

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 14    JUVENILE JUSTICE**  
**PART 15        NEW MEXICO JUVENILE DETENTION REQUIREMENTS**

**8.14.15.1            ISSUING AGENCY:** Children, Youth and Families Department.  
[8.14.15.1 NMAC - N, 7/31/01]

**8.14.15.2            SCOPE:** This rule applies to all New Mexico juvenile detention centers operating under the certification of the Children, Youth and Families Department.  
[8.14.15.2 NMAC - N, 7/31/01]

**8.14.15.3            STATUTORY AUTHORITY:** Section 32A-2-4 NMSA 1978, as amended.  
[8.14.15.3 NMAC - N, 7/31/01]

**8.14.15.4            DURATION:** Permanent.  
[8.14.15.4 NMAC - N, 7/31/01]

**8.14.15.5            EFFECTIVE DATE:** July 31, 2001  
[8.14.15.5 NMAC - N, 7/31/01]

**8.14.15.6            OBJECTIVE:** The purpose of these rules and regulations is to promulgate standards for the maintenance and operation of all juvenile detention facilities including standards for the site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all juvenile detention facilities in the State meeting the standards promulgated.  
[8.14.15.6 NMAC - N, 7/31/01]

**8.14.15.7            DEFINITIONS:**

A.        **“action plan”** means a written document in response to a sanction submitted by the facility to the department for approval which states those actions that the program implements, with specific time frames and responsible parties for each, to correct the deficiencies found by the department in the previous on-site visit or review of documents.

B.        **“adjudicate”** means to make a finding of whether a child committed a delinquent act.

C.        **“administrator”** means the person in charge of the daily operation of the facility. The administrator may be the person named on the certification or an authorized representative of the applicant and/or designee.

D.        **“annual certification”** is an authorization to a facility to operate for a one year period of time. The effective date is noted on the face of the document. The annual certification is issued on an initial and renewal basis following investigation of an initial application for certification and/or the inspection of the facility by the department, unless a complaint is received during the certification period that warrants the issuance of a sanction.

E.        **“appearances”** means the act of the hearing officer in recording, for the record, the names of person(s) appearing at the hearing and their representatives, if any.

F.        **“appellant”** means the party seeking review of a final decision of the department.

G.        **“applicant”** means the county, municipality or other facility operator, in whose name a certification for a facility has been issued and who is legally responsible for compliance with applicable laws, standards or regulations.

H.        **“application”** means the forms, attachments and other writings and drawings required to be completed as part of the process of granting or denying an annual certification or provisional certification.

I.        **“authority”** means the New Mexico Children’s Code, Section 32A-2-5; 32A-2-9; 32A-2-11 as amended.

J.        **“burden of proof”** the burden of persuasion is on the party to convince the hearing officer of all elements of the case by a preponderance of the evidence.

K.        **“capacity”** means the number of beds available to the facility as established through certification standards without a waiver provision.

L.        **“certification”** means the document issued by the department which authorizes the operation of a facility pursuant to certification standards. The term “certification” may include an annual certification and

provisional certification.

M. **“collocated facility”** means a facility located within or as part of or on the same immediate grounds of an existing county or municipal jail, or courthouse, which contains a jail, provided that all federal and state requirements for a collocated facility are met. No facility that is not an existing collocated facility, as of December 31, 1993, shall be certified as a collocated facility after that date.

N. **“deficiency”** means a violation of, or failure to, comply with a provision(s) of these regulations.

O. **“denial of an application and denial of annual certification”** means action by the department refusing to grant an annual certification or provisional certification.

P. **“department”** means the New Mexico Children, Youth and Families Department.

Q. **“detention screening tool”** means the instrument used to guide the detention decision.

R. **“direct care staff”** means an employee of the facility who provides supervision, security, custody and control of facility residents; this excludes contractual personnel and volunteers.

S. **“directed action plan”** means an action plan related to a sanction that the department writes and specifies that the facility must enforce within the specific time frame.

T. **“direct supervision”** means direct care staff who provide direct supervision, observation, interaction and programming by being physically present with juveniles at all times.

U. **“director”** means the Director of the Juvenile Justice Division of the New Mexico Children, Youth and Families Department.

