



Washington State Auditor's Office

Performance Audit

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A Review of Administrative Appeals Processes

Administrative hearing processes are functioning as intended in Washington, but striking the proper balance between implementing agency policy and providing a fair process is challenging

Through administrative appeals, state agencies provide a resolution process for people and businesses to dispute agency decisions. Intended to be more timely, informal and economical than court processes, appeals processes were designed to ensure disputes are decided impartially and fairly, while serving to enforce agency policies. Most administrative appeals cases are resolved without going to court.

State agencies are committed to administering appeals of their decisions in an economical, expedient and impartial manner that also serves to implement agency policy. The state agency appeal and review processes we reviewed for this performance audit are designed to resolve cases impartially. However, some participants find the process difficult to navigate while others believe the process is biased towards agencies.

Through the Administrative Procedures Act (APA), lawmakers intended to provide due process for appeals participants while maintaining the flexibility agencies need to implement policy. Differences of opinion among stakeholders – including legislators, administrative law specialists, state agency managers, hearing officers and other appeals participants – makes striking the right balance difficult. All agree that appeals must be impartial in both fact and appearance, but they disagree on some of the details. Two issues have generated particular controversy:

- Who should have final order authority, and what degree of influence should an agency have on the decision maker, who is usually a hearing officer?
- How should agency views not reflected in its rules (often referred to as “informal guidance”) be considered in a hearing officer’s decisions?

We evaluated agencies representing a balance of appeals types and volumes, as well as agencies that were recommended for review by stakeholders during our planning process. We selected nine appeals processes, conducted by eight agencies:

Appeal process	APA or other	Agencies involved
Insurance-related appeals	APA	Office of the Insurance Commissioner (OIC)
Retirement benefits	APA	Department of Retirement Systems (DRS)
Excise taxes (pre-APA appeal)	Rule 100	Department of Revenue (DOR)
Office of Administrative Hearings (OAH) agency-wide appeals	APA	Office of Administrative Hearings (OAH)
Unemployment insurance benefits	APA	Employment Security Dept (ESD) and OAH
Medicaid benefits	APA	Health Care Authority (HCA) and OAH
Public assistance benefits	APA	Department of Social & Health Services (DSHS) and OAH
Excise taxes (appeal of DOR decision)	APA	Board of Tax Appeals (BTA)
Workers' compensation	Title 51 RCW	Board of Industrial Insurance Appeals (BIIA)

Appeals by the numbers...

100,000 appeals

of state agency decisions in 2014

28 agencies

offer appeals

Based on our analysis, we do not propose an overhaul of appeals processes

To address the controversial issues mentioned above, we recommend amending statute to clarify what sorts of communications with hearing officers are permitted, and the role of informal guidance in administrative decision making. Our recommendations to certain agencies will make it easier for appeals participants to navigate the process, taking into consideration resource availability and the volume and type of appeals. We also identified noteworthy practices both within Washington and in other states that agencies should consider implementing.

Appeals processes vary among states and within Washington

Administrative appeals processes vary among states as well as among agencies within Washington. The most notable difference is whether a final decision is made within a regulating agency or by a different agency or board.

Washington's appeals processes are on the whole similar to those offered in five other states we reviewed, but we also identified some important differences. Like about half the states, Washington uses a central panel agency – the Office of Administrative Hearings – to process a large portion of its appeals. Specific aspects of appeals differ from state to state, however, including the types of cases processed in a central panel and which agency issues a final decision – a regulating agency or a central panel. And importantly, guidelines also differ. For instance, state rules regarding communications with judges vary considerably. One state has developed guidance regarding such communications. And a couple of states have detailed statutes or rules regarding the role of agency views in appeals decisions.

Recommendations

Throughout the report, we identify policy issues and tradeoffs, and discuss the differences of opinion among stakeholders, appeals participants and specialists. We also identify requirements that would benefit from additional clarification through amendments to statute. The Legislature, with input from stakeholders and specialists, is in the best position to accommodate differences of opinion and competing objectives, and thus determine how to proceed. For this reason, our recommendations to amend statute identify elements in need of clarification, but do not offer specific statutory language. To assist the Legislature, we present examples of approaches taken in other states.

To improve perceptions of fairness and hearing officers' impartiality, both within the agencies and among stakeholders, we recommend the Legislature amend the APA and Board of Industrial Appeals statute to clarify what types of communication between management and hearing officers are allowed, and when and in what capacity managers may provide direction regarding a hearing officer's performance

We developed our recommendations to state agencies with the understanding that it would not be practical for all agencies to have similar operating processes. We recommend seven agencies develop internal guidance regarding:

- What types of communication between management and hearing officers are allowed
- When and in what capacity managers may provide direction regarding a hearing officer's performance

We also make recommendations to three state agencies that will help appeals participants navigate through the appeals process.

We hope that this report can inform efforts to deliver appeals that inspire the public trust.

Examples of internal guidance include but are not limited to a code of ethics, a memo, or an administrative policy. We are not making a recommendation regarding internal guidance to the Office of the Insurance Commissioner because they recently adopted such internal guidance. The Department of Revenue's process does not restrict these sorts of communications and their internal guidance reflects this.