

July 2024

GUIDING PRINCIPLES

Policy Committee Meeting



**Teacher Retirement System of
Texas**
1000 Red River Street
Austin, Texas
78701-2698

TEACHER RETIREMENT SYSTEM OF TEXAS MEETING

BOARD OF TRUSTEES

AND

POLICY COMMITTEE

*All or part of the July 18, 2024, meeting of the TRS Policy Committee and Board of Trustees may be held by telephone or video conference call as authorized under Sections 551.130 and 551.127 of the Texas Government Code. The Board intends to have a quorum and the presiding officer of the meeting physically present at the following location, which will be open to the public during the open portions of the meeting: **1000 Red River, Austin, Texas 78701 in the TRS East Building, 5th Floor, Boardroom.***

The open portions of the July 18, 2024, meeting are being broadcast over the Internet. Access to the Internet broadcast and agenda materials of the meeting is provided at www.trs.texas.gov. A recording of the meeting will be available at www.trs.texas.gov.

AGENDA

July 18, 2024 – 11:30 a.m.

TRS East Building, 5th Floor, Boardroom

1. Call roll of Committee members.
2. Consider the approval of the proposed minutes of the May 2024 committee meeting – Committee Chair.
3. Review and consider recommending to the Board proposed amendments to the Procurement Policy –Heather Traeger.
4. Consider recommending to the Board adoption of the following proposed repeal and new rule in Chapter 51 of Title 34, Part 3 of the Texas Administrative Code – Heather Traeger and James Burshtyn:
 - A. [REPEAL] §51.2 Vendor Protests, Dispute Resolution, and Hearing
 - B. [NEW] Rule 51.2 Vendor Protests and Appeals

NOTE: The Board of Trustees (Board) of the Teacher Retirement System of Texas will not consider or act upon any item before the Policy Committee (Committee) at this meeting of the Committee. This meeting is not a regular meeting of the Board. However, because the full Policy Committee constitutes a quorum of the Board, the meeting of the Committee is also being posted as a meeting of the Board out of an abundance of caution.

5. Consider recommending to the Board adoption of the following proposed new rule in Subchapter A of Chapter 41 of Title 34, Part 3 of the Texas Administrative Code, related to Retiree Health Care Benefits (TRS-Care) - Heather Traeger, Roberto Cortes-Moreno:
 - A. [NEW] §41.17 Limited-Time Enrollment Opportunity for Medicare-eligible retirees
6. Consider authorizing for publication in the Texas Register notice of proposed repeal and new rules in Chapter 43 of Title 34, Part 3 of the Texas Administrative Code, related to Contested Cases – Heather Traeger and Nick Gonzalez:
 - A. [REPEAL] §43.1 Administrative Review of Individual Requests
 - B. [REPEAL] §43.2 Effect of Invalidity of Rule
 - C. [REPEAL] §43.3 Definitions
 - D. [REPEAL] §43.4 Decisions Subject to Review by an Adjudicative Hearing
 - E. [REPEAL] §43.5 Request for Adjudicative Hearing
 - F. [REPEAL] §43.6 Filing of Documents
 - G. [REPEAL] §43.7 Computation of Time
 - H. [REPEAL] §43.8 Extensions
 - I. [REPEAL] §43.9 Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting
 - J. [REPEAL] §43.10 Authority to Grant Relief
 - K. [REPEAL] §43.11 Classification of Pleadings
 - L. [REPEAL] §43.12 Form of Petitions and Other Pleadings
 - M. [REPEAL] §43.13 Filing of Pleadings and Amendments
 - N. [REPEAL] §43.14 Briefs
 - O. [REPEAL] §43.15 Motions
 - P. [REPEAL] §43.16 Notice of Hearing and Other Action
 - Q. [REPEAL] §43.17 Agreements To Be in Writing
 - R. [REPEAL] §43.18 Motion for Consolidation
 - S. [REPEAL] §43.19 Additional Parties
 - T. [REPEAL] §43.20 Appearance and Representation
 - U. [REPEAL] §43.21 Lead Counsel
 - V. [REPEAL] §43.23 Powers of the Administrative Law Judge
 - W. [REPEAL] §43.24 Prehearing Conference and Orders
 - X. [REPEAL] §43.25 Conduct of Hearing
 - Y. [REPEAL] §43.26 General Admissibility
 - Z. [REPEAL] §43.27 Exhibits
 - AA. [REPEAL] §43.28 Pre-filed Direct Testimony in Disability Appeal Proceedings
 - BB. [REPEAL] §43.29 Limit on Number of Witnesses
 - CC. [REPEAL] §43.33 Failure to Appear
 - DD. [REPEAL] §43.34 Conduct and Decorum at Hearing
 - EE. [REPEAL] §43.35 Official Notice
 - FF. [REPEAL] §43.36 Ex Parte Consultations

GG.	[REPEAL]	§43.37 Recording of the Hearing; Certified Language Interpreter
HH.	[REPEAL]	§43.38 Dismissal without Hearing
II.	[REPEAL]	§43.39 Summary Disposition
JJ.	[REPEAL]	§43.40 The Record
KK.	[REPEAL]	§43.41 Findings of Fact
LL.	[REPEAL]	§43.42 Reopening of Hearing
MM.	[REPEAL]	§43.43 Subpoenas and Commissions
NN.	[REPEAL]	§43.44 Discovery
OO.	[REPEAL]	§43.45 Proposals for Decision, Exceptions, and Appeals to the Board of Trustees
PP.	[REPEAL]	§43.46 Rehearings
QQ.	[REPEAL]	§43.47 Procedures Not Otherwise Provided
RR.	[REPEAL]	§43.48 Cost of Preparing Administrative Record
SS.	[NEW]	SUBCHAPTER A. GENERAL ADMINISTRATION
TT.	[NEW]	§43.1 Applicability.
UU.	[NEW]	§43.2 Definitions.
VV.	[NEW]	§43.3 Filing of Documents.
WW.	[NEW]	§43.4 Computation of Time.
XX.	[NEW]	§43.5 Extensions.
YY.	[NEW]	§43.6 Ex Parte Consultations.
ZZ.	[NEW]	§43.7 Procedures Not Otherwise Provided.
AAA.	[NEW]	SUBCHAPTER B. REQUESTS FOR ADJUDICATIVE HEARING
BBB.	[NEW]	§43.101. Administrative Review of Individual Requests.
CCC.	[NEW]	§43.102. Administrative Review of Disability Determinations.
DDD.	[NEW]	§43.103. Administrative Review of Option Beneficiary or Optional Retirement Annuity Plan Changes.
EEE.	[NEW]	§43.104. Request for Adjudicative Hearing.
FFF.	[NEW]	§43.105. Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting.
GGG.	[NEW]	§43.106. Authority to Grant Relief.
HHH.	[NEW]	§43.107. Subpoenas and Commissions.
III.	[NEW]	SUBCHAPTER C. HEARINGS NOT DOCKETED AT SOAH
JJJ.	[NEW]	§43.201. Applicability.
KKK.	[NEW]	§43.202. Form of Pleadings.
LLL.	[NEW]	§43.203. Filing of Pleadings and Amendments.
MMM.	[NEW]	§43.204. Briefs.
NNN.	[NEW]	§43.205. Motions.
OOO.	[NEW]	§43.206. Discovery.
PPP.	[NEW]	§43.207. Notice of Hearing and Other Action.
QQQ.	[NEW]	§43.208. Agreements To Be in Writing.
RRR.	[NEW]	§43.209. Motion for Consolidation.
SSS.	[NEW]	§43.210. Additional Parties.

TTT.	[NEW]	§43.211. Appearance and Representation.
UUU.	[NEW]	§43.212. Lead Counsel.
VVV.	[NEW]	§43.213. Powers of the Administrative Law Judge.
WWW.	[NEW]	§43.214. Prehearing Conference and Orders.
XXX.	[NEW]	§43.215. Conduct of Hearing.
YYY.	[NEW]	§43.216. General Admissibility.
ZZZ.	[NEW]	§43.217. Exhibits.
AAAA.	[NEW]	§43.218. Pre-filed Direct Testimony in Disability Appeal Proceedings.
BBBB.	[NEW]	§43.219. Limit on Number of Witnesses.
CCCC.	[NEW]	§43.220. Failure to Appear.
DDDD.	[NEW]	§43.221. Conduct and Decorum at Hearing.
EEEE.	[NEW]	§43.222. Official Notice.
FFFF.	[NEW]	§43.223. Recording of the Hearing; Certified Language Interpreter.
GGGG.	[NEW]	§43.224. Dismissal without Hearing.
HHHH.	[NEW]	§43.225. Summary Disposition.
IIII.	[NEW]	§43.226. The Record.
JJJJ.	[NEW]	§43.227. Findings of Fact.
KKKK.	[NEW]	§43.228. Reopening of Hearing.
LLLL.	[NEW]	SUBCHAPTER D. FINAL DECISIONS OF TRS.
MMMM.	[NEW]	§43.301. Proposals for Decision and Exceptions.
NNNN.	[NEW]	§43.302. Decision of Executive Director.
OOOO.	[NEW]	§43.303. Proposals for Decision and Exceptions regarding Eligibility for Disability Retirement.
PPPP.	[NEW]	§43.304. Appeals to the Board of Trustees.
QQQQ.	[NEW]	§43.305. Final Decision of TRS.
RRRR.	[NEW]	§43.306. Rehearings.
SSSS.	[NEW]	§43.307. Cost of Preparing Administrative Record.

Minutes of the Policy Committee May 2, 2024

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on May 2, 2024, in the boardroom located on the Fifth Floor in the East Building of TRS' offices located at 1000 Red River Street, Austin, Texas, 78701.

Committee members present:

Mr. Jarvis V. Hollingsworth Acting-Chair
Ms. Brittney Allred
Mr. James Dick Nance
Mr. Robert H. Walls, Jr.

Other TRS Board Members present:

Mr. Michael Ball
Mr. David Corpus
Ms. Nanette Sissney
Mr. Elvis Williams

Others who participated:

Brian Guthrie, TRS
Andrew Roth, TRS
Don Green, TRS
Heather Traeger, TRS
Amanda Jenami, TRS
Barbie Pearson, TRS
Katrina Daniel, TRS
Beth Hallmark, TRS
Adam Fambrough, TRS
Meera Merrill, TRS
Meghan Bludau, TRS
Roberto Cortes Moreno, TRS
Sandy Mitchell, TRS
James Burshtyn, TRS
Katherine Farrell, TRS
Suzanne Dugan, Cohen Milstein

Policy Committee Acting-Chair, Mr. Jarvis V. Hollingsworth, called the meeting to order at 2:42 p.m.

1. Call roll of Committee members.

Ms. Farrell called the roll. A quorum was present, Mr. Elliott was absent.

2. Consider the approval of the proposed minutes of the December 2023 committee meeting – Chair.

On a motion by Mr. Nance, seconded by Ms. Allred, the committee voted to approve the proposed minutes for the December 2023 Policy Committee meeting as presented.

3. Receive an overview of the Policy Committee's Calendar Year 2024 Work Plan – Heather Traeger.

Ms. Heather Traeger reviewed the Policy Committee Work Plan. She noted the plan outlined the regular review schedule for policies and rules that either need to be addressed based on statutory mandates or other agency operations.

4. Consider recommending to the Board adoption of amendments to the Litigation Policy – Heather Traeger

Ms. Traeger provided an overview of the Litigation Policy noting it establishes a framework by which TRS engages in and manages litigation for the agency. She said there were no substantive updates to the policy.

On a motion by Mr. Nance, seconded by Mr. Walls, the committee voted to recommend to the Board adoption of the proposed amendments to the Litigation Policy, as presented by staff.

5. Consider recommending to the Board adoption of amendments to the Trustee External Communication Policy – Heather Traeger and Elizabeth Hallmark.

Ms. Hallmark stated the Trustee External Communication Policy is up for review. She reviewed the policy and noted staff was not making any substantive changes. She said the non-substantive changes included updating department and division names and minor editorial changes for clarity.

On a motion by Mr. Nance, seconded by Ms. Allred, the committee voted to recommend to the Board adoption of the proposed amendments to the Trustee External Communication Policy as presented by staff.

6. Consider recommending to the Board adoption a new Medical Board Policy– Meera Merrill and Adam Fambrough

Mr. Adam Fambrough stated for several years now there has been a Medical Board Policy at the agency level. Since the Medical Board is appointed by the Board of Trustees, he said staff was recommending the policy to be approved at the Board level. He reviewed the policy including the training requirements and the level of access that the Medical Board has to member records in the TRUST system.

On a motion by Ms. Allred, seconded by Mr. Walls, the committee voted to recommend to the Board adoption of the new Medical Board Policy as presented by staff.

7. Consider recommending to the Board adoption a new Retiree Advisory Committee Policy– Sandy Mitchell and Katrina Daniel.

Ms. Sandy Mitchell stated they were bringing the Retiree Advisory Committee (RAC) Policy to the Board level. The RAC Policy is based on an agency level policy that has been in place since 2019. She noted most of the new sections were consistent with using the new TRS Policy template, however, noted a few updates had been made such as changes to the training section and the engagement with the public section, as well as, the inclusion of required background checks for committee members.

On a motion by Ms. Allred, seconded by Mr. Nance, the committee voted to recommend to the Board adoption of the new Retiree Advisory Committee Policy as presented by staff.

8. Consider recommending to the Board adoption of the following proposed new rules in Subchapter A of Chapter 41 of Title 34, Part 3 of the Texas Administrative Code, related to Retiree Health Care Benefits (TRS-Care) – Heather Traeger, Roberto Cortes-Moreno and Katrina Daniel:

- A. [NEW] § 41.15 Optional Dental Benefits Plan**
- B. [NEW] § 41.16 Optional Vision Benefits Plan**

Mr. Roberto Cortes-Moreno provided an overview of the proposed rules for the optional Dental and Vision plans. He said the rules were previously proposed for publication in February and were published with no comments received.

On a motion by Mr. Walls, seconded by Ms. Allred, the committee voted to recommend to the Board adoption of the proposed new rules in Subchapter A of Chapter 31, Title 34, Part 3 as presented by staff.

9. Consider authorizing for publication in the Texas Register notice of the following proposed repeal and new rule in TRS rules in Chapter 51 of Title 34, Part 3 of the Texas Administrative Code – Heather Traeger, and James Burshtyn:

- A. [REPEAL] § 51.2 Vendor Protests, Dispute Resolution, and Hearing**
- B. [NEW] § 51.2 Vendor Protests and Appeals**

Mr. James Burshtyn stated staff was seeking authority to publish the proposed repeal of the rule and replacing it with the proposed new rule that is clearer and more streamlined. He said the new rule provides greater clarity on the timelines to take certain actions. Ms. Traeger noted the rule repeal and proposed new rule previously came before the committee in December. She said upon further consideration it was decided to retain the flexibility for the Executive Director to either make the final determination or to have the Board make the final decision.

On a motion by Ms. Allred, seconded by Mr. Walls, the committee voted to authorize for publication in the Texas Register notice of the proposed and new rules in TRS rules, Chapter 51, Title 34, Part 3 of the Texas Administrative Code as presented by staff.

