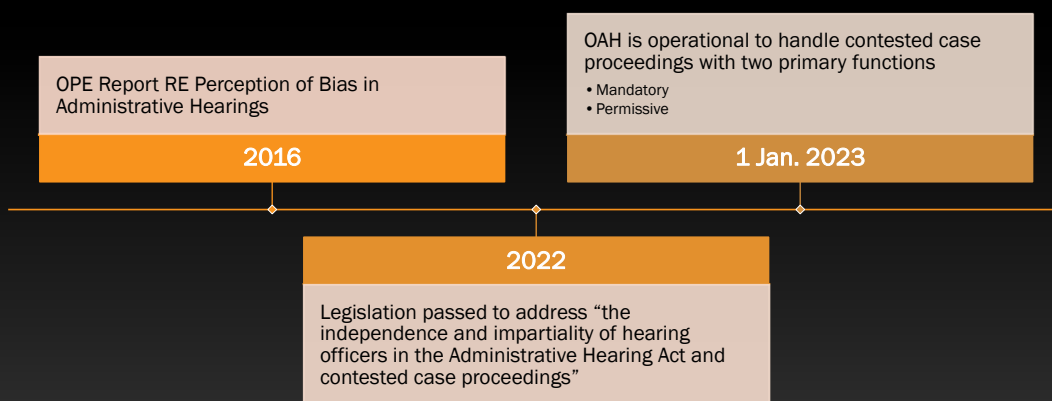




1

What is the OAH?

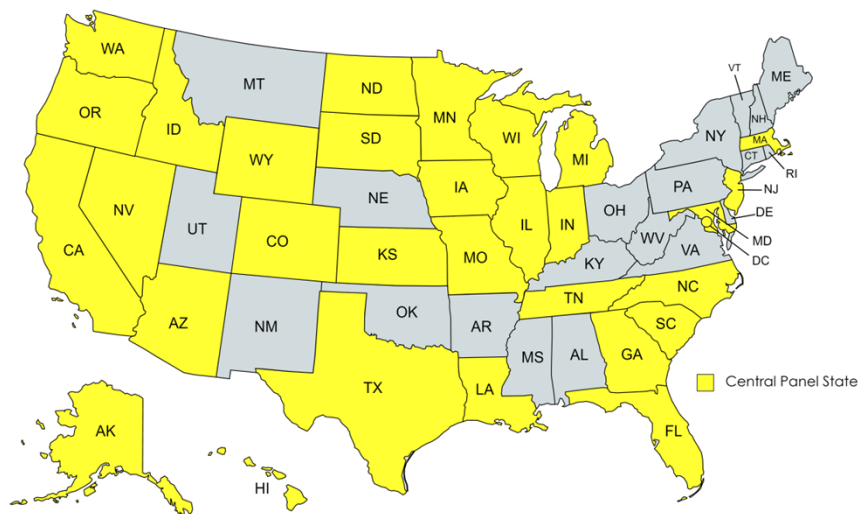


2

Concluded that “most agencies have built some safeguards into their hearing procedures”, but that “real and perceived conflicts can be inherent in the structure,” “pose a risk that bias will be present,” and “public confidence in the hearing process can be undermined.”

History

3



4



OAH's Primary Mission

The Office of Administrative Hearings serves the citizens, businesses, and state agencies of Idaho by providing independent, efficient, and unbiased hearings of contested administrative cases, and facilitates the opportunity for parties to resolve their disputes through alternative dispute resolution.

5



How Will It Do That?

Consolidate and standardize administrative hearing officer functions through a central, independent agency.

6

OAH's Goals

PRIMARY GOALS

- Transparency
- Objectivity
- Consistency

SECONDARY GOALS

- Rules
- Education
- ADR

7

Powers and Duties of the Chief Administrative Hearing Officer

Conduct	Conduct contested case proceedings and other permissive matters
Appoint and supervise	Appoint and supervise hearing officers <ul style="list-style-type: none"> • Designate a Deputy Chief Administrative Hearing Officer
Promulgate	Promulgate rules
Establish	Establish a Code of Conduct
Protect and Ensure	Protect and ensure decisional independence
Monitor	Monitor the quality of contested case proceedings
Contract	Contract with contract hearing officers and agencies

8

Code of Conduct

Applies to All Hearing
Officers, In-House and
Contract



9

Changes



Disqualification for cause only



Hearings in neutral locations (no
agency conference rooms)



Formalizing processes

10



Mandatory Function

APPEALS OF AGENCY ORDERS

11

How Can I
Tell If My
Case Is A
Mandatory
Matter?

