

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/opec/

