

Subchapter DD. Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001

Statutory Authority: The provisions of this Subchapter DD issued under Texas Education Code, §1001.52 and §1001.053, unless otherwise noted.

§176.1301. Rules of Procedure.

- (a) **Applicability.** This section applies to all hearings and appeals brought under the Texas Education Code, Chapter 1001. Hearings under this section are also governed by Chapter 157, Subchapter AA, of this title (relating to General Provisions for Hearings Before the Commissioner of Education) for the administration of all appeals before the state commissioner of education. If this section conflicts with Chapter 157, Subchapter AA, or any other rule governing hearings, the requirements of this section prevail for all hearings conducted under Texas Education Code, Chapter 1001 unless expressly provided otherwise.
- (b) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) **Adverse action--Written notification that:**
 - (A) denies, suspends, revokes, assesses a penalty against, or otherwise imposes conditions on a license or other form of approval held or sought by an applicant or licensee; and
 - (B) specifically provides the applicant or licensee with an opportunity for an adjudicative hearing under Texas Education Code, Chapter 1001.
 - (2) **Applicant--**A party seeking a license or other permission under Texas Education Code, Chapter 1001.
 - (3) **Commissioner--**The state commissioner of education or other person designated by the commissioner to render a decision under Texas Education Code, Chapter 1001.
 - (4) **Licensee--**A party holding a license or similar form of permission required under Texas Education Code, Chapter 1001.
 - (5) **Party--**A person or state agency named or admitted as a party to an appeal.
 - (6) **Party representative--**A lawyer or non-lawyer who acts on behalf of himself or herself or on behalf of another person during an adjudicative hearing.
- (c) **Grounds for hearing.** An applicant or licensee may request a hearing before the commissioner upon receiving notice of an adverse action.
- (d) **Procedures to schedule hearing.**
 - (1) To obtain a hearing, an applicant or licensee shall submit a written request for a hearing to the agency representative identified in the written notice of adverse action. The written request shall be submitted not later than the 15th calendar day after the date the notice of an adverse action is received. The written request shall be submitted in person, by courier receipted delivery, or by certified or registered mail. If mailed, the envelope's postmark shall be considered as the submittal date.
 - (2) A request for hearing shall include a specific statement of each issue the applicant or licensee intends to raise in the hearing to contest the adverse action. An applicant or licensee may be denied the opportunity to present evidence on issues that should reasonably have been raised in the written request for hearing.
 - (3) The agency representative shall forward the request for hearing and the notice of adverse action to the division of hearings for scheduling. A hearing shall be held within 30 calendar days after the date the written request for a hearing is received unless all parties agree to a later date for the hearing.

- (4) A licensee who is issued a summary suspension under Texas Education Code, Chapter 1001, shall be scheduled for a hearing on the suspension on an expedited basis.
 - (5) Petitions for review, answers, exceptions, and replies to exceptions need not be filed unless directed by a hearings examiner.
- (e) Amendments. A notice of adverse action or request for hearing may be amended or supplemented at any time up to ten calendar days before the hearing and thereafter with approval of the hearings examiner. Amendments and supplements shall be submitted to the division of hearings in the manner prescribed for the service of pleadings, pleas, and motions.
- (f) Classification of parties.
- (1) An applicant or licensee issued a notice of adverse action that denies an initial license or renewal license shall be classified as a petitioner, and the agency shall be classified as a respondent.
 - (2) A licensee issued a notice of adverse action that revokes an existing license, imposes conditions on a license, or assesses a penalty, shall be classified as a respondent, and the agency shall be classified as petitioner.
- (g) Motions for continuance.
- (1) Continuances may be granted by the hearings examiner under Texas Education Code, Chapter 1001; Chapter 157, Subchapter AA; and all other applicable law.
 - (2) If a continuance is sought by an applicant or licensee who is entitled to a hearing within 30 calendar days, the motion may be construed by the hearings examiner as a waiver of the right to the hearing within the statutory 30-day time line. The party representative for the agency may request, and the hearings examiner may grant, a waiver of the 30-day time line absent an objection by the applicant or licensee.
- (h) Service of documents.
- (1) Every pleading, plea, or motion filed with the division of hearings shall be served by delivering a copy to all party representatives of record in person, by agent, by courier receipted delivery, or by certified or registered mail, to the party's current address of record, or by facsimile to the recipient's current telecopier number of record.
 - (2) All other communications not specified in paragraph (1) of this subsection that are filed with the division of hearings may be served by first class mail.
 - (3) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.
 - (4) Service by facsimile completed after midnight local time of the recipient shall be deemed served on the following day.
 - (5) A party representative shall serve all party representatives by the same method as the document was filed with the division of hearings. Service by facsimile may be substituted for personal service. If one of the parties to be served does not have the ability to receive service by facsimile, service by certified mail shall be an adequate substitute for personal service.
 - (6) The party representative shall certify compliance with this rule in writing over the signature of the party representative on the filed document. The following form of certification shall be sufficient. "I certify that on this _____ day of _____, 20 ____, I served copies of the foregoing pleading upon all other parties to this proceeding by (state the manner of service). Signature."
 - (7) If a filing does not contain a required certificate of service or otherwise show service on all other parties, the division of hearings may:
 - (A) return the document to the filing party;

- (B) send a notice to all parties that the filing does not show service on all parties and will not be considered unless the division is notified that all parties have been served with the filing; or
 - (C) in the interest of economy of effort, send a copy of the filing to all parties.
- (i) Stipulations.
 - (1) By stipulation, the parties may agree to any substantive or procedural matter.
 - (2) A stipulation may be filed in writing or entered on the record at the hearing.
 - (3) The hearings examiner may permit or require additional development of stipulated matters if needed to evaluate the issues presented on appeal.
- (j) Decision.
 - (1) The hearings examiner shall prepare a decision that shall contain findings of fact and conclusions of law, separately stated. If deemed warranted, the hearings examiner may direct a party to draft and submit a proposal, which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings.
 - (2) The commissioner or his designee shall issue a decision on the appeal within ten calendar days after the hearing unless the parties agree to a later date.
- (k) Motion for rehearing. As a prerequisite to judicial appeal, a party may file a motion for rehearing. The motion shall satisfy all applicable requirements of law and Chapter 157, Subchapter AA.

Source: The provisions of this §176.1301 adopted to be effective December 26, 1999, 24 TexReg 11378; amended to be effective April 21, 2005, 30 TexReg 2230.