10. Consider authorizing for publication in the Texas Register notice of the following proposed new rule in TRS rules in Subchapter A of Chapter 41 of Title 34, Part 3 of

the Texas Administrative Code, related to Retiree Health Care Benefits (TRS-Care): – Heather Traeger, Roberto Cortes-Moreno and Katrina Daniel.

A. [NEW] § 41.17 Special Enrollment Opportunity for the TRS-Care MA plan.

Mr. Cortes-Moreno provided an overview of the rule. He said the proposed rule allows for a limited time enrollment opportunity for the TRS-Care Medicare Advantage Plan. The open enrollment is being offered in conjunction with the proposal to lower the rates for the TRS-Care Medicare Advantage Plan. He said the limited-time enrollment opportunity would begin on October 1, 2024, which is the TRS-Care’s next annual open enrollment and would extend through March 31, 2026.

On a motion by Mr. Nance, seconded by Mr. Walls, the committee authorized for publication in the Texas Register a notice of the proposed new TRS rule in Subchapter A of Chapters 41 of Title 34, Part 3 of the Texas Administrative Code, as presented by staff.

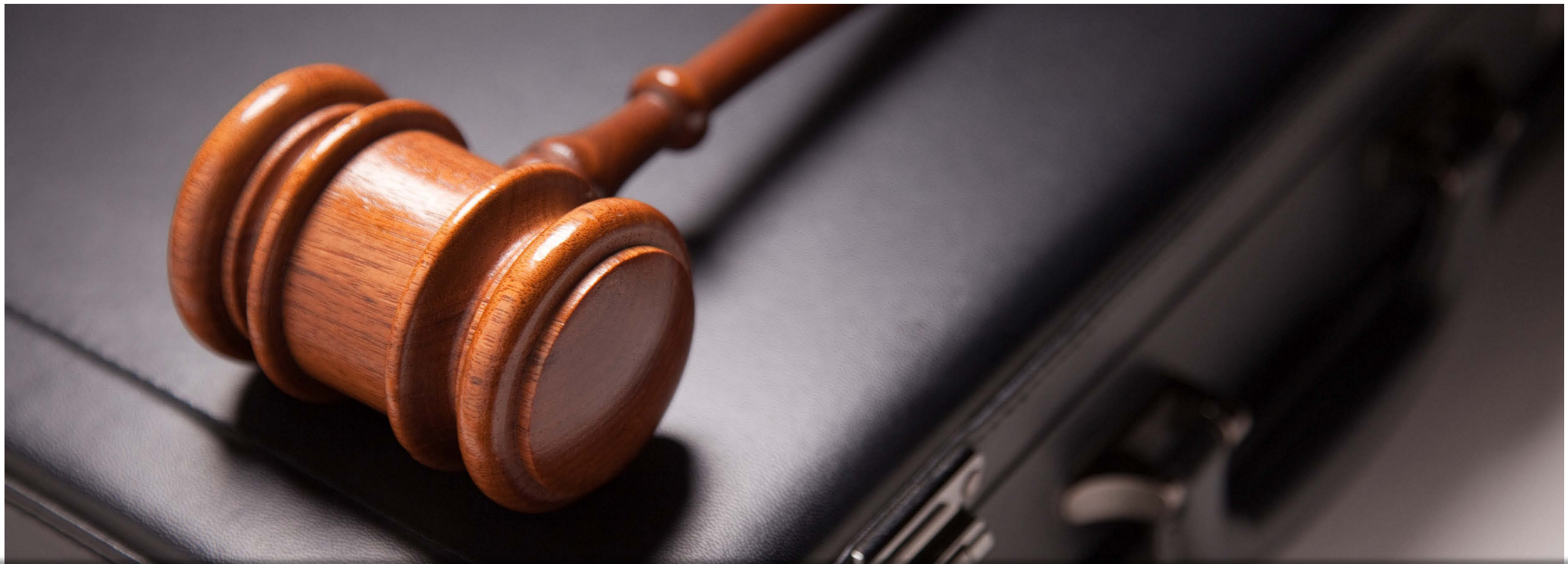
With no further business before the Committee, the meeting adjourned at 3:06 p.m.

Approved by the Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas on July _____, 2024.

Katherine H. Farrell
Secretary of the TRS Board of Trustees

Date

TAB 3



Legal & Compliance

Presentation Date: July 18, 2024

Presented By:
Heather Traeger



Board Procurement Policy

- Reviewed every three years
- Applies to the acquisition of goods and services by the board of trustees
- Defines the procurements obtained by the board and those procurements delegated to the staff

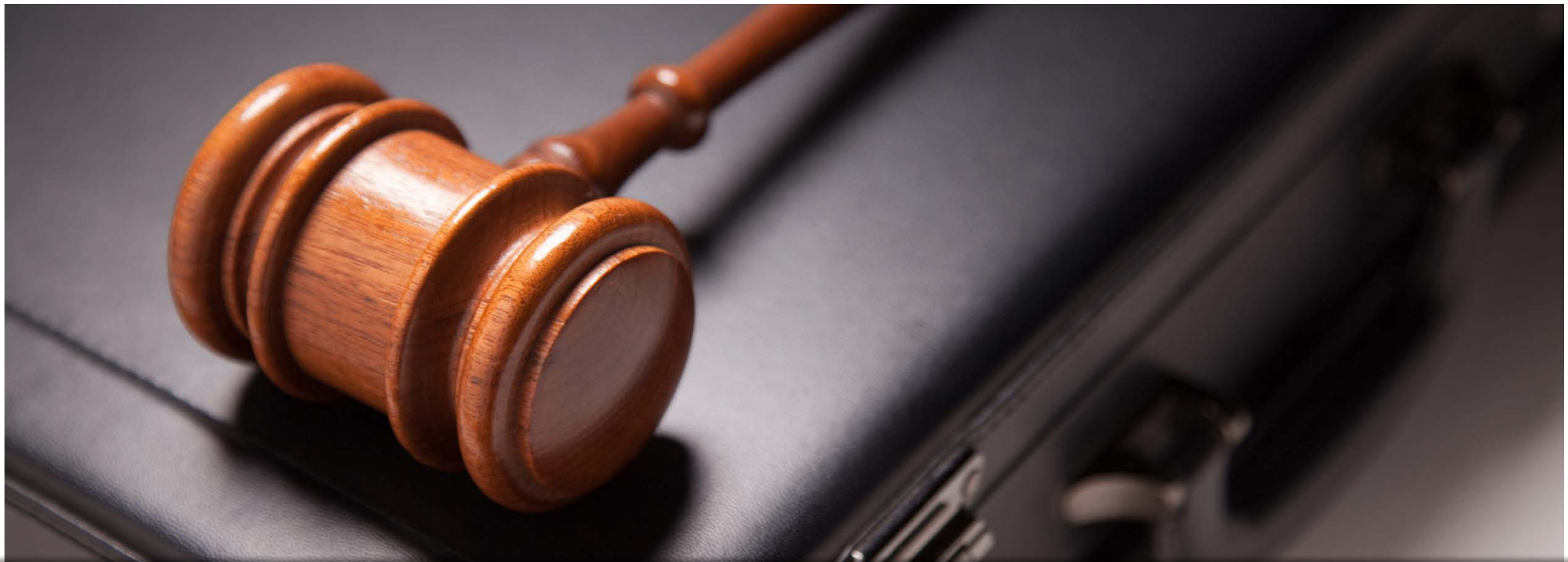


Proposed Amendments to the Board Policy



#	Proposed Amendments
1	<p>Statutory Updates:</p> <ul style="list-style-type: none">• Add statutory updates related to Senate Bill 1246 (“SB 1246”)• Recognize exemptions to Tex. Gov’t Code, Chapters 2261 and 2262
2	<p>Clarifications</p> <ul style="list-style-type: none">• Clarify the difference between board selection of a vendor(s) and final contract award• Reference the applicable Open Meetings Act provisions• Confirm the ability of the board, by resolution, to delegate negotiations, amendments or renewals to the executive director• Reference the new Board Contract Management Process
3	<p>Nonsubstantive Changes</p> <ul style="list-style-type: none">• Reformat to align with the new TRS Policy Template

TAB 4



Legal & Compliance

Presentation Date: July 18, 2024

Presented By:

Heather Traeger and James Burshtyn



Highlights of the New Vendor Protest Rule

- Nonsubstantive and formatting changes to address clarity and readability.
- Identifies TRS Legal & Compliance (L&C) as responsible for the management of the protest.
- Provides greater clarity on timeliness for vendors to submit a protest.



Project Goals and Requested Board Actions



PROJECT GOALS

- Update TRS' vendor protest and appeals rule to align with procurement and contracting processes and to make the process more timely and efficient.

REQUESTED BOARD ACTION

- Repeal current Vendor Protest Rule
- Adopt new Vendor Protest Rule



Key Dates

- **June 14, 2024** - TRS Rule 51.2 was published for comment in the *Texas Register*.
- **July 15, 2024** - The public comment period ended. TRS received no public comments on the proposed rule.
- **August 2024** - the proposed effective date for TRS Rule 51.2 will be 20 days after submission to the Texas Register.



Legal & Compliance

Memorandum

▪ **DATE:** July 18, 2024

TO: Policy Committee of the TRS Board of Trustees (“Policy Committee”)

FROM: Heather Traeger, General Counsel

THROUGH: Brian Guthrie, Executive Director

RE: Proposed Repeal: TRS Rule § 51.2 (Vendor Protests, Dispute Resolution, and Hearing);
and
Proposed Adoption: TRS Rule § 51.2 (Vendor Protests and Appeals).

Requested Action

TRS Staff asks the Policy Committee to recommend that the Board of Trustees (“Board”) take the following actions regarding TRS’ vendor protest rule without changes to the proposed text as published in the June 14, 2024 issue of the *Texas Register*:

- Repeal current rule § 51.2 (relating to Vendor Protests, Dispute Resolution, and Hearing) under Chapter 51 of TRS Rules (relating to General Administration) (49 TexReg 4421).
- Adopt new rule § 51.2 (relating to Vendor Protests and Appeals) under Chapter 51 of TRS Rules (relating to General Administration) (49 TexReg 4422).

Background

At the May 2, 2024 Board Meeting, TRS Staff asked the Board to authorize publication in the *Texas Register* of the proposed repeal of current TRS Rule § 51.2 (relating to Vendor Protests, Dispute Resolution and Hearing) and the proposed adoption of new TRS Rule § 51.2 (relating to Vendor Protests and Appeals). The Board authorized publication and the proposed repeal and adoption were published in the *Texas Register* on June 14, 2024.

As of the date of this memorandum, TRS has not received any public comments on the proposed repeal and adoption. If TRS receives public comments on the proposed repeal and adoption after

the date of this memorandum and prior to the July 15, 2024, deadline for filing public comments with TRS, TRS Staff will address such comments at the July 18, 2024 Board meeting or, if necessary, the September Board meeting.

Summary of Proposed New Vendor Protest Rule

TRS Staff recommends an update to TRS' existing vendor protest rule to align with procurement and contracting processes.

Staff proposes the repeal of the existing vendor protest rule under Chapter 51 of TRS Rules, and the adoption of a new vendor protest rule. While the new Chapter 51 rule incorporates many of the substantive provisions of TRS' existing vendor protest rule, the new vendor protest rule also removes inefficiencies from, and provides greater clarity to, the vendor protest and appeal process.

The proposed new rule makes several key changes to TRS' vendor protest rules:

- The title of current rule § 51.2 (*Vendor Protests, Dispute Resolution, and Hearing*) has been changed to *Vendor Protests and Appeals*. The new rule title more accurately describes current (and continuing) processes regarding vendor protests and appeals.
- Current rule § 51.2 does not include section headings. Under new rule § 51.2, headings have been provided to each section to improve readability.
- Current rule § 51.2 identifies the responsibilities of various TRS personnel throughout the protest process but does not identify the position or group that is responsible for the management of the protest. Under new rule § 51.2(f)(1), relating to the *Review and Disposition of Protests*, TRS Legal & Compliance (TRS L&C) will be responsible for the management of the protest and will coordinate TRS' disposition of the protest with the chief officer, with support provided by the P&C director.
- A definitions section has been added to new rule § 51.2 (see § 51.2(a) relating to *Definitions*).
- Current rule § 51.2(a), relating to rule purpose has been (i) renumbered as § 51.2(b). and (ii) expanded to reference appeals to the scope of the rule's coverage (which captures current practices but is not expressly stated in current rule § 51.2 (a)), and (iii) revised by moving the exceptions cited to the rule's applicability to a new standalone section (see § 51.2(c) relating to *Exceptions*).
- Current exceptions to the rule's applicability have been expanded to include transactions in which TRS buys or sells securities (see § 51.2(c)(4) relating to *Exceptions*).
- Current rule § 51.2(b) (relating to the filing of a vendor protest) is revised by (i) renumbering it as new rule § 51.2(e), (ii) substituting TRS L&C for the chief officer as the recipient of the protest (see new rule § 51.2(f)(1)), and (iii) clarifying the deadline for filing a protest. Under current rule § 51.2(b), to be considered timely, a protesting party must file its protest "within 10 working days after the protestor *knows or should have known*, of the occurrence of the action which is protested." New rule § 51.2(e) provides greater clarity for vendors by requiring a protest contesting (i) the solicitation be filed by the end of posted solicitation period, or (ii) the evaluation or award be filed within 10 calendar

days after the notice of contract award is posted either to the ESBDO, or the TRS website, as applicable (see new rule § 51.2 (e)(2)(A) &(B) relating to *Protest Procedures*).

- Current rule § 51.2(c) (relating to the required content of a vendor protest) is revised by (i) expanding the identification of the legal authority that TRS is alleged to have violated, from the “statutory provision” to also include TRS policy, and the TRS Procurement and Contract Management Guide (Guide) (see new rule § 51.2(e)(3)(A) &(B)), and (ii) requiring the protester to provide a precise statement of the remedy requested (see new rule § 51.2(e)(3)(F)).
- Current rule § 51.2(e)(1)-(3), relating to the chief officer’s determination has been renumbered as new rule 51.2(f)(1)-(5) relating to *Review and Dispositions of Protests*.
- Current rule § 51.2(f), relating to an appeal of the chief officer’s determination, has been revised by directing that an appeal be filed in accordance with the requirements stated in the solicitation document or on the TRS website, rather than with the office of the executive director or his or her designee (see new rule § 51.2 (g)(1)), relating to an *Appeal of Protest*.
- Current rule § 51.2(j) (relating to the stay of a protest or an appeal) is (i) renumbered and restated as new rule § 51.2(d), (ii) titled *Stay of Protest and Appeal*, and (iii) revised by adding guidance regarding the process of submitting a stay request to TRS.

Conclusion

For the reasons stated above, TRS Staff recommends repealing current rule § 51.2 and adopting new rule § 51.2. If approved, the repeal and adoption will become effective 20 days after submission to the *Texas Register*.

The proposed new rule is attached as Appendix A. Appendix B is current rule § 51.2, whose content has been stricken in its entirety.

APPENDIX A

Proposed New Rule §51.2

RULE §51.2.

Vendor Protests and Appeals.

a) Definitions. The following words and terms, when used in this rule, shall have the following meanings unless the context clearly indicates otherwise.

