

TITLE 26	HEALTH AND HUMAN SERVICES
PART 1	HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 745	LICENSING
SUBCHAPTER M	ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS
DIVISION 1	ADMINISTRATIVE REVIEWS

§745.8801. What is an administrative review?

(a) An administrative review is an informal review that determines whether a decision or action was appropriate under applicable laws and rules. An administrative review is not a formal hearing and does not involve formal examination and cross-examination of witnesses.

(b) If you do not waive your right to request an administrative review, we may not finalize any decision or action that is the subject of the review until you exhaust your due process rights concerning the decision or action. However, you may not be able to operate pending due process for some enforcement actions as provided by Division 3 of this subchapter (relating to Operating Pending and Administrative Review and Due Process Hearing). §745.8803. Who may request an administrative review?

§745.8803. Who may request an administrative review?

(a) The following chart describes who may request an administrative review to dispute a decision or action:

Figure: 26 TAC §745.8803(a)

Decision or action in dispute:	Person who can request an administrative review to dispute the decision or action:
<p>(1) Any of the following concerning an operation or prospective operation:</p> <p>(A) A denial or revocation of a waiver or variance;</p> <p>(B) The citation of a deficiency;</p> <p>(C) The denial of a voluntary suspension.</p> <p>(D) The imposition of probation or an adverse action, subject to the limitations in subsection (b) of this section; or</p> <p>(E) The addition of a condition to a corrective action plan for a probation that the operation is currently on.</p>	<p>The applicant, or an owner, partner, governing body, director, licensed administrator, or designee of the operation.</p>
<p>(2) A determination that a program is not exempt from regulation.</p>	<p>The person or entity that requested the exemption determination.</p>
<p>(3) The imposition of a remedial action listed in §745.9031 of this chapter (relating to What remedial actions can Licensing take against my administrator's license?).</p>	<p>The applicant or licensed administrator.</p>
<p>(4) A controlling person designation.</p>	<p>The person designated as a controlling person.</p>
<p>(5) A determination that the person poses an immediate threat or danger to the health or safety of children because of:</p> <p>(A) A juvenile adjudication; or</p> <p>(B) Another issue unrelated to criminal history or a Department of Family and Protective Services child abuse, neglect, or exploitation investigation.</p>	<p>The person determined to pose the immediate threat or danger to the health or safety of children.</p>

(b) An owner, partner, governing body, director, licensed administrator, or designee of an operation may not request an administrative review to dispute:

(1) An automatic suspension or revocation of a permit under Texas Human Resources Code (HRC) §42.052(j) or §42.054(f);

(2) The implementation of a court order against the operation;

(3) An emergency suspension or closure of the operation under HRC §42.073;

(4) A determination that the operation poses an immediate threat or danger to the health or safety of children; or

(5) An imposition of an administrative penalty against the operation.

§745.8805. How does a person request an administrative review?

(a) To request an administrative review, a person must submit a written request by regular mail, email, or fax to the name and address indicated in the notification letter or inspection report.

(b) The written request must:

(1) Describe the specific decision or action that the requestor is disputing;

(2) Describe the reasons why the decision or action should not be upheld;

(3) Include any documentation that supports the requestor's position, such as photographs, diagrams, or written and signed statements; and

(4) Be timely.

(c) For a request to be timely:

(1) A mailed request must be postmarked within 15 days after the person receives notification of the right to request an administrative review; or

(2) An emailed or faxed request must be received within the 15 days after the person receives notification of the right to request an administrative review.

(d) When determining whether a request was made timely:

(1) If the notification or inspection report was delivered in person:

(A) Add 15 calendar days to the date the notification or inspection report was delivered; and

(B) Identify the first date after adding the 15 calendar days that is not a Saturday, Sunday, or legal holiday; or

(2) If the notification or inspection report was delivered by regular mail:

(A) Add 18 calendar days to the date the notification or inspection report was mailed (a requestor is presumed to have received the notification or inspection report three days after it was mailed); and

(B) Identify the first date after the 18 calendar days that is not on a Saturday, Sunday, or legal holiday.

§745.8807. How does a person waive the right to an administrative review?

(a) A person waives the right to an administrative review by:

(1) Failing to meet the requirements of §745.8805 of this division (relating to How does a person request an administrative review?); or

(2) Submitting a written statement stating that the person waives the right to the administrative review.

