

- (4) Exclusion or removal of an individual pursuant to this paragraph shall not be considered an order of exclusion for purposes of Health and Section Code section 1558, Section 16519.6 of the Welfare and Institutions Code, or any other applicable law.

SECTION 12-08: Service of Process

- (a) A County or the Department, as applicable, shall serve a Notice of Action by personal service or first class mail in accordance with the established standard. The County shall keep a record of service of the Notice of Action.
- (b) An exclusion order shall be served by personal service or registered mail as provided in Welfare and Institutions Code section 16519.6(g) and in accordance with the established standard. A copy of the order shall be served on the Resource Family by personal service or registered mail.
- (c) Except as provided in subsections (a) and (b), all other writings related to a proceeding conducted pursuant to Welfare and Institutions Code section 16519.6 shall be served by first class mail, unless otherwise specified in another applicable law.
- (d) Service by mail of a Notice of Action, exclusion order, or other writing on a Respondent in a proceeding conducted pursuant to Welfare and Institutions Code section 16519.6 is effective if served to the last mailing address on file with a County or the Department, as applicable. If the last day for the performance of any action falls on a holiday, then such period shall be extended to the next day, which is not a holiday.
- (e) Proof of service shall be by declaration under penalty of perjury under the laws of the State of California and shall state the title of the document served or filed, the name and address of the person making the service, the date and method of delivery, and that the person is over 18 years of age and not a party to the matter. If service is made by personal service, then the proof of service shall also name the person to whom the papers were handed.

SECTION 12-09: Procedures After Receipt of Appeal

- (a) (1) Upon receipt of an appeal, a County or the Department, as applicable, shall date-stamp the appeal and appeal envelope, if applicable, and document the appeal status in the Notice of Action (NOA) database maintained by the Department with the date the appeal is received.
- (2) An appeal shall be processed as required in this section, even if a County or the Department has reason to believe that an informal resolution is expected in the matter.
- (b) For matters to be heard by the Office of Administrative Hearings, a County and the Department shall process the appeal as follows:
- (1) A County shall serve an acknowledgement of appeal upon an individual who is the subject of a Notice of Action. The Department shall serve an acknowledgement of

- appeal upon an individual who is the subject of an exclusion action or is the subject of an exclusion action and Notice of Action that were served simultaneously.
- (2) A County shall forward the appeal and originals of all relevant documents to the Department's **county liaison**, if the Legal Division is representing the County.
- (c) For matters to be heard by the State Hearings Division, a County and the Department shall process the appeal as follows:
- (1) A County shall forward the appeal and case file documents to the Legal Division if the Legal Division is representing the County. The Department shall forward the appeal and case file documents related to an exclusion action to the Legal Division.
- (2) After the documentation has been forwarded to the Legal Division as provided in paragraph (1), a County or the Department, as applicable, shall forward the appeal to the State Hearings Division no later than ten business days following the receipt of the appeal.
- (3) The State Hearings Division shall serve an acknowledgement of appeal by first class mail upon the individual who is the subject of a Notice of Action.
- (d) An acknowledgement of appeal shall contain the following:
- (1) Confirmation that a Respondent's appeal has been received by a County or the Department, as applicable, including the date of receipt.
- (2) Notice to a Respondent of the duty to notify the County or Department, as applicable, in writing of any change in the Respondent's mailing address until the administrative action process has been completed or terminated.
- (e) A County or the Department, as applicable, shall maintain copies of an appeal and all relevant documents forwarded as specified in this section.

