

OFFICE OF LEGAL AFFAIRS

Administrative Hearings

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Policy

The Administrative Hearings Unit (AHU) is a division within the Office of Legal Affairs responsible for conducting administrative hearings which provide a neutral forum for fair and independent resolution of contested matters.

The hearing notice shall include the date, time and place of the hearing; statutory basis for the hearing; right of the client to be represented at his or her own expense; and the principal issue to be considered at the hearing.

Definitions

Benefit means a cash benefit to a child or caregiver or a vendor payment to a service provider on behalf of a child

Care or Custody of the Department means committed to or placed with the Department under a court order of the Superior Court for Juvenile Matters.

Child means a person under the age of eighteen.

Child Care Facility is a DCF licensed foster home, adoptive home, residential treatment facility, group home, temporary shelter, alcohol/substance abuse treatment facility, transitional living facility, residential educational institution, maternity home or extended day treatment.

Child care facility does not mean a youth camp, a juvenile detention facility under the authority of the court, or a facility which is primarily an educational institution exempted by the State Department of Education as provided in Conn. Gen. Stat. §10-8.

Child Placing Agency is an agency, association, corporation, institution, society of other public or private organization licensed by DCF to place a child into a temporary or permanent care home.

Client, for purposes of fair hearing policy, means a youth age 16 or older who is receiving services from DCF and who is residing in out-of-home care.

Guardian means one who has the authority and obligations of guardianship/.

Guardianship means guardianship of a minor, and includes (A) the obligation of care or control; and (B) the authority to make major decisions, affecting the child's welfare, which the child cannot make on his own, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment.

Permanent Family Residence means one or two adults, an agency, association, corporation, institution, society of other organization licensed by DCF to provide permanent care to handicapped children in a home environment and family setting

Limitation of License means any restriction placed on a license other than revocation or refusal to renew.

Relative Caregiver means a person who is caring for a child related to such person because the parent of the child has died or become otherwise unable to care for the child for reasons that make reunification with the parent not a viable option within the foreseeable future.

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Types of Hearings

Administrative hearings held by the Department include:

- Case Plan Hearings
- Educational Stability Hearings
- Fair Hearings
- Licensing Hearings
- Out-of-State Placement Hearings
- Rate Setting Hearings
- Removal Hearings
- Subsidy Hearings
- Substantiation Hearings
- Voluntary Services Hearings.

Scheduling of Hearings

Hearings are scheduled within thirty (30) days of the receipt of the request, except as otherwise noted in policy.

Hearings may be postponed by the manager of the Hearings Unit for good cause shown. Requests for postponements shall be submitted in writing.

No pre-hearing discovery shall be permitted except for the opportunity to inspect and copy relevant and material records, papers and documents.

When a language or sign language interpreter is needed or requested, the Administrative Hearings Unit shall arrange for a qualified and impartial interpreter to be present at the hearing.

Hearing Officers

Administrative hearings are conducted by Hearing Officers from the Department's Legal Division. Hearing Officers are impartial employees of the Department of Children and Families and are designees of the Commissioner of the Department of Children and Families. Hearing Officers conduct the hearing, review the hearing record, research the law and issue written decisions based on the facts and applicable state law.

Burden of Proof

The Department shall bear the burden of proof at the hearing. The applicable standard of proof for all hearings is fair preponderance of the evidence.

The Department's case may be presented by any Department employee or other designee of the Commissioner.

Client Representation

The client may be represented by legal counsel, at his or her own expense.

Parties

The parties, the parties authorized representatives and witnesses, while testifying, are authorized to attend the hearing.

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Parties
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The Hearing Officer, in his or her discretion, may permit other persons to be present for all or part of the hearing. One person, acting as a support person for the person requesting the hearing may be present for the entire hearing. If that support person is testifying as a witness, the Hearing Officer may require that person to testify out of order. Observers are non-participants and do not testify. Observers may be permitted at the discretion of the Hearing Officer.

A person seeking to intervene may file a written motion for intervention, setting forth the basis for intervention.

In cases involving common issues of law or fact, the Hearing Officer may, in his or her discretion, order a joint hearing to expedite or simplify consideration of any or all of the issues in such cases.

