

21 NCAC 21 .0605 EXCEPTIONS AND PROPOSED DECISIONS

(a) When a request for hearing has been granted and the case referred to the Office of Administrative Hearings and the administrative law judge has made a proposal for decision, each party shall do the following:

- (1) file written exceptions to the proposal for decision, unless the party accepts the decision in its entirety. Any party may choose to submit alternative findings of fact and conclusions of law. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion or recommendation shall be proposed. Exceptions and alternative findings of fact and conclusions of law shall be received by the Board no later than 30 calendar days after the receipt of the proposal for decision and accompanying evidentiary materials by the Board. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, and the specific reason(s) the Board should not adopt the administrative law judge's finding of fact or conclusion of law. Each exception and proposed alternative finding or conclusion shall also reference the specific evidence in the record which supports the rejection of the administrative law judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses and any evidentiary exhibits. Any new findings of fact proposed to the Board must be supported by a preponderance of the admissible evidence in the record. Reference must be made to the transcript of the hearing;
- (2) file a Proposed Decision and Order for consideration by the Board to accompany the party's written exceptions. The proposed Decision and Order shall be received by the Board no later than 30 calendar days after the receipt of the administrative law judge's proposal for decision and evidentiary materials by the Board. The Proposed Decision and Order shall indicate separately and in detail, for each finding of fact to be rejected by the Board and for each alternative finding of fact, the reasons therefore and the supporting evidence in the record. The Proposed Decision and Order shall demonstrate that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the record, and shall set forth its reasoning, which shall also describe the exercise of discretion by the Board, if any; and
- (3) file a brief, if any, to accompany any filed exceptions and Proposed Decision and Order. Responsive briefs are not encouraged, but shall be considered if received by the Board no later than five days after a party's receipt of the other party's brief, exceptions or proposed final agency decision. Briefs shall be limited to 15 pages in length, unless prior approval is obtained.

(b) When a request for hearing has been granted and the Board elects to conduct the evidentiary hearing, the parties may file a hearing brief outlining the issues of law to be determined by the Board as a result of the evidentiary hearing. These briefs must be filed with the Board no later than 30 days prior to the date of hearing. Response briefs are not encouraged, but shall be accepted if filed with the Board no later than five days after receipt of the other party's brief. The parties also may file a proposed decision with findings of fact and conclusions of law. Proposed decisions must be filed with the Board within 15 days of the conclusion of the hearing or within 15 days of the Boards' receipt of the transcript of the hearing, if any, whichever is later. The findings of fact and conclusions of law in the proposed decision must make specific reference to the evidence admitted at the hearing and to the transcript.

(c) Unless otherwise directed, parties shall file these documents at the Board's office by 5:00 p.m. on the date due. Parties shall submit eight copies of each set of written exceptions, proposed decision, and any brief. Copies of parts of the record which may be useful to the Board may be included in an appendix to pleadings, document or other papers. A copy of any document filed with the Board shall be served on all parties.

(d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

*History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-42;
 Eff. February 1, 1986;*

Amended Eff. April 1, 2003; April 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December
16, 2014.