



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held August 3, 2012, at 9:30 a.m.
4205 North 7th Avenue, Suite 206
Phoenix, Arizona

Board Members

Charles Easaw, Department of Education, Chairperson
Matthew A. Scheller, Department of Juvenile Corrections, Vice Chairperson
Chad Campbell, Administrative Office of the Courts
Dale Doucet, Department of Economic Security
Kim Pipersburgh, Department of Health Services

Executive Director

Dennis Seavers

CALL TO ORDER AND ROLL CALL

Mr. Easaw called the meeting to order at 9:33 a.m. The following Board members were present: Charles Easaw, Matthew A. Scheller, Dale Doucet, and Yolanda Cordova (alternate Board member for the Department of Health Services). The following Board member was absent: Chad Campbell.

Also in attendance were Dennis Seavers, Executive Director, and Christopher Munns, Assistant Attorney General.

CALL TO THE PUBLIC

Mr. Easaw made a call to the public. There were no members of the public who wished to speak.

APPROVAL OF MINUTES

Mr. Scheller made a motion to approve the draft minutes from the July 6, 2012 meeting. Mr. Doucet seconded the motion, which passed, 4–0.

Mr. Easaw noted that the draft minutes from the July 20, 2012 meeting, under “Adjournment,” said that Mr. Scheller had adjourned the meeting. Mr. Seavers agreed that it was an error and that actually Mr. Easaw had adjourned the meeting. Mr. Scheller made a motion to approve the draft minutes from the July 30, 2012 meeting, with the noted correction, and Mr. Doucet seconded. The motion passed, 4–0.

SENATE BILL 1136 IMPLEMENTATION

Mr. Easaw referred Board members to the draft rules that Mr. Seavers developed based on the Board’s actions in the July 6, 2012 meeting (see Attachment 1) and the public comments submitted by the Department of Economic Security (DES) (see Attachment 2). In addition, Mr. Seavers had gotten from DES an explanation for the basis of its recommendation to change the draft rule R13-11-103(B)(5) (see Attachment 3), and he summarized the explanation for the Board.

Mr. Seavers said that most of the comments DES submitted were technical changes, and he suggested that the Board adopt all the recommended changes except for the proposed change to the draft rule R13-11-103(B)(5). For that rule, he said that DES’s comments showed that the Board needed to revise the draft rule to reflect the fact that not all applicants will have had Child Protective Services (CPS) case plans. However, he believed that the Board should not adopt the language that DES had proposed to replace R13-11-103(B)(5). He said that although the motivation for the suggested change was understandable, the proposed language was too vague and could not be assessed for administrative completeness without first determining whether the applicant was rehabilitated (something that not all applicants would be). He also believed that the application requirements shouldn’t be understood as criteria for approval but rather as the minimum documents that the Board must receive before reviewing a case. Mr. Seavers agreed with DES that there were limitations on the usefulness of case plans in assessing rehabilitation. However, based on his experience of reviewing case plans, he believed that they provided some useful information that the Board could consider and weigh along with other documents.

Mr. Easaw said that case plans are prepared early in the case and become outdated quickly. He said that the case plans don’t necessarily reflect changes in the case, such as improvements that the applicant has made since the plan was originally developed, so the plan wouldn’t address whether the applicant was rehabilitated. He was concerned that the Board might give undue weight on the contents of the plan.

Mr. Seavers mentioned that it was true that case plans can be out of date, but he noted that the plans are required to be updated every six months. Mr. Easaw said that the case plan might not indicate whether the applicant was complying with the plan

requirements. Mr. Seavers said that the best document to show compliance and outstanding issues was the progress report to the juvenile court, but that document would be unavailable to the Board.

Mr. Doucet wondered whether the Board could require the applicant to submit the progress report on a voluntary basis. Mr. Munns cautioned the Board that a request for information to be submitted voluntarily could take on a coercive quality if the Board negatively judged applicants who didn't submit the reports. Mr. Seavers said that the progress reports often contain references to unsubstantiated allegations of child abuse or neglect, and Mr. Munns advised that having access to that information could be problematic. Mr. Munns also said that the portion of the application-requirements rule that allows applicants to submit any other appropriate evidence would allow applicants to voluntarily submit the progress reports, if they have access to them.

Mr. Scheller said that the Board should get as much information as it possibly can. Ms. Cordova believed that the case plan would be a good starting point for consideration; it would show what the applicant was asked to do, and the applicant could provide more detail as appropriate. Mr. Doucet thought that the Board should err on the side of caution in getting information from the applicants and repealing the requirement later, if necessary; Mr. Easaw argued that erring on the side caution would mean that the Board shouldn't request the information unless it later proved necessary, since the Board otherwise would get irrelevant or bad information.

Mr. Munns asked whether changes to the case plan were shown in the case plan. Mr. Seavers said that although CPS might track this information in its databases, the case plans wouldn't necessarily show the history of case-plan components but would instead show the current plan requirements. Mr. Munns said that the Board probably would hear applicants refer to case plans at hearings, and that the Board might find it helpful to have the case plans part of the record.

Mr. Seavers suggested that the Board's application form could encourage applicants to address the contents of their case plan in the written statement they submit. Mr. Munns said that the Board could request just the most current case plan, and Mr. Scheller suggested adding that language to the proposed rule.

Mr. Scheller made a motion to adopt the proposed language for the draft rule provision on case plans, but specifying that the Board request the most current case plan. Mr. Doucet seconded the motion, which passed 3-1.

Mr. Scheller made a motion to adopt the changes suggested by Mr. Seavers to limit the case-plan requirement only to applicants who had a case plan. Mr. Doucet seconded the motion, which passed 4-0.

Mr. Scheller made a motion to adopt the changes recommended by DES to the rule definitions, and Mr. Doucet seconded. The motion passed, 4-0.

Mr. Scheller made a motion to adopt the remaining changes recommended by DES, and Mr. Doucet seconded. The motion passed, 4–0.

Mr. Scheller made a motion to adopt the rules with the adopted changes, and Mr. Doucet seconded. The motion passed, 4–0.

Mr. Seavers reported that there was an unexpected group, the Arizona Developmental Disabilities Planning Council, that intended to require central-registry background checks. He noted that this group posed a difficulty for the Board because the group doesn't currently require fingerprint clearance cards for contractors, and that would prohibit the Board from being able to get criminal-history information from DPS. He was working with DES to make sure that there weren't other unexpected populations that might affect the Board's caseload projections.

