

Resource Family Approval Due Process



State of California
Department of Social Services

Legal Division

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What is “Due Process?”



- Due process is a legal term of art.
- In plain English, it means the procedures related to appeal and hearing rights.
- A due process framework must meet established legal rules and principles.

RFA Due Process Legal Authority



- 1) Implementing Authority: WIC §16519.5(f)
- 2) Appeal and hearing framework: WIC §16519.6 (AB 403, effective 1/1/16)
- 3) Written Directives (“WDs”) - General
- 4) WD Section 11 – Appeal and hearing procedures.
- 5) Note: ACL to be issued by State Hearings Division on hearing procedures.

Foster Care Due Process Background

(Prior to RFA implementation)

- ❖ **Foster Care Licensing** - Health and Safety Code and Administrative Procedures Act or “APA” (Gov. Code) govern hearing procedures.

Hearings are held by Office of Administrative Hearings (OAH).

- ❖ **Relative/NREFM approvals** -WIC and Division 22 regulations or “MPP” govern hearing procedures.

Hearings are held by State Hearings Division (SHD).



Difference between RF approval and Relative approval?

For relative (and NREFM) approvals under *Harris*, the only type of administrative action that may be required is:

- 1) application denials.**



Difference between RF approval and Relative approval?

Under Resource Family Approval, the types of administrative actions that may be required are:

- 1) application denials;**
- 2) rescissions of the RF approval; and**
- 3) exclusion actions against individuals.**

RFA Due Process Goals



- 1) GOAL#1: Provide the due process required by law for RFA parents, applicants, and individuals while providing a fair and respectful hearing for all parties.
- 2) GOAL #2: Incorporate into RFA due process what is best in the appeal and hearing procedures already in place for foster care and relatives/NREFM.
- 3) GOAL #3: Further the goals of RFA while protecting the health, safety, and well-being of children or NMD in care.

RFA Due Process Goals



Goal #1: Provide the due process required by law for RFA parents, applicants, and individuals while providing a fair and respectful hearing process for all parties.

“Required by law” includes all applicable areas of the law – statutes, regulations or written directives or ACL, precedential case law issued by certain courts.

RFA Due Process Goals



Goal #2: Incorporate into RFA due process what is best in the appeal and hearing procedures already in place for foster care.

How? Dual forum solution.

Took current State Hearings Division (SHD) *Harris* procedures and Office of Administrative Hearings (OAH) foster licensing procedures, and developed a system whereby RFA cases would be heard in **both forums** depending on the type of case.

RFA's Dual Hearing Forums: OAH and SHD

DGS Office of Administrative Hearings (OAH)

- Administrative Procedures Act (APA), Government Code governs.



CDSS State Hearings Division (SHD)

- WIC §10950 et seq. and CDSS Division 22 Regulations (“MPP”) govern.
- Note: RFA ACL to be issued by SHD detailing hearing procedures.

2 RFA Hearing Forums: OAH and SHD

How are they similar?

- Both are administrative hearing forums.
- Both provide state level hearings.
- Both are less formal than civil or criminal court.
- Both have Administrative Law Judges (ALJs) that preside over the hearings.
- Both hold their hearings “before the Department of Social Services.”

2 Hearing Forums: OAH and SHD. How are they different?

OAH

- Has experience doing foster care licensing hearings.
- More technical evidentiary rules apply such as limitations on evidence, which is helpful to limit the length of complex hearings.
- APA provides rules for complex discovery, evidentiary issues/motions, expert witnesses, etc.
- Requires the filing of a formal pleading (Accusation or Statement of Issues).

SHD

- Has experience doing relative/NREFM (*Harris*) hearings.
- SHD's rules of evidence allow more information to be viewed by ALJs.
- MPP does not currently provide rules for complex discovery or expert witnesses.
- No formal pleading is filed, rather a Statement of Position (SOP) is filed. This means county's Notice of Action and SOP must meet certain legal sufficiency requirements.