V. **“emergency suspension of certification”** means the department’s prohibition of operation of a facility for a stated period of time by temporary withdrawal of the certification, prior to a hearing on the matter, when immediate action is required to protect human health and safety.

W. **“facility”** means all juvenile detention facilities required to be certified by the department by authority of the New Mexico Children’s Code, Section 32A-2-4, NMSA 1978, as amended.

X. **“final decision”** means the written document following a hearing, stating the final determination of the secretary.

Y. **“five-day hearing”** means the hearing noted in the emergency suspension order and notice of hearing. See the definition of “emergency suspension of certification” above.

Z. **“health and safety deficiencies”** means non-compliance with any standard which relates to conditions or circumstances leading to death, physical harm, or psychological harm to recipient(s) of services or any pervasive conditions that pose a threat to the physical safety of occupants, or any pervasive neglect of residents or abuse of residents or the pervasive detainment of status offenders.

AA. **“hearing officer”** means a person the secretary designates to conduct pre-hearing conferences, hearings, and issue reports and recommendations, based on the information produced at the hearing.

BB. **“imminent danger”** means a danger which could reasonably be expected to cause death or serious harm to detained juveniles or staff and which requires immediate correction.

CC. **“inspection”** means an entry into, and examination of the facility’s premises, records, including staff interviews, interviews with juveniles, and any relevant information needed to show compliance with these standards.

DD. **“juvenile”** means any person who is less than eighteen (18) years old.

EE. **“certifying authority”** means the Children, Youth and Families Department.

FF. **“long term”** means a separate or collocated facility certified to detain juveniles for longer than a (72) hour period.

GG. **“maintenance”** means the care of building(s), by keeping them in a repaired and safe condition and the grounds in a safe, sanitary and presentable condition.

HH. **“management”** means the juvenile detention center manager, supervisor, superintendent or administrator.

II. **“official notice”** means information concerning the status of a facility’s certification.

JJ. **“partial compliance”** means that a facility is found to meet the conditions of participation, with moderate to few non-health and safety deficiencies and is able to receive a temporary certification so long as the implementation of a corrective action plan is achieved.

KK. **“prospective applicant”** means the county, municipality or other facility operator, in whose name a certification for operation of a facility is submitted. The prospective applicant may be represented by the administrator or supervisor of the facility.

LL. **“provisional certification”** means a temporary certification, not to exceed two (2) consecutive one hundred twenty (120) day provisional certifications, to operate a facility.

- MM. **“recipient”** means the person or entity who receives service of notice.
- NN. **“revocation of certification”** means the department’s prohibition of operation of a facility by withdrawal of a certification.
- OO. **“sanctions”** means a measure imposed by the department for a violation(s) of certification standards.
- PP. **“standard of compliance”** means the degree of compliance required by these regulations is designated by the use of the words shall and must and may. Shall and must designate mandatory requirements that may not be waived. May is permissive and designates other requirements that may be determined to be non-applicable by the department.
- QQ. **“secretary”** means the secretary of the New Mexico Children, Youth and Families Department.
- RR. **“serious incident”** means environmental hazards, arrest or detention or situations that require emergency services. Environmental hazards include unsafe conditions which create immediate threat to life or safety, including but not limited to fire and contagious disease requiring quarantine. Emergency services include unanticipated admission to a hospital, other psychiatric facility, or the provision of emergency services including, but not limited to, treatment for broken bones, cuts requiring sutures, poisoning, contagious diseases requiring quarantine, burns requiring specialized medical treatment, medication under-dose or overdose requiring treatment, or incidents between residents or residents and staff resulting in physical or psychological harm or which could result in psychological harm, or a confrontation between staff(s) or resident(s) that results in any restraint, use of force or behavior-management technique, or other conditions requiring specialized treatment at an urgent care center, emergency room or by EMS.
- SS. **“severability”** means if any part or application of these regulations is held invalid, the remainder or its application to other situations or persons shall not be effected.
- TT. **“six (6) hour certification”** means a certified facility that may only detain juveniles for no more than a six (6) hour period for the purpose of arranging transportation and/or release.
- UU. **“forty-eight (48) hour certification”** means a certified facility that may only detain juveniles for no more than forty-eight (48) hour period for the purpose of arranging transportation and/or release.
- VV. **“status offender”** means a runaway, a truant, and/or a juvenile who has committed a status offense that is not classified a delinquent act (exception: out-of-state runaway juveniles as mandated by state and/or federal law).
- WW. **“substantial compliance”** means that a facility is found to meet the Conditions of Participation, without deficiencies, or with minor to few non-health and safety deficiencies, and is able to receive Full Certification.
- XX. **“suspension of certification”** means the Department’s prohibition of operation of a facility for a stated period of time through withdrawal of the certification, after notice and an opportunity for a hearing.
- YY. **“supervision”** means the direct observation and guidance by adult staff at all times by being physically present with the juveniles and/or through video monitoring with direct observation.
- ZZ. **“usage”** means the masculine pronoun includes the feminine and neuter, and, the singular number includes the plural and the plural includes the singular.
- AAA. **“waiver”** means a temporary or provisional certification to operate a facility which is in non-conformance with the Standards for a period of time set by the Secretary. A waiver from the Department may be granted to a facility for up to two (2) years only. Any request for a waiver for re-certification of a waiver, denied by the Department is not subject to the hearing process and procedures.
- BBB. **“working days”** means when determining compliance with various deadlines in these regulations, Monday through Friday, of each calendar week, excluding state observed holidays.
- [8.14.15.7 NMAC - N, 7/31/01]

