

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER a: SERVICE DELIVERY

**PART 337**  
**SERVICE APPEAL PROCESS**

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**Section 337.10 Purpose**

This Part governs the service appeal process for child welfare services provided either directly or through a provider agency. Persons who may appeal through this process may include persons requesting or receiving services, and as governed by this Part, foster parents, and relative caregivers.

(Source: Amended at 19 Ill. Reg. 10557, effective July 1, 1995)

**Section 337.20 Definitions**

"Adequate notice" means a notice that contains all of the elements identified in Section 337.90(c) of this Part.

"Administrative Hearings Unit" means the Department's unit responsible for receiving requests for and acting upon a service appeal and conducting fair hearings on appeal.

"Administrative law judge" means an attorney who is appointed by the Director of the Department and who is responsible for conducting the fair hearing.

"Administrator of the Administrative Hearings Unit" means the person who is responsible for receiving requests for a service appeal and for coordinating the fair hearings.

"Appellant" means the person who requests a service appeal or on whose behalf a service appeal is requested.

"Authorized representative" means a person authorized in writing by the appellant to assist the appellant in the appeal process. If the appellant is unable to reduce such authorization to writing, the Department shall assist the appellant in doing so. The representative may be legal counsel or other spokesperson.

"Clinical Intervention for Placement Preservation" or "CIPP" means a regionally based, multidisciplinary team consisting of designated DCFS staff, the child (when age-appropriate), the child's family, extended family and others who have relevant and current information about the child, and professionals who are critical to achieve informed, sound decision-making.

"Clinical Intervention for Placement Preservation (CIPP) Action Plan" means a written document summarizing a clinical assessment of a child or youth's service needs, identifying the resources required to meet those needs, and establishing time frames for their achievement.

"Child welfare services" means publicly-funded social services that are directed toward the accomplishment of the following purposes:

*protecting and promoting the health, safety and welfare of all children, including homeless, dependent, or neglected children;*

*preventing, remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;*

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*preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;*

*restoring to their families children who have been removed by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;*

*placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;*

*assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;*

*providing supportive services and living maintenance that contributes to the physical, emotional and social well-being of children for whom the Department is legally responsible who are pregnant and unmarried;*

*providing shelter and independent living services for homeless youth; and*

*placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility, or secure child care facility. The Department is not required to place or maintain children:*

*who are in a foster home; or*

*who are person with a developmental disability, as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5]; or*

*who are female children who are pregnant, pregnant and parenting or parenting; or*

*who are siblings;*

*in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5(a)(3)]*

These services include but are not limited to: counseling, advocacy, day care, homemaker, emergency caretaker, family planning, adoption, visitation, placement, child protection and information and referral.

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“Clinical placement review” means a process whereby designated clinical Department staff will review a disputed decision by the Department or purchase of service agency to remove a child from the home of a foster family or relative caregiver, when the child will be placed in the home of another foster family or relative caregiver.

"Date of action" means the effective date of the action or proposed action by the Department or provider agency that resulted in the appeal.

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

"Date of notice" means the date on which the appellant receives written notice of the Department's intended action or decision or the date on which the appellant learns of the intended action or decision, if a written notice was not provided.

"Day care services" means care provided to children for less than 24 hours per day in facilities requiring licensure under the Child Care Act of 1969 [225 ILCS 10/1] in facilities exempt from licensure, in the homes of relatives, or in their own home.

"Department representative" means an attorney or designated individual responsible for presenting the Department's position in mediation, staffings and negotiations and at an emergency review and fair hearing.

"Emergency review" means a limited review of the actions or decisions of the Department or provider agency that may adversely affect an individual or individuals served by the Department. An emergency review provides for an interim decision pending a fair hearing.

"Fair hearing", as used in this Part, means a formal review of the action or decision of the Department or provider agency to determine whether that action or decision is in compliance with applicable laws and rules and will be in the best interests of the child.

"Family" means the biological or adoptive parents (provided a court has not terminated parental rights), legal guardian, or any relative who has assumed custody and control of the child in the absence of the child's biological or adoptive parents.

"Final administrative decision" means the Department's final decision, order, or determination on an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of appellants and that may be appealed in a circuit court under the Administrative Review Law [735 ILCS 5/Art. III].

*"Fictive kin" means any individual, unrelated by birth or marriage, who:*

*is shown to have significant and close personal or emotional ties with the child or the child's family prior to the child's placement with the individual; or*

*is the current foster parent of a child in the custody or guardianship of the Department pursuant to the Child and Family Services Act and the Juvenile Court Act of 1987, if the child has been placed in the home for at least one year and has established a significant and family-like relationship with the foster parent, and the foster parent has been identified by the Department as the child's permanent connection. [20 ILCS 505/7(b)]*

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“Godparent” is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising a child if the parent cannot raise the child. If the person is considered to be the child’s godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code. 301.80 (Relative Home Placement) must be met.

"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 would not be taken immediately.

"Individual legally acting on a person's behalf" means an individual who has been appointed by a court to act on behalf of a person when the person is incompetent, incapacitated, or otherwise unable to speak for himself or herself.

"Mediation" means a meeting open to all parties affected by the decision being appealed to attempt agreement on the issue in dispute, with a mediator who assists the parties in resolving issues and drawing up an agreement.

"Mediator" means a neutral third party appointed by the Director of the Department who conducts the mediation and assists the parties in resolving issues and drawing up an agreement.

"Parties" means the Department or its agents and those persons who have appealed the service decisions made by the Department or its agents.

"Permanent connection" means a family-like relationship, consistent with a child's best interests, health, safety and well-being, that provides:

- safe, stable and committed parenting;
- unconditional love and lifelong support; and
- a permanent legal status between child and family.