(1) Appeal: A written appeal of the Determination of the Chief Officer.

(2) Appealing Party: A party who files an Appeal to the Determination.

(3) Chief Officer: the head of any business unit of TRS.

(4) Determination: A determination issued by the Chief Officer in response to a Protest.

(5) Director of Procurement & Contracts (P&C Director): The head of the TRS division responsible for overseeing the procurement of goods and services.

(6) Executive Director: Appointed by the TRS Board of Trustees pursuant to Government Code §825.202.

(7) Final Decision: A decision issued by either the Board of Trustees or the Executive Director in response to an Appeal.

(8) Interested Parties: Vendors who submitted a bid, offer, or proposal, as applicable, in response to the subject procurement.

(9) Protest: A process initiated in accordance with this rule by a Vendor who believes they have been aggrieved in connection with a solicitation, evaluation, or award of a contract.

(10) Protesting Party: A party who files a Protest.

(11) Solicitation Documents: All documents (including Invitation for Bids, Request for Offers, Request for Proposals, and Request for Qualifications) requesting responses from Vendors to provide specified goods or services, or both. Solicitation Documents also include any addenda posted by TRS to the Electronic State Business Daily (ESBD) or the TRS website, which may be accessed at <https://www.trs.texas.gov>, as applicable, for the subject procurement.

(12) TRS Legal & Compliance (TRS L&C): The TRS legal and compliance division.

(13) TRS Legal Counsel: The TRS General Counsel or any attorney designated by TRS General Counsel.

(14) Vendor: An individual, company, partnership, corporation, or other entity that has filed a response to a TRS solicitation.

(b) Purpose. The purpose of this rule is to provide a procedure for a Vendor to Protest or Appeal, if applicable, the process by which TRS purchases goods, services, or both.

APPENDIX A

Proposed New Rule §51.2

(c) Exceptions.

(1) This rule does not apply to Protests of purchases made by:

(A) the Texas Facilities Commission (Facilities Commission) on behalf of TRS, which are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution);

(B) the Department of Information Resources (DIR) on behalf of TRS, which are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures);

(C) the Comptroller of Public Accounts (Comptroller's Office) on behalf of TRS, which are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals); or

(D) TRS, for transactions in which TRS buys or sells securities (whether publicly traded or privately issued) under the authority of Government Code §825.302, as well as any other transactions not subject to state purchasing rules.

(2) The rules of the Facilities Commission, DIR, and the Comptroller's Office may be accessed through the website of the Office of the Secretary of State, Texas Register Division located at: www.sos.state.tx.us/tac/index.shtml.

(d) Stay of Protest or Appeal. If a timely Protest or Appeal is filed, the Protesting Party or the Appealing Party may request in writing that TRS not proceed further with the solicitation or with the award of the contract. In support of the request, the Protesting Party or Appealing Party is required to show why a stay is necessary and that harm to TRS will not result from the stay. If the Executive Director determines that it is in the interest of TRS not to proceed with the solicitation or contract award, the Executive Director may make such a decision in writing and partially or fully suspend procurement or contract activity. Any request for a stay must be submitted in accordance with the requirements stated in the Solicitation Document (relating to Vendor Protests and Appeals) or on the TRS website, may be accessed at <https://www.trs.texas.gov/>, as applicable.

(e) Protest Procedures.

(1) A Vendor who believes they have been aggrieved in connection with a solicitation, evaluation, or award of a contract may formally Protest to TRS. Such Protest must be in writing and timely received by TRS L&C in accordance with the instructions provided in the Solicitation Document or on the TRS website, which may be accessed at <https://www.trs.texas.gov/> as applicable. Copies of the Protest must be concurrently mailed or delivered by the Protesting Party to all other Interested Parties.

(2) To be considered timely, the Protest must be filed:

APPENDIX A

Proposed New Rule §51.2

(A) by the end of the posted solicitation period, if the Protest concerns the Solicitation Documents or actions associated with the publication of the Solicitation Documents; or

(B) no later than 10 calendar days after the notice of contract award is posted to either the ESBD or the TRS website, which may be accessed at <https://www.trs.texas.gov/>, as applicable, if the Protest concerns the evaluation or award. Notice of Awards posted to the TRS website may be accessed at <https://www.trs.texas.gov/>.

(3) A formal Protest must be sworn and contain:

(A) a specific identification of the State of Texas statutory provision(s), TRS policy, or TRS Procurement and Contract Management Guide (Guide) requirement that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated a State of Texas statutory provision(s), TRS regulatory policy, or Guide requirement;

(C) a precise statement of the relevant facts;

(D) an identification of the issue or issues to be resolved;

(E) argument and authorities in support of the Protest;

(F) a precise statement of the remedy requested by the Protesting Party; and

(G) a statement that copies of the Protest have been mailed or delivered to all other Interested Parties. Upon request, TRS will provide the Protesting Party with a list of Interested Parties as reflected in TRS records.

(f) Review and Disposition of Protests.

(1) TRS L&C will be responsible for management of the Protest and will coordinate TRS' disposition of the Protest with the Chief Officer, with support provided by the P&C Director.

(2) The Chief Officer may:

(A) dismiss the Protest if the Chief Officer determines the Protest was not timely filed or does not meet the requirements of subsection (e)(3) of this rule, or

(B) settle and resolve a timely Protest by mutual agreement of TRS and the Protesting Party.

(3) If the Chief Officer does not dismiss or resolve the Protest, the Chief Officer may, in his or her sole discretion, solicit written responses to the Protest from other Interested Parties.

(4) If the Protest is not dismissed or resolved under subsection (f)(2) of this section, the Chief Officer will issue to the Protesting Party and other Interested Parties a written Determination as to

APPENDIX A

Proposed New Rule §51.2

whether a violation of State of Texas statutes, TRS regulatory policies, or Guide requirements has occurred.

(5) The Determination will set forth the reasons for the Determination, and any appropriate remedial action, if applicable. Such remedial action, if applicable, may include, but is not limited to, declaring the procurement void; reversing the award and awarding the contract to a different Interested Party; or re-advertising the procurement.

(g) Appeal of Protest.

(1) The Protesting Party or an Interested Party may Appeal the Determination to the Executive Director. The written Appeal must be received in accordance with the requirements stated in the Solicitation Document or on the TRS website, which may be accessed at <https://www.trs.texas.gov/>, as applicable, no later than ten working days after the date of the Determination. The Appeal is limited to a review of the Determination.

(2) The Appealing Party must concurrently mail or deliver copies of the Appeal to all other Interested Parties and must include an affidavit that such copies have been provided.

(3) TRS L&C shall review the Protest, the Determination, and the Appeal, and any responses received from Interested Parties, and prepare a written opinion with a recommendation to the Executive Director. The Executive Director may, in his or her discretion, refer the matter to the Board of Trustees at a regularly scheduled open meeting or issue in writing a Final Decision.

(4) When a Protest has been appealed to the Executive Director under subsection (g)(1) of this section and has been referred to the Board of Trustees by the Executive Director under subsection (g)(3) of this section, the following requirements shall apply:

(A) Copies of the Appeal, responses of Interested Parties, if any, and the TRS L&C recommendation, shall be mailed to the Board members and Interested Parties. Copies of the TRS L&C recommendation and responses of Interested Parties shall be provided to the Appealing Party.

(B) All Interested Parties who wish to make an oral presentation at the open meeting are requested to notify the TRS L&C in accordance with the requirements stated in the Solicitation Document or on the TRS website, which may be accessed at <https://www.trs.texas.gov/>, as applicable, at least 48 hours in advance of the open meeting.

(C) The Board of Trustees may consider oral presentations and written documents presented by staff, the Appealing Party, and Interested Parties. The chairman shall set the order and amount of time allowed for presentations.

(D) The Board of Trustees' decision of the Appeal shall be by duly adopted resolution in the minutes of the open meeting and shall be final.

(5) A Final Decision issued by either the Board of Trustees in open meeting, or in writing by the Executive Director, shall be the final administrative action of TRS.

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Proposed New Rule §51.2

APPENDIX B- CURRENT RULE § 51.2

RULE §51.2

Vendor Protests, Dispute Resolution, and Hearing

~~(f) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Teacher Retirement System of Texas (TRS). Protests of purchases made by the Texas Facilities Commission (facilities commission) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by the Department of Information Resources (DIR) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by Texas Procurement and Support Services of the Comptroller of Public Accounts (comptroller's office) on behalf of TRS are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of the facilities commission, DIR, and the comptroller's office are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.~~

~~(c) A formal protest must be sworn and contain:~~

- ~~–(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;~~
- ~~–(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;~~
- ~~–(3) a precise statement of the relevant facts;~~
- ~~–(4) an identification of the issue or issues to be resolved;~~
- ~~–(5) argument and authorities in support of the protest; and~~
- ~~–(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.~~

~~(d) The chief officer shall have the authority, prior to appeal to the executive director or his designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The chief officer may solicit written responses to the protest from other interested parties.~~

- ~~–(1) If the chief officer determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.~~
- ~~–(2) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested~~

parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

~~-(3) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.~~

~~(f) The chief officer's determination on a protest may be appealed by an interested party to the executive director or his designee. An appeal of the chief officer's determination must be in writing and must be received in the office of the executive director or his designee no later than ten working days after the date of the chief officer's determination. The appeal shall be limited to review of the chief officer's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.~~

~~(g) The general counsel shall review the protest, chief officer's determination, and the appeal and prepare a written opinion with recommendation to the executive director or his designee. The executive director or his designee may, in his or her discretion, refer the matter to the Board of Trustees at a regularly scheduled open meeting or issue a final written determination.~~

~~(h) When a protest has been appealed to the executive director or his designee under subsection (f) of this section and has been referred to the Board of Trustees by the executive director or his designee under subsection (g) of this section, the following requirements shall apply:~~

~~-(1) Copies of the appeal, responses of interested parties, if any, and general counsel recommendation shall be mailed to the Board members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.~~

~~-(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the office of the executive director or his designee at least 48 hours in advance of the open meeting.~~

~~-(3) The Board of Trustees may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.~~

~~-(4) The Board of Trustees' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.~~

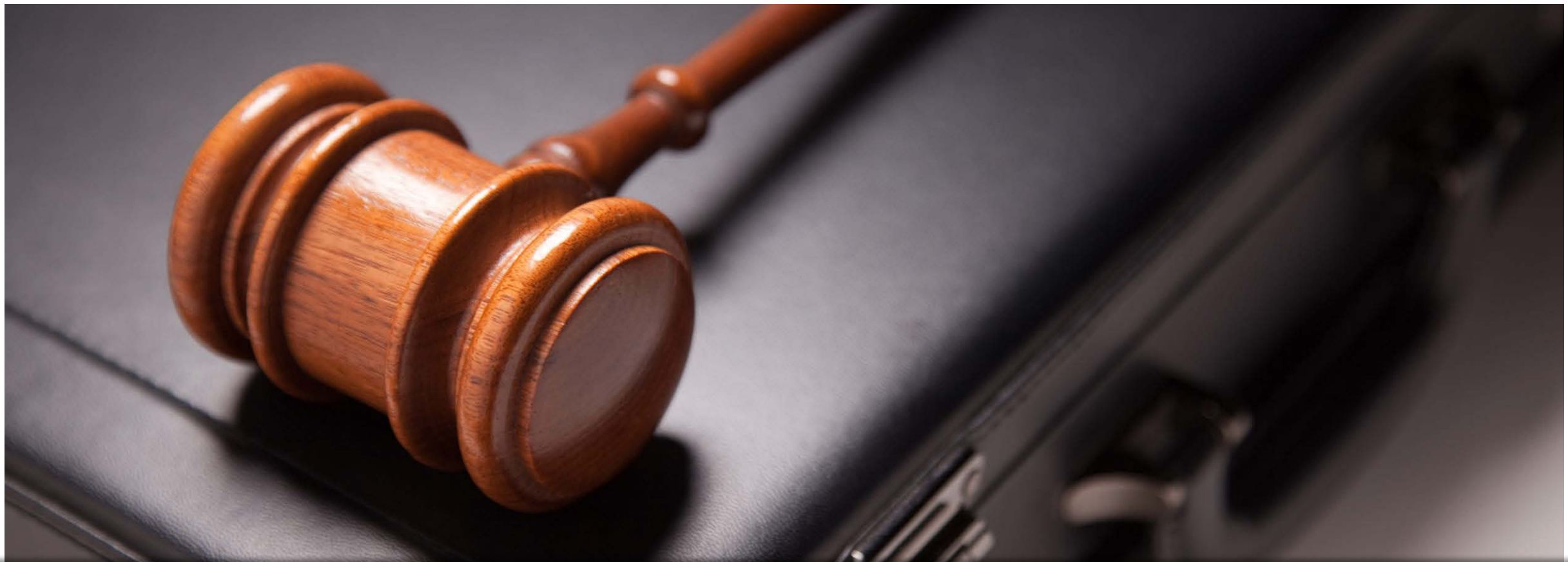
~~(i) Unless good cause for delay is shown or the executive director or his designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.~~

~~(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that TRS not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to TRS will not result from the stay. If the executive director determines that it is in the interests of TRS~~

~~not to proceed with the contract, the executive director may make such a determination in writing and partially or fully suspend contract activity.~~

~~(k) A decision issued either by the Board of Trustees in open meeting, or in writing by the executive director or his designee, shall be the final administrative action of TRS.~~

TAB 5



Legal & Compliance

July 18, 2024

Presented By: **Heather Traeger, General Counsel**
Roberto Cortes-Moreno, Director of Healthcare



HEALTH CARE RULE FOR ADOPTION

Chapter 41. Health Care and Insurance Programs
Subchapter A. Retiree Health Care Benefits (TRS-Care)

Limited-Time Enrollment Opportunity for Medicare-eligible Retirees



TRS-Care Medicare Advantage Limited-Time Enrollment Opportunity (LTEO) For Medicare-eligible Retirees

- *In correspondence from legislative leadership, TRS was directed to lower premium rates and offer a LTEO for eligible TRS-Care Medicare Advantage (MA) participants.*
- In order to implement the **LTEO** and to define eligibility and the effective date of coverage, *staff requests that the board adopt:*
 - ***New Rule §41.17***
 - (a) ***Eligibility***: Unenrolled retirees, dependents, surviving spouses, and surviving dependent children will be able to join TRS-Care MA.
 - (b) ***Effective date of coverage***: Jan. 1, 2025, if the application is received and approved before this date, otherwise it will begin the first day of the month after TRS receives and approves the enrollment request.
- *For purposes of this section, the **LTEO** period begins on Oct. 1, 2024, and extends through March 31, 2026.*



Development on Proposed New Rule § 41.17



The proposed new rule was published in the *Texas Register* on May 31, 2024.



No public comments were received in response to the proposed new rule.



If adopted and published timely, the new rule will be effective Aug. 11, 2024.



