

1 SENATE BILL 395

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

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

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

21 A. A court-appointed special advocate, child,
22 child's attorney, custodian, foster parent, guardian, guardian
23 ad litem, Indian tribe, parent, preadoptive parent, relative,
24 fictive kin, mental health provider, school staff or protective
25 services division worker of a child in department custody may

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1 request an administrative hearing for any department decision
2 involving the following:

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

5 (2) the removal of a child from a foster home;

6 (3) a dispute relating to the reimbursement of
7 expenses; or

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

15 B. A person seeking an administrative hearing
16 pursuant to this section shall serve the department and the
17 administrative hearings office with a written protest
18 requesting such proceeding no later than thirty calendar days
19 following the date of the mailing or verbal notification of the
20 action proposed to be taken by the department. Every protest
21 shall identify the following; provided that the person may
22 supplement the protest at any time prior to a hearing:

23 (1) the identity of the person seeking relief
24 and any relevant parties to the protest;

25 (2) the action or inaction that is in dispute;

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- 1 (3) the grounds for the protest;
2 (4) the affirmative relief that is requested;
3 and
4 (5) a summary statement of the evidence
5 expected to be produced supporting each assertion.

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

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

11 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

12 A. The chief hearing officer shall:

13 (1) adopt and promulgate a hearing officer
14 code of conduct; and

15 (2) annually, evaluate each hearing officer's
16 performance for competency, efficiency and professional
17 demeanor in accord with relevant legal standards and the
18 hearing officer code of conduct, including through the use of a
19 survey of practitioners who appear before the hearing officer.

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

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

25 (2) review with a hearing officer any issue on

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1 appeal addressed by a court of this state.

2 C. The administrative hearings office shall:

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

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

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

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

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

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

16 [~~6~~] (7) make and preserve a complete record
17 of all proceedings; and

18 [~~7~~] (8) maintain confidentiality regarding
19 taxpayer information as required by Section 7-1-8 NMSA 1978.

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

23 (1) the Rules of Evidence do not apply. The
24 hearing officer may require reasonable substantiation of
25 statements or records tendered, the accuracy or truth of which

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1 is in reasonable doubt, to rule on the admissibility of
2 evidence. A taxpayer or the taxation and revenue department
3 may request a written ruling on a contested question of
4 evidence in a matter in which the taxpayer has filed a written
5 protest and for which that protest is pending. The
6 administrative hearings office shall issue a copy of its
7 written ruling to the department at the time the ruling is
8 issued to the taxpayer;

9 (2) the Rules of Civil Procedure for the
10 District Courts do not apply. The hearing officer shall
11 conduct a hearing to allow the ample and fair presentation of
12 complaints and defenses. The hearing officer shall hear
13 arguments, permit discovery, entertain and dispose of motions,
14 require written expositions of the case as the circumstances
15 justify and render a decision in accordance with the law and
16 the evidence presented and admitted. A taxpayer or the
17 taxation and revenue department may request a written ruling on
18 a contested question of procedure in a matter in which the
19 taxpayer has filed a written protest and for which that protest
20 is pending. The administrative hearings office shall issue a
21 copy of its written ruling to the department at the time the
22 ruling is issued to the taxpayer; and

23 (3) the hearing officer may administer oaths
24 and issue subpoenas for the attendance of witnesses and the
25 production of relevant books and papers, and for hearings

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1 conducted for a license suspension pursuant to Section 66-5-30
2 NMSA 1978, the hearing officer may require a reexamination of
3 the licensee."

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

6 "7-1B-11. [NEW MATERIAL] CHILDREN, YOUTH AND FAMILIES
7 DEPARTMENT--ADMINISTRATIVE HEARING--PROCEDURES.--

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

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

17 C. After affording the parties the opportunity to
18 submit proposed findings and conclusions of law, and based
19 solely upon the record in accordance with the Administrative
20 Hearings Office Act and the Administrative Procedures Act, the
21 hearing officer shall make findings of fact and conclusions of
22 law on all material issues of fact, law or discretion, stating
23 the basis for each; provided that the findings and conclusions
24 shall be supported by substantial evidence. The findings of
25 fact and conclusions of law of the hearing officer shall be

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1 made and served upon all parties of record within thirty
2 calendar days following the hearing.

