

**Texas Juvenile Probation Commission**  
**Title 37 Texas Administrative**  
**Chapter 349. General Administrative Standards**

*Effective Date July 1, 2011*

**Subchapter A. Definitions**

<\*>349.100. Definitions. The words and terms used in this chapter shall have the following definitions unless the context clearly indicates otherwise.

- (1) Address of record--A Certified Officer's most recent address of record with the Texas Juvenile Probation Commission.
- (2) Administrative Designee--The chief administrative officer or facility administrator who was directly responsible for the policies and procedures that resulted in an incident of abuse, neglect or exploitation.
- (3) Administrative review--A review by a Commission-appointed hearing examiner of the case that formed the basis for assigning the role of Designated Perpetrator or Administrative Designee to a Certified Officer.
- (4) Alleged Victim--A juvenile under the jurisdiction of the juvenile court or participating in a program operated under the authority of the governing board or juvenile board who is alleged to be a victim of abuse, neglect or exploitation.
- (5) Alleged Perpetrator--A person alleged as being responsible for the abuse, neglect or exploitation of a juvenile through the person's actions or failure to act.
- (6) APA--The Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code Annotated.
- (7) Applicant--An individual applying for certification or recertification as a juvenile supervision or probation officer.
- (8) Attorney of record--A person licensed to practice law in Texas who has provided the Commission with written notice of representation.
- (9) Authorized representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated by a party to represent the party.
- (10) Board--The governing board of the Texas Juvenile Probation Commission.
- (11) Certified Officer--A juvenile supervision or probation officer who has satisfied the minimum certification requirements and is currently certified by the Commission.
- (12) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.
- (13) Code of Ethics--The Certified Officer Code of Ethics contained in Chapter 345 of this title.
- (14) Commission--The Texas Juvenile Probation Commission.
- (15) Default proceeding--The issuance of a proposal for decision or an order in which the factual allegations against the Certified Officer in a contested case are deemed admitted as true upon the Certified Officer's failure to appear at a properly noticed hearing or failure to file a response to the formal charges.

(16) Designated Perpetrator--The individual responsible for the abuse, neglect or exploitation of a juvenile who has not exhausted the right to administrative review or whose right to administrative review has not expired.

(17) Disciplinary Action--Commission action that could adversely affect the certification of a Certified Officer.

(18) Disciplinary Proceedings--Initiation and pursuit by the Commission of proceedings that could result in disciplinary action.

(19) Executive Director--The Executive Director of the Texas Juvenile Probation Commission.

(20) Facility Administrator--An individual designated by the chief administrative officer or governing board of a juvenile justice facility as the on-site program director or superintendent of a secure facility.

(21) Formal Charges--Formal pleading by the Commission alleging the basis for disciplinary action against a Certified Officer.

(22) Hearing--An adjudicative proceeding at the State Office of Administrative Hearings.

(23) Judge--A State Office of Administrative Hearings administrative law judge who presides over an administrative hearing held under Chapter 2001 of the Texas Government Code Annotated.

(24) Juvenile Board--A county's governing board created under Chapter 152 of the Texas Human Resources Code.

(25) Juvenile Probation Department ("department")--A county or district level governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 141 of the Texas Human Resources Code.

(26) Juvenile Justice Facility ("facility")--A facility, including its premises and all affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with <\*>51.12 of the Texas Family Code;

(B) A public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with <\*>51.125 of the Texas Family Code, except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.

(27) Juvenile Justice Program ("program")--A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

(28) Juvenile Probation Officer--An individual whose primary responsibility and essential job function is to provide juvenile probation services and supervision duties authorized under statutory and agency administrative law that can only be performed by a person with an active Commission-issued certification.

(29) Juvenile Supervision Officer--An individual whose primary responsibility and essential job function is the supervision of juveniles in a juvenile justice program or juvenile justice facility.

(30) Notice of Disposition--The Commission's notification of disposition sent to appropriate parties upon conclusion of an abuse, neglect or exploitation investigation.

(31) SOAH--The State Office of Administrative Hearings.

(32) Sustained Perpetrator--A Designated Perpetrator as defined in paragraph (16) of this section who has already been offered the right to an administrative review and the Designated Perpetrator's right to an administrative review has expired or the disposition was upheld.

### **Subchapter B. Waiver**

<\*>349.200. Waiver or Variance.

(a) Waiver.

(1) Who May Request. Unless expressly prohibited by another standard, the juvenile board, chief administrative officer or facility administrator may submit a request for waiver of any standard adopted by the Commission. If the chief administrative officer or facility administrator submits a request for waiver, the chief administrative officer or facility administrator shall notify in writing the juvenile board simultaneous with submission of the request to the Commission.

(2) Contents of Request. The written request for waiver shall be submitted on a form provided by the Commission and shall:

(A) explain why compliance with standards cannot be achieved immediately;

(B) explain the impact the waiver would have on compliance with other standards;

(C) explain how substantial compliance with the intent and purpose of the standard for which a waiver is requested will be achieved through alternative methods or means; and

(D) explain how the health and safety of juveniles will be maintained during the duration of the waiver.

(3) Length of Waiver. Waivers granted by the Commission under this section shall not exceed one year. The juvenile board, chief administrative officer or facility administrator may request one subsequent waiver extension which, if approved, shall not exceed one year.

