Chapter 14. The Agency Decision

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14.1 Exceptions to the Administrative Law Judge's Report and Argument to the Agency before Final Decision

The Minnesota Administrative Procedure Act (MN APA) provides that an agency cannot issue its final decision and order until the report of the administrative law judge (ALJ) has been made available to the parties for at least ten days and each party adversely affected has been afforded the opportunity to file exceptions to the ALJ's report and present argument to a majority of the officials who are to render the final decision.[1] An individual agency's procedural rules and statutes may contain additional procedures and requirements for filing exceptions and presenting argument, including the process for any party to file a written response to any timely-filed exceptions.[2] The agency will typically issue an "exceptions letter" to the parties setting forth the exact procedures to follow and deadlines for exceptions and response submissions.

The MN APA does not specify that addition argument must be orally made to the decision-makers. Either written or oral argument satisfies due process.[3] If a party requests oral argument, however, the agency should grant the request.[4] By the same token, an agency's failure to respond to a party's request to present argument creates a "lack of basic fairness" and may result in a reversal of the agency's decision because it was based on unlawful procedure and may demonstrate a lack of due process.[5] The contested case rules of individual agencies may provide for oral argument,[6] or the agency may exercise its discretion to allow written argument while allowing oral argument in particular cases.

An agency may issue findings different from those contained in the ALJ's recommended decision even where agency staff fails to file exceptions to the recommended decision.[7] A party's failure to object to an ALJ's discovery ruling in exceptions does not preclude that party from raising

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[1] Minn. Stat. § 14.61, subd. 1 (2026). Commissioners may delegate authority to any subordinate employee the exercise of specified statutory powers or duties, such as receiving additional argument from a party and issuing the agency's final decision and order in an administrative contested case. *Id.* § 15.06, subd. 6(1) (2026).

[2] *See, e.g., In re Lab. Law Violation of Chafoulias Mgmt. Co.*, 572 N.W.2d 326, 332 (Minn. App. 1997), *review denied* 527 N.W.2d 326 (Minn. Feb. 19, 1998) (finding Commissioner's failure to promulgate procedural rules for filing exceptions did not violate due process where Commissioner rejected relator's exceptions on substantive, not procedural, grounds); Minn. R. 7829.2700 (2026) (governing public utilities commission procedure following ALJ reports).

[3] *R.R. & Warehouse Comm'n v. Chi. & Nw. Ry.*, 98 N.W.2d 60, 66 (1959) (dictum). *See generally* 2 RICHARD J. PIERCE and KRISTIN E. HICKMAN, ADMINISTRATIVE LAW TREATISE § 9.5 (7th ed. 2026).

[4] *In re Determining the Nat. Ordinary High Water Level of Lake Pulaski*, 384 N.W.2d 510, 515 (Minn. App. 1986)

[5] *Yellowbird, Inc. v. MSP Exp., Inc.*, 377 N.W.2d 490, 494 (Minn. App. 1985); *In re Haugen*, 278 N.W.2d 75, 79–80 (Minn. 1979).

[6] *See, e.g.*, Minn. R. 7829.2700, subp. 3 (2026) (granting parties opportunity for oral argument before the public utilities commission following ALJ's report).

[7] *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989).

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the discovery issue on judicial review.[8]

After *In the Matter of the Surveillance and Integrity Review (SIRS) Appeals by Trinity Home Health Care Services and Etyane Ayana*, 996 N.W.2d 178 (Minn. 2023) (holding that the MN DHS Commissioner lacked authority (implied, express or otherwise) to remand a contested case to the ALJ for reconsideration of the ALJ's report with recommendation), the Minnesota Legislature amended MINN. STAT. § 14.62 to permit agencies the opportunity to request a remand to the Court of Administrative Hearings (CAH) for further proceedings. It is a request that must be made within 45 days following the close of the hearing record, but the statute does contain a good cause provision if the request is made after 45 days.[9] The request for a remand must set forth with specificity the reasons the agency is requesting remand, including if it is asking for further fact finding by identifying the issues for which further fact finding is needed and explaining why further fact finding is necessary to facilitate a fair and just final decision.[10]

14.2 Agency Review of the Record Before Decision

When the Administrative Law Judge (ALJ) issues their report and recommendation,[11] the ALJ certifies and transfers the official record to the agency.[12] Upon receipt of the record, the agency conducts its own quasi-judicial determination of the contested case. In reaching its decision, the agency must rely solely on the record. Both statute[13] and due process[14] require that the agency decision-maker consider only evidence that is part of the record.

Consistent with this requirement, decision-makers may not decide cases on the basis of information acquired from *ex parte* communications. Due process, in particular, generally prohibits such communications as inconsistent with the fundamental premises inherent in our concept of fairness in adversarial hearings.[15] *Ex parte* communications with an agency decision-maker may be regarded as fraud on the agency.[16] But not all such contacts result in a due process violation.[17] The

[8] *Surf & Sand Nursing Home v. Dep't of Hum. Servs.*, 422 N.W.2d 513, 519–20 (Minn. App. 1989).

