

1 **CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 The Texas Workforce Commission (Commission) proposes new Subchapter T, relating to Career
8 Schools and Colleges, as follows:

9
10 Subchapter T, Career Schools Hearings, §§807.381 - 807.395

- 11
12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
14 **PART III. IMPACT STATEMENTS**
15 **PART IV. COORDINATION ACTIVITIES**
16

17 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

18
19 The purpose of the proposed rule change is to set forth procedures for the appeal and hearing
20 process for those entities and individuals subject to regulation by the Commission under Chapter
21 132 of the Texas Education Code. Under a separate, but concurrent, rulemaking proposal, the
22 Commission is proposing the repeal of Chapter 823, General Hearings rules, containing the
23 hearings and appeals process for career schools and colleges, which has been modified and
24 incorporated into Chapter 807.

25
26 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

27 **The Commission proposes new Subchapter T, Career Schools Hearings, as follows:**

28
29 **§807.381. Purpose**

30 Section 807.381 states that the purpose of Subchapter T is to set out the hearings process as
31 authorized by Agency rules and Chapter 132 of the Texas Education Code.

32
33 **§807.382. Definitions**

34 Section 807.382 adds definitions, retained with minor modifications from the concurrent repeal
35 of Chapter 823, which are referenced throughout Subchapter T.

36
37 Section 807.382(1) defines "appellant" as a party or the party's authorized hearing representative
38 who files an appeal from an appealable determination or decision.

39
40 Section 807.382(2) defines "date of notice" as the date the notice is received—unless good cause
41 exists for the hearing officer to determine otherwise.

42
43 Section 807.382(3) defines "date of request of hearing" as the date on which the appellant or the
44 hearing representative filed a written notice of appeal with the Agency by hand delivery,
45 facsimile, or mail. If an appeal is mailed to the Agency, it is completed as of the postmark date
46 on the envelope containing the appeal request, unless good cause exists for the hearing officer to

1 determine otherwise. If an appeal is hand delivered or faxed after 5 p.m., the date of request
2 must be the following day.

3
4 Section 807.382(4) defines "hearing" as an informal, orderly, and readily available proceeding
5 held before an impartial hearing officer. A party or hearing representative may present evidence
6 to show that the Agency's determination should be reversed, affirmed, or modified.

7
8 Section 807.382(5) defines "hearing officer" as an Agency employee designated to conduct
9 impartial hearings and issue final administrative decisions.

10
11 Section 807.382(6) defines "hearing representative" as any individual authorized by a party to
12 assist in presenting the party's appeal, including legal counsel or another individual. Each party
13 may have a hearing representative to assist in presenting the party's appeal.

14
15 Section 807.382(7) defines "party" as the person or entity with the right to participate in a
16 hearing authorized in applicable statute or rule.

17
18 **§807.383. Information on Right of Appeal**

19 Section 807.383 sets forth that an issuer of a determination shall inform the career school
20 applicant or any party directly aggrieved by the determination of the right to a hearing. The
21 notice shall explain the procedure for an appeal, the applicant's or party's right of appeal, and the
22 right to be represented by others, including legal counsel.

23
24 **§807.384. Request for Hearing**

25 Section 807.384 sets forth procedures for requesting a hearing.

26
27 Section 807.384(a) provides that the party seeking review of a determination under this
28 subchapter relating to career school hearings shall request a hearing in writing within 15 days
29 after receipt of notice of the determination.

30
31 Section 807.384(b) states that the request shall be addressed as provided in the determination,
32 state the nature of the determination, the name and identifying information of the requesting
33 party, and a request that the determination be reviewed.

34
35 Section 807.384(c) specifies that the request may include an explanation of why the
36 determination should be changed, although this is not a jurisdictional requirement.

37
38 **§807.385. Setting of Hearing**

39 Section 807.385 sets forth the Agency requirements for setting a hearing.

40
41 Section 807.385(a) states that upon receipt of the request for a hearing, the Agency shall
42 promptly mail a notice of hearing that sets the hearing for a reasonable time and place within 30
43 days from the receipt of the request.

