

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter E. Post-Hearing Matters

Statutory Authority: The provisions of this Subchapter E issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1), (4), and (7); Texas Government Code, §2001.058(e); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051, unless otherwise noted.

§249.36. 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 SBEC, with a copy to each party.
- (d) Except as otherwise provided or prohibited by these rules and other applicable law, the SBEC's general counsel may issue procedural directives relating to matters that arise after the submission of the proposal for decision to the SBEC and that are not delegated to the State Office of Administrative Hearings for action or decision.

Source: The provisions of this §249.36 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.37. 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 1 Texas Administrative Code, 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.
 - (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.

Source: The provisions of this §249.37 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.38. Review and Presentation of Proposal to Board.

The State Board for Educator Certification (SBEC) shall review the proposal for decision and any amended proposals for decision, the exceptions and any replies to exceptions, the relevant excerpts from the record of the hearing conducted by the State Office of Administrative Hearings, and oral arguments by the parties (if any) before making a final decision or issuing an order in a case. The SBEC may require the presiding administrative law judge to make a presentation on the proposal for decision at a public meeting of the SBEC.

Source: The provisions of this §249.38 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.39. Final Decisions and Orders.

- (a) The chair having certified a quorum present at a State Board for Educator Certification (SBEC) meeting, a majority vote of the voting members present shall be required to make a final decision on a proposal for decision, an agreed order, or request for issuance of a default judgment, unless provided otherwise by this chapter.
- (b) 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 SBEC's decision or order shall be delivered by certified mail to the parties or to their authorized representatives, as appropriate. TEA 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.
- (c) All final decisions and orders of the SBEC under this chapter shall be in writing and signed by the chair or other board officer on behalf of the majority as provided by this chapter, board operating policies and procedures, and applicable law, unless members of the majority adopting the decision or order exercise their discretion to sign the decision or order. 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.
- (d) The SBEC 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 SBEC 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 §249.39 issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1), (4), (7), and (8); Texas Government Code, §2001.058(e); and Texas Occupations Code, §§53.021(a), 53.0224, 53.025, 53.051, and 53.052.

Source: The provisions of this §249.39 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 8, 2015, 40 TexReg 6892.

§249.40. Motion for Rehearing; Administrative Finality; Appeal.

- (a) A motion for rehearing of the State Board for Educator Certification's (SBEC'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.
- (c) Appeals from a final order of the SBEC 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 1 Texas Administrative Code, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

Source: The provisions of this §249.40 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.41. Procedure for Reprimand; Restriction.

- (a) Notice. When the State Board for Educator Certification (SBEC) reprimands an educator or restricts an educator's certificate, the Texas Education Agency (TEA) staff shall mail to the educator a copy of the SBEC's order.
- (b) Inscribed reprimand.
- (1) The TEA staff shall inscribe the reprimand upon the virtual certificate of the educator.
 - (2) A record of the SBEC's action publicly reprimanding the educator shall become part of the educator's official certification records maintained by the TEA staff.
 - (3) If known, the TEA staff shall also notify the employing school district of the SBEC's order reprimanding the educator.
- (c) Non-inscribed reprimand.
- (1) The SBEC's action reprimanding the certificate holder shall only become part of the person's confidential investigative/litigation case file maintained by the TEA staff and shall not be available for public inspection except as required by law.
 - (2) The TEA staff, the presiding administrative law judge, and the SBEC may consider a non-inscribed reprimand in seeking, recommending, or ordering sanctions based on subsequently obtained evidence of improper or criminal conduct by the educator.
- (d) Restriction.
- (1) A record of the SBEC's action restricting the educator's certificate shall be placed on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.
 - (2) If known, the TEA staff shall notify the employing school district of the SBEC's order restricting the educator's certificate.

Source: The provisions of this §249.41 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.42. Procedure for the Suspension, Surrender, or Revocation of a Certificate.

