

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter D. Hearing Procedures

Statutory Authority: The provisions of this Subchapter D issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1) and (7); Texas Government Code, §2001.058(f); and Texas Occupations Code, §53.024 and §53.051, unless otherwise noted.

§249.30. Notice of Hearing.

- (a) The notice of hearing is governed by the Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure); and this chapter.
- (b) The Texas Education Agency (TEA) staff may serve the notice of hearing by sending it certified, return receipt requested, and regular first-class United States mail to the party's last known address.
- (c) For purposes of this subsection, the last known address is:
 - (1) the address of record of the party or the party's authorized representative in the contested case, if any; or
 - (2) if the party has not made an appearance in the contested case, the last address provided in any response to the complaint or proposed action that is the subject of the contested case, if any; or
 - (3) if the party has not provided an address in response to the complaint or proposed action:
 - (A) for a certified educator, the address supplied by the educator pursuant to §230.91(c) of this title (relating to Procedures in General);
 - (B) for a certification applicant, the address provided in the certification application; or
 - (C) for an examinee, the address provided in the examination registration.
- (d) While notice to the last known address is legally sufficient, notice may also be given by regular first-class United States mail, facsimile, email, or any other means to any other possible address that is known to the TEA staff at the time that the notice is sent.

Statutory Authority: The provisions of this §249.30 issued under the Texas Education Code, §21.041(b)(1), (7), and (8).

Source: The provisions of this §249.30 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113.

§249.31. Venue.

Hearings shall be conducted in Austin, Texas, at a site designated by the State Office of Administrative Hearings in accordance with applicable law and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.31 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.32. Conduct and Record of Hearings.

The rules of the State Office of Administrative Hearings under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) shall govern the procedure at the hearing and the making of a record of a contested case.

Source: The provisions of this §249.32 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.33. Use of Deposition Transcripts in Contested Case Hearings.

The use of deposition transcripts in contested case hearings shall be governed by Rule 203 of the Texas Rules of Civil Procedure. The terms "court proceedings" and "trial" used in Rule 203 are deemed to refer to "contested case hearing(s)" for purposes of applying this section and Rule 203 to contested case hearings before the State Office of Administrative Hearings.

Source: The provisions of this §249.33 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.34. Consolidated Proceedings.

A party may move to consolidate two or more proceedings under this chapter if:

- (1) the proceedings involve common questions of law and fact; and
- (2) separate proceedings would result in unwarranted expense, delay, or substantial injustice.

Source: The provisions of this §249.34 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 19, 2011, 36 TexReg 8533.

§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 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; 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, or 1 TAC, Part 7, §155.501 (relating to Default Proceedings).

- (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.

Statutory Authority: The provisions of this §249.35 issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1), (4), (7), and (8); and the Texas Government Code, §2001.058(d-1) and (e).

Source: The provisions of this §249.35 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 8, 2015, 40 TexReg 6892; amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective March 8, 2018, 43 TexReg 1273.