ARTICLE 3. ADMINISTRATIVE REVIEWS AND HEARINGS

Rule 1. Purpose and Definitions

465 IAC 3-1-1 Purpose

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-2-7; IC 31-25-4; IC 31-27; IC 31-33-26-9

Sec. 1. The purpose of this article is to establish procedures for the following:
(1) Administrative review by the department before an administrative hearing is available or conducted, concerning certain department actions or decisions described in 465 IAC 3-2.
(2) Administrative hearings concerning certain department actions or decisions described in 465 IAC 3-3.
(Department of Child Services; 465 IAC 3-1-1; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-1-2 Definitions

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-2-7; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 2. The definitions in IC 31-9-2 and the definitions in this rule apply throughout this article. *(Department of Child Services; 465 IAC 3-1-2; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-3 "Administrative law judge" or "ALJ" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-2-7; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 3. "Administrative law judge" or "ALJ" means an individual who is:
(1) an attorney in good standing who is admitted to practice law in Indiana under the rules of the Indiana supreme court; and
(2) appointed by the director of the department or the director's designee to conduct administrative hearings under this article, regarding the subject or subjects specified in the appointment.
(Department of Child Services; 465 IAC 3-1-3; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-1-4 "Appellant" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-2-7; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 4. "Appellant" means the person that requested an administrative review or administrative hearing under any provision of this article. *(Department of Child Services; 465 IAC 3-1-4; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-5 "Child care worker" defined

Authority: IC 31-33-26-13
Affected: IC 31-9-2; IC 31-33-26

Sec. 5. "Child care worker" means a person who:
(1) is employed or actively seeking employment, other than self-employment as an owner, with an agency, facility, or home described in IC 31-9-2-31(b)(2);
(2) is a child caregiver, as defined in IC 31-9-2-16.4; or
(3) has or will have direct contact with children, on a regular and continuing basis, through current employment or

employment that the person is actively seeking, with any agency, facility, or home that provides:

(A) child care, as defined in IC 31-9-2-16.3; or

(B) services to, or for the benefit of, children who are victims of child abuse or neglect, as defined in IC 31-9-2-133; for a child or children to whom the person is not related, as defined in IC 31-9-2-106.5 *[IC 31-9-2-106.5 was repealed by P.L.123-2014, SECTION 3, effective July 1, 2014.]*.

(Department of Child Services; 465 IAC 3-1-5; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-1-6 "Child protection index" defined

Authority: IC 31-33-26-13
Affected: IC 31-33-26-2

Sec. 6. "Child protection index" has the meaning set forth in IC 31-33-26-2. *(Department of Child Services; 465 IAC 3-1-6; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-7 "Department" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-7; IC 31-25-2-18; IC 31-27; IC 31-33-26-13
Affected: IC 31-19-26.5; IC 31-25-2-1; IC 31-25-3-1; IC 31-33-26

Sec. 7. "Department" means the department of child services established under IC 31-25-2-1 and includes the following:

(1) The central office and any local office of the department.

(2) The child support bureau established under IC 31-25-3-1.

(Department of Child Services; 465 IAC 3-1-7; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-1-8 "Indiana adoption assistance program" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 31-9-2-17.8; IC 31-19-26.5

Sec. 8. "Indiana adoption assistance program" means the program administered by the department to provide adoption financial assistance or subsidies through periodic payments, Medicaid coverage, and reimbursement of nonrecurring adoption expenses, under the Title IV-E adoption assistance program (42 U.S.C. 673) or state adoption subsidy (IC 31-19-26.5). *(Department of Child Services; 465 IAC 3-1-8; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-9 "Indiana guardianship assistance program" defined

Authority: IC 31-25-2-18
Affected: IC 31-9-2-17.8

Sec. 9. "Indiana guardianship assistance program" means the program administered by the department to provide guardianship assistance periodic payments, Medicaid coverage, and reimbursement of nonrecurring expenses of establishing a legal guardianship for an eligible child, under the Title IV-E kinship guardianship assistance program (42 U.S.C. 673(d)), or any corresponding state assisted guardianship program under IC 31-9-2-17.8(1)(E). *(Department of Child Services; 465 IAC 3-1-9; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-10 "Informal adjustment" or "IA" defined

Authority: IC 31-33-26-13
Affected: IC 31-33-26; IC 31-34-8; IC 31-37-9

Sec. 10. "Informal adjustment" or "IA" has the meaning set forth in IC 31-34-8 and IC 31-37-9. *(Department of Child Services; 465 IAC 3-1-10; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-11 "Perpetrator" defined

Authority: IC 31-33-26-13
Affected: IC 31-33-8-12; IC 31-33-26

Sec. 11. "Perpetrator" means a person who, by an act or an omission, has been identified in a report to have committed child abuse or neglect. *(Department of Child Services; 465 IAC 3-1-11; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-1-12 "Report" defined

Authority: IC 31-33-26-13
Affected: IC 31-33-8-8

Sec. 12. "Report" means a written report of a completed assessment, following an initial report of possible child abuse or neglect, that the department receives and that is:

(1) described in IC 31-33-8-8; and

(2) approved by an authorized employee of the department.

(Department of Child Services; 465 IAC 3-1-12; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

Rule 2. Administrative Reviews

465 IAC 3-2-1 Administrative review of a substantiated report of child abuse or neglect

Authority: IC 31-33-26-13
Affected: IC 31-33-26-8; IC 31-33-26-13

Sec. 1. (a) Except as provided in subsection (b) or (c) or section 4 of this rule, any person who has been notified that a substantiated report of child abuse or neglect identified the person as a perpetrator, and that the person has been entered into the child protection index, on or after October 15, 2006, may submit a request for an administrative review of the substantiated report as provided in this section.

(b) If the alleged perpetrator is a child care worker or licensed foster parent, the department will complete an administrative review prior to approving the substantiation of any allegation, as provided in section 2 of this rule.

(c) If the perpetrator is a department employee, the department will complete an administrative review, as provided in section 3 of this rule.

(d) A person identified as a perpetrator who:

(1) is not described in subsection (b) or (c); and

(2) has been notified of an approved substantiated report;

may submit to the department, within fifteen (15) days after service of the notice, a request for administrative review of the determination. The request must be submitted in writing and contain the information specified in the notice.

(e) If the person identified as a perpetrator is a child, a request for an administrative review must be made by one (1) of the following:

(1) A parent of the child.

(2) A legal guardian for the child.

