

Note: Effective January 26, 2023, the below rules in Title 40, Chapter 745, Subchapter M, Administrative Reviews and Due Process Hearings were deleted and replaced by new rules in Title 26, Chapter 745, Subchapter M, Administrative Reviews and Due Process Hearings.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 745 LICENSING
[SUBCHAPTER M—ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS
DIVISION 1—ADMINISTRATIVE REVIEWS

~~§745.8801. What is an administrative review?~~

~~An administrative review is an informal review we conduct to determine whether a Licensing decision or action was appropriate under applicable Licensing rule or law.~~

~~§745.8803. What is the purpose of an administrative review?~~

~~(a) The purpose of the administrative review is to give certain individuals or operations the opportunity to dispute a specific Licensing decision or action listed in §745.8805 of this title (relating to Under what circumstances may I request an administrative review?). The review is not a formal hearing. There will be no formal examination and cross examination of witnesses.~~

~~(b) If you do not waive your right to request an administrative review, we may not implement any decision or action that is the subject of the review until your due process rights concerning the decision or action are exhausted.~~

~~§745.8805. Under what circumstances may I request an administrative review?~~

~~(a) You may request an administrative review when:~~

~~—(1) We determine that your operation is not exempt from our regulation;~~

~~—(2) We deny your operation a waiver or variance;~~

~~—(3) We cite your operation with a deficiency, and you disagree with the citation;~~

~~—(4) We take remedial action against your operation, subject to the limitations in subsection (b) of this section;~~

~~—(5) We have determined that you are an immediate threat or danger to the health or safety of children;~~

~~—(6) We have designated you as a perpetrator of child abuse, neglect, or exploitation;~~

- ~~—(7) We take remedial action against your Child Care Administrator's License; or~~
- ~~—(8) We intend to designate you as a Controlling Person.~~

~~(b) You may not request an administrative review to challenge:~~

- ~~—(1) An automatic suspension or revocation of your permit;~~
- ~~—(2) A remedial action initially implemented through a court order;~~
- ~~—(3) An emergency suspension or closure pursuant to the Human Resources Code §42.073; or~~
- ~~—(4) An administrative penalty against you or your operation.~~

~~§745.8806. How long do I have to submit a request for an administrative review?~~

~~We must receive your request within 15 calendar days after you receive our notification of your right to an administrative review. Requests received in the mail must be postmarked within 15 calendar days. If we do not receive a complete request within 15 days of the date you are notified of our decision or action as specified in §745.8809 of this title (relating to How do I request an administrative review?), your right to a review will be waived.~~

~~§745.8807. Who may request an administrative review?~~

~~The following persons may request an administrative review:~~

- ~~—(1) The governing body, director or designee regarding the review of the decision or action against the operation noted in paragraphs (1)–(4) of §745.8805 of this title (relating to Under what circumstances may I request an administrative review?);~~
- ~~—(2) The person that we have determined is an immediate threat or danger to the health or safety of children;~~
- ~~—(3) A designated perpetrator of abuse, neglect, or exploitation against a child in care regarding the review of our related finding of abuse, neglect, or exploitation;~~
- ~~—(4) The holder of a child care administrator's license regarding the review of a remedial action concerning that license; and~~
- ~~—(5) An individual who receives a letter from Licensing notifying them of our intent to designate them as a controlling person.~~

~~§745.8809. How do I request an administrative review?~~

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

~~(b) The written request must:~~

~~—(1) Describe the specific decision or action that you are disputing;~~

~~—(2) Indicate why you are disputing the decision or action or how you were in compliance with the applicable Licensing rule or law; and~~

~~—(3) Include any documentation that supports your position, such as photographs, diagrams, or written and signed statements.~~

~~§745.8813. Who conducts the administrative review?~~

~~(a) For routine deficiencies, the relevant Licensing supervisor, the relevant district director for Licensing, or their designee may conduct the review.~~

