

Regulations for All Types of Child Care in Texas

Texas Administrative Code _Title 40. Social Services and Assistance _Part 19. Department of Family and Protective Services _Chapter 745. Licensing _Subchapter K. Inspections and Investigations _Division 1. Overview of Inspections and Investigations

40 TAC § 745.8401
Tex. Admin. Code tit. 40, § 745.8401

§ 745.8401. Who has the right to conduct an inspection or investigation?

An authorized representative of Licensing may inspect, investigate, and/or evaluate an operation during the hours of operation.

40 TAC § 745.8403
Tex. Admin. Code tit. 40, § 745.8403

§ 745.8403. What is the purpose of an inspection?

The purpose of an inspection is to:

(1) Verify compliance with licensing statutes, rules, and minimum standards;

(2) Assess the risk to children in facilities;

(3) Evaluate whether the operation is subject to regulation;

(4) Assist the provider in identifying problems contributing to violations of licensing statutes, rules, and minimum standards;

(5) Offer technical assistance; and

(6) Gather information as part of an investigation.

40 TAC § 745.8405
Tex. Admin. Code tit. 40, § 745.8405

§ 745.8405. What is the purpose of an investigation?

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The purpose of an investigation is to:

(1) Reduce the risk of abuse and neglect to children and to protect them in out-of-home care; and

(2) Obtain sufficient information to make a fair, accurate, and impartial decision regarding the report, allegation, situation, and/or conditions.

40 TAC § 745.8407
 Tex. Admin. Code tit. 40, § 745.8407

§ 745.8407. When will Licensing inspect and/or investigate an operation?

Please refer to the following chart:

Figure: 40 TAC §745.8407

Type of Operation	Inspection	Investigation
(1) Listed Operation	<ul style="list-style-type: none"> We do not conduct routine inspections. We may inspect your operation as part of an investigation. We may inspect your operation to ensure that you are providing care within the limits of the permit issued to you. 	We investigate when we have received a report: <ul style="list-style-type: none"> Of abuse or neglect; Of an immediate risk to the health or safety of a child being cared for in the home; That the home administered a medication to a child in violation of Human Resources Code, §42.065; or That the home is caring or receiving compensation for four or more unrelated children.
(2) Registered Operation	We inspect: registration; <ul style="list-style-type: none"> At least once every three years after the issuance of the registration; and As part of an investigation. 	We investigate when we have received a report of: <ul style="list-style-type: none"> Alleged abuse or neglect; or A deficiency in a licensing statute, rule, or minimum standard.
(3) Licensed or Certified Operation	We inspect: <ul style="list-style-type: none"> Prior to the issuance of the license or certification; At least once every year; and As part of an investigation. 	We investigate when we have received a report of: <ul style="list-style-type: none"> Alleged abuse or neglect; or A deficiency in a licensing statute, rule, or minimum standard.
(4) Agency foster and foster group home	<ul style="list-style-type: none"> We will periodically inspect a random sample of agency foster homes and agency group homes. 	We investigate when we have received a report of: <ul style="list-style-type: none"> Alleged abuse or neglect; or Pertaining to a child under six years: <ul style="list-style-type: none"> A reportable serious incident; A deficiency in a minimum standard that is weighted high; or A deficiency in a licensing statute, rule, or minimum standard that is prioritized by DFPS with a high degree of risk. Other deficiencies in a licensing statute, rule, or minimum standard are investigated by the child-placing agency.

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(5) Employer-Based Child Care	We inspect: <ul style="list-style-type: none">• Prior to the issuance of the compliance certificate; and• As part of the investigation.	We investigate when we have received a report of: <ul style="list-style-type: none">• Alleged abuse or neglect; or• A deficiency in a licensing statute or rule.
(6) Shelter Care	We inspect: <ul style="list-style-type: none">• Prior to the issuance of the compliance certificate; and• As part of an investigation.	We investigate when we have received a report of: <ul style="list-style-type: none">• Alleged abuse or neglect; or• A deficiency in a Licensing statute or rule.

40 TAC § 745.8409
Tex. Admin. Code tit. 40, § 745.8409

§ 745.8409. How often may Licensing inspect or investigate my operation?

We may inspect or investigate as often as is necessary to verify compliance with the statutes, rules, and minimum standards or complete the investigation.

40 TAC § 745.8411
Tex. Admin. Code tit. 40, § 745.8411

§ 745.8411. Are inspections and investigations announced or unannounced?

(a) For registered child-care homes, one inspection every three years must be unannounced.

(b) For licensed or certified operations, one inspection every year must be unannounced.

(c) All other inspections and investigations may be announced or unannounced. Investigations of abuse and/or neglect are usually unannounced.

40 TAC § 745.8413
Tex. Admin. Code tit. 40, § 745.8413

§ 745.8413. Must I allow Licensing to inspect and/or investigate my operation?

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Yes, all operations, whether regulated or not, must admit us and not delay or prevent us from making inspections or conducting investigations during the hours of operation.

40 TAC § 745.8415
Tex. Admin. Code tit. 40, § 745.8415

§ 745.8415. What can Licensing inspect and/or investigate?

We may investigate any part of your operation that could affect the health, safety, or well being of children. This includes, but is not limited to, access to all children in care, employees, records, and any area of the building, home, or grounds where your operation is located.

40 TAC § 745.8417
Tex. Admin. Code tit. 40, § 745.8417

§ 745.8417. Can Licensing read all of the records during an inspection or investigation?

Yes, we must have access to all records. We will then select the ones to be read.

40 TAC § 745.8419
Tex. Admin. Code tit. 40, § 745.8419

§ 745.8419. Can Licensing staff take copies of records from my operation?

Yes. Our staff may take copies of records from your operation, including child records and personnel records.

40 TAC § 745.8421
Tex. Admin. Code tit. 40, § 745.8421

§ 745.8421. Will Licensing investigate anonymous reports?

(a) We will evaluate an anonymous report regarding standard violations that does not contain allegations that the health or safety of children is at risk to discern whether the allegations have a factual basis. To evaluate the report, we may check the operation's compliance history for similar allegations and/or deficiencies, and call the operation and/or collaterals. If there appears to be a factual basis for the allegations, the investigation will proceed to determine the actual findings. If there does not appear to be a factual basis for the allegations, the investigation will not proceed.

(b) We will investigate an anonymous report alleging abuse or neglect.

