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1           **CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS**

2  
3           **SUBCHAPTER A. GENERAL PROVISIONS**

4  
5           **§823.1. Short Title and Purpose.**

- 6  
7           (a) This chapter provides an appeals process to the extent authorized by federal and state  
8           law and by rules administered by the Texas Workforce Commission (Agency).  
9  
10          (b) This section applies only to complaints or determinations regarding federal- or state-  
11          funded workforce services administered by the Agency or Local Workforce  
12          Development Boards (Boards), as follows:  
13  
14               (1) Child care;  
15  
16               (2) Temporary Assistance for Needy Families (TANF) Choices;  
17  
18               (3) Supplemental Nutrition Assistance Program (SNAP) Employment and  
19               Training (E&T);  
20  
21               (4) Workforce Innovation and Opportunity Act (WIOA) adult, dislocated worker,  
22               and youth programs; and  
23  
24               (5) Eligible Training Providers (ETPs) receiving WIOA funds or other funds for  
25               training services.  
26  
27          (c) Determinations or complaints relating to the following matters are not governed by  
28          this chapter:  
29  
30               (1) Across-the-board reductions of services, benefits, or assistance to a class of  
31               recipients;  
32  
33               (2) Matters governed by hearing procedures otherwise provided for in this title;  
34  
35               (3) Alleged violations of nondiscrimination and equal opportunity requirements;  
36  
37               (4) Denial of benefits as related to mandatory work requirements for individuals  
38               receiving TANF and SNAP E&T services and is administered through the  
39               Texas Health and Human Services Commission (HHSC);  
40  
41               (5) Matters governing job service-related complaints as referenced in 20 CFR Part  
42               658, Subpart E, §§658.400, 658.410, 658.411, 658.417, and 658.418 and the  
43               federal Employment Service law;  
44  
45               (6) Services provided by the Commission pursuant to Texas Labor Code  
46               §301.023, relating to Complaints Against Commission;

- (7) Alleged criminal violations of any services referenced in subsection (b) of this section;
- (8) Disputes between contractors and Boards;
- (9) Contract disputes; or
- (10) Any other determination or complaint not listed in subsection (b) of this section.

*The provisions of this §823.1 adopted to be effective November 26, 2007, 32 TexReg 8546; amended to be effective January 25, 2021, 46 TexReg 607*

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#### **§823.2. Definitions.**

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

- (1) Adverse action--Any denial or reduction in benefits or services to a party or displacement of an individual from current employment by a Workforce Solutions Office customer.
- (2) Agency decision--The written finding issued by an Agency hearing officer following a hearing before that hearing officer.
- (3) Appeal--A written request for a review filed with the Board or the Agency by an individual in response to a determination or decision.
- (4) Board adjudicator--An impartial individual designated by the Board to participate in informal dispute resolutions and to review and issue Board decisions.
- (5) Board decision--The written finding issued by a Board adjudicator following a hearing before that adjudicator in response to an appeal or complaint.
- (6) Complaint--A written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service covered by this chapter.
- (7) Determination--A written order issued to a Workforce Solutions Office customer by a Board, its designee, or the Agency relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility

1 under programs administered by the Agency or a Board listed in §823.1(b) of  
2 this subchapter (relating to Short Title and Purpose).

3  
4 (8) Hearing officer--An impartial individual designated by the Agency to conduct  
5 hearings and issue Agency decisions.

6  
7 (9) Informal resolution--Any procedure that results in an agreed final settlement  
8 between all parties to a complaint.

9  
10 (10) Party--An individual who files a complaint or who appeals a determination or  
11 the entity against which the complaint is filed or that issued the determination.

12  
13 *The provisions of this §823.2 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
14 *amended to be effective January 25, 2021, 46 TexReg 607*

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17  
18 **§823.3. Timeliness.**

19  
20 (a) A properly addressed determination or decision is final for all purposes unless the  
21 party to whom it is mailed files an appeal no later than 14 calendar days after the  
22 mailing date.

