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Removal Hearings for Out of Home Care Providers

Sec. 17a-100-1. Scope of regulations

Regulations 17a-100-1 through 17a-100-14 apply to removal hearings pertaining to the removal of a child from an out of home care provider by the Department of Children and Families pursuant to Sections 17a-90(c) and 17a-100 of the Connecticut General Statutes.

(Effective February 20, 1997)

Sec. 17a-100-2. Definitions

As used in sections 17a-100-1 through 17a-100-14, inclusive, of the Regulations of Connecticut State Agencies, the following definitions apply:

(a) “Approved” means to be granted permission by a child placing agency, licensed by the department, to be a foster family or prospective adoptive family.

(b) “Certified” means to be granted permission by the department to provide out of home care for a related child, pursuant to section 17a-114 of the Connecticut General Statutes.

(c) “Child” means any person under eighteen years of age, except as otherwise specified, or any person under twenty-one years of age who is in full time attendance in a secondary school, a technical school, a college or a state accredited job training program.

(d) “Child-placing agency” means an agency, association, corporation, institution, society, or other public or private organization licensed by the department, pursuant to section 17a-149 of the Connecticut General Statutes, to place a child into temporary or permanent care in an out of home care provider family.

(e) “Commissioner” means the commissioner of the department of children and families.

(f) “Department” means the department of children and families.

(g) “Emergency” means any situation in which an immediate threat to the physical or emotional health or welfare of a child or children exists or is suspected.

(h) “Former Legal Guardian” means the person(s) who last had legal responsibility for the care and custody of a minor child prior to the current transfer of custody to the commissioner.

(i) “Foster family” means an individual or family licensed, pursuant to section 17a-145 of the Connecticut General Statutes, approved, pursuant to section 17a-150 of the Connecticut General Statutes, or certified pursuant to section 17a-114 of the Connecticut General Statutes, to provide out of home care, hereinafter referred to as a foster family, foster home or foster parent(s).

(j) “Hearings Unit” means the section within the department having responsibility for administrative hearings.

(k) “Independent Evaluator” means a social work professional who provides the hearing officer with a written report, and oral testimony if necessary, with respect to the best interests of the child on issues of permanency planning and future placement.

(l) “Licensed” means to be granted a department permit, certificate, approval or other form of permission required under law.

(m) “Out of home care provider” means a prospective adoptive family, foster family or permanent family residence providing board and care for a child, hereinafter referred to as an out of home care provider or provider.

(n) “Prospective Adoptive family” means an individual or family licensed, pursuant to section 17a-145 of the Connecticut General Statutes, or approved pursuant to section 17a-150 of the Connecticut General Statutes, for adoption placement,

hereinafter referred to as a prospective adoptive family, prospective adoptive home or prospective adoptive parent(s).

(o) "Related" means kinship by blood, marriage or adoption, descended from a common ancestor not more than three generations removed from said child.

(p) "Removal hearing" means an administrative proceeding conducted to determine if the removal of a child from an out of home care provider is in the child's best interest.

(Effective February 20, 1997)

Sec. 17a-100-3. Removal hearing

(a) The department shall conduct a removal hearing when the out of home care provider, qualified for such hearing under section 17a-100-5 of the regulations of Connecticut State Agencies, disagrees with the department's decision to remove a child from the provider and requests a removal hearing within ten (10) days of receiving the written notice required by section 17a-100-4(c) of the regulations of Connecticut State Agencies.

(Effective February 20, 1997; amended May 10, 1999)

Sec. 17a-100-4. Removal hearing procedures

(a) Except in cases of emergency, the department shall notify the out of home care provider, the child's attorney and the child's guardian ad litem, in writing at least fourteen (14) calendar days before removal, of its decision to remove the child from the out of home care provider and of the provider's right to a removal hearing if the provider disagrees with the removal.

(b) In the case of an emergency removal the department shall inform the out of home care provider, the child's attorney and the child's guardian ad litem, of the provider's right to a removal hearing at the time of the removal or as soon thereafter as practicable.

(c) The written notice given to the out of home care provider, the child's attorney and the child's guardian ad litem, pursuant to subsection (a) of this section shall include:

(1) a copy of sections 17a-100-1 through 17a-100-14, inclusive, of the regulations of Connecticut State Agencies;

(2) the department's reason for the removal;

(3) the out of home care provider's right to a removal hearing;

(4) how the out of home care provider may request a removal hearing; and

(5) the time in which a request for a removal hearing must be made.

(d) A copy of the notice provided to the out of home care provider, the child's attorney and the child's guardian ad litem, shall be maintained in the case record, and furnished to the hearings unit by the social worker, upon request of a hearing.

(e) If the out of home care provider decides to request a removal hearing, the social worker shall refer the provider to the manager of the hearings unit for technical assistance. The hearing officer assigned to the hearing shall not provide technical assistance on the hearing. However, nothing in this section shall require the Department to provide legal assistance to the provider.