#### **8.14.15.8 LEGAL AUTHORITY**

- A. The following regulations are promulgated by the New Mexico Children, Youth and Families Department pursuant to 32A-2-4, N.M.S.A 1978 comp. as amended. These are rules and regulations concerning the basic operations of juvenile detention centers in New Mexico.
- B. Administration and Enforcement Responsibility: The Department shall have access to the administrator or designee and the facility for inspection of the facility for compliance with these regulations and standards, upon appropriate identification.
- C. All secure juvenile detention facilities must comply with Department Standards and these rules and regulations. Compliance is determined during annual inspections or more frequently when warranted.

D. The facility shall meet all applicable certification requirements, and applicable state and federal laws.

E. Confidentiality: Written policy and procedure shall provide that records are safeguarded from unauthorized and improper disclosure. Manual records are marked "confidential" and kept in locked files that are also marked "confidential". Written policy and procedure provide that when any part of the information system is computerized, confidentiality of records is maintained.

[8.14.15.8 NMAC - N, 7/31/010]

#### **8.14.15.9 STANDARDS**

A. Standards for detention facilities shall be promulgated by publishing notice of the proposed adoption of new or revised standards in the Albuquerque Journal and Las Cruces Sun News at least twenty (20) days before the date of a public hearing.

B. The notice shall comply with NM rules and regulations for the adoption of such standards. At a minimum, the notice shall consist of where the proposed Standards may be obtained, location of public hearing, the dates and time of such hearing and the proposed adoption date of the Standards. The public hearing shall be held in Santa Fe, New Mexico.

[8.14.15.9 NMAC - N, 7/31/01]

#### **8.14.15.10 GENERAL PROVISIONS**

##### **A. TYPES OF CERTIFICATIONS**

(1) FULL CERTIFICATION: Is granted to a facility currently serving clients and determined to be in substantial compliance with the Certification Standards. If there are minor to few non-health and safety standards deficiencies, the Department directs a facility to correct deficiencies through the submission of a Department approved Action Plan within the time frame specified. The program produces proof of correction through submission of appropriate and relevant documentation or by subsequent on-site review. This certification status lasts for twelve (12) months and is renewed prior to the expiration date.

(2) PROVISIONAL (TEMPORARY) CERTIFICATION: Is granted to a facility determined to be in partial compliance with the certification standards.

B. A temporary certificate covers, depending upon the severity/chronicity of the deficiencies and at the discretion of the Department, any period of time up to one hundred twenty (120) days. During this certification period the facility meets the Conditions of Participation. The facility also submits an Action Plan within fourteen (14) days of receipt of the Department certification report. The Department approves the action plan. The facility is then either inspected on-site again, or is required to submit proof of correction through submission of appropriate and relevant documentation within the time frame the Department specifies.