23  
24 (b) Each party to a complaint, adjudication, or appeal shall promptly notify, in writing,  
25 the Board, Board's designee, or the Agency with which the complaint or appeal was  
26 filed of any change of mailing address. Determinations and decisions shall be mailed  
27 to the new address.

28  
29 (1) A copy of the determination or decision must be mailed to a properly  
30 designated party representative in order for it to become final.

31  
32 (2) The Board or Agency is responsible for making an address change only if the  
33 Board or Agency is specifically directed by the party to mail subsequent  
34 correspondence to the new address.

35  
36 (3) If the Board, Board's designee, or Agency addresses a document incorrectly,  
37 but the party receives the document, the time frame for filing an appeal shall  
38 begin as of the actual date of receipt by the party, whether or not the party  
39 receives the document within the appeal time frame set forth in subsection (a)  
40 of this section. However, this does not apply if the party fails to provide a  
41 current address or provides an incorrect address.

42  
43 (c) A determination or decision mailed to a party shall be presumed to have been  
44 delivered if the document was mailed as specified in subsection (b) of this section.

45  
46 (1) A determination or decision shall not be presumed to have been delivered:

- 1
- 2 (A) if there is tangible evidence of nondelivery, such as being returned to the
- 3 sender by the US Postal Service; or
- 4
- 5 (B) if credible and persuasive evidence is submitted to establish nondelivery
- 6 or delayed delivery to the proper address.
- 7
- 8 (2) If a party provides the Board or Agency with an incorrect mailing address, a
- 9 mailing to that address shall be considered a proper mailing, even if there is
- 10 proof that the party never received the document.
- 11
- 12 (d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed
- 13 electronically only if filed in a form approved by the Agency in writing. The filing
- 14 date for a complaint or an appeal shall be:
- 15
- 16 (1) the postmark date or the postal meter date (where there is only one or the
- 17 other);
- 18
- 19 (2) the postmark date, if there is both a postmark date and a postal meter date;
- 20
- 21 (3) the date the document was delivered to a common carrier, which is equivalent
- 22 to the postmark date;
- 23
- 24 (4) three business days before receipt by the Board or Agency, if the document
- 25 was received in an envelope bearing no legible postmark, postal meter date, or
- 26 date of delivery by a common carrier;
- 27
- 28 (5) the date of the document itself, if the document date is fewer than three days
- 29 earlier than the date of receipt and if the document was received in an envelope
- 30 bearing no legible postmark, postal meter date, or date of delivery by a
- 31 common carrier;
- 32
- 33 (6) the date of the document itself, if the mailing envelope containing the
- 34 complaint or appeal is lost after delivery to the Board or Agency. If the
- 35 document is undated, the filing date shall be deemed to be three business days
- 36 before receipt by the Board or Agency; or
- 37
- 38 (7) the date of receipt by the Board or Agency, if the document was filed by fax.
- 39
- 40 (e) Credible and persuasive testimony under oath, subject to cross-examination, may
- 41 establish a filing date that is earlier than the dates established under subsection (d) of
- 42 this section. A party shall be allowed to establish a filing date earlier than a postal
- 43 meter date or the date of the document itself only upon a showing of extremely
- 44 credible and persuasive evidence. Likewise, when a party alleges that a complaint or
- 45 appeal has been filed that the Board or Agency has never received, the party must
- 46 present credible and persuasive evidence to support the allegation.

(f) A decision or determination shall not be deemed final if a party shows that a representative of the Board, the Board's designee, or Agency has given misleading information on appeal rights to the party. The party shall specifically establish:

(1) how the party was misled; or

(2) what misleading information the party was given, and, if possible, by whom the party was misled.

(g) There is no good cause exception to the timeliness rules.

