

497—4.5(17A) Presiding officer.

4.5(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within ten days after service of a notice of hearing which identifies or describes the presiding officer as the board or one or more members of the board.

4.5(2) The board shall give preference to assigning an administrative law judge if requested by a party and may deny the request only upon a finding that two or more of the following apply:

a. Neither the board nor any member of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. A qualified administrative law judge is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

4.5(3) The board shall issue a written ruling specifying the grounds for its decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

4.5(4) An administrative law judge assigned to act as presiding officer in contested cases involving open meetings or public records laws shall have knowledge of or experience with Iowa Code chapters 21 and 22 unless waived by the agency.

4.5(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.5(6) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]