

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

2  
3 **ADOPTED 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) adopts new Subchapter T, *without* changes to  
8 the following sections, relating to Career Schools and Colleges, as published in the July 13,  
9 2007, issue of the *Texas Register* (32 TexReg 4346):

10  
11 Subchapter T, Career Schools Hearings, §807.381, §§807.383 - 807.386, §807.388, and  
12 §§807.391 - 807.395

13  
14 The Commission adopts new Subchapter T, *with* changes to the following sections, relating to  
15 Career Schools and Colleges, as published in the July 13, 2007, issue of the *Texas Register* (32  
16 TexReg 4346):

17  
18 Subchapter T, Career Schools Hearings, §807.382, §807.387, §807.389, and §807.390

- 19  
20 PART I. PURPOSE, BACKGROUND, AND AUTHORITY  
21 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND  
22 RESPONSES  
23

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

25  
26 The purpose of the adopted rule change is to set forth procedures for the appeal and hearing  
27 process for those entities and individuals subject to regulation by the Commission under Chapter  
28 132 of the Texas Education Code. Under a separate, but concurrent rulemaking, the Commission  
29 has adopted the repeal of Chapter 823, General Hearings rules, containing the hearings and  
30 appeals process for career schools and colleges, which has been modified and incorporated into  
31 Chapter 807.

32  
33 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**  
34 **RESPONSES**

35 **The Commission adopts new Subchapter T, Career Schools Hearings, as follows:**

36  
37 **§807.381. Purpose**

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

40  
41 **§807.382. Definitions**

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

44  
45 **Comment:** One commenter suggested that the term "Agency" be defined because the term  
46 "Commission" is used to refer to the Texas Workforce Commission in Chapter 132, Texas

1 Education Code and Chapter 807, but the term “Agency” is used in the new proposed  
2 Subchapter T.  
3

4 **Response:** The Commission appreciates the comment and agrees with the suggestion.  
5 Therefore, to ensure consistency between Texas Education Code, Chapter 132, and Chapter  
6 807, the definitions of both terms—Agency and Commission, as set forth in §800.2 of this  
7 title—are added as §807.382(1) and §807.382(3), respectively.  
8

9 Section 807.382(1) defines "Agency," as set forth in §800.2 of this title, as the unit of state  
10 government established under Texas Labor Code Chapter 301 that is presided over by the  
11 Commission and administered by the Executive Director to operate the integrated workforce  
12 development system and administer the unemployment compensation insurance program in this  
13 state as established under the Texas Unemployment Compensation Act, Texas Labor Code  
14 Annotated, Title 4, Subtitle A, as amended.  
15

16 Section 807.382(2) defines "appellant" as a party or the party's authorized hearing representative  
17 who files an appeal from an appealable determination or decision.  
18

19 Section 807.382(3) defines "Commission," as set forth in §800.2 of this title, as the body of  
20 governance of the Texas Workforce Commission composed of three members appointed by the  
21 Governor as established under Texas Labor Code §301.002 that includes one representative of  
22 labor, one representative of employers, and one representative of the public.  
23

24 Section 807.382(4) defines "date of notice" as the date the notice is received—unless good cause  
25 exists for the hearing officer to determine otherwise.  
26

27 Section 807.382(5) defines "date of request of hearing" as the date on which the appellant or the  
28 hearing representative filed a written notice of appeal with the Agency by hand delivery,  
29 facsimile, or mail. If an appeal is mailed to the Agency, it is completed as of the postmark date  
30 on the envelope containing the appeal request, unless good cause exists for the hearing officer to  
31 determine otherwise. If an appeal is hand delivered or faxed after 5 p.m., the date of request  
32 must be the following day.  
33

34 Section 807.382(6) defines "hearing" as an informal, orderly, and readily available proceeding  
35 held before an impartial hearing officer. A party or hearing representative may present evidence  
36 to show that the Agency's determination should be reversed, affirmed, or modified.  
37

38 Section 807.382(7) defines "hearing officer" as an Agency employee designated to conduct  
39 impartial hearings and issue final administrative decisions.  
40

