

# Administrative Law in Washington: An Introduction

By

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# What is administrative law?

## ad·min·is·tra·tive law

*noun* LAW

the body of law that regulates the operation and procedures of government agencies.

# Why create an agency?

- The Legislature passes a law:
  - delegates its lawmaking authority to an agency
  - to make the rules in a particular area
- Used for areas that are:
  - technical, specialized, or require a large workforce to implement
- Relieves the:
  - Legislature from detailed rulemaking
  - Governor from direct administration
  - Courts from a huge volume of cases

# How does an agency get its authority?

- Every agency has an enabling act
- Agencies get their authority from the legislature



- Use [www.oah.wa.gov](http://www.oah.wa.gov) for shortcuts to access each agency's rules and the Administrative Procedures Act

# oah.wa.gov

OFFICE OF ADMINISTRATIVE HEARINGS

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**Hearings**

- General Hearing Information
- Unemployment Insurance
- Public Assistance/Welfare
- Division of Child Support

**Legal Research**

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## Legal Research & Resources

You may represent yourself and do not need to have an attorney. If you represent yourself, you must review the decision made by the agency. Review the law related to that decision.

Listed below are resources you may use to prepare your case. (The resources are not intended to provide legal advice.)

### Frequently Conducted Hearings

Click to view laws and information for each topic.

- Unemployment Insurance
- Child Support
- Public Assistance
- Health Care Authority
- Labor and Industries
- Liquor and Cannabis

### Laws and Regulations

#### General

- U. S. Constitution
- WA State Constitution
- Statutes and Rules Relating to the Office of Administrative Hearings

#### Laws

- Revised Code of Washington (RCW) (Search)
- Revised Code of Washington (RCW) (Browse)
- WA Administrative Procedure Act (APA)
- United States Code - Federal Statutes

#### Regulations

- WA Administrative Code (WAC) (Search)
- WA Administrative Code (WAC) (Browse)
- Model Rules of Procedure
- Code of Federal Regulations
- WA State Register Online (WSR)

# Who makes the laws and regulations?

- When the Legislature makes the law it is called a...
  - Statute
- And statutes are found in the...
  - RCW (Revised Code of Washington)
- If a government agency makes the law, through its delegated authority, it is called a...
  - Rule (or Regulation)
- And rules go in the...
  - WAC (Washington Administrative Code)

# What is OAH?

- OAH is the Office of Administrative Hearings
- If a person disagrees with some things done by a state agency, they have the right to a hearing. Before OAH was created, the hearing was held by a judge from that same state agency.
- When OAH was created, a new structure was set up with some agencies. The appeal hearings were moved and held by an independent judge at OAH.
- Over 20 state and local agencies covered by the APA refer appeals to OAH
- Read more on [www.oah.wa.gov](http://www.oah.wa.gov)

# Where is OAH's Enabling Act?

- The enabling act

*"A state office of administrative hearings is hereby created. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with the legislative intent expressed by this chapter." RCW 34.12.010*

- OAH hearings are informal

*Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding. RCW 34.12.010*



# Laws and Regulations

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## Laws and Regulations

**4** **Statutes and Rules for OAH**

- Chapter 34.12 RCW (OAH authorizing statute)
- Chapter 10-04 WAC (Agency organization and public records process)
- Chapter 10-16 WAC (Filing a complaint against an Administrative Law Judge)
- Model Rules of Procedure (OAH Model Rules of Administrative Hearing Procedure)

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# Administrative Hearings

- Adjudicative Proceeding = Administrative Hearing

APA

Also called

- Government agencies make thousands of decisions that affect people's lives. When you disagree with a decision that an agency has made, there is a good chance you have the right to appeal that decision. When you do, you will get an administrative hearing.

# Administrative Hearing vs. Courtroom

The justice system means traditional courts to most people. Administrative law is largely invisible in the press and popular media.

