Chapter 157. Hearings and Appeals

Subchapter AA. General Provisions for Hearings Before the Commissioner of Education

Statutory Authority: The provisions of this Subchapter AA issued under the Texas Education Code, §7.057 and §21.301; and Texas Government Code, §2001.004, unless otherwise noted.

§157.1041. Scope and Purpose.

(a) This chapter shall govern in all hearings before the commissioner of education.

(b) This chapter adopts for all purposes the provisions of the Texas Rules of Civil Evidence (http://www.courts.state.tx.us/rules/tre-toc.asp) and the Texas Rules of Civil Procedure (http://www.supreme.courts.state.tx.us/rules/TRCP/RCP_all.pdf). The Rules of Civil Evidence and Civil Procedure will prevail except as modified by these rules. The provisions of this Subchapter AA shall govern the procedure for the administration of all hearings before the commissioner of education except where modified by Subchapter BB of this chapter (relating to Specific Appeals to the Commissioner).

Source: The provisions of this §157.1041 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889; amended to be effective May 28, 2012, 37 TexReg 3830.

§157.1042. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative law judge--A member or employee of the agency or other individual assigned to issue a proposal for decision, to render a decision, or to make findings of fact or conclusions of law.

(2) Agency--The Texas Education Agency.

(3) Board--The board of trustees of a public school district.

(4) Commissioner--The commissioner of education, or one who has been designated by the commissioner to perform a task.

(5) Disqualification--When an administrative law judge, in his or her discretion, permanently forbids a party representative from any further participation in an adjudicative proceeding.

(6) Exclusion--When an administrative law judge, in his or her discretion, ejects a person temporarily from an adjudicative proceeding.

(7) Hearing--An adjudicative process from initiation until final decision.

(8) Independent hearing examiner--a person certified by the commissioner to hold hearings pursuant to the Texas Education Code, Chapter 21, Subchapter F (Hearings Before Hearings Examiners).

(9) Party representative--A lawyer or non-lawyer who acts on behalf of himself or herself or who is authorized to act on behalf of a party during the hearing.

Source: The provisions of this §157.1042 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1043. Administrative Law Judge.

(a) The commissioner may designate and appoint an administrative law judge to act on his or her behalf in conducting any hearing held under this chapter and to prepare draft decisions or proposals for decision on those hearings.

(b) The administrative law judge has the authority to administer oaths; call and examine witnesses; issue subpoenas; make rulings on motions, the admissibility of evidence, and amendments to pleadings; maintain

decorum; schedule and recess the hearing from day to day; establish reasonable timelines; and make any other orders as justice requires.

(c) If the administrative law judge is unable to continue presiding over a hearing at any time before the final decision, another administrative law judge will be appointed who shall perform any remaining function without the necessity of repeating any previous proceedings.

Source: The provisions of this §157.1043 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1044. Classification of Parties.

(a) Parties are designated as follows.

(1) Petitioner--the party who initiates the hearing before the commissioner by filing a petition for review in compliance with §157.1051 of this title (relating to Petition for Review).

(2) Respondent--any party against whom a petition for review has been filed with the commissioner.

(3) Intervenor--a person who, upon showing a justiciable interest, is permitted to become a party to a hearing.

(b) Regardless of errors concerning designations in the pleadings, parties shall be accorded their true status in the hearing.

Source: The provisions of this §157.1044 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1045. Appearances.

Any party may appear on his or her own behalf; if a minor, by his or her next friend, or by a representative of the party's choice. Corporations must be represented by a duly authorized attorney licensed to practice in the state of Texas. Party representatives are held to the same procedural and substantive standards as attorneys. Attorneys and party representatives who wish to take a vacation and prevent the scheduling of hearings during a specific time period must notify the administrative law judge in writing at least two weeks before the vacation begins.

Source: The provisions of this §157.1045 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1046. Conduct and Decorum.

(a) Standards of conduct during the hearings process.