40 TAC § 745.8423
Tex. Admin. Code tit. 40, § 745.8423

§ 745.8423. Will the findings of an anonymous report be posted on the Department's Internet website,

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Search Texas Child Care?

(a) If we determine the allegations of an anonymous report to be false or lack factual foundation, we will not post the information concerning the report on the Department's Internet website.

(b) We will post any deficiency found during an investigation inspection that is not related to the allegations on the website as a deficiency found during an inspection.

40 TAC § 745.8425
Tex. Admin. Code tit. 40, § 745.8425

§ 745.8425. What will happen if I do not allow Licensing to inspect and/or investigate all areas of my operation?

We may take remedial action as specified in Subchapter L of this chapter (relating to Remedial Actions), if you refuse, prevent, or delay our ability to conduct an inspection and/or investigation.

40 TAC § 745.8427
Tex. Admin. Code tit. 40, § 745.8427

§ 745.8427. What are the expectations for a listed family home?

A listed family home must:

- (1) Operate within the limits of its permit;
- (2) Ensure that each child is free from abuse, neglect, and exploitation while in care;
- (3) Ensure that there is no immediate risk to the health or safety of a child while in care;
- (4) Ensure that any medication given to a child in care is administered according to § 42.065 of the Human Resources Code;

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(5) Request background checks as required in Subchapter F of this chapter (relating to Background Checks);

(6) Pay all required fees as outlined in Subchapter E of this chapter (relating to Fees); and

(7) Comply with all other applicable rule and law.

40 TAC § 745.8441
Tex. Admin. Code tit. 40, § 745.8441

§ 745.8441. How will Licensing notify me of the purpose of an unannounced inspection or investigation?

(a) For routine inspections, we will notify the person in charge of the operation at the time of the inspection.

(b) For investigations of a report, we will notify the person in charge of the operation of the investigation procedures and the nature of the allegation(s) made in the report. We do not have to explain the nature of the allegation(s) if:

(1) The allegation is made against the person in charge, administrator, or director; or

(2) There is reason to believe that disclosing the nature of the allegation(s) might compromise the investigation.

40 TAC § 745.8443
Tex. Admin. Code tit. 40, § 745.8443

§ 745.8443. If Licensing does not notify my operation of the nature of the allegation during an investigation, to whom will Licensing convey this information?

We must inform the applicant or permit holder of the nature of the allegation(s) by the next workday following the first on-site investigation unless we have reason to believe that the investigation may be compromised. If we believe the investigation may be compromised, the investigator may postpone explaining the nature of the allegation(s). We must inform the appropriate person(s) of the nature of the allegation(s) as soon as we decide that our doing so will not compromise the investigation.

40 TAC § 745.8445
Tex. Admin. Code tit. 40, § 745.8445

§ 745.8445. Whom will Licensing inform of the inspection and/or investigation results?

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(a) Once the inspection and/or investigation is complete, we will notify, in writing, the person in charge or director, and the applicant, permit holder, board chair, or designee of the outcome of the inspection and/or investigation.

(b) We will also notify whoever made the report, unless:

(1) The reporter has indicated that he does not want to be notified;

(2) We have determined that there is a reasonable likelihood that notifying the reporter will jeopardize the reporter's safety; or

(3) The reporter will receive notice in another capacity pursuant to subsection (a) of this section.

**40 TAC § 745.8447
Tex. Admin. Code tit. 40, § 745.8447**

§ 745.8447. What will the notification include?

(a) The notification of the results of the inspection and/or investigation to the person in charge or director, and the applicant, permit holder, board chair, or designee will include:

(1) Specifics of the deficiency;

(2) Corrections necessary for compliance;

(3) Date by which you must comply; and

(4) Your right to an administrative review to dispute the findings.

(b) The notification of the results sent to the reporter will include whether we found violations of rule or law as a result of the investigation and a reference to the Child Care Licensing website.

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40 TAC § 745.8449
Tex. Admin. Code tit. 40, § 745.8449

§ 745.8449. What must I do if Licensing notifies me of a deficiency?

You must correct all deficiencies and meet all minimum standards within the specified timeframe. To dispute a finding, you may request an administrative review.

40 TAC § 745.8451
Tex. Admin. Code tit. 40, § 745.8451

§ 745.8451. Who notifies parents an investigator interviewed their child during an abuse/neglect investigation?

(a) During an abuse or neglect investigation, we will make a reasonable effort to notify the parents within 24 hours after we interview and/or examine their child.

(b) If PRS determines the abuse or neglect occurred in the child's own home, then PRS will inform the parents.

(c) If we determine abuse or neglect occurred at your operation, we will notify or instruct your operation to notify the victim's parents of our determination.

(d) If we determine abuse or neglect occurred at your operation, we may instruct you to notify the parents of all children in your care that abuse or neglect has occurred in your operation.

40 TAC § 745.8453
Tex. Admin. Code tit. 40, § 745.8453

§ 745.8453. If Licensing instructs me to notify a parent that his child was a victim of abuse or neglect or all parents that child abuse or neglect occurred in my operation, what information must I give to the parents and when?

You must give the parents the circumstances, conditions, and/or information necessary to make decisions about the treatment of their own children within 24 hours after we instruct you to notify the parents. You must document all notifications.

40 TAC § 745.8455
Tex. Admin. Code tit. 40, § 745.8455

§ 745.8455. Can PRS hold me responsible for abuse without identifying me as the perpetrator?

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We may hold you responsible if you are an administrator, director, or other employee and evidence indicates that you:

(1) Were aware of the abuse or the genuine threat of substantial harm to a child; and

(2) Did not act to prevent the abuse or threat.

**40 TAC § 745.8481
Tex. Admin. Code tit. 40, § 745.8481**

§ 745.8481. Is information in my operation's monitoring file confidential?

(a) No, information in your operation's monitoring file is, for the most part, available to the general public.

(b) We will not release some information in your operation's monitoring file because of other state and federal laws that make the information confidential, as provided in § 745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?).

**40 TAC § 745.8483
Tex. Admin. Code tit. 40, § 745.8483**

§ 745.8483. Will you tell me who made the report that resulted in the investigation of my operation?

No, the name of the person who made the report is confidential.

**40 TAC § 745.8485
Tex. Admin. Code tit. 40, § 745.8485**

§ 745.8485. Are investigations confidential?

(a) All investigations are confidential until we complete the investigation and make a finding.

