



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: April 19, 2023

TIME: 10:46 AM

WSR 23-09-073

**Agency:** Department of Children, Youth, and Families (DCYF)

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** \_\_\_\_\_ ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_ ; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) DCYF is amending the following WACs:

WAC 110-03-0020 Definitions

WAC 110-03-0040 The right to a hearing

WAC 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default

WAC 110-15-0280 Right to request an administrative hearing

WAC 110-50-0590 How does the foster parent appeal the department's decision on review?

WAC 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
May 23, 2023		Telephonic	Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where DCYF will send its response. Comments received through and including May 23, 2023 will be considered

**Date of intended adoption:** May 24, 2023 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DCYF Rules Coordinator

Address:

Email: dcyf.rulescoordinator@dcyf.wa.gov

Fax:

Other: <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>

By (date) May 23, 2023

**Assistance for persons with disabilities:**

Contact DCYF Rules Coordinator

Phone:

Fax:

TTY:

Email: dcyf.rulescoordinator@dcyf.wa.gov

Other:

By (date) May 18, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** DCYF is amending these WACs to align with SSB 5729 which allows for a good cause exception for missed deadlines when requesting an administrative hearing for public assistance cases.

**Reasons supporting proposal:** These amendments comply with [Substitute Senate Bill 5729 \(2022\)](#).

**Statutory authority for adoption:** RCW 74.08.080 and RCW 74.09.741

**Statute being implemented:** RCW 74.08.080 and RCW 74.09.741

**Is rule necessary because of a:**

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Type of proponent:**  Private  Public  Governmental  
**Name of proponent:** (person or organization) Department of Children, Youth, and Families (DCYF)

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Laura Farris	Olympia	(360) 485-7621
Implementation:	DCYF	statewide	
Enforcement:	DCYF	statewide	

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328(5)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.  
Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.
- Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** April 19, 2023

**Name:** Brenda Villarreal

**Title:** DCYF Rules Coordinator

**Signature:**

**WAC 110-03-0020 Definitions.** The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no appeal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a prehearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

"Documents" means papers, letters, writings, or other printed or written items.

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

- (iii) Fax transmission, if the party also mails a copy of the document the same day;
- (iv) Commercial delivery service; or
- (v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation or subsidy overpayments to child care providers, the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provisions of superior court civil rule 60 as a guide to determine what may be considered good cause.

For purposes of public assistance cases, good cause has the same meaning as described in RCW 74.08.080. Good cause for not requesting a hearing before the deadline may include, but is not limited to: Military deployment, medical reasons, housing instability, language barriers, or domestic violence.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

"Initial order" is a decision made by an ALJ that may be reviewed by a review judge at any party's request.

"Judicial review" means a superior court's review of a final order.

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

"Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF offices and divisions.

"Public assistance" means public assistance as defined in RCW 74.04.004.

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

"Rule" means a state agency regulation found in the Washington Administrative Code (WAC).

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service;

(v) Legal messenger service; or

(vi) By any other method authorized by chapter 10-08 WAC.

(b) Service for each method, respectively, is complete when:

(i) Personal service is made;

(ii) Mail is properly stamped, addressed, and deposited in the United States mail;

(iii) Fax produces proof of transmission;

(iv) A parcel is delivered to a commercial delivery service with charges prepaid; or

(v) A parcel is delivered to a legal messenger service with charges prepaid.

(c) A party cannot serve documents by email, unless agreed in advance by the receiving party.

(d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.

"Stay" means an order temporarily halting the effective date of a DCYF action.

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

**WAC 110-03-0040 The right to a hearing.** (1) A person or entity has a right to a hearing to appeal an action by DCYF only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. Except for public assistance cases, there is no good cause exception to the requirement to timely request a hearing. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieving decision, the request may still be filed within one year of the aggrieving decision upon a showing of good cause.

(2) Some DCYF programs may require a party to complete an agency review process before requesting a hearing. The notice of DCYF action that DCYF sends a party will include information about this requirement.

(3) A party has a specific, limited time to request a hearing. The deadline for the request is set by statute or department rule. In cases where the department sends a notice of DCYF action, information about how, where, and when to request a hearing will be provided in the notice.

(4) A challenge to an appealable DCYF action is heard in an administrative hearing by an ALJ employed by OAH. Not all DCYF actions may be challenged through the hearing process.

(5) If a party properly requests a hearing that is authorized under subsection (1) of this section, OAH will schedule a hearing and serve written notice of it on the parties.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right.

