**OAH Study**

# Washington State Office of Administrative Hearings

# Fee Structure, Billing Methodology, Productivity, and Organizational Structure Review

**June 2019**

**Stellar** Associates LLC

June 30, 2019

Lorraine Lee, Chief Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Court SW
Olympia, WA 98504

### OAH Fee Structure, Billing Methodology, Productivity, and Organizational Structure Review
### January through June 2019

Dear Ms. Lee:

The Washington State Office of Administrative Hearings (OAH) contracted with Stellar Associates, LLC in late December 2018 to conduct a review of OAH's current fee structure, billing methodology, productivity, and organizational structure, including the research of promising practices and other states' panel adjudicatory agencies, looking for potential improvements to increase efficiency and/or the structure of the agency. We have been responsible for the day-to-day management of the review; conducting the research; reaching the conclusions; developing recommendations; and writing the draft and final reports.

The attached final report represents the review conclusions and recommendations and is based upon a review of agency documentation, processes, and practices; research into other states and other Washington State agencies; staff and stakeholder interviews; staff work sessions; a staff and stakeholder survey; and observations from January through June 2019. We defined our general methodology in the review kick-off that was held on February 1, 2019.

We conducted this review independently and it contains the conclusions and recommendations prepared after completion of the review. Our assessment of OAH is based on our professional experience, judgment, and performance review methodology. It is intended to provide valuable independent insight into how well agency management processes, practices, and activities are performing, identifying corrections that are being made or might be needed, and ensuring business value is realized.

The OAH Fee Structure, Billing, Productivity, and Organizational Structure Review contains 23 conclusions along with 63 recommendations offered as actionable ways to improve the overall agency performance. Please see the executive summary for a brief description of the review conclusions and recommendations. Detailed information about the conclusions and recommendations is contained in the Final Report.

It has been an honor and a pleasure to work with all the agency staff and stakeholders in preparing this report. Please contact us at 360.515.9200 or via email if you have any questions or comments. We will be available for any requested briefings.

Sincerely,

Melanie Roberts, Principal
Stellar Associates, LLC
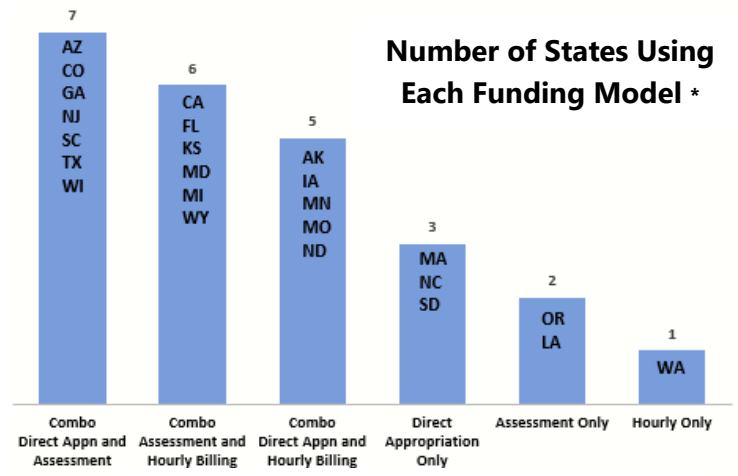
cc:     OAH Executive Management Team
        Cheri Keller, Office of Financial Management
        Bryan Way, Office of Financial Management

| | |
|---|---|
| **Purpose of the Review** | In the 2018 supplemental operating budget, the Washington State Office of Administrative Hearings (OAH) received funding to conduct a review in collaboration with the Office of Financial Management (OFM), of the fee structure, billing methodology, and assumptions about productivity which impact billing and fee structure. The study reviewed promising practices for fees, billing methodology, productivity, and organizational structures and processes that support efficiencies. |

| | |
|---|---|
| **Summary of Review Results** | Prior to OAH's creation, most disputes that a citizen or business had with agencies' decisions were resolved within the decision-making agency. OAH was created in 1981 by the Washington State Legislature as a centralized decision-making agency, or central panel adjudicatory agency, to independently resolve administrative disputes through accessible, fair, prompt processes and issuance of sound decisions. This remains OAH's mission today. |

*OAH can receive caseloads from over 260 different programs, requiring an understanding of a multitude of applicable laws.*

OAH received over 48,000 cases in calendar year (CY) 2018 from 25 different state and local agencies representing 130 different programs. Employment Security Department, Department of Social and Health Services, and the Health Care Authority make up 98% of the OAH caseload. The other 2% is made up of a variety of programs and caseloads from many different agencies. This variation in caseload requires an understanding of the applicable laws and required administrative timelines associated with each agency and individual program.



OAH Cases Received in CY 2018
48,751 total cases
- DSHS 12,535 26%
- HCA 7,127 15%
- All Other Agencies 1,216 2%
- ESD 27,873 57%

Washington State is one of 25 states and one federal district which have a central panel adjudicatory agency (shown in green on the map). Michigan, Maryland, Washington, Oregon, and the District of Columbia all carry caseloads for child support, unemployment insurance, Medicaid, public assistance, and special education (marked in yellow). The other 21 states have a variation of these type of caseloads. Central panel adjudicatory agencies in six states including Washington handle unemployment insurance appeals.

*Twenty-five states and a federal district use a central panel adjudicatory agency approach to appeals.*



States with Central Panel Agencies

States with Similar Programs as WA | States with Panel Agencies

*Only Washington State relies 100% on an hourly rate for funding when compared to the other central panel adjudicatory agencies.*

There are three funding models used for central panel adjudicatory agencies:
- a direct appropriation of general fund or special revenue funds;
- an assessment to referring agencies; or
- an hourly billing to referring agencies.

Almost all states use a combination of funding methods depending on the appeal workload they carry. Sixty percent of states receive a direct appropriation to fund at least part of their operations.

**Number of States Using Each Funding Model** *

| | | | | | |
|---|---|---|---|---|---|
| 7 | | | | | |
| AZ CO GA NJ SC TX WI | | | | | |
| | 6 | | | | |
| | CA FL KS MD MI WY | | | | |
| | | 5 | | | |
| | | AK IA MN MO ND | | | |
| | | | 3 | | |
| | | | MA NC SD | | |
| | | | | 2 | |
| | | | | OR LA | |
| | | | | | 1 |
| | | | | | WA |
| Combo Direct Appn and Assessment | Combo Assessment and Hourly Billing | Combo Direct Appn and Hourly Billing | Direct Appropriation Only | Assessment Only | Hourly Only |

* One state did not report their funding methodology for this review.

*The current rate structure is difficult for staff and stakeholders to understand.*

There is a perception of the lack of impartiality and fairness when referring agencies are billed directly for OAH services. No matter which funding methodology is chosen, states usually require central panel agencies to keep track of hours worked per case, so they can forecast future workloads and meet requirements for state and federal reporting. In Washington, direct general fund appropriations put agencies in competition for limited general fund state resources. A non-appropriated OAH account could strengthen the public's perception of OAH's independence and would provide the flexibility to quickly respond to spikes in workload.

OAH currently uses three cost pools for rates. There is confusion amongst staff and stakeholders on what costs are included in each pool. Opportunities for OAH to improve its fee structure and billing include:
- Determining the appropriate direct costs to charge agencies for adjudication of appeals and the shared indirect or overhead costs.
- Integrating the shared indirect or overhead costs into the hourly rates for the Administrative Law Judge (ALJs) and the legal professional support staff.
- Categorizing the budget so actual expenditures can be tracked against the assumptions in the rates.
- Developing communication and education material to explain what is included in the rate and how costs will be tracked.

The fee structure should also establish rates that would allow OAH to build up a 60-day working capital reserve to cover expenditures from one billing period to the next.

*Staff and leaders wear multiple hats, crossing many skill levels and fields of expertise.*

A lack of resources has been a major barrier to addressing efficiency improvements recommended to OAH from previous reviews. Leaders and staff have an overwhelming set of responsibilities, often outside their areas of expertise. OAH has limited capacity and few resources to fill even some of the most common operational support roles that other similarly sized organizations have authority and budget to fill. Increased and targeted capacity in key roles will benefit OAH overall and improve its ability to meet the varied stakeholder demands.

## RECOMMENDATIONS IN BRIEF

The report provides 63 recommendations, some short-term and others long-term, designed to ensure the agency's success. The recommendations include:
- Increasing capacity and expertise to adequately and effectively manage agency operations.
- Setting rates high enough to generate enough revenues to build up a 60-day working capital reserve.
- Examining the rate structure to ensure the appropriate allocation of direct and indirect or overhead costs and integrating those costs into the fee structure.
- Creating an agency advisory committee to work directly with stakeholders to increase transparency.
- Changing the administrative revolving fund from appropriated to a non-appropriated, but allotted fund.

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## A. INTRODUCTION

**Review Objectives**

In the 2018 supplemental operating budget, the Washington State Office of Administrative Hearings (OAH) received funding to conduct a review in collaboration with the Office of Financial Management (OFM) on the fee structure, billing methodology, and assumptions about productivity which impact billing and fee structure.

The review reviewed promising practices for billing and fee structures as well as organizational structures and processes that support efficiencies. We identified possible improvements regarding fee structure, billing methodology, organizational structure, and productivity assumptions, asking:

1. How well do OAH's business processes and organizational structure:

   a. implement promising practices and meet standards? If underperforming in any areas, why;

   b. meet its statutory and customer requirements; and

   c. ensure consistent business processes, manage workload, and control costs?

2. What improvements could be made to improve quality, increase consistency and performance, respond to changes, and control costs?

3. How well does OAH manage its business relationships and what improvements could be made to their current approach?

**Scope of Review**

The scope of the review was to examine and make recommendations in the following areas:

**Billing Methodology**
- Accuracy and understandability of current billing practices and external reporting
- Time recording and reporting practices and how it ties into billing

**Stakeholder Relationships**
- Information regarding staff and customer perspectives

**Fee Structure**
- Rates to determine if they are:
  - fair & equitable
  - cover costs
  - meet federal requirements
- The suitability of allocation bases, including cost pool composition and billing methods

**Organizational Structure and Productivity Assumptions**
- Assumptions about employee productivity as it relates to billing, fee, and organizational structure.
- Other entities' (other states' central panel agencies and other Washington state agencies) practices for potential "best or promising practices

# Office of Administrative Hearings
## Fee Structure, Billing, Productivity, and Organizational Review

**Review Timeline**    The review was conducted over a six month period in Fiscal Year (FY) 2019.
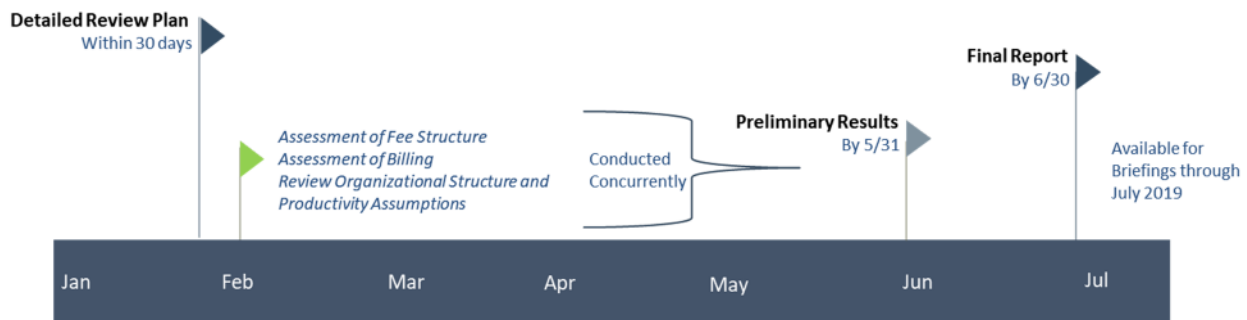


## Background

*OAH was created in 1981.*

OAH is a central panel agency created in 1981 by the Washington State Legislature. Central panel agencies are formed by placing Administrative Law Judges (ALJs) in an independent agency to promote a more objective and efficient adjudication by separating the ALJs from the agencies they serve. This promotes the independent resolution of administrative disputes through accessible, fair, prompt processes and sound decisions. Prior to OAH's creation, administrative disputes were resolved within the regulating agency.

The creation of the office followed a national trend in the 1970s to form separate agencies for administrative adjudication of disputes. The first central panel agency was formed in California in 1945, with a few states following in the mid-1970s, and more states in the following decade. Since then 25 states have established a central panel to provide independent administrative hearings for state and local systems.

*History of OAH in Washington State*

Washington's central panel originated from a special Administrative Law Task Force of the Washington State Bar Association (WSBA) that was formed in 1979 to investigate concerns over the fairness of the administrative hearing processes of state agencies. The task force's review resulted in legislation in 1981 that created OAH. The Legislature provided $120,000 in FY 1982 to hire a Chief Administrative Law Judge who would develop a plan for the organizational and billing structure of the new agency.

Once the plan was approved by the Legislature and the budget for the revolving fund structure was established, additional staff were hired and employees responsible for conducting hearings primarily at the Department of Social and Health Services (DSHS) and Employment Security Department (ESD) were transferred to OAH. They began to conduct hearings in FY 1983. In its first full year, the agency closed 35,372 administrative dispute cases.

***OAH Statute in Washington State***

The purpose of OAH is to be an independent agency responsible for impartial administration of administrative hearings as outlined in RCW 34.12.010. By facilitating the administrative hearing process, OAH allows persons or businesses with disagreements regarding decisions or actions by state and local agencies the right to a hearing. OAH's ALJs independently review cases and make decisions on behalf of the state and local agencies who refer appeals (represented as referring agencies in this report). Following the hearing, the Administrative Law Judge issues a written order deciding whether to affirm, modify, reverse, or dismiss the agency decision.

With the establishment of OAH, the Legislature intended that the new agency would make the hearings process independent and impartial and allow appeals to be more accessible and transparent. As RCW 34.12.010 states, "Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding."

**OAH Current Organizational Structure**

OAH's current Chief Administrative Law Judge Lorraine Lee was appointed by Governor Christine Gregoire in 2009 and to a second five-year term by Governor Jay Inslee in 2015. Since OAH's inception in 1981, five others have filled the role of Chief ALJ.

Currently, OAH employs approximately 100 ALJs and approximately 70 legal professional support and management staff.

In addition to OAH headquarters in Olympia, OAH has four field offices: Olympia, Tacoma, Seattle, and Spokane Valley. The Olympia office houses both headquarters and field staff.

OAH is funded by an appropriated revolving fund which is supported by revenues received through billing the referring agencies. The 2019-21 biennial budget is approximately $45.7 million and assumes an average of 175.1 authorized full-time equivalents (FTEs). The biennial revenue generated by billing the referring agencies is approximately $45.7 million, which is deposited into the revolving fund.

**OAH Strategic Planning**

***Strategic planning is a best practice and requirement for Washington State agencies.***

Since OAH's inception, their strategic planning goals have centered around improving timeliness, creating excellence, and identifying efficiencies. In the 1980's, the goals not only focused on improving timeliness of hearings but also on providing cross training for judges and legal professional support staff. In 1999, the goals again reflected these themes and included performance measures for the various case types.

In FY 2010, the agency strategic plan focused on improving service delivery by:

- Eliminating the backlog of Unemployment Insurance appeals;
- Reducing time to scheduling cases;
- Improving training for new ALJs and legal professional support staff; and
- Reevaluating performance measures.

***Current Vision, Mission, Values, Goals, and Strategies***

The current agency Strategic Plan for 2016-21 includes the following mission, vision, values, goals, and strategies.

**Mission**

We independently resolve administrative disputes through accessible, fair, prompt processes and issue sound decisions.

**Vision**

OAH offers the people of Washington a convenient, easy to navigate system to request and receive fair and impartial hearings on their appeals of government actions. OAH is the preferred neutral forum for Washingtonians to resolve their disputes with state and local government agencies.

**Values**

- Public Service
- Respect
- Integrity
- Communication
- Employees

**Goals**

1. Performance Excellence: We deliver high quality, timely work.
2. Convenience and Accessibility: We make it easy for people to do business with us.
3. Independence and Impartiality: We inspire public confidence in administrative decision making.
4. Proficient and Engaged Employees: We develop skilled and dedicated employees.

**Strategies**

- Quality Work
- Timeliness
- Provide secure electronic access using customer-friendly technology
- Provide equal access to administrative justice for those facing economic and other barriers
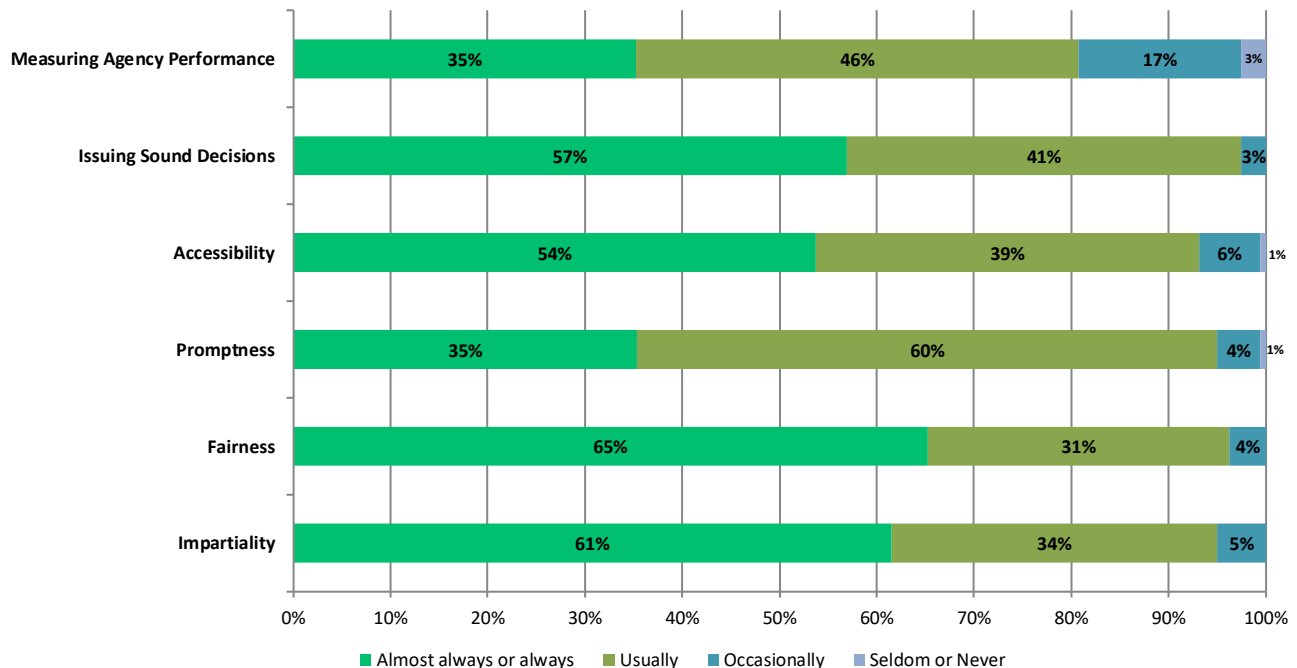
- Improve customer value by enhancing processes and services
- Communicate in plain language
- Establish and maintain high ethical standards
- Support the principals of the Administrative Procedure Act
- Attract and retain exemplary employees
- Foster a culture of innovations, trust, and respect that welcomes feedback and collaboration
- Provide opportunities for employees to learn and grow

**Staff and Stakeholders Share a Common Goal.**

It is clear through the historical focus on these themes and through the interviews with staff and stakeholders that timeliness, excellence, and efficiency are important to everyone involved in the appeals process. OAH staff and stakeholders share a common goal of fairness, promptness, impartiality, and accessibility.

When asked to indicate how well OAH achieves its goals in the recent online survey, the majority of survey respondents said the agency did almost always, always, or usually achieve its goals. In this report, the conclusions reached, and recommendations provided will help provide more support to the agency in further achieving these goals.

**OAH's mission and vision statements highlight impartiality, promptness, and accessibility. How well does OAH do the following:**

| Category | Almost always or always | Usually | Occasionally | Seldom or Never |
|---|---|---|---|---|
| Measuring Agency Performance | 35% | 46% | 17% | 3% |
| Issuing Sound Decisions | 57% | 41% | 3% | |
| Accessibility | 54% | 39% | 6% | 1% |
| Promptness | 35% | 60% | 4% | 1% |
| Fairness | 65% | 31% | 4% | |
| Impartiality | 61% | 34% | 5% | |

*Source: OAH Review staff and stakeholder survey conducted in May 2019. 162 OAH staff and stakeholders answered this question.*

**OAH Workload**

*Types of Appeals Received*

In calendar year 2018, OAH held over 65,000 hearings and other adjudicatory events and closed nearly 50,000 cases. OAH received over 48,000 cases in that same year from 25 different state and local agencies representing 130 different programs. Cases from all 262 different program types are not received each year. Additionally, OAH can receive new caseload requests throughout the year as different agencies, boards, and local governments refer cases for appeal from programs that have not previously been handled by OAH.

Each of these programs requires an understanding of the applicable law and the required administrative hearing timelines associated with that specific agency and that individual program. Not only does the addition of new programs increase the workload of the ALJ who must learn the laws and rules related to each new program, the rest of the agency must support the program from the beginning to the end of the appeal process, including intake, mailing, scheduling, and the development of new processes, templates, and forms.

Historically, the trend has remained consistent with ESD, DSHS, and HCA making up more than 90% of the total number of cases referred to the agency annually. Although these three agencies make up the majority of cases referred to OAH, there are many more agencies who refer cases to OAH in much lower volumes.

Currently, the following agencies make up 98% of the total cases:

- Employment Security Department (ESD)
- Department of Social and Health Services (DSHS)
- Health Care Authority (HCA)

## OAH Cases Received in CY 2018
### 48,751 total cases
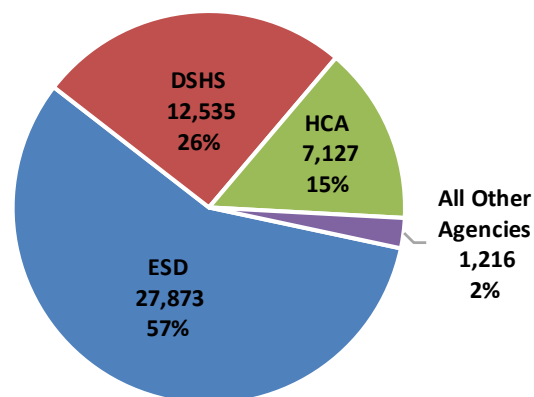


Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed or Received or Closed Between 1/1/2018 and 12/31/2018

The "All Other Agencies" category in the chart above includes OAH cases received from the following agencies:

- Department of Labor and Industries (LNI)
- Liquor and Cannabis Board (LCB)
- Office of the Superintendent of Public Instruction (OSPI)
- Department of Children, Youth, and Families (DCYF)
- Department of Early Learning (DEL)
- Washington State Gambling Commission (WSGC)
- Washington State University (WSU)
- Department of Licensing (DOL)
- Department of Financial Institutions (DFI)
- Office of the Insurance Commissioner (OIC)
- Attorney General's Office (AGO)
- Eastern Washington University (EWU)
- Washington State Patrol (WSP)
- Office of Minority and Women's Business Enterprises (OMWBE)
- Department of Retirement Systems (DRS)
- Washington State Department of Agriculture (WSDA)
- Department of Transportation (DOT)
- Local Governments
- Workforce Training Coordinating and Education Board (WTCEB)
- Washington Student Achievement Council (WSAC)
- Office of Financial Management (OFM)
- Human Rights Commission (HRC)

*The volume of cases coming into OAH spiked to over 70,000 in FY 2010 and FY 2011 and returned to a more normal volume as the economy improved.*

**OAH Appeal Intake**
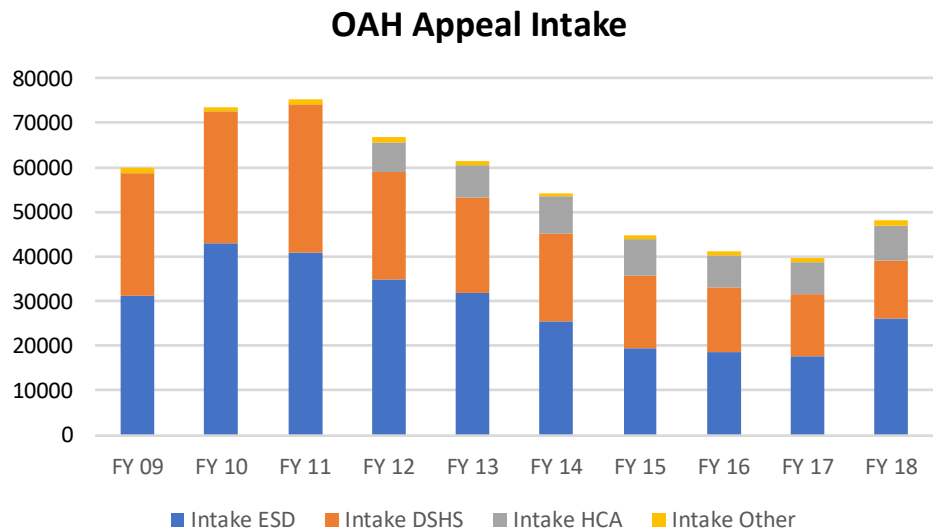


Note: DOT tolling appeals are not included.
*Source: OAH Trend Data as of June 2019*

**Intake vs. Closed - ESD, DSHS, HCA/Other**
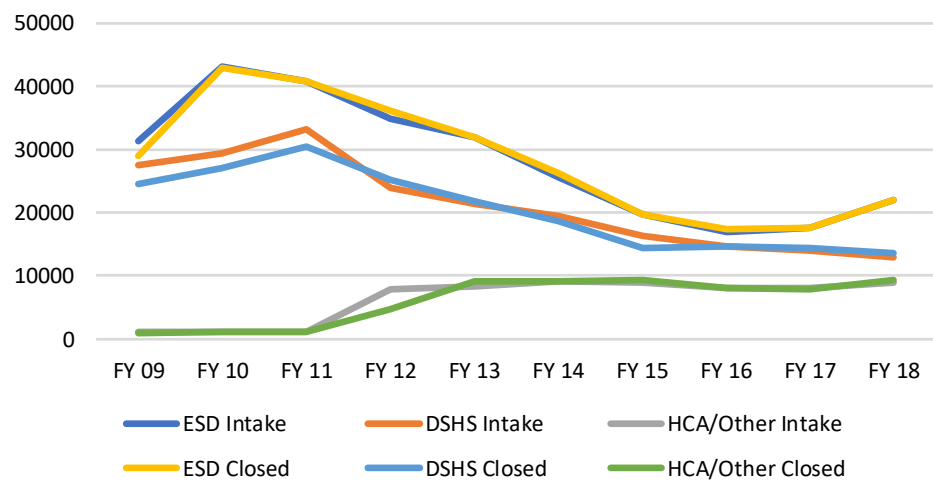


*Source: OAH Trend Data as of June 2019*

***Changes to caseloads and programs have occurred over time.***

OAH has had to remain flexible and nimble in its service to state and local agencies. In 1995, all Utilities and Transportation Commission (UTC) cases were returned to UTC, resulting in a significant loss of referrals, forcing OAH into a staff reduction in force. Other agencies, such as the OMWBE and state universities, moved their administrative hearings back to their agencies for a period of time, only to return to the services of OAH later.

A significant change in caseload occurred during the 2011-2013 biennium with the transfer of the Medicaid program from DSHS to HCA. It became apparent during this transition that the various OAH systems being used at the time were having difficulty tracking these cases between the two agencies. This became the catalyst for OAH to invest in their new central case management system (PRISM).

Other significant changes to the caseload and their associated processes include:

- Tolling cases from the DOT created a new caseload and program (2012).

- Federal Affordable Care Act cases created a new caseload and program (2013).

  o Caseload spiked at OAH due to the Health Benefit Exchange website having a link to appeals without a link for citizens to ask questions. 95% of the cases were dismissed (2013).

- OMWBE caseload returned to OAH (2013).

- Medicaid moved from DSHS to HCA (2013-2015).

- LCB's marijuana licensing program cases created a new caseload and program (2015).

- University of Washington, WSU, and EWU transferred student misconduct and Title IX cases to OAH creating a new caseload and program (2017).

- DCYF was created with a merger of DEL and DSHS Children's Administration (2018).

- Paid Family and Medical Leave Act cases will create a new caseload and program within OAH anticipated to start in late 2019.

- Long Term Services and Supports Trust Program will add a new caseload and program within OAH anticipated to start in FY 2022.

The timeline of OAH's history is depicted on the next page.

## OAH Caseload History

**1980**

OAH is formed

DSHS and ESD hearings employees and processes transfer to OAH

Major caseloads - ESD, DSHS, UTC, LCB, DOL plus 17 other agencies

OSPI becomes a major user of OAH services

HCA is formed, appeals caseload transferred from DSHS

**1990**

ESD and DSHS make up 95% of caseload

40+ agencies use OAH

ESD transitions budget for non-staff related expenditures to OAH

UTC hearings are resumed under UTC

90% of caseload is ESD, DSHS, OSPI, LCB, DOL

**2000**

DEL is formed. DSHS caseload transferred to DEL

The Great Recession - unemployment increases from 5% to 9%+

Recession continues - appeals rise from 42,000 to 72,000

OAH creates specialized caseload unit

WSDOT toll cases added and OMWBE caseload returns

**2010**

DSHS transitions Medicaid to HCA and Affordable Care Act caseload added

LCB marijuana licensing caseload added to OAH DEL delegates "second tier" reviews to OAH

OAH completes moving case data into PRISM

ESD's new Unemployment Insurance system results in caseload surge

OAH resumes university student misconduct and Title IX cases

DCYF forms an in-house board of appeals

95% of caseload is ESD, DSHS, DCYF, HCA, OSPI, LCB, DOL

**2020**

ESD's Paid Family and Medical Leave Benefits begin

Appeals of Long Term Care Benefits will impact OAH

# B. OAH CASELOADS AND PRODUCTIVITY

***Central Panel Adjudication Approach***

Central panel adjudicatory agencies across the country have been the focus of research articles and studies published over the years discussing the evolution of the adjudicatory process and the states' desire for a more transparent, independent, and impartial option for parties.

Across the country and across several decades, scholars have been considering the advantages and disadvantages of the central panel model, some of which are summarized below.

Much of the research for this report also contained comparisons of funding methods and consideration of the role of the ALJ in the central panel adjudicatory agencies. These will be summarized later in this report.

## Advantages and Disadvantages of a Central Panel Adjudication Approach

| Advantages of Central Panels | Disadvantages of Central Panels | Year Published | Study/Article |
|---|---|---|---|
| • More objective and efficient adjudication by separating ALJs from the agencies they serve<br>• ALJs can serve more than one agency without being employed by any of them | • Reduces agency's exclusive control over the administrative and financial aspects of the hearing process<br>• Increases resistance from agencies during the change-over period and over budgetary considerations | 1981 | "Adapting the Central Panel System: A Study of Seven States", Malcolm Rich |
| • Important for citizens to appear before impartial adjudicator who is not controlled by the same agency as the investigator and prosecutor<br>• Provides an independent review of the facts and the law<br>• Reduces the chance of referring agencies violating administrative due process<br>• Establishes uniform hearing process and data collection<br>• Improves efficiency of operation | • Takes time and a collaborative effort to create new agency<br>• Resistance to central panel is common from referring agencies when creating | 2008 | "Louisiana's Division of Administrative Law:  An Independent Administrative Hearings Tribunal", Ann Wise, Louisiana Law Review |
| • Increases efficiency by allowing a centralized organization and management of ALJs<br>• Increases impartiality as administrative law judges are located outside of the referring agencies | • Administrative law judges are meant to be impartial decisionmakers and advancers of agency policy but not meant to be independent<br>• Increases the concern for lack of expertise with the hearing of multiple caseloads types<br>• Increases the potential for question of independence where the ALJ is not the final decision-making authority | 2010 | "Neither Fish nor Fowl: Administrative Judges in the Modern Administrative State", Weaver and Jellum, Windsor Yearbook of Access to Justice |
| • Provides a more neutral and impartial hearing due to the panel hearing officers not being employed by the referring agency which provides a more neutral and impartial hearing<br>• Improves consistency of procedures as the | • Presents challenges to maintaining specialized ALJ caseloads with inconsistent and unstable workload<br>• Increases potential for disparate administrative processes and standards making it difficult to have a unified | 2011 | "A History of Minnesota Administrative Procedure and the Office of Administrative Hearings", Bruce H. Johnson |

| Advantages of Central Panels | Disadvantages of Central Panels | Year Published | Study/Article |
|---|---|---|---|
| • central panels are able to adopt single set of hearing rules | approach and consistent culture when there are significant statutory differences requiring separate caseloads | | |
| • Provides a single mission – adjudication<br>• Guarantees impartiality of ALJs as fact-finders<br>• Improves the quality of hearings and decisions<br>• Provides training to management and ALJs from experienced officials<br>• Reduces costs<br>• Attracts quality individuals due to politically insulated career | • None specifically listed for the central panel itself, but two possible disadvantages regarding final authority:<br> ○ from an accountability perspective, allowing a central panel ALJ to trump the agency on [a policy] issue is problematic; and<br> ○ while generalist decisions are valued over expert decisions, this comes at some cost for expertise in agency decision making | 2014 | "Reforming the Administrative Law of Pennsylvania: Staff Report 2014", Joint State Government Commission: General Assembly of the Commonwealth of Pennsylvania. Journal of the National Association of Administrative Law Judiciary |
| • Provides relaxed rules of procedure which makes it easier for individuals to present their case<br>• Provides predictable processes for citizens with one agency conducting the administrative reviews<br>• Increases community's confidence in the fairness of the hearings<br>• Allows cost savings due to centralization and single enterprise technological solution<br>• Increases efficiency over hearing units that are a part of larger organizations, both in terms of costs and productivity<br>• Provides ALJs with greater job satisfaction | • Increases potential back-log of cases if not resourced correctly<br>• Presents a significant cost to develop standardized case management system<br>• Presents perceptions of loss of objectivity and independence when the director is appointed by the Governor | 2017 | "Administrative Law Reform Report", CMS Bureau of Administrative Hearings |
| • Increases administrative transparency<br>• Improves public perception of fairness<br>• Increases ALJ independence<br>• Advances due process and efficiency<br>• Provides fresh perspective due to variety of cases reviewed<br>• Reduces overall costs due to economy of scale and flexibility<br>• Reduces or eliminates filing fees for the citizens<br>• Increases accountability with ALJs being evaluated annually compared to state court judges | • Reduces power of agencies, potentially making the system less efficient<br>• Impedes agencies in making the final decisions which provides consistency with policy<br>• Increased bias when funding comes from referring agencies<br>• Increases political intervention with political appointments of central panel directors<br>• Presents challenges when there are expectations for a minimum number of hearings | 2019 | "The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices", Malcolm Rich and Alison Goldstein |
| • Increases administrative transparency, perceived fairness and ALJ independence<br>• Improves public trust and positive perceptions of administrative courts<br>• Increases fairness of administrative adjudications by creating separate central panels and prosecutorial powers from adjudicatory powers and closer to Article III judicial proceedings<br>• Decreases the appearance of bias that occurs when ALJs are hired, promoted, supervised, and paid by the agency that appears before them as a party | • Impacts the perception of impartiality when funding comes from referring agencies<br>• Decreases technical expertise when ALJs hear a wide range of cases<br>• Increases concern over unreasonable standards for case quotas and decisional deadlines | 2019 | American Bar Association/National Conference of the Administrative Law Judiciary/Government and Public Sector Lawyers Division, Report to the House of Delegates |

***Other States' Central Panel Adjudicatory Agencies***

Across the United States, no two central panel agencies are exactly alike. They differ in the type and breadth of hearings they conduct, their size, and their funding and fee structure. Central panel agencies rarely have 100% jurisdiction over all administrative hearings.

