**Licensing Policy and Procedures**

**Handbook Revision \_\_**

This revision of the Licensing Policy and Procedures Handbook was published on \_\_\_\_. Summaries of new or revised items are provided below.

For Licensing revisions only: Immediately following signoff, Licensing staff will prepare a highlighted document showing significant changes that we will post with the revision memo.

Child Sexual Aggression (PATS 9857)

This item revises child sexual aggression procedures.

Display of Revisions with Changes Highlighted (Word Document)

See:

Definitions of Terms

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6232.1 Selecting Allegations of Violations in CLASS

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6353 **Notifications Involving a Child** ~~Notifying the CPS Caseworker for a Child~~ in the Conservatorship of DFPS (Abuse or Neglect Only)

6353.1 How to Notify the CPS Caseworker

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6622.6 **Allegations Involving Child Sexual Aggression or Child-on-Child Physical Abuse** ~~If a Child in Care Has Abused Another Child~~

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6635 Special Notifications for Investigations Involving Children in DFPS Conservatorship

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6724 Investigation Findings

**6724.1 Findings Involving Child Sexual Aggression**

**6724.2 Findings Involving Child-on-Child Physical Abuse**

**6724.3 Explanation of Disposition Based on Preponderance**

**6724.4 Final Disposition and Summary of Due Process**

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Intake Note: I found no cross references affected.

## Definitions of Terms

LPPH ~~March 2017~~ DRAFT 9857-CCL

child sexual aggression is a new term to be placed after “children’s records”

**child sexual aggression:** Sexual behavior in which a child takes advantage of a younger or less powerful child through seduction, coercion, or force in accordance with the following definitions:

 **•** *Less powerful* is defined as differences in developmental level, physical stature, cognitive ability, or social skills.

 **•** *Seduction* is defined as the use of charm, manipulation, promises, gifts, or flattery to induce a child to engage in sexual behavior.

 **•** *Coercion* is defined as the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

 **•** *Force* is defined as the threat or use of physical or emotional harm toward a child or someone or something a child cares about.

“listed family home” is a revision of the term that already exists after “limited partnership (LP)”

**listed family home:** A child day care operation that receives a listing permit. The caregiver is at least 18 years old and provides care for compensation in the caregiver’s own home, for three or fewer children unrelated to the caregiver, birth through 13 years. Care is provided for at least four hours a day, three or more days a week, and for more than three consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.

Texas Human Resources Code [§42.052(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.052) and 40 TAC [§745.37](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=37)

“regular care” is a revision of the term that already exists after “registration”

**regular care**: A child care arrangement in which care is provided in a registered child-care home or listed family home:

 • at least four hours a day;

 • three or more days a week; and

 • for more than three consecutive weeks.

Texas Human Resources Code [§§42.002(9)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002) and [§42.002(17)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002)

##### 6232.1 Selecting Allegations of Violations in CLASS

LPPH ~~December 2015~~ DRAFT 9857-CCL (rev)

Regardless of the priority or whether an intake report is assigned for investigation, the *Allegation Type* check boxes must accurately reflect the allegations contained in the intake report. This includes all intakes of abuse or neglect and non abuse or neglect. If additional allegations arise during the investigation, any additional boxes related to those allegations should be checked on the *Investigation Main* page. The chart below outlines the allegations of violations of minimum standards in CLASS:

