

## Chapter 157. Hearings and Appeals

### Subchapter EE. Informal Review, Hearing Following Investigation, and Review by State Office of Administrative Hearings

#### Division 1. Informal Review

*Statutory Authority: The provisions of this Division 1 issued under the Texas Education Code, §§12.104, 12.1141, 12.115, 12.116, 12.1162, 39.003-39.007, 39.102, 39.103, 39.104, 39.152, and 42.258, unless otherwise noted.*

##### §157.1121. Applicability.

This division applies to:

- (1) a final investigation report issued under the Texas Education Code (TEC), §39.003, except when the final investigation report includes a recommendation for a board of managers, alternative management of a campus, or the closure of a district or district campus;
- (2) an over-allocation to an open-enrollment charter school described under §100.1041(e) of this title (relating to State Funding);
- (3) a determination to deny a petition for renewal and allow a charter of an open-enrollment charter school to expire pursuant to the TEC, §12.1141(d);
- (4) a decision subject to review by the State Office of Administrative Hearings under Division 3 of this subchapter (relating to State Office of Administrative Hearings Substantial Evidence Review) or Division 4 of this subchapter (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review);
- (5) the assignment of an accreditation status; and
- (6) any other investigation made subject to this division at the sole discretion of Texas Education Agency staff.

*Source: The provisions of this §157.1121 adopted to be effective September 18, 2014, 39 TexReg 7334; amended to be effective April 6, 2022, 47 TexReg 1691.*

##### §157.1122. Notice of Informal Review.

A final report, an assignment, a determination, or a decision subject to this division must be presented in writing to the school district or open-enrollment charter school that the Texas Education Agency (TEA) finds has violated a law, rule, or policy and must:

- (1) describe the factual and legal basis for each violation;
- (2) identify the action proposed to be taken as a result of the final report, assignment, determination, or decision;
- (3) describe the procedures for obtaining an informal review of the final report, assignment, determination, or decision;
- (4) identify the TEA representative to whom the request for an informal review may be addressed; and
- (5) set a deadline for requesting and submitting items and information to be considered during an informal review.

*Source: The provisions of this §157.1122 adopted to be effective September 18, 2014, 39 TexReg 7334; amended to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1123. Informal Review.**

- (a) A school district, an open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or decision identified in §157.1121 of this title (relating to Applicability) may request, in writing, an informal review under this section.
- (b) A written request for informal review must be addressed to the designated Texas Education Agency (TEA) representative. The written request must be received by the TEA representative on or before the deadline identified in the notice issued under §157.1122 of this title (relating to Notice of Informal Review).
- (c) A school district, an open-enrollment charter school, or any person requesting the informal review may submit written information to the TEA representative by the deadline set forth in the notice issued under §157.1122 of this title. In addition, the TEA representative may require attendance at a meeting at the TEA headquarters in Austin, Texas, or by telephone or virtual meeting platform, to discuss the findings and/or provide additional information for review. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the Texas Education Code (TEC), §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the TEA representative shall, at the request of the open-enrollment charter school, meet with representatives from the open-enrollment charter school at the TEA headquarters in Austin, Texas, or by telephone or virtual meeting platform. This meeting is part of the informal review but is not a contested case hearing. The meeting will not include the examination of any witnesses, including TEA staff. The rules of civil procedure and evidence, including rules prohibiting ex parte communications, do not apply.
- (d) If no informal review is requested by the deadline, an assignment, a determination, or a decision may be issued without informal review.
- (e) An informal review is not governed by the TEC, §7.057, or by the Texas Government Code, Chapter 2001.
- (f) Following the informal review by the TEA representative, an assignment, a determination, or a decision will be issued. The assignment, determination, or decision may include changes or additions to the preliminary report or action, and such modifications are not subject to another informal review procedure. An assignment, a determination, or a decision issued following an informal review is final and may not be appealed, except as provided by law or rule. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the TEC, §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the final decision shall include a written response to any information the charter holder submits under this section.

