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**SOAH 101: A School Lawyer's Guide**

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## SOAH 101: A School Lawyer's Guide

For many school law attorneys, our day to day tasks are focused on employment matters and providing advice to our clients on various employment and administrative concerns. Attorneys often represent their clients in grievance, non-renewal and termination hearings and in Chapter 21 and Chapter 7.057 administrative appeals before the Commissioner of Education. The State Office of Administrative Hearings (SOAH) is yet another forum in which a school lawyer may need to represent and/or defend his or her client.

As mandated by statute or regulation, the Texas Education Agency (TEA) may refer a matter to SOAH in cases that involve educator certification, special education due process hearings and matters involving sanctions issued against school districts and open-enrollment charter schools. This paper will provide a brief overview of how SOAH is allowed to adjudicate or review disputes that may arise in the school law arena.

### I. State Office of Administrative Hearings

#### A. History & Mission:

The State Office of Administrative Hearings (SOAH) was created in 1991.<sup>1</sup> It began operations in January 1992.<sup>2</sup> The purpose of its creation was “to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions in the executive branch.”<sup>3</sup> The Legislature “hoped to increase economic efficiency by pooling the resources of smaller agencies that are unable to employ full-time administrative law judges.”<sup>4</sup> It also “hoped to create an administrative judiciary independent of the agency that could hear objectively administrative disputes.”<sup>5</sup>

“The agency’s mission is to serve as an independent neutral forum for the State of Texas by providing a fair and efficient hearings process and the opportunity for alternative dispute resolution proceedings, in accordance with Chapter 2003 of the Texas Government Code.”<sup>6</sup>

The agency’s objectives are as follows:

- (1) Conduct fair and objective administrative hearings;**
- (2) Provide fair, timely, and efficient decisions and proposals for decision;**
- (3) Offer the opportunity for parties to resolve their disputes through mediation (or alternative dispute resolution.)<sup>7</sup>**

<sup>1</sup> Texas Legislature Online, SB 884.

<sup>2</sup> <http://www.soah.texas.gov/Agency/history.html>.

<sup>3</sup> Tex. Gov.Code §2003.021(a).

<sup>4</sup> Tex. Att’y Gen. Op. No. DM-231 (1993) at 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Texas State Office of Administrative Hearings, <http://www.soah.texas.gov/>.

<sup>7</sup> *Id.*

SOAH employs 120 staff at Austin headquarters and seven field office locations throughout Texas: Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, San Antonio.<sup>89</sup> The agency also has remote hearing locations, which are public buildings made available to the agency by other government entities.<sup>10</sup> The agency hears cases for over **50** state agencies and conducts approximately **30,000** hearings per year.<sup>11</sup> General hearings include cases in which a State of Texas agency decides to take certain action against a person or business.<sup>12</sup> The agency is under the direction of the Chief Administrative Law Judge who is appointed by the governor for a two-year term.<sup>13</sup>

## **B. Applicable Rules:**

Procedural rules for the State Office of Administrative hearings can be found in Chapter 155 of the Texas Administrative Code.<sup>14</sup> When adjudicating disputes, SOAH may refer to the statute or code of the referring agency (i.e. Texas Education Code) and the referring agency's substantive rules that are found in the respective section of the Texas Administrative Code.<sup>15</sup> The SOAH rules do not apply to matters otherwise addressed by statute or to matters that are limited by other regulations.<sup>16</sup> For cases involving the Individuals with Disabilities Education Act (IDEA), proceedings are governed by statute, federal regulations and the rules of the Texas Education Agency.<sup>17</sup>

If the Texas Education Agency refers a case to SOAH, it may not take any adjudicative action relating to the matter until the office has issued its proposal for decision or otherwise concluded its involvement in the matter. TEA may exercise its advocacy rights in the matter before the office in the same manner as any other party.<sup>18</sup>

## **C. The Administrative Procedure Act**

The Administrative Procedure Act ("APA") (which can be found at Texas Government Code 2001) addresses the rules regarding the adjudication of disputes between a party and a state agency. The Administrative Law Handbook which is published by the Administrative Law Division of Office of the Attorney General of Texas is a good resource for general guidance and an overview of procedures and applicable law under this Act.<sup>19</sup>

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<sup>8</sup> <http://www.soah.texas.gov/Agency/history.html>.

<sup>9</sup> <http://www.soah.texas.gov/Agency/contactUs.html>.

<sup>10</sup> <http://www.soah.texas.gov/Agency/Visiting-SOAH/remoteLocations.html>.

<sup>11</sup> <http://www.soah.texas.gov/Agency/history.html>.

<sup>12</sup> <http://www.soah.texas.gov/Agency/hearingTypes.html>.

<sup>13</sup> Tex. Gov. Code §2003.022(a).

<sup>14</sup> 1 Tex. Admin. Code §155.1 - §155.509. *See also* Appendix D.

<sup>15</sup> <http://www.soah.texas.gov/Agency/administrativeRulesLaws.html>.

<sup>16</sup> 1 Tex. Admin. Code §155.1(a).

<sup>17</sup> 1 Tex. Admin. Code §155.1(i); For the federal regulations, see 34 C.F.R. Part 300. For the corresponding rules under the Texas Education Agency, see 19 Tex. Admin. Code Chapter 89 – "Adaptations for Special Populations."

<sup>18</sup> Tex. Gov't Code §2003.051(a).

<sup>19</sup> <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/AdministrativeLawHandbook.pdf> (2018).

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