The types of cases most frequently heard by central panel agencies include licensing, permit or certificate applications, suspensions or revocations, individual benefit claims, disability allowances, and workers compensation. (Malcolm C. Rich, The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices, 2019).

**Frequency of Case Types Heard by Central Panels**
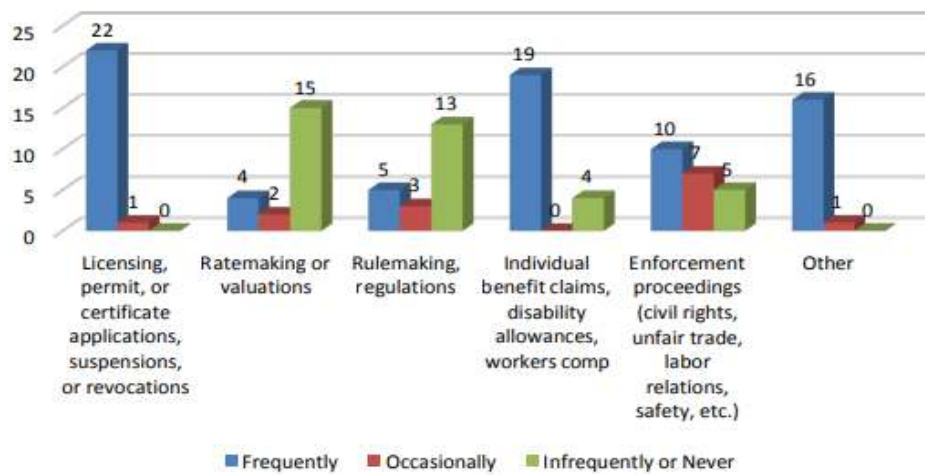


*Source: Malcolm C. Rich, The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices, 2019*

Some states prefer specialized ALJs while other states cross-train their staff to handle a variety of different caseloads. Mediation efforts differ from state to state in how those efforts are utilized, what cases receive mediation, and to the extent mediation services are offered and provided to appellants and referring agencies.

A comparison of the states' panel agency structure, caseload, and funding model is included in Appendix 1. A summary of the states who provided data and the types of caseloads they handle is shown on the next page. This review did not evaluate the cost per case or cost per hearing due to the wide variations in the types of caseload across states.

## Central Panel Adjudicatory Agency State Comparison

| State | Child Support | Unemployment Insurance | Medicaid | Public Assistance | Special Education | Approximate Number of Referring Agencies | Number of Cases Received FY or CY 2018 |
|---|---|---|---|---|---|---|---|
| Michigan | x | x | x | x | x | 20+ | 80,000 |
| Washington | x | x | x | x | x | 36 | 48,751 |
| Georgia | x | | x | x | x | 40 | 47,501 |
| Maryland | x | x | x | x | x | 30 | 40,984 (2016) |
| Texas | x | | | | x | 57 | 34,169 |
| District of Columbia | x | x | x | x | x | 40 | 30,186 |
| Oregon | x | x | x | x | x | 60 | 23,650 |
| Wisconsin | | | x | x | x | 15 | 21,312 |
| New Jersey | | | | x | x | 50 | 18,618 |
| California | x | | | | x | 1600 | 14,483 |
| Massachusetts | | | | | x | 20 | 12,381 |
| Colorado | | | x | x | | 10 | 12,100 |
| Iowa | x | | x | x | | 75 | 10,971 |
| Minnesota | | | | | x | Any state or local agency can refer | 10,720 |
| Louisiana | x | | x | x | x | 17 | 10,703 |
| North Carolina | x | | x | x | x | All but two of the state agencies | 8,382 |
| Tennessee | | | | | x | 60 | 8,124 |
| South Carolina | | x | x | x | | 30+ | 7,206 |
| Florida | x | | x | | x | 31 | 6,393 |
| Arizona | x | | x | | x | 50 | 5,798 |
| Kansas | | | x | x | x | 40 | 3,575 |
| Missouri | | | | | x | 16 | 1,679 |
| Wyoming | | | x | x | | 20+ | 1,446 |
| Alaska | x | | x | x | | 12+ | 1,339 |
| North Dakota | | | x | x | x | 85 | 646 |
| South Dakota | x | | x | x | | 20 | 262 |

***How does Washington OAH compare to other states' panel agencies?***

The approximate number of referring agencies provided in the table on the previous page does not reflect that each referring agency is likely to have multiple programs.

Washington State is one of 25 states and one federal district which have a central panel adjudicatory agency (shown in green on the map). Michigan, Maryland, Washington, Oregon, and the District of Columbia all carry caseloads for child support, unemployment insurance, Medicaid, public assistance, and special education (marked in yellow). The other 21 states have a variation of these type of caseloads. Central panel adjudicatory agencies in six states including Washington handle unemployment insurance appeals.



States with Central Panel Agencies
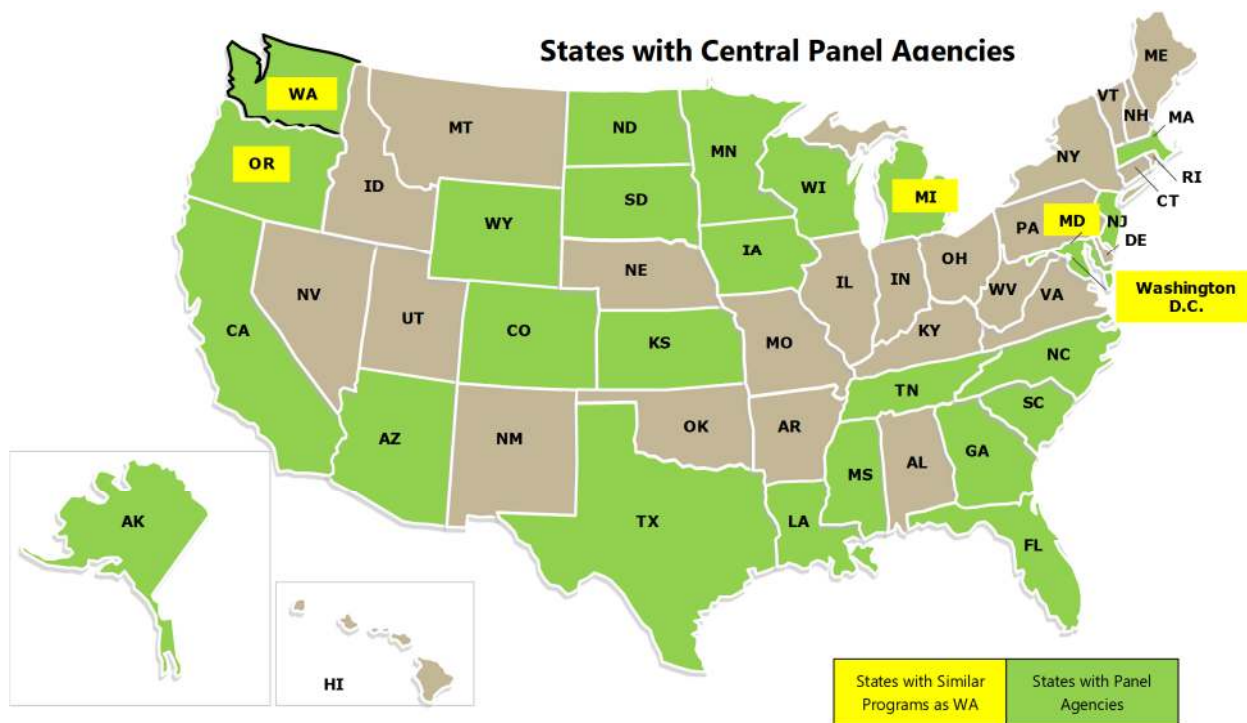
***Interpretations vary of the definition of a "case".***

The kind and complexity of cases handled across each of the central panel agencies varies. The different case types include (Wallace, 2018):

- Regulatory cases: This area involves challenging a rule or policy created by the agency. Business owners as well as interested members of the public may have a conflict with a regulation created by a governmental agency.

- Entitlement cases: Public benefits are governed by administrative law. If benefits are denied and appealed, an administrative court reviews the case to determine whether the denial was justified.

- Enforcement cases: When an individual or entity has violated an agency's regulation, the agency can bring a case against them in an administrative court.

***Workload impact varies across cases and caseloads.***

Similarly, the workload associated with each of the cases received varies widely. The case counts shown in the table on the page 14 do not reflect that each case follows a unique path, which could include anything from default to withdrawal to settlement at a preconference hearing to multiple hearings.

Some hearings are held in person and take multiple days to complete; however, most hearings can be handled very quickly over the phone. In Washington's OAH, 97% of all hearings are handled using teleconferencing.

**Participation Type for 65,157 Hearings Held in CY 2018**

By WebEx 53%
By Phone 44%
In Person 3%
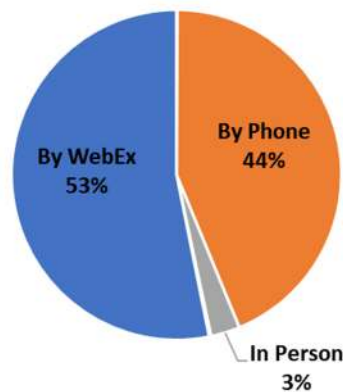
*Source: OAH Hearings Report June 2019*

***Final authority varies across programs.***

Since the inception of administrative hearings offices, state and local government agencies have had varied approaches to who has the final decision authority. Final authority could rest with:

- an agency's own administrative review process (either through a formal legislative exemption or an informal exemption);
- the central panel agency for only the initial decision; or
- the central panel agency for the entire administrative process and final decision.

In Washington State, OAH holds final order authority in a minority of programs. This varies across programs within some caseloads, using a mix of initial versus final authority, depending on the program.

**Initial vs. Final Order Authority**
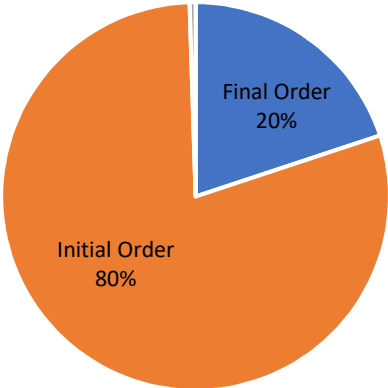


*Source: OAH Performance Timelines CY2018*

A separation of final authority from the agency with a stake in the outcome has driven a longstanding perception among some stakeholders that a central panel agency helps appeals be fairer and more impartial. Others argue that granting final authority outside of the referring agency could create inconsistencies between the agencies' articulated policies and the results achieved contested litigation, adversely affecting the agency's enforcement of its statutory mandate. (Flanagan, 2002)

An inventory of the current agencies and programs with the delegation of authority for each program along with calendar year 2018 cases received and closed cases is included in Appendix 2.

**Conclusion #1: Appellants' needs vary across caseloads.**

OAH reports that administrative appellants usually do not have formal legal representation and are less likely than their often-represented adversaries to understand the procedures, laws, and implications of their engagement before, during, and after a hearing. These appellants are likely to require more explanation and support during the process.

In addition, on January 1, 2018, OAH adopted new Washington Administrative Code (WAC) section 10-24-10, Accommodation. The goals of the newly adopted WAC include:

- to establish a referral process for self-represented (pro se) appellants with disabilities to the OAH Americans with Disabilities Act (ADA) coordinator;
- to establish a network to assist such pro se parties in accessing OAH's proceedings; and.
- to establish a training program to enable such assistance.

Providing teleconference access to appellants can help minimize time away from work and travel costs. Some states' panel adjudicatory agencies provide appellants with electronic access to their case records and status. OAH intends to implement a portal for this type of information, but timeframes are unconfirmed at this time. As OAH makes this transition, it will be important for them to revamp their notices to appellants in plain talk and to take advantage of electronic transmission of notices either via email or text.

**Recommendations**

The following recommendations are offered to improve program outcomes and address current issues:

1.1    Improve notice of hearing and written orders for appellant use by ensuring they are written in plain language and available in a variety of formats.

1.2    Complete the business and technical requirements for an appellant portal to allow the appellant easy access to the status of appeals, hearing notifications, and other relevant case information.

**Conclusion #2:
There is opportunity to increase consistency in rules and/or processes across referring agencies and caseloads.**

All of the hearings that OAH holds are governed by the state's Administrative Procedure Act (APA) (Chapter 34.05 RCW), which was first enacted in 1988. One of the objectives of the APA was to standardize the appeals processes. As a result, OAH has adopted the Model Rules of Procedure. Each state agency is expected to "adopt as much of the model rules as is reasonable under its circumstances." However, most agencies with large appeals caseloads have also adopted further rules governing the appeals process.

While the framers of the APA hoped to standardize agency processes, they also offered agencies flexibility in how they conduct appeals. For example, the APA offers agencies several choices, including whether to use in-house hearing officers or those at OAH, and whether OAH ALJs may issue both initial and final decisions. While adopting the Model Rules is encouraged, each agency may adopt rules outlining procedures in greater detail than – *or even contrary to* – the Model Rules.

***Despite Model Rules, policies and procedures vary.***

In Washington State, several agencies manage their own administrative adjudications outside OAH's jurisdiction. These include:

- Department of Revenue;
- Department of Retirement Systems;
- Department of Health;
- Labor and Industries;
- Washington Utilities and Transportation Commission;
- Department of Licensing;
- Department of Commerce;
- Department of Corrections; and
- Department of Ecology.

While APA appeals generally conform to the same overarching model, adjudicative proceedings and processes vary from agency to agency. Some examples include:

- an agency incorporates by reference WAC 10-08 (the Model Rules), for example in the Employment Security Department;
- an agency incorporates by reference WAC 10-08, but in some programs, there are very specific procedural rules, for example in the Department of Labor and Industries;
- an agency has its own specific and extensive procedural rules, for example the Health Care Authority and the Department of Social and Health Services; and

- an agency's rules are silent on adjudicative proceedings, for example the Human Rights Commission.

In the last calendar year, OAH processed administrative appeals requests for 25 state and local government agencies covering more than 130 different government programs. These agencies are grouped into two categories below: (1) agencies that use the Model Rules with few agency-specific procedural rules, and (2) agencies that have their own procedural rules, which OAH applies when holding hearings for them.

Group 1

- Employment Security Department
- Department of Labor and Industries
- Office of the Superintendent of Public Instruction
- Liquor and Cannabis Board
- Department of Licensing
- Office of Minority and Women's Business Enterprises
- Office of the Insurance Commissioner
- Executive Ethics Board

Group 2

- Department of Social and Health Services
- Health Care Authority
- Department of Children, Youth, and Families
- Washington State Patrol
- Gambling Commission
- Department of Agriculture
- Department of Transportation
- Human Rights Commission

*"Standardize all rules and procedures utilized by the central panel system from the beginning, rather than adopting existing fractured rules and procedures from the agencies."*

*Malcolm Rich*

Two of the advantages of creating a central panel are the opportunity for consistency and the opportunity for efficiencies. With so many agencies, programs, cases, and citizens to support, there is an elevated level of procedural complexity for those within OAH. At the same time, those external to OAH may find it challenging to gain insight, through consolidated data, to information about citizen access to justice.

When OAH was first formed, ALJs and staff who were brought into the organization continued to support their specific agencies and caseloads. However, over time, the agencies and programs supported have grown exponentially. While many ALJs continue to concentrate on specific case types, some support a wide variety of cases, particularly the specialized caseloads. The hoped-for advantage of centralization eliminating

unproductive downtime for ALJs on specialized caseloads has been realized.

The staff and processes supporting the ALJs have a great opportunity to leverage efficiencies with greater consistencies across caseloads. However, many of the possible 262 programs supported still have the flexibility to create unique rules and processes.

*There may be opportunities to improve performance measurement consistency across caseloads.*

OAH staff and leadership take great pride in their work and are committed to providing excellent customer service to appellants and to performing well against the metrics established by federal and state regulators. Referring agencies need to comply with regulations and rely on OAH to comply as well. For example, the United States Department of Labor requires that OAH complete 60% of Unemployment Insurance cases within 30 days, HCA has established timelines regarding cases involving Medicaid, and DSHS has federal requirements for cases involving Public Assistance (PA) (e.g. food benefits).

Sometimes; however, referring agencies have expectations for OAH that go beyond compliance. In some cases, OAH establishes its own internal timeframes. For instance, a complicated prehearing conference, or a non-dispositive motion hearing where the Division Chief ALJ can flex the deadline, based on circumstances and complexity. This flexibility to change an internal deadline has resulted in labor-intensive processes and activities that are the consequence of unique rules and/or requests related to individual program caseloads.

- As a first step to addressing this issue, OAH should work with internal and external stakeholders to develop uniform timeframes for cases that are not already mandated by state or federal statute. Currently, OAH ALJs and support staff must understand and manage to performance timelines per case type that range from 5 business days to 120 days from time of appeal filing or receipt until the close of the hearing record. In addition, there are number of other performance timelines associated with orders and motions that occur throughout the appeal process.
  - o Standardizing timeframes where possible may require a rule change for agencies; however, this will assist OAH and agencies to more efficiently manage caseloads and Washington citizens to more easily understand and navigate the process to assert their rights and meaningfully engage in the process.
- Some Washington entities, such as the Washington State Board of Tax Appeals, Thurston County Superior Court, and the State Court of Appeals, among others, have already put e-filing in place. OAH has

been working to transition the labor and resource intensive paper-based workloads and workflows to paperless processes. While a few agencies are sending and receiving data electronically with OAH, other agencies' rules or processes require paper. These agencies may need to update their rules or processes to allow OAH to complete its paperless objective.

- OAH does not have a standardized set of reports and invoices available. Instead, one referring agency may request a customized report with only high-level information, another program may request a customized report with a sub-set of detailed data, and a third program may request a detailed report with a different subset. One agency requested that their data be formatted in a PowerPoint presentation. All of the requests mentioned were filled. Each month, OAH staff manually customize invoices and reports per these specialized requests. As an alternative, agencies could be given the option of four or five standardized reports and/or their complete data set to leverage as they wish. (See Recommendation #21.1.)

There is opportunity for referring agencies to learn about the impacts of their unique rules and/or requests on OAH efficiency. In the Stakeholder Management section of this document, the formation of an advisory committee is recommended. (See Recommendation #18.1.) The advisory committee would be an excellent venue for working together to standardize timeframes, partner to complete the paperless initiative, and standardize reporting.

**Recommendations**

The following recommendations are offered to improve program outcomes and address current issues:

2.1 Work with the advisory committee to develop uniform timeframes for case management when they are not mandated by state or federal statute. This may require rule changes but will assist OAH and agencies to more efficiently manage caseloads, and citizens to better understand and navigate the process. (See Recommendation #18.1.)

2.2 Identify and complete the remaining activities and resources necessary to achieve OAH's electronic case records (ECR) project.

2.3 Work with referring agencies to leverage efficiencies in currently available options for accessing data through Border Services and/or the Referring Agency Portal, allowing agencies self-service access to the status of appeals, hearing notifications, and other relevant case information.

2.4     Work with stakeholders to continue the efforts for e-filing of appeals.

**Conclusion #3: There are many opportunities to increase organization-wide process consistency at OAH.**

Internal processes vary across OAH offices and there are few standardized manuals. Currently each office acts autonomously and each has created its own localized desk manuals, capturing local processes and procedures. Many of these tasks are completed enterprise-wide; however, the differences in process poses challenges for intra-agency collaboration.

Without organization-wide processes, there is no formal new employee orientation or organization-wide training program in place. Each new hire is individually mentored and trained by their supervisor. This creates a burden for supervisors and results in wide variability in each onboarding experience.

When turnover rate is low, the organizational burden of individualized training is also low. The average for the Executive Branch agencies over the past five years has been slightly under or around 10% (Washington Office of Financial Management, 2018). OAH has been slightly higher than that during four of the last six years. For OAH, the cumulative turnover for the past six years is 64.5%.

| Year | Employee Count | Annual Turnover | Turnover Rate |
|---|---|---|---|
| 2013 | 195.7 | 27 | 13.80% |
| 2014 | 192.5 | 20 | 10.39% |
| 2015 | 175.3 | 20 | 11.41% |
| 2016 | 168.4 | 22 | 13.06% |
| 2017 | 174.3 | 16 | 9.18% |
| 2018 | 183.1 | 13 | 7.10% |
| 6 Year Total | | 118 | 64.45% |

*Note: While turnover percentages capture employees leaving state service, some employees leave their current positions to move to another agency or another position. This is not reflected in the turnover data shown in the above table.*

*"There has been a change in [one] Senior ALJ 4 times in the last 3 years or so. Continuity would help. The turnover is due to burnout at the management level."*

*2019 Review Survey*

Fifty-two of the 118 were ALJs across all levels of the organization. Thirty-six of these 52 were Line ALJs, placing a heavy training and mentoring burden primarily on the Senior ALJs.

Improvements have been made in ALJ training in recent years to ensure there are supported opportunities for continuing legal education (CLE) credits. Although direct billing is reduced when ALJs attend training, out-of-pocket training costs are avoided as much as possible. OAH creatively opts for recruiting existing ALJ staff to provide training to co-workers or inviting professionals to share information on relevant topics.

The onboarding demands for legal professional support staff have been consistent with that of the Line ALJs. In the past six years, 36 legal professional support staff positions have turned over. In work sessions, legal professional support staff shared their belief that there is little

opportunity for growth or advancement at OAH. High turnover results in constant onboarding, which leads to supervisors spending less time with staff and performing other operational duties.

Developing standardized training materials will rely on standardizing processes across the organization. During the work sessions for this review, staff were asked their hopes and fears for this review. Every session elicited the same response. Staff hope the review results in more consistent processes and increased efficiencies. Some of the specific opportunities mentioned included standardizing:

*"Standardize scheduling for the state. Currently each OAH office schedules only for their area."*

*2019 Review Survey*

- the tools and processes used for scheduling;
- use of WebEx for hearings;
- the use of templates;
- mail distribution;
- reserving hearing rooms;
- training materials and delivery;
- coordination of interpreters;
- communication of policy and process changes;
- adoption of paperless processes; and
- equipment provided (copiers, etc.)

When survey respondents were asked what tools, technology, and/or resources are missing, 60% or 96 of the respondents said, "increase the consistent use of templates, checklists, and other tools." 45% or 73 respondents said, "automate notifications of hearings and send automatic reminders via text or email."

In order to accomplish standardization, OAH should remove the silos between offices and create a position whose primary focus is to work with the Division Chief ALJs and Legal Administrative Managers across all offices to standardize processes, procedures, templates, and forms. (See Recommendation #15.1.)

OAH has accomplished major information technology advancements in the last several years. To make the best use of the consolidated case management system, standardized processes and training need to be put in place to ensure data integrity does not get degraded due to lack of knowledge of the system.

**Recommendations**

The following recommendations are offered to improve program outcomes and address current issues:

3.1     Standardize training materials and create a training program to ensure staff understand what is expected of them for consistent

use of technologies and processes, such as WebEx for hearings or Outlook for scheduling. Requiring use of tools that are already in place will quickly improve efficiencies within the organization. (See Conclusion #16.)

3.2 Establish a position, similar to a Court Administrator, whose primary focus is to work with the Division Chief ALJs and Legal Administrative Managers to standardize processes, procedures, templates, and forms. (See Recommendation #15.1.)

3.3 Standardize organizational policies and processes and use a collaboration tool (similar to SharePoint) when teams are collaborating on initiatives and developing operational documents.

3.4 Provide electronic access to all case-related information and standardize the use of existing tools and systems (such as PRISM and NTMS).

**Conclusion #4: OAH staff are passionate about the agency mission and take pride in doing meaningful work, particularly valuing their role of independence.**

In Washington's OAH, the value of impartiality and independence is felt strongly across the organization. OAH staff consistently articulate the importance of their role in providing access to a fair and impartial process for Washingtonians. When surveyed about their mission, all respondents felt strongly about their work.

**I believe in the work that we do.**



Often 19%

Always 81%
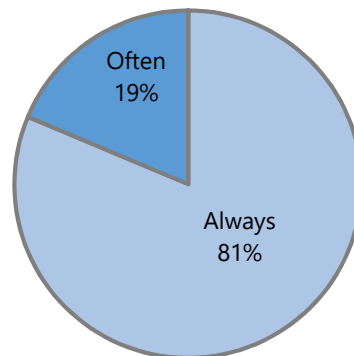
*Source: OAH Review staff and stakeholder survey held in May 2019. 134 OAH staff answered this question. There were no responses of sometimes, seldom, or never..*

*Central panel agencies believe building public trust has been the greatest advantage of their organizations.*

This sentiment is shared across all central panel agencies. The central panel directors surveyed by Malcolm Rich cited multiple benefits of central panels, but the most common was improvements in public trust or perceived impartiality of the administrative courts. (Malcolm C. Rich, The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices, 2019). This improvement was illustrated by all the central panel responses (table on next page), but especially by a comment from one central panel director:

> "Of paramount importance is the trust that has built up with the public that citizens will receive a fair and impartial hearing forum. There is no doubt that those persons who participate in administrative litigation through our central panel feel that regardless of the outcome, they have been given a fair hearing by an agency that is independent. This is reflected in our annually accumulated post hearing surveys. Without exception, over the last 20 years the number of participants rating the process as good to excellent have exceeded 90%."

What, if anything, has proven to be beneficial about central panels?
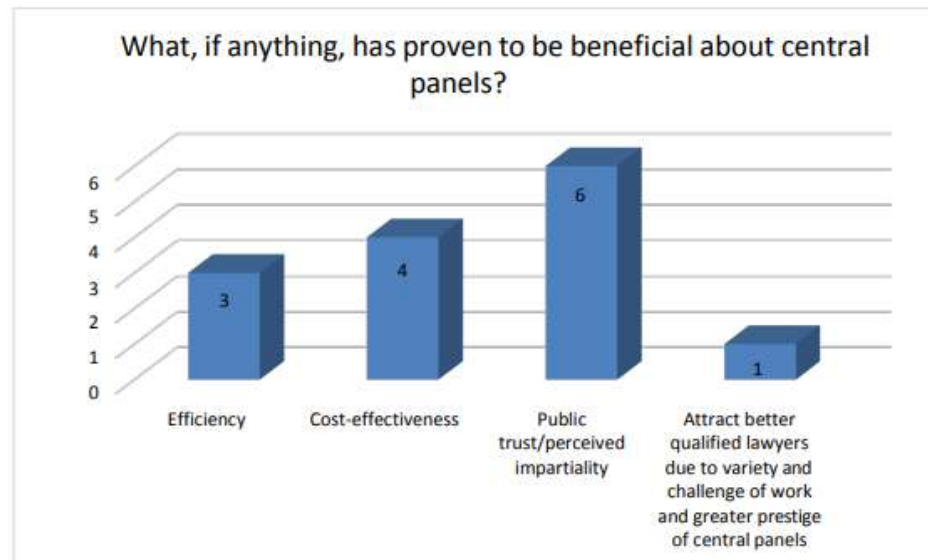
*Source: Malcolm C. Rich, The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices, 2019 indicating the number of panel agency survey responses*

**Conclusion #5: Morale varies across the offices and within offices.**

Considering the many variables described above, it would reason that the experiences of OAH staff are variable as well. While the survey responses exposed uniformity in belief in the mission of the organization, how that mission translates to the work and the environment is not consistent across caseloads, locations, or roles.

During interviews and work sessions, staff shared that there is often a lack of information about why decisions or changes are being made. One person interviewed explained that when a suggestion is submitted, it is unclear what happens next. Sometimes it appears as if nothing happens. Other times a change is implemented, but it is different from the requested/suggested action and it is unclear what influenced the change.

One survey respondent said that the biggest challenge with agency communication is, "Disseminating information regarding decision-making and gathering information for use in decisions. Hierarchical management style leads to decisions feeling arbitrary because their basis isn't known. Employees feel that their feedback is ignored or not passed on to those making the decisions."

Communicating change in the organization is most often done through email, but the frequency and depth of information is inconsistent. Communications often leave out the 'why'.

Author Simon Sinek suggests that everyone in an organization knows 'what' it is that they do. Some know 'how' they do it. But, very few know 'why' they do what it is that they do. This concept is not to be made overly complicated, as depicted by the Golden Circle. (Sinek, 2011)

*"Every company, organization or group with the ability to inspire starts with a person or small group of people who were inspired to do something bigger than themselves."*

**Simon Sinek**
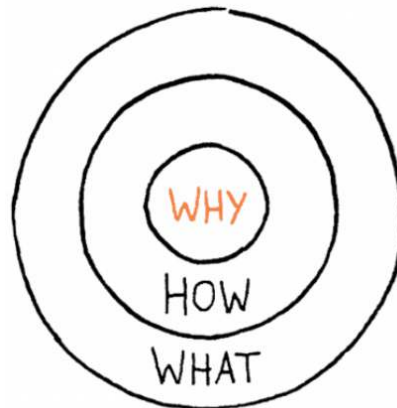


*Source: Simon Sinek, Start with Why: How Great Leaders Inspire Everyone to Take Action, 2011*

Sinek argues that the 'why' may be the most important message that an organization or individual can communicate, as this is what inspires others to action. Successfully articulating the 'why' is a very impactful way to communicate with others, define your particular value proposition and

inspire them to act. Sinek's theory is that communicating the 'why' taps into the part of the listener's brain that influences behavior. This is why the Golden Circle is considered such an influential theory of leadership.

With so many variables in the 'what' and a lack of understanding of the 'why', it may not be surprising then that OAH staff are also largely unclear about how their performance is measured.

**What improvements could be made in how productivity and performance is measured for OAH as a whole?**



*Source: OAH Review staff and stakeholder survey held in May 2019. 70 OAH staff answered this question.*

**Recommendation**     The following recommendation is offered to improve program outcomes and address current issues:

    5.1    Ensure adequate subject matter expertise is leveraged prior to decision making and that the rationale behind decisions is documented and communicated. (See Recommendation #9.1.)

**Conclusion #6: Measurement of performance varies across the offices.**

The survey responses largely mirrored the feedback gathered earlier during interviews and work sessions. There is strong desire for more standardized, defined, and clearly communicated performance measures. Most staff shared that it has been at least a year since their last performance review. Some staff shared that they do not have defined performance criteria. Other staff shared that there is an appearance that performance measures vary for different staff, even when filling the same role.

The "2007 Washington State Office of Administrative Hearings Full Examination Feedback Report" developed by the Washington State Quality Award office cited six significant opportunities, concerns, or vulnerabilities. (Washington State Quality Award Board of Examiners, 2007). Three of the 2007 significant opportunities are related to processes around performance measures:

- "There is little evidence of a systemic approach for measurement and analysis of organizational performance. There is no evidence of a systematic approach for obtaining comparative and competitive information and segmentation for customer and employee data leading to actionable information… Similarly, it is not clear that OAH aligns its key approaches and processes to achieve a systems perspective.

- Although OAH identifies the GMAP (Government Management Accountability and Performance) process and SWOT (strengths, weaknesses, opportunities, and threats) analysis as the primary vehicles for assessing organizational performance, identifying gaps, and responding to changing needs and requirements, there is little evidence to indicate these are systematic processes (i.e. inputs, outputs, steps defined, etc.), these processes are deployed across the organization, or that they are effectively used for improving performance and organizational learning.

- Differing methods for assessing workforce enrichment and development across the workforce groups and segments are not evident. Measurement of effectiveness for current organizational approach are based on global performance measures and not measurement of specific interventions, programs, or services… When describing educational support, OAH referred to financial constraints several times; however,

it is not clear what impact financial constraints might have had on results or approach to workforce engagement and development. Employee and customer satisfaction might be improved by having a comprehensive method to assess the effectiveness of engagement activities."

There is still much opportunity for OAH to improve its rigor in these areas. The focus of the organization's management team is solidly placed on serving the needs of the appellants and meeting the statutory timelines established for each caseload; however, there are multiple internal process improvements that could be made to make that goal easier.

*The internal case quality review (CQR) process used at OAH is a strength.*

One area of performance process strength at OAH is the internal case quality review (CQR) process for ALJ performance on cases. The CQR program was created in 1999 for non-Employment Security (ESD) Unemployment Insurance (UI) cases. Prior to 1999 only ESD UI cases were reviewed per the requirement of the federal Department of Labor (USDOL). Through a well-defined and documented process, cases are randomly reviewed and scored.

A quarterly report is prepared which summarizes the results of the reviews. Part of the review includes a review of user feedback comments. It is a good example of what OAH is capable of and could be expanded beyond its focus of ALJ performance on cases. Staff did express concerns about the drivers of this process and the implications. Communicating the purpose of CQRs will help alleviate staff anxiety.

Another area of performance relates to individual performance development plans for employees. Establishing performance criteria and reviewing progress towards employee goals helps both the employer and employee build on the employee's strengths and identify areas for improvement. Aligning employee performance with the organization's mission results in a more engaged workforce.

Identified performance measures ensure that both the supervisor and employee are aware of work that is considered "acceptable performance." Because of the active involvement of both the supervisor and the employee in performance review process, an important channel of two-way communication is opened. Communication can result in increased cooperation and understanding between supervisors and employees, which in turn can enhance work performance and work environment thus providing better customer service to the external stakeholders and each other.

The most effective performance measures align to the level of responsibility within an organization. (See chart on next page.)

> **Performance Measures: Are a description of an agency's and staff's work and results. They tell a story about whether desired objectives are achieved and progress is being made towards goals.**

➢ The most effective measures align to the level of responsibility with an organization. The best method to achieve performance measures is to create a "Cascade or Waterfall" method to identify measures and to track and report data.

➢ Cascading measures create a logical, uniform, quantifiable process of focusing on the most relevant measures to analyze performance at the appropriate level. Generally, what gets measured gets done.
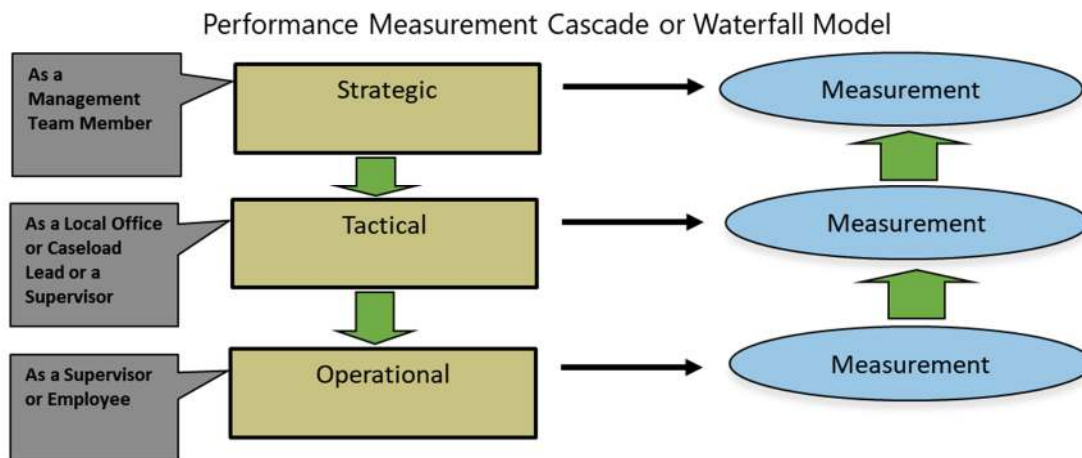
**Performance Measurement Cascade or Waterfall Model**

| As a Management Team Member | Strategic | → | Measurement |
| As a Local Office or Caseload Lead or a Supervisor | Tactical | → | Measurement |
| As a Supervisor or Employee | Operational | → | Measurement |

**Recommendations**     The following recommendations are offered to improve program outcomes and address current issues:

6.1     Reconfirm or establish and communicate performance measures and catch up on performance reviews.

6.2     Establish, monitor, and report on performance measures at the strategic, tactical, and operational level to increase performance and accountability.