44
45 Section 807.385(b) requires that the notice of hearing be in writing and include:

- 46 (1) a statement of the date, time, place, and nature of the hearing;

- 1 (2) a statement of the legal authority under which the hearing will be held; and
- 2 (3) a short and plain statement of the issues that will be considered during the hearing.

3
4 Section 807.385(c) requires that the notice of hearing be issued at least 10 days before the date of
5 the hearing unless a shorter period is permitted by statute.

6
7 Section 807.385(d) provides that the hearing notice shall state whether the hearing will be
8 conducted by telephone or in-person. The notice also shall identify the location of an in-person
9 hearing.

10
11 Section 807.385(e) specifies that parties needing special accommodations, including a bilingual
12 or sign language interpreter, may request such before the setting of the hearing, if possible, or as
13 soon as practical.

14
15 **§807.386. Hearing Officer Independence and Impartiality**

16 Section 807.386 sets out the powers and independence of hearing officers and the grounds and
17 process for the disqualification and withdrawal of hearing officers.

18
19 Section 807.386(a) provides that a hearing officer has all necessary powers to conduct a full, fair,
20 and impartial hearing. Hearing officers are to remain independent and impartial in all matters
21 relating to active cases and in issuing their decisions.

22
23 Section 807.386(b) specifies that a hearing officer shall be disqualified if he or she has a personal
24 interest in the outcome of the appeal or directly or indirectly participated in the determination on
25 appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing
26 officer.

27
28 Section 807.386(c) allows the hearing officer to withdraw from a hearing to avoid the
29 appearance of impropriety or partiality.

30
31 Section 807.386(d) provides that upon disqualification or withdrawal, the Agency shall assign an
32 alternate hearing officer. This alternate hearing officer is not bound by any findings or
33 conclusions made by the disqualified or withdrawn hearing officer.

34
35 **§807.387. Hearing Procedures**

36 Section 807.387 sets out the general procedures for a hearing.

37
38 Section 807.387(a) specifies that hearings shall be conducted in person in Austin, Texas, unless
39 the parties agree to a telephonic hearing or request a different location.

40
41 Section 807.387(b)(1) - (4) specifies that all hearings shall be conducted informally and in such a
42 manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall
43 be considered and addressed, and may include:

- 44 (1) presentation of evidence;
- 45 (2) examination of parties and witnesses;
- 46 (3) additional evidence; and

1 (4) appropriate hearing behavior.

2
3 Section 807.387(c)(1) - (3), Records, states that:

4 (1) the hearing record shall include the audio recording of the proceedings and any other
5 relevant evidence relied on by the hearing officer, including documents and other physical
6 evidence entered as exhibits;

7 (2) the hearing record shall be maintained in accordance with federal and state law; and

8 (3) confidentiality of information contained in the hearing record shall be maintained in
9 accordance with federal and state law.

10
11 **§807.388. Postponements, Continuances, and Withdrawals**

12 Section 807.388 authorizes the hearing officer to grant a postponement, continuance, or
13 withdrawal.

14
15 Section 807.388(a) allows the hearing officer to grant a postponement of a hearing for good
16 cause at a party's request.

17
18 Section 807.388(b) states that a continuance may be ordered at the discretion of the hearing
19 officer in order to consider additional, necessary evidence or for any other reason deemed
20 appropriate by the hearing officer.

21
22 Section 807.388(c) provides that a party may withdraw its appeal at any time before the final
23 decision is issued.

24
25 **§807.389. Evidence**

26 Section 807.389 sets forth the evidence procedures for hearings.

27
28 Section 807.389(a), Evidence Generally, provides the standard for the admissibility of evidence,
29 specifying that hearsay evidence may be admitted. However, the hearing officer has the
30 authority to exclude relevant evidence to ensure fairness or to prevent undue delay, waste of
31 time, or needless presentation of cumulative evidence.

