

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case." (1985 (Reg. Sess., 1986), c. 1022, s. 1(11); 1991, c. 418, s. 16.)

§ 150B-22.1. Special education petitions.

(a) Notwithstanding any other provision of this Chapter, timelines and other procedural safeguards required to be provided under IDEA and Article 9 of Chapter 115C of the General Statutes must be followed in an impartial due process hearing initiated when a petition is filed under G.S. 115C-109.6 with the Office of Administrative Hearings.

(b) The administrative law judge who conducts a hearing under G.S. 115C-109.6 shall not be a person who has a personal or professional interest that conflicts with the judge's objectivity in the hearing. Furthermore, the judge must possess knowledge of, and the ability to understand, IDEA and legal interpretations of IDEA by federal and State courts. The judges are encouraged to participate in training developed and provided by the State Board of Education under G.S. 115C-107.2(h)[(g)].

(c) For the purpose of this section, the term "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and its regulations. (2006-69, s. 5.)

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;

- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.

(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this

section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(9), (10), 6(2), (3); 1987, c. 878, ss. 3-5; c. 879, s. 6.1; 1987 (Reg. Sess., 1988), c. 1111, s. 5; 1991, c. 35, s. 1; 1993 (Reg. Sess., 1994), c. 572, s. 2.)

§ 150B-23.1. Mediated settlement conferences.

(a) Purpose. – This section authorizes a mediation program in the Office of Administrative Hearings in which the chief administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. The purpose of the program is to determine whether a system of mediated settlement conferences may make the operation of the Office of Administrative Hearings more efficient, less costly, and more satisfying to the parties.

(b) Definitions. – The following definitions apply in this section:

- (1) Mediated settlement conference. – A conference ordered by the chief administrative law judge involving the parties to a contested case and conducted by a mediator prior to a contested case hearing.
- (2) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.

(c) Conference. – The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted insofar as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(d) Attendance. – The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.

(e) Mediator. – The parties shall have the right to stipulate to a mediator. Upon the failure of the parties to agree within a time limit established by the presiding administrative law judge, a mediator shall be appointed by the presiding administrative law judge.

(f) Sanctions. – Upon failure of a party or a party's attorney to attend a mediated settlement conference ordered under this section, the presiding administrative law judge may impose any sanction authorized by G.S. 150B-33(b)(8) or (10).

(g) Standards. – Mediators authorized to conduct mediated settlement conferences under this section shall comply with the standards adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(h) Immunity. – A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(i) Costs. – Costs of a mediated settlement conference shall be paid one share by the petitioner, one share by the respondent, and an equal share by any intervenor, unless otherwise apportioned by the administrative law judge.

(j) Inadmissibility of Negotiations. – All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(k) Right to Hearing. – Nothing in this section restricts the right to a contested case hearing. (1993, c. 321, s. 25(b); c. 363, ss. 1, 3; 1995, c. 145, s. 1.)

§ 150B-24. Venue of hearing.

(a) The hearing of a contested case shall be conducted:

- (1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;
- (2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or
- (3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 6.)

§ 150B-25. Conduct of hearing; answer.

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

(b) Repealed by Session Laws 1991, c. 35, s. 2.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(13); 1987, c. 878, s. 6; 1991, c. 35, s. 2.)

§ 150B-26. Consolidation.

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985, (Reg. Sess., 1986), c. 1022, s. 1(1), 1(14).)

§ 150B-27. Subpoena.

After the commencement of a contested case, subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. In addition to the methods of service in G.S. 1A-1, Rule 45, a State law enforcement officer may serve a subpoena on behalf of an agency that is a party to the contested case by any method by which a sheriff may serve a subpoena under that Rule. Upon a motion, the administrative law judge may quash a subpoena if, upon a hearing, the administrative law judge finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed.

Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 66; 1985, c. 746, s. 1; 1987, c. 878, s. 6; 1991, c. 35, s. 3.)

§ 150B-28. Depositions and discovery.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 2007-491, s. 2.)

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object

to its consideration by the administrative law judge in making a decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 7; 1991, c. 35, s. 4; 2000-190, s. 4.)

§ 150B-30. Official notice.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-31. Stipulations.

(a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 6.)

§ 150B-31.1. Contested tax cases.

