

WAC 170-03-0010 Purpose and scope. (1) **Application.** This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of early learning (DEL) and:

(a) Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are aggrieved by a DEL denial of an application or a revocation, suspension, or modification of a license;

(b) Applicants for employment (~~(or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and)~~), staff, volunteers and contracted providers who participate in DEL programs, including child care, who are required to meet background check standards and who are disqualified by DEL;

(c) Individuals receiving child care subsidies under (~~the seasonal~~) a child care program who dispute a program decision or licensed/certified providers who dispute an overpayment under (~~the seasonal~~) a child care program.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.215.305, the statute governing hearing rights for applicants and licensees; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a procedural or substantive rule, the provision in the chapter containing the procedural or substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be denied, revoked, suspended, or modified as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendments to this chapter apply to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in order to comply with the amendment, unless the amendment expressly says so.

(5) **Effective date.** This chapter is initially effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter, and not its DSHS predecessor, applies to all pending DEL

cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial decisions; Provided, Parts VIII and IX of this chapter, governing review of initial and final orders, will apply to review of any initial orders mailed after the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0020 Definitions. The following definitions apply to this chapter:

(1) **"Adjudicative proceeding"** means a hearing before an administrative law judge concerning an appeal of department action pursuant to RCW 43.215.305.

(2) **"Administrative law judge" or "ALJ"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ((ALJs are not DEL employees or DEL designees.))

(3) **"Business days"** means all days except Saturdays, Sundays and legal holidays.

(4) **"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

(5) **"Case"** means the entire proceeding following the filing of a request for hearing with OAH.

(6) **"Continuance"** means a change in the date or time of a pre-hearing conference, hearing or deadline for other action.

(7) **"DEL" or "department"** means the department of early learning.

(8) **"Documents"** means papers, letters, writings, or other printed or written items.

(9) **"Ex parte contact"** means a written or oral communication with an ALJ or review judge about something related to the hearing when the other parties are not present. 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.

(10) **"Final order"** means an order that is the final DEL decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to a review judge. If an ALJ's initial order is appealed to a review judge, the review judge's order is DEL's final decision.

(11) **"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.

(12) **"Hearing"** means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(13) **"Initial order"** is a decision made by an ALJ that may be reviewed by a review judge.

(14) **"OAH"** means the office of administrative hearings. This is a separate agency and not part of DEL.

(15) **"Party"** means a person or entity to whom a DEL adverse action is directed and who has a right to be involved in the hearing process. DEL also is a party.

(16) **"Representative"** means the person selected by a party to represent that party in an administrative hearing. **"Lay representative"** means a person or advocate who is assisting a party in presenting that party's case in administrative hearings. **"DEL representative"** means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

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

(18) **"Review"** means the act of reviewing initial orders and issuing the DEL final order as provided by RCW 34.05.464.

(19) **"Review judge"** (~~or "DEL review judge"~~) means an attorney employed by or designated by DEL to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(20) **"Rule"** means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(21) **"Stay"** means an order temporarily halting the DEL decision or action.

(22) Words of command such as **"will," "shall,"** and **"must"** are words that impose a mandatory obligation on a participant in the hearing process. The word **"may"** is used when referring to a discretionary act to be taken by a participant in the hearing process.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0160 Requirements that apply to decisions involving limited-English-speaking parties. (1) When an interpreter is used at a hearing (~~involving limited English speaking parties, the ALJ~~), the administrative law judge (ALJ) must explain that (the decision will be) decisions are written in English (but) and that (a party using an interpreter may contact) the office of administrative hearings (OAH) will provide an interpreter for an oral translation of the decision at no cost to that party.

(2) (~~Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties~~) OAH must provide the party needing interpretation services information about how to obtain those services. Information about how to access interpretation services must be attached to the decision or order. The individual who provides the interpretation service does not need to be the same individual who provided the interpreter services at the hearing.

(3) OAH or the review judge must ~~((mail))~~ send a copy of a decision or order to ~~((the))~~ an interpreter for use in oral ~~((translation))~~ interpretation.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0570 Appeal of the initial order. (1) Review of the initial order may occur when a party disagrees with or wants a change in an initial order, other than correcting a clerical error.

(2) A party must request review of an initial order from the ~~((DEL))~~ review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

~~((5) Review does not include another hearing by the DEL review judge.))~~

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0590 Petition for review. (1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Arguments supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

(3) The review judge can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

Review Judge
~~((Department of Early Learning
P.O. Box 40970
Olympia, WA 98504-0970
360-725-4665))~~ Office of Administrative Hearings
P.O. Box 42488
2420 Bristol Court S.W.
Olympia, WA 98504-2488
Phone: 360-407-2700
Fax: 360-586-6563

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and ~~((OAH))~~ the administrative law judge who entered the initial order.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0610 Decision process. (1) After the response deadline, the record on review is closed unless there is a good cause to reopen the record.

(2) ~~((A review judge is assigned to the review after the record is closed.~~

~~(3))~~ The review judge only considers evidence given at the original hearing unless the review judge has reopened the record pursuant to subsection (1) of this section.

~~((4))~~ (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.

~~((5))~~ (4) The review judge enters a final order that affirms, changes, dismisses or reverses the initial order, or remands (returns) the case to ~~((OAH))~~ the administrative law judge for further specified action.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0620 Authority of the review judge. (1) The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's order is the DEL final order in the case. If the review judge's final order upholds the department's adverse 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 ~~((review judge))~~ superior court after filing a petition for judicial review in accordance with WAC 170-03-0660.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0660 Judicial review. (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date ~~((OAH or))~~ the review judge mails the final order in the case.

(3) Filing an appeal of a final order does not stay the effectiveness of the final order.

(4) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.