

**10A NCAC 63F .0617 DISQUALIFICATION OF HEARING OFFICER**

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefore.

(b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impractical for the hearing officer to proceed with the hearing, the Director shall arrange for the appointment of another hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) the case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

*History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361-57; P.L. 102-569; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*