*The provisions of this §823.3 adopted to be effective November 26, 2007, 32 TexReg 8546; amended to be effective January 25, 2021, 46 TexReg 607*

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#### **§823.4. Representation.**

A party may authorize a representative to assist with participating in an informal resolution or in presenting a complaint or an appeal on behalf of the party under this chapter. The Agency or Board may require the authorization to be in writing. On behalf of the party, the representative may exercise any of the party's rights under this chapter.

*The provisions of this §823.4 adopted to be effective November 26, 2007, 32 TexReg 8546; amended to be effective January 25, 2021, 46 TexReg 607*

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### **SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES**

#### **§823.10. Board-Level Complaints.**

(a) Individuals who may file a complaint include:

(1) Workforce Solutions Office customers;

(2) other interested individuals affected by the One-Stop Service Delivery System, including subrecipients and eligible training providers; and

(3) previously employed individuals who believe they were displaced by a Workforce Solutions Office customer participating in work-based services such as subsidized employment, work experience, or workfare.

(b) Complaints shall be in writing and filed within 180 calendar days of the alleged violation.

1  
2 (c) The complaint shall include:

- 3  
4 (1) the complainant's name and current mailing address; and  
5  
6 (2) a brief statement of the alleged violation stating the facts on which the  
7 complaint is based.  
8

9 (d) Each Board shall ensure that information about complaint procedures is provided to  
10 individuals, eligible training providers, and subrecipients. The information provided  
11 shall be presented in such a manner as to be understood by the affected individuals,  
12 including youth, individuals with disabilities, and individuals with limited English  
13 proficiency. This information shall be:

- 14  
15 (1) posted in a conspicuous public location at each Workforce Solutions Office;  
16  
17 (2) provided in writing to any customer;  
18  
19 (3) made available in writing to any individual upon request; and  
20  
21 (4) placed in each Workforce Solutions Office customer's file.  
22

23 *The provisions of this §823.10 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
24 *amended to be effective January 25, 2021, 46 TexReg 607*  
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28 **§823.11. Determinations.**  
29

30 (a) A determination affecting the type and level of services or benefits to be provided by  
31 a Board or its designee shall be promptly provided to any individual directly  
32 affected.  
33

34 (b) The determination shall include the following:

- 35  
36 (1) a brief statement of the adverse action;  
37  
38 (2) the mailing date of the determination;  
39  
40 (3) an explanation of the individual's right to an appeal;  
41  
42 (4) the procedures for requesting informal resolution with the Board and for filing  
43 an appeal to the Board, including applicable time frames as required in §823.3  
44 of this chapter (Timeliness);  
45  
46 (5) the right to have a representative, including legal counsel; and



1  
2 (6) the address and fax number to which a request for informal resolution or  
3 appeal may be sent.  
4

5 (c) Boards shall allow training service providers the opportunity to appeal a  
6 determination related to the:  
7

8 (1) denial of eligibility as a training provider under WIOA, §122(b), (c), or (d);  
9

10 (2) termination of eligibility as a training provider or other action under WIOA,  
11 §122(f); or  
12

13 (3) denial of eligibility as a training provider of on-the-job or customized training  
14 by the operator of a Workforce Solutions Office under WIOA, §122(h).  
15

16 (d) An individual who receives a determination from a Board or a Board's designee may  
17 file an appeal with the Board requesting a review of the determination. The appeal  
18 must be submitted in writing, be filed within 14 calendar days of the mailing date of  
19 the determination, and include the party's proper mailing address.  
20

21 *The provisions of this §823.11 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
22 *amended to be effective January 25, 2021, 46 TexReg 607*  
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26 **§823.12. Board Informal Resolution Procedure.**  
27

28 (a) Each Board shall provide an opportunity for informal resolution of a complaint or  
29 appeal.  
30

