

STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 DOJ 04213

TODD THOMAS )  
)  
Petitioner, )  
)  
v. )  
)  
NORTH CAROLINA SHERIFFS' )  
EDUCATION AND TRAINING )  
STANDARDS COMMISSION, )  
)  
Respondent. )  
\_\_\_\_\_ )

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable John C. Evans, Administrative Law Judge, and filed in the Office of Administrative Hearings on February 15, 2024, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Conclusions of Law Nos. 5 and 6 should be added to align with Respondent's position on burden of proof.
5. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. §150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. §150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. §150B-34(a).
6. While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that "the burden of proof rests on the petitioner challenging an agency decision").

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JUN 04 2024

BY: SHERIFFS' STANDARDS

This the 29<sup>th</sup> day of May, 2024.

JOSHUA H. STEIN  
Attorney General

/s/ J. Joy Strickland

J. Joy Strickland  
Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001  
Telephone: (919) 716-6401  
State Bar No.: 25695  
COUNSEL TO THE COMMISSION

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner's counsel** by mailing a copy to the following address:

**Danny Earl Britt, Jr.  
The Britt Law Firm  
216 N. Chestnut Street  
Lumberton, North Carolina 28358**

This the 29<sup>th</sup> day of May, 2024.

JOSHUA H. STEIN  
Attorney General

*/s/ J. Joy Strickland* \_\_\_\_\_

J. Joy Strickland  
Assistant Attorney General  
ATTORNEY FOR THE COMMISSION

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**BY: SHERIDAN STANDARD**