How to know which forum - OAH or SHD?

The **general rule** as to which forum is set forth in WD §11-06. A legal consult is required to assist the county in sending the case to the correct forum.



Which forum - OAH or SHD?

The **general rule** as to which forum is set in WD §11-06.

OAH

- (1) Dual-license matters where the applicant, parent, or individual holds another type of license issued by the Department.
- (2) Rescissions or exclusion actions that are not based solely on criminal conduct or a conviction.
- (3) A temporary suspension order was issued as a result of an immediate and substantial risk to the health and safety of a child.
- (4) Exclusion actions.

SHD

- (1) Application denials.
- (2) Denial, rescission or exclusion actions based upon criminal conduct or a conviction.





Which forum - OAH or SHD

Can there be exceptions to the general rule? Yes.

Whether a county needs to send a case to the other forum will be determined at a **legal consult**, using factors set forth in the WDs.

WD §11 -06: “...unless a determination is made by the County in consultation with the Legal Division that factors as described in subsection 11-06(d)” require that the matter be heard in the other forum...

2 Hearing Forums: OAH or SHD

Exceptions to the General Rule

What factors will the attorney consider?

WD §11 -06(d) OAH

(1) Office of Administrative Hearings is the preferred forum when the matter involves complex issues or evidentiary considerations such as, but not limited to, the following:

(A) Where testimony from expert witnesses to address abuse or neglect is anticipated or where motions to exclude evidence may be required.

(B) Where evidence of abuse, neglect, conduct, or other violations includes medical, mental health, coroner's office, or other records, and evidentiary or admissibility disputes are anticipated.

(C) Where the matter involves allegations of abuse, neglect, conduct, or other violations such that there is a need for evidentiary technical rules at hearing as set forth in the Administrative Procedures Act.

(D) Where multiple parties, facility types, licensure, certification, or TrustLine registration are involved, or multiple actions types are involved in the matter such that bifurcation or separate hearings may be necessary.

2 Hearing Forums: OAH or SHD

Exceptions to the General Rule

What factors will your attorney consider?

WD §11-06(d) SHD

(2) State Hearings Division is the preferred forum when the matter involves issues or evidentiary considerations such as, but not limited to, the following:

- (A) Where the allegations at issue can be proved using documentary evidence alone.
- (B) Where the Respondent has made admissions to the allegations at issue, and no significant dispute is anticipated as to those admissions.
- (C) Where the allegations at issue can be proved using demonstrative or real evidence, and there is no significant dispute anticipated as to the content or admissibility of that evidence.
- (D) Where witness testimony is expected but the matter does not involve allegations of abuse, neglect, conduct, or other violations that require a need for multiple days of hearing and evidentiary technical rules as set forth in the Administrative Procedures Act.



Legal Consult

The county legal consult with the CDSS Legal attorney (or other attorney) is a key step for RFA due process.

When in the process should the legal consult take place?

- Whenever a decision is made that will affect RFA approval, including RFA denial, rescission, or exclusion actions, or criminal record exemption denials or rescissions.
- The consult should ideally take place BEFORE the Notice of Action is served.



Legal Consult

What will the legal consult provide?

The legal consult will provide:

- Legal advice on RFA decisions and administrative actions (regular monthly consult or right away on urgent matters).
- Selection of forum as provided in WD §11-06.
- Training of county staff on evidence.

