

PROCEDURES 337
SERVICE APPEAL PROCESS
June 1, 1995 - P.T. 95.15

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Section 337.10 Purpose

Section 337.20 Definitions

"Adequate Notice" means a notice, which contains all of the elements identified in Rule Section 337.90 (c).

"Date of appeal" means the postmark date or date of receipt of appellant's written request for an appeal; whichever is earlier, at the address specified in the notice.

"Imminent risk of harm" means that individuals' actions, omissions or conditions endanger the life, or seriously jeopardize the physical or mental health, or safety of themselves or others if protective action is not taken immediately. Factors the Department will consider when determining whether imminent risk of harm is present include but are not limited to the child's age, physical and mental abilities, the caregiver's physical, emotional and mental health, as well as any environmental factors that may pose a risk to the child.

"Timely Written Notice" means a notice, which complies with the requirements of Rule Section 337.90 (b).

Section 337.30 The Service Appeal Process

a) Request for Appeals

// All requests for service appeals are to be forwarded to:

The Administrative Hearings Unit
Department of Children and Family Services
160 North LaSalle, 6th Floor
Chicago, IL 60601

// b) Log-In of Appeals by the Administrative Hearings Unit

Upon receipt, the Administrative Hearings Unit will log in the request for an appeal, collect information from the parties (appellant and the Department) and complete an appeal intake face sheet. The Administrative Hearings Unit will complete the face sheet documenting the following information:

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- 1) Appellant's name, address and phone number;
- 2) The name, address and phone of the attorney for the appellant, if known and applicable;
- 3) Children's names;
- 4) Client's CYCIS identification number;
- 5) Regional Administrator's name;
- 6) Caseworker and supervisor's name and phone number along with the name of the local field office;
- 7) A list of the issues appealed, and the appeal level status; and
- 8) The date the Unit received the request for an appeal.
- 9) The names and addresses of those who must be notified of the appeal in accordance with rule **Section 337.150, Notice Concerning a Service Appeal.**

c) **Determination of Whether an Issue is Appealable**

// The Administrator of the Administrative Hearings Unit shall make the decision as to whether the issues raised by the appellant are appealable. Within five working days from the date of receipt of the appeal, the Administrator of the Administrative Hearings Unit will decide whether the issues raised by the appellant are appealable in the following manner:

- 1) All Issues Appealable
 - A) If the Administrator of the Administrative Hearings Unit determines **all issues raised by appellant are appealable**, the Administrator shall document this decision and the date it was made on the intake face sheet.
 - B) **The Administrator of the Administrative Hearings Unit shall assign the case to mediation.** A mediation shall be scheduled in accordance with Procedure 337.30(f).
- 2) Issues Not Appealable
 - // A) If the Administrator of the Administrative Hearings Unit determines **no issues raised on appeal are appealable**, the Administrator shall document this decision and the date it was made on the intake face sheet.
 - // B) **The Administrator of the Administrative Hearings Unit shall dismiss the appeal.**

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- // C) If the issue is one that is appropriate for consideration under the decision review process described in **Rule and Procedure 305.80, Decision Review**, the Administrator of the Administrative hearings Unit will take appropriate action to schedule the decision review.

- 3) Some Issues Appealable, Others Not
 - // A) If the Administrator of the Administrative Hearings Unit makes the determination that **some issues raised by the appellant are appealable** and others are not, the Administrator marks this decision and the date it was made on the intake face sheet. The Administrator shall **indicate on the intake sheet which issues are appealable and those that are not**.

 - B) **The Administrator of the Administrative Hearings Unit shall assign the case to mediation for those issues determined to be appealable.** A mediation shall be scheduled in accordance with **Procedures 337.30(f)**.

 - // C) If any of the issues deemed not appealable are appropriate for consideration under the decision review process described in **Rule and Procedure 305.80, Decision Review**, the Administrator of the Administrative hearings Unit will take appropriate action to schedule the decision review.

- d) **Acknowledgments to Appellant and Region**
 - // The Administrative Hearings Unit will send a letter with the brochure, CFS 1050-32, "**The Service Appeal Process**," to the appellant acknowledging receipt of the appeal and informing the appellant whether the issues raised by the appellant are appealable (see Rule Section 337.70 and 337.80), whether any issues raised warrant emergency review, and how to request an emergency review.

