#### 7541 Notification of the Administrative Penalty

LPPH ~~December 2009~~ DRAFT 5902-CCL

Procedure

The supervisor sends a certified letter recommending the imposition of a penalty and the amount of the penalty to:

 • the permit holder; or

 • the controlling person, if the penalty is recommended for a controlling person.

The supervisor must send the certified letter within 14 days after the date that the inspector made the recommendation to impose the penalty. The supervisor uses [Form 2994](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2994.doc) Administrative Penalty Letter to notify the permit holder or the controlling person about the recommendation to impose a penalty.

### 7710 Administrative Reviews

LPPH ~~April 2011~~ DRAFT 5902-CCL

Policy

Licensing staff conduct administrative reviews to determine whether a decision made by Licensing or an action taken by Licensing was appropriate, according to the applicable licensing statutes, administrative rules, or minimum standards when a permit holder or individual disputes the action or decision.

DFPS Rules 40 TAC §§[745.8801](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8801); [745.8803](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8803)

#### 7711 The Right to an Administrative Review

LPPH ~~April 2011~~ DRAFT 5902-CCL

Policy

The following persons may request an administrative review of a decision or action by Licensing:

a. The governing body, director, or designee of an operation that is entitled to request an administrative review

b. A person that Licensing has determined is an immediate threat or danger to the health or safety of children

c. A designated perpetrator of abuse, neglect, or exploitation against a child in care

d. The holder of an administrator's license regarding the review of a remedial action concerning that license

e. An individual whom Licensing intends to designate as a controlling person

DFPS Rules 40 TAC §§[745.8805](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8805); [745.8807](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=145748&p_tloc=&p_ploc=1&pg=3&p_tac=&ti=40&pt=19&ch=745&rl=8805)

If a minor is designated as a perpetrator of abuse or neglect, the minor’s parent has the right to request an administrative review on behalf of the minor.

DFPS Rules 40 TAC [§745.21](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=21)

##### 7711.1 An Operation’s Right to an Administrative Review

LPPH ~~April 2011~~ DRAFT 5902-CCL

Policy

Specific situations in which an operation’s governing body, director, or designee is entitled to an administrative review, include the following:

a. Licensing does not agree that the operation is exempt from DFPS regulation.

b. Licensing denies the operation’s request for a waiver or variance from a minimum standard.

c. Licensing cites the operation for a deficiency, and the operation does not agree that a deficiency was committed.

d. Licensing takes remedial action against an operation, unless the remedial action was initially implemented through a court order. Emergency suspensions, emergency closures, administrative penalties, automatic suspensions, and automatic revocations also are not subject to administrative reviews.

Human Resources Code [§42.073](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.073)

DFPS Rules 40 TAC [§745.8805](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8805)

##### 7711.3 Explaining the Right to an Administrative Review

LPPH ~~November 2011~~ DRAFT 5902-CCL

Policy

Licensing staff advises the subject of a Licensing decision or action that he or she has a right to request an administrative review.

Procedure

To advise an individual or designee of the operation about his or her right to request an administrative review, Licensing staff explains verbally by discussing the decision or action with the individual or the governing body, director, or designee of the operation and provides written notice by:

a. leaving a printed copy of the completed CLASS form 2936 Child Care Facility Inspection with the person in charge during the exit conference; or

b. sending the specific notification letter in the CLASS system that is appropriate for the particular decision or action by both regular and certified mail to the individual or the governing body, director, or designee of the operation. If the individual is a minor designated as a perpetrator of abuse or neglect, Licensing staff also sends the CLASS Form 2894 Abuse or Neglect Findings Letter to the Perpetrator by both regular and certified mail to the minor’s parent, guardian, or managing conservator.

Licensing staff inform the individual or the governing body, director, or designee of the operation that the request for an administrative review:

a. must be submitted to Licensing in writing, either by letter or by using [Form 2940](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2940.pdf) Administrative Review Request;

b. must include the information outlined in [7713](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713) Receiving a Request for an Administrative Review; and

c. must be received by Licensing no later than 15 days after the individual or operation received notice about Licensing’s decision or action.

DFPS Rule 40 TAC §§[745.8806](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=T&app=9&p_dir=P&p_rloc=145749&p_tloc=&p_ploc=1&pg=4&p_tac=&ti=40&pt=19&ch=745&rl=8805); [745.8809](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8809)

Documenting in CLASS

Licensing staff enter the date that notification about the right to a review was sent in the appropriate due process field in CLASS.

