

The Texas Education Agency (TEA) proposes an amendment to §157.1061, concerning general provisions for hearings before the commissioner of education. The proposed amendment would update the procedures for a motion for rehearing to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Government Code (TGC), §2001.004, requires that state agencies adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Section 157.1061 implements TGC, §2001.004, by specifying the requirements for a motion for rehearing before the commissioner of education. The motion for rehearing is a prerequisite to a judicial appeal.

TGC, §2001.146, provides the procedures and deadlines for filing a motion for rehearing in a contested case. The proposed amendment to §157.1061 would update the rule to align with the procedures and deadlines established in statute.

Subsection (a) would be amended to specify that a motion for rehearing must be filed by a party representative within 25 days after the date the decision or order that is the subject of the motion is signed.

Subsection (b) would be amended to specify that replies to a motion for rehearing must be filed with the agency within 40 days after the date the decision or order that is the subject of the motion is signed.

Subsection (c) would be amended to specify agency action on the motion for rehearing must be taken within 55 days after the date the decision or order that is the subject of the motion is signed. If agency action is not taken within the 55-day period, the motion for rehearing would be overruled by operation of law.

Subsection (d) would be amended to specify that the agency may, by written order, extend the period of time for filing the motions or replies and taking agency action, except that an extension may not extend the period for agency action beyond 100 days after the date the decision or order that is the subject of the motion is signed.

Subsection (e) would be amended to specify in the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 100 days after the date the decision or order that is the subject of the motion is signed.

FISCAL IMPACT: Von Byer, general counsel for legal services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state 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 TGC, §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 TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §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 expand an existing regulation by extending existing deadlines to conform with statute.

It would not create or 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 create

a new regulation; would not 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. Byer 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 ensuring that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: 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 February 5, 2021, and ends March 8, 2021. 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 February 5, 2021. 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/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt rules of practice for formal and informal procedures; and TGC, §2001.146, which provides procedures and deadlines for filing a motion for rehearing in a contested case.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Government Code, §2001.004 and §2001.146.

<rule>

§157.1061. Motions for Rehearing.

- (a) In the absence of a finding of imminent peril, a motion for rehearing is a prerequisite to a judicial appeal. A motion for rehearing must be filed by a party representative within 25 ~~[20]~~ days after the date the decision or order that is the subject of the motion is signed ~~[party representative is notified of the final decision or order]~~ .
- (b) Replies to a motion for rehearing must be filed with the agency within 40 ~~[30]~~ days after the date the decision or order that is the subject of the motion is signed ~~[party representative is notified of the final decision or order]~~ .
- (c) Agency action on the motion for rehearing must be taken within 55 ~~[45]~~ days after the date the decision or order that is the subject of the motion is signed ~~[a party representative is notified of the final decision or order]~~ . If agency action is not taken within the 55- ~~[45-]~~ day period, the motion for rehearing is overruled by operation of law 55 ~~[45]~~ days after the date the decision or order that is the subject of the motion is signed ~~[party representative is notified of the final decision or order]~~ .
- (d) The agency may, by written order, extend the period of time for filing the motions or replies and taking agency action, except that an extension may not extend the period for agency action beyond 100 ~~[90]~~ days after the date the decision or order that is the subject of the motion is signed ~~[a party representative is notified of the final order or decision]~~ .
- (e) In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 100 ~~[90]~~ days after the date the decision or order that is the subject of the motion is signed ~~[party representative is notified of the final decision or order]~~ .