

TITLE 22: COURTS

CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE

PART 9: PARENTAL RESPONSIBILITY ACT HEARINGS

22.600.9.1 ISSUING AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.9.1 NMAC - N, 2/1/2018]

22.600.9.2 SCOPE: This part applies to all persons and parties subject to driver's license suspension action pursuant to the New Mexico Parental Responsibility Act.
[22.600.9.2 NMAC - N, 2/1/2018]

22.600.9.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.9.3 NMAC - N, 2/1/2018]

22.600.9.4 DURATION: Permanent.
[22.600.9.4 NMAC - N, 2/1/2018]

22.600.9.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.9.5 NMAC - N, 2/1/2018]

22.600.9.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the hearing provisions under the Parental Responsibility Act and the Administrative Hearings Office Act.
[22.600.9.6 NMAC - N, 2/1/2018]

22.600.9.7 DEFINITIONS: As used in 22.600.5 NMAC:

- A. "Administrative hearings office"** is the agency established under Section 7-1B-1 NMSA 1978.
- B. "Certificate of compliance"** means a certified statement from HSD stating that a licensee is in compliance with a judgment and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.
- C. "Chief hearing officer"** is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.
- D. "Hearing officer"** is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.
- E. "HSD"** means the child support enforcement division of the New Mexico human services department.
- F. "License"** means an individual driver's license or a commercial driver's license.
- G. "Licensee"** means the person challenging the proposed suspension of their driving privileges for an alleged violation of the Parental Responsibility Act.
- H. "MVD"** is the motor vehicle division of the New Mexico taxation and revenue department.
- I. "Notice of intent to suspend driver's license and right to a hearing"** means a written statement that MVD intends to suspend or not renew a driver's license, the basis for the proposed suspension, and the process afforded a licensee by MVD or HSD.
[22.600.9.7 NMAC - N, 2/1/2018]

22.600.9.8 REQUEST FOR HEARING AND SUBMISSION OF REFERRAL TO THE ADMINISTRATIVE HEARINGS OFFICE FOR CONDUCT OF A HEARING:

A. Requests for hearing from a licensee must be submitted to MVD within 30 days from the date notice of intent to suspend driver's license and right to a hearing was mailed. The request may be mailed to parental responsibility hearings, P.O. Box 630, Santa Fe, New Mexico 87504-0630, or delivered in person to the legal services bureau, Joseph M. Montoya building, 1100 S. St. Francis Drive, Suite 1100, Santa Fe, New Mexico. Incomplete requests or requests received after this time will not be honored by MVD. Timeliness of the request shall be determined either by the date of actual delivery to MVD's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U. S. postal service. The administrative hearings office, which is a separate and distinct agency from MVD, lacks authority under the statute to accept a request for hearing directly from a licensee. While the administrative hearings office will make reasonable efforts to forward any hearing requests incorrectly submitted to it rather than MVD, the administrative hearings officer will not be held liable for the licensee's initial error in filing the request with the wrong entity in terms of timeliness of the request for hearing.

B. Upon receipt of a timely, complete request for hearing, MVD shall promptly transmit, submit or file a referral for hearing to the administrative hearings office in a method and manner required by the administrative hearings office. At a minimum, any referral for hearing by MVD should include the notice of intent to suspend driver's license and right to a hearing, a copy of the controlling court order from HSD, licensee's request for hearing, the licensee's address of record with MVD if different than what was listed on the licensee's request for hearing, and any entry of appearance filed by an attorney on behalf of the licensee. Administrative hearings office staff may reject any hearing referral received from MVD that does not include the minimum requested information until MVD provides the required information.

C. After initial submission of a referral for hearing with the administrative hearings office, MVD shall have a continuing duty to forward any additional information received in the case to the administrative hearings office for inclusion in the case file, including but not limited to, any subsequent entry of appearance received from an attorney on behalf of a licensee, any supplemental evidence received, or any certificate of compliance issued in the case.

D. Upon receipt of a complete referral for hearing, the chief hearing officer or staff designated by the chief hearing officer will promptly assign the matter to a hearing officer to be heard.
[22.600.9.8 NMAC - N, 2/1/2018]

22.600.9.9 HEARINGS UNDER THE PARENTAL RESPONSIBILITY ACT:

A. The hearing shall be held within 90 days from the date of the referral of the case by MVD the administrative hearings office.

B. Because of the limited and simple issues involved in the proceeding, all license suspension hearings regarding the Parental Responsibility Act will be held by telephone unless the hearing officer, at their sole discretion, determines that an in-person hearing is required.

C. The administrative hearings office shall provide notice to the licensee and HSD of the hearing date and time.

(1) This notice will be directed to the address contained in the request for a hearing or, if no return address is indicated, to the address last given by the licensee to MVD pursuant to Section 66-5-22 NMSA 1978 or to the address provided by licensee's counsel in the entry of appearance. Such notice of hearing will be sent a minimum of seven calendar days before the scheduled hearing consistent with Section 66-2-11 NMSA 1978. A licensee, or their representative, has a continuing, ongoing obligation through final issuance of a decision and order resolving the case to provide the administrative hearings office with any change of address information.