- (a) When the State Board for Educator Certification (SBEC) issues an order of suspension, surrender, or revocation, the Texas Education Agency (TEA) staff shall mail a copy of the order to the person who formerly held the certificate. If the parties have not agreed to the terms of the order, TEA staff shall send a notice with the order, including the findings of fact and conclusions of law on which the SBEC based its decision, and a statement that should the person desire to request that the SBEC reconsider the decision, the person should file a Motion for Rehearing with the SBEC.
- (b) A record of the SBEC action suspending, accepting a surrender, or revoking the certificate shall be recorded on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.
- (c) The TEA staff shall also notify the employing school district of the SBEC's order when it becomes administratively final.

Statutory Authority: The provisions of this §249.42 are issued under Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a) and (b)(1), (4), and (7); and Texas Occupations Code, §§53.021(a), 53.022–53.025, and 53.051.

Source: The provisions of this §249.42 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective March 3, 2022, 47 TexReg 927.

§249.43. Procedure for Reinstating a Suspended Certificate.

- (a) At the end of the suspension period designated by the State Board for Educator Certification (SBEC), the person whose certificate was suspended may submit a written request that the Texas Education Agency (TEA) staff reinstate the certificate, together with proof of compliance with the order of suspension, and payment of the appropriate fee. The TEA staff shall run a criminal background check on an educator who requests reinstatement of a suspended certificate and may deny the reinstatement based on any subsequent criminal history or other misconduct occurring or discovered after the effective date of the order suspending the certificate. The educator must also meet all other requirements necessary to maintain educator certification or, if applicable, to reactivate an inactive standard certificate.
- (b) A record of reinstatement of the certificate shall become part of the educator's official certification records and shall be recorded on the educator's virtual certificate together with the record of the suspension.

Source: The provisions of this §249.43 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.44. Reapplication Following Denial, Surrender, or Revocation.

- (a) Except as provided by this section, the Texas Education Agency (TEA) staff shall process and review in its usual and customary manner the certificate application of a person whose previous application was denied or whose certificate was revoked or surrendered by the State Board for Educator Certification (SBEC) under this chapter. Such an applicant shall be subject to the same requirements and qualifications as any other current applicant, as specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification), including recommendation from an approved educator preparation program, if applicable, and all other prerequisites for certification at the time the application is received.
- (b) A person whose certificate has been denied, surrendered, or revoked under this chapter shall not reapply for a certificate before the fifth anniversary after the date of the SBEC's order denying, accepting a surrender, or revoking a certificate became administratively final. The TEA staff shall reject without processing or further proceedings any application received in violation of this subsection. A person reapplying for certification after denial, revocation, or surrender must be recommended for certification by an approved educator preparation program and must satisfy the same requirements for certification that are applicable to any other new applicant.
- (c) In addition to other sanctions available under this chapter, the SBEC may order that a person whose certificate has been denied, surrendered, or revoked under this chapter shall not reapply for a certificate for a time period of five years or longer after the order of denial, surrender, or revocation becomes administratively final. The SBEC may order that a certificate be permanently revoked or surrendered or that an application be permanently denied without opportunity to reapply for certification, pursuant to §249.17(d) of this title (relating to Decision-Making Guidelines), or otherwise as the SBEC may deem appropriate. The TEA staff shall reject without processing or further proceedings any application received in violation of such an order. A rejection pursuant to this section is not considered an administrative denial and is not subject to a contested case hearing.
- (d) In reviewing a certificate application, the TEA staff, the presiding administrative law judge, and the SBEC shall consider prior SBEC orders denying, accepting a surrender, or revoking a certificate previously applied for or held by the applicant. The applicant may not contest the underlying basis for the prior order.
- (e) A person whose petition for relief under this section has been denied by the SBEC, in whole or in part, shall not file a subsequent application or petition earlier than the fifth anniversary of the effective date of such denial.

- (f) The TEA staff shall publish notice of any certificate issued to a person whose previous application was denied or whose certificate was canceled or revoked by the SBEC under this chapter by updating the educator's virtual certificate.

Source: The provisions of this §249.44 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.