

SENATE BILL 395

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO ADMINISTRATIVE HEARINGS; PROVIDING AN ADMINISTRATIVE HEARING PROCESS FOR CERTAIN ACTIONS OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; ESTABLISHING PROCEDURES; MAINTAINING CONFIDENTIALITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Children's Code is enacted to read:

.219276.4AIC March 16, 2021 (12:39pm)

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"[NEW MATERIAL] CHILDREN, YOUTH AND FAMILIES DEPARTMENT--
ADMINISTRATIVE HEARING--PROCEDURES.--

A. A court-appointed special advocate, child, child's attorney, custodian, foster parent, guardian, guardian ad litem, Indian tribe, parent, preadoptive parent, relative, fictive kin, mental health provider, school staff or protective services division worker of a child in department custody may request an administrative hearing for any department decision involving the following:

(1) the revocation or suspension of a foster home license;

SHPAC → (2) ~~the removal of a child from a foster home;~~ ← SHPAC

SHPAC → (3) ← SHPAC SHPAC → (2) ← SHPAC a dispute relating to the reimbursement of expenses; or

SHPAC → (4) ← SHPAC SHPAC → (3) ← SHPAC any dispute in which a court-appointed special advocate, child, child's attorney, custodian, foster parent, guardian, guardian ad litem, Indian tribe, parent, preadoptive parent, relative, fictive kin, mental health provider, school staff or protective services division worker alleges that an action of the department conflicts with an existing law or department policy or rule.

B. A person seeking an administrative hearing pursuant to this section shall serve the department and the

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administrative hearings office with a written protest requesting such proceeding no later than thirty calendar days following the date of the mailing or verbal notification of the action proposed to be taken by the department. Every protest shall identify the following; provided that the person may supplement the protest at any time prior to a hearing:

- (1) the identity of the person seeking relief and any relevant parties to the protest;
- (2) the action or inaction that is in dispute;
- (3) the grounds for the protest;
- (4) the affirmative relief that is requested;

and

- (5) a summary statement of the evidence expected to be produced supporting each assertion.

C. All administrative hearings brought pursuant to this section shall comply with the procedures provided in Sections 7-1B-11, 7-1B-12 and 32A-4-33 NMSA 1978."

SECTION 2. Section 7-1B-6 NMSA 1978 (being Laws 2015, Chapter 73, Section 6, as amended) is amended to read:

"7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

A. The chief hearing officer shall:

- (1) adopt and promulgate a hearing officer code of conduct; and
- (2) annually, evaluate each hearing officer's performance for competency, efficiency and professional

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demeanor in accord with relevant legal standards and the hearing officer code of conduct, including through the use of a survey of practitioners who appear before the hearing officer.

B. The chief hearing officer shall ensure that each hearing officer has decisional independence; however, the chief hearing officer may:

(1) consult with a hearing officer about a genuine question of law; and

(2) review with a hearing officer any issue on appeal addressed by a court of this state.

C. The administrative hearings office shall:

(1) hear all tax protests pursuant to the provisions of the Tax Administration Act;

(2) hear property tax protests pursuant to the provisions of the Property Tax Code;

(3) hear all certificate-denial protests pursuant to the provisions of Section 13-1-22 NMSA 1978;

(4) conduct all adjudicatory hearings pursuant to the Motor Vehicle Code;

(5) conduct all driver's license revocation hearings pursuant to the provisions of the Implied Consent Act;

(6) conduct all administrative hearings requested pursuant to the provisions of Section 1 of this 2021 act and Sections 7-1B-11 NMSA 1978 and 7-1B-12 NMSA 1978;

[~~(6)~~] (7) make and preserve a complete record

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of all proceedings; and

[~~(7)~~] (8) maintain confidentiality regarding taxpayer information as required by Section 7-1-8 NMSA 1978.

D. In hearings conducted in accordance with the Tax Administration Act, Section 13-1-22 NMSA 1978 and the Motor Vehicle Code:

(1) the Rules of Evidence do not apply. The hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the department at the time the ruling is issued to the taxpayer;

(2) the Rules of Civil Procedure for the District Courts do not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer or the

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taxation and revenue department may request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the department at the time the ruling is issued to the taxpayer; and

(3) the hearing officer may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and for hearings conducted for a license suspension pursuant to Section 66-5-30 NMSA 1978, the hearing officer may require a reexamination of the licensee."