(3) An attorney for the child who has been authorized in writing by the:

(A) child's parent or legal guardian; or

(B) department if the child has no living parent or legal guardian and is a ward of the department;

to represent the child in proceedings under this article.

(4) A guardian ad litem or court appointed special advocate (CASA) for the child, who has been appointed by a court.

(f) The person identified as a perpetrator may submit with the written request information or documents for consideration in the administrative review. However, the person may not attend the review.

(g) The review shall be conducted by a department employee who:

(1) was not involved with the assessment of the allegations or with the preparation of the assessment report; and

(2) is selected in accordance with department policy.

(h) The department will notify the appellant in writing of the outcome of the review. The review shall determine one (1) of the following possible outcomes:

(1) Affirmance of the approved substantiated report.

(2) A directive to change the report determination from substantiated to unsubstantiated for any allegation of child abuse or neglect concerning the alleged perpetrator who submitted the request for administrative review.

(3) A directive to reopen the assessment in order to obtain additional information and prepare a new report.

(i) For purposes of IC 31-33-26-8(c), a request for administrative review submitted under subsection (d) shall be deemed to be a timely request for an administrative hearing, subject to compliance with 465 IAC 3-3-3. *(Department of Child Services; 465 IAC 3-2-1; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-2-2 Administrative review procedure for child care workers and licensed foster parents

Authority: IC 31-33-26-13
Affected: IC 31-33-26

Sec. 2. (a) A child care worker or licensed foster parent who is:

(1) named as a perpetrator in a report of child abuse or neglect; and

(2) not a department employee;

shall be notified of an automatic administrative review in the form of a child care worker assessment review (CCWAR) prior to department approval of a substantiated report.

(b) The administrative review process described in this section is applicable to a child care worker or licensed foster parent, whether or not the allegation concerns acts or omissions within the scope of the individual's:

(1) employment as a child care worker; or

(2) responsibilities as a foster parent of a child.

(c) If:

(1) an individual who is the subject of an assessment of reported child abuse or neglect is a child care worker or licensed foster parent; and

(2) either the:

(A) assessment concerns acts or omissions by the individual identified as a perpetrator that are not related to the individual's employment as a child care worker or foster care of a child; or

(B) department is not informed, as shown in the proposed assessment report, that the individual is currently employed as a child care worker or is a licensed foster parent;

the individual must inform the department local office that he or she is a child care worker or licensed foster parent in order to receive a CCWAR under this section.

(d) A CCWAR meeting shall be scheduled and held within fifteen (15) business days of the date of service by the department of notice to the alleged perpetrator informing the individual of the proposed substantiated determination.

(e) An alleged perpetrator who is a child care worker or licensed foster parent may personally attend and participate in a CCWAR meeting.

(f) The CCWAR meeting will be held whether or not the alleged perpetrator attends the meeting unless, prior to the scheduled meeting, the alleged perpetrator requests a continuance. A continuance for not more than fifteen (15) calendar days after the date of the originally scheduled CCWAR may be granted if the:

(1) appointed reviewer receives a written request for a continuance from the alleged perpetrator before the date scheduled for the meeting; and

(2) continuance will not endanger the health or safety of a child.

(g) The CCWAR meeting is an informational meeting only. No official recording will be made of the meeting.

(h) At the CCWAR meeting, the alleged perpetrator shall have the opportunity to present information to assist the reviewer in arriving at a decision.

(i) The child care worker or licensed foster parent alleged perpetrator has the right to have an attorney or other representative present at the CCWAR meeting. The attorney or other representative may assist the alleged perpetrator in presenting information

to the reviewer. No witness testimony will be received at the CCWAR meeting.

(j) The CCWAR shall be conducted by a department employee who:

(1) was not involved with the assessment of the allegations or with the preparation of the assessment report; and

(2) is selected in accordance with department policy.

(k) The CCWAR shall determine one (1) of the following possible outcomes:

(1) Authorization to approve the proposed substantiated determination.

(2) A decision that the proposed determination be changed from substantiated to unsubstantiated for any allegation of child abuse or neglect, as applied to the alleged perpetrator for whom the CCWAR was conducted under this section.

(3) A directive to reopen the assessment to obtain additional information and prepare a revised report.

(l) The department will:

(1) notify the alleged perpetrator in writing of the CCWAR finding; and

(2) if the finding authorized approval of the proposed substantiated report, provide information in the notice of the right to request an administrative hearing, and the time and procedure for submitting a request for hearing under 465 IAC 3-3-3.

(m) If the CCWAR results in an approved substantiated report, the department may notify the child care worker's employer or prospective employer known to the department. The department shall notify the employer within two (2) business days, if the CCWAR reviewer concludes that the health or safety of a child will be potentially endangered if the child care worker has continuing unsupervised contact with children. *(Department of Child Services; 465 IAC 3-2-2; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-2-3 Administrative review procedure for department employees for a substantiated report of child abuse or neglect

Authority: IC 31-33-26-13
Affected: IC 31-33-26-8

Sec. 3. (a) A department employee who is identified as a perpetrator in a report of child abuse or neglect shall be notified in writing of the scheduled date of an automatic administrative review. The notice will be sent or delivered with the notice to the employee of a substantiated report of alleged child abuse or neglect identifying the employee as a perpetrator, as provided in IC 31-33-26-8.

(b) Before the date scheduled for the administrative review, the employee may submit written information or documents to be considered at the administrative review.

(c) The administrative review must be held and completed:

(1) within fifteen (15) business days after the date that the substantiated report is approved; and

(2) after service of the notice under subsection (a).

(d) The administrative review shall be conducted by an administrative review team consisting of individuals that were:

(1) not involved with the assessment of the allegations or with the preparation of the assessment report; and

(2) selected in accordance with department policy.

(e) The administrative review team shall determine one (1) of the following possible outcomes:

(1) Affirmance of the approved substantiated report.

(2) A directive to change the report determination from substantiated to unsubstantiated for any allegation of child abuse or neglect concerning the department employee as an alleged perpetrator.

(3) A directive to reopen the assessment in order to obtain additional information and prepare a new report.

(f) The department shall send or deliver to the employee a written notice of the administrative review decision within five (5) business days following the review.

(g) If the administrative review determination affirmed the report, the notice shall provide to the employee information regarding the right to request an expedited administrative hearing.

