



INTRODUCTION TO DOAH

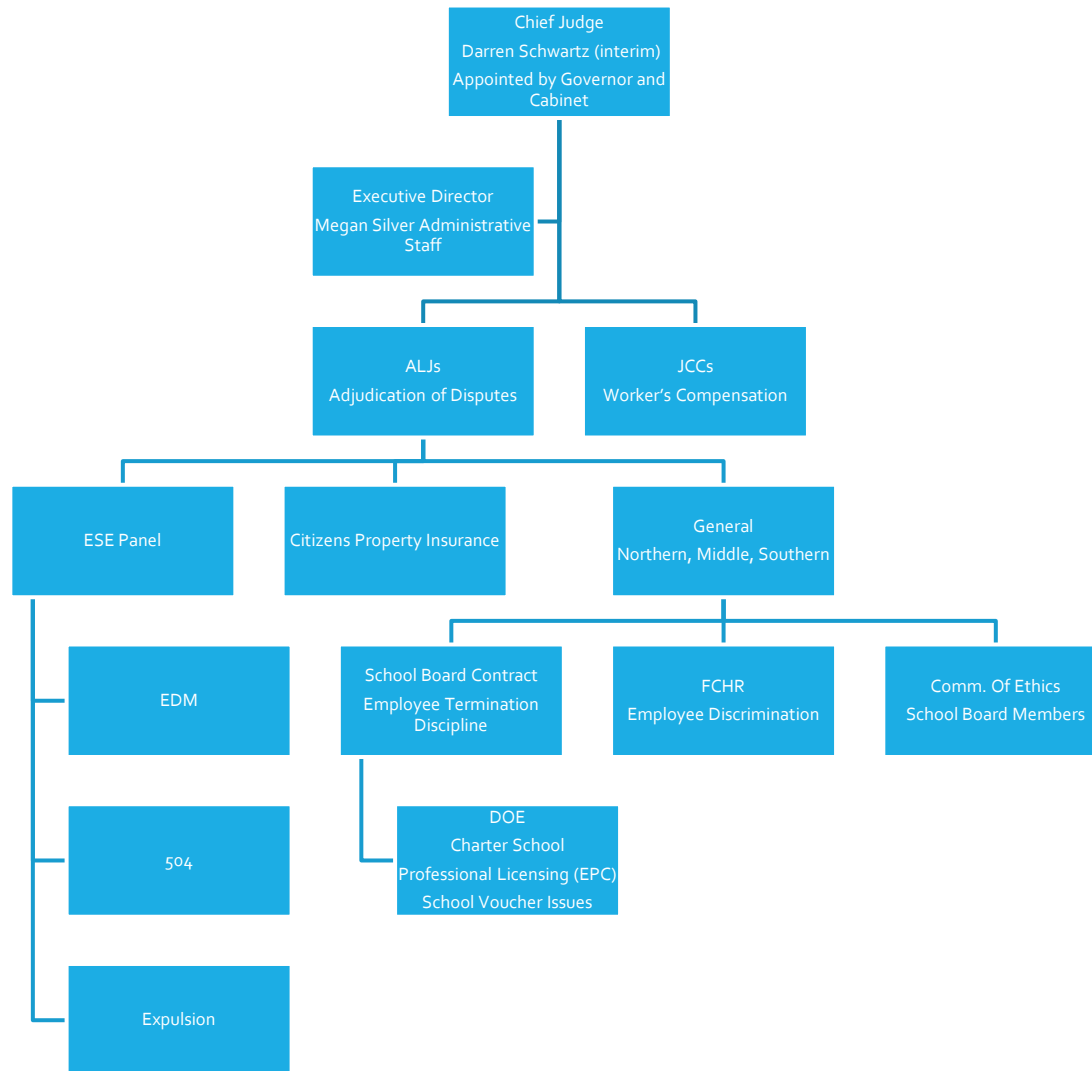
**AN INTRODUCTION TO
SCHOOL BOARD CASES AT
THE DIVISION OF ADMINISTRATIVE HEARINGS**