31 (b) Informal resolution may include, but is not limited to:  
32

33 (1) informal meetings with case managers or their supervisors;  
34

35 (2) second reviews of the case file;  
36

37 (3) telephone calls or conference calls to the affected parties;  
38

39 (4) in-person interviews with all affected parties; or

- 1  
2 (5) written explanations or summaries of the laws or regulations involved in the  
3 complaint.  
4

5 *The provisions of this §823.12 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
6 *amended to be effective January 25, 2021, 46 TexReg 607*  
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10 **§823.13. Board Reviews.**  
11

- 12 (a) If the informal resolution procedure results in a final agreement between the parties,  
13 no hearing shall be held.  
14  
15 (b) If no informal resolution is reached, Boards shall provide an opportunity for a formal  
16 review to resolve an appeal or complaint.  
17  
18 (c) Either a final agreement resulting from an informal resolution or a hearing and Board  
19 decision shall be completed within 60 calendar days of the original filing of the  
20 appeal or complaint.  
21  
22 (d) Boards shall provide a process that allows an individual alleging a labor standards  
23 violation to submit a complaint to a binding arbitration procedure if a collective  
24 bargaining agreement covering the parties to the complaint so provides.  
25  
26 (e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send  
27 the parties a decision setting forth the results of the hearing. The decision shall be  
28 issued by a Board adjudicator, include findings of fact and conclusions of law, and  
29 provide information about appeal rights to the parties.  
30  
31 (f) If no Board decision is mailed within the 60 calendar-day time frame described in  
32 subsection (e) of this section, or if any party disagrees with a timely Board decision,  
33 a party may file an appeal with the Agency.  
34  
35 (g) An appeal to the Agency shall be filed in writing by mail, fax, or hand delivery with  
36 the TWC Commission Appeals Department at its state office, 101 E. 15th Street, CA  
37 Hearings Unit, Room 678, Austin, Texas, 78778, or faxed to the number provided in  
38 the determination or decision within 14 calendar days after the mailing date of the  
39 Board's decision. If the Board does not issue a decision within 60 calendar days of  
40 the date of the filing of the original appeal or complaint, an appeal to the Agency  
41 must be filed no later than 90 calendar days after the filing date of the original appeal  
42 or complaint.  
43

1     *The provisions of this §823.13 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
2     *amended to be effective January 25, 2021, 46 TexReg 607*

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5  
6     **§823.14. Board Policies for Resolving Complaints and Appeals of Determinations.**

- 7
- 8       (a) Each Board shall establish written policies to handle complaints and appeals of  
9       determinations, provide the opportunity for informal resolution, and conduct reviews  
10      in compliance with this subchapter for individuals, eligible training providers, and  
11      other individuals affected by the One-Stop Service Delivery System, including  
12      subrecipients.
- 13
- 14      (b) A Board shall maintain written copies of these policies and make them available to  
15      the Agency, Workforce Solutions Office customers, and other interested individuals  
16      upon request. A Board shall require that its subrecipients provide these policies to  
17      Workforce Solutions Office customers and other interested individuals upon request.
- 18
- 19      (c) At a minimum, a Board shall:
- 20
- 21          (1) develop and approve policies to ensure that determinations are provided as  
22          specified in §823.11 of this subchapter (relating to Determinations);
- 23
- 24          (2) develop and approve policies to ensure that information about complaint  
25          procedures is available as described in §823.10(d) of this subchapter (Board-  
26          Level Complaints);
- 27
- 28          (3) notify individuals that complaints must be submitted in writing and set forth  
29          the facts on which the complaint is based, and notify them of the time limit in  
30          which to file a complaint;
- 31
- 32          (4) maintain a complaint log and all complaint-related materials in a secure file for  
33          a period of three years after final resolution;
- 34
- 35          (5) designate an individual to be responsible for investigating, documenting,  
36          monitoring, and following up on complaints;
- 37
- 38          (6) inform individuals of the:
- 39
- 40              (A) right to file a complaint;
- 41
- 42              (B) right to appeal a determination;
- 43
- 44              (C) opportunity for informal resolution and a Board review;
- 45

