

ATTACHMENT I

Statutory Citations Relating to Amendments to 19 TAC Chapter 157, Hearings and Appeals, Subchapter AA, General Provisions for Hearings Before the Commissioner of Education, Subchapter BB, Specific Appeals to the Commissioner, Subchapter CC, Hearings of Appeals Arising Under Federal Law and Regulations, and Subchapter DD, Hearings Conducted by Independent Hearing Examiners

Texas Education Code, §7.057, Appeals:

- (a) Except as provided by Subsection (e), a person may appeal in writing to the commissioner if the person is aggrieved by:
 - (1) the school laws of this state; or
 - (2) actions or decisions of any school district board of trustees that violate:
 - (A) the school laws of this state; or
 - (B) a provision of a written employment contract between the school district and a school district employee, if a violation causes or would cause monetary harm to the employee.
- (a-1) A person is not required to appeal to the commissioner before pursuing a remedy under a law outside of Title 1 or this title to which Title 1 or this title makes reference or with which Title 1 or this title requires compliance.
- (b) Except as provided by Subsection (c), the commissioner after due notice to the parties interested shall, not later than the 180th day after the date an appeal under Subsection (a) is filed, hold a hearing and issue a decision without cost to the parties involved. In conducting a hearing under this subsection, the commissioner has the same authority relating to discovery and conduct of a hearing as a hearing examiner has under Subchapter F, Chapter 21. This section does not deprive any party of any legal remedy.
- (c) In an appeal against a school district, the commissioner shall issue a decision based on a review of the record developed at the district level under a substantial evidence standard of review. A school district's disclosure of the record to the commissioner under this subsection is not an offense under Section 551.146, Government Code.
- (d) A person aggrieved by an action of the agency or decision of the commissioner may appeal to a district court in Travis County. An appeal must be made by serving the commissioner with citation issued and served in the manner provided by law for civil suits. The petition must state the action or decision from which the appeal is taken. At trial, the court shall determine all issues of law and fact, except as provided by Section 33.081(g).
- (e) This section does not apply to:
 - (1) a case to which Subchapter G, Chapter 21, applies; or
 - (2) a student disciplinary action under Chapter 37.
- (f) In this section:
 - (1) "Record" includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument.
 - (2) "School laws of this state" means Title 1 and this title and rules adopted under those titles.

Texas Education Code, §12.116, Procedure for Modification, Placement on Probation, Revocation, or Denial of Renewal:

- (a) The commissioner shall adopt a procedure to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school.
- (b) The procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated.
- (c) Chapter 2001, Government Code, does not apply to a hearing that is related to a modification, placement on probation, revocation, or denial of renewal under this subchapter.

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.

Texas Education Code, §21.254, Assignment of Hearing Examiner:

- (a) The commissioner shall maintain a list of the names of all persons who have been certified as hearing examiners. The list shall be initially prepared in a random order, and subsequent additions to the list shall be added chronologically.
- (b) The commissioner shall assign the hearing examiner for a particular case by selecting the next person named on the list who resides within reasonable proximity to the district as determined by the commissioner. The commissioner may not change the order of names once the order is established under this section, except that once each hearing examiner on the list has been assigned to a case, the names shall be randomly reordered.
- (c) If a hearing examiner is not selected by the parties to a pending case under Subsection (e), the commissioner shall assign a hearing examiner to the case not earlier than the sixth business day and not later than the 10th business day after the date on which the commissioner receives the request for a hearing. When a hearing examiner has been assigned to a case, the commissioner shall immediately notify the parties.

- (d) The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject the assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one party has good cause to reject the hearing examiner, the commissioner shall assign another hearing examiner as provided by Subsection (b). If neither party makes a timely rejection, the assignment is final.
- (e) After the teacher receives the notice of the proposed action, the parties by agreement may select a hearing examiner from the list maintained by the commissioner under Subsection (a) or a person who is not certified to serve as a hearing examiner. A person who is not a certified hearing examiner may be selected only if the person is licensed to practice law in this state. If the parties agree on a hearing examiner, the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including the name of the hearing examiner selected.
- (f) After the teacher receives the notice of the proposed action, the teacher and the district may agree in writing that the decision of the hearing examiner will be final and nonappealable on all or some issues.

