

# NEWS RELEASE

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## **Office of Performance Evaluations**

### **Idaho Legislature**

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#### **FOR IMMEDIATE RELEASE**

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### **Risk of Bias in Administrative Hearings**

Full report and one-page highlights are available on the OPE website:  
<http://www.legislature.idaho.gov/ope/>

(BOISE)—In a meeting today of the Joint Legislative Oversight Committee, the Office of Performance Evaluations released an evaluation on the risk of real or perceived bias in administrative hearings. Administrative hearings with an impartial decision maker help ensure citizens' constitutional rights for due process when state agencies make decisions, such as driver's license suspension, unemployment determinations, or food stamp violations. Evaluators conclude that overall risk is low because agencies have implemented a variety of safeguards to mitigate bias. Examples of safeguards include having a conflict of interest policy, hearing officer training, and the ability to disqualify a hearing officer without cause. The question put before policymakers is whether the remaining risk is compelling enough to prompt either statewide or agency-specific change.

Administrative hearings are quasi-judicial processes in which agencies may perform the roles of investigator, prosecutor, and judge. Agency heads are responsible to act as the impartial decision maker. They may conduct the hearing or delegate the responsibility to a hearing officer.

Evaluators found that the risk of bias increased when agencies performed multiple administrative roles and conducted hearings because hearing officers, whether contractors or employees, were paid by the agency. Real or perceived risk also increased when an agency head

acted as the hearing officer. Power of the agency is concentrated in the agency head and efforts to separate the agency head do not fully satisfy doubts about the ability to act impartially. In addition, fewer safeguards and levels of agency appeal are available to mitigate risk when the agency head is the hearing officer. Agency heads conducted less than 1% of the total hearings (52,488) in fiscal years 2011–2015 for 15% of the 93 types of decisions that required a hearing.

Of the 93 decisions, evaluators ranked the real or perceived risk of bias as low or moderate in 85%. Evaluators found most agencies had built safeguards into their hearing procedures. Risk was lower for agencies that did not investigate, prosecute, or advocate a position but whose single role was to conduct hearings. Two-thirds of their decisions were considered low risk.

In the evaluators' review of 79 Idaho Supreme Court opinions on appeals from administrative hearings filed January 2010–June 2015, they found only one appellant who made an argument that a violation of due process had occurred as a result of decision maker bias. The appeal rate of administrative hearings to district courts was also low. Of 20,586 hearings in fiscal years 2011–2015, 173 were appealed—less than 1%. However, evaluators said traditional methods for measuring bias were limited and difficult to interpret. Low appeals rates could indicate that parties were generally satisfied with the results or that parties were not fully aware of their appeal rights or were disengaged with the system. Parties may have also lacked resources to continue the appeal process.

Although risk is overall low, there is a level of real or perceived bias present in all administrative hearings. If policymakers decide to take steps to further mitigate the risk, evaluators recommend a range of options including improving communication, strengthening safeguards, or establishing an independent agency to conduct hearings. Whatever steps are taken, evaluators also recommend an interim committee to coordinate policy changes by considering agency-specific nuances in hearing procedures.

**The Office of Performance Evaluations is a nonpartisan, independent office that evaluates whether state government programs and agencies are operating efficiently and cost-effectively and are achieving intended results. OPE conducts all reviews in response to direction from a bipartisan committee of the Legislature—the Joint Legislative Oversight Committee. OPE's reviews are used by the Legislature to make policy and budget decisions and by agencies to improve performance.**