See:

[6632](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6632) Notification to the Alleged Perpetrator of Abuse, Neglect, or Exploitation Findings

[7713.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713_1) Determining Whether a Request for a Review Meets the Due Date

##### 7711.4 Waiving the Right to an Administrative Review

LPPH ~~November 2011~~ DRAFT 5902-CCL

Policy

An individual or operation may waive the right to an administrative review, if:

 • the individual or operation does not dispute the Licensing decision or action; or

 • the individual or operation would like to expedite the decision or action Licensing is seeking to take.

An individual or operation may expedite the Licensing decision or action by providing a written statement waiving the right to an administrative review.

DFPS Rules, 40 TAC [§745.8817](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8817)

Procedure

To waive the right to an administrative review, the individual, or governing body, director, or designee of the operation submits a written statement to Licensing no later than 15 days after he or she received notice about the Licensing decision or action.

If the individual or governing body, director, or designee of the operation verbally notifies a Licensing staff person that he or she has decided to waive the right, the staff person informs the individual or designee that the decision must be submitted in writing.

The right to a review is automatically waived if the individual or designee does not submit a written request for an administrative review within the required timeframe.

See [7713.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713_1) Determining Whether a Request for an Administrative Review Meets the Due Date.

Documenting in CLASS

For all types of actions or decisions, if the administrative review is waived, the Licensing staff person:

a. changes the status of the administrative review in the CLASS system from *Pending* to *Waived*, if there was no additional information requested or from *Requested* to *Waived*, if additional information had been requested (see [7713.22](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713_22) When a Request or an Administrative Review is Incomplete);

b. files a written request to expedite the decision or action in the investigation or operation’s record and documents the request in the *Chronology* field in CLASS, if applicable; and

c. documents in the *Chronology* field in CLASS how the reviewer determined that the request was not received by the due date, if applicable (see [7713.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713_1) Determining Whether a Request for an Administrative Review Meets the Due Date).

For actions or decisions involving abuse or neglect or adverse actions, the Licensing staff person:

 • drafts the appropriate letter notifying the individual or designee of the decision (see [7717](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7717) Notifying a Requestor About the Outcome of an Administrative Review); and

 • enters a date in the decision date field in CLASS.

#### 7712 Roles for Conducting an Administrative Review

LPPH ~~September 2012~~ DRAFT 5902-CCL

Policy

Routine Violations

A supervisor plans and conducts administrative reviews of routine violations.

Routine violations:

 • are identified during inspections or investigations; and

 • do not involve abuse or neglect.

All Other Decisions and Actions

For all other Licensing decisions and actions (including reviews related to findings of abuse or neglect), the administrative review is conducted by the relevant:

a. division administrator;

b. district director;

c. manager;

d. risk analyst; or

e. designee.

The reviewer:

 • must not have been involved in making, taking, or staffing the decision or action; and

 • must be from a different unit or region where the decision or action was made.

DFPS Rules 40 TAC [§745.8813](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8813)

#### 7713 Receiving a Request for an Administrative Review

LPPH ~~November 2011~~ DRAFT 5902-CCL

Policy

Before conducting an administrative review, Licensing staff must determine that the request for an administrate review:

a. is addressed to the Licensing contact person designated on the notice;

b. includes a signed Form 2940 Administrative Review Request or a signed letter granting authorization to an attorney to represent the operation or individual, if applicable;

c. is received by the due date; and

d. is complete.

DFPS Rules 40 TAC §§[745.8806](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8806); [745.8809](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8809)

###### 7713.12 When the Request for an Administrative Review Does Not Meet the Due Date

LPPH ~~November 2011~~ DRAFT 5902-CCL

Procedure

If the request for an administrative review is not received within the calculated time frame, the reviewer documents information in CLASS as outlined in [7711.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7711_4) Waiving the Right to an Administrative Review.

##### 7716.1 Documenting the Outcome of an Administrative Review in CLASS

LPPH ~~April 2011~~ DRAFT 5902-CCL (title is revised)

The reviewer documents the outcome in the CLASS system by:

a. changing the status of the administrative review from *Requested* to *Overturned* or *Upheld*;

b. clearly explaining the decision in the *Due Process Documentation* field;

c. entering a date in the *Decision Date* field; and

d. drafting a letter to notify the individual or designee of the operation of the decision (see [7717](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7717) Notifying a Requestor About the Outcome of an Administrative Review).

