

The Texas Education Agency (TEA) proposes new §§153.1201, 153.1203, 153.1205, 153.1207, 153.1209, 153.1211, 153.1213, 153.1215, 153.1217, 153.1219, 153.1221, 153.1223, 153.1225, 153.1227, 153.1229, 153.1231, 153.1233, 153.1235, 153.1237, 153.1239, 153.1241, 153.1543, 153.1245, 153.1247, 153.1249, and 153.1251, concerning registry of persons not eligible for employment in public schools. The proposed new sections would implement the requirement for the registry created by House Bill (HB) 3, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new 19 TAC Chapter 153, Subchapter EE, would implement the registry of persons not eligible for employment in public schools mandated by HB 3, 86th Texas Legislature, 2019. HB 3 requires a superintendent or director of a school district, district of innovation, charter school, regional education service center, or shared services arrangement to notify the commissioner if an employee is terminated or resigns and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. HB 3 gives the commissioner authority to investigate the allegations brought by the school district and to list the person under investigation publicly on the TEA website. It allows the person under investigation to request a contested case hearing before the State Office of Administrative Hearings (SOAH). HB 3 grants the commissioner authority to issue final orders determining whether the person committed the alleged misconduct and to place the person's name on the registry of persons ineligible to work in public schools available on the TEA website.

Proposed new §153.1201, Definitions, would define "solicitation of a romantic relationship" to match the definition implemented by the State Board for Educator Certification (SBEC) in 19 TAC §249.3(51), reflecting that the statutory language in Texas Education Code (TEC), §22.093, requiring reporting uncertified employees regarding inappropriate relationships with students or minors, matches that in TEC, §21.006, requiring reporting of certified educators. The proposed rule would define "abuse" to match the Texas Family Code definition of abuse, in keeping with the statutory requirements of TEC, §22.093. The proposed rule would also create a definition of "private school," limited to accredited private schools or licensed preschools, to ensure that the entities accessing the registry of persons not eligible for employment in public schools in accordance with TEC, §22.092(d), are only educational institutions accessing the information for legitimate employment needs.

Proposed new §153.1203, Required Reporting by Administrators, would set out for clarity and ease of reference the reporting requirements for principals, directors, and superintendents under TEC, §22.093, and the specific information that must be reported in order to make investigation of the allegations as efficient and accurate as possible. The required information would be the same as the information the SBEC requires for reports regarding certified educators under 19 TAC §249.14(f). The proposed rule would also allow a report a superintendent or director makes to the SBEC regarding a certified educator to be considered a report to the commissioner if the educator's certification expires before the case against him or her is completed, to prevent educators avoiding placement on the registry of persons ineligible to teach in public schools by simply allowing his or her educator certification to expire.

Proposed new §153.1205, Persons Under Investigation, would set out the procedures for notifying a person that they are under investigation and for identifying persons under investigation on the TEA website. The proposed rule would require TEA staff to send notice via U.S. mail and certified mail to the person's address as provided in the report made under §153.1203. The individuals reported under §153.1203 are not required to keep updated addresses on file with TEA as are certified educators. The proposed rule would set a presumption that a notice mailed is received within five days and would add that five-day timeline to the statutory 10-day notice period required under TEC, §22.094(c). This would require TEA staff to send the notice of investigation at least 15 days prior to identifying the person as under investigation on the TEA website. Proposed new §153.1205(b) would also give a 30-day deadline for TEA staff to send a person notice that the person has been the subject of a report of misconduct, interpreting the statutory term "promptly" in TEC, §22.094(b).

Proposed new §153.1207, Request for Hearing, would set out for clarity and ease of reference the requirements for requesting a hearing and the repercussions for not requesting one, as described in TEC, §22.094(c) and (e).

Proposed new §§153.1209, 153.1211, 153.1213, 153.1215, 153.1217, 153.1219, 153.1221, 153.1223, 153.1225, 153.1227, 153.1229, 153.1231, 153.1233, 153.1235, 153.1237, 153.1239, 153.1241, 153.1243, 153.1245, 153.1247, 153.1249, and 153.1251 would be procedural rules for the contested case hearing process before SOAH. The

proposed new rules are derived from and closely parallel the procedural rules for contested cases in educator discipline and licensure matters codified in 19 TAC Chapter 249, Disciplinary Proceedings, Subchapter C, Prehearing Matters, Subchapter D, Hearing Procedures, and Subchapter E, Post-Hearing Matters.

