### 4150 Conducting Inspections

LPPH ~~March 2014~~ DRAFT 8057-CCL

Policy

When conducting any type of inspection, Licensing staff must:

a. identify themselves as DFPS Licensing staff and state the specific purpose of the inspection upon arrival at the site;

b. assess the risk to children;

c. terminate the inspection if the safety of Licensing staff is threatened;

d. document the inspection results in the CLASS system (see [4160](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4160) Documenting the Results of an Inspection);

e. conduct an exit interview at the end of the inspection; and

f. offer technical assistance to help the permit holder identify problems that contribute to deficiencies with the minimum standard rules and understand how to comply with the rules.

DFPS Rules, 40 TAC [§745.8401](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8401)

General Procedures

Procedure

Licensing staff must observe the following requirements when conducting any type of inspection on an operation:

a. Carry a valid DFPS identification card and present it to the person in charge.

b. Explain to the person in charge, upon arrival:

1. the purpose of the inspection;

2. the law, administrative rules, or minimum standards by which compliance will be evaluated;

3. that compliance with additional minimum standards may be evaluated as the situation demands; and

4. that photographs and video may be taken during the inspection.

c. Obtain written consent before interviewing biological or adopted children, even when the owner’s or operator’s children are in care at the operation. Children in care may be interviewed, provided the child’s parent has not previously refused to allow Licensing to interview his or her children. See [6000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6000) Investigations.

d. Terminate the inspection at any time when Licensing staff feel unsafe. Staff must not be placed at risk. Report termination of an inspection to the supervisor. If the danger arises from the caregiver’s resistance to the inspection, follow the procedures in [4159](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4159) Handling Resistance or Refusal to Allow Inspection.

e. Follow the procedures in [7200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7200) Handling Immediate Danger to Children, if children are at risk.

f. Follow the procedures in [4155](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4155) When An Inspection is Attempted, if there is no one at the operation or no children are in care.

g. Follow the procedures in [6210](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6210) Receipt of Intake Reports From Statewide Intake, if abuse or neglect is reported or is observed during the inspection.

##### 4150.4 Additional Requirements for Investigation Inspections

LPPH ~~August 2012~~ DRAFT 8057-CCL

Policy

The investigator conducts an unannounced investigation inspection at an operation that is the subject of the investigation according to the timeframes in [6000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6000) Investigations.

The first investigation inspection to the operation may be announced if the investigator has:

a. attempted one or more unannounced inspections;

b. obtained supervisory approval to conduct an announced inspection; and

c. documented the following in the *Observations Made During Inspection* narrative box on the *Investigation Conclusion* page in the CLASS system:

• The reason for an unannounced inspection could not be conducted

• The dates supervisory approval was requested and obtained.

Subsequent investigation inspections may be announced or unannounced.

Inspection Not Required

An investigation inspection is not required when the investigation was assigned:

• a priority of 5 (P5); or

• a priority of 3 (P3) to process a sex offender proximity report.

See [6000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6000) Investigations.

DFPS Rules, 40 TAC [§745.8407](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8407)

#### 4151 Operation Walk-Throughs

LPPH ~~August 2012~~ DRAFT 8057-CCL

Policy

Any time Licensing staff visit an operation other than a child placing agency, staff perform an operation walk-through and cite any deficiencies observed during the walk-through.

Licensing staff walk through all of the following areas in the operation:

a. Indoor and outdoor activity areas

b. Areas where meals are prepared and served

c. Restrooms accessible to children

d. Sleeping areas

Procedure

During all inspections, Licensing staff walk through the operation and assesses the risk to children related to obvious violations of the Licensing statutes, administrative rules, or minimum standards related to:

a. supervision of children;

b. child/caregiver ratio;

c. swimming pools and transportation safety, if applicable;

d. fire, safety, and sanitation requirements; and

e. responsibilities of the director, administrator, staff, or caregivers.

##### 4151.1 Exceptions for an Investigation Inspection

LPPH DRAFT 8057-CCL (new item; replaces current 4151.1)

Policy

If Licensing staff has conducted previous investigations at the operation and a supervisor determines that Licensing staff is sufficiently familiar with the operation’s compliance and investigation history, the supervisor may grant an exception that allows Licensing staff to conduct a condensed operation walk-through.

However, at minimum, Licensing staff must walk through:

a. the sleeping area of the alleged victim, if applicable;

b. the restrooms accessible to the alleged victim, if applicable; and

c. the specific area where the incident being investigated is alleged to have occurred.