[9] Minn. Stat. § 14.62, subd. 2b(a) (2026) ("An agency may request remand of a finding of fact, conclusion of law, or recommendation within 45 days following the close of the hearing record under section 14.61. Upon a showing of good cause by the agency, the chief administrative law judge may consider a request for remand received after the deadline specified in this provision.").

[10] Minn. Stat. § 14.62, subd. 2b(b).

[11] Minn. Stat. § 14.50 (2026) (providing that the ALJ's report contains findings of fact, conclusions of law, and recommendation on action to be taken by agency).

[12] *Id.*, § 14.58 (2026).

[13] *Id.*, §§ 14.60, subd. 2, .62, subd. 1 (2026).

[14] *See Hosking v. Metro. House Movers Corp.*, 138 N.W.2d 404, 409 (1965) ("It was held in that case that due process requires that the findings of the Industrial Commission be based upon substantial evidence contained in the record." (citing *Hunter v. Zenith Dredge Co.*, 19 N.W.2d 795 (1945))) (dictum); *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001) (due process is satisfied where relator had, in addition to notice and a hearing, a decision based solely on the record).

[15] *Nevels v. Hanlon*, 656 F.2d 372, 376 (8th Cir. 1981); *Camero v. United States*, 375 F.2d 777, 780-81 (1967) (opining that due process forbids adversary to proceed communicating privately with decision-maker regarding exceptions); *see also Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 174 (Minn. App. 2001) (finding substantial evidence of procedural irregularities where city council members considered evidence outside the record, and transferring the case to the district court to take testimony and determine the alleged irregularities in procedure); Minn. R. Prof. Conduct 3.5(g) (2026) (prohibiting *ex parte* communications regarding the merits of the case with the judge or official before whom a proceeding is pending).

[16] *In re Minn. Pub. Utils. Comm'n*, 417 N.W.2d 274, 280-83 (Minn. App. 1987).

[17] *Simer v. Rios*, 661 F.2d 655, 679 (7th Cir. 1981).

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issue is whether the contact has created a risk of actual bias.[18] An *ex parte* communication does not violate due process where those objecting to the communication had the opportunity to confront, cross-examine, or argue concerning the information received by the decision-maker involved in the communication.[19] A clandestine *ex parte* communication not made part of the record would afford the objector no such opportunity.[20]

The agency can take notice of facts of which judicial notice could be taken and also of general, technical, and scientific facts within its specialized knowledge, provided that before or during the hearing, parties have been given notice and an opportunity to contest any such facts.[21] In evaluating the evidence in the record, however, the agency may utilize its experience, technical competency and expertise, and specialized knowledge.[22]

The ALJ's report and recommendation are not ordinarily binding on the agency.[23] It is, however, entitled to some credence. Determinations of the credibility of witnesses by the ALJ are, for example, entitled to some weight.[24] In contested case appeals, the ALJ who presided at the hearing is in the best position to judge the credibility of witnesses and to determine the weight to be given evidence presented in a case.[25] On the other hand, inferences and conclusions drawn from the facts by the ALJ may be given less weight.[26] Moreover, it is within the particular expertise of the agency to evaluate the weight to be given expert testimony.[27] An agency might, for example, focus on certain witnesses' testimony, and give one witness's testimony more weight.[28] In fact, the agency decision-maker owes no deference to the agency's own expert witnesses.[29] While the ALJ's

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[18] *See Barlau v. City of Northfield*, 568 F. Supp. 181, 187 (D. Minn. 1983).

[19] *Simer*, 661 F.2d at 679; *Barlau*, 568 F. Supp. at 186-87.

[20] *Barlau*, 568 F. Supp. at 186; *see supra* text accompanying note 18 (discussing *Barlau*); *see also Simer*, 661 F.2d at 680-81.

[21] Minn Stat. § 14.60, subd. 4 (2026); *see also* § 10.4 in this volume.

[22] Minn. Stat. § 14.60, subd. 4 (2026); *see Kollmorgen v. Bd. of Med. Exam'rs*, 416 N.W.2d 485, 487-88 (Minn. App. 1987).

[23] *In re Denial of Eller Media Company's Applications for Outdoor Advertising Device Permits in the City of Mounds View*, Minnesota, 664 N.W.2d 1, 6-7 (Minn. 2003); *Hymanson v. City of St. Paul*, 329 N.W.2d 324, 326-27 (Minn. 1983) (dictum); *In re Rate Appeal of Elim Homes, Inc.*, 575 N.W.2d 845, 849 (Minn. App. 1998) (declining to adopt a doctrine of administrative-judicial comity that would require the commissioner to defer to the ALJ's legal expertise, just as courts defer to the commissioner's technical expertise). An agency may, however, delegate final decisionmaking authority to an ALJ. Minn. Stat. § 14.57(a) (2026).