(b) Completed investigations that do not involve abuse or neglect become part of the operation's monitoring file, which is, for the most part, available to the general public, as provided in § 745.8481 of this title (relating to Is information in my operation's monitoring file confidential?).

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(c) Completed investigations of child abuse or neglect are confidential and not available to the general public, except as provided under this chapter and applicable federal or state law.

(d) Records related to a child fatality that is the subject of an investigation may be released to the general public as provided under Subchapter D, Release of Records Related to a Child Fatality, in Chapter 702 of this title (relating to General Administration).

**40 TAC § 745.8487
Tex. Admin. Code tit. 40, § 745.8487**

§ 745.8487. What information can Licensing release to the public after the completion of the abuse or neglect investigation?

(a) We may release to the public only those portions of the abuse or neglect investigation record that we must file in the operation's monitoring file under § 745.8489 of this title (relating to What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?).

(b) Before releasing portions of the abuse or neglect investigation that are in the operation's monitoring file, we must remove:

(1) The identity of any alleged victims or their families;

(2) The identity of any other children involved in the investigation;

(3) The identity of the reporter;

(4) The identity of the alleged perpetrator;

(5) The identity of any other individual whose life or safety might be endangered by the release; and

(6) Any other information that may not be released under § 745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?).

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40 TAC § 745.8489
Tex. Admin. Code tit. 40, § 745.8489

§ 745.8489. What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?

We will maintain all records of an abuse or neglect investigation separate from an operation's monitoring file except the following:

- (1) A statement regarding the nature of the abuse or neglect allegation that was investigated;
- (2) A copy of any written notices sent to the operation under § 745.8445 of this title (relating to Whom will Licensing inform of the inspection and/or investigation results?);
- (3) A copy of the written notice that we mailed to you relating the finding of the investigation;
- (4) A copy of any recommendations for disposition resulting from the investigation and subsequent correspondence relating to that disposition;
- (5) Documentation of any monitoring inspections which may have taken place during the investigation into alleged child abuse or neglect; and
- (6) Documentation of your receipt of any of the above notices or documents.

40 TAC § 745.8491
Tex. Admin. Code tit. 40, § 745.8491

§ 745.8491. Who can obtain information from the confidential portions of an abuse or neglect investigation file?

- (a) The following may obtain information from the confidential portions of an abuse or neglect investigation file, subject to the limitations described in § 745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and § 745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?):

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- (1) DFPS staff, including volunteers, as necessary to perform their assigned duties;
- (2) The parent of the child who is the subject of the investigation or the alleged perpetrator in the investigation;
- (3) An attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse or neglect;
- (4) The alleged perpetrator;
- (5) Law enforcement;
- (6) A member of the state legislature when necessary to carry out that member's official duties;
- (7) An operation cited for a deficiency as a result of the investigation;
- (8) With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation that is cited for a deficiency as a result of the investigation;
- (9) An administrative law judge, or a judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse or neglect, if he:
 - (A) Provides notice to DFPS and any other interested parties;
 - (B) After reviewing the information, including audio and/or videotapes, determines that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and

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(C) Includes in his disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation; and

(10) According to the Texas Family Code § 162.006, a prospective adoptive parent of the child who is the subject of the investigation or who is the alleged perpetrator in the investigation.

(b) Notwithstanding any other provision of this section, the parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child.

(c) A social study evaluator may obtain a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code § 107.05145.

**40 TAC § 745.8493
Tex. Admin. Code tit. 40, § 745.8493**

§ 745.8493. Are there any portions of Licensing records that Licensing may not release to anyone?

(a) We may not release the following portions of Licensing records to anyone:

(1) Any information that would interfere with an ongoing law enforcement investigation or prosecution;

(2) Any information identifying the person who made a report that resulted in an investigation;

(3) The location of a family violence shelter;

(4) Information pertaining to an individual who was provided family violence services;

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(5) The location of a victims of trafficking shelter center;

(6) Information pertaining to an individual who was provided services at a victims of trafficking shelter center;

(7) The identity of any child or information identifying the child in an abuse or neglect investigation, unless the requestor is:

(A) The child's parent or prospective adoptive parent;

(B) The operation that was cited for a deficiency as a result of the investigation; or

(C) The single-source continuum contractor (SSCC) for foster care redesign when:

(i) The SSCC subcontracts with the operation;

(ii) The operation has signed a release of information; and

(iii) The operation was cited for a deficiency as a result of the investigation; and

(8) Any other information confidential under state or federal law.

(b) Notwithstanding any other provision in this section, DFPS may provide any of the above confidential information to the following parties in the relevant situations:

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(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect or false or malicious reporting of alleged child abuse or neglect;

(3) A member of the state legislature when necessary to carry out that member's official duties;

(4) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction; and

(5) A social study evaluator who has requested a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code § 107.05145.

(c) Notwithstanding any other provision in this chapter, CCL staff, in consultation with the Office of the General Counsel, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.

**40 TAC § 745.8495
Tex. Admin. Code tit. 40, § 745.8495**

§ 745.8495. Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?

(a) We may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records to any of the following:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect, failure to report child abuse or neglect, or false or malicious reporting of alleged child abuse or neglect;

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(3) An administrative law judge or a judge of a court of competent jurisdiction in a criminal or civil case to which the inspection or investigation is relevant;

(4) The parent of the child; and

(5) Any other person authorized by state or federal law to have a copy.

(b) The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:

(1) An attorney ad litem, guardian ad litem, or court appointed special advocate of the child;

(2) The operation;

(3) With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation; and

(4) A prospective adoptive parent of the child, as provided in Texas Family Code § 162.006.

**40 TAC § 745.8511
Tex. Admin. Code tit. 40, § 745.8511**

§ 745.8511. What are the different types of voluntary actions that an operation may take?

The following chart lists the types of voluntary actions:

Figure: 40 TAC §745.8511

Voluntary Actions	Description of Voluntary Action
(1) Withdrawal of Application	You may choose to close or not open your operation after you apply for a permit, but before a decision is made to deny or issue the permit.
(2) Temporary Relocation	You relocate your operation for a period of up to 90 days due to damage or renovation to the building, which makes it temporarily unsuitable for child care.
(3) Voluntary Suspension	You request a suspension of your permit for a specific time and for specific reasons.
(4) Voluntary Closure	You close your operation after a permit has been issued.

40 TAC § 745.8513
 Tex. Admin. Code tit. 40, § 745.8513

§ 745.8513. Must Licensing approve all voluntary actions?