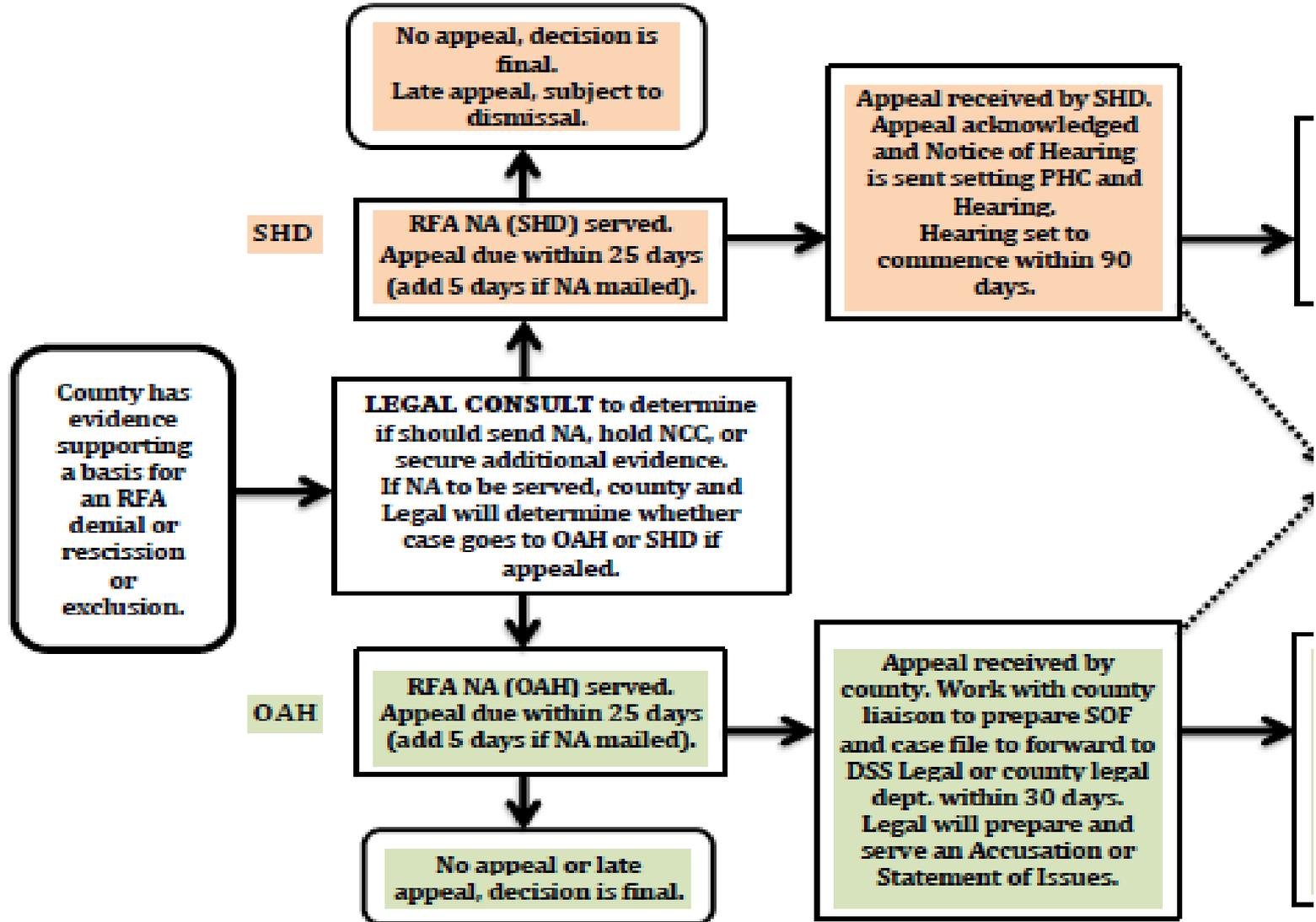
RFA Due Process Timelines

- ❖ **General Timelines: (WIC §16519.6)**
 - **APPEAL:** 25 days to appeal from date of service of Notice of Action (NA). Add 5 days if NA served by mail.
 - **HEARING:** Must commence within 90 days from date of appeal or Notice of Defense (NOD).
 - **Temporary Suspension Order (TSO) HEARING:** 30 days from date of appeal or NOD.
 - Continuances (OAH) or Postponements (SHD) require legal good cause. No time waivers.