(a) Application. – This section applies only to contested tax cases. A contested tax case is a case involving a disputed tax matter arising under G.S. 105-241.15. To the extent any provision in this section conflicts with another provision in this Article, this section controls.

(b) Simple Procedures. – The Chief Administrative Law Judge may limit and simplify the procedures that apply to a contested tax case involving a taxpayer who is not represented by an attorney. An administrative law judge assigned to a contested tax case must make reasonable efforts to assist a taxpayer who is not represented by an attorney in order to assure a fair hearing.

(c) Venue. – A hearing in a contested tax case must be conducted in Wake County, unless the parties agree to hear the case in another county.

(d) Reports. – The following agency reports are admissible without testimony from personnel of the agency:

- (1) Law enforcement reports.

(2) Government agency lab reports used for the enforcement of motor fuel tax laws.

(e) Confidentiality. – The record, proceedings, and decision in a contested tax case are confidential until the final decision is issued in the case. (2007-491, s. 42; 2008-134, s. 9.)

§ 150B-32. Designation of administrative law judge.

(a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

(a1) Repealed by Sessions Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(15), effective July 15, 1986.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the administrative law judge shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When an administrative law judge is disqualified or it is impracticable for him to continue the hearing, the Director shall assign another administrative law judge to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(12), 1(15), c. 1028, s. 40; 1987, c. 878, s. 8.)

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

- (1) Administer oaths and affirmations;
- (2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;
- (3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;
- (3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;
- (4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;
- (6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;
- (7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and
- (8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.
- (9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.
- (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules.
- (11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay.
- (12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 9, 10, 26; 1987 (Reg. Sess., 1988), c. 1111, ss. 18, 19; 1991, c. 35, s. 5; 2000-190, s. 5; 2004-156, s. 4.)

§ 150B-34. Decision of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in each contested case the administrative law judge shall make a decision that contains findings of fact and conclusions of law and return the decision to the agency for a final decision in accordance with G.S. 150B-36. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. All references in this Chapter to the

administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.

(d) Except for the exemptions contained in G.S. 150B-1(c) and (e), and subsection (c) of this section, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 23; 1987 (Reg. Sess., 1988), c. 1111, s. 21; 1991, c. 35, s. 6; 2000-190, s. 6.)

§ 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an **ex parte** matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 11.)

§ 150B-36. Final decision.

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision made by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) Except as provided in G.S. 150B-34(c) or subsection (d) of this section, a final decision in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The agency shall adopt each finding of fact contained in the administrative law judge's decision unless the finding is clearly contrary to the

preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency and each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall follow the procedures set forth in subsections (b1) and (b2) of this section.

(b1) For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the following:

- (1) The reasons for not adopting the findings of fact.
- (2) The evidence in the record relied upon by the agency in not adopting the finding of fact contained in the administrative law judge's decision.

Any finding of fact not specifically rejected as required by this subsection shall be deemed accepted for purposes of judicial review of the final decision pursuant to Article 4 of this Chapter.

(b2) For each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. Any new finding of fact made by the agency shall be supported by a preponderance of the admissible evidence in the record. The agency shall not make any new finding of fact that is inconsistent with a finding of fact contained in the administrative law judge's decision unless the finding of fact in the administrative law judge's decision is not adopted as required by subsection (b1) of this section.

(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the administrative law judge unless the agency demonstrates that the decision of the administrative law judge is clearly contrary to the preponderance of the admissible evidence in the record. If the agency does not adopt the administrative law judge's decision as its final decision, the agency shall set forth its reasoning for the final decision in light of the findings of fact and conclusions of law in the final decision, including any exercise of discretion by the agency. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision. A copy of the decision shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to superior court under Article 4 of this Chapter:

- (1) A determination that the Office of Administrative Hearings lacks jurisdiction.
- (2) An order entered pursuant to the authority in G.S. 7A-759(e).
- (3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

(d) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (b) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c) or Rule 56. For any decision by the administrative law judge granting judgment on the pleadings or summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge's decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4 of this Chapter. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(16); 1987, c. 878, ss. 12, 24; 1987 (Reg. Sess., 1988), c. 1111, s. 20; 1991, c. 35, s. 7; 2000-190, s. 7.)

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) Repealed by Session Laws 1987, c. 878, s. 25.
- (6) The administrative law judge's decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the administrative law judge's decision to each party. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 13, 25; 2000-190, s. 8.)