



# OLR RESEARCH REPORT

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## **CONTESTED CASES--HEARING OFFICERS AND NUMBERS**

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Using the Uniform Administrative Procedure Act's (UAPA) definition of "agency" and "contested case," you asked (1) for a list of state agencies that conduct contested cases, (2) for the average number of contested cases filed with each agency per year for the past five years (3) which agencies have full- or part-time hearing officers, (4) for the number of full- and part-time officers, (5) how the officers were chosen, and (6) for the costs the agencies incurred to hear the cases.

We have answered questions one through five. You will receive agency costs directly from the Office of Fiscal Analysis.

### **SUMMARY**

We contacted all of the state's departments and related boards and commissions that appear to meet the UAPA's definition of "agency" and are not otherwise exempt from the act. Some agencies (e.g., Judicial Review Council, Workers' Compensation Commission, and the Claims Commission) are included in the definition of "agency," and hear contested cases, but they are exempt from following the uniform procedures. While most of the agencies responded, some did not provide answers within your timeframe. We will send you any additional information that we receive.

Under the UAPA, “agency” means each state board, commission, department, or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly; the courts; the Council on Probate Judicial Conduct; the governor, lieutenant governor, or attorney general; town or regional boards of education; automobile dispute settlement panels; the Higher Education Supplemental Loan Authority; or the Municipal Liability Trust Fund Committee. A “contested case” is a proceeding, including ratemaking, price fixing, and licensing, in which (1) a hearing is held or (2) state statutes or regulations require state agencies to determine a person’s legal rights, duties, or privileges after an opportunity for hearing. Contested cases do not include proceedings on a petition for a declaratory ruling on the validity of any regulation or the applicability of a statute, regulation, or final agency decision to specified circumstances; hearings on proposed regulations; or Department of Correction or the Board of Pardons and Paroles hearings (CGS §§ 4-166 and 4-186).

Only a small percentage of the responding agencies indicated that they appoint or employ people who only hear contested cases. To the contrary, most hearing officers are senior level agency employees or board or commission members who hear cases in addition to other duties. According to the Department of Administrative Services, 12 classifications of employees are authorized to hear cases. These are (1) employment security associate appeals referee, (2) employment security principal appeals referee, (3) fair hearings officer, (4) fair hearings supervisor, (5) human rights referee, (6) labor department adjudicator specialist, (7) public utilities administrative hearings coordinator, (8) principal adjudicator, (9) principal attorney, (10) social services director administrative hearings and appeal, (11) supervising adjudicator, and (12) tax hearings officer.

The process for selecting or appointing hearing officers varies by agency. Under the UAPA, a hearing officer is an individual, including an agency employee, appointed by an agency to conduct a hearing (CGS § 4-166 (4)).

The average number of contested cases filed with these agencies during the past five years ranges from less than one filed with the Department of Mental Health and Addiction Services and several boards within the Department of Public Health to a high of over 10,000 filed with the Department of Social Services. The average number of cases filed per year is based on data from calendar years 2000 to 2004 or fiscal years 2000 to 2005. Unless otherwise indicated, case numbers are reported by calendar year.

Table 1 shows the agencies that conduct contested cases, the average number of cases filed in the past five years, the person responsible for hearing them, their employment status (i.e., full- or part-time), and the process for selecting the person.

Table 1 follows.

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**Table 1: Contested Cases By Agency**