41 Section 807.382(8) defines "hearing representative" as any individual authorized by a party to  
42 assist in presenting the party's appeal, including legal counsel or another individual. Each party  
43 may have a hearing representative to assist in presenting the party's appeal.  
44

45 Section 807.382(9) defines "party" as the person or entity with the right to participate in a  
46 hearing authorized in applicable statute or rule.  
47

1 **§807.383. Information on Right of Appeal**

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

6  
7 **§807.384. Request for Hearing**

8 Section 807.384 sets forth procedures for requesting a hearing.

9  
10 Section 807.384(a) provides that the party seeking review of a determination under this  
11 subchapter relating to career school hearings shall request a hearing in writing within 15 days  
12 after receipt of notice of the determination.

13  
14 Section 807.384(b) states that the request shall be addressed as provided in the determination,  
15 state the nature of the determination, the name and identifying information of the requesting  
16 party, and a request that the determination be reviewed.

17  
18 Section 807.384(c) specifies that the request may include an explanation of why the  
19 determination should be changed, although this is not a jurisdictional requirement.

20  
21 **§807.385. Setting of Hearing**

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

23  
24 Section 807.385(a) states that upon receipt of the request for a hearing, the Agency shall  
25 promptly mail a notice of hearing that sets the hearing for a reasonable time and place within 30  
26 days from the receipt of the request.

27  
28 Section 807.385(b) requires that the notice of hearing be in writing and include:

- 29 (1) a statement of the date, time, place, and nature of the hearing;  
30 (2) a statement of the legal authority under which the hearing will be held; and  
31 (3) a short and plain statement of the issues that will be considered during the hearing.

32  
33 Section 807.385(c) requires that the notice of hearing be issued at least 10 days before the date of  
34 the hearing unless a shorter period is permitted by statute.

35  
36 Section 807.385(d) provides that the hearing notice shall state whether the hearing will be  
37 conducted by telephone or in-person. The notice also shall identify the location of an in-person  
38 hearing.

39  
40 Section 807.385(e) specifies that parties needing special accommodations, including a bilingual  
41 or sign language interpreter, may request such before the setting of the hearing, if possible, or as  
42 soon as practical.

43  
44 **§807.386. Hearing Officer Independence and Impartiality**

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

1  
2 Section 807.386(a) provides that a hearing officer has all necessary powers to conduct a full, fair,  
3 and impartial hearing. Hearing officers are to remain independent and impartial in all matters  
4 relating to active cases and in issuing their decisions.

5  
6 Section 807.386(b) specifies that a hearing officer shall be disqualified if he or she has a personal  
7 interest in the outcome of the appeal or directly or indirectly participated in the determination on  
8 appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing  
9 officer.

10  
11 Section 807.386(c) allows the hearing officer to withdraw from a hearing to avoid the  
12 appearance of impropriety or partiality.

13  
14 Section 807.386(d) provides that upon disqualification or withdrawal, the Agency shall assign an  
15 alternate hearing officer. This alternate hearing officer is not bound by any findings or  
16 conclusions made by the disqualified or withdrawn hearing officer.

17  
18 **§807.387. Hearing Procedures**

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

20  
21 Section 807.387(a) specifies that hearings shall be conducted in person in Austin, Texas, unless  
22 the parties agree to a telephonic hearing or request a different location.

23  
24 Section 807.387(b)(1) - (4) specifies that all hearings shall be conducted informally and in such a  
25 manner as to ascertain the substantive rights of the parties. All issues relevant to the appeal shall  
26 be considered and addressed, and may include:

- 27 (1) presentation of evidence;  
28 (2) examination of parties and witnesses;  
29 (3) additional evidence; and  
30 (4) appropriate hearing behavior.

31  
32 **Comment:** One commenter stated that schools as parties should retain the right to object to  
33 evidence.

