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**WELFARE AND INSTITUTIONS CODE - WIC**

**DIVISION 9. PUBLIC SOCIAL SERVICES [10000 - 18999.98]** ( Division 9 added by Stats. 1965, Ch. 1784. )

**PART 1.8. Child Care and Development Services Act [10207 - 10492.2]** ( Part 1.8 added by Stats. 2021, Ch. 116, Sec. 260. )

**CHAPTER 23. Administrative Review [10390 - 10402]** ( Chapter 23 added by Stats. 2021, Ch. 116, Sec. 260. )

**10390.** It is the intent of the Legislature to authorize an appeal process for the resolution of disputes between the department and local agencies which contract with the department to provide child care and development services or to furnish property, facilities, personnel, supplies, equipment and administrative services.

(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)

**10391.** (a) The department shall provide an internal appeal procedure to resolve a dispute between the department and a contracting agency providing child care and development services pursuant to Section 10268.5 regarding the interpretation or application of a term or condition of a contract, or to dispute a finding made by the department resulting from a fiscal or programmatic review, including, but not limited to, an error rate notification.

(b) A contracting agency shall have the right to appeal the findings of a fiscal or programmatic review, including, but not limited to, an error rate finding, by submitting a request for appeal in accordance with the internal appeal procedure developed by the department pursuant to subdivision (a).

(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)

**10392.** (a) The department shall provide an independent appeal procedure to each contracting agency providing child care and development services pursuant to Section 10268.5 that shall be conducted by the Office of Administrative Hearings and shall be provided upon an appeal petition of the contracting agency in any of the following circumstances:

(1) Termination of a contracting agency's contract.

(2) Denial of more than 4 percent or twenty-five thousand dollars (\$25,000), whichever is less, of a local contracting agency's contracted payment for services schedule.

(3) Demand for remittance of an overpayment of more than 4 percent or twenty-five thousand dollars (\$25,000), whichever is less, of a local contracting agency's annual contract.

(b) Before filing an appeal petition for an action taken pursuant to paragraph (2) or (3) of subdivision (a), the contracting agency shall have submitted all previously required standard monthly or quarterly reporting forms to the department.

(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)

**10393.** All hearings required by Section 10392 shall be conducted according to the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except as otherwise directed in this chapter.

(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)

**10394.** The Office of Administrative Hearings shall, by June 30, 1982, adopt regulations governing the hearings, which shall include all of the following:

(a) Deadlines for filing petitions, commencing hearings and rendering decisions.

(b) Notice to affected parties.

(c) The manner for maintaining appropriate provision for electronic recording and transcription, if necessary.

(d) Hearings shall be conducted at the offices of the Office of Administrative Hearings in Sacramento or Los Angeles. However, hearings in Los Angeles shall be available only to local contracting agencies with the department whose annual contracts total less than two hundred thousand dollars (\$200,000).

(e) Any other issues deemed appropriate by the Office of Administrative Hearings.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10395.** The determination of the hearing examiner shall be the final administrative determination to be afforded the local contracting agency.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10396.** All actions by the department, as defined in subdivisions (a) and (b) of Section 10392 shall be preceded by a written notice of action to the local contracting agency which shall include the following:

(a) A statement of the specific reasons for the action in the Statement of Issues.

(b) A description of the local contracting agency's rights and responsibilities concerning the appeal procedure described herein.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10397.** (a) The department shall establish a contract classification system for purposes of identifying, monitoring, and providing technical assistance to contractors as follows:

(1) Clear contract. This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (2), nor a conditional contract, as described in paragraph (3).

(2) Provisional contract. This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the department and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. The contract status shall be reviewed annually.

(3) Conditional contract. This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance. A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the department for all child care and development program purposes and is subject to any restrictions deemed reasonable to secure compliance. The conditional contract shall include a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of contract and to qualify the agency for clear contract status, and technical assistance plan. Failure to demonstrate substantive progress toward fiscal or program compliance within six months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in Section 10398 or 10400, in accordance with Section 10392.

(b) Agencies with conditional contracts shall receive technical assistance from the Child Care and Development Division of the department.

(c) Notwithstanding subdivision (b), technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within 60 days of receipt of the request.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10398.** (a) A contracting agency that evidences any of the following acts or omissions may have its contract or contracts immediately terminated if there is documented evidence of the acts or omissions, and upon review and recommendation of the general counsel of the department:

(1) Fraud, or conspiracy to defraud.

(2) Misuse or misappropriation of state or federal funds, including a violation of Section 10399.

(3) Embezzlement.

(4) Threats of bodily or other harm to a state official.

(5) Bribery or attempted bribery of a state official.

(6) Unsafe or unhealthy physical environment or facility.

(7) Substantiated abuse or molestation of children.

(8) Failure to report suspected child abuse or molestation.

(9) Theft of supplies, equipment, or food.

(10) Cessation of operations without the permission of the department, or acts or omissions evidencing abandonment of the contract or contracts.

(11) Failure of a program operating pursuant to Chapter 3 (commencing with Section 10225) or Chapter 21 (commencing with Section 10370) to fully reimburse a significant number of approved child care providers, as determined by the department, within 15 calendar days after the date set in the plan for timely payments to child care providers adopted by the contracting agency pursuant to Section 18226 of Title 5 of the California Code of Regulations, unless the failure is attributable to a delay in receiving apportionments from the state.

(12) Failure of a program operating pursuant to this chapter to pay salaries owed to employees, pay federal payroll tax, or fully reimburse a significant number of child care providers, as determined by the department, affiliated with a contracting agency pursuant to Chapter 8 (commencing with Section 10250) for more than 15 days after the employee salaries, federal payroll taxes, or reimbursement payments were due, unless the failure is attributable to a delay in receiving apportionments from the state.

(b) An agency whose contract is immediately terminated pursuant to this section retains appeal rights in accordance with Section 10392.

(c) Notwithstanding any service provision in the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), a notice of immediate termination shall be served on the contracting agency by personal service or at the last address on file with the department, by overnight mail or certified mail. Service may be proved in the manner authorized in a civil action. Service by mail is complete at the time of deposit.

(d) The department shall advise child care and development contractors of the provisions of this section within 30 working days of the effective date of the act amending this section during the 2013–14 Regular Session of the Legislature.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10399.** (a) An agency that has in place or places a person in a position of fiscal responsibility or control who has been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract immediately terminated pursuant to Section 10398 if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the department.

(b) For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal child care and development funds received pursuant to this chapter whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

(c) If the agency provides evidence to the department, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the department shall withdraw the termination action.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10400.** Except for causes listed in Sections 10398 and 10399, termination of a child care and development contract shall not occur without good cause and without notice as described in Section 10396 at least 90 days before the effective date given in the notice of termination.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10401.** Actions as defined in subdivision (a) of Section 10392 shall remain in effect during the appeal process. However, local contracting agencies may continue to operate under the contract during an appeal of termination, unless the action is an immediate termination action taken pursuant to Sections 10398 and 10399, in which case a contracting agency shall not continue to operate under the contract after the effective date given in the notice of immediate termination.

*(Added by Stats. 2021, Ch. 116, Sec. 260. (AB 131) Effective July 23, 2021.)*

**10402.** All contracts entered into by the department pursuant to Section 10268.5 shall contain a complete description of the appeal procedures provided in this chapter.