The Administrative Hearings Unit will send an interoffice memorandum to the Regional Administrator of the region responsible for the appellant's case, notifying the region of the appeal and of what issues are or not appealable and encouraging the region to continue to attempt resolution of the issues while the appeal is being scheduled for mediation or hearing.

- e) **Scheduling Mediation**
 - 1) When the Administrator of the Administrative Hearings Unit makes a decision that the request is appealable, he/she will **assign a mediator to the case** and mark on the intake face sheet the date the case was assigned for scheduling of the mediation. The

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Administrative Hearings Unit will forward to the mediator a copy of the completed intake face sheet, the appellant's initial request letter, and any correspondence written by the Administrative Hearings Unit pertaining to the appeal.

- 2) The mediator will send a letter to the appellant notifying the appellant of the following:
 - A) the right to a hearing;
 - B) the option of mediation and the process involved;
 - C) **that the appellant has an option not to mediate and go immediately to a formal administrative hearing;**
 - D) that if the appellant chooses mediation, the administrative hearing will be placed on hold to see if mediation is successful in resolving the issues raised;
 - E) the date reserved for a mediation session;
 - F) the location reserved for the mediation session (this should be a location convenient to the appellant);
 - G) that the appellant must notify the mediator, if choosing a hearing over mediation.
- 3) The mediator will send a notice of the date, time and place of the mediation to those individuals identified in Rule Section 337.150, Notice Concerning a Service Appeal, who indicated they wished to receive such notice.
- 4) If the Regional Administrator informs the mediator that the issues have been resolved prior to the mediation session, the mediator will **notify the appellant of the stated resolution giving the appellant ten days to respond prior to dismissal of the appeal.** A copy of this letter will be sent to the Administrator of the Administrative Hearings Unit.
- 5) If the appellant does not respond within the ten day time frame, a letter will be sent to the Administrator of the Administrative Hearings Unit recommending that the appeal be dismissed.
- 6) The Administrator of the Administrative Hearings Unit will dismiss the service appeal unless the Administrator determines it should not be dismissed, e.g. if the Administrator learns that the Department is not complying with the agreement. Upon dismissing the appeal, the Administrator will notify the appellant of this dismissal in writing. A copy of this notice will be sent to the Regional Administrator.

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f) Mediation

- 1) At the mediation session all parties will sign an Agreement to Mediate, which are guidelines to which the parties agree while mediating.
- 2) Appellants sign a Hearing Status form, which **gives the Department written consent to put the hearing on hold until the mediation is concluded.**
- 3) At the beginning of the mediation session the mediator will inform the parties that **the session is confidential** in that the mediator will not disclose any communication or documents collected during mediation, and the parties agree that **neither the mediator or the mediator's file is subject to subpoena in any administrative or judicial proceeding.** The parties will sign an agreement to this effect.
- // 4) If mediation is successful and all issues are resolved, a Memorandum of Agreement is drawn up and signed by the parties and any others participating in mediation. The Administrative Hearings Unit and the Regional Administrator shall receive a copy of this signed agreement. The Administrator of the Administrative Hearings Unit will close out the case by sending a letter to the appellant saying the service appeal is dismissed. A copy of this letter will be sent to the mediator and the Regional Administrator.
- // 5) If mediation resolves some but not all of the issues on appeal, a Memorandum of Agreement shall be drawn up and signed by the parties for those issues that were resolved in mediation. A copy of this agreement shall be sent to the Administrator of the Administrative Hearings Unit and the Regional Administrator. If the appellant indicates he or she wishes to go to hearing on the remaining issues, a memorandum shall also be sent to the Administrator of the Administrative Hearings Unit requesting that a hearing be set for those issues not resolved in mediation, giving the names of the parties, representatives, if any; and others participating in mediation, the issues still pending for hearing, including any new issues raised during mediation, and the names of those who should receive a copy of a Notice of Hearing. The Regional Administrator shall receive a copy of this memorandum.
- // 6) If mediation does not resolve any issues on appeal or if the appellant chooses not to mediate and wishes to proceed immediately to hearing, the mediator shall send a memorandum to the Administrative Hearings Unit indicating the need for a hearing, the issues pending, including any new issues raised during mediation, the names of the parties to the service appeal, including any representatives, and names of those who should receive a copy of the Notice of Hearing. A copy of this memorandum shall be sent to the Regional Administrator.

