

ATTACHMENT II
Text of Adopted New 19 TAC

Chapter 157. Hearings and Appeals

Subchapter EE. Review By State Office of Administrative Hearings: Certain Accreditation Sanctions

§157.1151. Applicability.

- (a) This subchapter applies only to a final order issued under §97.1037(f) of this title (relating to Record Review of Certain Decisions) that orders:
 - (1) alternative management of a school district campus or a charter school campus under Texas Education Code (TEC), §39.1327;
 - (2) closure of a school district or an open-enrollment charter school under TEC, §§39.071(c), 39.131(a), or 39.1321(c); or
 - (3) closure of a school district campus or charter school campus under TEC, §39.1324 or §39.1327.
- (b) This subchapter does not apply to:
 - (1) a final order issued under §97.1037(f) of this title that orders:
 - (A) assignment under §97.1055 of this title (relating to Accreditation Status) of an accreditation status of Accredited-Warned or Accredited-Probation;
 - (B) assignment of a board of managers under TEC, §39.136 and §39.131(a)(9) or §39.1324(c); or
 - (C) an audit recovery from an open-enrollment charter school under §97.1037(a)(4) of this title; or
 - (2) a final order issued pursuant to the no-request provision specified in §97.1037(g) of this title.

§157.1153. Applicability of Other Law.

- (a) A challenge under this subchapter shall be governed by the contested case procedures provided by this subchapter and Government Code, Chapter 2001, as modified by Texas Education Code, §39.302.
- (b) To the extent that a provision of this subchapter conflicts with a rule or practice of the State Office of Administrative Hearings, this subchapter shall prevail.
- (c) The record review conducted under §97.1037 of this title (relating to Record Review of Certain Decisions) is not governed by Government Code, Chapter 2001.

§157.1155. Petition for Review.

- (a) A school district or open-enrollment charter school subject to a decision defined by §157.1151 of this title (relating to Applicability) (petitioner) may file with the Texas Education Agency (TEA) division responsible for hearings and appeals a petition for review of the decision under this subchapter not later than the 30th calendar day after the date the decision complained of is first communicated to the school district or charter school.
 - (1) The petition for review shall include a copy of the challenged decision and any attachments or exhibits to the decision.
 - (2) The petition for review shall concisely state, in numbered paragraphs:

- (A) if alleging the decision was made in violation of a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the decision;
- (B) if alleging the decision was made in excess of the TEA's statutory authority, the TEA's statutory authority and the specific facts supporting a conclusion that the decision was made in excess of this authority;
- (C) if alleging the decision was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the decision was made through unlawful procedure;
- (D) if alleging the decision was affected by other error of law, the law violated and the specific facts supporting a conclusion that the decision violated that law;
- (E) if alleging the decision was not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole, each finding, inference, conclusion, or decision that was unsupported by substantial evidence in the record;
- (F) if alleging the decision was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected; and
- (G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the school district or charter school that were prejudiced by such violation, error, or defect.

(3) A petition for review shall further contain:

- (A) a concise statement of the relief sought by the petitioner; and
- (B) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.

(4) A request for relief in a review under this subchapter may not be made orally or as part of the record at a prehearing conference or hearing.

(b) Failure to comply with the requirements of subsection (a) of this section shall result in dismissal of the petition for review. A petition for review may not be amended or supplemented after the deadline for filing a petition for review.

(c) The TEA division responsible for hearings and appeals shall transmit the petition for review to the State Office of Administrative Hearings with a request that it be docketed.

(d) If the TEA chooses to file an answer, the answer must be filed by the date the record is filed under §157.1163 of this title (relating to Proceedings Regarding Agency Record).

§157.1157. Standard of Review.

(a) A challenge under this subchapter shall be governed by the substantial evidence rule as provided by Government Code, §2001.174 and §2001.175, and judicial case precedents construing those provisions.

(b) The State Office of Administrative Hearings (SOAH) may not substitute its judgment for the judgment of the commissioner of education on questions committed to ~~the commissioner's~~ ~~[commissioner]~~ discretion. ~~Questions committed to the commissioner's discretion include but are not limited to the following:~~

- (1) any questions arising under a statute, rule, or other legal standard that requires or permits the commissioner to make a decision within general legal guidelines that do not mandate a specific result under the circumstances; and
- (2) the execution of any act authorized or required to be taken by the commissioner of education.

- (c) The SOAH may not substitute its judgment for the judgment of the commissioner on the weight to be assigned the evidence before the commissioner.
- (d) The SOAH may affirm the commissioner decision in whole or in part.
- (e) The SOAH shall reverse **and remand** the decision **for further proceedings** if substantial rights of the school district or open-enrollment charter school have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the commissioner are:
 - (1) in violation of a statutory provision;
 - (2) in excess of the commissioner's authority;
 - (3) made through unlawful procedure;
 - (4) affected by other error of law;
 - (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
 - (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (f) An order of remand may not direct or control the commissioner's exercise of discretion on a matter committed to the commissioner's discretion by §157.1171(b) of this title (relating to Final Decision) and TEC, Chapter 39.
- (g) On remand, the commissioner shall apply the facts and law as determined by the SOAH to reach a new decision in light of all the circumstances of the case.
- (h) The commissioner shall continue on remand to exercise discretion over the accreditation decision as required by §157.1171(b) of this title and TEC, Chapter 39.

§157.1159. Scope of Review; Additional Evidence.

