



## Representational Accommodation - Rulemaking Workgroup

### MEETING NOTES

October 17, 2016 9:00 – 12:00

**Attendees:** Lorraine Lee, Ed Pesik, Johnette Sullivan, Jeff Manson, Barb Cleveland, Sheri Sawyer, Barbara Harris, Pete Wogsland, Laura Bradley, Maggie Leland, Cade Walker (for Evelyn Cantrell), David Lord, Amy McCullough (for Elizabeth Flavin), Lisa Brodoff

**Absent:** Neil Gorrell

**Administrative:**

Ed Pesik, Chair

- Introductions All Around
- Breaks, Restrooms, Coffee/Water, Minutes, Meeting Dates & Type

Workgroup members introduced themselves and explained whom they represent. Cade Walker was attending on behalf of Evelyn Cantrell (HCA) and Amy McCullough was attending on behalf of Elizabeth Flavin (NJP). Ed reviewed housekeeping matters. He stated the CR101 has been filed with the Code Reviser's office and the next step is to file the CR102 with draft rule language. He anticipates holding two more in person meetings; the goal is to be able to file the CR102 by the end of February 2017.

**Welcome:**

Chief Lorraine Lee

Chief Lee welcomed workgroup members to the meeting. She briefly reviewed the OAH handout on caseload and staffing statistics; only 3.4% of DCS cases are represented. She briefly summarized the Tammy Bussing case (abuse of a vulnerable adult) and the 2006 superior court decision. Chief Lee mentioned that OAH initially filed a CR101 in 2012, which affected HCA and DSHS cases only; it was never finalized into rule; she noted that OFM approached OAH in 2014 and asked us to start collecting data on the representational accommodation issue. In June 2016, a petition was filed by both the Korematsu Center at Seattle University School of Law, and Disability Rights Washington, on behalf of an appellant, C.B. Chief Lee stated that it is important for us to look at all of our caseloads that may potentially need representational accommodation. She does not believe that other Central Panel states have handled this issue. With our new case management system – PRISM – we are better able to track representational accommodation data and generate reports.

**Charter:**

Ed Pesik

- Purpose
- Unanimity vs. Consensus
- Minority Report?
- Timeline
- Recommendations

Ed explained the purpose of the workgroup; members will draft rule language for inclusion with the CR102. The proposed rule will cover four elements: assessment criteria; accommodation response; training; and data collection. He anticipates that we will provide our recommendations and draft rule to Chief Lee by February 2017. If the group is not unanimous on the draft language, then the majority will rule. The group will decide whether it is better to draft the rule in multiple sections or all in one (similar to the recent change to WAC 10-08-150).

It was also noted that the February date for completion of the group's work was just a target; if it is possible to finish the work sooner, then the date for filing the CR102 may be moved up.

Ed proposed the next in person meeting will be held on 12/7/16 in Olympia, which gives the group 30-45 days to create the first draft of the rule language. He also proposed splitting the workgroup into two separate subcommittees for drafting purposes. One group will handle **Assessment Criteria** and the other **Accommodation Response**, and the subcommittees will be chaired by Jeff Manson and Johnette Sullivan, respectively. The subcommittees will meet by teleconference and are tasked with developing draft language for these two items. Ed will work on gathering information about the training and data collection process separately. The draft language developed by the two subgroups will be reviewed by the entire workgroup at the 12/7/16 meeting.

**Communication:**

Barb Cleveland

- Public Website
- Rulemaking File
- Public Disclosure
- Communications within the Workgroup

Barb stated that she will be maintaining both an electronic and hard copy rulemaking file and will retain all meeting materials and notes; her goal is to prepare the minutes within seven business days of the meetings and share with workgroup members for review and edit prior to posting. Rulemaking information will also be posted on the OAH website to ensure transparency. Barb reminded the group that all workgroup documents and emails are subject to disclosure. Ed reminded the group to be respectful of one another's comments, opinions and time.

**Substantive Discussion:**

Ed Pesik

- Assessment Criteria
- Accommodation Response
- Training
- Data Collection

The group reviewed the CR101 and the attachment. There are three main objectives of the rule: (1) establish a process for handling accommodation requests; (2) establish a network of ombuds persons to assist pro se parties; and (3) establish a training program for OAH staff and ombuds persons. There will be four main elements to the rule: (1) assessment criteria; (2) accommodation response; (3) training; and (4) data collection. Ed reported that we are also in the process of revising our ADA policy, and have identified a new ADA coordinator and are refining the coordinator roles. He stated that although the need for accommodation can occur in

any caseload for many categories of “needs”, our goal for developing this rule is more narrowly focused.