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

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

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

13 "7-1B-12. [NEW MATERIAL] CHILDREN, YOUTH AND FAMILIES
14 DEPARTMENT--ADMINISTRATIVE HEARING--HEARING OFFICER.--

15 A. The chief hearing officer of the administrative
16 hearings office shall select the hearing officer to preside
17 over the administrative hearing held pursuant to Section
18 7-1B-11 NMSA 1978; provided that the selected hearing officer
19 shall:

20 (1) be licensed and in good standing to
21 practice law in New Mexico or another state;

22 (2) have at least three years' cumulative
23 experience in an area relevant to the specific written protest;
24 and

25 (3) not currently be employed by or represent,

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1 or belong to a law firm that currently represents, the
2 children, youth and families department.

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

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

8 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

9 A. All records or information concerning a party to
10 a neglect or abuse proceeding, including social records,
11 diagnostic evaluations, psychiatric or psychological reports,
12 videotapes, transcripts and audio recordings of a child's
13 statement of abuse or medical reports incident to or obtained
14 as a result of a neglect or abuse proceeding or that were
15 produced or obtained during an investigation in anticipation of
16 or incident to a neglect or abuse proceeding shall be
17 confidential and closed to the public.

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

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

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

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1 (3) the child's guardian ad litem;

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

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

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

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

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

16 (9) any state government social services
17 agency in any state or when, in the opinion of the department
18 it is in the best interest of the child, a governmental social
19 services agency of another country;

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

24 (11) a foster parent, if the records are those
25 of a child currently placed with that foster parent or of a

1 child being considered for placement with that foster parent
2 and the records concern the social, medical, psychological or
3 educational needs of the child;

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

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

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

16 (15) protection and advocacy representatives
17 pursuant to the federal Developmental Disabilities Assistance
18 and Bill of Rights Act and the federal Protection and Advocacy
19 for Mentally Ill Individuals Amendments Act of 1991;

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

23 (17) representatives of the federal government
24 or their contractors authorized by federal statute or
25 regulation to review, inspect, audit or otherwise have access

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1 to records and information pertaining to neglect or abuse
2 proceedings;

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

8 (19) any other person or entity, by order of
9 the court, having a legitimate interest in the case or the work
10 of the court.

11 C. Any hearing commenced pursuant to Section 1 of
12 this 2021 act shall be conducted in a sealed proceeding. Only
13 the parties to an administrative hearing, or their
14 representatives, shall be permitted to participate. All
15 testimony provided and all records of the department that are
16 compelled by subpoena, produced, relied upon or referred to,
17 regardless of whether the testimony or record is offered as an
18 exhibit, shall not be disclosed to anyone other than the
19 parties to the administrative hearing or to the court in an
20 underlying child welfare case. After an administrative hearing
21 has concluded, the hearing officer shall return all records
22 produced during the proceedings to the producing party. Anyone
23 who receives documents or information pursuant to an
24 administrative hearing shall be prohibited from disclosing
25 those documents or the information contained in those documents

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1 to any third party.

2 ~~[G-]~~ D. A parent, guardian or legal custodian whose
3 child has been the subject of an investigation of abuse or
4 neglect where no petition has been filed shall have the right
5 to inspect any medical report, psychological evaluation, law
6 enforcement reports or other investigative or diagnostic
7 evaluation; provided that any identifying information related
8 to the reporting party or any other party providing information
9 shall be deleted. The parent, guardian or legal custodian
10 shall also have the right to the results of the investigation
11 and the right to petition the court for full access to all
12 department records and information except those records and
13 information the department finds would be likely to endanger
14 the life or safety of any person providing information to the
15 department.

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

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

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