

**From:** Pesik, Ed (OAH)

**Sent:** Friday, June 23, 2017 12:17 PM

**To:** Schumacher, David (OFM) <[David.Schumacher@ofm.wa.gov](mailto:David.Schumacher@ofm.wa.gov)>

**Cc:** Marcus, Roselyn (OFM) <[Roselyn.Marcus@OFM.WA.GOV](mailto:Roselyn.Marcus@OFM.WA.GOV)>; Wicker, Kelly (GOV) <[kelly.wicker@gov.wa.gov](mailto:kelly.wicker@gov.wa.gov)>; Crawford, Jim (OFM) <[Jim.Crawford@ofm.wa.gov](mailto:Jim.Crawford@ofm.wa.gov)>; Thomas, Ralph (OFM) <[Ralph.Thomas@OFM.WA.GOV](mailto:Ralph.Thomas@OFM.WA.GOV)>; Lee, Lorraine (OAH) <[lorraine.lee@oah.wa.gov](mailto:lorraine.lee@oah.wa.gov)>

**Subject:** OAH Contingency Planning - Amendment

Dear Director Schumacher,

OAH filed an update to our contingency plan as requested by your office on May 5, 2017. This email represents an amendment to that planning memo based on the continued inputs we have received from referring agencies. The services being added all fit within the three categories already reflected in our May 5<sup>th</sup> plan, and are necessitated by changes in available personnel for the Employment Security Department/Unemployment Insurance caseload and the provision now being made for the determinations of emergency requests for “expedited hearings” in Medicaid/medical assistance cases for the Health Care Authority (HCA).

All of our requirements for partial operations are detailed below. The changes from our May 5<sup>th</sup> memorandum to you are indicated in [\[brackets\]](#).

1. Services funded by appropriations in the 2017-19 transportation budget (ESB 5096).
  - Department of Transportation Toll Violation Appeals **(0.3 ALJ FTE)**
  - Department of Transportation Land Use Hearings **(0.1 ALJ FTE)**
2. Services that do not require an appropriation; *e.g.*, from non-appropriated funds.
  - Local Government Whistleblower Appeals [*See* RCW 42.41.060] **(0.3 ALJ FTE)** [\[The ALJ assigned to this work will also handle HCA expedited hearing request determinations\]](#)
  - Department of Financial Institutions – referred appeals **(0.3 ALJ FTE)**
3. Services based on constitutional mandates and/or federal law (with specific relation to your direction to provide the minimum level of support staff essential for carrying out those services under categories 3 & 4)
  - Office of Superintendent of Public Instruction special education appeals [*See* 34 CFR 300.1, 34 CFR 300.101 and 34 CFR 300.500] **(1.0 ALJ FTE, 1.0 Support Staff FTE)** [\[The support staff assigned to this work will also handle any case setup for HCA expedited hearing requests that are granted\]](#)
  - Washington State University Title IX Hearings [*See* 34 CFR Part 106, *et. seq.*] **(1.0 ALJ FTE)**
  - Employment Security Department Unemployment Insurance Appeals [ESD is required by federal law to provide benefits to eligible claimants in a timely manner, with very specific timeliness deadlines for the lower level state appeals process, which service is provided by OAH. *See* 42 USC 503 and section 3304(a)]

of the Federal Unemployment Tax Act] (**22.85 ALJ FTE, 10 Support Staff FTE**) [Decrease of one FTE in support staff and increase of 1.35 FTE in ALJ FTEs]

Additionally, **12 FTEs** from the Headquarters staff are identified to provide necessary support for the above adjudicative services in Executive Management, Fiscal, Human Resources, Information Technology and Customer Service Call Center operations. [Increase of one additional statewide Call Center Staff FTE to process requests for expedited hearings]

Overall, we will have 48.85 FTEs ( head count 56) in ALJ and supporting staff categories working and 117 subject to layoff and leave without pay.

