

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter C. Prehearing Matters

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

§249.18. Jurisdiction.

- (a) A contested case commences under this chapter when a petition is properly served with the Texas Education Agency (TEA) staff.
- (b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines:
 - (1) in an administrative denial case, the applicant has timely served a petition pursuant to §249.12(d) of this title (relating to Administrative Denial; Appeal); or
 - (2) the certificate holder has timely served an answer pursuant to §249.15(d) of this title (relating to Disciplinary Action by State Board for Educator Certification).
- (c) Nothing in this section precludes the TEA staff from referring the case to the SOAH prior to the receipt of a petition or answer.
- (d) Jurisdiction of the SOAH is determined by the administrative law judge under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) and this chapter after the TEA staff have referred the case to the SOAH.

Source: The provisions of this §249.18 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.

§249.19. Powers and Duties of Administrative Law Judge.

The powers and duties of an administrative law judge are determined by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.19 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.

§249.20. Recusal and Disqualification of Administrative Law Judge.

The recusal or disqualification of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.20 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.

§249.21. Substitution of Administrative Law Judge.

Substitution of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.21 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.

§249.22. Classification of Parties; Current Addresses.

- (a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

- (b) The petitioner in a contested case proceeding under this chapter and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings. The petitioner shall have the burden of proof to show by a preponderance of the evidence entitlement to such relief.
- (c) Parties shall keep the Texas Education Agency (TEA) staff apprised of their current addresses and shall notify the TEA staff of a change of address within five calendar days of the effective date of such change.

Source: The provisions of this §249.22 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.

§249.23. Representation of Parties.

- (a) Representatives of parties shall notify the State Office of Administrative Hearings (SOAH) and other parties of the representation.
- (b) At an informal conference offered pursuant to the Texas Government Code, Chapter 2001, a person may be represented by a person who is not an attorney.
- (c) Parties in contested cases before the SOAH may represent themselves or be represented by an attorney licensed to practice law in the State of Texas.

Source: The provisions of this §249.23 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.24. Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge.

- (a) The following original papers shall be served upon the Texas Education Agency (TEA) staff:
 - (1) appeal of an administrative denial;
 - (2) appeal of the imposition of an administrative sanction and request for a contested case hearing under this chapter;
 - (3) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and
 - (4) motions for rehearing.
- (b) It is a rebuttable presumption that the date of service is the file stamp date affixed by the TEA staff.
- (c) All papers may be served upon the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.
- (d) The filing of papers with the SOAH or service of documents on the ALJ in contested cases shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure), unless modified by order of the ALJ as allowed by law.

Source: The provisions of this §249.24 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.

§249.25. Pleadings.

- (a) Pleadings include petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.
- (b) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.
- (c) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.
- (d) In addition to this chapter, 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) shall also govern the following matters related to pleadings:

- (1) content generally of pleadings;
- (2) purpose and effect of motions;
- (3) general requirements for motions;
- (4) responses to motions generally;
- (5) motions to intervene;
- (6) motions for continuance;
- (7) responses to written motions for continuance; and
- (8) amendment of pleadings.

Source: The provisions of this §249.25 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.

§249.26. Petition.

- (a) The party seeking relief and requesting a contested case hearing under this chapter shall serve a petition as required under this chapter. The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.
- (b) The petition shall contain the following items:
 - (1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;
 - (2) a reference to the particular sections of the statutes and rules involved;
 - (3) a statement of the matters asserted;
 - (4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;
 - (5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and
 - (6) if the petition seeks to impose sanctions against a certificate holder, a notification set forth as follows in at least 12-point boldface type: If you do not file a written answer to this petition with the Texas Education Agency staff WITHIN 30 CALENDAR DAYS of being served with this petition, the State Board for Educator Certification may grant the relief requested in this petition, including revocation of your certificate by default. The matters asserted in the petition will be deemed admitted unless your written answer specifically denies each assertion pled and is filed within the prescribed time period. If you file a written answer but then fail to attend a scheduled hearing, the State Board for Educator Certification may grant any relief requested in this petition, up to and including REVOCATION OF YOUR CERTIFICATE.
- (c) The petition shall be served on the respondent by United States certified mail, return receipt requested, and by regular first-class United States mail, to the address a certified educator is required to provide pursuant to §230.91 of this title (relating to Procedures in General), or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, Legal Certification Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

Statutory Authority: The provisions of this §249.26 issued under the Texas Education Code, §21.041(b)(1), (7), and (8).

Source: The provisions of this §249.26 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.

§249.27. Answer.

- (a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing. The respondent shall serve the answer on the petitioner by United States certified mail, return receipt requested, and by regular first-class United States mail.
- (b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.
- (c) The answer shall contain the name, current mailing address, daytime telephone number, email address, and facsimile number, if any, of the respondent and the respondent's authorized representative.
- (d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.
- (e) An answer that does not comply with the requirements of this section and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings) may provide grounds for default judgment in favor of the petitioner, as provided in this chapter.

Source: The provisions of this §249.27 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.

§249.28. Stipulations.

Stipulations shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.28 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.

§249.29. Discovery.

The Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure); this chapter; and the Texas Rules of Civil Procedure, as applicable, shall govern discovery.

Source: The provisions of this §249.29 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.