The Hearing Officer shall conduct the hearing; have the power to administer oaths and affirmations; subpoena witnesses if the Hearing Officer determines in his or her discretion that the witness is necessary in order for the Hearing Officer to render a fair decision; require the production of records, physical evidence, papers and documents; limit witness testimony and take any other action necessary to facilitate the hearing process, including questioning witnesses.

Recording the Hearing

The hearing shall be recorded by the Hearing Officer.

Decision Timelines

The following hearing decisions shall be rendered within thirty (30) days of the close of evidence:

- License Hearing
- Out-of-State Placement Hearing
- Removal Hearing
- Subsidy Hearing
- Substantiation Hearing
- Voluntary Services Hearing

The following hearing decisions shall be rendered within fifteen (15) days of the close of evidence:

- Educational Stability Hearing
- Parole Revocation Hearing
- Case Plan Hearing

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Decision Timelines

The following hearing decisions shall be rendered within ninety (90) days of the close of evidence:

- Fair Hearing
- Rate Setting Hearing

The Commissioner or her designee, prior to the start of the hearing, shall determine if the Hearing Officer shall render a proposed final or final decision.

The hearing decision shall include the names of the persons attending the hearing; issues presented; summary of any motions ruled on; applicable provisions of law and policy; findings of fact; reasoning on which the decision is based; decision; and notice of client's right to appeal.

If the client fails to appear at a hearing after receiving notice of the hearing, the Hearing Officer may dismiss the hearing for good cause shown.

If the client does not agree with the Hearing Officer's decision, the client has the right to ask the Department for reconsideration. The client also has the right to appeal the Hearing Officer's decision to Superior Court without first asking for reconsideration.

A party requesting a hearing may at any time submit a written withdrawal of the hearing request.

The parties may agree to settle the matters in dispute at any time. The Hearing Officer shall enter the agreement as part of the record and dismiss the request for hearing with prejudice.

Legal Reference: Conn. Gen. Stat. §§ 4-177 through 4-183.

Case Plan Hearings

The purpose of the Case Plan Hearing is to determine if the Department's case plan is appropriate to the needs of the child and is consistent with available resources, Department regulations, policies and philosophy.

The child, parent or legal guardian may request a Case Plan Hearing.

The Administrative Hearings Unit shall deny a request for a case plan hearing if:

- the issue is currently pending in Court;
- the child is under the legal jurisdiction of another state through the Interstate Compact statutes; or
- the specific issue from the case plan is not identified (The Administrative Hearings Unit may return the request and ask for clarification).

Written notice of the Case Plan Hearing shall be provided at least five (5) calendar days in advance of the hearing to:

- the child's attorney;

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Case Plan Hearings
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- the child's parent or legal guardian; and
- the respective attorneys or advocates.

The child may attend the Case Plan Hearing at the discretion of the Hearing Officer. The Hearing Officer shall consider the age, emotional state or other conditions of the child. The Department shall arrange for transportation of the child to the hearing. If a party raises an issue regarding the advisability of bringing the child to the hearing, the Hearing Officer shall consult with the child's attorney or advocate, the Department's legal representative and other interested parties prior to making a decision to exclude the child from the Case Plan Hearing.

The current case plan shall be entered as part of the hearing record.

The Hearing Officer shall render a written decision within fifteen (15) days of the closing of the hearing record which shall determine if the case plan is appropriate to the child's needs and include any change, if needed, to modify the case plan.

Legal Reference: Conn. Gen. Stat. § 17a-15.

Educational Stability Hearing

The purpose of the Educational Stability Hearing is to determine whether or not it is in the child's best interests to remain in the school of origin. The school of origin means the school that the child is attending at the time DCF places the child in out-of-home care of the school the child is attending at the time of any change in the child's placement.

The parent, child's attorney or child's guardian ad litem may object to the school placement decision within three (3) days of receiving notice of the decision. Upon receipt of an objection, the Administrative Hearings Unit shall schedule an administrative hearing as quickly as possible. The child shall remain in the school of origin until the time for the objection has passed or the Administrative Appeal has been resolved.

If a child is removed from the school of origin based on the Department's determination that remaining in the school of origin will jeopardize the child's immediate physical safety and an objection is filed, the Administrative Hearings Unit shall hold a hearing within three (3) business days of the objection. The child may be moved to the new school pending the appeal.