- 1 (D) time frame in which to either reach informal resolution or to issue a  
2 Board decision; and  
3  
4 (E) right to file an appeal to the Agency, including providing information on  
5 where to file the appeal;  
6  
7 (7) designate adjudicators to conduct Board hearings, document actions taken, and  
8 render decisions; and  
9  
10 (8) ensure that complaints remanded from the Agency to the Board for resolution  
11 are handled in a timely fashion and follow established Board policies and time  
12 frames.  
13

- 14 (d) Complaints filed directly with the Agency may be remanded to the appropriate Board  
15 to be processed in accordance with the Board's policies for resolving complaints.  
16

17 *The provisions of this §823.14 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
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## 22 **SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES**

### 23 **§823.20. State-Level Complaints.**

- 24  
25  
26 (a) A Workforce Solutions Office customer or other interested individual affected by the  
27 statewide One-Stop Service Delivery System, including service providers that allege  
28 a noncriminal violation of the requirements of any federal- or state-funded workforce  
29 services, may file a complaint with the Agency.  
30  
31 (b) Complaints shall be in writing and filed within 180 calendar days of the alleged  
32 violation. The complaint shall include the party's name, current mailing address, and  
33 a brief statement of the alleged violation identifying the facts on which the complaint  
34 is based.  
35  
36 (c) The complaint shall be filed with the TWC Commission Appeals Department at its  
37 state office, 101 E. 15th Street, CA Hearings Unit, Room 678, Austin, Texas, 78778.  
38  
39 (d) The Agency shall provide an opportunity for informal resolution.  
40  
41 (e) If the informal resolution procedure results in a final agreement between the parties,  
42 no hearing shall be held.  
43  
44 (f) If no final informal resolution is reached, the complaint shall be promptly set for a  
45 hearing and a decision shall be issued in accordance with the procedures for appeals  
46 under this subchapter.

- 1  
2 (g) Complaints filed directly with the Agency may be remanded to the appropriate  
3 Board to be processed in accordance with the Board's hearing policies.  
4

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10 **§823.21. Hearings.**  
11

- 12 (a) A WIOA-funded training provider or other provider certified by the Agency and  
13 later found to be ineligible to receive funding as a training provider may file an  
14 appeal directly with the Agency.  
15  
16 (b) Upon receipt of an appeal from a Board decision, an appeal pursuant to subsection  
17 (a) of this section, or if no informal resolution of a complaint is successfully reached  
18 pursuant to §823.20 of this subchapter (relating to State-Level Complaints), the  
19 Agency shall promptly assign a hearing officer and mail a notice of hearing to the  
20 parties and/or their designated representatives. The hearing shall be set and held  
21 promptly and in no case later than as provided by applicable statute or rule.  
22  
23 (c) The notice of hearing shall be in writing and include a:  
24  
25 (1) statement of the date, time, place, and nature of the hearing;  
26  
27 (2) statement of the legal authority under which the hearing is to be held; and  
28  
29 (3) short and plain statement of the issues to be considered during the hearing.  
30  
31 (d) The notice of hearing shall be issued at least 10 calendar days before the date of the  
32 hearing unless a shorter period is permitted by statute.  
33  
34 (e) Hearings shall be conducted by telephonic means, unless an in-person hearing is  
35 required by applicable statute or the Agency determines that an in-person hearing is  
36 necessary.  
37  
38 (f) Parties may request accommodations, including interpreters, through the hearing  
39 officer or Agency staff.  
40

41 *The provisions of this §823.21 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
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1       **§823.22. Postponement and Continuance.**  
2

3           (a) The hearing officer shall use his or her best judgment to determine when to grant a  
4           continuance of postponement of a hearing in order to secure all the evidence that is  
5           necessary and to be fair to the parties.  
6

7           (b) Before the hearing, requests for a continuance or a postponement of a hearing may be  
8           made informally, either orally or in writing, to the hearing officer.  
9