Mr. Easaw suggested that the definition of "expedited review" be rewritten to define it as "an examination by the Board, in accordance with Board rules, of the documents an applicant submits without the applicant being present." Mr. Scheller made a motion to adopt the change, and Mr. Doucet seconded. The motion passed, 4–0.

ADJOURNMENT

Mr. Scheller made a motion to adjourn, and Mr. Doucet seconded. The motion passed, 4–0. Mr. Easaw adjourned the meeting at 10:37 a.m.

Minutes approved on August 17, 2012

Dennis Seavers, Executive Director



Arizona Board of Fingerprinting Memo

TO: Board members, stakeholders, and members of the public
FROM: Dennis Seavers
C:
Date: July 9, 2012
SUBJECT: Draft rules for central-registry exceptions

Arizona Session Laws 2012 (First Regular Session), Chapter 188 (Senate Bill 1136), establishes central-registry exceptions (CREs) and gives the Board jurisdiction over CREs. The legislation also extends the Board's rulemaking authority to cover central-registry exceptions.

At its July 6, 2012, the Board of Fingerprinting adopted a plan for implementing SB 1136. For the purposes of rulemaking, the Board will follow these steps:

- July 6: adopt draft procedures and application requirements. (This meeting already occurred.)
- July 9 or 10: disseminate draft rules based the actions the Board took at its July 6 meeting and begin receiving public comments.
- July 27: close the formal period for accepting public comments. However, please note that the Board will consider any comments submitted and, if necessary, alter its rules, even if the comments are submitted after the deadline.
- August 3: adopt and subsequently publish final rules.

As indicated above, the Board has adopted draft procedures and application requirements and is seeking comment on its proposed rules, which are attached to this memo. The purpose of this memo is to explain the intended purpose of the draft rules. Please note that this memo is meant as an aid and does not constitute a legally binding interpretation.

Please share this memo and the draft rules with anyone who may be interested in or affected by the proposal. Any comments or questions should be submitted to:

Dennis Seavers, Executive Director
Arizona Board of Fingerprinting
dennis.seavers@azbof.gov
Mail Code 185

PO Box 6129
Phoenix, AZ 85005-6129

Since the Board has had to develop these draft rules quickly, please note that there may be substantial changes. In addition, please forgive any typographical or technical errors, although you should feel free to point them out. The Board wanted to make these proposed rules available as quickly as possible, so I may have overlooked some errors.

EXCEPTION TO RULEMAKING REQUIREMENTS

This rulemaking is exempt from the rulemaking requirements of the Administrative Procedures Act under Laws 2012, Chapter 188, §9(a) and A.R.S. § 41–619.53(A)(2) (as amended by Laws 2012, Chapter 188, §5).

Although the Board is not required to follow normal rulemaking procedures, the Board's rulemaking will be as transparent as possible and will solicit public input. Given the short time frame that the Board has to implement the legislation, the Board will not be able to publish the draft rules in the *Arizona Administrative Register*, although the final rules will be published. Nonetheless, the Board encourages the public to share and offer comments on the draft rules.

RULES EXPLANATION

As indicated above, this analysis should not be construed as legal advice and does not serve as legally binding interpretation of the proposed rules. The purpose of this memo is to help Board members and the public understand the intent of the rules and to improve the transparency of the rulemaking process. If you believe there is any discrepancy between this analysis and the draft rules, I encourage you to submit comments on the rules. Please note that not all portions of the rules are explained in this memo, particularly if the meaning of the proposed change is self-evident.

The attached proposed rules don't follow the conventions in the *Arizona Administrative Register* for announcing rule changes. For a layperson, those conventions may make it difficult to see what's being changed. Instead, I have shown the existing rule and identified changes either with red strikeout font for instances where the Board is proposing to strike portions of a rule or with blue capitalized font for instances where the Board is proposing new language.

R13-11-101. Applicability

The current rule applies only to good-cause exceptions. The draft rule eliminates references specific to good-case exceptions so that the rule applies to both good-cause exceptions and central-registry exceptions.

R13-11-102. Definitions

The draft rule makes various changes to existing definitions, adds new definitions to reflect the addition of central-registry exceptions, and eliminates portions of the rule that are obsolete.

- The current rules distinguish between an appellant and an applicant. This distinction represents an outdated and legally incorrect usage, since the Board is not an appeals agency. “Applicant” would become a general term referring to a good-cause-exception applicant or a central-registry-exception applicant.
- The general term “application” is eliminated because there are new definitions for the two types of applications.
- The definition for “central registry exception” comes from A.R.S. § 41–619.51(3), as amended by Laws 2012, Chapter 188, §4.
- The definition for “central registry exception application” refers to the rule that specifies the application requirements. This definition also makes it clear that the statutory time frame in A.R.S. § 41–619.57(A) (as created by Laws 2012, Chapter 188, §7), which specifies that expedited reviews must be conducted within 20 days of receiving an application, does not begin until all the application requirements are met. Without this provision, the Board would be forced to conduct expedited reviews (or possibly even hearings) without the records it needs to make determinations.
- The definition for “good cause exception application” is identical to the existing definition, except for changes to reflect the renumbering of other rules.
- The definition for “request” has been struck for the reasons described in the explanation under the struck version of R13-11-103.

R13-11-103. Request for Good Cause Exception (struck)

This rule describes an obsolete process. Due to a 2010 reduction in force, the Board eliminated this portion of the process.

R13-11-103. Application Requirements

The rule has been rewritten to identify the requirements for both good-cause-exception applications and central-registry-exception applications. Although there have been some technical changes to the rule for good-cause-exception applications, the substance of the rule has not changed. The Board is not proposing any changes to good-cause-exception applications in the proposed rules.

R13-11-104. Expedited Review

The rule has been changed to add references to central-registry exceptions and to make technical alterations. The process for both central-registry exceptions and good-cause exceptions will generally be the same, so this and subsequent rules outline the same procedures for handling both types of applications.

In some cases, the phrase “or its hearing officer” has been struck. This language was a holdover from days when the Board’s hearing officer made final determinations for good-cause-exception applications. The Legislature has since amended the Board’s statutes so that only the Board makes final determinations.

R13-11-105. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing

The rule has been changed to add references to central-registry exceptions and to make technical alterations.

Subsection D(3) has been struck for technical reasons. There are no circumstances in which the law would require the Board to give higher priority to applicants whose fingerprint clearance card has been suspended because the Board is not subject to certain provisions of the Administrative Procedures Act.

R13-11-106. Telephonic Testimony

The changes in the rule are technical.