**Conclusion #7: There is a lack of clearly defined roles, responsibilities, and performance measures.**

One of the first steps in measuring performance is to ensure roles, responsibilities, and expectations are clearly defined. (See more about this in the Organizational Structure section of this document.)

An advantage of clearly defined roles, responsibilities, and performance measures will be the opportunity for clarity on the expectation, acceptance, and/or importance of time logged in the time management system as "Essential Office Time" or EOT.

Many staff expressed concerns about such detailed tracking of time and its implications. The two primary concerns were:

*"It makes employees feel like they aren't being trusted to get work done..."*

*2019 Review Survey*

- The ability for a referring agency to interfere with the independence of the process should they attempt to alter the work necessary to complete the process independently; and

- Confusion about whether or not EOT is acceptable (implicitly and explicitly) and if there might be punitive response to too much EOT time.

Staff shared that the primary (if not singular) measurement for success is the number of hours charged to cases. They avoid entering EOT time so much that it acts as a deterrent for interaction with team members, mentoring newer team members, or participating in initiatives to improve the organization. The side effect of the unclear expectations, the isolation, and the fear of contributing to organizational growth is having an impact on morale.

*"Stop measuring it in time accounting. EOT provides incorrect information about judge's time, efforts, skills, and abilities."*

*2019 Review Survey*

Two of the many survey respondents who wrote about EOT had these thoughts to share regarding, "If I could change one thing to make me more effective in my work, I would":

- "Get more training and more EOT to do caseload-specific research/learning (not case-specific). I would also like an opportunity to observe more hearings by more senior ALJs. I do these things when I can, but I feel guilty like I have too much EOT. (No one has talked to me about my EOT, it's just knowing the general guideline for acceptable EOT and feeling bad when I log more EOT than that)."

- "Embrace the idea that time spent at work that is not case-specific is also productive time and it has value. Currently 'EOT' has a connotation that it's not valued time, and ALJs feel they have to justify it."

Currently the reporting portal includes executive management reports for reviewing information about cases, such as caseload and timeliness. It would be helpful to leverage the portal's capabilities to include more

robust filtering capabilities to allow easier access to personalized data applicable to staff at all levels of the organization to consume and inform their own work. It would also improve staff morale if additional metrics were identified, tracked, and reported that were meaningful and accessible for staff at all levels of the organization.

**Recommendations**

The following recommendations are offered to improve program outcomes and address current issues:

7.1    Define roles and responsibilities, including authority in decision making. (See Recommendations #12.3 and #13.1.)

7.2    Expand existing dashboards to report on performance measures that are meaningful and accessible for staff at the strategic, tactical, and operational levels of the organization. (See Recommendation #6.2.)

**Conclusion #8: Staff are concerned about compensation.**

The number one reason that staff surveyed listed as the reason they would consider leaving OAH was related to salary. Staff across OAH are concerned that there is disparity of pay between themselves and positions performing the same or similar work in other Washington agencies.

## What would possibly make you want to leave OAH?
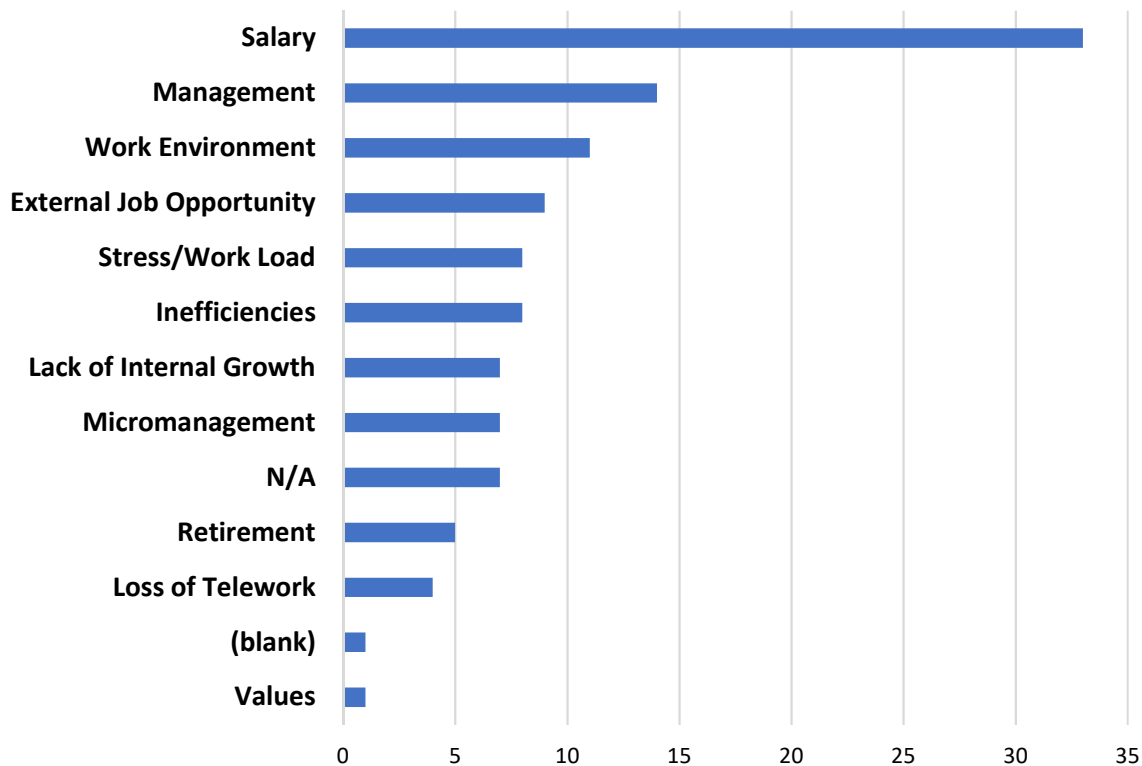


*Source: OAH Review staff and stakeholder survey held in May 2019. 115 OAH staff answered this question.*

One way to address disparity would be for OAH to work with the Office of Financial Management (OFM) to benchmark ALJ salary to the salaries of judges at BIIA. This may require shifting the OAH ALJs from exempt status to classified so salary can be tied together during salary surveys.

A table comparing ALJ salaries with similar roles in other state agencies is listed on the next page:

**Salary Comparison as of July 2019**
**BIIA vs. OAH**



Superior Court Judges $190,985
District Court Judges $181,846

Industrial Insurance Judge 4 - Step M $110,189

Industrial Insurance Judge 3 - Step M $102,316

Line ALJ - Upper Limit $97,428

Lead ALJ - Upper Limit $103,140
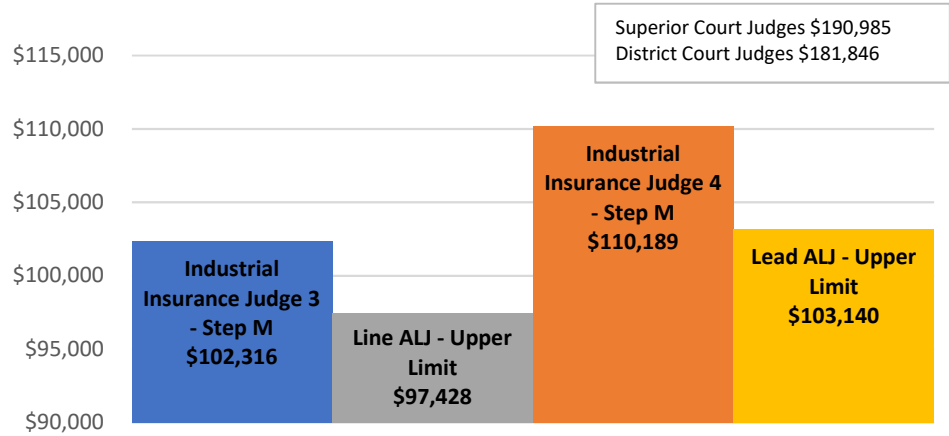
*Source: July 2019 OFM Salary Schedule*

**Recommendation**

The following recommendation is offered to improve program outcomes and address current issues:

8.1 Review options with OFM to benchmark ALJ salary to the salaries of judges at BIIA. This may require shifting the ALJs from exempt status to classified so salaries can be linked during salary surveys.

**Conclusion #9: Many of the recommendations from past reviews have not been implemented.**

In 2010, OAH commissioned an efficiency review to inform the updating the agency's strategic plan and to guide future budget requests. The review attempted to evaluate OAH processes, practices, and systems in ways that balanced efficiency, effectiveness, and service quality. (Framework LLC, Washington Office of Administrative Hearings Efficiency Review, 2010). In 2012, the same company returned to evaluate progress and challenges and publish an update. (Framework LLC, Washington Office of Administration Efficiency Review Update, 2012).

All reviews, including this one, have found OAH to have many strengths. Many of the recommendations from the earlier reviews, however, have only partially been addressed or remain unresolved. One of the biggest challenges for OAH in 2010 was having to manage and maintain paper case files, as well as disparate case management systems for different caseloads. Since 2010, the agency has successfully implemented PRISM and all case management is now performed in one system.

Three of the eleven high priority recommendations in 2010 have been addressed and did not present themselves as areas for improvement in 2019. The other eight recommendations continue to need work.

The 2010 review resulted in eleven high priority recommendations:

| High Priority Recommendations from 2010 Efficiency Review | 2012 Update and Follow Up Review | 2019 Status |
|---|---|---|
| 1. *Streamline, standardize, and document processes and policies statewide.* | *Needs work* | Still needs work (See Conclusions #2 and #3 above.) |
| 2. *Implement a single, organization-wide case tracking system.* | *In process* | Complete |
| 3. *Clearly identify responsibility for each appeal and accountability for overall case flow.* | *Mostly complete* | Still need to clearly define and document roles and responsibilities. (See the Organizational Structure Section.) |
| 4. *Balance performance expectations.* | *Needs work* | Still need to ensure performance expectations are documented and reviewed. (See Recommendation #6.2.) |
| 5. *Fully leverage existing office technology to support case management, electronic document management, communication, and reporting.* | *Significant progress made* | Still needs additional work in the areas of data definitions, statewide processes, and training to ensure consistency of the use of tools and processes. (See Conclusion #10.) |
| 6. *Explore strategies to balance workload between offices.* | *In process* | Still needs work (see Conclusions #3 and #12.) |
| 7. *Develop a simple weighted caseload model.* | *In process* | A caseload model was developed and is used for fiscal notes; however, this |

| | | | |
|---|---|---|---|
| | | | may need to be updated based on any changes to billing and fee structure. |
| 8. | *Confirm OAH's available employee resource.* | *Partially complete* | Needs work (See Organizational Structure section of this document.) |
| 9. | *Work with ESD to forecast Unemployment Insurance appeals workload.* | *Initiated by OAH* | The backlog which drove the initial recommendation was resolved; however, forecasting remains an issue in regard to funding. (See the Billing Structure and Time Reporting section of this document.) |
| 10. | *Hire additional ALJs to support the ESD Unemployment Insurance caseload.* | *Complete* | Complete |
| 11. | *Negotiate staffing reconciliation timeframe with ESD.* | *Complete* | Complete |

*"The main complaint I hear is there isn't enough time/staff to accomplish what is needed. I also hear complaints about how our top priorities sometimes shift too often, you get started on a task only to be told a new, higher priority task has just taken its place."*

*2019 Review Survey*

A lack of resources has been one of the biggest barriers to addressing the many desired improvements at OAH. Staff and leaders wear multiple hats, crossing many skill levels and fields of expertise. Leaders have an overwhelming set of responsibilities, often outside their areas of expertise. OAH has limited capacity and few resources to fill even some of the most common positions that other similarly-sized organizations have authority and budget to fill. (See the Organizational Structure section of this document.)

Given the tasks already on their plates, neither leaders nor support staff are able to complete the multitude of desired, high priority initiatives. Without clearly defined roles and responsibilities, many of these activities become extra duties, which overtake the responsibilities of the regular position. For example, OAH has trained and/or hired staff with the expertise to help the agency improve performance and efficiency; however, these individuals are tasked with a wide variety of operational responsibilities and do not have the capacity to leverage the processes and tools necessary to implement structured change.

Another example is when OAH must adjust business processes to support new or changing caseloads. The addition of the Paid Family Medical Leave (PFML) caseload is a recent example. Often OAH does not receive any planning money and must absorb the cost of establishing support for these new or changed programs within their existing resources. This includes:

*"When everything is a priority, nothing is a priority."*

*Karen Martin*

- reviewing and updating rules;
- developing processes, templates, and tools;
- modifying systems and integrations;
- collaborating with the affected agencies;
- communicating changes;

- hiring staff; and
- developing and providing training.

These activities are often not billable and become a shared cost across all agencies.

There is opportunity to leverage staff with insight and desire to assist with organizational improvements. However, many staff have, or believe they have, performance expectations related to logging a minimum number of case-related hours in the time management system. This belief works as a disincentive against contributing to process and organizational improvements that could save time and money for the organization in the long term.

In order to accomplish their many desired initiatives, OAH should establish a system for making decisions based on data. This can be accomplished by:

- implementing a strong governance structure with subject matter experts representing roles across the organization;

- developing agreed upon criteria for prioritizing work. This will allow a proactive, measured approach to determining which initiatives to tackle first, within existing resources;

- developing a list of initiatives and applying the prioritization criteria;

- leveraging the governance structure to identify the priority initiatives and communicate their decisions;

- considering the roles and responsibilities of staff before assigning them to take on additional work. If an added assignment goes beyond their available capacity, a different responsibility will need to be removed; and

- recognizing that other high priority initiatives will come up and utilize the governance structure to rebalance priorities, removing something when a new, higher priority is added.

It is essential that the governance committee include representatives from every role within the organization. This will ensure decisions are made with input from subject matter experts most knowledgable about the challenges, impacts, and benefits of the options being considered. Building this into the process early will reduce the number of decisions that need to be reversed and the number of staff who are confused and frustrated.

Currently, OAH staff expertise is centered on adminstrative law and the legal support of administrative law. These staff are measured by the

*"I think that the biggest challenge with agency communication is that whatever is communicated with us was communicated with us too late. The process is usually always already in effect. Also, another big challenge is that our directives are coming from a manager who does not know our work and what we do every day and that's really frustrating."*

*2019 Review Survey*

number of cases handled and the timeliness of the decisions. OAH may have been able to operationally get by with this reality as a very small agency, but over time, the agency has grown to be more comparable with a mid-size agency.

Unfortunately, OAH has not had skilled resources with available capacity to fill the operational gaps to implement the changes, such as standardizing processes across offices, that have been recommended over the years such as the recommendations from the 2007 Washington State Office of Administrative Hearings Full Examination Feedback Report, the 2010 Efficiency Review, and the 2012 Efficiency Review Update.

One of the biggest fears that staff shared regarding the outcome of this review was that nothing would happen, again. This concern was consistently shared in all of the work sessions held in OAH offices across the state as well as in the responses to the survey.

**What are your concerns or worries about this study?**
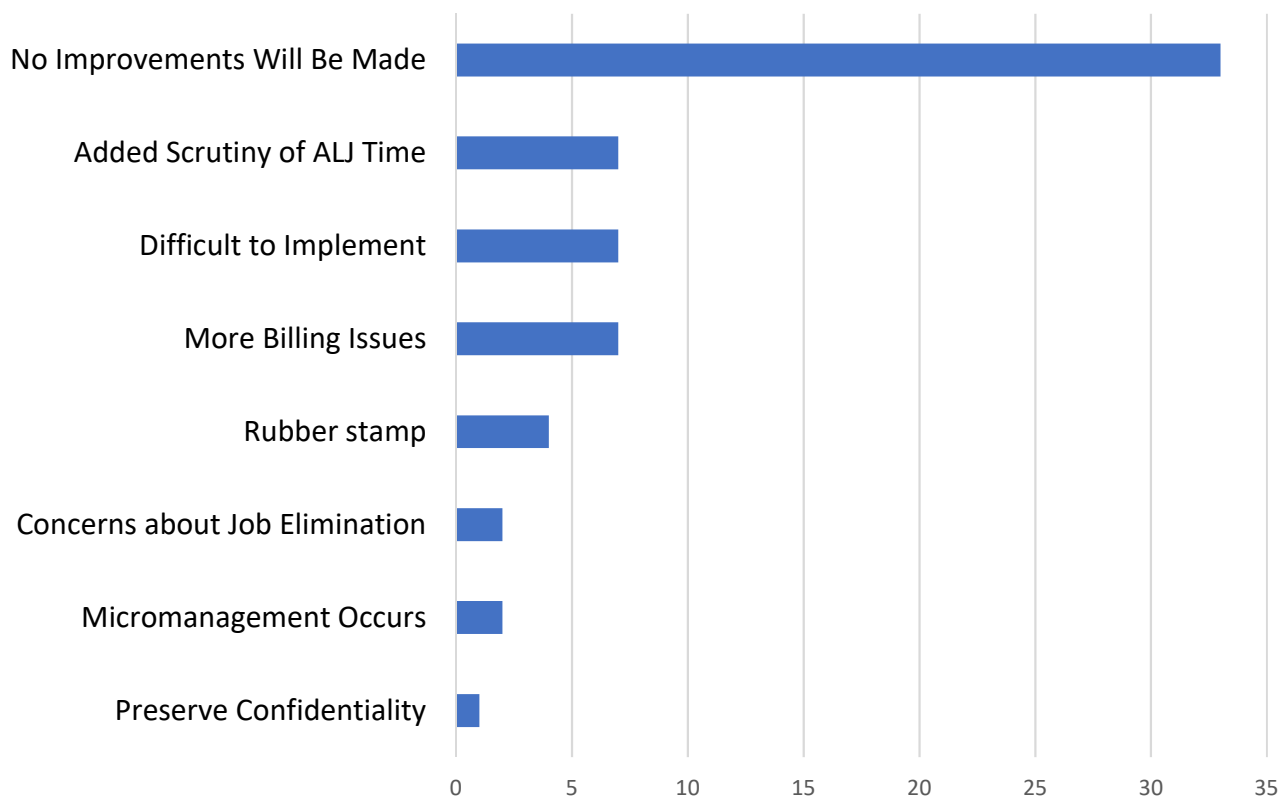


*Source: OAH Review staff and stakeholder survey held in May 2019. 72 OAH staff and stakeholders answered this question.*

*"I think that if the distribution of information and process directions is consistent and standardized, it will increase outside confidence in OAH's abilities and competency."*

*2019 Review Survey*

In order to make the changes recommended in this review (or others), OAH needs staff who are skilled in project management, organizational change management, and Lean. OAH did make investments in Lean several years ago, but these staff have been assigned to other duties and have not been able to dedicate the necessary time to move the agency forward.

In 2016 a great deal of work was completed to identify improvement opportunities and develop a tool for prioritizing initiatives. A proposal was made to recommend next steps to move the agency forward. Unfortunately, this effort did not gain the necessary momentum needed to affect change and was shelved.

OAH needs to establish a Business Transformation Project Management Office (PMO) with dedicated resources with expertise in project management, organizational change management, and Lean to help the agency making implement the decision-model described above.

**Recommendations**

The following recommendations are offered to improve program outcomes, address current issues, and effectively manage resources:

9.1 Create a governance structure with subject matter experts to prioritize initiatives, review and raise issues, and make decisions.

9.2 Ensure there is adequate capacity and expertise to effectively execute program, administrative, and regulatory activities.

9.3 Establish a Business Transformation PMO with project, organizational change management, and Lean expertise to implement the recommendations of prior reviews, this review, and the agency's priorities. (See Recommendations #10.3, 12.1.1, and #15.1.)

9.4 Develop a tactical roadmap as a companion to the Strategic Plan.

**Conclusion #10: OAH has difficulty accessing the data to make informed decisions and manage workloads.**

OAH has many recent information technology achievements to be proud of. Staff and referring agencies surveyed appreciate the IT support, tools, and innovation. There was very little in the comments mentioned that was truly technology related. Most of the desired changes around technology were process or governance related.

The same technology improvements were consistently mentioned and acknowledged to have potential for high value by both staff and leadership across offices and organizational levels.

Much of the technology is already in place to allow for the desired, greater efficiency. What is missing is consistent application and/or use. The top four answers require very little additional technology time or spending. In fact, only four of the items are primarily technology initiatives, as opposed to process change, including:

- Automating notifications and reminders for hearings;
- Expanding the use of the agency portal;
- Increasing the ability to create performance or data dashboards; and
- Adding functionality to automate scheduling and assignments.

### What tools, technology, and/or resources are missing to help you perform your role more efficiently?

| Item | Value |
|---|---|
| Increase the consistent use of templates, checklists, and other tools. | 96 |
| Increase the training opportunities for OAH employees. | 90 |
| Complete the electronic case records initiative (e.g., paperless). | 77 |
| Add a robust electronic decision library for access across the agency. | 75 |
| Automate notifications of hearings and send automatic reminders via text or email. | 73 |
| Expand use of the agency portal for self help in getting hearing information. | 57 |
| Increase the ability to create dashboards or run standard reports to review performance and establish reasonable goals and timelines. | 46 |
| Expand the use of WebEx and video conferencing within the agency, with stakeholders, and in hearings. | 45 |
| Other (please specify) | 44 |
| Add functionality to partially automate scheduling/case assignment based on ALJ credentials, workload, etc. | 31 |

*Source: OAH Review staff and stakeholder survey held in May 2019. 162 OAH staff and stakeholders answered this question and could select multiple items.*

*Staff had many ideas for tools, technology, and/or resources.*

Forty-four respondents (both internal staff and external stakeholders) offered their own ideas for tools, technology, and/or resources to help them perform their jobs as part of the "other" category in the survey chart above. Some of those improvements included:

- "To ensure the staff to workload ratio is realistic. We have had backloads in various offices."

- "Better, more efficient copiers/printers/scanners - desktop scanners for support staff"

- "The new speaker phones in the office seem to improve the audio quality of the hearings. It would be great if teleworkers could be issued speakers that could be attached to our phones to improve audio quality."

- "Re-ignite the concept of "team". In my view, we have lost that."

- "More support staff to assist ALJs"

- "Billing system"

- "Standard billing and timekeeping"

- "Internal controls and expanded visibility into billing processes to verify accuracy of billing and directly connect billing to work effort"

- "Gain access to agency Portal. We do not have any access."

- "Access to research tools like Westlaw, LexisNexus"

- "Exhibits pop up in Adobe in all different sizes which creates extra work in making them larger and smaller in the viewer. Even going from one page to the next in the same document can be a huge difference in size."

- "Increase & improve on the use of 'plain English' to simplify and clarify instructions and Orders for customers."

- "Remember not to adopt new tools and or technology that gives agencies an advantage that the citizens do not have."

- "Enhance or change the existing [PRISM] to be more user friendly & timely implement enhancement requests."

- "Better functionality of search tool for CRO decisions"

- "Mandate/Increase use of Outlook calendaring for all caseloads"

- "If we want to provide electronic filing of documents, I would like to see a guideline for ensuring that documents are processed correctly so that important information does not fall through the cracks."

*"Prioritized projects with dedicated resources and a realistic limit on the number of projects going on at the same time"*

*2019 Review Survey*

- "Going fully paperless and allowing staff teleworking."

- "The old decision library under Word Perfect was amazing - you could use a Boolean search (even just the name of the judge, or a word or two for subject) and get just what you needed). I've never understood why we can't just go back to that - I know people spent a lot of time and work to make it better recently and when I tried to find a case, found nothing and got very frustrated in about ten mins."

- "Software to transcribe audio in long hearings to streamline decision writing"

- "Update WACs to allow submissions and communications via email"

- "Email or fax NOH from OAH. USPS is too slow"

- "Some of the things listed would work well for some caseloads but not others."

- "Add resources (people) to help develop and design training"

- "Leadership should make a plan and see it through to the end."

- "The right individuals in charge of projects and using subject matter experts with the necessary technical and people skills to do the job effectively."

- "Make sure templates are up to date and useful and more than just shells."

- "Further standardize and specialize templates and improve the quality/consistency of the same."

- "To include in ALL appeal rights, the fax information as well as the mailing. To inform parties that they may submit via fax as an option."

- "[adequate] Space"

*OAH has made significant progress consolidating their case management systems.*

Of significant note is the progress OAH has made to modernize technology platforms and consolidate all disparate case management systems into one system. This was a huge step towards increasing access to data for better decision making. (See timeline graph on next page.)

The final step to ensuring the consolidated data remains as valuable as possible, is to ensure data standards are defined, including a data dictionary in plain language so that end users know the appropriate data for entry. This prevention will reduce data entry errors, but additional steps will need to be implemented for periodic quality audits and clean up.

Staff should have recurring training, so they have the expertise to perform their jobs effectively to ensure and protect data integrity.

Data is essential to an organization's success, yet it is often overlooked as an essential asset. OAH should treat their data as an asset, making investments in it and protecting it like other assets.

## PRISM Caseload Conversion Timeline
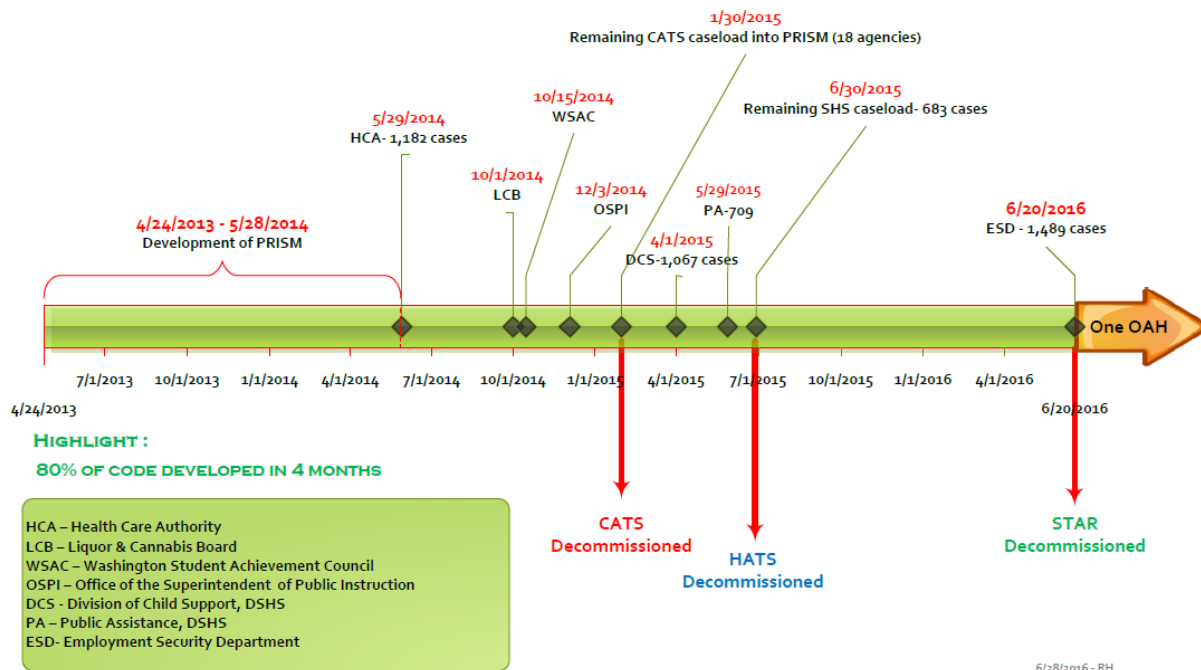
*Source: OAH*

**Recommendations**

The following recommendations are offered to improve program outcomes and address current issues:

10.1 Leverage a governance committee to prioritize the tools, technology, and/or resource changes in support of OAH staff. (See Recommendation #9.1.)

10.2 Create a data dictionary in plain language to define and communicate the expected data for each of the fields within PRISM so that end users know the appropriate data for entry.

10.3 Leverage training and organizational change management to improve the use of technology and support quality and consistency, allowing leaders and stakeholders to more easily analyze issues, identify trends, and develop data-driven options for decision making. (See Recommendations #9.3, 12.1.1., and 15.1.)

**Conclusion #11: Staff like the flexibility of performing their work anywhere.**

Given the number of hearings that are able to be held via teleconference, there is much opportunity for OAH ALJs to work remotely. Slightly over half of the employees surveyed rarely or never telework. Twenty-five percent of the staff say they telework most or all of the time. Continuing to transition information and processes to electronic records management and achieving the goal of becoming paperless will help further this flexibility.

## What makes you want to stay working at OAH?
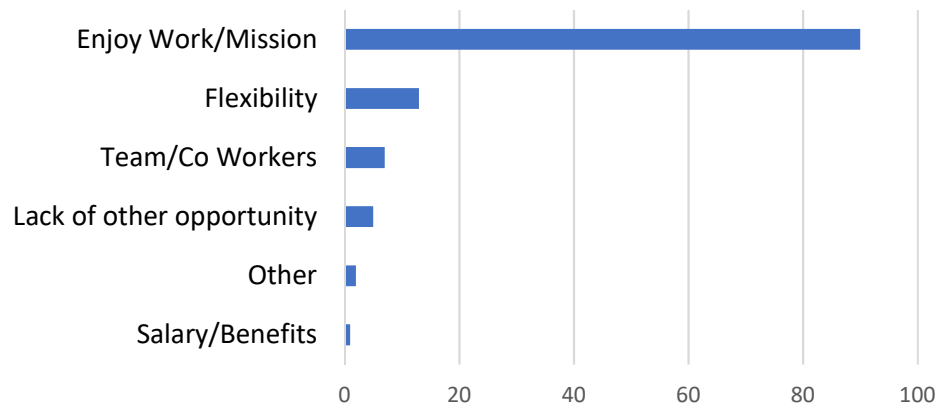


*Source: OAH Review staff and stakeholder survey held in May 2019. 118 OAH staff answered this question.*

## Do you telework?
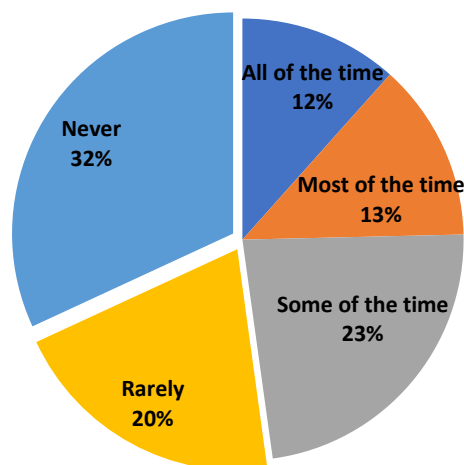


*Source: OAH Review staff and stakeholder survey held in May 2019. 138 OAH staff answered this question.*

**Recommendations**

The following recommendations are offered to increase flexibility to telework and to improve program outcomes and address current issues:

11.1    OAH should partially automate the case assignment and scheduling tasks within PRISM.

11.2    Continue to transition information and processes to electronic records management and achieving the goal of becoming paperless will help further OAH's flexibility.

# C. OAH ORGANIZATIONAL STRUCTURE

**Standards and Promising Practices**

Organizational structure is crucial for any entity to provide guidance and clarity to the employees, and customers, who ultimately are the life blood of the organization. An organizational structure defines how activities, task allocation, coordination, supervision, and other details of the organization are focused toward achieving the goals that support success. Organizational structure will impact organizational actions and provide the foundation on which standard operating procedures and routines will rest. Organizational structure determines which individuals participate in the decision-making processes of the entity, shaping the current and future state of the organization. Organizational structure is the lens, or perspective, through which individuals, inside and outside the organization, interact with and view the operation of the entity.

There are several different ways to structure an organization, but whichever organizing construct is used, it must be clearly linked to the mission and vision of the agency. The structure of an organization will determine how it operates and performs. Organizational structure must allow for allocation of responsibilities for different functions and processes to different entities, such as the office, branch, department, division, workgroup, and individual. Organizational structures must also be efficient, flexible, and innovative in order to remain sustainable and weather the constant winds of change.

For OAH, there are several requirements to keep in mind as an organizational structure is developed:

- the mission and vision are focused around the fairness, promptness, soundness of decisions, independence, and neutrality of the agency and access by the citizen to resolve disputes;

- alignment with Results Washington, and other state accountability measures, which direct each department or agency to establish measurable goals to achieve desirable results for customers, and to develop clear strategies and timelines for achieving these goals. Agencies must also establish expected results for each major activity in its budget; and

- incorporation of federal requirements and goals into their established measures for those caseloads that fall under federal regulations and guidelines.

With these competing organizational goals, OAH works in a complex environment with competing deliverables.

# Office of Administrative Hearings
## Fee Structure, Billing, Productivity, and Organizational Review

*There are three organizational structures within OAH.*

Besides the official, or explicit, hierarchical organizational structure, OAH has two additional unofficial, or implicit, organizational structures. OAH is also organized by caseload (known in private sector industry as product structure) and by geographical structure. These structures are matrixed into the hierarchical organizational structure shown below. The Division Chief ALJ in each local office wears two hats, one providing caseload leadership and one providing local office leadership. With two of these positions currently vacant, the Deputy Chief ALJ is filling those roles in two offices with three major caseloads.

**Current Organizational Structure**
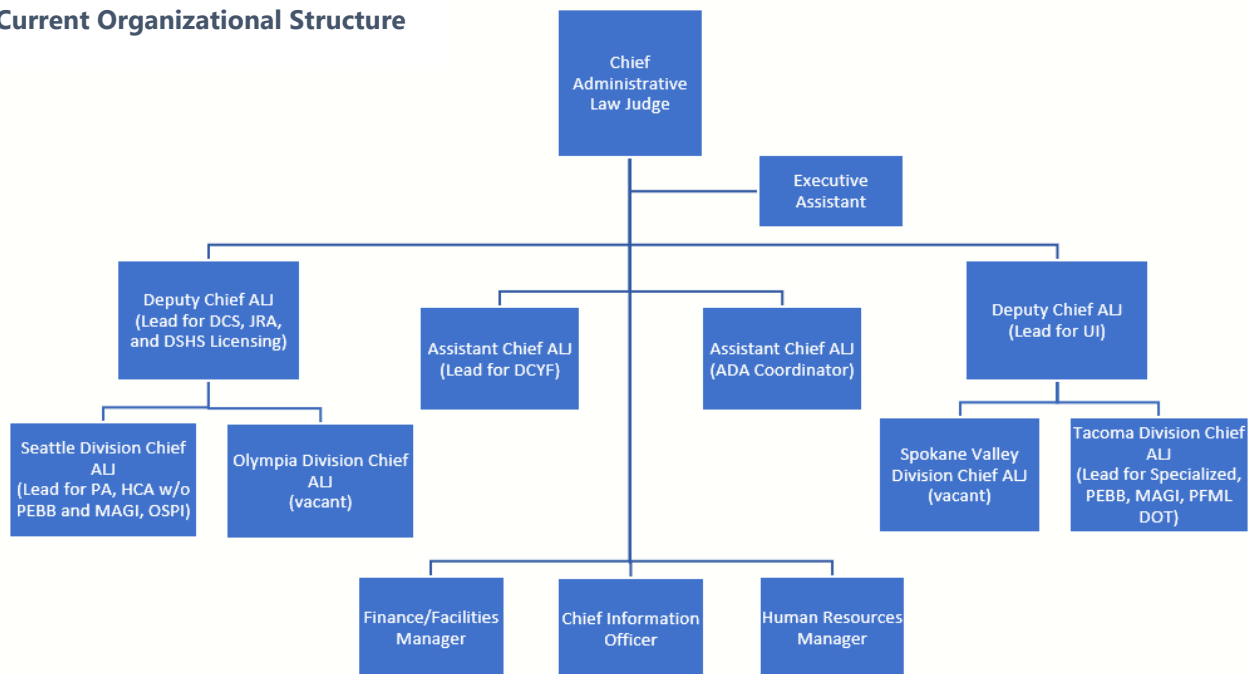


*Hierarchical Structure*

*Every (entity) has two organizational structures: The formal one is written on the charts; the other is the everyday relationship of the men and women in the organization.*

*Harold Geneen*

Currently, OAH is officially organized in a hierarchal structure, sometimes referred to as a bureaucratic or mechanistic structure. This structure has levels of management ranging from senior executives at headquarters to managers, supervisors, and leads at each of the local offices. Characteristics of this type of organization include:

- a narrow span of control, as well as high centralization, specialization, and formalization;

- rigidness in what specific divisions or offices are designed and permitted to do;

- more formal than organic structure; and

- use of specific standards and practices to govern every decision.