(h) For purposes of IC 31-33-26-8(c), the date of service of the notice of administrative review decision under subsection (f) shall be deemed to be the date of service of the notice of a substantiated report. *(Department of Child Services; 465 IAC 3-2-3; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-2-4 Exceptions to administrative review of an abuse or neglect determination based on court findings

Authority: IC 31-33-26-13
Affected: IC 31-33-26-11; IC 31-33-26-12

Sec. 4. (a) The department will not schedule a CCWAR or administrative review under this rule, if the alleged perpetrator has been:

(1) found by the court in a child in need of services case to be responsible for child abuse or neglect; or

(2) convicted of a crime, or found to be delinquent in a juvenile delinquency case;

based on the same act or omission that the department determined to be child abuse or neglect.

(b) In the case of a child care worker or licensed foster parent who is an alleged perpetrator of child abuse or neglect, if the alleged perpetrator is not entitled to an administrative review or hearing after the final action of the court as provided in IC 31-33-26-11 or IC 31-33-26-12, the department may approve the proposed substantiated report without conducting a CCWAR and without prior notice to the alleged perpetrator. *(Department of Child Services; 465 IAC 3-2-4; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-2-5 Administrative review of certain determinations under the Indiana adoption assistance program or Indiana guardianship assistance program

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 31-9-2-17.8; IC 31-19-26.5

Sec. 5. (a) A prospective adoptive parent or adoptive parent, or prospective guardian or legal guardian of a child, who has:

(1) applied for financial or other assistance under the Indiana adoption assistance program or Indiana guardianship assistance program, administered by the department under IC 31-9-2-17.8(1)(E) or IC 31-19-26.5, or any rule or policy of the department relating to administration of those programs; or

(2) entered into an adoption assistance or guardianship assistance agreement with the department and has received a final decree of adoption or order establishing a legal guardianship for a child following a determination of eligibility for assistance under the Indiana adoption assistance program or Indiana guardianship assistance program;

may submit a request for administrative review of certain determinations relating to the department's administration of those programs.

(b) The following determinations are subject to administrative review under this section:

(1) A final Indiana adoption assistance program or Indiana guardianship assistance program eligibility determination.

(2) The amount of a periodic payment that the department has agreed to pay an eligible applicant for adoption or guardianship assistance, as stated in a final offer letter that the department submitted to the applicant.

(3) Denial, in whole or in part, of a request by an adoptive parent or guardian who is a party to an adoption assistance agreement or guardianship assistance agreement, for modification of the agreement to increase the periodic payment amount, due to change of circumstances after signature of the agreement, as provided in the applicable department policy.

(4) Denial of an application by an adoptive parent to continue the benefits provided under the adoption assistance agreement after the child's eighteenth birthday, based on the child's mental or physical handicap that warrants continuation of assistance.

(5) Denial or termination of benefits provided to an adoptive parent or guardian under an adoption assistance agreement or guardianship assistance agreement that became effective after the child's sixteenth birthday, for a time period after the child's eighteenth birthday, if the denial or termination is based on the youth's failure to comply with the applicable educational or employment requirements for continued eligibility.

(6) Termination of an adoption or guardianship assistance agreement, before the child's eighteenth birthday, or suspension of periodic payments under the agreement, for reasons stated in the applicable law or department policy.

(7) The amount of reimbursement that the department has agreed to pay for nonrecurring expenses relating to the adoption or establishment of legal guardianship for the child.

(c) No review will be provided under this rule to an applicant or recipient of payments under the Indiana adoption assistance or guardianship assistance program, concerning any of the following department determinations:

(1) Availability of funds for payments under state adoption subsidy agreements.

(2) Percentage or other reductions in current periodic payments if required by applicable law due to a reduction in the foster care per diem rate that would be payable to the child in foster care.

(3) Any determination related to administration of the adoption assistance or guardianship assistance program that is not described in subsection (b).

(d) A person entitled to request an administrative review under this section may submit a written request for review, in the form prescribed by the department for that purpose, within fifteen (15) days after the department serves a notice or letter regarding the determination that is subject to review. The individual requesting the review may submit with the request any written information or documents that the requester considers relevant to consideration in the review.

(e) The administrative review shall be conducted by a department employee who:

(1) is familiar with the laws, rules, and policies applicable to the adoption assistance or guardianship assistance program;

(2) was not involved in making the decision or determination that is the subject of the request for administrative review; and

(3) is selected in accordance with department policy.

(f) The department will notify the person who requested the administrative review of the outcome of the review, within sixty (60) days of receipt of the review request. The outcome may:

(1) uphold, reverse, or modify the department's original determination; or

(2) remand the issue on review for further consideration by the appropriate department office.

(g) If the administrative review determination includes a department agreement or recommendation that would require amendment of an existing adoption assistance or guardianship assistance agreement, the adoptive parent or guardian who requested the review may, within thirty (30) days after receipt of the notice of outcome of the review, do either of the following:

(1) Sign an amendment to the agreement that implements the review determination.

(2) Request an administrative hearing under 465 IAC 3-3.

(Department of Child Services; 465 IAC 3-2-5; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-2-6 Administrative review of certain determinations regarding rates or amounts payable to residential treatment services providers or licensed child placing agencies

Authority: IC 31-25-2-18
Affected: IC 31-25-2

Sec. 6. (a) A residential treatment services provider may request an administrative review of a base rate or other cost based rate relating to payment for a child whom the department has placed at a provider's residential treatment facility, as determined under 465 IAC 2-16.

(b) A licensed child placing agency may request an administrative review of an administrative payment or other cost based rate relating to services that the agency provides to children whom the department has placed through the agency in a foster family home, as determined under 465 IAC 2-17.

(c) The criteria for administrative reviews described in this section, and the procedures for requesting those reviews, are specified in 465 IAC 2-16-26 and 465 IAC 2-17-27, respectively. *(Department of Child Services; 465 IAC 3-2-6; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-2-7 Denial of review

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-33-26-13
Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-33-26

Sec. 7. (a) If a person's request for administrative review is denied without consideration of the issue or issues presented by the request, the department shall send to the person a written notice of denial that states the reason for the denial.

(b) The person may request a review of the denial within fifteen (15) days after service of the denial on the person, by submitting to the department a written request to reconsider the request for review. The request to reconsider must state the basis on which the person asserts entitlement to administrative review.

(c) A department employee selected by the director or designee, will:

(1) review the denial notice and the written request to reconsider denial of administrative review;
(2) determine whether review is appropriate; and
(3) send or deliver to the person who requested the review a written decision, within fifteen (15) days after receipt of the person's request for reconsideration.