*Statutory Authority: The provisions of this §157.1123 issued under the Texas Education Code, §§7.055(b)(5), 12.1141, 12.115, and 12.116.*

*Source: The provisions of this §157.1123 adopted to be effective September 18, 2014, 39 TexReg 7334; amended to be effective June 9, 2016, 41 TexReg 4010.*

**Division 2. Hearing Following Investigation**

*Statutory Authority: The provisions of this Division 2 issued under the Texas Education Code, §§39.003-39.007, 39.102, and 39.104, unless otherwise noted.*

**§157.1131. Applicability.**

This division applies only to a commissioner of education decision resulting from a special investigation to:

- (1) appoint a board of managers;
- (2) appoint alternative management to a campus; or
- (3) close a school district or district campus.

*Source: The provisions of this §157.1131 adopted to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1133. Hearing Procedures.**

A hearing requested pursuant to §157.1131 of this title (relating to Applicability) shall be conducted in the following manner.

- (1) The hearing shall be conducted by the State Office of Administrative Hearings unless the school district or open-enrollment charter school and the Texas Education Agency (TEA) agree in writing to the appointment of another qualified person to conduct the hearing.
- (2) Except as otherwise provided by this subchapter, a hearing conducted under this section is a contested case under Texas Government Code, Chapter 2001.
- (3) A hearing conducted under this section shall be held at the administrative offices of the school district or open-enrollment charter school that requested the hearing or at another location within the geographic boundaries of the district or charter school agreed to by the district and TEA, unless the district or charter school and TEA agree in writing to a different location.
- (4) To protect the privacy of a witness who is a child, the hearing examiner or the person conducting the hearing may:
  - (A) close the hearing to receive the testimony of the witness; or
  - (B) order that the testimony or a statement of the witness be presented using the procedures prescribed by the Code of Criminal Procedure, Article 38.071.
- (5) Not later than 90 calendar days after the date on which the school district or open-enrollment charter school requests a hearing, the hearing examiner or the person conducting the hearing shall issue and submit to the commissioner of education findings of fact and conclusions of law. The hearing examiner or the person conducting the hearing may not issue a recommendation for relief.
- (6) A hearing conducted under this section may not be held on a Saturday, Sunday, or state or federal holiday, unless agreed to by the school district or open-enrollment charter school that requested the hearing and TEA.

*Source: The provisions of this §157.1133 adopted to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1134. Commissioner Determination.**

- (a) After a hearing is conducted under Texas Education Code (TEC), §39.005, the commissioner of education shall provide an opportunity for the Texas Education Agency (TEA) and the school district or open-enrollment charter school to present oral argument to the commissioner regarding the disagreement that formed the basis of the hearing. The commissioner shall provide TEA and the school district or open-enrollment charter school with equal time for oral argument.
- (b) After hearing any oral argument presented under subsection (a) of this section, the commissioner shall issue a written decision to the school district or open-enrollment charter school that contains:
  - (1) findings of fact;
  - (2) conclusions of law; and
  - (3) sanctions, interventions, or other actions authorized by law.
- (c) In determining the written decision under subsection (b) of this section, the commissioner shall consider:
  - (1) the record of the hearing conducted under TEC, §39.005;
  - (2) the findings of fact and conclusions of law issued by the hearing examiner or the person conducting the hearing under TEC, §39.005(h); and
  - (3) the oral arguments presented under subsection (a) of this section.
- (d) The commissioner may accept, reject, or amend the conclusions of law issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, regarding the interpretation of a provision of the TEC.

- (e) The commissioner may not reject or amend a finding of fact issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, unless the commissioner, after reviewing the record, determines that a finding of fact is not supported by substantial, admissible evidence.
- (f) The commissioner shall provide in writing the legal basis and reason for any amendment or rejection of a finding of fact or conclusion of law made by the hearing examiner or the person who conducted the hearing under TEC, §39.005.