Most, if not all, legal and judicial systems are organized this way, as well as most governmental agencies.

***Geographic Structure***

OAH provides services throughout the state of Washington. The state is large and presents some geographic challenges. The mountains and the overall size create barriers to easy travel and access to headquarter support. Local OAH offices manage and supervise staff, take care of local administrative details and support, and generally function as a local OAH unit.



*Source: OAH 2018 Rate Day Presentation*

Geographic structures are generally suited to large entities that have a need for specific local facility or labor needs. In some instances, smaller organizations do benefit from a geographic structure. For instance, an organization would benefit from having a geographic structure if two or more functions benefit from a specific geographic location or if their client base is concentrated geographically. Geographic structures are not usually a structure that an organization intentionally chooses over another specific structure, but one that develops out of necessity and business need.

While customer and location support are advantages to a geographic organizational structure, there are some inherent disadvantages. To be successful with this structure, there needs to be very strong leadership, at both the central and geographic locations, and requires that:

- all understand and implement a strong, shared mission;
- there is an extraordinary communications infrastructure that promotes consensus; and
- all have a clear understanding of how the organizations strategic and tactical decisions align to the vision of the organization.

Without these elements present, a geographic based organizational structure will suffer.

*Caseload Structure*

The work OAH conducts is essentially the same across caseloads, independently resolving administrative disputes through accessible, fair, prompt processes and issuing sound decisions. There are differences between caseloads such as the required reporting, communication, and work products. These differences are recognized by assigning Caseload Leads for each major type of caseload – Unemployment Insurance, Social and Health, Specialized or Other Caseload. This role is currently performed by the Division Chief ALJs.

The current organizational structure assumes four Division Chief ALJs in four locations across the state. Two of the four Division Chief ALJ positions are currently vacant. The Olympia office is housed in the same building as the OAH headquarters.

| Type of Caseload | Current Caseload Lead | CY 2018 OAH Appeals Received |
|---|---|---|
| ESD except for PFML | Deputy Chief ALJ (Spokane Valley Office Division Chief ALJ is currently vacant) | 27,873 |
| DSHS Public Assistance (PA), HCA except for Public Employees Benefits Board (PEBB) and Modified Adjusted Gross Income (MAGI), and OSPI | Seattle Office Division Chief | 10,224 |
| Specialized, PEBB, MAGI, PFML, and Other | Tacoma Office Division Chief | 2,650 |
| DSHS Division of Child Support (DCS), DSHS Licensing (LIC), JRA, DCYF | Deputy Chief ALJ is lead on DCS and DSHS Licensing, Assistant Chief ALJ is lead for DCYF (Olympia Office Division Chief ALJ is currently vacant) | 8,004 |
| Total Appeals Received | | 48,751 |

Malcom Rich speaks to central panel agencies as they grow and mature, moving from generalized knowledge of the cases they oversee, to more specialized and specific caseload knowledge. (Malcolm C. Rich, The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices, 2019) Like other central panel agencies, Washington's OAH has naturally moved to this advanced model of service.
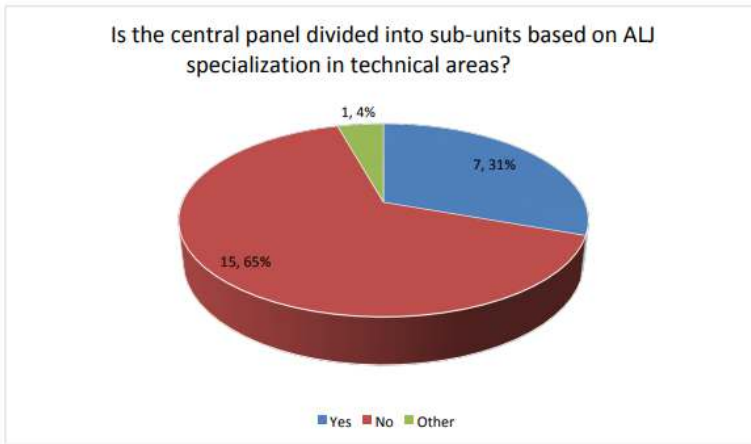


Nearly 2/3 (65%) of states do not divide central panels into sub-units based on ALJ specialization in technical areas, while 30% (7/23) of states do. One state divides some of the central panel ALJs into sub-units while others are general jurisdiction.

*Source: Malcolm C. Rich, The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices, 2019*

***Competing Organizational Structures***

Many organizations are naturally organized in a project or product-based structure which for OAH is caseload-based. This can mean a deeper understanding of the business needs for a specific caseload, as well as increased responsiveness and agility to meet the stakeholder's needs.

A caseload-based organizational structure is flexible from both a workload and a business process re-engineering standpoint. This structure is best suited for business lines that have continuous and constant change or flux and those that have a specific, focused solution and implementation with clear goals, dedicated budgets, and are time and outcome based.

The challenge for OAH is to have a blend of these three types of organizational structures that are clear to staff, management, stakeholders, and the authorizing environment.

**Conclusion #12: There is a lack of understanding of the current hybrid, or matrix, organization structure.**

While flexibility and focus are advantages of the hybrid or matrix organizational structure, there are some disadvantages.

- This structure can isolate teams into their specific caseloads with little to no visibility outside of their own focus. Teams tend to focus on getting their specific work done, but collaboration outside of the work, or caseload, group can suffer.

- There is also a risk that, even when the caseloads are functioning smoothly, they do not fit well into the organization as a whole and the lessons of one case, or workload, are not shared across the agency.

- Continuity can also be a challenge since employees are not cross-trained on different workloads.

At OAH, these three organizational structures sometimes work together collaboratively, but at times are in opposition to each other, creating tension and confusion among the staff, with decision-making, and with communication throughout the organization.

*Staff do not always know who or where to address their questions and concerns.*

First, the decision-making process for case-based decisions, site-based decisions, and central or hierarchical decisions are not aligned with each other. Staff who ask questions may get conflicting answers, especially if the situation overlaps between multiple spheres of influence.

These three organizational structures also impact communications since the feedback cycle can be interrupted if the wrong position in one of the organizational structures was initially contacted. Some of the feedback from the online survey included:

- "Too many layers. Communications become warped."
- "There seems to be a lack of communication with the field offices and within certain work classifications within the field offices."
- "Disparate locations will always mean communications and creating a feeling of unity and cohesiveness will be a challenge."
- "There are so many levels to the agency as well as locations. We all deal with different aspects of the hearing stages and so someone decides one thing works for this office but not for this office and sometimes support staff are not even notified of a change."
- "Different protocols for each office."
- "I think communication gets lost in translation from the different tiers of staff."

While most staff report they hear back when they raise concerns, more than one-third of the respondents to the survey said concerns go up the ladder, but do not consistently come back down. When concerns are addressed, it is often done informally or on a person to person basis.

**How often do you hear back that your issues or concerns addressed?**
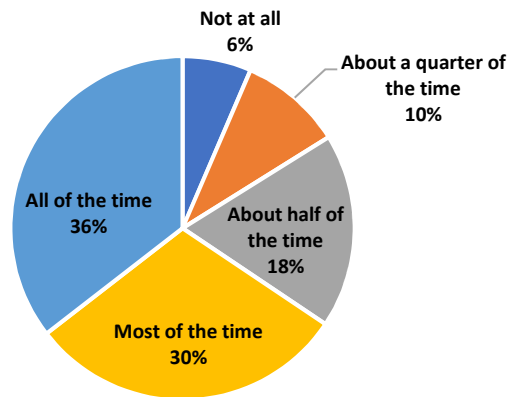


*Source: OAH Review staff and stakeholder survey conducted in May 2019. 93 staff answered this question.*

***Staff are unclear on the reasons behind decisions.***

This leaves staff to wonder if everyone is on the same page, wondering if the decision is accepted throughout the entire management team or the organization as a whole. Staff are unclear about who has the authority to give direction. Is it the leadership for the local site, the caseload lead, or someone in the headquarters hierarchy? If they are given an answer, staff are concerned if it is the correct answer and if they are responsible for communicating it among the other organizational structures or if this has already been accomplished. As staff ponder these, and other questions, time and effort are taken away from the important work of the agency.

According to the recent survey responses, most staff report that their direct manager or supervisor is responsive to their ideas and suggestions, communicates expectations, and is available and accessible when issues come up. The rating declines a bit when it comes to understanding the reasons behind decisions. It has been reported that this is due to a lack of consistent and clear messaging when those decisions are made.

## Please indicate your experience with your manager or supervisor with the following statements.

| Statement | Always | Often | Sometimes | Seldom/Never |
|---|---|---|---|---|
| My manager provides me information on my productivity and work performance. | 36% | 33% | 20% | 10% |
| My manager is available and accessible. | 55% | 30% | 11% | 5% |
| My manager is responsive to my ideas, requests, and suggestions. | 49% | 31% | 13% | 7% |
| My manager handles disagreements effectively and professionally. | 50% | 30% | 15% | 6% |
| My manager explains the reasons behind decisions that impact my work. | 37% | 33% | 25% | 5% |
| My manager clearly communicates expectations. | 41% | 38% | 18% | 3% |

Legend: ■ Always ■ Often ■ Sometimes ■ Seldom/Never

*Source: OAH Review staff and stakeholder survey conducted in May 2019. 134 staff answered this question.*

***Staff want more collaboration from their manager or supervisor.***

When staff were asked what one thing they would change to make their manager or supervisor more effective, the common themes were around communication and collaboration with staff and the need to adjust the manager workload to free them up to work with staff.

It was reported by staff in the online survey and during the interviews and work sessions that Senior ALJs and Lead ALJs spend a lot of time gathering and analyzing data; assigning ALJs to cases based on their experience, expertise, and availability; and working with the legal professional support staff to schedule hearings. These tasks are important, but systems and tools could be put in place to alleviate this workload for managers and leads and give them more time to collaborate with staff and work with the judicial support side of the organization on consistent processes, templates, and tools. (See Recommendations #11.1 and #15.1.)

**If I could change one thing about my manager or supervisor to make them more effective, I would:**

| Category | Value |
|---|---|
| Improve Collaboration with Staff | 17 |
| Adjust Manager or Supervisor Workload | 14 |
| My Manager or Supervisor is Great | 8 |
| Improve Leadership Skills | 8 |
| Improve Communication from HQ | 8 |
| Improve Communication | 5 |
| Improve Staff Feedback | 4 |
| Focus More on Efficiencies | 4 |
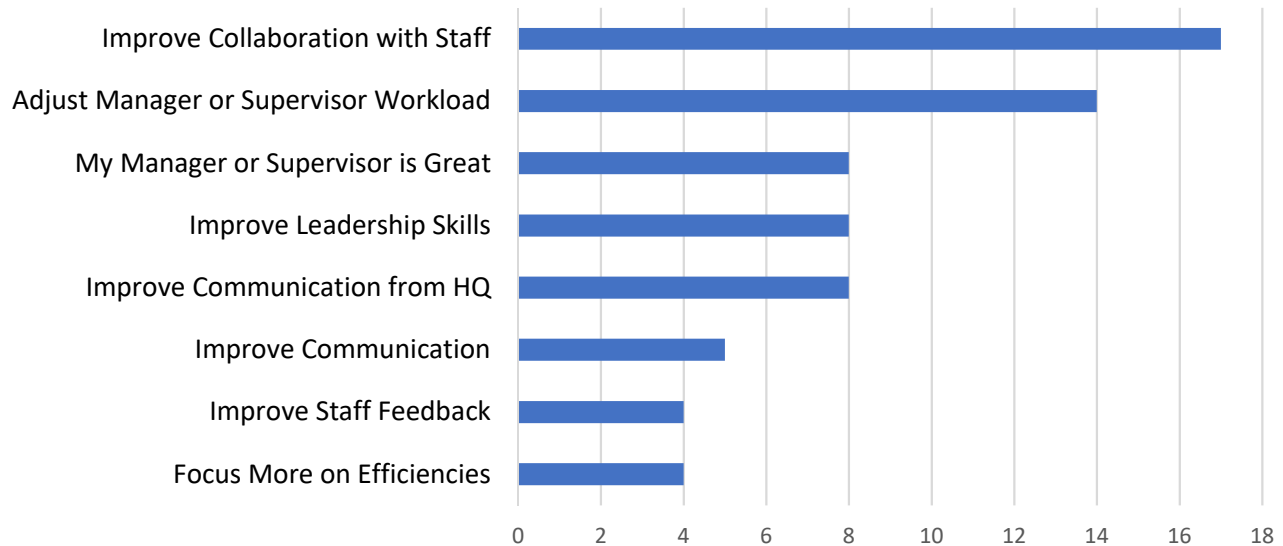
*Source: OAH Review staff and stakeholder survey conducted in May 2019. 68 staff answered this question.*

***What makes sense for an updated organization structure to clarify roles?***

OAH must clarify and make transparent to staff an explicit, functional, organizational structure. This will support the organization's mission and clarify decision making and accountability. To accomplish this, OAH should re-work the current structure, making the three matrixed organizations easier to understand, so staff know who to go for issues, concerns, and decisions.

When moving through a review of their organizational structure, there are several specific questions that OAH must ask before any action is taken.

1. What structure will work best for the business needs, operational needs, and ongoing success of the organization?

2. What do similar state government organizations have for their organization structure?

3. Which structure will establish a clear, bright line between the ALJs decision making and judicial authority and the everyday billing, interaction, and communication with the referring agencies, so no conflict of interest, real or perceived, is embedded in the new organizational structure?

4. Does OAH need four locations across the state when the in-person hearings are concentrated in the urban areas?

    a. Can some of the offices be consolidated?

    b. Can some of the legal professional support staff functions be centralized?

5. What can be done to keep the number of direct reports to a supervisor at a reasonable number?

6. Do workloads need to be re-balanced across the offices?

7. What should be the reporting relationship between legal professional support staff and the local office leadership?

8. Can the number of direct reports to the Chief ALJ be reduced or better defined?

9. Are the caseload management responsibilities assigned appropriately across Division Chiefs?

10. What is the best arrangement and location for each caseload's legal professional support staff and what should be their functions?

This conversation is necessary before an effective structure can be developed and must consider the input of both internal and external stakeholders. Until these questions are answered, staff will define these for themselves and the implicit or un-official organizational structures will continue to exist.

An option to consider is shown on the next page and in Appendix 4. This option consolidates the field offices to three and establishes the bright line or barrier between judicial or adjudication operations and judicial or adjudication support. While Division Chief ALJs or Senior ALJs will still likely have to answer questions from referring agencies and other stakeholders, we recommend that Lead and Line ALJs be protected from questions about specific decisions as much as possible to keep their decisional independence.

**Proposed Option for
Organizational Structure**

**Chief ALJ**

**Executive Assistant**

**Clear, bright line
Decisional
Independence**

**Deputy
Judicial
Operations**

**Division Chief
Eastern Washington**

Caseload Lead for UI

**Division Chief
Northwest Washington**

Caseload Lead for PA,
HCA, OSPI

**Division Chief
Southwest Washington**

Caseload Lead for DCS,
Licensing, DCYF,
Specialized Caseload,
JRA, PFML, DOT

**Finance and Facilities
Manager**

**Human Resources**

**Chief Information
Officer**

**Deputy
Judicial Support**

**Assistant Chief
Judicial Practice
Improvement**

**Assistant Chief
ADA and Special
Projects**

**Centralized Legal
Administration
Manager**

**Assistant Chief
Policy, Governmental
Affairs, and Risk
Management**

**Assistant Chief
Quality Assurance**

*A RACI matrix would help define roles, responsibilities, and accountability.*

OAH should also consider the adoption of a RACI matrix that assigns which roles are *Responsible* for each type of action, which personnel are *Accountable*, and, where appropriate, who needs to be *Consulted or Informed*. A RACI matrix attempts to focus decision-making by assigning authority and responsibility for the major parts of the organization. A RACI matrix should be developed for each of the three organizational structures:

- Agency Hierarchical Structure
- Local Office Leadership
- Caseload Leadership

**Legend:** R (Responsible), A (Accountable), C (Consulted), I (Informed)

**OAH Leadership Decision Matrix**

| Decisions | Chief ALJ | Human Resources Manager | Chief Information Officer | Finance and Facilities Manager | Deputy Chief of Judicial Support | Deputy Chief of Judicial Operations | Division Chief ALJ - Eastern Washington and UI Caseload Lead | Division Chief ALJ - SW Washington and Specialized and Other Caseload Lead | Division Chief ALJ - Northwest Region and SHS Caseload Lead | Assistant Chief Judicial Practice Improvement | Assistant Chief for Policy, Government Affairs, and Risk | Assistant Chief Quality Assurance | Assistant Chief ADA and Special Projects | Centralized Legal Support Manager |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | *Executive Management Team* | | | | | | *Judicial Operations* | | | *Judicial Support* | | | | |
| 1. Changes the agency's strategic plan | A | R (varies based on change) | | | | | C | C | C | C | C | C | C | C |
| 2. Changes cross-agency administrative policies, processes, templates, training, etc. | C | C | C | C | A | C | C | C | C | R | C | C | C | C |
| 3. Changes to judicial policies, government relations, or risk program | C | C | C | C | A | C | C | C | C | C | R | C | C | C |
| 4. Judicial operations; does not change a current business activity; local office only; only one option; no stakeholder impact | I | I | I | I | C | C | A/R (varies) | | | I | I | I | I | I |
| 5. Judicial operations; has a minor impact; changes a current business activity; affects a single caseload, stakeholder, or local office | C | C | C | C | C | C | A/R (varies) | | | C | C | C | C | C |
| 6. Judicial operations; has a moderate impact; changes a current business activity; affects a single or multiple caseloads/stakeholders/offices | C | C | C | C | C | A | C | C | C | R | C | C | C | C |
| 7. Judicial operations; has a significant impact; changes a current business activity; affects a single or multiple caseloads/stakeholders/offices | C | C | C | C | C | A | C | C | C | R | C | C | C | C |
| 8. Judicial support; does not change a current business activity; only one option; no stakeholder impact | I | I | I | I | C | C | C | C | C | A/R (varies) | | | | |
| 9. Judicial support; has a minor impact; changes a current business activity; affects a single caseload or stakeholder | C | C | C | C | A | C | C | C | C | R (varies) | | | | |
| 10. Judicial support; has a moderate impact; changes a current business activity; affects a single or multiple caseloads/stakeholders | C | C | C | C | A | C | C | C | C | R (varies) | | | | |
| 11. Judicial support; has a significant impact; changes a current business activity; affects a single or multiple caseloads/stakeholders | C | C | C | C | A | C | C | C | C | R (varies) | | | | |
| 12. Administrative Services; does not change a current business activity; only one option; no stakeholder impact | C | A/R (varies) | C | C | C | C | C | C | C | C | I | I | I | C |
| 13. Administrative Services; has a minor impact; changes a current business activity; affects a single division or stakeholder | C | A/R (varies) | C | C | C | C | C | C | C | C | I | I | I | C |
| 14. Administrative Services; has a moderate impact; changes a current business activity; affects a single or multiple divisions/stakeholders | C | A/R (varies) | C | C | C | C | C | C | C | R | C | C | C | C |
| 15. Administrative Services; has a significant impact; changes a current business activity; affects a single or multiple divisions/stakeholders | C | A/R (varies) | C | C | C | C | C | C | C | R | C | C | C | C |
| 16. Requires the procurement of a service or solution | C | C | R | A | R | R | C | C | C | C | I | I | I | I |

| OAH Local Leadership Decision Matrix — Decisions | Chief ALJ | Human Resources Manager | Chief Information Officer | Finance and Facilities Manager | Deputy Chief of Judicial Support | Deputy Chief of Judicial Operations | Division Chief ALJ - Eastern Washington and UI Caseload Lead | Division Chief ALJ - SW Washington and DCS, Licensing, DCYF, and Specialized Caseload Lead | Division Chief ALJ - Northwest Region and PA, HCA, OSPI Caseload Lead | Assistant Chief Judicial Practice Improvement | Assistant Chief for Policy, Government Affairs, and Risk | Assistant Chief Quality Assurance | Assistant Chief ADA and Special Projects | Centralized Legal Support Manager |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Executive Management Team | | | | | Judicial Operations | | | Judicial Support | | | | |
| **Local Office Authority** | | | | | | | | | | | | | | |
| 1. Budget and expenditure authority - purchases $1000 and under | I | I | I | I | I | C | A/R (varies) | | | I | I | I | I | I |
| 2. Budget and expenditure authority - purchases over $1000 | C | I | C | A | C | R | R (varies) | | | I | I | I | I | I |
| 3. Space - movement within a local office - no expansion of office footprint | I | I | C | C | I | C | A/R (varies) | | | I | I | I | I | I |
| 4. Space - expansion of office footprint | C | C | C | R | C | A | R (varies) | | | I | I | I | I | I |
| 5. Hiring of Line ALJ's and Support Staff | I | C | I | I | C | A | R (varies) | | | I | I | I | I | I |
| 6. Hiring of Lead and Senior ALJ's and Legal Admin Mgr. | C | C | I | I | C | A | R (varies) | | | I | I | I | I | I |
| 7. Communication Lead - local office related | I | I | I | I | C | A | R (varies) | | | I | I | I | I | I |
| **Caseload Authority** | | | | | | | | | | | | | | |
| 8. Caseload Workflow Lead for assigned caseload - Works across agency on processes, procedures, templates, performance reports | C | C | C | C | A | R | R (varies) | | | R | C | C | C | R |
| 9. Stakeholder Management Lead for Assigned Caseload - Works across agency on issues and questions raised from staff, Agencies, and other stakeholders | C | C | C | C | R | R | A/R (varies) | | | R | C | C | C | C |
| 10. Communication Lead - assigned caseload related, across agency to other staff assigned same caseload | C | C | C | C | R | R | A/R (varies) | | | R | C | C | C | C |
| 11. Staff check-ins with Senior ALJs (and possibly line ALJs) across agency doing assigned caseload | I | I | I | I | C | C | A/R | | | C | I | I | I | I |

Legend: R (Responsible), A (Accountable), C (Consulted), I (Informed)

**Recommendations**

The following recommendations are offered to improve program outcomes and address current issues:

12.1 Update the organizational structure to position the agency for success and infuse management expertise with well-defined roles and responsibilities and proven skills and abilities. An option of an updated organizational structure and RACI matrices for the agency is in Appendix 4. Other factors should be considered as OAH adopts a new organizational structure:

12.1.1 Increase staff capacity for project management, Lean, organizational change management, communications, fiscal and facility analysis, and business analysis. (See Conclusion #15 for additional information.)

12.1.2 Retain the caseload lead designation with each Division Chief ALJ. This will require a matrix relationship across

the agency with the Senior ALJs, Lead ALJ's, and Line ALJs.

12.1.3  Retain the direct reporting relationship of the legal professional support staff to the local Division Chief ALJ.

12.1.4  Establish a matrix relationship between the Legal Administrative Manager in each office with the Deputy Chief ALJ for Judicial Support.

12.2  OAH should establish a clear, bright line within the organization structure between the billing, funding, judicial support part of the agency and the ALJs to ensure decisional independence.

12.3  OAH should adopt a RACI matrix for management positions to clearly identify decision-making authority for the hierarchical structure, the local office structure, and the caseload structure.

12.4  OAH should develop a communication plan to advise staff of the new organizational structure, to share the RACI matrices, to explain where they will fit into the structure, and to identify who they will report to in the new structure.

**Conclusion #13: Some staff fill multiple roles within the organization.**

Besides decision making and communications, the confusion around these competing organizational structures also extends to the realm of roles and responsibilities. Individuals who are clearly in one of the organizational structures are often fulfilling roles and have responsibilities in other organizational structures.

Roles are left empty, sometimes by design, as in the case of site-based managers, and sometimes because these responsibilities are assumed by others, in the case of the legislative or communications roles. This is not a problem if there is enough staff capacity and roles and responsibilities are explicitly communicated to the staff. But that is not the case for OAH. There is limited staff capacity for a variety of required agency roles. Often times, responsibilities are assumed by others and any changes made by these individuals are communicated through one of the three organizational structures, but not the other two.

It is not clear what other duties have been assigned that may or may not be part of their official position descriptions and are responsibilities that are implicitly applied. For example, members of OAH executive leadership wear multiple hats, when some of these responsibilities could be performed by staff if there was capacity (see current organizational structure below). Most of these staff already have full-time work that requires their attention so when an issue comes up that falls under another one of these hats, it takes their attention away from their core work. The result is that the agency is very reactionary instead of proactive.

**Current Organizational Structure**
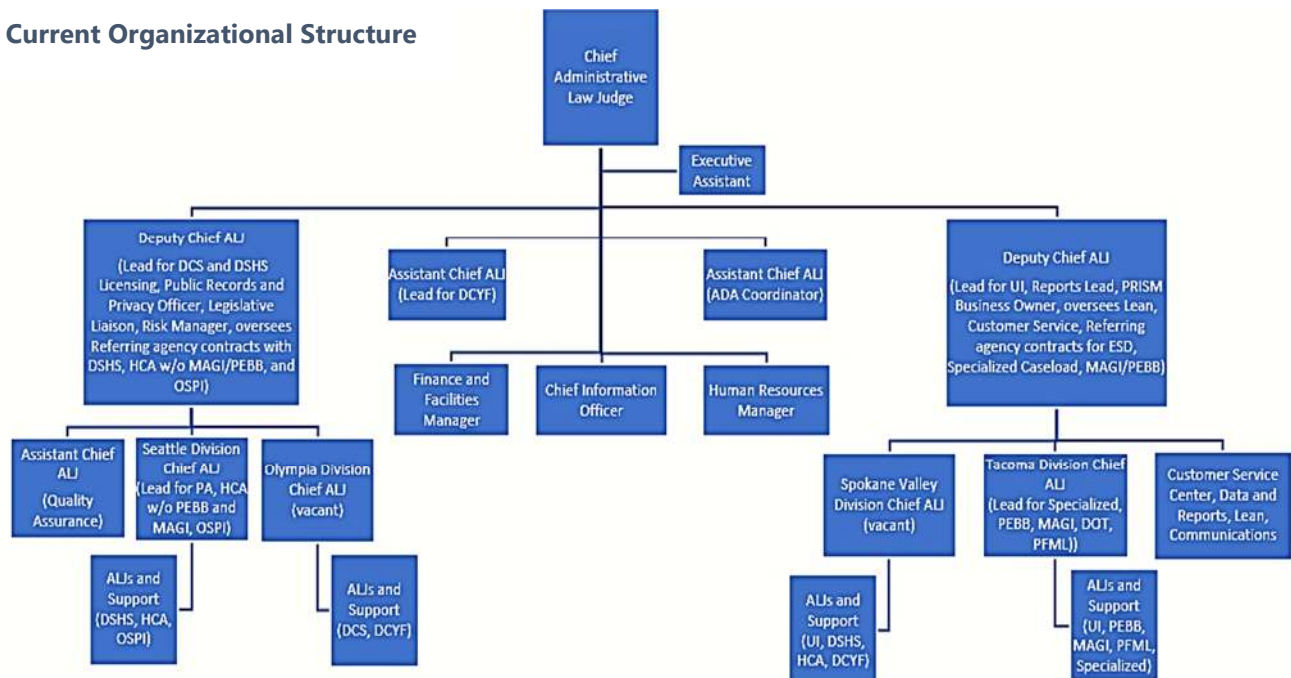
*"I would like to have a written position description that reflects the work that I do, and which reflects the work that the agency wants me to do."*

*2019 Review Survey*

OAH must identify, clarify, and revise position descriptions to reflect all roles and responsibilities for managers, supervisors, Senior ALJs, Lead ALJs, Line ALJs, legal professional support staff, and headquarters positions. Responsibilities included in the position descriptions should not only describe their job duties, but also provide clarity regarding the position's expectations and decision-making authority.

Along with the responsibilities, core competencies should be developed for each role. These position descriptions with the associated roles, responsibilities, and competencies must be made transparent so all staff understand who is responsible for what. This will strengthen accountability and will also relieve some of the misconceptions around decision making, current real or perceived gaps, and supervisory responsibilities.

OAH leadership will need to collaborate with staff to identify all the roles and responsibilities that are now directly, or indirectly, assigned to individuals or groups that are not clearly outlined in their current position descriptions. They should help in the alignment of competencies to each role and will allow the agency to evaluate staff capacity.

Once position descriptions are updated, roles, responsibilities, and competencies will need to be updated on the Individual Performance and Development plans for each employee. Each plan becomes a tool to facilitate communication between a supervisor and an employee about the linkage between the employee's expected results and the organization's goals and performance measures. OAH must take a transparent and collaborative approach to this work or risk losing the trust of the staff.

***Some managers have too many direct reports.***

There are several supervisory roles, mostly the Legal Administrative Managers, that have too many direct reports. A best practice for human resource management is not to have more than eight direct reports. Some Legal Administrative Managers have as many as 12 to 16 direct reports.

Reducing the span of control for some positions should be considered as the new organizational chart is developed. This will allow those managers to focus more attention on collaborating with their staff, communicating, mentoring, and providing feedback.

**Recommendations**

The following recommendation is offered to improve program outcomes and address current issues:

13.1 Using the RACI matrix, update position descriptions to include all roles and responsibilities within the organization.

**Conclusion #14: OAH's new hiring process has created questions about roles and responsibilities for some staff.**

OAH recently replaced a siloed hiring process with a more centralized process. The new hiring process has been significantly revised to address concerns raised by managers in the local offices. During interviews and work sessions, managers shared that the current hiring process is not completely understood and that there is confusion around the roles and responsibilities. The perception is that the hiring process is not as transparent or inclusive of local office management input as desired. The current hiring process should be reviewed to assess if the desired results of the last revision were achieved and if any adjustments are necessary. Communicating the reasons or "the why" behind the current process elements to the managers will alleviate some of the confusion. Staff do not feel included in the current hiring process and feel like their recommendations go unheard, or worse, are heard but ignored without any explanation. OAH should further refine the new process for hiring staff to clearly define roles and responsibilities.

OAH leadership should continue to strive to transparently provide relevant information across the organization relating to each new hire. Some of the information includes:

- who will be hired;
- what they will be doing;
- where they will be located;
- when they will be hired; and
- why the position is necessary.

There is likely additional information, depending on the role being filled and the responsibilities assigned to the role, but, at a minimum, the above information should be clearly and openly communicated to all staff.

As much as possible, a wide range of roles across organizational levels should be included on the hiring committee or in the hiring process. It is particularly important that local office and role-based leaders directly impacted by hiring decision represent their team in these processes.

This cooperative approach will increase the transparency of the process, will increase buy-in from managers and staff, and will allow for a broader perspective, with more diverse opinions.

**Recommendations**      The following recommendations are offered to improve program outcomes and address current issues:

14.1    With the assistance of Human Resources (HR), refine the current hiring process and document and distribute the process to managers and supervisors.

14.2    Develop a RACI for the updated hiring process to define the authority for each level of management within the agency.

**Conclusion #15: OAH lacks the necessary staff capacity, expertise, and skills for agency operational support.**

To be efficient and effective, agencies need appropriate technical and management expertise and skills, plus sufficient resources. According to the analysis of agency data, staff interviews, work sessions, and surveys, OAH needs additional staff capacity, expertise, and skills in order to accomplish agency operational support effectively and efficiently.

OAH has several organizational and role gaps that should be filled for the agency to function as a fully formed governmental entity. Increasing staffing levels is always a difficult decision and OAH should be strategic in requesting additional resources by starting conversations now with the referring agencies, the Governor's Office, and OFM for decision packages in their 2020 supplemental and 2021-23 budget requests. Some of these gaps may be addressed through realignment of current duties and positions. Others may need additional funding authority.

In the recent staff and stakeholder survey conducted in May 2019 for this review, respondents were asked what changes would be most helpful to improve OAH's efficiency. Respondents were allowed to make multiple selections. The results are shown below.

**Considering the current OAH organizational structure, what changes to the organizational structure would be the most helpful to improve efficiency?**

| Response | Count |
|---|---|
| Other (please specify) | 36 |
| Establish a position (such as a professional Court Administrator) to standardize OAH processes and tools and make better use of technology to ensure consistency. | 73 |
| Keep and fill Division Chief positions in each field office. | 65 |
| Clarify the roles and responsibilities of all agency positions (HQ, office leadership, and all other staff). | 62 |
| Align professional legal support staff to the ALJs they support in each office. | 46 |
| Establish clear governance and decision making authority within agency. | 44 |
| Add resources for project management, LEAN, change management, training, and communication activities. | 41 |
| No changes to the current structure. | 11 |

*Source: OAH Review staff and stakeholder survey conducted in May 2019. 151 staff and stakeholders answered this question.*

*Staff had many ideas for organizational structure improvements.*

*"An organization's ability to learn, and translate that learning into action rapidly, is the ultimate competitive advantage."*

   *Jack Welch*

Thirty-six respondents offered their own ideas for organizational structure efficiency improvements as part of the "other" category in the survey chart above. Some of those improvements included:

- "Update current roles to better reflect duties being performed by staff."

- "I think the LA3s should supervise their teams, instead of just being leads. They are better equipped to provide good quality supervision and they have a better understanding of the caseload work. Office managers are more equipped to supervise the leads and provide guidance for working with their teams."

- "Allow ALJ's in Tacoma and Spokane to communicate. Treat both offices as one unit. There is currently a divide between the two that cuts off one half of ESD from the knowledge base of the other."

- "While I agree the Division Chief positions need to be filled for each office, I don't think those positions should necessarily be structured as they currently are. We need a single leader identified for each caseload, and we need a single leader identified for each field office. Those duties don't necessarily have to overlap. If the caseload leader is not also the leader of the field office, that position's authority needs to be very clearly laid out, so as to ensure agency-wide compliance."

- "Cross-training for all staff on all caseloads"

- "Standardize procedures so that all OAH offices act as one in structure and delivery of services"

- "Consider using managers who are not judges but have a highly developed skillset for performance measurement and managing people."

- "More ALJs to do the work, rather than more managers to supervise. The span of control needs to be about one manager for every six to eight employees, not one manager for every two to four employees."

- "Try out a "court facilitator" position to better inform litigants"

- "Consolidate services such as printing, mailing and scheduling into a single headquarters unit"

*How does OAH compare with similar-sized state and adjudicatory agencies?*

OAH is constrained by its available resources to be fully effective. Although there is a perception that the agency is top heavy, it appears that may be the result of the way it calculates its overhead and indirect costs. See Fee Structure and Cost Allocation section for additional information.

After reviewing similar-sized state government and adjudicatory agencies, there were gaps noted when OAH was compared to the current organizational structure and resource capacity at other agencies. For example:

- Washington State Department of Financial Institutions with approximately 202 FTEs has larger HR, information technology, and fiscal teams. They have dedicated resources for policy, communications, regulatory affairs, and legal affairs.

- Washington State Utilities and Transportation Committee with approximately 152 FTEs has dedicated resources for communications, policy, and legislative affairs.

- Washington State Department of Retirement Systems with approximately 239 FTEs has dedicated resources for communication and stakeholder relations, project management, communication, and risk management.

- Washington State Board of Industrial Insurance Appeals with approximately 158 FTEs has larger facility, telecommunications, and fiscal teams.

- Minnesota Office of Administrative Hearings has a court administrator who oversees the administrative functions and legal support of the agency. They have dedicated resources for communications and rule coordination.