Memorandum

DATE: July 18, 2024

TO: Policy Committee of the Board of Trustees ("Policy Committee")

FROM: Heather Traeger, General Counsel and Chief Compliance Officer

THROUGH: Brian Guthrie, Executive Director

RE: Adoption of Proposed New Rule: 34 T.A.C. § 41.17

Requested Action

TRS Staff asks the Policy Committee to recommend that the Board of Trustees ("Board") adopt the following proposed new Rule without changes to the proposed text as published in the May 31, 2024 issue of the *Texas Register*:

- § 41.17 (relating to Limited-time Enrollment Opportunity for Medicare-eligible Retirees)

Background

At the Board meeting on May 2, 2024, TRS Staff asked the Board to authorize publication in the *Texas Register* of proposed new Rule § 41.17. The Board authorized publication and the proposed new Rule was published in the *Texas Register* on May 31, 2024 (49 TexReg 3917 – 3919). TRS did not receive any public comments on the proposed new Rule.

Summary of Proposed New Rule

TRS received correspondence from legislative leadership directing TRS to use the TRS-Care fund growth to reduce premiums and offer a one-time enrollment opportunity for eligible TRS-Care Medicare Advantage participants. TRS evaluated how to maximize its fund balance to accomplish these goals while preserving the fund's long-term stability. TRS developed the proposed new Rule in furtherance of the legislative direction and TRS' evaluation of the fund.

TRS is adopting new §41.17 to provide a limited-time enrollment opportunity for unenrolled retirees, dependents, surviving spouses, and surviving dependent children in anticipation of the upcoming TRS-Care open enrollment period (which begins on October 1, 2024) and the reduced premiums that would take effect on the next plan year, which begins January 1, 2025.

New §41.17 implements details of this limited-time enrollment opportunity, for example, specifying who is eligible, when eligible individuals may enroll, and when coverage will be effective. Eligible retirees, dependents, surviving spouses, and surviving dependent children will be eligible to enroll beginning October 1, 2024, through March 31, 2026.

Conclusion

If the Board authorizes adoption of the proposed new Rule, the new Rule will become effective 20 days after the filing of the adoption order with the Secretary of State.

Draft of the proposed new Rule for adoption is attached as Attachment 1.

ATTACHMENT 1

Texas Administrative Code

TITLE 34 PUBLIC FINANCE
PART 3 TEACHER RETIREMENT SYSTEM OF TEXAS
SUBCHAPTER A RETIREE HEALTH CARE BENEFITS (TRS-CARE)
RULE §41.17 Limited-Time Enrollment Opportunity for Medicare-eligible Retirees

§41.17. Limited-time Enrollment Opportunity for Medicare-eligible Retirees


(a) Eligibility.

- (1) Retiree. A retiree who is eligible to enroll in the Medicare Advantage plan offered under TRS-Care in accordance with § 1575.1582(b) of the Insurance Code (hereinafter referred to as “MA plan”) and who is not currently enrolled in the MA plan, may enroll in the MA plan if the retiree applies for enrollment during the limited-time enrollment period. For the purpose of this section, the limited-time enrollment period is the period that begins on October 1, 2024, and extends through March 31, 2026.
- (2) Surviving spouses or surviving dependent children. If a retiree has passed away, the retiree’s surviving spouse or the retiree’s surviving dependent child may enroll under this section, as long as:
 - i. The surviving spouse or surviving dependent child qualifies as such under § 1575.003 of the Insurance Code, and
 - ii. The surviving spouse or surviving dependent child is eligible for Medicare and is eligible to enroll in the MA plan offered under TRS-Care in accordance with § 1575.1582(b) of the Insurance Code.
- (3) Dependents. If the retiree’s or surviving spouse’s application to enroll under this section is approved, the retiree or surviving spouse may also enroll any eligible dependents.
- (4) Single enrollment opportunity. A retiree, surviving spouse, or surviving dependent child may only enroll one time during the limited-time enrollment period.

(b) Effective Date of Coverage.

- (1) January 1, 2025. For those applications received and approved before January 1, 2025, coverage shall be effective on January 1, 2025.
- (2) After January 1, 2025. For those applications received after January 1, 2025, the effective date of coverage shall be the first day of the month after TRS receives and approves the request to enroll.
- (3) Range. In no event shall the effective date be prior to January 1, 2025, or after April 1, 2026.

TAB 6



Chapter 43: Repeals & Proposed New Rules

July 18, 2024

Presented By:
Heather Traeger & Nick Gonzalez



Chapter 43: Repeal and Restructuring



2022 Rule Review

Board recommends repeal and readoption of Chapter 43 of TRS rules (relating to contested cases)



Full Repeal of Chapter 43

TRS staff recommends proposed repeal of all 44 rules in existing Chapter 43



Adopt new Chapter 43

TRS staff recommends adopting a new Chapter 43 that includes 4 subchapters and 49 new rules.





Summary of New Rules



- 93 rules in total proposed for repeal or adoption but most changes are for readability or minor administrative improvements.
- Some substantive changes to the board hearing process.

Restructuring

- 42 of 44 existing rules readopted wholly or in part.
- New rules reorganized into 4 new subchapters.

Administrative

- Exceptions process for proposals for decision (PFD)
- Period for correcting a petition
- Rehearing process for non-docketed petitions

Board Hearings

- Oral argument before the board of trustees
- Briefs and exceptions to the board of trustees
- Disability hearings before the board of trustees



Oral Argument Changes



Current Oral Argument Process

- Determination of whether oral argument is permitted at sole discretion of the board;
- Determination must be made in every case;
- Parties have no established way to request or decline oral argument;
- “Hearings on a hearing.”

Proposed Oral Argument Process

- Appealing party must request or decline oral argument and how to appear; nonappealing parties have opportunity to respond;
- Executive director has sole discretion to determine, but may consult with board chair in making the determination;
- Avoids “hearings on a hearing.”



Additional Board Hearing Changes



Briefing & Exceptions

- Currently, there is no rule authority for briefing at the board level unless ED modifies the administrative law judge's (ALJ) PFD;
- Appealing party gets to file notice of appeal in all cases; no response authorized;
- New rule would permit briefing and/or exceptions and replies in all cases.

Disability appeals

- Current rules have disability appeals proceed directly from a contested case hearing to the board, (i.e., the board reviews the ALJ's PFD);
- Current rules do not provide procedures for this process;
- New rules create process for hearing, confidentiality, and the review process.



Next Steps



Sept.
2024

- Tentative period to submit to *Texas Register*

Oct.
2024

- Approximate end of public comment period

Dec.
2024

- Present to board for adoption



Legal & Compliance

Memorandum

DATE: July 18, 2024

TO: Policy Committee of the TRS Board of Trustees (“Policy Committee”)

FROM: Heather Traeger, General Counsel

THROUGH: Brian Guthrie, Executive Director

RE: Proposed Repeal: TRS Rules §§ 43.1, 43.2, 43.3, 43.4, 43.5, 43.6, 43.7, 43.8, 43.9, 43.10, 43.11, 43.12, 43.13, 43.14, 43.15, 43.16, 43.17, 43.18, 43.19, 43.20, 43.21, 43.23, 43.24, 43.25, 43.26, 43.27, 43.28, 43.29, 43.33, 43.34, 43.35, 43.36, 43.37, 43.38, 43.39, 43.40, 43.41, 43.42, 43.43, 43.44, 43.45, 43.46, 43.47, and 43.48;

Proposed New: Subchapter A: General Administration - TRS Rules §§ 43.1, 43.2, 43.3, 43.4, 43.5, 43.6, and 43.7.

Subchapter B: Requests for Adjudicative Hearing - TRS Rules §§: 43.101, 43.102, 43.103, 43.104, 43.105, 43.106, and 43.107.

Subchapter C: Hearings Not Docketed at SOAH - TRS Rules §§ 43.201, 43.202, 43.203, 43.204, 43.205, 43.206, 43.207, 43.208, 43.209, 43.210, 43.211, 43.212, 43.213, 43.214, 43.215, 43.216, 43.217, 43.218, 43.219, 43.220, 43.221, 43.222, 43.223, 43.224, 43.225, 43.226, 43.227, and 43.228.

Subchapter D: Final Decisions of TRS – TRS Rules §§ 43.301, 43.302, 43.303, 43.304, 43.305, 43.306, and 43.307.

Requested Action

TRS Staff asks the Policy Committee to authorize publication in the *Texas Register* the following:

- A proposal to repeal all 44 existing rules under Chapter 43 of TRS Rules (relating to Contested Cases); and
- A proposal for 49 new rules under Chapter 43 of TRS Rules (relating to Contested Cases).

A complete listing of all the existing rules proposed for repeal and new rules proposed for adoption can be found in Appendix A, which is attached to this memo.

Background and Reason for the Proposed Repealed and New Rules

In 2022, the board of trustees approved the adoption of TRS's four-year rule review. As part of that adopted rule review, TRS staff recommended amending or repealing and readopting all of Chapter 43 of TRS rules, which govern the pension appeals process, in order to improve the readability of the chapter for TRS members and staff. The proposed repeal of all 44 rules in Chapter 43 and proposed readoption of 49 new rules implements this rule review recommendation.

As recommended in rule review, the proposed new rules primarily restructure the existing Chapter 43 rules to increase readability and usability for both TRS members and TRS staff. Of 44 rules proposed for repeal, 42 are being readopted wholly or in part but with style and structural changes. For instance, the proposed new rules are divided into four new subchapters to clarify which rules apply at which point in the TRS appeal process.

In addition to restructuring the chapter, the proposed new rules provide for several minor administrative improvements to the pension appeals process. These improvements include clarifying the exceptions process after the administrative law judge issues a proposal for decision and the deadline for members to resubmit petitions for adjudicative hearing that were rejected for formal deficiencies.

Lastly, the proposed new rules make substantive changes to the hearing process for appeals to the board of trustees. These changes include:

- delegating the board's authority to determine whether to have oral argument to the executive director in consultation with the board chair;
- providing an expanded opportunity for parties to submit written briefs to the board; and
- clarifying the hearing process for disability appeals that come before the board.

These changes will improve the hearing process by expediting the process to determine whether oral argument will be granted while simultaneously ensuring that all parties have equal opportunity to provide written argument to the board. Further, the changes to the disability appeal process clarify how confidentiality, oral argument, and the board's review of the ALJ's proposal for decision shall proceed.

The proposed new rules also make several additional minor, nonsubstantive changes necessary to ensure that the rules conform with current TRS practice and nomenclature or with the structural changes to the chapter. A detailed, rule-by-rule summary of changes is attached as Appendix B. In addition, the draft language of all 49 proposed new rules is attached as Appendix C and a conversion chart describing where each repealed rule was readopted (if at all) is included as Appendix D.

Conclusion

If the Policy Committee authorizes publication, the proposed repeal and the proposed new rules will be published in the *Texas Register* for public comment for at least 30 days before presentation to the Policy Committee and board of trustees for final adoption.

Appendix A

List of Proposed Repealed and New Rules under Title 34, Part 3 of the Texas Administrative Code (TAC).

REPEALED RULES

[REPEAL]	§43.1	Administrative Review of Individual Requests
[REPEAL]	§43.2	Effect of Invalidity of Rule
[REPEAL]	§43.3	Definitions
[REPEAL]	§43.4	Decisions Subject to Review by an Adjudicative Hearing
[REPEAL]	§43.5	Request for Adjudicative Hearing
[REPEAL]	§43.6	Filing of Documents
[REPEAL]	§43.7	Computation of Time
[REPEAL]	§43.8	Extensions
[REPEAL]	§43.9	Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting
[REPEAL]	§43.10	Authority to Grant Relief
[REPEAL]	§43.11	Classification of Pleadings
[REPEAL]	§43.12	Form of Petitions and Other Pleadings
[REPEAL]	§43.13	Filing of Pleadings and Amendments
[REPEAL]	§43.14	Briefs
[REPEAL]	§43.15	Motions
[REPEAL]	§43.16	Notice of Hearing and Other Action
[REPEAL]	§43.17	Agreements To Be in Writing
[REPEAL]	§43.18	Motion for Consolidation
[REPEAL]	§43.19	Additional Parties
[REPEAL]	§43.20	Appearance and Representation
[REPEAL]	§43.21	Lead Counsel
[REPEAL]	§43.23	Powers of the Administrative Law Judge
[REPEAL]	§43.24	Prehearing Conference and Orders
[REPEAL]	§43.25	Conduct of Hearing
[REPEAL]	§43.26	General Admissibility
[REPEAL]	§43.27	Exhibits
[REPEAL]	§43.28	Pre-filed Direct Testimony in Disability Appeal Proceedings
[REPEAL]	§43.29	Limit on Number of Witnesses
[REPEAL]	§43.33	Failure to Appear
[REPEAL]	§43.34	Conduct and Decorum at Hearing
[REPEAL]	§43.35	Official Notice
[REPEAL]	§43.36	Ex Parte Consultations
[REPEAL]	§43.37	Recording of the Hearing; Certified Language Interpreter
[REPEAL]	§43.38	Dismissal without Hearing
[REPEAL]	§43.39	Summary Disposition
[REPEAL]	§43.40	The Record
[REPEAL]	§43.41	Findings of Fact

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[REPEAL]	§43.42 Reopening of Hearing
[REPEAL]	§43.43 Subpoenas and Commissions
[REPEAL]	§43.44 Discovery
[REPEAL]	§43.45 Proposals for Decision, Exceptions, and Appeals to the Board of Trustees
[REPEAL]	§43.46 Rehearings
[REPEAL]	§43.47 Procedures Not Otherwise Provided
[REPEAL]	§43.48 Cost of Preparing Administrative Record

NEW RULES

[NEW] SUBCHAPTER A. GENERAL ADMINISTRATION

[NEW]	§43.1 Applicability.
[NEW]	§43.2 Definitions.
[NEW]	§43.3 Filing of Documents.
[NEW]	§43.4 Computation of Time.
[NEW]	§43.5 Extensions.
[NEW]	§43.6 Ex Parte Consultations.
[NEW]	§43.7 Procedures Not Otherwise Provided.

[NEW] SUBCHAPTER B. REQUESTS FOR ADJUDICATIVE HEARING

[NEW]	§43.101. Administrative Review of Individual Requests.
[NEW]	§43.102. Administrative Review of Disability Determinations.
[NEW]	§43.103. Administrative Review of Option Beneficiary or Optional Retirement Annuity Plan Changes.
[NEW]	§43.104. Request for Adjudicative Hearing.
[NEW]	§43.105. Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting.
[NEW]	§43.106. Authority to Grant Relief.
[NEW]	§43.107. Subpoenas and Commissions.

[NEW] SUBCHAPTER C. HEARINGS NOT DOCKETED AT SOAH

[NEW]	§43.201. Applicability.
[NEW]	§43.202. Form of Pleadings.
[NEW]	§43.203. Filing of Pleadings and Amendments.
[NEW]	§43.204. Briefs.
[NEW]	§43.205. Motions.
[NEW]	§43.206. Discovery.
[NEW]	§43.207. Notice of Hearing and Other Action.
[NEW]	§43.208 Agreements To Be in Writing.
[NEW]	§43.209 Motion for Consolidation.