*Source: The provisions of this §157.1134 adopted to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1135. Judicial Review.**

- (a) Notwithstanding Texas Government Code, Chapter 2001, a school district or open-enrollment charter school may only appeal a decision made by the commissioner of education under Texas Education Code (TEC), §39.006, and this section in accordance with TEC, §39.007, and this section.
- (b) A school district or open-enrollment charter school may appeal a decision made by the commissioner under TEC, §39.006, and this section to:
  - (1) a district court with jurisdiction in the county in which the school district's or open-enrollment charter school's central administrative offices are located; or
  - (2) a district court in Travis County, if agreed to by the school district or open-enrollment charter school and the commissioner.
- (c) A school district or open-enrollment charter school must file an appeal under this section not later than 30 calendar days after the date on which the district or charter school received the commissioner's written decision under TEC, §39.006(b), and §157.1134(b) of this title (relating to Commissioner Determination).
- (d) The filing of an appeal under this section does not affect or stay the enforcement of the commissioner's written decision issued under TEC, §39.006(b), and §157.1134 of this title.
- (e) A court hearing an appeal under this section shall review the decision issued by the commissioner under TEC, §39.006(b), and §157.1134(b) of this title under the substantial evidence rule as provided by Texas Government Code, Chapter 2001, Subchapter G, after examining:
  - (1) the evidentiary record of the hearing conducted under TEC, §39.005, and §157.1133 of this title (relating to Hearing Procedures);
  - (2) the findings of fact issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, and §157.1133 of this title; and
  - (3) any amendment or rejection of a finding of fact made by the commissioner under TEC, §39.006, and §157.1134 of this title.
- (f) A court hearing an appeal under this section may not take additional evidence.
- (g) A court hearing an appeal under this section may review any amendment to or rejection of a finding of fact made by the commissioner. If the court determines that the amendment or rejection was not supported by substantial evidence, the court shall reject the commissioner's amended finding of fact and consider instead the original finding issued by the hearing examiner or the person who conducted the hearing under TEC, §39.005, and §157.1133 of this title.
- (h) Notwithstanding Texas Government Code, §2001.174, the court may not reverse or remand a decision issued by the commissioner under TEC, §39.006(b), and §157.1134(b) of this title based on a procedural error or irregularity made by the commissioner, an agency investigator, or the hearing examiner or the person who conducted the hearing under TEC, §39.005, and §157.1133 of this title, unless the court determines that the procedural error or irregularity is likely to have caused an erroneous decision by the commissioner.

*Source: The provisions of this §157.1135 adopted to be effective April 6, 2022, 47 TexReg 1691.*

**Division 3. State Office of Administrative Hearings Substantial Evidence Review**

*Statutory Authority: The provisions of this Division 3 issued under the Texas Education Code, §§12.104, 39.003-39.007, 39.102, 39.103, 39.104, 39.107, and 39.152, unless otherwise noted.*

**§157.1151. Applicability.**

This division applies only to review of a commissioner of education decision to:

- (1) close a school district under the Texas Education Code (TEC), Chapter 39 or 39A;
- (2) close an open-enrollment charter school under TEC, Chapter 39 or 39A;
- (3) close a school district campus under TEC, Chapter 39 or 39A;
- (4) close an open-enrollment charter school campus under TEC, Chapter 39 or 39A;
- (5) order alternative management of a school district campus under TEC, Chapter 39 or 39A;
- (6) order alternative management of an open-enrollment charter school under TEC, Chapter 39 or 39A;
- (7) appoint a board of managers to a school district under TEC, Chapter 39 or 39A, unless the school district is owed a contested hearing under TEC, §39.005;
- (8) appoint a board of managers to an open-enrollment charter school under TEC, Chapter 39 or 39A, unless the charter school is owed a contested hearing under TEC, §39.005;
- (9) appoint a conservator or management team to a school district under TEC, Chapter 39 or 39A; and
- (10) appoint a conservator or management team to an open-enrollment charter school under TEC, Chapter 39 or 39A.