10       *The provisions of this §823.22 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
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15       **§823.23. Evidence.**  
16

17           (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is  
18           relevant and if in the judgment of the hearing officer it is the kind of evidence on  
19           which reasonably prudent persons are accustomed to rely in the conduct of their  
20           affairs. However, the hearing officer may exclude evidence if its probative value is  
21           outweighed by the danger of unfair prejudice, by confusion of the issues, or by  
22           reasonable concern for undue delay, waste of time, or needless presentation of  
23           cumulative evidence.  
24

25           (b) Exchange of Exhibits. To be considered as evidence in a decision, any document or  
26           physical evidence must be entered as an exhibit at the hearing. Any documentary  
27           evidence to be presented during a telephonic hearing shall be exchanged with all  
28           parties and a copy shall be provided to the hearing officer in advance of the hearing.  
29           Any documentary evidence to be presented at an in-person hearing shall be  
30           exchanged at the hearing.  
31

32           (c) Stipulations. The parties, with the consent of the hearing officer, may agree in  
33           writing to relevant facts. The hearing officer may decide the appeal on the basis of  
34           such stipulations or, at the hearing officer's discretion, may set the appeal for hearing  
35           and take such further evidence as the hearing officer deems necessary.  
36

37           (d) Experts and Evaluations. If relevant and useful, testimony from an independent  
38           expert or a professional evaluation from a source satisfactory to the parties and the  
39           Agency may be ordered by hearing officers, on their own motion or at a party's  
40           request. The cost of any such expert or evaluation ordered by the hearing officer  
41           shall be borne equally by the parties.  
42

43           (e) Subpoenas.  
44

- (1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.
- (2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.
- (3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.
- (4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

*The provisions of this §823.23 adopted to be effective November 26, 2007, 32 TexReg 8546*

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#### **§823.24. Hearing Procedures.**

- (a) General Procedure. All hearings shall be conducted de novo. The hearing shall be conducted informally and in such manner as to ascertain the substantive rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed.
  - (1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.
  - (2) Examination of Witnesses and Parties. The hearing officer shall examine parties and any witnesses under oath and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.
  - (3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.
  - (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive.

1 After an expulsion, the hearing officer may proceed with the hearing and  
2 render a decision.

3  
4 (b) Records.

- 5  
6 (1) The hearing record shall include the audio recording of the proceeding and any  
7 other relevant evidence relied on by the hearing officer, including documents  
8 and other physical evidence entered as exhibits.  
9  
10 (2) The hearing record shall be maintained in accordance with federal or state law.  
11  
12 (3) Confidentiality of information contained in the hearing record shall be  
13 maintained in accordance with federal and state law.  
14  
15 (4) Upon request, a party has the right to obtain a copy of the hearing record,  
16 including recordings of the hearing and file documents at no charge.  
17

18 *The provisions of this §823.24 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
19 *amended to be effective January 25, 2021, 46 TexReg 607*  
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23 **§823.25. Withdrawal of Complaint or Appeal.**

24  
25 A party may request a withdrawal of its own complaint or appeal at any time before a  
26 final Agency decision is issued. The hearing officer may grant the request for withdrawal  
27 in writing and issue an order of dismissal.  
28

29 *The provisions of this §823.25 adopted to be effective November 26, 2007, 32 TexReg 8546*  
30

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33 **§823.26. Hearing Officer Independence and Impartiality.**

- 34  
35 (a) A hearing officer presiding over a hearing shall have all powers necessary and  
36 appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall  
37 remain independent and impartial in all matters regarding the handling of any issues  
38 during the pendency of a case and in issuing their written decisions.  
39  
40 (b) A hearing officer shall be disqualified if the hearing officer has a personal interest in  
41 the outcome of the appeal or if the hearing officer directly or indirectly participated  
42 in the determination or Board decision on appeal. Any party may present facts to the  
43 Agency in support of a request to disqualify a hearing officer.  
44  
45 (c) A hearing officer may withdraw from a hearing to avoid the appearance of  
46 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 *The provisions of this §823.26 adopted to be effective November 26, 2007, 32 TexReg 8546*  
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11 **§823.27. Ex Parte Communications.**  
12