Some of the key resource gaps that should be addressed within the OAH organizational structure include:

- A dedicated resource to standardize OAH processes and tools and make better use of technology to ensure consistency across the state. This role would be similar to a Court Administrator or the Assistant Chief for Judicial Practice Improvement included in the optional organizational chart in Appendix 4. This role could help OAH answer legal and judicial questions from the avalanche of data that the agency has, while remaining separate from the judicial or adjudication operations of the agency. This position will help the agency talk about the value of OAH services to the authorizing

environment and the referring agencies from a different perspective. This role will also be able to answer specific and important research questions that will support the work of the agency and the ALJs.

- A Policy and Government Affairs role to help the agency with internal and external communications and with updating and making administrative, and, or, substantive changes to the agency's RCWs and WACs. This position would work closely with both sides of the agency, the judicial or adjudicative operations, and the judicial or adjudicative support, and would have a close working relationship with the Chief and Deputy Chief ALJs. This position would also work closely with their counterparts in the referring agencies to align legislative agendas and coordinate rule-making activities.

- Add a Business Transformation Project Management Office (PMO) and governance structure to prioritize agency projects and develop and execute implementation, change management, and training plans. The PMO needs expertise in project management, organizational change management, business analytics, organizational change management, training, and data analysis. Due to limited resources, the agency has a history of starting projects and not finishing them, leaving the staff to feel that their work on projects rarely produces tangible results, although it takes significant time. This team would help ensure these projects reach a successful, tangible outcome.

- A Centralized Legal Administration Manager to oversee centralizing mail, scheduling, and the call center and provide input on standardized processes, templates, and tools.

- Add fiscal and facility capacity to increase transparency and make process improvements in the areas of agency finances, leases, billing, fee structure, and equipment.

**Recommendations**  The following recommendations are offered to improve the organizational structure of the agency and address organizational gaps:

15.1    Increase resource capacity and expertise to adequately and effectively manage agency administrative and judicial support activities to:

15.1.1    Lead the consistent use of policies, procedures, templates, and other tools across specified caseloads

(proposed as the Assistant Chief for Judicial Practice Improvement in the optional organizational chart).

15.1.2     Lead projects to support current business needs and improve the quality and consistency of the appeal process (proposed as the Business Transformation PMO in the optional organizational chart).

15.1.3     Lead the development and implementation of model rulemaking strategy in close coordination with the internal agency and external stakeholders (proposed as the Assistant Chief for Policy, Governmental Affairs, and Risk Management in the optional organizational chart).

15.1.4     Provide analytical expertise within the agency to analyze issues, identify trends, and develop data driven options for decision makers to consider (proposed as the Business Transformation PMO in the optional organizational chart and in the increased capacity for the fiscal office in Recommendation #23.8.)

15.1.5     Lead the implementation of updated policies, the implementation of the communications and stakeholder plans, and the implementation of the performance management plan (proposed as the Business Transformation PMO in the optional organizational chart).

15.1.6     Lead the development of a staff training program to build commonly needed skills in judicial or adjudication operations, interpersonal communication, leadership development, managing change, building teams, and meeting facilitation (proposed as the Business Transformation PMO in the optional organizational chart). (See Conclusion #16).

## D. OAH TRAINING AND DEVELOPMENT

**Standards and Promising Practices**

Training and development are a critical and a vitally important part of any organization's resource and function management. Both activities are essential to improving the organization's performance, productivity, and outcomes. Often training and development are lumped together and thought of as one thing. Both activities must be continuous and aligned to the organization's mission and vision. They must be funded appropriately, and they must become part of the culture of the organization. Training is usually thought to be a system, provided by the organization, to develop knowledge and skills in an employee, or team, that aligns to the requirements of their job. Development is usually thought to be an activity specifically designed to help individuals learn and grow.

The major differences between training and development are:

| Training | Development |
|---|---|
| New employees engage to gain key skills for the required job | Existing employees engage to support overall advancement |
| Short term – 3 to 6 months | A continuous, long term, process |
| Focus on developing skills and knowledge of the current, present, job | Focus on building knowledge, understanding and competencies for future challenges |
| Limited in scope – specific job | Wider in scope – career oriented |
| Teacher or trainer driven | Self-directed with input from manager |
| Similar activities are provided to multiple people at the same time or over time | Individual activities that are different depending on the development goals of the individual |

Training should occur whenever a new employee is hired, a new process is implemented, or any type of change to organizational practice occurs. Development should occur over the course of an employee's career at the organization. Development should align with the progress and long term organizational and employee goals.

The benefits to having both training and development as a clear and understandable program within an organization are many, but two stand out as critical to any organization. First, they provide a competent and

skilled staff that can easily execute the tasks assigned to them with the tools provided. When cross training is part of the plan, it also increases collaboration and allows the organization to be more flexible and agile when employees leave or workload surges. Second, training and development increases team cohesiveness. When all members of the team are moving in the same direction, with the same training, and have a roadmap for their career development, the team and the organization are healthier and happier.

**Conclusion #16: There are inconsistent training and development opportunities within OAH.**

Training and development must be strategic and available to all levels of the organization. The organization needs to identify specific goals, linked to the vision, mission, and outcomes of the organization. It must also be frequent, assessed for effectiveness and need, and continually updated for it to be effective. This constant feedback loop will provide those responsible for supporting the training and development efforts at the agency a likely roadmap for further training and development. It will also uncover organizational-wide and team specific problems that can be addressed and other employee and organizational needs.

Finally, once training and development efforts are identified and aligned to the overall strategic needs of the organization, it must be funded appropriately and continually. Currently, OAH has no dedicated training budget. There is no budget for development of materials, platforms, or infrastructure. Since there is no budget for training, this becomes an ad hoc activity for staff to volunteer to add on top of existing responsibilities or as part of project support when a new technology tool is deployed. A new employee is trained by existing personnel as an addition to their current workload and training is also provided on specific new technology tools as it becomes available. Funding for training development is critical to the ongoing success of the organization and to the morale of agency staff.

A common theme expressed in the staff survey and during the interviews and work sessions is employees want to see improved training and development. Fifty-six percent of survey respondents reported the need to increase the training opportunities for employees; followed closely behind was increasing the use of consistent templates, checklists, and other tools.

## What tools, technology, and/or resources are missing to help you perform your role more efficiently?

| | |
|---|---|
| Increase the consistent use of templates, checklists, and other tools. | 59% |
| Increase the training opportunities for OAH employees. | 56% |
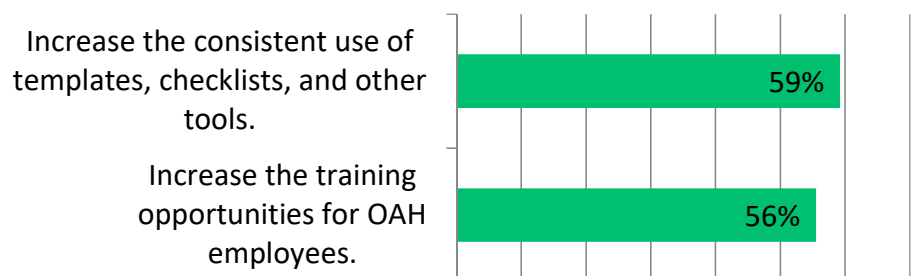
*Source: OAH Review staff and stakeholder survey conducted in May 2019. 162 staff and stakeholders answered this question.*

Some of the comments made in the survey included:

- "I trained myself. I ask questions, but I had to pick up on my position on my own. I sat with someone for half a day and that was it...."

- "Have more training directly related to my job."

- "like to see more consistency in training and how policy and procedures are implemented."

- "observe my peers' work so I could learn from them."

- "Add resources (people) to help develop and design training"

- "specific, scheduled time set aside for training (i.e. trying to utilize lynda.com was impossible)"

***Other revolving fund agencies have a pool of training hours.***

OAH should establish a training and development budget. Both the State Auditor's Office and the Attorney General's Office reported that they allocate staff hours each year for employee training. This budget should either be part of the hourly rate charged to each agency or as part of the agency overhead, distributed to the referring agency on a percentage basis. The budget should be developed after agency requirements have been analyzed, and costs for materials, training, platforms, staff, and caseload needs are understood. Once the budget is established, it must be kept current year after year and account for growth in OAH business and FTEs.

***There is a need to create training and developmental opportunities for specific roles, caseloads, and processes.***

OAH should create training materials and provide access to development opportunities for specific roles, caseloads, and processes for all levels of staff, including leadership training, coaching, and development opportunities for agency management.

- When linked to the staff role, these materials and development opportunities should clearly align to their position descriptions and the core competencies associated with them.

- When caseload-based, they should be drawn from experiences of the Senior ALJs on these caseloads and on the information needs of the referring agencies.

- When they are process driven, the agency should make sure that they have simplified the process using Lean principles and are training on something that is going to provide value to all involved.

These trainings should be consistent throughout the agency and should not vary from site to site, caseload to caseload, or role to role, except

where explicitly necessary. Not all training must be developed in house by OAH. They should take advantage of other agencies training opportunities and outside providers to support what is developed in house.

These training and development opportunities should be led by the Business Transformation PMO and constructed with the help of the staff who will participate in them. The plan to deliver should include cross training efforts and opportunities, which will add greater stability for the agency. Finally, training and development opportunities are not something that happens only once or at the beginning of an individual's career with OAH. It must continue throughout their career, growing and changing with them, or it risks becoming stagnant or useless.

*There are various modern training platforms available that are adaptive.*

OAH should utilize modern training platforms that are adaptive and can record and archive not only staff participation but can streamline training. This will allow staff to participate at a distance, maintaining a cohesive training experience for all, quickly able to update and revise materials and course of instruction, and many other advantages.

This platform can also be used for external stakeholders needing training or information on OAH processes. With a modern training platform, role-based permissions allow for internal and external access to be differentiated.

OAH may not need to invest in their own platform but may decide to take advantage of a statewide offering. OAH might also elect to use a per person licensed offering, making sure that the content and data is portable and easily extracted into other systems in the future.

*Not only would internal OAH staff benefit from improving training, but so would referring agencies.*

OAH should create training materials and conduct training for external stakeholders. These trainings should support specific caseloads and processes that will help referring agencies understand OAH processes and how referring agencies can and should interact with caseloads. These training opportunities should be provided to all levels of the stakeholder community.

These materials should be developed in collaboration with the referring agencies and should also be drawn from experiences of the Senior ALJs on specific caseloads and on the information needs of the referring agencies. When they are process driven, the agency should make sure that they have simplified the process using Lean principles and that these processes are specific to referring agencies. Defining what process a referring agency would use to extract and interact with OAH data would be an example of a

process the external stakeholders might require training on, especially if these processes change or are expanded. It is critical that whatever training is offered to external stakeholders it provides value to all involved.

OAH management should communicate with referring agencies, and the authorizing environment, to explain the need for training and development opportunities that will, in the end, create better processes for hearings, reduce identified wastes on all sides, and increase collaboration with referring agencies. This process should follow a continuous improvement cycle.

**Recommendations**

The following recommendations are offered to promote training and development opportunities for OAH staff:

16.1    Establish a dedicated budget for training and development.

16.2    Work with the Business Transformation PMO for staff support creating a training plan for internal staff by role, caseload, and process. (See Recommendation #15.1.6.)

16.3    Utilize modern training platforms.

16.4    Create and conduct training for external stakeholders.

# E. OAH STAKEHOLDER MANAGEMENT

**Standards and Promising Practices**

Stakeholder management is a critical component to the successful delivery of any project, program, or activity. The aim of stakeholder management is to influence stakeholder attitudes, decisions, and actions for mutual benefit. Stakeholders need to gain from the relationship or they may not be sufficiently motivated to cooperate.

The first steps in stakeholder management are to identify and prioritize stakeholders. A stakeholder is any individual, group, or organization that can affect, be affected by, or perceive itself to be affected by a program or an agency. OAH staff work with a variety of stakeholders in their daily work including referring agencies, appellants, party representatives, respondents, interpreters, other adjudicatory and legal organizations; OFM; and the Legislature. What OAH says, when they say it, how, and to whom they communicate, affects the involvement and perceptions of all of these stakeholders.

In February 2019, time was spent with the agency leadership team in mapping the OAH internal and external stakeholders who could possibly be affected by the results of this review and what their degree of influence or interest is in agency operations (see the next page). It will be important for OAH to use the results of this effort as they develop an ongoing stakeholder management and communication plan.
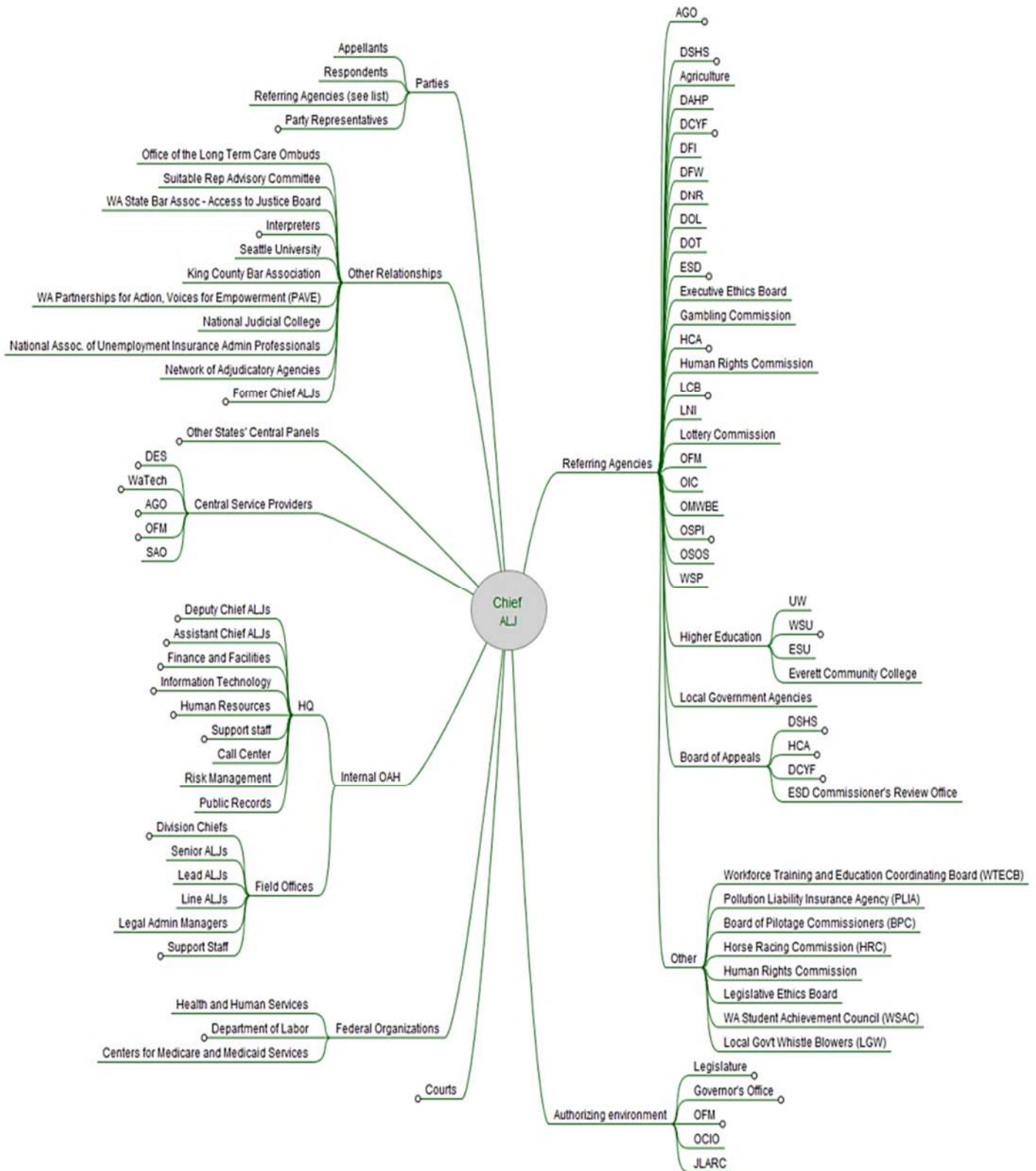
**OAH Stakeholder Map**

**Conclusion #17: OAH lacks a robust stakeholder management strategy.**

Currently, referring agencies communicate primarily through the Chief ALJ, the Deputy Chief ALJs, the Division Chief ALJs, or other headquarters staff. This is appropriate and should continue. However, communications are mostly reactionary in nature. A communication plan should be developed that describes the strategy for providing the right information, to the right people, in a useful format, at the proper time.

The knowledge gained during the stakeholder mapping exercise will inform the communication strategy for each person or group. The mere act of consciously planning communication can transform stakeholder management from reactive to proactive.

*ALJs are independent of, and not subject to control or influence by, the referring agencies.*

OAH management continually seeks to balance the need for decisional independence with the needs of their various stakeholders, particularly the referring agencies. OAH's role is to provide fair and unbiased adjudications and due process to the agencies involved, the appellants, and the public. Their ALJs are independent of, and not subject to control or influence by, the agencies for which they conduct hearings. Needs for time reporting and performance management data are perceived by ALJs as crossing the line between independence and the need for information. They see requests or questions raised by the referring agencies about their time or performance metrics as an attack on their professional integrity.

As OAH develops a stakeholder management strategy, this balance needs to be maintained to help ensure the decisional independence of the line and Lead ALJs is protected. OAH should establish a clear, bright line between the ALJs conducting the hearing and the staff who are responding to referring agency questions, issues, and concerns. (See OAH Organizational Structure section of this document.)

*OAH staff and stakeholders want to see improvements in communication within and outside the agency.*

The themes of lack of consistency, follow through, understanding of decisions, and unclear roles and responsibilities were prevalent throughout the feedback received from the staff and stakeholders who participated in the online survey or the in-person interviews and work sessions.

When asked what staff and stakeholders would suggest for improvements of OAH communications, the most common answer involved clearer roles and responsibilities to ensure consistency in communication and broader staff and stakeholder involvement in agency decision-making.

## What improvements could be made to agency communications?



Horizontal bar chart showing responses:
- Clear Roles and Responsibilities to Ensure…: 23
- Broader Staff and Stakeholder Involvement: 16
- Increase In Person Mtgs: 9
- Increase Transparency: 8
- Central Location for Communication and Feedback: 6
- No suggestions: 5
- Improve Technology and Training: 4
- Fewer Emails: 2
- Scheduled Time for Communication: 1
- More Staff: 1
- Space: 1
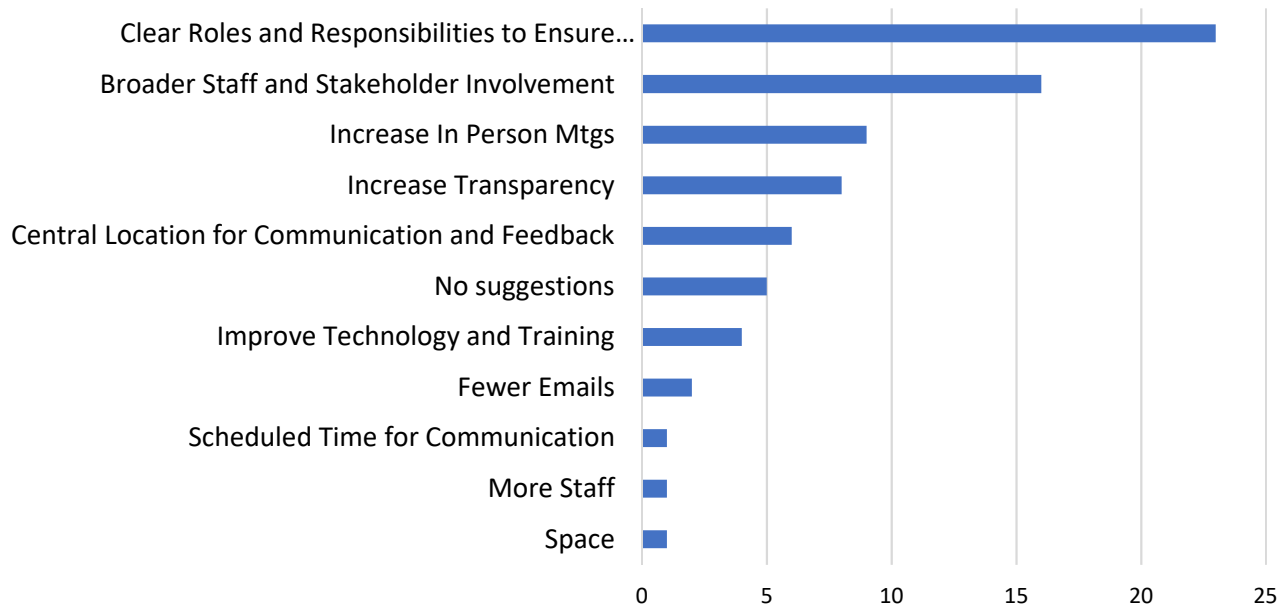
*Source: Staff and stakeholder survey. 76 respondents answered this open-ended question.*

***A RACI matrix can be used to clarify roles and responsibilities in stakeholder management.***

Confusion over who must be involved in decisions can be a significant source of conflict for any organization or project. This is particularly true for any organizations that are planning changes in systems or processes. In addition to a communication plan, OAH should consider the adoption of a RACI matrix that can be used to be clear on who is responsible, accountable, consulted, or informed in any dealings with internal and external stakeholders. This matrix will be a key component to success as OAH decides the appropriate agency involvement with the various stakeholders or groups and who has authority and responsibility for maintaining those identified relationships.

At a minimum, each Division Chief ALJ, who has been assigned as lead for a specified caseload, should meet with the referring agencies for those caseloads every quarter. In addition, the Division Chief ALJ should schedule periodic check-ins with the Senior ALJs, and if possible Lead ALJs as well, matrixed to them as part of their caseload lead role. Topics for these discussions may include:

- program or policy changes;
- technology opportunities;
- processes, procedures, forms, and templates;
- lessons learned from the previous quarter;
- trends;

- forecasts of future caseloads; and
- communication required to the Line ALJs and legal professional support staff.

Moderate or significant changes in program or policy will require coordination with the Chief and Deputy ALJs.

*Perception of OAH from external stakeholders is less positive than from OAH staff.*

As stated earlier, all staff and stakeholders share a common goal of fairness, promptness, impartiality, and accessibility. However, for the external stakeholders, their evaluation of their experience with OAH is less positive than the same evaluation from OAH staff except for their perception of the expertise and ability of OAH managers. Fifty percent or less of the stakeholders surveyed said that that OAH:

- provides secure electronic access using customer-friendly technology;
- attracts and retains exemplary employees;
- fosters a culture of innovation, trust, and respect that welcomes feedback and collaboration; and
- fosters a culture of equity and inclusion.

**Experience with OAH**
**Comparison of OAH Staff and Stakeholder Responses**

| Statement | Stakeholders | OAH Staff |
|---|---|---|
| OAH values the rights of parties. | 65% | 95% |
| OAH values relationships with other organizations. | 65% | 73% |
| OAH fosters a culture of equity and inclusion. | 43% | 68% |
| OAH fosters a culture of innovation, trust, and respect that welcomes feedback and collaboration. | 50% | 53% |
| OAH attracts and retains exemplary employees. | 46% | 55% |
| OAH provides secure electronic access using customer-friendly technology. | 31% | 54% |
| OAH work is timely. | 68% | 89% |
| OAH work is high quality. | 83% | 91% |
| OAH managers have the expertise and ability to make OAH successful. | 78% | 72% |

■ Stakeholders  ■ OAH Staff

*Source: Staff and stakeholder survey. 128 OAH staff and 23 external stakeholders answered these questions.*

*What could be done to improve external perceptions of OAH?*

When asked in the recent online survey, what could be done to improve the external perceptions of OAH by referring agencies, the majority of respondents said to improve communication.

**How do you think external perceptions of OAH could be improved?**
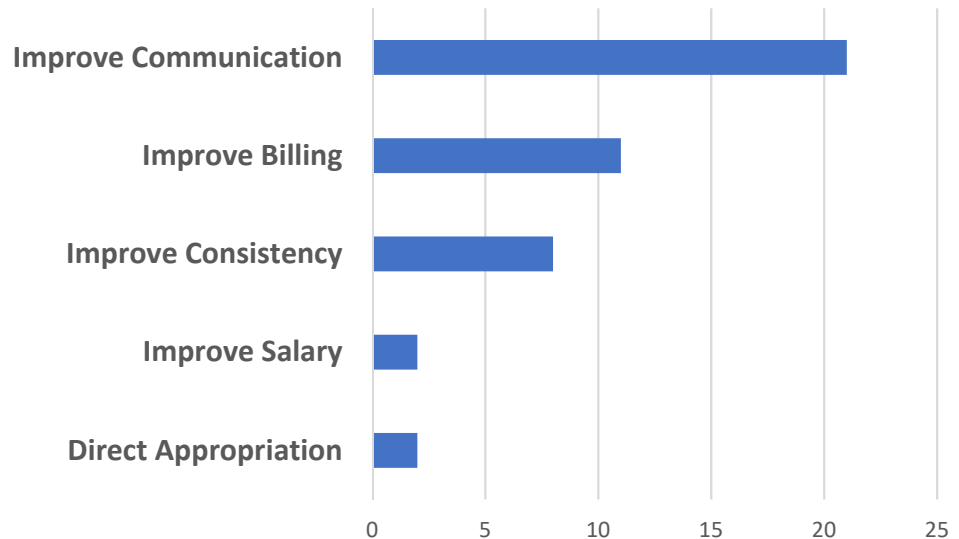


*Source: Staff and stakeholder survey. 44 OAH staff and 23 external stakeholders answered these questions.*

**Recommendations**

In addition to other recommendations offered throughout the report that address customer and stakeholder relationships, OAH should:

17.1    Develop a stakeholder management plan and a communication plan and review its progress on implementation of the plans on a quarterly basis.

17.2    Establish a primary point of contact for stakeholder management for each caseload with clear roles, responsibilities, and decision-making authority.

17.3    Establish a standard agenda for quarterly meetings with key stakeholders to include program or policy changes, lessons learned, trends, and forecasts of future caseloads.

17.4    Adopt common meeting management practices for the meetings, including developing and issuing agendas in advance, and documenting outcomes for each agenda item with action steps, assignments, and due dates.

**Conclusion #18: OAH does not have a formal advisory council.**

OAH currently uses an advisory committee to handle suitable representation issues. However, there is not a formal structure with the referring agencies to take on issues such as uniform policies, rules, procedures, and practices with the administrative hearing system as a whole. These discussions are handled more informally.

An advisory council could include a review of current practices and procedures and technology opportunities within both the judicial court system and the administrative hearing system, with a constructive exchange of ideas and proposals. For example, Maryland created the State Advisory Council on Administrative Hearings, which advises the chief administrative law judge on issues and proposals.

The council can also identify issues that the administrative law judges should address and can review and comment on matters relating to administrative hearings, the agency operational processes, and policies and regulations proposed by the Chief ALJ.

***Stakeholders see opportunities for system improvements.***

During the in-person interviews and work sessions, several suggestions were made on how to improve communications and stakeholder relationships with technology. Some of these ideas included:

- improving notice of hearing and written orders for appellant use by ensuring they are written in plain language;

- completing the portal for appellants, referring agencies, and other stakeholders have access to monitor status of appeal, for hearing notifications, and obtain other relevant information;

- completing electronic transfer of case file and exhibits between agencies to reduce duplication of effort; and

- getting more information regarding continuances and defaults and the reasons why.

These ideas for technology improvements could be discussed at the advisory council for review and prioritization before going to the OAH governance committee for final decision-making.

**Recommendations**

In addition to other recommendations offered throughout the report that address customer and stakeholder relationships, OAH should:

18.1 Create an agency advisory committee to work directly with stakeholders to review model rules, policies, technology improvements, and initiatives, such as plain talk and paperless, to understand their potential impact on other organizations.

18.2 Develop and post a charter for the advisory committee that contains, at a minimum, its purpose, members, responsibilities, and meeting expectations.

# F. OAH BILLING STRUCTURE AND TIME REPORTING

**Central Panel Funding Methodologies**

Funding for the central panel agencies across the country generally falls into three categories:

- Direct appropriation – either general fund or special revenue fund

- Assessment to referring agencies of allocated costs

- Hourly rate for actual time spent usually using a revolving fund

As discussed earlier, scholars have been considering the advantages and disadvantages of the central panel model and their various funding methods. See the next page for a summary of strengths and challenges for each methodology.

No matter which funding methodology is chosen, states need to make accurate forecasts of their required workload so realistic budget appropriations can be made that are acceptable to each state's authorizing environment (Legislature, Governor's budget office, etc.). This usually requires panel agencies to keep track of hours worked per case, so they can forecast future workloads and meet agency requirements for state and federal budget and performance reporting. In addition, the competition for general fund state funding authority is intense in most states.

In Washington, seeking general fund state authority would put the OAH in competition for limited resources with agencies seeking funding for K-12 education, social and health services, corrections, higher education, and debt service. This would most likely not be well received by the authorizing environment.

**How is near General Fund-State Money Spent?**

**(Dollars in Billions)**
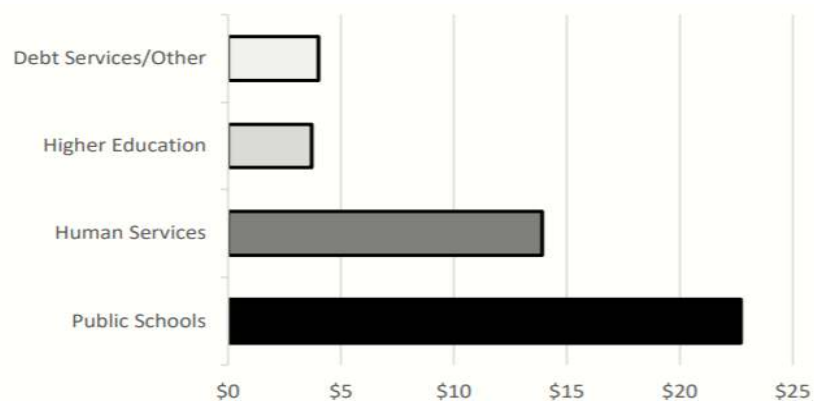


*Source: Citizen's Guide to Washington State Budget, 2019.*

## Strengths and Challenges of Central Panel Funding Methodologies

| | Funding strengths | Funding challenges | Year Published | Studies or Articles |
|---|---|---|---|---|
| **General Fund or Special Revenue Direct Appropriation** | • Simple and predictable.<br>• Advantageous for referring agency as they can avoid forecasting or budgeting for administrative reviews.<br>• Reduces perception of bias as the referring agency is not paying for the hearing. | • Difficult to manage unexpected increases in caseload.<br>• Referring agencies do not have the fiscal incentive to mediate or settle cases to avoid hearings. | 2016 | "Performance Audit Administrative Appeals" Washington State Auditor's Office |
| | • Results in a simple and predictable budget that allows some fiscal stability not achieved with other funding models.<br>• Avoids having to hold funds in a revolving fund balance as a reserve for revenue fluctuations.<br>• Agency does not have to avoid providing hearings to manage budget.<br>• Relief to small agencies as difficult to manage unexpected fluctuations in caseload or expenses associated with lengthy, complex cases.<br>• Provides the legislative branch of government greater oversight and control over the activities of the hearing office.<br>• Relieves pressures from referring agencies to keep costs low. | • Funding model provides no revenue for sudden spike in caseload when there is a need for contract ALJs.<br>• Does not provide fiscal incentives to settle or mediate cases.<br>• Personal accountability of time and funding may be absent.<br>• Can also be seen as an indirect subsidy to these types of local units of government. | 2000 | "Methods of Funding Central Panels: The Fiscal, Management, and Policy Implications" Bruce H. Johnson Journal of the National Association of Administrative Law Judges |
| | • Reduces the appearance of OAH's dependence on agencies' satisfaction with the rulings. | • Would not have a clear evidentiary basis because accurate data may not be collected regarding the time and costs associated with different case types.<br>• Would require reducing the budgets of referring agencies.<br>• Might eliminate the incentive for referring agencies to get it right the first time to avoid the per case charge. | 2016 | Administrative Justice in the District of Columbia: Recommendations to Improve DC's Office of Administrative Hearings |
| | • Helps ensure the independence of central panel ALJ decision-making.<br>• Ensures fairness.<br>• Funding source is independent of the referring agencies.<br>• Promotes independent operations by central panel. | | 2019 | "The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices", Malcolm Rich and Alison Goldstein |
| | • Fosters Impartiality, as it frees ALJs from reliance on payment from the agency.<br>• Creates fair and efficient system. | | 2019 | American Bar Assn. Nat'l Conference of the Administrative Law Judiciary Government and Public Sector Lawyers Division, Report |

| | Funding strengths | Funding challenges | Year Published | Studies or Articles |
|---|---|---|---|---|
| **Assessments to Agencies** | • Reduces the risk that agencies would use financial pressure to influence the outcomes of hearings.<br>• Reduces anxiety at the central panel that annual revenues from billing will be insufficient to cover annual costs.<br>• Referring agencies have a fiscal incentive to mediate or settle cases to avoid hearings as it will save costs. | • Periodic assessments create less fiscal stability than direct funding by general fund. | 2016 | "Performance Audit Administrative Appeals" Washington State Auditor's Office |
| | • More predictable and stable than a budget funded entirely from an hourly rate.<br>• Funding model considers time spent on cases that may be settled before hearings or defaulted hearings.<br>• Model often includes opportunity to charge agencies when unexpected caseloads spikes occur and allows hiring contract ALJs to accommodate increases.<br>• Can provide more flexibility in managing changes to caseload.<br>• Greater fiscal distance from referring agency than hourly billing which allows for a more independent and impartial public perception. | • Raises the question of independence when one of the parties in a contested case pays for the hearing.<br>• May damage public confidence in the impartiality of the system.<br>• Puts pressure on the central panel to keep costs low.<br>• Challenges with assessing small or local agencies who may be occasional users of the central panel.<br>• Complex accounting practices are required when local government systems are not part of the state's assessment budget. | 2000 | "Methods of Funding Central Panels: The Fiscal, Management, and Policy Implications" Bruce H. Johnson Journal of the National Association of Administrative Law Judges |
| | • Fosters Impartiality, as it frees ALJs from reliance on payment from the agency. | | 2019 | American Bar Assn. Nat'l Conference of the Administrative Law Judiciary Government and Public Sector Lawyers Division, Report |

| | Funding strengths | Funding challenges | Year Published | Studies or Articles |
|---|---|---|---|---|
| **Bill Hourly Rate to Agencies** | • Caseload increases are covered fiscally with the pay as you go model.<br>• Incentivizes agencies to settle disputes that might otherwise result in hearings due to charging agencies the full cost of administrative hearings. | • Presents the greatest opportunity for agencies to exert financial pressure on the central panel.<br>• ALJs may spend less time on individual cases out of concern for costs.<br>• The perception of partiality and lack of neutrality is strongest where the requesting agency is billed directly for the cost of its hearings.<br>• This approach can also create financial instability if hearing volumes fluctuate unpredictably. | 2016 | "Performance Audit Administrative Appeals" Washington State Auditor's Office |
| | • State funds do not pay for the cost of the hearing for local governments as may occur in the other two methods.<br>• Allows local government to use central panel and no cost to the state.<br>• Billing is directly proportionate to the number of hearings. | • One of the parties in a contested case pays for the hearing which raises the question of the independence of the ALJ.<br>• May damage public confidence in the impartiality of the system.<br>• Funding hourly requires ALJs to account daily for their time in order to produce hourly billings to referring agencies. | 2000 | "Methods of Funding Central Panels: The Fiscal, Management, and Policy Implications" Bruce H. Johnson Journal of the National Association |

| | Funding strengths | Funding challenges | Year Published | Studies or Articles |
|---|---|---|---|---|
| | • Works well for offices that conduct large volume, low cost hearings.<br>• Agency can hire additional staff as needed when caseload spikes occur.<br>• Incentivizes agencies to settle disputes at the lowest possible level. | • Cases that are settled or defaulted are in some cases not able to be billed.<br>• Caseload fluctuations can cause instability and makes budgeting challenging.<br>• Challenging for small agency budgets.<br>• Complex cases may not receive the attention needed due to concern about managing time and costs.<br>• Concern with overt pressure from referring agencies to influence outcomes. | | of Administrative Law Judges |
| | | • Many central panels build safeguards into the process of a billable rate method through a "Memorandum of Understanding" (MOU) which governs the funding relationship. This method:<br>   o Requires significant administrative effort annually to renegotiate with the referring agencies and forecast the upcoming year's costs.<br>   o Proves to be challenging to resolve billing disputes that arise. | 2019 | "The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices", Malcolm Rich and Alison Goldstein |

**How does Washington State OAH compare to other states' panel agencies?**

Washington's central panel was established in 1982 with a revolving fund and is currently billing agencies based on an hourly rate. Washington is the only state that relies solely on this method of billing. Most states surveyed are a combination of various funding models.