[24] *See First Nat'l Bank v. Dep't of Commerce*, 245 N.W.2d 861, 865 (Minn. 1976); *Saif Food Mkt. v. Dep't of Health*, 664 N.W.2d 428, 431 (Minn. App. 2003) (noting adverse credibility determination by ALJ regarding owner's testimony and observing that the court defers to agency credibility determinations); *In re Friedenson*, 574 N.W.2d 463, 467 (Minn. App. 1998) (finding that board, in deviating from the ALJ's findings of fact and conclusions of law, "did not reject the ALJ's credibility assessments, but rather occasionally disagreed with inferences or conclusions based on testimony").

[25] *In the Matter of the Maltreatment Determination of Amanda Restorff and the Order to Pay a Fine and Order of Conditional License for the Family Child Care License of Amanda Restorff*, 932 N.W.2d 12, 24 (Minn. 2019) ("The functions of fact-finding, resolving conflicts in the testimony, and determining the weight to be given to it and the inferences to be drawn therefrom rest with the administrative board.") (quoting *Gibson v. Civil Serv. Bd.*, 171 N.W.2d 712, 715 (1969)).

[26] *City of Moorhead*, 343 N.W.2d at 846-47 (citing *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951) (hearing examiner's report part of record under Taft-Hartley Act)).

[27] *In re Hutchinson*, 440 N.W.2d 171, 177 (Minn. App. 1989).

[28] *In re Petition of N. States Power Gas Util.*, 519 N.W.2d 921, 926 (Minn. App. 1994) (citing *Minn. Power & Light Co. v. Minn. Pub. Util. Comm'n*, 342 N.W.2d 324, 330 (Minn. 1983)).

[29] *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). *But see Hurrle v. Cnty. of Sherburne*, 594 N.W.2d 246, 251 (Minn. App. 1999) (reiterating that decisionmaking entity

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report is part of the record for the agency's consideration,[30] it is only one part of the record and is usually only a recommendation to the agency.[31] Accordingly, the Commissioner is not bound by the recommendation of the ALJ.[32] The Commissioner may independently decide the contested case appeal based on the evidence in the record before them.[33] A decision or order may reject or modify the ALJ's findings of fact, conclusions of law, or recommendation contained in the report of the ALJ, when including the reasons for each rejection or modification.[34] However, where there is competing evidence or testimony, the Commissioner will not substitute her judgment for that of the ALJ unless the ALJ's findings are wholly unsupported by the law or the record or demonstrate a clear showing of mistake or bias.[35] The Commissioner, the Commissioner's designee or agency officials render the final decision and order under the MN APA.[36] The agency must conduct its own review of the record and reach its own independent determinations of all issues, whether legal or factual. It must not rubber-stamp the findings and conclusion of the ALJ.[37]

The agency may make its own findings differing from those of the ALJ as long as the agency's findings are supported by substantial evidence in the record. The agency is not restricted to reviewing the findings of the ALJ and changing them only when they are not supported by substantial evidence.[38] In addition, an agency is not bound to adopt stipulations of fact and ay look to other evidence in the record.[39] An agency, however, may not base its decision on evidence outside the record even where that evidence was part of the record in a previous contested case.[40] The Commissioner must issue a final agency decision that is supported by substantial evidence in the

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may not reject expert testimony without adequate reasons).

[30] *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 847 (Minn. 1984); *Big Fish Lake Sportsmen's Club v. Water Res. Bd.*, 400 N.W.2d 416, 421 (Minn. App. 1987).

[31] *City of Moorhead*, 343 N.W.2d at 847; *Hymanson v. City of St. Paul*, 329 N.W.2d 324, 326-27 (Minn. 1983) (dictum). There are several exceptions created by statute where the agency is bound by the ALJ's findings and conclusions. *See e.g.*, Minn. Stat. §§ 182.661, subd. 3 (OSHA citations), .669 (OSHA discrimination cases), 244.052, subd. 6 (sex offender notice), 363A.29, subds. 3, 7 (human rights cases) (2020).

[32] *See, e.g.*, Minn. Stat. § 142B.20, subd. 6 (2026).

[33] *In re Excess Surplus State of Blue Cross and Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001) (internal citation omitted).

[34] Minn. Stat. § 14.62, subd. 2 (2026).

[35] A factfinder "abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). "To prove actual bias, the challenging party must show that the [fact-finder] exhibited strong and deep impressions that would prevent [it] from lay[ing] aside [its] impression or opinion and render[ing] a verdict based on the evidence presented in court." *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015) (citations omitted).

[36] *Excess Surplus of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d at 278 (agency decisionmaker owes no deference to the recommendations of the ALJ); *City of Moorhead*, 343 N.W.2d at 846; *In re Application of the Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 870 (Minn. App. 2007) (stating the commission need not defer to ALJ's findings, conclusions, or recommendation).

[37] *See Urban Council on Mobility v. Minn. Dep't of Natural Res.*, 289 N.W.2d 729, 736 (Minn. 1980); *PEER v. Minn. Envt'l. Quality Council*, 266 N.W.2d 858, 873 (Minn. 1978); *Brinks v. Minn. Pub. Utils. Comm'n*, 355 N.W.2d 446 (Minn. App. 1984).