C. If the facility does not meet certification requirements at the end of the temporary certification period, a sanction is imposed along with a second temporary certification or the temporary certification expires. Only two (2) consecutive temporary certifications are granted.

D. RENEWAL: Applicant must submit a request for certification, or renewal of certification to the Director upon the forms approved by the Department. Applications for renewal of certification must be submitted one month prior to date of expiration.

E. AMENDED CERTIFICATE: Is granted to facilities currently serving clients that has a change of applicant. The new applicant applies to the Department for an amended certificate. The existing expiration date applies.

(1) A request for an amended certificate is submitted in writing to the Director upon the forms approved by the Department.

(2) A request for an amended certificate is submitted within ten (10) working days of the change.

F. No juvenile detention may operate unless certification is received.

##### **G. TYPES OF SANCTIONS**

(1) Action Plan with monitoring. The Department directs a Facility to correct deficiencies within the time frame specified by the Department through the submission of an Action Plan. At the discretion of the Department, the Action Plan can be written by the Facility and approved by the Department or it may be a Directed Action Plan that the Department writes and is enforced by the Facility within the time frame specified by the Department. The Facility produces proof of correction through submission of appropriate and relevant documentation. The Department may conduct an on-site inspection to review the Facility with emphasis on the previously noted deficiencies. An Action Plan may involve the appointment of a monitor who determines

compliance with the action plan and if corrective steps are taken to remedy violation of a systematic level. The detention facility pays for all costs associated with the process. The monitor will be selected by the Department

(2) **Denial of Certification:** The Department denies initial certification, renewal of certification or revokes the certification based on existing and or history of violations of the Standards. A facility may not apply for certification for a period of six (6) months after denial of certification.

(3) **Emergency Suspension:** The Departments suspends certification immediately based on health and safety deficiencies.

(4) **Letter of Correction:** A letter informing a Facility of deficiencies that are to be corrected before the next inspection and which a sanction was not imposed at the time of initial inspection.

(5) **Suspension:** The Department suspends certification for a specified period of time pending correction of deficiencies.

H. **CONSIDERATION FOR IMPOSITIONS OF SANCTIONS**

(1) health and safety of juveniles and staff,  
(2) abuse, neglect or exploitation of juveniles,  
(3) regulatory violations which immediately affect the health and safety of the juveniles,  
(4) number of violations of standards,  
(5) repetitive violations of standards, does not have to be on consecutive inspections,  
(6) failure to correct violations found on previous visits in which a sanction was not imposed but a letter of correction was issued,

(7) history of non-compliance,  
(8) non-disclosure and or deceit regarding condition of facility, records or services provided, and  
(9) violation of Standards.

I. In the event of closure of a detention facility is proposed, the detention facility shall cooperate with the orderly transfer of residents, provide all records related to the resident to CYFD, and fully cooperate with any instruction from the Department.

[8.14.15.10 NMAC - N, 7/31/01]

**8.14.15.11 SERVICE OF NOTICE:** The Department provides notification by fax and certified mail or personal service of its imposition of any sanction against a Facility. Notification of other actions contemplated under the regulations may be by fax, mail or personal service.

[8.14.15.11 NMAC - N, 7/31/01]

**8.14.15.12 RIGHT TO APPEAL:** The Facility may appeal the Department's action of imposition of any sanction except a Letter of Correction. The Department shall appoint a hearing officer to conduct an administrative appeal. Appeals shall be governed by the Hearing Process and Procedure section of these rules and regulations.

[8.14.15.12 NMAC - N, 7/31/01]

**8.14.15.13 TIME TO APPEAL:** To secure an administrative appeal, the Facility must make a request for hearing in writing within ten (10) working days after the facility received the Department's notice. A facility is deemed to receive notice of a sanction within three (3) days of the mailing.