(4) Review of Request. In the event a request for waiver is denied, the juvenile board or chief administrative officer may request a review by the Board. The review of the waiver request shall occur at the next Board meeting where waivers will be considered, provided that there is adequate time to place the item on the Board's agenda.

(b) Variance.

(1) Who May Request. Unless expressly prohibited by another standard, the juvenile board may make an application for a variance of any standard or standards adopted by the Commission.

(2) Contents of Request. The written request for variance shall be submitted on a form provided by the Commission and shall:

(A) explain why compliance with standards cannot be achieved;

(B) explain the impact the variance would have on compliance with other standards;

(C) explain how substantial compliance with the intent and purpose of the standard for which a variance is requested would be achieved through alternative methods or means;

(D) explain how the health and safety of juveniles will be maintained if the variance is granted;

(E) explain how compliance with the standard in question will result in undue hardship on the requesting entity; and

(F) explain how issuing the variance would not put the juvenile board, department, program or facility in violation of any state or federal law.

(3) The Board may grant a variance from a standard if it makes affirmative findings of fact with regard to the factors specified in paragraph (2) of this subsection.

(4) The Board shall grant or deny the variance at the next Board meeting where variances will be considered, provided that there is adequate time to place the item on the Board's agenda.

### **Subchapter C. Disciplinary Actions and Hearings**

<\*>349.300. Requests for Disciplinary Action.

(a) Department, Facility or Juvenile Board Requests.

(1) Code of Ethics Violations. The chief administrative officer, facility administrator or juvenile board shall forward a copy of an internal investigation based upon a code of ethics violation to the Commission. The internal investigation shall serve as a request for disciplinary action. At the time the chief administrative officer or facility administrator makes the request for disciplinary action, the chief administrative officer or facility administrator shall simultaneously notify in writing the juvenile board.

(2) Criminal Conduct. The chief administrative officer, facility administrator or the juvenile board shall submit a written request for disciplinary action to the Commission within 10 working days after obtaining notice that a Certified Officer has been convicted of or received deferred adjudication for any offense listed under <\*>344.400 of this title. A request for waiver or variance under <\*>349.200 of this chapter may not be requested for this section unless the certified officer, chief administrative officer or facility administrator received a pardon.

(b) Public Requests.

(1) Code of Ethics Violations. In the event the Commission receives notice in any manner from a member of the public that a Certified Officer has violated the code of ethics, the Commission shall notify in writing the local juvenile board and, provided the alleged violation does not involve the chief administrative officer or facility administrator, shall also notify in writing the chief administrative officer or facility administrator. The Commission shall provide this notice to the chief administrative officer or facility administrator no later than three (3) working days from receipt of the report of an alleged violation. Upon receipt of notification from the Commission, the chief administrative officer, facility administrator or the juvenile board shall conduct an internal investigation, which shall be forwarded to the Commission upon completion.

(2) Criminal Conduct. In the event the Commission receives notice from a member of the public that a Certified Officer has been convicted of or received deferred adjudication for any offense listed under <\*>344.400 of this title, the Commission shall notify in writing the local juvenile board and, provided the alleged violation does not involve the chief administrative officer or facility administrator, shall also notify in writing the chief administrative officer or facility administrator. Upon receiving notice from the Commission, the facility administrator, chief administrative officer or juvenile board shall investigate and, if disqualifying criminal history exists, shall request disciplinary action in accordance with subsection (a)(2) of this section.

<\*>349.305. Commission Initiated Disciplinary Action. The Commission may initiate disciplinary action when:

(1) the Commission discovers through a monitoring visit, compliance audit or as a result of receiving notice in any other manner that an individual currently certified by the Commission does not meet the requirements under <\*>344.810 of this title;

(2) the Commission confirms that a Certified Officer has committed a Code of Ethics violation; or

(3) the Commission confirms that abuse, neglect or exploitation has occurred in a juvenile justice department, program or facility.

<\*>349.307. Disciplinary Sanctions.

(a) Under the authority of Section 141.064 of the Texas Human Resources Code, the Commission may, upon a determination that censure is warranted, impose one of the following actions for a violation of law or a Commission administrative rule:

(1) revocation of an officer's certification;

(2) suspension of an officer's certification; or

(3) reprimand of a certified officer.

(b) A person is entitled to a hearing if revocation or suspension of an officer's certification is recommended by the Commission.

<\*>349.308. Disciplinary Guidelines.

(a) The purpose of these guidelines is to:

(1) provide a framework for analysis by staff members, administrative law judges, and the Board in the making of recommendations in disciplinary matters;

(2) promote consistency in the exercise of sound discretion by Board members in certification and disciplinary matters; and

(3) provide guidance in the resolution of potentially contested matters.

(b) The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation, which may include:

(A) whether the conduct was in violation of a law;

(B) the nature and extent of the harm caused; and/or

(C) the frequency of and time period covered by the violation(s).

(2) the nature of the violation, which may include:

(A) the relationship between the certified officer and the person harmed;

(B) the vulnerability of the person harmed; and/or

(C) the culpability of the certified officer, such as whether the violation:

- (i) was intentional or premeditated;
  - (ii) due to blatant disregard or gross neglect;
  - (iii) resulted from simple error or negligence; and/or
  - (iv) evidences lack of integrity, trustworthiness, or honesty.
- (D) the degree to which actions showed lack of good judgment.
- (3) the degree of personal accountability taken by the certified officer, which may include:

- (A) admission of wrongdoing and acceptance of responsibility;
- (B) showing appropriate remorse or concern;
- (C) efforts to ameliorate the harm or make restitution;
- (D) cooperation with an investigation or request for information; and/or
- (E) attempts to deny or conceal the misconduct or falsify documents.