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

**WAC 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default.** (1) A party's failure to request a hearing (~~(to)~~) to challenge a DCYF action within the time limit required by statute or rule results in the action becoming final and the loss of any right to a hearing. A final order resulting from a party's failure to timely request a hearing may not be vacated. Except for public assistance cases, there is no good cause exception (~~(for failing)~~) to the requirement to timely request a hearing. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieved decision, the request may still be filed within one year of the aggrieved decision upon a showing of good cause.

(2) An order of dismissal served on the parties and their representatives by an ALJ to end an adjudicative proceeding may be based on withdrawal of the hearing request by the appealing party, the appealing party's failure to appear or refusal to meaningfully participate in the proceedings, a request for dismissal based on a written agreement between the parties, or a request for dismissal made by DCYF.

(a) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to meaningfully participate, the DCYF action becomes the final agency action.

(b) If the hearing is dismissed pursuant to a written agreement between the parties, the parties must comply with the agreement.

(3)(a) If an appealing party fails to attend or refuses to meaningfully participate in a scheduled prehearing conference or hearing, an order of default may be entered.

(b) The order of default will include notice that the party against whom the default order was entered may file a written motion requesting that the order be vacated and the hearing reinstated.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a motion to vacate the default order within (~~(twenty-one)~~) 21 calendar days of the date the order was served on the parties as provided under WAC 110-03-0270.

(d) After an order of default becomes a final order, the DCYF action will remain in effect and will be the final agency action.

**WAC 110-15-0280 Right to request an administrative hearing. (1)**

**Consumers:** Consumers who disagree with DCYF's decisions affecting their WCCC benefits have administrative hearing rights under chapter 110-03 WAC.

(a) Consumers' requests for hearing:

(i) May be made by contacting DCYF in-person, by telephone, or by serving DCYF with written requests that are also filed with the office of administrative hearings (OAH) as described in WAC 110-03-0060 and 110-03-0080.

(ii) Must include the information and documents described in WAC 110-03-0050(2), if requests are made in writing.

(iii) Must be made within 90 calendar days of the date the consumers received the decisions being appealed, unless good cause for a late request can be established under chapter 110-03 WAC.

(b) After completing the administrative hearings, OAH issues initial orders pursuant to WAC 110-03-0460 and 110-03-0480. Consumers who disagree with initial orders may request reviews as provided in WAC 110-03-0510 through 110-03-0550.

(c) When consumers request reviews of the initial orders, review judges issue final orders after considering the requests for review, initial orders, and hearing records. Consumers who disagree with final orders may request reconsiderations as provided in WAC 110-03-0570 through 110-03-0580 or seek judicial reviews as described in WAC 110-03-0590.

(2) **Providers:** Child care providers who disagree with WCCC overpayment decisions may request administrative hearings pursuant to RCW 43.20B.675.

(a) To request administrative hearings, child care providers must:

(i) Make their hearing requests in writing and include the information and documents described in RCW 43.20B.675(3) including, but not limited to, copies of the overpayment notices and statements explaining why they believe the overpayment notices are incorrect; and

(ii) Serve the hearing requests on the Department of Social and Health Services, Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501, using certified mail return receipt requested or other manner that provides proof of receipt within 28 calendar days of the date they received the overpayment notices being appealed.

(b) After completing the administrative hearings, OAH will issue final orders. Child care providers who disagree with final orders may request reconsideration. Providers may also seek judicial review of final orders.



AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0590 How does the foster parent appeal the department's decision on review?** (1) If the department upholds the rate assessment on review, the foster parent has the right to further challenge the assessment by timely requesting an administrative hearing.

(2) The request must be in writing and sent to the office of administrative hearings (OAH) (~~(. WAC 388-02-0025 lists the current addresses for OAH)~~), per WAC 110-03-0050.

(3) The request must be received by OAH within (~~(twenty)~~) 90 calendar days from the date of the letter notifying the foster parent of the department's decision on review, unless good cause for a late request can be established under chapter 110-03 WAC.

(4) Foster care providers and recipients of foster care funds do not have a right to request an administrative hearing to challenge or dispute the established rates of the foster care program or to challenge the foster care rate assessment standardized form or program.

**WAC 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues?** (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

(a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;

(b) Failure to respond with reasonable promptness to a written application or request for services;

(c) Denial of a written request to modify the level of payment or service in the agreement;

(d) Delay of more than (~~thirty~~) 30 calendar days when responding to a written request for modification of the agreement;

(e) Denial of a request for nonrecurring adoption expenses;

(f) Suspension of adoption support benefits; or

(g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within (~~ninety~~) 90 calendar days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request, unless good cause for a late request can be established under chapter 110-03 WAC.

(3) The office of administrative hearings must apply the rules in this chapter as they pertain to the issues being contested.