**FLORIDA EDUCATIONAL NEGOTIATORS
MAY 7, 2025**

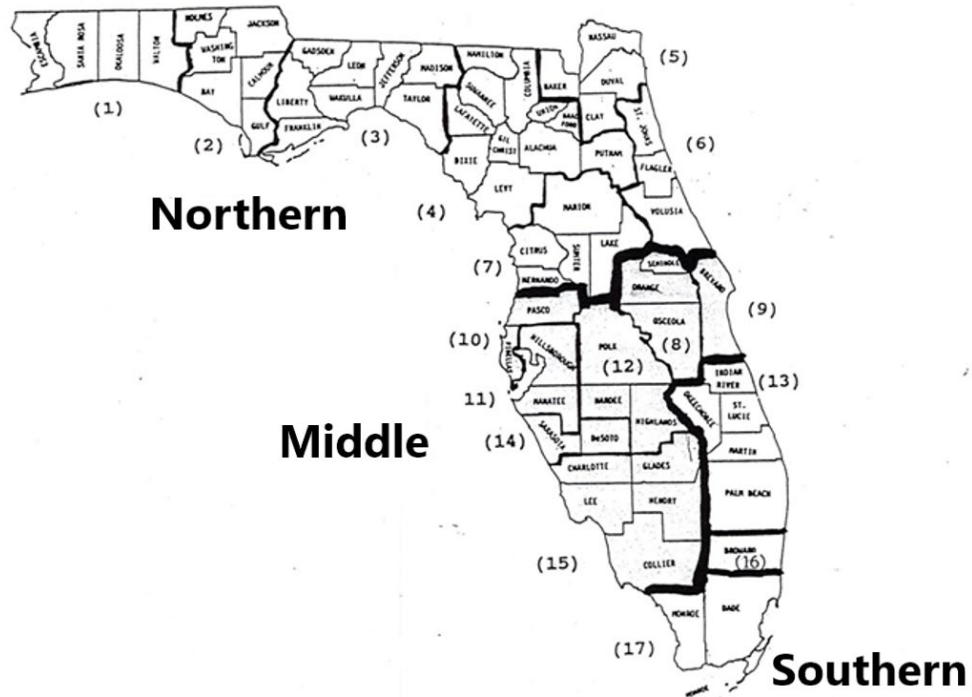
ADMINISTRATIVE LAW JUDGE HETAL DESAI

What is DOAH?

- DOAH has 44 Administrative Law Judges and 32 Judges of Compensation Claims.
- DOAH operates 13 offices statewide (from Miami to Pensacola) and employs 216 people.
- The agency head is the Director/Chief Judge who is appointed by the Governor and Cabinet and confirmed by the Senate.
- Most ALJs are based in the Tallahassee office, but are organized into three districts: Northern, Middle, and Southern.



DOAH Districts



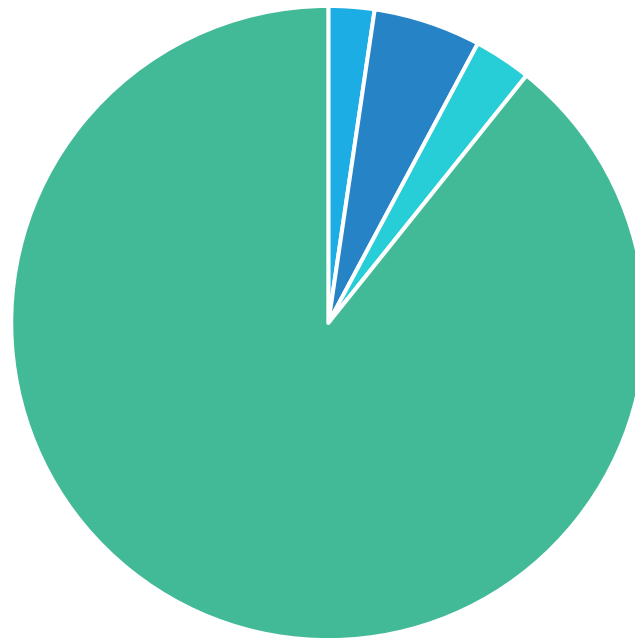
What does DOAH do?