- (a) The administrative law judge is confined to the Texas Education Agency (TEA) record, except that the administrative law judge may receive evidence of procedural irregularities alleged to have occurred before the TEA that are not reflected in the record.
- (b) A party may apply to the administrative law judge to present additional evidence of procedural irregularities alleged to have occurred before the TEA that are not reflected in the record.
 - (1) If the additional evidence is material to the outcome of the review, and if there were good reasons for the failure to present it in the proceeding before the TEA, the administrative law judge may order that the additional evidence be taken before the TEA on conditions determined by the administrative law judge.
 - (2) The commissioner of education may change the TEA findings and decision by reason of the additional evidence, and the TEA shall file the additional evidence and any changes, new findings, or decisions with the administrative law judge.
- (c) The administrative law judge may not take testimony, question witnesses, administer oaths, rule on questions of evidence, or compel discovery or disclosure of evidence in any form.

§157.1161. Components of Agency Record.

The Texas Education Agency (TEA) record of proceedings shall include the following components, as specified under §97.1037 of this title (relating to Record Review of Certain Decisions):

- (1) the notice of proposed order under §97.1037(b) of this title, including all information referenced in the notice under §97.1037(b)(1) of this title;
- (2) the request for record review under §97.1037(c) of this title, including any request for the attendance of specific TEA staff under §97.1037(d)(3) of this title;

- (3) any written correspondence made a part of the record by the TEA representative under §97.1037(d)(5) of this title;
- (4) any audiotapes or similar recordings made a part of the record by the TEA representative under §97.1037(d) of this title;
- (5) all audiotapes or similar recordings of the record review under §97.1037 of this title, and any recorded telephone conferences, proffers of excluded information, or other recorded proceedings before the TEA representative under §97.1037 of this title;
- (6) all written information presented to the TEA representative during the record review;
- (7) a description of all matters officially noticed; and
- (8) the final order under §97.1037(f) of this title.

§157.1163. Proceedings Regarding Agency Record.

- (a) The Texas Education Agency (TEA) shall file the original or a certified copy of the entire record of the proceeding under review not later than the 20th calendar day after the date the petition for review is filed, unless additional time is allowed by the administrative law judge.
- (b) The record may be shortened by stipulation of all parties to the review proceedings. The administrative law judge may assess costs against a party who unreasonably refuses to stipulate to limit the record, unless that party is required to pay all costs of record preparation.
- (c) The petitioner shall offer, and the administrative law judge shall admit, the TEA record into evidence as an exhibit.
- (d) The administrative law judge may require or permit later corrections or additions to the record.

§157.1165. Enforcement of Decision Pending Review.

The pendency of a review under this subchapter does not stay or otherwise affect the enforcement of the commissioner of education decision challenged under this subchapter.

§157.1167. Expedited Review.

- (a) The State Office of Administrative Hearings shall expedite its review of a challenge under this subchapter.
- (b) The administrative law judge shall issue a pre-hearing order initially setting a date for closure of the record that is not later than the 30th calendar day after the date the petition for review is filed.
- (c) The administrative law judge may grant a continuance of the date set in subsection (b) of this section only for good cause shown.
- (d) The administrative law judge may not order a settlement conference, mediation, or other form of alternative dispute resolution.
- (e) The administrative law judge shall issue a final order not later than the 30th calendar day after the date on which the record is finally closed.

§157.1169. Conduct of Review During a Ratings Appeal.

- (a) A decision is final within the meaning of §157.1151(a) of this title (relating to Applicability) even if based, in part, on a rating that may yet be appealed under Texas Education Code (TEC), §39.301. In the commissioner of education's sole discretion, the decision may be delayed or withdrawn pending the outcome of a ratings appeal under TEC, §39.301, that is timely and sufficient under applicable rules.
- (b) The administrative law judge shall proceed with an expedited review under this subchapter during any ratings appeal under TEC, §39.301, and shall presume for purposes of such review that the rating will not change by reason of the appeal, unless the commissioner:
 - (1) withdraws the decision under subsection (a) of this section; or

- (2) requests that review of the final decision be abated pending the outcome of the ratings appeal.
- (c) If a rating is adjusted by the commissioner following an appeal under TEC, §39.301, the administrative law judge shall order that the adjusted rating be treated as additional evidence to be taken before the Texas Education Agency (TEA) under §157.1163 of this title (relating to Proceedings Regarding Agency Record). The TEA may change its findings and/or decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the administrative law judge.

§157.1171. Final Decision.

- (a) The decision of the administrative law judge:
 - (1) must rule on each mandatory sanction listed in Texas Education Code, §39.1324;
 - (2) may not order a sanction or relief that the commissioner of education is not authorized to order under applicable law;
 - (3) may not change an accreditation status; and
 - (4) may not change an academic or a financial accountability rating.
- (b) The decision of the administrative law judge is final and may not be appealed.

§157.1173. Application to Charter Schools.

- (a) The charter of an open-enrollment charter school is automatically:
 - (1) revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner of education ordering the charter school closed under this subchapter; and
 - (2) modified to remove authorization for an individual campus on the effective date of a final decision by the commissioner ordering the campus closed under this subchapter.
- (b) If sanctions are imposed on an open-enrollment charter school under the procedures provided by this subchapter, a charter school is not entitled to an additional hearing relating to the modification, placement on probation, revocation, or denial of renewal of a charter as provided by Texas Education Code, Chapter 12, Subchapter D.