| Allegation Types in CLASS  | Explanation | Type of Investigation |
| --- | --- | --- |
| Standard/Law Violation | Allegation of a violation of a law, administrative rule, or minimum standard. | All investigations  |
| Illegal Operation | Allegation that care is being provided to children by an operation that does not have a permit and the operation may be subject to regulation. | Abuse or neglect or non abuse or neglect |
| Suicide Attempt | Allegation that a child attempted suicide while in care at a residential operation. | Abuse or neglect or non abuse or neglect (RC only) |
| Child Death | A child dies while in the care of an operation or an operation that is subject to regulation. | Abuse or neglect |
| Serious Harm/Injury | Any physical injury to a child that requires medical treatment and resulted or may result in impairment to the child’s overall health or well-being, but which does not result in a medical professional determining that the child is in critical condition.  | Abuse or neglect or non abuse or neglect |
| Critical injury | A child in care of an operation sustains a life-threatening injury that requires a stay in an intensive care unit of a hospital or requires life-resuscitation methods. | Abuse or neglect or non abuse or neglect |
| Child Arrest | A child in care of a residential operation is arrested. | Abuse or neglect or non abuse or neglect (RC only) |
| Illness Requiring Hospitalization | A child in care of an operation has an illness requiring hospitalization. | Abuse or neglect or non abuse or neglect |
| Child Run Away | A child in care of a residential operation runs away from the residential operation. | Abuse or neglect or non abuse or neglect (RC only) |
| Caregiver Drug Abuse | Allegation that a caregiver in a residential operation is using drugs. | Abuse or neglect or non abuse or neglect (RC only) |
| Domestic Violence | Report from law enforcement that law enforcement responded to a domestic violence call at a foster home.  | Abuse or neglect or non abuse or neglect (RC only) |
| Endangering Person | Allegation that a sex offender’s address listed in the sex offender database matches a child care operation. | Abuse or neglect or non abuse or neglect |
| Child Sexual Aggression | Allegation of sexual behavior in which a child takes advantage of a younger or less powerful child through seduction, coercion, or force. Must document the number of children involved. | Abuse or neglect  |
| Child on Child Physical Abuse | Allegation of child-to-child behavior that results in a child sustaining observable substantial harm requiring medical treatment. Must document the number of children involved. | Abuse or neglect  |

#### 6353 Notifications Involving a Child in the Conservatorship of DFPS (Abuse or Neglect Only)

LPPH ~~December 2012~~ DRAFT 9857-CCL (rev, ttl)

Policy

If a child is in the conservatorship of DFPS, the investigator or designee must notify the child’s CPS caseworker if:

 • the child is listed as an alleged victim of abuse or neglect; or

 • the child lives in a foster home where another child is alleged to have been abused or neglected.

The investigator or designee must also notify the Licensing program administrator if the investigation involves an allegation of child sexual aggression.

##### 6353.1 How to Notify the CPS Caseworker

LPPH ~~December 2012~~ DRAFT 9857-CCL (rev)

Procedure

The investigator or designee notifies the CPS caseworker via email and includes:

 a. the child’s name;

 b. name of the operation that is the subject of the investigation;

 c. name of the foster home, if applicable;

 d. the IMPACT case ID number;

 e. a statement regarding whether or not the allegations involve sexually aggressive behavior or child-on-child physical abuse; and

 f. whether the child is listed as an alleged victim or as a household member in the intake report.

##### 6622.6 Allegations Involving Child Sexual Aggression or Child-on-Child Physical Abuse

LPPH ~~December 2012~~ DRAFT 9857-CCL (rev, ttl)

Policy

If a report involves an allegation of child sexual aggression or child-on-child physical abuse, the investigator evaluates the caregiver’s role and may determine that the abuse is the result of:

 • neglectful supervision on the part of the caregiver; or

 • failure to prevent abuse by another person.

In these situations, the caregiver is given the role of *Designated Perpetrator* in the *Allegation Detail* page in IMPACT.

Licensing staff determines that child-on-child physical abuse occurred if:

 • there is a physical injury that results in substantial harm to the child and requires emergency medical treatment, excluding an accident; or

 • a child fails to make a reasonable effort to prevent an action by another child that results in a physical injury with substantial harm.

Licensing staff determines that child sexual aggression occurred if:

 • there is sexual conduct harmful to a child’s mental, emotional, or physical welfare; or

 • a child fails to make a reasonable effort to prevent sexual conduct harmful to another child.

Texas Family Code [§261.410](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.261.htm#261.410)

A child in care is never designated as a perpetrator of abuse or neglect.

Procedure

Child Sexual Aggression Involving a Child in DFPS Conservatorship

If the allegations involve an incident of child sexual aggression for a child currently in DFPS conservatorship, the Licensing and CPS programs must jointly staff the investigation to determine whether the incident can be confirmed. The investigator or supervisor first staffs the determination with the Licensing program administrator. Then, the following staffings between Licensing and CPS take place in the order listed below until the two programs reach a consensus about whether the incident occurred:

 1. Licensing program administrator and CPS program administrator

 2. Licensing district director and CPS regional director

 3. Licensing associate commissioner and CPS associate commissioner

If Licensing and CPS reach a consensus that an incident involving child sexual aggression occurred, the Licensing program administrator documents the confirmation in CLASS by following the steps outlined in [6724.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6724_1) Findings Involving Child Sexual Aggression.

