

Office of Legislative Auditor

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Informational Report: Potential Duplication With Administrative Hearings

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About This Informational Report

Louisiana Revised Statute (R.S.) 24:522(C) requires the Louisiana Legislative Auditor (LLA) to evaluate programs and services of state government agencies and identify areas needing improvement. In the last regular session, the legislature formed the Commission on Streamlining Government (Commission), and the LLA was assigned to assist the Commission. One of the topics the Commission is focusing on is duplication of services provided by two or more agencies.

To assist the Commission, we will report on areas of potential duplication by two or more agencies in delivering services. We defined duplication as identical or similar activities performed by more than one agency leading to accomplishment of the same or similar goal. We will issue individual reports addressing different areas of duplication.

We obtained information from state law, budget documents, agency interviews, and other sources. We did not conduct an audit in accordance with all government auditing standards. Though we performed procedures adequate to identify potential duplication, we did not perform sufficient procedures to make definitive conclusions or estimate potential savings, if any, that may result from any action taken by these entities to eliminate such potential duplication.

Although the Division of Administrative Law (DAL) was created to conduct administrative hearings for departments, agencies, boards, and commissions of the executive branch of state government, exemptions in law may be creating duplication. R.S. 49:991 created the DAL to consolidate under one agency administrative hearings that were being conducted by various agencies. However, R.S. 49:992 provides for exemptions that allow other agencies, boards, and commissions to conduct administrative hearings themselves. Because of the various exemptions, there is potential duplication among agencies and boards that conduct administrative hearings. We conducted cursory legal research and identified at least 40 state agencies, boards, and commissions authorized to conduct their own hearings because of the exemptions.

Although many agencies, boards, and commissions conduct their own hearings, we focused on three agencies because of their size and number of hearings conducted. These agencies are the Department of Health and Hospitals (DHH), the Department of Social Services (DSS), and the Department of Education (DOE). In addition to these three agencies conducting their own hearings, DAL conducts hearings for DHH's Office of Public Health, various DSS administrative license suspensions, and DOE's Food and Nutrition Program.

POTENTIAL DUPLICATION - ADMINISTRATIVE HEARINGS _____

R.S. 49:992(D)(2) provides that an agency can conduct its own hearings if “pursuant to a federal mandate and as a condition of federal funding” it is required “to conduct or to render a final order in an adjudication proceeding.” (federal mandate exemption). DOE, DSS, and DHH rely on the federal mandate exemption and federal law as the justification to retain some of their hearings. These agencies provided us with the legal authority and information to support their positions. After reviewing this information, it was not clear to us if all agencies met the federal mandate exemption for some types of hearings that they conduct.

Potential Duplication Among DAL, DHH, DOE, and DSS

Potential duplication exists because all four agencies perform administrative hearings. The administrative hearing activities include conducting actual hearings, receiving and processing files, and supervising administrative law judges and non-attorney staff. Exhibit 1 below contains a comparison of administrative hearing activities by agency.

The four agencies held 10,937 hearings and spent \$5,922,870 in fiscal year 2009, of which \$2,302,162 was state general funds. These agencies had 59 employees performing work on administrative hearings in fiscal year 2009. Exhibit 2 on the following page contains a summary of the number of hearings, staffing, and expenditure information for the four agencies.

Exhibit 1 Comparison of Job Activities of Agency Staff				
Administrative Hearing Job Activities	DAL	DHH	DSS	DOE
Conduct hearings and perform related legal and administrative work (such as legal research, writing opinions, examination of witnesses)	Yes	Yes	Yes	Yes*
Supervise administrative law judges	Yes	Yes	Yes	No
Administrative work including receiving case files, docketing, facilitating work flow, correspondence	Yes	Yes	Yes	Yes
Supervise non-attorney staff	Yes	Yes	Yes	Yes
*DOE contracts with attorneys to act as hearing officers.				
Source: Prepared by legislative auditor’s staff from information provided by DAL, DHH, DSS, and DOE.				