Texas Education Code, §21.301, Appeal to Commissioner:

- (a) Not later than the 20th day after the date the board of trustees or board subcommittee announces its decision under Section 21.259 or the board advises the teacher of its decision not to renew the teacher's contract under Section 21.208, the teacher may appeal the decision by filing a petition for review with the commissioner.
- (b) The school district must file a response not later than the 20th day after the date the petition for review is filed. The record of the local hearing must be filed with the district's response or be filed alone within the period for a response if the district does not file a response. A school district's filing of the record with the commissioner under this subsection is not an offense under Section 551.146, Government Code.
- (c) The commissioner shall review the record of the hearing before the hearing examiner and the oral argument before the board of trustees or board subcommittee. Except as provided in Section 21.302, the commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. The commissioner, on the motion of a party or on the commissioner's motion, may hear oral argument. The commissioner shall accept written argument.
- (d) In conducting a hearing under this section, the commissioner has the same authority relating to discovery and conduct of a hearing as a hearing examiner has under Subchapter F.
- (e) The commissioner may adopt rules governing the conduct of an appeal to the commissioner. An appeal to the commissioner under this section is not subject to Chapter 2001, Government Code.
- (f) The commissioner may obtain advice concerning legal matters from the chief legal officer of the agency if the chief legal officer has not been involved in the proceedings.

Texas Education Code, §21.304, Decision of Commissioner:

- (a) The commissioner's decision must be in writing and must include findings of fact and conclusions of law. The commissioner may adopt by reference and incorporate findings of fact or conclusions of law from the local record.
- (b) The commissioner must issue a decision not later than the 30th day after the last day on which a response to the petition for review may be filed under Section 21.301(b). If the commissioner fails to issue a decision within that time, the decision of the board is affirmed.
- (c) The commissioner shall send a copy of the decision to each party or the party's representative by certified mail. The commissioner shall keep a record of the mailing. A party is presumed to be notified of the decision on the date the decision is received, as indicated by the certified mail return receipt.
- (d) The commissioner shall maintain and index decisions of the commissioner issued under this section with the recommendations or decisions of the hearing examiner.
- (e) If the commissioner reverses the action of the board of trustees, the commissioner shall order the school district to reinstate the teacher and to pay the teacher any back pay and employment benefits from the time of discharge or suspension to reinstatement.
- (f) Instead of reinstating a teacher under Subsection (e), the school district may pay the teacher one year's salary to which the teacher would have been entitled from the date on which the teacher would have been reinstated.

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.

34 Code of Federal Regulations §76.401, Disapproval of an application--opportunity for a hearing:

- (a) *State agency hearing before disapproval.* Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
Chapter 1, Program in Local Educational Agencies.	Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701-2731, 2821-2838, 2851-2854, and 2891-2901).	200
Chapter 1, Program for Neglected and Delinquent Children.	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2801-2804).	203
State Grants for Strengthening Instruction in Mathematics and Science.	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	208
Federal, State, and Local Partnership for Educational Improvement.	Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952 and 2971-2976).	298
Assistance to States for Education of Handicapped Children.	Part B, Individuals with Disabilities Education Act (except Section 619) (20 U.S.C. 1411-1420).	300
Preschool Grants	Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419).	301
Chapter 1, State-Operated or Supported Programs for Handicapped Children.	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791-2795).	302
Transition Program for Refugee Children.	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d)).	538
Emergency Immigrant Education Program.	Emergency Immigrant Education Act (20 U.S.C. 3121-3130).	581
Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities.	Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b).	617

- (b) *Other programs--hearings not required.* Under other programs covered by this part, a State agency--other than a State educational agency--is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.
- (c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:
- (1) Disapproval of or failure to approve the application or project in whole or in part.
 - (2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.
- (d) *State educational agency hearing procedures.*
- (1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

- (2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.
 - (3) The applicant shall request the hearing within 30 days of the action of the State educational agency.
 - (4)
 - (i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.
 - (ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.
 - (iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.
 - (5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.
 - (6)
 - (i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.
 - (ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.
 - (7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.
 - (8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.
- (e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section--other than State educational agencies--are not required to use the procedures in paragraph (d) of this section.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

34 Code of Federal Regulations §80.43, Enforcement:

- (a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:
 - (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
 - (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
 - (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
 - (4) Withhold further awards for the program, or
 - (5) Take other remedies that may be legally available.
- (b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.
- (c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
 - (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
 - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §80.35).