For a child for whom the Department is legally responsible, a permanent connection may be the child's parents or another caregiver in the child's home of origin. When the child cannot be safely returned home, a permanent connection may be the current or former foster parent or relative caregiver, an individual identified as an adoptive or legal guardianship placement resource, or another individual from among the child's or family's lifelong connections with whom a child has developed a familial relationship.

"Preponderance of the evidence" means the greater weight of the evidence or evidence that renders a fact more likely than not.

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"Provider agency" means an agency offering case management and/or casework services through a signed contract with the Department for paid services.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means *any person, 21 years of age or over, other than the parent, who:*

- *is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or*
- *is the spouse, or party to a civil union, of such a relative; or*
- *is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; or*
- *is the partner, or adult child of a partner, in a civil union with the child's mother or father; or*
- *is a fictive kin as defined in this Section.*

*"[R]elative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines, and documents, that it would be in the child's best interests to consider this person a relative, based upon the factors for determining best interests set forth in Section 1-3(4.05) of the Juvenile Court Act of 1987 [705 ILCS 405/1-3(4.05)]. [20 ILCS 505/7(b)]*

"Request for an appeal" means the written request by an appellant for a fair hearing to review an action taken or a decision made by the Department or a provider agency on behalf of the Department. If the appellant is unable to request an appeal in writing, the Department or provider agency shall help the appellant put the request in writing.

"Reviewer" means the person appointed by the Department to conduct an emergency review.

"Service appeal process" means the appeal system offered by the Department to parents, children, guardians ad litem, foster parents and relative caregivers to challenge service decisions of the Department.

"Services" means child welfare or day care services, including placement services or benefits provided by the Department or its provider agencies under Titles IV and XX of the Social Security Act (42 USC 601 et seq. and 1397 et seq.) or the laws of the State of Illinois.

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"Stay of action" means the action or decision made by the Department or its provider agency will not be implemented pending an emergency review or final administrative decision by the Department.

"Timely written notice" means a notice that complies with the requirements of Section 337.90(b).

(Source: Amended at 42 Ill. Reg. 2228, effective January 17, 2018)

**Section 337.30 The Service Appeal Process**

When the issue is the removal of a child from the home of a foster family or relative caregiver, the service appeal process for the Department of Children and Family Services consists of a fair hearing after a clinical placement review of the decision to remove the child pursuant to subsection (c) of this Section. When the issue is disagreement with a Clinical Intervention for Placement Preservation action plan, the service appeal process consists of a fair hearing to review the issue pursuant to subsection (d). In all other cases, the service appeal process for the Department of Children and Family Services consists of a mediation, which is optional, and a fair hearing. Initiation of a service appeal does not preclude ongoing discussion between the parties to resolve the appealed issues. If mediation is successful, an agreement is drawn up, with assistance of the mediator, and signed by the parties. In some instances, the issue on appeal is too immediate to await the final administrative decision on the action. An emergency review may be held in lieu of mediation on the specific issues, and an interim decision will be issued by the reviewer pending the fair hearing and final administrative decision. Mediation and emergency review is not available to any party when the issue is removal or change of placement of a child, or disagreement with a service decision in a CIPP Action Plan.

a) Mediation

- 1) The Department shall offer mediation to an appellant within 30 calendar days from the date of appeal in an attempt to resolve his or her issues. The appellant may accept or reject an offer to participate in mediation. No issues addressed and determined by an emergency review, clinical placement review or CIPP may be addressed in mediation. If mediation is successful, an agreement is drawn up, with assistance by the mediator, and signed by the parties. This constitutes a resolution of the fair hearing, but the appellant may reinstate the request for hearing if the agreement is violated.
- 2) If the dispute is not resolved in mediation, or if the appellant rejects the mediation agreement and the Department receives written notice of this rejection at least 15 calendar days after the mediation session, the appellant may then proceed to the fair hearing.
- 3) The individual conducting the mediation shall be trained as a mediator and shall have no prior involvement in the case.

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b) Emergency Review

An emergency review allows for an interim decision pending a fair hearing and can be requested by any party. The request for an emergency review must be in writing and shall be submitted to the Administrative Hearings Unit, Department of Children and Family Services, 406 E. Monroe, Station 15, Springfield, Illinois 62701. The emergency review must be requested within 10 calendar days of the date of an appeal. A determination will be made whether the issues are appropriate for emergency review. If they are appropriate, the Department shall schedule an emergency review and the reviewer shall issue a decision, which shall include any corrective orders, within ten calendar days from the date of the request for emergency review. The Department shall implement the order within five calendar days from the date the decision was issued by the reviewer. An emergency review is held to consider only the following issues on appeal:

1) Lack of Timely Notice Due to Imminent Risk of Harm

A party may request an emergency review within 10 calendar days after the date of appeal on any issue, except placement, where the Department or provider agency has taken action without timely notice because the child was determined to be at imminent risk of harm. The reviewer shall consider only whether imminent risk of harm existed to justify the Department or provider agency action without timely notice. If the reviewer determines imminent risk of harm did not exist, the reviewer shall order corrective action.

2) Continuing Services Pertaining to Changes in Family Visitation During the Service Appeal

When services pertaining to the family visitation plan remain unchanged because an appeal has been requested within 10 calendar days after the date of notice, a party may request an emergency review, if that party has reasonable cause to believe that imminent risk of harm to the child will result if services remain unchanged during the appeal process. The only issue to be considered by the reviewer is whether imminent risk of harm to the child is likely to result from the stay of action. If the reviewer determines imminent risk of harm to the child is likely to result, the reviewer may order corrective action.

c) Clinical Placement Review

- 1) When the issue is the removal of a child from the home of a foster family or relative caregiver, the party objecting to the removal must request and complete a clinical placement review before filing a request for a service appeal. The request for a clinical placement review must be made within 3 working days after receiving the notice of intent to remove the child.