- 13 (a) The hearing officer shall not participate in ex parte communications, directly or  
14 indirectly, in any matter in connection with any substantive issue, with any interested  
15 person or party. Likewise, no person shall attempt to engage in ex parte  
16 communications with the hearing officer on behalf of any interested person or party.  
17  
18 (b) If the hearing officer receives any such ex parte communication, the other parties  
19 shall be given an opportunity to review that communication.  
20  
21 (c) Nothing shall prevent the hearing officer from communicating with parties or their  
22 representatives about routine matters such as requests for continuances or  
23 opportunities to inspect the file.  
24  
25 (d) The hearing officer may initiate communications with an impartial Agency employee  
26 who has not participated in a hearing or any determination in the case for the limited  
27 purpose of using the special skills or knowledge of the Agency and its staff in  
28 evaluating the evidence.  
29

30 *The provisions of this §823.27 adopted to be effective November 26, 2007, 32 TexReg 8546*  
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34 **SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS**  
35

36 **§823.30. Hearing Decision.**  
37

- 38 (a) Following the conclusion of the hearing, the hearing officer shall promptly issue a  
39 written decision on behalf of the Agency. Decisions issued on state-level complaints  
40 and grievances, or appeals of local-level complaints and grievances, made pursuant  
41 to provisions of WIOA, must be issued within 60 calendar days of the filing of the  
42 complaint, grievance or appeal, whichever comes later.  
43  
44 (b) The Agency decision shall be based exclusively on the evidence of record in the  
45 hearing and on matters officially noticed in the hearing. The Agency decision shall  
46 include:

- (1) a list of the individuals who appeared at the hearing, including representatives and observers;
  - (2) the findings of fact and conclusions of law reached on the issues; and
  - (3) the affirmation, reversal, or modification of a determination or Board decision.
- (c) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to reconsider the issues on appeal, take additional evidence, and issue a corrected decision until the expiration of 14 calendar days from the mailing date of the hearing decision.

*The provisions of this §823.30 adopted to be effective November 26, 2007, 32 TexReg 8546; amended to be effective January 25, 2021, 46 TexReg 607*

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**§823.31. Petition for Reopening.**

- (a) If a party fails to appear for a hearing, the hearing officer may hear and record the evidence of the party present and the witnesses, if any, and shall proceed to decide the appeal on the basis of the record unless there appears to be good reason for continuing the hearing. A copy of the decision shall be promptly mailed to the parties with an explanation of the manner in which, and time within which, a request for reopening may be submitted.
- (b) A party that fails to appear at a hearing may, within 14 calendar days from the date the decision is mailed, petition in writing for a new hearing before the hearing officer. The petition should identify the party requesting the reopening and explain the reason for the failure to appear. The timeliness rules in §823.3 of this chapter (relating to Timeliness) apply to the petition. The petition shall be granted if it appears to the hearing officer that the petitioner has shown good cause for the petitioner's failure to appear at the hearing.
- (c) The hearing officer may schedule a hearing on whether to grant the reopening.
- (d) The hearing officer may deny the petition if no good cause is alleged for the party's nonappearance at the prior hearing.

