

Chapter 153. School District Personnel

Subchapter EE. Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools

§153.1201. Definitions.

- (a) Solicitation of sexual contact--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual contact is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an employee of sexual contact with a student:
- (1) behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:
 - (A) the nature of the communications;
 - (B) the timing of the communications;
 - (C) the extent of the communications;
 - (D) whether the communications were made openly or secretly;
 - (E) the extent that the employee attempts to conceal the communications;
 - (F) if the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the employee reported the abuse or neglect to the appropriate authorities; and
 - (G) any other evidence tending to show the context of the communications between employee and student;
 - (2) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
 - (3) making sexually demeaning comments to a student;
 - (4) making comments about a student's potential sexual performance;
 - (5) requesting details of a student's sexual history;
 - (6) requesting a date, sexual acts, or any activity intended for the sexual gratification of the employee;
 - (7) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
 - (8) inappropriate hugging, kissing, or excessive touching;
 - (9) providing the student with drugs or alcohol;
 - (10) violating written directives from school administrators regarding the employee's behavior toward a student;
 - (11) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
 - (12) any other acts tending to show that the employee solicited sexual contact with a student.

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (b) Abuse--This term has the meaning assigned by Texas Family Code, §261.001(1).
- (c) Private school--A non-public school that offers a course of instruction for students in Texas in one or more grades from Prekindergarten-Grade 12 and is:
 - (1) accredited by an organization that is monitored and approved by the Texas Private School Accreditation Commission;
 - (2) listed in the National Center for Education Statistics database; or
 - (3) a child care provider that is licensed by the Texas Health and Human Services Commission.
- (d) Employee--A person who is employed by a school district, district of innovation, charter school, service center, or shared services arrangement and does not hold a certification issued by the State Board for Educator Certification under Texas Education Code, Chapter 21, Subchapter B.
- (e) Nonprofit teacher organization--An organization approved by the commissioner of education to participate in a tutoring program under Texas Education Code, §33.913.

Statutory Authority: The provisions of this §153.1201 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1201 adopted to be effective December 31, 2019, 44 TexReg 8307; amended to be effective January 25, 2022, 47 TexReg 152.

§153.1203. Required Reporting by Administrators.

- (a) A person who serves as the superintendent of a school district or district of innovation or the director of a charter school, regional education service center, or shared services arrangement shall notify the commissioner of education in writing by filing a report within seven business days of the date the person either receives a report from a principal under subsection (b) of this section or knew that an employee was terminated or resigned from employment and there is evidence that he or she committed any of the following acts:
 - (1) abused or otherwise committed an unlawful act with a student or minor; or
 - (2) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.
- (b) A person who serves as principal in a school district, district of innovation, or charter school must notify the superintendent or director of the school district, district of innovation, or charter school no later than seven business days after an employee resigns or is terminated following an alleged incident of misconduct involving the conduct described in subsection (a)(1) and (2) of this section.
- (c) A superintendent or director of a school district shall complete an investigation of an employee if there is reasonable cause to believe the employee may have engaged in misconduct described in subsection (a)(1) and (2) of this section despite the employee's resignation from district employment before completion of the investigation.
- (d) A report filed under subsection (a) of this section must include:
 - (1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee; and
 - (2) the factual circumstances requiring the report and the subject of the report by providing the following available information:
 - (A) name and any aliases and certificate number, if any, or social security number;
 - (B) last known mailing address and home and daytime phone numbers;
 - (C) all available contact information for any alleged victim or victims;
 - (D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
 - (F) involvement by a law enforcement or other agency, including the name of the agency.
- (e) A report filed with the State Board for Educator Certification in compliance with Texas Education Code, §21.006, regarding a certified educator will be considered to have been filed with the commissioner as a report under this section on the date that the certification of the educator expires before the case is closed.

Statutory Authority: The provisions of this §153.1203 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1203 adopted to be effective December 31, 2019, 44 TexReg 8307; amended to be effective January 25, 2022, 47 TexReg 152.

§153.1205. Persons Under Investigation.