## Number of States Using Each Funding Model*
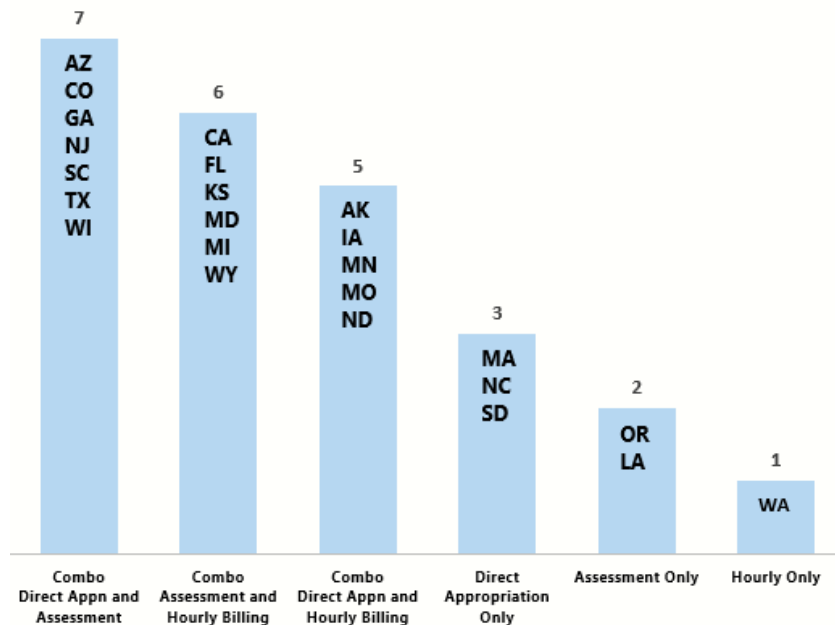
| 7 | 6 | 5 | 3 | 2 | 1 |
|---|---|---|---|---|---|
| AZ<br>CO<br>GA<br>NJ<br>SC<br>TX<br>WI | CA<br>FL<br>KS<br>MD<br>MI<br>WY | AK<br>IA<br>MN<br>MO<br>ND | MA<br>NC<br>SD | OR<br>LA | WA |
| Combo Direct Appn and Assessment | Combo Assessment and Hourly Billing | Combo Direct Appn and Hourly Billing | Direct Appropriation Only | Assessment Only | Hourly Only |

* One state did not report their funding methodology for this review.

- Fifteen of the 24 states who reported their funding methodology have a direct general fund or special revenue appropriation; although most do not rely solely on that appropriation. Seven of those states have a combination of direct appropriation and an assessment; five of them have a direct appropriation and hourly billing; and three states rely exclusively on a direct appropriation of either general fund or special revenue funds.

- Seven of the states have some sort of assessment methodology in place; although only two of those seven states rely exclusively on an assessment to referring agencies.

- Six states are billing referring agencies on an hourly basis; although only one state, Washington, relies exclusively on an hourly rate.

- Most states do a combination of funding methodologies. For example, Kansas has a system in place where the five largest referring agencies, who make up two-thirds of their caseload, pay a quarterly retainer and then settle any retainer disparity every six months. In addition, these referring agencies get a monthly report for their own tracking purposes of the actual hours spent. The small referring agencies, within their caseload, are billed hourly each month based on actuals. They also bill directly for interpreter, court reporter, and travel costs. The assessment method provides them working capital reserves but creates a workload when the true-up to actual costs happens every six months. At that time, referring agencies either receive a credit or an additional cost they must pay. See the summary of the states' panel adjudicatory agencies funding methodologies on the next page.

## State Comparison of Panel Adjudicatory Agencies' Funding Methodologies

| State | Direct Appropriation General Fund | Direct Appropriation Special Fund | Assessment to Referring Agencies | Hourly Billing to Referring Agencies | Funding Model Comments |
|---|---|---|---|---|---|
| | **Funding Model** | | | | |
| Alaska | x | | | x | |
| Arizona | x | | x | | Funding model is a combination of approximately 45% is General fund and an assessment including hourly rate and filing fees |
| California | | | x | x | Funding model is a combination of hourly and assessment for filing and other direct costs. $276/hour for Special Education cases $280/ hour for General Jurisdiction cases |
| Colorado | x | | x | | |
| District of Columbia | n/a | n/a | n/a | n/a | Not available |
| Florida | | | x | x | $153/hour, plus cost of travel 5.1% admin |
| Georgia | x | | x | | New Model for FY 2020 $124/hour judges, $69/hour staff attorneys, $16/referral covers fixed costs for agency Bill agency for direct costs |
| Iowa | x | x | | x | Combination of general fund dollars, appropriation from the Road Use Tax Fund, and billing to agencies at $99.25/hour |
| Kansas | | | x | x | 5 largest agencies pay a retainer for about 2/3 of annual volume. $100/hour for the remaining agencies. |
| Louisiana | | | x | | Assessment using SWCAP methodology |
| Maryland | | | x | x | Hourly rate is based on type of case and formula developed based on time studies. Also includes fee system for some cases. |
| Massachusetts | x | x | | | Type of funding: General Fund – direct appropriation GJU Special Fund – appropriation Federal Trust fund funds BSEA through Dept of Education |
| Michigan | | | x | x | Funding structure varies based on agency and agreement type. Funding varies from the following: - Set fee - Hourly Flat Rate - Hourly Actual salary and benefits - Hourly including separate support costs |
| Minnesota | | x | | x | $170/hour attorney $90/staff attorney |
| Missouri | x | | | x | Hourly for special education cases only |

| | Funding Model | | | | |
|---|---|---|---|---|---|
| State | Direct Appropriation General Fund | Direct Appropriation Special Fund | Assessment to Referring Agencies | Hourly Billing to Referring Agencies | Funding Model Comments |
| New Jersey | x | | x | | Combination of general fund appropriation, state assessment/recoveries, state third party recoveries, federal fund reimbursements |
| North Carolina | x | | | | GF direct appropriation |
| North Dakota | | x | | x | $165/hour for all (including travel) $140/hour for contract ALJs |
| Oregon | | | x | | Around 2011 moved from hourly rate to actual cost billing model. Looking at new billing model within next few years. |
| South Carolina | x | | x | | The revenue from the fees is retained and expended by the ALC to help defray the costs of the proceedings |
| South Dakota | x | | | | |
| Tennessee | n/a | n/a | n/a | n/a | Not available |
| Texas | x | | x | | 2/3 General Fund Direct Appropriation 1/3 Assessment to Referring Agencies |
| Washington | | | | x | Hourly Rate - $93 per hour ALJ, $54 per hour legal professional support staff, plus overhead |
| Wisconsin | | x | x | | |
| Wyoming | | | x | x | 60% from workers compensation division, 40% from the department of transportation Bill other referring agencies (any state agency that can hold contested cases, other than work comp and driver's license) $120/hr. |

*Washington State's Approach to Funding*

Washington's OAH approach to funding has evolved over the years.

- Prior to FY 2014, billings were based on an assessment of full-time equivalent (FTE) staff assigned to a specified caseload.

- In FY 2014, this methodology shifted from an FTE assessment to an hourly billing basis in response to a desire on the part of referring agencies to have more granular data driving the allocation of costs. Despite closely monitoring this change, the cash balance for the revolving fund went negative due to the difference between billing in advance based on FTEs versus billing based on actual hours at the end of the month (see chart on the next page). This required OAH to seek an exception from the state's budget office in order to continue operations with a negative cash balance.

**Cash balance at June 30 of each year**



| | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|---|---|---|---|---|---|---|---|---|---|
| | 1,207,242 | 1,277,643 | (681,946) | 1,101,847 | (92,356) | (93,438) | 37,203 | (478,450) | (945,197) |

Shift from Pre-Bill in Advance to Billing Actual Hours



| 2009-11 | Transfer of Financial and HR from OAH to Small Agency Services | 2011-13 | Small Agency Services moved to Dept. of Enterprise Services (DES) | 2013-15 | Shift from Pre-Bill based on FTEs to Billed on Actual Hours | 2015-17 | Financial/HR duties transfer back to OAH from Small Agency Svs (except payroll) | 2017-19 | Changed to 3 cost pools based on actual hours |

| FTE Assigned | $120.00 per ALJ hour | $130.34 per ALJ hour | 3 cost pools - $93 per hour ALJ, $54 per hour Support Staff, plus Overhead/Indirect |
|---|---|---|---|

*The single hourly rate was adopted in the 2013-15 biennium.*

In addition to the cash flow issues, the change to the $120 ALJ hourly rate based on actual hours created a hardship for both OAH and the referring agencies. Agencies were having difficulty accurately estimating the number and complexity of cases they were sending to OAH and how they were being billed. OAH was having issues with covering the costs of their support and administrative staff plus their fixed costs, such as building leases, computer leases, and other administrative costs. These costs were imbedded in the hourly rate and could not flex quickly enough in response to the unexpected downturn in billable hours. The hourly rate increased in FY 2015 to $130.34 per ALJ hour to try to cover these costs.

The hours used in the rate calculation in both biennia included what was termed "an uplift" to cover the support and administrative staff and other fixed costs. The referring agencies did not understand this concept and wanted more visibility into what those costs were.

*A change was made going into the 2017–19 biennium to move from a single hourly rate to three cost pools.*

In FY 2017, the billing changed from one hourly rate charged to all referring agencies to a more complex rate structure with three cost pools.

- Cost Pool 1: Administrative Law Judge time is billed at a fixed rate of $93 per hour based on agency actual use; this pool covers the costs of judge salaries and benefits, supervision, and caseload driven costs such as travel;

- Cost Pool 2: Legal professional support staff time is billed at a fixed rate of $54 per hour based on agency actual use; this pool covers the costs of legal professional support staff salaries, benefits, supervision, and some caseload driven costs such as paper, postage, and interpreter services;

- Cost Pool 3: Centrally provided services covers the cost of administrative salaries and benefits, as well as central service charges from other agencies, leased facilities, and equipment, distributed as a share of hours in Cost Pools 1 and 2.

There is still uneasiness reported by the referring agencies on what is included in Cost Pool 3 and how that affects their bill.

**Conclusion #19: The current billing methodology requires detailed time tracking.**

Billing by the hour requires all agency staff to record their time and leave by the 1/10th of the hour. ALJ's and legal professional support staff time reporting requirements are the same except for the following level of reporting detail:

- ALJs are required to enter their time by docket number.

- Legal professional support staff record their hours by caseload or program unless the referring agency has requested the information by docket number.

The billable hours are listed on the invoices sent to referring agencies along with an allocation of the overhead and administrative costs.

Staff are required to track their leave and non-billable time as well, including:

- Essential Office Time (EOT);

- HQ Administration;

- Training;

- Management Activity;

- Public Records Requests Processing (for Joint Legislative Audit Review Committee (JLARC) reporting);

- Public Records Request Administration (for JLARC reporting);

- Public Records Litigation (for JLARC reporting);

- ADA Requests; and

- Non-Work Day.

The OAH policy for the use of the New Time Management System (NTMS) says these hours do not result in a charge to referring agencies. However, the rates charged to agencies assume all of the ALJ and legal professional support staff hours and costs for the year including leave, so in an indirect way they are charged to referring agencies. There is no evidence that hours by category are used for any trend analysis at the local or caseload level or that the hours are budgeted by category so staff and managers know if they are exceeding the plan.

**Staff question if their decisional independence is being challenged with this billing method.**

Decisional independence was frequently brought up in the online staff and stakeholder survey and the in-person interviews and work sessions as an issue regarding the current hourly billing methodology for OAH services. While this is a recognized concern, given the current authorizing environment, it would not be a wise recommendation to switch from the current billing methodology to a direct general fund appropriation.

A change to direct fund appropriation will change the funding dilemma from the perceived lack of appearance of impartiality and fairness, to one where OAH is competing for a small piece of the highly sought after, highly competitive, general fund pie. If direct funded by the general fund, the agency may be subject to frequent spending cuts as the Governor and the Legislature seek funding for other priorities, such as K-12 education, social and health services, corrections, and higher education.

However, the ALJs should be isolated from influences that might sway decisions. One element supporting this independence is establishment of the clear, bright line in the organizational structure separating the ALJs from potential influences. Based on feedback received in the interviews and work session, staff need assurance that questions or issues around billing and hours coming from referring agencies are handled by Senior ALJs or above in the organization to ensure decisional independence. (See recommendation #12.2.)

*Staff do not understand why there is need to collect billing information.*

OAH staff and stakeholders do not understand how referring agencies are billed nor do they have knowledge of the reports they are provided.

### Do you understand how referring agencies are billed and have knowledge of the reports they are provided?
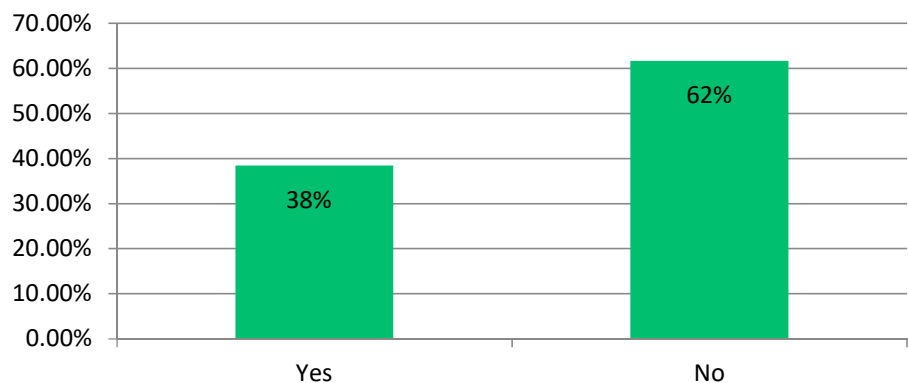


*Source: Staff and stakeholder survey. 151 staff and stakeholders answered these questions.*

*Staff want to see improvements in time reporting.*

When staff were asked in the recent survey, what is the one thing to make me more effective in my job, 25% said it was to improve billing and time reporting. Some of the comments included:

- "Get rid of NTMS. Bill per case, not hourly. I got out of private practice because it was always 'one eye on the work, the other on the billable clock'. Now, I'm doing the same thing, only getting paid half as much though."

- "Not have to bill my time in the degree of detail that I do."

*"Automate the time keeping system so that Judges don't have to make so many manual entries each day and try to account for every 6 minutes of time."*
*Survey 2019*

- "Get rid of the NTMS/billing time system."

- "Eliminate billing, allow more flexibility with work schedule and telework."

- "Less time spent tracking time."

- "Recording the time spend on each and every UI case in NTMS is a massive and unnecessary waste of time and taxpayer money. It would be much more efficient to simply establish an annual or biannual average time spend on each UI case and bill accordingly. I could (and would) do two extra UI cases per week in the time it takes me to feed the NTMS monster each week. "

- "Get rid of the requirement to keep track of all of the time spent on cases and other tasks. It is a waste of time."

- "Automate the time keeping system so that Judges don't have to make so many manual entries each day and try to account for every 6 minutes of time."

- "Not having to account for my time minute-by-minute."

- "First, OAH should have a direct appropriation such that we don't have to pay other agencies. It's better for efficiency and our independence. Given that we do have to bill agencies, I understand the need to track that. However, I see no reason to track Essential Office Time (EOT), Management Time, Training Time, or anything else in NTMS, since we aren't bill[ed] for that time. "

- "Keeping track of time interrupts the flow of work. it also takes more time than you would think to keep track of what time is spent on what tasks, locate the docket nos., enter the info correctly, make notes to account for travel time or what EOT is spent on, etc. Streamlining or eliminating this process would make for better productivity and less stress."

- "Today I spent 2 hours on the phone with an ALJ colleague, talking about the agency in general...Yet, I'll have to "bill" over 3 hours of EOT today, and will need to put a note in NTMS about why EOT was so high.

- "Change the billing structure so I'm not constantly worried about billable hours. "

- "I attest that my time sheet is accurate, and my supervisor approves it. Why should the [referring] agency get to challenge my attestation?"

*There is a clear lack of understanding of why this level of detail is needed for time reporting by ALJs and legal professional support staff.*

There is a clear lack of understanding of why this level of detail is needed for time reporting by ALJs and legal professional support staff. It is not clear to the staff how agency management uses the tracking of EOT and other non-billable categories which leaves staff guessing.

There also seems to be a lack of knowledge of the tools that are available to staff in PRISM and NTMS that may be helpful to them as they track their time. For example, it was reported that there is functionality built into PRISM that allows staff to link to NTMS to record their time. This functionality uses data from PRISM to populate the time sheet.

*Staff and stakeholders want more communication in how billing works.*

When staff and stakeholders were asked how could OAH improve on the accuracy and understandability of referring agency billings, reporting, and fee structure, about one-third of the respondents thought improvements could be made in education and communication and defining clear roles and responsibilities.

### How could OAH improve on the accuracy and understandability of referring agency billings, reporting, and fee structure?

| | |
|---|---|
| Establish clear roles and responsibilities on how referring agency billing and reporting inquiries will be handled to ensure ALJ decisional independence. | 39% |
| Provide additional guidance to OAH staff on time reporting and the linkage to agency performance and billing structure. | 35% |
| Develop communication materials to help referring agencies and OAH staff understand the OAH funding model. | 29% |
| Formalize roles and responsibilities for referring agency point of contacts. | 16% |
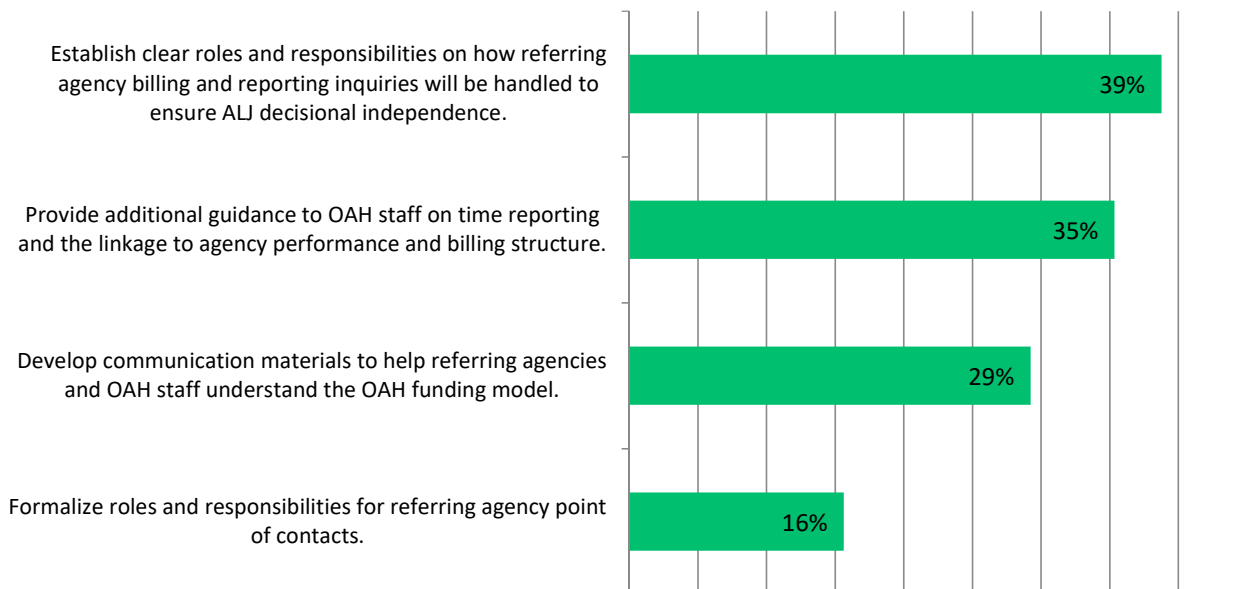
*Source: Staff and stakeholder survey. 147 staff and stakeholders answered these questions.*

**Recommendations**

The following recommendations are offered to improve the time reporting and billing methodology of the agency:

19.1    In the short term, continue the current method of billing by the hour by docket number for ALJ and legal professional support staff

for those agencies and programs that require that level of detail to meet their federal requirements.

19.2    In the long term, work with OAH staff and referring agencies to analyze the effects of switching from billing hourly to a retainer or assessment method for the five largest referring agencies based on the average billable hours in the last twelve months.

19.3    In the long term, work with OAH staff and referring agencies to analyze the effects of switching from billing hourly by docket number for legal professional support staff to an assessment method based on intake or open cases.

19.4    Review the level of detail that is currently required in the NTMS for non-billable time and determine if it is necessary for agency decision making and then explain to agency staff each category and why it is important. This may be an opportunity to rebrand EOT.

19.5    Update the policy regarding the use of the Time Management System based on the decisions made in Recommendation 19.1, 19.2, and 19.3. Provide quick reference guides and training to staff on some of the tools available to them to quickly track their time.

19.6    Develop training and communication material for use with agency staff on the billing methodology and how their time reporting is being used.

19.7    Develop a budget for each category of hours such as billable, EOT, training, and other categories that are determined to be important, so staff understand what the plan is they are managing to.

**Conclusion #20: The current billing methodology may not be aligned with the RCW.**

The way that OAH is currently billing seems to be out of step with state statute that allows the agency to bill on a quarterly basis. When the agency did bill using a quarterly assessment methodology that seems to be more in align with the statute, fiscal staff reported there were issues including:

- The reconciliation between the actual hours and the assessment caused unpredictable swings in the billing as those adjustments were made.

- There was a complicated system of buying and selling FTEs between designated caseloads when the need arose which was difficult to track.

- Some referring agencies complained about the lack of data and/or the timeliness of getting data regarding the hours it took per case during the appeal process to meet federal and other requirements.

Based on these issues, OAH made the decision to switch from a quarterly FTE based billing methodology to actual hours. The RCW may need to be amended to reflect the current billing method or any changes OAH decides to make to the billing methodology in the future. The RCW currently states that:

- "The amounts to be disbursed from the administrative hearings revolving fund from time to time shall be transferred thereto by the state treasurer from funds appropriated to any and all agencies for administrative hearings expenses on a quarterly basis.

- Agencies operating in whole or in part from non-appropriated funds shall pay into the administrative hearings revolving fund such funds as will fully reimburse funds appropriated to OAH for any services provided activities financed by non-appropriated funds.

- The funds from the employment security department for the administrative hearings services provided by the office of administrative hearings shall not exceed that portion of the resources provided to the employment security department by the department of labor, employment and training administration, for such administrative hearings services. To satisfy department of labor funding requirements, the office of administrative hearings shall meet or exceed timeliness standards under federal regulations in the conduct of employment security department appeals.

- The director of financial management shall allot all such funds to the office of administrative hearings for the operation of the office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other agencies under chapter 43.88 RCW.

- Disbursements from the administrative hearings revolving fund shall be pursuant to vouchers executed by the chief administrative law judge or his or her designee."

*A non-appropriated, allotted, OAH fund could strengthen the perception of OAH's independence.*

As shown by the previous studies, scholars have commented that whether pressure or not exists from the referring agencies, there is a perception of the lack of impartiality and fairness when referring agencies are billed directly for OAH services.

According to the State Performance Audit Report on Administrative Hearings (Washington State Auditor's Office, 2016), OAH leadership also expressed its view that the perception of impartiality would benefit from a more independent budget approach. The report states that while OAH does not believe that referring agencies are seeking to improperly influence specific decisions, they think a non-appropriated OAH account could strengthen the public's perception of OAH's independence.

Currently, OAH spending levels are subject to approval by the Legislature and the Governor; OAH must also obtain OFM approval for its hourly rate. With a non-appropriated fund, this may be an easier discussion. In addition, when unanticipated caseload increases occur, OAH would be able to enter into separate interagency agreements to bring in the revenue to cover the increased costs and not be limited by the appropriation.

With the current budget structure, an appropriation is required for both the central service agencies including OAH and the referring or client agencies. This results in a double appropriation in funding at the statewide level. By making the revolving funds for the central service agencies non-appropriated, but allotted, the budgeted dollars will not be double counted, and the state will still be able to monitor expenditures through the allotment process.

**Recommendations**

The following recommendation is offered to improve the funding methodology of the agency:

20.1    Work with OFM to change the administrative revolving fund from appropriated to a non-appropriated, but allotted, fund and amend RCW 34.12.140 to reflect their billing methodology.

**Conclusion #21: Interagency agreement and invoice requirements vary by referring agency.**

There is increasing pressure from policy and decision makers to have better cost information, especially when it comes to agencies who are charging other agencies for services. The customer agencies will want more data to see what is driving costs and if they are getting the value and performance results they expect.

Interagency agreements with referring agencies vary in their detail and time frames. OAH has negotiated with each agency their individual requirements for data and billing. Some agencies may have several different funding sources that require very specific, detailed information to break out the costs properly when they pay the invoice.

As discussed in Conclusion #2, this results in OAH not having a standardized set of reports and invoices. OAH staff manually customize invoices and reports per the specialized requests for each referring agency.

These various referring agency needs make it very difficult for OAH to manage across the various caseloads. OAH could take advantage of their advisory committee to develop some standards for their invoices and interagency agreements. These standards should reflect the balance that is required between the need for data and the costs of collecting that data.

OAH sends out invoices every month to about 25 different agencies. Some agencies receive multiple invoices. Fiscal staff extract hours data from NTMS using the specific requirements for each agency based on the individual agreements.

Billing is currently based on the hours reported by the ALJs and legal professional support staff. The level of detail is as follows:

- Agency level
    - Caseload level
        - Program level
            - Docket number / Case name

However, not all agencies require the data down to the docket number or case name and are only billed at the caseload or program level. OAH has implemented a portal with PRISM that some referring agencies have taken advantage of. If NTMS data were added to the portal, agencies could access additional information and would not need it to be shown on their invoice.

At some point, OAH would like to have a billing system other than their current Excel worksheets. This will require consistent business requirements to take full advantage of the technology that is available. If referring agencies can continue to get the information they need through the portal for their internal and external business and legal requirements, invoices could be standardized across all 25 different agencies.

When staff and stakeholders were asked how OAH could improve on the accuracy and understandability of referring agency billings, reporting, and fee structure, 42 respondents agreed that standardizing referring agency billings and reports and providing them access to additional data via the portal would be helpful.

**Recommendations**

The following recommendations are offered to improve the funding methodology and billing of the agency:

21.1    Work with OAH management and the advisory committee to standardize billing and other required reports across all referring agencies. Make other data available, including time reporting data, in the portal to allow referring agencies to run their own reports. (See Recommendation #2.3.)

21.2    Standardize interagency agreements between agencies to be on a biennial basis.

21.3    Develop requirements and standard business rules for the creation of a new billing system, once the billing, interagency agreements, and time reporting processes are standardized.

## G. OAH FEE STRUCTURE AND COST ALLOCATION

**Standards and Promising Practices**

The United States Office of Management and Budget (OMB) has established uniform principles for determining the allowability of costs incurred by nonfederal entities expending federal awards. Many state agencies perform functions and activities that are associated with federal assistance programs or provide central service support to federal assistance programs. OAH is part of the central service support model that provides appeal services to several state agencies who have federal funds including DSHS, HCA, DCYF, and ESD.

*OAH is part of the central service support model that provides hearing services to several state agencies who have federal funds including DSHS, HCA, DCYF, and ESD.*

As noted in Washington's State Administrative and Accounting Manual (SAAM), the Statewide Central Services Cost Allocation Plan (SWCAP) is used to identify and assign central service costs. Since federal funds are used within the individual referring agencies, a process is necessary to identify the central service costs, such as services from OAH, AGO, and the SAO, and assign them to benefited activities on a reasonable and consistent basis. Two basic methods are used in this plan to assign appropriate costs of centralized services to operating agencies or their programs:

- <u>Billed</u> central services, where allowable costs are billed to benefited agencies and/or programs on an individual fee for service or similar basis. OAH is considered one of those central service activities.

- <u>Allocated</u> central services, where services that benefit operating agencies and/or programs are not billed on a fee for service or similar basis, but allowable costs are allocated to benefited agencies on some reasonable basis.

The SWCAP for <u>billed</u> central services charges states these services will be billed in accordance with rates established by the state. In addition, the rates will be based on the estimated costs of providing the services. Any adjustments for variances between billed costs and the actual allowable costs of providing the services can be made with approval from the state's accounting office.

The SAAM Manual outlines the following responsibilities to central service agencies, including OAH:

- Understand and adhere to the requirements of the Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance) from the OMB.

- Ensure information is made available for inclusion in the SWCAP including a current narrative description of the service; a balance sheet; a statement of revenue and expense; a description of the

procedures (methodology) used to charge service costs to users including how billing rates are determined; a schedule of current rates; and a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service with an explanation of how variances will be handled.

*OAH should align its rate-setting method with best practices for user fees by calculating the total direct, overhead, and indirect costs of providing a service.*

Cost allocation is another key element of the OMB Uniform Guidance. If all an agency's expenditures benefit one program, then one program would be charged directly. But when you add another program and/or funding source, you must determine which costs are direct, which costs are shared as indirect or overhead, and how you plan to allocate those costs to each of these programs and/or funding sources for the expenses that occur. For OAH, this review of costs should be used to calculate the rate structure for each biennial budget cycle.

OAH should follow best practices for its rate setting methodology by calculating the total direct, overhead, and indirect costs of providing a service. In doing so, OAH should clarify all costs as either:

- direct costs those that are directly attributable to a caseload, such as a judge's time spent working on a case and interpreters; or

- overhead and indirect costs, those that multiple users share, such as building rent and information technology services.

**Conclusion #22: The current rate structure does not allow for adequate working capital reserves.**

OAH operates under a revolving fund established under RCW 34.12.130 when the agency was created. This revolving fund is set up as an internal service fund. As previously discussed, OAH has been operating with a negative or near zero cash balance since FY 2014 when they changed from billing in advance to a billing method based on actual hours at the end of the month. Because of the small cash reserves, fiscal staff must continually check cash balances to ensure they do not fall below a certain level. An adequate working capital reserve will help cover the agency during temporary downturns in the caseload. In addition, fiscal staff will be able to focus on higher value activities.

The OMB Uniform Guidance recognizes that internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve, as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes, is considered reasonable. Both the State Auditor's Office and the Attorney General's Office reported their goal is to keep a working capital reserve of 30 to 60 days and plan for that when they set their rates each biennium.

**Recommendation**

The following recommendation is offered to improve the fee structure of the agency:

22.1    OAH should set rates high enough to generate sufficient revenues to build up a 60-day working capital reserve to cover its expenditures from one billing period to the next.

**Conclusion #23: The current rate structure is difficult for staff and stakeholders to understand.**

The current rate structure assumes three cost pools. Two of the cost pools track ALJ and the legal professional support staff direct billable hours. The third cost pool tracks overhead and other administrative costs. There is confusion amongst staff and stakeholders on what the third cost pool is and what costs are included. There is also a perception that the agency is top heavy and that the overhead costs exceed other agencies. However, it appears that there are some elements of the third cost pool that could be direct charged to the appropriate referring agency such as interpreter costs. This would bring more visibility into the true costs of the appeals for each agency.

## Expenditures by Category
## July 2017 - March 2019

Field Judicial Staff 69%
Telecomm Computer Leases Software 2%
WaTech, AGO, and Other Central Svs. Self Insurance 4%
Facility Leases 5%
Interpreters 2%
HQ - Overhead/ Indirect 15%
Call Center 3%
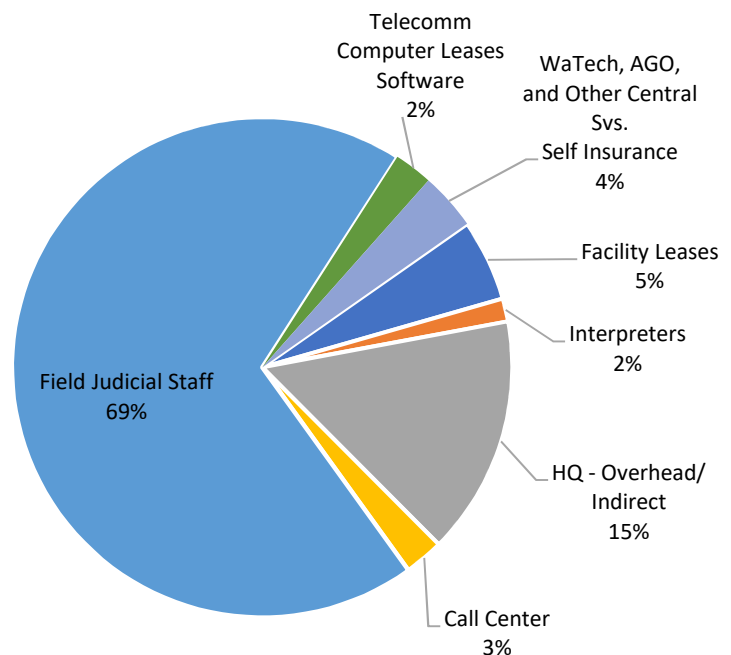
*Source: OAH - Agency Financial Reporting System Report as of March 31, 2019*

***OAH should consider categorizing the budget and expenditures that would help with decision making.***

It is not clear if OAH has management reports that show the above costs against the planned budget. It appears that most of the financial monitoring is done centrally at the agency level and not by the local office. There is also not an easy way to separate costs for ALJ, legal professional support staff, and the other costs of running each local office.

OAH should consider categorizing the budget and expenditures to help with decision making within each office and across the department plus to monitor actual expenditures against the assumptions included in the rate calculation. The categorization of costs should designate the direct costs, indirect costs, and overhead costs of the agency and keep in mind the following cost allocation principles:

- Whenever practical, it is most fiscally accurate to directly associate costs with the specific programs or caseloads they support.

- Organizations usually have overhead or indirect shared costs that provide support to more than one distinct program or caseload.

  - It is often very expensive or administratively complicated to directly expense shared costs to the multiple programs or caseloads the cost supports. Instead a cost allocation is used to estimate each program's or caseload's portion of the shared cost.

*The categorization of costs should designate the direct costs, indirect costs, and overhead costs of the agency.*

In addition, these definitions may be helpful to designate costs into cost allocation categories:

- Direct costs: Those costs that can be reasonably and economically assigned to a defined cost center and can be directly attributable to a defined caseload;

- Indirect costs: Those costs that cannot be reasonably and economically assigned to a defined caseload. Indirect costs are typically incurred to provide internally shared services (e.g., computer leases, building leases); and

- Overhead costs: Those costs that are incurred for the benefit of the entire organization. Overhead costs include those fixed and uncontrollable expenses that provide value to the entire organization and do not rise and fall with caseload. For example, OAH will always have a Chief ALJ, a finance manager, a human resource manager, and chief information officer, no matter what the size of the agency caseload is.

*The agency continually tries to improve the efficiency of its operations.*

OAH should continue seeking efficiencies as much as possible. The agency continually tries to improve the efficiency of its operations, such as going paperless, simplifying document exchange with agencies, and implementing electronic document submission for appeals. Additional work is required in these areas to further the progress in these initiatives. In developing its rates for services, OAH should continue to seek to control or reduce its costs and to share those efforts with referring agencies to help ensure its rates are both understood and as low as possible.