32
33 Section 807.389(b), Exchange of Exhibits, states that any documentary evidence to be presented
34 during a telephonic hearing shall be exchanged with all parties with a copy given to the hearing
35 officer in advance of the hearing. Documentary evidence to be presented at an in-person hearing
36 shall be exchanged at the hearing.

37
38 Section 807.389(c), Stipulations, states that parties to an appeal, with the consent of the hearing
39 officer, may agree in writing to the relevant facts involved. The hearing officer may decide the
40 appeal based on such stipulation or, at the hearing officer's discretion, may set the appeal for
41 hearing and take such further evidence deemed necessary.

42
43 Section 807.389(d), Experts and Evaluations, allows the hearing officer to order—or a party may
44 request, if relevant and useful—an independent expert or a professional evaluation from a source
45 satisfactory to the parties and the Agency. Such expert or evaluation shall be at the expense of
46 the party(ies).

1
2 Section 807.389(e), Subpoenas, provides that:

3 (1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the
4 production of records. A subpoena may be issued either at the request of a party or on the
5 hearing officer's own motion.

6 (2) A party requesting a subpoena shall state the nature of the information desired, including
7 names of any witnesses and the records that the requestor feels are necessary for the proper
8 presentation of the case.

9 (3) The request shall be granted only to the extent the records or the testimony of the requested
10 witnesses appears to be relevant to the issues on appeal.

11 (4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons
12 for such denial.

13
14 **§807.390. Ex Parte Communications**

15 Section 807.390(a) provides that the hearing officer shall not participate in ex parte
16 communications, directly or indirectly, in any matter in connection with any substantive issue,
17 with any interested person or party. Likewise, no person shall attempt to engage in ex parte
18 communications with the hearing officer on behalf of any interested person or party.

19
20 Section 807.390(b) provides that if any such ex parte communication is received, the other
21 parties should be given the opportunity to review the ex parte communication.

22
23 Section 807.390(c) specifies that hearing officers may communicate with parties or
24 representatives about procedural matters.

25
26 Section 807.390(d) provides that a hearing officer may communicate with Agency personnel
27 who are not otherwise involved in a case for the limited purpose of using the special skills or
28 knowledge of the Agency and its staff in evaluating the evidence.

29
30 **§807.391. Change in Determination**

31 Section 807.391 sets out that the original issuer of the determination, which a party has appealed,
32 may change the determination that is the basis of the appeal at any time up to the issuance of a
33 decision by the hearing officer.

34
35 **§807.392. Hearing Decision**

36 Section 807.392 sets forth the time frame for and the content of a decision issued by a hearing
37 officer under this subchapter.

38
39 Section 807.392(a) requires the hearing officer to prepare a written decision promptly after the
40 hearing ends on behalf of the Agency.

41
42 Section 807.392(b)(1) - (3) provides that the decision shall be based exclusively on the evidence
43 of record in the hearing and matters officially noticed in the hearing, and shall include:

44 (1) a list of the individuals who appeared at the hearing;

45 (2) the findings of fact and conclusions of law reached on the issues; and

46 (3) the affirmation, reversal, or modification of the determination.

1
2 Section 807.392(c) states that unless a party files a timely motion for a rehearing, the Agency
3 may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of
4 30 calendar days from the mailing date of the hearing decision.

5
6 **§807.393. Motion for Reopening**

7 Section 807.393 sets forth the time frame and requirements for a motion for the reopening of a
8 hearing.

9
10 Section 807.393(a) provides that if a party does not appear for a hearing, the party may request
11 the reopening of the hearing within 30 calendar days from the date the decision is mailed.

12
13 Section 807.393(b) states that the motion shall be in writing and detail the reason for failing to
14 appear at the hearing.

15
16 Section 807.393(c) provides that the Agency may schedule a hearing on whether to grant the
17 reopening.

18
19 Section 807.393(d) allows that a motion may be granted if the hearing officer determines that the
20 party has shown good cause for failing to appear at the hearing.