34  
35 **Response:** The Commission appreciates the comment and agrees that the right to object to  
36 evidence should be explicit in the rule. Therefore, the Commission adds language stating  
37 that a party has the right to object to evidence offered at a hearing by the hearing officer or  
38 other parties.

39  
40 **Comment:** One commenter stated that schools as parties should have an unqualified right  
41 to examine and cross-examine parties and witnesses without that right being subject to the  
42 discretion of the hearing officer. The commenter also stated that the hearing officer should  
43 not be given an absolute right to permit cross-examination of witnesses. The commenter  
44 further noted that the regulation should not mandate that the hearing officer "shall" examine  
45 parties and any witnesses.

1       **Response:** The Commission believes that the primary duty of the presiding hearing officer is  
2 to ascertain the substantive rights of the parties. At the same time, the hearing officer has an  
3 affirmative duty to develop the record. Therefore, the Commission contends that the hearing  
4 officer has the obligation by rule to examine parties and witnesses and that control of the  
5 examination and cross-examination should be within the hearing officer's discretion.  
6

7       **Comment:** One commenter suggested that parties should be given notice any time  
8 additional evidence is presented and afforded sufficient time to review and rebut any such  
9 additional evidence.  
10

11       **Response:** The Commission understands that due process must be afforded to parties under  
12 such circumstances. However, the Commission believes that the requirement that a party  
13 shall be given the opportunity to rebut such evidence if it is to be used against the party's  
14 interest provides sufficient protection for the party's due process rights. As stated previously,  
15 the presiding hearing officer's primary duty is to ascertain the substantive rights of the  
16 parties.  
17

18 Section 807.387(c)(1) - (4), Records, states that:

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

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

23 (3) confidentiality of information contained in the hearing record shall be maintained in  
24 accordance with federal and state law; and

25 (4) upon request, a party has the right to obtain a copy of the hearing record at no charge.

26 However, a party requesting a transcript of the hearing record shall pay the costs of the  
27 transcription.  
28

29       **Comment:** One commenter stated that the rule should provide that parties have the right to  
30 request a copy of the record and the rule should specify the costs and procedures for  
31 obtaining the record.  
32

33       **Response:** The Commission agrees with the comment and adds §807.387(c)(4).  
34  
35

### 36 **§807.388. Postponements, Continuances, and Withdrawals**

37 Section 807.388 authorizes the hearing officer to grant a postponement, continuance, or  
38 withdrawal.  
39

40 Section 807.388(a) allows the hearing officer to grant a postponement of a hearing for good  
41 cause at a party's request.  
42

43 Section 807.388(b) states that a continuance may be ordered at the discretion of the hearing  
44 officer in order to consider additional, necessary evidence or for any other reason deemed  
45 appropriate by the hearing officer.  
46

1 **Comment:** One commenter stated that continuances to consider additional, necessary  
2 evidence should be mandatory and not at the discretion of the hearing officer.  
3

4 **Response:** The Commission disagrees. The hearing officer must determine whether  
5 additional evidence is relevant and necessary; therefore, the setting of a continuance must  
6 necessarily be within the discretion of the hearing officer.  
7

8 Section 807.388(c) provides that a party may withdraw its appeal at any time before the final  
9 decision is issued.  
10

11 **Comment:** One commenter recommended a new provision requiring that witnesses and  
12 parties be placed under oath by the hearing officer.  
13

14 **Response:** The Commission agrees and has modified §807.387(b)(2) to indicate that  
15 witnesses must be placed under oath prior to their examination.  
16

### 17 **§807.389. Evidence**

18 Section 807.389 sets forth the evidence procedures for hearings.  
19

20 Section 807.389(a), Evidence Generally, provides the standard for the admissibility of evidence,  
21 specifying that hearsay evidence may be admitted. However, the hearing officer has the  
22 authority to exclude relevant evidence to ensure fairness or to prevent undue delay, waste of  
23 time, or needless presentation of cumulative evidence.  
24

25 Section 807.389(b), Exchange of Exhibits, states that any documentary evidence to be presented  
26 during a telephonic hearing shall be exchanged with all parties with a copy given to the hearing  
27 officer in advance of the hearing. Documentary evidence to be presented at an in-person hearing  
28 shall be exchanged at the hearing.  
29