SECTION 12-10: Hearing Forum Rules

- (a) An administrative law judge at the State Hearings Division shall hear administrative actions based upon the following:
- (1) A denial or rescission of a criminal record exemption or failure to comply with background check requirements.
- (2) Criminal conduct or conduct that poses a risk or threat to the health, safety, protection, or well-being of a child or nonminor dependent or other individual, except for conduct that involves abuse or severe neglect of a child or other minor or nonminor dependent or abuse or neglect of a dependent adult.
- (3) A failure to meet or comply with home environment related standards.
- (4) A failure to act as a reasonable and prudent parent or a failure to provide adequate care and supervision as specified in Sections 11-12 and 11-13, where the matter does not involve abuse or severe neglect of a child or other minor or nonminor dependent.
- (5) A failure to meet Resource Family qualifications other than the requirement for good mental health, or a failure to meet Permanency Assessment criteria as determined in a family evaluation specified in Sections 6-04 and 6-05 other than criteria related to mental health.

- (6) A failure to comply with reporting requirements.
 - (7) A failure to maintain or provide records for a child or nonminor dependent.
 - (8) A failure to meet applicant requirements or failure to complete required training.
 - (9) A failure to cooperate or comply as specified in Section 11-17 or upon false or misleading statements provided to a County or the Department.
- (b) An administrative law judge at the Office of Administrative Hearings shall hear administrative actions based upon the following:
- (1) Dual or multiple-program matters when the applicant, Resource Parent, or individual has applied for or holds a license, administrator certificate, or registration issued by the Department, a Resource Family approval or certificate of approval issued by a foster family agency, or is employed by or regularly present in a facility licensed by the Department.
 - (2) When a temporary suspension order was issued as a result of an immediate and substantial risk to the health and safety of a child or nonminor dependent.
 - (3) Conduct that poses a risk or threat to the health, safety, protection or well-being of a child or nonminor dependent or other individual, including abuse or severe neglect of a child or other minor or a nonminor dependent, or abuse or neglect of a dependent adult.
 - (4) A violation of the personal rights of a child or nonminor dependent, or a failure to ensure a child or nonminor dependent is accorded personal rights.
 - (5) A failure to act as a reasonable and prudent parent or failure to provide care and supervision as specified in Sections 11-12 and 11-13 and the matter involves abuse or severe neglect of a child or other minor or nonminor dependent, or abuse or neglect of a dependent adult.
 - (6) An exclusion action.
 - (7) A failure to meet the Resource Family qualification of good mental health as specified in Section 5-02 or as determined in a Written Report as specified in Section 6-07.
 - (8) Financial malfeasance involving a child or nonminor dependent or dependent adult, including but not limited to, fraudulent appropriation for personal gain of money or property or willful or negligent failure to provide services.
 - (9) A pattern of serious deficiencies or a failure to comply with more than one requirement across several different areas.
 - (10) Any administrative action that does not meet the criteria specified in subsection (a) or subsections (b)(1) through (b)(9).
- (c) Except for exclusion actions, hearing forum determination shall be made at the sole discretion of a County in consultation with the Legal Division, or a County attorney if the Legal Division is not representing the County. For exclusion actions, hearing forum determination shall be made at the sole discretion of the Department in consultation with the Legal Division.
- (d) Hearing forum determination shall not be subject to rehearing or review in an administrative hearing. If a matter is set in the incorrect forum, a presiding administrative law judge of the State Hearings Division or Office of Administrative Hearings, on its own motion or at the

request of a County or the Department, if applicable, may issue an order to remand the matter to the County or Department, as applicable, to proceed with the administrative action in the correct forum.