## County Courthouse

Typical image of courtroom

- Juries
- Judge in robes
- Fancy building
- Witness box
- Bailiff

Judge Judy or Law & Order

## Administrative Hearing

- No jury
- Typically by telephone
- When face to face
  - Informal conference room
  - No robes
  - No gavels
- No filing fee to OAH

# Washington State

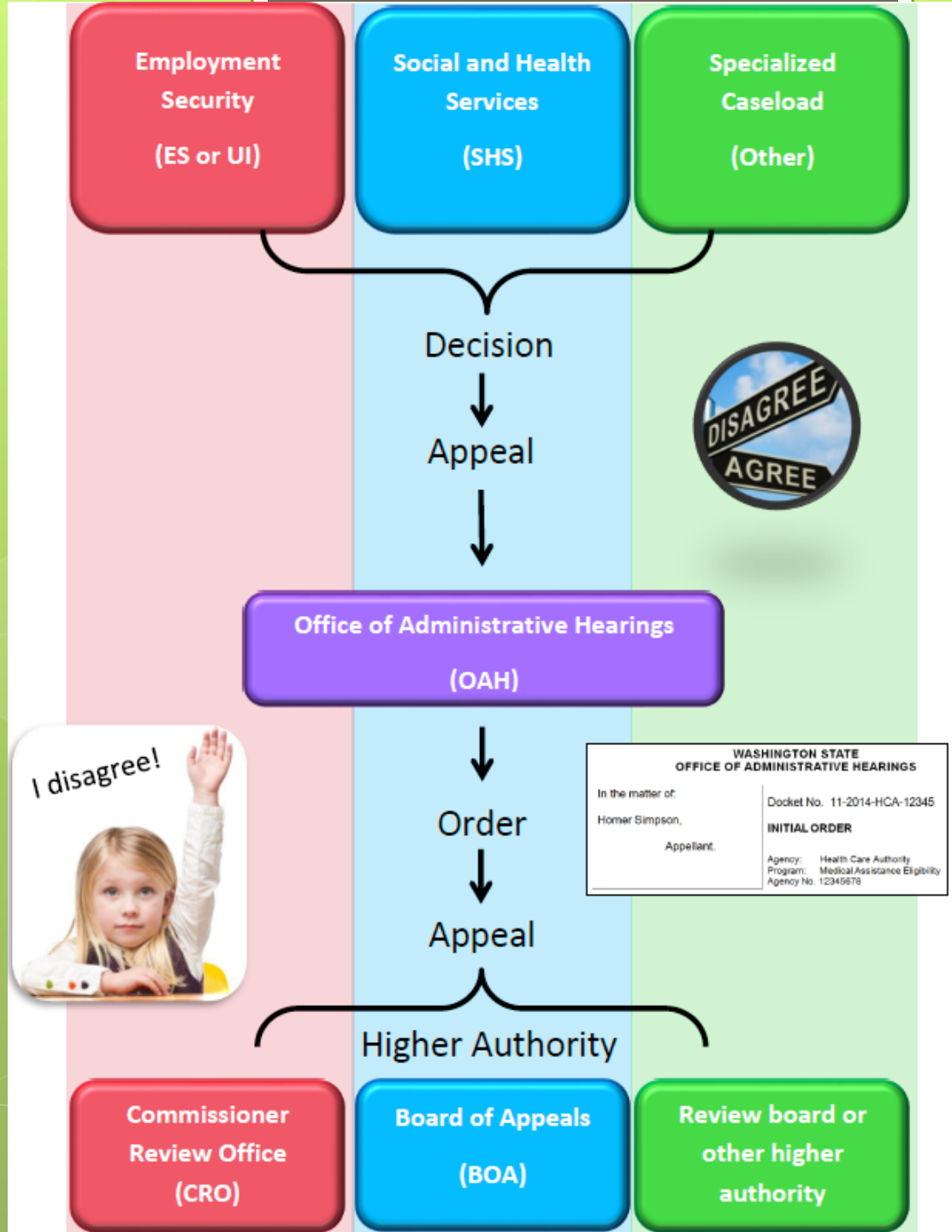
- Often a person's only contact with the justice system may be with an administrative hearing rather than the traditional courts
- In 2015, traditional courts conducted **10,654** trials.
- In the same time period, OAH completed around **24,000** hearings