(4) Any other relevant factors, which may include:

- (A) the certified officer's record of training, length of service, position, job responsibilities, and performance history;
- (B) the presence or absence of prior or subsequent violations;
- (C) any other relevant circumstances, including aggravating or mitigating factors, such as environmental factors that may have contributed to the officer's actions;
- (D) disciplinary action taken in similar incidents;
- (E) disciplinary action taken by the employer and the employer's recommendation to the commission; and/or
- (F) any other matter justice may require.

<\*>349.310. Effect of Request for Disciplinary Action. When the Commission receives a request for disciplinary action under <\*>349.300 of this chapter or when the Commission initiates a disciplinary action under <\*>349.305 of this chapter, the Commission shall give the Certified Officer subject to the disciplinary action preliminary notice in accordance with <\*>349.330 of this chapter.

<\*>349.311. Disciplinary Sanctions.

- (a) The Board shall permanently revoke the certification of any officer, or permanently deny the application of a person if, after a contested case hearing, it is determined that the officer or applicant:
  - (1) engaged in or solicited any sexual contact or a romantic relationship with a juvenile;
  - (2) possessed or distributed child pornography;
  - (3) is convicted of, or placed on deferred adjudication for, a felony level offense against a person or an offense that requires registration as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(4) is convicted of, or placed on deferred adjudication for, a felony level violation of the controlled substances provisions of the Texas Health and Safety Code, committed in the workplace or while on duty as a certified officer.

(b) The rules enumerated above are not intended to be exhaustive criteria. The Board may, at its discretion, recommend revocation of the certification of any officer who violates applicable laws or Commission rules or standards.

#### <\*>349.315. Computation of Time.

(a) Unless otherwise required by law, in computing any period of time prescribed or allowed by these sections, the date of the act, event or default after which the designated period of time begins to run is not to be included, and the last day of the period is to be included, unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(b) When this chapter specifies a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days unless otherwise provided for by this chapter, applicable law, SOAH rules or judge order. However, if the period specified is five days or less, the intervening Saturdays, Sundays and legal holidays are not counted.

(c) When by this chapter, SOAH rules or judge order, an act is required or allowed to be done at or within a specified time period, the Executive Director, Board or judge (if SOAH has acquired jurisdiction) may, for good cause shown, order the period extended if application is made before the expiration of the specified time period. In addition, where good cause is shown for the failure to act within the specified time period, the Executive Director, Board or judge may permit the act to be done after the expiration of the specified period.

#### <\*>349.320. Notice and Service.

(a) Notice must be in writing and addressed to the Certified Officer. Notice to a Certified Officer is effective and service is complete when sent by certified mail, return receipt requested, to the Certified Officer's most recent address of record with the Commission.

(b) If a document was sent by regular or certified mail, it will be presumed received no later than three days after mailing. Service shall be presumed effected if the wrapper containing the document is not returned to the Commission.

(c) Notice of a hearing in a contested case must comply with <\*>2001.052 (APA) of the Texas Government Code. Service is complete when made pursuant to 1 TAC <\*>155.103 (SOAH Procedural Rules).

#### <\*>349.325. Representation.

(a) A person may represent himself/herself or may appear by authorized representative.

(b) A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and, if SOAH has acquired jurisdiction, an order of the judge approving the request.

#### <\*>349.330. Preliminary Notice to Certified Officer in Disciplinary Matters

(a) Except for proceedings conducted under the authority of <\*>141.064(c) of the Texas Human Resources Code or unless it would jeopardize an investigation, prior to commencing disciplinary proceedings under <\*>349.335 of this chapter, the Commission shall serve the Certified Officer with written notice in accordance with subsection <\*>2001.054(c) of the Texas Government Code.

(b) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse certification action. The notice shall invite the Certified Officer to show compliance with all requirements of the law for retention of the certification.

(c) The Certified Officer shall file a written response within 20 days after service of the notice specified in subsection (a) of this section. Failure to file a written response may result in a default order, as provided in <\*>349.340 and <\*>349.370 of this chapter.

<\*>349.335. Commencement of Disciplinary Proceedings.

(a) If a disciplinary matter is not resolved informally, the Commission may commence disciplinary proceedings by filing formal charges.

(b) The formal charges shall contain the following information:

(1) the name of the Certified Officer and his or her certification number;

(2) a statement alleging with reasonable certainty the specific act or acts relied upon by the Commission to constitute a violation of a specific statute or Commission rule; and

(3) a reference to the section of the Commission rules that the Certified Officer is alleged to have violated.

(c) When formal charges are filed, the Commission shall serve the Certified Officer with a copy of the formal charges. The notice shall state that the Certified Officer shall file a written answer to the formal charges that meets the requirements of <\*>349.340 and <\*>349.370 of this chapter.

(d) The Commission may amend the formal charges at any time as permitted by the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code Annotated. A copy of any formal amended charges shall be served on the Certified Officer.