(d) If the department's reconsideration decision reverses the denial of review, the review will be completed without further request. If the department affirms the denial, the appellant may request an administrative hearing limited to the reason or reasons stated for denial of the review. *(Department of Child Services; 465 IAC 3-2-7; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-2-8 Service of notice and receipt of requests for review

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-33-26-13
Affected: IC 4-21.5-3-1; IC 4-21.5-3-2; IC 31-19-26.5; IC 31-25-2-7; IC 31-33-26

Sec. 8. All applicable provisions of IC 4-21.5-3-1 and IC 4-21.5-3-2 will control determination of the manner and time of service of notices and computation of the time for receipt of a request for administrative review as provided in this rule, unless otherwise prescribed by statute or another applicable rule. *(Department of Child Services; 465 IAC 3-2-8; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

Rule 3. Administrative Hearings

465 IAC 3-3-1 Purpose

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 1. (a) The purpose of this rule is to establish procedures for administrative adjudication within the department, upon a request for an administrative hearing by a person who:

(1) has been identified as a perpetrator in a substantiated report of child abuse or neglect approved by the department on or after October 15, 2006, and entered into the child protection index under IC 31-33-26;
(2) is aggrieved by a department determination concerning certain decisions relating to the Indiana adoption assistance program or Indiana guardianship assistance program;
(3) is aggrieved by the department's actions relating to child support obligation collection or distribution concerning:
    (A) income withholding under IC 31-16-15-4.3;
    (B) suspension of license privileges or issuance of notices of child support delinquent obligations to licensing agencies under IC 31-25-4-32;
    (C) blocking or encumbering an account of the obligor with a financial institution under IC 31-25-4-31;
    (D) interception of a state income tax refund for application to a delinquent child support obligation under IC 6-8.1-9.5-7; or
    (E) distribution of child support payments involving an assignment of rights to the state under IC 31-25-4-17 and IC 31-25-4-26;
(4) is aggrieved by the department's actions denying or revoking a license to operate a child caring institution, private secure facility, foster family home, group home for children, or child placing agency, under IC 31-27;
(5) is aggrieved by the department's determination regarding certain rates or other amounts payable under 465 IAC 2-16 for children placed with a licensed residential treatment services provider, or payable under 465 IAC 2-17 for children placed in a foster family home through a licensed child placing agency; or
(6) is aggrieved by the department's determination concerning admission or reentry into collaborative care under 465 IAC 2-15.1-16.

(b) In the event that any provision of this rule conflicts with any provision of a federal or state statute, regulation, or another rule that is specifically applicable to any department action described in subsection (a), the other statute, regulation, or rule shall supersede that part of this rule for which the conflict exists. *(Department of Child Services; 465 IAC 3-3-1; filed Nov 14, 2012,*

12:46 p.m.: 20121212-IR-465120404FRA; filed Oct 12, 2016, 2:03 p.m.: 20161109-IR-465160055FRA)

465 IAC 3-3-2 Standing

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 2. In the event that the rights, duties, or obligations of any person are adversely affected by a:

(1) decision of the department following an administrative review under 465 IAC 3-2;

(2) notice of intent by the department to take any action concerning enforcement of a child support obligation or distribution of child support collection, as described in section 1(a)(3) of this rule; or

(3) decision of the department to deny or revoke a license to operate a foster family home, residential facility for the care or treatment of children, or a child placing agency, as described in section 1(a)(4) of this rule;

the person may request an administrative hearing, as provided in section 3 of this rule. *(Department of Child Services; 465 IAC 3-3-2; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-3 Request for hearing

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-16-15-3.5; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 3. (a) Any person who has been notified that a substantiated report of child abuse or neglect has been entered into the child protection index identifying the person as a perpetrator, and who has exhausted the department's administrative review process, may request an administrative hearing by submitting the hearing request form made available by the department or attached to the administrative review decision, completed in accordance with the instructions included on the form and department policy. The completed request form must be submitted to the department hearings and appeals unit not more than thirty (30) days after the person was served with written notice of the administrative review determination that affirmed a substantiated report identifying the person as a perpetrator.

(b) Any child support obligor who has been notified that the department intends to:

(1) take action to suspend or restrict, any professional, motor vehicle operator, recreational, or other license or permit, as described in IC 31-25-4-32; or

(2) notify a licensing agency under IC 31-25-4-32 concerning possible imposition of sanctions;

may request a hearing under IC 31-25-4-33.

(c) Any person who has been notified that the department intends to implement an income withholding order under IC 31-16-15-3.5 may request a hearing under IC 31-16-15-4.3.

(d) Any person who has been notified that the department has initiated action to block or encumber the person's account with a financial institution under IC 31-25-4-31 may request a hearing under IC 31-25-4-31(g).

(e) Any taxpayer who has been notified that the department intends to intercept a state income tax refund owing to the taxpayer for application to a delinquent child support obligation may request a hearing under IC 6-8.1-9.5-7.

(f) A recipient of the federal Temporary Assistance to Needy Families (TANF) program, who has been notified of the distribution of support payment proceeds under an assignment to the state may request a hearing under IC 31-25-4-26 on the issue of the proper distribution under IC 31-25-4-17 of the support money collected.

(g) A person who has been notified of denial or revocation of a license under IC 31-27 may request a hearing under IC 31-27-3-11, IC 31-27-3-20, IC 31-27-4-13, IC 31-27-4-23, IC 31-27-5-12, IC 31-27-5-20, IC 31-27-6-8, or IC 31-27-6-17, whichever is applicable.

(h) A person who has received written notice that an administrative review request under 465 IAC 3-2 was denied without consideration of the issue or issues presented may request a hearing under 465 IAC 3-2-7.

(i) A hearing request under subsection (b), (c), (d), or (f) must be made not more than twenty (20) days after the date the notice was mailed to the person.

(j) A hearing request under subsection (e), (g), or (h) must be made not more than thirty (30) days after the date the notice was mailed to the person.

(k) The department will provide an administrative hearing upon receipt of a request for hearing timely submitted under subsection (b), (c), (d), or (e) for mistake of fact, on one (1) of the following grounds:

(1) The person to whom the notice is addressed is not the person to whom the notice applies.

(2) The amount of arrears is less than the amount required to initiate the action.

(l) A person who is dissatisfied with the department determination following administrative review under the Indiana adoption assistance program or the Indiana guardianship assistance program may request an administrative hearing by submitting a hearing request to the department hearings and appeals unit, in the form made available to the person by the department, and completed in accordance with the instructions included in the form and department policy, within thirty (30) days after service of notice of the review decision.