SECTION 12-11A: Disclosure of Documents and Issuance of Subpoenas

- (a) A party shall make available to the other party or parties for examination all relevant documents in the party's possession in accordance with the established standard. Prior to disclosure, documents that are subject to confidentiality or privilege laws shall be redacted or withheld, as required by law.
 - (1) Notwithstanding CDSS Manual of Policies and Procedures sections 22-045 and 22-051 for matters set before the State Hearings Division, the notice of hearing shall include to Respondent of the right to review during regular working hours all documents in the County's case record and if the matter includes an exclusion, the Department's case record, that are relevant to the Notice of Action or exclusion order. Upon the request of a Respondent, a County or the Department, as applicable, shall provide to a Respondent redacted copies of all relevant documents that are not required to be withheld, which may be provided by mail or secure electronic format, and shall be provided free of charge.
 - (2) For matters set before the Office of Administrative Hearings, the provisions governing discovery in the Administrative Procedures Act shall apply.
- (b) If a party has requested but not been provided an opportunity to examine relevant documents in the other party's possession in advance of a State Hearings Division hearing, the party may be entitled to a postponement in accordance with Section 12-18. If a party has requested but not been provided copies of relevant and discoverable documents in the other party's possession in advance of a hearing at the Office of Administrative Hearings, the party may be entitled to a continuance in accordance with Section 12-18.
- (c) Prior to the commencement of a hearing, and after the commencement of a hearing if necessary, a subpoena requiring the presence of a witness or a subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records, may be issued in accordance with applicable law, the Administrative Procedures Act, and CDSS Manual of Policies and Procedures section 22-051, as applicable.
 - (1) Notwithstanding CDSS Manual of Policies and Procedures section 22-051, a subpoena or subpoena duces tecum may be issued by an attorney of record for a party.

SECTION 12-11B: Filing the Administrative Hearing Documents

- (a) For matters to be heard at the State Hearings Division, a County shall prepare and file a position statement with the State Hearings Division and serve it on a Respondent no later than two business days prior to a hearing in accordance with Welfare and Institutions Code sections 10952.5 and 16519.6. A Respondent may file a Position Statement, but is not required to do so unless so ordered by an administrative law judge.

- (b) A Position Statement shall include the following:
 - (1) A summary of the facts and issues in the case and the justification for the County's or Department's action.
 - (2) Citations to the applicable statutory, regulatory, or Written Directives authority for each applicable basis for action.
 - (3) A list of witnesses and documentary evidence which the County intends to use during the hearing to support the County's position, with copies of the documents attached.
- (c) For matters to be heard at the Office of Administrative Hearings, a County or the Department, as applicable, shall prepare and file an Accusation or Statement of Issues and serve it in accordance with the Administrative Procedures Act.
- (d) A County and the Department may file consolidated pleadings or file a motion to consolidate multiple actions if a matter involves both a County and Department action.

SECTION 12-12: Law Governing Hearing Procedures

- (a) For State Hearings Division matters, hearings and all related procedures are governed by Welfare and Institutions Code sections 10950 et seq. and 16519.6 et seq., the CDSS Manual of Policies and Procedures section 22-000 et seq., All County Letters applicable to Resource Family hearings, and this article. The provisions of Welfare and Institutions Code section 16519.5 et seq. prevail over a conflicting or inconsistent provision in Welfare and Institutions Code section 10950 et seq. This article governs the hearing process and the rights and responsibilities of parties. The CDSS Manual of Policies and Procedures section 22-000 et seq. govern procedures, rights, and responsibilities that are not addressed in the Written Directives.
- (b) For Office of Administrative Hearings matters, hearings and all related procedures are governed by Welfare and Institutions Code section 16519.6 et seq., All County Letters applicable to Resource Family hearings, the Written Directives, the Administrative Procedures Act (Gov. Code, section 11370 et seq.), and Title 1, California Code of Regulations, section 1000 et seq.

SECTION 12-13: Setting the Hearing and Prehearing Conference

- (a) For matters to be set before the State Hearings Division, the State Hearings Division shall set prehearing conference and hearing dates upon receipt of an appeal. The State Hearings Division shall serve all parties with a notice of hearing.
- (b) For matters to be set before the Office of Administrative Hearings, if a Respondent submits a Notice of Defense, a County or the County's legal representative shall request a hearing date from the Office of Administrative Hearings in accordance with Title 1, California Code of Regulations, section 1018. The County shall serve a Respondent with a notice of hearing.