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- // 7) If new issues are raised during mediation and are not resolved in mediation, the Administrator of the Administrative Hearings Unit will decide if these new issues are appealable and notify the appellant of this decision in the Notice of Hearing. The Regional Administrator will receive a copy of this notice.

g) Resolution of Service Appeal at the Regional Level

- // **If the region resolves the issues at any stage of the appeal process, the region shall notify the appellant in writing of the resolution** and forward a copy of the written notification to the mediator and the Administrator of the Administrative Hearings Unit.

Upon receipt of the notification, the Administrator of the Administrative Hearings Unit shall send a letter notifying the appellant of the stated resolution, giving the appellant ten days to respond prior to dismissal of the appeal. If the appellant does not respond within the ten day time frame, the Administrator of the Administrative Hearings Unit shall dismiss the service appeal unless the Administrator determines it should not be dismissed.

- // Upon dismissing the appeal, the Administrator will notify the appellant of this dismissal in writing. A copy of this notice shall be sent to the mediator and the Regional Administrator, if the case had been sent to mediation.

h) Noncompliance With a Memorandum of Agreement

- 1) If the Department or its agents do not comply with the **Memorandum of Agreement** the parties may return to mediation in an attempt to get compliance or renegotiate the terms of the agreement or the appellant may go to fair hearing.
- 2) If the appellant wishes to return to mediation due to noncompliance with the **Memorandum of Agreement** by the Department, the appellant shall notify:

// The Administrative Hearings Unit
Department of Children and Family Services
160 North LaSalle, 6th Floor
Chicago, Illinois 60601

- 3) **A second mediation shall be scheduled within 30 days from the notice by the appellant of noncompliance** and shall be scheduled and conducted in accordance with Procedure 337.30 (f) and (g).

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- 4) **If the mediation process does not resolve some or all of the issues, the appellant may proceed to a fair hearing.** The mediator will notify the Administrator of the Administrative Hearings Unit and the Regional Administrator of the appellant's desire to proceed to a fair hearing on the noncompliance issues, per Procedures 337.30 (g) (5) and (g) (6). A hearing will be scheduled by the Administrative Hearings Unit.

- // 5) **If the appellant chooses not to mediate the noncompliance issues, the appellant may proceed to a fair hearing.** The fair hearing shall be scheduled within 45 days from the date of notice to the Administrator of Administrative Hearings Unit of the noncompliance and the appellant's desire to proceed to hearing. The hearing shall be scheduled within 45 days from the date of the request and shall be conducted in accordance with Procedures 337.170 through 337.250. **A final administrative decision and implementation of this decision shall occur within 90 days from the date of noncompliance and request for hearing.**

- i) **Fair Hearing**
 - 1) If the appellant chooses not to go to mediation, the mediator will notify the Administrative Hearings Unit and the Regional Administrator. **The Administrative Hearings Unit will schedule a hearing within 45 days from the date of the appeal.**
 - 2) If the mediation process does not resolve some or all of the issues, the mediator will notify the Administrator of the Administrative Hearings Unit and the Regional Administrator per the instructions contained above in (g) (5) and (6). A hearing will be scheduled by the Administrative Hearings Unit.

- j) **Emergency Review**
 - 1) **An emergency review must be requested within ten calendar days from the date the request for an appeal was filed** by sending this request in writing to the:

// Administrative Hearings Unit
Department of Children and Family Services
160 North LaSalle, 6th Floor
Chicago, Illinois 60601.

An emergency review may be requested by either party to the service appeal, i.e., appellant or the Department.

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- // 2) The Administrator of the Administrative Hearings Unit shall determine if any issues are appropriate for emergency review when initially determining if the issues raised by appellant are appealable. The Administrator of the Administrative Hearings Unit shall notify the Regional Administrator of this decision.

- // 3) The Administrative Hearings Unit shall send written notification to the parties including the Regional Administrators, notifying them of the following:
 - A) What issues are appealable and what issues are not.
 - B) If any issues warrant an emergency review, the purpose for emergency review, and how to request an emergency review.
 - C) The steps involved in a service appeal.