R13-11-107. Hearings

Subsection A has been struck because the criteria for making good-cause-exception determinations are already in A.R.S. § 41–619.55(E), and the rule adds nothing to the statute.

The changes in the remainder of the rule are technical.

R13-11-108. Ex Parte Communications

The rule has been changed to add references to central-registry exceptions and to make technical alterations.

R13-11-109. Rehearing or Review of Decision

The changes in the rule are technical.

R13-11-111. Notification of Decision for Good Cause Exception (struck)

The rule is unnecessary because the notification requirements are specified in Article 6 of the Administrative Procedures Act.

R13-11-112. Confidentiality

The rule is unnecessary because A.R.S. § 41–619.54 identifies what records are confidential or exempt from public-records law, and the rule adds nothing to the statute.

**TITLE 13. PUBLIC SAFETY
CHAPTER 11. BOARD OF FINGERPRINTING
ARTICLE 1. BOARD OF FINGERPRINTING**

R13-11-101. Applicability

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, ~~except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card under A.R.S. § 41-1758.03.~~

R13-11-102. Definitions

In this Article, the following definitions apply, unless the context otherwise requires:

- ~~1. "Appellant" means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board under A.R.S. § 41-1758.03; and who submits a request according to R13-11-103(A).~~
21. "Applicant" means a person who applies for a ~~fingerprint clearance card under A.R.S. § 41-1758.03~~ **GOOD CAUSE EXCEPTION UNDER A.R.S. § 41-619.55 OR A CENTRAL REGISTRY EXCEPTION UNDER A.R.S. § 41-619.57.**
- ~~3. "Application" means all of the documents required by A.A.C. R13-11-104(A).~~
42. "Board" means the Board of Fingerprinting.
3. **"CENTRAL REGISTRY EXCEPTION" MEANS NOTIFICATION TO THE DEPARTMENT OF ECONOMIC SECURITY OR THE DEPARTMENT OF HEALTH SERVICES, AS APPROPRIATE, PURSUANT TO A.R.S. § 41-619.57 THAT THE PERSON IS NOT DISQUALIFIED BECAUSE OF A CENTRAL REGISTRY CHECK CONDUCTED PURSUANT TO A.R.S. § 8-804.**
4. **"CENTRAL REGISTRY EXCEPTION APPLICATION" MEANS ALL THE DOCUMENTS REQUIRED BY A.A.C. R13-11-103(B).**
5. **"CPS" MEANS CHILD PROTECTIVE SERVICES.**
6. **"DES" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.**
7. **"DES NOTICE" MEANS THE NOTICE OF DISQUALIFICATION BECAUSE OF A CENTRAL REGISTRY CHECK THAT THE DEPARTMENT OF ECONOMIC SECURITY SENDS TO AN APPLICANT UNDER A.R.S. § 8-804(H).**
58. **"Department DPS" means the Department of Public Safety.**

69. "Department's DPS notice" means the notice of denial or suspension of a fingerprint clearance card that the Department OF PUBLIC SAFETY sends to an FINGERPRINT CLEARANCE CARD applicant under A.R.S. § 41-1758.04.
710. "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant-APPLICANT submits by the Board or its hearing officer without the appellant APPLICANT being present.
811. "Good cause exception" means the issuance of a fingerprint clearance card to an appellant under A.R.S. § 41-619.55.
12. "GOOD CAUSE EXCEPTION APPLICATION" MEANS ALL OF THE DOCUMENTS REQUIRED BY A.A.C. R13-11-103(A).
913. "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions OR CENTRAL REGISTRY EXCEPTIONS.
- ~~10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception under A.R.S. § 41-619.55, along with a copy of all pages of the Department's notice. A person's dated signature on the Department's notice shall suffice as a written indication.~~

~~R13-11-103. Request for Good Cause Exception~~

- ~~A. A person who meets the requirements of A.R.S. § 41-1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department's notice.~~
- ~~B. The Board shall send an application package within five business days to an applicant if one of the following applies:~~
- ~~1. The applicant meets the requirement of R13-11-103(A).~~
 - ~~2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.~~
 - ~~3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board shall determine a request incomplete if the request lacks one of the following:~~

a. ~~A written indication that the applicant wishes to appeal for a good cause exception under A.R.S. § 41-619.55, or~~

b. ~~The Department's notice or any of its pages.~~

~~C. Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.~~

~~D. The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days if one of the following applies:~~

~~1. The applicant submits a request in excess of 30 days of the date on the Department's notice, except as provided for in R13-11-103(B)(2).~~

~~2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41-1758.03.~~

R13-11-~~104~~103. Good Cause Exception Application REQUIREMENTS

A. **GOOD CAUSE EXCEPTION APPLICATION.** ~~A~~ **GOOD CAUSE EXCEPTION** application shall consist of both the criminal history information provided by ~~the~~ **Department DPS** and the following materials submitted by an ~~appellant~~ **APPLICANT** to the Board ~~to establish good cause for an exception:~~

1. The good cause exception application form prescribed by the Board. This form shall be notarized.

2. Two letters of reference on forms prescribed by the Board that meet the following requirements:

a. Both letters of reference shall be from individuals who have known the ~~appellant~~ **APPLICANT** for at least one year; and

b. At least one letter of reference shall be from the ~~appellant's~~ **APPLICANT'S** current or former employer or from an individual who has known the ~~appellant~~ **APPLICANT** for at least three years.

3. If the ~~Department's~~ **DPS** notice indicates that ~~the Department~~ **DPS** could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the ~~appellant~~ **APPLICANT** either do not exist or have been purged.

4. For any charges that occurred five years or less prior to the date on the ~~Department's~~ DPS notice, regardless of whether the charges were listed on the ~~Department's~~ DPS notice, the police report for each charge and documents from the appropriate court showing the disposition of the charge.
5. For every criminal conviction, regardless of whether the offenses were listed on the ~~Department's~~ DPS notice, documents from the appropriate court showing that the ~~appellant~~-APPLICANT has met all judicially imposed obligations or sentencing conditions or that records pertaining to the ~~appellant~~-APPLICANT either do not exist or have been purged. If the ~~appellant~~-APPLICANT has not met all judicially imposed obligations or sentencing conditions, the ~~appellant~~-APPLICANT shall provide a written statement indicating or documents from the appropriate court showing the status of the ~~appellant's~~-APPLICANT'S efforts toward meeting the obligations.
6. A statement written by the ~~appellant~~ APPLICANT that explains each charge, regardless of whether the charges were listed on the ~~Department's~~ DPS notice.