*Source: The provisions of this §157.1151 adopted to be effective September 18, 2014, 39 TexReg 7334; amended to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1153. Applicability of Other Law.**

- (a) A review under this division shall be governed by the procedures provided by this division and is not subject to the Texas Government Code, Chapter 2001, except as provided by the Texas Education Code, §39A.301.
- (b) A review conducted by the State Office of Administrative Hearings (SOAH) under this division is governed by Chapter 155 of Title 1 (relating to Rules of Procedure), except as modified herein.
- (c) To the extent that a provision of this division conflicts with a rule or practice of the SOAH, this division shall prevail.

*Source: The provisions of this §157.1153 adopted to be effective September 18, 2014, 39 TexReg 7334; amended to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1155. Petition for Review.**

- (a) A school district or an open-enrollment charter school subject to a decision defined by §157.1151 of this title (relating to Applicability) (petitioner) may file with the Texas Education Agency (TEA) a petition for review of the decision or determination under this division. The petition must be received by the TEA not later than the 15th calendar day after the notice is sent to the petitioner.
  - (1) The petition for review shall include a copy of the challenged decision and any attachments or exhibits to the decision.
  - (2) The petition for review shall concisely state, in numbered paragraphs:
    - (A) if alleging the decision was made in violation of a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the decision;

- (B) if alleging the decision was made in excess of the TEA's statutory authority, the TEA's statutory authority and the specific facts supporting a conclusion that the decision was made in excess of this authority;
  - (C) if alleging the decision was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the decision was made through unlawful procedure;
  - (D) if alleging the decision was affected by other error of law, the law violated and the specific facts supporting a conclusion that the decision violated that law;
  - (E) if alleging the decision was not reasonably supported by substantial evidence considering the reliable and probative evidence, each finding, inference, conclusion, or decision that was unsupported by substantial evidence;
  - (F) if alleging the decision was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected; and
  - (G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the school district or charter school that were prejudiced by such violation, error, or defect.
- (3) A petition for review shall further contain:
    - (A) a concise statement of the relief sought by the petitioner; and
    - (B) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.
  - (4) A request for relief in a review under this division may not be made orally or as part of the record at a prehearing conference or hearing.
  - (b) Failure to comply with the requirements of subsection (a) of this section shall result in dismissal of the petition for review and final action without further review and without referral to the State Office of Administrative Hearings (SOAH).
  - (c) The TEA shall transmit the petition for review to the SOAH with a request that it be docketed.
  - (d) The TEA shall file a notice of hearing, present evidence and arguments, and otherwise fully participate as a party in the contested case proceeding.

*Source: The provisions of this §157.1155 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective December 22, 2010, 35 TexReg 11238; amended to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1157. Standard of Review.**

- (a) In response to a challenge to a commissioner of education decision under the Texas Education Code (TEC), §39.152, the administrative law judge shall conduct a hearing to consider evidence and arguments regarding the decision. Based on the evidence and arguments presented, the administrative law judge shall review the commissioner's decision under the substantial evidence rule as provided by Government Code, §2001.174 and §2001.175, and judicial case precedents construing those provisions.
- (b) The State Office of Administrative Hearings (SOAH) may not substitute its judgment for the judgment of the commissioner on questions committed to the commissioner's discretion. Questions committed to the commissioner's discretion include, but are not limited to, the following:
  - (1) any questions arising under a statute, rule, or other legal standard that requires or permits the commissioner to make a decision within general legal guidelines that do not mandate a specific result under the circumstances; and
  - (2) the execution of any act authorized or required to be taken by the commissioner.