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- [NEW] §43.210 Additional Parties.
- [NEW] §43.211. Appearance and Representation.
- [NEW] §43.212. Lead Counsel.
- [NEW] §43.213. Powers of the Administrative Law Judge.
- [NEW] §43.214. Prehearing Conference and Orders.
- [NEW] §43.215. Conduct of Hearing.
- [NEW] §43.216. General Admissibility.
- [NEW] §43.217. Exhibits.
- [NEW] §43.218. Pre-filed Direct Testimony in Disability Appeal Proceedings.
- [NEW] §43.219. Limit on Number of Witnesses.
- [NEW] §43.220. Failure to Appear.
- [NEW] §43.221. Conduct and Decorum at Hearing.
- [NEW] §43.222. Official Notice.
- [NEW] §43.223. Recording of the Hearing; Certified Language Interpreter.
- [NEW] §43.224. Dismissal without Hearing.
- [NEW] §43.225. Summary Disposition.
- [NEW] §43.226. The Record.
- [NEW] §43.227. Findings of Fact.
- [NEW] §43.228. Reopening of Hearing.

[NEW] SUBCHAPTER D. FINAL DECISIONS OF TRS.

- [NEW] §43.301. Proposals for Decision and Exceptions.
- [NEW] §43.302. Decision of Executive Director.
- [NEW] §43.303. Proposals for Decision and Exceptions regarding Eligibility for Disability Retirement.
- [NEW] §43.304. Appeals to the Board of Trustees.
- [NEW] §43.305. Final Decision of TRS.
- [NEW] §43.306. Rehearings.
- [NEW] §43.307. Cost of Preparing Administrative Record.

Appendix B

Summary of Changes for Proposed New Chapter 43 Rules.

Subchapter A: General Administration

§ 43.1. Applicability – Proposed new § 43.1 relates to the applicability of Chapter 43 and readopts portions of current § 43.1 (relating to Administrative Review of Individual Requests) and § 43.9 (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting) in subsection (a) and (c) respectively. In addition, proposed new § 43.1(b) clarifies that appeals relating to qualified domestic relations orders are governed by Chapter 47 of this title (relating to Qualified Domestic Relations Order) and not governed by Chapter 43.

§ 43.2. Definitions – Proposed new § 43.2 largely readopts the existing provisions of current § 43.3 (relating to Definitions) with minor, nonsubstantive changes for style and clarity purposes.

§ 43.3. Filing of Documents – Proposed new § 43.3 largely readopts the existing provisions of current § 43.6 (relating to Filing of Documents) with minor, nonsubstantive changes for style and clarity purposes. In addition, proposed new § 43.3 also provides the procedures for filing of documents if TRS has referred an appeal for hearing before an administrative law judge (ALJ) not affiliated with the State Office of Administrative Hearings (SOAH).

§ 43.4. Computation of Time – Proposed new § 43.4 primarily readopts current § 43.7 (relating to Computation of Time) with minor, clarifying changes.

§ 43.5. Extensions – Proposed new § 43.5 readopts current § 43.8 (relating to Extensions) with minor, nonsubstantive changes for style and clarity purposes.

§ 43.6 Ex Parte Consultations – Proposed new § 43.6 readopts the provisions of current § 43.36 (relating to Ex Parte Consultations) and also clarifies that its provisions apply to all contested cases under Chapter 43, not just those heard before a hearing officer not affiliated with SOAH.

§ 43.7 Procedures Not Otherwise Provided – Proposed new § 43.7 readopts current § 43.47 (relating to Procedures Not Otherwise Provided) with a clarifying change that the board of trustees and TRS deputy director may also, in addition to the ALJ and executive director, resolve procedural issues as necessary in accordance with this provision when there are no other applicable TRS rules or statutes.

Subchapter B: Requests for Adjudicative Hearing

§ 43.101. Administrative Review of Individual Requests – Proposed new § 43.101 readopts portions of current § 43.1 (relating to Administrative Review of Individual Requests) that pertain to the administrative review of pension appeals that do not relate to eligibility for disability retirement. Proposed new § 43.101 also makes minor, conforming changes to the text of current § 43.1.

§ 43.102. Administrative Review of Disability Determinations – Proposed new § 43.102 readopts subsection (f) of current § 43.1, which relates to the administrative review of disability determinations made by the TRS Medical Board. Proposed new § 43.102 also provides procedural steps for the review

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that are analogous to the steps for nondisability reviews under proposed new § 43.101. Lastly, proposed new § 43.102 provides that a TRS member who pursues an adjudicative hearing on the member's eligibility for disability retirement consents to public hearing of that appeal once it reaches the TRS Board of Trustees.

§ 43.103. Administrative Review of Option Beneficiary or Optional Retirement Annuity Plan Changes – Proposed new § 43.103 readopts subsection (b) of current § 43.4 (relating to Decisions Subject to Review by an Adjudicative Hearing).

§ 43.104. Request for Adjudicative Hearing – Proposed new § 43.104 largely readopts provisions from current § 43.5 (relating to Request for Adjudicative Hearing) and subsections (d) and (e) of current § 43.12 (relating to Form of Petitions and Other Pleadings). In addition, proposed new § 43.104 provides that a petition for adjudicative hearing must include “a concise statement of the facts supporting the petition and a statement of the specific relief requested from TRS” to correspond with analogous provisions in paragraphs (f)(2)-(3) of current § 43.12.

§ 43.105. Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting – Proposed new § 43.105 readopts provisions from current § 43.4 and § 43.9 that relate to the determination to docket or decline to docket a petition for adjudicative hearing. In addition, proposed new § 43.105 clarifies the deadline for how long a party has to resubmit a petition that the deputy director rejects for formatting purposes.

§ 43.106. Authority to Grant Relief – Proposed new § 43.106 readopts current § 43.10 (relating to Authority to Grant Relief) with minor, nonsubstantive changes for style and clarity.

§ 43.107. Subpoenas and Commissions – Proposed new § 43.107 primarily readopts current § 43.43 (relating to Subpoenas and Commissions). In addition, proposed new § 43.107 simplifies the subpoena and commission process by placing all authority to issue subpoenas and commissions with the deputy director and providing that only the parties and the ALJ may request a subpoena or commission.

Subchapter C: Hearings Not Docketed at SOAH

§ 43.201. Applicability – Proposed new § 43.201 is a new rule that provides that the provisions of new Subchapter C of Chapter 43 (relating to Hearings Not Docketed at SOAH).

§ 43.202. Form of Pleadings – Proposed new § 43.202 primarily readopts the provisions relating to pleadings of current § 43.12 (relating to Form of Petitions and Other Pleadings) with only minor conforming changes. The provisions related to petitions (specifically subsections (d)-(e)) are readopted in proposed new § 43.104 (relating to Request for Adjudicative Hearing).

§ 43.203. Filing of Pleadings and Amendments – Proposed new § 43.203 primarily readopts the provisions of current § 43.13 (relating to Filing of Pleadings and Amendments) with only minor conforming changes.

§ 43.204. Briefs – Proposed new § 43.204 primarily readopts the provisions of current § 43.14 (relating to Briefs) with only minor conforming changes.

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§ 43.205. Motions – Proposed new § 43.205 primarily readopts the provisions of current § 43.15 (relating to Motions) with only minor conforming changes.

§ 43.206. Discovery – Proposed new § 43.206 primarily readopts the provisions of current § 43.44 (relating to Discovery) with only minor conforming changes and to update the reference to SOAH’s procedural rules regarding discovery.

§ 43.207. Notice of Hearing and Other Action – Proposed new § 43.207 primarily readopts the provisions of current § 43.16 (relating to Notice of Hearing and Other Action) with only minor changes for style and clarity.

§ 43.208. Agreements To Be in Writing – Proposed new § 43.208 primarily readopts the provisions of current § 43.17 (relating to Agreements To Be in Writing) with only minor conforming changes.

§ 43.209. Motion for Consolidation – Proposed new § 43.209 primarily readopts the provisions of current § 43.18 (relating to Motion for Consolidation) with only minor conforming changes.

§ 43.210. Additional Parties – Proposed new § 43.210 primarily readopts the provisions of current § 43.19 (relating to Additional Parties) with only minor changes for style and clarity.

§ 43.211. Appearance and Representation – Proposed new § 43.211 primarily readopts the provisions of current § 43.20 (relating to Appearance and Representation) with only minor conforming changes.

§ 43.212. Lead Counsel – Proposed new § 43.212 readopts the provisions of current § 43.21 (relating to Lead Counsel).

§ 43.213. Powers of the Administrative Law Judge – Proposed new § 43.213 primarily readopts the provisions of current § 43.23 (relating to Powers of the Administrative Law Judge) with only minor conforming changes.

§ 43.214. Prehearing Conference and Orders – Proposed new § 43.214 readopts the provisions of current § 43.24 (relating to Prehearing Conference and Orders).

§ 43.215. Conduct of Hearing – Proposed new § 43.215 primarily readopts the provisions of current § 43.25 (relating to Conduct of Hearing) with minor conforming changes and a clarification that all TRS contested case hearings before a hearing officer not affiliated with SOAH are confidential. This is the same standard as contested case hearings heard before SOAH.

§ 43.216. General Admissibility – Proposed new § 43.216 readopts the provisions of current § 43.26 (relating to General Admissibility).

§ 43.217. Exhibits – Proposed new § 43.217 primarily readopts the provisions of current § 43.27 (relating to Exhibits) with only minor conforming changes and changes for style and clarity.

§ 43.218. Pre-filed Direct Testimony in Disability Appeal Proceedings – Proposed new § 43.218 readopts the provisions of current § 43.28 (relating to Pre-filed Direct Testimony in Disability Appeal Proceedings).

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§ 43.219. Limit on Number of Witnesses – Proposed new § 43.219 readopts the provisions of current § 43.29 (relating to Limit on Number of Witnesses).

§ 43.220. Failure to Appear – Proposed new § 43.220 readopts the provisions of current § 43.33 (relating to Failure to Appear).

§ 43.221. Conduct and Decorum at Hearing – Proposed new § 43.221 primarily readopts the provisions of § 43.34 (relating to Conduct and Decorum at Hearing) with only minor conforming changes.

§ 43.222. Official Notice – Proposed new § 43.222 readopts the provisions of § 43.35 (relating to Official Notice).

§ 43.223. Recording of the Hearing; Certified Language Interpreter – Proposed new § 43.223 primarily readopts the provisions of current § 43.37 (relating to Recording of the Hearing; Certified Language Interpreter) with only minor conforming changes.

§ 43.224. Dismissal without Hearing – Proposed new § 43.224 primarily readopts the provisions of current § 43.38 (relating to Dismissal without Hearing) with only minor conforming changes.

§ 43.225. Summary Disposition – Proposed new § 43.225 primarily readopts the provisions of current § 43.39 (relating to Summary Disposition) but changes the deadline for filing a motion for summary disposition from 25 days before the hearing on the merits to 30 days before the hearing. This change is necessary to ensure non-SOAH hearings conform with SOAH hearings on key procedural deadlines and provide sufficient time for the administrative law judge to consider the motion prior to the hearing on the merits.

§ 43.226. The Record – Proposed new § 43.226 readopts the provisions of current § 43.40 (relating to The Record).

§ 43.227. Findings of Fact – Proposed new § 43.227 readopts the provisions of current § 43.41 (relating to Findings of Fact).

§ 43.228. Reopening of Hearing – Proposed new § 43.228 readopts some provisions of current § 43.42 (relating to the Reopening of Hearing) but removes provisions relating to reopening the hearing after the administrative law judge issues a PFD and the executive director or board of trustees have begun to consider the appeal. Because proposed new § 43.228 only applies at the contested case level, these elements of current § 43.42 have been readopted in provisions related to those later stages of the appeal process.

Subchapter D: Final Decisions of TRS

§ 43.301. Proposals for Decision and Exceptions – Proposed new § 43.301 readopts subsection (b) of current § 43.45 (relating to Proposals for Decision, Exceptions, and Appeals to the Board of Trustees). In addition, proposed new § 43.301 further clarifies the exceptions process after an ALJ issues a proposal for decision after a contested case. Specifically, proposed new § 43.301 provides that exceptions shall be filed with and reviewed by the ALJ, not the executive director, and the ALJ shall inform TRS whether any action was taken pursuant to the parties' exceptions.

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§ 43.302. Decision of Executive Director – Proposed new § 43.302 readopts, in part, subsections (c), (e), (h), and (i) of current § 43.45 to the extent the provisions involve the duties of the executive director after an ALJ issues a proposal for decision to TRS. Proposed new § 43.302 also adds provisions to clarify the executive director's authority to remand a case to the administrative law judge and to modify a proposal for decision if a finding of fact is against the weight of the evidence.

§ 43.303. Proposals for Decision and Exceptions regarding Eligibility for Disability Retirement – Proposed new § 43.303 readopts, in part, subsections (c), (h), and (i) of current § 43.45 as they relate to the duties of the board of trustees to review an ALJ's proposal for decision in a case relating to a member's eligibility for disability retirement. Proposed new § 43.303 primarily expands upon these provisions to provide for the procedure for a proposal for decision to be reviewed by the board of trustees in such a case. The proposed new procedures are similar to those followed by the executive director in a nondisability pension appeal.

§ 43.304. Appeals to the Board of Trustees – Proposed new § 43.304 readopts, in part, subsections (c) through (i) and (k) of current § 43.45 as they relate to the duties of the board of trustees when reviewing a decision of the executive director. In addition, proposed new § 43.304 makes several member-friendly changes to the board of trustees' portion of the appeals process. These changes include providing all parties with the opportunity to submit written briefs to the board of trustees in every appeal to the board, not only those appeals when the executive director made a change to the ALJ's proposal for decision. The changes also include offering the parties the opportunity to express their preference on whether oral argument is needed in a case and delegates the determination on whether to have oral argument from the board to the executive director in order to expedite the decision-making process. Lastly, similar to the changes made in proposed new § 43.302, proposed new § 43.304 also adds provisions to clarify the board of trustees' authority to remand a case to the administrative law judge and to modify a proposal for decision if a finding of fact is against the weight of the evidence.

§ 43.305. Final Decision of TRS – Proposed new § 43.305 readopts subsection (j) of current § 43.45.

§ 43.306. Rehearings – Proposed new § 43.306 readopts current § 43.46 (relating to Rehearings).

§ 43.307. Cost of Preparing Administrative Record – Proposed new § 43.307 readopts current § 43.48 (relating to Cost of Preparing Administrative Record).

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TITLE 34 PUBLIC FINANCE PART 3 TEACHER RETIREMENT SYSTEM OF TEXAS CHAPTER 43 CONTESTED CASES

SUBCHAPTER A. GENERAL ADMINISTRATION

§43.1. Applicability.

(a) The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

(b) The procedures of this chapter do not apply to determinations of whether a domestic relations order is a qualified domestic relations order (QDRO) under Chapter 47 of this title (relating to Qualified Domestic Relations Orders). Appeals relating to QDROs are subject to the requirements of Chapter 47.

(c) If a contested case under this chapter is referred to the State Office of Administrative Hearings (SOAH) for adjudicative hearing, then during the period of time the case is before SOAH, the procedural rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent with applicable statutes or constitutional provisions. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of Subchapter C of this chapter (relating to Hearings Not Docketed at SOAH) shall apply to the conduct of the hearing while pending before the hearing official.

§43.2. Definitions.

