

531—5.7(17A) Presiding officer.

5.7(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 20 days after service of a notice of hearing that identifies or describes the presiding officer as the agency head or members of the agency.

5.7(2) The chief executive officer of the lottery may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency 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. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

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

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

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

5.7(3) The chief executive officer of the lottery shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

5.7(4) 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 lottery. A party must seek any available appeal with the lottery in order to exhaust adequate administrative remedies.

5.7(5) Unless otherwise provided by law, the chief executive officer or a designee, when reviewing a proposed decision upon appeal to the lottery, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 4814C, IAB 12/18/19, effective 1/22/20]