30 Section 807.389(c), Stipulations, states that parties to an appeal, with the consent of the hearing  
31 officer, may agree in writing to the relevant facts involved. The hearing officer may decide the  
32 appeal based on such stipulation or, at the hearing officer's discretion, may set the appeal for  
33 hearing and take such further evidence deemed necessary.  
34

35 **Comment:** One commenter stated that hearing officers should only be allowed to decide the  
36 appeal based solely on stipulations if all parties are in agreement.  
37

38 **Response:** Subsection 807.389(c) merely allows the hearing officer to issue a decision based  
39 on stipulations if the parties agree to waive their hearing rights. However, the Commission  
40 believes that the right to a hearing is sufficiently set forth in §807.387. Therefore, the  
41 Commission agrees that parties should have the opportunity for a hearing, even if all facts are  
42 stipulated.  
43

44 Section 807.389(d), Experts and Evaluations, allows the hearing officer to order—or a party may  
45 request, if relevant and useful—an independent expert or a professional evaluation from a source

1 satisfactory to the parties and the Agency. Such expert or evaluation shall be at the expense of  
2 the party(ies).

3  
4 **Comment:** One commenter stated that the costs of experts ordered by the hearing officer on  
5 his own motion should be borne equally by the parties.

6  
7 **Response:** The Commission agrees and adds a provision stating that if a hearing officer  
8 orders testimony from an independent expert or a professional evaluation on his own motion,  
9 the cost will be borne equally by the parties.

10  
11 Section 807.389(e), Subpoenas, provides that:

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

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

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

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

22  
23 **§807.390. Ex Parte Communications**

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

28  
29 Section 807.390(b) provides that if any such ex parte communication is received, the other  
30 parties should be given the opportunity to review the ex parte communication.

31  
32 Section 807.390(c) specifies that hearing officers may communicate with parties or  
33 representatives about procedural matters.

34  
35 Section 807.390(d) provides that a hearing officer may communicate with Agency personnel  
36 who are not otherwise involved in a case for the limited purpose of using the special skills or  
37 knowledge of the Agency and its staff in evaluating the evidence.

38  
39 **Comment:** One commenter stated that the hearing officer should only contact an "impartial"  
40 Agency employee to evaluate the evidence if the hearing officer has notified the parties of  
41 the name and title of the Agency employee before contact.

42  
43 **Response:** While the Commission agrees that the hearing officer should contact only an  
44 "impartial" Agency employee, the Commission disagrees with the requirement for  
45 notification of the name and address of the employee contacted. As set out in  
46 §807.387(b)(1), it is the responsibility of the hearing officer to actively develop the record on

1 the relevant circumstances and facts to resolve all issues. To do so, the hearing officer may  
2 communicate only with an Agency employee who has not participated in a hearing or any  
3 determination in the case. Language has been added to §807.390(d) specifying that a hearing  
4 officer may initiate communications with an impartial Agency employee. A hearing officer  
5 may need to use the special skills or knowledge of Agency staff, including individuals in the  
6 hearing officer's own management chain. To require notification of the name and title of the  
7 employee before contact would be unnecessarily burdensome and would negatively impact a  
8 hearing officer's ability to resolve all issues. Further, allowing a hearing officer to have such  
9 communications is consistent with general administrative practices.

10  
11 **§807.391. Change in Determination**

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

15  
16 **§807.392. Hearing Decision**

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

19  
20 Section 807.392(a) requires the hearing officer to prepare a written decision promptly after the  
21 hearing ends on behalf of the Agency.

22  
23 Section 807.392(b)(1) - (3) provides that the decision shall be based exclusively on the evidence  
24 of record in the hearing and matters officially noticed in the hearing, and shall include :

- 25 (1) a list of the individuals who appeared at the hearing;  
26 (2) the findings of fact and conclusions of law reached on the issues; and  
27 (3) the affirmation, reversal, or modification of the determination.

