

Chapter 10-24 WAC

ACCESS TO OAH FACILITIES AND SERVICES

WAC

10-24-010

Accommodation.

WAC 10-24-010 Accommodation. (1) Accommodation requests under the federal Americans with Disabilities Act (ADA) by a party to an office of administrative hearings adjudicative proceeding are handled pursuant to the office of administrative hearings' policy. This section specifically applies to requests for representation as an accommodation in adjudicative proceedings before the office of administrative hearings. The appointment of a suitable representative may be an appropriate response in those cases where the party is unable to meaningfully participate in an adjudicative proceeding. This section is intended to ensure that all requests for accommodation are addressed in accordance with the requirements of the ADA and that any accommodation response is the minimum necessary to effectively address the needs of the party.

(2) Definitions.

(a) "Disability" as used in this section is defined under 42 U.S.C. Sec. 12102. Disability does not include factors such as lack of education, lack of English proficiency, or other non-disability factors.

(b) "Suitable representative" means an individual who is qualified under subsection (11) of this section to provide the assistance needed to enable an otherwise unrepresented party with a disability to meaningfully participate in the adjudicative proceeding.

(c) "Agency ADA coordinator" is an administrative law judge designated by the chief administrative law judge to make the assessment and accommodation determinations described in subsection (3) of this section.

(3) If, during any stage of an adjudicative proceeding, the administrative law judge or any party has a reasonable belief that an otherwise unrepresented party may be unable to meaningfully participate in the adjudicative proceeding because of a disability, with that party's consent the administrative law judge shall refer the party to the agency ADA coordinator and delay commencing or resuming the adjudicative proceeding until the accommodation request is addressed by the ADA coordinator.

(4) The agency ADA coordinator will expedite the assessment and accommodation process to the greatest extent practicable and consistent with the party's limitations.

(5) All records considered in the decision whether to appoint a suitable representative shall be kept confidential and held separately from the adjudicative proceeding record.

(6) Upon a party's request for a suitable representative or referral from the administrative law judge, the agency ADA coordinator must determine whether the party is a person with a disability. The agency ADA coordinator may require documentation from the party at the coordinator's discretion.

(7) If the party is a person with a disability, the agency ADA coordinator must determine whether the party is unable to meaningfully participate in the adjudicative proceeding as a result of the disability. The existing assistance of a legal guardian, near relative, or friend shall not affect the agency ADA coordinator's determination of whether the party is able to meaningfully participate in the adjudicative proceeding. The agency ADA coordinator shall consider the following:

(a) Whether the party has a rational and factual understanding of:

(i) The nature and object of the adjudicative proceeding;

(ii) The right of representation;

(iii) The right to present, examine, and object to evidence;

(iv) The right to cross-examine witnesses; and

(v) The right to appeal.

(b) Whether the party has sufficient present ability to:

(i) Exercise the rights in (a) of this subsection;

(ii) Make informed decisions about whether to waive the rights in (a) of this subsection;

(iii) Physically participate in the adjudicative proceeding;

(iv) Respond to any allegations, issues, arguments, and evidence presented by other parties;

(v) Evaluate and coherently discuss arguments and defenses;

(vi) Present evidence relevant to eligibility for relief;

(vii) Present coherent testimony based upon adequate recall; and

(viii) Act upon instructions and information presented by other parties and the administrative law judge.

(8) If the party is unable to meaningfully participate in the adjudicative proceeding as a result of a disability, the agency ADA coordinator will commence an interactive process with the party to determine the type of accommodation required to allow the party to meaningfully participate in the adjudicative proceeding, specifically:

(a) Whether an alternative accommodation can adequately address the party's specific disability-related limitations; or

(b) Whether a suitable representative is the most appropriate accommodation.

(9) If the agency ADA coordinator determines that appointment of a suitable representative is not the accommodation needed, the agency ADA coordinator will inform the party in writing, or any other communication appropriate to the situation, of the denial of a suitable representative, including how to seek review of the decision under subsection (16) of this section.

(10) If the agency ADA coordinator determines that appointment of a suitable representative is the accommodation necessary for a party's meaningful participation in an adjudicative proceeding, the agency ADA coordinator will

identify an individual to assist the party at no cost to the party.

