

Chapter 157. Hearings and Appeals

Subchapter BB. Specific Appeals to the Commissioner

Statutory Authority: The provisions of this Subchapter BB issued under the Texas Education Code, §§7.057, 12.116, and 21.301; and Texas Government Code, §2001.004, unless otherwise noted.

§157.1071. Hearings in Which the Texas Education Agency is a Party.

- (a) All requests for hearing in which the Texas Education Agency (the agency) is a petitioner or respondent shall be heard by the State Office of Administrative Hearings (SOAH).
- (b) In hearings in which the agency is a party, the party shall file a motion for summary judgment calculated to lead to the discovery of admissible evidence. The statement should specify how the requested testimony is likely to lead to admissible evidence concerning a particular issue in the case, including a statement of the operative facts.
 - (2) The motion shall contain a statement that counsel or the party, if not represented by counsel, has dedicated funds sufficient to pay a witness or deponent who is not a party to the case, the amount required under Texas Government Code, §2001.103, and will tender that amount to the witness or deponent no later than immediately following testimony or when the witness or deponent is released.
 - (3) If a party requests a witness to bring documents or objects, the motion should specifically identify the documents or objects and specify the good cause for each document or object.
 - (4) Motions to quash subpoenas must be filed with the SOAH.
- (e) In cases where discovery is appropriate, the agency administrative law judge may issue a commission for deposition in accordance with Texas Government Code, §2001.094.
 - (1) The commission for deposition allows the court reporter to issue subpoenas necessary to require that witnesses appear and produce books, records, papers, or other objects necessary and proper for the purposes of the proceeding.
 - (2) To obtain a commission for deposition, the party shall file a motion that sets forth good cause for obtaining a commission for deposition. The statement of good cause must be more than a conclusory statement that such discovery is reasonably calculated to lead to the discovery of admissible evidence. The statement should set forth a statement of the operative facts.
 - (3) The motion shall contain a statement that counsel or the party, if not represented by counsel, has dedicated funds sufficient to pay a deponent who is not a party to the case. The motion should also identify the time and place for the deposition.
 - (5) Motions to quash depositions must be filed with the SOAH.

Source: The provisions of this §157.1071 adopted to be effective July 20, 2004, 29 TexReg 6894; amended to be effective May 28, 2012, 37 TexReg 3830.

§157.1072. Hearings Brought Under Texas Education Code, Chapter 21, Subchapter G.

- (a) Applicability. This section shall apply to all hearings under the Texas Education Code (TEC), Chapter 21, Subchapter G. To the extent that this section conflicts with any other sections governing hearings before the commissioner, this section shall prevail.
- (b) Standard of review. All hearings under this section shall be decided upon a substantial evidence review of the record created before an independent hearing examiner or the board of trustees except that the administrative law judge may take evidence of procedural irregularities that are not reflected in the local record that occurred at a hearing before an independent hearing examiner. In a request for an evidentiary hearing, a party shall identify the specific defect and its claimed effect on the decision of the board of trustees or board subcommittee. After such evidentiary hearing, the commissioner may:
 - (1) remand the case to the board of trustees with instructions; reverse the decision of the board of trustees; or

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for inspection. A copy of the record shall be provided to the teacher at a reasonable charge upon request.

- (e) Local record. The record of the proceedings before the independent hearing examiner or the board of trustees shall include:
 - (1) the transcripts of proceedings at the local level;
 - (2) all admitted evidence;
 - (3) all offers of proof;
 - (4) all written pleadings, motions, and intermediate rulings;
 - (5) a description of all matters officially noticed;
 - (6) if applicable, the recommendation of the independent hearing examiner;
 - (7) the transcript of the oral argument before the board of trustees or the board subcommittee;
 - (8) the decision of the board of trustees or the board subcommittee; and
 - (9) if applicable, the board of trustees' or the board subcommittee's written reasons for changing the ne(u)6 (bc)3.9 .

- (f) Supplementation of the local record. In all hearings filed against a school district, the commissioner's decision shall be based on a review of the local record. The administrative law judge may, on the motion of either party, order that the record be reopened and remanded to the district to supplement the transcript or tape recording if it appears that the party has evidence to offer that is material, relevant, or not unduly repetitious that the party, for good cause, was unable to adduce at the local hearing. Good cause for failure to secure the testimony of a witness may be demonstrated by:
 - (1) a clear and unambiguous communication to the witness of the party's intention to call the witness at the hearing;
 - (2) reasonable notice to the witness of the date, time, and place of the board meeting at which the testimony will be required;
 - (3) such reasonable follow-up measures as an ordinary prudent person would exercise to secure the attendance of a material witness at a hearing before the board of trustees; and
 - (4) if the witness is an employee of the district, the district shall produce the witness if reasonable notice is given to the superintendent of the party's intention to call the witness.
- (g) Oral argument. Upon either party's request, the administrative law judge may afford both parties the opportunity to file briefs and present oral argument concerning the merits of the hearing.
- (h) Standard of review. The commissioner shall review the administrative law judge's decision on the merits of the hearing.