

Explanatory Report of 22 Tex. Admin. Code §213.23(d), Pertaining to *Decision of the Board*

(for informational purposes only)

Background: At the January, 2012, Board meeting, Staff was requested to provide an overview of the requirements of Board Rule 213.23(d) as it relates to a Respondent's request to appear before the Board concerning a Proposal for Decision (PFD). Below is a summary of the key requirements of the rule.

I. What does Rule 213.23(d) do?

The rule permits an individual to submit written exceptions and briefs (written materials) to the Board regarding a PFD prior to the Board's deliberation and decision. The rule also permits an individual to make an oral presentation to the Board regarding a PFD prior to the Board's deliberation and decision, provided the individual meets the rule's time lines.

II. Under Rule 213.23(d), is an individual required to file written materials regarding a PFD with the Board?

No. The rule provides individuals the opportunity to file written materials with the Board prior to its deliberation and decision. An individual is not required to do so. However, if an individual wishes to make an oral presentation to the Board, the individual must submit written materials to the Board in accordance with the rule's time lines.

NOTE: If an individual submits written materials to the Board, Staff provides those materials to the Board in its Board packet for its consideration. Currently, however, the rule **does not** provide a deadline for the submission of written materials to the Board in the situation where the individual does not wish to make an oral presentation to the Board, but wants to submit written materials for the Board's consideration.

III. Under Rule 213.23(d), if an individual wishes to make an oral presentation to the Board, what must the individual do?

An individual wishing to make an oral presentation to the Board must file written materials in accordance with the rule's time lines.

IIIA. What are the applicable time lines?

The answer to this question depends upon whether or not Staff is recommending a modification to the PFD. Staff always notes whether or not it is recommending a

modification to the PFD in its report, which is always provided to the individual prior to the date the individual would be required to submit its written materials under the rule.

If Staff is not recommending a modification to the PFD, the rule requires the individual to submit his/her written material to the Board at least 21 days prior to the date of the Board meeting.

If Staff is recommending a modification to the PFD, the rule requires the individual to submit his/her written material to the Board at least 10 days prior to the date of the Board meeting.

If the individual does not meet these deadlines, the rule provides that the individual cannot make an oral presentation to the Board. Again, however, the rule does not specifically prohibit providing late written materials to the Board. To date, Staff has continued to provide the written materials to the Board (sometimes even as late as the day of the Board meeting), but advise that the individual is not eligible under the rule to make an oral presentation to the Board regarding the PFD.