(m) A person may request an administrative hearing concerning payment rates or amounts determined under 465 IAC 2-16 or 465 IAC 2-17 as provided in 465 IAC 2-16-27 or 465 IAC 2-17-28.

(n) A person who requested an administrative hearing may withdraw a request for administrative hearing at any time before closure of the hearing record. If a hearing request is withdrawn, the person waives any further right to hearing by the department. *(Department of Child Services; 465 IAC 3-3-3; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-4 Parties

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 4-21.5-3-21; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26

Sec. 4. The parties to an administrative hearing under this rule are the appellant and the department. No other person or entity shall be considered a party for purposes of any proceeding under this rule, unless permitted to intervene as a party under IC 4-21.5-3-21 in a hearing to which IC 4-21.5-3 applies, on a ground applicable under Indiana Trial Rule 24 or IC 4-21.5-3-21. *(Department of Child Services; 465 IAC 3-3-4; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-5 Review of child support hearing requests

Authority: IC 31-25-2-18; IC 31-25-4-27
Affected: IC 6-8.1-9.5-7; IC 31-16-15-4.3; IC 31-25-4

Sec. 5. (a) Any request for hearing under section 3(b), 3(c), 3(d), 3(e), or 3(f) of this rule will first be reviewed by the department to determine if the hearing request was timely, and whether the basis of the request for hearing asserts an issue that is eligible for administrative hearing.

(b) If a request is determined to be untimely or presents an issue that is not eligible for administrative hearing, the department will notify the person who submitted the request and state the reason that the person is not entitled to a hearing and the request will not be considered for administrative hearing. *(Department of Child Services; 465 IAC 3-3-5; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-6 Denial of requested administrative hearing

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-33-26-13
Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-27; IC 31-33-26

Sec. 6. (a) If a person's request for administrative hearing under 465 IAC 2-15.1-17 or section 3(a), 3(g), 3(l), or 3(m) of this rule is denied without consideration of the issue or issues presented by the request, the department shall send a written notice of denial to the person that states the reason that the person is not entitled to a hearing on the issue or issues.

(b) The person may request a review of the basis for the denial of administrative hearing within fifteen (15) days after service of the notice of denial, by submitting a written request to reconsider the denial of administrative hearing. The request must:

(1) be sent or delivered to the department hearings and appeals office; and

(2) state the basis on which the person asserts entitlement to a hearing under this rule.

(c) A department employee selected in accordance with department policy will review the denial notice and the written request for reconsideration and determine whether administrative hearing is appropriate.

(d) The department will send written notice of the decision to the person within fifteen (15) days after receipt of the person's request for reconsideration of denial of administrative hearing.

(e) If the denial of administrative hearing is reversed, the administrative hearing will be scheduled and conducted without further request by the person. Any time limits applicable under this rule to the requested hearing shall commence on the date of service of the notice of decision under this subsection. If the department affirms the denial, written notice of the decision will be the final agency action on the issue. *(Department of Child Services; 465 IAC 3-3-6; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA; filed Oct 12, 2016, 2:03 p.m.: 20161109-IR-465160055FRA)*

465 IAC 3-3-7 Stay of administrative hearing on substantiation of child abuse or neglect

Authority: IC 31-33-26-13
Affected: IC 31-33-26; IC 31-34-8-1; IC 31-37-9-1

Sec. 7. (a) If a court having jurisdiction over a child in need of services case under IC 31-34 is anticipated to determine whether child abuse or neglect occurred, or an individual named in a report of child abuse or neglect is a perpetrator, a request for an administrative hearing filed by that individual shall be stayed in accordance with IC 31-33-26-11.

(b) If a criminal charge or juvenile delinquency petition has been filed against an individual identified as a perpetrator, based on the facts and circumstances on which a report of child abuse or neglect was classified as substantiated, a request for an administrative hearing filed by that individual shall be stayed until the petition or charges have been disposed of by the court having jurisdiction.

(c) If, under IC 31-34-8-1 or IC 31-37-9-1, a program of informal adjustment (IA) has been filed, based on the facts and circumstances on which a report of child abuse or neglect was classified as substantiated, and the IA is pending under the jurisdiction of a juvenile court, a request for administrative hearing filed by an individual who is participating in the IA will be stayed until the court no longer retains jurisdiction over the IA proceeding, in accordance with IC 31-33-26-11.

(d) If the department has received notification from a prosecutor that criminal charges are under review based on the same facts and circumstances that resulted in the classification of allegations as substantiated against the individual requesting administrative hearing, the request shall be stayed until the prosecutor no longer asserts that criminal charges are under review.

(e) During a stay of an administrative hearing, a substantiated report will remain in the child protection index.

(f) A party must submit to the department the following documents in order to request that a hearing be scheduled following a stay of the original hearing under this section:

(1) A written request to schedule an administrative hearing.

(2) Documentation establishing that:

(A) the issues relating to the facts and circumstances of the substantiated report have been resolved in a court proceeding;

(B) the court no longer retains jurisdiction over the matter; or

(C) if court proceedings have not been commenced, the prosecutor does not assert that criminal charges are under review.

(g) The request for hearing on a stayed matter must be submitted to the department hearings and appeals unit within thirty (30) days after one (1) of the following events has occurred, consistent with the reason for the stay:

(1) A dispositional decree or order of dismissal is entered in a child in need of services or juvenile delinquency case.

(2) An order of dismissal or discharge is entered in a juvenile court case in which the court approved a program of informal adjustment.

(3) Final adjudication or dismissal in a criminal case.

(4) The appellant received notice that the prosecutor no longer asserts that criminal charges are under review.

If the request is not received timely, the request for hearing may be dismissed.

(h) A request for scheduling of an administrative hearing that has been stayed will not be granted, and the original request for administrative hearing will be dismissed, if the alleged perpetrator no longer is entitled to an administrative hearing as provided in IC 31-33-26-8, IC 31-33-26-11, or IC 31-33-26-12. *(Department of Child Services; 465 IAC 3-3-7; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-8 Appointment of administrative law judges

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26-9

Sec. 8. The department director or designee will appoint ALJs as needed to conduct hearings and issue decisions under this rule. ALJs may be employees of the department. *(Department of Child Services; 465 IAC 3-3-8; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-9 Scheduling of hearings

Authority: IC 31-19-26.5; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26-9

Sec. 9. (a) The department's hearing and appeals unit will schedule evidentiary hearings and issue notices to parties regarding the:

(1) date;
(2) time;
(3) location; and
(4) procedures;

relating to the scheduled hearing.

