

ATTACHMENT I

Statutory Citations Relating to Review of 19 TAC Chapter 157, Hearings and Appeals, Subchapter A, General Provisions for Hearings Before the State Board of Education, and Subchapter D, Independent Hearing Examiners

Rule Review

Texas Government Code, §2001.039, Agency Review of Existing Rules:

- (a) A state agency shall review and consider for re adoption each of its rules in accordance with this section.
- (b) A state agency shall review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not affect the dates on which the rule must be reviewed except that the effective date of an amendment is considered to be the effective date of the rule if the agency formally conducts a review of the rule in accordance with this section as part of the process of adopting the amendment.
- (c) The state agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.
- (d) The procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, re adoption, or re adoption with amendments of the rule, except as provided by this subsection. Publishing the Texas Administrative Code citation to a rule under review satisfies the requirements of this subchapter relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.
- (e) A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

19 TAC Chapter 157, Hearings and Appeals, Subchapter A, General Provisions for Hearings Before the State Board of Education

Texas Education Code, §31.151, Duties of Publishers and Manufacturers:

- (a) A publisher or manufacturer of instructional materials:
 - (1) shall furnish any instructional material the publisher or manufacturer offers in this state at a price that does not exceed the lowest price at which the publisher offers that instructional material for adoption or sale to any state, public school, or school district in the United States;
 - (2) shall automatically reduce the price of instructional material sold for use in a school district or open-enrollment charter school to the extent that the price is reduced elsewhere in the United States;
 - (3) shall provide any instructional material or ancillary item free of charge in this state to the same extent that the publisher or manufacturer provides the instructional material or ancillary item free of charge to any state, public school, or school district in the United States;

- (4) shall guarantee that each copy of instructional material sold in this state is at least equal in quality to copies of that instructional material sold elsewhere in the United States and is free from factual error;
 - (5) may not become associated or connected with, directly or indirectly, any combination in restraint of trade in instructional materials or enter into any understanding or combination to control prices or restrict competition in the sale of instructional materials for use in this state;
 - (6) shall deliver instructional materials to a school district or open-enrollment charter school;
 - (7) shall, at the time an order for instructional materials is acknowledged, provide to school districts or open-enrollment charter schools an accurate shipping date for instructional materials that are back-ordered;
 - (8) shall guarantee delivery of instructional materials at least 10 business days before the opening day of school of the year for which the instructional materials are ordered if the instructional materials are ordered by a date specified in the sales contract; and
 - (9) shall submit to the State Board of Education an affidavit certifying any instructional material the publisher or manufacturer offers in this state to be free of factual errors at the time the publisher executes the contract required by Section 31.026.
- (b) The State Board of Education may impose a reasonable administrative penalty against a publisher or manufacturer who knowingly violates Subsection (a). The board shall provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty. The board shall base the amount of the penalty on:
- (1) the seriousness of the violation;
 - (2) any history of a previous violation;
 - (3) the amount necessary to deter a future violation;
 - (4) any effort to correct the violation; and
 - (5) any other matter justice requires.
- (c) A hearing under Subsection (b) shall be held according to rules adopted by the State Board of Education.
- (d) A penalty collected under this section shall be deposited to the credit of the state instructional materials fund.
- (e) An eligible institution, as defined by Section 31.0241(a), that offers open-source instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.

Texas Government Code, §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions:

In addition to other requirements under law, a state agency shall:

- (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures;

- (2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; and
- (3) index, cross-index to statute, and make available for public inspection all final orders, decisions, and opinions.

19 TAC Chapter 157, Hearings and Appeals, Subchapter D, Independent Hearing Examiners

Texas Education Code, §21.252, Certification of Hearing Examiners:

- (a) The State Board of Education, in consultation with the State Office of Administrative Hearings, by rule shall establish criteria for the certification of hearing examiners eligible to conduct hearings under this subchapter. A hearing examiner certified under this subchapter must be licensed to practice law in this state.
- (b) The commissioner shall certify hearing examiners according to the criteria established under Subsection (a). A person certified as a hearing examiner or the law firm with which the person is associated may not serve as an agent or representative of:
 - (1) a school district;
 - (2) a teacher in any dispute with a school district; or
 - (3) an organization of school employees, school administrators, or school boards.
- (c) The commissioner shall set hourly rates of compensation for a hearing examiner and shall set a maximum amount of compensation a hearing examiner may receive for a hearing.