21
22 **§807.394. Motion for Rehearing**

23 Section 807.394 sets forth the time frame and requirements for a motion for rehearing.

24
25 Section 807.394(a) states that a party has 30 calendar days from the date the decision is mailed to
26 file a motion for rehearing. A rehearing may be granted only for the presentation of new
27 evidence.

28
29 Section 807.394(b) requires that a motion for rehearing be in writing and allege the new evidence
30 to be considered. The party must show a compelling reason why the evidence was not presented
31 at the hearing.

32
33 Section 807.394(c) states that if the hearing officer determines that the alleged, new evidence
34 warrants a rehearing, a hearing shall be scheduled at a reasonable time and place.

35
36 Section 807.394(d) requires that the hearing officer issue a written decision in response to a
37 timely filed motion for rehearing.

38
39 Section 807.394(e) states that the Agency may assume continuing jurisdiction to modify, correct,
40 or reform a decision until the expiration of 30 calendar days from the mailing date of the hearing
41 decision.

42
43 **§807.395. Finality of Decision**

44 Section 807.395 sets forth the conditions under which the decision of the hearing officer is the
45 final decision of the Agency, and gives the Agency the discretion to assume continuing
46 jurisdiction.

1
2 Section 807.395(a) states that the decision of the hearing officer becomes the final decision of
3 the Agency after the expiration of 30 calendar days from the mailing date of the decision unless
4 within that time:

- 5 (1) a request for reopening is filed with the Agency;
- 6 (2) a request for rehearing is filed with the Agency; or
- 7 (3) the Agency assumes continuing jurisdiction to modify or correct the decision.

8
9 Section 807.395(b) provides that any decision issued in response to a request for a reopening or
10 rehearing or a modification or correction issued by the Agency shall be final on the expiration of
11 30 calendar days from the mailing date of the decision, modification, or correction.

12 13 **PART III. IMPACT STATEMENTS**

14
15 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
16 years the rules will be in effect, the following statements will apply:

17
18 There are no additional estimated costs to the state and local governments expected as a result of
19 enforcing or administering the rules.

20
21 There are no estimated reductions in costs to the state and to local governments as a result of
22 enforcing or administering the rules.

23
24 There are no estimated losses or increases in revenue to the state or to local governments as a
25 result of enforcing or administering the rules.

26
27 There are no foreseeable implications relating to costs or revenue of the state or local
28 governments as a result of enforcing or administering the rules.

29
30 There are no anticipated economic costs to persons required to comply with the rules.

31
32 There is no anticipated adverse economic impact on small or microbusinesses as a result of
33 enforcing or administering the rules.

34
35 Mark Hughes, Director of Labor Market Information, has determined that there is no significant
36 negative impact upon employment conditions in the state as a result of the rules.

37
38 Laurence M. Jones, Director, Workforce Development Division, has determined that for each
39 year of the first five years the rules are in effect, the public benefit anticipated as a result of
40 enforcing the proposed rules will be to clarify the hearing process for career schools, career
41 school applicants, and individuals subject to Chapter 132 of the Texas Education Code.

42
43 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
44 be within the Agency's legal authority to adopt.

45 46 **PART IV. COORDINATION ACTIVITIES**

1
2 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and
3 UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-
4 mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments
5 postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

6
7 The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
8 the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
9 deems necessary for the effective administration of Agency services and activities.

10
11 The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as
12 Texas Education Code, Chapter 132.

13

1
2 **Chapter 807. CAREER SCHOOLS AND COLLEGES**

3
4 **SUBCHAPTER T. CAREER SCHOOLS HEARINGS**

5
6 **§807.381. Purpose**

7
8 This subchapter provides a hearing process to the extent authorized by Chapter 132 of the Texas
9 Education Code and the rules administered by the Agency.

10
11 **§807.382. Definitions**

12
13 The following words and terms, when used in this chapter, have the following meanings, unless
14 the context clearly indicates otherwise.

