

WAC 110-03-0290 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a child care 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 110-03-0040, 110-03-0050, and 110-03-0280 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 is 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 may be filed at any time until there is a decision entered by the ALJ on the merits of the suspension. The motion for stay, and documents and pleadings described in subsection (5) of this section, must be filed with the office of administrative hearings and served on the attorney general's office by noon on the seventh day before the stay hearing. Reply affidavits or declarations must be served on the licensee and licensee's attorney or representative, by noon on the day prior to the hearing.

(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 must be based on:

- (a) Legal authority; and
- (b) Affidavits or declarations signed under penalty of perjury.

(6) The ALJ will 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 to offer oral testimony must be based on affidavits filed in support of or opposition to that motion.
- (b) Oral testimony will 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 must schedule a hearing on the motion, to occur no sooner than seven business days from the date the request is received by OAH.

(8) The ALJ must 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, more than economic hardship alone, if the stay is not granted; and
- (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.

(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 BOA at the request of either DCYF or the licensee. The request for review must be filed no later than seven business days after the decision is served on the parties by OAH.

(11) The review judge must promptly determine a request for review. The review judge's decision on the request for review of the ALJ's decision on a motion for stay is not subject to judicial review.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0290, filed 12/19/19, effective 1/19/20.]