

Text of Proposed Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter D. Hearing Procedures

§249.35. Disposition Prior to Hearing; Default.

- (a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.
- (b) The Texas Education Agency (TEA) staff or the commissioner of education may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) resolving a case , prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH), by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.
- (c) The SBEC or the SOAH ~~[State Office of Administrative Hearings (SOAH)]~~ may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC, the TEA staff, or the presiding ALJ ~~[administrative law judge (ALJ)]~~ ; failure to state a claim for which relief can be granted; or failure to prosecute.
- (d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter F, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.
- (e) For purposes of this chapter, the following shall constitute a default in a contested case:
 - (1) the failure of the respondent to timely file a written answer in proper form as required by this chapter;
 - (2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or
 - (3) the failure of the certificate holder or applicant to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed.
- (f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, and 1 TAC, Part 7, §155.501 (relating to Default Proceedings) ~~[, whether or not the case has been referred to the SOAH, upon 30 calendar days' notice. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing. The notice shall specify the factual and legal basis for imposing the proposed sanction. Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with the TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding] .~~
 - (1) If a respondent has failed to timely file a written answer or a petitioner in an administrative denial case has failed to timely file a petition, TEA staff will provide the certificate holder or applicant with a notice of default specifying the factual and legal basis for imposing the proposed sanction at least 30 calendar days prior to presenting a motion for default to the SBEC. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing.

- (2) If the case is dismissed and remanded to the SBEC by the SOAH after a certificate holder or applicant failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the TEA staff attorney shall present to the SBEC a motion for default. After consideration of the petition and the motion for default, the SBEC may then issue a default order deeming the allegations in the petition as true.
- (3) Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.