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CHAPTER 5

ADMINISTRATIVE RULES FOR CERTIFICATION

OF CHILD CARE FACILITIES

CONTESTED CASE HEARING

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CHAPTER 5  
ADMINISTRATIVE RULES FOR CERTIFICATION  
OF CHILD CARE FACILITIES  
CONTESTED CASE HEARING

Section 1.     **Authority.**

These rules are promulgated pursuant to the Wyoming Administrative Procedure Act.

Section 2.     **Purpose.**

These rules have been adopted to provide uniform procedures for the conduct of contested case hearings before the Child Care Certification Board pursuant to the Wyoming Administrative Procedure Act, W.S. § 16-3-101 through §16-3-115.

Section 3.     **Applicability.**

Contested case hearings before the Child Care Certification Board shall be conducted according to these rules.

Section 4.     **Definitions.**

The definitions set forth in the Wyoming Administrative Procedures Act, W.S. §16-3-101, are incorporated by reference. For the purposes of a contested case hearing, the following definitions shall also apply:

(a)     "Affidavit" - a written notarized statement of facts made voluntarily under oath.

(b)     "Board" – the Child Care Certification Board acting as the board of review.

(c)     "Chairman" – the chairman of the Child Care Certification Board.

(d)     "Contested case" - a proceeding involving denial, suspension, revocation, substantiated complaint or non-renewal of any certificate issued under W.S. §14-4-101 through 14-4-116 where a hearing has been requested.

(e)     "Department" - the Department of Family Services (DFS).

- (f) "Director" - the Director of the Department of Family Services.
- (g) "Ex parte matter" - matters heard by the hearing officer in the absence of and without notice to the adverse party.
- (h) "Hearing officer" - any designee of the Chairman to serve as the presiding officer at a hearing held under these rules. The Chairman may appoint such persons as necessary to assist in the conduct of a hearing.
- (i) "Hearing panel" – a committee of three (3) or more Board members designated by the Chairman of the Child Care Certification Board to hear a case and recommend a decision on behalf of the Board.
- (j) "Indispensable party" - any person whose joinder as a party is required to obtain a just resolution of the contested case. The hearing officer will determine who is an indispensable party.
- (k) "Individual" - the person impacted by decisions of the Department.
- (l) "Informal Conference" - the conference conducted at the DFS local level by the Child Care Licensing Program Manager or Supervisor to review case information concerning local DFS action regarding a contested case.
- (m) "Person" - any individual, partnership, corporation, association, municipality, governmental subdivision, public or private organization of any character, other than an agency.
- (n) "Petitioner" - agency or individual as designated by the Hearing Officer
- (o) "Respondent" - agency or individual as designated by the Hearing Officer.
- (p) "WAPA" - the Wyoming Administrative Procedure Act, W.S. §16-3-101 through §16-3-115.

**Section 5. Requests for Hearing.**

- (a) Any person or their formally designated representative may make a request to the Department for a hearing in a contested case. Requests may be made within local offices and forwarded to the Department.
- (b) Requests for a hearing must be in writing.

Section 6.      **Computation of Time.**

In computing any time period set forth in these rules, by applicable statute or order of the hearing officer or Director, the day of the act, event or default from which the designated period begins to run shall not be included. If the last day of a designated period falls on a Saturday, Sunday or legal holiday, or when the act to be done is the filing of a paper and weather or other conditions have made the place of filing inaccessible, then the period runs until the end of the next business day. For time periods of ten (10) days or less, the period of time shall be ten (10) business days. For purposes of this section, “legal holiday” includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the Governor.

Section 7.      **Contents of Request for Contested Case Hearings.**

(a)      The request shall contain at least:

(i)      Name, address, and telephone number of the person requesting the hearing; and identification of the person on whose behalf the hearing is being requested.

(ii)     The reason for the request, including the nature of the departmental action, order or determination being contested; and

(iii)    Name and address of the requesting party’s legal counsel or representative, if the requesting party has retained counsel or a representative at the time the request for hearing is made.

Section 8.      **Time Period for Requests and Evaluation of Requests.**

(a)      Requests for a hearing on issues pertaining to Day Care Licensing shall be made within ten (10) days from the date of mailing of the agency action.

Section 9.      **Notice of Hearing; Request for Continuance.**

(a)      In any contested case, all parties shall be afforded no less than twenty (20) days advance notice of the hearing.

(i)      The time period specified herein may be waived by an individual upon written notification to the Chairman or Hearing Officer.

(ii)     Notice shall be served personally or by certified mail to the last known address of the party.