(11) To identify an individual, the agency ADA coordinator will consider the needs identified in the assessment under subsection (7) of this section and any other factors, including:

- (a) The party's preferences;
- (b) The knowledge, skills and abilities of the individual being considered, including:
 - (i) Knowledge of or the ability to attain knowledge of the procedural rules;
 - (ii) Knowledge of or ability to attain knowledge of the substance at issue;
 - (iii) Experience and training in advocating for people with disabilities; and
 - (iv) The individual's availability to meet the timelines and duration of the particular adjudicative proceeding.
- (c) An individual is not eligible to be appointed as a suitable representative if the individual is employed by the office of administrative hearings, or is prohibited by law from representing the party.

(d) The agency ADA coordinator will inform the party with a disability that an individual has been identified to assist as the party's suitable representative. The party will show acceptance of the appointment in writing or in any other form consistent with the party's disability. If the party disagrees with the appointment, the party will contact the agency ADA coordinator. The agency ADA coordinator will evaluate the party's reconsideration request, and may consider identifying another individual to be appointed as the party's suitable representative, if the request for reconsideration contains new disability or suitability related information.

(12) The appointment of a suitable representative is made by the chief administrative law judge. The appointment is effective upon acceptance of the accommodation by the party with a disability. The party has the right to reject the appointment of a suitable representative.

(13) Upon appointment the suitable representative will file a notice of appearance under WAC 10-08-083 or other applicable rule or law to inform all parties and representatives of record of the suitable representative's name, address, and telephone number.

(14) The appointment under this section ends when the time expires to file a petition for review of the administrative law judge's initial or final order, unless earlier terminated by the party or the suitable representative. The suitable representative will file a notice of withdrawal under WAC 10-08-083 or other applicable rule or law if the appointment is terminated prior to the deadline for the petition for review.

(15) In the event a higher authority remands the case to the office of administrative hearings, the agency ADA coordinator will determine whether the party is able to meaningfully participate in the remanded adjudicative proceeding under subsection (7) of this section and the appropriate accommodation under subsection (8) of this section. If a suitable representative is still the most appropriate accommodation, the agency ADA coordinator will determine if the individual previously appointed is available or will identify another individual to be the suitable representative. The party

with a disability may state a preference for or disagree with an individual's appointment, or reject an appointment.

(16) If the party is not satisfied with a decision by the agency ADA coordinator, the party may request review of the accommodation request by the chief administrative law judge, whose decision shall be final.

(17) The office of administrative hearings will establish a network of individuals who are able and available to be appointed by the chief administrative law judge as suitable representatives.

(18) The chief administrative law judge will ensure that all office of administrative hearings staff receive both initial and annual training commensurate with the scope of their duties. The training selected will include specific reference to the requirements of the ADA, as amended, as well as the Washington state law against discrimination, as they relate to the issues of reasonable accommodation throughout an adjudicative proceeding, with particular regard to the process for assessing and determining accommodations necessary to ensure meaningful participation in an adjudicative proceeding.

(19) The agency ADA coordinator will also receive specialized training initially and thereafter as necessary to assure an adequate knowledge and understanding of the requirements of federal and state law with respect to assessing the need for reasonable accommodations. The agency ADA coordinator will make recommendations to the chief administrative law judge regarding the necessary training for agency staff and for suitable representatives.

(20) Suitable representatives shall receive uniform qualification training, or demonstrate equivalent experience or training, as established by the chief administrative law judge.

(21) The chief administrative law judge or his/her designee will develop routine reports that reflect the number of requests for accommodation pursuant to this section, the result of those requests, and the costs, if any, associated with any such accommodation. Personal health information and other confidential data will be redacted from reports in order to comply with relevant privacy laws.

(22) Two years following the effective date of this section the program will be reviewed and assessed for its effectiveness. The results of this assessment will be made available on the OAH public web site for inspection and will also be provided to the office of financial management and all persons or organizations who express an interest in receiving the report. The assessment will include a review of:

- (a) The timeliness of the process, including the suitable representative process and the impact on the scheduling of the adjudicative proceeding;
- (b) The adjudicative proceeding outcome for parties with suitable representation, including how many cases resulted in: Settlement, orders affirming or reversing agency action, or defaults;
- (c) The number of suitable representation requests granted and denied;
- (d) The sources of referrals to the agency ADA coordinator;
- (e) The number and outcome of appeals of denials to the chief administrative law judge; and
- (f) Feedback from parties, the agency ADA coordinator, persons appointed as suitable representatives, administrative

law judges, and referring agency representatives on how the provisions of this section may be improved.

[Statutory Authority: RCW 34.12.080, 34.05.250, and 34.12.030. WSR 17-17-079, § 10-24-010, filed 8/16/17, effective 1/1/18.]