[38] *City of Moorhead*, 343 N.W.2d at 847; *In re Friedenson*, 574 N.W.2d 463, 467 (Minn. App. 1998); *BAL, Inc. v. City of St. Paul*, 469 N.W.2d 341, 343 (Minn. App. 1991) (stating that city council may reject or modify ALJ's findings); *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989). *But see In re Lidberg*, 529 N.W.2d 376, 381 (Minn. App. 1995) (holding commissioner in error for rejecting ALJ's conclusion after adopting ALJ's findings).

[39] *In re N. States Power Co.*, 440 N.W.2d 138, 140 (Minn. App. 1989).

[40] *Id.*

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record,[41] and not an arbitrary or capricious agency decision based on the agency exercising its will, rather than its judgment, or a decision based on whim or is devoid of articulated reasons.[42]

Since 2000, the MN APA has required an agency that rejects or modifies a finding of fact, conclusion, or recommendation of an ALJ to state the reasons for each rejection or modification.[43] Before this amendment, case law had encouraged an agency to state its reasons for changing an ALJ recommended decision, providing that where an agency rejects an ALJ's recommendations, the "better practice" is for the agency to articulate its reasons for doing so.[44] An agency's rejection of an ALJ's findings, or its significant departure from them, without any comment or explanation suggests that the agency exercised its will rather than its judgment.[45]

What constitutes an adequate review of the record by the agency so as to ensure that the agency is deciding the issues independently and is not rubber-stamping the ALJ's recommendation is determined on a case-by-case basis. A ten-hour review by an agency head of a voluminous record, in which the agency head (1) reviewed the entire transcript, reading verbatim the areas of testimony they felt were of substance or in dispute, (2) examined every exhibit, and (3) received a four- or five-hour briefing from their staff reviewing the evidence and the arguments of the parties, has been held sufficient.[46] Where two of three decision-makers acting as a commission had read the entire record before the hearing examiner and the third had read one-half of the record and all had considered the written and oral objections of the parties before issuing the decision, the review of the record was held to be sufficient.[47] And where all of the agency decision-makers had heard oral arguments, read briefs and appendices and the recommended decision of the ALJ but only one member and the advising assistant attorney general had read the whole transcript, the review of the record was held to be consistent with the principles of due process.[48]

An agency decision-maker may consult agency staff in arriving at a decision.[49] Due process

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[41] *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757 (Minn. 2013).

[42] *In the Matter of the Appeal by Primrose School of Arden Hills and Shoreview of the Order of License Revocation*, A23-0496, 2024 WL1714231, at *8 (Minn. App. Apr. 22, 2024) (nonprecedential) (quoting *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), review denied (Minn. Nov. 13, 2001)).

[43] Minn. Stat. § 14.62, subd. 1 (2022).

[44] *City of Moorhead*, 343 N.W.2d at 847; *In re Hutchinson*, 440 N.W.2d at 176 (finding appellate court's review more critical where conclusions differ from ALJ's); *In re Perron*, 437 N.W.2d 92, 96 (Minn. App. 1989); *Dep't of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 117 (Minn. App. 1989).

[45] *In re Revocation of the Family Child Care License of Burke,* 666 N.W.2d 724, 728 (Minn. App. 2003) (finding commissioner of human services abused his discretion in revoking a child care license where ALJ recommended less severe discipline and agency failed to explain how the record supported revocation); *In re Sentry Ins. Payback Program*, 447 N.W.2d 454, 460 (Minn. App. 1989); *In re Orr*, 396 N.W.2d 657, 662 (Minn. App. 1986); *Five Star Trucking, Inc. v. Minn. Transp. Regulation Bd.*, 370 N.W.2d 666, 670 (Minn. App. 1985); *Beaty v. Minn. Bd. of Teaching*, 354 N.W.2d 466, 471 (Minn. App. 1984).

[46] *Urban Council on Mobility v. Minn. Dep't of Natural Res.*, 289 N.W.2d 729, 736 (Minn. 1980).

[47] *In re Lecy*, 304 N.W.2d 894, 898–99 (Minn. 1981).

[48] *In re Hutchinson*, 440 N.W.2d at 176; *see also Kells (BWSR) v. City of Rochester*, 597 N.W.2d 332, 339-40 (Minn. App. 1999) (upholding agency decision although only five of the seventeen members of the Board of Water and Soil Resources heard oral argument or read the briefs, because the statute specifically requires that appeals on wetland replacement plans must be heard by the five-member dispute resolution committee of the Board).

[49] *See Urban Council on Mobility*, 289 N.W.2d at 736 (upholding agency decision where agency staff provided four- or five-hour briefing to agency head); *In re Otter Tail Power Co.*, 417 N.W.2d 677, 680 (Minn. App. 1988) (finding agency staff and counsel acted as advisors, making suggestions and recommendations and informing the agency of possibilities based upon their knowledge and expertise).

