

**RE: OAH Rules**

Yvonne Dunbar &lt;yvonne.dunbar@dopl.idaho.gov&gt;

Wed 8/2/2023 5:20 PM

To: Bryan Nickels &lt;bryan.nickels@oah.idaho.gov&gt;; Leslie Hayes &lt;Leslie.Hayes@oah.idaho.gov&gt;; Lea Kear &lt;lea.kear@dopl.idaho.gov&gt;

Cc: Scott Zanzig &lt;Scott.Zanzig@oah.idaho.gov&gt;

Hi Bryan,

Thank you for taking the time to speak with me and Lea. Your email correctly captures the content of our discussion.

Have a nice evening,

Yvonne

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**From:** Bryan Nickels <bryan.nickels@oah.idaho.gov>**Sent:** Monday, July 31, 2023 1:49 PM**To:** Leslie Hayes <Leslie.Hayes@oah.idaho.gov>; Yvonne Dunbar <yvonne.dunbar@dopl.idaho.gov>; Lea Kear <lea.kear@dopl.idaho.gov>**Cc:** Scott Zanzig <Scott.Zanzig@oah.idaho.gov>**Subject:** Re: OAH Rules

Yvonne -

Thanks for the call today to discuss the Rules below. To summarize our call:

1. Rule 477 - With respect to burden of proof, DOPL noted that caselaw may also govern the applicable burden of proof - for example, disciplinary matters are governed by a clear and convincing standard, citing Laurino v. Board, 137 Idaho 596 (2002). OAH noted that the new draft rule was written with several caveats, in light of the variety of actions handled by agencies, to provide a general standard, but directing parties to other statutes and rules that might provide a different standard. OAH will evaluate revising this draft rule to clarify that caselaw may also provide a standard.
2. Rule 425.01 - With respect to this provision of the default procedure, DOPL noted that the three-day period in the rule might be difficult to meet in certain circumstances, suggesting the language be revised to provide more leeway if the three-day deadline cannot be met. OAH noted that the provision addresses the requirement that a decision be issued "promptly after the expiration of the time within which the party may file a petition" per I.C. sec. 67-5242(4), but was still framed as "should" to accommodate timing challenges rather than mandatory "shall" language. OAH will evaluate revising this draft rule to further clarify that the three-day deadline is a non-mandatory guideline.
3. Rule 751.02 - With respect to appointment of a presiding officer in emergency proceedings, DOPL noted that the three-day period might be difficult to meet in certain circumstances, and that, where OAH was utilized, additional time might be needed given OAH's appointment processes. OAH noted that the provision was created to address the provision in I.C. 67-5247(4) which requires that "the agency shall proceed as quickly as feasible to complete any proceedings" following an emergency order. OAH will evaluate revising this draft rule to address the scenario of OAH assignment/appointment.

OAH will evaluate potential changes to address DOPL's comments, as outlined above; any updated drafts of the new IRAP will be posted on OAH's rulemaking page: <https://oah.idaho.gov/rulemaking-docket-no-62-0101-2301/>

If I missed anything in the above summary, please let me know. Thanks again.

Bryan.

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**From:** Yvonne Dunbar <[yvonne.dunbar@dopl.idaho.gov](mailto:yvonne.dunbar@dopl.idaho.gov)>

**Sent:** Friday, July 21, 2023 3:46:15 PM

**To:** Leslie Hayes <[Leslie.Hayes@oah.idaho.gov](mailto:Leslie.Hayes@oah.idaho.gov)>

**Subject:** OAH Rules

Hi Leslie,

Do you have some time on Monday, July 31 to discuss the draft OAH rules? I'm out of town next week and lost track of time today to reach out.

The rules I would like to discuss are the timelines set forth in draft Rules 425.01 and 751.02 and the burden of proof in Rule 477.

Thank you,



**Yvonne Dunbar**

General Counsel

Administration Section

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