Exhibit 2
Summary of Number of Hearings, Staff and Expenditures
Fiscal Year 2009

Agency	Number of Hearings*	Number of Employees	Total Expenditures	State General Funds
DAL	8,548	32	\$3,362,745	\$384,670
DHH	1,382	18	1,595,954	1,595,954
DSS	977	7	895,948	321,538
DOE	30	2**	68,223	0
Total	10,937	59	\$5,922,870	\$2,302,162

*Number includes only cases that required an administrative hearing; it does not include number of appeals processed that were resolved by other methods.

**According to an agency official, DOE contracts with three individuals to act as hearing officers. Two DOE employees work varying amounts of time on administrative hearings.

Source: Prepared by legislative auditor's staff from information provided by DAL, DHH, DSS, and DOE.

DAL

DAL conducts administrative hearings for state entities unless an agency or a program is exempt by law from having DAL conduct its hearings. DAL conducts multiple hearings for various state agencies.

DAL held 8,548 administrative hearings in fiscal year 2009. In fiscal year 2009, DAL had 32 full-time and five temporary employees and total expenditures were \$3,362,745. Of the expenditures, \$384,670 was from state general funds, \$2,966,810 from interagency transfers (IAT), and \$11,265 from self-generated funds.

DHH

DHH's Bureau of Appeals (BOA) conducts all of DHH administrative hearings, except for those arising in the Office of Public Health (OPH). The DAL hears OPH administrative hearings. The majority of hearings that BOA conducts are Medicaid provider appeals and recipient appeals. Medicaid provider appeals are matters in which licensed medical providers (hospitals, health care agencies, nursing homes, nurse aides, and any other entity or individual licensed or paid by DHH or Medicaid) have an adverse action proposed or taken against them. Recipient appeals typically involve denials of, or a reduction in, Medicaid benefits or services. According to DHH officials, federal and state law and the Medicaid state plan provide authority for DHH to conduct hearings.

POTENTIAL DUPLICATION - ADMINISTRATIVE HEARINGS

During fiscal year 2009, the BOA received 4,460 hearing requests, disposed of 4,109 appeal requests, and held 1,382 hearings. The BOA has 18 employees and its expenditures for fiscal year 2009 were \$1,595,954 of state general funds.

DSS

DSS's Appeals Bureau (Bureau) conducts administrative hearings for 15 programs, according to agency officials. The types of programs that the Bureau hears appeals from include Public Assistance Food Stamps, Day Care Facility, and Foster Care. The vast majority of the cases docketed and disposed of by the Bureau are fairness hearings on eligibility determination decisions and administrative disqualification hearings. Fairness hearings determine if repayment measures are appropriate and administrative disqualification hearings determine if punitive measures are appropriate. According to agency officials, federal statutes and regulations require DSS to perform these hearings.

In fiscal year 2009, DSS received 4,655 cases but held administrative hearings for 977 cases. The Bureau had seven employees in fiscal year 2009 and spent \$895,948 funded through \$321,538 of state general funds, \$571,343 of federal funds, \$1,983 of interagency transfers, and \$1,084 of statutory dedications.

DOE

DOE conducts one type of administrative hearing that covers issues related to the Individuals with Disabilities Education Act (IDEA). These are disputes between the parents of special education students and local school districts. They arise when a student's parent claims the local school district is not providing adequate services to the student. DOE contracts with hearing officers (attorneys) to conduct the hearings on these disputes. According to agency officials, federal regulations require DOE to hold these hearings.

In total, DOE spent approximately \$68,223 in federal funds on administrative hearings related to IDEA. According to an agency official, DOE spent \$30,867 on three outside contracts to handle 30 IDEA administrative hearings in fiscal year 2009. Two DOE employees work varying amounts of time on IDEA hearings for a total annual salary of approximately \$37,356 attributable to their IDEA hearing work.

FOR QUESTIONS RELATED TO THIS INFORMATIONAL REPORT,
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A copy of this report is available at our Web site www.la.la.gov.

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor.

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