(1) The administrative law judge and the party representative should refer to the Texas Disciplinary Rules of Professional Conduct for guidance, regardless of whether all participants are licensed attorneys (Texas State Bar Rules, Article 10, §9).

(2) A party representative shall maintain high standards of professionalism during the administrative process and promote an atmosphere of civility and fairness.

(3) A party representative shall use these rules for legitimate purposes and not for dilatory purposes or to harass or intimidate other participants.

(b) Exclusion or disqualification of party representatives.

(1) Contemptuous conduct. An administrative law judge may exclude or disqualify a party representative from participating in the agency hearings process for contemptuous conduct. The administrative law judge shall warn the party representative prior to disqualification or exclusion, if possible. Contemptuous conduct includes:

(A) actual or threatened physical assault of any participant to the hearing;

(B) knowingly or recklessly making a false statement of material fact or law to the administrative law judge;

(C) counseling or assisting a witness to testify falsely;

(D) knowingly offering or using false evidence;

(E) filing a frivolous or knowingly false pleading or other document, or filing a frivolous or knowingly false defense. A frivolous filing is one:

(i) for which the party representative is unable to make a good faith argument consistent with existing law, or a good faith argument for an extension, modification, or reversal of existing law; or

(ii) primarily for the purpose of harassing or maliciously injuring another person;

(F) paying, offering to pay, or acquiescing in a payment or offer of payment to a witness based on the content of the witness' testimony or the outcome of the hearing;

(G) continually violating an established rule of agency procedure or of evidence;

(H) raising superfluous objections or otherwise unreasonably delaying the hearing or increasing the costs or other burdens of the hearing;

(I) misrepresenting, mischaracterizing, or misquoting facts or law to gain unfair advantage;

(J) except as otherwise permitted by law, communicating or causing someone else to communicate with the administrative law judge without the knowledge and consent of opposing party representatives in order to gain unfair advantage or to influence the hearing;

(K) using offensive or abusive language during the hearing;

(L) making inappropriate derogatory remarks about the commissioner, an administrative law judge, a party, a witness, or opposing counsel at a hearing or in documents filed with the agency; and

(M) engaging in disruptive conduct.

(2) Conflicts of interest. An administrative law judge may disqualify a party representative from participating in a hearing if the administrative law judge decides that the party representative has a conflict of interest. Conflicts of interest can be, but are not limited to, the following:

(A) when a party representative who previously acted as a public officer or employee on a matter later attempts to represent a private client on the same matter, unless the appropriate government agency consents;

(B) when a party representative who serves as a public officer or employee on a matter negotiates for private employment with a party or party representative involved in the same matter;

(C) when a party representative who serves as a public officer or employee participates in a matter involving a former private client whom he or she represented on the same matter, unless no one may legally act in the attorney's stead;

(D) when an attorney engages in the practice of law while under suspension or in violation of a disciplinary order or judgment; and

(E) any other conflict of interest that, in the opinion of the administrative law judge, offends the dignity and decorum of the hearing.

(3) Procedures for excluding or disqualifying a party representative.

(A) Notice. The administrative law judge shall state the specific reason for excluding or disqualifying a party representative on the record or in a written order. The administrative

law judge shall notify the affected party and party representative of the exclusion or disqualification personally or by certified mail.

(B) Reasonable time for substitution. After the administrative law judge has excluded or disqualified a party representative, the affected party or party representative shall have a reasonable time to substitute a new representative. In determining a reasonable time, the administrative law judge shall consider the right of opposing parties to have the hearing resolved without undue delay. The administrative law judge may therefore align the affected party with another party in interest instead of permitting a substitution.

(C) No further participation. After being disqualified from a hearing, a party representative may not provide further assistance, either directly or indirectly, to any party with regard to the hearing, except to the extent reasonably necessary to appeal to the commissioner and to complete the withdrawal and substitution of a new party representative.

(D) No recusal. The exclusion or disqualification of a party representative by an administrative law judge is not a ground for recusal of the administrative law judge in the same or any subsequent hearing.

