APPLICABILITY

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;
2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or
3. Suspend without pay.

EXCEPTION

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;
2. Not renew a term contract, unless the Board has adopted this process for nonrenewals; or
3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the Board has decided to use this hearing process.

Education Code 21.251

REQUEST FOR HEARING

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the Commissioner for a hearing before a hearing examiner. The employee must provide the District with a copy of the request and must provide the Commissioner with a copy of the notice. The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. *Education Code 21.253*

ASSIGNMENT OF HEARING EXAMINER BY AGREEMENT

The parties may agree to select a hearing examiner from the list maintained by the Commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. 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.

BY APPOINTMENT

If the parties do not select a hearing examiner by agreement, the Commissioner shall assign the hearing examiner not earlier than the sixth business day and not later than the tenth business day after the date on which the Commissioner receives the request for

a hearing. When a hearing examiner has been assigned, the Commissioner shall notify the parties immediately.

REJECTION

The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an 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 for the rejection, the Commissioner shall assign another hearing examiner.

FINALITY OF DECISION

After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner's decision be final and nonappealable on all or some issues.

Education Code 21.254

POWERS OF HEARING EXAMINER

The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by Commissioner rule.

CONDUCT OF HEARING

The hearing and any depositions must be held within the geographical boundaries of the District or at the regional education service center that serves the District.

Education Code 21.255

SCHEDULE RESTRICTION

A hearing before a hearing examiner may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree. *Education Code 21.257(c)*

PRIVATE

A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.

EXCEPTION

If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.

PROTECTION OF WITNESSES

To protect the privacy of a witness who is a child, the hearing examiner may close the hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.

EMPLOYEE RIGHTS

At the hearing, the employee has the right to:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence on which the charges are based;
3. Cross-examine each adverse witness; and

4. Present evidence.

The hearing is not subject to the Administrative Procedure Act.

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

EVIDENCE

The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of the teacher is presumed to be admissible at the hearing. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

BURDEN OF PROOF

The District has the burden of proof by a preponderance of the evidence at the hearing.

Education Code 21.256

COSTS

The District shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

RECOMMENDATION

Not later than the 60th day after the date on which the Commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief may not include attorney's fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the Board President, and the Commissioner.

WAIVER OF DEADLINE

The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

Education Code 21.257

CONSIDERATION

The Board or a designated subcommittee shall consider the hearing examiner's record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the Board President receives the hearing examiner's recommendation and record.

ORAL ARGUMENT AND RECORDING

At the meeting, the Board or subcommittee shall allow each party to present an oral argument to the Board or subcommittee. The Board may, by written policy, limit the amount of time for oral argu-

ment, provided equal time is allotted each party. A certified shorthand reporter shall record any such oral argument.

LEGAL ADVICE

The Board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.

Education Code 21.258, .260

DECISION

Not later than the tenth day after the date on which the meeting to consider the hearing examiner's recommendation is held, the Board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a grant of relief.

The Board or subcommittee may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the Board or Board subcommittee.

The Board may reject or change a finding of fact made by the hearing examiner:

1. Only after reviewing the record of the proceedings; and
2. Only if the finding of fact is not supported by substantial evidence.

The Board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.

Education Code 21.257, .259

RECORDING

A certified shorthand reporter shall record the announcement of the decision. The District shall bear the cost of the reporter's services. *Education Code 21.260*

RECORD OF PROCEEDINGS

The Commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. *Education Code 21.301(c)*

The record of the proceedings before the independent hearing examiner shall include:

1. The transcripts of proceedings at the local level;
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;

5. A description of matters officially noticed;
6. If applicable, the recommendation of the independent hearing examiner;
7. The transcript of the oral argument before the Board or Board subcommittee;
8. The decision of the Board or Board subcommittee; and
9. If applicable, the Board or Board subcommittee's written reasons for changing the recommendation of the independent hearing examiner.

19 TAC 157.1072(e)