28  
29 Section 807.392(c) states that unless a party files a timely motion for a rehearing, the Agency  
30 may assume continuing jurisdiction to modify or correct a hearing decision until the expiration of  
31 30 calendar days from the mailing date of the hearing decision.

32  
33 **§807.393. Motion for Reopening**

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

36  
37 Section 807.393(a) provides that if a party does not appear for a hearing, the party may request  
38 the reopening of the hearing within 30 calendar days from the date the decision is mailed.

39  
40 Section 807.393(b) states that the motion shall be in writing and detail the reason for failing to  
41 appear at the hearing.

42  
43 Section 807.393(c) provides that the Agency may schedule a hearing on whether to grant the  
44 reopening.



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

3  
4 **§807.394. Motion for Rehearing**

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

6  
7 Section 807.394(a) states that a party has 30 calendar days from the date the decision is mailed to  
8 file a motion for rehearing. A rehearing may be granted only for the presentation of new  
9 evidence.

10  
11 Section 807.394(b) requires that a motion for rehearing be in writing and allege the new evidence  
12 to be considered. The party must show a compelling reason why the evidence was not presented  
13 at the hearing.

14  
15 Section 807.394(c) states that if the hearing officer determines that the alleged, new evidence  
16 warrants a rehearing, a hearing shall be scheduled at a reasonable time and place.

17  
18 Section 807.394(d) requires that the hearing officer issue a written decision in response to a  
19 timely filed motion for rehearing.

20  
21 Section 807.394(e) states that the Agency may assume continuing jurisdiction to modify, correct,  
22 or reform a decision until the expiration of 30 calendar days from the mailing date of the hearing  
23 decision.

24  
25 **§807.395. Finality of Decision**

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

29  
30 Section 807.395(a) states that the decision of the hearing officer becomes the final decision of  
31 the Agency after the expiration of 30 calendar days from the mailing date of the decision unless  
32 within that time:

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

36  
37 Section 807.395(b) provides that any decision issued in response to a request for a reopening or  
38 rehearing or a modification or correction issued by the Agency shall be final on the expiration of  
39 30 calendar days from the mailing date of the decision, modification, or correction.

40  
41 **Comment:** One commenter suggested that a school's right to appeal the Agency's final  
42 decision should be recognized in a rule.

43  
44 **Response:** The Commission does not believe it is necessary to establish such a rule because  
45 it is stipulated in state statute. A decision, when issued, includes a notification to the parties  
46 of their appeal rights. Schools that disagree with the Agency's final decision have the right to

1 appeal to a district court in Travis County, pursuant to the provisions of Chapter 132 of the  
2 Texas Education Code. This right to appeal is derived from the Texas Legislature and is not  
3 granted by the Commission.  
4

5 **COMMENTS WERE RECEIVED FROM:**

6  
7 Sadie Harrison-Fincher, Whitaker, Chalk, Swindle & Sawyer, L.L.P., attorneys for Career  
8 Education Corporation  
9

10 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to  
11 be within the Agency's legal authority to adopt.  
12

13 The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide  
14 the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it  
15 deems necessary for the effective administration of Agency services and activities.  
16