- (a) Persons under investigation for misconduct following a report under §153.1203 of this title (relating to Required Reporting by Administrators) are identified by name on the Texas Education Agency (TEA) website.
- (b) Within 30 days of receiving a report under §153.1203 of this title and at least 15 calendar days before identifying a person on the TEA website as under investigation, the commissioner of education shall send the person who is the subject of the report a notice by both first-class U.S. mail and certified mail, return receipt requested, to the person's address in the report:
 - (1) notifying the person of the report, including a statement of the alleged conduct that forms the basis for the report;
 - (2) stating that the person must request a State Office of Administrative Hearings (SOAH) hearing within 10 days after the date the person receives the notice; and
 - (3) providing the person with the opportunity to show cause in a written response sent within 10 days of receiving the notice, explaining why the commissioner should not pursue an investigation.
- (c) For purposes of this section and §153.1207 of this title (relating to Request for Hearing), it is a rebuttable presumption that a person receives the notice no later than five calendar days after mailing. The 10-day deadline to request a hearing before SOAH is not tolled during any attempts to show cause.
- (d) If the commissioner does not determine that the person who is the subject of the report has shown cause why the commissioner should not pursue an investigation, the person will be identified on the TEA website as a person under investigation.
- (e) The person will no longer be identified on the TEA website as a person under investigation after the commissioner issues a final order determining whether the person committed the alleged conduct.

Statutory Authority: The provisions of this §153.1205 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1205 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1207. Request for Hearing.

- (a) A person must submit a written request for a hearing before State Office of Administrative Hearings (SOAH) to Texas Education Agency staff in accordance with §153.1221 of this title (relating to Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge) within ten days after the person receives notice as described in §153.1205 of this title (relating to Persons Under Investigation).
- (b) If a person does not timely request a hearing, the commissioner of education will issue a final order with a determination as to whether a preponderance of the evidence supports a conclusion that the person:
 - (1) abused or otherwise committed an unlawful act with a student or minor; or

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (2) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

Statutory Authority: The provisions of this §153.1207 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1207 adopted to be effective December 31, 2019, 44 TexReg 8307; amended to be effective January 25, 2022, 47 TexReg 152.

§153.1209. Jurisdiction.

- (a) A contested case commences under this subchapter when a notice of hearing in accordance with §153.1229 of this title (relating to Notice of Hearing) is properly served by the Texas Education Agency (TEA) staff on the person at the address included in the report under §153.1203 of this title (relating to Required Reporting by Administrators).
- (b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines a person has timely requested a hearing pursuant to §153.1205 of this title (relating to Persons Under Investigation) and Texas Education Code, §22.094(c).
- (c) Jurisdiction of the SOAH is determined by the administrative law judge under Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure), and this subchapter after the TEA staff have referred the case to the SOAH.

Statutory Authority: The provisions of this §153.1209 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1209 adopted to be effective December 31, 2019, 44 TexReg 8307; amended to be effective January 25, 2022, 47 TexReg 152.

§153.1211. Powers and Duties of Administrative Law Judge.

The powers and duties of an administrative law judge are determined by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

Statutory Authority: The provisions of this §153.1211 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1211 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1213. Recusal and Disqualification of Administrative Law Judge.

The recusal or disqualification of an administrative law judge shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

Statutory Authority: The provisions of this §153.1213 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1213 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1215. Substitution of Administrative Law Judge.

Substitution of an administrative law judge shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

Statutory Authority: The provisions of this §153.1215 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1215 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1217. Classification of Parties; Current Addresses.

- (a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (b) In a contested case proceeding under this subchapter, Texas Education Agency (TEA) staff on behalf of the commissioner of education shall have the burden of proof to show, by a preponderance of the evidence, entitlement to relief.
- (c) Parties shall keep the TEA staff apprised of their current addresses and shall notify the TEA staff of a change of address within five calendar days of the effective date of such change.

Statutory Authority: The provisions of this §153.1217 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1217 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1219. Representation of Parties.

- (a) Representatives of parties shall notify the State Office of Administrative Hearings (SOAH) and other parties of the representation.
- (b) Parties in contested cases before the SOAH may represent themselves or be represented by an attorney licensed to practice law in the State of Texas.

Statutory Authority: The provisions of this §153.1219 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1219 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1221. Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge.

- (a) The following original papers shall be served upon the Texas Education Agency (TEA) staff:
 - (1) request for a contested case hearing under this subchapter;
 - (2) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and
 - (3) motions for rehearing.
- (b) It is a rebuttable presumption that the date of service is the file stamp date affixed by the TEA staff.
- (c) All papers may be served upon the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.
- (d) The filing of papers with the SOAH or service of documents on the ALJ in contested cases shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure), unless modified by order of the ALJ as allowed by law.

Statutory Authority: The provisions of this §153.1221 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1221 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1223. Pleadings.