- // 4) If a party requests an emergency review, the Administrative Hearings Unit shall designate an individual to sit as the reviewer. The designated reviewer shall schedule an emergency review in a location convenient to the parties. **The reviewer shall issue an interim decision in writing, along with any corrective orders, within 10 calendar days subsequent to the request for the review.** The rationale for the decision shall also be cited in the reviewer's decision.

- 5) When conducting an emergency review, the reviewer shall hear both sides to the dispute and may consider any information or documentation the parties or the reviewer feel would be helpful in making a decision on the disputed issues. Though more than one issue may be raised in a service appeal, an emergency reviewer may hear and issue an interim decision on only those limited issues allowed to be considered in an emergency review, as delineated in Rule 337.30 (b)(1) and (2).

- 6) The emergency reviewer shall send the interim decision to the parties, including the Regional Administrator. **The Department shall implement the interim decision within five calendar days from the date the decision was issued by the reviewer.**

Section 337.40 Department and Provider Agency Responsibilities on Appealable Issues

- a) 1) Timely and adequate notice as required in Section 337.90 is accomplished by sending or handing to the client a form **CFS 151, Notice of Decision.**

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- 2) **When the appellant files an appeal within 10 days of the date of notice, the Department must make a determination whether continuing services at the same level during the course of the appeal process would place a child or others at imminent risk of harm.** If such imminent risk of harm would exist, services may be terminated immediately rather than continued during the course of the appeal process. However, if imminent risk of harm does not exist, services shall be continued at the same level during the entire course of the appeal process unless imminent risk of harm subsequently arises.

When determining imminent risk of harm, the worker shall use the factors set forth in Section 337.20 above as a guide.

= = 3)

- // 4) The Administrative Hearings Unit will contact the regional office responsible for the action, when the appeal request has been logged in and ask that a written summary of the intended action or action already taken be submitted to the Administrative Hearings Unit. The summary shall include a statement and specific citations of the law or policy, reasons for the action and a summary of facts supporting the action.

- 5) When making documents available to the appellant or representatives, the provisions of **89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department**, are to be followed.

- 6) When assigning a staff person to the mediation or hearing, the region shall assure that person is familiar with the case and the actions being appealed and has authority to make decisions binding on the Department.

- 7) **The region has responsibility for ensuring that the child is transported to the appeal or for arranging the child's participating through teleconferencing.** Teleconferencing may be used when a child lives in excess of 150 miles from the location of the mediation or hearing or the proceedings are scheduled at a time when transporting the child to the proceedings would not be in the child's best interests. For example, the proceeding may interfere with another activity that is important to the child.

- b) Provider agencies shall follow the same procedures as above (a)(1) through (7) when the provider agency has made the decision or intends to take the action being appealed.

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Section 337.50 **The Right to a Service Appeal**

- a) Instructions on how to request an appeal are contained on the notice form, CFS 151. In addition, the pamphlet, The Service Appeal Process, shall be given to all clients during the intake assessment period, the Administrative Case Review, and when a client indicates the desire to file an appeal.
- b) **Interpreter services will be arranged by the region in accordance with local interpreter services agreements.** If clients are unable to read or comprehend the English language, the region is responsible for helping them to understand all letters, notices and forms. For example, if a client is unable to read or unable to read English, forms, notices and letters should be read to the person or translated into a language the client can read. Cassettes may also be used for visually impaired clients or clients unable to read.
- c) If the appellant needs assistance in putting the appeal in writing, Department or provider agency staff shall provide assistance. The appellant should briefly describe why he or she disagrees with the Department's or provider agency's decision. The appellant may include other information, which may influence the determination. Appellants should include their name, address, telephone number and location of the local DCFS field office. They are to send their appeal to:

// Administrative Hearings Unit
 Department of Children and Family Services
 160 North LaSalle, 6th Floor
 Chicago, IL 60601.

