DEPARTMENT OF HUMAN RESOURCES SOCIAL SERVICES DIVISION ADMINISTRATIVE CODE

CHAPTER 660-5-26
DAY CARE LICENSURE - CHILD CARE LICENSING AND PERFORMANCE STANDARDS FOR DAY CARE CENTERS AND NIGHTTIME CENTERS

660-5-26-.11 Hearings And Appeals.

(1) Pre-revocation Hearings

(a) If the Department makes the decision to revoke or refuse to renew the license, six-month permit, or approval, a pre-revocation hearing shall be held in order to discuss the intended action and give the licensee/permit holder an opportunity to show why the action should not be taken. Notice of the pre-revocation hearing and notice of action taken by the Department following the pre-revocation hearing shall be sent to the licensee/permit holder by certified mail unless waived. The pre-revocation hearing shall be held in accordance with the Administrative Code, Chapter 660-1-5, a copy of which may be obtained from the Department on request. The pre-revocation hearing does not alter the licensee, permit, or approval holder's right to a fair hearing.

(b) If the Department finds that danger to the health, safety or welfare of the children requires emergency suspension of a license, six-month permit, or approval, the licensee, permit, or approval holder shall be notified in writing of the reason(s) for the decision. The Department may proceed without hearing or upon any abbreviated hearing it finds practicable to suspend the license, six-month permit or approval. The suspension shall become effective immediately unless otherwise stated. In this event, the child care facility shall not operate during the pendency of any proceeding for a fair hearing or judicial review, except under court order. The suspension may remain in effect for a period of not longer than 120 days and shall not be renewable. The license, permit, or approval shall not be suspended for the same or a substantially similar emergency within one calendar year from its first suspension unless the emergency could not have been reasonably foreseen during the initial 120 day period that such emergency would continue or would likely reoccur during the next nine months. When such summary suspension is ordered, a formal suspension or revocation proceeding shall also be promptly instituted and acted upon.

(c) No pre-denial hearing is required to be held prior to the denial of an initial application for a license.

(2) Request for a Fair Hearing.

(a) An aggrieved person may request a fair hearing in the following situations:

1. If an application for an initial license is denied;

2. If an application for a renewal of a license is denied;

3. If any application for an initial license or renewal of a license is not acted upon with reasonable promptness, which is defined as sixty (60) days from the date of the receipt by the Department of all information (including but not limited to: required forms received; investigations and inspections completed) needed to make a decision to grant or deny the license or permit; or

4. If a license, six-month permit, or approval is revoked.

(b) Notice of the opportunity to request a fair hearing shall be given by certified mail.

(c) When a pre-revocation hearing has been held, a request for a fair hearing shall be filed within fourteen (14) calendar days of the notice of the revocation. Any existing license or six-month permit shall remain in effect during the fourteen (14) day time period allowed for request of a fair hearing. If a fair hearing is requested, the existing license, six-month permit, or approval shall remain in effect until and including thirty (30) days after the final decision on the request for a fair hearing.

(d) If the Department finds that danger to the health, safety or welfare of the children requires emergency suspension of a license or six-month permit, the licensee/permit holder shall be notified in writing of the reasons for the decision. The existing license or six-month permit shall be suspended immediately or on the date specified in the notice of suspension.

(e) In all other situations where a pre-action hearing has not been held, a request for a fair hearing shall be filed within sixty (60) calendar days of the action (or inaction) with which the aggrieved person is dissatisfied.

(3) Conduct of a Fair Hearing.

(a) When a pre-revocation hearing has been held, the fair hearing will be conducted on the record. No additional evidence or testimony will be admitted unless it can be shown that it is material to the issues of the case and could not have been presented at the prior hearing with reasonable

diligence or that the additional evidence was not allowed at the prior hearing due to unlawful procedures.

(b) When a pre-action hearing has not been held, the fair hearing is to be conducted in accordance with the hearing procedures found in the Administrative Code, Chapter 660-1-5, a copy of which may be obtained from the Department on request.

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Statutory Authority: Code of Ala. 1975, as amended (hereinafter referred to as Code), §§38-7-1 through 38-7-18, §§41-22-19, §§38-2-6(10), (12), (13), (15), §§26-14-3, §§26-14-4.
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