Is it an “agency” under the APA?

Is it a “contested case” under the APA?

Is it an appeal of an agency order?

Is it carved out in OAH’s enabling statute?

Is it carved out somewhere else?

Is it “otherwise specified by law”?

12

Is It An “Agency”?

(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(I.C. §67-5201(2))

13

Is It a “Contested Case”?

CONTESTED CASES. A proceeding by an agency other than the public utilities commission, the industrial commission, the Idaho personnel commission, and the Idaho transportation department's driver's license suspension contested case hearings, which may result in the issuance of an order, is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law.

(I.C. §67-5240)

14

Is It an Appeal of An Agency Order?

(a) ... conduct all contested case proceedings that arise from an appeal of an agency order[.]

(I.C. §67-5280(2)(a))

15

Is it Carved Out of OAH's Enabling Statutes?

(3) The office of administrative hearings shall not hear and shall not have authority over or oversight of any action by the department of water resources or the water resource board.

(I.C. §67-5280(3))

16

Is It Carved Out Somewhere Else?

PROCESS AND PROCEDURE BEFORE STATE TAX COMMISSION. Process and procedure before the state tax commission shall be as summary and simple as reasonably may be, and, as far as possible, in accordance with the rules of equity. Process and procedures before the state tax commission as the state board of equalization under title 63, Idaho Code, and before the state tax commission for redetermination of taxes under section 63-3045 or 63-3631, Idaho Code, are not contested cases within the meaning of chapter 52, title 67, Idaho Code.

(I.C. §63-107)

17

Is It “Otherwise Specified by Law?”

Unless otherwise specified by law, conduct all contested case proceedings that arise from an appeal of an agency order;

(I.C. §67-5280(2)(a))

18

Example of “Otherwise Specified”:

410. BOARD MEMBERS AS PRESIDING OFFICERS, APPOINTMENT OF HEARING OFFICERS. One (1) member of the Board may act as the presiding officer. The Board may appoint a hearing officer to act as the presiding officer on behalf of the Board. The hearing coordinator will administer the appointment of the hearing officer. Notice of appointment of a hearing officer or notice of a Board member who will act as presiding officer will be served on all parties.

(IDAPA 58.01.23.410)(DEQ)

19

Future
Mandatory
Proceedings

Health and Welfare matters on/*after* July 1,
2024

20

What Does it Take to be a Hearing Officer?

- Hearing Officer Requirements
 - Age
 - Citizenship
 - Licensure
 - Not Engage in any Prohibited Conduct
- Code of Conduct
- Oath of Office

21

Statutory Prohibitions for Hearing Officers

- Engaging in the Practice of law outside of the Hearing Officer's role with the Office of Administrative Hearings
- Holding or being a candidate for any federal, state, county, municipal, district, or elective office
- Serving as the agency, representative, officer, political treasurer, or employee, whether for profit or otherwise, of any political party, political committee, or candidate
- Holding any other public or private-sector position, whether for profit or otherwise, except for volunteer positions that are not inconsistent with their duties as a Hearing Officer

22

Independence and Quality Control: Trainings

(I.C. §67-5282(1)(g) & (h))

In-house attorneys:

- National Judicial College
- Mediation training
- Arbitration training

Contract attorneys:

- Quarterly CLEs
- AARs (After Action Reviews)

23

Independence and Quality Control: Measures

(I.C. §67-5282(1)(h))

Promptness tracking:

- Days to Acknowledgment/Assignment
- Days to First Hearing/Full Hearing
- Days to Decision

Accuracy tracking:

- Agency reversals
- Judicial reversals

Results tracking:

- Applicant/Agency
- By Agency/case type
- Represented/Self-Represented

24

How Hearing Officers Are Assigned

Chief Administrative Hearing
Officer makes assignment.

