

Office for Civil Rights, Education

§ 101.63

served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before him. A repetitious motion will not be entertained.

§ 101.57 Responses to motions and petitions.

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

§ 101.58 Disposition of motions and petitions.

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however*, That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held or written motions or petitions unless the presiding officer in his discretion expressly so orders.

Subpart G—Responsibilities and Duties of Presiding Officer

§ 101.61 Who presides.

A hearing examiner assigned under 5 U.S.C. 3105 or 3344 (formerly section 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

§ 101.62 Designation of hearing examiner.

The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and pro-

posed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 101.63 Authority of presiding officer.

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue initial or recommended decisions.

(k) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).