Yes, Licensing must review and approve all voluntary actions.

40 TAC § 745.8515
 Tex. Admin. Code tit. 40, § 745.8515

§ 745.8515. Can I prevent Licensing from taking a corrective or adverse action by taking a voluntary action?

We may impose a remedy against you even though you have taken a voluntary action to remedy the violation. We may impose the remedy while you are taking the voluntary action. If your action is voluntary closure or suspension, then we may impose the remedy when you reopen your operation. We may also determine that a remedy is unnecessary because of your voluntary action.

40 TAC § 745.8517
 Tex. Admin. Code tit. 40, § 745.8517

§ 745.8517. What must I do when I temporarily relocate my operation because of damage or renovation?

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You must do the following when you temporarily relocate your operation:

- (1) Notify us immediately when you move your operation to a new location;
- (2) Obtain fire, sanitation, and gas pipe pressure test inspections of the temporary location prior to or as soon as possible after the relocation; and
- (3) Obtain our approval for any aspect of the temporary location that does not comply with standards.

**40 TAC § 745.8519
Tex. Admin. Code tit. 40, § 745.8519**

§ 745.8519. Can I voluntarily suspend my permit?

Yes, you may request a voluntary suspension of your permit for the following reasons:

- (1) You are repairing or making changes to your operation or family home;
- (2) You do not have children in care;
- (3) You or the caregiver are ill;
- (4) You or the caregiver are absent for an extended length of time; or
- (5) You or the caregiver have personal reasons to suspend the permit.

**40 TAC § 745.8521
Tex. Admin. Code tit. 40, § 745.8521**

§ 745.8521. How long can I voluntarily suspend my permit?

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If you are registered or licensed to provide child day care, then you can request suspension of your non-expiring permit for a maximum of 90 days. If you are licensed to provide residential child care, then you can request a suspension of your license for a maximum of two years.

**40 TAC § 745.8523
Tex. Admin. Code tit. 40, § 745.8523**

§ 745.8523. How do I request voluntary suspension?

You must submit a written request for voluntary suspension to your Licensing representative. In your request, you must include:

- (1) The reason you are requesting voluntary suspension;
- (2) Proposed dates for the suspension to begin and end;
- (3) Plans for resuming operation; and
- (4) A statement about how you will meet the standards at the end of the suspension period.

**40 TAC § 745.8525
Tex. Admin. Code tit. 40, § 745.8525**

§ 745.8525. Will Licensing automatically grant me a properly requested voluntary suspension?

No, we may approve, deny, or add conditions to your request for voluntary suspension. We will not approve a voluntary suspension if you are involved in a remedial action for a suspension, probation, or revocation. If we do not approve your request, you have a right to an administrative review.

**40 TAC § 745.8527
Tex. Admin. Code tit. 40, § 745.8527**

§ 745.8527. What are my responsibilities during the voluntary suspension period?

During the voluntary suspension period, you must:

- (1) Notify the parents of the suspension;

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(2) Not have children in care;

(3) Notify us at least 15 days before resuming operation;

(4) Return the permit to us during the suspension period; and

(5) Remit all fees due during the suspension period.

40 TAC § 745.8529
Tex. Admin. Code tit. 40, § 745.8529

§ 745.8529. How do I resume operation at the end of the voluntary suspension period?

You cannot reopen without our approval. You must give us at least 15 days notice before resuming operation. We will give you permission to reopen your operation after we determine that you are meeting applicable standards.

40 TAC § 745.8531
Tex. Admin. Code tit. 40, § 745.8531

§ 745.8531. What if I do not resume operation at the end of the voluntary suspension period?

You must close your operation. Your permit will no longer be valid if you have not resumed operations with our approval at the end of the voluntary suspension period. We will notify you that your permit is revoked and inform you of your rights to an administrative review.

40 TAC § 745.8533
Tex. Admin. Code tit. 40, § 745.8533

§ 745.8533. What if I intend to voluntarily close my operation?

You should notify us before you close. If that is not possible, you must notify us within ten days after closing.

40 TAC § 745.8551
Tex. Admin. Code tit. 40, § 745.8551

§ 745.8551. What is the purpose of this division?

The purpose of this division is to further describe the definitions of abuse, neglect, and exploitation by persons who

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work under the auspices of an operation, as found in Texas Family Code, Chapter 261, Subchapter E, § 261.401.

**40 TAC § 745.8553
Tex. Admin. Code tit. 40, § 745.8553**

§ 745.8553. Who works “under the auspices of an operation”?

The following persons work under the auspices of an operation:

- (1) Any employee or volunteer of the operation;
- (2) Any person under contract with the operation;
- (3) A director, owner, operator, or administrator of an operation;
- (4) Anyone who has responsibility for the children in care;
- (5) Anyone who has unsupervised access to the children in care;
- (6) Anyone who regularly or routinely lives at the operation; and
- (7) Any other person permitted by act or omission to have access to children in care.

**40 TAC § 745.8555
Tex. Admin. Code tit. 40, § 745.8555**

§ 745.8555. What do the following words mean when Licensing investigates abuse, neglect, or exploitation?

(a) Emotional harm--An observable impairment in a child’s psychological growth, development, or functioning. Emotional harm is any significant change in a child’s physical health or social behavior, including changes in sleeping and eating patterns. Emotional harm also includes any “substantial emotional harm.” A mental health professional does not have to determine that there is emotional harm.

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(b) Intentional, knowing, or reckless act or omission--An act or omission is intentional, knowing, or reckless if the person committing it:

(1) Deliberately causes or might cause physical injury or emotional harm to the child;

(2) Knows or should know that physical injury or emotional harm to the child is a likely result of the act or omission; or

(3) Consciously disregards an unjustifiable risk of physical injury or emotional harm to the child.

(c) Omission--A failure to act.

(d) Physical injury--Any bodily harm, including minor scrapes, cuts, and bruises. This includes any bodily harm resulting from the discipline of a child and any "substantial physical injury."

