

Chapter 157. Hearings and Appeals

Subchapter CC. Hearings of Appeals Arising Under Federal Law and Regulations

Statutory Authority: The provisions of this Subchapter CC issued under 34 Code of Federal Regulations (CFR), §76.401 and §80.43(a), unless otherwise noted.

§157.1081. Applicant's Opportunity for a Hearing Prior to Denial of an Application.

- (a) Before the Texas Education Agency (TEA) disapproves an application filed under any of the following programs, the commissioner of education shall provide the applicant with notice and an opportunity for a hearing:
- (1) Chapter 1, program in local educational agencies, as authorized under the Elementary and Secondary Education Act of 1965, Title I, Chapter 1, as amended (20 United States Code (USC), §§2701-2731, 2821-2838, 2851-2854, and 2891-2901; and 34 Code of Federal Regulations (CFR), Part 200);
 - (2) Chapter 1, program for neglected or delinquent children, as authorized under the Elementary and Secondary Education Act of 1965, Title I, Chapter 1, as amended (20 USC, §§2801-2804; and 34 CFR, Part 203);
 - (3) state grants for strengthening instruction in mathematics and science, as authorized under the Elementary and Secondary Education Act of 1965, Title II, Part A, as amended (20 USC, §§2981-2993; and 34 CFR, Part 208);
 - (4) federal, state, and local partnership for educational improvement, as authorized under the Elementary and Secondary Education Act of 1965, Title I, Chapter 2, as amended (20 USC, §§2911-2952 and 2971-2976; and 34 CFR, Part 298);
 - (5) assistance to states for education of children with disabilities, as authorized under the Individuals with Disabilities Education Act, Part B (except Section 619) (20 USC, §§1411-1420; and 34 CFR, Part 300);
 - (6) preschool grants, as authorized under the Individuals with Disabilities Education Act, §619 (20 USC, §1419; and 34 CFR, Part 301);
 - (7) Chapter 1, state operated or supported programs for children with disabilities, as authorized under the Elementary and Secondary Education Act of 1965, Title I, Chapter 1, as amended (20 USC, §§2791-2795; and 34 CFR, Part 302);
 - (8) transition program for refugee children, as authorized under the Immigration and Naturalization Act, §412(d) (8 USC, §1522(d); and 34 CFR, Part 538);
 - (9) emergency immigrant education program, as authorized under the Emergency Immigrant Education Act (20 USC, §§3121-3130; and 34 CFR, Part 581); or
 - (10) financial assistance for construction, reconstruction, or renovation of higher education facilities, as authorized under the Higher Education Act of 1965, §711 (20 USC, §1132b; and 34 CFR, Part 617).
- (b) If the applicant applied under a program not listed in subsection (a) of this section, the commissioner of education shall provide an opportunity for a hearing either before or after TEA disapproves the application.
- (c) An applicant for a subgrant may request a hearing under §157.1083 of this title (relating to Procedures for Hearing for Denial of an Application or an Enforcement Action) if the applicant alleges that any of the following TEA actions violates a state or federal statute or regulation:
- (1) disapproval of, or failure to approve, the application or project in whole or in part; or
 - (2) failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

Source: The provisions of this §157.1081 adopted to be effective May 8, 1996, 21 TexReg 3708, amended to be effective May 28, 2012, 37 TexReg 3830.

§157.1082. Grantee's or Subgrantee's Opportunity for a Hearing in an Enforcement Action.

- (a) The Texas Education Agency (TEA) may take one or more of the following actions specified in 34 Code of Federal Regulations, §80.43(a), as appropriate in the circumstances, if a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation as an assurance, in a state plan or application, in a notice of award, or elsewhere:
- (1) temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;
 - (2) disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
 - (3) wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;
 - (4) withhold further awards for the program; or
 - (5) take other remedies that may be legally available.
- (b) In taking enforcement action, TEA shall provide the grantee or subgrantee an opportunity for any hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

Source: The provisions of this §157.1082 adopted to be effective May 8, 1996, 21 TexReg 3708; amended to be effective May 28, 2012, 37 TexReg 3830.

§157.1083. Procedures for Hearing for Denial of an Application or an Enforcement Action.

- (a) Requirements for request for hearing.
- (1) The applicant, grantee, or subgrantee shall file a request for a hearing within 30 days after the date of the action taken by the Texas Education Agency (TEA).
 - (2) The request for hearing shall follow the filing requirements set forth in TEA's notice of action.
 - (3) The applicant, grantee, or subgrantee shall specify the action or proposed action that is the subject of the requested hearing, the statutory or regulatory authority identifying and supporting a finding that a violation occurred, and specific facts supporting a finding that the action taken by TEA is in error.
- (b) Hearings process.
- (1) The commissioner of education or a designee of the commissioner shall hold a hearing on the record and review the action taken by TEA within 30 days after a request for hearing is received by the director of hearings or the designated docket clerk for the TEA Division of Hearings.
 - (2) The TEA shall make available at reasonable times and places to each applicant, grantee, or subgrantee all TEA records pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.
 - (3) No later than ten days after the hearing, the commissioner of education or the commissioner's designee shall issue a written ruling, including findings of fact and reasons for the ruling.
 - (4) If the commissioner of education or the commissioner's designee determines that the action taken by TEA is contrary to state or federal statutes or regulations that govern the applicable program, TEA shall be ordered to rescind the action.

Source: The provisions of this §157.1083 adopted to be effective May 8, 1996, 21 TexReg 3708; amended to be effective May 28, 2012, 37 TexReg 3830.

§157.1084. Appeal from the Decision of the Commissioner of Education.

If the commissioner of education or the commissioner's designee does not rescind the final action after the review under §157.1083(b) of this title (relating to Procedures for Hearing for Denial of an Application or an Enforcement Action), the applicant may appeal to the secretary of education under 34 CFR, §76.401(d)(5) and (6).

Source: The provisions of this §157.1084 adopted to be effective May 8, 1996, 21 TexReg 3708; amended to be effective May 28, 2012, 37 TexReg 3830.