- (c) A party may request that a prehearing conference, settlement conference, or hearing be conducted by electronic means in accordance with the established standard.
- (d) The hearing location may be set within the County that issued the Notice of Action or where a Respondent or witnesses reside, or for matters set before the Office of Administrative Hearings, at the location set forth in the Administrative Procedures Act.
- (e) Related County or Department actions that were filed or received separately but that involve the same parties and issues shall be consolidated unless it is not feasible to ensure consistent outcomes and the efficiency of process.

SECTION 12-14: Reserved

SECTION 12-15: Reserved

SECTION 12-16: Conduct of Hearing; Confidentiality and Procedures

- (a) All proceedings conducted in accordance with Welfare and Institutions Code section 16519.6 shall be conducted in a manner that protects the confidential information and identity of a child, nonminor dependent, applicant, or Resource Family as required by Health and Safety Code section 1536, Family Code section 9201, Penal Code section 11167.5, and Welfare and Institutions Code sections 827, 10850 and 16519.55.
- (b) An administrative law judge, in his or her discretion, with due consideration for the effect on witnesses, the hearing process, and existing law and protective orders, may:
 - (1) Issue an order to remove an individual from the hearing.
 - (2) Issue a protective order.
 - (3) Order the record to be sealed.
 - (4) Close the hearing to the public.
 - (5) Upon an offer of proof of privilege or confidentiality, review information *in camera* prior to ruling on whether all or part of the information is privileged or confidential and subject to exclusion or redaction. The opposing party shall be given an opportunity to agree or disagree as to the need for an *in camera* hearing. If held, the *in camera* hearing must be recorded on a separate record from the prehearing conference or hearing.
 - (6) Take other action to promote due process or the orderly conduct of the proceeding.

SECTION 12-17: Rulings on Evidence

- (a) Rulings on the admissibility of evidence made during an administrative hearing shall be made on the record and, when appropriate, shall be included in a decision or proposed decision.

SECTION 12-18: Good Cause Requirement for Continuance or Postponement

- (a) A hearing shall be held within the timelines set forth in Welfare and Institutions Code section 16519.6, unless a continuance or postponement of the hearing is granted for good cause. When the matter has been set for hearing, only an administrative law judge may grant a continuance of the hearing. The administrative law judge may grant a continuance or postponement of the hearing only upon a finding of good cause shown by the existence of one or more of the following:
- (1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.
 - (2) Lack of proper notice of hearing.
 - (3) A material change in the status of the case where a change in the parties, Position Statement, or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings or Position Statement shall not be good cause for a continuance to the extent that the portion of the pleadings or Position Statement that have not been amended is ready to be heard.
 - (4) The substitution of the representative or attorney of a party upon a showing that the substitution is required and that a late substitution was not caused by the neglect of the party.
 - (5) The unavailability of a party, representative or attorney of a party, or witness to an essential fact due to a conflicting and required court appearance when the appearance cannot be postponed.
 - (6) The unavailability of a party, representative or attorney of a party, or material witness due to an unavoidable emergency.
 - (7) Failure by a party to comply with a timely submission of a Position Statement or discovery request if the continuance request is made by the other party.
 - (8) A request by a Respondent when it is argued that the Respondent did not receive an adequate and/or language-compliant notice, and the administrative law judge determines that the required notice was not received.
- (b) Nothing in this section shall be construed to limit the authority of an administrative law judge at the State Hearings Division to postpone the hearing in accordance with CDSS Manual of Policies and Procedures sections 22-053.13 through 22-053.21. Any postponement granted pursuant to this section shall be deemed a postponement for good cause for aid pending purposes.

SECTION 12-19: Applicability of Precedential Decisions

- (a) An administrative law judge shall apply the principles of the Department's precedential decision(s), if the facts or issues are similar to those before the administrative law judge in a proceeding conducted pursuant to Welfare and Institutions Code section 16519.6.

- (b) In accordance with Government Code section 11425.60, the Department's designation of a precedential decision is not subject to judicial review.