There is a rebuttable presumption that it is in the child's best interests to remain in the school of origin. If the Hearing Officer concludes that the child should be educated at a school other than the school of origin, the hearing decision shall set forth the reasons for the decision.

The following factors shall be considered in determining whether or not remaining in the school of origin is in the child's best interests:

- travel distance between the new out-of-home placement and the school of origin;
- age of the child;
- the mental health of the child;

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Educational Stability Hearing
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- the school climate;
- the child's school performance;
- the child's connections in the school;
- the proximity to a natural school transition point, e.g., end of the semester;
- the child's wishes;
- the positions of the child's attorney, child's guardian ad litem, parents and surrogate, if applicable;
- any safety considerations;
- the likelihood of reunification; and
- other factors unique to the child's case.

The cost of transportation shall not be considered as a factor in the best interest analysis.

Legal Reference: Conn. Gen. Stat. § 17a-16.

Cross Reference: DCF Policy 3-2 "Educational Management", and Attachment A, "Educational Stability Procedure".

Fair Hearings

The purpose of the Fair Hearing is to consider any issue of the parent, guardian, caretaker or child 16 or older, who disagrees with the Department's denial, suspension, reduction or discontinuation of a cash and/or program benefit on behalf of the youth or child.

A prospective caregiver may request a Fair Hearing for the purpose of contesting DCF's decision to deny placement of a child in Connecticut from out-of-state pursuant to the Interstate Compact on the Placement of Children.

The Department shall provide written notice of the intent to deny or change benefits and the client's right to a Fair Hearing.

The client has sixty (60) days from the date of notice to request a hearing. If the client sends a request for a hearing postmarked within ten (10) days after the date the proposed action is mailed, the benefits shall continue while the hearing decision is pending.

If the hearing decision upholds the Department's decision and the benefit has been continued beyond the eligibility date, the client may be asked to reimburse the Department.

The client's social worker shall provide a Summary of Facts, with supporting documentation concerning the reason for the denial, suspension, reduction or discontinuation of a cash and/or program benefit. The Summary of Facts shall be entered as part of the hearing record.

Legal Reference: Conn. Gen. Stat. §§17a-90 and 46b-129(l).

License Hearings

The purpose of the Licensing Hearing is to determine if there is cause to suspend, revoke or fail to renew a license for child care facilities; permanent family residence or child placing agency.

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License Hearings
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The Department shall provide written notice of its intent to deny suspend, limit, revoke or refuse to renew a license and the right of the applicant or licensee to request an administrative hearing.

In the event a foster family is in non-compliance with any statutes or regulations, the Department shall identify in writing within twenty (20) business days of the determination of non-compliance the sections of the statutes or regulations in which the person is not in compliance. The foster family shall be provided twenty (20) business days to show compliance with the statutes or regulations. If compliance cannot be achieved within twenty (20) business days, the Commissioner or her designee may provide the foster family with an opportunity to submit a written plan outlining steps to achieve compliance.

If the Department determines that a threat to the health or welfare of a child or children placed in a foster or prospective adoptive home exists, the Department may summarily suspend the license or approval. The Department shall immediately remove any foster child or prospective adoptive child residing in the home. If the licensed foster or prospective adoptive family requests a hearing within ten (10) days of notification, the hearing shall be heard within thirty (30) days.

For all other Licensing Hearings, a hearing must be requested within fifteen (15) days of notice of the action. A request for hearing shall result in a stay of the licensing decision, except when emergency action is needed for health or the safety or welfare of children.

The issue for the hearing is whether the facility, permanent family home or agency has complied with the Department's licensing regulations, policies and procedures.

The Hearing Officer shall determine whether it is in the best interests of the child to uphold the Department's proposed action; continue the license provisionally for a specified time period until corrective measures are taken; suspend the license; restrict or limit the license by specifying the number, type, age and sex of children who are being served; issue the license or renew the license.

Legal Reference: Conn. Gen. Stat. §§ 17a-114; 17a-145 and 17a-151; Regulations of Connecticut State Agencies §§ 17a-20-11 through 17a-20-61; 17a-145-130 through 17a-145-160; 17a-145-48 through 17a-145-58; 17a-127-1 through 17a-127-36.

