

**RULES  
OF  
TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES  
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 0250-5-13  
PROCEEDINGS AFFECTING FOSTER FAMILY CARE**

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**0250-5-13-.01 RIGHT TO APPEAL.**

- (1) A foster parent who has had a foster child, who is in the custody of the Department of Children's Services, in his or her home for a period of 12 or more consecutive months shall have the right to appeal a decision by a representative of the Department of Children's Services to remove said child from his or her home for placement in a different foster care home or facility or in an adoptive home. This right shall not apply, however, to removals necessitated by any of the following reasons:
  - (a) Children returned to their parent(s) or legal guardian. Legal guardian as used in these rules shall not mean the Department of Children's Services;
  - (b) Children removed from the foster family home pursuant to a Court Order requiring such removal;
  - (c) Children removed from the foster family home at the request of the foster parent(s).

**Authority:** T.C.A. §§4-5-226, 37-5-105, and 37-5-112. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28, 1979; effective January 12, 1980. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed January 3, 1992; effective March 16, 1992. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.01 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.

**0250-5-13-.02 NOTICE.**

- (1) Not less than ten (10) days prior to the removal of a child from a foster family home for reasons other than as specified in rule 0250-5-13-.01(1), (2), and (3), the foster parent(s) shall be notified in writing of the Department's intention to remove the child, the date of the intended removal and the reasons for the intended removal. Such notice shall also advise the foster parents of their right to appeal this decision and that if they appeal within ten (10) days the child will not be removed from their home pending the outcome of the appeal.
- (2) Advance notice of the intent to remove a child from a foster home shall not be required when the Department determines that there is an imminent threat of harm to the child's health or safety if he is not removed from the foster family home immediately. In such cases the foster parent(s) shall be given as much advance notice as possible without endangering the child's health or safety and shall be advised of their right to appeal the decision, although an appeal in such cases will not stay the removal of the child pending the outcome of the appeal.

**Authority:** T.C.A. §§4-5-226, 37-5-105, and 37-5-112. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28, 1979; effective January 12, 1980.

(Rule 0250-5-13-.02, continued)

*Amendment filed December 17, 1982; effective March 16, 1983. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.02 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.*

#### **0250-5-13-.03 TIME LIMIT FOR FILING AN APPEAL.**

- (1) Appeals from decisions to remove a child from a foster family home will be accepted only if they are filed within ten (10) days after the mailing date of the written notice of the action unless good cause can be shown as to why the appeal could not be filed within the time limit.
- (2) The time limits shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or legal holiday in which case the last day shall be the first day following the Saturday, Sunday, or legal holiday which is not itself a Saturday, a Sunday, or a legal holiday.
- (3) Any waiver of the ten (10) day time limit for filing an appeal is subject to the approval of the Commissioner or his designated representative. Additionally, if an appeal is made after the ten (10) day time limit but prior to the actual removal of the child from the foster family home, the Commissioner or his designated representative may order that the child not be removed from the foster family home pending the outcome of the hearing unless he determines that the child's health or safety requires immediate removal.

**Authority:** T.C.A. §§4-5-226, 4-5-301, 37-5-105, and 37-5-112. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28, 1979; effective January 12, 1980. Amendment filed December 17, 1982; effective March 16, 1982. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.03 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.

#### **0250-5-13-.04 WAIVER OF RIGHT TO APPEAL AND WITHDRAWAL OR DISMISSAL OF HEARING REQUESTS.**

- (1) Foster parents who concur with the plan for removal of a child from their home or who choose not to pursue an appeal may waive their right to a hearing and to the ten (10) day advance notice period by executing a written waiver. A waiver to the right to appeal may not be executed prior to receipt of the written notice of the proposed removal, but once executed denies the right to future appeal and authorizes the Department to remove the child from the home on the date specified in the notice or on an earlier date, if such earlier date is specified in the waiver.
- (2) The Department may dismiss a request for a hearing if it has been withdrawn by the foster parent(s) in writing or if it is abandoned. Abandonment may be deemed to have occurred if the foster parent(s), or an authorized representative acting on their behalf, without good cause fails to appear at the scheduled hearing.

**Authority:** T.C.A. §§4-5-226, 37-5-105, and 37-5-112. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28, 1979; effective January 12, 1980. Amendment filed December 17, 1982; effective March 16, 1982. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.04 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.

#### **0250-5-13-.05 PRE-HEARING CONFERENCE.**

- (1) Foster parents who have not had an opportunity to discuss their disagreement regarding a decision to remove a child from their home with someone in the Department other than the worker and/or his immediate supervisor, will be given the opportunity for a conference with higher level supervisors and/or the Regional Administrator at the time they request to file an appeal. Efforts should be made to

(Rule 0250-5-13-.05, continued)

resolve complaints through informal conference procedures; however, such a conference will in no way deny or infringe on the foster parent(s) right to appeal.

**Authority:** T.C.A. §§4-5-226, 4-5-306, 37-5-105, and 37-5-112. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28, 1979; effective January 12, 1980. Amendment filed December 17, 1982; effective March 16, 1982. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.05 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.

#### **0250-5-13-.06 HEARING PROCEDURES.**

- (1) A hearing regarding removal of children from foster family homes shall be in accordance with the requirements of Chapter 5 of Title 4 of T.C.A. and, except as may be specified otherwise in this chapter, shall be held in accordance with Chapters 0250-5-1,0250-5-2,0250-5-3,0250-5-4,0250-5-5, 0250-5-6, 0250-5-7,0250-5-8,0250-5-9, and 0250-5-10 of the Rules of the Tennessee Department of Children's Services, Administrative Procedures Division.

**Authority:** T.C.A. §§4-5-226, 4-5-312, 37-5-105, and 37-5-112. **Administrative History:** Original ruler filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28,1979; effective January 12, 1980. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.06 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.

#### **0250-5-13-.07 TIME LIMITATION.**

- (1) Except as may be specifically waived in writing by both the foster parent(s) and the Commissioner or his/her designated representative, the maximum time limit for processing an appeal regarding removal of a child from a foster family home is forty-five (45) days. This time limit begins to run on the date the request for appeal is received by the Department and ends on the date the Initial Order is mailed to the foster parent(s).
- (2) When the final agency decision upholds the decision to remove the child from the foster family home, the decision letter shall state the date on which the child will be removed, which date shall be not less than seven (7) days from the mailing date of the letter.

**Authority:** T.C.A. §§4-5-226, 37-5-105, and 37-5-112. **Administrative History:** Original rule filed November 22, 1978; effective January 8,1979. Repeal and new rule filed November 28,1979; effective January 12, 1980. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.07 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.

#### **0250-5-13-.08 BASIS OF DECISION.**

- (1) The final decision as to whether to remove the child from the foster family home will be made in accordance with what is found to be in the best interest of the child. When the interests of an adult and those of the child are in conflict, the interest of the child will be controlling.

**Authority:** T.C.A. §§4-5-226, 37-5-105, and 37-5-112. **Administrative History:** Original chapter filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed November 28, 1979; effective January 12, 1980. Rule assigned a new control number, removed, and renumbered from 1240-5-13-.08 filed and effective March 25, 1999. Amendment filed May 29, 2002; effective August 12, 2002.