<i>AGENCY</i>	<i>CONTESTED CASES SINCE 2000 (CY data unless otherwise noted)</i>	<i>AVERAGE PER YEAR</i>	<i>HEARING OFFICERS (Full-Time, Part-Time, Contractual, Hourly)</i>	<i>HEARING OFFICER SELECTION PROCESS</i>
Agriculture, Department of	28	4.6	none at present <sup>a</sup>	The commissioner selects hearing officers.
Banking, Department of (DOB)	234 (FY 01 to FY 05)	46.8	none at present	DOB contracts hearing officers on an as needed basis through the Department of Administrative Services (DAS). DOB provides specifications, e.g. type of case, duration. In addition to the contracted officers, one DOB division director hears cases on occasion.
Barbers, Hairdressers and Cosmeticians Board	11	2.2	see Department of Public Health (DPH) <sup>b</sup>	N/A
Board of Accountancy	755	125.8	see selection process	The Board hears contested cases. It consists of nine members whom the governor appoints. Five hold current, valid licenses to practice public accountancy. (The Connecticut Society of Certified Public Accountants submits the names of five qualified licensees to the governor from which she chooses each appointment.) The remaining four are members of the public.
Board of Education and Services for the Blind (BESB)	3	0.5	see selection process	BESB does not have hearing officers of its own. In one vocational rehabilitation case, BESB used a Department of Social Services (DSS) Bureau of Rehabilitation Services (BRS) hearing officer. A blind vendor in the business enterprise program can seek an appeal before a BESB manager.
Board of Firearms Permit Examiners	1,641 (FY 00 to FY 05)	274	see selection process	The full Board hears appeals. The governor appoints all seven part-time members.
Children and Families, Department of	3,536	625.8	5 (2 PT, 3 FT)	Competitive
Chiropractic Examining Board	10	1.6	see DPH	N/A
Codes and Standards Committee (Department of Public Safety)	215	35.6	see selection process	The full Committee hears cases and all committee members are part-time. The public safety commissioner appoints all 17 members.
Commission on Human Rights and Opportunities	342	68.4	7 (FT)	The governor appoints the officers with the legislature's advice and consent.
Consumer Protection, Department of	7,216	1,215.8	see selection process	Seven administrative hearing attorneys hear cases and the department uses the civil service process to hire them.

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Dental Commission	33	6	see DPH	N/A
Division of Special Revenue	1,428 (FY 00 to FY 05)	238	5 (PT)	The executive director delegates hearing officer responsibilities.
Electrologists (Hypertrichologists) Board	1	0.2	see DPH	N/A
Embalmers and Funeral Directors Board	15	2.8	see DPH	N/A
Employees' Review Board	**	**	see selection process	The seven-member board hears and decides on complaints regarding employee dismissal or discipline. The governor appoints all board members and at least one must be an attorney experienced in administrative or labor law.
Environmental Protection, Department of (DEP)	146	26.2	2 (FT)	Hired through DAS and union process. Director of DEP Office of Adjudications also hears cases (approximately 3/4 time). Caseload figures include one case heard under 22a-133v.
Freedom of Information Commission (FOIC)	3,402	576.2	see selection process	Part-time commissioners, whom the governor appoints and who serve four-year, staggered terms, generally hear cases. The FOIC also employs senior attorneys who occasionally hear cases.
Gaming Policy Board	29 (FY 00 to FY 05)	4.8	see selection process	Board members, together with a division attorney, hear appeals. Governor appoints all five, part-time board members, subject to legislative confirmation.
Homeopathic Medical Examining Board	1	0.2	see DPH	N/A
Insurance, Department of (DOI)	720	120 (82 administrative enforcement proceedings and 38 rate hearings)	see selection process	To date, DOI has not used outside staff as hearing officers. Instead, staff examiners, attorneys, actuaries, and managers hear cases.
Labor Relations Board	159	32	see selection process	The board hears complaints. It consists of three part-time members whom the governor appoints and who serve six-year terms. Both chambers approve the nominations.
Medical Examining Board	104	16.2	see DPH	N/A
Mental Health and Addiction Services, Department of	1	0.2	see selection process	The human resources director heard the one case in past six years.