(b) If a person waives the right to an administrative review, the decision or action will be upheld. When applicable, the Texas Health and Human Services Commission will send a notice of the right to a due process hearing as set forth in Division 2 of this Subchapter (relating to Due Process Hearings). If the person does not have a right to a due process hearing, the decision or action will be final.

§745.8809. Who conducts an administrative review?

(a) Administrative Reviews are conducted by Texas Health and Human Services Commission Child Care Enforcement (Regulatory Enforcement).

(b) The person conducting an administrative review must not have:

(1) Directly supervised the person making the decision or action or conducting the inspection or investigation that is being reviewed; or

(2) Otherwise been involved in the original decision, action, inspection, or investigation.

§745.8811. How is an administrative review conducted?

(a) The person conducting an administrative review may conduct the review by telephone conference, including virtual conferencing, or in a face-to-face meeting at the person's office.

(b) Within 10 calendar days after receiving a request that meets the requirements of §745.8805 of this division (relating to How does a person request an administrative review?), the person conducting the administrative review will contact the requestor to schedule a date and time to conduct the review.

(c) Subject to the limitations in subsection (h) of this section, the telephone conference or meeting must occur within 30 days of the date of this initial contact, unless additional time is necessary to complete a records request related to the subject of the administrative review. If additional time is necessary, the 30-day timeframe for completing the conference or meeting will begin when the requestor obtains the records.

(d) The person conducting the administrative review will proceed with the review without conducting the telephone conference or meeting if:

(1) The requestor does not respond to the person's attempts to schedule the conference or meeting within the 30-day timeframe and does not show good cause for the requestor's failure to respond within the timeframe;

(2) The requestor does not schedule the conference or meeting within the 30-day timeframe and does not show good cause for the requestor's failure to schedule the conference or meeting within the timeframe; or

(3) The requestor misses the scheduled conference or meeting without requesting a delay under subsection (e) of this section.

(e) To delay the telephone conference or meeting, the requestor must present a good cause reason for a delay, in writing, to the person conducting the administrative review before the time of the scheduled telephone conference or meeting. The person conducting the review will decide whether good cause exists to delay the conference or meeting.

(f) "Good cause" in this section is a reason for taking an action or failing to take an action that is reasonable and justified when viewed in the context of the surrounding circumstances.

(g) Following the telephone conference or meeting, the person conducting the administrative review will review any documentation the requestor provided, may review any other relevant files, may ask additional questions, and may gather other relevant information, as needed.

(h) When an operation has been cited for the abuse, neglect, or exploitation of a child in care, an administrative review for a deficiency in the following will be postponed while the finding is pending an administrative review before the Texas Department of Family and Protective Services:

(1) A standard related to ensuring that no child is abused, neglected, or exploited while in the care of the operation; or

(2) A standard stating that the child has the right to be free from abuse, neglect, or exploitation.

§745.8813. What actions may the person conducting the administrative review take at the end of the review?

(a) The person conducting an administrative review may uphold, overturn, or alter the decision or action. The person alters the decision or action by modifying it after assessing the relevant information available at the end of the review. For example, if the disputed decision under review is a minimum standard deficiency, the person conducting the review may determine the deficiency occurred and alter the record by updating the minimum standard to one that better describes the deficiency.

(b) If the telephone conference or meeting did not occur for a reason outlined in §745.8811(d) of this division (relating to How is an administrative review conducted?), the person conducting the administrative review will base the decision to uphold, overturn, or alter the decision or action on the written request for a review, any supporting documentation submitted with the request, and any other information that the person gathered.

(c) If the person overturns or alters the decision or action, the Texas Health and Human Services Commission (HHSC) will update HHSC records to reflect the change.

(d) If the decision or action is altered, the requestor may not request an additional administrative review concerning the altered decision or action.

(e) If the requestor has the right to request a due process hearing related to the altered decision or action, the altered decision or action will be the subject of the hearing.

(f) If the requestor does not have the right to request a due process hearing, the altered decision or action will be final.

§745.8815. When will the person who conducts the administrative review issue a decision?

(a) The person conducting the administrative review will prepare and send a written decision to the requestor within the following timeframes, unless the person determines good cause exists to extend the relevant timeframe:

(1) Within 21 calendar days of conducting the telephone conference or meeting;  
or

(2) Within 60 days of the request for an administrative review, if the telephone conference or meeting was not held for a reason outlined in §745.8811(d) of this division (relating to How is an administrative review conducted?).