B. CENTRAL REGISTRY EXCEPTION APPLICATION. A CENTRAL REGISTRY EXCEPTION APPLICATION SHALL CONSIST OF THE CRIMINAL HISTORY INFORMATION PROVIDED BY DPS, THE CPS INVESTIGATIVE REPORT PROVIDED BY DES, AND THE FOLLOWING MATERIALS SUBMITTED BY AN APPLICANT TO THE BOARD:

1. THE CENTRAL REGISTRY EXCEPTION APPLICATION FORM PRESCRIBED BY THE BOARD. THIS FORM SHALL BE NOTARIZED.
2. TWO LETTERS OF REFERENCE ON FORMS PRESCRIBED BY THE BOARD THAT MEET THE FOLLOWING REQUIREMENTS:
 - A. BOTH LETTERS OF REFERENCE SHALL BE FROM INDIVIDUALS WHO HAVE KNOWN THE APPLICANT FOR AT LEAST ONE YEAR; AND
 - B. AT LEAST ONE LETTER OF REFERENCE SHALL BE FROM THE APPLICANT'S CURRENT OR FORMER EMPLOYER OR FROM AN INDIVIDUAL WHO HAS KNOWN THE APPLICANT FOR AT LEAST THREE YEARS.
3. IF THE APPLICANT HAS HAD ANY CRIMINAL CHARGES:
 - A. DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THE DISPOSITION OF THE CRIMINAL CHARGES OR SHOWING

THAT RECORDS PERTAINING TO THE APPLICANT EITHER DO NOT EXIST OR HAVE BEEN PURGED.

- B. FOR ANY CHARGES THAT OCCURRED FIVE YEARS OR LESS PRIOR TO THE DATE ON THE DES NOTICE, THE POLICE REPORT FOR EACH CHARGE AND DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THE DISPOSITION OF EACH CHARGE.
 - C. FOR EVERY CRIMINAL CONVICTION, DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THAT THE APPLICANT HAS MET ALL JUDICIALLY IMPOSED OBLIGATIONS OR SENTENCING CONDITIONS OR THAT RECORDS PERTAINING TO THE APPLICANT EITHER DO NOT EXIST OR HAVE BEEN PURGED. IF THE APPLICANT HAS NOT MET ALL JUDICIALLY IMPOSED OBLIGATIONS OR SENTENCING CONDITIONS, THE APPLICANT SHALL PROVIDE A WRITTEN STATEMENT INDICATING OR DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THE STATUS OF THE APPLICANT'S EFFORTS TOWARD MEETING THE OBLIGATIONS.
 - D. A STATEMENT WRITTEN BY THE APPLICANT THAT EXPLAINS EACH CRIMINAL CHARGE.
- 4. A STATEMENT WRITTEN BY THE APPLICANT THAT EXPLAINS EACH INCIDENT THAT LED TO A SUBSTANTIATED ALLEGATION OF CHILD ABUSE OR NEGLECT.
 - 5. THE CHILD PROTECTIVE SERVICES CASE PLAN OR DOCUMENTATION FROM CHILD PROTECTIVE SERVICES SHOWING THAT THE CASE PLAN IS UNAVAILABLE.
- BC. The Board or its hearing officer may accept any other documents an ~~appellant~~ **APPLICANT** submits ~~to demonstrate good cause for an exception, consistent with~~ **AS ALLOWED BY A.R.S. § 41-1062.**

R13-11-~~105~~104. Expedited Review

- A. Within 20 days of receiving an application, the Board ~~or its hearing officer~~ shall conduct an expedited review. When determining whether the ~~appellant~~ **APPLICANT** should receive a good cause exception **OR CENTRAL REGISTRY EXCEPTION** under an expedited review, the Board ~~or its hearing officer~~ shall consider the following:

1. The criteria listed in ~~R13-11-108(A)~~ A.R.S. § 41-619.55(E) FOR GOOD CAUSE EXCEPTION APPLICATIONS OR A.R.S. § 41-619.57(E) FOR CENTRAL REGISTRY EXCEPTION APPLICATIONS; and
 2. Whether the documentation submitted in support of a good cause exception APPLICATION OR CENTRAL REGISTRY EXCEPTION APPLICATION is sufficient to allow the Board ~~or its hearing officer~~ to grant a good cause exception OR CENTRAL REGISTRY EXCEPTION, or whether the Board or its hearing officer require further documentation or oral testimony.
- B. If the Board ~~or its hearing officer~~ determines that the ~~appellant~~ APPLICANT is eligible for a good cause exception OR CENTRAL REGISTRY EXCEPTION under an expedited review, the Board or its hearing officer shall grant the ~~appellant~~ APPLICANT a good cause exception OR CENTRAL REGISTRY EXCEPTION.
- C. If the Board ~~or its hearing officer~~ determines that an ~~appellant~~ APPLICANT is not eligible for a good cause exception OR CENTRAL REGISTRY EXCEPTION under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the ~~appellant~~ APPLICANT reasonable notice of the hearing in accordance with A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

R13-11-~~106~~105. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing

- A. An ~~appellant~~ APPLICANT who wishes to request that the Board or its hearing officer vacate or reschedule a hearing shall submit a written request to the Board.
- B. The Board OR ITS HEARING OFFICER shall give an ~~appellant~~ APPLICANT written notification if a hearing has been vacated or rescheduled.
- C. Vacating a hearing. The Board or its hearing officer may vacate a hearing if:
1. The APPLICANT NO LONGER REQUIRES A GOOD CAUSE EXCEPTION OR CENTRAL REGISTRY EXCEPTION ~~Department determines that it will issue the fingerprint clearance card that the appellant has requested;~~
 2. The ~~appellant~~ APPLICANT withdraws the ~~appeal~~-APPLICATION by submitting a written notice to the Board; or
 3. Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing if the action will further administrative convenience,

expedience, and economy and does not conflict with law or cause undue prejudice to any party.