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- 2) The Department shall conduct a clinical placement review within 5 working days of receipt of the request. During the clinical placement review, the Department will review the current placement, the reason for the removal of the child, and the child's needs regarding safety, well being and permanency. The clinical reviewer has the authority to create an action plan that may alleviate the issues prompting removal of the child. The clinical reviewer may postpone the removal date when he/she determines the need to obtain and review additional information that currently exists in another file or the party requesting the change in placement agrees to postpone the removal date.
- 3) The Department shall provide written notice of the decision of the clinical placement review and the right to request a fair hearing through the Department's Administrative Hearings Unit.
- 4) The following placement changes shall not be subject to clinical placement review:
  - A) change in the child's substitute care placement when:
    - i) the child has been placed in a licensed foster family or relative caregiver's home for fewer than 60 days, or
    - ii) the child has been placed in an unlicensed relative caregiver's home for fewer than 90 days;
  - B) placement to consolidate siblings in a single home;
  - C) placement of a child in a specialized foster home, in accordance with a CIPP action plan;
  - D) placement in a group home or institution, in accordance with a CIPP action plan; or
  - E) placement in a transitional or independent living program, in accordance with a CIPP action plan.
- 5) The Department or provider agency may immediately remove a child from a foster family or relative caregiver's home, without timely notice to the family, when the child is determined to be at imminent risk of harm in the current placement.
- 6) When the child, family or caregiver disagrees with the final clinical placement review decision, the objecting party may request a hearing through the Department's Administrative Hearings Unit.
- 7) The request for a fair hearing must be submitted in writing within 10 days after receiving written notice of the clinical placement review decision.

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The request for a hearing and a copy of the clinical placement review decision shall be sent to:

DCFS Administrative Hearings Unit  
Change of Placement Appeals  
406 East Monroe, Station 15  
Springfield, Illinois 62701  
Fax: (217) 557-4652

- 8) If an appeal is taken from the final decision of a clinical placement review, the child shall be placed in accordance with that decision during the pendency of the appeal.
- d) Review of Service Decisions in Clinical Intervention for Placement Preservation
- 1) CIPP participants shall attempt to reach a consensus in developing an action plan and resolve any objections to the action plan that are raised. When a consensus cannot be reached, the objecting participants shall record the nature and basis of their objection on the action plan.
  - 2) The Department shall provide a copy of the action plan to the parents (if parental rights have not been terminated), the child, the child's guardian ad litem, the child's current caregiver, and may also provide a copy to other CIPP participants when consistent with confidentiality requirements in 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department).
  - 3) The Department shall give written notice to the parents, the child and the child's guardian ad litem, of their right to request a fair hearing through the Department's Administrative Hearings Unit if they disagree with a service decision in the action plan that denies, reduces, suspends or terminates child welfare services.
  - 4) The Department shall give written notice to the current foster parent/relative caregiver of his or her right to request a fair hearing through the Department's Administrative Hearings Unit if he or she disagrees with a service decision in an action plan that directly affects the foster parent/relative caregiver or affects services provided for the benefit of a foster child in his/her care. (See Section 337.70(b))
  - 5) The request for a fair hearing must be submitted in writing within 45 days after receiving written notice of the decision of the CIPP. The request for a hearing and a copy of the action plan shall be sent to:

DCFS Administrative Hearings Unit  
CIPP Appeals  
406 East Monroe, Station 15  
Springfield, Illinois 62701  
Fax: (217) 557-4652

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- 6) In order to stop any recommended denial, reduction, suspension or termination of services during the appeal, the request for a fair hearing must be submitted within 10 calendar days after receiving the action plan.
  - 7) When an appeal is not requested within 10 days, the child or youth shall be placed in accordance with the action plan, and all other aspects of the action plan shall be implemented during the pendency of the appeal.
  - 8) When a request for a hearing is received, the Administrative Hearings Unit shall conduct a review to determine whether re-convening the CIPP is appropriate based on one of the following factors:
    - A) Material information that existed at the time of the CIPP meeting was not presented at the meeting, and the inclusion of that information would have affected the development of the action plan; or
    - B) Critical CIPP participants, such as the child or youth (if clinically appropriate), current caregiver, guardian ad litem or another professional with relevant, current information about the child or youth were not in attendance at the meeting and their attendance would have affected the development of the action plan.
  - 9) If the Administrative Hearings Unit review confirms that one of the factors in subsection (d)(7), is the basis for the appeal, the Administrative Hearings Unit shall refer the case back to the CIPP to review the action plan in light of the additional material and/or include critical CIPP participants.
    - A) If a referral back to the CIPP is requested or agreed to by an appellant, the appeal shall be dismissed as premature.
    - B) If the appellant does not agree to a review by the CIPP, the administrative law judge shall refer the case for review. However, the Department shall be required to make and implement a final administrative decision within the service appeal time frame as set out in Section 337.120.
- e) Fair Hearing

At a fair hearing, the administrative law judge conducts a hearing in which the Department and all parties may present evidence supporting their position. The administrative law judge then makes a recommendation to the Director of the Department based on the evidence presented at the hearing.

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- 1) At a fair hearing for service appeals of clinical placement review decisions, the burden of proof shall be on the appellant to show by a preponderance of the evidence that the decision made by the clinical reviewer was not consistent with the child's needs regarding safety, well being, and permanency.
- 2) At a fair hearing for appeals of a CIPP action plan, the burden of proof shall be on the appellant to show by a preponderance of the evidence that the decision made by the CIPP was not consistent with the child's needs regarding safety, well being, and permanency.
- 3) At all other fair hearings, the burden of proof shall be on the Department to show by a preponderance of the evidence that the decision made was consistent with the child's needs regarding safety, well being, and permanency.

