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When Schools Get An Eviction Notice: Administrative and Judicial Remedies

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INTRODUCTION

Which avenue should your district or open-enrollment charter school use to attack the Commissioner's decision?

As with most things related to the law, the appropriate manner in which to attack or appeal a decision, sanction, or ruling issued by the Commissioner depends on the contents of the specific decision, sanction, or ruling the Commissioner has issued to your district or open-enrollment charter school. Below are the proper avenues to attack or appeal a decision by the Commissioner. As the North Forest ISD found out, doing nothing early can and will result in limited options later. In the post NFISD analysis, we believe that it is the best practice to appeal every Record Review and to file suit sooner rather than later.

PART I: ADMINISTRATIVE REMEDIES

I. Challenging an Academic or Financial Accountability Rating

The Commissioner shall provide rules describing a process for a school district or open-enrollment charter school to challenge an agency decision made relating to an academic or financial accountability rating that affects the district or school. Tex. Educ. Code §39.151(a). These rules must also allow the Commissioner to appoint a committee to make recommendations to the Commissioner on a challenge made to an agency decision relating to an academic performance rating or determination or financial accountability rating. Tex. Educ. Code §39.151(b). The problem that we found is that the Commissioner writes rules that are blatantly in favor of the agency, or are drafted in such a way that the Commissioner can interpret them against the district. In other words, the Commissioner uses his rule making authority to draft rules that box the district into a loss before they ever get into the game.

The Commissioner may not appoint an agency employee as a member of the committee. *Id.* Under Tex. Educ. Code §39.151(c), the Commissioner may limit a challenge to the agency's decision regarding academic and financial accountability ratings to a written submission of any issue identified by the school district or open-enrollment charter school challenging the agency decision. The Commissioner shall make a final decision under this section after considering the recommendation of the committee discussed above. Tex. Educ. Code §39.151(d). The Commissioner's decision is not appealable under Section 7.057 or other law. *Id.*

It is important to note that a school district or open-enrollment charter school may not challenge an agency decision relating to an academic or financial accountability rating under this chapter in another proceeding if the district or school has had an opportunity to challenge the decision under Tex. Educ. Code §39.151. Tex. Educ. Code §39.151(e).

II. Record Review of the Commissioner's Decision

A. What decisions can be challenged with a Record Review?

Record Reviews apply to decisions by the Commissioner which propose to order alternative management of a school district campus or a charter school campus under Texas Educ. Code § 39.107; closure of a school district or an open-enrollment charter school under Tex. Educ. Code §§ 39.052, 39.102, or 39.104; or closure of a school district campus or charter school campus under Tex. Educ. Code § 39.107. 19 Tex. Admin. Code § 97.1037(a)(1)(A-C). Record Reviews are also allowed with regard to decisions proposing to order assignment under 19 Tex. Admin. Code §97.1055 of an accreditation status of Accredited-Warned or Accredited-Probation; and assignment of a board of managers under TEC, § 39.112 and § 39.102, or TEC, § 39.107. 19 Tex. Admin. Code §97.1037(a)(2-3).

B. What triggers the Record Review procedure?

Before the district or open-enrollment charter school may request a Record Review, they must receive notice of the proposed order from the Commissioner. To trigger a Record Review, the Commissioner's proposed order must take one or more of the actions listed in 19 Tex. Admin. Code §97.1037(a). The notice of proposed order shall make reference to any Texas Education Agency (TEA) reports, final investigative reports, or other information on which the proposed order is based. 19 Tex. Admin. Code §97.1037(b)(1). As a practical matter, information maintained on the TEA website may be referenced by providing a general citation to the information. 19 Tex. Admin. Code §97.1037(b)(1)(A). Likewise, TEA reports previously sent to the district, charter, or campus may be referenced by providing the title and date of the report. 19 Tex. Admin. Code §97.1037(b)(1)(B). TEA is required to provide copies of, or reasonable access to, information referenced in the notice of the proposed order. 19 Tex. Admin. Code §97.1037(b)(1)(C). Do not merely rely on these documents. As soon as you can, send a request pursuant to the Texas Open Records Act, Tex. Govt. Code §552.221 requesting everything you can possibly think of including all emails and memos regarding the district. You will be surprised at the information you find. TEA has 10 business days to respond, and may further delay the disclosure of the desired information by requesting an Attorney General Opinion, or by claiming that production of the records will take a significant amount of time such that the records will not be made available until after the Record Review.

The notice of proposed order shall state the procedures for requesting a Record Review of the proposed order, including the name and department of the TEA representative to whom a request for Record Review may be addressed. 19 Tex. Admin. Code §97.1037(b)(2). The notice of proposed order must also set a deadline for requesting a Record Review, which shall not be less than 10 calendar days from the date of mailing of the notice. *Id.* Get the PIA request out on the first or second day, then, send in the request for a hearing on the last day.

This potentially short deadline will present some difficulties on behalf of the district or open-enrollment charter school with regard to gathering information for the Record Review. The PIA request is essential in gathering a complete record for the evidentiary portion of the matter.

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[Alternative School Issues: Home Schooling after Leeper; plus School District Governance Statutes](#)

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"Who's in Control? Alternative School District Governance Statutes in the Texas Education Code"