(e) Formal charges may be resolved by agreement of the parties at any time as provided by the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code Annotated.

<\*>349.340. Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default).

(a) The Certified Officer in a disciplinary matter shall file an answer to the formal charges and to every amendment thereof.

(b) The answer shall admit or deny each of the allegations in the formal charges or amendment thereof. If the Certified Officer intends to deny only a part of an allegation, the Certified Officer shall specify the portion that is true and shall deny only the remainder. The answer shall also include any other matter, whether of law or fact, upon which the Certified Officer intends to rely for his or her defense.

(c) If the Certified Officer fails to file a response to the formal charges, the matter will be considered as a default case.

(d) In a case of default, the Certified Officer will be deemed to have:

(1) admitted all of the factual allegations in the formal charges;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the formal charges; and

(4) waived objection to the sanction recommended in the formal charges.

(e) The Executive Director may recommend that the Board enter a default order, based upon the allegations set out in the formal charges, that adopts the sanction recommended in the formal charges.

(f) Upon consideration of the case, the Board may:

(1) enter a default order under <\*>2001.056 of the APA; or

(2) order the matter to be set for a hearing at SOAH.

(g) The Certified Officer may amend his or her answer at any time permitted by the APA or SOAH rules.

(h) The first answer filed shall be entitled "answer," the first amended answer filed shall be entitled "first amended answer," and so forth.

(i) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice, and upon proof of proper notice to the Certified Officer. For purposes of this section, proper notice means notice sufficient to meet the provisions in <\*>2001.054 of the Texas Government Code and <\*>349.320 of this chapter. Such notice shall also include the following language in capital letters in 12 point boldface type: FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL CHARGES, EITHER PERSONALLY OR BY AUTHORIZED REPRESENTATIVE, MAY RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE RELIEF SOUGHT BY THE COMMISSION IN THE NOTICE OF HEARING MAY BE GRANTED BY DEFAULT.

(j) A motion for rehearing that requests the Board vacate its default order under this section shall be granted if the Certified Officer proves by a preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the Certified Officer has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will not cause delay or otherwise create a hardship for the Board.

<\*>349.345. Discovery.

(a) Parties to administrative proceedings shall have reasonable opportunity and methods of discovery described in the Texas Administrative Procedure Act (APA), Chapter 2001 of the Texas Government Code Annotated, and SOAH rule, 1 TAC <\*>155.251. Matters subject to discovery are limited to those that are relevant and material to issues within the Board's authority. Subject to prior agreement of parties, responses to discovery requests, except for notices of depositions, shall be made within 20 days of receipt of the request.

(b) Parties may obtain discovery by: request for disclosure, as described by rule 194 of the Texas Rule of Civil Procedure; oral or written depositions; written interrogatories to a party; requests of a party for admission of facts and the genuineness of identity of documents and things; requests and motions for production, examination and copying of documents and other tangible materials; motions for mental or physical examinations; and requests and motions for entry upon and examination of personal and/or real property.

(c) Parties are encouraged to make stipulations of evidence where possible and agree to methods and time lines to expedite discovery and conserve time and resources.

<\*>349.355. Subpoenas.

(a) Upon the written request of any party, the Board may issue a subpoena to require the attendance of witnesses or the production of books, records, papers or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If the subpoena is for the attendance of a witness, the written request shall contain the name, address and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is

sought. If the subpoena is for the production of books, records, writings or other tangible items, the written request shall contain a description of the item sought; the name, address and title, if any, of the person or entity who has custody or control over the items, and the date on which and the location at which the items are sought to be produced. Each request, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that a party has shown good cause for the issuance of the subpoena, the Board shall issue the subpoena in the form described in <\*>2001.089 of the Texas Government Code.

(d) Notwithstanding any other provisions of this chapter, the Board may issue a subpoena prior to the filing of formal charges under <\*>349.335 of this chapter, if, in the opinion of the Board, such a subpoena is necessary to preserve evidence and testimony to investigate any potential violation or lack of compliance with Commission rules and regulations, or orders of the Board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers or other objects.

#### <\*>349.360. Informal Proceedings.

(a) The Board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes such as informal proceedings or alternative dispute resolution. Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, agreed order, dismissal or default.

(b) In disciplinary matters, the Commission shall offer the Certified Officer the opportunity to be heard. The offer may be made at any time prior to disposition and may be included on any notice required by statute or this chapter, or otherwise.

(c) Informal proceedings may be conducted in person, by authorized representative, or by electronic, telephonic or written communication.

(d) Informal proceedings shall be conducted pursuant to the following procedural standards:

(1) the Certified Officer shall have a right to be represented by an attorney of record or authorized representative. At any time, should the Certified Officer choose to obtain representation by an attorney or authorized representative and advises staff of such choice, the conference will be discontinued;

(2) the Certified Officer will be expected to answer questions concerning the allegations contained in the preliminary notice or formal charges, but may decline to answer any questions posed during the conference;

(3) participation by the Certified Officer and Commission staff in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. The Certified Officer will be expected to cooperate fully with the Commission staff to ensure that the Commission has all pertinent information relating to the complaint or formal charges against the Certified Officer; and

(4) although, a verbatim transcript is not being kept of the informal conference, party admissions and outline notes may be used at a formal hearing if the matter is ultimately docketed as a formal proceeding at SOAH.