Documenting the Administrative Review Status for an Abuse or Neglect Citation in CLASS

Licensing staff change the status of the administrative review for the abuse or neglect citation from *Pending* to *Requested* if:

 • an individual who was designated as a perpetrator of abuse or neglect requests a review of the investigation finding; or

 • a designee of the operation requests an administrative review of the citation for abuse or neglect.

The finding for an abuse or neglect citation must remain as *Requested* until the due process for all designated perpetrators is complete.

If both the individual and the operation waive the right to an administrative review, Licensing staff change the status of the administrative review for the abuse or neglect citation from *Pending* to *Waived.*

##### 7716.2 Documenting the Outcome of an Administrative Review in IMPACT for Decisions Involving Abuse or Neglect

LPPH ~~April 2011~~ DRAFT 5902-CCL (renumbered; currently 7716.12; title is revised)

The reviewer documents the outcome in the *Administrative Review/Appeal* stage in the IMPACT system by:

a. choosing *FPS Position Changed* or *FPS Position Upheld* from the *Result* drop-down menu;

b. changing the *Reason to Believe* finding to *Ruled Out* or *Unable to Determine* on the allegation list if the decision is to overturn the decision; and

c. documenting the outcome, in detail, in the *Narrative* field.

##### 7716.3 Amending an Action or Decision as the Result of an Administrative Review

LPPH ~~April 2011~~ DRAFT 5902-CCL (title is revised)

If the reviewer determines that the information provided during the review supports a change in the decision or action, the reviewer amends the Licensing decision or action.

Specifically, amending a decision or action may include:

a. changing the conditions of a corrective action, waiver, or variance;

b. editing the original documentation of a decision or action; or

c. overturning the citation of a minimum standard that was cited incorrectly and providing technical assistance for a minimum standard that more accurately addresses the situation.

Documenting the Decision

The reviewer documents the outcome by following the steps in [7716.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7716_1) Documenting the Outcome of an Administrative Review in CLASS.

#### 7717 Notifying a Requestor About the Outcome of an Administrative Review

LPPH ~~November 2011~~ DRAFT 5902-CCL

Policy

Within 21 days after conducting an administrative review, the reviewer prepares and sends written notification about the outcome to the individual or governing body, director, or designee of the operation who requested the review.

If the administrative review is waived by the appropriate person, the reviewer sends written notification explaining the outcome of the administrative review within 21 days of the date that the conference was waived.

Unless the individual or operation has the right to request a due process hearing to challenge the Licensing decision or action, it takes effect:

a. on the date Licensing receives the individual or designee’s written statement waiving the right;

b. on the date that the administrative review is automatically waived;

c. when the decision or action is upheld; or

d. when the decision or action is overturned.

DFPS Rules 40 TAC [§745.8815](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8815)

##### 7717.1 Notifying an Operation of the Outcome of the Administrative Review

LPPH DRAFT 5902-CCL (new item)

Policy

Licensing does not offer due process hearings when any of the following decisions or actions are upheld or waived:

a. Licensing determines that the operation is not exempt from DFPS regulation.

b. Licensing denies the operation’s request for a waiver or variance.

c. Licensing cites the operation for a deficiency.

d. Licensing imposes corrective action on an operation.

Licensing does offer the permit holder a due process hearing if the decision to impose adverse action is upheld or waived.

DFPS Rules 40 TAC [§745.8835](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8835)

Procedure

To notify a designee of the operation about the outcome of an administrative review, the reviewer drafts and sends by both regular and certified mail one of the following letters:

a. Form 2885 Corrective Action Letter to uphold the decision to impose corrective action. Form 2885 is also mailed if the operation waives the right to administrative review

b. CLASS Form 2878 Decision to Impose Adverse Action for a decision regarding an adverse action (see [7632.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7632_1) Adverse Action is Overturned at an Administrative Review or [7632.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7632_2) Adverse Action Is Upheld at an Administrative Review or No Administrative Review Is Requested)

c. Form 2834A DFPS Letterhead located on the page in CLASS where the action is documented for all other types of reviews

If Form 2834A DFPS Letterhead is used, the reviewer composes the notification letter as a direct response to the designee’s request for an administrative review and includes:

a. the specific Licensing decision being disputed and reviewed;

b. the date that the request was received, the date of conference, and the date of the final decision; and

c. the outcome of the review.

