SUMMARY OF COMMENTS RECEIVED ON WAC 10-24-010 (subsection numbering refers to subsections in the CR-102 proposed language. Subsections are renumbered in the CR-103 permanent rule.)	THE AGENCY CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
General Comments – Whether Rule Should Be Adopted Comments in support and opposition to the proposed rule were submitted by various stakeholders. Opponents comment that there is no demonstrated need for the rule and the office of administrative hearings has supplied no data supporting the need; that administrative hearings already have a relaxed evidentiary standard and ALJs provide extra help for *pro se* litigants who need it, including developing the record by asking questions, independently calling witnesses, issuing subpoenas, and requesting documents; litigants are allowed to have lay representatives to assist them; agency staff often provide copies of laws or rules and referrals to legal resources, and assist litigants to obtain additional information and resolve the case; all of these aspects demonstrate very low barriers to access, even for people with severe disabilities. Supporters comment that an ALJ's ability to help is limited, especially with people with the most severe disabilities; the stakes can be high and full access to the process is crucial in cases implicating basic human needs; Washington Courts have adopted General Rule (GR) 33, recognizing the need and that representation can be a necessary accommodation; the courts' experience with GR 33, especially in Pierce County, has demonstrated that representation is not often needed, but when it is it is a time-saver for the court and all parties involved; that the proposed rule not only removes significant barriers to access to administrative justice, but also sets an example for other state agency hearings offices to follow.	The agency believes there is sufficient need for this rule. While relaxed evidentiary standards and assistance by administrative law judges (ALJs) is an effective accommodation for the vast majority of people with disabilities, there are some individuals who cannot meaningfully participate in an adjudicatory proceeding without the assistance of a representative. The need is evidenced by the experience of current and former ALJs, the petitioners for rulemaking, and advocates. The need was identified in a 2004 memo to then-Secretary of the Department of Social and Health Services (DSHS) from the DSHS Standing Committee on Administrative Hearings, identifying a "broad concern . . . about the ability of appellants with diminished capacity to represent themselves in the administrative hearing process." The need has also been recognized by the Washington State Supreme Court in its adoption of GR 33. The agency is already receiving requests for representation as an accommodation and has appointed suitable representatives. The rule is necessary to establish a process for assessing the need, determining whether representation is the appropriate accommodation, training and assigning people willing to step forward as representatives, and collecting the data necessary to inform implementation going forward.
A stakeholder expresses concern that adoption of the rule will open floodgates of requests for representation. Other stakeholders believe the rule is appropriately narrow in focus and experience with GR 33 shows that the process is not overly expensive or	The agency is already receiving requests for representation as an accommodation. The rule is necessary to provide a process, which will result in efficiencies as seen in courts implementing GR 33.