Agencies and state officials
prohibited from influencing
selection of a particular hearing
officer (except mediations)

Agencies can advise OAH in
writing of expertise needed or
desired in certain types of
proceedings.

25

Permissive Functions

Adjudications

Arbitrations

Mediations

26

OAH Alternative Dispute Resolution: the Nuts and Bolts

Addressed in OAH's "permissive" functions, I.C. §67-5280(2)(b):

"Conduct such adjudicatory hearings, **mediations**, and arbitrations not required by this chapter that are requested by agencies and agreed to by the office of administrative hearings at such monetary rates as established by the office of administrative hearings"

27

OAH Mediation Processes

Agencies can't pick assigned hearing officers except for mediators:

"No agency or state officer, other than the chief administrative hearing officer, shall attempt to influence the selection of a hearing officer for a contested case proceeding or any other matter, except mediations[" (I.C. §67-5284)

28

IRAP 500 and 501

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500). “. . . An agency may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest.”

501. NEUTRALS (RULE 501). “When ADR is used for all or a portion of a contested case, . . . The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. . . .”

29



“That are requested by agencies”



Any neutral can act as mediator



And while unlikely, OAH also retains authority to decline request (“and agreed to by the office of administrative hearings”) ...

Key
Takeaway:
ADR
Remains
Agency’s
Prerogative

30

OAH Mediation Processes

If no agency selection, CAHO selects:



- Approved mediator roster (posted on website)
- Only trained mediators on roster, including in-house mediators
- All in-house Hearing Officers, will be fully trained in 2023

31

OAH Mediation Processes

Requests during pendency of case:



- Assigned Hearing Officer will not handle in-case ADR
- Assigned to a mediator on the mediator roster

32

Mediation Summary

Consistent with OAH's Mission:
"facilitates the opportunity for
parties to resolve their disputes
through alternative dispute
resolution."

Consistent with statutory
functions: "Conduct ...
mediations... at such monetary
rates as established by the office
of administrative hearings"

FY2023 (thru June 30, 2023)
mediation rate: \$0/hr

33

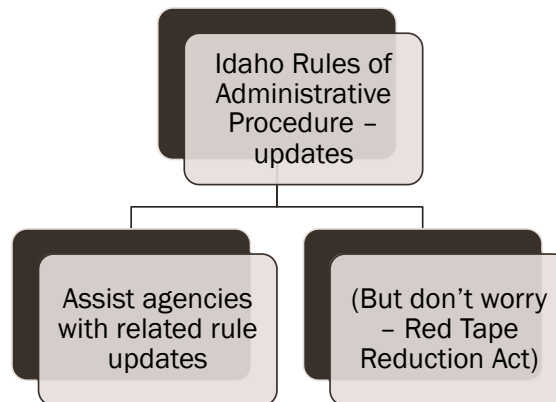
Rulemaking

"The chief administrative hearing officer shall: . . .
Promulgate rules to implement the provisions of
sections 67-580 through 67-5286, Idaho Code[.]" I.C. §
67-5282(1)(e).

"With respect to contested cases and other
proceedings conducted by the office of administrative
hearings as authorized by this chapter, rules
promulgated by the attorney general or any agency
pursuant to subsection (4) of this section shall remain
in full force and effect, except with respect to hearing
officer qualifications, until such time as the office of
administrative hearings promulgates replacement
rules, and thereafter such rules of the office of
administrative hearings shall govern unless otherwise
required by governing federal law."