- (c) The SOAH may not substitute its judgment for the judgment of the commissioner on the weight to be assigned the evidence before the commissioner.
- (d) The SOAH may affirm the commissioner decision in whole or in part.
- (e) The SOAH shall reverse and remand the decision for further proceedings if substantial rights of the school district or open-enrollment charter school have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the commissioner are:
  - (1) in violation of a statutory provision;
  - (2) in excess of the commissioner's authority;
  - (3) made through unlawful procedure;
  - (4) affected by other error of law;
  - (5) not reasonably supported by substantial evidence considering the reliable and probative evidence as a whole; or
  - (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (f) An order of remand may not direct or control the commissioner's exercise of discretion on a matter committed to the commissioner's discretion by §157.1171(b) of this title (relating to Final Decision) and TEC, Chapter 39.
- (g) On remand, the commissioner shall apply the facts and law as determined by the SOAH to reach a new decision in light of all the circumstances of the case.
- (h) The commissioner shall continue on remand to exercise discretion over the accreditation decision as required by §157.1171(b) of this title and TEC, Chapter 39.

*Source: The provisions of this §157.1157 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1165. Enforcement of Decision Pending Review.**

The pendency of a review under this division does not stay or otherwise affect the enforcement of the commissioner of education decision challenged under this division.

*Source: The provisions of this §157.1165 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1167. Expedited Review.**

- (a) The State Office of Administrative Hearings (SOAH) shall expedite its review of a challenge under this division in order to meet the requirements of this section.
- (b) The administrative law judge shall issue a pre-hearing order initially setting a date for closure of the record that is not later than the 30th calendar day after the date the petition for review is transmitted to the SOAH.
- (c) The administrative law judge may grant a continuance of the date set in subsection (b) of this section only for good cause shown.
- (d) The administrative law judge may not order a settlement conference, mediation, or other form of alternative dispute resolution.
- (e) The administrative law judge shall issue a final order not later than the 30th calendar day after the date on which the record is finally closed.
- (f) Where the revocation of a charter is an issue, in all cases where the matter is docketed at the SOAH on or before March 15, the administrative law judge shall issue a final order not later than May 31 of the same year.

- (g) Where the revocation of a charter is an issue, in setting deadlines and issuing orders, the SOAH shall consider the following:
  - (1) the need for parents and students to evaluate, select, and enroll in another school district or open-enrollment charter school;
  - (2) the need for educators and staff to find other employment;
  - (3) the need for the school district or open-enrollment charter school to engage in an orderly termination of its operations; and
  - (4) the need for the Texas Education Agency to facilitate and complete an orderly termination of the operations of a school district or open-enrollment charter school.

*Source: The provisions of this §157.1167 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective December 22, 2010, 35 TexReg 11238; amended to be effective September 18, 2014, 39 TexReg 7334; amended to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1169. Conduct of Review During a Ratings Appeal.**

- (a) The administrative law judge shall proceed with an expedited review under this division during any ratings appeal under the Texas Education Code (TEC), §39.151, and shall presume for purposes of such review that the rating will not change by reason of the appeal, unless the commissioner of education:
  - (1) withdraws the rating; or
  - (2) requests that review of the final decision be abated pending the outcome of the ratings appeal.
- (b) If a rating is adjusted by the commissioner following an appeal under TEC, §39.151, the administrative law judge shall order that the adjusted rating be substituted for the original rating. The Texas Education Agency may change its findings and/or decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the administrative law judge.

*Source: The provisions of this §157.1169 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective December 22, 2010, 35 TexReg 11238; amended to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1171. Final Decision.**

- (a) The decision of the administrative law judge:
  - (1) may not order a sanction or relief that the commissioner of education is not authorized to order under applicable law;
  - (2) may not change an accreditation status; and
  - (3) may not change an academic or a financial accountability rating.
- (b) The decision of the administrative law judge is final and may not be appealed.