- (a) Pleadings include notices of hearing, motions, and exceptions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.
- (b) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.
- (c) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.
- (d) In addition to this subchapter, Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) shall also govern the following matters related to pleadings:
 - (1) content generally of pleadings;

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (2) purpose and effect of motions;
- (3) general requirements for motions;
- (4) responses to motions generally;
- (5) motions to intervene;
- (6) motions for continuance;
- (7) responses to written motions for continuance; and
- (8) amendment of pleadings.

Statutory Authority: The provisions of this §153.1223 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1223 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1225. Stipulations.

Stipulations shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

Statutory Authority: The provisions of this §153.1225 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1225 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1227. Discovery.

The Texas Government Code, Chapter 2001; Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure); this subchapter; and the Texas Rules of Civil Procedure, as applicable, shall govern discovery.

Statutory Authority: The provisions of this §153.1227 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1227 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1229. Notice of Hearing.

- (a) The notice of hearing is governed by the Texas Government Code, Chapter 2001; Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure); and this subchapter.
- (b) The Texas Education Agency (TEA) staff may serve the notice of hearing by sending it certified, return receipt requested, and regular first-class U.S. mail to the party's last known address.
- (c) For purposes of this subsection, the last known address is:
 - (1) the address of record of the party or the party's authorized representative in the contested case, if any; or
 - (2) if the party has not made an appearance in the contested case, the last address provided in any response to the notice sent in accordance with §153.1205 of this title (relating to Persons Under Investigation) or the proposed action that is the subject of the contested case, if any; or
 - (3) if the party has not provided an address in response to the proposed action, the address for the person included in the report made in accordance with §153.1203 of this title (relating to Required Reporting by Administrators).
- (d) While notice to the last known address is legally sufficient, notice may also be given by regular first-class U.S. mail, facsimile, email, or any other means to any other possible address that is known to the TEA staff at the time that the notice is sent.

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

Statutory Authority: The provisions of this §153.1229 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1229 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1231. Venue.

Hearings shall be conducted in Austin, Texas, at a site designated by the State Office of Administrative Hearings in accordance with applicable law and Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

Statutory Authority: The provisions of this §153.1231 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1231 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1233. Conduct and Record of Hearings.

The rules of the State Office of Administrative Hearings under Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) shall govern the procedure at the hearing and the making of a record of a contested case.

Statutory Authority: The provisions of this §153.1233 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1233 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1235. Use of Deposition Transcripts in Contested Case Hearings.

The use of deposition transcripts in contested case hearings shall be governed by Rule 203 of the Texas Rules of Civil Procedure. The terms "court proceedings" and "trial" used in Rule 203 are deemed to refer to "contested case hearing(s)" for purposes of applying this section and Rule 203 to contested case hearings before the State Office of Administrative Hearings.

Statutory Authority: The provisions of this §153.1235 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1235 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1237. Consolidated Proceedings.

A party may move to consolidate two or more proceedings under this subchapter if:

- (1) the proceedings involve common questions of law and fact; and
- (2) separate proceedings would result in unwarranted expense, delay, or substantial injustice.

Statutory Authority: The provisions of this §153.1237 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1237 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1239. Disposition Prior to Hearing; Default.

- (a) This subchapter and Texas Administrative Code (TAC), Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.
- (b) The commissioner of education may issue and sign orders resolving a case prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.
- (c) The commissioner or the SOAH may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the presiding ALJ; failure to state a claim for which relief can be granted; or failure to prosecute.

- (d) A party's failure to appear in person or by authorized representative on the day and at the time set for hearing shall constitute a default in a contested case, and the commissioner may enter a default judgment, as authorized by the Texas Government Code, §2001.056, or 1 TAC §155.501 (relating to Default Proceedings).
- (1) If the case is dismissed and remanded to the commissioner by the SOAH after a party failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the Texas Education Agency (TEA) staff attorney shall present to the commissioner a motion for default.
 - (2) Prior to issuance of a default decision or order, a party may contest the issuance of a default judgment by written notice filed with TEA staff showing good cause for failure to appear at the contested case hearing.
 - (3) After consideration of the petition and the motion for default, the commissioner may then issue a default order deeming the allegations in the petition as true.

Statutory Authority: The provisions of this §153.1239 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1239 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1241. Proposal for Decision.