34

Rule Promulgation Goals



35

Rulemaking Purpose

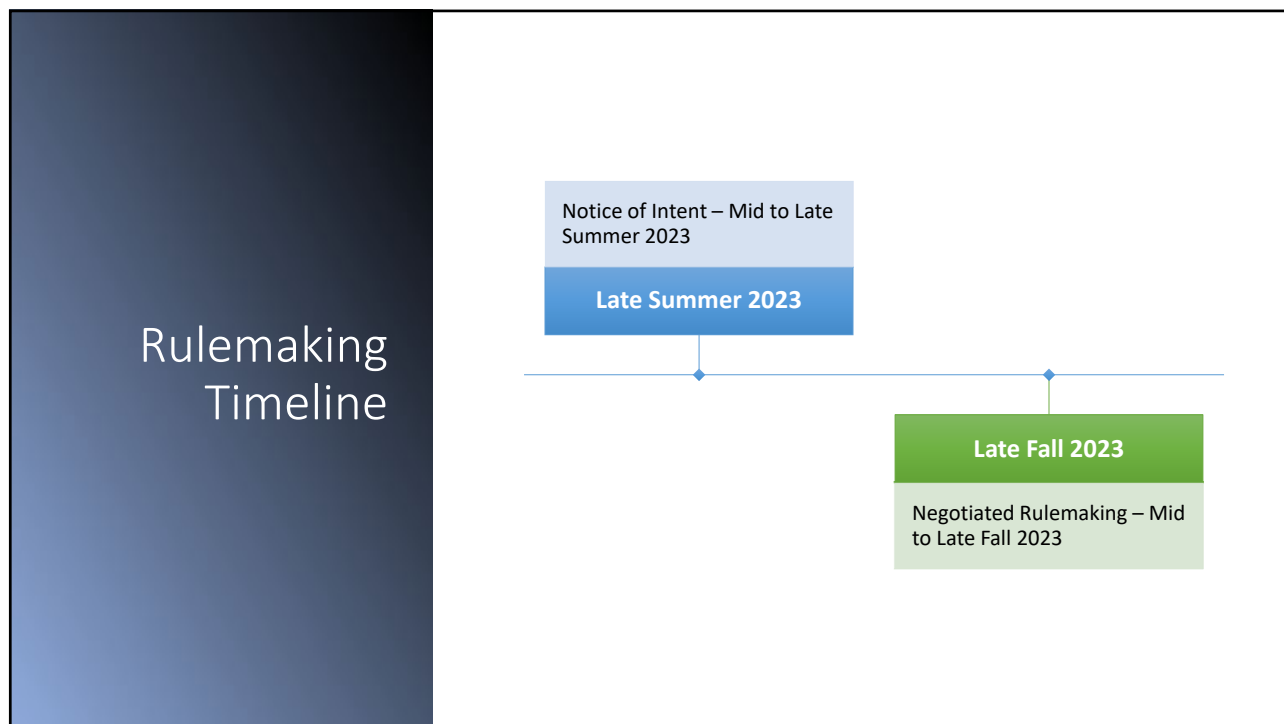
Update, Standardize, and Streamline Procedures

Agency-Specific Procedures: What to keep and what to strike?

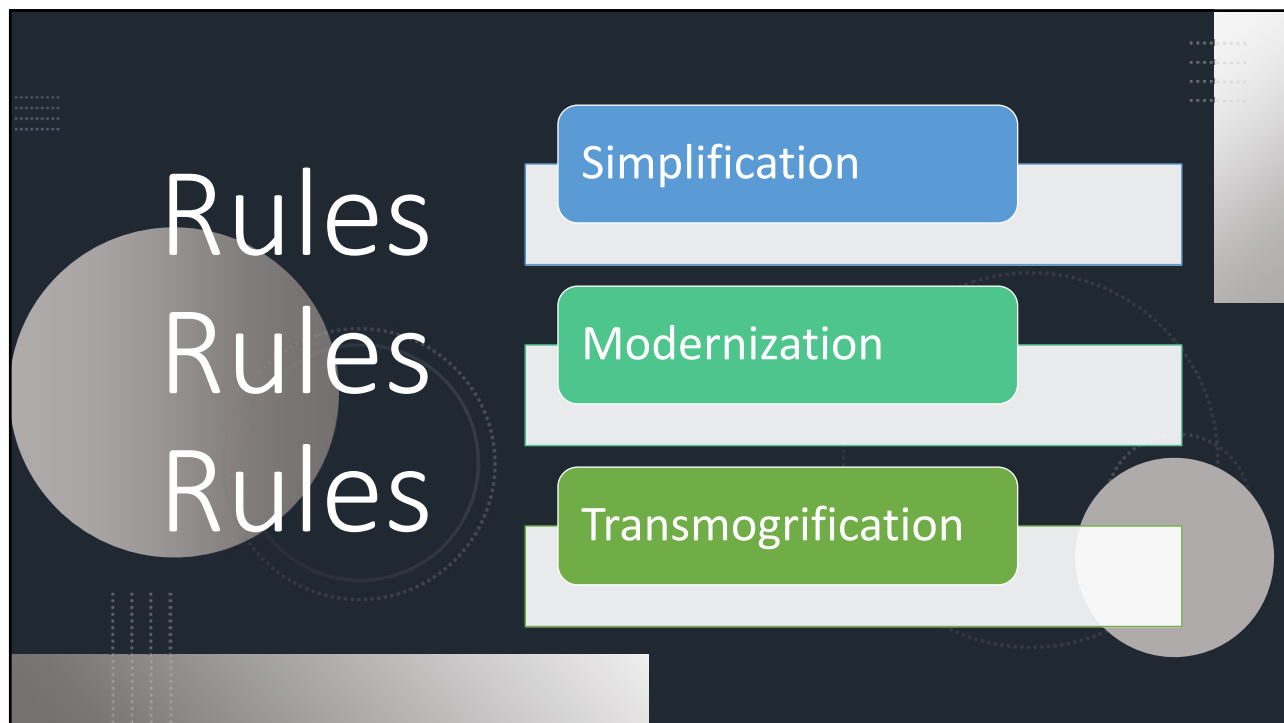
I.C. § 67-5282(1)(h): Quality Control Function