SECTION 3. A new Section 7-1B-11 NMSA 1978 is enacted to read:

"7-1B-11. [NEW MATERIAL] CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ADMINISTRATIVE HEARING--PROCEDURES.--

A. An administrative hearing brought pursuant to Section 1 of this 2021 act shall commence no later than thirty calendar days following the appointment of the hearing officer as provided in Section 7-1B-12 NMSA 1978 or as stipulated by the parties or otherwise ordered by the hearing officer upon a showing of good cause.

B. At any hearing, a hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant evidence.

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C. After affording the parties the opportunity to submit proposed findings and conclusions of law, and based solely upon the record in accordance with the Administrative Hearings Office Act SHPAC ~~and the Administrative Procedures Act~~ SHPAC , the hearing officer shall make findings of fact and conclusions of law on all material issues of fact, law or discretion, stating the basis for each; provided that the findings and conclusions shall be supported by substantial evidence. The findings of fact and conclusions of law of the hearing officer shall be made and served upon all parties of record within thirty calendar days following the hearing.

D. The hearing officer's findings of fact and conclusions of law shall be binding on the children, youth and families department and constitute a final agency decision, which may be appealed pursuant to Section 39-3-1.1 NMSA 1978.

E. The administrative hearings office and the hearing officer shall maintain the confidentiality of any information provided during the hearing that would have otherwise been confidential pursuant to the Children's Code."

SECTION 4. A new Section 7-1B-12 NMSA 1978 is enacted to read:

"7-1B-12. [NEW MATERIAL] CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ADMINISTRATIVE HEARING--HEARING OFFICER.--

A. The chief hearing officer of the administrative hearings office shall select the hearing officer to preside

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over the administrative hearing held pursuant to Section 7-1B-11 NMSA 1978; provided that the selected hearing officer shall:

- (1) be licensed and in good standing to practice law in New Mexico or another state;
- (2) have at least three years' cumulative experience in an area relevant to the specific written protest; and
- (3) not currently be employed by or represent, or belong to a law firm that currently represents, the children, youth and families department.

B. The children, youth and families department shall reimburse the administrative hearings office for the costs of a contract hearing officer."

SECTION 5. Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127, as amended) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be

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confidential and closed to the public.

B. The records described in Subsection A of this section shall be disclosed only to the parties and:

(1) court personnel and persons or entities authorized by contract with the court to review, inspect or otherwise have access to records or information in the court's possession;

(2) court-appointed special advocates appointed to the neglect or abuse proceeding;

(3) the child's guardian ad litem;

(4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code;

(5) department personnel and persons or entities authorized by contract with the department to review, inspect or otherwise have access to records or information in the department's possession;

(6) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(7) law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(8) district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(9) any state government social services

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agency in any state or when, in the opinion of the department it is in the best interest of the child, a governmental social services agency of another country;

(10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;

(12) school personnel involved with the child if the records concern the child's social or educational needs;

(13) a grandparent, parent of a sibling, relative or fictive kin, if the records or information pertain to a child being considered for placement with that grandparent, parent of a sibling, relative or fictive kin and the records or information concern the social, medical, psychological or educational needs of the child;

(14) health care or mental health professionals involved in the evaluation or treatment of the child or of the child's parents, guardian, custodian or other family members;

(15) protection and advocacy representatives

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pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(16) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department;

(17) representatives of the federal government or their contractors authorized by federal statute or regulation to review, inspect, audit or otherwise have access to records and information pertaining to neglect or abuse proceedings;

(18) any person or entity attending a meeting arranged by the department to discuss the safety, well-being and permanency of a child, when the parent or child, or parent or legal custodian on behalf of a child younger than fourteen years of age, has consented to the disclosure; SHPAC→and←SHPAC

(19) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court SHPAC→; and

(20) the administrative hearings office and its employees and contractors, pursuant to the requirements of the Administrative Hearings Office Act, if the records are needed for the purpose of carrying out the provisions of the Administrative Hearings Office Act←SHPAC .

C. Any hearing commenced pursuant to Section 1 of

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this 2021 act shall be conducted in a sealed proceeding. Only the parties to an administrative hearing, or their representatives, shall be permitted to participate. All testimony provided and all records of the department that are compelled by subpoena, produced, relied upon or referred to, regardless of whether the testimony or record is offered as an exhibit, shall not be disclosed to anyone other than the parties to the administrative hearing or to the court in an underlying child welfare case. After an administrative hearing has concluded, the hearing officer shall return all records produced during the proceedings to the producing party. Anyone who receives documents or information pursuant to an administrative hearing shall be prohibited from disclosing those documents or the information contained in those documents to any third party.

[G-] D. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all

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department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

[D-] E. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

[E-] F. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."