(e) Sexual conduct--Includes any of the following:

(1) Any touching of the anus, breast, or any part of the genitals of a child with intent to arouse or gratify the sexual desire of any person;

(2) Exposing the anus, breast, or any part of the genitals, knowing the child is present, with the intent to arouse or gratify the sexual desire of any person;

(3) Engaging a child in any activity that is obscene as defined in the Penal Code, § 43.21;

(4) Requesting, soliciting, or compelling a child to engage in any activity that is obscene as defined in the Penal Code, § 43.21;

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(5) In the presence of a child, engaging in or displaying any activity that is obscene as defined in the Penal Code, § 43.21;

(6) In the presence of a child, requesting, soliciting, or compelling another person to engage in any activity that is obscene as defined in the Penal Code, § 43.21; or

(7) The illegal or improper use of a child, which may or may not include sexual contact or touching, with intent to arouse or gratify the sexual desire of any person.

(f) Substantial emotional harm--An observable impairment in a child's psychological growth, development, or functioning that is significant enough to require treatment by a medical or mental health professional. Evidence that the emotional harm is substantial includes the nature of the act or omission, the age of the child, and/or the persistence of the symptoms. Substantial emotional harm is presumed when the act or omission is of a sexual nature, the child acts out sexually, or the child attempts suicide. A mental health professional does not have to determine that there is substantial emotional harm.

(g) Substantial physical injury--Bodily harm that warrants treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs. Evidence that physical injury is substantial includes the location and/or severity of the bodily harm and/or the age of the child.

**40 TAC § 745.8557
Tex. Admin. Code tit. 40, § 745.8557**

§ 745.8557. What is abuse?

Abuse is any intentional, knowing, or reckless act or omission by someone working under the auspices of an operation that causes or may cause emotional harm or physical injury to, or the death of, a child that the operation serves. Intentional, knowing, or reckless acts and omissions include:

(1) Any act such as striking, shoving, shaking, or hitting a child, whether intended as discipline or not;

(2) Failure to make a reasonable effort to prevent abuse by another person;

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(3) Causing, expressly permitting, or encouraging a child to use alcohol or a controlled substance as defined by Health and Safety Code, Chapter 481 (other than a prescription drug that is prescribed to the child and used as prescribed);

(4) Using alcohol or a controlled substance in a manner or to the extent that the use results in physical injury or emotional harm;

(5) Sexual conduct that constitutes the offense of indecency with a child as defined under Penal Code, § 21.11, sexual assault as defined under Penal Code, § 22.011, or aggravated sexual assault as defined under Penal Code, § 22.021;

(6) Compelling or encouraging the child to engage in sexual conduct;

(7) Failure to make reasonable effort to prevent sexual conduct to a child;

(8) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knows or should know that the resulting photograph, film, or depiction of the child is obscene as defined by Penal Code, § 43.21, or pornographic; and

(9) Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Penal Code, § 43.2540 TAC § 745.8559
Tex. Admin. Code tit. 40, § 745.8559

§ 745.8559. What is neglect?

Neglect is an act or omission that is a breach of a duty by a person working under the auspices of an operation that causes or may cause substantial emotional harm or substantial physical injury to a child. The breach of a duty includes:

(1) Failure to take an action that a reasonable member of that profession, reasonable caregiver, or reasonable person should take in the same situation;

(2) Taking an action that a reasonable member of that profession, reasonable caregiver, or reasonable person should not take in the same situation;

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(3) Placing a child in or failing to remove him from a situation that a reasonable member of that profession, reasonable caregiver, or reasonable person should realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities;

(4) Leaving a child in a situation where a reasonable member of that profession, reasonable caregiver, or reasonable person would expect the child to be exposed to substantial physical injury or substantial emotional harm without arranging for necessary care for the child;

(5) Failure to seek, to obtain, or to follow through with medical care for a child;

(6) Failure to provide a child with food, clothing, and shelter necessary to sustain the life or health of the child;

(7) Placing a child in or failing to remove the child from a situation in which a reasonable member of that profession, reasonable caregiver, or reasonable person should know exposes the child to the risk of sexual conduct;

(8) A violation of any law, rule, or minimum standard that causes substantial emotional harm or substantial physical injury to a child;

(9) Repeated (two or more) violations of any law, rule, or minimum standard, after notice and an opportunity to correct the violation, that may cause substantial emotional harm or substantial physical injury to a child;

(10) Failure to comply with an individual treatment plan, plan of service, or individualized service plan that causes substantial emotional harm or substantial physical injury to a child; and

(11) Repeated failures (two or more) to comply with an individual treatment plan, plan of service, or individualized service plan, after notice and an opportunity to correct the failure, that may cause substantial emotional harm or substantial physical injury to a child.

**40 TAC § 745.8601
Tex. Admin. Code tit. 40, § 745.8601**

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§ 745.8601. What happens if I am deficient in a minimum standard, rule, law, specific term of my permit, or condition of evaluation, probation, or suspension?

We may make recommendations and/or impose remedial actions for any deficiency.

40 TAC § 745.8603
 Tex. Admin. Code tit. 40, § 745.8603

§ 745.8603. What remedial actions may Licensing impose?

There are four types of remedial actions: corrective, adverse, judicial, and monetary actions. These actions are:

Figure: 40 TAC §745.8603

Types of Remedial Actions	Description
(1) Corrective Actions	These actions address your deficiency without requiring you to close. We do not impose them against listed family homes.
(2) Adverse Actions	These actions address your deficiency and may require you to close and/or add permanent restrictions or conditions to your permit.
(3) Judicial Actions	A court may impose these actions, including closure, when we request a court order to address your deficiency.
(4) Monetary Actions	These actions are fines or penalties that we may impose as provided by the Human Resources Code, §42.075 and §42.078.

40 TAC § 745.8605
 Tex. Admin. Code tit. 40, § 745.8605

§ 745.8605. When can Licensing take remedial action against me?