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may, however, prevent the decision-maker from consulting an agency staff member involved in the investigation of the case if, under the circumstances, the consultation would result in biasing the decision-maker.[50] Statutes governing the licensing boards prevent a board member consulted during an investigation from voting on the decision in the case but allow the member to participate at the hearing.[51] The Minnesota Court of Appeals has commented that review of the agency's draft order before issuance by the attorney who represented the agency in the hearing as an advocate is objectionable, as it creates an appearance of possible prejudice and a risk of biasing the agency.[52]

If the agency decision-maker is a group of persons, such as a board or commission, the Minnesota open meeting law[53] may apply. The open meeting law does not, however, require that decision-makers who have independently reviewed the record and deliberated individually have a collegial discussion.[54] The individuals need not orally discuss in public a decision on which they have reached independent judgments.[55]

14.3 The Agency's Final Decision and Order

The agency's final decision and order must be in writing.[56] The final decision and order must be based on the entire contested case record, including any timely-filed exceptions to the ALJ's report, any timely-filed responses to those exceptions, and any presentation of argument to a commissioner, designee of a commissioner, or a majority of the officials who are to render the agency's final decision and order.[57] The Minnesota Administrative Procedure Act (MN APA) requires that the agency decision contain findings of fact and conclusions on all material issues.[58] The question of whether a particular fact is material to the proceeding such as to require a finding can be answered by asking whether an appellate court could, without that finding, conduct a sufficient judicial review of the agency's decision.[59] The agency should state with clarity and

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[50] *Urban Council on Mobility*, 289 N.W.2d at 736 ("The nature of the administrative process is such that a division of the agency may properly act as an advocate where the ultimate decision is made by the agency head. So long as the decision-maker remains unbiased, the combination of functions by an agency does not conflict with the dictates of due process."). *See generally Withrow v. Larkin*, 421 U.S. 35, 46-55 (1975) (finding combination of adjudicative and investigative functions in an agency does not constitute a due process violation except where, against a presumption of administrative regularity, a showing of disqualifiable bias such that a neutral decisionmaker is not presiding has been made).

[51] Minn. Stat. § 214.10, subd. 2 (2022).

[52] *See Richview Nursing Home v. Minn. Dep't of Pub. Welfare*, 354 N.W.2d 445, 460 (Minn. App. 1984).

[53] Minn. Stat. § 13D (2022). The open meeting law is not applicable to agencies, boards, or commissions when they are exercising quasi-judicial powers involving disciplinary proceedings. *Id.* § 13D.01, subd. 2.

[54] *In re Lecy*, 304 N.W.2d 894, 899 (Minn. 1981).

[55] *Id.*

[56] Minn. Stat. § 14.62, subd. 1 (2026).

[57] Minn. Stat. § 14.61, subds. 1–2 (2026); Minn. Stat. § 14.62, subd. 1.

[58] Minn. Stat. § 14.62, subd. 1; *Carter v. Olmsted Cnty. Hous. and Redev. Auth.*, 574 N.W.2d 725, 730 (Minn. App. 1998) (an agency decision not supported by proper findings is considered "prima facie arbitrary"); *cf. State ex rel. Harris v. Annuity & Pension Bd.*, 275 N.W.2d 668, 675 (Wis. 1979) (even if a statute did not require such findings and conclusions, procedural "due process and sound administrative procedures" would require them).

[59] "[J]udicial review of decisionmaking is only possible if the agency states with clarity and completeness the facts and conclusions essential to its decision so that the reviewing court can determine whether the facts support the agency's action." *PEER, Inc. v. Minn. Env't Quality Council*, 266 N.W.2d 858, 871 (Minn. 1978) (citing *Bryan v. Cmty. State Bank*, 172 N.W.2d 771, 775 (1969)). Even in situations where the MN APA did not require written findings and conclusions, the Minnesota Court of Appeals has found them to be

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completeness the facts and conclusions essential to its decision so that the reviewing court can determine if the facts justify the agency's action[60] For example, an agency's findings consisting solely of a reference to certain pages in the transcript would be insufficient and a failure to engage in "reasoned decision making."[61] However, there is no hard-and-fast MN APA or due process rule concerning how detailed and particular findings should be.[62] There is rather a "zone of propriety" between the extremes of mere conclusion and undue particularity.[63] The adequacy of a particular set of findings depends on whether the findings enable the court on review to ascertain the facts on which the agency made its decision.

The MN APA requires that the agency decision contain findings of fact and conclusions on all material issues[64] but does not necessarily require a memorandum, opinion, or other statement of the agency's rationale in reaching its decision, or that the reasons or basis for the order be otherwise specified.[65] Due process does not require that the decision be accompanied by a written memorandum discussing each of the objections parties may have raised during the proceeding or during the exceptions process.[66] Nor does due process require the agency to discuss the weight given any part of the evidence.[67] The agency is not required to discuss the mental processes by which it

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necessary. *See Rsrv. Mining Co. v. Minn. Pollution Control Agency*, 364 N.W.2d 411, 414 (Minn. App. 1985) (holding agency decision to not provide Reserve and other interested parties the opportunity for a contested case hearing once the MPCA Board decided to materially alter the terms of the noticed permit to be arbitrary and capricious, because no written findings and reasons were prepared for a "decision of this magnitude" and interested parties had no opportunity to seek contested case status of the matter, signifying the decision "represents the agency's will rather than its judgment." Moreover, "[a]part from the inherent arbitrariness of an order without written reasons and findings, appellate review of a technical order of this type without written findings and reasons is (1) unfair to the appealing party and (2) highly impractical for the reviewing body."); *In re Matter of the Application of Nw. Bell Tel. Co.*, 374 N.W.2d 758, 762–63 (Minn. App. 1985), *rev'd in part*, 386 N.W.2d 723 (Minn. 1986).