(f) The child shall remain with the out of home care provider pending the outcome of a removal hearing, unless there has been a determination that an emergency exists or is suspected, and which requires immediate removal of the child pursuant to section 17a-100-2(g) of the regulations of Connecticut State Agencies.

(g) If the child's attorney or the child's guardian ad litem disagrees with the department's decision to remove the child from the out of home care provider, he

may request a treatment plan hearing in accordance with section 17a-15 of the Connecticut General Statutes and sections 17a-15-1 through 17a-15-11 of the regulations of Connecticut State Agencies. If a treatment plan hearing is requested by the child's attorney or the child's guardian ad litem within ten (10) days of receiving the written notice required by section 17a-100-4(c) of the regulations of Connecticut State Agencies then the child shall remain with the out of home care provider pending the outcome of the treatment plan hearing, unless there has been a determination that an emergency situation exists or is suspected, and which requires immediate removal of the child pursuant to section 17a-100-2(g) of the regulations of Connecticut State Agencies.

(h) If the out of home care provider has requested a removal hearing and is eligible for such hearing in accordance with section 17a-100-5 of the regulations of Connecticut State Agencies and the child's attorney or the child's guardian ad litem has requested a treatment plan hearing pursuant to subsection (g) of this section, then the two hearings shall be consolidated and both shall be held in accordance with section 17a-100-7 through 17a-100-14, inclusive, of the regulations of Connecticut State Agencies.

(Effective February 20, 1997; amended May 10, 1999)

Sec. 17a-100-5. Request for removal hearing

(a) A licensed or certified out of home care provider may request a removal hearing if the child:

- (1) has been in continuous placement with the out of home care provider for one (1) year or more; or
- (2) has been in non-continuous placement with the out of home care provider for a total of two (2) or more years of actual placement;

(b) Notwithstanding the provisions of subsection (a) of this section no removal hearing shall be provided by the department if:

- (1) a child is removed from an out of home care provider for the purpose of placing such child with a prospective adoptive family or other placement identified in the permanency plan approved by the court; or
- (2) the out of home care provider is denied a hearing under the provisions of section 17a-100-6 of the regulations of Connecticut State Agencies.

(Effective February 20, 1997; amended May 10, 1999)

Sec. 17a-100-6. Denial of a request for a removal hearing

(a) A request for a removal hearing shall be denied by the department when:

- (1) the child is being removed from a relative and is being placed with the parent(s) or legal guardian or other placement identified in the permanency plan approved by the court;
- (2) the child is not in the custody of the department pursuant to any court order; or
- (3) the request for a hearing is made more than ten (10) days after the out of home care provider received the written notice required by section 17a-100-4(c) of the regulations of Connecticut State Agencies.

(b) A removal hearing may be denied by the department when court proceedings are in progress which may result in a change in the child's placement.

(Effective February 20, 1997; amended May 10, 1999)

Sec. 17a-100-7. Removal hearing deferred pending licensing action

A removal hearing shall be deferred pending a license action when a child has been, or is being removed from the out of home care provider based on an alleged

violation of the Department's licensing regulations, sections 17a-145-48 through 17a-145-101, and 17a-155-1 through 17a-155-35, inclusive, of the Regulations of Connecticut State Agencies. The removal hearing shall be reinstated, provided the licensee maintains his license, following full and final resolution of all licensure actions pending against the licensee, including summary suspension and revocation actions. The child shall remain with the out of home care provider pending the outcome of all licensing and removal hearing action except in the case of an emergency removal pursuant to section 17a-100-4 of the Regulations of Connecticut State Agencies.

(Effective February 20, 1997)

Sec. 17a-100-8. Scheduling the removal hearing

(a) The Removal Hearing shall be scheduled by the hearing unit within thirty (30) calendar days of the date the request is received by the manager of the Administrative Hearings Unit. A removal hearing may be continued or postponed for good cause at the discretion of the hearing officer or with agreement of all parties.

(b) The removal hearing shall be held in the regional office of the department or, if agreeable to all the parties, another location designated by the hearing officer.

(c) Notice of the removal hearing shall be given to the out of home care provider, the child's social worker, the child's attorney and the child's guardian ad litem.

(Effective February 20, 1997; amended May 10, 1999)

Sec. 17a-100-9. Pre-hearing conference for a removal hearing

(a) The hearing officer may involve the parties and their representatives in a pre-hearing conference preceding the removal hearing for the purpose of:

- (1) simplification and consolidation of issues;
- (2) identification and limitation of the number of witnesses; or
- (3) considering any other matters that will promote the quality of the proceedings.

(b) The hearing officer shall identify and recite on the removal hearing record any agreements made, or actions taken, by the parties at the conference.

