

WAC 110-03-0510 Review of the initial order. (1) Any party who disagrees with or wants a change in an initial order, other than correcting a clerical error, may seek review of the initial order with the BOA as provided in WAC 110-03-0520 through 110-03-0560.

(2) If more than one party requests review, each request must meet the deadlines described in WAC 110-03-0520.

(3) The review judge will consider a written request for review, any response or reply, the initial order, and the record before deciding if the initial order should be affirmed, reversed, or remanded for further proceedings. In reviewing the findings of fact in the record, the review judge will give due regard to the ALJ's opportunity to observe witnesses. Oral argument may be allowed, if the review judge determines that it is necessary.

(4) Review judges may not review final orders entered by an ALJ.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0510, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0520 Time for requesting review of the initial order.

(1) A written petition for review must be filed so the BOA receives it on or before the twenty-first calendar day after the initial order was served on the requesting party. A party may submit the review request by facsimile transmission (fax), but only if the party also mails a copy of the request on the same day.

(2) A review judge may extend the deadline for requesting review of an initial order if a party:

(a) Asks for more time orally or in writing before the deadline expires; and

(b) Shows good cause for requesting more time.

(3) The BOA may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the twenty-one-day deadline;

(b) The party shows good cause for failing to file the request for review or failing to make a request for more time to file the request for review before the expiration of the twenty-one-day deadline; and

(c) The party shows good cause for requesting more time beyond the twenty-one-day deadline.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0520, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0530 Requesting review of the initial order. (1) A party must file the review request (petition for review) in writing and it should:

(a) Clearly identify the parts of the initial order with which the party disagrees; and

(b) Clearly present arguments and refer to evidence in the record supporting the party's position.

(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.

(3) Instructions for obtaining a review will be sent with the initial order. Depending on how the petition is filed, use the following contact information:

(a) Mailing address:

DCYF Board of Appeals
P.O. Box 40982
Olympia, WA 98504-0982;

(b) Fax: 360-586-5934;

(c) Email: Call the BOA at 360-902-0278 and request access to the secure email portal; or

(d) Physical address:

DCYF Board of Appeals
1115 Washington Street Southeast
Olympia, WA 98501

(4) The contact information in this subsection is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.

(5) The DCYF board of appeals can be contacted by phone at: 360-902-0278.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 21-11-078, § 110-03-0530, filed 5/18/21, effective 6/18/21; WSR 20-02-031, § 110-03-0530, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0540 Response and reply to petition for review of the initial order. (1) Any party may respond to a petition for review.

(2) If a party responds, the response must be filed on or before the seventh business day after the date a copy of the petition for review was served on the parties.

(3) The responding party must serve a copy of the response on all other parties and their representatives at the same time the response is filed.

(4) If a response is filed, a nonresponding party may reply to the response.

(5) If a party replies, the reply must be filed on or before the seventh business day after the date a copy of the response was served on the parties.

(6) The replying party must serve a copy of the reply on all other parties and their representatives at the same time the reply is filed.

(7) If a party needs more time to respond or reply, the party must contact the BOA by the deadline in subsection (2) or (5) of this section and show good cause for an extension of time.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0540, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0550 Board of appeals decision process. (1) After the deadlines required in WAC 110-03-0540, the record on review is

closed unless, upon the motion of a party, a review judge finds good cause to keep it open or to reopen the record.

(2) A review judge is assigned by the BOA to review the initial order after the record is closed. The review judge only considers evidence considered by the ALJ, unless the review judge has reopened the record pursuant to subsection (1) of this section.

(3) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

(4) The review judge enters a final order that affirms, changes, dismisses, or reverses the initial order, or remands (returns) the case to the administrative law judge for further specified action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0550, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0560 Authority of the review judge. (1) The review judge reviews initial orders and enters final orders. The review judge has the same decision-making authority as the ALJ. The review judge considers the entire record and decides the case de novo (anew). In reviewing the findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) A review judge may remand (return) cases to OAH for further action and may authorize temporary relief if appropriate.

(3) A review judge's authority is limited to those powers granted by statute or rule. The review judge has no inherent or common law powers.

(4) The review judge's order is the DCYF final order in the case, and the review judge serves the final order on each party and the agency. If the review judge's final order upholds the department's action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the superior court after filing a petition for judicial review in accordance with WAC 110-03-0590.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0560, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0570 Reconsideration of the final order. (1) Reconsideration is asking a judge to reexamine a final order because the party believes a mistake concerning a matter of law or fact was made.