SECTION 12-20: Burden of Proof and Inferences at Hearing

- (a) In all proceedings conducted in accordance with Welfare and Institutions Code section 16519.6, the burden of proof on a County or the Department, as applicable, shall be by a preponderance of the evidence.
- (b) Where criminal misconduct is proven, whether or not it resulted in a conviction, negative character inferences shall be presumed in accordance with the established standard.

SECTION 12-21: Decision

- (a) A decision or proposed decision shall be in writing and shall include a statement of the factual and legal basis for the decision and any other basis as required in any applicable law. A decision or proposed decision shall include, but not be limited to, the following:
 - (1) A concise and explicit statement of the underlying facts of record that support the decision.
 - (2) Any determinations on the weight of evidence or determinations of credibility that affect the findings and conclusions.
 - (3) Any determinations on the admissibility of evidence that affect the findings and conclusions.
 - (4) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness or content of the witness testimony that supports the determination.
- (b) A decision or proposed decision may place conditions on an approval, criminal record exemption, or presence in a Resource Family's home in order to ensure the health and safety of children or nonminor dependents in care, so long as the applicant, Resource Family, or individual meets the requirements and standards for approval, a criminal record exemption, or presence in a Resource Family's home.
- (c) If a County discontinued the Comprehensive Assessment of an applicant pursuant to Section 6-01(d), an administrative law judge shall not order the approval to be granted but may remand the relevant part of the action to the County to complete the Comprehensive Assessment.
- (d) A proposed decision by an administrative law judge at the State Hearings Division shall be delivered to the Department for a final decision by the Director as provided in Welfare and Institutions Code section 10959, and the provisions of that section and CDSS Manual of Policies and Procedures section 22-061 et seq. shall govern procedures related to decisions.

- (e) A proposed decision by an administrative law judge at the Office of Administrative Hearings shall be delivered to the Department for a final decision by the Director as provided in Government Code section 11517, and the provisions of that section shall govern procedures related to decisions.

SECTION 12-22: Reinstatement or Reduction in Penalty

- (a) An individual who has been excluded for life from residing or being present in any Resource Family home or from having contact with a child or nonminor dependent in the home may petition for reinstatement to the Department after one year has elapsed from the date of the notification of the exclusion order pursuant to Government Code section 11522 and Health and Safety Code section 1558. The burden of proof on the individual filing a petition shall be **substantial evidence**.
- (1) For purposes of this subsection, “**substantial evidence**” means that it is substantially more likely than not that a fact is true. **Substantial evidence** is a medium level of burden of proof which is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than the beyond a reasonable doubt standard.
- (b) If an individual filing a petition seeks reinstatement in order to apply for Resource Family Approval, the Department may seek information and a recommendation from a County. The County and Department shall share evidence and information related to the petition or application.

ARTICLE 13: ADOPTION REQUIREMENTS FOR RESOURCE FAMILIES

Section 13-01 Adoption Approval Requirements

- (a) Following the approval of a Resource Family, when adoption is the identified case plan for a child or NMD currently placed in the home, the family shall be referred to an adoption program for the completion of the remaining adoption procedures and services.
- (1) A prospective adoptive Resource Family shall maintain their approval status during the adoption process, including adoptive placement and through adoption finalization.
- (2) A Resource Family maintains their approval status, after adoption finalization, unless approval is rescinded by a County or the Resource Family chooses to surrender their approval.
- (b) A Written Report for a Resource Family that meets the requirements of Section 6-07(b), and any updates to the Written Report, shall be considered sufficient for meeting the requirements of a written assessment of an adoptive applicant pursuant to Title 22, California Code of Regulations, Division 2, Subdivision 4, Chapter 3, Subchapter 5, Article 11, section 35180.
- (1) If documentation for an adoption is in the Resource Family file, it may be shared with an adoption social worker for the purposes of finalizing an adoption.