(b) Except as otherwise provided in this subsection, hearings will be scheduled and conducted at a location in Indianapolis, Indiana. The location for hearings requested under section 3(a) or 3(g) of this rule will be scheduled at a location determined under applicable department policy. By agreement of the parties and in the discretion of the ALJ, the hearing may be conducted at a different location.

(c) The department will schedule a hearing to be held within:

(1) a reasonable time after the date the department receives the hearing request;
(2) twenty (20) days after the date the department receives a hearing request under section 3(a) of this rule that is not stayed under section 7 of this rule, from an individual who is:
    (A) a child care worker or a department employee; and
    (B) identified in a substantiated report as the perpetrator of child abuse or neglect; or
(3) twenty-five (25) days after the date the department receives a hearing request under section 3(b), 3(c), or 3(d) of this rule.

(d) The appellant may waive the time limit for conducting a hearing scheduled under subsection (c)(2) by submitting to the ALJ:

(1) a request for continuance of the hearing, under section 18 of this rule; or
(2) a letter or other writing requesting or approving a waiver of the time limitation.

(e) The time limit for conducting a hearing scheduled under subsection (c)(3) may be waived if the:

(1) appellant or the child support bureau, at or before the time of the scheduled hearing, requests a continuance of the hearing under section 18 of this rule; and
(2) ALJ may grant the continuance request under the conditions stated in section 18(d) of this rule.

(f) The department shall notify the parties in writing of the scheduled hearing date, time, and place at least seven (7) days in advance of the hearing, unless a hearing is scheduled on a date agreed to by the parties.

(g) Except as otherwise determined by the ALJ under subsection (h), all hearings will be completed on the date scheduled for the hearing, unless the parties agree at the hearing, by statements on the record, that:

(1) due to unanticipated circumstances, and for good cause approved by the ALJ, the hearing cannot be completed on that date; and
(2) any time deadline for completion of the hearing, as stated in the applicable statute or this section, is extended to the date of a continued hearing scheduled by agreement among the parties and the ALJ.

(h) If the hearing cannot be completed due to circumstances beyond the control of the ALJ and the parties, including, but not limited to, severe weather conditions or unavailability of the hearing location, the ALJ may reschedule the completion of the hearing at another date and time. *(Department of Child Services; 465 IAC 3-3-9; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-*

465120404FRA)

465 IAC 3-3-10 Procedures applicable to hearings not subject to IC 4-21.5-3

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 4-21.5-3; IC 6-8.1-9.5-7; IC 31-27

Sec. 10. Sections 11 though 16 of this rule do not apply to hearings to which IC 4-21.5-3 applies, as provided in the statute or rule applicable to the particular hearing category. *(Department of Child Services; 465 IAC 3-3-10; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-11 Service of notice and receipt of requests for hearing

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-9
Affected: IC 4-21.5-3-1; IC 4-21.5-3-2; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-33-26-9

Sec. 11. Unless otherwise provided in this rule or an applicable provision of the statute or rule governing a particular proceeding, all applicable provisions of IC 4-21.5-3-1 and IC 4-21.5-3-2 will control determination of the manner and time for service of notices and computation of the time for receipt of a request for administrative hearing under this rule. *(Department of Child Services; 465 IAC 3-3-11; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-12 Conduct and authority of administrative law judge

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 4-21.5-3; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-33-26-9

Sec. 12. (a) An ALJ shall conduct a proceeding under this rule in a manner that promotes public confidence in the integrity and impartiality of the administrative process.

(b) The provisions of IC 4-21.5-3-11 through IC 4-21.5-3-13, relating to ex parte communications, prohibited acts, disqualification, and involvement in a preadjudicative stage of the matter that is the subject of a hearing, apply to proceedings and hearings under this rule.

(c) The assigned ALJ may, when necessary, requested by a party, or otherwise determined to be appropriate, schedule and conduct prehearing conferences or other informal conferences, substantially in accordance with any applicable provisions of IC 4-21.5-3-18 and IC 4-21.5-3-19.

(d) The assigned ALJ may conduct proceedings and make rulings or decisions regarding any procedural matter in conducting proceedings under this rule, to the same extent that a trial court judge is authorized to conduct proceedings and make rulings or decisions in a civil action, utilizing any applicable provision of the Indiana Rules of Trial Procedure. In addition, the ALJ may exercise any powers or authority given to an ALJ under a provision of law applicable to the program or matter that is the subject of the hearing. *(Department of Child Services; 465 IAC 3-3-12; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-13 Conduct of hearings

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 4-21.5-3-25; IC 4-21.5-3-26; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-33-26-9

Sec. 13. (a) The provisions of IC 4-21.5-3-25, except IC 4-21.5-3-25(g), and IC 4-21.5-3-26, apply to hearings conducted by the assigned ALJ under this rule.

(b) The ALJ shall do the following:

(1) Conduct the hearing in an informal manner and without adherence to the Indiana rules of evidence applicable in civil court proceedings, except as provided in this section.

(2) Exclude from consideration irrelevant, immaterial, or unduly repetitious evidence.

(c) Each party shall have the right to submit evidence, including the testimony of witnesses. Each party shall have the right to cross-examine witnesses and offer rebuttal evidence.

(d) The ALJ may admit and consider hearsay evidence.

(e) Upon application by a party, hearing requests involving the same person or persons and the same facts and circumstances may be consolidated or heard at the same time to promote administrative efficiency.

(f) The ALJ may conduct an administrative hearing or accept testimony in person or by telephone, audiovisual communication, or other available means of communication, for the convenience of the parties or upon request of any party. A party may request permission to conduct the hearing or present testimony under this subsection by written motion in advance of the scheduled hearing date. Any other party may, at the discretion of the ALJ, object or otherwise respond to a motion under this subsection.

(g) In conducting a hearing, the ALJ may utilize, or permit a party to utilize, any provision of the Indiana Rules of Evidence that is applicable to the particular testimony or document presented at the hearing and is not inconsistent with this section or the applicable provisions of IC 4-21.5-3-26.

(h) Any issue not presented by an appellant in the administrative review, if applicable, or in the hearing request, is waived and shall not be considered in the hearing, unless the ALJ grants the appellant's request for consideration of the issue in the interest of fairness and justice, and one (1) of the following conditions applies:

(1) The appellant establishes excusable neglect or fraud in support of the failure to present the issue timely in the administrative review or hearing request.