[8.14.15.13 NMAC - N, 7/31/01]

**8.14.15.14 INSPECTION OF FACILITIES:** Inspections: the Department may inspect any detention facility located in this state with or without prior notice. Each detention facility provides full and prompt access of all segments of the facility, to all residents, to all employees, and to all records. In the event that such an inspection results in a violation of any provision of the Department's detention regulations or standards, a violation of the detention facility policies and procedures, then a sanction may be imposed. Any sanction issued under this section of the detention regulations or standards that is related to a health and safety violation or any condition endangering any youth or resident or staff, if not corrected promptly and in a systematic way to prevent the reoccurrence of such violations, may be identified as an emergency. An emergency permits the immediate implementation of any and all remedies outlined in the Department's detention standards and regulations.

[8.14.15.14 NMAC - N, 7/31/01]

**8.14.15.15 HEARING PROCESS AND PROCEDURE**

A. Right to a hearing: in the event a sanction is imposed, the Children, Youth and Families

Department provides the detention facility with a written notice of the intent to impose a sanction. The notice of sanction is provided as soon as possible after the discovery of the violation, but in no event later than thirty (30) days from the date of the last inspection conducted. A request for a hearing does not act as a stay of any sanction imposed, unless agreed to by all the parties and such an agreement is reduced to writing.

B. If a review of a sanction is requested, the detention facility shall send written notice within ten (10) working days to : Director, Juvenile Justice Division, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160. The Children, Youth and Families Department appoints a hearing officer to conduct an evidentiary hearing within thirty (30) days. The hearing officer issues a written decision to the Secretary of the Children, Youth and Families Department within fifteen (15) days of the date of the hearing. The Secretary of the Children, Youth and Families Department issues a formal acceptance or rejection of the hearing officer's decision within ten (10) days. In the event the Secretary rejects the finding of the hearing officer, the Secretary provides notice of the specific findings or conclusions rejected and the facts from the record supporting such rejection. Any appeal from this administrative determination if filed in accordance with NMSA 1978 39-3-1.1 (1999). Any deadline in this hearing process may be extended by agreement of the parties and noted in writing.

C. Initiation of hearing process: the hearing process is begun upon receipt by the Department of a timely request for hearing, or, in the case of a pre-hearing suspension of certification, by service upon the facility of an emergency suspension order and notice of hearing.

D. Request for hearing:

- (1) Shall be: Made in writing; and shall be signed;
- (2) By the applicant, and/or;
- (3) By the applicant or an authorized representative, including but not limited to the administrator or director of the facility, in the case of an emergency suspension, suspension or revocation.

Delivery. The request for hearing shall be addressed to the Director of the Juvenile Justice Division of the New Mexico, Children, Youth and Families Department, and hand delivered or by certified mail to the office of the Director at the Department's offices located at the PERA Building, Juvenile Justice Division, or PO Drawer 5160, Santa Fe, NM, 87502-5160.

(4) Timeliness. In order to be timely, the request for hearing must be received by the Department within ten (10) working days after receipt by the renewal applicant of notice of the decision denying the certification renewal: if mailed, it must be postmarked within the ten (10) day period.

(5) Department's responsibility following receipt of request for hearing scheduling appointment of hearing officer. Upon receipt of a timely request for hearing the Department shall schedule a hearing to be held in Santa Fe and appoint a hearing officer.

(6) Hearing date. The hearing date shall be no later than thirty (30) days after receipt of a timely request for hearing by the Department, unless the hearing officer extends the time limitations based upon just cause.

(7) Notice. The hearing officer shall, not less than fifteen (15) days prior to the date set for hearing, notify the facility, or recipient of the:

- (a) Date, time and place for the hearing;
- (b) Identity of the hearing officer;
- (c) Subject matter of the hearing;
- (d) Regulations claimed violated, and
- (e) Service of notice. Notice shall be written and made by certified mail.

E. Hearing Officer: all administrative hearings are conducted by a hearing officer appointed by the Secretary or his/her designee.

F. Qualifications of the hearing officer: the hearing officer may be an employee of the Children, Youth and Families Department but may not have been involved, directly or indirectly, with the administrative decision at issue. The hearing officer need not be a licensed attorney.

