

ATTACHMENT
Text of 19 TAC

Chapter 157. Hearings and Appeals

Subchapter A. General Provisions for Hearings Before the State Board of Education

Statutory Authority: The provisions of this Subchapter A issued under the Texas Education Code, §31.151, and Texas Government Code, §2001.004, unless otherwise noted.

§157.1. Scope and Purpose.

This subchapter shall govern the proceedings in all contested cases before the State Board of Education where:

- (1) notice and opportunity for hearing is expressly required by other law; and
- (2) the hearing is not exempted from the provisions of the Administrative Procedure Act (APA) (Texas Government Code, Chapter 2001).

Source: The provisions of this §157.1 adopted to be effective March 31, 2004, 29 TexReg 3175.

§157.2. Request for Hearing; Transfer to State Office of Administrative Hearings.

- (a) All proceedings under §157.1 of this title (relating to Scope and Purpose) shall be heard by the State Office of Administrative Hearings, pursuant to the procedures set forth in 1 TAC Chapter 155 (relating to Rules of Procedures).
- (b) In cases in which the Texas Education Agency is not the petitioner, petitions for review or requests for hearing shall be filed with the State Board of Education (SBOE) within 30 calendar days after the decision, order, or ruling complained of is first communicated to the petitioner, except as otherwise provided by law or SBOE rule.
- (c) At the time the petitioner files a request for hearing with the SBOE regarding administrative penalties pursuant to the Texas Education Code, §31.151, all parties to the hearing are prohibited from contacting members of the SBOE concerning the factual or legal issues presented in the hearing until a final decision is rendered.

Source: The provisions of this §157.2 adopted to be effective March 31, 2004, 29 TexReg 3175; amended to be effective March 7, 2012, 37 TexReg 1513.

§157.3. Board Consideration and Adoption of Proposal for Decision.

- (a) After the time for filing exceptions and replies to exceptions expires and the proposal for decision is forwarded to the Texas Education Agency, the State Board of Education (SBOE) shall consider the proposal for decision and any exceptions and replies in public session and shall enter a written decision adopting or modifying and adopting the proposed decision or remanding the matter to the State Office of Administrative Hearings for further proceedings.
- (b) No public testimony shall be heard on the question of adopting, modifying, or remanding the proposal for decision. No information other than the record of the proceedings conducted by the administrative law judge, the proposal for decision, and the exceptions and replies of the parties shall be heard, considered, or discussed by the SBOE concerning the contested case.
- (c) All final decisions or orders of the SBOE shall be in writing and signed by the chair, if voting in favor of the decision, or by a member selected by those voting in favor of the decision. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (d) The decision of the SBOE may incorporate by reference the proposal for decision in whole or in part, and such incorporation by reference may constitute compliance with subsection (c) of this section. If the

decision of the SBOE modifies the proposal for decision in any respect, the SBOE shall specify the portions modified and shall set out in full the affected language as modified by the decision of the SBOE.

- (e) Party representatives shall be simultaneously notified either personally, by facsimile transmission, or overnight courier of each decision or order. For purposes of §157.4 of this title (relating to Motions for Rehearing), a party present at a meeting of the SBOE at which a public vote is taken shall be deemed notified of the decision or order on the date of the vote.

Source: The provisions of this §157.3 adopted to be effective March 31, 2004, 29 TexReg 3175; amended to be effective March 7, 2012, 37 TexReg 1513.

§157.4. Motions for Rehearing.

- (a) In the absence of a finding of imminent peril, a motion for rehearing is a prerequisite to a judicial appeal.
- (b) Motions for rehearing will be in conformance with the Texas Government Code, §2001.146.

Source: The provisions of this §157.4 adopted to be effective March 31, 2004, 29 TexReg 3175.

Subchapter D. Independent Hearing Examiners

§157.41. Certification Criteria for Independent Hearing Examiners.

- (a) License required. An individual who is certified as an independent hearing examiner must be licensed to practice law in the State of Texas.
- (b) Representations prohibited. An independent hearing examiner, and the law firm with which the independent hearing examiner is associated, must 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) Moral character and criminal history. An independent hearing examiner must:
 - (1) possess good moral character; and
 - (2) as demonstrated by a criminal history report process required by the commissioner of education, not have been convicted, given probation (whether through deferred adjudication or otherwise), or fined for:
 - (A) a felony;
 - (B) a crime of moral turpitude; or
 - (C) a crime that directly relates to the duties of an independent hearing examiner in a public school setting.
- (d) Status as a licensed attorney. An independent hearing examiner must:
 - (1) currently be a member in good standing of the State Bar of Texas;
 - (2) within the last five years, not have had the independent hearing examiner's bar license:
 - (A) reprimanded, either privately or publicly;
 - (B) suspended, either probated or otherwise; or
 - (C) revoked;
 - (3) have been licensed to practice law in the State of Texas or any other state for at least five years prior to application; and
 - (4) have engaged in the actual practice of law on a full-time basis, as defined by the Texas Board of Legal Specialization, for at least five years.

