
POLICY TRANSMITTAL NO. 07-44	DATE: AUGUST 9, 2007
LEGAL DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:2-5-112 and 2-5-119.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

OAC 340:2-5-112 is amended to expand the definition of "official record" to include a transcript of the hearing and to provide a definition of "clear and convincing evidence."

OAC 340:2-5-119 is amended to conform the standard of proof in child care licensing proceedings to due process requirements.

Original signed on 8-9-07

Charles Waters, General Counsel
Legal Division

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WF # 07-14 (NAP)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

REMOVE

340:2-5-112

340:2-5-119

INSERT

340:2-5-112, pages 1-3, revised 8-3-07

340:2-5-119, 1 page only, revised 8-3-07

340:2-5-112. Definitions

Revised 8-3-07

The following words and terms, when used in this Part, shall have the following meanings, unless the context clearly indicates otherwise:

"Access to the case file" means that the applicant, licensee, and authorized representative have the right to review any information to be used by the Oklahoma Department of Human Services (OKDHS) in the hearing.

(A) The review may be made at a reasonable time before the date of the hearing.

(B) Access to the case file means access to the applicant or licensee file but does not include the Children and Family Services Division (CFSD) records and any report to the district attorney unless ordered released by the administrative hearing officer (AHO). The order is based upon a request by the applicant or licensee and, after an in camera review by the AHO, a determination that a compelling reason exists and that disclosure is necessary for the protection of a public or private interest. Any child's name and the reporter's name is removed prior to submitting the information to the AHO.

(C) When a request for file access is made, the local office must make arrangements for the applicant or licensee and authorized representative to review the case file with as much privacy as possible. A supervisory staff member observes the review of the case file to ensure that contents of the case file are not removed from the record.

(D) The applicant, licensee, and authorized representative are free to make written notes from the record or obtain copies of available documents. An applicant, licensee, or representative is not charged for copies of documents made for the purpose of hearing preparation or presentation.

"Administrative hearing officer (AHO)" means:

(A) the professional staff member of the Appeals Unit who has been designated by the Appeals Unit supervisor to conduct an administrative hearing and issue a decision; or

(B) a lawyer who has a contract with OKDHS to preside over administrative hearings and issue a decision.

"Appeals Unit" means the unit established within the Legal Division which is responsible for conducting administrative hearings.

"Appeals Unit supervisor" means the person designated by the OKDHS general counsel to supervise the Appeals Unit.

"Applicant or licensee" means:

- (A) an applicant for a license to operate a child care facility; or
- (B) the holder of a license to operate a child care facility which has been revoked.

"Authorized representative" means a person authorized by the applicant or licensee to represent them in the hearing process.

- (A) Any party may be represented by a lawyer or legal intern licensed to practice by the Supreme Court of Oklahoma.
- (B) A party may be represented by a non-lawyer.
- (C) If the representative is not a lawyer, OKDHS verifies the authority of the person to represent the applicant or licensee through verbal or written authorization of the applicant or licensee.

"Clear and convincing evidence" means the degree of proof which has produced in the AHO a firm belief as to the truth of the allegation sought to be established.

"Division of Child Care (DCC)" means any office in any division or unit within DCC which is responsible for the act, or failure to act, which is the subject of the hearing request.

"Hearing" means the process by which evidence is obtained and a decision made regarding the OKDHS action being protested.

"Hearings on licensing actions related to child care facilities and child placing agencies" means:

- (A) the process to review an OKDHS decision on denial or revocation of a license for a child care facility or child placing agency; or
- (B) hearings on emergency orders to cease operation of a child care facility.

"Hearing request" means a written expression by an applicant, licensee, or authorized representative of the applicant's or licensee's desire to contest an action by OKDHS through the hearing process.

"OAC" means the Oklahoma Administrative Code, which contains the regulations promulgated by each state agency.

"Official record" means:

- (A) all evidence offered for introduction at the hearing;
- (B) an electronic recording of the hearing, or a transcription of the hearing; and
- (C) the hearing decision.

"OKDHS" means the Oklahoma Department of Human Services.

340:2-5-119. Standard of review and burden of proof

Revised 8-3-07

(a) **Standard of review.** The administrative hearing officer (AHO) determines whether the Oklahoma Department of Human Services (OKDHS) action is supported by clear and convincing evidence and not contrary to the applicable law.

(b) **Burden of proof.** The party who seeks to alter the status quo has the burden of proof. The burden of proof is on:

- (1) an applicant to show that the applicant is eligible to receive a child care facility license;
- (2) OKDHS to show that a child care facility license should be revoked; and
- (3) OKDHS to show that the issuance of an emergency order was necessary to protect the health, safety, or welfare of a child receiving child care.