- 15 (1) **Appellant** -- The party or the party's authorized hearing representative who files an
16 appeal from an appealable determination or decision.
- 17 (2) **Date of notice** -- The date the notice is received, unless good cause exists for the hearing
18 officer to determine otherwise.
- 19 (3) **Date of request of hearing** -- The date on which the appellant or the hearing
20 representative filed a written notice of appeal with the Agency by hand delivery,
21 facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as
22 of the postmark date on the envelope containing the appeal request unless good cause
23 exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or
24 facsimile after 5 p.m., the date of request shall be the next day.
- 25 (4) **Hearing** -- An informal, orderly, and readily available proceeding held before an
26 impartial hearing officer. A party or hearing representative may present evidence to
27 show that the Agency's determination should be reversed, affirmed, or modified.
- 28 (5) **Hearing officer** -- An Agency employee designated to conduct impartial hearings and
29 issue final administrative decisions.
- 30 (6) **Hearing representative** -- Any individual authorized by a party to assist the party in
31 presenting the party's appeal. A hearing representative may be legal counsel or another
32 individual. Each party may have a hearing representative to assist in presenting the
33 party's appeal.
- 34 (7) **Party** -- The person or entity with the right to participate in a hearing authorized in
35 applicable statute or rule.

36
37 **§807.383. Information on Right of Appeal**

38 An issuer of a determination shall inform the career school applicant or any party directly
39 aggrieved by the determination of the right to a hearing. The notice shall explain the
40 procedure for an appeal, the party's right of appeal, and the right to be represented by others,
41 including legal counsel.

1 **§807.384. Request for Hearing**

- 2 (a) The party seeking review of a determination under this subchapter relating to career
3 schools hearings shall request a hearing in writing within 15 days after receipt of the
4 notice of determination.
- 5 (b) The request shall be addressed as provided in the determination and state the nature of the
6 determination, the name and identifying information of the requesting party, and a request
7 that the determination be reviewed.
- 8 (c) The request may include an explanation of why the determination should be changed;
9 however, this is not a jurisdictional requirement.

10
11 **§807.385. Setting of Hearing**

- 12 (a) Upon receipt of request for a hearing, the Agency shall promptly mail a notice of hearing
13 that sets the hearing for a reasonable time and place within 30 days from receipt of the
14 request for a hearing.
- 15 (b) The notice of hearing shall be in writing and include a:
16 (1) statement of the date, time, place, and nature of the hearing;
17 (2) statement of the legal authority under which the hearing is to be held; and
18 (3) short and plain statement of the issues to be considered during the hearing.
- 19 (c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless
20 a shorter period is permitted by statute.
- 21 (d) The hearing notice shall state whether the hearing shall be conducted by telephone or in-
22 person. The hearing notice shall also include the location of an in-person hearing.
- 23 (e) Parties needing special accommodations, including a bilingual or sign language
24 interpreter, may request such before the setting of the hearing, if possible, or as soon as
25 practical.

26
27 **§807.386. Hearing Officer Independence and Impartiality**

- 28
29 (a) A hearing officer presiding over a hearing shall have all powers necessary and
30 appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall
31 remain independent and impartial in all matters regarding the handling of any issues
32 during the pendency of a case and in issuing their written decisions.
33
- 34 (b) A hearing officer shall be disqualified if the hearing officer has a personal interest in
35 the outcome of the appeal or if the hearing officer directly or indirectly participated
36 in the determination on appeal. Any party may present facts to the Agency in
37 support of a request to disqualify a hearing officer.
38
- 39 (c) The hearing officer may withdraw from a hearing to avoid the appearance of
40 impropriety or partiality.

