

WAC 10-24-010 Representation as an accommodation for a party with disabilities. (1) **Purpose.** The office of administrative hearings (OAH) addresses all accommodation requests under OAH policy, the federal Americans with Disabilities Act (ADA), and the Washington law against discrimination (WLAD). This section applies to requests and referrals for representation as a necessary accommodation in adjudicative proceedings before OAH. A suitable representative may be an appropriate accommodation where a party is unable to meaningfully participate in an adjudicative proceeding as a result of a disability.

(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 nondisability factors.

(b) "Suitable representative" means an individual who is appointed under subsection (12) of this section to provide the assistance needed to enable a self-represented party with a disability to meaningfully participate in the adjudicative proceeding.

(c) "ADA coordinator" is an employee designated by the chief administrative law judge (ALJ).

(3) **Requests and referrals.**

(a) Requests. The party may request a suitable representative accommodation in the hearing request form or by contacting OAH:

(i) By telephone;

(ii) By fax;

(iii) By mail;

(iv) Using the OAH online accommodation request form;

(v) Directly asking the ALJ.

Requests should be made in advance whenever possible.

(b) Referrals by others. Other persons, including participants to the proceeding, may inform the ADA coordinator that the party may need a suitable representative accommodation. The ADA coordinator will contact the party.

(c) Referral by administrative law judge (ALJ). If the ALJ believes that a self-represented party may be unable to meaningfully participate in the adjudicative proceeding as a result of a disability, the ALJ will ask the party to consent to referral to the ADA coordinator. With the party's consent the ALJ will delay starting or resuming the adjudicative proceeding until the accommodation request is addressed by the ADA coordinator.

(4) **Expedited process.** The ADA coordinator will hasten the assessment and accommodation process as quickly as practical.

(5) **Confidentiality.** OAH keeps confidential all health information from health care providers, health plans, and other covered entities under the federal Health Insurance Portability and Accountability Act and the state Health Care Information Access and Disclosure Act in chapter 70.02 RCW. However, all other records considered or created during the accommodation process may be subject to public disclosure under the state Public Records Act in chapter 42.56 RCW. The ADA coordinator will not add records to the adjudicative proceeding record unless at the self-represented party's request.

(6) **Disability determination.** The ADA coordinator will promptly review requests and referrals and determine whether the party has a disability. The ADA coordinator may require documentation.

(7) **Meaningful participation determination.** If the party has a disability, the ADA coordinator will determine whether as a result of the disability the party is unable to meaningfully participate in the

adjudicative proceeding. The existing assistance of a legal guardian, near relative, or friend shall not affect the ADA coordinator's determination. The ADA coordinator will 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 ALJ.

(c) Whether the party's spouse or registered domestic partner is their co-party in the adjudicative proceeding and the co-party can meaningfully participate without a suitable representative.

(8) **Accommodation determination.** If the party is unable to meaningfully participate in the adjudicative proceeding as a result of a disability, the ADA coordinator will communicate with the party to determine the types of accommodations the party requires to allow the party to meaningfully participate in the adjudicative proceeding. The ADA coordinator will determine:

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

(b) If alternative accommodations do not adequately address the party's needs, whether a suitable representative accommodation is necessary. The ADA coordinator may determine that the party needs a suitable representative accommodation in addition to alternative accommodations.

(9) **Representative accommodation denial.** If the ADA coordinator determines a suitable representative is not needed, the ADA coordinator will inform the party in writing, or any other communication appropriate to the situation, of the reasons for denial and how to seek review of the decision under subsection (17) of this section.

(10) **No cost to party.** If the ADA coordinator determines that appointment of a suitable representative is the necessary accommodation, the ADA coordinator will identify an individual to assist the party at no cost to the party.

(11) **Suitable representative factors.** To identify an individual, the 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 timely attain knowledge of the procedural rules;

(ii) Knowledge of or ability to timely 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.

(12) **Acceptance and appointment.** After the ADA coordinator has identified an individual to be the party's suitable representative, the ADA coordinator will inform the party. The party will show acceptance of the appointment in writing or in any other form consistent with the party's disability. The appointment of a suitable representative is made by the chief ALJ. The appointment is effective upon acceptance of the accommodation by the party with a disability.

(13) **Rejection.** The party has the right to reject the identified suitable representative. If the party disagrees with the appointment, the party will contact the ADA coordinator to request a new representative. If the request contains new disability or suitability-related information, the ADA coordinator may consider identifying another individual to be appointed as the party's suitable representative.

(14) **Notice of appearance.** 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 individual's name, address, and telephone number.

(15) **End of appointment.** The appointment ends automatically when the time expires to file a petition for review of the ALJ's initial or final order. Alternatively, the party or the suitable representative may end the appointment at any stage. The suitable representative will file a notice of withdrawal under WAC 10-08-083 or other applicable rule or law if the appointment ends prior to the deadline for the petition for review.

(16) **In case of remand.** If a higher authority remands the case to OAH, the ADA coordinator will redetermine whether a suitable representative is still the necessary accommodation. The ADA coordinator will verify if the individual previously appointed is available or will identify another individual to be the suitable representative. The party retains the right to accept or reject the identified suitable representative.

(17) **Grievance.** If the party is not satisfied with a representative accommodation decision by the ADA coordinator, the party may request review of the accommodation request by the chief ALJ, whose decision will be final.

(18) **ADA coordinator training.** The ADA coordinator will receive specialized training to assure an adequate knowledge and understanding of adjudicative proceedings and federal and state law requirements with respect to assessing the need for reasonable accommodations. The ADA coordinator will make recommendations to the chief ALJ regarding the necessary training for agency staff and for suitable representatives.

(19) **Suitable representative training.** Before serving as a suitable representative, an individual must complete qualification training, or demonstrate equivalent experience or training, as established by the chief ALJ.

[Statutory Authority: RCW 34.12.030 and 34.12.[0]80. WSR 23-16-106, § 10-24-010, filed 7/31/23, effective 8/31/23. 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.]