If Licensing and CPS reach a consensus that an incident involving child sexual aggression did not occur, the investigator documents the determination as outlined in [6724](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6724) Investigation Findings and [6724.3](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6724_3) Explanation of Disposition Based on Preponderance.

Child Sexual Aggression Involving a Child Not in DFPS Conservatorship

If the allegations involve an incident of child sexual aggression for a child not currently in DFPS conservatorship, the investigator or supervisor staffs the determination with the Licensing program administrator. If the program administrator agrees that the incident can be confirmed, he or she documents the confirmation in CLASS by following the steps outlined in [6724.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6724_1) Findings Involving Child Sexual Aggression.

See:

[Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp), *child sexual aggression*

[6724](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6724) Investigation Findings

[6232.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6232_1) Selecting Allegations of Violations in CLASS

#### 6635 Special Notifications for Investigations Involving Children in DFPS Conservatorship

LPPH ~~December 2012~~ DRAFT 9857-CCL (rev)

Policy

If the alleged victim is a child in the conservatorship of DFPS, the alleged victim’s Child Protective Services (CPS) caseworker must be notified about the results of the investigation.

Procedure

The child’s CPS caseworker can be notified by phone or email. Licensing staff document the date of notification on the *Investigation* page in the CLASS system. If the investigation involves allegations of child-on-child physical abuse or child sexual aggression, the investigator provides a copy of the investigation report to the CPS caseworker via email regardless of the investigation findings.

For investigations involving allegations of child sexual aggression or child-on-child physical abuse, see [6622.6](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6622_6) Allegations Involving Child Sexual Aggression or Child-on-Child Physical Abuse.

#### 6724 Investigation Findings

LPPH ~~March 2015~~ DRAFT 9857-CCL (rev)

Procedure

The investigator completes the *Investigations Findings* section on the *Investigation Conclusion* page in CLASS for all investigations.

*The following sections 6724.1, 6724.2,6724.3, and 6724.4 have been separated from 6724 and renumbered.*

##### 6724.1 Findings Involving Child Sexual Aggression

LPPH DRAFT 9857 (new)

Procedure

If the preponderance of the evidence indicates a child in DFPS conservatorship exhibited child sexual aggression and the staffing requirements outlined in [6622.6](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6622_6) Allegations Involving Child Sexual Aggression have been met, the Licensing program administrator selects the *Child Sexual Aggression* checkbox.

See [6635](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6635) Special Notifications for Investigations Involving Children in DFPS Conservatorship.

##### 6724.2 Findings Involving Child-on-Child Physical Abuse

LPPH DRAFT 9857 (new)

Procedure

If the preponderance of the evidence indicates child-on-child physical abuse has occurred and there is a *Reason to Believe* (*RTB*) finding for *Neglectful Supervision* (*NSUP*), the investigator selects the corresponding checkbox.

##### 6724.3 Explanation of Disposition Based on Preponderance

LPPH DRAFT 9857 (new)

Procedure

For a non abuse or neglect investigation, this documentation explains how the investigator evaluated the evidence and determined whether the operation was in compliance with the relevant standards. For abuse or neglect investigations, the documentation includes whether the evidence meets the preponderance of the evidence threshold for each element of each allegation. This information must be consistent with the preponderance statement in the *Licensing Investigation Report (LIR)* in IMPACT.

##### 6724.4 Final Disposition and Summary of Due Process

LPPH DRAFT 9857 (new)

Procedure

If each designated perpetrator involved in the abuse or neglect investigation waives his or her right to a due process hearing, the assigned Licensing supervisor:

 a. selects *Reason to Believe* from the *Final Disposition* drop-down menu on the *Investigation Conclusion* page in CLASS; and

 b. documents the reason for the final disposition, including the designated perpetrator's decision to waive his or her right to the due process hearing, and the date the decision became final in the *Summary of Due Process* narrative box in CLASS.

See:

[7723.3](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7723_3) Waiving the Right to a Due Process Hearing

[7725](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7725) Sustaining a Perpetrator in IMPACT