(b) Contents

(i) A notice of hearing shall contain, at least:

(A) The time, place, and nature of the hearing;

(B) The legal authority and jurisdiction under which the hearing is being held;

(C) The particular sections of the statutes or rules involved;

(D) A short and plain statement of the matters asserted;

(E) The docket number assigned to the case;

(F) The right to be represented by an attorney or representative; and

(G) The right to present witnesses or other appropriate evidence.

(c) Upon request for a continuance by either party served, the Hearing Officer shall, upon a showing of good cause, allow the party an alternative time and place for the hearing, provided such request is made within ten (10) days from the date of mailing of the notice of hearing.

(i) When a request for a continuance is granted, the Hearing Officer shall reissue the notice in accordance with Section 10 of these rules at least five (5) days prior to the hearing date.

(ii) Only one request for rescheduling of a hearing shall be honored unless, in the Hearing Officer's judgment, additional changes must be allowed to avoid manifest injustice. Notice shall be issued as provided by Section 10 (a) and (b) above.

(d) A hearing shall be held within ninety (90) days of the agency action which gives rise to the complaint, unless otherwise provided by law.

**Section 10. Failure to Appear.**

If a party requesting a hearing fails to appear at the place, date, and time specified in a notice, the hearing officer may:

(a) Continue the hearing to a later date and provide notice as prescribed by Section 10 (a) and (b) herein; or,

(b) Dismiss the hearing and send notice to all parties the hearing was dismissed for the requesting party's failure to appear. The party requesting the hearing shall have twenty (20) days from the mailing of the dismissal notice to submit a written request that the hearing be recalendared accompanied by a showing that good cause existed for the requesting party to have failed to appear at the originally scheduled hearing.

**Section 11. Discovery.**

All discovery in a contested case shall be governed by the Wyoming Rules of Civil Procedure, and the Wyoming Administrative Procedure Act, W. S. §16-3-107 (g) and (h). The party for whom any depositions are taken will ensure original transcripts are placed in the record by filing them with the Director's designee. All other records of discovery shall likewise be filed with the Director or designee by the party originating such discovery.

**Section 12. Subpoenas.**

Any party may request the hearing officer issue a subpoena so as to compel the attendance of a witness pursuant to W. S. §16-3-107. Request for the issuance of the subpoena shall be accompanied by a completed subpoena which should substantially conform to the form provided by the Department. Upon receipt of a subpoena request, the hearing officer shall issue the subpoena and return the subpoena to the requesting party for service.

**Section 13. Expedited Contested Case.**

(a) Upon request of the parties, made prior to the date set for the hearing, any case may be heard as an expedited case.

(b) Expedited cases will be decided on written argument, evidence and stipulations submitted by the parties. Oral argument will be presented upon the request of any party.

(c) The hearing officer has discretion to require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined without an evidentiary hearing.

**Section 14. Prehearing Conference.**

(a) At a time on or before the day of the hearing, the hearing officer, with or without either party's motion, may meet with the parties for a conference to consider simplification of the

issues, stipulations and admissions of fact, clarification or limitation of evidence, and any other matters that may expedite the proceeding and assure a just conclusion of the case.

(b) Any stipulations, limitations or agreements made at a prehearing conference shall be recited in the record and shall control the course of the proceedings, unless modified during the hearing to prevent manifest injustice.

**Section 15. Informal Disposition.**

Settlement of a contested case by any informal means (i.e., stipulation, agreed settlement or consent order) shall be allowed at any time unless precluded by law. Such settlements shall be in writing by both parties and included as a part of the record. The Hearing Officer shall enter an order dismissing the contested case proceeding upon such settlement, and such order shall be considered a final order of the Department.

**Section 16. Hearing Officer.**

(a) The Chairman or designee shall appoint a hearing officer to preside over contested case hearings on a case-by-case basis or for a scheduled period of time, as deemed appropriate.

(b) The hearing officer shall be any person determined by the Chairman or designee to be qualified to serve in such a capacity, who has not taken part in the investigation, preparation, or earlier disposition of the case to be heard.

(i) The hearing officer may withdraw from a hearing at any time a contested case is pending by filing a written notice of withdrawal with the Chairman or designee and serving all parties.

(ii) Any party may request in writing the Chairman remove and replace the hearing officer in a contested case. This request must be accompanied by a statement and affidavits, if appropriate, setting forth the alleged grounds for disqualification. The Chairman or designee may deny a party's request for removal and shall issue a written statement explaining the grounds for denial which shall be made a part of the record. If the request is granted, the Chairman or designee shall appoint a new hearing officer as soon as is practicable.