G. Disqualification of the hearing officer: A hearing officer does not participate in any proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party. The hearing officer can only be removed for good cause. Any party seeking to recuse the hearing officer must file a motion with the officer within seven (7) days of receipt of the initial communication from the hearing officer, setting forth the grounds for disqualification and accompanied by all supporting reasons, affidavits, and authorities. The hearing officer rules on the request to disqualify, and an appeal of the ruling may be made to the Secretary within seven days of the ruling. The Secretary promptly determines the validity of the grounds alleged and takes any appropriate action. A written request to disqualify and an appeal of the hearing officer's ruling on the matter tolls any applicable timetable for completion of the proceedings.

H. Duties of the hearing officer: upon appointment, the hearing officer establishes an official file which contain all the filed notices, pleadings, briefs, recommendations, correspondence and decisions. It shall also contain the Department's initial action, as well as the request for hearing. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall turn over to the Department this official file for future custody.

I. The hearing officer shall preside over the hearing, administer oaths, take evidence and rule on matters that arise prior to and at the hearing.

J. Appearances and filing:

(1) Parties may enter an appearance on their own behalf or be represented by an attorney licensed to practice in New Mexico.

(2) Entities. The Department, other organizations and entities may appear by a bona fide officer, employee or may be represented by an attorney licensed to practice in New Mexico at their own cost and expense.

K. Filing: any party filing documents in the appeal shall sign the original and hand deliver or mail it to the hearing officer, and shall hand deliver or mail copies to all other parties.

L. Pre-hearing conference: Purpose: a pre-hearing conference is scheduled at a time reasonably convenient to all parties, in order to:

(1) Identify issues;

(2) Identify admissions of fact or stipulations;

(3) Set discovery plan;

(4) Identify witnesses; and

(5) Notice: the hearing officer will give notice of the time and place of the pre-hearing conference to the parties by telephone, in person or by mail.

M. Costs: each party shall bear its own costs, including transportation costs, and attorney fees.

N. Informal: either party may request an informal resolution conference to try to establish a corrective action plan addressing the areas of non-compliance identified in its notice of sanction. The informal conference does not stay any hearing, unless the parties agree to a stay and so notify the hearing officer, in writing of this agreement. No offer of settlement made at the conference shall be admissible evidence at a later hearing. No record shall be made of informal conference.

O. Settlement: any settlement reached between the parties is written, signed by the hearing officer and the parties or their attorneys, and submitted to the Secretary. The Secretary approves the settlement agreement.

P. Postponement or continuance: the hearing officer may postpone or continue a hearing upon his own motion or upon motion of a party, for good cause shown.

(1) Notice. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties.

(2) Limits. No more than two (2) thirty (30) day postponements or continuances shall be granted for a pre-hearing conference or appeal hearing.

Q. Conduct of the hearing: Public: all hearings are open to the public. If it is necessary to use the names of children or employees of the detention facility, the hearing officer directs the parties to develop a process to prevent the disclosure of the full identity of the child or employee.

R. Authority and responsibility of hearing officer. The hearing officer has all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to:

(1) Administration of oaths;

(2) Examine witnesses and direct witnesses to testify; limit repetitions and cumulative testimony; and set reasonable limits on the amount of time each witness may testify;

(3) Take such evidence as may be necessary to resolve the appeal;

(4) Conduct pre-hearing conferences;

(5) Make findings of fact and conclusions of law, opinions, decisions and recommendations and,

(6) Record proceedings.

S. Order of presentation should be the same for all adverse actions:

(1) Opening of proceeding and taking of appearances by the hearing officer;

(2) Opening statement of the Department;

(3) Facility's opening statement;

(4) Department's case-in-chief;

(5) Facility's case-in-chief;