Agency Action Taken

Appeal

OAH Hearing

Appeal to  
Higher Authority



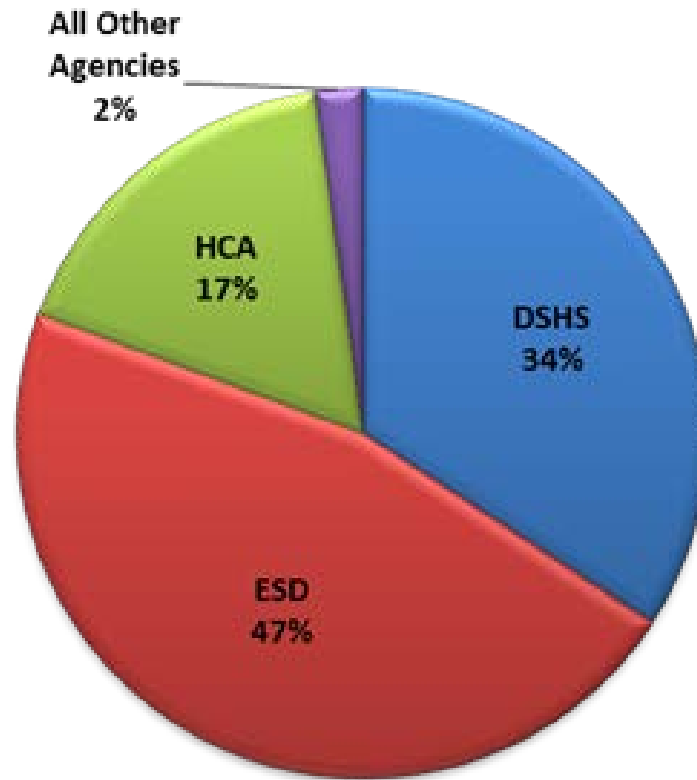
# Right to Appeal

- In administrative law, the right to file an appeal comes from an agency rule, a statute, or both
  - ESD
    - RCW 50.32.020
  - LCB
    - WAC 314-55-510

# Who Does Administrative Hearings in WA

- OAH
  - Central panel – holds multiple types of hearings
- Others include:
  - BIIA (workers comp)
  - DOH (medical provider licensing)
  - DOR (state tax appeals)
  - ELUHO (environmental hearings)
  - PDC (campaigns for public office)
  - PERC (public employment, union matters)
  - BTA (review of DOR decisions)
  - DOL (DUI and Financial Responsibility)
  - DRS (public employee pension disputes)
  - OIC (insurance regulation)

# Types of Cases OAH Handles (2016 Totals)





# ALJ Authority

- Generally limited to determining whether the agency was right or wrong when it issued its decision.
- The judge cannot change the agency's rules.
- The judge is limited to what the law allows them to do. There are very few case types where the judge has authority to create solutions or remedies.

# Evidence and Hearing Procedure

- Judges will be active in the hearing
  - They will ask questions
  - They may ask for documents
- Evidence usually consists of witness testimony and written documents
- Judges decide the credibility of the evidence
  - First hand reports are more credible
  - The judge may allow a secondhand report of what another person said (hearsay)
- The website [www.oah.wa.gov](http://www.oah.wa.gov) has a lot of information about what to expect during the process of the hearing

# Burden of Proof

- In a hearing, one party has the responsibility to present evidence about disputed facts
- A party must persuade the judge that their facts (their position) is correct
- Sometimes after a party proves their position (met the burden), the burden of proof shifts to the other side
  - For example, the burden may shift to prove a defense

# Burden of Proof

- The judge will let you know who has the burden of proof
- Unemployment Insurance example:
  - If the employer fired the claimant, the employer has the burden to prove the employee's actions were "misconduct"
  - If the claimant quit, the claimant must prove they had "good cause" to quit
- Child Support example:
  - Both parents have a burden to prove their income (if they disagree with the amount DCS shows)

# Standards of Evidence

These are the standards used by judges when determining if someone met their burden of proof

- Preponderance of the Evidence
  - Applies in most administrative hearings
  - “More likely than not” standard
  - “More than 50%” standard
- Clear and Convincing
  - Applies in certain cases like fraud
  - “Substantially more likely than not” standard
- Beyond a Reasonable Doubt
  - Not used in administrative hearings
  - Used in criminal cases

# Ex Parte Communication

The judge usually does not communicate with only one party.

- Exceptions
  - When necessary for procedural aspects of maintaining an orderly process
  - Example: request for a continuance or a change of location
  - When the communication is authorized by law
  - Example: request for an ADA accommodation
- Can a witness talk to the judge anonymously?
  - No
- Can you write a letter with evidence for the judge's eyes only?
  - No

Everything you send or say to the judge must be shared with the other party

- RCW 34.05.455

# When does the administrative hearing process end?

- Initial Orders end the process only if no one appeals
  - There is still a right to another administrative appeal
  - If no one appeals, the Initial Order automatically becomes a Final Order
  - If an appeal is filed, the process ends when the review judge issues a Final Order
- Final Orders end the administrative process
  - An agency can delegate final decision-making authority to the judges at OAH
  - An agency may keep the final decision-making authority
  - Whoever has final decision-making authority will issue the Final Order
- The next step after a Final Order is to the traditional court system