[60] *Bryan*, 172 N.W.2d at 775-76; *Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492, Austin Pub. Schs.*, 136 N.W.2d 105, 108 (1965) ("The general rule is that an administrative board should state with clarity and completeness the facts and conclusions essential to its decision so that a reviewing court can determine from the record whether the facts furnish justifiable reason for its action."); *Carter*, 574 N.W.2d at 729.

[61] *Morey*, 136 N.W.2d at 108 ("[T]he zone of propriety between the extremes of mere conclusion and undue particularity has never been accurately defined.").

[62] *Id.* In the case of a county decision on a plat application, the MN Court of Appeals observed that an entity need not necessarily prepare formal findings of fact, but it must, at a minimum, have reasons for its decision recorded or reduced to writing, and in more than just a conclusory fashion. *Hurrle v. Cnty. of Sherburne ex rel. Bd. of Comm'rs*, 594 N.W.2d 246, 249 (Minn. App. 1999) ("An entity need not necessarily prepare formal findings of fact, but it must, at a minimum, have the reasons for its decision recorded or reduced to writing and in more than just a conclusory fashion.") (quotation marks omitted).

[63] *Morey*, 136 N.W.2d at 108 ("An administrative board should not leave to the court the obligation to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency.") (quotation marks and citations omitted); *State v. Tri-State Tel. & Tel. Co.*, 284 N.W. 294, 301 (1939).

[64] *See* Minn. Stat. § 14.62, subd. 1 2026).

[65] The Minnesota APA contrasts, in this respect, with the federal APA, which requires that all decisions include a statement of the "findings and conclusions, *and the reasons or basis therefor*, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. § 557(c)(3)(A) (2026) (emphasis added); *cf.* Minn. Stat. § 14.62, subd. 1 (2026) ("Every decision and order rendered by an agency in a contested case shall be in writing, shall be based on the record and shall include the agency's findings of fact and conclusions on all material issues.").

[66] *In re Lecy*, 304 N.W.2d 894, 899 (Minn. 1981).

[67] *See Tri-State Tel. & Tel. Co.*, 284 N.W. at 301; see also Lecy, 304 N.W.2d at 899.

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reached its conclusion.[68] If there are no formal findings of fact and conclusions, due process may, at least in some circumstances, require a statement of reasons for the determination and the evidence relied upon.[69] This assures that the decision is based on the official record.[70]

The MN APA specifies that if an agency does not modify or reject an ALJ's recommended decision within 90 days of the close of the record, then the ALJ's recommended decision becomes final.[71] The record closes upon the filing of exceptions to the ALJ's Report or any responses to a party's exceptions and the presentation of additional argument, if any, whichever occurs chronologically last, or upon the expiration of the deadline for doing so.[72] Apart from the MN APA, the statutes relating to particular agencies may contain decision deadlines.[73]

The agency must serve a copy of the agency's decision and any order upon each party and upon the ALJ by first class mail.[74] The agency's final decision and order may include an award of

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[68] *Tri-State Tel. & Tel. Co.*, 284 N.W. at 301; *see also Lecy*, 304 N.W.2d at 899.

[69] *See PBGC v. LTV Corp.*, 496 U.S. 633, 655–56 (1990) (finding determination by the agency was lawfully made by informal adjudication, governed by federal APA in 5 U.S.C. § 555(e), which does not require findings or reasons to support decision, because courts cannot require an agency to use procedures greater than those required by statute or by due process); *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974) (finding minimum due process requirements for justifying deprivation of prisoner's good time and placement in solitary confinement include a written statement of evidence and reasons, though formal findings are unnecessary); *Morrissey v. Brewer*, 408 U.S. 471, 487 (1972) (finding minimum due process requirements for parole revocation include written statement about evidence relied on and reasons for revocation, although no formal findings are necessary); *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (finding minimum due process requirements for termination of AFDC payments, although not necessitating formal findings, include statement of reasons and evidence relied upon).

Some commentators have questioned, however, whether "findings" requirements are constitutionally required at all and have suggested that due process requires them only in special circumstances. Courts do not make findings in all cases. *See* 1 RICHARD J. PIERCE and KRISTIN E. HICKMAN, ADMINISTRATIVE LAW TREATISE § 8.5 (7th ed. 2026). *But see Cole v. Metro. Council HRA*, 686 N.W.2d 334, 338 (Minn. App. 2004) (noting that, under federal regulations, a recipient of assistance is entitled to a written decision that briefly states the reasons for the determination; although the findings were somewhat vague, they were sufficient to permit meaningful appellate review).

[70] *See Goldberg*, 397 U.S. at 271.

[71] Minn. Stat. § 14.62, subd. 2a (2026).