- D. Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:
1. The ~~appellant~~ APPLICANT shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
 2. The ~~appellant~~ APPLICANT shows that attending the calendared hearing would be impossible, using reasonable diligence.
 - ~~3. Rescheduling the calendared hearing is necessary to give priority to a hearing for an appellant whose fingerprint clearance card was suspended over a hearing for an appellant whose application for a fingerprint clearance card was denied.~~
 43. Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- E. Continuing a hearing. When ruling on a motion to continue a hearing, the Board or its hearing officer shall consider such factors as:
1. The reasons for continuing the hearing; and
 2. Whether the continuance will cause undue prejudice to any party.
- F. Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

R13-11-~~407~~106. Telephonic Testimony

- A. An ~~appellant~~ APPLICANT who wishes to submit or have a witness submit telephonic testimony at the hearing shall submit a written request to the Board.
- B. The Board or its hearing officer may allow the ~~appellant~~ APPLICANT or the ~~appellant's~~ APPLICANT'S witness to submit telephonic testimony at the hearing if:
1. Personal attendance by the ~~appellant~~ APPLICANT or the ~~appellant's~~ APPLICANT'S witness at the hearing will present an undue hardship for the ~~appellant~~ APPLICANT or the ~~appellant's~~ APPLICANT'S witness;
 2. Telephonic presence will not cause undue prejudice to any party; and

3. The ~~appellant~~ **APPLICANT** or ~~appellant's~~ **APPLICANT'S** witness assumes the cost of testifying telephonically.

R13-11-~~108~~107. Hearings

- ~~A. When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:~~
- ~~1. The extent of the appellant's criminal record;~~
 - ~~2. The length of time that has elapsed since the offense was committed;~~
 - ~~3. The nature of the offense;~~
 - ~~4. Any applicable mitigating circumstances;~~
 - ~~5. The degree to which the appellant participated in the offense; and~~
 - ~~6. The extent of the appellant's rehabilitation, including:~~
 - ~~a. Completion of or progress toward completing probation, parole, or community supervision;~~
 - ~~b. Completion of payment or progress toward paying restitution or other compensation for the offense;~~
 - ~~c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;~~
 - ~~d. Personal references attesting to the appellant's rehabilitation; and~~
 - ~~e. Witness testimony.~~
- BA.** Absent good cause, if the ~~appellant~~ **APPLICANT** or ~~his or her representative~~ fails to appear at a hearing, the Board ~~or its hearing officer~~ may deny the ~~applicant a~~ good cause exception **APPLICATION OR CENTRAL REGISTRY EXCEPTION APPLICATION** for failure to appear at the hearing. An ~~appellant~~ **APPLICANT** demonstrates good cause by showing that the ~~appellant~~ **APPLICANT** could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-~~106~~105, using reasonable diligence. An ~~appellant's~~ **APPLICANT'S** failure to inform the Board of a change in address

shall not constitute grounds for good cause. The Board ~~or its hearing officer~~ shall determine whether good cause exists.

- ~~GB.~~ The Board ~~or its hearing officer~~ shall grant or deny a good cause exception within 80 days of the hearing.

R13-11-~~109~~108. Ex Parte Communications

- A. In any good cause exception **OR CENTRAL REGISTRY EXCEPTION** case, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
1. No interested person outside the Board may make or knowingly cause to be made to any Board members, hearing officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
 2. No Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the ~~good cause exception determination~~ **PROCEEDING**, may make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the determination.
- B. A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the ~~good cause exception determination~~ **PROCEEDING**, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, must place on the record of the proceeding and serve on all parties to the proceeding:
1. All prohibited written communications;
 2. Memoranda stating the substance of all prohibited oral communications; and
 3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in (1) and (2) of this subsection.
- C. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

- D. The provisions of this Section apply beginning when the ~~request~~ **APPLICATION** for a good cause exception **OR CENTRAL REGISTRY EXCEPTION** is filed ~~in accordance with R13-11-103.~~
- E. For the purposes of this Section:
1. "Person outside the Board" means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
 2. "Ex parte communication" means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

R13-11-~~110~~109. Rehearing or Review of Decision

- A. An ~~appellant~~ **APPLICANT** may seek a review or rehearing of a Board ~~or hearing-officer~~ decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board ~~or its hearing officer~~ shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the ~~appellant~~**APPLICANT**:
1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
 2. The ~~appellant~~ **APPLICANT** was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
 3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
 4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the ~~appellant's~~ **APPLICANT'S** rights were materially affected.
- C. The Board ~~or its hearing officer~~ may grant a rehearing or review for any of the reasons in subsection (A). The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.

- D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

~~**R13-11-111. Notification of Decision for Good Cause Exception**~~

- A. ~~The Board shall notify the appellant in writing of the Board or its hearing officer's decision and transmit findings of fact and conclusions of law.~~
- B. ~~When the Board or its hearing officer grants a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.~~

~~**R13-11-112. Confidentiality**~~

~~All information relating to an applicant or appellant's criminal history is confidential and shall not be disseminated or disclosed except as required by law.~~

R13-11-110. Fees

No change to rule

Dennis Seavers

From:
Sent: Tuesday, July 31, 2012 2:38 PM
To: Dennis Seavers
Cc:
Subject: BOF Draft Rules (SB 1136)
Attachments: 2012-07-09 draft rules.pdf

Dennis---we have reviewed the draft rules (Title 13, Chapter 13, Article 1). Our overall impression is that the proposed amendments are clear, concise, understandable and consistent with applicable state laws. We offer the following minor suggestions for clarification:

- R13-11-102
 - #7—after "REGISTRY", add "BACKGROUND", and
 - #11—delete "appellant", insert "APPLICANT".
- R13-11-103
 - B, line three—after "THE" insert "REDACTED"; after "CPS" insert "REPORT AND"; delete "REPORT" insert "INFORMATION".
 - ✓ Dennis---We expect to define "CPS report and investigative information" in our procedures to include the redacted CPS report and any other redacted substantiated report on the Central Registry; the report finding statement; and the investigative case notes. **However, please do not define this is your rule as this may change.**
 - #5—delete, insert "DOCUMENTATION THAT THE APPLICANT HAS BEEN SUCCESSFULLY REHABILITATED AND IS NOT A RECIDIVIST."
- R13-11-107
 - B—after "exception" insert "CENTRAL REGISTRY EXCEPTION".
 - **QUESTIONS**
 - ✓ A.R.S. § 41-619.57(F) does not specify a timeframe for notifying the DES or DHS of the FOB's decision to grant or deny the Central Registry exception. R13-11-109(A) seems to indicate that the BOF will notify the applicant of the decision to grant or deny the application. Do you anticipate applying the timeframe (80 days of the Central Registry Hearing) in R13-11-107(B) to the notification process?
 - ✓ Do you anticipate the BOF determining a Central Registry exception after an expedited review of the completed application and documentation? If so, how often? What timeframe will you use to notify DES or DHS of the FOB's decision to grant or deny the Central Registry exception? I presume that the BOF will notify the applicant of the decision to grant or deny the application.