(Effective February 20, 1997)

Sec. 17a-100-10. Conduct of the removal hearing

(a) The Removal Hearing shall be conducted by a hearing officer designated by the commissioner or his designee.

(b) The hearing officer shall have the power to administer oaths and affirmations, subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in the case.

(c) The hearing officer has the final authority to limit witnesses and take any other necessary actions that will facilitate the hearing process.

(d) Each party shall be afforded the opportunity to:

- (1) inspect and copy relevant and material records, papers and documents; and
- (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses and to present evidence and argument on all issues involved.

(e) Any oral or documentary evidence may be received provided:

(1) the hearing officer shall limit or exclude any evidence which is irrelevant, immaterial or unduly repetitious;

(2) the hearing officer shall recognize the rules of privilege governing confidential, professional communications;

(3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and, upon request, parties shall be given an opportunity to compare the copy with the original;

(5) notice may be taken of generally recognized technical or scientific facts within common knowledge or the agency's specialized knowledge;

(6) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed;

(7) the agency's experience, technical compliance, and specialized knowledge may be used in the evaluation of the evidence;

(8) all parties and their attorney shall be permitted to examine all records and documents introduced by the parties to the hearing. Should any record or document, which a party was not permitted to examine in advance of the hearing, be introduced, that party may request a continuance, which may be granted at the discretion of the hearing officer, to allow the requesting party an opportunity to prepare a response to the record or document; and

(9) a party may conduct cross-examinations required for a full and true disclosure of the facts.

(f) The full proceedings of removal hearings shall be audio recorded.

(g) The removal hearing decision shall be entered as part of the licensing file of the out of home care provider.

(Effective February 20, 1997)

Sec. 17a-100-11. Party and intervenor status in removal hearings

(a) Parties to the removal hearing are the child, the out of home care provider and the department. The parent(s) and the former legal guardian may be granted party or intervenor status, subject to the provisions of section 4-177a of the Connecticut General Statutes.

(b) The parties, intervenors, if any and their representatives and witnesses, while testifying; shall be the only authorized persons at the hearing unless all parties and the hearing officer consent to the presence of other persons.

(c) If a request to intervene is granted pursuant to subsection (a) of this section, the hearing officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the request and shall define the intervenor's right to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine, so as to promote the orderly conduct of the proceeding.

(Effective February 20, 1997)

Sec. 17a-100-12. The removal hearing record

(a) The record shall include:

- (1) written notices related to the case;
- (2) all petitions, pleadings, motions and intermediate rulings, if any;
- (3) evidence received or considered;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) the official recording of the proceedings; and
- (6) the final decision.

(b) Any recording or stenographic record of the proceeding shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript.

(Effective February 20, 1997)

Sec. 17a-100-13. The removal hearing decision

(a) The hearing officer shall be responsible for preparing the memorandum of decision which shall be mailed within thirty (30) calendar days of the hearing to:

- (1) parties;
- (2) attorneys;
- (3) director of children's protective and family services;
- (4) regional office administration and casework staff;
- (5) hearings unit file; and
- (6) licensing file of the out of home care provider.

(b) The standard of review in an administrative hearing is a preponderance of the evidence. The Department shall have the burden of proof, as it is seeking to make a change in the child's placement.

(c) The memorandum of decision shall contain:

- (1) the names of the persons present;
- (2) a summary of the positions of the parties;
- (3) the provisions of law, regulation and policy applicable to the case;
- (4) evidence relied on in making the decision;
- (5) findings of fact; and
- (6) a statement of the reasoning on which the decision is based.

(d) If the hearing officer determines that the child should be removed from the out of home care provider and that it would not be in the child's best interest to remain with the provider until the full memorandum of decision is sent to the parties, a preliminary notice of decision shall be sent to all parties immediately following the hearing at which time the child may be removed.

(e) Any additional recommendations by the hearing officer pertaining to follow up actions to be taken by the parties, shall be submitted in separate correspondence to all parties.

(Effective February 20, 1997)

Sec. 17a-100-14. The independent evaluator in a removal hearing

(a) The commissioner or his designee shall designate a social work professional to serve as the independent evaluator during a removal hearing when an independent evaluator is requested by the hearing officer.

(b) The evaluator shall not be a person who has been involved in any decisions regarding the case.

(c) The evaluator shall have immediate and unlimited access to all department records pertaining to the child and out of home care providers. The evaluator shall also be empowered to conduct interviews as may be necessary.

(d) The evaluator shall be prepared to acquaint the hearing officer with the background of the child and provide recommendations as may be requested at a removal hearing.

(e) The evaluator shall prepare a written report including recommendations regarding future placement which shall be submitted to the hearing officer and all parties prior to the day of the removal hearing. The evaluator shall be expected to give testimony under oath if called as a witness by any of the parties or the hearing officer.

(Effective February 20, 1997)