- (6) Department's rebuttal;
- (7) Department's closing statement;
- (8) Facility's closing statements;
- (9) Closing proceedings by the hearing officer and
- (10) Disposition by the hearing officer on the merits of the hearing.
- T. Hearing decision must be in writing.
- U. Burden of Proof. The Department must prove that the action proposed in the notice of sanction is supported by a preponderance of evidence.
- V. Evidence: the hearing is conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the State of New Mexico. However, in order to support the Secretary's decisions, there must be a residuum of legally competent evidence.
- W. Record: Content: the record of a proceeding under these regulations includes tape recording of proceedings, all documents the hearing officer marks into evidence during the hearing, including orders the hearing officer issues, the notice of Department sanctions, findings of fact and conclusions of law, recommendations of the hearing officer, and the final decision of the Secretary. Any records produced during the hearing are public records provided that all identifying information concerning children is redacted.
- X. Report and recommendation of hearing officer: hearing officer's report contains:
  - (1) The notice of sanction proposed;
  - (2) Findings of fact and conclusions of law;
  - (3) Findings of fact are based on the evidence presented at the hearing;
  - (4) The standard is the best interest of the child to be placed in a detention facility. Best interest means whether the violations in the notice of sanction pose a risk to their health and safety;
  - (5) Recommended determination;
  - (6) Proposed findings and conclusions; and
  - (7) The hearing officer may request the parties to submit proposed findings of fact, and conclusions of law.
- Y. Review by department:
  - (1) The hearing officer's recommendation and all records are submitted to the Secretary of the New Mexico Children, Youth and Families Department for final determination.
  - (2) Entry of decision: The hearing officer submits the recommendation to the Secretary within fifteen (15) of the conclusion of the hearing. If the hearing officer fails to render a timely decision, the parties submit a letter to the Secretary. The Secretary issues a directive to command the hearing officer to issue a recommendation.
  - (3) Final decision: the Secretary of the New Mexico Children, Youth and Families Department accepts or rejects the hearing officers recommendation within ten (10) working days.
  - (4) The Secretary's decision represents the final action of the Children, Youth and Families Department. Failure of the facility or recipient of any order to appear on the date and at the time set for any hearing, without good cause shown, constitutes a default with the notice of sanction operating as proof of violations warranting the proposed action.
  - (5) Service: service of any notice of sanction is accomplished through regular mail. All notices mailed are deemed received within three (3) days of the postmark. In the event of an emergency sanction, service may be accomplished through fax, with the fax receipt serving as proof of transmittal. The notice of sanction may be transmitted electronically with the receipt from the electronic posting serving as proof.

[8.14.15.15 NMAC - N, 7/31/01]

#### **8.14.15.16 JUDICIAL REVIEW OF ADMINISTRATIVE DECISION**

- A. In the event of an appeal to state district court, Rule 1-077 is followed.
- B. Record Proper:
  - (1) The hearing officer is responsible for creating the record proper.
  - (2) All exhibits admitted into evidence, orders, submissions or motions the parties file and tapes or other transcripts of the hearing compose the record proper.
  - (3) The expense of copying tape recorded testimony and any other expense of preparing the record, including accompanying costs, are the appellant's responsibility.
  - (4) The appellant certifies in the pleadings filed with the court that arrangements have been made for preparation of the record proper. Within thirty (30) days after service of the appeal, the Department files a certified copy of the original and two duplicate copies of the tapes of the hearing under review together with the original and



two (2) copies of the official file maintained and certified by the hearing officer.

(5) In the event the judicial appeal involves a request for injunctive relief by either party, the Department files a certified copy of the original and two (2) duplicate copies of the tapes of the hearing under review together with the original and two (2) copies of the official file maintained and certified by the hearing officer within ten (10) days after service of the notice of judicial appeal.

C. Court ordered stay: Filing for judicial review does not stay enforcement of the final decision. A motion in state district court is filed concerning any issuance of a stay. Safety of the residents in the facility is the primary consideration when a stay is requested.

[8.14.15.16 NMAC - N, 7/31/01]

**HISTORY OF 8.14.15 NMAC:** The material in this part was derived from that previously filed with the state Records Center and Archives under:

DOC 73-1, Facilities for the Detention of Children Minimum Standards, 6-29-73;

SIB 81-1, Local Facilities for the Detention of Children Standards, 4-1-82;

YA JFD 100, Legal Authority, Related Regulations And Definitions, 6-24-91;

YA JFD 200, Hearing Process and Procedures, 6-24-91;

YA JFD 300, Judicial Review Of Administrative Decisions, 6-24-91;

**HISTORY OF REPEALED MATERIAL:**

YA JFD 100, Legal Authority, Related Regulations And Definitions - Repealed, 7-31-01;

YA:JFD 200, Hearing Process and Procedures - Repealed, 7-31-01;

YA JFD 300, Judicial Review Of Administrative Decisions - Repealed, 7-31-01;