Please let me know if you have questions or need clarification. Thanks.

From: Dennis Seavers
Sent: Tuesday, July 10, 2012 3:05 PM
To:
Cc:
Subject: Draft rules

Attached are draft rules that the Board has adopted, along with a memo that summarizes the intended purpose of the rules. Please note that they are only draft rules; the Board will be finalizing the rules on August 3.

**TITLE 13. PUBLIC SAFETY
CHAPTER 11. BOARD OF FINGERPRINTING
ARTICLE 1. BOARD OF FINGERPRINTING**

R13-11-101. Applicability

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, ~~except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card under A.R.S. § 41-1758.03.~~

R13-11-102. Definitions

In this Article, the following definitions apply, unless the context otherwise requires:

- ~~1. "Appellant" means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board under A.R.S. § 41-1758.03; and who submits a request according to R13-11-103(A).~~
21. "Applicant" means a person who applies for a ~~fingerprint clearance card under A.R.S. § 41-1758.03~~ GOOD CAUSE EXCEPTION UNDER A.R.S. § 41-619.55 OR A CENTRAL REGISTRY EXCEPTION UNDER A.R.S. § 41-619.57.
- ~~3. "Application" means all of the documents required by A.A.C. R13-11-104(A).~~
42. "Board" means the Board of Fingerprinting.
3. "CENTRAL REGISTRY EXCEPTION" MEANS NOTIFICATION TO THE DEPARTMENT OF ECONOMIC SECURITY OR THE DEPARTMENT OF HEALTH SERVICES, AS APPROPRIATE, PURSUANT TO A.R.S. § 41-619.57 THAT THE PERSON IS NOT DISQUALIFIED BECAUSE OF A CENTRAL REGISTRY CHECK CONDUCTED PURSUANT TO A.R.S. § 8-804.
4. "CENTRAL REGISTRY EXCEPTION APPLICATION" MEANS ALL THE DOCUMENTS REQUIRED BY A.A.C. R13-11-103(B).
5. "CPS" MEANS CHILD PROTECTIVE SERVICES.
6. "DES" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.
7. "DES NOTICE" MEANS THE NOTICE OF DISQUALIFICATION BECAUSE OF A CENTRAL REGISTRY **BACKGROUND** CHECK THAT THE DEPARTMENT OF ECONOMIC SECURITY SENDS TO AN APPLICANT UNDER A.R.S. § 8-804(H).
58. "~~Department~~ DPS" means the Department of Public Safety.

69. "Department's DPS notice" means the notice of denial or suspension of a fingerprint clearance card that the Department OF PUBLIC SAFETY sends to an FINGERPRINT CLEARANCE CARD applicant under A.R.S. § 41-1758.04.
710. "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant-APPLICANT submits by the Board or its hearing officer without the appellant APPLICANT being present.
811. "Good cause exception" means the issuance of a fingerprint clearance card to an appellant APPLICANT under A.R.S. § 41-619.55.
12. "GOOD CAUSE EXCEPTION APPLICATION" MEANS ALL OF THE DOCUMENTS REQUIRED BY A.A.C. R13-11-103(A).
913. "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions OR CENTRAL REGISTRY EXCEPTIONS.
- ~~10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception under A.R.S. § 41-619.55, along with a copy of all pages of the Department's notice. A person's dated signature on the Department's notice shall suffice as a written indication.~~

~~R13-11-103. Request for Good Cause Exception~~

- ~~A. A person who meets the requirements of A.R.S. § 41-1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department's notice.~~
- ~~B. The Board shall send an application package within five business days to an applicant if one of the following applies:~~
- ~~1. The applicant meets the requirement of R13-11-103(A).~~
 - ~~2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.~~
 - ~~3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board~~

~~shall determine a request incomplete if the request lacks one of the following:~~

- ~~a. A written indication that the applicant wishes to appeal for a good cause exception under A.R.S. § 41-619.55, or~~
- ~~b. The Department's notice or any of its pages.~~

~~C. Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.~~

~~D. The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days if one of the following applies:~~

- ~~1. The applicant submits a request in excess of 30 days of the date on the Department's notice, except as provided for in R13-11-103(B)(2).~~
- ~~2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41-1758.03.~~

R13-11-~~104~~103. Good Cause Exception Application REQUIREMENTS

A. **GOOD CAUSE EXCEPTION APPLICATION.** A **GOOD CAUSE EXCEPTION** application shall consist of both the criminal history information provided by ~~the Department~~ **DPS** and the following materials submitted by an ~~appellant~~ **APPLICANT** to the Board ~~to establish good cause for an exception:~~

- 1. The good cause exception application form prescribed by the Board. This form shall be notarized.
- 2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
 - a. Both letters of reference shall be from individuals who have known the ~~appellant~~ **APPLICANT** for at least one year; and
 - b. At least one letter of reference shall be from the ~~appellant's~~ **APPLICANT'S** current or former employer or from an individual who has known the ~~appellant~~ **APPLICANT** for at least three years.
- 3. If the ~~Department's~~ **DPS** notice indicates that ~~the Department~~ **DPS** could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records

pertaining to the ~~appellant~~ APPLICANT either do not exist or have been purged.

4. For any charges that occurred five years or less prior to the date on the ~~Department's~~ DPS notice, regardless of whether the charges were listed on the ~~Department's~~ DPS notice, the police report for each charge and documents from the appropriate court showing the disposition of the charge.
5. For every criminal conviction, regardless of whether the offenses were listed on the ~~Department's~~ DPS notice, documents from the appropriate court showing that the ~~appellant~~-APPLICANT has met all judicially imposed obligations or sentencing conditions or that records pertaining to the ~~appellant~~-APPLICANT either do not exist or have been purged. If the ~~appellant~~-APPLICANT has not met all judicially imposed obligations or sentencing conditions, the ~~appellant~~-APPLICANT shall provide a written statement indicating or documents from the appropriate court showing the status of the ~~appellant's~~-APPLICANT'S efforts toward meeting the obligations.
6. A statement written by the ~~appellant~~ APPLICANT that explains each charge, regardless of whether the charges were listed on the ~~Department's~~ DPS notice.

