

**10A NCAC 89B .0217 DISQUALIFICATION OF HEARING OFFICER**

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

(b) If a party to the case believes that the hearing officer of record cannot conduct the 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.

(c) When a hearing officer is disqualified or it is impracticable for the hearing officer to proceed with the hearing, another hearing officer shall be assigned by the Division staff member who appointed the hearing officer to proceed with the case. However, if it is shown to the Division staff member who appointed the hearing officer 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 Division staff member who appointed the hearing officer 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. 143-545A; 150B-1; 34 C.F.R. 361.48;  
Eff. September 1, 1989;  
Amended Eff. April 1, 1997;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*