(Source: Amended at 40 Ill. Reg. 13608, effective September 18, 2016)

**Section 337.40 Department and Provider Agency Responsibilities on Appealable Issues**

The Department or provider agency which made the decision, or intends to take the action being appealed, shall be responsible as follows.

- a) When the Department is the service provider, the Department's responsibilities are to:
  - 1) provide timely and adequate notice as required in Section 337.90 of this Part;
  - 2) make a determination whether the children are in imminent risk of harm;
  - 3) provide continuing services when there is a stay of action and reinstate services when the decision is made to do so;
  - 4) within 15 calendar days from the date of appeal, prepare and submit to the Administrator of the Administrative Hearings Unit and the appellants a written summary of the intended action or action already taken. Such summary shall include a statement and specific citation of the law or policy, reasons for the action, and a summary of the facts supporting the action;
  - 5) make available to the appellant the documents considered or created in taking the action(s) or reaching the decision(s) under appeal;
  - 6) provide, at the hearing, a staff person who is familiar with the case and proposed action(s) or decision(s) being appealed; and

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- 7) arrange for transportation or a telephone conference to ensure the child's participation or presence at the proceeding, if a child for whom the Department is legally responsible will participate in or attend any part of the appeal process. The Department shall bear the cost of the transportation or the telephone conference.
- b) When the provider agency is the service provider, the provider agency's responsibilities are to:
- 1) provide timely and adequate notice as required in Section 337.90 of this Part;
  - 2) provide continuing services when there is a stay of action and reinstate services when the decision is made to do so;
  - 3) obtain a determination from the Department whether the children are at imminent risk of harm;
  - 4) conduct a review of the action(s) taken or decision(s) made prior to the emergency review or mediation. Such agency review shall be conducted by an administrator of the provider agency;
  - 5) within 15 calendar days from the date of appeal, submit to the Administrator of the Administrative Hearings Unit and the appellants a summary of the outcome of the review. Such summary shall include a statement and specific citation of the law or policy, reasons for the action, and a summary of the facts supporting the action;
  - 6) provide to the Department all information and records pertinent to the action(s) or decision(s) under appeal;
  - 7) make available to the Department and the appellant the documents considered or created in reaching the decision(s) under appeal;
  - 8) provide, at the hearing, a staff person who is familiar with the case and action(s) or decision(s) being appealed; and
  - 9) arrange for transportation or a telephone conference to ensure the child's participation or presence at the proceeding, if a child for whom the Department is legally responsible will participate in or attend any part of the appeal process. The provider agency shall bear the cost of the transportation or the telephone conferences.

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

- a) The Department or provider agency shall provide clear written instructions on how to request an appeal. These instructions shall be provided to children and families when the commencement or denial of services occurs, during the intake assessment period, when a decision has been made to change services, during the administrative case review, and at any time services are requested and denied. Instructions shall be provided to foster parents and relative caregivers upon placement of a child, when services are requested and denied or a decision has been made to change services or upon the decision on the placement of a child made as a result of a clinical placement review.
- b) Information and instructions regarding the appeal shall be provided in writing in the appellant's primary language.
- c) If the appellant is unable to request a service appeal in writing the Department or provider agency shall provide assistance to ensure that the request is made in writing.
- d) The appeal may be filed by the appellant or his or her authorized representative.

(Source: Amended at 26 Ill. Reg. 6246, effective June 1, 2002)

**Section 337.60 Who May Appeal**

- a) The following persons may appeal decisions made by or on behalf of the Department in accordance with Section 337.70 of this Part:
  - 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; or
  - 3) foster parents or relative caregivers who have care and custody of a child for whom the Department is legally responsible.
- b) The appeal may be requested by:
  - 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;

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- 4) the authorized representative of any of the above persons; or
  - 5) an individual who has been appointed by a court to legally act on behalf of the above parties including the guardian ad litem for a child; 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 provided as authorization to represent such persons unless the appointment is as a Guardian Ad Litem in Juvenile Court.
- c) If an appellant has an authorized representative or an individual legally acting on the appellant's behalf, that representative or individual may exercise the rights of the party in the mediation or emergency review and the fair hearing. These rights include the right to review and copy case materials pursuant to 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department, to receive Department notices, to speak in the mediation or emergency review and the fair hearing, and to take any other actions permitted an appellant in this Part.

(Source: Amended at 19 Ill. Reg. 10557, effective July 1, 1995)

**Section 337.70 What May Be Appealed**

- a) By Families and Children

Families and children may appeal the following issues:

- 1) the denial, in whole or in part, of child welfare services requested by families, children, or an individual legally appointed to represent a minor, incompetent or incapacitated person or the failure of the Department or its provider agency to decide, within 30 calendar day after the date after the request, whether to grant or deny services requested by the parents or children;
- 2) a decision to reduce, suspend or terminate services;
- 3) the choice of a permanency goal or the denial of a request for a change in permanency goal, provided the circuit court has not entered any permanency order establishing the permanency goal;
- 4) the failure to complete a service plan within 45 calendar days after case opening or the failure to review the service plan within the Department's specified time frames;

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- 5) the failure to provide services as specified in the service plan with reasonable promptness or within the time frames as provided in the service plan;
  - 6) 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;
  - 7) a change in the placement of a child; or
  - 8) the imposition of unnecessary services or conditions as part of a service plan.
- b) By Foster Parents and Relative Caregivers
- 1) Foster parents may appeal the following issues:
    - A) decisions made by the Department or its provider agency that directly affect the foster parent, such as payment issues, as defined in 89 Ill. Adm. Code 359 (Authorized Child Care Payments);
    - B) 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;
    - C) 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
    - D) removal of a child from the foster family home, provided that the child has been placed in the home for at least 60 days. This does not include placement with the biological or adoptive parents or siblings, placements for purposes of adoption as ordered by the court, or return to an individual or individuals with whom the child resided prior to entering substitute care or removals of a child at the request of the foster parents.
  - 2) Relative caregivers may appeal the following issues:
    - A) 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);
    - B) 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;