(2) To request reconsideration of a final order, a party must file a petition for reconsideration with the office of OAH or the BOA that issued the final order. The petition for reconsideration must be filed within ten calendar days of the date the final order was served. The party requesting reconsideration must serve copies on all other parties and their representatives at the same time the petition is filed.

(3) Filing a petition for reconsideration does not stay the effectiveness of a final order.

(4) The petition for reconsideration must identify the parts of the final order with which the party disagrees and must identify the evidence in the hearing record that supports the party's position.

(5) Any nonrequesting party may, but is not required to respond to a request for reconsideration.

(6) If a nonrequesting party responds, the response must be filed so the ALJ or review judge receives it on or before the seventh business day after the date a copy of the petition for reconsideration was served on the parties.

(7) A responding party must serve a copy of the response on all other parties and their representatives at the same time the response is filed.

(8) If a response is filed, a nonresponding party may reply to the response.

(9) If a party replies, the reply must be filed so the office that issued the final order receives it on or before the seventh business day after the date a copy of the response was served on the parties.

(10) The replying party must serve a copy of the reply on all other parties and their representatives at the same time the reply is filed.

(11) If a party needs more time to respond or reply, the party must contact the office that issued the final order by the deadline in subsection (6) or (9) of this section and show good cause for an extension of time.

(12) If a party asks for reconsideration of the final order, the reconsideration process must be completed before requesting judicial review. However, a request for reconsideration of a final order is not required prior to requesting judicial review.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0570, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0580 Ruling on request for reconsideration. (1) An ALJ or review judge must dispose of a reconsideration request within twenty calendar days from the date a petition for reconsideration is filed, unless the ALJ or review judge serves notice that additional time is required or an extension of time to file a response or reply is granted.

(2) The same ALJ or review judge who entered the decision will dispose of the petition for reconsideration, unless that judge is unavailable.

(3) The ALJ or review judge must prepare and serve on all parties a written order:

(a) Granting the petition and dissolving or modifying the final order;

(b) Granting the petition and setting the matter for further hearing; or

(c) Denying the petition.

(4) If, within twenty calendar days of receipt of the reconsideration request, the ALJ or review judge does not dispose of the petition or serve the parties written notice setting a date by which the ALJ or review judge will act on the petition, the request is deemed denied.

(5) The ALJ or review judge decision on reconsideration is final on the date the written decision is served or the date the request is deemed denied as provided in subsection (4) of this section.

(6) An order denying reconsideration or a notice specifying the date by which there will be action on the petition is not subject to judicial review.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0580, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0585 Index of significant decisions. (1) The department's index of significant decisions, prepared under RCW 42.56.070(5), contains BOA orders that include an analysis or decision of substantial importance to the department in carrying out its duties.

(2) A final order may be relied upon, used or cited as precedent by a party if the final order has been indexed in the department's index of significant decisions.

(3) The department selects the orders to be included in its "index of significant decisions" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. The index of significant decisions will include orders meeting the criteria in subsections (1) and (3) of this section, issued by the department.

(4) The index will, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject and program; and pertinent legal citation.

(5) Any person may nominate a BOA order to be evaluated for indexing by submitting the request, reason why the person believes an order should be indexed, and a copy of the nominated order to the Board of Appeals, P.O. Box 40983, Olympia, WA 98504. The department will make a final decision as to whether to index the nominated order, and that decision is not appealable.

(6) The department will periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsections (1) and (3) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a public record may not be cited in a proceeding if it has not been indexed.

(7) The index is a public record and is available for public inspection at <https://dcyf.wa.gov/board-of-appeals>. The index of significant decisions is located at the Board of Appeals, 1115 Washington St. S.E., Olympia, WA 98501.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0585, filed 12/19/19, effective 1/19/20.]

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing a final agency order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within thirty calendar days of the date the review judge serves the final order in the case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the thirty day period does not commence until the agency disposes of the petition for reconsideration. Copies of the petition must be served on DCYF, the of-

fice of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered, mailed with proof of receipt, or sent by secure email.

(a) The physical location of the secretary is:

DCYF Office of the Secretary
1500 Jefferson Street Southeast
Olympia, WA 98501

The mailing address of the secretary is:

DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975

(b) The physical location and mailing address for the DCYF BOA are as stated in WAC 110-03-0530.

(c) To serve by email, call the BOA at 360-902-0278 and request access to the secure email portal.

(4) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

(5) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 21-11-078, § 110-03-0590, filed 5/18/21, effective 6/18/21; WSR 20-02-031, § 110-03-0590, filed 12/19/19, effective 1/19/20.]