(iii) The party requesting hearing may object to the appointment of the hearing officer on the record at the hearing. The objection shall set forth the alleged grounds for disqualification.

(c) The hearing officer shall have all powers necessary to conduct a fair and impartial hearing, including but not necessarily limited to, the following authority:

- (i) To administer oaths and affirmations;
- (ii) To subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry;
- (iii) To rule upon offers of proof and relevant evidence;
- (iv) To provide for discovery and determine its scope;
- (v) To regulate the course of the hearing;
- (vi) To hold conferences for the settlement or simplification of the issues;
- (vii) To dispose of procedural requests or similar matters; and
- (viii) To take any other action authorized by the Department's rules.

(d) Failure or refusal to appear or obey orders of the hearing officer may result in the sanctions provided in W.S. §16-3-107(c) and (f).

(e) Except to the extent authorized by W.S. §16-3-111 or by other state law, a party or that party's attorney shall not communicate directly or indirectly in connection with any issue of fact or law with the hearing officer or any member of the Board concerning any pending case, except upon notice and opportunity for all parties to participate. Should ex parte communication occur, the hearing officer or the Board member contacted shall advise all parties of the communication as soon as possible thereafter, and if requested, allow any party the opportunity to respond. If a Board member needs counsel regarding the hearing, they shall contact the Attorney General's office. If the individual requesting the hearing needs counsel, they are encouraged to contact the Wyoming State Bar or a private attorney.

#### Section 17. **Evidence and Testimony; Telephone Conferences**

(a) Except as may be otherwise ordered by the hearing officer, the Department bears the burden of proof.

##### (b) Admissibility of evidence

(i) The parties shall be entitled to present any oral or documentary evidence, submit rebuttal evidence and conduct cross-examinations, as may be required for a full disclosure of the facts.

(ii) All documentary or physical evidence submitted for consideration shall be marked as exhibits. Petitioner's exhibits shall be marked by letters of the alphabet beginning with "A". Respondent's exhibits will be marked by numbers beginning with "1".

(iii) The hearing officer shall allow any oral or documentary evidence. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Hearsay is admissible.

(iv) Evidence may be received in written form, yet if such written evidence would not be admissible under the Wyoming Rules of Evidence, all parties should be afforded a reasonable opportunity to confront and cross-examine the author of the written evidence. Generally, such a reasonable opportunity is afforded by giving all parties written notice of the intent to introduce and rely upon the written evidence a reasonable period of time prior to the scheduled evidentiary hearing.

(c) Objections

(i) The grounds for objection to any evidentiary ruling by the hearing officer shall be briefly stated. Rulings on all objections shall appear in the record. Only those objections made before the hearing officer, or specifically stipulated to by both parties, may be relied on in a subsequent proceeding.

(ii) Formal exception to an adverse ruling is not required.

(d) Privileged and confidential information

(i) Any privilege at law shall be recognized by the hearing officer in considering evidence.

(ii) No employee of the Department shall be compelled to testify or to divulge information which is confidential or privileged at law and which is contained within the records of the Department or acquired within the scope of employment except as provided in W.S. §16-3-107.

(e) Administrative notice may be taken of any material fact not appearing in evidence in the record that is of the nature of traditional matters of judicial notice or within the special technical knowledge or files of the Department. Parties shall be given an opportunity to contest matters administratively noticed prior to a final decision by the Department in accordance with W.S. §16-3-108.

(f) Each witness who is present to give testimony must identify himself or herself by stating his or her name and address; indicate on whose behalf he or she will testify; and be administered an oath by affirmation by the Hearing officer.

(g) At the discretion of the hearing officer, telephone calls may be used to conduct any hearing or other proceeding. At the discretion of the hearing officer, parties or their witnesses may be allowed to participate in hearings by telephone.

**Section 18. Representation.**

(a) All parties have a right to represent themselves, to be represented by an attorney licensed to practice law to appear on their behalf.

(i) If the individual requesting a hearing is represented by an attorney, payment of attorney's fees and costs are the responsibility of the individual requesting a hearing.

(b) Department employees may request the Attorney General to assist in contested case hearings to the extent required by W.S. §16-3-112(c).