- Creating uniformity in procedures regardless of what agency a party appears in front of

36



37



38



39

- General Provisions (IRAP 0-99)
 - Original: 2,007 words
 - First pass: 453 words
- Parties (IRAP 150-156)
 - Original: 6 “flavors”
 - First pass: 2

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Modernization



41

Transmogrification



42



Transmogrification


- Logical reorganization
 - I.C. sec. 67-5241, “Informal Disposition”

BUT

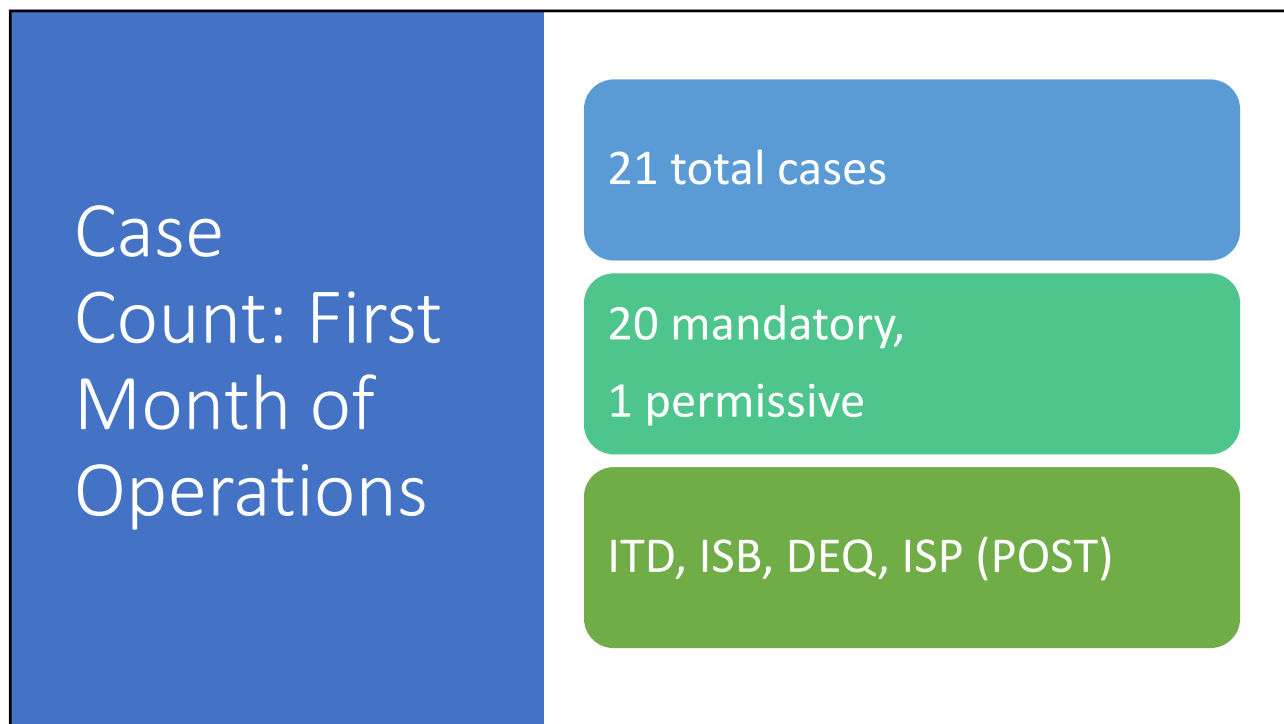
- IRAP 100-104, “Informal Proceedings”
 - IRAP 280, “Consent Agreements”
 - IRAP 422, “Consideration of Consent Agreement”
 - IRAP 557, “Stipulations”
- Fix? Collapse into new IRAP section.