(e) Informal conferences may be conducted at any time by the Executive Director or designee.

(f) The Commission's General Counsel or designee shall participate in informal proceedings.

(g) Disposition of matters considered informally may be made at any time in an agreed order containing such terms as the Executive Director may deem reasonable and necessary. Except as to matters delegated to the Executive Director for ratification, said agreed order shall not be final and effective until the Board votes to accept the proposed disposition.

(h) In the event the Certified Officer fails to comply with the terms of the agreed order, formal disciplinary proceedings will be initiated or resumed.

(i) If disciplinary matters are not resolved informally, formal charges may be filed in accordance with <\*>349.335 of this chapter and the case may be set for a hearing before SOAH in accordance with <\*>349.370 of this chapter.

(j) Pre-docketing conferences may be conducted by the Executive Director or designee prior to SOAH acquiring jurisdiction over a contested case. The Executive Director or designee, unilaterally or at the request of any party, may direct the parties or their attorneys to appear before the Executive Director or designee at a specified time and place for a conference prior to the hearing for the purpose of:

(1) clarifying and simplifying the issues;

(2) considering the making of admissions or stipulations of fact or law;

(3) reviewing the procedure governing the hearing;

(4) limiting the number of witnesses whose testimony will be repetitious or duplicative; and

(5) performing any act that may simplify the proceedings and disposing of the matters in controversy, including settling all or part of the issues in dispute pursuant to this section and <\*>349.365 of this chapter.

<\*>349.365. Agreed Dispositions. Informal proceedings, complaints and formal charges may be resolved by stipulation, agreed settlement, agreed order or dismissal pursuant to <\*>2001.056 of the Texas Government Code Annotated.

<\*>349.370. Formal Disciplinary Proceedings. In the event a disciplinary action is not resolved informally, formal disciplinary proceedings may be initiated and pursued by the Commission in accordance with the following provisions.

(1) Formal administrative hearings in contested cases shall be conducted in accordance with the APA and SOAH rules. Jurisdiction over the case is acquired by SOAH when Commission staff or the Certified Officer files a Request to Docket Case Form accompanied by legible copies of all pertinent documents, including but not limited to the complaint, petition, application or other document describing the agency action giving rise to a contested case.

(2) When a case has been docketed before SOAH, the party requesting docketing shall provide a notice of hearing to all parties in accordance with <\*>2001.052 of the Texas Government Code and applicable SOAH rules.

(3) The certified officer shall enter an appearance by filing a written answer or other responsive pleading with SOAH, along with a copy to Commission staff, within 20 days of the date on which the notice of hearing is served on the Certified Officer.

(4) For purposes of this section, an entry of an appearance shall mean the filing of a written answer or other responsive pleading.

(5) The failure of the Certified Officer to timely enter an appearance as provided in this section shall entitle Commission staff to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the judge.

(6) The notice of hearing provided to a Certified Officer for a contested case shall include the following language in capital letters in 12-point bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL CHARGES WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED, SHALL ENTITLE COMMISSION STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

(7) If a Certified Officer fails to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the judge, pursuant to SOAH's rules, shall, upon adequate proof that proper notice under the APA and SOAH rules was served upon the defaulting party, enter a default judgment in the matter adverse to the Certified Officer. Such notice shall have included in 12-point, boldface type, the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice may be deemed admitted as true and the relief sought in the proposed recommendation by the staff may be granted by default.

(8) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice of hearing, and upon proof of proper notice to the Certified Officer. For purposes of this section, proper notice means notice sufficient to meet the provisions in **2001.051, 2001.052 and 2001.054** of the Texas Government Code and **349.320** of this chapter. Such notice of hearing shall also include the following language in capital letters in 12-point boldface type: **FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY AUTHORIZED REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, MAY RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF THE COMMISSION MAY BE GRANTED BY DEFAULT.**

(9) A party may file a motion no later than 10 days after the hearing to set aside a default and to reopen the record if a proposal for decision or a final decision has not been issued.

(A) The judge may grant the motion, set aside the default and reopen the hearing for good cause shown.

(B) If the motion to set aside the default judgment is granted, it shall be the responsibility of the parties to either settle the matter informally or to request a rehearing on the merits. Whenever possible, the rehearing of the case shall occur with the judge that heard the default matter.

(10) Due to the often voluminous nature of the records properly received into evidence by the judge, the party introducing such documentary evidence may paginate each exhibit or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(11) The schedule of disciplinary sanctions set out in **141.064** of the Texas Human Resources Code is adopted by the Board and the judge shall use such sanctions, as well as any sanctions adopted by Board rule.

(12) Within a reasonable time after the conclusion of the hearing, the judge shall prepare and serve on the parties a proposal for decision that includes the judge's findings of fact and conclusions of law and a proposed order recommending a sanction to be imposed, if any.

(13) Each hearing may be recorded by a court reporter in accordance with the APA and SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript and said request shall be sent directly to the court reporter and the requesting party shall notify the other party in writing of the request.