Out-of-State Placement Hearing

The purpose of the Out-of-State Placement Hearing is to determine whether or not it is in the child's best interests to be placed in an out-of-state treatment facility.

The Department of Children and Families shall not place a child in an out-of-state treatment facility unless all in state placement options have been reviewed and the Commissioner has determined there are no appropriate facilities in the State of Connecticut.

The final decision regarding the out-of-state placement shall be made by the Commissioner.

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Out-of-State Placement Hearing
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If the Commissioner has approved an out-of-state placement for a child, the Department shall provide notice to the child and the parents or guardians concerning (1) the proposed placement and (2) the child's and parents' or guardians' right to an administrative hearing concerning the proposed placement.

The Department shall notify the parent(s), child's attorney and child's guardian ad litem in writing at least fourteen (14) calendar days before the proposed placement in the out-of-state facility, of the decision to place the child out of state and their right to request a hearing if they disagree with the proposed placement.

The notice shall include:

- information regarding the child's current placement;
- the name and address of the proposed out-of-state placement facility;
- the name, business address and telephone number of the director of the facility;
- the date of the proposed placement in the out of state facility;
- why it is in the best interests of the child to be placed in the proposed out-of-state facility; and
- why the child cannot be placed in a facility located within Connecticut.

If the child or the child's attorney objects to the placement, then the administrative hearing shall conduct an Out-of-State Placement Hearing.

If the parents or guardians of the child object to the placement, then the administrative hearing shall conduct a Case Plan hearing.

If the child, parents or guardians request an administrative hearing to object to the out-of-state placement, then the child shall remain in his or her current placement until a hearing is held and a final decision is issued by the agency.

If the child, parents or guardians do not request a hearing within five (5) days of receipt of the notice, then the child may be moved to the out-of-state facility at the end of the five (5) day period.

The Administrative Hearings Unit shall schedule an administrative hearing concerning a proposed out-of-state placement within five (5) days of the receipt of the request for a hearing.

The issues at an Out-of-State Placement hearing held at the request of the child or the child's attorney shall be whether the proposed out-of-state placement is in the child's best interests and whether the proposed change in placement is to an appropriate facility located outside the State of Connecticut.

The issue at a Treatment Plan hearing shall be whether or not the proposed placement is appropriate to the child's needs.

The Hearing Officer shall issue a proposed final decision within five (5) days of the completion of the hearing.

Legal Reference: Conn. Gen. Stat. § 17a-16(h).

Rate Setting Hearing

The purpose of the Rate Setting Hearing is to determine whether or not rate making decisions for residential care are consistent with the Department's regulations and policies.

If a treatment center disagrees with the Department's rate setting decision for residential care, the treatment center shall file a written request for a hearing within thirty (30) days of receipt of notification of a rate making decision.

Legal Reference: Conn. Gen. Stat. § 17a-17; Regulations of Connecticut State Agencies §§ 17a-17-1 through 17a-17-16.

Removal Hearing

The purpose of the Removal Hearing is to determine if removal of a child from an out of home care provider is in the child's best interests. An out of home care provider includes a prospective adoptive family, or foster family providing care for a child.

An out of home care provider who disagrees with the Department's decision to remove a child may request a removal hearing. The request must be made within ten (10) business days of the provider receiving written notice from the Department.

A removal hearing shall be denied by the Administrative Hearings Unit when:

- the child is being removed from an out of home provider for the purpose of:
 - placement with a prospective adoptive family,
 - placement with the parent(s) or legal guardian, or
 - other placement identified in the permanency plan and approved by the Court;
- the child is not in the custody of the Department pursuant to a Court order;
- the request for the removal hearing is made more than ten (10) days after the out of home provider received the written notice of the removal;
- there are Court proceedings in progress that may result in a change of the child's placement; or
- the child has not been in continuous placement with the out of home provider for one year or the child has not been in the placement of the provider for a total of two years over a non-continuous period.

Except in emergency cases, 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 the removal, of its decision to remove the child from the out of home care provider and of the provider's right to request a removal hearing if the provider disagrees with the removal. A copy of the removal notice shall be sent to the Administrative Hearings Unit.