##### 7717.2 Notifying an Individual of the Outcome of the Administrative Review

LPPH DRAFT 5902-CCL (new item)

Procedure

Licensing offers a due process hearing to any of the following individuals if the decision is upheld or waived:

 • An individual designated as a perpetrator of abuse, neglect, or exploitation of a child in care

 • An individual designated as a controlling person

To notify an individual about the outcome of an administrative review, the reviewer drafts and mails one of the following letters:

a. CLASS Form 2886B Administrative Review: Decision Overturned – Letter to Perpetrator or CLASS Form 2886 Decision Letter to Perpetrator for an individual who was designated as a perpetrator of abuse, neglect, or exploitation (see 7723 Explaining the Offer of a Due Process Hearing to Someone whom Licensing Designated as a Perpetrator of Abuse or Neglect)

b. Form 2880 SOAH Letter to Minor, located in the DFPS automated forms, to a minor who was designated as a perpetrator of abuse or neglect and the minor’s parent when the administrative review was upheld (see 7723 Explaining the Offer of a Due Process Hearing to Someone whom Licensing Designated as a Perpetrator of Abuse or Neglect)

c. CLASS Form 2763 Controlling Person Administrative Review Decision Letter for an individual who was designated as a controlling person (see [7772.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7772_2) No Administrative Review Requested by the Controlling Person or [7772.3](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7772_3) Decision to Designate a Controlling Person Is Overturned or [7772.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7772_4) Decision to Designate a Controlling Person Is Upheld)

### 7720 Hearings Concerning Child Abuse or Neglect Findings

LPPH ~~December 2009~~ DRAFT 5902-CCL (title is revised)

Policy

A person has an opportunity to request a due process hearing when Licensing:

 • designates the person as a perpetrator of child abuse or neglect; or

 • releases that APS or CPS designated the person as a perpetrator of child abuse or neglect.

#### 7721 Due Process Hearings for Persons Investigated by Licensing

LPPH ~~December 2009~~ DRAFT 5902-CCL (title is revised)

Procedure

Licensing offers a hearing to a person who has been found to have abused or neglected a child in an operation.

Licensing offers the alleged perpetrator a due process hearing only after the finding is upheld at the administrative review or the alleged perpetrator, including a minor, waives the review.

DFPS Rules, 40 TAC §§[745.8831](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8831); [745.8833](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8833)

Delete item 7723

#### 7723 Explaining the Offer of a Due Process Hearing to Someone Whom Licensing Designated as a Perpetrator of Abuse or Neglect

LPPH ~~December 2009~~ DRAFT 5902-CCL (renumbered; currently 7724; title is revised)

Procedure

The investigator notifies the perpetrator in writing of the following:

a. A statement of the abuse or neglect findings

b. The decision whether the findings will be released prior to the due process hearing

c. That the finding may affect his or her employment in child care

d. The perpetrator's right to request a hearing;

e. The party to whom the written request for a hearing is addressed:

Docket Clerk

Legal Services, Mail Code Y-956

Texas Department of Family and Protective Services

P.O. Box 149030

Austin TX 78714-9030;

f. That the request must be postmarked within 30 days after the person receives this notice

g. The fact that a copy of the request must be sent to the investigator or his or her supervisor

Delete item 7724.1

##### 7723.1 Additional Information for Permit Holders

LPPH ~~December 2009~~ DRAFT 5902-CCL (renumbered; currently 7724.2)

Procedure

If the designated perpetrator is a permit holder, add both of the following:

 • That the finding may be the basis for remedial action; or, if simultaneous to a notice of intent to revoke or deny, the details of the adverse action (Licensing may combine the release hearing with the appeal of the adverse action)

 • The requirement that the request must be postmarked within 30 days after the person receives this notice

##### 7723.2 Additional Information for Illegal Operations

LPPH ~~December 2009~~ DRAFT 5902-CCL (renumbered; currently 7724.3)

Procedure

For illegal operations (see [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp#LPPH_Definitions_of_Terms)), include:

a. the requirements to be licensed, registered, or listed;

b. that the finding might be the basis for denying the perpetrator a permit; and

c. that the request must be postmarked within 30 days after the person receives this notice.

##### 7723.3 Waiving the Right to a Due Process Hearing

LPPH DRAFT 5902-CCL (new item)

Policy

A perpetrator may waive the right to a due process hearing, if he or she:

 • does not dispute the Licensing decision or action; or

 • would like to expedite the action Licensing is seeking to take.