(14) A party who appeals a final decision of the Board shall pay all costs of preparation of the original and certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

(A) The record in a contested case shall consist of the following:

(i) all pleadings, motions, intermediate rulings;

(ii) all evidence received or considered by the judge;

(iii) a statement of the matters officially noticed;

(iv) questions and offers of proof, objections and rulings thereon;

(v) proposed findings and exceptions;

(vi) any decision, opinion or report by the judge presiding at the hearing;

(vii) all Commission correspondence submitted to the judge in connection with his or her consideration of the case; and

(viii) the transcribed statement of facts (question and answer testimony) from the hearing unless the parties have stipulated to all or part of the statement of facts.

(B) Calculation of costs for preparation of the record shall be governed by the same procedure utilized by the Commission in preparing documents responsive to open records requests under the Public Information Act. These costs shall include, but not be limited to, the cost of research, document retrieval, copying and labor.

(15) Notice of Order. The Commission shall notify by mail a Certified Officer whose conduct was the subject of a disciplinary hearing of the final order. The notice of order shall include:

(A) the acts or omissions, if any, by the officer that violated the code of ethics;

(B) a statement of the evidence relied upon;

(C) the identification of each section of the code of ethics that was violated by the acts or omissions of the officer;

(D) the Board's disposition concerning the officer's certification; and

(E) notification of the individual's right to rehearing and appeal.

<\*>349.375. Decision of the Board.

(a) Except as to those matters expressly delegated to the Executive Director for ratification, the Board may make final decisions in all matters relating to disciplinary action.

(b) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions. Exceptions and replies shall be filed with the judge and copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies or briefs submitted by the parties without again being served on the parties.

(c) The proposal for decision may be acted on by the Board after the expiration of 10 days from the date of filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(d) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when the Board determines that:

(1) the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) a technical error in a finding of fact should be changed.

(e) If the Board modifies, amends or changes the recommended order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made under subsection (d) of this section.

(f) An order of the Board shall be in writing and may be signed by the Executive Director on behalf of the Board.

(g) A copy of the order shall be mailed to the Certified Officer at the most recent address of record with the Commission.

(h) The decision of the Board is immediate, final and appealable upon the signing of the written order by the Executive Director on behalf of the Board where:

(1) the Board finds and states in the order that an imminent peril to the public health, safety or welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(i) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (h) of this section.

(j) Motions for rehearing are governed by <\*>2001.145 of the Texas Government Code Annotated.

<\*>349.380. Judicial Review. A Certified Officer who has exhausted all administrative remedies within the Commission is entitled to judicial review as provided by <\*>2001.171 of the Texas Government Code.

<\*>349.385. Mandatory Suspension for Failure to Pay Child Support.

(a) Upon receipt of an order suspending certification for failure to pay child support issued under <\*>232.008 or <\*>232.009 of the Texas Family Code, the Commission shall suspend the Certified Officer's certification.

(b) Notice of Suspension.

(1) The Commission shall notify the Certified Officer subject to a suspension order received under subsection (a) of this section that the agency has formally suspended the individual's certification.

(2) The notice shall also instruct the individual that he or she may not perform the duties of a Certified Officer while the suspension order is in effect.

(3) The Commission shall also notify the chief administrative officer or facility administrator and the juvenile board of the employing department, facility or program of the suspension.

(c) Length of Suspension. A certification suspension shall remain in effect until the Commission receives an order issued under <\*>232.013 of the Texas Family Code that either vacates or stays the suspension.

(d) An individual subject to a suspension order issued under subsection (a) of this section may not be hired, certified or recertified while the suspension order remains in effect.

(e) A request for waiver or variance under <\*>349.200 of this chapter may not be requested for this standard.

(f) An individual subject to a suspension order issued under subsection (a) of this section may not appeal the suspension order to the Commission.

#### **Subchapter D. Complaints Against Juvenile Boards.**

<\*>349.400. Complaint Process.

(a) When the Commission receives a complaint about a juvenile board, the Commission shall review the circumstances surrounding the complaint to determine whether the juvenile board has violated the rules or standards of the Commission.

(b) If the Commission determines the complaint is about juvenile services within the discretion of the juvenile board, the complaint shall be referred to the juvenile board. The complainant shall be notified in writing of the referral by the Commission.

(c) If the Commission determines the juvenile board has violated the Commission's rules or standards, the juvenile board shall be notified in writing of the violation. If, within 90 calendar days of the date on which the juvenile board received written notice of the Commission's determination, the juvenile board does not propose its own plan for achieving compliance or if the plan is not acceptable to the Commission, the Commission will attempt to negotiate a mutually agreeable solution.

(d) Upon written notice of the violation, the juvenile board shall be given 90 calendar days to achieve compliance or propose a plan to achieve compliance acceptable to the Commission.

(e) If the Commission and the juvenile board cannot reach an agreement, the Commission shall give the juvenile board written notice of its intent to refuse, reduce or suspend state aid under <\*>141.085 of the Texas Human Resources Code. Upon receipt of the above notice, the juvenile board shall have 15 calendar days to:

(1) notify in writing the Commission's Executive Director of the juvenile board's compliance;

(2) propose in writing an alternate solution; or

(3) provide a written appeal of the Commission's action(s) to the Executive Director.

(f) The juvenile board's appeal must state specifically any difference of opinion with the Commission's staff concerning the facts in dispute and the solution necessary under the standards or rules of the Commission. The appeal shall state whether the juvenile board requests a hearing before the Commission's board.