Source: The provisions of this §157.1046 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1047. Classification of Pleadings.

Pleadings filed with the commissioner shall include, but not be limited to, petitions for review, answers, pleas to the jurisdiction, motions, replies to motions, exceptions to the proposal for decision, and replies to the exceptions to the proposal for decision. Regardless of any error in its designation, the filing shall be accorded its true status in the hearing in which it is filed.

Source: The provisions of this §157.1047 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1048. Form and Content of Documents.

All pleadings, briefs, and exhibits filed with the commissioner shall be signed by the party representative and legibly handwritten, typewritten, or printed on paper 8 l/2 inches wide by 11 inches long. If the document is typewritten or printed, the filing must be double-spaced and printed in at least 12-point font.

Source: The provisions of this §157.1048 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1049. Filing of Documents with the Commissioner of Education.

(a) Except where otherwise provided by law, the petitioner shall file with the commissioner or the agency's division responsible for hearings and appeals a petition for review within 45 calendar days after the decision, order, or ruling complained of is first communicated to the petitioner. In all cases, when a decision is announced in the presence of the petitioner or the petitioner's representative of record at a hearing, the announced decision shall constitute communication to the petitioner.

(b) Filing of documents is governed by Texas Rules of Civil Procedure 21 and 21a.

(c) Except as otherwise provided, any document other than a petition for review will be filed with the agency's division responsible for hearings and appeals. All mailings and deliveries shall be addressed to: Texas Education Agency, 1701 North Congress Avenue, Suite 2-150, Austin, Texas 78701-1494. All facsimile filings shall be sent to the following facsimile number: (512) 475-3662.

(d) All documents filed after 11:59 p.m. Central Time shall be deemed filed on the following business day.

(e) Failure to comply with subsection (a) of this section relating to the time for filing a petition for review will result in the dismissal of the case.

Source: The provisions of this §157.1049 adopted to be effective July 20, 2004, 29 TexReg 6889.

§157.1050. Service of Documents on Other Parties.

Unless otherwise provided by law, every pleading, plea, or motion filed with the agency's division responsible for hearings and appeals shall be served on all parties or party representatives by the same method as the document was filed with the agency, except that service by facsimile may be substituted for personal service.

Source: The provisions of this §157.1050 adopted to be effective July 20, 2004, 29 TexReg 6889.

§157.1051. Petition for Review.

(a) A petition for review shall contain the following in numbered paragraphs:

(1) a description of the challenged ruling, action, or failure to act complained of;

(2) the date of the challenged ruling, action, or failure to act;

(3) a precise description of the action the petitioner wants the commissioner to take on the petitioner's behalf;

(4) a statement of jurisdiction and the legal basis for the claim;

(5) if the hearing is de novo, a statement of the facts of which the petitioner is aware or which the petitioner believes to be true and which would lead to a reasonable conclusion that the petitioner is entitled to the relief sought;

(6) the name, mailing address, telephone number of the petitioner's party representative during business hours, and facsimile number, if any; and

(7) the name, mailing address, and business telephone of the respondent or the respondent's representative, and facsimile number, if any.

(b) Nothing in this section requires the petitioner to plead all evidence relied upon. However, all issues relied upon by the petitioner must be raised in the petition for review, and the commissioner will not consider any issues not raised in the petition for review.

Source: The provisions of this §157.1051 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1052. Answers.

(a) Except where otherwise provided by law, the respondent shall file an answer within 30 calendar days after receiving notice from the commissioner that a hearing has been docketed.

(b) The answer shall specifically admit or deny each allegation in the petition for review, or shall assert that respondent is without sufficient knowledge and information to admit or deny the allegation and shall set forth all affirmative defenses.

(c) The answer shall contain the name of the respondent or the respondent's party representative, the mailing address, telephone number during business hours, and facsimile number, if any.

(d) In de novo hearings, all well-pled factual allegations will be deemed admitted unless the respondent's answer, containing specific responses to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition for review.

