

TEXAS EDUCATION CODE, CHAPTER 21
SUBCHAPTER F. HEARINGS BEFORE HEARING EXAMINERS

§ 21.251. APPLICABILITY. (a) This subchapter applies if a teacher requests a hearing after receiving notice of the proposed decision to:

- (1) terminate the teacher's continuing contract at any time;
- (2) terminate the teacher's probationary or term contract before the end of the contract period; or
- (3) suspend the teacher without pay.

(b) This subchapter does not apply to:

- (1) a decision to terminate a teacher's employment at the end of a probationary contract; or
- (2) a decision not to renew a teacher's term contract, unless the board of trustees of the employing district has decided to use the process prescribed by this subchapter for that purpose.

§ 21.252. CERTIFICATION OF HEARING EXAMINERS. (a) The State Board of Education, in consultation with the State Office of Administrative Hearings, by rule shall establish criteria for the certification of hearing examiners eligible to conduct hearings under this subchapter. A hearing examiner certified under this subchapter must be licensed to practice law in this state.

(b) The commissioner shall certify hearing examiners according to the criteria established under Subsection (a). A person certified as a hearing examiner or the law firm with which the person is associated may not serve as an agent or representative of:

- (1) a school district;
- (2) a teacher in any dispute with a school district; or
- (3) an organization of school employees, school administrators, or school boards.

(c) The commissioner shall set hourly rates of compensation for a hearing examiner and shall set a maximum amount of compensation a hearing examiner may receive for a hearing.

§ 21.253. REQUEST FOR HEARING. (a) A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice.

(b) The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.

§ 21.254. ASSIGNMENT OF HEARING EXAMINER. (a) The commissioner shall maintain a list of the names of all persons who have been certified as hearing examiners. The list shall be initially prepared in a random order, and subsequent additions to the list shall be added chronologically.

(b) The commissioner shall assign the hearing examiner for a particular case by selecting the next person named on the list who resides within reasonable proximity to the district as determined by the commissioner. The commissioner may not change the order of names once the order is established under this section, except that once each hearing examiner on the list has been assigned to a case, the names shall be randomly reordered.

(c) If a hearing examiner is not selected by the parties to a pending case under Subsection (e), the commissioner shall assign a hearing examiner to the case not earlier than the sixth business day and not later than the 10th business day after the date on which the commissioner receives the request for a hearing. When a hearing examiner has been assigned to a case, the commissioner shall immediately notify the parties.

(d) The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject the assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one party has good cause to reject the hearing examiner, the commissioner shall assign another hearing examiner as provided by Subsection (b). If neither party makes a timely rejection, the assignment is final.

(e) After the teacher receives the notice of the proposed action, the parties by agreement may select a hearing examiner from the list maintained by the commissioner under Subsection (a) or a person who is not certified to serve as a hearing examiner. A person who is not a certified hearing examiner may be selected only if the person is licensed to practice law in this state. If the parties agree on a hearing examiner, the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including the name of the hearing examiner selected.

(f) After the teacher receives the notice of the proposed action, the teacher and the district may agree in writing that the decision of the hearing examiner will be final and nonappealable on all or some issues.

§ 21.255. HEARINGS BEFORE HEARING EXAMINER. (a) The hearing examiner may issue subpoenas at the request of either party for the attendance of witnesses and the production of documents at the hearing and may administer oaths, rule on motions and the admissibility of evidence, maintain decorum by closing the hearing or taking other appropriate action, schedule and recess the proceedings, and make any other orders as provided by rules adopted by the commissioner. The hearing examiner may issue a subpoena for the attendance of a person who is not an employee of the district only if the party requesting the issuance of the subpoena shows good cause for the subpoena. The hearing must be held within the geographical boundaries of the school district or at the regional education service center that serves the district.

(b) A hearing examiner may allow either party to take one or more depositions or to use other means of discovery before the hearing. The hearing examiner, at the request of either party, may issue subpoenas for the attendance of witnesses and the production of documents at the deposition. The hearing examiner may issue a subpoena for the deposition of any person who is not an employee of the district only if the party

requesting the issuance of the subpoena shows good cause for the subpoena. The deposition must be held within the geographical boundaries of the school district or at the regional education service center that serves the district.