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

(1) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The deputy director may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(2) Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by the chief benefit officer or the Medical Board on a matter over which TRS has jurisdiction and authority to grant relief.

(3) Board--The Board of Trustees of TRS.

(4) Chief Benefit Officer--The Chief Benefit Officer of TRS or person acting in that position.

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

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- (6) Deputy Director--The Deputy Director of TRS or person acting in that position.
- (7) Executive director--The executive director of TRS or person acting in that position; when the executive director determines that a need exists, the executive director at his or her discretion may designate a person to accomplish the duties assigned in this chapter to the executive director.
- (8) Final administrative decision--An action, determination, or decision by the chief benefit officer or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).
- (9) Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.
- (10) Medical board--The medical board appointed by the TRS board of trustees under Government Code §825.204.
- (11) Member--A person who is a member, retiree, or beneficiary of TRS.
- (12) Order--The whole or a part of the final disposition of an appeal, whether affirmative, negative, injunctive, or declaratory in form, of the executive director, deputy director, or the board in a contested case.
- (13) Party--Each person named or admitted in a contested case.
- (14) Person--Any natural person or other legal entity.
- (15) Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case.
- (16) SOAH--The State Office of Administrative Hearings.
- (17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS.
- (18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.
- (19) TRS--The Teacher Retirement System of Texas.
- (20) Trustee--One of the members of the board.

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(21) With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action.

§43.3. Filing of Documents.

(a) All documents relating to any appeal of a final administrative decision shall be filed with the deputy director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. A document may be filed with TRS by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail. A document is deemed filed when mailed if it is received by TRS within a timely manner under Rule 5 of the Texas Rules of Civil Procedure and the sender provides adequate proof of the mailing date.

(b) If the deputy director has docketed an appeal and referred it for adjudicative hearing at SOAH, documents shall be filed in accordance with the procedural rules of SOAH and served upon TRS in accordance with those rules.

(c) If the deputy director has docketed an appeal and referred it to an administrative law judge or other hearing official not affiliated with SOAH, documents shall be filed with the administrative law judge and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge.

§43.4. Computation of Time.

In computing any period of time prescribed or allowed by this chapter, by order of the deputy director, executive director, or board, or by any applicable statute, the period shall begin on the day after the act, event, or default in question, and it shall conclude on the last day of that designated period, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

§43.5. Extensions.

(a) Unless otherwise provided by statute, the time for filing pleadings or other documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

(b) A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing.

(c) In the case of filings that initiate a proceeding or that are made before an appeal has been referred for an adjudicative hearing, the deputy director will determine whether good cause exists and whether an extension should be granted.

(d) In the case of filings made in a proceeding after TRS has referred the appeal for an adjudicative hearing, rules governing hearings before SOAH will control so long as the matter is before SOAH.

(e) If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then

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the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official.

(f) For matters returned by an administrative law judge or hearing examiner to TRS, either through dismissal from the adjudicative hearing docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted.

(g) The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

§43.6 Ex Parte Consultations.

Unless required for the disposition of ex parte matters authorized by law, the executive director, the administrative law judge, and any member of the board who may render a decision that may become final under this chapter or make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. To the extent permitted by law, the executive director, the administrative law judge, and any member of the board who may render a decision that may become final under this chapter or make findings of fact and conclusions of law in a contested case, may communicate ex parte with employees of TRS who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of TRS and its staff in evaluating the evidence.

§43.7 Procedures Not Otherwise Provided.

If, in connection with any hearing, the board of trustees, the executive director, the deputy director, or the administrative law judge, as applicable, determines that there are no statutes or other applicable rules resolving particular procedural questions in the proceedings, the parties shall follow procedures consistent with the purpose of this chapter.

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SUBCHAPTER B. ADMINISTRATIVE REVIEW AND REQUESTS FOR ADJUDICATIVE HEARING

§43.101. Administrative Review of Individual Requests.

(a) TRS is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may appeal the determination, decision, or action to the appropriate manager within the department, and then to the chief benefit officer of TRS. The chief benefit officer shall mail a final written administrative decision, which shall include:

(1) the chief benefit officer's determination regarding the person's appeal and reasons for denying the appeal, if applicable; and

(2) a statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision and the deadline for doing so.

(c) An appeal to the chief benefit officer as described by subsection (b) of this section must be submitted by the later of:

(1) 45 days after the date the decision of the department manager is mailed; or

(2) the number of days after the date the decision of the department manager is mailed equal to the number of days it took TRS to issue the decision of the department manager.

(d) The number of days it took TRS to issue the decision of the department manager is calculated from the date TRS received the person's appeal of the determination, decision, or action of department personnel to the date TRS mailed the decision of the department manager.

(e) A person adversely affected by a decision of the chief benefit officer may request an adjudicative hearing to appeal the decision of the chief benefit officer as provided in §43.104 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.105 of this chapter (relating to Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

§43.102. Administrative Review of Disability Determinations.

(a) In the event that the Medical Board does not certify disability of a member under Government Code §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board.

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(b) The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision by requesting an adjudicative hearing as provided in §43.104 of this chapter (relating to Request for Adjudicative Hearing).

(c) The deputy director shall determine whether the petition should be docketed and set for a contested case hearing pursuant to §43.105 of this chapter (relating to Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(d) A party who requests to adjudicative hearing pursuant to this section consents to the public discussion by the board of trustees of all relevant facts, including information in the member's file that may otherwise be confidential by law, when the board considers the proposal of decision of an administrative law judge in the party's appeal.

§43.103. Administrative Review of Option Beneficiary or Optional Retirement Annuity Plan Changes.

A determination by the executive director or the executive director's designee regarding whether a court with jurisdiction over the marriage of a retiree and the beneficiary of an optional annuity selected by the retiree under Government Code §824.204(c)(1), (c)(2), or (c)(5) or an optional disability annuity selected by the retiree under Government Code §824.308(c)(1), (c)(2), or (c)(5) has approved or ordered a change in retirement plan under Government Code §824.1012, or a change in beneficiary under Government Code §824.1013, is a final decision by TRS. No appeal to the board of trustees of TRS is authorized. A party adversely affected by a determination of the executive director or the designee must file a motion for reconsideration with the executive director no later than 25 days after the date such a determination is rendered if the party wishes to contest the determination.

§43.104. Request for Adjudicative Hearing.

(a) On a matter over which TRS has jurisdiction and authority to grant relief that does not conflict with the terms of the pension plan, a person may appeal a final administrative decision by filing a petition for adjudicative hearing with the deputy director.

(b) A petition for adjudicative hearing must be filed by the later of:

(1) 45 days after the date the final administrative decision is mailed; or

(2) a number of days after the final administrative decision is mailed equal to the number of days it took TRS to issue the final administrative decision.

(c) The number of days it took TRS to issue the final administrative decision is calculated from the date TRS received the person's appeal of the department manager's decision to the date TRS mailed the final administrative decision.

(d) The original petition for an adjudicative hearing should be styled: "Petition of (Name of Petitioner)" and must be filed with TRS, directed to the attention of the deputy director. The petition must include:

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(1) the name, address, telephone number, and email address of petitioner;

(2) the name, address, telephone number, email address, and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. In lieu of the tax number, the petition may include other information sufficient to identify the member or beneficiary whose interest may be involved in the case;

(3) the identity of other all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address, telephone number, and email address; and

(4) a concise statement of the facts supporting the petition and a statement of the specific relief requested from TRS.

§43.105. Docketing of Petition for Adjudicative Hearing and Dismissal for Failure to Obtain Setting.

(a) Subject to subsection (b) of this section, the deputy director shall assign a petition for adjudicative hearing a TRS docket number, provide all parties notice of the docket number, and refer the matter for an adjudicative hearing before SOAH or otherwise as authorized by law if the petition regards the following:

(1) any matter related to a member's service or disability retirement, death or survivor benefits, or request for refund of accumulated contributions;

(2) the eligibility of a person for membership in TRS;

(3) the amount of annual compensation credited by TRS;

(4) the amount of deposits or fees required of a member;

(5) any matter involving the granting, purchase, transfer, or establishment of service credit;

(6) any application for correction of error in the file of a member, beneficiary, or alternate payee, other than a determination of whether an order is a QDRO;

(7) the cancellation or suspension of retirement, survivor, or death benefits; or

(8) any other matter affecting eligibility for retirement and related disability and death benefits or the amount of such benefits payable under the laws governing TRS.

(b) Notwithstanding subsection (a) of this section, the deputy director may decline to docket an appeal for the following reasons:

(1) TRS has no jurisdiction over the subject matter of the petition;

(2) TRS does not have the authority to grant the relief requested by the petition;

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(3) the petition is not timely filed; or

(4) the petition otherwise fails to comply with this chapter.

(c) The deputy director's decision declining to docket an appeal is the final decision of TRS when the circumstances described in Government Code §2001.144, are met. A person may not appeal such decision to the executive director or the board. A person may file a motion for rehearing with the deputy director in accordance with §43.306 of this chapter (relating to Rehearings).

(d) Prior to docketing a petition, the deputy director may review the request filed with TRS to determine whether it meets the requirements of §43.104 of this chapter (relating to Request for Adjudicative Hearing). If the petition does not materially comply with §43.104 of this chapter, the deputy director shall return the petition to the person who filed it, along with reasons for the return. The person shall be given 60 days from the date the deputy director sends the notice to file a corrected petition. If the petition is not corrected to substantially comply with §43.104 of this chapter within the time given, the deputy director may decline to docket the appeal.

(e) A party that files an appeal and causes a matter to be docketed and referred to for adjudicative hearing shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the matter for an adjudicative hearing.

§43.106. Authority to Grant Relief.

(a) At any time before an appeal is referred for adjudicative hearing, the chief benefit officer or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interests of other individual parties are not adversely affected and the relief does not conflict with the terms of the pension plan.

(b) If the granted appeal has been referred to SOAH, the parties shall request that the SOAH administrative law judge dismiss the case from the SOAH docket in accordance with SOAH rules. If the granted appeal was referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this Subchapter C shall apply to the dismissal of the case.

§43.107. Subpoenas and Commissions.

(a) Except as provided in subsection (d) of this section, the issuance of a subpoena in any proceeding under this chapter shall be governed by the Administrative Procedure Act, Government Code §2001.089. Upon a written request by a party showing good cause and payment of required fees, or upon the request of the administrative law judge, the deputy director may issue a subpoena addressed to the sheriff or a constable to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a hearing.

(b) The issuance of a commission in any proceeding under this subchapter shall be governed by the Administrative Procedure Act, Government Code §2001.094. Upon a written motion of a party and payment of required fees, or on the request of the administrative law judge, the deputy director may

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issue a commission addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken.

(c) Subpoenas and commissions shall be issued by the deputy director only after a deposit of sums sufficient to ensure payment of expenses incident to the subpoenas. Payment of witness fees shall be made in the manner prescribed in the Administrative Procedure Act, Government Code §2001.103.

(d) Members of the Medical Board may not be the subject of a subpoena regarding findings or determinations made in assisting the deputy director or the board of trustees in all matters referred to it.

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SUBCHAPTER C. HEARINGS NOT DOCKETED AT SOAH

§43.201. Applicability.

The provisions of this subchapter only apply to an adjudicative hearing referred to a hearing official not affiliated with SOAH.

§43.202. Form of Pleadings.

(a) Briefs and other pleadings shall be typed or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Copies may be used, provided they are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts.

(c) The original of any pleading filed with TRS shall be signed by the party filing it or by his or her authorized representative. Pleadings shall contain the address, telephone number, and email address of the party filing the documents or the name, business address, telephone number, email address, and fax number of counsel.

(d) If a TRS or other adjudicative hearing docket number has been assigned, pleadings shall contain the docket number.

(e) All pleadings shall contain the following:

- (1) the name of the party filing the pleading;
- (2) a concise statement of the facts relied upon by the party;
- (3) a request stating the type of relief, action, or order desired by the party;
- (4) a certificate of service conforming to subsection (f) of this section; and
- (5) any other matter required by statute.

(f) Written pleadings may be served by hand-delivery, courier-receipted delivery, fax, or regular, certified, or registered mail upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service may be made upon a party by serving the attorney of record. The following form of certification will be sufficient: "I hereby certify that I have this _____ day of _____, 20____, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(g) A party may object to the form or sufficiency of a pleading by filing the objections in writing at least 15 days before the hearing date. If the objections are sustained, the administrative law judge shall allow

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a reasonable time for amendment.

§43.203. Filing of Pleadings and Amendments.

(a) Any party to a case may file answers, amendments to pleadings (as permitted by this subchapter), and motions that conform to the requirements of this subchapter. Any amendment that operates as a surprise to any other party may be allowed only upon a written motion showing no harm will result. Failure to file an answer shall in no case result in a default judgment.

(b) The filing of motions, answers, amended pleadings, and corrected pleadings shall not be permitted to delay any hearing unless the executive director, board of trustees, or administrative law judge determines that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

§43.204. Briefs.

Briefs shall conform, where practicable, to the form requirements of pleadings set out in this subchapter. The points involved shall be concisely stated, the allegations in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

§43.205. Motions.

A motion, unless made during a hearing, shall be made in writing, set forth the relief or order sought, state the grounds for such relief, and be timely filed with TRS, and the administrative law judge. A copy shall be served by the movant on each party of record. Any reply to the motion shall be timely filed with TRS or the administrative law judge, as applicable, with a copy served on the movant and other parties of record. Failure to serve copies may be grounds for withholding consideration of the motions or replies. Unless otherwise directed by the administrative law judge, executive director, or board, motions based on matters which do not appear of record must be supported by affidavit. When necessary, a hearing will be held to consider any motion.

§43.206. Discovery.

If a matter was referred for an adjudicative hearing to a hearing official not affiliated with SOAH, parties may obtain discovery under this subchapter or under SOAH's relevant procedural rules (1 TAC §§155.251-155.259 (relating to Discovery)) to the extent those rules do not conflict with this subchapter.

§43.207. Notice of Hearing and Other Action.

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by TRS, or an administrative law judge, as applicable, shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid if it is received by TRS within a timely manner under Rule 5 of the Texas Rules of Civil Procedure and the sender provides adequate proof of the mailing date. Service may also be accomplished by electronic mail or facsimile transmission if all parties agree. In

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that case, the sender shall retain the original of the document and file it upon request with the administrative law judge or the executive director, as applicable. Upon request, the sender has the burden of proving the date and time of receipt of the document served by facsimile transmission or electronic mail. Electronic mail may not be used with documents produced pursuant to a discovery request. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial hearing notices shall include the following:

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

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short, plain statement of the factual matters asserted. If TRS or a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten days before the date set for hearing, a more definite and detailed statement must be furnished not less than seven days prior to the date set for the hearing; and

(5) a statement that failure to appear at the prehearing conference or any scheduled hearing may result in the following: the facts alleged by TRS may be admitted as true; the relief requested by TRS may be granted; petitioner's appeal may be denied; or petitioner's appeal may be dismissed with prejudice for failure to prosecute the claim; or any or all of the foregoing actions.

(c) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 30 days before the date set for hearing. If the motion is granted, the administrative law judge shall give notice, not less than 20 days before the date of hearing, of the additional issues and matters to be decided in the contested case.