If the perpetrator decides to expedite the Licensing action, he or she may provide a written statement to Licensing, waiving the right to the due process hearing or fail to request one within the 30-day time period.

Procedure

To waive the right to a release hearing, an individual submits a written statement no later than 30 days after he or she received notice about the right to request a due process hearing.

If the perpetrator verbally notifies a Licensing staff person that he or she has decided to waive the right, the staff person informs him or her that the decision must be submitted in writing.

The right to a due process hearing is automatically waived if the individual does not submit a written statement requesting a hearing or a written statement waiving his or her right to a hearing within the required time frame, except if the individual is a minor. See 7724.41 Minor Does Not Request a Due Process Hearing.

DFPS Rules 40 TAC [§745.8855](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8855)

Sustain the Individual in IMPACT

If a perpetrator waives the hearing, the Licensing staff person sustains him or her as a perpetrator of abuse or neglect in IMPACT. See 7725 Sustaining a Perpetrator in IMPACT.

Documenting in CLASS

If a perpetrator waives the hearing, the Licensing staff person:

a. changes the hearing status in the CLASS system from *Pending* to *Waived*;

b. enters a date in the *Final Notification Date* field; and

c. drafts a letter to notify the individual that the decision if final (see 7724.3 Notifying the Perpetrator About the Outcome of a Due Process Hearing).

See 7726 Documenting the Final Disposition for Abuse or Neglect Investigations in CLASS.

#### 7724 Documenting the Results of the Due Process Hearing

LPPH ~~December 2009~~ DRAFT 5902-CCL (renumbered; currently 7725; title is revised)

Procedure

The legal division notifies the appropriate licensing district director, residential child care manager, or designee of the outcome of a due process hearing for child abuse or neglect. A licensing supervisor documents the results in Licensing’s official records of the investigation. This includes IMPACT, CLASS, and the paper files.

See [5331](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5331) Acting on Abuse and Neglect Findings in a DFPS Central Registry Report.

DFPS Rules, 40 TAC [§§](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8809)[745.8843](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8843); [745.8849](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8849)

See also:

[Appendix 7000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000_2.jsp#LPPH_apx7000_2): Guidelines for Preparing Records for SOAH Hearings

##### 7724.1 Overturning a Finding of Abuse or Neglect

LPPH DRAFT 5902-CCL (new item)

If the administrative law judge overturns a finding of child abuse or neglect, the assigned Licensing supervisor documents the outcome by:

a. choosing *FPS Position Changed* from the *Result* drop-down menu, changing the *Reason to Believe* finding to *Ruled Out* on the allegation list, and documenting the outcome, in detail, in the *Narrative* field of the *Administrative Review/Appeal* stage in the IMPACT system;

b. changing the status of the hearing from *Requested* to *Overturned* in the CLASS system;

c. clearly explaining the decision to overturn the decision in the *Due Process Documentation* field in the CLASS system; and

d. entering the date of notification in both the CLASS and IMPACT systems.

See 7726 Documenting the Final Disposition for Abuse or Neglect Investigations in CLASS.

##### 7724.2 Upholding a Finding of Abuse or Neglect

LPPH DRAFT 5902-CCL (new item)

If the administrative judge law upholds the finding of abuse or neglect, the assigned Licensing supervisor documents the outcome by:

a. sustaining the individual in IMPACT (see 7725 Sustaining a Perpetrator in IMPACT);

b. changing the status of the hearing from *Requested* to *Upheld* in the CLASS system;

c. clearly explaining the decision to uphold the decision in the *Due Process Documentation* field in the CLASS system;

d. entering the date of notification in both the CLASS and IMPACT systems; and

e. drafting a letter notifying the individual that the decision is final (see 7724.3 Notifying the Perpetrator About the Outcome of a Due Process Hearing).

See 7726 Documenting the Final Disposition for Abuse or Neglect Investigations in CLASS.

##### 7724.3 Notifying the Perpetrator About the Outcome of a Due Process Hearing

LPPH DRAFT 5902-CCL (new item)

Procedure

Within 35 days after the assigned Licensing supervisor receives notice that a finding is upheld following a waiver or hearing, the supervisor prepares and sends written notification to the perpetrator that the abuse or neglect finding has been officially sustained.

The supervisor drafts and mails one of the following letters by both regular and certified mail:

 • CLASS Form 2889 Letter to Perpetrator SOAH Decision, if the release hearing was upheld

 • CLASS Form 2886C Letter to Perpetrator Final No Appeal, if the individual waived his or her right to a release hearing

The supervisor also sends a copy of the letter to the parent, legal guardian, or managing conservator if the person who is the subject of the review is still a minor at the time of the due process hearing.