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Mental Retardation, Department of (DMR)	242	43.2	7 (PT)	DMR holds hearings for several purposes. DMR managers, chosen for their expertise, hold hearings for (1) approving certain types of programs; (2) determining whether a client's placement or transfer is inappropriate; and (3) beginning October 1, 2005, for determining the priority of a person on the waiting list. But hearings constitute only about 5% of those managers' functions. (In addition, outside hearing officers heard three hearings in 2004 and two in 2002.) Hearings to determine whether an individual should be listed on the state's abuse and neglect registry are heard by three individuals hired on a per diem or independent contractor basis following notice in legal publications. They are all attorneys who DMR's directors of Human Resources and Legal and Government Affairs select.
Motor Vehicles, Department of	36,817	6,376.80	14 (PT)	The commissioner appoints the hearing officers, who must all be lawyers. At this time, only 12 are active (one is in the military and one is in public office).
Natureopathic Board	1	0.2	see DPH	N/A
Nursing Board	284	46	see DPH	N/A
Occupational Safety and Health Review Commission	1 (FY 01 to FY 05)	0.2	see selection process	The commission hears and decides on complaints regarding unsafe or unhealthy conditions or practices in municipal or state employment. The governor appoints the five-member commission from among people trained, educated, or with experience to carry out the commission's mission. Commission members alternate hearing of appeals according to a schedule the commissioner adopts.
Office of Health Care Access	(information not provided)	12	see selection process	The commissioner generally hears the cases. The governor appoints the commissioner.
Office of Policy and Management (OPM)	19	3.8	see selection process	The OPM secretary assigns agency personnel to hear cases from available management staff working in corresponding departments impacted by a particular claim.
Opticians Board	4	0.6	see DPH	N/A
Optometrists Board	1	0.2	see DPH	N/A
Physical Therapists Board	1	0.2	see DPH	N/A

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Podiatry Board	4	0.8	see DPH	N/A
Police Officer Standards and Training Council (POST)	1 case in 2004 and 1 in 2005; previous years figures are not currently available	average cannot be determined because complete figures are not currently available	see selection process	POST appoints an executive director and he conducts the hearings.
Psychiatric Security Review Board	1,064 (FY 00 to FY 05)	177.3	see selection process	Six board members hold hearings (three-member panels) and there is a different criteria for each (e.g., psychiatrist, probation officer, etc). The governor nominates the board members and either chamber approves the nomination.
Psychologists Board	4	0.8	see DPH	N/A
Public Health, Department of	1,728	291.6	5 (4 FT, 1 PT)	The officers are hired as any other unionized employees. The positions have to go through the Personnel Action Form process (i.e., the "form" that the agency needs to complete to start the hiring process and that DAS and OPM must approve). They are all adjudicator II's, except for one who is a principal attorney
Public Utility Control, Department of (DPUC)	817	152	see selection process	A panel of three commissioners (five for major dockets such as rate cases) hears the docket and issues the decision. DPUC has five full-time commissioners who serve four-year, staggered terms. No more than three are from the same political party. The authority elects the chairperson and the governor submits nominations for the four remaining commissioners to the legislature for confirmation. The chairperson assigns cases to panels of three commissioners.
Revenue Services, Department of	6,928 (FY 00 to FY 05)	1,155	None	DRS has a separate Appellate Division, which receives, acknowledges, and reviews all taxpayer appeals. Its tax appellate officers and specialists conduct informal hearings, render final determinations, and negotiate settlements of tax controversies. Division personnel also provide litigation support to the attorney general's office on cases appealed to Superior Court. The division has 12 employees: 10 tax appellate officers, one tax unit manager, and one tax appellate specialist. All are full-time employees in the state

