HOUSE DOCKET, NO. 3297 FILED ON: 1/18/2013

HOUSE . . . . . No. 124

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to fair hearings in the Department of Children and Families.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kay Khan	*11th Middlesex*
James J. O'Day	*14th Worcester*
Ellen Story	*3rd Hampshire*
Denise Andrews	*2nd Franklin*
Marcos A. Devers	*16th Essex*
Tricia Farley-Bouvier	*3rd Berkshire*
Sean Garballey	*23rd Middlesex*
Jason M. Lewis	*31st Middlesex*

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HOUSE . . . . . No. 124

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 124) of Kay Khan and others relative to hearings in the Department of Children and Families. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

An Act relative to fair hearings in the Department of Children and Families.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 18B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “assistance” on the last line of section 5, the following:-

"(a) There shall be within the department a division of hearings for the purpose of holding the hearings referred to herein and rendering decisions. Said division shall be under the supervision of a director appointed by the commissioner and shall be independent of all other divisions and personnel of the department except as specifically set forth herein.

(b) Any person aggrieved by any decision of the department which is eligible for an administrative hearing pursuant to the regulations of the department shall have a right to a hearing, after due notice, upon appeal to the director. Any determination by the division of hearings that there is no right to a hearing shall be provided to the appellant in writing and shall include a statement of the reasons therefore. The appellant shall have a right to a fair hearing to determine whether the facts underlying that determination are accurate.

(c) A hearing held pursuant to this section shall be conducted by a hearing officer designated by the director and shall be held at the area office at which the decision was made or at another location that is equally or more convenient to the appealing party. The provisions of chapter 30A, section 12 shall apply to all such hearings. The director shall be responsible for the fair and efficient operation of the division in conformity with state and federal laws and regulations and may review and discuss with the hearing officer proceedings held pursuant to this section solely in order to carry out this responsibility. No person outside of the hearings unit shall communicate about any pending case with any member of the hearings unit unless such communication is made in the presence of all parties or submitted in writing with copies to all parties. The director

26 shall also be responsible for the training of hearing officers, scheduling of hearings and the
27 maintenance of a docket/decision index that shall be available for public inspection.
28
29 (d) The hearing office shall schedule a fair hearing to be held within 90 days of receipt of a
30 request for a fair hearing, and shall render decisions within 30 days from the close of the hearing
31 record. Upon request for good cause shown, a showing that circumstances require a speedy
32 resolution, the department may expedite the hearing so that it is held sooner than 90 days from
33 the request. The hearing officer may extend the deadline for rendering a decision one time
34 provided that good cause reasons for the delay are stated in a written decision to continue, but, in
35 no event may a hearing officer render a fair hearing decision more than 150 days from the date of
36 the fair hearing request. The decision of the department shall be subject to review in accordance
37 with the provisions of chapter 30A.
38
39 (e) (i) The filing of a request for a fair hearing allowable under the regulations of the
40 department regarding a decision to terminate or reduce services shall stay the effect of the
41 challenged decision until after the fair hearing is held and the fair hearing decision is rendered.
42
43 (ii) The filing of a request for a fair hearing allowable under the regulations of the department
44 within 10 days of the removal of a child from a foster home shall stay the removal of the child
45 until after the fair hearing is held and decided. However, upon a written finding that the
46 physical, mental or emotional safety of the child would be placed at risk if the child is not
47 removed immediately, the removal may take place before the fair hearing, and the fair hearing
48 shall be held and the decision rendered within 14 days of the removal.
49
50 (iii) Except as provided in paragraphs (e)(i) and (e)(ii) above, the filing of a request for a fair
51 hearing shall not otherwise stay or affect the implementation of the challenged hearing decision.
52 The decision appealed shall be reversed if the department's hearing is not scheduled within 90
53 days and is not decided within 150 days from the postmark date, fax receipt date, or hand
54 delivery date of the hearing request. Upon the department's written finding that the physical,
55 mental or emotional safety of a child would be placed at risk by reversing the challenged
56 decision, the department shall have an additional 14 days to render its decision. In the event that
57 the department grants a party's request for a continuance of the hearing, the department's
58 deadline for scheduling the hearing shall be suspended and its time for rendering the decision
59 shall be extended by the number of days that the hearing was continued or 30 days, whichever is
60 shorter.
61
62 (f) The hearing officer shall provide a copy of the written hearing decision to the appealing
63 party and the Department. Within 20 days of the postmark date of mailing or of the date of in-
64 hand delivery of the hearing officer's decision, an appealing party or a departmental
65 representative may request that the commissioner reconsider the hearing officer's decision. The

66 hearing officer's decision shall become final 30 days from issuance unless the appealing party is
67 notified within that time period that the commissioner intends to reconsider the decision. The
68 commissioner shall render a decision within 60 days of giving notice of intent to reconsider. If
69 upon reconsideration the commissioner issues a decision that differs from the hearing officer's
70 decision, the commissioner's decision must state the facts, law and policy supporting any such
71 difference. The commissioner's reconsideration decision shall be the final decision of the
72 Department, but the hearing officer's decision shall also be included in the record for judicial
73 review. If the commissioner does not render a decision within 60 days from giving notice of an
74 intent to reconsider, then the hearing officer's decision shall become the final decision of the
75 department 60 days from the date of the commissioner's notice of an intent to reconsider."
76
77 (g) The department shall report quarterly to the house and senate committees on ways and
78 means and the joint committee on children, families, and persons with disabilities on the
79 department's policy and plan for eliminating its backlog of administrative hearing requests. Each
80 quarterly report shall include: (a) the number of pending administrative appeals in which a
81 decision has not been issued within 150 days of the hearing request and the number of them in
82 which a hearing decision has been written by the hearing officer but not yet issued to the
83 appellant; (b) the number of pending administrative appeals in which a decision has not been
84 issued within 150 days of the hearing request and the number of them in which a hearing
85 decision has been written by the hearing officer but not yet issued to the appellant; and, (c) for
86 each hearing that was requested after October 3, 2012, the date the hearing was requested,
87 whether the hearing has been held, whether the hearing officer has written a decision, and
88 whether the decision has been issued to the appellant.
89
90 (h) The department shall maintain and make available to the public during regular business
91 hours a record of its fair hearings, with identifying information removed, reflecting, for each
92 hearing request, the date of the request, the date of the hearing, the length of any extensions
93 granted to the party, the date of the hearing decision, the decision rendered by the hearing
94 officer, and the final decision rendered upon the Commissioner's review.
95
96 (i) The department shall promulgate and implement regulations which shall ensure that the
97 department shall maintain an independent, timely and fair administrative hearing system no later
98 than June 24, 2013."
99