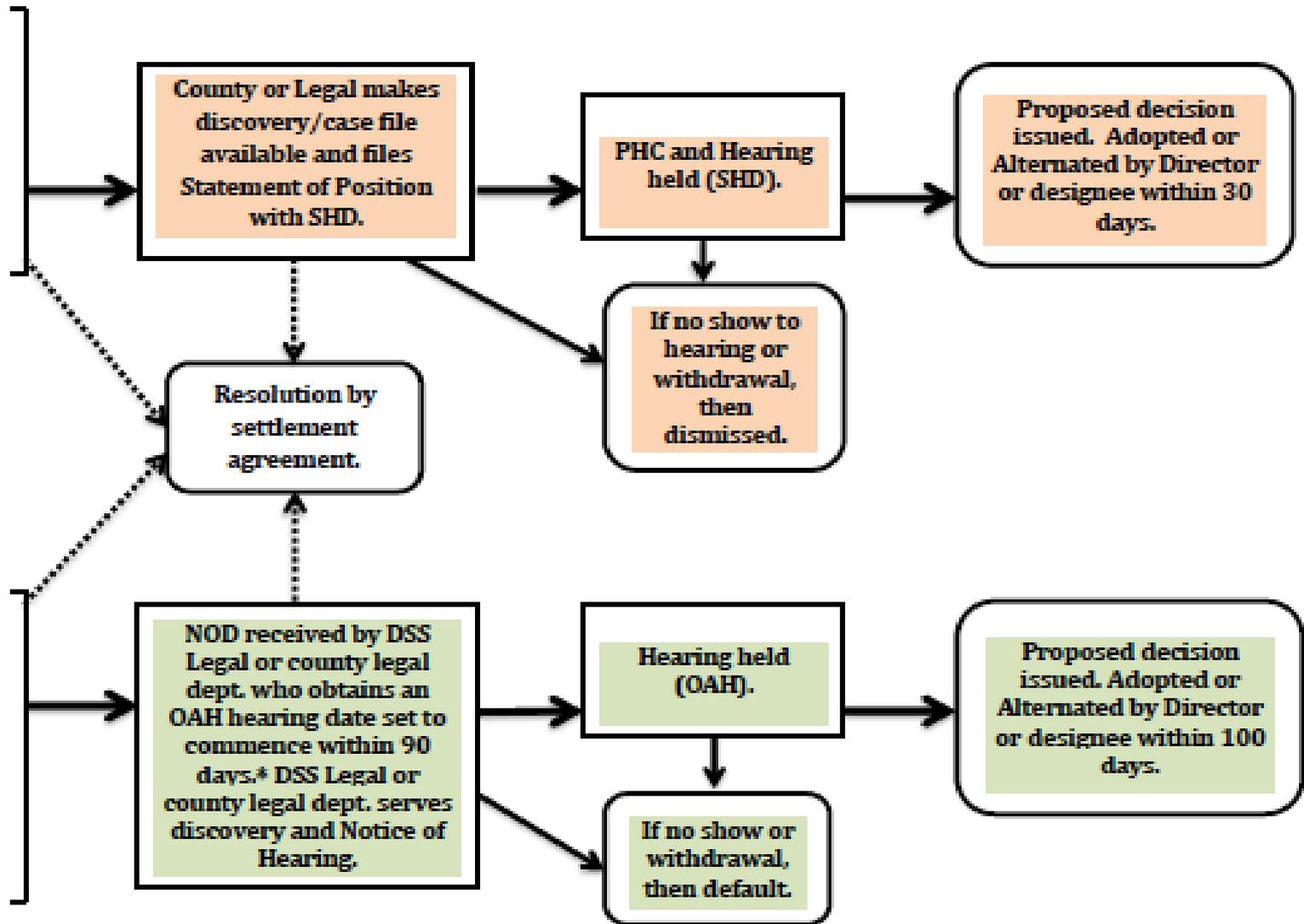
- ❖ No interim hearing for TSOs.
- ❖ Immediate exclusion timelines currently fall under Health and Safety Code §1558.
- ❖ Expedited hearing guidelines still being explored.
- ❖ Actions regarding FFAs and STRTCs under development.