(d) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

§43.208 Agreements To Be in Writing.

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding governed by this subchapter, shall be enforced unless it shall have been reduced to writing and signed by the parties or the representatives authorized by this subchapter to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this subchapter, unless precluded by law.

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§43.209 Motion for Consolidation.

A motion for consolidation of two or more appeals, applications, petitions, or other proceedings shall be in writing, signed by the movant or the movant's attorney, and filed with SOAH, TRS, or the administrative law judge, as applicable, prior to the date set for hearing. The motion shall state the number and style of all proceedings sought to be consolidated, and the movant shall file a copy of the motion in each proceeding. No two or more appeals, applications, petitions, or other proceedings shall be consolidated or heard jointly without the consent of all parties to all such proceedings unless the administrative law judge or executive director shall find that the two or more appeals, applications, petitions, or other proceedings involve common questions of law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

§43.210 Additional Parties.

(a) A person who may be affected by a decision of TRS in the proceeding may file a written motion to intervene at least 15 days in advance of the hearing date. The person may request an opportunity to present any relevant, material, and proper testimony and evidence bearing upon the request to intervene.

(b) A party may move to join other persons as parties to the proceeding if they may be affected by a final decision of TRS. A motion to join other parties shall identify the person by name, address, and telephone number; shall state the nature of the other person's relationship to the proceeding or potential interest in the proceeding; and shall state why the person is needed for the just adjudication of the appeal or other grounds for the motion. The motion shall also state whether joinder of the person is feasible. If the motion is granted, the person shall be a party to the proceeding.

§43.211. Appearance and Representation.

(a) A party or person seeking to be admitted as a party may appear at a hearing or prehearing conference in person or by an attorney. A natural person may not be represented by another person who is not an attorney. An entity other than a natural person that is a party or that seeks to be admitted as a party may appear through a person with legal authority to act on behalf of the entity, such as an officer, director, or trustee, or may be represented by an attorney.

(b) An attorney representing a person or party in a proceeding must be authorized to practice law in the court of highest jurisdiction of any state of the United States or the District of Columbia. The attorney of record of any party shall be the attorney who signs the first pleading filed on behalf of the party or who files with TRS or the administrative law judge, as applicable, a written notice signed by the party designating the attorney as attorney of record in the case. An attorney appearing on behalf of a party may be required to show authority to act for the party. Nothing in this subchapter shall be interpreted to require a party to the hearing to be represented by counsel.

§43.212. Lead Counsel.

A party represented by more than one attorney in a proceeding may be required to designate a lead counsel who shall have control in the management of the matter. The administrative law judge,

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executive director, or board may limit the number of counsel heard on any matter.

§43.213. Powers of the Administrative Law Judge.

The presiding administrative law judge shall have the authority established by applicable statutes and the rules of this subchapter. Additionally, the administrative law judge may

(1) determine the jurisdiction of TRS concerning the matter under consideration;

(2) determine the scope of the matter referred to the administrative law judge; and

(3) limit testimony to matters under TRS's jurisdiction and to matters referred to the administrative law judge by TRS.

§43.214. Prehearing Conference and Orders.

(a) The administrative law judge may hold a prehearing conference prior to any adjudicative hearing.

(b) At the prehearing conference or by prehearing conference order, the administrative law judge may require parties to file and serve the following in order to expedite the hearing:

(1) a list of witnesses the party intends to have testify, with a brief narrative summary of their expected testimony;

(2) a written statement of the disputed issues or;

(3) a copy of any documentary evidence the party intends to use at the hearing.

(c) Witnesses and proposed documentary evidence may be added and narrative summaries of expected testimony amended at the hearing only upon a finding of the administrative law judge that good cause existed for failure to serve the additional or amended material by the established date.

(d) At any prehearing conference, or in a prehearing conference order, the administrative law judge:

(1) may obtain stipulations and admissions, and otherwise identify matters on which there is agreement;

(2) shall identify disputed issues for consideration at the hearing;

(3) may consider and rule prospectively upon objections to the introduction into evidence at the hearing on the merits of any written testimony, documents, papers, exhibits, or other materials;

(4) may identify matters of which official notice may be taken;

(5) may strike issues not material or not relevant, including issues not within the scope of the matter referred by TRS; and

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(6) may consider any other matter that may expedite the hearing or aid in the disposition of the matter.

(e) A prehearing conference may be held by means of a conference telephone call.

(f) Rulings or decisions made at a prehearing conference shall be summarized in a written order by the administrative law judge and made part of the record.

§43.215. Conduct of Hearing.

(a) A hearing shall be confidential to ensure the information of a member's file is not disclosed. The member may expressly waive the member's right to maintain confidentiality of the information before the proceedings will be opened to the public.

(b) All hearings will be held in Austin, Texas unless all parties agree to another site.

(c) The petitioner has the burden of proving by a preponderance of the evidence that the relief sought in the petition should be granted. The petitioner shall present his or her direct case first at hearing.

(d) Where the proceeding is initiated at the executive director's or the board's own call, or where several proceedings are heard on a consolidated record, the administrative law judge shall designate who shall open and close and at what stage intervenors or other parties shall be permitted to offer evidence.

(e) The administrative law judge may call upon any party or staff of TRS for further material or relevant evidence upon any issue before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection, cross-examination, and rebuttal by the other interested parties.

(f) At the request of a party, the administrative law judge shall order the witnesses excluded so that they cannot hear the testimony of other witnesses. This section does not authorize exclusion of a party.

(g) During the hearing, formal exceptions to rulings of the administrative law judge are not required. It shall be sufficient that a party, at the time of any ruling is made or sought, shall make known to the administrative law judge the action sought.

§43.216. General Admissibility.

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of Texas shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by a reasonably prudent person in the conduct of the person's affairs. The administrative law judge shall give effect to the rules of privilege recognized by law.

(b) When testimony is excluded by ruling of the administrative law judge, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance

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of the proposed testimony prior to the conclusion of the hearing. Such offer of proof shall be sufficient to preserve the point for review. The administrative law judge may ask questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as presented in the offer of proof.

§43.217. Exhibits.

(a) Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of TRS and whenever practicable, shall conform to the requirements set forth in §43.202 of this chapter (relating to Form of Pleadings).

(b) The original of each exhibit offered shall be tendered to the court reporter or administrative law judge for identification; one copy shall be furnished to the administrative law judge and one copy to each other party of record or his or her attorney of record.

(c) In the event an exhibit has been identified, objected to, and excluded, the administrative law judge shall determine whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to that party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the administrative law judge with the ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Unless specifically permitted by the administrative law judge, no exhibit will be permitted to be filed in any proceeding under this subchapter after the conclusion of the hearing. In the event the administrative law judge allows an exhibit to be filed after the conclusion of a hearing, copies of the late-filed exhibit shall be served on all parties of record.

§43.218. Pre-filed Direct Testimony in Disability Appeal Proceedings.

(a) In a contested case concerning Medical Board denial of certification of disability or a finding that a disability retiree is no longer mentally or physically incapacitated from the performance of duty, all testimony and other evidence, including medical or employment records, that the petitioner intends to offer in petitioner's direct case shall be pre-filed at least 90 days before the date of the hearing on the merits. Testimony shall include all expert and fact witnesses, including that of a petitioner who intends to testify. In order to avoid any unnecessary expense and time associated with adjudicative hearings and in accordance with Government Code §824.303, which requires Medical Board certification in order for a person to be retired, TRS staff shall be given adequate opportunity to present such information to the Medical Board for consideration before the hearing on the merits. If, upon consideration of the information petitioner intends to offer at hearing, the Medical Board certifies the person as disabled, TRS staff or petitioner may move for dismissal of the appeal. If, however, the Medical Board does not certify the person as disabled, the petitioner may continue to prosecute the appeal as previously docketed and referred for an adjudicative hearing. The petitioner shall not be permitted to introduce direct testimony and evidence that has not been pre-filed and made available to the Medical Board for consideration.

(b) The pre-filed testimony of a witness upon direct examination shall be in question and answer form. The qualifications of an expert witness shall be described in question and answer testimony or by

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attachment of a resume as an exhibit to the testimony. Pre-filed testimony of a witness may be offered into the record by a party during its direct case. The testimony shall not be admitted into the hearing record in whole or in part unless the witness is available at the hearing on the merits and, upon being sworn, identifies the pre-filed testimony as a true and accurate record of what his or her testimony would be if the witness were testifying orally. A witness may be given an opportunity to correct errors. After calling the witness and authenticating the testimony in this manner, a party may offer the testimony into the record. Pre-filed testimony is subject to the rules of evidence, including objections or motions to strike when such testimony is offered, as if the testimony were presented orally at a hearing. Such testimony, if admitted, may be incorporated in the record as if read or received as an exhibit. The witness shall be subject to cross-examination by other parties after the admission of the pre-filed testimony in whole or in part, and the party offering the testimony may conduct re-direct examination of the witness at the conclusion of cross-examination.

(c) Pre-filed documentary evidence other than testimony of witnesses may be offered into the record by a party during its direct case. All pre-filed documentary evidence is subject to the rules of evidence.

§43.219. Limit on Number of Witnesses.

The administrative law judge shall have the right in any proceeding under this subchapter to limit the number of witnesses whose testimony is merely cumulative.

§43.220. Failure to Appear.

The petitioner or the petitioner's attorney shall appear at the hearing. Failure to so appear may be grounds for withholding consideration of a matter, denial of the appeal with or without prejudice, or dismissal of the appeal. However, no default judgment may be taken against a third party petitioner or respondent for failure to appear.

§43.221. Conduct and Decorum at Hearing.

Every participant in the proceedings shall conduct himself with proper dignity, courtesy, and respect for TRS, the administrative law judge, all other participants, and all other persons attending the proceedings. TRS or the administrative law judge may take such action as appropriate and necessary to enforce this rule.

§43.222. Official Notice.

Official notice may be taken of all facts judicially cognizable. In addition, official notice may be taken of generally recognizable facts within the specialized knowledge of TRS. All parties shall be notified either before or during the hearing, or by reference in preliminary reports, drafts of orders, or otherwise, of any material officially noticed, including any staff memoranda or data. All parties will be afforded an opportunity to contest the material so noticed.

§43.223. Recording of the Hearing; Certified Language Interpreter.

(a) A record of a hearing or prehearing conference shall be made in a manner consistent with the

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purpose of 1 TAC §155.423 (relating to Making a Record of Proceeding). Because of the nature of TRS proceedings and the expense of stenographic recordings and transcripts, it is the policy of TRS to rely on an audio or video recording as the official record of the proceeding, regardless of the anticipated length of the hearing.

(b) TRS may assess the cost of preparation of a stenographic recording or transcript against a party requesting such, or against other parties as appropriate. Cost of a transcript copy ordered by a party shall be paid by that party. TRS may require a deposit or full payment of the estimated costs by a party against whom costs have been assessed in advance of arranging for a court reporter to be present at the hearing or in advance of preparation of the transcript. If no party requests stenographic recording of a proceeding or preparation of a transcript by a court reporter but the administrative law judge so requires, TRS may assess the cost to one or more parties or may request that TRS not be required to bear the costs.

(c) In the alternative to a stenographic recording or transcript prepared by a court reporter, TRS may prepare a transcript from a video or audio tape of the proceeding. The transcript prepared by TRS may be considered the official record of the proceeding. TRS may obtain the official audio or video recording from the administrative law judge for purposes of preparing the transcript. A party who objects to a TRS-prepared transcript and requests that proceedings be stenographically recorded or transcribed by a court reporter may be required to pay the costs of such recording and transcription.

(d) A stenographic reporter shall recognize that TRS may print and distribute additional copies of the transcript as necessary to conduct its business and shall maintain the confidentiality of information presented at hearing.

(e) A party who desires the services of a certified language interpreter for any part of the contested case proceedings is responsible for arranging for the interpreter and paying for the services.

§43.224. Dismissal without Hearing.

(a) The administrative law judge may consider motions for dismissal from the adjudicative hearing docket without a hearing and recommend dismissal with or without prejudice for any of the following reasons:

(1) failure to prosecute a claim;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal or voluntary dismissal of appeal;

(4) moot questions, obsolete petitions, or laches;

(5) lack of jurisdiction; or

(6) failure to comply with §43.104 of this chapter (relating to Request for Adjudicative Hearing) or other applicable sections.

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(b) The administrative law judge shall dismiss from the adjudicative hearing docket and recommend dismissal by TRS of the appeal of a petitioner who has defaulted by:

(1) failing to appear at the hearing; or

(2) failing to request a hearing or take some other action specified by the administrative law judge within 30 days after notice is mailed of intention to dismiss the claim.

(c) For good cause, the executive director may permit reinstatement of a dismissed appeal.

§43.225. Summary Disposition.

(a) A party may move with or without supporting affidavits for a summary disposition any time after an appeal has been referred for an adjudicative hearing. The motion for summary disposition shall specify the grounds for resolving the appeal without an evidentiary hearing. The motion and any supporting affidavits shall be filed and served at least 30 days before the time specified for the hearing. The motion may be granted if the pleadings, discovery, affidavits, stipulation of the parties, and authenticated or certified public records submitted in support of the motion show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on the issues expressly set out in the motion.

(b) A proposal for decision by the administrative law judge recommending summary disposition is subject to exceptions in the same manner as a proposal for decision issued after an evidentiary hearing.

§43.226. The Record.

The record in a contested case shall include the items identified in Government Code §2001.060.

§43.227. Findings of Fact.

Findings of fact shall be based exclusively on the evidence admitted in accordance with applicable rules and statutes and on matters officially noticed.

§43.228. Reopening of Hearing.

Upon motion of any party or upon the order of the administrative law judge the hearing may be reopened for good cause at any time before the proposal for decision is issued.

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SUBCHAPTER D. FINAL DECISIONS OF TRS.

§43.301. Proposals for Decision and Exceptions.

(a) The administrative law judge shall issue a proposal for decision with proposed conclusions of law and findings of fact in accordance with Government Code, Chapter 2001 and other applicable law.

(b) Exceptions to the proposal for decision, if any, shall be filed with the SOAH administrative law judge or the administrative law judge in accordance with 1 TAC §155.507 (relating to Proposals for Decision; Exceptions and Replies). The exceptions shall also be filed with TRS, directed to the attention of the executive director.

(c) The administrative law judge shall notify TRS and the parties whether the administrative law judge made any changes to the proposal for decision based on the exceptions and replies of the parties.

§43.302. Decision of Executive Director.

(a) After TRS receives notice from the administrative law judge under subsection 43.301(c) of this title (relating to Proposals for Decision and Exceptions), the executive director shall review the proposal for decision of the administrative law judge and render a decision in the proceeding, except as provided by §43.303 of this title (relating to Proposals for Decision and Exceptions regarding Eligibility for Disability Retirement). The executive director may accept or modify the proposed conclusions of law or proposed findings of fact or may vacate or modify an order issued by an administrative law judge in the manner set forth in subsection (c) of this section. If changes are made, the decision shall state in writing the specific reason and legal basis for each change. A copy of the decision shall be served on the parties.

(b) The executive director's decision shall be based upon the existing record in the case, including any exceptions and replies to exceptions filed with the administrative law judge.