We can impose a remedial action any time we find one of the following:

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- (1) You supplied false information or made false statements during the application process;

- (2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by Licensing minimum standards;

- (3) You do not have the required insurance;

- (4) You do not pay the required fees;

- (5) A single serious deficiency of minimum standards, rules, or laws, including a finding of abuse or neglect or background check matches;

- (6) Several deficiencies that create an endangering situation;

- (7) A repetition or pattern of deficiencies;

- (8) An immediate threat or danger to the health or safety of children;

- (9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection and/or investigation;

- (10) A failure to timely report necessary changes to Licensing;

- (11) A failure to comply with any restrictions or limits placed on your permit;

- (12) A failure to meet the terms and conditions of your evaluation or probation;

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(13) A failure to comply with minimum standards, rules, or laws at the end of the suspension period;

(14) A failure to submit information to us within two days of a change in your controlling persons, as required in § 745.903 of this title (relating to When must I submit to Licensing information about a person whom I consider to be a controlling person at my child-care operation?);

(15) For residential child-care operations on or after September 1, 2005, and all other child-care operations on or after September 1, 2011:

(A) We revoked your permit; or

(B) You voluntarily closed your operation or relinquished your permit after receiving notice of our intent to take adverse action against your permit or that we were taking adverse action against your permit;

(16) You apply for a permit after we designate you as a controlling person, but before the designation is sustained;

(17) It is within five years since your designation as a controlling person has been sustained;

(18) You apply for a permit to operate a child-care operation, and you are barred from operating a child-care operation in another state;

(19) You apply for a permit to operate a child-care operation, and your permit to operate a child-care operation in another state was revoked;

(20) You apply for a permit to operate a child-care operation, and your permit to operate was revoked, suspended, or terminated by another Texas state agency as outlined in Chapter 531 of the Government Code, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions);

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(21) You apply for a permit to operate a child-care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in § 745.277 of this title (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in § 745.279 of this title (relating to How may the results of a public hearing affect my application for a permit or a request to amend my permit?);

(22) You operate a child-care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(23) A reason set forth in Human Resources Code, § 42.078; or

(24) A failure to pay an administrative penalty under Human Resources Code, § 42.078.

40 TAC § 745.8607
Tex. Admin. Code tit. 40, § 745.8607

§ 745.8607. How will Licensing decide which type of remedial action to impose?

We decide to take remedial actions based upon an assessment of the following:

(1) The severity of the deficiency;

(2) Whether the deficiency has been repeated;

(3) Whether the deficiency can be corrected;

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- (4) How quickly the correction can be made (for a suspension, whether the deficiency can be corrected within the suspension period);
- (5) Whether you demonstrate responsibility for compliance with minimum standards, rules, and laws;
- (6) Whether conditions must be imposed to avoid further deficiencies;
- (7) Your compliance history; and
- (8) The degree and/or immediacy of danger or threat of danger posed to the health or safety of children.

40 TAC § 745.8609
Tex. Admin. Code tit. 40, § 745.8609

§ 745.8609. How will I know Licensing is taking remedial action against me?

We will notify you in the following manner:

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Figure: 40 TAC §745.8609

Type of Remedial Action	Licensing provides notice of the remedial action
(1) Corrective Action	In writing at least 15 days before the start date of the evaluation or probation.
(2) Adverse Action	In person and/or by registered or certified mail that a specific type of adverse action is being taken against you and the start date of the action.
(3) Judicial Action	As required by the Rules of Civil Procedure for any hearings on judicial actions that we request a court to enforce.
(4) Monetary Action/Administrative Penalties	In writing at least 14 days after the recommendation for an administrative penalty is issued.
(5) Monetary Action/Civil Penalties	As required by the Rules of Civil Procedure for any hearings on civil penalties that we request a court to enforce.

40 TAC § 745.8611
 Tex. Admin. Code tit. 40, § 745.8611

§ 745.8611. For remedial actions that cover a specific period of time (e. g. evaluation, probation, suspension, etc.), how long do they last and can they be extended?

The following chart describes when corrective actions are taken and the length of time they can be imposed:

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Type of Remedial Action/Specific Action	Period of Time and Extensions
(1) Corrective Action/Evaluation	An evaluation period will be between 30 days and six months. We may extend an evaluation period for up to an additional six months. If there is an extension, a new corrective action plan may be developed. The maximum amount of time an operation may be on evaluation is one year.
(2) Corrective Action/Probation	A probation period will be between 30 days and one year. We may extend a probation period beyond the original probationary period, as long as the probationary period is not longer than one year, including extensions. If there is an extension, a new corrective action plan may be developed.
(3) Adverse Action/Suspension	The suspension period will be the time we estimate you need to correct the deficiencies, and we need to determine that there is compliance with the applicable standards. The suspension will be less than 120 days, though we may extend it up to a maximum amount of 120 days.
(4) Judicial Action/Temporary Restraining Order	The court order will specify the timeframe and usually set a date for a hearing on whether you should continue to operate. The court may grant an extension as required by the law and will be noted in a new order.

40 TAC § 745.8613
 Tex. Admin. Code tit. 40, § 745.8613

§ 745.8613. What rights do I have if I disagree with the decision of Licensing to impose a remedial action?

(a) The rights you have vary depending upon the type of action imposed against you. The chart in this subsection describes your rights for each type of remedial action:

Figure: 40 TAC §745.8613(a)

Type of Remedial Action	Rights When You Disagree With a Remedial Action
(1) Corrective Action	If we decide to impose a corrective action, then you have a right to an administrative review regarding the entire action or any of the conditions imposed as part of the action.
(2) Adverse Action	If we decide to impose an adverse action, then you have a right to an administrative review and a due process hearing before the State Office of Administrative Hearings.
(3) Judicial Action	If we attempt to have the court impose a judicial action, then your rights are before the court.
(4) Monetary Action/Administrative Penalties	If we attempt to impose administrative penalties, see the Human Resources Code, §42.078 for your rights.
(5) Monetary Action/Civil Penalties	If we attempt to have the court impose civil penalties, then your rights are before the court.

(b) For additional information regarding administrative reviews and due process hearings, see Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

40 TAC § 745.8631
Tex. Admin. Code tit. 40, § 745.8631

§ 745.8631. What corrective actions may Licensing impose?

We may impose the following corrective actions:

Figure: 40 TAC §745.8631

Corrective Actions	Description of Corrective Action
(1) Evaluation	If we place you on evaluation, then we will impose a corrective action plan. We may impose conditions beyond the minimum standards and the basic permit requirements. We will inspect your operation more frequently to improve compliance with minimum standards. If compliance gets worse or standard deficiencies become more serious during the evaluation period, we may change the conditions and increase the inspections required by the corrective action plan.
(2) Probation	If we place you on probation, then we will impose a corrective action plan that is more restrictive and intense than an evaluation. We may impose conditions beyond the minimum standards and the basic permit requirements. We will inspect your operation more frequently to improve compliance with standards. If compliance gets worse or standard deficiencies become more serious, we may change the conditions and increase the inspections required by the corrective action plan.

40 TAC § 745.8633
 Tex. Admin. Code tit. 40, § 745.8633

§ 745.8633. What requirements must I meet during the evaluation or probation period?