~~(b) For all other Licensing decisions or actions when a person is entitled to an administrative review, the relevant division administrator for Licensing, the relevant district director for Licensing, or their designee may conduct the review. For an administrative review of an abuse or neglect finding, the designee must not have been involved in the investigation and must not have directly supervised the investigation.~~

~~§745.8815. How is the administrative review conducted?~~

~~(a) Administrative reviews are generally conducted by telephone. However, if we take remedial action against your operation or we designate you as a perpetrator of child abuse, neglect, or exploitation, we may conduct the review in a face-to-face meeting at our office. If we cite you with a deficiency and you disagree with the citation or we determine that your operation is not exempt from our regulation, we may visit your operation to conduct the review.~~

~~(b) We will contact you within 10 calendar days of receiving your written request to schedule a time to conduct the review. The telephone conference or meeting must occur within 30 days of the date of this initial contact unless additional time is necessary in order for us to comply with your request for records related to the subject of the administrative review. If additional time is necessary, then the 30-day timeframe for completing the telephone conference or meeting will begin when you obtain the records.~~

~~(c) You will waive the telephone conference or meeting if:~~

~~—(1) You do not respond to our attempts to contact you; or~~

~~—(2) You do not complete the conference or meeting within the 30-day timeframe, unless the person conducting the review finds that there is good cause to schedule the conference or meeting at a later date.~~

~~(d) If you believe there is good cause to delay the conference or meeting, you must timely present your request for a delay and the reason in writing to the person conducting the review. The person conducting the review will make a decision regarding good cause based on policy developed by DFPS.~~

~~(e) Following the telephone conference or meeting, we will review the Licensing file and any additional documentation provided by you, may ask additional questions, and may gather other relevant information, as needed. If you waive the telephone conference or meeting, we will make a decision based on your written request and any supporting documentation submitted with your request.~~

~~(f) Unless good cause exists according to policy, we will prepare a written decision within 21 calendar days of conducting the review that upholds, amends, or overturns the Licensing decision or action in dispute and send notification of the decision to you. If the Licensing decision or action is overturned or amended, then we will correct the decision in our records.~~

~~§745.8817. Can I waive my right to an administrative review?~~

~~You will waive your right to an administrative review if you do not request it according to §745.8806 of this title (relating to How long do I have to submit a request for an administrative review?) and §745.8809 of this title (relating to How do I request an administrative review?). If you want to expedite the action we are seeking to take, you may send us a written statement indicating that you waive your right to the administrative review before the 15-day timeframe has expired.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 745 LICENSING
[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 Licensing decision or action was appropriate.~~

~~§745.8833. What is the purpose of a due process hearing?~~

~~The purpose of the due process hearing is to give a person the right to challenge certain Licensing decisions or actions in an impartial setting. The judge for the State Office of Administrative Hearings will decide if the facts that existed at the time we made a decision or took an action justify the decision or action.~~

~~§745.8835. When can I request a due process hearing?~~

~~(a) You may request a due process hearing in the following situations:~~

~~—(1) When we have designated you as a perpetrator of child abuse or neglect;~~

~~—(2) When we are going to release the fact that you are a perpetrator due to a Child Protective Services or Adult Protective Services finding of child abuse or neglect;~~

~~—(3) When we determine you or your operation is an immediate threat or danger to the health or safety of children;~~

~~—(4) When we are taking adverse action against your operation;~~

~~—(5) When we designate you as a controlling person at a residential operation;~~

~~—(6) When we impose an administrative penalty against you; or~~

~~—(7) If you are a licensed administrator, when we deny, revoke, suspend, or refuse to renew your license.~~

~~(b) Automatic suspension or revocation is not subject to a due process hearing.~~

~~§745.8837. Who can request the due process hearing?~~

~~(a) When we have designated a person as a perpetrator of child abuse or neglect or determined that he is an immediate threat or danger to the health or safety of children, only he can request the due process hearing.~~

~~(b) When we are taking an adverse action against an operation or determine an operation is an immediate threat or danger to the health or safety of children, only the governing body, director, or the designee can request the due process hearing.~~