43

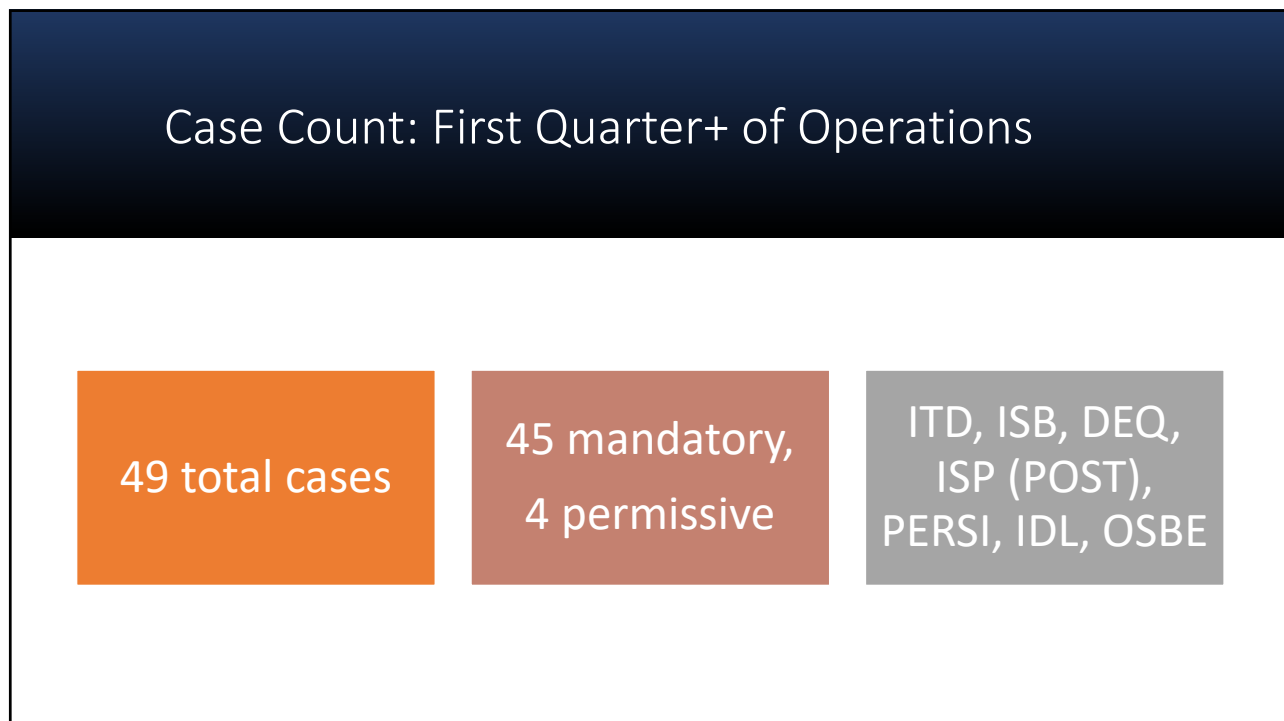
SB1023

- Mostly technical
 - Adds additional public records exception to I.C. sec. 74-104 (statute governing judicial records)
 - Protects judicial work product
 - Does not change the character of records being transmitted, or the order itself
- 

44



45



46

Agency Website

OAH.IDAHO.GOV

47

Questions?

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