An emergency means any situation in which the Department determines that an immediate threat to the physical or emotional health or welfare of a child or children placed in a foster or prospective adoptive home exists or is suspected.

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Removal Hearing
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If the child's attorney or child's guardian ad litem disagrees with the Department's decision to remove the child from the out of home care provider, he or she may request a Case Plan Hearing.

Except in cases of emergency, if the case plan hearing is requested by the child's attorney or the child's guardian ad litem within ten (10) days of receiving written notice of the removal, the child shall remain with the out of care provider pending the outcome of the hearing.

If the out of home care provider has requested and is eligible for a Removal Hearing and the child's attorney or child's guardian ad litem requested a Case Plan Hearing, the two hearings shall be combined.

Unless there is an emergency, upon notification that a removal hearing has been requested, the social worker shall suspend plans to remove the child from the out of home care provider, pending the outcome of the Removal Hearing.

The Removal Hearing shall be scheduled within thirty (30) calendar days of the date the request is received. A pre-hearing conference may be scheduled for the purpose of exploring resolution of the pending matter and identification of witness and exhibits.

Notice of the Removal Hearing shall be provided to the out of home care provider; child's social worker; child's attorney and child's guardian ad litem.

When requested by the Hearing Officer, the Commissioner shall designate a social work professional to serve as an independent evaluator during a removal hearing. The evaluator shall be a person not involved in any of the decisions concerning the removal and shall render an independent report with recommendations to the Hearing Officer and parties. The evaluator shall be available to provide testimony at the hearing.

Legal Reference: Conn. Gen. Stat. § 17a-100.

Subsidy Hearing

The purpose of the Subsidy Hearing is to determine if the Department's decision to deny, terminate or reduce a guardianship subsidy or adoption subsidy is consistent with the Department's regulations and policies.

Subsidy decisions are reviewed biannually/annually by the Department. Any subsidy decision by the Department may be appealed by the guardian, adopting parent(s), or child placing agency to the Administrative Hearings Unit.

The Department shall notify subsidized guardian(s) or adoptive parent in writing at least thirty days (30) days before the proposed modification or termination of subsidy and their right to request a hearing if they disagree with modification or termination.

The notice shall include:

- the reason for the denial, modification or termination of the subsidy;
- advise of the right to a hearing;

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Subsidy Hearing
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- how to apply for a subsidy hearing;
- the time within the which a request shall be made; and
- a copy of Regulations of Connecticut State Agencies for subsidized guardianships.

The adoptive parent or guardian shall appeal the decision to the Administrative Hearings Unit within fifteen (15) days of receipt of notification. If a timely appeal is filed, the subsidy shall continue without modification until the decision of the Administrative Hearings Unit is rendered.

A request for a subsidy hearing shall be denied by the hearing's unit when:

- the relative caregiver fails to qualify for the subsidy hearing pursuant to Regulations of Connecticut State Agencies.; or
- the child has reached the age of termination for the subsidy.

Legal Reference for Adoption subsidies: Conn Gen. Stat. §§ 17a-117 through 17a-118; Regulations of Connecticut State Agencies §§ 17a-116-6 through 17a-116-14; 17a-120-3 through 17a-120-9; 17a-126-1 through 17a-126-23.

Legal Reference for Guardianship subsidies: Conn. Gen. Stat. § 17a-126; Regulations of Connecticut State Agencies §§ 17a-126-1 through 17a-126-23.

Substantiation Hearing

The purpose of the Substantiation Hearing is to determine whether the Department's finding that the Appellant is responsible for child abuse and/or neglect is supported by the facts as found by the Hearing Officer. If the Appellant is also placed on the central registry, the purpose of the hearing is to determine if the finding that the client poses a risk to children is supported by the applicable criteria as set forth in Department's regulations and policies.

A request for a Substantiation Hearing shall be denied and the registry decision confirmed if a criminal proceeding has resulted in a finding that the Appellant committed the act of child abuse and/or neglect that is the subject of the substantiation hearing.

If a civil court determines that the Appellant committed the act of child abuse and/or neglect that is the subject of the subject of the Substantiation Hearing, the Substantiation Hearing shall proceed only as to the registry decision.