~~(c) A licensed administrator can request a due process hearing when we suspend, revoke, or deny his administrator's license.~~

~~(d) A controlling person can request a due process hearing if an administrative penalty is imposed against that controlling person.~~

~~(e) A person can request a due process hearing when Licensing designates that person as a controlling person as provided under §745.905 of this title (relating to When will Licensing designate someone at my child care operation as a controlling person?).~~

~~(f) The governing body, director, or the designee of the operation can request a due process hearing for an administrative penalty imposed against a permit holder.~~

~~§745.8839. How do I request a due process hearing?~~

~~To request a due process hearing you must:~~

~~—(1) Send the written request by certified mail;~~

~~—(2) Describe the specific decision that you are disputing and the reason(s) why this decision or action should not be upheld;~~

~~—(3) Attach a copy of the notification letter informing you of your rights to a due process hearing; and~~

~~—(4) Send and postmark the request within 30 days after you receive our notification of your right to a due process hearing.~~

~~§745.8841. Where do I send the written request for a due process hearing?~~

~~You must send your request for a due process hearing by certified or regular mail to our Docket Clerk in Legal Services. The exact mailing address is included in the notice informing you of your right to due process. You must also send a copy of your request to the Licensing staff that sent you the notice letter.~~

~~§745.8843. What happens after I make a request for a due process hearing?~~

~~(a) After you request a due process hearing, we will ask the State Office of Administrative Hearings to appoint an administrative law judge to conduct proceedings necessary for him to make a final decision in the case.~~

~~(b) After the State Office of Administrative Hearings assigns a docket number to your case:~~

~~—(1) We will send you notice of the hearing, by regular and certified mail, to your last known address as shown by our records; or~~

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

~~(c) You are responsible for providing the Docket Clerk with written notification of any change in your address that occurs after you have requested a due process hearing.~~

~~(d) If you requested a hearing because we are going to release a Child Protective Services or Adult Protective Services finding that you abused or neglected a child, we may nullify your request if we decide not to release the finding to the operation. We may decide not to release the finding to the operation if we determine that you are no longer present at the operation. If we nullify your request for a hearing, you will retain your right to request a due process hearing in the event that we seek to release the finding in the future. We may not nullify your request for a hearing if:~~

~~—(1) We released the finding to the operation as set forth in §745.733 of this title (relating to Will Licensing release a central registry finding on a designated perpetrator or sustained perpetrator to my operation?); or~~

~~—(2) We are taking adverse action against your 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 Administrative Hearings (SOAH) found at 1 TAC Chapters 155, 157, and 161 (relating to Rules of Procedure, Temporary Administrative Law Judge, and Requests for Records);~~

~~—(2) The Texas Government Code, Chapter 2001, Administrative Procedures Act (APA) rules, to the extent that they do not conflict with the SOAH rules; and~~

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

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

~~(a) They may discuss:~~

~~—(1) Facts which were not evaluated by the Licensing staff; and~~

~~—(2) New interpretations of 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. What can the administrative law judge (ALJ) do to the decisions or actions that Licensing made?~~

~~The ALJ may uphold, reverse, or alter our decision or action. If he reverses our decision or action, then we must correct the decision or action in our records. If he upholds our decision or action, then we will go forward with the decision or action. If he alters our decision or action, then we will follow the direction outlined in the Order.~~

~~§745.8851. Can due process hearings be combined?~~

~~Yes, an administrative law judge (ALJ) may combine hearings that involve issues related to the same decision or action. For example, if we take an adverse action against your operation based on a finding of child abuse or neglect, and you request a due process hearing on both the finding and the adverse action, then the ALJ may combine the hearing to listen to these related issues at the same time. Another example is when three different individuals are designated as perpetrators of abuse or neglect based on the same incident, and all three individuals request due process hearings. In this situation, the ALJ may combine all three hearings to listen to the related abuse and neglect issue at the same time. However, the ALJ's judgment must reflect a determination on all of the individual due process requests before him.~~