Proposed new §153.1209, Jurisdiction, would describe the start of the contested case process, including the duty of TEA staff to refer the case to SOAH for a hearing when the person requests it timely as required by TEC, §22.094(c), and the onset of SOAH's jurisdiction over the case after it is referred.

Proposed new §§153.1211, 153.1213, and 153.1215 would defer to the rules of SOAH for the powers, duties, recusal, disqualification, and substitution of an administrative law judge (ALJ) to allow consistency and predictability for SOAH ALJs, attorneys, and parties and allow SOAH to make consistent, uniform rules for all parties in contested cases.

Proposed new §153.1217, Classification of Parties; Current Addresses, would clarify the roles of the parties, regardless of how they are described in the pleadings; set the burden of proof at a preponderance of the evidence; and require parties to inform TEA staff if their addresses change. The proposed new rule would parallel the burden, roles, and requirements that the SBEC uses for certified educators in contested cases.

Proposed new §153.1219, Representation of Parties, would require parties in contested cases to notify SOAH and other parties if they are represented by counsel and would allow parties to represent themselves. The proposed rule would not allow parties to be represented by persons who are not attorneys licensed to practice in Texas. The proposed rule is intended to make parties' representation before SOAH as effective as possible, while still allowing individuals who do not want to hire an attorney to represent themselves.

Proposed new §153.1221, Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge, would set out service requirements for requests for contested case hearings, exceptions and replies to proposals for decision and motions for rehearing. The proposed new rule would defer to the SOAH rules on service, which currently allow service by hand-delivery; by regular, certified, or registered mail; by email, upon agreement of the parties; or by fax. Limiting service to these particular methods would ensure that TEA staff will receive the request timely and predictably, while still allowing several possible delivery methods.

Proposed new §153.1223, Pleadings, would define pleadings and defer to SOAH rules on pleadings for the specific requirements on formatting, content, and filing. This proposed rule would be similar to that which the SBEC uses for certified educators in contested cases; would allow consistency and predictability for SOAH ALJs, attorneys, and parties; and would make consistent, uniform rules for all parties in contested cases.

Proposed new §153.1225, Stipulations, would defer to SOAH rules regarding stipulations between parties, to allow consistency and predictability for SOAH ALJs, attorneys, and parties.

Proposed new §153.1227, Discovery, would state that discovery in contested cases will be governed by the Administrative Procedure Act, the SOAH rules, and the Texas Rules of Civil Procedure. This would parallel the rule for discovery in educator discipline cases, creating predictability for parties and SOAH ALJs, and would encompass all the sources of authority for discovery in administrative contested cases before SOAH.

Proposed new §153.1229, Notice of Hearing, would set out the requirements for a notice of hearing, which is required to initiate a contested case proceeding under Texas Government Code, §2001.051. The proposed rule would incorporate by reference the requirements of the Administrative Procedure Act and the SOAH rules to allow consistency and predictability for SOAH ALJs, attorneys, and parties. It would parallel the SBEC rules regarding contested cases for certified educators regarding service of the notice of hearing to ensure that the respondent will receive the notice timely and predictably. With regard to what address the notice of hearing is sent, the proposed rule would allow it to be sent to the party's authorized representative, an address the respondent provided when responding to the initial notice under §153.1205, the address provided in the report under §153.1203 if the person has not provided a different address, or any other address known to TEA staff at the time notice is sent. This would allow flexibility to ensure that the address to which the notice is sent is as accurate as practicable while also providing efficiency for TEA staff.

Proposed new §153.1231, Venue, would set venue for hearings in Austin, Texas, at SOAH. This would ensure that staff will not have to use state resources travelling the state to go to hearings and that both TEA and SOAH will be able to accurately and consistently budget resources based only on docket size, without having to factor in the diverse locations of potential future respondents. It will also give respondents an incentive to settle prior to hearing in order to avoid the expense involved. It is important to note that SOAH rules allow respondents to appear telephonically, eliminating the need for travel expenses.