(c) The executive director, in the executive director's sole discretion may take the following actions:

(1) modify, refuse to accept, or delete any proposed finding of fact or conclusion of law made by the administrative law judge;

(2) make alternative findings of fact and conclusions of law;

(3) vacate or modify an order issued by the administrative law judge and remand to the administrative law judge, if necessary; and

(4) make a final decision on a contested case.

(d) In exercising the director's discretion, the executive director may consider but is not limited to the following grounds for changing a finding of fact or conclusion of law or for making a final decision in a contested case that is contrary to the recommendation of the administrative law judge:

(1) the administrative law judge did not properly apply or interpret applicable law, retirement

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system rules, written policies provided to the administrative law judge, or prior administrative decisions;

(2) a prior administrative decision on which the administrative law judge relied is incorrect or should be changed;

(3) a technical error in a finding of fact should be changed;

(4) a finding of fact of the administrative law judge is against the weight of the evidence;

(5) a finding or conclusion or other action of the administrative law judge would alter the terms of the plan; or

(6) the change is pursuant to a fiduciary responsibility.

(e) The executive director may delegate any of the authority under this subchapter to the deputy director or another TRS employee for any appeal.

§43.303. Proposals for Decision and Exceptions regarding Eligibility for Disability Retirement.

(a) In a proceeding relating to a member's eligibility for disability retirement, an administrative law judge's proposal for decision shall be reviewed by the board of trustees.

(b) After TRS receives notice from the administrative law judge under subsection 43.301(c) of this title (relating to Proposals for Decision and Exceptions), the board of trustees shall review the proposal for decision of the administrative law judge and render a decision in the proceeding. The board of trustees may accept or modify the proposed conclusions of law or proposed findings of fact or may vacate or modify an order issued by an administrative law judge in the manner set forth in subsection (d) of this section. If changes are made, the decision shall state in writing the specific reason and legal basis for each change. A copy of the decision shall be served on the parties.

(c) The decision of the board of trustees shall be based upon the existing record in the case, including any exceptions and replies to exceptions filed with the administrative law judge.

(d) The board of trustees, in the board's sole discretion may take the following actions:

(1) modify, refuse to accept, or delete any proposed finding of fact or conclusion of law made by the administrative law judge;

(2) make alternative findings of fact and conclusions of law;

(3) vacate or modify an order issued by the administrative law judge and remand to the administrative law judge, if necessary; and

(4) make a final decision on a contested case.

(e) In exercising the board's discretion, the board of trustees may consider but is not limited to the

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following grounds for changing a finding of fact or conclusion of law or for making a final decision in a contested case that is contrary to the recommendation of the administrative law judge:

(1) the administrative law judge did not properly apply or interpret applicable law, retirement system rules, written policies provided to the administrative law judge, or prior administrative decisions;

(2) a prior administrative decision on which the administrative law judge relied is incorrect or should be changed;

(3) a technical error in a finding of fact should be changed;

(4) a finding of fact of the administrative law judge is against the weight of the evidence;

(5) a finding or conclusion or other action of the administrative law judge would alter the terms of the plan; or

(6) the change is pursuant to a fiduciary responsibility.

(f) The board of trustees shall consider a proposal for decision under this section in open meeting to the extent required by law. The board in its sole discretion may determine whether to hear oral argument from the parties when considering a proposal for decision under this section.

§43.304. Appeals to the Board of Trustees.

(a) Any party adversely affected by a decision of the executive director in a docketed appeal may appeal the decision to the board of trustees, unless by statute or other rule the decision of the executive director is the final decision of TRS. Written notice of appeal and any associated exceptions or briefing under subsection (d) of this section must be filed with the executive director by the later of:

(1) 20 days after the decision of the executive director is mailed; or

(2) the number of days after the date the decision of the executive director is mailed equal to the number of days it took the executive director to render the decision in the proceeding.

(b) The number of days it took the executive director to render the decision in a proceeding is calculated from:

(1) if exceptions to a proposal for decision are not filed, the date of the deadline to file exceptions to a proposal for decision in the proceeding under subsection (b) of this section to the date the decision of the executive director is mailed; or,

(2) if exceptions to a proposal for decision are filed, the date the administrative law judge takes action on the filed exceptions to the date the decision of the executive director is mailed.

(c) If notice of appeal is timely filed, the decision of the executive director shall serve as a proposal for decision to the board.

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(d) If a decision of the executive director is appealed, the parties may file additional exceptions or briefs and replies. Additional exceptions or briefs must be filed and served at the same time as the notice of appeal. Replies shall be filed and served within 15 days of the filing of the notice of appeal and exceptions or briefs. The executive director may modify the filing deadlines. Briefs and replies filed under this section may not include additional evidence not previously admitted into the administrative record of the proceeding.

(e) A notice of appeal to the Board of Trustees must also include a statement whether the appealing party is requesting oral argument before the board of trustees and, if oral argument is set, whether the party prefers to appear in person or virtually. A notice of appeal that does not include a statement regarding oral argument shall be deemed as not requesting oral argument. A notice of appeal that does not include how the party requests to appear for oral argument shall be deemed as a request to appear in person.

(f) A nonappealing party may also request oral argument before the board of trustees or request that oral argument not be granted in the party's reply to the appealing party's notice of appeal. The nonappealing party may also state whether the party requests to appear in person or virtually for oral argument.

(g) The executive director, in the executive director's sole discretion, shall determine whether to grant oral argument in a given appeal and how the parties shall appear for oral argument, if granted. The executive director may consult with the chairman of the board of trustees in making a determination under this subsection and shall make the determination by order no later than 30 days prior to the date of the hearing. The order shall be provided to all parties to the appeal.

(h) The final decision in an appeal shall be based upon the existing record in the case, including any exceptions, oral argument, or briefing filed with the board of trustees under this section. In its sole discretion, the board of trustees may take the following actions:

(1) modify, refuse to accept, or delete any proposed finding of fact or conclusion of law made by the administrative law judge;

(2) make alternative findings of fact and conclusions of law;

(3) vacate or modify an order issued by the administrative law judge and remand to the administrative law judge, if necessary; and

(4) make a final decision on a contested case.

(i) In exercising its discretion, the board of trustees may consider but is not limited to the following grounds for changing a finding of fact or conclusion of law or for making a final decision in a contested case that is contrary to the recommendation of the administrative law judge:

(1) the administrative law judge did not properly apply or interpret applicable law, retirement system rules, written policies provided to the administrative law judge, or prior administrative decisions;

(2) a prior administrative decision on which the administrative law judge relied is incorrect or

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should be changed;

(3) a technical error in a finding of fact should be changed;

(4) a finding of fact of the administrative law judge is against the weight of the evidence;

(5) a finding or conclusion or other action of the administrative law judge would alter the terms of the plan; or

(6) the change is pursuant to a fiduciary responsibility.

(j) An appeal to the board of trustees shall be considered in open meeting to the extent required by law.

§43.305. Final Decision of TRS.

An administrative decision of TRS staff, a decision by the Medical Board, or a decision by the executive director is the final decision of TRS unless a party exhausts any right to appeal a matter to the board of trustees, if applicable.

§43.306. Rehearings.

(a) A decision of the executive director or deputy director is the final decision of TRS when, under applicable law or rule, the decision is not subject to appeal to the board and when the circumstances described in Government Code §2001.144, are met.

(b) A decision by the board of trustees in a contested case is the final decision of TRS when the circumstances described in Government Code §2001.144, are met.

(c) A party adversely affected by a decision that may be the final decision of TRS may file a motion for rehearing with TRS, not later than the 25th day after the date on which the decision or order that is the subject of the motion is signed, unless the time for filing the motion has been extended under Government Code §2001.142, by an agreement under Government Code §2001.147, or by written order of the executive director or deputy director under subsection (g) of this section. A timely motion for rehearing is a prerequisite to an appeal in a contested case under Government Code §2001.145, if an appeal is otherwise permitted by law.

(d) A reply to the motion for rehearing must be filed with TRS not later than the 40th day after the date on which the decision or order that is the subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under Government Code §2001.147 or by a written order of the executive director or deputy director under subsection (g) of this section.

(e) The board of trustees, the executive director, or the deputy director, as applicable, shall act on a motion for rehearing not later than the 55th day after the date on which the decision or order that is the subject of the motion is signed. If the motion is not acted on within the time specified, the motion is overruled by operation of law.

APPENDIX C

(f) The board of trustees may rule on a motion for rehearing in the manner provided for in Government Code §2001.146. A subsequent motion for rehearing is not required after the board of trustees rules on a motion for rehearing unless a motion is required under Government Code §2001.146(h).

(g) The executive director or the deputy director if the motion for rehearing concerns a decision of the deputy director may by written order extend the time for filing a motion or reply or for TRS to act on a motion for rehearing, in accordance with Government Code §2001.146.

(h) A motion for rehearing under this section must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

§43.307. Cost of Preparing Administrative Record.

In the event an appeal of the Final Decision of the Board of Trustees is authorized by law, any cost associated with pursuing the appeal is the responsibility of the appealing party, including the cost of the record of the administrative proceedings and the transcription of any video or audio recordings of administrative proceedings.

APPENDIX D

Chapter 43 Repeal and New Conversion Chart				
#	Current Rule#	Current Rule Title	Description of Change	New Rule#
1	§43.1	Administrative Review of Individual Requests	Readopted in Subchapters A and B. Subsections (a)-(f) split between proposed new 43.101 and 43.102 as disability appeals now have a separate rule; Subsection (g) added to proposed new 43.1.	§§43.1; 43.101; and 43.102
2	§43.2	Effect of Invalidity of Rule	Repealed	N/A
3	§43.3	Definitions	Readopted with changes in Subchapter A as §43.2.	§43.2
4	§43.4	Decisions Subject to Review by an Adjudicative Hearing	Readopted in Subchapter B. Paragraphs (a)(1)-(8) added to proposed new §43.105 and subsection (b) moved to separate rule, §43.103.	§§43.103 and 43.105
5	§43.5	Request for Adjudicative Hearing	Readopted with minor changes in Subchapter B in proposed new §43.104	§43.104
6	§43.6	Filing of Documents	Readopted with changes in Subchapter A as proposed new §43.3	§43.3
7	§43.7	Computation of Time	Readopted in Subchapter A as proposed new §43.4	§43.4
8	§43.8	Extensions	Readopted with changes in Subchapter A as §43.5	§43.5
9	§43.9	Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting	Readopted with changes in Subchapter A and Subchapter B. Subsections (a)-(c) and (e) readopted in proposed new §43.105. Subsection (d) readopted in §43.1.	§§43.1 and 43.105
10	§43.10	Authority to Grant Relief	Readopted with changes in Subchapter B as proposed new §43.106.	§43.106
11	§43.11	Classification of Pleadings	Repealed	N/A
12	§43.12	Form of Petitions and Other Pleadings	Readopted with changes in Subchapter B and Subchapter C. Subsection (d) readopted in proposed new §43.104.	§§43.104 and 43.202

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Chapter 43 Repeal and New Conversion Chart				
#	Current Rule#	Current Rule Title	Description of Change	New Rule#
			Remaining subsections readopted in proposed new §43.202	
13	§43.13	Filing of Pleadings and Amendments	Readopted with changes in Subchapter C as proposed new §43.203.	§43.203
14	§43.14	Briefs	Readopted with changes in Subchapter C as proposed new §43.204.	§43.204
15	§43.15	Motions	Readopted with changes in Subchapter C as proposed new §43.205.	§43.205
16	§43.16	Notice of Hearing and Other Action	Readopted with changes in Subchapter C as proposed new §43.207.	§43.207
17	§43.17	Agreements To Be in Writing	Readopted with changes in Subchapter C as proposed new §43.208.	§43.208
18	§43.18	Motion for Consolidation	Readopted with changes in Subchapter C as proposed new §43.209	§43.209
19	§43.19	Additional Parties	Readopted with changes in Subchapter C as proposed new §43.210	§43.210
20	§43.20	Appearance and Representation	Readopted with changes in Subchapter C as proposed new §43.211	§43.211
21	§43.21	Lead Counsel	Readopted as proposed new §43.212	§43.212
22	§43.23	Powers of the Administrative Law Judge	Readopted with changes in Subchapter C as proposed new §43.213	§43.213
23	§43.24	Prehearing Conferences and Orders	Readopted in Subchapter C as proposed new §43.214	§43.214
24	§43.25	Conduct of Hearing	Readopted with changes in Subchapter C as proposed new §43.215	§43.215
25	§43.26	General Admissibility	Readopted in Subchapter C as proposed new §43.216	§43.216

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Chapter 43 Repeal and New Conversion Chart				
#	Current Rule#	Current Rule Title	Description of Change	New Rule#
26	§43.27	Exhibits	Readopted with changes in Subchapter C as proposed new §43.217	§43.217
27	§43.28	Pre-filed Direct Testimony in Disability Appeal Proceedings	Readopted in Subchapter C as proposed new §43.218	§43.218
28	§43.29	Limit on Number of Witnesses	Readopted in Subchapter C as proposed new §43.219	§43.219
29	§43.33	Failure to Appear	Readopted in Subchapter C as proposed new §43.220	§43.220
30	§43.34	Conduct and Decorum at Hearing	Readopted with changes in Subchapter C as proposed new §43.221	§43.221
31	§43.35	Official Notice	Readopted in Subchapter C as proposed new §43.222	§43.222
32	§43.36	Ex Parte Consultations	Readopted with changes in Subchapter A as proposed new §43.6	§43.6
33	§43.37	Recording of the Hearing; Certified Language Interpreter	Readopted with changes in Subchapter C as proposed new §43.223	§43.223
34	§43.38	Dismissal without Hearing	Readopted with changes in Subchapter C as proposed new §43.224	§43.224
35	§43.39	Summary Disposition	Readopted with changes in Subchapter C as proposed new §43.225	§43.225
36	§43.40	The Record	Readopted in Subchapter C as proposed new §43.226	§43.226
37	§43.41	Findings of Fact	Readopted in Subchapter C as proposed new §43.227	§43.227
38	§43.42	Reopening of Hearing	Readopted with changes in Subchapter C and D in proposed new §§43.228, 43.302, 43.303, and 43.304.	§§43.228, 43.302, 43.303, and 43.304
39	§43.43	Subpoenas and Commissions	Readopted with changes in Subchapter B as proposed new §43.107.	§43.107

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Chapter 43 Repeal and New Conversion Chart				
#	Current Rule#	Current Rule Title	Description of Change	New Rule#
40	§43.44	Discovery	Readopted with changes in Subchapter C as proposed new §43.206	§43.206
41	§43.45	Proposals for Decision, Exceptions, and Appeals to the Board of Trustees	Readopted with changes in Subchapter D in proposed new §§43.302, 43.303, 43.304, and 43.305	§§43.302, 43.303, 43.304, and 43.305
42	§43.46	Rehearings	Readopted in Subchapter D as §43.306	§43.306
43	§43.47	Procedures Not Otherwise Provided	Readopted in Subchapter A as proposed new §43.7	§43.7
44	§43.48	Cost of Preparing Administrative Record	Readopted in Subchapter D as proposed new §43.307	§43.307