17 The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as  
18 Texas Education Code, Chapter 132.  
19

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  
16 (1) **Agency** -- The unit of state government established under Texas Labor Code Chapter 301  
17 that is presided over by the Commission and administered by the Executive Director to  
18 operate the integrated workforce development system and administer the unemployment  
19 compensation insurance program in this state as established under the Texas  
20 Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as  
21 amended. The definition of "Agency" shall apply to all uses of the term in rules  
22 contained in this subchapter.  
23
- 24 (2) **Appellant** -- The party or the party's authorized hearing representative who files an  
25 appeal from an appealable determination or decision.  
26
- 27 (3) **Commission** -- The body of governance of the Texas Workforce Commission composed  
28 of three members appointed by the Governor as established under Texas Labor Code  
29 §301.002 that includes one representative of labor, one representative of employers, and  
30 one representative of the public. The definition of "Commission" shall apply to all uses  
31 of the term in rules contained in this subchapter.  
32
- 33 (4) **Date of notice** -- The date the notice is received, unless good cause exists for the hearing  
34 officer to determine otherwise.  
35
- 36 (5) **Date of request of hearing** -- The date on which the appellant or the hearing  
37 representative filed a written notice of appeal with the Agency by hand delivery,  
38 facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as  
39 of the postmark date on the envelope containing the appeal request unless good cause  
40 exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or  
41 facsimile after 5 p.m., the date of request shall be the next day.
- 42 (6) **Hearing** -- An informal, orderly, and readily available proceeding held before an  
43 impartial hearing officer. A party or hearing representative may present evidence to  
44 show that the Agency's determination should be reversed, affirmed, or modified.  
45

1 (7) **Hearing officer** -- An Agency employee designated to conduct impartial hearings and  
2 issue final administrative decisions.  
3

4 (8) **Hearing representative** -- Any individual authorized by a party to assist the party in  
5 presenting the party's appeal. A hearing representative may be legal counsel or another  
6 individual. Each party may have a hearing representative to assist in presenting the  
7 party's appeal.  
8

9 (9) **Party** -- The person or entity with the right to participate in a hearing authorized in  
10 applicable statute or rule.  
11

### 12 **§807.383. Information on Right of Appeal**

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

### 17 **§807.384. Request for Hearing**

- 18 (a) The party seeking review of a determination under this subchapter relating to career  
19 schools hearings shall request a hearing in writing within 15 days after receipt of the  
20 notice of determination.
- 21 (b) The request shall be addressed as provided in the determination and state the nature of the  
22 determination, the name and identifying information of the requesting party, and a request  
23 that the determination be reviewed.
- 24 (c) The request may include an explanation of why the determination should be changed;  
25 however, this is not a jurisdictional requirement.  
26

### 27 **§807.385. Setting of Hearing**

- 28
- 29 (a) Upon receipt of request for a hearing, the Agency shall promptly mail a notice of hearing  
30 that sets the hearing for a reasonable time and place within 30 days from receipt of the  
31 request for a hearing.
- 32 (b) The notice of hearing shall be in writing and include a:
- 33 (1) statement of the date, time, place, and nature of the hearing;
- 34 (2) statement of the legal authority under which the hearing is to be held; and
- 35 (3) short and plain statement of the issues to be considered during the hearing.
- 36 (c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless  
37 a shorter period is permitted by statute.
- 38 (d) The hearing notice shall state whether the hearing shall be conducted by telephone or in-  
39 person. The hearing notice shall also include the location of an in-person hearing.
- 40 (e) Parties needing special accommodations, including a bilingual or sign language  
41 interpreter, may request such before the setting of the hearing, if possible, or as soon as  
42 practical.

1  
2 **§807.386. Hearing Officer Independence and Impartiality**  
3

- 4 (a) A hearing officer presiding over a hearing shall have all powers necessary and  
5 appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain  
6 independent and impartial in all matters regarding the handling of any issues during the  
7 pendency of a case and in issuing their written decisions.  
8  
9 (b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the  
10 outcome of the appeal or if the hearing officer directly or indirectly participated in the  
11 determination on appeal. Any party may present facts to the Agency in support of a  
12 request to disqualify a hearing officer.  
13  
14 (c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety  
15 or partiality.  
16  
17 (d) Following any disqualification or withdrawal of a hearing officer, the Agency shall  
18 assign an alternate hearing officer to the case. The alternate hearing officer shall not be  
19 bound by any findings or conclusions made by the disqualified or withdrawn hearing  
20 officer.  
21