Source: The provisions of this §157.1052 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1053. Prehearing Conference.

(a) In any hearing, the administrative law judge or a party may move for the setting of a prehearing conference. At the administrative law judge's discretion, the parties shall be directed to appear, either in person or by

telephone, at a specific time for a conference prior to a hearing on the merits for the purposes of considering any of the following:

(1) the formulation or simplification of issues;

(2) admission of certain assertions of fact or stipulations;

(3) the procedure at the hearing on the merits, if the hearing is de novo;

(4) any limitation, where possible, of the number of witnesses, if the hearing is de novo; and/or

(5) such other matters as may aid in the simplification of the hearing or the disposition of matters in controversy, including the settlement of matters in dispute.

(b) Action taken at the conference shall be recorded in the manner directed by the administrative law judge.

(c) A written request to reschedule a telephonic conference must contain a statement that all parties have been consulted or the reason why all parties were not consulted and list any objection and shall set forth three alternate dates and times for rescheduling the conference.

Source: The provisions of this §157.1053 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1054. Discovery.

(a) Permissible forms of discovery in a de novo hearing are:

(1) oral or written deposition governed by Texas Government Code, §§2001.094-2001.103;

(2) written interrogatories to a party governed by Texas Rule of Civil Procedure 197;

(3) requests of a party for admission of facts and the genuineness or identity of documents or things governed by Texas Rule of Civil Procedure 198;

(4) requests and motions for production, examination, and copying of documents or other tangible materials governed by Texas Government Code, §2001.091;

(5) requests and motions for entry upon and examination of real property governed by Texas Government Code, §2001.091;

(6) discovery from parties regarding the identity of witnesses or potential parties and expert reports governed by Texas Government Code, §2001.092, and discovery from parties regarding copies of previous statements governed by Texas Government Code, §2001.093; and

(7) requests for disclosure governed by Texas Rule of Civil Procedure 194.

(b) Commissions to take depositions and subpoenas to secure the attendance of a witness at hearing may only be issued by an administrative law judge. To obtain a commission or a subpoena, a party must file a motion which specifically articulates grounds constituting good cause for the issuance of the subpoena and must pay all applicable fees.

(c) Any motion to compel discovery shall contain a certificate by the party filing the motion that efforts to resolve the discovery dispute without the necessity of agency intervention have been attempted and failed.

(d) Requirements concerning discovery sanctions include the following.

(1) Motions for sanctions or order compelling discovery. Upon reasonable notice to all party representatives and affected persons, a party may apply to the administrative law judge for an order compelling discovery. A party may not request sanctions under paragraph (3) of this subsection without having first obtained an order compelling discovery.

(2) Enforcement in district court. If a person fails to comply with a subpoena or a commission for deposition issued by an administrative law judge, the agency or party requesting the subpoena or commission for deposition may seek its enforcement in district court in any manner provided by law.

(3) Failure to comply with order or with discovery request. If a party; or an officer, director, or managing agency of a party; or a person designated to testify on behalf of a party fails to comply with proper discovery requests or to obey an order compelling discovery, an administrative law judge may, after opportunity for hearing, issue orders in response to the failure, including any of the following orders:

(A) preventing the disobedient party from further discovery of any kind, or of a particular kind;

(B) deeming any facts pertaining to the order, or any other facts, to be established, as claimed by the moving party;

(C) disallowing the disobedient party from supporting or opposing designated claims or defenses, or prohibiting the party from introducing designated matters in evidence; and

(D) striking out pleadings or parts of pleadings, staying further action until the order is obeyed; dismissing the hearing with or without prejudice; or rendering a judgment against the disobedient party.

(4) Abuse of discovery process. The administrative law judge may impose any of the sanctions listed in paragraph (3) of this subsection on a party who abuses the discovery process in seeking or resisting discovery or who files a request, response, or answer that is frivolous, oppressive, or made for the purpose of delay.