(b) "Good cause" in this section has the same meaning as stated in §745.8811(f) of this division.

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SUBCHAPTER M	ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS
DIVISION 2	DUE PROCESS HEARINGS

§745.8831. What is a due process hearing?

A due process hearing is a formal legal proceeding before an administrative law judge of the State Office of Administrative Hearings to determine whether a decision or action was appropriate under applicable laws and rules.

§745.8833. What does "Legal Enforcement Department" mean in this division?

The Legal Enforcement Department is the department of the Legal Services Division of the Texas Health and Human Services Commission (HHSC) that represents HHSC during due process hearings and handles other matters related to these hearings.

§745.8835. Who may request a due process hearing?

(a) The following chart describes who may request a due process hearing to dispute a decision or action:



Figure: 26 TAC §745.8835(a)

Decision or action in dispute:	Person who can request a due process hearing to dispute the decision or action:
(1) The imposition of either of the following against an operation:  (A) An adverse action, subject to the limitations in subsection (b) of this section; or  (B) An administrative penalty.	The applicant or an owner, partner, governing body, director, licensed administrator, or designee of the operation.
(2) A denial, refusal to renew, suspension, or revocation of an administrator's license.	The applicant or licensed administrator.
(3) The designation of a person as a controlling person.	The person designated as a controlling person.
(4) The imposition of an administrative penalty against a controlling person.	The controlling person that the administrative penalty was imposed upon.
(5) A Central Registry finding of child abuse, neglect, or exploitation that has not been sustained and is the result of a background check conducted under Subchapter F of this chapter (relating to Background Checks).	The subject of the background check.
(6) A determination that the person poses an immediate threat or danger to the health or safety of children because of:  (A) A juvenile adjudication; or  (B) Another issue unrelated to criminal history or a Texas Department of Family and Protective Services child abuse, neglect, or exploitation investigation.	The person determined to pose the immediate threat or danger.

(b) An owner, partner, governing body, director, licensed administrator, or designee of an operation may not request a due process hearing to dispute:

(1) An automatic suspension or revocation of a permit under Texas Human Resources Code (HRC) §42.052(j) or §42.054(f);

(2) The implementation of a court order against the operation;

(3) An emergency suspension or closure of the operation under HRC §42.073; or

(4) A determination that the operation poses an immediate threat or danger to the health or safety of children.

§745.8837. How does a person request a due process hearing?

(a) To request a due process hearing, a person must send a written request to the Docket Clerk for Licensing in the Legal Enforcement Department at the mailing address, email address, or fax number listed in the notice informing the person of the right to request a due process hearing.

(b) The written request must:

(1) Describe the specific decision or action that the requestor is disputing;

(2) Describe the reasons why this decision or action should not be upheld;

(3) Include a copy of the notification letter informing the requestor of the right to request a due process hearing;

(4) Include the requestor's mailing address, even if the request is by email or fax; and

(5) Be timely.

(c) For a request to be timely:

(1) A mailed request must be postmarked within 30 days after the person receives notification of the right to request a due process hearing;

(2) An emailed or faxed request must be received within the 30 days after the person receives notification of the right to request a due process hearing; and

(d) When determining whether a request was made timely:

(1) If the notification of the right to request a due process hearing was delivered in person:

(A) Add 30 calendar days to the date the notification was delivered; and

(B) Identify the first date after adding the 30 calendar days that is not a Saturday, Sunday, or legal holiday; or

(2) If the notification of the right to request a due process hearing was delivered by regular mail:

(A) Add 33 calendar days to the date the notification was mailed (a requestor is presumed to have received the notification three days after it was mailed); and

(B) Identify the first date after the 33 calendar days that is not on a Saturday, Sunday, or legal holiday.

§745.8839. What is the process for scheduling a due process hearing and notifying the requestor?

(a) After a person requests a due process hearing, the Legal Enforcement Department will ask the State Office of Administrative Hearings (SOAH) to appoint an administrative law judge to conduct a hearing to make a final decision regarding whether the decision or action was appropriate under applicable laws and rules.