RFA General Appeal and Hearing Procedures



RFA General Appeal and Hearing Procedures (cont.)



RFA: Bases for Administrative Action

WD § 08-03(b): Rescinding and Denying Approval of a Resource Family, Exclusions, and Related Actions

- (1) Violation of any applicable law or the Written Directives.
- (2) Aiding, abetting, or permitting the violation of any applicable law or the Written Directives.
- (3) Conduct that poses a risk or threat to the health and safety, protection, or well-being of a child or nonminor dependent.
- (4) The conviction of the Resource Family applicant, parent, or associated individual, at any time before or during his or her approval, of a crime as defined in Section 1522 of the Health and Safety Code.
- (5) Engaging in acts of financial malfeasance, including but not limited to, improper use or embezzlement of the money or property of a child or nonminor dependent or fraudulent appropriation for personal gain of money or property, or willful or negligent failure to provide services.

RFA: Bases for Administrative Action

WD § 08-03(c): Additional grounds for denial of a Resource Family application include:

- (1) Failure to meet Resource Family qualifications set forth in Section 05-02(c).
- (2) Inability to provide adequate references.
- (3) Incomplete application.
- (4) Failure to attend pre-approval training.
- (5) Failure to receive a criminal clearance or exemption.
- (6) Failure to meet the home environment assessment standards.
- (7) Psychosocial assessment results that in the county's judgment are incompatible with the definition of a Resource Family.
- (8) Failure to comply with Section 10-15 (Cooperation and Compliance).
- (9) False or misleading statements made to the County or the Department to obtain or maintain any resource family related approval.

RFA Due Process: Written Directives, Section 11 Highlights

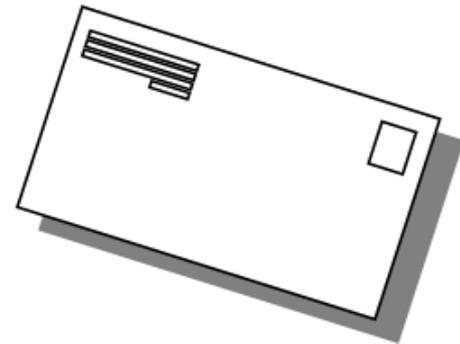
§03-02: Due Process Definitions

§11-02: Notice of Action

§11-03: Resolution Prior to Notice of Action

§11-04: Service of Process

**§11-05: Acknowledgement
of Appeal**



RFA Due Process: Written Directives, Section 11 Highlights



Remember Due Process Goal #3? Further the goals of RFA while protecting the health, safety, and well-being of children or NMD in care.

How? Create a system that is flexible, fair, respectful and child protective by including certain hearing procedures that are child and family friendly:

- 1) **§11-07: Child Hearsay Rule** (addresses testimony of children under age 12)
- 2) **§11-08: Exclusions on Evidence Regarding Alleged Victim** (e.g., protects victims of sexual abuse from unwarranted disclosure of their past sexual history).



RFA Due Process: Written Directives, Section 11 Highlights

§11-09: Applicability of Precedential Decisions

(The ALJ is required to apply the principles of the Department's Precedential Decision(s) if the facts or issues are similar to the matter at hand.

Why? Requiring ALJs to follow Dept. of Social Services laws and policies as set forth in the CDSS Precedential Decisions means consistent decisions that are child protective.)

RFA Due Process:

Written Directives, Section 11 Highlights

§11-11: Considerations of Rehabilitation and Good Character

[Incorporates the factors the Department's Caregiver Background Check Bureau (CBCB) and the counties already use for criminal record exemption matters, and also incorporates some of the case law in this area.]





Find More Helpful Info at CDSS extranet:

- <http://www.childsworld.ca.gov/PG3416.htm>
(RFA FAQs, Brochure, Overview)
- Note: ACL on SHD Hearing Procedures in progress
- Send RFA questions to: RFA@dss.ca.gov