When granting approval, the supervisor explains to Licensing staff which areas of the operation that Licensing staff is required to conduct a walk-through.

Licensing staff documents the exception approved by the supervisor in CLASS.

Procedure

For investigation inspections, Licensing staff is responsible for:

a. obtaining approval from the supervisor before conducting a condensed operation walk-through;

b. checking for and citing any obvious plain-view violations observed during the operation walk-through; and

c. inspecting the specific area where the incident being investigated is alleged to have occurred and citing any necessary deficiencies.

For an investigation inspection, Licensing staff documents the exception to conducting a full walk-through in the *Observations Made During the Inspection* section of the *Investigation Conclusion* page in CLASS. Documentation must include:

• the areas included in the walk-through; and

• the date the supervisor approved the exception.

##### 4151.2 Exceptions for a Follow-Up Inspection

LPPH DRAFT 8057-CCL (new item; replaces current 4151.2)

Policy

If a follow-up inspection is conducted within the timeframe referenced in 4311 When a Follow-Up Inspection Is Required, Licensing staff may conduct a condensed walk-through limited to the area of the operation relevant to the follow-up inspection.

If a follow-up inspection is not conducted within the timeframes referenced in 4311 When a Follow-Up Inspection Is Required. Licensing staff must conduct a full walk-through.

#### 4152 Reviewing Restrictions and Conditions

LPPH ~~August 2012~~ DRAFT 8057-CCL

At each initial or monitoring inspection, Licensing staff review:

a. any restrictions on a permit;

b. any conditions on a permit;

c. any conditions related to a waiver or variance;

d. any conditions related to a risk evaluation; and

e. any conditions related to a corrective action.

During an investigation or follow-up inspection, Licensing staff review and evaluate the operation's compliance with any restrictions or conditions if they are relevant to the investigation or follow-up being conducted.

After reviewing the restrictions and conditions, Licensing staff document an operation’s deficiencies and instances of compliance, as appropriate, in the CLASS system.

Procedure

For each initial or monitoring inspection, Licensing staff:

a. evaluate all restrictions and conditions, if any, during the inspection;

b. list all of the restrictions and conditions being evaluated, if any, in the *Narrative* box on CLASS Form 2936; and

c. document the operation’s level of compliance with each restriction and condition on CLASS Form 2936 Child Care Facility Inspection, as described below.

See:

[4161](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4161) Completing CLASS Form 2936 Child Care Facility Inspection

[7436](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7436) Inspecting an Operation During an Evaluation and Probation

Documenting Compliance

Licensing staff document compliance with a restriction or condition being evaluated at an operation in the *Narrative* box on CLASS Form 2936 by entering:

a. a description of the restriction or condition evaluated to be in compliance. If multiple restrictions or conditions were originally referenced using numbers or letters, it is permissible to use numbers or letters to reference each restriction or condition when it is being evaluated;

b. a narrative statement explaining that the operation is in compliance with the restriction or condition listed; and

c. a description of how compliance was determined, such as whether staff reviewed paperwork, interviewed the operation’s staff or the children, or took photographs.

Documenting Deficiencies

Licensing staff document a deficiency related to a restriction or condition being evaluated at an operation on CLASS Form 2936 by:

a. citing the Licensing statute, administrative rule, or minimum standard that has been violated;

b. describing the restriction or condition that was violated. If multiple restrictions or conditions were originally referenced using numbers or letters, it is permissible to use numbers or letters to reference each restriction or condition when it is being evaluated;

c. describing the deficiency observed;

d. describing how compliance was determined, such as whether staff reviewed paperwork, interviewed the operation’s staff or the children, or took photographs;

e. documenting the following, depending on whether the deficiency was corrected during the inspection:

• If the deficiency was corrected during the inspection, Licensing staff explain how the deficiency was corrected during the inspection.

• If the deficiency was not corrected during the inspection, Licensing staff:

• explain what correction is needed to either meet the conditions or to comply with the Licensing statute, rule, or minimum standard, and

• provide a correction deadline date.

##### 4152.1 When an Operation Repeatedly Fails to Meet Restrictions or Conditions

LPPH ~~August 2012~~ DRAFT 8057-CCL

If the operation repeatedly fails to meet the restrictions or conditions, Licensing staff consult with the supervisor on what action to take.

See:

[3800](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3800) Handling Changes in an Operation

[5140](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.asp#LPPH_5140) Rescinding or Amending a Waiver or Variance

[5300](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5300) Central Registry and Criminal History Searches

[7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Remedial Actions

##### 4153.2 Reviewing Background Check Records During Inspections

LPPH ~~August 2012~~ DRAFT 8057-CCL (title is revised)

During each application, initial, and monitoring inspection, Licensing staff review background check records on all persons required to have a background check to determine whether the operation is in compliance with all background check requirements.