(g) The Commission shall set the appeal on the agenda for its next regularly scheduled meeting. If the juvenile board has requested a hearing, the juvenile board and the Commission's staff may appear and make oral presentations concerning the appeal. If the juvenile board does not request a hearing before the Commission, the Board will make its decision based upon the record.

(h) The complainant shall be notified in writing upon receipt of the complaint and upon resolution.

<\*>349.410. Administrative Review and Appeal of Investigation Findings.

(a) Any person to whom the Commission assigns the role of designated perpetrator or administrative designee may request an administrative review of the Commission's disposition of such role.

(b) The designated perpetrator or administrative designee shall request the review in writing within 45 calendar days after receiving the Commission's written notice of disposition.

(c) If civil or criminal proceedings related to an allegation that the Commission has investigated are pending when a designated perpetrator or administrative designee requests an administrative review, or if such proceedings are initiated before the Commission begins the review, the Commission may postpone the review until the proceedings are completed.

(d) The designated perpetrator or administrative designee has a right to:

(1) appear in person at the review;

(2) represent himself/herself or be represented by an authorized representative; and

(3) submit relevant evidence on his/her behalf.

(e) If the designated perpetrator or administrative designee does not speak English or is hearing impaired, the Commission shall provide a certified translator or interpreter unless the designated perpetrator or administrative designee chooses to provide his/her own certified translator or interpreter.

(f) If the designated perpetrator or administrative designee chooses to provide his/her own certified translator or interpreter, he/she will be responsible for all costs incurred in connection with the review.

(g) The administrative review shall be conducted by a Commission hearing examiner. The hearing examiner shall confirm or revise the Commission's original notice of disposition based on the same policies applied by the Commission during the original investigation. Within 30 calendar days after completing the review, the hearing examiner shall notify the designated perpetrator or administrative designee of the outcome of the review.

(h) The hearing examiner's notification must inform the designated perpetrator or administrative designee that if he/she is dissatisfied with the hearing examiner's decision, he/she must notify the Commission in writing within 20 days after receiving notice of the decision in order to request that the decision be appealed to SOAH.

(i) If the hearing examiner or SOAH revises the Commission's original findings or advises the Commission to take any other action(s) in the case, the Commission must:

(1) enter the revised findings into the investigation record;

(2) notify each person who was notified of the original findings that the findings have been revised; and

(3) take any other action specified by the reviewer.

#### **Subchapter E. Confidentiality and Release of Abuse, Exploitation and Neglect Investigation Records.**

<\*>349.500. Purpose. The purpose of this subchapter is to clarify to whom and under what circumstances the Commission may disclose information made confidential under <\*>261.201 of the Texas Family Code.

<\*>349.510. Definitions. The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Investigation Records--That portion of the records described in <\*>261.201(a) of the Texas Family Code which were generated by the Commission or required to be submitted to the Commission during the course of an abuse, neglect or exploitation investigation.

(2) Parent--Biological or adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the juvenile, provided that the requestor's parental or other legal relationship to the juvenile has not been terminated at the time the request for information is made.

(3) Report--Formal notification to the Commission of an alleged incident of abuse, neglect or exploitation of a juvenile in a juvenile justice program and/or under the jurisdiction of the juvenile court.

(4) Reporter--An individual who makes a report to the Commission alleging the abuse, neglect or exploitation of a juvenile. If more than one individual makes a report alleging abuse, neglect or exploitation of the same juvenile, all such individuals shall have the designation of reporter.

<\*>349.520. Access to Confidential Information.

(a) To the extent required by state or federal law, or to the extent deemed necessary by the Commission for the protection and care of juveniles, the Commission may release, as requested, the Commission's Notice of Disposition and/or investigation records made confidential under Texas Family Code <\*>261.201(a) to the following listed persons or entities:

(1) the juvenile board and chief administrative officer that placed the alleged victim, unless the requesting board member, chief administrative officer or facility administrator is the alleged, designated or sustained perpetrator, or administrative designee;

(2) the juvenile board, the chief administrative officer and the facility administrator of the county in which the department, program or facility is located, unless the requesting board member, chief administrative officer or facility administrator is the alleged, designated or sustained perpetrator or administrative designee;

(3) law enforcement officials for the purpose of investigating allegations of abuse, neglect and exploitation or for the purpose of investigating allegations of false or malicious reporting of alleged abuse, neglect and exploitation;

(4) a physician who suspects a juvenile may be the victim of abuse, neglect or exploitation and requires this information for diagnosis, prognosis or treatment of the juvenile;

(5) a government official when specifically required by law;

(6) a grand jury;

(7) an attorney, attorney ad litem, guardian ad litem or court appointed special advocate of an alleged victim;

(8) a court in a criminal or civil case arising in connection with an investigation of abuse, neglect and exploitation;

(9) the attorney general of the state, or a county or district attorney, when such attorney represents the state in a proceeding in connection with an investigation;

(10) a member of the state legislature when necessary to carry out that member's official duties; and

(11) any other person or entity, including other licensing agencies, law enforcement and prosecutors, when, in the discretion of the Commission, such information is necessary to aid in the protection of juveniles.

(b) Upon written request, the Commission shall provide access to investigation records to the parent or other legal guardian of the alleged/designated victim provided that the records are redacted in accordance with <\*>349.530 of this chapter.

(c) The Commission may release investigation records, or information contained therein, to a person, including a minor, who is the subject of those records if the Commission deems the release to be in the best interest of the person.