1  
2 *The provisions of this §823.31 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
3 *amended to be effective January 25, 2021, 46 TexReg 607*  
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7 **§823.32. Motion for Rehearing and Decision.**  
8

- 9 (a) A party has 14 calendar days from the date the decision is mailed to file a motion for  
10 rehearing. A rehearing may be granted only for the presentation of new evidence.  
11  
12 (b) Motions for rehearing shall be in writing and allege the new evidence to be  
13 considered. The appellant must show a compelling reason why the evidence was not  
14 presented at the hearing and explain how consideration of the evidence would alter  
15 the outcome of the case.  
16  
17 (c) If the hearing officer determines that the motion does not meet the criteria in  
18 subsection (b) of this section, the hearing officer may issue a decision indicating that  
19 they have not been met and that no hearing will be set on the motion.  
20  
21 (d) If the hearing officer determines that the appellant has met the requirements of  
22 subsection (b) of this section, the hearing officer shall grant the motion and schedule  
23 a hearing to consider the new evidence on the record.  
24  
25 (e) The hearing officer shall issue a written decision following the hearing to consider  
26 the evidence on the Motion for Rehearing.  
27  
28 (f) After the hearing on the Motion for Rehearing, the hearing officer shall issue a  
29 written decision granting or denying the Motion for Rehearing and may affirm,  
30 reverse, leave in effect, void, or modify the prior decision.  
31

32 *The provisions of this §823.32 adopted to be effective November 26, 2007, 32 TexReg 8546;*  
33 *amended to be effective January 25, 2021, 46 TexReg 607*  
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37 **§823.33. Finality of Decision.**  
38

- 39 (a) The decision of the hearing officer is the final decision of the Agency after the  
40 expiration of 14 calendar days from the mailing date of the decision unless within  
41 that time:  
42  
43 (1) a request for reopening is filed with the Agency;  
44  
45 (2) a request for rehearing is filed with the Agency; or  
46

1 (3) the Agency assumes continuing jurisdiction to modify or correct a decision.

- 2  
3 (b) Any decision issued in response to a request for reopening or rehearing or a  
4 modification or correction issued by the Agency shall be final on the expiration of 14  
5 calendar days from the mailing date of the decision, modification, or correction.  
6

7 *The provisions of this §823.33 adopted to be effective November 26, 2007, 32 TexReg 8546*

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11 **§823.34. Federal Appeals.**

- 12  
13 (a) Participants and interested or affected parties have a right to appeal to the US  
14 Secretary of Labor when decisions are not issued within the time prescribed or when  
15 an adverse final Agency decision is issued.  
16  
17 (b) The US Secretary of Labor will investigate appeals under the following  
18 circumstances:  
19  
20 (1) A decision on a grievance or complaint has not been reached:  
21  
22 (A) within 60 calendar days of receipt of the grievance or complaint; or  
23  
24 (B) within 60 calendar days of receipt of the request for appeal of a local  
25 level grievance and either party appeals to the US Secretary of Labor; or  
26  
27 (2) A state level decision on a grievance or complaint has been reached and the  
28 party to which such decision is adverse appeals to the US Secretary of Labor.  
29  
30 (c) Participants and interested or affected parties that wish to appeal to the US Secretary  
31 of Labor must adhere to the following time parameters:  
32  
33 (1) Appeals that are based on subsection (b)(1) of this section must be filed within  
34 120 calendar days of filing the grievance or timely appeal with the state.  
35  
36 (2) Appeals that are based upon subsection (b)(2) of this section must be filed  
37 within 60 calendar days of receipt of the state-level decision.  
38  
39 (d) Appeals to the US Secretary of Labor must be submitted by certified mail with a  
40 return receipt requested. In addition to sending an appeal to the US Secretary of  
41 Labor, the party must also simultaneously provide a copy of the appeal to the  
42 opposing party and the US Department of Labor Employment and Training  
43 Administration regional administrator.  
44  
45 (e) This federal appeals process applies solely to noncriminal grievances and complaints  
46 under WIOA, Title I.

- 1  
2 (f) This process does not apply to filing appeals regarding discrimination, or denial or  
3 termination of training provider eligibility, for inclusion on the Texas Eligible  
4 Training Provider List.  
5

6 *The provisions of this §823.34 adopted to be effective January 25, 2021, 46 TexReg 607*  
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