burdensome.	
The rule violates RCW 34.05.428(2) of the Administrative Procedure Act (APA), which states: "[A]ny party may be advised and represented at the party's own expense by council or, if permitted by provision of law, other representative."	The agency disagrees that the rule violates RCW 34.05.428(2). First, the permissive "may" does not explicitly forbid a party from being represented at another entity's expense, otherwise a litigant could not be represented at the expense of a non-profit legal services organization, for example. Second, the agency must follow the Americans with Disabilities Act (ADA), which went into effect after the effective date of RCW 34.05.428(2). Therefore, the APA must be read in a way consistent with the ADA's mandate to provide reasonable accommodations necessary to provide for meaningful participation in an adjudicative proceeding. If no other accommodation provides this access, then appointment of a representative may be the accommodation mandated by the ADA.
Some stakeholders commented that the rule is not consistent with the ADA: that the ADA does not specifically require appointing a representative as an accommodation, that case law does not mandate it, that the ADA requires a fact-specific inquiry on a case-by-case basis, and that the ADA does not allow accommodations that are not offered to others. Other stakeholders commented that while the issue had not reached the appellate courts, federal and state courts are recognizing that the ADA requires appoint of a representative if it is the only accommodation that allows for meaningful participation. Specifically, Washington State courts have mandated appointment of representatives as an accommodation under the ADA for certain individuals in state administrative hearings.	The agency believes the rule is not only consistent with the ADA, but that the ADA mandates appointing a representative when no other accommodation provides for meaningful participation in an adjudicative proceeding. The ADA is deliberately general in its language and does not specifically mention many mandated accommodations, such as large print materials. The agency has already been handling requests and providing various forms of assistance as necessitated by the needs of the party. The rule is necessary to provide a uniform process and allow for a fact-specific inquiry and determination on a case-by-case basis. Moreover, it is the clear intent of the rule to provide only that accommodation which is required by the ADA given the unique circumstances of each case.
A stakeholder comments that the Department of Social and Health Services (DSHS) already provides a similar service; specifically, WAC 388-865-0262 provides for an ombuds to assist litigants in mental health grievance hearings and WAC 365-18-0090(2)	These are valuable services and when utilized may provide sufficient assistance such that a litigant may meaningfully participate in the hearing process. However, neither WAC 388-865-0262 nor WAC 365-18-0090(2) provide for appointment of an actual representative for individual litigants. Additionally,

provides long-term care ombuds who can assist residents of long-term care facilities.	these cases (involving mental health grievances and appeals of notices of transfer or discharge from a long-term care facility) represent less than 1% of the cases handled by the agency.
General Comments – Funding The rule does not specify how the process is funded, including fees for representatives, travel costs, administrative costs, and training. One stakeholder expressed concern that other agencies will bear the cost of the program.	Funding to support the rule and which parts of state government bear the costs are very important issues, but are outside the scope of the rule itself. The costs of all accommodations under the ADA (whether large print materials, audio equipment for hearing-impaired, or appointment of suitable representation under this rule) will be handled administratively and need not be codified in the Washington Administrative Code. *See, e.g.,* RCW 34.12.030, 34.12.130 and 34.12.160. The legislature clearly intended that referring agencies fully fund necessary adjudicative services.
General Comments – Effect on other Agencies A stakeholder comments that several agencies which conduct hearings under the APA but do not utilize ALJs at OAH incorporate Chapter 10-08 WAC by reference, and any rule adopted under this chapter would apply to those agencies. As such, the stakeholder requests that the rule be changed to broaden its applicability, specifically: change references to an ALJ to "presiding officer," change the definition of the ADA Coordinator so he or she need not be an ALJ, and expand any references to OAH to encompass all state agencies adopting Chapter 10-08 WAC.	The agency always intended the rule to apply only to the agency's own adjudicative proceedings and obligations under the ADA. The language specific to OAH and ALJs remains unchanged, but the rule will be codified in WAC 10-24-010 instead of WAC 10-08-055 so that it is not incorporated by reference by agencies adopting Chapter 10-08 WAC. Additionally, subsection (1) is amended to specify that agency policy governs handling of accommodation requests "by a party to an office of administrative hearings adjudicative proceeding[.]"
General Comments – Practice of Law Issues The proposed rule suggests that non-attorneys may be appointed as suitable representatives, which may constitute the unauthorized practice of law.	RCW 34.05.428(2) allows for non-attorneys to represent a litigant in an adjudicative proceeding "if permitted by provision of law." Additionally, GR 24(b)(3) excludes "[a]cting as a lay representative authorized by administrative agencies or tribunals" from the definition of the practice of law. Several agencies have adopted rules specifically permitting non-attorneys to represent litigants in adjudicative proceedings and some agencies have non-attorney

