

PINELLAS COUNTY LICENSE BOARD FOR CHILDREN'S CENTERS AND FAMILY DAY CARE HOMES
RULES OF PROCEDURE FOR HEARINGS

1. PURPOSE:

In accordance with the authority given to this Board by its enabling acts, and in accordance with this Board's desire to conduct its hearing procedures in a fair and impartial manner, the following rules of procedure are hereby adopted. These rules shall be binding upon the Board in its hearings and shall only be subject to change by the affirmative vote of a simple majority of members. The Board may adopt further "guidelines" as it deems necessary to further assist the parties in preparing for the conduct of these proceedings, however, such guidelines shall not have the force or effect of these rules. The adoption of these rules supersedes all Board Rules adopted previously.

2. AVAILABILITY OF HEARING:

Any licensed provider or applicant who has been issued a Notice of Imposition of Fine, Notice of Intent to Revoke, Notice of Intent to Suspend, Notice of Intent to Convert to Probationary Status, or Notice of Intent to Deny Application is entitled to request a hearing under these procedures.

3. REQUEST FOR HEARING:

Providers or applicants entitled to a hearing shall, as a condition precedent to being granted a hearing, file a written Request for Hearing. Such Request for Hearing must be received by the Pinellas County License Board for Children's Centers and Family Day Care Homes within fifteen (15) calendar days of receipt of written notice of fine, intent to revoke, suspend or deny to which the provider or applicant is being subjected. The Request shall be deemed effective upon actual receipt. Failure to provide such written request within the fifteen (15) day period shall constitute a voluntary waiver by the provider or applicant of all rights to an administrative appeal and the license will be deemed suspended, revoked, or converted to probationary status, or the application denied, or the administrative fine shall be imposed.

The Request for Hearing shall contain, as a minimum, the following items:

- (a) a statement that the person filing the Request for Hearing is entitled to an appeal;
- (b) a brief statement of the action which is being appealed and the basis for the appeal; and
- (c) a specific request for relief (i.e. a request to the hearing officer to take specific action).

The appealing provider or applicant shall be limited in the scope of his or her appeal to the issues which are raised in the Request for Hearing.

4. NOTICE TO PROVIDER, APPLICANT, BOARD AND INTERESTED PARTIES:

Within two (2) working days of receipt of the provider or applicant's Notice of Appeal/Request for Hearing, the PCLB staff shall transmit to the PCLB Attorney the Notice of Appeal/Request for Hearing and the underlying action being appealed. The Attorney shall then schedule a hearing with a senior judge and this information shall be furnished by U. S. mail by the Attorney to all interested parties forthwith. Absent a waiver from the provider, the hearing must be held within thirty (30) days of the effective date the Notice of Appeal/Request for Hearing.

5. HEARINGS:

All hearings and proceedings related thereto shall be conducted according to the rules followed by the Department of Administrative Hearings, as found in Florida Statutes, Chapter 120, as may be amended.

6. APPEALING PARTY FAILS TO APPEAR:

Where a proceeding is commenced by a party pursuant to the Special Act or the procedures adopted pursuant thereto, and said party, after filing their initial Request for Hearing, fails to appear for any scheduled proceedings, such party shall be deemed to have waived their appeal, and accepted the decision of the PCLB staff as final. Further, said party agrees that the Hearing Officer is authorized by this Rule, to dismiss said appeal and submit a Recommended Order to that effect.

7. REVIEW BY BOARD:

Upon receipt by the PCLB Attorney of executed Findings of Fact and Recommendations of the Hearing Officer (Order) from the Hearing Officer, the same shall be distributed to all interested parties. Either the PCLB or the appealing provider or applicant – whichever is aggrieved by the Order – shall have the right to file written Exceptions to the Board within fifteen (15) days of their receipt of the Order. If both parties are aggrieved, then the party against whom the written Exceptions are filed, would have the right to file written Cross-Exceptions within fifteen (15) days of their receipt of the original Exceptions.

Responses to Exceptions shall be filed within ten (10) days of the service of the Exceptions, and time shall be computed in accordance with Florida Administrative Code, rules 28-106.217 and 28-106.103, as may be subsequently amended. The Board will schedule or calendar hearings in such a manner as to accommodate the time frames provided in this section and the Board Attorney will notify all parties of the date and time of the hearing.

8. WRITTEN EXCEPTIONS:

Each exception shall specify with particularity the finding of fact, conclusion of law, or recommendation which is objectionable and the reasons therefore. The exceptions themselves shall state with specificity if the finding of fact excepted to is not supported by competent substantial evidence or that the proceedings did not comply with the essential requirements of law or that the conclusion of law excepted to departs from the essential requirements of law. In accordance with Florida Statutes, section 120.57(1)(k), the Board has the right to decline to rule upon Exceptions which do not identify the disputed portion of the recommended order by page number or paragraph, do not identify the legal basis for the exception, or do not include appropriate and specific citations to the record.

Facts upon which exceptions to findings of fact or conclusions of law are based which are not set forth in the Recommended Order shall be provided by the party filing the exceptions. It is the responsibility of the excepting party to notify the PCLB Attorney so that a transcript may be promptly ordered and made available to the provider or applicant at actual cost.

9. BOARD HEARING:

All exceptions to the recommended order shall be considered at a hearing before the Board. In the event a conflict exists, the party in conflict may file a written request for continuance of the hearing, which will be considered at the hearing.

At the hearing before the Board, in cases where exceptions have been filed, each party or their representative shall each be given 15 minutes to present their argument as to why the Hearing Officer's recommended order should be adopted by the Board or why the order should be rejected or modified. The excepting party shall proceed first. The parties are limited in their presentation to matters of law and to the facts contained within the record of the administrative hearing and may not argue any facts not contained within that record. If no exceptions have been filed, no argument shall be received by the board.

Following presentations of the parties, the Board shall deliberate and either adopt the Hearing Officer's recommendation or reject or modify the recommended order, as it deems appropriate. The Board may not reject or modify findings of fact unless the Board first determines from a review of the entire record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Board hearings shall be recorded and minutes prepared following each hearing.

Any party desiring or requiring a verbatim transcript, is responsible for retaining and compensating a court reporter to record the proceeding.

10. FINAL AGENCY ACTION:

The Chairman, or in the Chairman's absence, the Secretary or designee, shall execute the Final Agency Action prepared by the Board Attorney and reflecting the decision of the Board at the hearing held on this cause. The determination of the Board becomes final within fifteen (15) days of service of the decision if not appealed.

11. APPEALS OF FINAL AGENCY ACTION:

An aggrieved party may file an appeal of the Final Agency action with the Department of Children and Families by filing a Notice of Appeal within fifteen (15) days of service of the Final Agency Action.

(July 26, 2017 – Board Approval)