During each investigation inspection, Licensing staff ensures the operation has complied with background check requirements concerning the persons involved in the investigations, including principals and any collaterals interviewed. For follow-up inspections, Licensing staff review any background check records relevant to the follow-up being conducted.

See [4140](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4140) Preparing for Inspections and [5380](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5380) Determining Compliance with Background Check Requirements.

##### 4153.3 Reviewing Information on Controlling Persons

LPPH ~~March 2013~~ DRAFT 8057-CCL (title is revised)

Procedure

During inspections with a category of *Application*, *Initial*, or *Monitoring*, the inspector reviews the list of controlling persons with the person in charge to determine if:

a. the list accurately reflects the status of all controlling persons for the operation;

b. the information entered on each controlling person on the Controlling Person Detail page in CLASS is accurate; and

c. the operation has complied with all requirements on controlling person in statute, administrative rules, and minimum standards.

Controlling Person With a Status of Review

If any controlling person on the list has a status of Review, the inspector follows the procedures in [7773.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7773_4) Reviewing the Status of a Sustained Controlling Person in CLASS.

List of Controlling Persons in CLASS Is Inaccurate

If the list of controlling persons in CLASS is inaccurate, the inspector:

a. documents the changes in a Chronology (category, Controlling Persons);

b. directs the operation to submit updated information according to the procedures in [5420](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5420) When and How Applicants and Operations Submit Information on Controlling Persons; and

c. cites a deficiency of the appropriate minimum standard, if the operation did not notify Licensing within two days of when a person became or ceased to be a controlling person.

##### 4153.4 Reviewing Records at a Central Administrative Location

LPPH ~~March 2013~~ DRAFT 8057-CCL

When reviewing records at a central administrative location that does not have an operation number, Licensing staff:

• document deficiencies as an assessment in CLASS for the applicable operation; and

• follow-up on deficiencies with the operation that was cited or with the person who maintains records at the central administrative location.

##### 4161.2 Documenting Inspection Results on CLASS Form 2936

LPPH ~~September 2012~~ DRAFT 8057-CCL

Procedure

Licensing staff document the following on CLASS Form 2936 Child Care Facility Inspection:

1. The finding (non-compliant, compliant, or pending) for each Licensing statute, administrative rule, or minimum standard, that was evaluated during the inspection (see 4161.21 Documentation of the Findings Evaluated From the Inspection)

2. Technical assistance provided, if any (see [4154.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4154_2) Documenting Technical Assistance)

3. The review of restrictions and conditions, for initial and monitoring inspections only (see [4152](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4152) Reviewing Restrictions and Conditions)

4. A list of any hazards that the operation must correct immediately

5. Whether Licensing staff assessed risk to children as required during the operation walk-through by checking the …*items regarding risk to children… c*heckbox.

Licensing staff do not check the box if they are visiting an operation:

• during an investigation inspection; or

• as part of an investigation to interview a child or an adult to gain information for the investigation and the operation is not involved in the allegations

See:

[4151](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4151) Operation Walk-Throughs

[4156](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4156) Visiting an Operation to Conduct an Investigation Interview When the Operation Is Not the Subject of the Investigation

6. For an application, initial, or monitoring inspection, information to indicate if Licensing staff has ensured the operation has complied with background check requirements by checking the *Background Checks have been Verified/Evaluated* checkbox (see [5380](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5380) Determining Compliance with Background Check Requirements)

7. If conducting an application, initial or monitoringinspection, information to indicate that the inspector has discussed the list of controlling persons, as documented in CLASS, with the person in charge. If appropriate, the inspector checks the *Controlling Persons Have Been Verified* checkbox.

See:

[4153.3](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4153_3) Reviewing Information on Controlling Persons

[4171](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4171) Discussing the Results of the Inspection

[5400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5400) Controlling Person

8. If conducting a follow-up inspection, Licensing staff document:

• a list of all of the deficiencies or conditions being followed-up on and a finding of *NC* (deficient) or *CO* (compliant); and

• a narrative explaining how the operation is compliant or the efforts the operation has made toward compliance

9. If conducting an inspection at a licensed child care center, whether the designated director is present during the inspection. See [4133](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4133) Minimum Frequency of Monitoring Inspections for Licensed Operations

###### 4161.21 Documentation of the Findings Evaluated From the Inspection

LPPH DRAFT 8057-CCL (new; taken from 4161.2)

If documenting a deficiency, Licensing staff document the following in the *Narrative* field in CLASSMate or CLASS:

• Explain how the operation is deficient. (Describe observations in detail. Do not merely repeat the requirement in the statute, rule, or minimum standard.)