	representatives appear on their behalf. Subsection (11)(c) of this rule states an individual is not eligible to be appointed as a suitable representative if the individual is "prohibited by law from representing the party." When choosing a suitable representative for appointment, the agency will limit appointments to individuals who are authorized by law to serve as a representative in the particular adjudicative proceeding.
General Comments – Consistent language The proposed rule uses the terms "adjudicative proceeding," "administrative hearing," and "hearing process," interchangeably. A consistent term should be used throughout. One stakeholder suggests "adjudicative proceeding." Another stakeholder suggests "administrative hearing." The rule should address all accommodations, not just appointment of a suitable representative, otherwise it appears a representative is the preferred accommodation over alternatives. All references to "suitable representative" should be changed to "accommodation."	The agency has changed all these references to "adjudicative proceeding," which has a specific definition in the APA under RCW 34.05.010(1) and is consistent with the term used in Chapter 10-08 WAC. The agency already addresses a wide variety of accommodation requests through its own policy. This rule reiterates this process in subsection (1), while specifically explaining that the rest of the rule only applies to requests for appointment of a suitable representative as an accommodation. The process described also makes clear under subsection (8) that alternative accommodations will be considered and a suitable representative will only be appointed if alternative accommodations cannot adequately address the party's specific disability-related limitations.
General Comments – rulemaking document reference to "cognitive disabilities" Language in rulemaking documents (outside the text of the actual rule) refers to "cognitive disabilities," which may not capture the variety of disabilities that may warrant appointment of a suitable representative.	While the term "cognitive disabilities" was included in early rulemaking documents, the text of the rule itself is deliberately general so that all disabilities may be considered. Several types of impairments could prevent an individual from meaningfully participating in an adjudicative proceeding, including cognitive, psychological, physical, intellectual, sensory, and others.
Title The title of the rule should be changed from "Suitable	The agency has changed the chapter title to "Equal

representation" to "Reasonable accommodation."	Access to OAH Facilities and Services." The section will be "Accommodation." This title more clearly communicates that the process included in the rule is one mandated by the ADA.
Subsection (1) Add to the end of the first sentence: "and this rule."	The agency agrees this provision requires clarity. As an alternative to the suggested language, the word "specifically" is added to the second sentence to show that while all ADA requests are handled by agency policy, only that subset involving requests for a suitable representative are handled by the provisions of this rule.
At the end of the last sentence, "appellant" should be replaced with "person requesting an accommodation."	The agency agrees "appellant" is inappropriate, as the word does not describe all litigants. The word "party" is substituted to match the usage in the rest of the rule.
Delete the third sentence entirely: "The appointment of a suitable representative. . .hearing process."	This sentence provides important context for the rest of the rule, mirrors language in the ADA, and introduces the "meaningful participation" standard.
Subsection (2) Consider defining "party" and clarify if it includes the guardian of a person with a disability.	The term "party" is defined in the APA under RCW 34.05.010(12) and in other statutes depending on the type of case.
Subsection (3) Replace "the referring agency or its representative, or the appellant" with "or any party."	The agency made this change.
At the end, add "so long as delaying the administrative hearing does not conflict with any law requiring timeliness of the administrative hearing."	Adding this clause would require adding a similar clause to nearly every procedural and administrative rule adopted by the agency. Subsection (4) adequately addresses timeliness.
At the end, add "including through any appeals pursuant to subsection 17," so that the adjudicative proceeding is not commenced or resumed until the chief administrative law judge addresses an appeal of the ADA coordinator's denial of a suitable representative.	The agency agrees that the proposed rule was ambiguous, but disagrees with the suggested language. Instead, "by the ADA coordinator" is added so it is clear the hearing may commence or resume during an appeal of the ADA coordinator's decision. (An ALJ may still grant or deny continuances based on the applicable procedural rules.)

