

# Risk of Bias in Administrative Hearings

## Report highlights

February 2016

**A risk of real or perceived bias is present in all administrative hearings. Idaho agencies have implemented a variety of safeguards to mitigate this risk.**

### The issue

Administrative hearings are quasi-judicial processes in which agencies may perform the roles of investigator, prosecutor, and judge.

An unbiased hearing officer ensures citizens' constitutional right for due process.

Idaho has a decentralized hearing system. Proponents of two hearing systems argue:

1. Decentralized systems allow agencies to conduct hearings with subject-matter expertise through authority delegated to them by the Legislature.
2. Centralized systems improve fairness, quality, and efficiency by creating an independent agency to preside over hearings.

### Factors that increase potential bias

The agency performs multiple administrative roles and conducts hearings.

The hearing officer is an agency head, contractor, or employee of an agency with multiple roles.

### Safeguards that mitigate potential bias

Ability to disqualify hearing officers

Judicial review before the courts

Conflict of interest policy

*Ex parte* communications policy

Professional code of ethics

Hearing officer training

Federal review

Organizational, physical, or functional separation of employee hearing officers

*De novo* review by the courts

### Findings

For fiscal years 2011–2015, agencies reported:

**52,488** administrative hearings were for 93 actions (e.g., decisions, rules, or functions agencies use to carry out responsibilities).

**60%** of the hearings were for one action—unemployment determinations.

**Confirmed instances of bias in Idaho Supreme Court opinions were rare.**

**The appeal rate of administrative hearings was less than 1%.**

**The risk of bias was either low or moderate in 85% of the 93 agency actions.**



1. High-risk actions had hearings typically conducted by the agency head.
2. Safeguards and levels of agency appeal, which mitigate risk, were less available for high-risk actions.
3. Even though 15% of actions were high risk, less than 1% of total hearings conducted were for high-risk actions.

### Recommendations

Strengthen safeguards to improve internal practices and give citizens extra assurances of receiving a fair hearing.

Consider whether to implement a centralized hearing system.

Establish an interim committee to coordinate any changes and ensure agency perspectives are well represented.

View the report: [www.legislature.idaho.gov/ope/](http://www.legislature.idaho.gov/ope/)