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- C) 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
  - D) removal of a child from the relative caregiver's home, provided that, for a licensed relative caregiver, the child has been placed in the home for at least 60 days or for an unlicensed relative caregiver, the child has been placed in the home for at least 90 days. This does not include placement with the biological or adoptive parents, or siblings, placements for purposes of adoption as ordered by the court, return to an individual or individuals with whom the child resided prior to entering substitute care, or removal of a child at the request of the foster parents.
- 3) Foster parents and relative caregivers have the right to be heard by the Department on issues specified in 89 Ill. Adm. Code 316 (Administrative Case Reviews and Court Hearings) and 316.90 (Decision Review) that are not appealable under this Part. However, they will not be considered a party to the service appeal on issues that may affect residual parental rights and responsibilities. These include, but are not limited to, issues regarding the child's return home, family visitation, the right to consent to adoption, the right to determine the minor's religious affiliation and other issues that do not directly affect the foster parents themselves or their roles as caregivers of the child. The residual rights and responsibilities of parents are further defined in Section 405/1-3(13) of the Juvenile Court Act of 1987 [705 ILCS 405/1-3(13)].
- 4) When the foster parent or relative caregiver appeals a change of placement, the child shall always be a party to the appeal and the child's attorney and guardian ad litem notified of the appeal. For all other appeals affecting the child, the child's attorney and guardian ad litem shall be notified.

(Source: Amended at 36 Ill. Reg. 4388, effective March 7, 2012)

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**Section 337.80 What May Not Be Appealed**

The Administrator of the Administrative Hearings Unit will decide whether an issue is appropriate for fair hearing pursuant to Section 337.70. Issues inappropriate for a fair hearing include, but are not limited to:

- a) When the sole issue is one of State or federal law regulating the automatic adjustment of services for classes of children and families;
- b) When the Department has already made a final administrative decision on the issue as a result of a previous appeal;
- c) When the issue is not a service issue as defined in 89 Ill. Adm. Code 302 (Services Delivered by the Department), 89 Ill. Adm. Code 304 (Access to and Eligibility for Child Welfare Services), 89 Ill. Adm. Code 315 (Permanency Planning), 89 Ill. Adm. Code 316 (Administrative Case Reviews and Court Hearings) and 89 Ill. Adm. Code 359 (Authorized Child Care Payment). These issues are to be appealed through a different appeal and administrative hearing process, as identified in 89 Ill. Adm. Code 435 Administrative Appeals and Hearings);
- d) When the issue involves a service that the child does not currently need, but may potentially be needed by the child at some future time;
- e) When the issue regards only the Medical Assistance Program under Title XIX of the Social Security Act (42 USC 1396 et seq.). Appeal requests regarding Title XIX services should be sent to the Department of Healthcare and Family Services;
- f) When a court has made a judicial determination or issued an order on the issue being appealed. However, a juvenile court determination that a current foster home placement is necessary and appropriate does not constitute a judicial determination on the merits of a service appeal, filed by a former foster parent, involving a change of placement decision.

(Source: Amended at 40 Ill. Reg. 13608, effective September 18, 2016)

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**Section 337.90 Notices of Department or Provider Agency Decisions**

a) Required Notices

- 1) Persons who may appeal, pursuant to Section 337.60, have the right to receive a timely and adequate written notice of Department or provider agency decisions. This notice may be in the form of a completed service plan provided the service plan includes, either in the case plan or through additional documents, all of the elements required in an adequate notice (subsection (c)). This notice shall be provided by the entity making the decision. A timely and adequate written notice is required on decisions that are appealable under Section 337.70.
- 2) Notices need not be "timely" in situations in which a child is considered to be in imminent risk of harm. In situations in which the Department assessed a child to be in imminent risk of harm, the Department may omit "timely written notice", but shall send adequate written notice no later than the date of the action that shall include a statement explaining why timely notice was not provided.
- 3) Written notice shall be in the appellant's primary language.

b) Timely Written Notices

A written notice is considered "timely" when mailed within the following time frames:

- 1) within 30 calendar days after the request for child welfare or day care services;
- 2) at least 10 calendar days before an action to reduce, suspend or terminate services, or before implementing a critical decision in situations in which the Department does not consider the child in imminent risk of harm;
- 3) within 30 calendar days after the date the Department is given notice of the relative's request for placement of a Department ward.

c) Adequate Notices

A written notice is considered "adequate" when it contains:

- 1) a specific statement of the action the Department or its provider agency intends to take;
- 2) the proposed date for the intended action;

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- 3) the reasons and information supporting the action, and specific rules relied upon when taking the action;
- 4) a statement advising the individual of the right to appeal the decision made by the Department or its provider agency or any part of the service plan with which he or she may not agree;
- 5) an explanation of the service appeal process available;
- 6) a statement that:
  - A) except as provided in subsection (c)(6)(B), an appeal of a decision made by the Department or its provider agency must be requested in writing within 45 calendar days after the date of notice; and
  - B) an appeal of a final decision of a clinical placement review must be requested in writing within 10 days from the clinical placement review decision (see Section 337.30(c));
- 7) a statement that:
  - A) except as provided in subsection (c)(7)(B), services will continue unchanged, unless the child is determined to be in imminent risk of harm if services continue unchanged, if an appeal of the decision made by the Department or its provider agency is requested within 10 calendar days after the date of notice; and
  - B) for an appeal taken from the final decision of a clinical placement review, the child shall be placed in accordance with that decision during the pendency of the appeal (see Section 337.30(c));
- 8) if the issue is subject to emergency review, a statement advising the individual that an emergency review is available upon request;
- 9) the name and address of the individual who must be contacted in order to request an appeal of the decision;
- 10) a statement that the individual may have a lawyer, or other representative, witnesses, or other individuals having knowledge of the issues in dispute, present throughout the appeal process; and
- 11) a statement informing the individual that he or she may submit a brief, written summary that may include additional information for consideration as to why the Department or provider agency should change its decision.