(b) After SOAH assigns a docket number to the case:

(1) The Legal Enforcement Department will send the requestor a notice of the hearing by regular and certified mail to the last known address noted in the records; or

(2) If the Docket Clerk has received written notice of representation from an attorney who will be representing the requestor at the hearing, the Legal Enforcement Department will send the notice to the attorney in a manner allowed under the rules referenced in §745.8845 of this division (relating to How is a due process hearing conducted?).

§745.8841. What happens if a requestor's address changes after the initial request for a hearing?

(a) The requestor is responsible for notifying the Docket Clerk in writing of any change in the requestor's address that occurs after the initial request for a hearing.

(b) If the requestor fails to notify the Docket Clerk of an address change, the last address that the requestor provided to the Docket Clerk will remain the address of record for any notice that the Legal Enforcement Department sends the requestor.

§745.8843. When may the Legal Enforcement Department nullify a request for a due process hearing?

(a) If the request for a due process hearing relates to a Central Registry finding of child abuse, neglect, or exploitation that was not conducted in a child care operation under Texas Administrative Code, Title 40, Chapter 707, Subchapter C (relating to Child Care Investigations), the Legal Enforcement Department may nullify the request upon determining that the requestor is no longer present at the operation that requested the original background check on the requestor.

(b) A nullification will not affect the requestor's ability to dispute the finding in relation to a future background check.

(c) The Legal Enforcement Department may not nullify a request for a hearing if:

(1) The requestor is not present at the operation because Licensing determined that the requestor is ineligible to be present at the operation because of the finding, unless the requestor agrees to the nullification; or

(2) The Texas Health and Human Services Commission is taking adverse action against an operation because of the finding.

§745.8845. How is a due process hearing conducted?

A due process hearing is conducted according to the following procedural rules, which are incorporated into this rule by reference:

(1) Rules of the State Office of Administrative Hearings (SOAH) found at Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure);

(2) Applicable provisions of the Texas Government Code, Chapter 2001, Administrative Procedures Act (APA); and

(3) The Texas Rules of Civil Procedure, to the extent that they do not conflict with the SOAH rules or the applicable APA provisions.

§745.8847. What information can the parties discuss in a due process hearing?

(a) During a due process hearing the parties may discuss:

(1) Facts directly relevant to the decision or action, including relevant facts that staff did not previously evaluate; and

(2) Interpretations of directly relevant facts.

(b) Alleged changes that have been made to the operation after the decision to take adverse action are not directly relevant to the due process hearing, and the administrative law judge may exclude them.

§745.8849. Can an administrative law judge address multiple decisions and actions during a single due process hearing?

An administrative law judge (ALJ) appointed by the State Office of Administrative Hearings may address multiple decisions and actions that are related to each other during a single due process hearing. For example, if the Texas Health and Human Services Commission (HHSC) has decided to revoke an operation's license based on an abuse finding made by the Texas Department of Family and Protective Services (DFPS), the ALJ may address these matters during the same hearing. However, the ALJ's final decision must include determinations for both DFPS's finding of abuse and HHSC's revocation of the operation's license.

§745.8851. Who may appeal the final decision after a due process hearing?

After the administrative law judge appointed by the State Office of Administrative Hearings (SOAH) issues the final decision after a due process hearing, either party may file an appeal in district court by following the provisions of Texas Government Code, Chapter 2001, Administrative Procedures Act, including filing a timely motion for rehearing with SOAH.

§745.8853. What action must the Texas Health and Human Services Commission take after the final decision in a due process hearing?

After there is a final decision in a due process hearing, including the results of a subsequent appeal, the Texas Health and Human Services Commission (HHSC) must take the action described in the following chart:

Figure: 26 TAC §745.8853

If the final due process hearing decision:	HHSC:
(1) Overturns HHSC's decision or action,	Corrects the decision or action.
(2) Upholds HHSC's decision or action,	Applies the decision or action.
(3) Alters HHSC's decision or action,	Complies with the direction outlined in the final order, including modifying the decision or order.

§745.8855. Can a person waive the right to a due process hearing?

(a) A person may waive the right to a due process hearing:

(1) By not requesting a hearing according to §745.8837 of this division (relating to How does a person request a due process hearing?); or

(2) By submitting a written statement that waives the right to a due process hearing to the Legal Enforcement Department.