Proposed new §153.1233, Conduct and Record of Hearings, would defer to the SOAH rules regarding the procedure and record for a hearing, to allow consistency and predictability for SOAH ALJs, attorneys, and parties.

Proposed new §153.1235, Use of Deposition Transcripts in Contested Case Hearings, would incorporate Rule 203 of the Texas Rules of Civil Procedure to govern the use of deposition transcripts in hearings, to make the use of deposition transcripts congruent with their use in other Texas state court litigation, and to allow consistency and predictability for SOAH ALJs, attorneys, and parties.

Proposed new §153.1237, Consolidated Proceedings, would allow parties to consolidate proceedings if the proceedings involve common questions of law and fact and if combining the proceedings would reduce delay, expense, or substantial injustice. This proposed rule would parallel the SBEC rule regarding consolidation of contested cases for certified educators and allow efficiency in hearings when the conditions are right.

Proposed new §153.1239, Disposition Prior to Hearing; Default, would set out the procedures for settlements and defaults of contested cases. The proposed rule would incorporate by reference the SOAH rules regarding procedure to allow consistency and predictability for SOAH ALJs, attorneys, and parties. This proposed rule would parallel the SBEC rule regarding settlements and defaults at a SOAH hearing for contested cases for certified educators.

Proposed new §153.1241, Proposal for Decision, would describe the procedures and content for the proposal for decision, which the SOAH ALJ issues at the conclusion of a contested case hearing. This proposed rule would parallel the SBEC rule regarding proposals for decision in contested cases for certified educators.

Proposed new §153.1243, Exceptions and Replies, would set out the procedure for parties to file exceptions to the ALJ's proposal for decision. This proposed rule would parallel the SBEC rule regarding exceptions in contested cases for certified educators and accord with the requirements of Texas Government Code, §2001.062, that allow parties to file exceptions for consideration by the ALJ.

Proposed new §153.1245, Review of Proposal by Commissioner of Education, would set out the procedure for the commissioner's review of a proposal for decision issued by an ALJ following a contested case hearing at SOAH. This proposed rule would parallel the SBEC rule regarding the SBEC's review of proposals for decision and would set out the specific information that the commissioner may consider when reviewing a proposal for decision. In keeping with the requirements of Texas law, it does not allow the commissioner to review information outside the record developed in the contested case proceeding.

Proposed new §153.1247, Final Decisions and Orders, would set out procedures and content requirements for final orders issued by the commissioner following a contested case. This proposed rule would parallel the SBEC rule regarding the content of SBEC's final orders and comport with the requirements of Texas Government Code, §§2001.058(e), 2001.141, and 2001.142, regarding procedures for reviewing, changing, and sending notice for final decisions resulting from a proposal for decision.

Proposed new §153.1249, Motion for Rehearing; Administrative Finality; Appeals, would set out the procedures for motions for rehearing and appeals from commissioner's decisions resulting from a proposal for decision. The proposed rule would invoke and comport with the requirements of Texas Government Code, Chapter 2001, which governs the timelines and requirements for final orders and appeals under the Administrative Procedure Act. This proposed rule would parallel the SBEC rule regarding final SBEC decisions. It requires the appealing party to pay transcription costs and other costs of preparing the administrative record for appeal as required by Texas Government Code, §2001.175 and §2001.177, to ensure that the TEA is not left to pay the bill to create administrative records for respondents' specious appeals.

Proposed new §153.1251, Notice of Placement on Registry, would create the procedures for adding a person's name to the registry of persons not eligible for employment in Texas public schools following a commissioner's final order. The procedures would require TEA staff to send notice of the commissioner's final order to the person's last known school district to ensure that word gets out as efficiently as possible that the person is no longer eligible for employment in a public school. It would also enact TEC, §22.092(d), which requires that both public and private schools have equal access to the registry, using the term "public school" as defined in §153.1201(c), so as to limit the scope of individuals with access to the personally identifiable information in the registry to legitimate educational institutions seeking information about their employees.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect there would be costs to state government required to comply with the proposal, specifically, an increase of approximately \$9,000 per year for fiscal years (FY) 2020-2024 in postage expenses caused by the requirements to serve documents via certified mail. The proposal would require the TEA to serve documents on persons under investigation and respondents in contested cases through certified mail or first-class U.S. mail at three different points in the process. This is similar to the mailings the SBEC currently sends to certified educators during its process of investigation and contested case proceedings. Currently, TEA spends about \$36,000 on mailings to certified educators in SBEC investigations and contested cases. The volume of cases resulting from the proposal is estimated to be about 25% of the volume of educator discipline cases currently on the SBEC docket. Accordingly, the estimated mailing cost resulting from the proposal would be about 25% of \$36,000, or \$9,000 per year.