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d) Delivery of Notices

Notices shall be:

- 1) hand delivered with a certificate of delivery signed by the appellant or representative; or
- 2) sent certified or registered mail to the parties or their agents appointed to receive service of process in accordance with the requirements of the Illinois Administrative Procedure Act [5 ILCS 100/10-25].

(Source: Amended at 36 Ill. Reg. 4388, effective March 7, 2012)

**Section 337.100 How to Request a Service Appeal**

- a) The appellant shall request a service appeal in writing within 45 calendar days after the date of notice, unless the issue is the removal of a child or change of placement, then the appellant shall request a service appeal within 10 days from the clinical placement review decision. The appellant shall include in the request his or her name, address, and a statement of the intent to appeal. The appellant may also submit a general statement of the issue appealed and a brief written summary stating his or her position regarding the Department's decision, and may include additional information for the Department to consider as to why the Department should change its decision.
- b) If the appellant wishes the services to remain unchanged during the time of the appeal, the appellant shall request an appeal in writing within ten calendar days after the date of notice.
- c) The request for a service appeal must be in writing and shall be submitted to the Administrative Hearings Unit, Department of Children and Family Services, 406 E. Monroe Street, Springfield, Illinois 62701.
- d) If the appellant is unable to request a service appeal in writing, the Department or provider agency shall provide assistance to ensure that the request is made in writing.

(Source: Amended at 26 Ill. Reg. 6246, effective June 1, 2002)

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**Section 337.110 Grounds for Dismissal of a Service Appeal Request**

- a) The Administrator of the Administrative Hearings Unit shall dismiss a request for a service appeal for the following reasons:
  - 1) the appellant failed to request an appeal within the time frames allowed. However, when timely or adequate notice was not provided in accordance with this Part, the appellants may appeal up to 45 days from the date they receive adequate notice of the Department's action or decision;
  - 2) the appeal has been withdrawn in writing. If the appellant is unable to withdraw the appeal in writing, the Department or provider shall help the appellant put the withdrawal in writing;
  - 3) the issue is not within the jurisdiction of the appeal system;
  - 4) a court has made a judicial determination or issued an order on the issue being appealed; However, a juvenile court determination that a current foster home placement is necessary and appropriate does not constitute a judicial determination on the merits of a service appeal, filed by a former foster parent, involving a change of placement decision; or
  - 5) the appellant has waived the right to a service appeal by abandoning his or her right, as defined in Section 337.160 of this Part.
- b) The Administrator of the Administrative Hearings Unit shall give written notice of the decision to grant or deny the request for an appeal within ten calendar days of receipt of the request. If the Department finds that the issue is not an appealable issue under this Part, but may be appropriately heard through another appeal process (refer to 89 Ill. Adm. Code 435, Administrative Appeals and Hearings), the Department shall forward the request for appeal to the proper hearing authority and notify the appellant of this action.

**Section 337.120 Time Frames for the Service Appeal Process**

The appeal process shall begin on the date of appeal as defined in Section 337.20 of this Part. The Department shall give the appellant an opportunity to attend a mediation within 30 calendar days from the date of appeal and shall schedule a fair hearing within 45 calendar days from the date of appeal. An emergency review shall be heard on the appropriate issues within 10 calendar days from the date of the appeal. The Department shall make and implement a final administrative decision on the appealed issue within 90 calendar days from the date of appeal, extended by any delay caused by or agreed to by the appellant.

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**Section 337.130 Continuing Services During the Service Appeal Process**

When an appellant requests a service appeal within the 10 calendar days following the date of notice of the action to be taken, the Department or its provider agency shall continue to provide 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 or if the appeal is about a clinical placement review decision or if a corrective order has been issued by the reviewer subsequent to an emergency review.

(Source: Amended at 36 Ill. Reg. 4388, effective March 7, 2012)

**Section 337.140 Confidentiality During the Service Appeal Process**

- a) The Department has an affirmative duty to protect the confidentiality of personal information of clients served by the Department, in accordance with 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department, and the Adoption Assistance and Child Welfare Act of 1980 (42 U.S.C. par. 671 (a)(8)). Confidentiality shall be preserved during mediation, emergency review, the fair hearing, the transmittal of the administrative law judge's recommendation to the Director and the release of the final administrative decision.
- b) The mediator, reviewer, and the administrative law judge have the right to exclude any individual or agency who does not have the right of access to the information being presented in accordance with the Adoption Assistance and Child Welfare Act of 1980, the Children and Family Services Act, the Abused and Neglected Child Reporting Act, and any other pertinent Act.
- c) The mediator, reviewer, and administrative law judge have the authority to divide the proceeding into segments which deal with issues of the parent, child or other parties in order to preserve confidentiality as mandated under applicable statutes and rules and to prohibit discussion or introduction of evidence that is outside of the scope of the issues being presented in that segment.
- d) The client and authorized or legal representative have the right to review the case record, as provided by 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department, upon request, with the exception of deleted confidential information, and to review any material the Department or agency intends to submit at the hearing. The case record will be made available for viewing by the client and representative in the presence of a Department employee during regular business hours at the office providing or denying services. The client or representative may obtain copies of the case record material in accordance with the Department's rules on confidentiality (89 Ill. Adm. Code 431).