- (a) As appropriate, the presiding administrative law judge (ALJ) shall prepare a proposal for decision containing separately stated findings of fact and conclusions of law.
- (b) The ALJ may amend the proposal for decision pursuant to exceptions, replies to exceptions, and briefs.
- (c) The ALJ shall submit the proposal for decision to the commissioner of education, with a copy to each party.

Statutory Authority: The provisions of this §153.1241 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1241 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1243. Exceptions and Replies.

- (a) A party may file any exceptions to the proposal for decision within 15 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 15 calendar days of the filing of exceptions. These time limits may be extended by agreement of the parties and the administrative law judge (ALJ). Exceptions and replies shall be:
 - (1) served upon the other party by mail, hand-delivery, facsimile, any method allowed by the State Office of Administrative Hearings rules, or any electronic transmission agreed to by the parties; and
 - (2) filed with the ALJ in accordance with Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).
- (b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.
- (c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.
 - (1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.
- (3) Arguments shall be logical and coherent and citations to authorities shall be complete.
- (d) Exceptions to the proposal for decision may be based on the following:
 - (1) the ALJ has made an incorrect conclusion of law;
 - (2) the ALJ has failed to make an essential fact finding;
 - (3) the ALJ applied the incorrect burden or standard of proof;
 - (4) the findings of fact do not support the conclusions of law; or
 - (5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

Statutory Authority: The provisions of this §153.1243 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1243 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1245. Review of Proposal by Commissioner of Education.

The commissioner of education shall review the proposal for decision and any amended proposals for decision, the exceptions and any replies to exceptions, and the relevant excerpts from the record of the hearing conducted by the State Office of Administrative Hearings before making a final decision or issuing an order in a case.

Statutory Authority: The provisions of this §153.1245 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1245 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1247. Final Decisions and Orders.

- (a) Unless a party or the party's authorized representative, as appropriate, agrees in writing to receive it via facsimile or email, a copy of the commissioner of education's decision or order shall be delivered by certified mail to the parties or to their authorized representatives, as appropriate. Texas Education Agency staff shall send the copy by facsimile or email to the State Office of Administrative Hearings (SOAH) if SOAH has issued a proposal for decision in the case.
- (b) All final decisions and orders of the commissioner under this subchapter shall be in writing and signed. A final decision or order shall include findings of fact and conclusions of law separately stated. The findings of fact or conclusions of law may be adopted by reference to another document.
- (c) The commissioner may adopt an order modifying findings of fact or conclusions of law in a proposal for decision submitted by the administrative law judge (ALJ) in accordance with the Texas Government Code, Chapter 2001. The commissioner may remand the matter back to the ALJ with specific instructions for the ALJ to determine an essential finding of fact or to apply the correct burden or standard of proof.

Statutory Authority: The provisions of this §153.1247 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1247 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1249. Motion for Rehearing; Administrative Finality; Appeals.

- (a) A motion for rehearing of the commissioner of education's decision in a contested case and the determination of administrative finality shall be governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.
- (b) A motion for rehearing unsupported by satisfactory evidence shall be overruled. This subsection does not limit the overruling of a motion for rehearing on other grounds or by operation of law.

**Commissioner's Rules Concerning Registry of Persons
Not Eligible for Employment in Public Schools**

§153.EE.

- (c) Appeals from a final order of the commissioner shall be under the substantial evidence standard of review and governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.
- (d) The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals. Texas Education Agency's services in preparing a record for appeal at the request of another party shall be reimbursed on the same basis as the charges for providing public information pursuant to Texas Administrative Code, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

Statutory Authority: The provisions of this §153.1249 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1249 adopted to be effective December 31, 2019, 44 TexReg 8307.

§153.1251. Notice of Placement on Registry.

- (a) The person's name will be added to the registry of persons not eligible for employment in Texas public schools, in accordance with Texas Education Code, §22.092(c)(5), if the commissioner of education determines in a final order that the person:
 - (1) abused or otherwise committed an unlawful act with a student or minor; or
 - (2) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.
- (b) If known, the Texas Education Agency staff shall notify the employing school district of the commissioner's final order placing the person's name to the registry of persons not eligible for employment in public schools.
- (c) Public and private schools in Texas and nonprofit teacher organizations may request access to search the registry of persons not eligible for employment in public schools.

Statutory Authority: The provisions of this §153.1251 issued under the Texas Education Code, §§22.0825 and 22.091-22.095, and Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

Source: The provisions of this §153.1251 adopted to be effective December 31, 2019, 44 TexReg 8307; amended to be effective January 25, 2022, 47 TexReg 152.