• Describe how the deficiency was corrected during the inspection, if applicable.

If further investigation or consultation with the supervisor is needed before determining whether the operation is in compliance with a statute, rule, or minimum standard, Licensing staff document the finding as *Pending*. If Form 2936 is completed in CLASS, rather than in CLASSMate, Licensing staff must type the following statement on the form for all pending deficiencies (the statement automatically prefills in CLASSMate). This possible standard violation is under further review. Final notification will be sent at a later time.

If documenting an inspection being conducted as part of an investigation, investigators also:

• code any citations for plain-view violations observed during the walk-through as *Monitoring (MN)*; and

• add appropriate minimum standards with a code of Investigation (IV), if the investigator obtains information regarding a violation related to the allegation being investigated that was not previously identified.

###### 4161.22 Limits to Documenting Names of Children

LPPH DRAFT 8057-CCL (new; taken from 4161.2)

When documenting inspection results, Licensing staff do not include the names of children when entering information that could be published on the DFPS public website. See [8230](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8230) Confidential Information Not to Be Released to the Public.

Licensing staff use only a child’s first name and last initial on hard copy forms (such as inspection guides) and in sections of CLASS that are not published on the DFPS public website, such as the Chronology and Contact fields.

###### 4161.23 Limits to Documenting Names of Operation Employees

LPPH DRAFT 8057-CCL (new; taken from 4161.2)

When documenting inspection results, Licensing staff do not include the names of operation employees in documentation that is published on the DFPS public website. See [8230](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8230) Confidential Information Not to Be Released to the Public.

Licensing staff may use staff names on paper copies of forms, such as inspection guides, and in sections of CLASS that are not published on the DFPS public website, such as the Chronology and Contact fields.

### 5380 Determining Compliance With Background Check Requirements

LPPH ~~September 2012~~ DRAFT 8057-CCL

Procedure

During inspections and investigations, Licensing staff must determine if:

• the names of persons described in [5311](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5311) For Whom Central Registry and Criminal Background Checks Are Required have been submitted to DFPS for background checks at the required times; and

• the operation has complied with all background check requirements.

See [5315](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5315) When Background Checks Are Required for more information.

When conducting an application, initial, or monitoring inspection, the Licensing inspector must ask the operation for a list of all persons at the operation that are required to have a background check. For child placing agencies, this list must include any foster or adoptive parents who have been verified since the last inspection. The Licensing inspector must then compare this list with the *People List* in CLASS or CLASSmate to determine whether the operation failed to submit any names or to meet any other background check requirement. This list should be kept in the operation’s case record. Licensing staff must follow the same process during an investigation inspection for principals and collaterals.

Licensing staff should determine whether the operation has allowed anyone to have access to a child in care before receiving the results from the complete background check. If so, then the Licensing staff must verify the following:

a. The person’s DPS and Central Registry check does not contain information that would preclude the person from working or being present at the child care operation while children are in care

b. The operation was experiencing a staffing shortage (see the Terms and Definitions in [5300](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5300) Central Registry and Criminal History Searches and [5319](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5319) Determining a Staff Shortage)

c. The person’s fingerprints were submitted within 30 days of having access to a child in care

For FBI checks that are pending in CLASS, the Licensing inspector resolves them by following the steps in the [FBI Tip Sheet](http://intranet/CCL/Background_Checks/FBI.asp) on the DFPS intranet.

Licensing staff evaluates compliance with any risk evaluation conditions or restrictions that apply to persons at the operation.

See [4140](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4140) Preparing for Inspections and [4150](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4150) Conducting Inspections for more information.

If the operation does not or has not submitted the required background requests or did not comply with background check requirements, then Licensing staff:

• cite the operation for violating the Human Resources Code or the appropriate rule from the Texas Administrative Code, Chapter 745, [Subchapter F](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=F); and

• inform the operation that an administrative penalty may be imposed and how to avoid incurring additional penalties (See Section [7511](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7511) Violations for Which Administrative Penalties May Be Assessed).

Texas Human Resources Code §§[42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056); [42.159](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.159); [42.206](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.206)

DFPS Rules, 40 TAC §§[745.623](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=623); [745.625](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=625)