

TERMINATION OF CONTRACT: DFD  
HEARINGS BEFORE HEARING EXAMINER (LOCAL)

**APPLICABILITY** In accordance with **Education Code 21.251**, this policy applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a probationary or term contract before the end of the contract period; or
2. Suspend without pay;
3. Not renew a term contract.

It does not apply to a decision to terminate a probationary contract at the end of the contract term.

**EXCEPTION** The hearing process is not applicable to the following decisions:

1. Termination of a probationary contract at the end of the contract term;
2. Non-renewal of a term contract under Board policy DFBB; or
3. Termination of a probationary or term contract prior to the end of the contract period when the termination is based on a financial exigency as described in Board policy DFBC.

**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 and provide the School with a copy of the request. The employee must also provide the Commissioner with a copy of the notice.

The School and the employee may agree, in writing, to extend the deadline for requesting a hearing by not more than ten days.

**Education code 21.253**

**ASSIGNMENT OF HEARING EXAMINER BY AGREEMENT** The parties may agree to select a person from a list of certified hearing examiners maintained by the Commissioner or someone who is not certified to serve as a hearing examiner. If the parties agree on a hearing examiner the parties shall, prior to the date the Commissioner is permitted to assign a hearing examiner, the parties shall notify the Commissioner in writing of the agreement and the name of the hearing examiner.

**BY APPOINTMENT** If the parties have not timely selected a hearing examiner by agreement, the hearing shall take place before a hearing examiner appointed by the Commissioner in accordance with state law.

**REJECTION** The School and the employee together 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

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hearing examiner's assignment. If the School and the employee agree to reject the hearing officer or the Commissioner determines that good cause exists 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 will be final and nonappealable on all or some issues. The agreement shall be filed with the hearing officer. Failure to file such agreement however, shall not invalidate such agreement.

**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 School or at the regional education service center that serves the School.

**Education Code 21.255**

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.

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**BURDEN OF PROOF** The School has the burden of proof by a preponderance of the evidence at the hearing.

**Education Code 21.256**

**COSTS** The School 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 45th 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 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 waive 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 meeting 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 argument, 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, 21.260**

**DECISION** Not later than the 10th 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. 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.

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

RECORDING

A certified shorthand reporter shall record the announcement of the decision. The School shall bear the cost of the reporter's services.

**Education Code 21.260**

RECORD OF  
PROCEEDINGS

If an appeal is filed, the School shall provide a record of the proceedings before the independent hearing examiner to the Commissioner to include:

1. Transcripts of the School's proceedings;
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 for independent hearing examiner;
7. Transcripts 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.

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