22 **§807.387. Hearing Procedures**

- 23 (a) The hearing shall be conducted in person in Austin, Texas, unless the parties agree to a  
24 telephonic hearing or request a different location.  
25  
26 (b) The hearing shall be conducted informally and in such a manner as to ascertain the  
27 substantive rights of the parties. All issues relevant to the appeal shall be considered  
28 and addressed, and may include:  
29  
30 (1) Presentation of Evidence. The parties to an appeal may present evidence that is  
31 material and relevant, as determined by the hearing officer. In conducting a  
32 hearing, the hearing officer shall actively develop the record on the relevant  
33 circumstances and facts to resolve all issues. To be considered as evidence in a  
34 decision, any document or physical evidence must be entered as an exhibit at the  
35 hearing. A party has the right to object to evidence offered at the hearing by the  
36 hearing officer or other parties.  
37  
38 (2) Examination of Parties and Witnesses. After placing the witnesses under oath, the  
39 hearing officer shall examine parties and any witnesses and shall allow cross-  
40 examination to the extent the hearing officer deems necessary to afford the parties  
41 due process.  
42  
43 (3) Additional Evidence. The hearing officer, with or without notice to any of the  
44 parties, may take additional evidence as deemed necessary, provided that a party  
45 shall be given an opportunity to rebut the evidence if it is to be used against the  
46 party's interest.

1  
2 (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an  
3 appropriate manner. The hearing officer may expel any individual or party who  
4 fails to correct behavior the hearing officer identifies as disruptive. After  
5 expulsion, the hearing officer may proceed with the hearing and render a decision.  
6

7 (c) Records  
8

9 (1) The hearing record shall include the audio recording of the proceeding and any  
10 other relevant evidence relied on by the hearing officer, including documents and  
11 other physical evidence entered as exhibits.  
12

13 (2) The hearing record shall be maintained in accordance with federal and state law.  
14

15 (3) Confidentiality of information contained in the hearing record shall be maintained  
16 in accordance with federal and state law.  
17

18 (4) Upon request, a party has the right to obtain a copy of the hearing record at no  
19 charge. However, a party requesting a transcript of the hearing record shall pay the  
20 costs of the transcription.  
21

22 **§807.388. Postponements, Continuances, and Withdrawals**  
23

24 (a) The hearing officer may grant a postponement of a hearing for good cause at a party's  
25 request.

26 (b) A continuance of a hearing may be ordered at the discretion of the hearing officer in  
27 order to consider additional, necessary evidence or for any other reason the hearing  
28 officer deems appropriate.

29 (c) A party may withdraw an appeal at any time prior to the issuance of the final decision.  
30

31 **§807.389. Evidence**  
32

33 (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is  
34 relevant and if in the judgment of the hearing officer it is the kind of evidence on which  
35 reasonably prudent persons are accustomed to rely in the conduct of their affairs.  
36 However, the hearing officer may exclude evidence if its probative value is outweighed  
37 by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern  
38 for undue delay, waste of time, or needless presentation of cumulative evidence.  
39

40 (b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic  
41 hearing shall be exchanged with all parties and a copy shall be provided to the hearing  
42 officer in advance of the hearing. Any documentary evidence to be presented at an in-  
43 person hearing shall be exchanged at the hearing.  
44

1 (c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing  
2 to relevant facts. The hearing officer may decide the appeal based on such stipulations  
3 or, at the hearing officer's discretion, may set the appeal for hearing and take such  
4 further evidence as the hearing officer deems necessary.  
5

6 (d) Experts and Evaluations. If relevant and useful, testimony from an independent expert  
7 or a professional evaluation from a source satisfactory to the parties and the Agency  
8 may be ordered by hearing officers, on their own motion or at a party's request. The  
9 cost of any such expert or evaluation ordered by the hearing officer shall be borne  
10 equally by the parties.  
11

12 (e) Subpoenas  
13

14 (1) The hearing officer may issue subpoenas to compel the attendance of witnesses  
15 and the production of records. A subpoena may be issued either at the request of  
16 a party or on the hearing officer's own motion.  
17

18 (2) A party requesting a subpoena shall state the nature of the information desired,  
19 including names of any witnesses and the records that the requestor feels are  
20 necessary for the proper presentation of the case.  
21