(2) The interests of any other party will not be prejudiced or adversely affected by consideration of the issue at the hearing.

(i) If all facts material to a decision are undisputed, the ALJ may, with agreement of the parties, dispense with an evidentiary hearing and issue a decision based on stipulated or otherwise undisputed facts and applicable law. *(Department of Child Services; 465 IAC 3-3-13; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-14 Burden of proof

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-33-26-9

Sec. 14. Unless otherwise provided in the statute applicable to the particular hearing category, the appellant has the burden of proof, by a preponderance of the credible evidence, to establish any fact that is material to a decision of the issue or issues presented at a hearing under this rule. *(Department of Child Services; 465 IAC 3-3-14; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-15 Dismissal

Authority: IC 31-19-36.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-33-26-9

Sec. 15. (a) At any stage of a proceeding, if a party fails to:

(1) timely request an administrative review that is available under 465 IAC 3-2;

(2) timely request an administrative hearing under this rule; or

(3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding, unless a continuance has been granted under this rule before the scheduled date;

the ALJ may serve upon all parties written notice of a proposed dismissal order, including a statement of the proposed reason or reasons for dismissal of the proceeding.

(b) Within seven (7) days after service of a proposed dismissal order, the party affected by the proposed dismissal may file a written motion requesting that the proposed dismissal not be ordered, and stating the grounds for objecting to the proposed order. During the time within which a party may file a motion under this subsection, the ALJ may adjourn the proceedings, or take any action in the proceedings that is necessary or appropriate, without participation of that party.

(c) If the party subject to the proposed dismissal order fails to file a timely written motion under subsection (b), the ALJ may issue the dismissal order without further notice. If the party has filed a timely motion under subsection (b), the ALJ may:

(1) conduct a prehearing conference or other informal proceeding to consider the proposed dismissal and objection; or

(2) enter the order or withdraw the proposed order based on undisputed facts and reasons stated in the proposed order and

response motion.
(Department of Child Services; 465 IAC 3-3-15; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-3-16 Hearing decision

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-33-26-13
Affected: IC 4-21.5-3-27; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4-32; IC 31-25-4-33; IC 31-33-26-9

Sec. 16. (a) The provisions of IC 4-21.5-3-27(b), IC 4-21.5-3-27(d), IC 4-21.5-3-27(e), and IC 4-21.5-3-27(h) apply to findings, conclusions, and orders issued by an ALJ under this rule.

(b) Except as provided in subsections (d) and (e), at the conclusion of the hearing, the ALJ may request the parties, or grant a request made by a party, to submit post-hearing proposed findings of fact and conclusions of law or a post-hearing brief concerning the facts and issues presented, or both. The ALJ will specify the time limit for filing and service of post-hearing proposed findings or briefs. The time allowed for post-hearing submissions will be excluded from computation of the otherwise applicable time for the ALJ to issue a decision under this rule.

(c) Except as provided in subsections (d) and (e), the written decision of the ALJ shall be issued within ninety (90) days after conclusion of the hearing or after submission of proposed findings or briefs under subsection (b), unless the time for issuance of a decision is extended or waived:

(1) with written consent of all parties; or

(2) for good cause, as determined by the ALJ upon motion of a party or by the ALJ, and specified in a written order.

(d) In the case of a hearing involving an allegation of abuse or neglect by a child care worker or department employee, a hearing decision shall be issued within fifteen (15) days after conclusion of the hearing, unless this time limit is extended or waived:

(1) by written consent of the appellant; or

(2) for good cause based on unanticipated and unavoidable circumstances, as specified in a written order.

A request by the appellant to file post-hearing proposed findings or a brief shall constitute a waiver of the time limit for issuance of a decision under this subsection. In that event, the time limit for issuance of a written decision will be fifteen (15) days after submission of the proposed findings or brief, or any additional time that may be established by the ALJ with agreement of the appellant.

(e) In the case of a hearing concerning:

(1) a child support income withholding order under IC 31-16-15-4.3; or

(2) sanctions for nonpayment of delinquent child support obligations under IC 31-25-4-32 and IC 31-25-4-33;

a hearing decision shall be issued at or immediately following conclusion of the hearing, unless the time limit is extended or waived by written consent of both the appellant and the child support bureau of the department, and with approval of the ALJ.

(f) The ALJ's decision shall:

(1) include findings of fact and conclusions of law;

(2) specify the reasons for the decision; and

(3) identify the evidence and applicable statutes, regulations, and policies supporting the decision.

(g) The findings of fact need not include a recitation of the evidence admitted in the evidentiary hearing. Rather, the findings should contain the basic facts that support the ALJ's conclusions of law and the ultimate decision. The ALJ's conclusions of law must cite the relevant laws upon which the ultimate decision is based and relate the facts to the law.

(h) The decision of the ALJ shall be the final decision of the department. The ALJ may affirm, reverse, or modify the department's decision or remand the matter to the department for further consideration. *(Department of Child Services; 465 IAC 3-3-16; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-17 Final order proceedings in hearings under IC 4-21.5-3

Authority: IC 4-21.5-3-28; IC 31-25-2-18
Affected: IC 4-21.5-3; IC 6-8.1-9.5-7; IC 31-27

Sec. 17. (a) For administrative hearings to which IC 4-21.5-3 applies, the delegee of the ultimate authority of the department,

for purposes of proceedings under IC 4-21.5-3-28, IC 4-21.5-3-29, and IC 4-21.5-3-31, shall be the general counsel of the department.

(b) The general counsel may appoint, as delegee for a particular hearing or category of hearings, another individual who:

(1) is an attorney or deputy director of the department; and

(2) has not participated in the consideration, approval, or administrative review under 465 IAC 3-2, of the determination that is the subject of the hearing.

(Department of Child Services; 465 IAC 3-3-17; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-3-18 Hearing continuances

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13
Affected: IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26-9

Sec. 18. (a) A request by a party for continuance of a scheduled hearing date shall be submitted to the department hearing and appeals unit in writing and shall be served on each party to the proceeding. The request must:

(1) include the reason for the request; and

(2) be accompanied by adequate documentation of the reason for the request.

A request for continuance may include suggested alternative dates for rescheduling of the hearing that are mutually agreeable to the parties. The ALJ will consider an objection to a request for a continuance before a continuance is granted or denied. Continuance of a hearing will be granted and the hearing rescheduled at the discretion of the ALJ upon a showing of good cause.