A request for a Substantiation Hearing must be made within thirty (30) days of receiving written notice of the internal review decision, or if the Department has not timely completed an internal review, at any time after the review has been pending with the internal reviewer for over thirty (30) days. Requests for hearings filed after thirty (30) days may be granted in the discretion of the Manager of the Administrative Hearings Unit.

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Substantiation Hearing
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The evidence at the hearing is limited to the evidence available to the Department at the time of the internal review. A party may be permitted to introduce additional evidence at the hearing, if the Hearing Officer finds that after an offer of proof, the additional evidence is relevant and material to the case, that the evidence will promote the interests of justice and that in the exercise of due diligence, the additional evidence was not available to and not considered by the Department during the investigation or internal review process.

A minor child who is not the subject of the Substantiation Hearing may be called as a witness at the discretion of the Hearing Officer, after the party calling the minor child presents an offer of proof as to why the child's testimony is relevant and material to the case and not duplicative of other evidence.

If a party intends to call as a witness the minor child who is the subject of the substantiation hearing, the party calling the child as a witness shall provide notice to the opposing party. If there is an objection to the minor child testifying, the hearing officer shall determine whether there is competent evidence that this particular child under the circumstances of this case will suffer psychological harm from testifying.

A request for a Substantiation Hearing may be deferred pending disposition of any civil, criminal or probate court or administrative proceeding arising from or including the incident of abuse or neglect that may result in a finding by the court or administrative tribunal that the Appellant has committed the act of child abuse or neglect that is the subject of the administrative hearing.

If the Appellant objects to deferment of the Substantiation Hearing, the hearing shall be scheduled. If the hearing is deferred, it is the Appellant's responsibility, within three years of the deferment, to notify the Administrative Hearings Unit that the court or administrative matter is no longer pending and request that the Substantiation Hearing be scheduled.

If the Appellant does not request a hearing within three years of the deferment, the substantiation and registry findings shall be confirmed.

The Department's investigative record, including the investigation protocol, medical records and other materials used to substantiate abuse and/or neglect and recommend placement on the central registry shall be admitted as part of the hearing record. Any relevant documents submitted by Appellant to the Department as part of the internal review process shall be admitted as part of the hearing record.

If a motion to amend the substantiation allegations is filed prior to the start of the hearing, the Hearing Officer shall grant the motion and, if requested by the Appellant, grant a continuance of the hearing.

If the motion to amend is made after the start of the hearing, the motion may be granted at the discretion of the Hearing Officer.

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Substantiation Hearing
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If the Appellant requests that the Department present a Department employee as a witness, the Department shall make that person available upon a showing by the Appellant that the testimony is relevant to the issue at the hearing.

The parties shall be responsible for securing attendance of non-Department employees' attendance at the hearing, including costs for any subpoenas.

The parties shall be responsible securing any records that they may wish to present at the hearing, including costs for any subpoenas.

Legal Reference: Conn. Gen. Stat. § 17a-101k and Conn. Gen. Stat. § 54-86h; Regulations of Connecticut State Agencies §§ 17a-101k-1 through 17a-101k-16.

Voluntary Services Program Hearing

The purpose of the Voluntary Services Hearing is to determine whether or not the Department's decision to deny or terminate the Voluntary Services Program is consistent with the Department's regulations and policies.

The Department shall provide written notice of its decision to deny or terminate the Voluntary Services Program to the parent or guardian of a child under fourteen (14) years of age or to a child fourteen (14) years of age or older.

The notice shall include:

- the reason for the denial or termination of voluntary services;
- the right of the parent or guardian of a child under fourteen (14) years of age or to a child fourteen (14) years of age or older to a hearing;
- how to apply for a Voluntary Services Hearing;
- the time within which a request shall be made; and
- a copy of Regulations of Connecticut State Agencies.

A request for a Voluntary Services Hearing must be made within fourteen (14) calendar days of receipt of the notice of denial or termination of voluntary services.

Legal Reference: Conn. Gen. Stat. §17a-11; Regulations of Connecticut State Agencies §§17a-11-4 through 17a-11-27.

Cross Reference: DCF Policy 29-1, "Voluntary Services Program".