*Source: The provisions of this §157.1171 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective December 22, 2010, 35 TexReg 11238.*

**§157.1173. Application to Charter Schools.**

- (a) The charter of an open-enrollment charter school is automatically:
  - (1) revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner of education ordering the charter school closed under this division; and
  - (2) modified to remove authorization for an individual campus on the effective date of a final decision by the commissioner ordering the campus closed under this division.
- (b) If sanctions are imposed on an open-enrollment charter school under the procedures provided by this division, a charter school is not entitled to an additional hearing relating to the modification, placement on

probation, revocation, or denial of renewal of a charter as provided by Texas Education Code, Chapter 12, Subchapter D.

*Source: The provisions of this §157.1173 adopted to be effective January 6, 2008, 33 TexReg 172; amended to be effective September 18, 2014, 39 TexReg 7334.*

**Division 4. State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review**

*Statutory Authority: The provisions of this Division 4 issued under the Texas Education Code, §§12.1141, 12.115, 12.116, 12.1162, 39.003-39.007, unless otherwise noted.*

**§157.1181. Applicability.**

This division applies only to review of a commissioner of education decision to:

- (1) revoke the charter of an open-enrollment charter school under the Texas Education Code (TEC), Chapter 12;
- (2) reconstitute the governing body of the charter holder of an open-enrollment charter school under the TEC, Chapter 12;
- (3) deny a petition for a discretionary renewal of an open-enrollment charter school under the TEC, Chapter 12; and
- (4) deny a petition for an expedited renewal of an open-enrollment charter school under the TEC, Chapter 12.

*Source: The provisions of this §157.1181 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1182. Applicability of Other Law.**

- (a) A review under this division shall be governed by the contested case procedures provided by this division and is not subject to the Texas Government Code, Chapter 2001, except as provided by the Texas Education Code, §39A.301.
- (b) A review conducted by the State Office of Administrative Hearings (SOAH) under this division is governed by Chapter 155 of Title 1 (relating to Rules of Procedure), except as modified herein.
- (c) To the extent that a provision of this division conflicts with a rule or practice of the SOAH, this division shall prevail.

*Source: The provisions of this §157.1182 adopted to be effective September 18, 2014, 39 TexReg 7334; amended to be effective April 6, 2022, 47 TexReg 1691.*

**§157.1183. Petition for Review.**

- (a) An open-enrollment charter school subject to a decision defined by §157.1181 of this title (relating to Applicability) (petitioner) may file with the Texas Education Agency (TEA) a petition for review of the decision or determination under this division. The petition must be received by the TEA not later than the 15th calendar day after the notice is sent to the petitioner.
  - (1) The petition for review shall include a copy of the challenged decision and any attachments or exhibits to the decision.
  - (2) The petition for review shall concisely state, in numbered paragraphs:
    - (A) if alleging the decision was arbitrary or capricious, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected;
    - (B) if alleging the decision was clearly erroneous, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected; and

- (C) for each violation, error, or defect alleged under subparagraphs (A) and (B) of this paragraph, the substantial rights of the school district or charter school that were prejudiced by such violation, error, or defect.
- (3) A petition for review shall further contain:
  - (A) a concise statement of the relief sought by the petitioner; and
  - (B) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.
- (4) A request for relief in a review under this division may not be made orally or as part of the record at a prehearing conference or hearing.
- (b) Failure to comply with the requirements of subsection (a) of this section shall result in dismissal of the petition for review and final action without further review and without referral to the State Office of Administrative Hearings (SOAH).
- (c) The TEA shall transmit the petition for review to the SOAH with a request that it be docketed.
- (d) The TEA shall file a notice of hearing, present evidence and arguments, and otherwise fully participate as a party in the contested case proceeding.