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**Section 337.150 Notice Concerning a Service Appeal**

The following persons shall receive notice that an appeal request has been granted and the date, time and place of the initial service appeal proceeding: the child (if age 13 or over and residing in substitute care), the family, the guardian ad litem upon written request and any other authorized or legal representative as defined in Section 337.60, the provider agency, and foster parents and relative caregivers when the issues raised on appeal directly affect the foster parents or relative caregivers or their role as caretaker of the child.

- a) If the appellant agrees to mediation or if an emergency review is requested, the Department shall provide written notice to all parties of the time, date and place of the mediation or emergency review. Notice concerning mediation and emergency review shall inform the parties of the right to bring any evidence in an attempt to resolve the problem more quickly.
- b) The Department shall provide written notice to the appellant of a fair hearing, which shall contain the following:
  - 1) the date, time and location of the hearing;
  - 2) a statement that the appellant or his or her authorized or legal representative's failure to appear at the hearing without adequate cause may be deemed an abandonment of the request, thus constituting a waiver by the appellant of the right to a hearing in accordance with Section 337.160 of this Part; and
  - 3) a statement of the parties' rights during the appeal process.
- c) All proceedings shall be scheduled at a time, date, and place reasonably convenient for all parties.
- d) When placement of a child in the custody or guardianship of the Department is at issue, the caregivers for the child shall receive written notice apprising them that an issue on appeal involves the placement of the child. This notice shall be provided to the caregivers at the same time that the appellant receives written notice of the fair hearing.

(Source: Amended at 36 Ill. Reg. 4388, effective March 7, 2012)



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**Section 337.160 Abandonment of a Service Appeal**

- a) An appellant shall be considered to have abandoned a service appeal if the appellant, the appellant's authorized representative, or an individual legally acting on the behalf of the appellant fails to appear at the fair hearing without adequate cause, has not requested rescheduling prior to the hearing, or had requested rescheduling and the request was denied (e.g., requests for continuances without adequate cause). Abandonment will constitute a waiver of the right to appeal. Adequate cause for failing to appear at a fair hearing includes, but is not limited to:
  - 1) death in the family of the appellant or in the family of the appellant's representative;
  - 2) serious illness of the appellant or the appellant's representative or serious illness in either person's immediate family;
  - 3) failure of the Department to give notice of the hearing to the appellant or representative at the last known address available to the Department.
- b) The Department shall reschedule those cases being continued for adequate cause as soon as reasonably convenient for the parties and the administrative law judge.

**Section 337.170 Fair Hearing Appeal Rights**

- a) The Department carries the burden of proof in showing by a preponderance of the evidence that the decision made or action taken is in the best interests of the child, in accordance with professional social work standards and Department administrative rules.
- b) The appellant has the right to request a rescheduling or continuance of the hearing when:
  - 1) the appellant, his or her representative, or witness is not available, and the appellant can demonstrate adequate cause for the lack of availability;
  - 2) the appellant and the agency are in the process of negotiating an agreement to resolve the issue in dispute;
  - 3) additional time is needed to respond to expert evidence produced pursuant to subsection (g).

The time period from the date of request until the new hearing date shall not be considered as part of the 90 day time frame the Department has to issue and implement its final administrative decision.

- c) A party may require a person's attendance at the hearing if the person has information relevant to the issues in dispute by asking the administrator of the administrative hearings unit to issue appropriate subpoenas. Witness fees and

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travel expenses for persons requested by the parties, other than Department employees or provider agency staff under contract with the Department, are the responsibility of the parties making the request.

- d) A party may bring a representative, including legal counsel, and witnesses to the hearing at the party's expense.
- e) Upon the request of a party, or when the need is demonstrated, the Department shall provide an interpreter at no cost if English is not the party's primary language, or if the party is hearing impaired.
- f) Any prehearing motions shall be filed with the administrative law judge at least 10 calendar days before the hearing, unless the party filing the motion can show the required evidence or information was not available within the required time frame. Copies shall be provided simultaneously to the Administrator of the Administrative Hearings Unit and all other parties.
- g) At least five calendar days before the fair hearing, each party shall disclose to every other party the documents, a list of witnesses, and other evidence the party intends to introduce at the hearing. If a party fails to disclose evidence and then seeks to introduce it at the hearing, the administrative law judge shall have the authority to rule on whether to admit or exclude the evidence. In determining the appropriate sanction, the administrative law judge shall consider the surprise or prejudice to the other parties, including prior disclosure at administrative case review, mediation and emergency review. The administrative law judge's authority includes adjourning or continuing the hearing to a later time or date to permit the other parties to examine the evidence and prepare their cases accordingly. The period between disclosure of the evidence and rescheduling the hearing shall not be considered in the 90 calendar day time frame the Department has to issue and implement its final administrative decision.
- h) The parties have the right to obtain examining physician's reports, medical review team's decisions, or medical assessments at the expense of the Department, if the administrative law judge deems this information is necessary and pertinent to the issue under appeal.
- i) During the fair hearing, the parties have the right to:
  - 1) present and question witnesses;
  - 2) present any information relevant to the issues;
  - 3) question or disprove any information, including an opportunity to question opposing witnesses; and
  - 4) dispose of any disputed issue by mutually agreeing to a resolution.