DOAH resolves disputes in a broad variety of cases. Here's a sample:

- Rule Challenges (All Agencies)
- Bid Protests (All Agencies)
- Professional Licensing (including DOE)
- Employment Discrimination (FCHR)
- Consumer Disputes (DACS)
- Growth Management
- Baker Acts (DCF)
- Child Support Enforcement (DOR)
- Ethics Complaints (COE)

DOAH Cases – Education/SB Related

2024 DOAH Cases



■ DOE ■ School Bd ■ FCHR ■ Other

What does DOAH do for SBs?

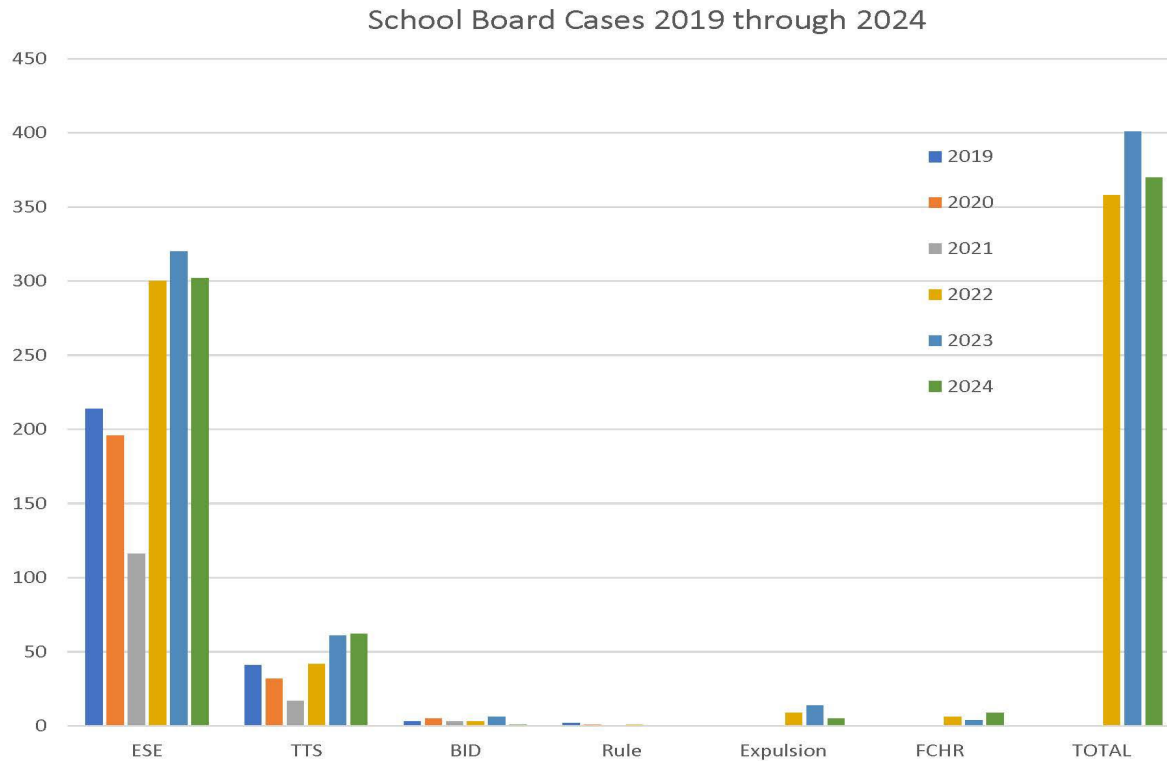
Mandatory

- ❖ ESE cases
§§ 120.65(6);
1003.57(1)(c)
- ❖ Charter School
(§ 1002.33)
- ❖ Bid protests
(§ 120.57(3))