There would be no fiscal impact to other state agencies or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does impose a cost on regulated persons. The costs are associated with the travel funds required to attend SOAH hearings in Austin, Texas, and the costs of creating an administrative record if the respondent chooses to appeal the final commissioner's decision. However, these costs are necessary to implement legislation (HB 3, Texas Legislature, 2019) and to protect the health, safety and welfare of Texas school children, so Texas Government Code, §2001.0045, does not apply.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations and create a government program, specifically, the registry of persons ineligible for employment in public schools and the commissioner's hearing process attendant thereto, although that program was already created directly by HB 3, 86th Texas Legislature, 2019.

The proposed rulemaking would not eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the protection of Texas school children from individuals working in schools who have significant, relevant criminal

history; individuals who have abused children; or individuals who have had inappropriate relationships with students or minors.

There is an estimated total cost of \$5,892 per year for FYs 2020-2024 for persons required to comply with the proposal. The estimated costs are based on a total of \$4,092 for travel costs plus \$1,800 for transcription costs per year for FYs 2020-2024.

The proposal would require respondents to come to Austin, Texas, for contested case hearings, causing them to incur travel costs to attend a hearing at SOAH in Austin, Texas. The costs to regulated persons will vary depending on how far away the respondent lives and how long the hearing is. Based on the hearings that SBEC currently conducts at SOAH for certified educators confronting allegations similar to those that will be raised in reports to the commissioner under this proposal, most hearings last only one day. Assuming the average educator lives 240 miles from Austin, Texas, and would have to stay overnight one night prior to the hearing, the travel costs at state reimbursement rates associated with a hearing would be approximately \$278 for driving mileage and \$94 for hotel for a total of \$372. SBEC has approximately 44 hearings before SOAH each year, and the volume of cases resulting from the proposal is expected to be approximately 25% of the current SBEC docket, yielding an expected 11 cases going to SOAH hearings as a result of these proposed rules. Multiplying the 11 cases by the \$372 expected travel cost per case yields \$4,092 total expected costs per year for persons required to comply with the proposal.

The proposal would also provide that if a person chooses to appeal a final decision in accordance with proposed new 19 TAC §153.1229, the appellant must bear the cost of transcription of a one-day hearing to create the administrative record the Administrative Procedure Act requires. The cost of transcription of a one-day hearing is approximately \$1,800. It is rare that a transcript of the hearing is required for the administrative record; the SBEC has not assessed transcription costs against any appealing party within the past five years. To be conservative, the TEA has estimated that one appellant per year will have to pay transcription costs.

DATA AND REPORTING IMPACT: The proposal would require superintendents and directors to report specific information regarding employees who have been terminated or resigned when there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. This data collection is allowed under TEC, §22.093(f) and (m).

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 20, 2019, and ends October 21, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on September 20, 2019. A form for submitting public comments is available on the TEA website at

[https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §22.0825, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires the Texas Education Agency (TEA) to subscribe to the criminal history clearinghouse and allows TEA access to any closed criminal investigation file that relates to a specific applicant for employment or a current or former employee of a public school, regional education service center, or shared services arrangement; TEC, §22.091, as added by HB 3, 86th Texas Legislature, 2019, which defines "other charter entity," causing the subchapter to apply to all forms of charter schools in Texas; TEC, §22.092, as added by HB 3, 86th Texas Legislature, 2019, which creates a registry of persons not eligible for employment in public schools, requires that TEA provide private schools and public schools equivalent access to the registry, and gives TEA authority to adopt rules as necessary to implement the section; TEC, §22.093, as added by HB 3, 86th Texas Legislature, 2019, which requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner within seven business days of when an employee resigns or is terminated and there is evidence that

