

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-6-11
ADMINISTRATIVE REVIEW, EVIDENTIARY, FAIR HEARING AND ARBITRATION**

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1240-6-11-.01 ADMINISTRATIVE REVIEW.

- (1) A manager who is dissatisfied with any action arising from the operation or administration of TBE may ask for a review of the action by filing a written request within thirty (30) days of the Agency's action with the Director of Services for the Blind and Visually Impaired with the Department of Human Services, or the manager may file an appeal pursuant to chapter 1240-6-11-.02. If the manager elects to have a review conducted by the Director of Services for the Blind and Visually Impaired, the written request for such review, which may be filed by the manager or a chosen representative, must specify the action(s) to be reviewed and the reason(s) for the manager's dissatisfaction.
- (2) Upon receipt of a request for an administrative review, the Director of Services for the Blind and Visually Impaired shall designate a member of the management staff who shall have fifteen (15) working days to file a written response, outlining the reason or reasons for any action objected to by the manager. In filing his/her response, the Agency representative shall forward a copy to the manager and to the manager's representative, if designated.
- (3) Upon receipt of the response from the Agency representative, the manager or his/her representative shall have ten (10) working days in which to file any objections or make reply, after which the Director of Services for the Blind and Visually Impaired shall evaluate the materials submitted and issue a written decision thereon. The decision shall be issued within fifteen (15) working days following the close of the period allowed for the manager's reply. The manager or a chosen representative may file an appeal in accordance with chapter 1240-6-11-.02 if the decision issued by the Director of Services for the Blind and Visually Impaired fails to resolve the manager's dissatisfaction.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 and 34 C.F.R. § 395 et seq. **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1989. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-6-11-.02 EVIDENTIARY FAIR HEARING.

- (1) The Agency shall provide the manager an opportunity to seek remedy for his/her dissatisfaction with Agency action arising from the operation or administration of TBE through an evidentiary fair hearing. The manager or a representative selected by the manager shall request an evidentiary fair hearing in writing within thirty (30) days of the agency's action from which the grievance arises or within fifteen (15) days following the manager's receipt of a decision issued by the director of services for the Blind Division pursuant to rule 1240-6-11-.01. All rules on file pertaining to the Department's procedures for conducting fair hearings will apply to the request for a fair TBE hearing.

(Rule 1240-6-11-.02, continued)

- (2) A request for an evidentiary fair hearing, filed by the manager, or a representative selected by the manager, shall be made to the Agency on an official appeals form and shall be completed and signed by the manager or his/her representative.
 - (a) The request shall be sent to the Agency office in which the manager is supervised. A copy of the request shall be sent to the manager's representative on the Committee of Blind Vendors.
- (3) The evidentiary fair hearing shall be conducted in accordance with the following:
 - (a) Time and Place of Hearing - A fair hearing shall be held in the state office at a time and place convenient to the manager.
 - (b) Notice of Fair Hearing - A notice of hearing shall be given to the licensee at least fifteen (15) working days prior to the date set for the hearing.
 - (c) Maximum Time Limit - The overall time limit for processing a fair hearing is ninety days, except when a hearing is delayed for:
 1. Illness of the manager, or
 2. Delay in obtaining evidence because of circumstances beyond the control of the manager or the Agency. The time limit applies to the period extending from the date the original request is received by the Agency until the date of the decision.
 - (d) Hearing Officer - An administrative judge shall be an impartial official, assigned by the Commissioner or his/her designated representative, to serve as hearing officer.
 - (e) Right of Counsel - The licensee is entitled to legal counsel or other representation. Such counsel shall be at his/her own expense or he may wish to avail himself of any legal services available in the community at little or no cost.
 - (f) Issuance of Subpoenas - Subpoenas shall be issued in accordance with the state rules governing the Department of Human Services Administrative Procedures Division.
 - (g) Rules of Evidence - The administrative judge shall exercise every reasonable effort to obtain the most credible evidence of fact in the case.
 - (h) Presentation of Case - The party shall be given every opportunity to present his/her case, examine and cross-examine witnesses, present argument and rebut evidence.
 - (i) Transcript - A transcript shall be made of the oral evidence and shall be made available to the parties upon request. The Agency shall pay all transcript costs and other costs associated with the conduct of the hearing.
 - (j) Content of Record - The transcript of testimony, exhibits, and all papers, and documents filed in the hearing shall constitute the exclusive record for decision.
 - (k) Initial Order - An Initial Order shall be issued by the hearing officer in accordance with state law and state rules governing the Department of Human Services Administrative Procedures Division.
 - (l) Notice of Right to a Petition for Reconsideration and/or Appeal of the Initial Order - Written notice of the right to petition for reconsideration and/or appeal is to accompany the Initial Order

(Rule 1240-6-11-.02, continued)

mailed to the parties. A petition for appeal of an Initial Order must be filed with the Commissioner of the Department of Human Services or his/her designated representative within fifteen (15) days after entry of an Initial Order. Also, any party, within fifteen (15) days after entry of an Initial Order, may file a petition for reconsideration with the hearing officer stating the specific grounds upon which relief is requested. If an Initial Order is subject to both a timely petition for reconsideration and appeal, the petition for reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the petition for reconsideration.

- (m) Final Order - The Commissioner of the Department of Human Services will review the facts of the case and the Initial Order that has been entered and enter the Final Order in the case.
 - (n) Notice of Right to a Petition for Reconsideration of a Final Order - Written notice of the right to petition for reconsideration of the Final Order is to accompany the Final Order to the parties. Any party who feels aggrieved by a Final Order, may within fifteen (15) days following the date of the Order, file a written petition for reconsideration which shall specify in detail the reasons for the request.
 - (o) Pursuant to T.C.A. § 71-4-508(a), the Agency shall have sole jurisdiction to provide administrative review or an evidentiary hearing to a licensed manager.
- (4) Pursuant to T.C.A. § 71-4-508(c), the State of Tennessee does not waive its sovereign immunity under the Eleventh Amendment of the U.S. Constitution or the Constitution of the State of Tennessee.

Authority: T.C.A §§ 4-5-201 et seq., 4-5-311, 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-508(a),(c), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395, 395.13. **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly numbered as 1240-6-10). Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-6-11-.03 ARBITRATION.

- (1) A vending facility manager, after having been provided a full evidentiary hearing by the Agency because of dissatisfaction with some Agency action, may request the convening of an arbitration panel by the U.S. Secretary of Education, because of the decision rendered as a result of such hearing.
- (2) A complaint requesting the convening of an arbitration panel must be filed by the manager or his/her representative within a reasonable period of time from the date the manager receives notification of the Final Order rendered in the full evidentiary hearing.
- (3) The arbitration proceedings will be conducted pursuant to 34 C.F.R. § 395.13.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.13(c) through (h). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed February 28, 1983; effective May 16, 1983. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. Repeal and new rule filed April 8, 2005; effective June 22, 2005.