Subsection (4) At the end, add "while assuring adherence to any state or federal timeliness requirement for the administrative hearing process."	See response to comments on subsection (3) above.
Subsection (5) After "All records pertaining to," insert "a party's request for a suitable representative and the".	The agency agrees this provision requires clarity. Instead of the proposed language, the rule changes "pertaining to" to "considered in," which is broad enough to include both the request and the decision.
Subsection (7) Delete the word "next" in the first sentence. At the end of the first sentence, add "and the type of accommodation needed." The term "next friend" should be added to the list of individuals providing existing assistance. At the end of the second sentence, add "but may be used in determining the type of accommodation most appropriate."	The agency made this change. This language is unnecessary as subsection (8) addresses the type of accommodation needed. The assessment and accommodation steps are deliberately codified in separate subsections to mirror the sequential process mandated by the ADA. The list already includes "friend" without additional qualifiers, which encompasses a next friend. The determination of the accommodation needed is addressed in subsection (8) and is worded broadly enough to allow the ADA coordinator to consider all circumstances.
Subsection (7)(a)(ii) A stakeholder comments that "privilege" should be changed to "right." Another comments it should be changed to "benefit." Another suggests adding "that may be available in the particular administrative hearing" to the end.	The agency has changed the clause to read: "The right of representation;" to match the other due process rights listed in this subsection.
Subsection (7)(a)(iv) Change "cross-examine" to "ask questions of."	"Cross-examine" is a term of art and a specific due process right.
Subsection (7)(b)(iv)	

Delete "coherently" and "legal." At the end, add "at a level comparative to appellants without disabilities."	The agency has deleted the word "legal," but kept "coherently." Some disabilities can cause incoherent speech, which may be an important factor in the assessment. However, the word "legal" suggests the sophistication of one's argument, which is more dependent on education or training, which are not disability factors. The effect of this language is already achieved by the definition of "disability" in (2)(a), specifically excluding nondisability factors such as education.
Subsection (7)(b)(v) Delete "and evidence."	The agency agrees "information and evidence" is redundant. However, "information and" is deleted to leave "evidence," an important legal term of art.
Subsection (7)(b)(vi) Delete "rational and coherent."	The agency has deleted "rational and," but kept "coherent." See response to comment on subsection (7)(b)(iv) above.
Subsection (7)(c) A stakeholder is concerned the language is subjective. Another suggests deleting (7)(c) and adding "Physically participate in the process" as a new clause under (7)(b).	The agency has deleted (7)(c) and added a new (7)(b)(iii): "Physically participate in the adjudicative proceeding[,]" and renumbered the remaining paragraphs under (7)(b).
Subsection (8) This subsection contains three clauses separated by semicolons. One stakeholder comments that the second and third should be deleted. Another comments that the word "specifically" should be added after the first semicolon.	The agency agrees this subsection requires clarity. After the first semicolon, the word "or" is replaced with "specifically:" and the second and third clauses are given their own paragraphs (a) and (b).
Subsection (10) At the end, add: "so long as such appointment does not violate any state or federal law or regulation."	It is the intention of rulemaking generally to encourage compliance with the law. This rule creates an appropriate process that conforms with the law.
Subsection (11) Replace "individual" with "agency, individual, or	The agency recognizes that subsection (10) references

organization set forth in subsection (10) of this rule as a suitable representative[.]"	"agency, organization or individual" while subsection (11) only references an "individual." While the agency will likely be working with agencies and organizations for identification of a suitable representative, the suitable representative will necessarily be an individual who the party may choose to accept or reject. Therefore, the words "agency, organization or" are deleted from (10), so that both subsections (10) and (11) only refer to an individual.
Subsection (11)(b) Add a new (11)(b)(vii): "The commitment to adhere to confidentiality standards and willingness to sign an agreement preventing disclosure of any confidential information.	Confidentiality will be a mandatory aspect of representation and is not appropriately included in a list of non-mandatory factors.
Subsection (11)(b)(iii) Delete it.	The agency has made the change. "Education" is not needed as a factor because "knowledge or ability to attain knowledge" under (11)(b)(i) and (ii) is sufficient.
Subsection (11)(b)(iv) Delete it.	The agency has made the change. "Certifications or licenses in good standing" is not needed as a factor because "knowledge or ability to attain knowledge" under (11)(b)(i) and (ii) is sufficient. In any case where only individuals with particular credentials are permitted to serve as a representative, the credentials would be mandatory and not appropriate to include in a list of non-mandatory factors. This is also covered in subsection (11)(c).
Subsection (11)(b)(v) Delete it.	Experience as an advocate of some type is an important factor to be considered. The agency changed "others" to "people with disabilities" to more precisely reflect the type of advocacy experience that is relevant to being appointed as a suitable representative.
Subsection (11)(c)	