(c) A procedure specified in this section may be changed or eliminated by written agreement of the teacher and the school district after the teacher receives the written notice of the proposed action.

(d) If the hearing examiner is unable to continue presiding over a case at any time before issuing a recommendation or decision, the parties shall request the assignment of another hearing examiner under Section 21.254 who, after a review of the record, shall perform any remaining functions without the necessity of repeating any previous proceedings.

(e) The school district shall bear the cost of the services of the hearing examiner and certified shorthand reporter at the hearing and the production of any original hearing transcript. Each party shall bear its respective costs, including the cost of discovery, if any, and attorney's fees.

§ 21.256. CONDUCT OF HEARING. (a) A hearing under this subchapter must be private unless the teacher requests in writing that the hearing be public, except that a hearing examiner may close a hearing if necessary to maintain decorum.

(b) The hearing is not subject to Chapter 2001, Government Code.

(c) At the hearing, a teacher has the right to:

- (1) be represented by a representative of the teacher's choice;
- (2) hear the evidence on which the charges are based;
- (3) cross-examine each adverse witness; and
- (4) present evidence.

(d) The Texas Rules of Civil Evidence apply at the hearing. A certified shorthand reporter shall record the hearing.

(e) The hearing shall be conducted in the same manner as a trial without a jury in a district court of this state. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

(f) To protect the privacy of a witness who is a child, the hearing examiner may:

- (1) close the hearing to receive the testimony of the witness; or
- (2) order that the testimony or a statement of the witness be presented using the procedures prescribed by Article 38.071, Code of Criminal Procedure.

(g) An evaluation or appraisal of the teacher is presumed to be admissible at the hearing.

(h) At the hearing, the school district has the burden of proof by a preponderance of the evidence.

§ 21.257. RECOMMENDATION OF HEARING EXAMINER. (a) Not later than the 60th day after the date on which the commissioner receives a teacher's written request for a hearing, the hearing examiner shall complete the hearing and make a written recommendation that:

- (1) includes proposed findings of fact and conclusions of law; and
- (2) may include a proposal for granting relief.

(b) The proposed relief under Subsection (a)(2) may include reinstatement, back pay, or employment benefits but may not include attorney's fees or other costs associated with the hearing or appeals from the hearing.

(c) The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date prescribed by Subsection (a). A hearing under this section may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree.

(d) The hearing examiner shall send a copy of the recommendation to each party, the president of the board of trustees, and the commissioner.

(e) A hearing examiner who fails to timely issue a written recommendation or decision may not be assigned by the commissioner to conduct additional hearings for a period not to exceed one year.

§ 21.258. CONSIDERATION OF RECOMMENDATION BY BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE. (a) The board of trustees or a subcommittee designated by the board shall consider the recommendation and record of the hearing examiner at the first board meeting for which notice can be posted in compliance with Chapter 551, Government Code, following the issuance of the recommendation. The meeting must be held not later than the 20th day after the date that the president of the board receives the hearing examiner's recommendation and the record of the hearing.

(b) At the meeting, the board of trustees or board subcommittee shall consider the hearing examiner's recommendation and shall allow each party to present an oral argument to the board or subcommittee. The board by written policy may limit the amount of time for oral argument. The policy must provide equal time for each party.

(c) The board of trustees or board subcommittee may obtain advice concerning legal matters from an attorney who has not been involved in the proceedings.

§ 21.259. DECISION OF BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE. (a) Not later than the 10th day after the date of the board meeting under Section 21.258, the board of trustees or board subcommittee shall announce a decision that:

- (1) includes findings of fact and conclusions of law; and
- (2) may include a grant of relief.

(b) The board of trustees or board subcommittee may adopt, reject, or change the hearing examiner's:

- (1) conclusions of law; or
- (2) proposal for granting relief.

(c) The board of trustees or board subcommittee may reject or change a finding of fact made by the hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial evidence.

(d) The board of trustees or board subcommittee shall state in writing the reason and legal basis for a change or rejection made under this section.

§ 21.260. RECORDING OF BOARD MEETING AND ANNOUNCEMENT.

A certified shorthand reporter shall record the oral argument under Section 21.258 and the announcement of the decision under Section 21.259. The school district shall bear the cost of the services of the certified shorthand reporter.