the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship or solicited or engaged in sexual contact with a student or minor. It requires that the notification to the commissioner be in writing and in a form prescribed by the commissioner. It also gives the commissioner rulemaking authority to adopt rules as necessary to implement the section; TEC, §22.094, as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to send notice promptly to a person who is the subject of a report under TEC, §22.093, to inform the person that they have the right to request a hearing on the merits, and requesting that the person show cause as to why the commissioner should not pursue an investigation. The person must respond to show cause and request a hearing within 10 days of receiving the notice. If the person does not show cause, the commissioner will identify the person as under investigation on the agency's website. If the person requests a hearing, the hearing will be governed by Texas Government Code, Chapter 2001. If the commissioner determines the person engaged in the alleged misconduct, the commissioner will instruct TEA to add the person's name to the registry of persons not eligible for employment in public schools. If the commissioner determines after the hearing that the person did not commit the misconduct, the commissioner will instruct TEA staff to no longer identify the person as under investigation on the TEA website. This provision gives the commissioner rulemaking authority to adopt rules necessary to implement it; TEC, §22.095, as added by HB 3, 86th Texas Legislature, 2019, which requires the TEA to develop an internet portal through which reports required under TEC, §22.093, can be confidentially and securely filed with the agency; Texas Government Code, §411.0901, which gives TEA authority to obtain criminal history record information for employees or applicants at school districts, charter schools, and shared services arrangements; Texas Government Code, Chapter 2001, Subchapter C, which sets out the rights and procedures for contested case hearings; Texas Government Code, Chapter 2001, Subchapter F, which sets out the procedures for final decisions, orders, and motions for rehearing following a contested case hearing; and Texas Government Code, Chapter 2001, Subchapter G, which sets out the procedure for judicial review on appeal of a final decision resulting from a contested case hearing.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§22.0825, 22.091-22.095; Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

<rule>

§153.1201. Definitions.

- (a) Solicitation of a romantic relationship--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate educator-student 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 educator of a romantic relationship with a student:
- (1) behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic 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 educator attempts to conceal the communications;
 - (F) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator 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 educator reported the abuse or neglect to the appropriate authorities; and

- (G) any other evidence tending to show the context of the communications between educator 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 contact, or any activity intended for the sexual gratification of the educator;
- (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 educator'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 educator solicited a romantic relationship with a student.
- (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 one or more grades from Prekindergarten-Grade 12 and is either:
 - (1) accredited by an organization that is monitored and approved by the Texas Private School Accreditation Commission; or
 - (2) a child care provider that is licensed by the Texas Health and Human Services Commission.

§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 of the school district, district of innovation, charter school, service center, or shared services arrangement was terminated or resigned from employment and there is evidence that he or she committed any of the following acts:
 - (1) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor; or
 - (2) solicited or engaged in sexual conduct or a romantic relationship 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 of the school district, district of innovation, or charter school 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 educator if there is reasonable cause to believe the educator may have engaged in misconduct described in subsection (a)(1) and (2) of this section despite the educator'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 educator; 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;
 - (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 (TEC), §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.

§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.

§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 (TEA) 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) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor; or
 - (2) solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

§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 Administration).
- (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 (TEC), §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.

§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).

§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).

§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).

§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.
- (b) The petitioner in a contested case proceeding under this subchapter and Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings. The petitioner shall have the burden of proof to show, by a preponderance of the evidence, entitlement to such relief.
- (c) Parties shall keep the Texas Education Agency (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.

§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.

§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.

§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;
 - (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.

§153.1225. Stipulations.

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

§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.

§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.

§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).

§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.

§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.

§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.

§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 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 commissioner, the TEA staff, or 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). 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 TEA staff attorney shall present to the commissioner a motion for default. 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.

§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.

§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.
 - (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.

§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.

§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.

§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.
- (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).

§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) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor; or
 - (2) solicited or engaged in sexual conduct or a romantic relationship 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) Both public and private schools in Texas may request access to search the registry of persons not eligible for employment in public schools.