

HOUSE No. 4106

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to fair hearings in the Department of Children and Families.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 18B of the General Laws, as appearing in the 2012 Official
2 Edition, is hereby amended by inserting after the word “assistance” on line 10,
3 the following:-

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5 "(a) There shall be within the department a division of hearings for the purpose of
6 holding the hearings referred to herein and rendering decisions. Said division shall be under the
7 supervision of a director appointed by the commissioner and shall be independent of all other
8 divisions and personnel of the department except as specifically set forth herein.

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10 (b) Any person aggrieved by any decision of the department which is eligible for an
11 administrative hearing pursuant to the regulations of the department shall have a right to a
12 hearing, after due notice, upon appeal to the director. Any determination by the division of
13 hearings that there is no right to a hearing shall be provided to the appellant in writing and shall
14 include a statement of the reasons therefore. The appellant shall have a right to a fair hearing to
15 determine whether the facts underlying that determination are accurate.

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17 (c) A hearing held pursuant to this section shall be conducted by a hearing officer
18 designated by the director and shall be held at the area office at which the decision was made or
19 at another location that is equally or more convenient to the appealing party. The provisions of
20 chapter 30A, section 12 shall apply to all such hearings. The director shall be responsible for the

21 fair and efficient operation of the division in conformity with state and federal laws and
22 regulations and may review and discuss with the hearing officer proceedings held pursuant to
23 this section solely in order to carry out this responsibility. No person outside of the hearings unit
24 shall communicate about any pending case with any member of the hearings unit unless such
25 communication is made in the presence of all parties or submitted in writing with copies to all
26 parties. The director shall also be responsible for the training of hearing officers, scheduling of
27 hearings and the maintenance of a docket/decision index that shall be available for public
28 inspection.

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30 (d) The hearing office shall schedule a fair hearing to be held within 65 business days of
31 the postmark date, fax receipt date, or hand delivery date of receipt of a request for a fair hearing,
32 and shall render decisions within 60 business days from the close of the hearing record. Upon
33 request for good cause shown, a showing that circumstances require a speedy resolution, the
34 department may expedite the hearing so that it is held sooner than 65 business days from the
35 request. The hearing officer may extend the deadline for rendering a decision one time for no
36 more than 30 business days provided that good cause reasons for the delay are stated in a written
37 decision to continue, but, in no event may a hearing officer render a fair hearing decision more
38 than 155 days from the date of the fair hearing request. The decision of the department shall be
39 subject to review in accordance with the provisions of chapter 30A.

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41 (e) (i) The filing of a request for a fair hearing allowable under the regulations of the
42 department regarding a decision to terminate or reduce services shall stay the effect of the
43 challenged decision until after the fair hearing is held and the fair hearing decision is rendered.

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45 (ii) The filing of a request for a fair hearing allowable under the regulations of the
46 department within 10 days of the removal of a child from a foster home shall stay the removal of
47 the child until after the fair hearing is held and decided. However, upon a written finding that the
48 physical, mental or emotional safety of the child would be placed at risk if the child is not
49 removed immediately, the removal may take place before the fair hearing, and the fair hearing
50 shall be held and the decision rendered within 14 days of the removal.

51 (iii) Except as provided in paragraphs (e)(i) and (e)(ii) above, the filing of a request for a
52 fair hearing shall not otherwise stay or affect the implementation of the challenged hearing
53 decision. The decision appealed shall be reversed if the department's hearing is not scheduled
54 within 65 business days and is not decided within 155 business days from the postmark date, fax
55 receipt date, or hand delivery date of the hearing request, or within 176 business days if the
56 decision is subject to review by the commissioner. Upon the department's written finding that the

57 physical, mental or emotional safety of a child would be placed at risk by reversing the
58 challenged decision, the department shall have an additional 30 days to render its decision. In the
59 event that the department grants a party's request for a continuance of the hearing, the
60 department's deadline for scheduling the hearing shall be suspended and its time for rendering
61 the decision shall be extended by the number of days that the hearing was continued or 30 days,
62 whichever is shorter.

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64 (f) The hearing officer shall provide a copy of the written hearing decision to the
65 appealing party and the department. The hearing officer's decision shall become final 21
66 business days from issuance unless the appealing party is notified within that time period that the
67 commissioner has reversed that decision or intends to reconsider the decision. The commissioner
68 shall render a decision within 60 days of giving notice of intent to reconsider. If upon
69 reconsideration, the commissioner issues a decision that differs from the hearing officer's
70 decision, the commissioner's decision must state the facts, law and policy supporting any such
71 difference. The commissioner's reconsideration decision shall be the final decision of the
72 department, but the hearing officer's decision shall also be included in the record for judicial
73 review. If the commissioner does not render a decision within 60 days from giving notice of an
74 intent to reconsider then the hearing officer's decision shall become the final decision of the
75 department 60 days from the date of the commissioner's notice of an intent to reconsider.

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77 (g) The department shall report on the last business day of December and the business
78 day of March of each year to the house and senate committees on ways and means and the joint
79 committee on children, families and persons with disabilities on: (a) the fair hearing requests
80 filed that fiscal year, stating for each hearing request using nonidentifying information: (b) the
81 subject matter of the appeal;(c) the number of days between the hearing request and the first day
82 of the hearing; (d) the number of days between the first day of the hearing and the hearing
83 officer's decision; (e) the number of days between the hearing officer's decision and the
84 agency's final decision; (f) the number of days of continuance granted at the appellant's request;
85 (g) the number of days of continuance granted at the request of the department of children and
86 families or the hearing officer's request, specifying which; and (h) whether the departmental
87 decision that was the subject of the appeal was affirmed or reversed; and (i) the fair hearing
88 requests filed prior to fiscal year 2015 which are pending for more than 180 days, stating the
89 number of such cases, how many of such cases have been heard but not decided and how many
90 have been decided by the hearing officer but not yet issued as a final agency decision;

91 (h) The department shall maintain and make available to the public during regular
92 business hours a record of its fair hearings, with identifying information removed, reflecting, for
93 each hearing request, the date of the request, the date of the hearing, the length of any extensions

94 granted to the party, the date of the hearing decision, the decision rendered by the hearing
95 officer, and the final decision rendered upon the commissioner's review. Redacted copies of fair
96 hearing decisions shall be made available to members of the public upon request.

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98 (i) The department shall maintain an independent, timely and fair administrative hearing
99 system.