Replace "individual" with "agency, organization, or individual." Add at the end: "or has not completed the uniform qualification training specified in subsection (21)."	See response to comment on subsection (11) above. The training requirements in subsection (21) (renumbered to subsection (20)) are sufficient and need not be referenced in subsection (11)(c).
Subsection (11)(d) Add to the end of the first sentence: "so long as such appointment does not violate any state or federal law or regulation. Subsection (11)(d) should function as its own subsection, e.g. subsection (12). Delete the last sentence. Add a new final sentence: "No party shall be required to disclose confidential information or accept appointment of a representative without explicit written consent."	 See response to comment on subsection (10) above. The agency believes this is the appropriate placement. The agency believes this sentence reflects an important part of the process. This change is not necessary. Protection of confidential information is addressed in subsection (5) and acceptance of a representative is address in subsection (11)(d).
Subsection (13) Add at the beginning: "Should the party accept the appointment of a suitable representative[.]"	 The agency agrees this sentence requires clarity. It is changed to add "Upon appointment" at the beginning, since subsection (12) specifies that the appointment is not effective until accepted.
Subsection (14) Delete it.	 Subsection (14) is deleted because the agency should not address any other agency's ADA obligations or processes through rulemaking. The remaining subsections are renumbered accordingly.
Subsection (15) Add to the end: "Should the suitable representative terminate representation prior to settlement or hearing, the suitable representative shall notify the party with a disability and the ADA coordinator."	 The agency agrees this section requires additional instruction. The agency has adopted an alternative: "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."

	Additionally, in the first sentence after "petition for review," the phrase "of the administrative law judge's initial or final order" is added for clarity.
Subsection (16) Delete "the individual previously appointed is available or will identify another individual to be the suitable representative" and replace with "an accommodation is required." Delete the last sentence.	The agency agrees that upon remand, there should be at least a brief inquiry to determine if an accommodation is still required, as a temporary impairment may no longer be present, or the nature of the remanded proceeding is substantially different from the first hearing. However, the language about the previous suitable representative is important to the process. After the first comma, the following language is added: "the agency ADA coordinator will determine whether the party is able to meaningfully participate in the remanded adjudicative proceeding under subsection (7) and the appropriate accommodation under subsection (8). If a suitable representative is still the most appropriate accommodation[.]" The ADA requires an individual's preferences to be considered when determining an appropriate accommodation. Additionally, it is important to reiterate the party's right to reject an individual representative, even if the party had accepted the representative previously.
Subsection (17) Change "the decision" to "any decision."	The agency has changed "the decision" to "a decision," which achieves the same effect.
Subsection (18) Add to the end: "free of charge to the state agencies using the services of the office of administrative hearings."	See response to comments under "General Comments – Funding" above.
Subsection (19) Delete the word "refresher."	The agency made this change.
Subsection (20) The rule does not describe how the ADA coordinator	The ADA does not require diagnosis or certification of

would certify a disability or be qualified to make a diagnosis.	disability when assessing the need for reasonable accommodation.
Subsection (21) "Persons selected by the agency ADA coordinator" conflicts with subsection (12), which states the chief administrative law judge makes the appointment. Add after "uniform qualification training," the phrase "or demonstrate equivalent experience or training as[.]"	To avoid this conflict, this phrase is deleted and the subsection is reworded so that it begins: "Suitable representatives shall receive[.]" The agency made this change.