B. CENTRAL REGISTRY EXCEPTION APPLICATION. A CENTRAL REGISTRY EXCEPTION APPLICATION SHALL CONSIST OF THE CRIMINAL HISTORY INFORMATION PROVIDED BY DPS, THE REDACTED CPS REPORT AND INVESTIGATIVE INFORMATION REPORT PROVIDED BY DES, AND THE FOLLOWING MATERIALS SUBMITTED BY AN APPLICANT TO THE BOARD:

1. THE CENTRAL REGISTRY EXCEPTION APPLICATION FORM PRESCRIBED BY THE BOARD. THIS FORM SHALL BE NOTARIZED.
2. TWO LETTERS OF REFERENCE ON FORMS PRESCRIBED BY THE BOARD THAT MEET THE FOLLOWING REQUIREMENTS:
 - A. BOTH LETTERS OF REFERENCE SHALL BE FROM INDIVIDUALS WHO HAVE KNOWN THE APPLICANT FOR AT LEAST ONE YEAR; AND
 - B. AT LEAST ONE LETTER OF REFERENCE SHALL BE FROM THE APPLICANT'S CURRENT OR FORMER EMPLOYER OR FROM AN INDIVIDUAL WHO HAS KNOWN THE APPLICANT FOR AT LEAST THREE YEARS.
3. IF THE APPLICANT HAS HAD ANY CRIMINAL CHARGES:

- A. DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THE DISPOSITION OF THE CRIMINAL CHARGES OR SHOWING THAT RECORDS PERTAINING TO THE APPLICANT EITHER DO NOT EXIST OR HAVE BEEN PURGED.
 - B. FOR ANY CHARGES THAT OCCURRED FIVE YEARS OR LESS PRIOR TO THE DATE ON THE DES NOTICE, THE POLICE REPORT FOR EACH CHARGE AND DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THE DISPOSITION OF EACH CHARGE.
 - C. FOR EVERY CRIMINAL CONVICTION, DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THAT THE APPLICANT HAS MET ALL JUDICIALLY IMPOSED OBLIGATIONS OR SENTENCING CONDITIONS OR THAT RECORDS PERTAINING TO THE APPLICANT EITHER DO NOT EXIST OR HAVE BEEN PURGED. IF THE APPLICANT HAS NOT MET ALL JUDICIALLY IMPOSED OBLIGATIONS OR SENTENCING CONDITIONS, THE APPLICANT SHALL PROVIDE A WRITTEN STATEMENT INDICATING OR DOCUMENTS FROM THE APPROPRIATE COURT SHOWING THE STATUS OF THE APPLICANT'S EFFORTS TOWARD MEETING THE OBLIGATIONS.
 - D. A STATEMENT WRITTEN BY THE APPLICANT THAT EXPLAINS EACH CRIMINAL CHARGE.
- 4. A STATEMENT WRITTEN BY THE APPLICANT THAT EXPLAINS EACH INCIDENT THAT LED TO A SUBSTANTIATED ALLEGATION OF CHILD ABUSE OR NEGLECT.
 - 5. ~~THE CHILD PROTECTIVE SERVICES CASE PLAN OR DOCUMENTATION FROM CHILD PROTECTIVE SERVICES SHOWING THAT THE CASE PLAN IS UNAVAILABLE. DOCUMENTATION THAT THE APPLICANT HAS BEEN SUCCESSFULLY REHABILITATED AND IS NOT A RECIDIVIST.~~
- BC.** The Board or its hearing officer may accept any other documents an **appellant APPLICANT** submits ~~to demonstrate good cause for an exception, consistent with~~ AS ALLOWED BY A.R.S. § 41-1062.

R13-11-105104. Expedited Review

- A. Within 20 days of receiving an application, the Board ~~or its hearing officer~~ shall conduct an expedited review. When determining whether the **appellant APPLICANT** should receive a good cause exception **OR CENTRAL REGISTRY**

EXCEPTION under an expedited review, the Board ~~or its hearing officer~~ shall consider the following:

1. The criteria listed in ~~R13-11-108(A)~~ A.R.S. § 41-619.55(E) **FOR GOOD CAUSE EXCEPTION APPLICATIONS OR A.R.S. § 41-619.57(E) FOR CENTRAL REGISTRY EXCEPTION APPLICATIONS**; and
 2. Whether the documentation submitted in support of a good cause exception **APPLICATION OR CENTRAL REGISTRY EXCEPTION APPLICATION** is sufficient to allow the Board ~~or its hearing officer~~ to grant a good cause exception **OR CENTRAL REGISTRY EXCEPTION**, or whether the Board or its hearing officer require further documentation or oral testimony.
- B. If the Board ~~or its hearing officer~~ determines that the **appellant APPLICANT** is eligible for a good cause exception **OR CENTRAL REGISTRY EXCEPTION** under an expedited review, the Board or its hearing officer shall grant the **appellant APPLICANT** a good cause exception **OR CENTRAL REGISTRY EXCEPTION**.
- C. If the Board ~~or its hearing officer~~ determines that an **appellant APPLICANT** is not eligible for a good cause exception **OR CENTRAL REGISTRY EXCEPTION** under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the **appellant APPLICANT** reasonable notice of the hearing in accordance with A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

R13-11-~~106~~105. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing

- A. An **appellant APPLICANT** who wishes to request that the Board or its hearing officer vacate or reschedule a hearing shall submit a written request to the Board.
- B. The Board **OR ITS HEARING OFFICER** shall give an **appellant APPLICANT** written notification if a hearing has been vacated or rescheduled.
- C. Vacating a hearing. The Board or its hearing officer may vacate a hearing if:
1. The **APPLICANT NO LONGER REQUIRES A GOOD CAUSE EXCEPTION OR CENTRAL REGISTRY EXCEPTION** ~~Department determines that it will issue the fingerprint clearance card that the appellant has requested~~;
 2. The **appellant APPLICANT** withdraws the ~~appeal~~-**APPLICATION** by submitting a written notice to the Board; or

3. Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing if the action will further administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- D. Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:
1. The ~~appellant~~ APPLICANT shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
 2. The ~~appellant~~ APPLICANT shows that attending the calendared hearing would be impossible, using reasonable diligence.
 - ~~3. Rescheduling the calendared hearing is necessary to give priority to a hearing for an appellant whose fingerprint clearance card was suspended over a hearing for an appellant whose application for a fingerprint clearance card was denied.~~
 43. Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- E. Continuing a hearing. When ruling on a motion to continue a hearing, the Board or its hearing officer shall consider such factors as:
1. The reasons for continuing the hearing; and
 2. Whether the continuance will cause undue prejudice to any party.
- F. Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

R13-11-~~407~~106. Telephonic Testimony

- A. An ~~appellant~~ APPLICANT who wishes to submit or have a witness submit telephonic testimony at the hearing shall submit a written request to the Board.
- B. The Board or its hearing officer may allow the ~~appellant~~ APPLICANT or the ~~appellant's~~ APPLICANT'S witness to submit telephonic testimony at the hearing if:

1. Personal attendance by the **appellant APPLICANT** or the **appellant's APPLICANT'S** witness at the hearing will present an undue hardship for the **appellant APPLICANT** or the **appellant's APPLICANT'S** witness;
2. Telephonic presence will not cause undue prejudice to any party; and
3. The **appellant APPLICANT** or **appellant's APPLICANT'S** witness assumes the cost of testifying telephonically.