- 1
2 (d) Following any disqualification or withdrawal of a hearing officer, the Agency shall
3 assign an alternate hearing officer to the case. The alternate hearing officer shall not
4 be bound by any findings or conclusions made by the disqualified or withdrawn
5 hearing officer.
6

7 **§807.387. Hearing Procedures**

- 8 (a) The hearing shall be conducted in person in Austin, Texas, unless the parties agree to a
9 telephonic hearing or request a different location.
10
11 (b) The hearing shall be conducted informally and in such a manner as to ascertain the
12 substantial rights of the parties. All issues relevant to the appeal shall be considered
13 and addressed, and may include:
14
15 (1) Presentation of Evidence. The parties to an appeal may present evidence that
16 is material and relevant, as determined by the hearing officer. In conducting a
17 hearing, the hearing officer shall actively develop the record on the relevant
18 circumstances and facts to resolve all issues. To be considered as evidence in a
19 decision, any document or physical evidence must be entered as an exhibit at
20 the hearing.
21
22 (2) Examination of Parties and Witnesses. The hearing officer shall examine
23 parties and any witnesses and shall allow cross-examination to the extent the
24 hearing officer deems necessary to afford the parties due process.
25
26 (3) Additional Evidence. The hearing officer, with or without notice to any of the
27 parties, may take additional evidence as deemed necessary, provided that a party
28 shall be given an opportunity to rebut the evidence if it is to be used against the
29 party's interest.
30
31 (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an
32 appropriate manner. The hearing officer may expel any individual or party who
33 fails to correct behavior the hearing officer identifies as disruptive. After
34 expulsion, the hearing officer may proceed with the hearing and render a decision.
35
36 (c) Records
37
38 (1) The hearing record shall include the audio recording of the proceeding and any other
39 relevant evidence relied on by the hearing officer, including documents and other
40 physical evidence entered as exhibits.
41
42 (2) The hearing record shall be maintained in accordance with federal and state law.
43
44 (3) Confidentiality of information contained in the hearing record shall be maintained in
45 accordance with federal and state law.

1
2 **§807.388. Postponements, Continuances, and Withdrawals**

- 3 (a) The hearing officer may grant a postponement of a hearing for good cause at a party's
4 request.
- 5 (b) A continuance of a hearing may be ordered at the discretion of the hearing officer in
6 order to consider additional, necessary evidence or for any other reason the hearing
7 officer deems appropriate.
- 8 (c) A party may withdraw an appeal at any time prior to the issuance of the final decision.
- 9

10 **§807.389. Evidence**

- 11
- 12 (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is
13 relevant and if in the judgment of the hearing officer it is the kind of evidence on which
14 reasonably prudent persons are accustomed to rely in the conduct of their affairs.
15 However, the hearing officer may exclude evidence if its probative value is outweighed
16 by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern
17 for undue delay, waste of time, or needless presentation of cumulative evidence.
- 18
- 19 (b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic
20 hearing shall be exchanged with all parties and a copy shall be provided to the hearing
21 officer in advance of the hearing. Any documentary evidence to be presented at an in-
22 person hearing shall be exchanged at the hearing.
- 23
- 24 (c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing
25 to relevant facts. The hearing officer may decide the appeal based on such stipulations
26 or, at the hearing officer's discretion, may set the appeal for hearing and take such
27 further evidence as the hearing officer deems necessary.
- 28
- 29 (d) Experts and Evaluations. If relevant and useful, testimony from an independent expert
30 or a professional evaluation from a source satisfactory to the parties and the Agency
31 may be ordered by hearing officers, on their own motion or at a party's request. Any
32 such expert or evaluation shall be at the expense of one or more of the parties.
- 33
- 34 (e) Subpoenas.
- 35
- 36 (1) The hearing officer may issue subpoenas to compel the attendance of witnesses
37 and the production of records. A subpoena may be issued either at the request of
38 a party or on the hearing officer's own motion.
- 39
- 40 (2) A party requesting a subpoena shall state the nature of the information desired,
41 including names of any witnesses and the records that the requestor feels are
42 necessary for the proper presentation of the case.
- 43
- 44 (3) The request shall be granted only to the extent the records or the testimony of the
45 requested witnesses appears to be relevant to the issues on appeal.