(2) HSD shall designate one person to receive all notices of hearing pursuant to the Parental Responsibility Act. The notice shall be mailed to HSD at the address and to the attention of the person designated by HSD. HSD shall be responsible for ensuring the appearance of HSD's witnesses at the hearing. HSD shall immediately inform the administrative hearings office of any change in the designated person or address.

D. Only the licensee, or in the case of a minor under the age of 18, the licensee's legal parent(s) or guardian(s), or an attorney licensed or authorized to practice law in New Mexico may represent the licensee at hearing. In order to prevent the unauthorized practice of law, any attorney not licensed to practice law in New Mexico must comply with applicable New Mexico supreme court pro hac vice rules in order to represent the person at the hearing. Any attorney wishing to represent a party must file a formal written entry of appearance directly with the administrative hearings office listing their mailing address, a fax number (if any), and a valid email address. Any attorney wishing to substitute for a previous attorney must file a substitution of counsel containing the same

information required in the initial entry of appearance. Upon withdrawal of representation, consistent with the rules of professional conduct, the attorney shall give reasonable notice of the date and time of the scheduled hearing to the party and allow time for the party to retain other counsel, if needed. A hearing officer may deny a request for withdrawal of representation only when withdrawal would have a clear, materially adverse effect on the party's interests and impede the conduct of a full, fair, and efficient hearing.

E. Hearings shall be closed to the public except upon request of the licensee.

F. At request of either party, or upon the hearing officer's own initiative, hearings may be postponed or continued at the discretion of the hearing officer and upon a showing of good cause. The hearing officer shall consider only those requests made in writing at least three working days prior to the scheduled hearing absent extraordinary circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling unit or the chief hearing officer may grant or deny the request on behalf of the hearing officer.

G. In all hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. Hearsay evidence may be considered and admitted into the record.

H. In hearings before the hearing officer, the rules of civil procedure for the district courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, or require written expositions of the case as the circumstances justify, and shall render a decision according to the law and the evidence presented and admitted.

I. The hearing officer shall make and preserve a record of the proceedings.

J. Failure of a licensee to appear shall be treated as an abandonment of the right to a hearing and shall result in the suspension of the licensee's driving privileges.

K. A certificate of compliance applicable to the order for support in dispute issued to the licensee within 30 days of the scheduled hearing shall be presumptive proof that the licensee is in compliance. HSD may present evidence to rebut the presumption.

L. The hearing officer, within 30 days of the hearing, shall issue a decision granting or denying the relief requested or granting such part thereof as seems appropriate and shall inform the party's of the right to and the requirements for perfection of, an appeal to the district court and of the consequences of a failure to appeal.
[22.600.9.9 NMAC - N, 2/1/2018]

22.600.9.10 ISSUES: The issues to be decided at the hearing are limited to whether:

A. the licensee is in compliance with a judgment and order for support;

B. the licensee is in compliance with a subpoena or warrants relating to paternity or child support proceedings; or

C. the licensee is the person whose name appears on the certified list sent to MVD from HSD.

[22.600.9.10 NMAC - N, 2/1/2018]

22.600.9.11 EVIDENCE AND PROOF:

A. In any hearing under this part, relevant evidence shall be limited to the following:

(1) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(2) evidence of compliance or non-compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings;

(3) evidence that the licensee is not the same person as the person whose name appears on the certified list of obligors sent to MVD by HSD; and

(4) a copy of the relevant judgment or order of support, subpoena, or warranted to paternity or child support proceedings.

B. In lieu of a hearing, a licensee may present a valid certificate of compliance to any MVD field office, pay all applicable fees and have the license reinstated. The administrative hearings office, upon receiving a certificate of compliance from HSD pertaining to a licensee whose hearing is still pending, shall issue an order dismissing the suspension and vacating the hearing.

[22.600.9.11 NMAC - N, 2/1/2018]

22.600.9.12 ORDER: An order entered solely because the licensee is not in compliance with the judgment and order for support or not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, shall provide that the license is to be reinstated upon presentation of a subsequent certificate of compliance to MVD and payment of applicable fees. MVD may order additional reasonable conditions necessary to compel compliance with MVD requirements for reapplication or reinstatement of lapsed licenses.
[22.600.9.12 NMAC - N, 2/1/2018]

22.600.9.13 APPEALS: All appeals shall be filed in accordance with Section 39-1-1.1 NMSA 1978 and Rule 1-074 of the rules of civil procedure for the district courts.
[22.600.9.13 NMAC - N, 2/1/2018]

HISTORY of 22.600.9 NMAC: [RESERVED]