R13-11-108107. Hearings

~~A. When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:~~

- ~~1. The extent of the appellant's criminal record;~~
- ~~2. The length of time that has elapsed since the offense was committed;~~
- ~~3. The nature of the offense;~~
- ~~4. Any applicable mitigating circumstances;~~
- ~~5. The degree to which the appellant participated in the offense; and~~
- ~~6. The extent of the appellant's rehabilitation, including:
 - ~~a. Completion of or progress toward completing probation, parole, or community supervision;~~
 - ~~b. Completion of payment or progress toward paying restitution or other compensation for the offense;~~
 - ~~c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;~~
 - ~~d. Personal references attesting to the appellant's rehabilitation; and~~
 - ~~e. Witness testimony.~~~~

BA. Absent good cause, if the **appellant APPLICANT** or ~~his or her representative~~ fails to appear at a hearing, the Board ~~or its hearing officer~~ may deny the ~~applicant a~~ good cause exception **APPLICATION OR CENTRAL REGISTRY EXCEPTION**

APPLICATION for failure to appear at the hearing. An ~~appellant~~ APPLICANT demonstrates good cause by showing that the ~~appellant~~ APPLICANT could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-~~406~~105, using reasonable diligence.

An ~~appellant's~~ APPLICANT'S failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board ~~or its hearing officer~~ shall determine whether good cause exists.

- GB. The Board ~~or its hearing officer~~ shall grant or deny a good cause exception **OR CENTRAL REGISTRY EXCEPTION** within 80 days of the hearing.

R13-11-~~409~~108. Ex Parte Communications

- A. In any good cause exception **OR CENTRAL REGISTRY EXCEPTION** case, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
1. No interested person outside the Board may make or knowingly cause to be made to any Board members, hearing officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
 2. No Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the ~~good cause exception determination~~ **PROCEEDING**, may make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the determination.
- B. A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the ~~good cause exception determination~~ **PROCEEDING**, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, must place on the record of the proceeding and serve on all parties to the proceeding:
1. All prohibited written communications;
 2. Memoranda stating the substance of all prohibited oral communications; and
 3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in (1) and (2) of this subsection.
- C. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer, to the extent

consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

- D. The provisions of this Section apply beginning when the ~~request~~ **APPLICATION** for a good cause exception **OR CENTRAL REGISTRY EXCEPTION** is filed ~~in accordance with R13-11-103.~~
- E. For the purposes of this Section:
1. "Person outside the Board" means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
 2. "Ex parte communication" means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

R13-11-~~110~~109. Rehearing or Review of Decision

- A. An ~~appellant~~ **APPLICANT** may seek a review or rehearing of a Board ~~or hearing officer~~ decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board ~~or its hearing officer~~ shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the ~~appellant~~ **APPLICANT**:
1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
 2. The ~~appellant~~ **APPLICANT** was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
 3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
 4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the ~~appellant's~~ **APPLICANT'S** rights were materially affected.

- C. The Board ~~or its hearing officer~~ may grant a rehearing or review for any of the reasons in subsection (A). The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.
- D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

~~R13-11-111. Notification of Decision for Good Cause Exception~~

- A. ~~The Board shall notify the appellant in writing of the Board or its hearing officer's decision and transmit findings of fact and conclusions of law.~~
- B. ~~When the Board or its hearing officer grants a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.~~

~~R13-11-112. Confidentiality~~

~~All information relating to an applicant or appellant's criminal history is confidential and shall not be disseminated or disclosed except as required by law.~~

R13-11-~~113~~110. Fees

No change to rule

Dennis Seavers

From:
Sent: Thursday, August 02, 2012 11:15 AM
To: Dennis Seavers
Cc:
Subject: RE: BOF Draft Rules (SB 1136)

Dennis---I'm available today. The motivation for R13-11-103(B)(5) ~~---delete, insert "DOCUMENTATION THAT THE APPLICANT HAS BEEN SUCCESSFULLY REHABILITATED AND IS NOT A RECIDIVIST"---~~

Is:

- The majority of applicants will not have a case plan.
 - Most reports are not substantiated for maltreatment and most cases do not warrant further CPS involvement. For example, during the 4/2011 to 9/2011 reporting period, the Child Abuse Hotline received 19,666 report of child abuse and/or neglect. Of these report, 19,245 were assigned for investigation. Approximately 7.6 % (1,465) of the reports assigned for investigation were substantiated. Another 571 reports proposed for substantiation were under appeal. Approximately 51.7% (9,953) of the reports (cases) were closed at investigation, meaning no case plan would have been developed. Families are often referred to community based services as the family's circumstances would not warranted further DES involvement.
- Even if the applicant has a case plan, the case plan is not a reliable measure of "*rehabilitation*". It will not demonstrate that the applicant participated in services or made any substantial behavioral changes to indicate that he/she was "*successfully rehabilitated and is not a recidivist*". In other words, the case plan will have little value to the Board's determination that the Central Registry exception should/should not be granted; that the applicant is not a threat to children or vulnerable adults.
- The applicant may have participated in services not identified in the case plan, or may have made behavioral changes without participating in "*rehabilitative*" services.
- The case plan may be global in nature, not identifying the specific behavior that caused the abuse or neglect, instead may be focused on decreasing any future safety threats or risk of harm to the child.

Our thought is that the case plan may be one of several documents submitted to the Board, but should not be the primary document (apart from two references, law enforcement reports, and applicant statement) to demonstrate that the applicant has been "*successfully rehabilitated and is not a recidivist*". Also, we thought that the rule should clearly tell the applicant what documentation he/she should submit to the Board to assist the Board in making its decision. Lastly, we'd like the rule to focus more on documentation (evidence) necessary to support the request for a Central Registry exception.

Hope this provides some insight into our recommendation. I'm available today to discuss this. Thanks.