During the ensuing discussion, the following points were made:

- When the judicial courts went through the same type of process with GR33; they looked at the whole system to make it consistent across the board. It is important that we should have an individual discussion with the people seeking the accommodation to hear what they need.
- The model rules (Chapter 10-08 WAC) do not address accommodations generally; that is done through policy and is a fairly routine process. However, requests for an attorney or advocate as an accommodation for disability is a fairly recent development.
- Rulemaking is necessary to ensure a consistent outcome. Perhaps rules should be broad enough to encompass all processes for determining accommodation needs besides representational accommodation.
- The workgroup will focus on representational accommodation and OAH will maintain consistency between our internal policy and the rule.
- What triggers an assessment? The ways that an ALJ can learn about the possible need for representational accommodation were discussed by the group and the subcommittees will work on appropriate language to guide presiding officers.
- It was generally agreed that the primary key in the assessment process has to be the nexus between the disability or impairment and the inability of the individual to represent themselves.
- The complexity of the case at issue may be an important factor in assessing the need.
- The pool of appellants which this rule addresses is likely only a small number of litigants. Rules that apply to these programs are complex – even the agencies are represented and we need to be mindful of this when assessing need.
- Chief Lee stated that legal services generally are underfunded and resources are not available, citing the recent Civil Legal Needs Study. But we cannot solve the issue of getting everyone representation in this rulemaking effort.

### **PRISM Demo:**

Josh Sundt provided a demo of the OAH case management system (PRISM). This system is able to capture data on accommodation requests. The categories we currently use for the type of accommodation being requested may change once we learn more about the types of accommodations needed. The current request types are auditory, cognitive, mobility, representational, and visual.

Josh indicated we are able to track more detailed information in the Notes field of the record and that we are also expanding data on the Outcome field.

We discussed how the request for hearing forms and the notices of prehearing conference/hearing forms could be modified to include options for seeking accommodation.

We all recognized that we still need to be able to provide some clear definition for terms used in the assessment process and for ensuring that accurate data collection can occur within the case management system.

Laura Bradley asked if we can include check boxes for the different types of impairments and how the appellant is being accommodated. Josh indicated we will be able to do that in the near future, we just are not there yet with our system.

David Lord stated that we need to be able to determine if appellant accommodation needs have been met? Should we consider a survey or lessons learned from the appellant and/or their representative? Laura Bradley stated that providing accommodations may result in less hearings, we'll see an impact over time. Josh noted that we have data and can query the system; we are working on a visual queue for the dashboard. Amy McCullough noted it would be helpful to have the ALJ perspective of the outcome and if the accommodation helped the appellant. Ed stated that early identification of an accommodation need is key to helping appellants get the services they need quickly.

### **Training:**

Chief Lee stated that we will be identifying components of training needed for staff. We previously conducted two trainings in 2015: Communicating with Mentally Ill Parties, and ADA Introduction and Policy refresher. Both ALJs and office managers were trained; the office managers then trained their support staff.

### **Data Collection:**

Ed stated that we are beginning to collect data in PRISM and will be able to provide reports on that data. He noted that the training and data collection will be handled internally by OAH.

### **Assessment Criteria:**

We need to determine the criteria we will use to assess accommodation needs. Johnette noted that it may depend at least in part on the complexity of the case and the type of case. The rule should address both how and by whom the assessment process is to be handled. The rule should also include a statement that a determination may not impact other cases or benefits that have been granted/denied to that appellant. There are two possible tracks to consider for assessment: (1) ALJ would refer to ADA coordinator for *ex parte* assessment; or (2) ALJ would assess and determine if they should handle (hearing on merits). Laura Bradley noted that the opposing party has an interest in knowing how the appellant is accommodated – this may need to be a criteria component.

**Accommodation Response:**

The rule needs to include the nature of the process once it has been determined what the need may be, and then how the suitable representative is procured and provided.

**Assignments and Adjournment:**

- Next meeting date

It was agreed that the workgroup would be split into two subcommittees: Assessment Criteria and Accommodation Response. Jeff Manson will chair the Assessment Criteria subcommittee and Johnette Sullivan will chair the Accommodation Response subcommittee. The subcommittees were tasked with drafting rule language for their respective elements and will share it with the group by 11/30 for review and discussion at the next meeting (12/7).

Ed asked members to indicate which subcommittee they would like to participate on; Ed will contact Neil Gorrell to get his preference. Subcommittees were formed as follows:

Assessment Criteria

Jeff Manson, chair  
Elizabeth Flavin  
Barbara Harris  
Evelyn Lopez  
David Lord  
Laura Bradley  
Neil Gorrell

Accommodation Response

Johnette Sullivan, chair  
Elizabeth Flavin  
Barbara Harris  
Evelyn Lopez  
Lisa Brodoff  
Maggie Leland  
Sheri Sawyer

Ed stated he will work on the Training and Data Collection rule language. Ed raised the question of where the *ex parte* file should be kept; it is a confidential file; he noted we will refer to the State Records Retention Schedule for guidance. The question was also raised about higher level review cases and putting a grievance process in place for those cases if accommodation requests are denied.

Ed closed the meeting with a plus/delta roundtable. The next in person meeting will be held on 12/7/16 in Olympia. Barb will send a meeting invite to workgroup members.