Respectfully,

Ed

Edward F. Pesik, Jr.  
Deputy Chief ALJ for Legal & Policy  
Office of Administrative Hearings  
Olympia Office: 360-407-2713

**From:** [Mattos, Liz \(OFM\)](#) on behalf of [Schumacher, David \(OFM\)](#)  
**To:** [OFM Budget](#)  
**Subject:** FW: OAH Contingency Planning  
**Date:** Friday, May 05, 2017 4:28:06 PM

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**From:** Lee, Lorraine (OAH)  
**Sent:** Friday, May 05, 2017 2:32 PM  
**To:** Schumacher, David (OFM) <David.Schumacher@ofm.wa.gov>  
**Cc:** Marcus, Roselyn (OFM) <Roselyn.Marcus@OFM.WA.GOV>; Wicker, Kelly (GOV) <kelly.wicker@gov.wa.gov>; Crawford, Jim (OFM) <Jim.Crawford@ofm.wa.gov>; Thomas, Ralph (OFM) <Ralph.Thomas@OFM.WA.GOV>; Pesik, Ed (OAH) <ed.pesik@oah.wa.gov>  
**Subject:** OAH Contingency Planning

Dear Director Schumacher:

I am responding to your request of April 25, 2017 relating to contingency planning. This email serves as our update to the information provided in 2013 and 2015.

The Office of Administrative Hearings (OAH) provides adjudicative services to more than 30 state agencies that refer cases to us for administrative hearing. The referring agencies include the Employment Security Department (ESD), the Health Care Authority (HCA), the Department of Social and Health Services (DSHS), the Department of Early Learning (DEL), the Department of Transportation (DOT), the Office of the Superintendent of Public Instruction (OSPI), the Department of Financial Institutions (DFI), the Liquor and Cannabis Board (LCB), and more recently the Washington State University for handling the Title IX caseload (WSU). In addition, we also conduct cases for many jurisdictions across the state related to local government whistleblower issues.

Because our role is to provide administrative hearings to members of the public when they disagree with an agency determination, our response is conditioned upon the responses of the referring agencies to your request. We have been in contact with those agencies and/or have reviewed their submissions to your office from past biennia regarding their view of the essential services that they must provide even in the absence of an appropriation for the next biennium. We are still awaiting further input from some agencies, however.

We are able to identify several adjudicative services that may be authorized in the absence of appropriations based on an operating budget. These services include;

1. Services funded by appropriations in the 2017-19 transportation budget (ESB 5096).
  - Department of Transportation Toll Violation Appeals **(0.3 ALJ FTE)**
  - Department of Transportation Land Use Hearings **(0.1 ALJ FTE)**
2. Services that do not require an appropriation; *e.g.*, from non-appropriated funds.
  - Local Government Whistleblower Appeals [*See* RCW 42.41.060] **(0.3 ALJ FTE)**
  - Department of Financial Institutions – referred appeals **(0.3 ALJ FTE)**
3. Services based on constitutional mandates and/or federal law (with specific relation to your direction to provide the minimum level of support staff essential for carrying out

those services under categories 3 & 4)

- Office of Superintendent of Public Instruction special education appeals [*See* 34 CFR 300.1, 34 CFR 300.101 and 34 CFR 300.500] **(1.0 ALJ FTE, 1.0 Support Staff FTE)**
- Washington State University Title IX Hearings [*See* 34 CFR Part 106, *et. seq.*] **(1.0 ALJ FTE)**
- Employment Security Department Unemployment Insurance Appeals [ESD is required by federal law to provide benefits to eligible claimants in a timely manner, with very specific timeliness deadlines for the lower level state appeals process, which service is provided by OAH. *See* 42 USC 503 and section 3304(a) of the Federal Unemployment Tax Act] **(21.5 ALJ FTE, 11 Support Staff FTE)**

Additionally, 11 FTEs from the Headquarters staff are identified to provide necessary support for the above adjudicative services in Executive Management, Fiscal, Human Resources, Information Technology and Customer Service Call Center operations.

For appeals from HCA, DEL, and DSHS programs there are some that are based on federal law with specified timeliness requirements; we are in contact with these agencies to determine which ones might fall under category 3 above. We will continue our efforts to identify the specific programs and mandates that should be authorized in the absence of appropriations. Once we have that information, we will forward it to you.

For additional information or questions, the OAH contact is Deputy Chief ALJ Ed Pesik, who can be reached at [ed.pesik@oah.wa.gov](mailto:ed.pesik@oah.wa.gov) or 360-407-2713.

Regards,

*Lorraine*

Lorraine Lee  
Chief Administrative Law Judge  
Office of Administrative Hearings  
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(360) 407-2710