

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 170-03-0040 and 170-03-0050 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license may obtain a stay of the effective date of the suspension only as set forth in this section.

(3) It shall be the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The licensee's request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension must be filed with the initial request for hearing, or by subsequent motion. The motion for stay, and documents and pleadings described in subsection (5) of this section, shall be served on the office of administrative hearings, and attorney general's office, by noon on the seventh day before the hearing, unless a shorter time is ordered. Reply affidavits or declarations shall be served on the licensee's attorney, or representative, by noon on the day prior to the hearing. If unrepresented, the reply affidavits or declarations shall be served on the licensee.

(5) The motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay shall be based on:

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The hearing officer shall not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion must be based on affidavits filed in support of or opposition to the motion to offer oral testimony.

(b) Oral testimony shall only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) Upon receipt of a motion for a stay, the ALJ shall schedule a hearing on the motion, not less than seven days from the date the request is received by the office of administrative hearings.

(8) The ALJ shall not grant the motion for stay unless the ALJ makes specific findings that the stay is in the public interest and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury if the stay is not granted;

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license; and

(d) Economic hardship of itself shall be an insufficient reason for a finding of irreparable injury under (b) of this subsection.

(9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion for stay, will expedite the hearing and decision on the merits.

(10) The decision on the motion for stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the motion for stay is mailed by OAH to the parties.

(11) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

[Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 13-21-111, § 170-03-0300, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW, RCW 34.05.220, chapter 34.05 RCW, 2006 c 265. WSR 08-06-102, § 170-03-0300, filed 3/5/08, effective 4/5/08.]