- (e) Experience. During the three years immediately preceding certification, an independent hearing examiner must have devoted a minimum of 50% of the examiner's time practicing law in some combination of the following areas, with a total of at least one-tenth or 10% of the independent hearing examiner's practice involving substantial responsibility for taking part in a contested evidentiary proceeding convened pursuant to law in which the independent hearing examiner personally propounded and/or defended against questions put to a witness under oath while serving as an advocate, a hearing officer, or a presiding judicial officer:
- (1) civil litigation;
 - (2) administrative law;
 - (3) school law; or
 - (4) labor law.
- (f) Continuing education. During each year of certification, an independent hearing examiner must receive credit for ten hours of continuing legal education, with three hours in the area of school law and seven hours in the area of civil trial advocacy and legal writing skills, which must include any combination of course work in evidence, civil procedure, and legal writing skills, during the period January 1 to December 31 of each year of certification.
- (g) Sworn application. In order to be certified as an independent hearing examiner, an applicant must submit a sworn application to the commissioner of education. The application shall contain the following acknowledgments, waivers, and releases.
- (1) The applicant agrees to authorize appropriate institutions to furnish relevant documents and information necessary in the investigation of the application, including information regarding grievances maintained by the State Bar of Texas.
 - (2) If selected as an independent hearing examiner, the applicant has the continuing duty to disclose grievance matters under subsection (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as an independent hearing examiner.
 - (3) If selected as an independent hearing examiner, the applicant has the continuing duty to disclose criminal matters under subsection (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as an independent hearing examiner.
- (h) Assurances as to position requirements. In the sworn application, the applicant must:
- (1) demonstrate that the applicant currently maintains an office or offices within the State of Texas;
 - (2) designate the office locations from which the applicant will accept appointments;
 - (3) demonstrate that the applicant provides telephone messaging and facsimile services during regular business hours;
 - (4) agree to attend meetings of independent hearing examiners in Austin, Texas, at the examiner's expense; and
 - (5) agree to comply with all reporting and procedural requirements established by the commissioner.
- (i) Voluntary evaluations. The commissioner may solicit voluntary evaluations from parties to a case regarding their observations of the independent hearings process.
- (j) Insufficient examiners in a region. In the event that insufficient numbers of independent hearing examiners are certified for any geographic region of the state, the commissioner may assign an independent hearing examiner whose office is within reasonable proximity to the school district.
- (k) Annual recertification.
- (1) Certification expires on December 31 of each calendar year. All independent hearing examiners seeking recertification shall reapply on a date specified by the commissioner. Certification as a

hearing examiner is effective on a yearly basis only and does not confer any expectation of recertification in subsequent years.

- (2) The commissioner, in his discretion, after providing notice and an opportunity to respond, may decline to recertify an independent hearing examiner, if the commissioner determines that the independent hearing examiner has failed to perform the duties of an independent hearing examiner in a competent manner. The commissioner may consider, but is not limited to, the following factors:
 - (A) timeliness;
 - (B) accuracy and appropriateness of procedural and evidentiary rulings;
 - (C) decorum or control; or
 - (D) application of appropriate legal standards.
- (3) The commissioner's decision in regard to recertification is final and not appealable.
- (l) Action against certification. The commissioner, after providing notice and an opportunity to respond, may take action against the certificate of an independent hearing examiner if it is determined that the independent hearing examiner or the law firm with which the independent hearing examiner is associated, during the time the independent hearing examiner has been certified, has:
 - (1) served as an agent or representative of a school district;
 - (2) served as an agent or representative of a teacher in any dispute with a school district;
 - (3) served as an agent or representative of an organization of school employees, school administrators, or school boards; or
 - (4) failed to timely issue a recommendation.

Statutory Authority: The provisions of this §157.41 issued under the Texas Education Code, §21.252(a).

Source: The provisions of this §157.41 adopted to be effective December 15, 1995, 20 TexReg 9695; amended to be effective September 1, 1997, 22 TexReg 7035; amended to be effective September 1, 1998, 24 TexReg 7783; amended to be effective April 27, 2008, 33 TexReg 3264; amended to be effective March 7, 2012, 37 TexReg 1513; amended to be effective August 27, 2018, 43 TexReg 1854; amended to be effective October 21, 2019, 44 TexReg 6030.