Section 337.60 **Who May Appeal**

- a) In accordance with Rule Section 337.60 the following persons may appeal decisions made by the Department or a provider agency:
 - 1) **Families and children who receive child welfare services**, either directly from the Department or through its provider agency;
 - 2) **Families and children requesting child welfare services** from the Department;
 - 3) **Foster parents or relative caregivers who have care and custody** of a child for whom the Department is legally responsible may appeal a limited number of issues;
or
- b) The appeal may be requested by:

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- 1) Persons who have the right to appeal. These persons are identified in (a) above;
- 2) The authorized representative of any of the above persons;
- 3) An individual who has been appointed by a court to legally act on behalf of the above parties; when monetary claims are at issue, an individual appointed by the court as administrator of the estate or a person acting in a similar capacity may appeal for the deceased person. A certified copy of the court's order must be attached to the request for appeal.

Section 337.70 What May Be Appealed

a) By Families and Children

Families and children may appeal the denial, reduction or termination of services which they request or the failure of the Department or its provider agency to decide within 30 calendar days of the date of the request whether to grant or deny the services which they requested. Services may be requested directly by the family or child or through their authorized representative.

Services which may be appealed are described in Department Rules 89 Ill. Adm. Code 301, Placement and Visitation Services, 302, Services Delivered by the Department of Children and Family Services, 303, Access to and Eligibility for Day Care Services, 304, Access to and Eligibility for Child Welfare Services, 305, Client Service Planning, 307, Indian Child Welfare Services, 359, Authorized Child Care Payments, and 431, Confidentiality of Personal Information of Persons Served by the Department.

The appealable services in these rules include but are not limited to:

- o Counseling and advocacy services
- o Homemaker services
- o Day care services
- o Emergency caretaker services
- o Adoption services including adoption assistance
- o Family planning services
- o Foster family home care
- o Relative home care
- o Residential care
- o Placement prevention services, including hard services and housing advocacy services.
- o Authorized child care payments which include payments for medical care and payments for children's personal and physical maintenance, school expenses, and travel.

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- o Independent living services
- o Successor guardianship services
- o The special needs of children and families with disabilities, including the use of interpreters, communication equipment, mobility equipment, etc.

Families and children may also appeal:

- o The **choice of a permanency goal or the denial of a request for a change in permanency goal**. Refer to rules and procedures 305, Client Service Planning.
- o The **failure to complete a service plan within 30 calendar** days of case opening.
- o The **failure to review the service plan** within the Department's specified time frames as described in rule and procedure 305, Client Service Planning.
- o The **failure to provide services as specified in the service plan**. These services are documented on the IL-418-497.
- o The **frequency or length of family visitation** or failure to arrange parent-child visits when the child is placed out of the home and parental rights have not been terminated, and the frequency or length of sibling visits when children are placed apart. Visitation policy is described in procedures 305, Section 305.90, Family-Child Visitation.
- // o **A change in the placement of a child, including a decision to separate siblings who have been placed together.**
- o The **imposition of unnecessary services** or conditions as part of a service plan.
- o A **denial of a request for service** made by an individual legally appointed to represent a minor, incompetent or incapacitated person. (See Rule 337.60(b))

b) By Foster Parents and Relative Caregivers

- 1) Foster parents may appeal the following issues:
 - o decisions made by the Department or its provider agency which **directly affect the foster parent**, such as payment issues, as defined in 89 Ill. Adm. Code Part 359, Authorized Child Care Payments;

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- o decisions made by the Department or its provider agency **regarding services provided for the benefit of foster children** in their care, such as day care, medical, educational, and psychological services;
 - o **failure to provide services** as specified in the service plan for the benefit of the foster children in their care. This does not include services provided to the biological family, such as family therapy or family counseling; and
 - o **a change in the child's substitute care placement.** This does not include placement with the biological or adoptive parent(s), relative(s), or sibling(s), placements for purposes of adoption as ordered by a court, or return to an unrelated individual(s) with whom the child resided prior to entering substitute care.
- 2) Relative caregivers may appeal the following issues:
- o decisions made by the Department or its provider agency that **directly affect the relative caregiver**, such as payment issues as defined in 89 Ill. Adm. Code 359, Authorized Child Care Payments;
 - o decisions made by the Department or its provider agency **regarding services provided for the benefit of foster children** in their care, such as day care, medical, educational, and psychological services;
 - o **failure to provide services** as specified in the service plan for the benefit of foster children in their care. This does not include services provided to the biological family, such as family therapy or family counseling; and
 - o **a change in the child's substitute care placement.** This does not include placement with the biological or adoptive parent(s), placements with a family for purposes of adoption as ordered by a court, or return to an unrelated individual(s) with whom the child resided prior to entering substitute care.
- 3) On issues, which are not appealable, foster parents and relative caregivers may be heard by the Director's designee in accordance with rule and procedures 305, **Section 305.80, Decision Review.**

Section 337.80 What May Not Be Appealed

See Section 337.30, The Service Appeal Process, paragraph (d) (2) and (3).