Discretionary

- ❖ Employee
Discipline and
Termination
(CBA &
§ 120.65(6) and
(9))

Number of School Board Cases 2019 – 2024



Benefits of Using DOAH

- ✓ Impartiality
- ✓ Experience
- ✓ Flexibility
- ✓ Timeliness
- ✓ Costs
- ✓ Administrative Support
- ✓ Technological Support
- ✓ Rules and Precedent

Collective Bargaining Agreement Issues

▶ Evidentiary Standard for TTS cases

“Preponderance of the Evidence” -

Through collective bargaining parties can agree to a more demanding evidentiary standard of “clear and convincing” and it must act in accordance with the applicable contract.

▶ Process

▶ Did SB follow Notice

▶ Was employee given proper process before Administrative Hearing (Weingarten)

▶ Progressive Discipline Steps – DOAH will enforce

DOAH PROCESS

Employee Discipline / Termination

- ▶ § 1012.22 & (1)(a)(f) - School Board responsible for suspension of dismissal of employees
- ▶ §1012.27(5) – Superintendent has authority to recommend that employee be suspended or dismissed from employment.

Employee Disputes

Collective Bargaining Agreement

- Burden on SB
- Applies to anyone in bargaining unit
- Usually determination of "Just Cause" section 1012.33 by preponderance of evidence
- Follows procedures in CBA, Chp. 1012, Fla. Stat.
- Employee can get Union Representation
- Discipline according to CBA terms
- Final Hearing conducted per terms of CBA (if silent rely on Florida Chapter 120 & Fla. Admin. Code Chp28-106)
- RO goes to SB to make final decision

FCHR Employment Claim - §760.01-760.11

- Burden on Employee
- Applies to any employee if protected class (race, age, disability, Nat. Origin, pregnancy)
- Determination if Violation (was there discrimination or retaliation)
- Follows procedures in Chp. 760 and 120, Fla. Stat. 60Y
- Hire counsel or act pro se
- Violation - actual damages (no punitive, no emotional distress, backpay, reinstatement, affirmative relief)
- RO goes to Fla. Comm. Of Human Relations

What is a DOAH final hearing?

- A DOAH final hearing is like a trial before a circuit court judge, but without a jury.
- The ALJ rules on the law and finds facts like a jury.
- Witnesses testify subject to cross examination.
- A court reporter is present and records the entire hearing.
- The same rules of evidence are applied with some limited exceptions.

Who is the SB's lawyer at DOAH?

- Ex parte statute prohibits the attorney who litigated the case from advising School Board on whether the Recommended Order should be adopted.
- So... School Board's lawyer for the hearing and the lawyer advising School Board on whether to accept the Recommended Order must be different people.

What happens after the hearing is over in disciplinary/employee cases?

- The transcript of the hearing is filed at DOAH.
- The parties file Proposed Recommended Orders.
- The ALJ enters a Recommended Order 30 days after the transcript of the hearing is filed.
- Exceptions are filed with SB.
- Heard at Noticed SB meeting.
- School Board/ Superintendent makes final decision (Depends on County/CBA).

What is a Recommended Order?

- 120.52(15) – “Recommended Order” – the official recommendation of an administrative law judge...
- The Recommended Order contains written, detailed findings of fact and conclusions of law.
- After the Recommended Order is issued, DOAH sends the Recommended Order, transcript of the hearing, and exhibits to the SB.

Recommended Orders Then What?

1. Parties file exception with School Board or Agency.
2. School Board holds hearing on recommended order.
3. School Board makes final decision.
4. Appealable to District Court of Appeal.
 - ▶ Exception for Charter School Issues

What are Exceptions ?

- SB must allow each party 15 days to submit written exceptions to the Recommended Order.
- Responses to exceptions are filed with SB 10 days later.
- SB's Final Order must include an explicit ruling on each exception.