You must:

- (1) Comply with all of the conditions imposed by the corrective action plan;
- (2) Correct the minimum standards that were deficient;
- (3) Unless you are an independent or agency foster family home, post both the corrective action plan and/or the probation notice in a prominent place(s) near all public entrances; and

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(4) Maintain compliance with all other Licensing statutes, rules, and minimum standards.

40 TAC § 745.8635
Tex. Admin. Code tit. 40, § 745.8635

§ 745.8635. What happens if I do not comply with the terms and conditions of the evaluation or probation?

We may:

(1) Reevaluate your corrective action plan to determine the appropriateness of the terms and conditions;

(2) Extend your evaluation or probation within the maximum limits of an evaluation (six months) or probation (one year). This may include additional conditions and increased inspections;

(3) Place you on probation or take adverse or judicial action, if you are currently under evaluation; or

(4) Take adverse or judicial action, if you are on probation.

40 TAC § 745.8651
Tex. Admin. Code tit. 40, § 745.8651

§ 745.8651. What adverse actions may Licensing impose?

We may impose the following adverse actions:

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Figure: 40 TAC §745.8651

Adverse Action	Description of Adverse Action
(1) Denial	You apply for a permit or an amendment of your permit, and we refuse to grant it.
(2) Adverse Amendment	After the issuance of your permit, we void your current permit and reissue a new permit with new or additional restrictions or conditions.
(3) Suspension	We take away your authority to operate for a specific period of time, so you can correct deficiencies. You must close your operation during a suspension.
(4) Revocation	We cancel your permit, and you must close.

40 TAC § 745.8653
 Tex. Admin. Code tit. 40, § 745.8653

§ 745.8653. What happens if I do not correct the deficiency during the suspension period?

We will revoke your permit if you are not complying with the Licensing statutes, rules, and minimum standards at the end of the suspension period.

40 TAC § 745.8655
 Tex. Admin. Code tit. 40, § 745.8655

§ 745.8655. Are there any notice requirements when Licensing attempts to take adverse action against my operation?

(a) You must post the notice of the adverse action in a prominent place(s) near each public entrance. You must post this notice as soon as you receive it;

(b) You must notify the parents of each child in your care that we are attempting to take adverse action. You must send a copy of the notice of the adverse action from us to the parents within five days of your receipt of the notice. You must send the notice by certified mail and give us a copy of each return receipt (the green card) within five days after the receipt is returned to you; and

(c) Neither of these notice requirements applies to adverse amendments.

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40 TAC § 745.8657
Tex. Admin. Code tit. 40, § 745.8657

§ 745.8657. Will Licensing inform anyone that they are attempting to deny, suspend, or revoke my permit?

Yes, the fact that we are attempting to enforce any adverse action against you is available to the public. If you are a child day-care operation participating in the Child Care Management Program or the Child and Adult Care Food Program, we will inform the staff of those programs of any suspension or revocation that we are attempting to enforce. If a child in your care is in the custody of PRS, then we will also inform the Child Protective Services Division of PRS, and, as appropriate, any other state or federal programs. We will tell these programs that we are attempting to suspend or revoke your permit, that you may request an administrative review and a due process hearing concerning this action, and whether you may care for children pending the administrative review and due process hearing.

40 TAC § 745.8659
Tex. Admin. Code tit. 40, § 745.8659

§ 745.8659. Will there be any publication of the denial, suspension, or revocation of my permit?

(a) If you waive the administrative review and due process hearing or if the denial, suspension, or revocation is upheld in the process, we will publish a notice of the adverse action taken against you:

(1) On DFPS's Internet website along with other information regarding your child-care services; or

(2) In the section of a local newspaper of general circulation in the county where your operation is located.

(b) For a denial, we will publish the notice only if you were previously operating.

(c) In addition, we will send notification of the outcomes of the administrative review and the due process hearing to those state and federal programs and agencies that we previously informed of the adverse action.

40 TAC § 745.8661
Tex. Admin. Code tit. 40, § 745.8661

§ 745.8661. What notice must I provide parents when the denial, suspension, or revocation of my permit is final?

If you are operating at the time you receive the final notice, you must notify the parents of each child that is enrolled of the denial, suspension or revocation of your permit. You must send notice of this action to the parents by certified mail within five days of the receipt of the notice of the denial, suspension, or revocation.

40 TAC § 745.8681

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Tex. Admin. Code tit. 40, § 745.8681

§ 745.8681. What judicial actions may Licensing impose?

Only courts may impose judicial actions. The judicial actions we may ask the court to order include the following:

Figure: 40 TAC §745.8681

Judicial Action	Description of Judicial Action
(1) Temporary Restraining Order (TRO)	We file suit in district court requesting the court to order the immediate closure of your operation. The TRO is valid for 14 days unless otherwise specified in the Order.
(2) Temporary or Permanent Injunction	We file suit in district court requesting the court to set a hearing for the temporary or permanent closure of your operation. We usually file a request for a temporary or permanent injunction at the same time we file the request for a TRO. The court will set a time for a hearing to determine whether you should continue to operate.

40 TAC § 745.8683

Tex. Admin. Code tit. 40, § 745.8683

§ 745.8683. Will anyone be informed of the judicial action being taken against me?

Yes, the fact that we are attempting to enforce a judicial action against you is available to the public. If you are a child day-care operation participating in the Child Care Management Program or the Child and Adult Care Food Program, we will inform the staff of those programs of any judicial action taken against you. If a child in your care is in the custody of the Department of Family and Protective Services (DFPS), then we will also inform the Child Protective Services Division of DFPS, and, as appropriate, any other state and federal programs. We will tell these programs that we have obtained a temporary restraining order preventing you from operating, that we are attempting to extend the order or make it permanent, and whether you may care for children pending the final hearing in the matter.

40 TAC § 745.8685

Tex. Admin. Code tit. 40, § 745.8685

§ 745.8685. When a court order instructs me to suspend and close my operation immediately, what happens to the children in my care?

(a) For child day care, you must notify the parents to pick up their children within four hours or by the end of the workday, whichever is longer. For residential child care, a parent, guardian, or managing conservator of the child

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must make other arrangements for the child's care. If the child was placed by a state agency, such as Mental Health Mental Retardation (MHMR) or Child Protective Services, that agency should be notified.

(b) In addition, within five days of delivery of the temporary restraining order (TRO) you must inform the parents of the reason for the closure and the length of the closure by:

(1) Sending by certified mail a copy of the TRO and giving us a copy of each return receipt (the green card) within five days after the receipt is returned to you; or

(2) Delivering a copy of the TRO in person to the parents when the child is picked up from your care, and giving us a copy of an acknowledgment of receipt of the TRO that the parents signed.