(d) Upon written request, the Commission shall provide access to investigation records to an alleged, designated or sustained perpetrator or administrative designee in accordance with §349.540 of this chapter.

(e) An individual not otherwise entitled to have access to records under this section, but who participated in, cooperated with or otherwise contributed to an investigation may have access only to that portion of the investigation records obtained directly from or pertaining directly to that individual.

(f) The Commission shall withhold the release of any investigation records obtained from another source, if the release of those records to the requestor is specifically prohibited under state or federal law. Information which may be withheld under this section includes, but is not limited to, the following:

(1) all medical records subject to the Medical Practices Act, Chapter 159 of the Texas Occupations Code, unless release to the requestor is authorized under that Act;

(2) HIV information unless release to the requestor is authorized under Chapter 81 of the Texas Health and Safety Code;

(3) offense reports, criminal history information and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law;

(4) adult or juvenile probation records, as well as juvenile arrest records, unless release to the requestor is specifically authorized under state or federal law; and

(5) polygraph exam reports, unless their release to the requestor is specifically authorized under the Polygraph Examiners Act, Chapter 1703 of the Texas Occupations Code.

(g) Notwithstanding any other provision in this chapter, the Commission may withhold any information in the investigation records if, in the discretion of the Commission, the release of that information would endanger the life or safety of any individual. The Commission shall keep a record of any information so withheld and shall document the specific factual basis for its belief that the release of the information would be likely to endanger the life or safety of an individual.

(h) Information withheld from a requestor under this subsection, as well as the documented basis for withholding information under subsection (g) of this section, may be released only upon a court order.

#### <\*>349.530. Redaction of Records Prior to Release.

(a) Unless otherwise permitted by law, prior to the release of investigation records, the Commission shall redact the name, address and any other information in the record that tends to reveal the identity of the reporter.

(b) In the event the reporter also provided a witness statement or other evidence, the reporter's identity as a witness and the information provided in the role of witness will be released. Any information that might identify the individual as the reporter shall be redacted from the record prior to its release.

(c) The Commission may, in its discretion, redact personally identifiable information about any person other than the reporter who is referenced in a report. Identifying information includes, but is not limited to, names, social security numbers, home and work addresses, telephone numbers and driver's license numbers.

#### <\*>349.540. Procedures for Requesting Access to Confidential Information.

(a) Subject to the exception in <\*>349.560 of this chapter, upon written request for copies of records and a determination that the requestor is entitled to have access to those records pursuant to either these rules or a court order issued in accordance with the provisions in <\*>261.201 of the Texas Family Code, the Commission shall provide copies of the requested records.

(b) Notwithstanding any other provision in this subchapter, the Commission shall not disclose any information which if released to the requestor would interfere with a criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, neglect and exploitation is complete unless, in the discretion of the Commission, release prior to completion of the investigation is necessary to aid in the protection of juveniles.

(d) Notwithstanding any other provision in this subchapter, if the Commission has been sued by any party and the Commission determines that the release of the requested records might interfere with the defense of that litigation, the Commission may require that a requestor seek access to records under the appropriate rules of civil procedure rather than under this chapter.

<\*>349.550. Public Information. The Commission shall compile statewide statistics on the incidence of abuse, neglect and exploitation as required by <\*>261.402 of the Texas Family Code.

(1) The following statistical data, which contains no case-specific identifiers, is available to the public upon written request:

(A) the number of reported allegations of abuse, neglect and exploitation;

(B) the classifications assigned to reported allegations of abuse, neglect and exploitation; and

(C) the dispositions assigned to investigations of reported allegations of abuse, neglect and exploitation.

(2) Additionally, upon written request and when necessary to cross-reference statistical data with individual allegations of abuse, neglect and exploitation reported from an individual county, or for purposes of compliance with <\*>51.12(c)(4) of the Texas Family Code, the department, facility or juvenile board may be entitled to specific case numbers assigned to allegations of abuse, neglect and exploitation that were reported by the county requesting the data. A county may only request specific case numbers related to allegations of abuse, neglect and exploitation pertaining to juvenile justice programs and facilities in its own county.

(3) Requests from juvenile probation departments, facilities or juvenile boards made pursuant to either paragraph (1) or (2) of this section may be provided to the requestor via inter-governmental transfer. No exceptions to disclosure under the Public Information Act, Chapter 552 of the Texas Government Code, are waived by the exchange, disclosure or dissemination of juvenile justice information under this rule.

<\*>349.560. Videotapes, Audiotapes and Photographs.

(a) Individuals authorized under <\*>349.520 of this chapter have access to investigation records may review any videotapes, audiotapes or photographs that are a part of those records.

(1) Access will be permitted only in areas designated by the Commission and at a time mutually convenient to the requestor and the Commission.

(2) When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless the participation of this individual is deemed by the Commission to be appropriate under the circumstances surrounding the request.

(b) Copies of videotapes, audiotapes and photographs may be provided to the individuals or entities identified in <\*>349.520(a) of this chapter only if, in the discretion of the Commission, it is determined that the provision of a copy is essential to the investigation, prosecution or resolution of a case.

<\*>349.570. Charges for Copies of Records. The Commission may charge a fee for records provided under this chapter using the same fee structure as that used by the Commission when assessing charges under Chapter 552 of the Texas Government Code.