

## Cleveland, Barb (OAH)

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**From:** Pesik, Ed (OAH)  
**Sent:** Friday, May 26, 2017 4:46 PM  
**To:** Cleveland, Barb (OAH)  
**Cc:** Lee, Lorraine (OAH); Sullivan, Johnette (OAH); Manson, Jeffrey J (OAH)  
**Subject:** FW: public hearing on 5/30

Comments on the CR102 by Division of Vocational Rehabilitation.  
Please include the email in the rule-making file and add it to the posted comments.

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**From:** Roberts, Deborah (DSHS/DVR)  
**Sent:** Friday, May 26, 2017 3:26 PM  
**To:** Pesik, Ed (OAH)  
**Subject:** RE: public hearing on 5/30

Hi Ed,

I have a couple of comments about the proposed WAC 10-08-055 Suitable representation, and look forward attending the public hearing on this matter on Tuesday.

In the preamble to the proposed WAC, there is a discussion regarding representation as an accommodation “because of cognitive disabilities” which appears to imply that other types of disability impairments would be ineligible to receive representational accommodations. All of DVR’s fair hearing cases involve individuals with disabilities, and the majority of those include Appellants who claim to need representation as an accommodation. Their disabilities range from ADHD, PTSD, personality disorders, hearing impairments, vision impairments, anxiety disorders, traumatic brain injuries, to many, many other types of disabilities. Many of the requests for accommodation are handled by the ALJ of record as a functional accommodation of the process, such as extended times for the hearing, frequent breaks if needed, extra time to submit documents, multiple continuances to allow for exacerbations of mental health conditions, keeping the record open following the hearing to submit additional exhibits that were not provided in advance, and others. More specific accommodations for hearings have included CART (computer aided real time captioning) for individuals with hearing impairments but also for people with cognitive impairments, which allows them to pause and read the dialogue of what just took place, so that they can process the information prior to proceeding. A note taker is generally not a recommended accommodation, since there can be a discrepancy between what is taken down in notes – CART ensures an accurate record for the Appellant, in a way that a court reporter might.

As far as the proposed WAC itself, I would suggest clarification in the following section (suggestion in red):

(7)(a)(ii) The privilege of representation by a suitable representative (as per RCW 34.05.428) -- discussion of a suitable representative seems premature in this section, since this is the “evaluative” section

(7)(b)(iv) Evaluate and coherently discuss legal arguments and defenses at a level comparative to Appellants without disabilities

(7)(c) Whether the party has sufficient energy and stamina to participate in the proceeding and if so could jeopardize the party’s health. – very subjective – no recommendations for modifying, but suggest reconsidering the implications

Suggest clarifying (14) – is this saying that if a person brings their own representative, and wants OAH to pay for the representative, that representative can petition for continuing status as representative WITH payment from OAH if an accommodation is approved for representational status? If this is the case, will there be a requirement for ALL attorneys or representatives to be notified of the possibility of filing a petition as an accommodation to be paid by OAH if there is a qualifying disability barrier to full participation?

*Deborah Roberts, M.A., CRC*

Customer Relations Manager | Division of Vocational Rehabilitation | Rehabilitation Administration | Department of Social and Health Services | 360.725.3611 | [Deborah.Roberts@dshs.wa.gov](mailto:Deborah.Roberts@dshs.wa.gov) | 4565 7th Ave SE, Lacey WA 98503 | PO Box 45340, Olympia WA 98504-5340

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**From:** Pesik, Ed (OAH)  
**Sent:** Tuesday, May 9, 2017 12:37 PM  
**To:** Roberts, Deborah (DSHS/DVR)  
**Subject:** RE: public hearing on 5/30

The public hearing will be held in our offices at 2420 Bristol Court in West Olympia. Look forward to seeing you there. And please let me know if you need directions to our office.

Thank you,

Ed

**Edward F. Pesik, Jr.**  
**Deputy Chief ALJ**  
**Office of Administrative Hearings**  
**Olympia Office: 360-407-2713**

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**From:** Roberts, Deborah (DSHS/DVR)  
**Sent:** Tuesday, May 09, 2017 10:08 AM  
**To:** Pesik, Ed (OAH)  
**Subject:** public hearing on 5/30

Hi Ed,

I'm thinking about attending the public hearing on the proposed WAC change on 5/30 at 10am – will that be at your Oly OAH location or somewhere else?

I am the DSHS/DVR fair hearing rep and this is a topic that has come up several times recently.

Thanks!

***Deborah Roberts, M.A., CRC***

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