22 (3) The request shall be granted only to the extent the records or the testimony of the  
23 requested witnesses appears to be relevant to the issues on appeal.  
24

25 (4) A denial of a subpoena request shall be made in writing or on the record, stating  
26 the reasons for such denial.  
27

### 28 **§807.390. Ex Parte Communications** 29

30 (a) The hearing officer shall not participate in ex parte communications, directly or  
31 indirectly, in any matter in connection with any substantive issue, with any interested  
32 person or party. Likewise, no person shall attempt to engage in ex parte  
33 communications with the hearing officer on behalf of any interested person or party.  
34

35 (b) If the hearing officer receives any such ex parte communication, the other parties  
36 shall be given an opportunity to review any such ex parte communication.  
37

38 (c) Nothing shall prevent the hearing officer from communicating with parties or their  
39 representatives about routine matters such as requests for continuances or  
40 opportunities to inspect the file.  
41

42 (d) The hearing officer may initiate communications with an impartial Agency employee  
43 who has not participated in a hearing or any determination in the case for the limited  
44 purpose of using the special skills or knowledge of the Agency and its staff in  
45 evaluating the evidence.

1  
2 **§807.391. Change in Determination**

3 The issuer of the determination may change the determination any time before the hearing  
4 officer issues the decision. Despite the issuer changing the determination, the parties may  
5 proceed with the hearing.  
6

7 **§807.392. Hearing Decision**

- 8 (a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a  
9 written decision on behalf of the Agency.
- 10 (b) The decision shall be based exclusively on the evidence of record in the hearing and on  
11 matters officially noticed in the hearing. The decision shall include:  
12 (1) a list of the individuals who appeared at the hearing;  
13  
14 (2) the findings of fact and conclusions of law reached on the issues; and  
15  
16 (3) the affirmation, reversal, or modification of the determination.
- 17  
18 (c) Unless a party files a timely motion for rehearing, the Agency may assume continuing  
19 jurisdiction to modify or correct a hearing decision until the expiration of 30 calendar  
20 days from the mailing date of the hearing decision.  
21

22 **§807.393. Motion for Reopening**

- 23  
24 (a) If a party does not appear for a hearing, the party may request the reopening of the  
25 hearing within 30 calendar days from the date the decision is mailed.  
26  
27 (b) The motion for reopening shall be in writing and detail the reason for failing to appear at  
28 the hearing.  
29  
30 (c) The Agency may schedule a hearing on whether to grant the reopening.  
31  
32 (d) The motion may be granted if the hearing officer determines that the party has shown  
33 good cause for failing to appear at the hearing.  
34

35 **§807.394. Motion for Rehearing**

- 36  
37 (a) A party has 30 calendar days from the date the decision is mailed to file a motion for  
38 rehearing. A rehearing shall be granted only for the presentation of new evidence.  
39  
40 (b) A motion for rehearing shall be in writing and allege the new evidence to be considered.  
41 The party shall show a compelling reason why this evidence was not presented at the  
42 hearing.  
43  
44 (c) If the hearing officer determines that the alleged, new evidence warrants a rehearing, a  
45 hearing shall be scheduled at a reasonable time and place.  
46



1 (d) The hearing officer shall issue a written decision in response to a timely filed motion for  
2 rehearing.

3  
4 (e) The Agency may assume continuing jurisdiction to modify, correct, or reform a decision  
5 until the expiration of 30 calendar days from the date of mailing of the hearing decision.  
6

7 **§807.395. Finality of Decision**

8  
9 (a) The decision of the hearing officer is the final decision of the Agency after the expiration  
10 of 30 calendar days from the mailing date of the decision unless within that time:

11 (1) a request for reopening is filed with the Agency;

12 (2) a request for rehearing is filed with the Agency; or

13  
14 (3) the Agency assumes continuing jurisdiction to modify or correct the decision.  
15

16  
17 (b) Any decision issued in response to a request for reopening or rehearing or a modification  
18 or correction issued by the Agency shall be final on the expiration of 30 calendar days  
19 from the mailing date of the decision, modification, or correction.  
20