(5) Failure to respond to or supplement discovery. A party who fails to respond to or supplement a discovery request or refuses to supplement a response to a discovery request may not present evidence that the party was under a duty to provide in a response or supplemental response, and may not offer the testimony of an expert witness or of any other person having knowledge of the discoverable matter, unless the administrative law judge finds good cause to permit the evidence despite the noncompliance. The burden of establishing good cause is upon the party offering the evidence, and good cause must be shown in the record.

(6) Impermissible communications. Unless permitted by law, party representatives shall not communicate with the administrative law judge or the commissioner without the knowledge of all other parties. The administrative law judge or commissioner may impose any of the preceding sanctions for impermissible communication.

(7) Record of basis for sanction. The administrative law judge shall state the specific basis for any sanction in the record or in a written order.

Source: The provisions of this §157.1054 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1055. Motions.

(a) A motion for continuance of any hearing shall specifically articulate grounds constituting good cause or shall be by agreement and shall be filed in writing.

(b) All motions requiring a ruling must be in writing and must contain a certificate of conference asserting that the movant has conferred with the opposing party representative and has or has not obtained agreement with the motion. If no conference was conducted, the movant shall state the reasons, amounting to good cause, why the conference was not held. All motions requiring a certificate of conference will be denied without the requirement of a response if the moving party fails to confer with the opposing party as required. Any motion for which a conference was not held, when the movant has alleged good cause for not holding a conference, must be responded to within seven days, unless the administrative law judge specifies a shorter time to respond.

Source: The provisions of this §157.1055 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889; amended to be effective May 28, 2012, 37 TexReg 3830.

§157.1056. Dismissal Without a Hearing; Nonsuits.

(a) The commissioner or his or her designee may, on his or her own motion or the motion of a party, inform the parties of the commissioner's intent to dismiss a hearing and allow time for response. The commissioner may then dismiss a hearing without further action for the following reasons: compromise, unnecessary duplication of proceedings, res judicata, withdrawal, mootness, untimely filing, lack of jurisdiction, failure of a petitioner to set forth facts in the pleadings that would support a decision in the petitioner's favor, failure to state a claim for which relief can be granted, failure to exhaust administrative remedies, or failure to prosecute.

(b) The petitioner may nonsuit the hearing at any time.

Source: The provisions of this §157.1056 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1057. Order of Procedure at De Novo Hearing.

(a) The petitioner may state briefly the nature of the claim or defense, what the petitioner expects to prove, and the relief sought. Immediately after, the respondent may make a similar statement, and the intervenors and other parties will be afforded similar rights as determined by the administrative law judge.

(b) Evidence shall then be introduced by the petitioner. The respondent and intervenors shall have the opportunity to cross-examine each of the petitioner's witnesses.

(c) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross examination.

(d) Unless the statement has already been made, the respondent may briefly state the nature of the claim or defense, what the respondent expects to prove, and the relief sought.

(e) Evidence, if any, shall be introduced by the respondent. The petitioner and intervenors shall have the opportunity to cross-examine each of the respondent's witnesses.

(f) The intervenor and other parties may make their statement, unless they have already done so, and shall introduce their evidence, if any. The petitioner and respondent shall have the opportunity to cross-examine the intervenor's witnesses.

(g) The petitioner may present rebuttal evidence.

(h) The parties may be allowed closing arguments at the discretion of the administrative law judge.

(i) The administrative law judge may permit deviations from this order of procedure in the interests of justice.

(j) Parties shall provide four copies of each exhibit offered.

(k) At the de novo hearing before the commissioner, any part or all of a certified transcript of sworn testimony and exhibits taken in a hearing before the board of trustees from which the petitioner appeals may be used by any party for any purpose against any party who was present or represented at the hearing before the board of trustees or who had reasonable notice of the meeting. The Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness were then present and testifying. Unavailability of a witness is not a requirement for admissibility. Testimony of a witness in the hearing before the commissioner shall not be precluded solely because the testimony is contained in the record of the hearing before the board of trustees.