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Section 337.90 Notice of Department or Provider Agency Decisions

- a) 1) **Form CFS 151, Notice of Decision, has been created to serve as *adequate notice*, as defined in these procedures, whenever the Department makes a decision to deny, terminate or reduce a service or implement a critical decision** as defined in rule Section 305.30 (e). A denial of a service is interpreted to mean a decision to deny a request for a service provided by the Department made by a parent, child or individual legally appointed to represent a minor, incompetent or incapacitated person or a request for service made by the child's caregiver. The request may be made by phone or in person, orally or in writing.
- 2) **When the Department cannot send *timely notice* based on imminent risk of harm, the worker shall document the reason in the case record. *Adequate written notice* shall be sent the same day as the action being taken.**
- 3) Regional staff shall utilize their local agreements with interpreter services to have the notice translated into the language of the client. If efforts to have the notice translated are unsuccessful, efforts must be made to ensure that the notice is orally interpreted for the client.
- = = b)
- = = c)
- d) 1) When decisions to deny, terminate or reduce a service or implement a critical decision are made outside of the administrative case review process, the **Notice of Decision shall be hand delivered with a copy for the case record signed by the client, or shall be sent by certified mail with return receipt requested.** To the extent possible, the Notice of Decision shall be given to clients in person (e.g. in the office, in the home, etc.), so as to avoid the expense of certified mail.
- // In the event that the action involves a change in the placement of siblings placed together, or a change in contact among siblings placed apart, the child (age seven or older) and his or her attorney and guardian ad litem shall receive a copy of the **CFS 151.**
- 2) When decisions are made at the administrative case review, the **service plan, (CFS 497 series) given to the client along with the brochure, The Service Appeal Process, fulfills the requirements of adequate notice.** If the client is not at the administrative case review, the service plan, with the brochure, shall be mailed to the client.

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Section 337.100 How to Request a Service Appeal

See Sections 337.30 and 337.50 for more details.

Section 337.110 Grounds For Dismissal of a Service Appeal Request

The grounds for dismissing a request for a service appeal are described in rule Section 337.110. When grounds for dismissing exist, the Administrator of the Administrative Hearings Unit shall notify the appellant in writing within ten calendar days of the request.

Section 337.120 Time Frames for the Service Appeal Process

The appeal process begins on the **date of appeal which is defined as the postmark date or date of receipt of the appellant's written request** for an appeal, whichever is earlier, at the address specified in the notice.

The time frames for the various stages in the appeal process are as follows:

Mediation - Within **30** calendar days from the date of appeal.

Fair Hearing - Within **45** calendar days from the date of appeal.

Emergency Review - Within **10** calendar days from the date of appeal.

Final Administrative Decision - Within **90** calendar days from the date of appeal.

Section 337.130 Continuing Services During the Service Appeal Process

If the appellant **appeals a decision within ten calendar days of the date of timely notice, the Department or provider agency shall continue to provide the services unchanged** during the appeal process unless the situation is determined to be one which would result in imminent risk of harm to the child or others if services remain unchanged.

== Section 337.140 Confidentiality During the Service Appeal Process

Section 337.150 Notice Concerning a Service Appeal

The Administrative Hearings Unit shall send a letter to the persons listed in Rule Section 337.150, as appropriate, asking them if they wish to receive notice of the date, time and place of mediation sessions and fair hearings. If they request to do so, they can attend the mediation or fair hearing subject to the confidentiality provisions described in Section 337.140 of the rule. **Attendance does not make them a party to the action (giving them the rights to**

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directly cross examine witnesses, file motions, etc.) but merely provides an opportunity to be heard.

Section 337.160 Through Section 337.250

Refer to the language in the rule for these Sections.

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