1
2 (4) A denial of a subpoena request shall be made in writing or on the record, stating
3 the reasons for such denial.
4

5 **§807.390. Ex Parte Communications**
6

- 7 (a) The hearing officer shall not participate in ex parte communications, directly or
8 indirectly, in any matter in connection with any substantive issue, with any interested
9 person or party. Likewise, no person shall attempt to engage in ex parte
10 communications with the hearing officer on behalf of any interested person or party.
11
- 12 (b) If the hearing officer receives any such ex parte communication, the other parties
13 shall be given an opportunity to review any such ex parte communication.
14
- 15 (c) Nothing shall prevent the hearing officer from communicating with parties or their
16 representatives about routine matters such as requests for continuances or
17 opportunities to inspect the file.
18
- 19 (d) The hearing officer may initiate communications with an Agency employee who has
20 not participated in a hearing or any determination in the case for the limited purpose
21 of using the special skills or knowledge of the Agency and its staff in evaluating the
22 evidence.
23

24 **§807.391. Change in Determination**

25 The issuer of the determination may change the determination any time before the hearing
26 officer issues the decision. Despite the issuer changing the determination, the parties may
27 proceed with the hearing.
28

29 **§807.392. Hearing Decision**

- 30 (a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a
31 written decision on behalf of the Agency.
- 32 (b) The decision shall be based exclusively on the evidence of record in the hearing and on
33 matters officially noticed in the hearing. The decision shall include:
34 (1) a list of the individuals who appeared at the hearing;
35
36 (2) the findings of fact and conclusions of law reached on the issues; and
37
38 (3) the affirmation, reversal, or modification of the determination.
39
- 40 (c) Unless a party files a timely motion for rehearing, the Agency may assume continuing
41 jurisdiction to modify or correct a hearing decision until the expiration of 30 calendar
42 days from the mailing date of the hearing decision.
43

1 **§807.393. Motion for Reopening**

- 2
- 3 (a) If a party does not appear for a hearing, the party may request the reopening of the
- 4 hearing within 30 calendar days from the date the decision is mailed.
- 5
- 6 (b) The motion for reopening shall be in writing and detail the reason for failing to appear at
- 7 the hearing.
- 8
- 9 (c) The Agency may schedule a hearing on whether to grant the reopening.
- 10
- 11 (d) The motion may be granted if the hearing officer determines that the party has shown
- 12 good cause for failing to appear at the hearing.
- 13

14 **§807.394. Motion for Rehearing**

- 15
- 16 (a) A party has 30 calendar days from the date the decision is mailed to file a motion for
- 17 rehearing. A rehearing shall be granted only for the presentation of new evidence.
- 18
- 19 (b) A motion for rehearing shall be in writing and allege the new evidence to be considered.
- 20 The party shall show a compelling reason why this evidence was not presented at the
- 21 hearing.
- 22
- 23 (c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a
- 24 hearing shall be scheduled at a reasonable time and place.
- 25
- 26 (d) The hearing officer shall issue a written decision in response to a timely filed motion for
- 27 rehearing.
- 28
- 29 (e) The Agency may assume continuing jurisdiction to modify, correct, or reform a decision
- 30 until the expiration of 30 calendar days from the date of mailing of the hearing decision.
- 31

32 **§807.395. Finality of Decision**

- 33
- 34 (a) The decision of the hearing officer is the final decision of the Agency after the expiration
- 35 of 30 calendar days from the mailing date of the decision unless within that time:
- 36
- 37 (1) a request for reopening is filed with the Agency;
- 38
- 39 (2) a request for rehearing is filed with the Agency; or
- 40
- 41 (3) the Agency assumes continuing jurisdiction to modify or correct the decision.
- 42
- 43 (b) Any decision issued in response to a request for reopening or rehearing or a modification
- 44 or correction issued by the Agency shall be final on the expiration of 30 calendar days
- 45 from the mailing date of the decision, modification, or correction.