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## **Exhaustion of Administrative Remedies at the Local Level and in Court**

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## ***I. Introduction***

This paper focuses on the exhaustion of administrative remedies doctrine. Specifically, the way in which the exhaustion of administrative remedies can be invoked in the court process and how it applies in the local grievance process will be explored. This includes a discussion on how the exhaustion doctrine is applicable on appeal when grievances are appealed to the Commissioner of Education. The paper begins with an analysis regarding the history of the Education Commissioner’s Jurisdiction and the power given to administrative agencies by the Legislature. The exhaustion of administrative remedies doctrine, the purpose of the doctrine, the exceptions to the doctrine, and the importance of exhausting administrative remedies at the local level are explored next. Finally, the second part of the paper will discuss the three-level grievance procedure adopted by some school districts, and addresses steps that a complainant should take in order to properly exhaust administrative remedies.

## ***II. The History of the Education Commissioner’s Jurisdiction Under Section 7.057 of the Texas Education Code.***

The Texas Constitution requires the Legislature to “establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”<sup>1</sup> In fulfilling this duty, the Legislature has established the Texas Education Agency (TEA),<sup>2</sup> the office of the Commissioner of Education,<sup>3</sup> the State Board of Education (SBOE),<sup>4</sup> and local school districts throughout the state.<sup>5</sup> In 1949, the office of state superintendent was transformed into the office of the Commissioner of Education, at

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<sup>1</sup> TEX. CONST. art. VII, § 1.

<sup>2</sup> Tex. Educ. Code § 7.002.

<sup>3</sup> Tex. Educ. Code § 7.055.

<sup>4</sup> Tex. Educ. Code § 7.102.

<sup>5</sup> Tex. Educ. Code § 11.001-.171.

which time the Commissioner had broad jurisdictional power.<sup>6</sup> For example, the Supreme Court in *McIntyre v. El Paso Independent School District* quotes the 1949 version of Texas Education Code section 7.057's predecessor, Texas Education Code section 11.13 ("Section 11.13"), which stated:

Parties having **any matter** of dispute among them arising under provisions of the school laws of Texas, or **any person** or parties aggrieved by the actions or decisions of any Board of Trustees or Board of Education, may appeal in writing to the Commissioner of Education.

*Id.* (emphasis added). Prior to the enactment of Section 7.057, Section 11.13 governed the scope of the Commissioner's jurisdiction and the review process. Pursuant to Section 11.13, anyone who was aggrieved by a decision of a board of trustees could appeal to the Commissioner. During this period, "aggrieved" was broadly defined. As such, the Commissioner attempted to limit the term to violations of legal, statutory, or constitutional rights, but the courts struck down this interpretation.<sup>7</sup> Thus, when the Commissioner received a Section 11.13 appeal, he held a *de novo* hearing and independently decided the case, which resulted in anomalous situations.<sup>8</sup> Consequently, the Legislature adopted Senate Bill 1 in 1995, which significantly changed and narrowed the procedures for appealing to the Commissioner. The scope of the Commissioner's jurisdiction remained largely unchanged until 1995, "when the Legislature reduced the

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<sup>6</sup> *McIntyre v. El Paso Indep. Sch. Dist.*, 499 S.W.3d 820, 823 (Tex. June 24, 2016).

<sup>7</sup> *June Jeffrey v. Tyler Indep. Sch. Dist.*, Tex. Educ. Comm'r Decision No. 223-R8-797 (Jan. 1, 1998) (citing *Spring v. Dillon*, 683 S.W.2d 832 (Tex. App.-Austin 1984, no writ)).

<sup>8</sup> *Jeffrey*, No. 223-R8-797 at \*3 (For example, an anomalous situation sometimes occurred when the grievance presented to the school board was a less elaborate proceeding than the appeal to the Commissioner. Often in such cases, the grievance presentation to the board would take less than thirty minutes, no witnesses would be called, and no evidentiary rulings would be made. However, when that same grievance was appealed to the Commissioner, a hearing lasting a day or more might be held before an Administrative Law Judge, witnesses could be subpoenaed from anywhere in the state, the Texas Rules of Civil Evidence would be used.)

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