*Source: The provisions of this §157.1183 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1184. Standard of Review.**

- (a) In response to a challenge to a commissioner of education decision under or subject to the Texas Education Code, §§12.1141, 12.115, or 12.116, the administrative law judge shall conduct a hearing to consider evidence and arguments regarding the decision. Based on the evidence and arguments presented, the administrative law judge shall review the commissioner's decision. The administrative law judge shall uphold a decision by the commissioner unless the judge finds the decision is arbitrary and capricious or clearly erroneous.
- (b) A decision of the administrative law judge is final and may not be appealed.

*Source: The provisions of this §157.1184 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1185. Enforcement of Decision Pending Review.**

The pendency of a review under this division does not stay or otherwise affect the enforcement of the commissioner of education decision challenged under this division.

*Source: The provisions of this §157.1185 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1186. Expedited Review.**

- (a) The State Office of Administrative Hearings (SOAH) shall expedite its review of a challenge under this division in order to meet the requirements of this section.
- (b) The administrative law judge shall issue a pre-hearing order as soon as practical after the petition for review is transmitted to the SOAH, setting all necessary deadlines.
- (c) The administrative law judge may grant a continuance of the date set in subsection (b) of this section only for good cause shown.
- (d) The administrative law judge may not order a settlement conference, mediation, or other form of alternative dispute resolution.
- (e) The administrative law judge shall issue a final order as soon as practical after the petition for review is transmitted to the SOAH.
- (f) In all cases where the matter is docketed at SOAH on or before March 15, the administrative law judge shall issue a final order not later than May 31 of the same year.

- (g) In setting deadlines and issuing orders, the SOAH shall consider the following:
  - (1) the need for parents and students to evaluate, select, and enroll in another school district or open-enrollment charter school;
  - (2) the need for educators and staff to find other employment;
  - (3) the need for the school district or open-enrollment charter school to engage in an orderly termination of its operations; and
  - (4) the need for the Texas Education Agency to facilitate and complete an orderly termination of the operations of a school district or open-enrollment charter school.

*Source: The provisions of this §157.1186 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1187. Conduct of Review During a Ratings Appeal.**

- (a) The administrative law judge shall proceed with an expedited review under this division during any ratings appeal under Texas Education Code (TEC), §39.151, and shall presume for purposes of such review that the rating will not change by reason of the appeal, unless the commissioner of education:
  - (1) withdraws the rating; or
  - (2) requests that review of the final decision be abated pending the outcome of the ratings appeal.
- (b) If a rating is adjusted by the commissioner following an appeal under TEC, §39.151, the administrative law judge shall order that the adjusted rating be substituted for the original rating. The Texas Education Agency may change its findings and/or decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the administrative law judge.

*Source: The provisions of this §157.1187 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1188. Final Decision.**

The decision of the administrative law judge is final and may not be appealed.

*Source: The provisions of this §157.1188 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**§157.1189. Application to Charter Schools.**

- (a) The charter of an open-enrollment charter school is automatically:
  - (1) revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner of education ordering the charter school closed under this division; and
  - (2) modified to remove authorization for an individual campus on the effective date of a final decision by the commissioner ordering the campus closed under this division.
- (b) If sanctions are imposed on an open-enrollment charter school under the procedures provided by this division, a charter school is not entitled to an additional hearing relating to the modification, placement on probation, revocation, or denial of renewal of a charter as provided by the Texas Education Code, Chapter 12, Subchapter D.

*Source: The provisions of this §157.1189 adopted to be effective September 18, 2014, 39 TexReg 7334.*

**Division 5. Conflicts**

*Statutory Authority: The provisions of this Division 5 issued under the Texas Education Code, §§12.104, 12.1141, 12.115, 12.116, 12.1162, 39.058, 39.102, 39.103, 39.104, 39.107, 39.152, and 42.258, unless otherwise noted.*

**§157.1191. Conflicts.**

This subchapter prevails in the event of a conflict between this subchapter and any other rule adopted by the commissioner of education.

*Source: The provisions of this §157.1191 adopted to be effective September 18, 2014, 39 TexReg 7334.*