(b) If a person waives the right to a due process hearing:

(1) By not requesting a hearing according to §745.8837 of this division, the decision or action will be effective as noted in the chart:

Figure: 26 TAC §745.8855(b)(1)

Decision or Action:	Effective Date of Decision or Action:
(A) Designation of person as a controlling person.	Determined according to §745.907(b) of this chapter (relating to What are the consequences of Licensing designating me as a controlling person?).
(B) Any other decision or action.	The day after the expiration of the required timeframe for requesting a due process hearing.

(2) By submitting a written statement waiving the right to a hearing, the decision or action will be effective on the date the Texas Health and Human Services Commission receives the waiver.

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DIVISION 3	OPERATING PENDING AN ADMINISTRATIVE REVIEW AND DUE PROCESS HEARING

§745.8871. Does a request for an administrative review suspend the start date of probation?

(a) If you request an administrative review regarding probation, the probation, including the implementation of the corrective action plan and the posting requirements at §745.8641(3) of this chapter (relating to What requirements must I meet during the probation period?), are suspended pending the outcome of the administrative review. Once the administrative review is complete, the Texas Health and Human Services Commission (HHSC) will notify you of the decision of the administrative review and the new start date for the probation, if appropriate.

(b) If HHSC adds a condition of probation while you are currently on probation and you request an administrative review on the new condition of probation, your current probation will continue. Once the administrative review is complete, HHSC will notify you of the decision and any change in conditions that need to be made to the probation.

§745.8873. If the Texas Health and Human Services Commission is imposing a suspension of, revocation of, or refusal to renew my permit, are the notice requirements postponed until the outcome of the administrative review and due process hearing?

No, you must meet the notice requirements for a suspension, revocation, or refusal to renew at §745.8656 of this chapter (relating to Are there any notice requirements when Licensing attempts to take adverse action against my operation?) pending the outcome of the administrative review and due process hearing.

§745.8875. May I operate during the appeal of an adverse action, including pending the outcome of an administrative review and due process hearing?

Whether you may operate during the appeal of an adverse action depends upon the type of adverse action the Texas Health and Human Services (HHSC) is imposing against you:

(1) If HHSC is suspending your permit or denying you a permit, you may not operate pending the outcome of an administrative review and due process hearing;

(2) If HHSC is revoking or refusing to renew your permit, you may continue to operate pending the outcome of the administrative review and due process hearing unless Licensing determines the operation poses an immediate threat or danger to the health or safety of children according to §745.751 of this chapter (relating to What factors does Licensing consider when determining if a person or operation is an immediate threat to the health or safety of children?); and

(3) If HHSC is adversely amending your permit, you may continue to operate without the adverse amendment pending the outcome of the administrative review and due process hearing.

§745.8877. What if I disagree with Licensing's decision that my operation poses an immediate threat or danger to the health or safety of children?

If you disagree with the determination that your operation poses an immediate threat or danger to the health or safety of children as described in §745.8875(2) of this division (relating to May I operate during the appeal of an adverse action, including pending the outcome of an administrative review and due process hearing?), you may seek injunctive relief from a district court in Travis County or in the county where the operation is located, as required by Texas Human Resources Code §42.072(e).

§745.8879. If the Texas Health and Human Services Commission is imposing a revocation of or refusal to renew my permit, may I enroll new children pending the outcome of an administrative review and due process hearing?

(a) You may enroll new children pending the outcome of an administrative review and due process hearing for a revocation of or a refusal to renew your permit:

(1) If you are able to continue to operate as explained in §745.8875(2) of this division (relating to May I operate during the appeal of an adverse action, including pending the outcome of an administrative review and due process hearing?); or

(2) A district court grants you injunctive relief to continue to operate as explained in §745.8877 of this division (relating to What if I disagree with Licensing's decision that my operation poses an immediate threat or danger to the health or safety of children?).

(b) If you are allowed to enroll children pending the outcome of an administrative review and due process hearing according to subsection (a) of this section, you must inform anyone seeking to enroll a child that HHSC is seeking to revoke or refuse to renew your permit and that you are continuing to care for children pending the outcome of the administrative review and due process hearing.



§745.8881. What kinds of inspections and investigations will be conducted if I continue to operate pending the outcome of an administrative review and due process hearing?

A pending enforcement action does not affect Licensing's responsibility to inspect or investigate your operation. Licensing must continue to conduct inspections and investigations while you are operating. The Texas Department of Family and Protective Services must also investigate any allegations of child abuse, neglect, and exploitation while you are operating.