What is a Final Order?

A Final Order is what the SB enters after receiving the ALJ's Recommended Order.

- Must hold public hearing within 90 days (unless otherwise in CBA).
- Review
 - the Recommended Order,
 - transcript
 - exhibits.
- No new evidence.

What can School Board do with a Recommended Order?

- SB may adopt the Recommended Order as your Final Order...
- OR can reject the ALJ's findings of fact, and maybe the ALJ's ultimate recommendation, if:
 - SB determines that the findings of fact were not based on competent substantial evidence

or

- that the proceedings on which the findings were based did not comply with essential requirements of law.

What is Competent Substantial Evidence?

- Competent – evidence that is admissible. In administrative hearings, “competent” evidence means that the evidence can be given weight.
- Substantial – some (more than a mere scintilla) of real, material, pertinent, and relevant evidence (as opposed to ethereal, speculative, theoretical or hypothetical possibilities) having probative value (i.e., tending to prove) as to each element.

What if SB does not like the ALJ's Conclusions of Law?

May reject or modify the conclusions of law
over which the School Board have
substantive jurisdiction.

But . . .

- The School Board is NOT authorized to weigh or reweigh the evidence, judge the credibility of witnesses, or interpret the evidence to fit a desired conclusion.
- And... if the School Board wrongfully reject a finding of fact, and that is proven on appeal, the School Board may have to pay attorney fees.

Agency Deference

Article V, section 21 reads:

In interpreting *a state statute or rule*, a state court or an officer hearing an administrative action *pursuant to general law* may not defer to an *administrative agency's* interpretation of *such statute or rule* and must interpret such *statute or rule* de novo.

(Emphasis added).

Applies to DOE and Charter School Issues

The days of judicial deference to an agency's interpretation of a statute or rule are over. *See* Art. V, § 21, Fla. Const. Instead, this Court interprets statutes and rules de novo and without deference to an agency's interpretation. *Id.*

Sch. Bd. of Volusia Cty. v. Fla. E. Coast Charter Sch., 312 So. 3d 158, 160 (Fla. 5th DCA 2021), review denied, No. SC21-416, 2021 WL 1590220 (Fla. Apr. 22, 2021) (charter school).

When is School Board's Final Order due?

School Board Final Order must be in writing and must be rendered within **90 days** after the Recommended Order was sent to the School Board.

Then What?

TTS -

- SB's Final Order is appealable under section 120.68, Florida Statutes, which governs appeals from administrative agency action.
- The venue for SB appeals—in most cases—is the District Court where the SB is located.
 - ▶ Charter School – Directly Appealable at DCA.
 - ▶ ESE – Appealable at circuit court or federal district court).

SCHOOL BOARD RELATED CASES

Charter Schools

§ 1002.33, Florida Statutes

- ▶ Role of Charter
- ▶ Operating and managing Finances
- ▶ School Boards
 - ▶ Issue funds
 - ▶ Monitor operations
 - ▶ Request periodic reports
 - ▶ Identify remedial action needed
 - ▶ Attempt to get more information when clear Charter's circumstances are not good.

Manatee County School Board v. Lincoln Memorial Academy
(DOAH Case No. 19-4155/ 19-5307F)

Bid Protest

§§ 120.569 and 120.57(3), Florida Statutes

- DOAH will begin the final hearing within 30 days of assignment of the ALJ.
- The ALJ will enter a Recommended Order within 30 days of the hearing.
- The Recommended Order comes back to SB like other Recommended Order cases.
- Exceptions are due in 10 days instead of 15 days.

What about Bid Protest Cases?

- DOAH will begin the final hearing within 30 days of assignment of the ALJ.
- The ALJ will enter a Recommended Order within 30 days of the hearing.
- The Recommended Order comes back to you like other Recommended Order cases.
- **Exceptions are due in 10 days instead of 15 days.**

Questions?

Thank you!