##### 7724.4 Documentation and Notification of Due Process Hearings for Perpetrators Who Are Minors

LPPH DRAFT 5902-CCL (new item)

Procedure

If a minor who was designated as a perpetrator of abuse or neglect of a child in care and the minor or the minor’s parent, legal guardian, or managing conservator requested a release hearing, Licensing staff follow the steps outlined in 7724.1 Overturning a Finding of Abuse or Neglect or 7724.2 Upholding a Finding of Abuse or Neglect, depending on the results of the hearing.

Exception

If the finding was upheld at the due process hearing as a result of a default (that is, the minor did not appear at the hearing), Licensing staff do not sustain the minor as a perpetrator of abuse or neglect in the IMPACT system. In this instance, see 7724.41 Minor Does Not Request a Due Process Hearing.

###### 7724.41 Minor Does Not Request a Due Process Hearing

LPPH DRAFT 5902-CCL (new item)

A minor does not have to request a hearing within 30 days of the original notification. If the request is not received within 30 days, Licensing:

 • leaves the hearing request as *Pending* in CLASS; and

 • leaves the minor's role as *Designated Perpetrator* in IMPACT.

A minor may request a hearing at any time following notification and may only be sustained when a release hearing that did not result in a default (that is, the minor did not appear at the hearing) upheld Licensing’s decision. See 7724.42 When a Minor Turns Eighteen.

###### 7724.42 When a Minor Turns Eighteen

LPPH DRAFT 5902-CCL (new item)

Licensing staff follow policy and procedures relating to adults who were designated as a perpetrator of abuse or neglect once a minor who was designated as a perpetrator of abuse or neglect:

 • turns 18 years old; and

 • has received notification of the opportunity to a due process hearing to challenge the finding.

#### 7725 Sustaining a Perpetrator in IMPACT

LPPH DRAFT 5902-CCL (new item)

Policy

If the finding is waived or upheld as a result of a due process hearing, the assigned Licensing supervisor sustains the individual as a perpetrator of abuse or neglect in the IMPACT system.

Procedure

The supervisor documents the outcome in the *Administrative Review/Appeal* stage in the IMPACT system by:

a. choosing *FPS Position Upheld* from the *Result* drop-down menu;

b. documenting the outcome, in detail, in the *Narrative* field;

c. making changes to the *Allegation List,* if applicable;

d. selecting the checkbox by the indicator for *Change Role to Sustained Perpetrator*; and

e. entering the date the individual was notified of the decision.

Exception

If the individual who is designated as a perpetrator of abuse or neglect is a minor and the due process hearing was waived, see 7724.41 Minor Does Not Request a Due Process Hearing.

#### 7726 Documenting the Final Disposition for Abuse or Neglect Investigations in CLASS

LPPH DRAFT 5902-CCL (new item)

Policy

If the original disposition is *Reason to Believe*, the investigation cannot be closed until the *Final Disposition* has been entered in CLASS. The final disposition must be entered after due process for all perpetrators associated with the investigation has been completed.

Procedure

Once due process has been completed, Licensing staff must:

 • select the appropriate final disposition from the *Final Disposition* drop-down menu on the *Investigation Conclusion* page; and

 • document the reason for the final disposition, including whether the due process hearing was waived, upheld, or overturned, and the date the decision became final in the *Summary of Due Process* narrative box.

#### 7727 Emergency Release

LPPH ~~December 2009~~ DRAFT 5902-CCL (renumbered; currently 7726; no changes made to content)

Policy

Under certain circumstances, information about a designated perpetrator may be released before a release hearing is held. The investigator consults with a Licensing attorney before releasing information before a hearing. An emergency release may be done when:

 • Licensing determines that the presence of the designated perpetrator constitutes an immediate threat or danger to the health, safety, or welfare of the children; or

 • Licensing determines that the information is necessary to allow the operation to safeguard children's health, safety, or welfare.

When the alleged perpetrator is a permit holder, the information may be released for the purpose of justifying a request for appropriate judicial relief or for notifying parents of children in care, or both.

Procedure

The information may be released to the operation or home at the same time the individual is notified of the emergency release.

The investigator notifies the perpetrator in writing according to the procedures in [7720](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7720) Release Hearings. The notification letter must include notice that the findings are to be or have been released to the employer.