**Section 19. Order of Procedure.**

(a) The following order of procedure shall be followed:

(i) The hearing officer shall announce the hearing is open and call by docket number and title the case to be heard. The hearing officer shall ask if parties are ready to proceed and will allow parties an opportunity to dispose of any preliminary matters;

(ii) The hearing officer shall administer the oath affirmation to all witnesses who will present testimony;

(iii) The hearing officer may, by discretion, allow evidence to be heard in an order other than prescribed here and shift the burden of proof accordingly;

(iv) The opening statements will be made by the Petitioner first, then by the Respondent, unless the hearing officer allows evidence to be heard in an order other than that prescribed and shifts the burden of proof according to paragraph (iii) of this subsection;

(v) Evidence will be presented by the Petitioner first, then by the Respondent, unless the hearing officer allows evidence to be heard in an order other than that prescribed and shifts the burden of proof according to paragraph (iii) of this subsection. Petitioner may then offer rebuttal evidence. Parties may each exercise the right to cross-examine;

(vi) The hearing officer and the hearing panel members may examine witnesses at the close of either party's direct or cross examination;

(vii) No testimony shall be received by the hearing officer unless given under oath/affirmation;

(viii) Closing statements will be made by the Petitioner first, then by the Respondent, and then the Petitioner will have the final response.

(ix) The hearing officer may limit the time for opening and closing statements;

(x) The hearing officer may recess the proceedings as appropriate;

(xi) After all parties have had an opportunity to be heard, the hearing officer may excuse all witnesses and adjourn the hearing;

(xii) The hearing may be reopened only upon a motion by a party to the proceeding on a showing of good cause.

#### Section 20. **Decisions.**

(a) The hearing officer shall make proposed findings of fact and conclusions of law within twenty (20) working days of the close of the hearing and forward them to members of the Hearing panel for approval as a recommended decision. This time may be extended if the parties or other interested persons are to submit briefs; but, in no event may this time be extended by more than ten (10) working days, unless a later date is stipulated, in writing, by Petitioner and Respondent.

(i) Within ten (10) working days of the Hearing officer's recommended decision, the Hearing panel shall issue its recommended decision to the Board.

(ii) Within ten (10) working days of the date of the Hearing panel's recommended decision, each party shall be allowed to file with the Board exceptions to the recommended decision with or without a supporting brief. Such exceptions and briefs shall be served on all other parties.

(b) Within fifteen (15) working days of receipt of the Hearing panel's recommended decision, the Board will make and enter in the record the final decision in the case. This decision shall be made and served on all parties to the proceeding.

(i) The decision shall include:

(A) A statement of the findings of fact and conclusions of law, stated separately, with a concise and explicit statement of the underlying facts supporting the findings; and

(B) The appropriate rule, order, relief or denial thereof. The decision shall be based upon a consideration of the whole contested case record or any portion stipulated to by the parties.

(ii) The decision shall state all facts administratively noticed and relied upon as provided by W.S. §16-3-108(d).

(c) Final decisions of the Board shall be approved by a majority of members present at a meeting where a quorum exists, signed by the Chairman and be effective immediately after being entered in the record and served upon all parties. Service shall be accomplished either personally or by mailing a copy of any decision or order to each party or to their-attorney of record within a reasonable time following the entry of the decision into the record.

#### Section 21. **Appeals.**

Appeals from a final decision of the Board shall be taken in accordance with W.S. §16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

#### Section 22. **Transcripts and Record.**

(a) When a contested case is set for hearing, the Chairman or designee shall assign a docket number to each case and enter the case with its number and date of filing in a docket book maintained by the Chairman or designee. The Chairman or designee shall maintain a separate file for each docketed case in which all pleadings, transcripts, correspondence, papers, and exhibits for that case shall be maintained. All such items shall have noted thereon the assigned docket number and the date of filing.

(b) The Chairman or designee shall record all contested case proceedings electronically, through the use of a qualified court reporter or any other appropriate means determined by the agency, or the hearing officer, as approved by the Department. Transcriptions of oral proceedings or written transcripts of a witness's testimony may be obtained upon payment of the cost. Costs may include costs of transcription, pro-rated time of a DFS employee to duplicate tapes for transcription, cost of tapes and any other cost associated with transcription of the hearing tapes.

(i) In a nonpublic investigation proceeding, requests for copies or transcripts may be limited to testimony of the requesting party.

(ii) Where individuals can demonstrate indigence and cannot effectively perfect appeal without such transcription the Department may waive the payment of the fee.

(c) The record of the hearing shall contain:

(i) All formal or informal notices, pleadings, motions, intermediate rulings;

(ii) Evidence received or considered, including matters administratively noticed;

(iii) Questions and offers of proof, objections and rulings;

(iv) Any proposed findings and exceptions thereto; and

(v) The report of the hearing officer to the Child Care Certification Board and the final decision of the Board.

Section 23. **Severability.**

If any portion of these rules is found to be invalid or unenforceable, the remainder shall continue in effect.