(b) Except as otherwise provided in this section, a request for continuance shall constitute a waiver of time deadlines otherwise applicable under this rule for scheduling and completing the hearing.

(c) A continuance under this section of a scheduled hearing requested under section 3(a) of this rule by a child care worker or department employee, that is requested by a party other than the appellant, will not be granted except upon a showing of good cause based on a reason specified in subsection (e), that could not have been known or anticipated at the time the hearing was scheduled.

(d) A continuance under this section of a scheduled hearing requested under section 3(b), 3(c), 3(d), or 3(f) of this rule will not be granted except upon:

(1) agreement of both the appellant and the child support bureau of the department, evidenced by a written stipulation or statements on the record at the time of the scheduled hearing; or

(2) a showing of good cause based on a reason specified in subsection (e), that could not have been known or anticipated at the time the hearing was scheduled.

(e) Good cause, for purposes of subsections (c) and (d), includes any of the following reasons:

(1) Inability of the appellant, the appellant's attorney, the department's attorney or necessary representative, or a necessary witness to attend the hearing because of a serious illness, incapacitating injury, or other serious physical or mental condition.

(2) Death in the family of appellant, appellant's attorney, the department's attorney or necessary representative, or a necessary witness.

(3) Severe weather conditions making it impossible or unsafe for a party, the party's attorney or necessary representative, or a necessary witness to travel to the location of the hearing.

(4) Unavailability of a necessary witness whose evidence cannot be otherwise obtained, if the witness or evidence is anticipated to be available within a reasonable time.

(5) Any other reason of a similar nature that the ALJ finds to be compelling.

(f) Nothing in this section limits the authority of an ALJ to reschedule any hearing without a request for continuance.

(Department of Child Services; 465 IAC 3-3-18; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)

465 IAC 3-3-19 Hearing records and transcripts

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-9
Affected: IC 4-21.5-3-33; IC 4-21.5-5; IC 6-8.1-9.5-7; IC 31-9-2-17.8; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4-31; IC 31-25-4-33; IC 31-27; IC 31-33-26-9

Sec. 19. (a) As used in this section, "hearing record" includes the following:

(1) Any applicable documents, recording, transcript, or other item listed in IC 4-21.5-3-33.

(2) Any item listed in IC 4-21.5-3-33 that relates to an ancillary hearing conducted by the ALJ under any applicable statutory procedure relating to an administrative hearing under this rule.

(b) As used in this section, "transcript" means a written transcription of an audio or video recording of a hearing included in the hearing record, prepared for purposes of the hearing decision or judicial review of that decision.

(c) The hearing record of a hearing that is closed or confidential under applicable law is confidential and will be made available, upon request, only to a party or the authorized attorney or other designated representative of a party, unless release of the hearing record is ordered by a court in a case to which the person requesting the hearing record is a party, after notice to the parties to the administrative hearing and a court hearing.

(d) The hearing record of a hearing that is not closed or confidential under applicable law will be made available, on request, to any person, subject to:

(1) exclusion or redaction of any portion of the record that is confidential under applicable law; and

(2) objection stated in writing by a party to the hearing, as provided in subsection (e).

(e) A person who is not a party in a hearing to which subsection (d) applies, and who desires to obtain a copy of all or any portion of the hearing record, shall submit to the general counsel of the department a written request specifying the portion of the hearing record desired. The department will forward a copy of that request to each party to the hearing, or the party's attorney. A party may submit to the department, with copy to the requester and within ten (10) days after receipt of the request, a response to the request that states any objection the party has to compliance with the request, and the basis or reasons for the objection. If an objection is timely submitted, the requester may submit to the department, within ten (10) days after receipt of the objection, a written response. The department general counsel or designee may sustain or overrule the objection upon consideration of the submissions received from the requester and objecting party.

(f) If a party requests a transcript of an administrative hearing for purposes of a petition for judicial review of the administrative decision under IC 4-21.5-5, the department may refer the party, or the party's attorney or other authorized representative, to a designated contractor or vendor that is qualified to prepare transcripts of hearings that the department conducts under this rule. The requesting party is responsible for making arrangements with the contractor or vendor for preparation of the transcript and payment of the fee or cost for its preparation, unless the court in which the petition for judicial review was filed finds that the petitioner is unable to pay the transcript cost and orders the department to provide the transcript without cost to the petitioner.

(g) The department will advise the petitioner concerning the anticipated time for completion of a transcript under the procedure specified in this section. The department may review for accuracy a transcript prepared for a party by the designated contractor or vendor, for purposes of judicial review. Upon receipt and approval of the transcript, the department shall prepare, assemble, and certify as needed, the hearing record other than the transcript, and submit the hearing record, including the transcript, to the judicial review petitioner or the petitioner's attorney for filing with the court.

(h) The department will not prepare a transcript of an administrative hearing under this rule that is requested by a party or any other person, for any purpose other than a judicial review petition filed under IC 4-21.5-5. If the party or other person requests and is entitled to obtain a copy of a hearing record, the department will, subject to subsection (i), provide a copy of the digital recording of the hearing together with any other portions of the hearing record that the requester is entitled to obtain, subject to payment of the cost of copying those items requested as provided by applicable law.

(i) If the digital recording of the hearing includes testimony or other information that is classified as confidential under applicable law, the department is not required to provide a redacted copy of the recording, unless the department has available the technological capability to redact without additional cost the confidential testimony or other information. If provision of a redacted copy is not feasible or required under this subsection, the department may deny a request for a copy of the hearing recording. *(Department of Child Services; 465 IAC 3-3-19; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

465 IAC 3-3-20 Agency record; judicial review

Authority: IC 31-19-26.5-12; IC 31-25-2-18; IC 31-25-4-27; IC 31-33-26-13

Affected: IC 4-21.5-3-33; IC 4-21.5-5; IC 31-16-15-4.3; IC 31-19-26.5; IC 31-25-4; IC 31-27; IC 31-33-26-9

Sec. 20. (a) If the appellant is not satisfied with the department's final action, the appellant may file a petition for judicial review in accordance with IC 4-21.5-5.

(b) The record of the administrative proceedings for purposes of judicial review shall include all items described in section 19(a) of this rule.

(c) The department will advise the parties that Indiana Trial Rule 5(G) and Administrative Rule 9(G) may apply to a judicial review petition and any part of the hearing record or transcript filed with a court. *(Department of Child Services; 465 IAC 3-3-20; filed Nov 14, 2012, 12:46 p.m.: 20121212-IR-465120404FRA)*

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