[72] *Id.* § 14.61, subd. 2.

[73] *See, e.g.*, *id.* §§ 216B.16, subd. 2 (2026) (public utilities commission - gas and electric); 237.075, subd. 2 (2026) (public utilities commission - telephone); *see also Henry v. Minn. Pub. Utils. Comm'n*, 392 N.W.2d 209, 213–14 (Minn. 1986) (finding 10-month time limit on telephone rate decisions of the Minnesota Public Utilities Commission is a limit upon the time within which rates may be suspended and not a temporal limit on the commission's jurisdiction that would operate to divest the commission of jurisdiction over the proceeding upon the expiration of 10 months); *In re Eigenheer*, 453 N.W.2d 349, 354–55 (Minn. App. 1990) (finding Commissioner's order issued after statutory 60 days from hearing was not void where statute is directive and not mandatory).

[74] Minn. Stat. § 14.62, subd. 1 (2026). *In re Findings of Abuse of D.F.C. v. Comm'r. of Health*, 693 N.W.2d 451, 454–55 (Minn. App. 2005) (acknowledging that under normal district court rules, service on the attorney is sufficient; but noting that some human services statutes require service on both the party *and* the attorney and finding it inconsistent to interpret the service required for the commissioner's order differently); *see, e.g.*, Minn Stat. Ch. 256. Hum. Servs. — "If the applicable commissioner or executive board refuses to accept the recommended order from the human services judge, the person involved, the person's attorney or authorized representative, and the agency shall be sent a copy of the recommended order, a detailed explanation of the basis for refusing to accept the recommended order, and the proposed modified order." Minn. Stat. § 256.0451, subd. 23(a) (2026)); *see also Reynolds v. Dep't of Hum. Servs.*, 737 N.W.2d 367 (Minn. App. 2007) (applying rules of civil procedure to informal adjudicative decision, allowing additional three days to the statutory appeal time for

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costs against an unsuccessful contested case litigant in favor of the agency if authorized by statute.[75] Under a statute authorizing an agency to require a licensee to pay "all costs" of the proceeding, disbursements may be taxed against the licensee; attorney fees and investigation costs of the attorney general's office or county may not, however, be taxed.[76] The specific expenses recoverable by a prevailing contested case litigant against the agency are enumerated by statute.[77] They may include filing fees, subpoena fees, mileage, transcript costs, court reporter fees, expert witness fees, the reasonable costs of any study, analysis, engineering report, test, or project, photocopying and printing costs, postage and delivery costs, and service of process fees.[78] Minn. Stat. § 15.472(a) specifically authorizes the court or ALJ to award fees and other expenses to a prevailing party.[79]

14.4 Rehearing and Reconsideration

The Minnesota Administrative Procedure Act (MN APA) provides that a party seeking rehearing or reconsideration must file the request within ten days of the agency's order.[80] The MN APA, however, does not confer a right to rehearing or reconsideration on any party to a contested case. The statutes or rules specific to a particular agency may contain such a right.[81] Specific agency statutes or rules might contain procedural requirements for rehearing and reconsideration that supplement those found in the MN APA.[82] The rules of the Court of Administrative Hearings (CAH) provide that any notice of and order for rehearing must be served on all parties in the same manner

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persons served by the agency by mail). Oftentimes, the commissioner will send courtesy copies of the agency's final decision and order to the parties and the ALJ via electronic dissemination, which normally includes email for the parties and uploading the final decision and order to the Court of Administrative Hearing's ShareFile system. The electronic dissemination is discretionary while formal issuance of the final decision and order is effective only via certified mail, pursuant to Minn. Stat. § 14.62, subd. 1 ("A copy of the decision and order *shall* be served upon each party or the party's representative *and* the administrative law judge *by first class mail*.") (emphasis added).

[75] *See, e.g.*, Minn. Stat. §§ 150A.08, subd. 3a (2026) (costs in dental license actions), 237.075, subd. 10 (2026) (costs in PUC proceeding); *In re Wang*, 441 N.W.2d 488, 495–96 (Minn. 1989). *See generally In re Nw. Bell Tel. Co.*, 374 N.W.2d 758, 761–62 (Minn. App. 1985) (analyzing whether costs claimed by intervenor were or were not allowed by applicable public utility statute); *See also Busse v. Bd. of Cnty. Comm'rs*, 241 N.W.2d 794, 798 (1976) ("The general rule, . . . is that attorney fees will not be granted absent *specific statutory* or contractual authorization therefor.") (emphasis added).

[76] *Wang*, 441 N.W.2d at 495–96.

[77] Minn Stat. § 15.471, subd. 4 (2026).

[78] *Id.*; *Wang*, 441 N.W.2d at 497.