**40 TAC § 745.8687
Tex. Admin. Code tit. 40, § 745.8687**

§ 745.8687. Will there be any type of publication of the judicial action taken against me?

Yes, once there is a final court order, we will publish a notice of the judicial action taken against you in the local newspaper. In addition, we will send notifications of the outcome of the final judicial action to those state and federal programs and agencies that were previously informed of the temporary restraining order.

**40 TAC § 745.8711
Tex. Admin. Code tit. 40, § 745.8711**

§ 745.8711. What monetary actions may Licensing impose?

We may impose administrative penalties or ask the court to order civil penalties, which are described below:

Figure: 40 TAC §745.8711

Monetary Actions	Description of Action
(1) Administrative Penalties	We impose these fines against you for certain deficiencies as provided by Human Resources Code (HRC), §42.078. Except as provided in §745.8713 of this title (relating to When may Licensing impose a monetary penalty before a corrective action?) and when appropriate, we must impose nonmonetary administrative sanctions including corrective actions before administrative penalties. We may proceed to adverse actions without imposing administrative penalties when we determine the deficiency is serious enough to warrant such action. See the statute for more detailed information.
(2) Civil Penalties	We ask the court to assess civil penalties against you for certain deficiencies as provided by HRC, §42.075. See the statute for more detailed information.

40 TAC § 745.8713

Tex. Admin. Code tit. 40, § 745.8713

§ 745.8713. When may Licensing impose a monetary penalty before a corrective action?

We may impose a monetary penalty before imposing a corrective action any time we find one of the following:

(1) A failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter (relating to Background Checks) on two or more occasions;

(2) A failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter before the 30th day after the date we notify you that the information is overdue;

(3) Except as provided in § 745.626 of this title (relating to How soon after I request a background check on a person can that person provide direct care or have direct access to a child?), you knowingly allow a person to be present in your child-care operation before you have received the results of the person’s background and criminal history check;

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(4) You knowingly allow a person to be present in your child-care operation after you have received the person's background and criminal history check, if the results contain criminal history or central registry findings that preclude the person from being present in the child-care operation; or

(5) You violate a condition or restriction we have placed on a person's presence at your child-care operation as part of a pending or approved risk evaluation of the person's background and criminal history or central registry findings.

40 TAC § 745.8715
Tex. Admin. Code tit. 40, § 745.8715

§ 745.8715. When may Licensing impose an administrative penalty against a controlling person?

We may impose an administrative penalty against a controlling person when the controlling person:

(1) Violates a term of a license or registration;

(2) Makes a statement about a material fact that the person knows or should know is false:

(A) On an application for the issuance of a license or registration or an attachment to the application; or

(B) In response to a matter under investigation;

(3) Refuses to allow a representative of DFPS to inspect:

(A) A book, record, or file required to be maintained by the child-care operation; or

(B) Any part of the premises of the child-care operation;

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(4) Purposefully interferes with the work of a DFPS representative or the enforcement of Human Resources Code (HRC), Chapter 42; or

(5) Fails to pay a penalty assessed under HRC, Chapter 42, on or before the date the penalty is due as determined under HRC § 42.078.

**40 TAC § 745.8801
Tex. Admin. Code tit. 40, § 745.8801**

§ 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.

**40 TAC § 745.8803
Tex. Admin. Code tit. 40, § 745.8803**

§ 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.

**40 TAC § 745.8805
Tex. Admin. Code tit. 40, § 745.8805**

§ 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;

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(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.

40 TAC § 745.8806
Tex. Admin. Code tit. 40, § 745.8806

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

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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.

**40 TAC § 745.8807
Tex. Admin. Code tit. 40, § 745.8807**

§ 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.

**40 TAC § 745.8809
Tex. Admin. Code tit. 40, § 745.8809**

§ 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.

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(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.

**40 TAC § 745.8813
Tex. Admin. Code tit. 40, § 745.8813**

§ 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.

**40 TAC § 745.8815
Tex. Admin. Code tit. 40, § 745.8815**

§ 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

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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.

40 TAC § 745.8817

Tex. Admin. Code tit. 40, § 745.8817

§ 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.

40 TAC § 745.8831

Tex. Admin. Code tit. 40, § 745.8831

§ 745.8831. What is a due process hearing?

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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.

**40 TAC § 745.8833
Tex. Admin. Code tit. 40, § 745.8833**

§ 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.

**40 TAC § 745.8835
Tex. Admin. Code tit. 40, § 745.8835**

§ 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.

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

40 TAC § 745.8837
Tex. Admin. Code tit. 40, § 745.8837

§ 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.

40 TAC § 745.8839
Tex. Admin. Code tit. 40, § 745.8839

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

To request a due process hearing you must:

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(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.

**40 TAC § 745.8841
Tex. Admin. Code tit. 40, § 745.8841**

§ 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.

**40 TAC § 745.8843
Tex. Admin. Code tit. 40, § 745.8843**

§ 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?).

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(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.

**40 TAC § 745.8845
Tex. Admin. Code tit. 40, § 745.8845**

§ 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.

**40 TAC § 745.8847
Tex. Admin. Code tit. 40, § 745.8847**

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

(a) They may discuss:

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(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.

40 TAC § 745.8849
Tex. Admin. Code tit. 40, § 745.8849

§ 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.

40 TAC § 745.8851
Tex. Admin. Code tit. 40, § 745.8851

§ 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.

40 TAC § 745.8853
Tex. Admin. Code tit. 40, § 745.8853

§ 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.

40 TAC § 745.8855
Tex. Admin. Code tit. 40, § 745.8855

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

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(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.

**40 TAC § 745.8871
Tex. Admin. Code tit. 40, § 745.8871**

§ 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.

**40 TAC § 745.8873
Tex. Admin. Code tit. 40, § 745.8873**

§ 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.

**40 TAC § 745.8875
Tex. Admin. Code tit. 40, § 745.8875**

§ 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

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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.

**40 TAC § 745.8877
Tex. Admin. Code tit. 40, § 745.8877**

§ 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.

**40 TAC § 745.8879
Tex. Admin. Code tit. 40, § 745.8879**

§ 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.

**40 TAC § 745.8881
Tex. Admin. Code tit. 40, § 745.8881**

§ 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.