**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). 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 the 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.

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 after 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 10 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.

2) The Department shall conduct a clinical placement review within 5 working days after 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. 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 Action Plans

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

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 team 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.

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)