[79] Minn. Stat. § 15.472(a) ("If a prevailing party other than the state, in a civil action or contested case proceeding other than a tort action, brought by or against the state, shows that the position of the state was not substantially justified, the court or administrative law judge *shall* award fees and other expenses to the party unless special circumstances make an award unjust." (emphasis added))

[80] *See* Minn. Stat. § 14.64 (2022). The statute provides If a request for reconsideration is made within ten days after the decision and order of the agency, the 30-day period provided in section 14.63 [for a writ of certiorari for judicial review] shall not begin to run until service of the order finally disposing of the application for reconsideration. *Id.*

See also Nw. Bell Tel. Co., 374 N.W.2d 758, 761 (Minn. App. 1985) (noting that once a request to rehear has been made by at least one party to the proceeding, the 30-day appeal period does not begin to run as to all parties until service of the order disposing of the application).

[81] *See, e.g.*, Minn. R. 7829.3000 (2026) (public utilities commission).

[82] *See, e.g.*, *id.* 7829.3000-.3200; *Henry v. Minn. Pub. Utils. Comm'n*, 392 N.W.2d 209, 214-15 (Minn. 1986) (discussing telephone rate proceeding rehearing requirements).

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prescribed for the original notice and order for hearing.[83] They also provide that the rehearing must be conducted in the same manner as the original hearing.[84]

Although the MN APA provides no right to a rehearing, and accordingly agencies are not required to entertain requests for rehearing, agencies may exercise their discretion to do so.[85] Where through fraud, mistake, or misconception of facts, an agency enters an order, it may, with notice to the parties, correct its order.[86] An agency has the inherent authority to correct its prior decisions.[87] An agency may also reopen its own proceeding on the ground of an implied authority to deal with fraud on the agency resulting from *ex parte* communications with agency decision makers.[88] An agency may exercise its discretion to reconsider a matter on the ground of newly discovered evidence not known at the time of the evidentiary hearing.[89] Rejecting an application for rehearing on such ground will not, however, constitute an abuse of discretion where the proffered evidence is merely cumulative of that already in the record and was in existence at the time of the hearing.[90] The authority of an agency to rehear or reconsider lasts until its jurisdiction is lost on the filing of an appeal from its decision.[91] A rehearing may in some circumstances be summary and not include the taking of additional evidence.[92]

The MN APA provides that an application for rehearing or reconsideration is not a prerequisite to judicial review of a contested case.[93] The Court of Appeals has ruled that it could consider issues not addressed by an unemployment law judge in the initial decision but raised and addressed for the first time on a motion for reconsideration.[94]

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[83] Minn. R. 1400.8300 (2026) (providing that ALJ may permit less than 30 days' notice prior to rehearing).

[84] *Id.*

[85] *Henry*, 392 N.W.2d at 214 (finding Minn. Stat. § 216A.05, subd. 5, authorized MPUC to reopen hearing on own motion to avoid cost of retrying issues); *Plunkett v. First Nat'l Bank of Austin*, 262 Minn. 231, 246 n.6, 115 N.W.2d 235, 245 n.6 (1962) (dictum); *Pfalzgraff v. Comm'r of Econ. Sec.*, 350 N.W.2d 458, 460 (Minn. App. 1984).

[86] *Anchor Cas. Co. v. Bongards Co-op. Creamery Ass'n*, 91 N.W.2d 122, 126 (1958); *see also State ex rel. Turnbladh v. Dist. Court*, 107 N.W.2d 307, 313 (1960); *In re Minn. Pub. Utils. Comm'n*, 417 N.W.2d 274, 281–82 (Minn. App. 1987).

[87] *Minn. Pub. Utils. Comm'n*, 417 N.W.2d at 282; *see also In re Class A License Application of N. Metro Harness, Inc.*, 711 N.W.2d 129, 136 (Minn. App. 2006); *In re Authority to Provide Alt. Operator Servs. in Minn.*, 490 N.W.2d 920, 925 (Minn. App. 1992).

[88] *Minn. Pub. Utils. Comm'n*, 417 N.W.2d at 280-83.

[89] *See Stepan v. Campbell Co.*, 36 N.W.2d 401, 404 (1949).

[90] *Id.*

[91] *Anchor Cas. Co.*, 91 N.W.2d at 126 (finding that case law prior to adoption of ten- day filing requirement by Minn. Stat. § 14.64 allowed a petition to be filed within reasonable time; time within which an appeal could be filed has been said to be reasonable; therefore, request for rehearing or reconsideration under law before § 14.64 was timely as long as time for appeal had not expired; prejudice to other interested parties was also consideration in determining timeliness of application). The agency's authority to amend its decision also expires when the appeal period has ended and no appeal has been filed. *See, e.g., Rowe v. Dep't of Emp't & Econ. Dev't*, 704 N.W.2d 191, 196 (Minn. App. 2005) (finding ULJ lacked authority to amend decision *sua sponte* because the 30-day appeal period had expired and by statute the ULJ's decision became a final decision of the Department if no appeal was filed); *cf. N. Metro Harness*, 711 N.W.2d at 135 (recognizing agency's inherent authority to reopen, rehear, and redetermine a decision if time for appeal has not yet expired).

[92] *See Henry v. Minn. Pub. Utils. Comm'n*, 392 N.W.2d 209, 215 (Minn. 1986).

[93] Minn. Stat. § 14.64 (2026).

[94] *The Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 66-67 (Minn. App. 2008).

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