(Source: Amended at 26 Ill. Reg. 6246, effective June 1, 2002)

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**Section 337.180 The Administrative Law Judge**

**a) Appointment of the Administrative Law Judge**

The Administrator of the Administrative Hearings Unit shall select and the Director shall appoint a trained, impartial administrative law judge to conduct the fair hearing. The administrative law judge:

- 1) shall be an attorney licensed to practice law in the State of Illinois;
- 2) shall possess knowledge and information acquired through training and/or experience relevant to the field of child and family welfare law, including familiarity with Department rules, procedures and functions;
- 3) shall not have been involved in the decision to take the action being appealed or have rendered legal advice to the decision-maker on the issue; and
- 4) shall not have a personal or professional interest which interferes with exercising objectivity or have any bias against the parties or issues appealed. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

**b) Functions of the Administrative Law Judge**

The administrative law judge shall have all authority allowed under the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.). This authority shall include, but is not limited to, the following:

- 1) prior to the hearing, conduct prehearing and preliminary telephone conferences, if necessary, among the parties and/or their attorneys;
- 2) conduct a fair and impartial hearing in which the strict rules of evidence do not apply;
- 3) provide for the recording of the hearing;
- 4) take necessary steps to develop a full and fair record which contains all relevant facts;
- 5) inform participants of their individual rights and responsibilities;
- 6) administer an oath or an affirmation to all witnesses;

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- 7) quash or modify subpoenas for good cause, including but not limited to, relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;
- 8) conduct in-camera reviews with children when requested by a child or a child's authorized representative. For purposes of this Part, an in-camera review means that the child may testify outside the presence of the appellant, with only the administrative law judge, Department and appellant's representative or attorney and court reporter, if applicable, present. If the appellant is unrepresented, the administrative law judge may continue the hearing to give the appellant the opportunity to obtain representation for the in-camera hearing;
- 9) preserve all documents and evidence for the record;
- 10) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;
- 11) order the removal of any person from the hearing room who is creating a disturbance whether by physical actions, profanity or otherwise engaging in conduct which disrupts the hearing;
- 12) identify the issues, consider all relevant facts, and receive or request any additional information necessary to decide the matter in dispute. This may include, but is not limited to, the submission of briefs, memoranda of law, and affidavits;
- 13) order an examining physician's report, medical review team's decision, or medical assessments, if the administrative law judge considers them necessary and pertinent to the issue under appeal. If the administrative law judge deems this type of material necessary, the Department will pay for the expense of obtaining this material;
- 14) ensure that the appellant has full opportunity to present facts and information supporting his or her position, in accordance with any rules of evidence that may apply;
- 15) issue a recommendation to the Director of the Department based exclusively on the evidence presented at the hearing. This recommendation shall include a summary of the evidence, findings of facts, conclusions of law, and a recommended decision. This recommendation may also include recommendations of actions that should be taken to implement the recommended decision;
- 16) explore the possibility of reaching an agreement regarding services; and
- 17) assist the parties in reaching an agreement on services.

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**Section 337.190 Record of a Fair Hearing**

The record of the fair hearing and the final administrative decision shall be maintained by the Administrator of the Administrative Hearings Unit. All final administrative decisions shall be available for public inspection during regular business hours. However, confidential information shall be deleted in accordance with 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department.

**Section 337.200 Combined Hearings**

When common issues are raised, the Administrator of the Administrative Hearings Unit may respond to requests for hearings from more than one appellant by conducting a single group hearing. The Administrator of the Administrative Hearings Unit may also combine all issues involving a single appellant in one hearing. Individuals shall be permitted to

present their own cases separately. The Administrator of the Administrative Hearings Unit, if required for the fair and efficient administration of the hearing or to prevent possible prejudice to the appellant, may sever any party or any issue from the combined hearing. The party or issue severed from the combined hearing shall be heard separately. When the issue being appealed is related to whether abuse or neglect occurred, and the indicated finding is under appeal through 89 Ill. Adm. Code 336, Appeal of Child Abuse and Neglect Investigation Findings, the Administrator of the Administrative Hearings Unit shall decide whether to hear the cases jointly, separately or one ahead of the other. When considering this issue after reviewing the totality of the circumstances, the Administrator shall consider what is in the best interests of the child and rule accordingly.

**Section 337.210 Continuances Requested in a Combined Hearing**

The Administrator of the Administrative Hearings Unit shall also consider requests for continuances by any party. The best interests of the child or children is the determining factor when deciding these issues. A final administrative decision must be made on the service appeal and implemented within 90 days of the date the Department received the request for the service appeal, extended by any delay caused or approved by an appellant.

(Source: Amended at 19 Ill. Reg. 7175, effective June 1, 1995)

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**Section 337.220 The Final Administrative Decision**

The Director of the Department may agree or disagree with or modify the administrative law judge's recommendation based upon what is the best interests of the child, in accordance with professional social work standards and Department administrative rules. The Director will then issue a decision that will be the final administrative decision of the Department. The Director shall send the final administrative decision to those listed in Section 337.230 of this Part. If the decision requires corrective action by the Department, the Director shall appoint a Department staff person who shall be responsible for assuring that prompt corrective action will be taken by the Department or provider agency within 90 days from the date of the appeal in compliance with the final administrative decision. Notice of who is responsible for corrective action will be given to the appellants along with the final administrative decision.

(Source: Amended at 26 Ill. Reg. 6246, effective June 1, 2002)

**Section 337.230 Who Receives a Copy of the Final Administrative Decision**

The appellant, authorized representative of the child, the parent or parents, any authorized or court appointed representative as defined in Section 337.60 of this Part, the administrative law judge, the Department's field-site office, the Department representative presenting the case, the Department's regional administrator, the Administrator of the Administrative Hearings Unit, and if they participate in the appeal and request it, the provider agency, guardian ad litem, foster parent, and purchase of service provider agencies shall receive a copy of the final administrative decision.

(Source: Amended at 19 Ill. Reg. 7175, effective June 1, 1995)

**Section 337.240 Notice of the Availability of Judicial Review**

The appellant shall be advised that, under the provisions of the Administrative Review Law (Ill. Rev. Stat. 1991, ch. 110, par. 3-101 et seq.), he or she may seek a judicial review of the Department's final administrative decision within the statutory time frame.

**Section 337.250 Severability of This Part**

If any court of competent jurisdiction finds that any Section, clause, phrase or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.