(l) In any hearing where a party is represented by more than one attorney, a lead attorney must be designated prior to the commencement of the hearing.

Source: The provisions of this §157.1057 adopted to be effective April 7, 1993, 18 TexReg 1930; amended to be effective July 20, 2004, 29 TexReg 6889.

§157.1058. Briefing.

(a) If briefing is required in a hearing that is reviewed by the commissioner under the substantial evidence standard, the petitioner's brief shall contain the following:

(1) Statement of the case. The brief must state concisely the nature of the case, the course of proceedings, and the school district's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.

(2) Issues presented. The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. However, an issue that is not so identified is waived.

(3) Statement of facts. The brief must state concisely and without argument the facts pertinent to the issues or points presented. The commissioner will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.

(4) Argument. The brief must contain clear and concise argument for the contentions made with appropriate citations to authorities and to the record.

(5) Prayer. The brief must contain a short conclusion that clearly states the nature of the relief sought.

(b) If briefing is required in a case that is reviewed by the commissioner under the substantial evidence standard, the respondent's brief shall conform to the requirements of the petitioner's brief, except that the respondent's brief need not include a statement of the case, statement of the issues presented, or a statement of the facts, unless the respondent is dissatisfied with that portion of the petitioner's brief.

(c) Because briefs are meant to acquaint the commissioner with the issues in the case and to present argument that will enable the commissioner to decide the case, substantial compliance with this rule is sufficient, subject to the following.

(1) Formal defects. If the administrative law judge determines that this rule has been flagrantly violated, the administrative law judge may require a brief to be amended, supplemented, or redrawn as statutory timelines may allow. If another brief that does not comply with this rule is filed, the administrative law judge may strike the brief, prohibit the party from filing another, and proceed as if the party had failed to file a brief.

(2) Substantive defects. If the administrative law judge determines either before or after submission, that the case has not been properly presented in the briefs, or that the law and authorities have not been properly cited in the briefs, the administrative law judge may, if statutory timelines allow, postpone submission, require additional briefing, and make any order necessary for a satisfactory submission of the case.

Source: The provisions of this §157.1058 adopted to be effective July 20, 2004, 29 TexReg 6889.

§157.1059. Filing of Exceptions and Replies to Proposal for Decision.

(a) A copy of the proposal for decision in a hearing shall be simultaneously delivered or mailed by certified mail, return receipt requested, to each party representative of record.

(b) Exceptions to the proposal for decision shall be filed within 30 calendar days of the date of the proposal for decision.

(c) Replies to exceptions shall be filed within 50 calendar days of the date of the proposal for decision.

(d) All disagreements with the factual findings and legal conclusions of the proposal for decision must be made in the parties' exceptions to the proposal for decision or be waived.

(e) The exceptions shall be specifically and concisely stated. The evidence relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(f) The timelines may be modified by the administrative law judge.

Source: The provisions of this §157.1059 adopted to be effective July 20, 2004, 29 TexReg 6889.

§157.1060. Orders.

After the time for filing exceptions and replies to exceptions expires, the administrative law judge's proposal for decision will be considered by the commissioner and either adopted or modified. All final decisions or orders of the commissioner shall be in writing and signed. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Party representatives shall be simultaneously notified either personally, by certified mail, or by facsimile transmission of each decision or order.

Source: The provisions of this §157.1060 adopted to be effective July 20, 2004, 29 TexReg 6889.

§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 days after the date the decision or order that is the subject of the motion is signed.

(b) 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.

(c) 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 is overruled by operation of law 55 days after the date the decision or order that is the subject of the motion is signed.

(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 days after the date the decision or order that is the subject of the motion is signed.

(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 days after the date the decision or order that is the subject of the motion is signed.

Statutory Authority: The provisions of this §157.1061 issued under Texas Government Code, §2001.004 and §2001.146.

Source: The provisions of this §157.1061 adopted to be effective July 20, 2004, 29 TexReg 6889; amended to be effective May 18, 2021, 46 TexReg 3125.