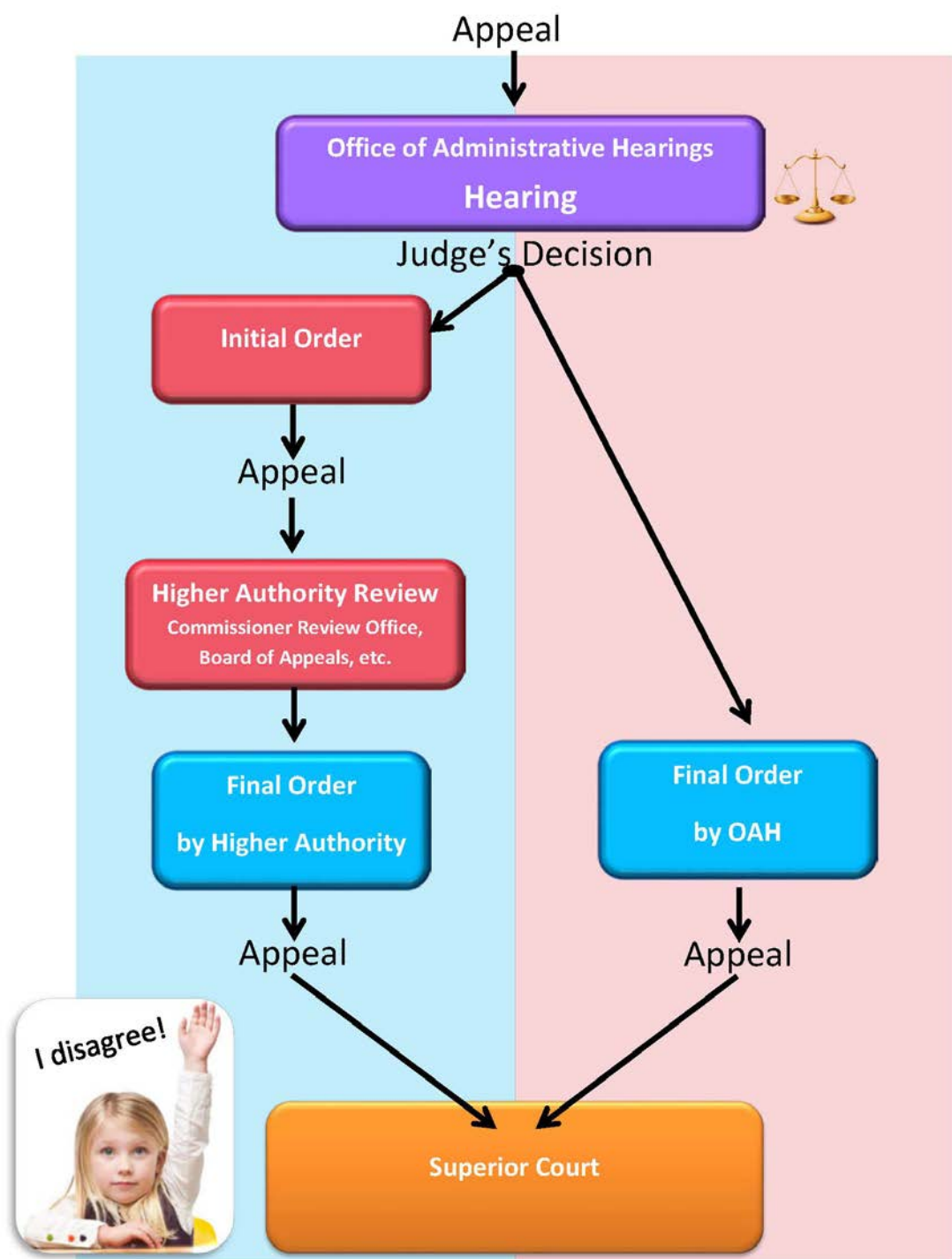
# Different paths to get to the final administrative order

- Final order done by OAH
  - Child Support
  - Food Assistance
- Final order done by Referring Agency
  - DSHS Board of Appeals
  - ESD Commissioner's Review Office
  - Liquor & Cannabis Board



# OAH Hearing

Appeal to  
Higher Authority



# Then what?

- Once the final administrative order issued, parties have a right to appeal through the traditional court system:
  - Superior Court
  - Federal District Court

# How do I learn more?

- [Washington Administrative Code](#) (WAC)
- [Revised Code of Washington](#) (RCW)
- [OAH website](#)
  - Precedential administrative decisions
- [Other agency websites](#)
- [Washington Law Help](#)