Once OAH has decided their rate setting process, it will be important to create rate-setting policies and procedures that include periodic review of rates and consider ways to increase the method's transparency with its staff and stakeholders. Following best practices, agencies' fee-setting processes should be transparent to service users and other stakeholders.

*The OAH fiscal office has limited capacity.*

Increasing the transparency and visibility into the costs that go into rate-setting takes time and analytical expertise to do. The OAH fiscal office consists of the Finance and Facilities Manager and two financial analysts. There is not enough capacity in the office to be able to do this work sufficiently.

Prior to 2010, OAH's financial office had five staff. In December 2009, Governor Gregoire issued an executive order requiring all small agencies, as identified by the director of the Office of Financial Management, to use Small Agency Client Services (SACS), also referred to as "Small Agency Services", to provide their accounting, payroll, and budgeting services. The intent was to centralize these services so small agencies could focus on their core business. OAH lost three of their five positions in the transfer of duties and staff to SACS. However, it was difficult for SACS to handle the workload for so many small agencies when they did not have the knowledge of each of those agencies' business needs.

In FY 2015, accounting and budget services were transferred back to OAH from SACS. The only OAH service that remains at SACS is payroll. OAH was able to hire one of the three FTEs they lost in this transition. The finance office currently has three positions providing these services along with facility management tasks. The workload for this small office is high and there is little capacity to do anything beyond the core duties of the office.

*Staff and stakeholders have ideas on how to improve the rate structure.*

When staff and stakeholders were asked how could OAH improve on the accuracy and understandability of referring agency billings, reporting, and fee structure, over one-third of the respondents thought simplifying the rate structure and explaining the elements would be helpful. Many respondents also agreed at looking at different options for the fee structure. Some respondents had additional thoughts on improving the rate structure:

- "Customer agencies should have input into implementation of all the suggestions above that are ultimately adopted by OAH. "

- "For all agencies to ensure that they are providing accurate information to the public regarding other agencies (timelines especially)"

- "Develop and implement an automated (transparent) cost allocation methodology."

- "Standard fees are the way to go, especially for the larger referring agencies. Billable hours only make sense for agencies the use our services on a limited/intermittent basis."

- "Charge the referring agencies by the case instead of by the hour. OAH should not be a billing factory like a law firm seeking profits."

- "Follow the RCW in our billing practice. or change the RCW before implementing a system that is not supported by the RCW."

- "change the structure itself"

### How could OAH improve on the accuracy and understandability of referring agency billings, reporting, and fee structure?

| Category | Percentage |
|---|---|
| Simplify billing rate structure and explain the elements assumed in the rates to OAH staff, the referring agencies, and the authorizing environment (OFM, Legislature, etc.). | 34% |
| Do direct billing for interpreters to the referring agency. | 31% |
| Establish a standard fee for hearing no-shows. | 24% |
| Establish a standard fee that creates a financial incentive for referring agencies to mediate and settle earlier in the process. | 19% |
| Establish a standard fee for intake for cases filed. | 16% |
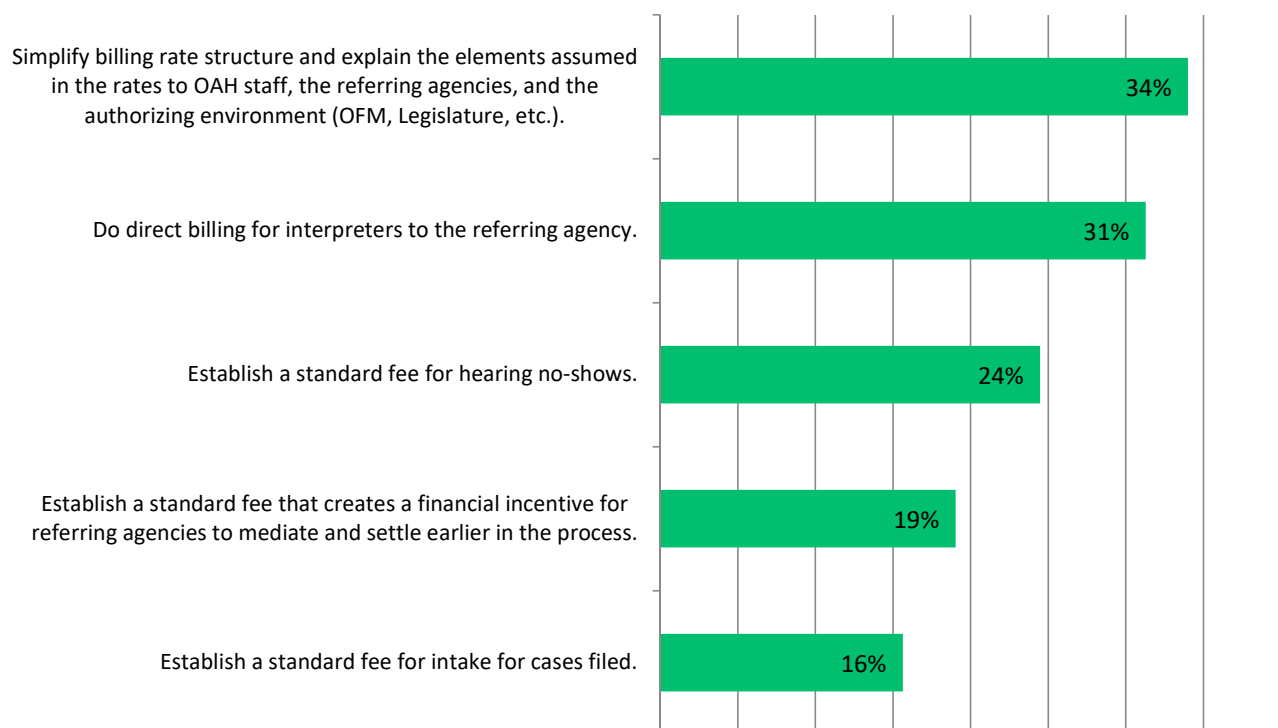
*Source: Staff and stakeholder survey. 147 staff and stakeholders answered these questions.*

**Recommendation**  The following recommendations are offered to improve the fee structure and cost allocation practices of the agency:

23.1   OAH should examine the appropriate allocation of direct, overhead, and indirect costs to its rates and simplify the rate structure as much as possible. Overhead and indirect costs should be integrated into the fully loaded costs of the ALJ and legal professional support staff. All direct costs should be charged to the appropriate referring agency.

23.2   Review and update the agency chart of accounts to capture the costs based on business needs. This may include tracking costs not

only by location, but by the categories assumed in the rate structure such as costs associated with ALJs, legal professional support staff, all other direct costs, overhead, and indirect.

23.3   OAH should ensure their rates cover costs associated with all direct costs plus overhead and indirect costs and develop management reports to routinely validate those assumptions.

23.4   OAH should identify all overhead, indirect, and direct costs including allowances for training, leave, and other non-docket specific costs for inclusion in their rate calculation.

23.5   OAH should use the advisory committee to evaluate possible cost efficiencies and additional rate options such as billing a one-hour no-show fee for late cancellations of hearings to drive desired behavior and a reduction of non-billable hours.

23.6   Once the rates are set, OAH should develop rate-setting policies and procedures that include periodic review of rates with OFM and acknowledge the need for transparency into the rate setting calculations.

23.7   Communication and education material should be developed to explain what goes into the rate for staff and external stakeholders. This information should be made available for rate date and for posting on the agency website.

23.8   Add a resource to the OAH fiscal office to assist in the above recommendations and do the financial and facility analysis that may be necessary to develop options for agency efficiencies. (See Recommendation #12.1.1. and #15.1.4.)

## H. Appendices

### APPENDIX 1 – State Comparison of Central Panel Adjudicatory Agencies

| State | Type of Caseload | | | | | Approximate Number of Agencies | Number of Cases Filed FY or CY 2018 | Annual Budget FY or CY 2018 | Number of ALJs | Number of Other Staff | Offer Mediation Services | Funding Model | | | | Funding Model Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Child Support | Unemployment Insurance | Medicaid | Public Assistance | Special Education | | | | | | | Direct Appropriation General Fund | Direct Appropriation Special Fund | Assessment to Referring Agencies | Hourly Billing to Referring Agencies | |
| Alaska | x | | x | x | | 12+ | 1,339 | Not provided | 11 | 5 | x | x | | | x | |
| Arizona | x | | x | | x | 50 | 5,798 | $2,455,868 | 7 | 16 | x | x | | x | | Funding model is a combination of approximately 45% is General fund and an assessment including hourly rate and filing fees |
| California | x | | | | x | 1600 | 14,483 | $37,154,000 | 100 | 60 | x | | | x | x | Funding model is a combination of hourly and assessment for filing and other direct costs. $276/hour for Special Education Cases $280/ hour for General Jurisdication Cases |
| Colorado | | | x | x | | 10 | 12,100 | $4,300,000 | 20 | 24 | x | x | | x | | |
| District of Columbia | x | x | x | x | x | 40 | 30,186 | Not provided | 33 | 45 | x | n/a | n/a | n/a | n/a | Not available |
| Florida | x | | x | | x | 31 | 6,393 | $8,586,032 | 31 | 34 | x | | | x | x | $153/hour, plus cost of travel 5.1% admin |
| Georgia | x | | x | x | x | 40 | 47,501 | 6.44 Million | 21 | 28 | | x | | x | | New Model for FY 2020 $124/hour judges, $69/hour staff attorneys, $16/referral covers fixed costs for agency Bill agency for direct costs |
| Iowa | x | | x | x | | 75 | 10,971 | $3,279,724 | 16 | 4 | Not provided | x | x | | x | Combination of general fund dollars, appropriation from the Road Use Tax Fund, and billing to agencies at $99.25/hour |
| Kansas | | | x | x | x | 40 | 3,575 | | 4 | 5 | x | | | x | x | 5 largest agencies pay a retainer for about 2/3 of annual volume. $100/hour for the remaining agencies. |
| Louisiana | x | | x | x | x | 17 | 10,703 | $8,157,222 | 31 | 27 | | | | x | | Assessment using SWCAP methodology |
| Maryland | x | x | x | x | x | 30 | 40,984 (2016) | $15,446,804 | 54 | 47 | limited mediation | | | x | x | Hourly rate is based on type of case and formula developed based on time studies. Also includes fee system for some cases. |
| Massachusetts | | | | | x | 20 | 12,381 | $4.3 million | 14 | 13 | Not provided | x | x | | | Type of funding: General Fund – direct appropriation GJU Special Fund – appropriation Federal Trust fund funds BSEA through Dept of Education |
| Michigan | x | x | x | x | x | 20+ | 80,000 | $38,000,000 | 100 | 100 | | | | x | x | Funding structure varies based on agency and agreement type.  Funding varies from the following: - Set fee - Hourly Flat Rate - Hourly Actual salary and benefits - Hourly including separate support costs |

### State Comparison of Central Panel Adjudicatory Agencies

| State | Type of Caseload | | | | | Approximate Number of Agencies | Number of Cases Filed FY or CY 2018 | Annual Budget FY or CY 2018 | Number of ALJs | Number of Other Staff | Offer Mediation Services | Funding Model | | | | Funding Model Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Child Support | Unemployment Insurance | Medicaid | Public Assistance | Special Education | | | | | | | Direct Appropriation General Fund | Direct Appropriation Special Fund | Assessment to Referring Agencies | Hourly Billing to Referring Agencies | |
| Minnesota | | | | | x | Any state or local agency can refer | 10,720 | 14.5 million biennial | 32 | 38 | x | | x | | x | $170/hour attorney $90/staff attorney |
| Missouri | | | | | x | 16 | 1,679 | $1,067,208 | 4 | 11 | | x | | | x | Hourly for special education cases only |
| New Jersey | | | | x | x | 50 | 18,618 | $10.2 Million (FY 20) | 39 | 50 | x | x | | x | | Combination of general fund appropriation, state assessment/recoveries, state third party recoveries, federal fund reimbursements |
| North Carolina | x | | x | x | x | All but two state agencies in addition to local agencies | 8,382 | $5,994,592 | 12 | 45.5 | x | x | | | | GF direct appropriation |
| North Dakota | | | x | x | x | 85 | 646 | $2,918,634 (2017-2019) Biennial budget | 11 | 2 | x | | x | | x | $165/hour for all (including travel) $140/hour for contract ALJs |
| Oregon | x | x | x | x | x | 60 | 23,650 | $13,753,436 | 47.5 | 35 | | | | x | | Around 2011 moved from hourly rate to actual cost billing model. Looking at new billing model within next few years. |
| South Carolina | | x | x | x | | 30+ | 7,206 | $1,491,000 | 6 | 20 | x | x | | x | | The revenue from the fees is retained and expended by the ALC to help defray the costs of the proceedings |
| South Dakota | x | | x | x | | 20 | 262 | $346,355 | 2 | 1 | | x | | | | |
| Tennessee | | | | | x | 60 | 8,124 | | 16 | 8 | x | n/a | n/a | n/a | n/a | Not available |
| Texas | x | | | | x | 57 | 34,169 | $13,543,738 | 62 | 61 | x | x | | x | | 2/3 General Fund Direct Appropriation 1/3 Assessment to Referring Agencies |
| Washington | x | x | x | x | x | 36 | 48,751 | $21,662,000 | 100 | 70 | limited mediation | | | | x | Hourly Rate - $93 per hour ALJ, $54 per hour professional legal support staff, plus overhead |
| Wisconsin | | | x | X | X | 15 | 21,312 | $10,660,500 | 51 | 35.5 | x | | x | x | | |
| Wyoming | | | x | x | | 20+ | 1,446 | annual budget is less than 4,000,000 | 10 | 7 | x | | | x | x | 60% from workers compensation division, 40% from the department of transportation Bill other referring agencies (any state agency that can hold contested cases, other than work comp and drivers license) $120/hr. |

*Sources: State websites, interviews and questionnaires sent to other state panel agencies in May/June 2019.*

## APPENDIX 2 – OAH Caseloads for CY2018

| | OAH Caseloads and Timelines by Agency/Program - Calendar Year 2018 | | | | | | |
|---|---|---|---|---|---|---|---|
| | Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed OR Received OR Closed Between 1/1/2018 and 12/31/2018 | | | | | | |
| **AGENCY** | **PROGRAM** | **PERFORMANCE TIMELINE** | **ORDER TYPE** | **Intake Caseload for Calendar Year 2018** | **Total Closed Cases Calendar Year 2018** | **Average Case Age** |
| Agriculture | Animal Safety; Food Safety Program; Pesticide Management | 10 days after brief adjudicative proceedings | Initial | 3 | 3 | 82 |
| Archaeology and Historic Preservation | Archaeological Excavation Permits | 60 days from close of record | Initial | - | - | - |
| Attorney General | Executive Ethics Board (Violation of State Ethics Law by State Employees) | 60 days from close of record | Initial or Presiding Only | 8 | 13 | 231 |
| Attorney General | Manufactured/Mobile Home Dispute Resolution Program | 30 days from close of record | Final | 2 | 3 | 129 |
| Board of Accountancy | Accountants licensing (Brief Adjudicative Proceeding) | 10 days after brief adjudicative proceedings | Initial | - | - | - |
| Board of Pilotage | Board of Pilotage Commissioners | 60 days from close of record | Initial | - | - | - |
| Children, Youth and Family | Background Checks Child Protective Services Civil Fine Daycare License Daycare License Revocation Daycare License Suspension Foster Care Licensing | 60 days from close of record / 30 days from close of record | Initial / Final | 239 | 283 | 164 |
| Colleges | Pierce College | 60 days from close of record | Initial | - | - | - |
| Colleges | Everett Community College | 30 days from close of record | Initial | - | 1 | 234 |
| Colleges | Renton Technical College | 30 days from close of record | Initial | - | - | - |
| Eastern Washington University | Title IX | 10 days from close of record | Initial | 8 | 8 | 47 |
| Employment Security | All other programs | 5 bus. days from close of record OR 30/45/90 days from appeal filed date (whichever is earlier) | Initial | 1,466 | 1,634 | 97 |
| Employment Security | Unemployment Tax | 21 days from close of record | Initial | 26,407 | 30,169 | 78 |
| Employment Security | Voluntary Family & Medical Leave Plan | 5 bus. days from close of record OR 30/45/90 days from appeal filed date (whichever is earlier) | Initial | - | - | - |
| Financial Institutions | All types | 60 days from close of record | Initial | 22 | 37 | 273 |
| Financial Management | State Employee Wage Overpayment | 60 days from close of record | Final | 1 | 2 | 71 |
| Fish & Wildlife | Commercial Fish Licenses | 60 days from close of record | Initial | - | - | - |
| Fish & Wildlife | Fish and Wildlife Recreational License Dealership; Revocation of Wildlife Hunting Licenses | 60 days from close of record | Initial | - | - | - |
| Fish & Wildlife | Hydraulic Project Approvals (HPA) | 60 days from close of record | Initial | - | - | - |
| Gambling Commission | All types | 60 days from close of record | Initial | 42 | 52 | 91 |
| Health Care Authority | All other HCA cases | 18 days from close of record | Initial | 5,159 | 6,014 | 80 |
| Health Care Authority | Provider Overpayments under chapters 182-502 and 182-502A WAC | 60 days from close of record | Initial | 82 | 155 | 128 |

| OAH Caseloads and Timelines by Agency/Program - Calendar Year 2018 | | | | | | |
|---|---|---|---|---|---|---|
| Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed OR Received OR Closed Between 1/1/2018 and 12/31/2018 | | | | | | |
| AGENCY | PROGRAM | PERFORMANCE TIMELINE | ORDER TYPE | Intake Caseload for Calendar Year 2018 | Total Closed Cases Calendar Year 2018 | Average Case Age |
| Health Care Authority | Public Employee Benefits Board (PEBB) | 60 days from close of record | Final | 59 | 65 | 54 |
| Health Care Authority | Washington Apple Health/MAGI | 18 days from close of record | Initial | 1,827 | 1,979 | 32 |
| Horseracing Commission | All types | 60 days from close of record | Initial | - | - | - |
| Human Rights Commission | Unfair Practices hearing and State Whistleblower Retaliation; | 60 days from close of record for Initial Order, then 30 days from receipt of comments for Final Order | Initial and Final | 1 | 1 | - |
| Insurance Commissioner | Insurance Brokers and Producers | 45 days from close of record | Initial | 4 | 4 | 126 |
| Insurance Commissioner | Office of the Insurance Commissioner | 45 days from close of record | Initial | 13 | 20 | 139 |
| Insurance Commissioner | Small Pharmacy Reimbursement | 30 days from appeal filed date | | - | - | - |
| Labor and Industries | Apprenticeship: several types of hearings. | 60 days from close of record | Initial (Proposed) | - | - | - |
| Labor and Industries | Child Labor law | 60 days from close of record | Initial (Proposed) | 5 | 7 | 167 |
| Labor and Industries | Contractor Registration | 60 days from close of record | Final | 99 | 144 | 154 |
| Labor and Industries | Domestic Violence Leave | 60 days from close of record | Initial (Proposed) | - | 1 | 176 |
| Labor and Industries | Electrical | 60 days from close of record | Initial (Proposed) | 97 | 123 | 184 |
| Labor and Industries | Elevator | 60 days from close of record | Final | - | - | - |
| Labor and Industries | Factory Assembled Structures | 60 days from close of record | Final | 3 | 3 | 83 |
| Labor and Industries | Family Care Act | 60 days from close of record | Initial (Proposed) | - | 1 | 223 |
| Labor and Industries | Farm Labor Contractor | 60 days from close of record | Initial (Proposed) | 1 | 2 | 202 |
| Labor and Industries | Military Family Leave | 60 days from close of record | Initial (Proposed) | - | - | - |
| Labor and Industries | Parental Family Leave | 60 days from close of record | Initial (Proposed) | - | - | - |
| Labor and Industries | Plumber | 60 days from close of record | Final | - | - | - |
| Labor and Industries | Prevailing Wage | 60 days from close of record | Initial (Proposed) | 3 | 11 | 369 |
| Labor and Industries | Wage Payment | 60 days from close of record | Initial (Proposed) | 100 | 181 | 253 |
| Legislative Ethics Board | Legislative Ethics Board | Presiding only, no order. | Presiding Only | - | - | - |
| Licensing | Auctioneers | 60 days from close of record | Initial | - | - | - |
| Licensing | Bail Bonds | 60 days from close of record | Initial | 2 | 3 | 231 |
| Licensing | Cosmetology | 60 days from close of record | Initial | 2 | 2 | 89 |
| Licensing | Court Reporters | 60 days from close of record | Initial | - | - | - |
| Licensing | Dealer/Manufacturer | 60 days from close of record | | 10 | 11 | 101 |
| Licensing | For Hire (Business and Professional Division) | 60 days from close of record | Initial | - | - | - |
| Licensing | Fuel Tax Prorate | 60 days from close of record | Initial | - | 1 | 88 |
| Licensing | Funeral Director | 60 days from close of record | Initial | - | - | - |
| Licensing | Home Inspection | 60 days from close of record | Initial | - | - | - |
| Licensing | Hulk Haulers/Scrap Processors (Dealer & Manufacturer Services/Vehicle Services Division) | 60 days from close of record | Initial | - | - | - |
| Licensing | Limousine | 60 days from close of record | Initial | - | 1 | 297 |
| Licensing | Motor Vehicle Transporters | 60 days from close of record | Initial | - | - | - |
| Licensing | Other Licensing | 60 days from close of record | Initial | 7 | 13 | 148 |
| Licensing | Private Investigators | 60 days from close of record | Initial | - | - | - |
| Licensing | Real Estate Appraisers | 60 days from close of record | Initial | 5 | 5 | 230 |
| Licensing | Security Guards | 60 days from close of record | Initial | 3 | 3 | 152 |

| OAH Caseloads and Timelines by Agency/Program - Calendar Year 2018 | | | | | | |
|---|---|---|---|---|---|---|
| Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed OR Received OR Closed Between 1/1/2018 and 12/31/2018 | | | | | | |
| AGENCY | PROGRAM | PERFORMANCE TIMELINE | ORDER TYPE | Intake Caseload for Calendar Year 2018 | Total Closed Cases Calendar Year 2018 | Average Case Age |
| Licensing | Tow Truck Operators | 60 days from close of record | Initial | - | - | - |
| Licensing | Traveling Salesperson | 60 days from close of record | Initial | - | - | - |
| Licensing | Vehicle Dealers, Vehicle Wreckers | 60 days from close of record | Initial | - | - | - |
| Liquor and Cannabis Board | Infused Marijuana Product Denial | 60 days from close of record | Initial | - | - | - |
| Liquor and Cannabis Board | Liquor Enforcement | 60 days from close of record | Initial | 74 | 102 | 226 |
| Liquor and Cannabis Board | Liquor Licensing | 60 days from close of record | Initial | 15 | 24 | 232 |
| Liquor and Cannabis Board | Marijuana Enforcement | 60 days from close of record | Initial | 114 | 178 | 251 |
| Liquor and Cannabis Board | Marijuana Licensing | 60 days from close of record | Initial | 48 | 73 | 204 |
| Liquor and Cannabis Board | Tobacco Enforcement | 60 days from close of record | Initial | 8 | 10 | 108 |
| Liquor and Cannabis Board | Tobacco Licensing | 60 days from close of record | Initial | 1 | 1 | 94 |
| Liquor and Cannabis Board | Tobacco Tax | 60 days from close of record | Initial | - | - | - |
| Local Governments | Local Government Whistleblower Retaliation | 45 days after the request for hearing was filed with the local gov't, unless ext. is granted | Final | 2 | 4 | 179 |
| Lottery Commission | Legal Services | 60 days from close of record | Initial | - | - | - |
| Minority and Women's Business Enterprises | All types | 60 days from close of record for full adjudicative proceeding or 10 days after brief adjudicative proceeding | Initial | 6 | 6 | 84 |
| Natural Resources | Geology | 60 days from close of record | Initial | - | - | - |
| Pollution Liability Insurance | Oil Heat Insurance Program | 60 days from close of record | Initial | - | - | - |
| Retirement Systems | LEOFF [Law Enforcement Officers and Fire Fighters] | 60 days from close of record | Initial | 5 | 8 | 263 |
| Secretary of State | Elections & Voting | 60 days from close of record | Final for Defaults and Withdrawals Initial for all other orders | - | - | - |
| Services for the Blind | Business Enterprises Program; Services for the Blind | 60 days from close of record | Final | - | - | - |
| Social and Health Services - DCS | Address Disclosure | 21 days from close of record | Initial | 8 | 10 | 80 |
| Social and Health Services - DCS | All other Child Support cases | 21 days from close of record | Final | 7,052 | 8,456 | 86 |
| Social and Health Services - JRA | Juvenile Parole Revocation | Must rule orally on the record Must issue written decision within 48 hours after hearing | Final | - | - | - |
| Social and Health Services - JRA | Juvenile Rehabilitation Reimbursement | 21 days from close of record | Final | 12 | 14 | 79 |
| Social and Health Services - Licensing | Adult Family Home License | 60 days from close of record | Initial | 24 | 48 | 241 |
| Social and Health Services - Licensing | Adult Family Home License - Initial | 60 days from close of record | Initial | - | - | - |
| Social and Health Services - Licensing | Adult Family Home License-Expedited | 60 days from close of record | Initial | 17 | 32 | 173 |
| Social and Health Services - Licensing | Adult Protective Services | 60 days from close of record | Initial | 219 | 372 | 368 |
| Social and Health Services - Licensing | Adult Residential Care Services | 60 days from close of record | Initial | 13 | 14 | 141 |
| Social and Health Services - Licensing | Assisted Living Facility License | 60 days from close of record | Initial | 5 | 9 | 147 |
| Social and Health Services - Licensing | Assisted Living Facility License - Initial | 60 days from close of record | Initial | - | - | - |

| AGENCY | PROGRAM | PERFORMANCE TIMELINE | ORDER TYPE | Intake Caseload for Calendar Year 2018 | Total Closed Cases Calendar Year 2018 | Average Case Age |
|---|---|---|---|---|---|---|
| | | OAH Caseloads and Timelines by Agency/Program - Calendar Year 2018 | | | | |
| | | Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed OR Received OR Closed Between 1/1/2018 and 12/31/2018 | | | | |
| Social and Health Services - Licensing | Behavioral Health Services | 60 days from close of record | Initial | - | - | - |
| Social and Health Services - Licensing | Case Mix Accuracy | 60 days from close of record | Initial | - | - | - |
| Social and Health Services - Licensing | Certified Community Residential Services and Supports | 60 days from close of record | Initial | 2 | 3 | 131 |
| Social and Health Services - Licensing | Child Protective Services | 60 days from close of record | Initial | 378 | 720 | 319 |
| Social and Health Services - Licensing | Division of Licensed Resources | 60 days from close of record | Initial | 1 | 2 | 282 |
| Social and Health Services - Licensing | Division of Licensed Resources Background Check | 60 days from close of record | Initial | 1 | 3 | 315 |
| Social and Health Services - Licensing | DV Perpetrator Programs | 60 days from close of record | Initial | - | 1 | 270 |
| Social and Health Services - Licensing | Enhanced Services Facility | 60 days from close of record | Initial | - | - | - |
| Social and Health Services - Licensing | Foster Care Licensing | 60 days from close of record | Initial | 15 | 37 | 347 |
| Social and Health Services - Licensing | Home Care Quality Authority Referral Registry | 60 days from close of record | Initial | - | - | - |
| Social and Health Services - Licensing | Interpreter Certification Revocation | 60 days from close of record | Initial | 2 | 3 | 99 |
| Social and Health Services - Licensing | Nursing Home | 60 days from close of record | Initial | 16 | 30 | 197 |
| Social and Health Services - Licensing | Resident and Client Protection Program | 120 from receipt of hearing request for nursing home resident (60 additional days more if extenuating circumstances) OR 60 days from close of record for non-nursing home resident | Initial | - | - | - |
| Social and Health Services - Licensing | Vulnerable Adult Abuse & Neglect | 60 days from close of record | Initial | - | - | - |
| Social and Health Services - PA | Adoption Support | 16 days from close of record | Initial | 9 | 9 | 100 |
| Social and Health Services - PA | Aged, Blind or Disabled | 16 days from close of record | Initial | 952 | 1,077 | 51 |
| Social and Health Services - PA | Child Care Assistance | 16 days from close of record | Initial | 588 | 798 | 71 |
| Social and Health Services - PA | Developmental Disabilities Administration | 60 days from close of record | Initial | 123 | 151 | 94 |
| Social and Health Services - PA | Division of Vocational Rehabilitation | 30 days from close of record | Final | 22 | 26 | 119 |
| Social and Health Services - PA | Food Assistance | earlier of 16 days from close of record or 60 days from receipt of requst | Final | 1,566 | 1,781 | 53 |
| Social and Health Services - PA | Food Assistance Disqualification | earlier of 16 days from close of record OR 90 days from Department notifying Respondent of allegation | Final | 183 | 235 | 92 |
| Social and Health Services - PA | Housing and Essential Needs | 16 days from close of record | Initial | 284 | 339 | 52 |
| Social and Health Services - PA | Medical Assistance Transfer--Non-Medicaid | 16 days from close of record | Initial | - | - | - |
| Social and Health Services - PA | Mental Illness Hospitalization | 16 days from close of record | Initial | - | - | - |
| Social and Health Services - PA | Pregnant Women Assistance | 16 days from close of record | Initial | - | - | - |
| Social and Health Services - PA | Refugee Assistance | 16 days from close of record | Initial | 1 | 3 | 54 |
| Social and Health Services - PA | State Supplemental Payment | 16 days from close of record | Initial | - | - | - |
| Social and Health Services - PA | Telephone Assistance | 16 days from close of record | Final | - | - | - |
| Social and Health Services - PA | Temporary Assistance for Needy Families | 16 days from close of record | Initial | 511 | 584 | 292 |
| Social and Health Services - PA | Vendor Overpayment | 16 days from close of record | Final | 529 | 830 | 207 |
| Social and Health Services - PA | Volunteer Services | 16 days from close of record | Initial | - | - | - |
| Social and Health Services - PA | WASHCAP | 16 days from close of record | Final | 2 | 3 | 169 |

| OAH Caseloads and Timelines by Agency/Program - Calendar Year 2018 | | | | | | |
|---|---|---|---|---|---|---|
| Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed OR Received OR Closed Between 1/1/2018 and 12/31/2018 | | | | | | |
| **AGENCY** | **PROGRAM** | **PERFORMANCE TIMELINE** | **ORDER TYPE** | **Intake Caseload for Calendar Year 2018** | **Total Closed Cases Calendar Year 2018** | **Average Case Age** |
| Student Achievement Council | Student Financial Aid Programs Degree Authorization | 60 days from close of record (for initial order after hearing)  3 days after request for withdrawal or non-appearance at hearing (withdrawal or default) | Initial | 1 | 1 | 49 |
| Superintendent of Public Instruction | Audit  Resolution Appeals | 90 days from close of record | Final | - | - | - |
| Superintendent of Public Instruction | Bus Driver Authorization | 90 days from close of record | Final | - | - | - |
| Superintendent of Public Instruction | EEOC Complaints | 90 days from close of record | Final | - | - | - |
| Superintendent of Public Instruction | Nonresident Transfers | 90 days from close of record | Final | - | - | - |
| Superintendent of Public Instruction | Professional Certification | 90 days from close of record | Final | - | - | - |
| Superintendent of Public Instruction | School Food Service/Care Program -        Milk Program for Children | 120 days from receipt of appeal | Final | - | 1 | 127 |
| Superintendent of Public Instruction | School Food Service/Care Program -        Child and Adult Care Food Program | 60 days from receipt of appeal | Final | - | - | - |
| Superintendent of Public Instruction | School Food Service/Care Program -        School Breakfast Program | 120 days from receipt of appeal | Final | - | - | - |
| Superintendent of Public Instruction | School Food Service/Care Program -        National School Lunch | 120 days from receipt of appeal | Final | - | - | - |
| Superintendent of Public Instruction | School Food Service/Care Program -        Summer Food Service Program | 5 days from end of hearing | Final | - | - | - |
| Superintendent of Public Instruction | Special Education | 45 days from end of 30 day "resolution period" or waiver of "resolution period" | Final | 152 | 186 | 97 |
| Superintendent of Public Instruction | Student Transfer | 90 days from close of record | Final | 60 | 63 | 28 |
| Superintendent of Public Instruction | Teacher Certification - Discipline | 90 days from close of record | Final | 1 | 3 | 125 |
| Superintendent of Public Instruction | Traffic Safety Education | 90 days from close of record | Final | - | - | - |
| Transportation | Environmental Impact Statements; Highway Access Management Hearings;  Relocation Assistance; Washington State Ferries | 60 days from close of record | Initial | 2 | 2 | - |
| Transportation | Limited Access Public Hearings | Presiding only, no order. | None - Presiding Only | - | - | - |
| Transportation | Toll Violation Appeals | 20 days from assignment for written reviews; 20 days from hearing for in person events | Final | - | - | - |
| University of Washington | Faculty Appeals Board | 45 days from close of record | Proposed | - | - | - |
| Veteran's Affairs | All types | 60 days from close of record | Initial | - | - | - |
| WA State Patrol | Commercial Vehicle Division / Compliance Review (Terminal Audits) | 60 days from close of record | Initial | - | - | - |

| OAH Caseloads and Timelines by Agency/Program - Calendar Year 2018 | | | | | | |
|---|---|---|---|---|---|---|
| Source: Report 1002 - OAH Workload for All Caseloads for Appeals Filed OR Received OR Closed Between 1/1/2018 and 12/31/2018 | | | | | | |
| AGENCY | PROGRAM | PERFORMANCE TIMELINE | ORDER TYPE | Intake Caseload for Calendar Year 2018 | Total Closed Cases Calendar Year 2018 | Average Case Age |
| WA State Patrol | Controlled Substances Seizures | 60 days from close of record. Party may request a 10 day stay of final order.  They must file reconsideration within 10 days. | Final | 7 | 13 | 171 |
| WA State Patrol | Fire Protection Bureau; Towing Operators; | 60 days from close of record | Initial | - | - | - |
| WA State Patrol | Impaired Driving Section - Ignition Interlock | 60 days from close of record | Initial | - | - | - |
| WA State Patrol | Trooper Discipline and Retirement Disabilities | ALJ presides only, no order. Board prepares an order for the chief's decision | None - Presiding Only | - | - | - |
| WA State Patrol | VIN (Vehicle Identification Number) cases; VIN Altered cases | 15 days from close of record | Final | 1 | 1 | - |
| Washington State University | Academic Integrity | 30 days from close of record | Initial | 15 | 17 | 39 |
| Washington State University | Alcohol/Drug | 30 days from close of record | Initial | 3 | 4 | 47 |
| Washington State University | Interim Suspension | 30 days from close of record | Initial | - | - | - |
| Washington State University | Non-Title IX Assault | 30 days from close of record | Initial | 2 | 2 | 69 |
| Washington State University | Title IX | 10 days from close of record | Initial | 18 | 18 | 45 |
| Workforce Training and Education Coordinating Board | Private Vocational School Act | 60 days from close of record | Initial | 1 | 1 | 104 |
| | Total Intake Caseload | | | 48,751 | 57,263 | 80 |

*In addition to the timeliness expectations for individual decisions, the following aggregate performance measures apply for Employment Security Department non-tax cases:

    60% of cases closed within 30 days after the appeal filed date

    80% of cases closed within 45 days after the appeal filed date

    95% of cases closed within 90 days after the appeal filed date

**In addition to the timeliness expectations for individual decisions, the following aggregate performance measures apply for  Specialized Caseload cases:
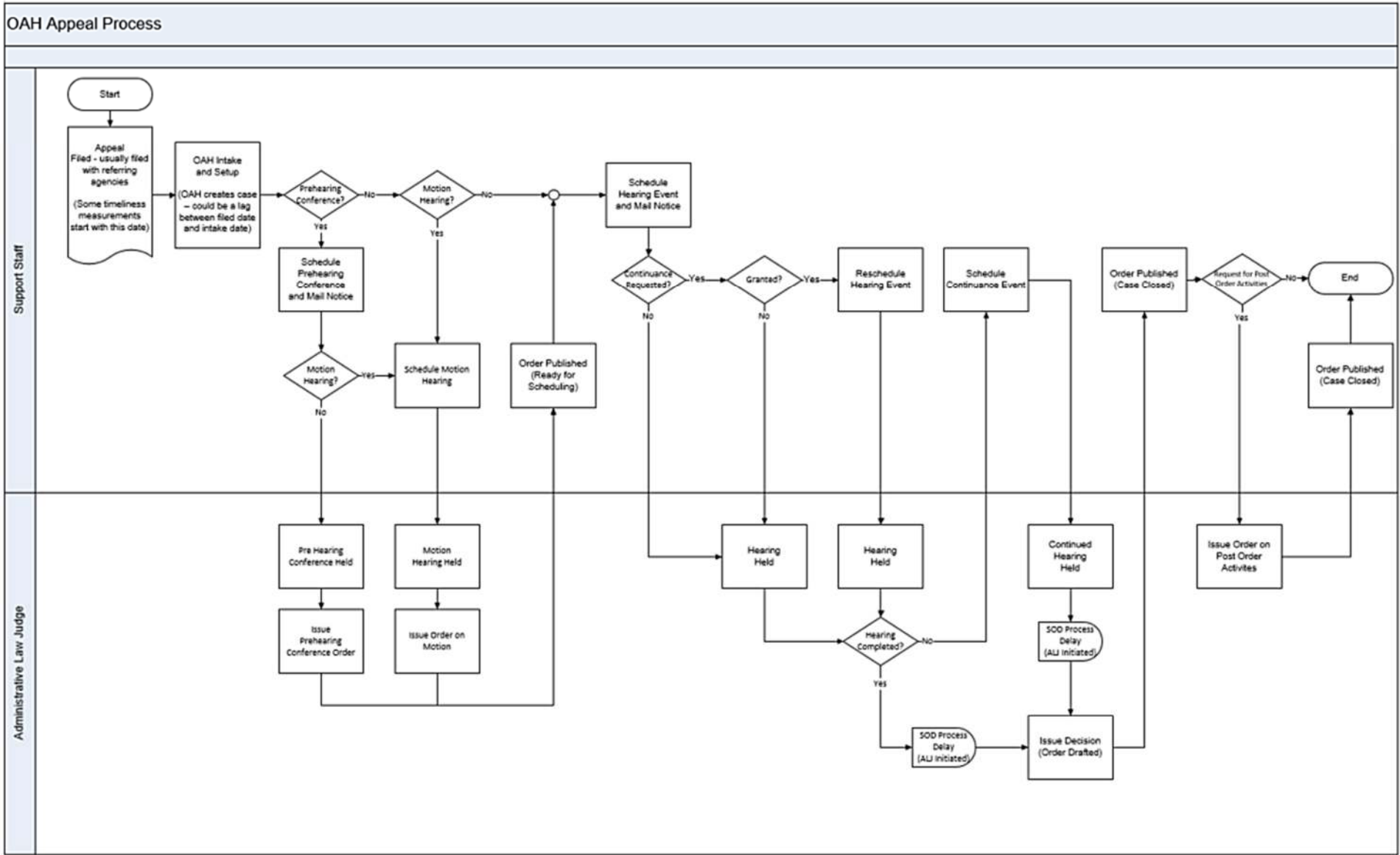
    60% of cases closed within 180 days after OAH receipt

    80% of cases closed within 240 days after OAH receipt.