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Revenue Services, Department of (DRS) (continued)				classified service.
Shorthand Reporters Board of Examiners	**	**	**	**
Siting Council	238	39.7	see selection process	The full council hears cases. Nine-member commission, consisting of the DEP commissioner and the DPUC chairman or their designees, one designee each of the House speaker and Senate president pro tempore, and five public members appointed by the governor. At least two of the governor's appointees must be ecologists. One of the governor's appointees serves as chair. The legislature must confirm the chairman's appointment but not those of the other members.
Social Services, Department of (DSS)	56,098 (1/1/00 through 6/30/05)	10,200.2	16 (12 FT, 1 PT, and 3 contractual/ hourly)	DSS conducts three types of hearings: client, provider, and those relating to the Bureau of Rehabilitative Services. Hearing officers who conduct client hearings are civil servants. DSS legal unit has three attorneys who are occasionally designated by the commissioner to hear a case involving a provider appeal (e.g., nursing home rate). The Bureau of Rehabilitative Services contracts hearing officers when needed.
Soldiers, Sailors and Marines Fund	2 (FY 00 to FY 05)	0.33	see selection process	The fund administrator or an officer he appoints conducts hearings. By law, the treasurer of the American Legion serves as the fund administrator.
State Board of Education/State Department of Education	2,358	393	28 (PT)	For cases involving school accommodations, residency, expulsions at V-T schools, and educator certificate and permit revocations and denials: Positions are posted and advertised in newspapers. Candidates are reviewed and screened by a committee, which reports top candidates to the education commissioner. The State Board of Education appoints them. For cases involving special education disputes between school districts and parents of children with disabilities the application and interview process involves



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State Board of Education/State Department of Education (continued)				Education Department representatives, school district personnel, parent advocacy representatives, and legal counsel for parents and school districts. The review committee recommends names to the State Board of Education for appointment.
State Elections Enforcement Commission (SEEC)	1,859	314.8	see selection process	The commissioners, executive director, and deputy director hear cases. The SEEC consists of five members who serve five-year, staggered terms. The Governor and the four top legislative leaders each appoint one member. No more than two may be from the same political party and at least one cannot be affiliated with any political party. Both houses of the General Assembly confirm. The commission employs such employees who are necessary to perform its functions including the executive director and deputy director.
State Employee Retirement Commission	25 (FY 01 to FY 05)	5	see selection process	The 14-member commission hears appeals from decisions on applications for retirement benefits. (Retirement applications are contested only after the Retirement Commission denies the application and the employee seeks to have it reconsidered.) Six commission members are employee-representative trustees, six are management trustees, and two are actuarial trustees. Different bargaining agents appoint the trustees, the governor appoints the management trustees, and the governor appoints the actuarial trustees after receiving one nomination each from the employee-representative trustees and management trustees.
State Ethics Commission (SEC) <sup>c</sup>	about 20 during the past three years	about 6 or 7	see selection process	Judge trial referees and the commission hear cases. Judge trial referees make probable cause determinations and the commission determines whether violations have occurred and imposes penalties. The commission consists of nine members who serve four-year terms. The governor appoints three members and the House speaker, Senate president, and majority and minority leaders appoint one each. Both houses confirm the nominations. Three members (one gubernatorial appointee and the majority leaders' appointees)

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SEC (continued)				are chosen from a list of nominees proposed by a citizen group with an interest in ethical government. The appointing authorities each select the citizen group from which each accepts nominees. The chief court administrator assigns the judge trial referees.
State Marshal Commission	29	5.4	see selection process	The eight-member commission conducts hearings (but the commission is in the process of hiring a hearing officer). The governor, top six legislative leaders, and the chief justice appoint one member each. The chief justice's appointee must be a Superior Court judge.
Transportation, Department of	**	**	**	**
Unlicensed Professionals	50	9.8	see DPH	N/A
Veterinary Medicine Board	11	2	see DPH	N/A

<sup>a</sup> The full-time staff member who was a part-time hearing officer is no longer with agency due to budgetary restrictions.

<sup>b</sup> As part of DPH's board support services, the hearing officers must write those cases that the health profession boards and commissions hear. These boards and commissions do not employ their own hearing officers.

<sup>c</sup> The SEC was abolished on July 1, 2005. The interim director of the new Office of State Ethics reported that the pre-2002 data is not readily available.

N/A means not applicable

\*\* Awaiting information