~~§745.8853. What if I do not appear at my due process hearing?~~

~~If you do not appear, the administrative law judge may enter a default decision that approves or upholds the decision or action we took.~~

~~§745.8855. Can I waive my right to a due process hearing?~~

~~(a) You will waive your right to a due process hearing by not requesting one according to §745.8839 of this title (relating to How do I request a due process hearing? and §745.8841 of this title (relating to Where do I send the written request for a due process hearing?). If you waive your right to a due process hearing by not requesting one according to the rules, our decision and/or action will be effective on the date after your time period for requesting a due process hearing expires unless the due process hearing was offered due to the designation of a controlling person. If so, see §745.907(b) of this title (relating to (What are the consequences of Licensing designating me as a controlling person?) to determine when the action is effective.~~

~~(b) If you want to expedite the decision and/or action, you may send us a written waiver of your right to the due process hearing before the 30-day timeframe has expired. Our decision or action will be effective on the date that we receive your written waiver.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 745 LICENSING
[SUBCHAPTER M — ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS
DIVISION 3 — OPERATIONS PENDING THE ADMINISTRATIVE REVIEW AND
DUE PROCESS HEARING

~~§745.8871. Does my request for an administrative review suspend the start date of the evaluation or probation?~~

~~(a) If you request an administrative review regarding the entire corrective action, then the evaluation or probation, including the implementation of the corrective action plan and the posting requirement, is suspended pending the outcome of the administrative review. Once the administrative review is complete, we will notify you of the decision of the administrative review and the new start date, if appropriate.~~

~~(b) If you only request an administrative review regarding one or more of the conditions imposed as part of the action, then we will notify you whether the evaluation or probation will continue with noted changes or is suspended pending the outcome of the administrative review. If the corrective action will continue, then you must meet the posting requirements. Once the administrative review is complete, we will notify you of the decision of the administrative review and any change in conditions that need to be made to the evaluation or probation, including a new start date, if appropriate.~~

~~§745.8873. If Licensing takes adverse action against me, is the posting requirement for an adverse action postponed until the outcome of the due process hearing?~~

~~No, you must follow the posting requirement for an adverse action pending the outcome of the due process hearing. Families with children in care need to be aware of the possibility that your operation may have to close in the near future.~~

~~§745.8875. If Licensing takes adverse action against me, may I continue to operate pending the outcome of an administrative review and/or a due process hearing?~~

~~Whether you may operate pending the outcome of an administrative review and/or due process hearing depends upon the type of adverse action being taken against you:~~

~~—(1) If we denied your permit, you may not operate; and~~

~~—(2) If we have adversely amended, suspended, or revoked your permit, then you may continue to operate pending the outcome of the administrative review and due process hearing unless we determine the operation poses an immediate threat or danger to the health or safety of children.~~

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

~~You may request an administrative review and/or due process hearing. We will notify you of this right when we inform you of our determination. If we determine that you pose an immediate threat or danger, you may not be present in the operation while children are in care pending the outcome of your administrative review and/or due process hearing. If we determine that your operation poses an immediate threat or danger, you must close your operation pending the outcome of the review and/or hearing. If you disagree with our determination that you or your operation poses an immediate threat, you may seek injunctive relief from a district court in Travis County or in the county where the operation is located.~~

~~§745.8879. If Licensing takes adverse action against my operation, may I enroll new children pending the outcome of an administrative review and/or due process hearing?~~

~~Yes, if we allow you to continue operating, you may enroll new children pending the outcome of an administrative review and/or due process hearing. However, you must inform anyone seeking to enroll a child that we are seeking to deny, suspend, or revoke your permit, and that you are continuing to care for children pending the outcome of the administrative review and/or due process hearing.~~

~~§745.8881. What kinds of inspections will Licensing conduct if I continue to operate pending the administrative review and due process hearing?~~

~~We continue to have a responsibility for inspections during the time you are operating. We will determine a plan to ensure the safety of children in your care.]~~