Note: Unless otherwise noted, all timelines of less than 7 days are business days and all timelines of 7 or more days are calendar days.  See WAC 10-08-080.

### APPENDIX 3 – General OAH Appeal Process

## APPENDIX 4 – Proposed Option – Revised OAH Organizational Chart and RACI Matrix

**Chief ALJ**

**Executive Assistant**

**Clear, bright line Decisional Independence**

**Deputy Judicial Operations**

- **Division Chief Eastern Washington**

  Caseload Lead for UI

- **Division Chief Northwest Washington**

  Caseload Lead for PA, HCA, OSPI

- **Division Chief Southwest Washington**

  Caseload Lead for DCS, Licensing, DCYF, Specialized Caseload, JRA, PFML, DOT

**Finance and Facilities Manager**

**Human Resources**

**Chief Information Officer**

**Deputy Judicial Support**

- **Assistant Chief Judicial Practice Improvement**

- **Assistant Chief ADA and Special Projects**

- **Centralized Legal Administration Manager**

- **Assistant Chief Policy, Governmental Affairs, and Risk Management**

- **Assistant Chief Quality Assurance**

```
                    ┌──────────────────────┐
                    │   Deputy Chief for   │
                    │  Judicial Operations │
                    └──────────────────────┘
          ┌──────────────────┼──────────────────┐
┌──────────────────┐ ┌──────────────────┐ ┌──────────────────┐
│   Deputy Chief   │ │   Deputy Chief   │ │   Deputy Chief   │
│    Southwest     │ │    Northwest     │ │     Eastern      │
│   Washington     │ │   Washington     │ │   Washington     │
└──────────────────┘ └──────────────────┘ └──────────────────┘
      ┌──────┴──────┐
┌─────────────┐ ┌─────────────┐
│ Legal Admin │ │ Senior ALJs │
│   Manager   │ │             │
└─────────────┘ └─────────────┘
```

**Clear, bright line**
**Decisional Independence**

```
┌──────────────────┐   ┌─────────────┐
│ Legal Support    │   │  Lead ALJs  │
│ Staff Lead       │   │             │
└──────────────────┘   └─────────────┘

┌──────────────────┐   ┌─────────────┐
│ Legal Support    │   │  Line ALJs  │
│ Staff            │   │             │
└──────────────────┘   └─────────────┘
```

Please note: Southwest Washington Division organizational structure shown above repeats in Northwest Washington and Eastern Washington offices.

```
                          Deputy Chief for
                          Judicial Support
```

**Deputy Chief for Judicial Support**

- **Assistant Chief Policy, Governmental Affairs, and Risk Management**
  - Privacy Officer and Public Disclosure

- **Assistant Chief Judicial Practice Improvement**
  - Business Transformation Project Management Office (PMO)
    - Organizational Change Management (OCM) and Communications
    - Lean Coordination
    - Project Management
    - Business Analysis
    - Performance Measure/Data Analysis
    - Training

- **Assistant Chief Quality Assurance**

- **Assistant Chief ADA and Special Projects**

- **Centralized Legal Support**
  - Centralized mailing, scheduling and hearing room coordination
  - Customer Service Center

**RACI Legend:**
- R (Responsible)
- A (Accountable)
- C (Consulted)
- I (Informed)

**OAH Leadership Decision Matrix**

| Decisions | Chief ALJ | Human Resources Manager | Chief Information Officer | Finance and Facilities Manager | Deputy Chief of Judicial Support | Deputy Chief of Judicial Operations | Division Chief ALJ - Eastern Washington and UI Caseload Lead | Division Chief ALJ - SW Washington and Specialized and Other Caseload Lead | Division Chief ALJ - Northwest Region and SHS Caseload Lead | Assistant Chief Judicial Practice Improvement | Assistant Chief for Policy, Government Affairs, and Risk | Assistant Chief Quality Assurance | Assistant Chief ADA and Special Projects | Centralized Legal Support Manager |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Executive Management Team** | | | | | | **Judicial Operations** | | | **Judicial Support** | | | | |
| 1. Changes the agency's strategic plan | A | R (varies based on change) | | | | | C | C | C | C | C | C | C | C |
| 2. Changes cross-agency administrative policies, processes, templates, training, etc. | C | C | C | C | A | C | C | C | C | R | C | C | C | C |
| 3. Changes to judicial policies, government relations, or risk program | C | C | C | C | A | C | C | C | C | C | R | C | C | C |
| 4. Judicial operations; does not change a current business activity; local office only; only one option; no stakeholder impact | I | I | I | I | C | C | A/R (varies) | | | I | I | I | I | I |
| 5. Judicial operations; has a minor impact; changes a current business activity; affects a single caseload, stakeholder, or local office | C | C | C | C | C | C | A/R (varies) | | | C | C | C | C | C |
| 6. Judicial operations; has a moderate impact; changes a current business activity; affects a single or multiple caseloads/stakeholders/offices | C | C | C | C | C | A | C | C | C | R | C | C | C | C |
| 7. Judicial operations; has a significant impact; changes a current business activity; affects a single or multiple caseloads/stakeholders/offices | C | C | C | C | C | A | C | C | C | R | C | C | C | C |
| 8. Judicial support; does not change a current business activity; only one option; no stakeholder impact | I | I | I | I | C | C | C | C | C | A/R (varies) | | | | |
| 9. Judicial support; has a minor impact; changes a current business activity; affects a single caseload or stakeholder | C | C | C | C | A | C | C | C | C | R (varies) | | | | |
| 10. Judicial support; has a moderate impact; changes a current business activity; affects a single or multiple caseloads/stakeholders | C | C | C | C | A | C | C | C | C | R (varies) | | | | |
| 11. Judicial support; has a significant impact; changes a current business activity; affects a single or multiple caseloads/stakeholders | C | C | C | C | A | C | C | C | C | R (varies) | | | | |
| 12. Administrative Services; does not change a current business activity; only one option; no stakeholder impact | C | A/R (varies) | C | C | C | C | C | C | C | C | I | I | I | C |
| 13. Administrative Services; has a minor impact; changes a current business activity; affects a single division or stakeholder | C | A/R (varies) | C | C | C | C | C | C | C | C | I | I | I | C |
| 14. Administrative Services; has a moderate impact; changes a current business activity; affects a single or multiple divisions/stakeholders | C | A/R (varies) | C | C | C | C | C | C | C | R | C | C | C | C |
| 15. Administrative Services; has a significant impact; changes a current business activity; affects a single or multiple divisions/stakeholders | C | A/R (varies) | C | C | C | C | C | C | C | R | C | C | C | C |
| 16. Requires the procurement of a service or solution | C | C | R | A | R | R | C | C | C | C | I | I | I | I |

Stellar

**RACI Legend:** R (Responsible), A (Accountable), C (Consulted), I (Informed)

### OAH Local Leadership Decision Matrix

| Decisions | Chief ALJ | Human Resources Manager | Chief Information Officer | Finance and Facilities Manager | Deputy Chief of Judicial Support | Deputy Chief of Judicial Operations | Division Chiefs (Eastern WA/UI; SW WA/DCS, Licensing, DCYF, Specialized; Northwest Region/PA, HCA, OSPI) | Assistant Chief Judicial Practice Improvement | Assistant Chief for Policy, Government Affairs, and Risk | Assistant Chief Quality Assurance | Assistant Chief ADA and Special Projects | Centralized Legal Support Manager |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Executive Management Team | | | | | Judicial Operations | Judicial Support | | | | |
| **Local Office Authority** | | | | | | | | | | | | |
| 1. Budget and expenditure authority - purchases $1000 and under | I | I | I | I | I | C | A/R (varies) | I | I | I | I | I |
| 2. Budget and expenditure authority - purchases over $1000 | C | I | C | A | C | R | R (varies) | I | I | I | I | I |
| 3. Space - movement within a local office - no expansion of office footprint | I | I | C | C | I | C | A/R (varies) | I | I | I | I | I |
| 4. Space - expansion of office footprint | C | C | C | R | C | A | R (varies) | I | I | I | I | I |
| 5. Hiring of Line ALJ's and Support Staff | I | C | I | I | C | A | R (varies) | I | I | I | I | I |
| 6. Hiring of Lead and Senior ALJ's and Legal Admin Mgr. | C | C | I | I | C | A | R (varies) | I | I | I | I | I |
| 7. Communication Lead - local office related | I | I | I | I | C | A | R (varies) | I | I | I | I | I |
| **Caseload Authority** | | | | | | | | | | | | |
| 8. Caseload Workflow Lead for assigned caseload - Works across agency on processes, procedures, templates, performance reports | C | C | C | C | A | R | R (varies) | R | C | C | C | R |
| 9. Stakeholder Management Lead for Assigned Caseload - Works across agency on issues and questions raised from staff, Agencies, and other stakeholders | C | C | C | C | R | R | A/R (varies) | R | C | C | C | C |
| 10. Communication Lead - assigned caseload related, across agency to other staff assigned same caseload | C | C | C | C | R | R | A/R (varies) | R | C | C | C | C |
| 11. Staff check-ins with Senior ALJs (and possibly line ALJs) across agency doing assigned caseload | I | I | I | I | C | C | A/R | C | I | I | I | I |

## APPENDIX 5 – Review Methodology

Independent organizational or program reviews provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. Independent review objectives vary widely and include assessments of program effectiveness, economy, risks, and efficiency; internal control; compliance; and prospective analyses. This review is a mix of all these objectives.

The general approach to organizational, fee, and billing reviews is outcome-based. The approach to this project had the following questions in mind:

- What will the impact of the assessment or review be?

- What efficiencies could be realized from the assessment or review?

- What is the value added by the assessment or review?

<u>Review Criteria</u>

The review **criteria**, defined as *what should be,* will provide context for understanding the purpose of the organization being reviewed. The criteria will describe what expectations have been set for the agency or program. This review used the following review criteria:

- Enabling statutes;
- Measurable goals and objectives;
- Washington Administrative Code;
- Relevant federal laws and regulations;
- Other budget and accounting requirements;
- Policies and procedures;
- Technically developed standards and norms;
- Generally accepted benchmarks;
- Performance of similar entities;
- Performance in the private sector; and
- Best practices of leading organizations.

The review approach is to independently assess the current conditions, or the *what is*, against the review criteria or the *what should be* as shown in Illustration 1 below. Any exceptions or gaps against the criteria will be expressed in terms of effects, or *the so what*. In other words, if performance does not meet expectations, what is the impact and what is the significance of the shortfall? This is frequently referred to as the materiality test. The causes for the exceptions, or *the why*, are diagnosed and recommendations are prepared to bring conditions up to the established criteria.
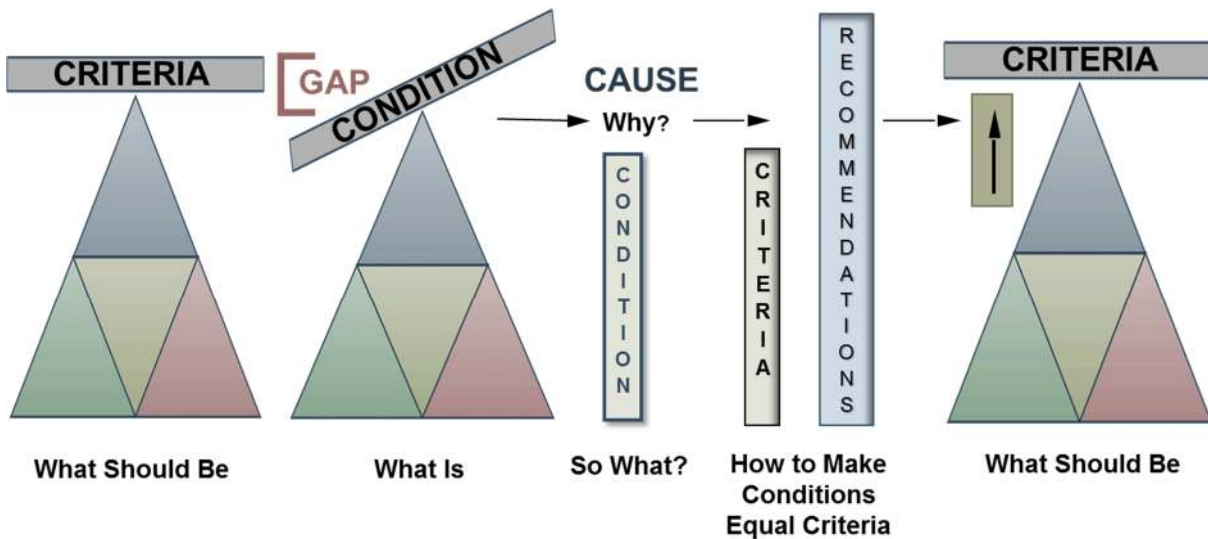
Illustration 1

## Evidence to Support the Assessment or Review

The Fee Structure, Billing Methodology, and Employee Performance was assessed using tangible and intangible evidence as shown in Illustration 2 below. The conditions are analyzed including practices and processes (the how, when, who, and how much) and the products (the what). The approach taken was to collect and examine as much physical evidence as possible, analyze data, review processes, conduct surveys, and listen to messages from participants and stakeholders to ensure the conclusions and recommendations are credible and achievable. While intangible evidence is important in evaluating satisfaction and acceptance, it will be critical to balance this with as much tangible evidence as possible to ensure the findings and conclusions are supportable.
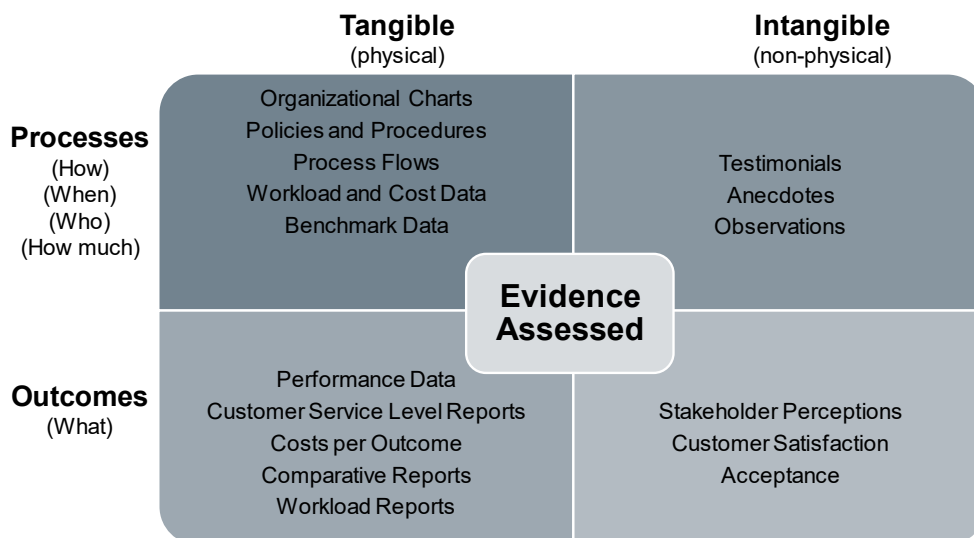


Illustration 2

The types of evidence used during this review were explainable and justifiable in terms of sufficiency, validity, reliability, relevance, and reasonableness. All findings and conclusions are supported by the evidence. The sources of evidence included:

- Review of prior assessments, audits, reviews, research, and evaluations;
- Review of reports, budgets, spreadsheets, and strategic plans;
- Review of financial reports and models;
- Review of performance measurement and management reports and tools;
- Observation of operations;
- Interviews with key staff and stakeholders;
- Review of similar programs in other states and similar agencies and industry best practices;
- Review organizational charts and process flowcharts;
- Review of job descriptions, recruitments, and workload data;
- Review applicable federal, state, and local laws; and
- Reviews of agency-written policies and procedures.

The review drew upon a variety of data-gathering and analysis techniques, such as surveys, interviews, observations, workflow mapping, document and spreadsheet analysis, as well as the analysis of financial and performance data. The methods chosen allowed for the gathering of data in an efficient and effective manner and was flexible in the choice of methods to not cause undue hardship on OAH resources or services.

### Staff and Stakeholder Interviews, Work Sessions, and Online Survey

The project team took advantage of the online survey tool, SurveyMonkey, to survey customers and stakeholders of OAH. The survey consisted of a mix of 38 matrix and open-ended questions and covered the major categories as defined the review's scope.

There was an attempt to reach as many OAH staff and stakeholders as possible. Major customer and stakeholder categories included:

- Appellants;
- Appellant representatives;
- Referring agencies including:
  - Department of Social and Health Services,
  - Department of Children, Youth, and Families,
  - Employment Security Department,
  - Health Care Authority,
  - Liquor Control Board,
  - Office of Superintendent of Public Instruction,
  - Department of Labor and Industries, and

- - Washington State Department of Financial Institutions.

- Authorizing environment representatives including legislative and OFM staff;

- Peer organizations in other states and like organizations in Washington State including:

  - Washington State Board of Industrial Insurance Appeals,

  - Washington State Attorney General's Office,

  - Washington State Auditor's Office,

  - Washington State Environmental Land Use Hearings Office,

  - Washington State Department of Health, and

  - Central panel adjudicatory agencies in other states listed in Appendix #1.

- Legal professional support staff in the Olympia, Seattle, Tacoma, and Spokane Valley OAH offices;

- Line, Lead, and Senior ALJs in the Olympia, Seattle, Tacoma, and Spokane Valley OAH offices; and

- Headquarters staff and leadership.

The project team emailed the survey to 270 staff and stakeholders identified above in May 2019. Of these surveys, 179 (66 percent) responded. 152 completed all survey questions and 27 partially completed the survey.

The total 179 surveys completed equates to survey results with a 95 percent confidence level and a 4.5 percent margin of error.

**APPENDIX 6 – Conclusions and Recommendations Summary**

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|:---:|:---:|
| **OAH CASELOADS AND PRODUCTIVITY** | | |
| **Conclusion #1: Appellants' needs vary across caseloads.** | | |
| 1.1 Improve notice of hearing and written orders for appellant use by ensuring they are written in plain language and available in a variety of formats. | | x |
| 1.2 Complete the business and technical requirements for an appellant portal to allow the appellant easy access to the status of appeals, hearing notifications, and other relevant case information. | x | |
| **Conclusion #2: There is opportunity to increase consistency in rules and/or processes across referring agencies and caseloads.** | | |
| 2.1 Work with the advisory committee to develop uniform timeframes for case management when they are not mandated by state or federal statute. This may require rule changes but will assist OAH and agencies to more efficiently manage caseloads, and citizens to better understand and navigate the process. (See Recommendation #18.1). | | x |
| 2.2 Identify and complete the remaining activities and resources necessary to achieve OAH's electronic case records (ECR) project. | | x |
| 2.3 Work with referring agencies to leverage efficiencies in currently available options for accessing data through Border Services and/or the Referring Agency Portal, allowing agencies self-service access to the status of appeals, hearing notifications, and other relevant case information. | | x |
| 2.4 Work with stakeholders to continue the efforts for e-filing of appeals. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|---|---|
| **Conclusion #3: There are many opportunities to increase organization-wide process consistency at OAH.** | | |
| 3.1 Standardize training materials and create a training program to ensure staff understand what is expected of them for consistent use of technologies and processes, such as WebEx for hearings or Outlook for scheduling. Requiring use of tools that are already in place will quickly improve efficiencies within the organization. (See Conclusion #16.) | | x |
| 3.2 Establish a position, similar to a Court Administrator, whose primary focus is to work with the Division Chief ALJs and Legal Administrative Managers to standardize processes, procedures, templates, and forms. (See Recommendation #15.1.) | | x |
| 3.3 Standardize organizational policies and processes and use a collaboration tool (similar to SharePoint) when teams are collaborating on initiatives and developing operational documents. | | x |
| 3.4 Provide electronic access to all case-related information and standardize the use of existing tools and systems (such as PRISM and NTMS). | | x |
| **Conclusion #4: OAH staff are passionate about the agency mission and take pride in doing meaningful work, particularly valuing their role of independence.** | | |
| **Conclusion #5: Morale varies across the offices and within offices.** | | |
| 5.1 Ensure adequate subject matter expertise is leveraged prior to decision making and that the rationale behind decisions is documented and communicated. (See Recommendation 9.1.) | x | |
| **Conclusion #6: Measurement of performance varies across the offices.** | | |
| 6.1 Reconfirm or establish and communicate performance measures and catch up on performance reviews. | x | |
| 6.2 Establish, monitor, and report on performance measures at the strategic, tactical, and operational level to increase performance and accountability. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|:---:|:---:|
| **Conclusion #7: There is a lack of clearly defined roles, responsibilities, and performance measures.** | | |
| 7.1 Define roles and responsibilities, including authority in decision making. (See Recommendations #12.3 and #13.1.) | x | |
| 7.2 Expand existing dashboards to report on performance measures that are meaningful and accessible for staff at the strategic, tactical, and operational levels of the organization. (See Recommendation #6.2.) | | x |
| **Conclusion #8: Staff are concerned about compensation.** | | |
| 8.1 Review options with OFM to benchmark ALJ salary to the salaries of judges at BIIA. This may require shifting the ALJs from exempt status to classified so salaries can be linked during salary surveys. | | x |
| **Conclusion #9: Many of the recommendations from past reviews have not been implemented.** | | |
| 9.1 Create a governance structure with subject matter experts to prioritize initiatives, review and raise issues, and make decisions. | x | |
| 9.2 Ensure there is adequate capacity and expertise to effectively execute program, administrative, and regulatory activities. | | x |
| 9.3 Establish a Business Transformation PMO with project, organizational change management, and Lean expertise to implement the recommendations of prior reviews, this review, and the agency's priorities.  (See Recommendations #10.3, 12.1.1, and #15.1.) | | x |
| 9.4 Develop a Communications Plan and a Stakeholder Management Plan. | | x |
| 9.5 Develop a tactical roadmap as a companion to the Strategic Plan. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|:---:|:---:|
| **Conclusion #10: OAH has difficulty accessing the data to make informed decisions and manage workloads.** | | |
| 10.1 Leverage a governance committee to prioritize the tools, technology, and/or resource changes in support of OAH staff. (See Recommendation #9.1.) | x | |
| 10.2 Create a data dictionary in plain language to define and communicate the expected data for each of the fields within PRISM so that end users know the appropriate data for entry. | x | |
| 10.3 Leverage training and organizational change management to improve the use of technology and support quality and consistency, allowing leaders and stakeholders to more easily analyze issues, identify trends, and develop data-driven options for decision making. (See Recommendations #9.3, 12.1.1., and 15.1.) | | x |
| **Conclusion #11: Staff like the flexibility of performing their work anywhere.** | | |
| 11.1 OAH should partially automate the case assignment and scheduling tasks within PRISM. | | x |
| 11.2 Continue to transition information and processes to electronic records management and achieving the goal of becoming paperless will help further OAH's flexibility. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|---|---|
| **OAH ORGANIZATIONAL STRUCTURE** | | |
| **Conclusion #12: There is a lack of understanding of the current hybrid, or matrix, organization structure.** | | |
| 12.1 Update the organizational structure to position the agency for success and infuse management expertise with well-defined roles and responsibilities and proven skills and abilities. An option of an updated organizational structure for the agency is in Appendix 4. Other factors should be considered as OAH adopts a new organizational structure: <br> 12.1.1  Increase staff capacity for project management, Lean, organizational change management, communications, fiscal and facility analysis, and business analysis. (See Conclusion #15 for additional information.) <br> 12.1.2  Retain the caseload lead designation with each Division Chief ALJ. This will require a matrix relationship across the agency with the Senior ALJs, Lead ALJ's, and Line ALJs. <br> 12.1.3  Retain the direct reporting relationship of the legal professional support staff to the local Division Chief ALJ. <br> 12.1.4  Establish a matrix relationship between the Legal Administrative Manager in each office with the Deputy Chief ALJ for Judicial Support. | | x |
| 12.2 OAH should establish a clear, bright line within the organization structure between the billing, funding, judicial support part of the agency and the ALJs to ensure decisional independence. | | x |
| 12.3 OAH should adopt a RACI matrix for management positions to clearly identify decision-making authority for the hierarchical structure, the local office structure, and the caseload structure. | | x |
| 12.4 OAH should develop a communication plan to advise staff of the new organizational structure, to share the RACI matrices, to explain where they will fit into the structure, and to identify who they will report to in the new structure. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|---|---|
| **Conclusion #13: Some staff fill multiple roles within the organization.** | | |
| 13.1 Using the RACI matrix, update position descriptions to include all roles and responsibilities within the organization. | | x |
| **Conclusion #14: OAH's new hiring process has created questions about roles and responsibilities for some staff.** | | |
| 14.1 With the assistance of Human Resources (HR), refine the current hiring process and document and distribute the process to managers and supervisors. | x | |
| 14.2 Develop a RACI for the updated hiring process to define the authority for each level of management within the agency. | x | |
| **Conclusion #15: OAH lacks the necessary staff capacity, expertise, and skills for agency administrative operations.** | | |
| 15.1 Increase resource capacity and expertise to adequately and effectively manage agency administrative and judicial support activities to: <br> 15.1.1 Lead the consistent use of policies, procedures, templates, and other tools across specified caseloads (proposed as the Assistant Chief for Judicial Practice Improvement in the optional organizational chart). <br> 15.1.2 Lead projects to support current business needs and improve the quality and consistency of the appeal process (proposed as the Business Transformation PMO in the optional organizational chart). <br> 15.1.3 Lead the development and implementation of model rulemaking strategy in close coordination with the internal agency and external stakeholders (proposed as the Assistant Chief for Policy, Governmental Affairs, and Risk Management in the optional organizational chart). <br> 15.1.4 Provide analytical expertise within the agency to analyze issues, identify trends, and develop data driven options for decision makers to consider (proposed as the Business Transformation PMO in the optional organizational chart and in the increased capacity for the fiscal office in Recommendation #23.8). | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|:---:|:---:|
| 15.1.5  Lead the implementation of updated policies, the implementation of the communications and stakeholder plans, and the implementation of the performance management plan (proposed as the Business Transformation PMO in the optional organizational chart).<br>15.1.6  Lead the development of a staff training program to build commonly needed skills in judicial or adjudication operations, interpersonal communication, leadership development, managing change, building teams, and meeting facilitation (proposed as the Business Transformation PMO in the optional organizational chart). (See Conclusion #16). | | x |
| **OAH TRAINING AND DEVELOPMENT** | | |
| **Conclusion #16: There are inconsistent training and development opportunities within OAH.** | | |
| 16.1 Establish a dedicated budget for training and development. | x | |
| 16.2 Work with the Business Transformation PMO for staff support creating a training plan for internal staff by role, caseload, and process. (See Recommendation #15.1.6.) | | x |
| 16.3 Utilize modern training platforms. | | x |
| 16.4 Create and conduct training for external stakeholders. | | x |
| **OAH STAKEHOLDER MANAGEMENT** | | |
| **Conclusion #17: OAH lacks a robust stakeholder management strategy.** | | |
| 17.1 Develop a stakeholder management plan and a communication plan and review its progress on implementation of the plans on a quarterly basis. | | x |
| 17.2 Establish a primary point of contact for stakeholder management for each caseload with clear roles, responsibilities, and decision-making authority. | x | |
| 17.3 Establish a standard agenda for quarterly meetings with key stakeholders to include program or policy changes, lessons learned, trends, and forecasts of future caseloads. | x | |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|---|---|
| 17.4 Adopt common meeting management practices for the meetings, including developing and issuing agendas in advance, and documenting outcomes for each agenda item with action steps, assignments, and due dates. | x | |
| **Conclusion #18: OAH does not have a formal advisory council.** | | |
| 18.1 Create an agency advisory committee to work directly with stakeholders to review model rules, policies, technology improvements, and initiatives such as plain talk and paperless to understand their potential impact on other organizations. | | x |
| 18.2 Develop and post a charter for the advisory committee that contains, at a minimum, its purpose, members, responsibilities, and meeting expectations. | | x |
| **OAH BILLING STRUCTURE AND TIME REPORTING** | | |
| **Conclusion #19: The current billing methodology requires detailed time tracking.** | | |
| 19.1 In the short term, continue the current method of billing by the hour by docket number for ALJ and legal professional support staff for those agencies and programs that require that level of detail to meet their federal requirements. | x | |
| 19.2 In the long term, work with OAH staff and referring agencies to analyze the effects of switching from billing hourly to a retainer or assessment method for the five largest referring agencies based on the average billable hours in the last twelve months. | | x |
| 19.3 In the long term, work with OAH staff and referring agencies to analyze the effects of switching from billing hourly by docket number for professional legal support staff to an assessment method based on intake or open cases. | | x |
| 19.4 Review the level of detail that is currently required in the NTMS for non-billable time and determine if it is necessary for agency decision making and then explain to agency staff each category and why it is important. This may be an opportunity to rebrand EOT. | x | |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|---|---|
| 19.5 Update the policy regarding the use of the Time Management System based on the decisions made in Recommendation 19.1, 19.2, and 19.3. Provide quick reference guides and training to staff on some of the tools available to them to quickly track their time. | x | |
| 19.6 Develop training and communication material for use with agency staff on the billing methodology and how their time reporting is being used. | x | |
| 19.7 Develop a budget for each category of hours such as billable, EOT, training, and other categories that are determined to be important, so staff understand what the plan is they are managing to. | x | |
| **Conclusion #20: The current billing methodology may not be aligned with the RCW.** | | |
| 20.1 Work with OFM to change the administrative revolving fund from appropriated to a non-appropriated, but allotted, fund and amend RCW 34.12.140 to reflect their billing methodology. | | x |
| **Conclusion #21: Interagency agreement and invoice requirements vary by referring agency.** | | |
| 21.1 Work with OAH management and the advisory committee to standardize billing and other required reports across all referring agency. Make other data available, including time reporting data, in the portal to allow referring agencies to run their own reports. (See Recommendation #2.3.) | | x |
| 21.2 Standardize interagency agreements between agencies to be on a biennial basis. | | x |
| 21.3 Develop requirements and standard business rules for the creation of a new billing system, once the billing, interagency agreements, and time reporting processes are standardized. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|:---:|:---:|
| **OAH FEE STRUCTURE AND COST ALLOCATION** | | |
| **Conclusion #22: The current rate structure does not allow for adequate working capital reserves.** | | |
| 22.1 OAH should set rates high enough to generate sufficient revenues to build up a 60-day working capital reserve to cover its expenditures from one billing period to the next. | x | |
| **Conclusion #23: The current rate structure is difficult for staff and stakeholders to understand.** | | |
| 23.1 OAH should examine the appropriate allocation of direct, overhead, and indirect costs to its rates and simplify the rate structure as much as possible. Overhead and indirect costs should be integrated into the fully loaded costs of the ALJ and legal professional staff. All direct costs should be charged to the appropriate referring agency. | x | |
| 23.2 Review and update the agency chart of accounts to capture the costs based on business needs. This may include tracking costs not only by location, but by the categories assumed in the rate structure such as costs associated with ALJs, legal professional staff, all other direct costs, overhead, and indirect. | x | |
| 23.3 OAH should ensure their rates cover costs associated with all direct costs plus overhead and indirect costs and develop management reports to routinely validate those assumptions. | x | |
| 23.4 OAH should identify all overhead, indirect, and direct costs including allowances for training, leave, and other non-docket specific costs for inclusion in their rate calculation. | x | |
| 23.5 OAH should use the advisory committee to evaluate possible cost efficiencies and additional rate options such as billing a one-hour no-show fee for late cancellations of hearings to drive desired behavior and a reduction of non-billable hours. | | x |

| Conclusions and Recommendations | Short Term (less than 1 year) | Long Term (more than 1 year) |
|---|:---:|:---:|
| 23.6 Once the rates are set, OAH should develop rate-setting policies and procedures that include periodic review of rates with OFM and acknowledge the need for transparency into the rate setting calculations. | x | |
| 23.7 Communication and education material should be developed to explain what goes into the rate for staff and external stakeholders. This information should be made available for rate date and for posting on the agency website. | x | |
| 23.8 Add a resource to the OAH fiscal office to assist in the above recommendations and do the financial and facility analysis that may be necessary to develop options for agency efficiencies. (See Recommendation #12.1.1. and #15.1.4.) | | x |

## I. References

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