



**Washington State  
Office of Administrative Hearings**

DATE: March 1, 2020  
TO: Lorraine Lee, Chief ALJ  
FROM: Johnette Sullivan, Assistant Chief ALJ  
SUBJECT: Report: Two Years Implementing WAC 10-24-010

This memo summarizes the activities of the Americans with Disabilities Act (ADA) team at OAH for the period January 1, 2018, through December 31, 2019. I served as the agency's ADA coordinator during the entire period. ALJ Pam Meotti assisted in administering the coordinator duties. The ADA team implemented WAC 10-24-010 for parties with disabilities by identifying the accommodation that would meet the parties' needs. If alternative accommodations were insufficient, the ADA coordinator determined if a representative accommodation was necessary.

**Data sources:**

*ADA team spreadsheet:* During the two years, the agency's ADA team maintained an Excel spreadsheet to record data about implementation of WAC 101-24-010. We recorded each request for a suitable representative, whether received directly from the party, or from a department representative, or from a referral from an ALJ. In addition, we recorded action on requests for other ADA accommodations received directly by the ADA team. In fall 2019, Carla Sullivan, Legal Assistant 2, began to assist in maintaining and updating the spreadsheet.

*OAH Reporting Application:* The OAH Reporting Application includes one report related to ADA accommodations. Report 2008 lists interpreter languages, of which Sign Language relates to an ADA disability.

*PRISM:* OAH calls its case management system "PRISM". Supervisors, staff, ALJs, and the ADA team entered data about ADA activities on a case-by-case basis. The data available in PRISM is wholly dependent on accurate and timely input by OAH staff. For example:

- A party may have settled and the case was dismissed before final action on an ADA request. PRISM shows the ADA action as "pending."
- ALJs approved and implemented accommodation requests on-the-record but did not complete an ADA field in PRISM.
- Staff identified Sign Language for a participant but failed to complete an ADA field.

The agency's Information Technology (IT) team completed a major enhancement to PRISM on April 5, 2019. The enhancement improved the ease of creating and editing accommodation requests. All OAH staff received instructions from IT about the PRISM ADA Enhancement, in

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addition to training from the ADA Coordinator. The IT team can create reports from PRISM on request. The IT team’s Beatrice Lupardus created a spreadsheet for the two-year period showing accommodation data entered by staff.

While staff entries in ADA fields prior to April 5, 2019, are no longer visible in PRISM, the data remains available. An IT spreadsheet for data queries January 1, 2018, through December 31, 2019, is available for further review.

### **ADA Accommodations at OAH—Overview:**

During the two-years, OAH recorded requests for accommodations from 119 persons in 151 dockets.

<b>Accommodation Requested</b>	<b>Approved</b>	<b>Denied</b>	<b>Pending/Withdrawn</b>	<b>Total</b>
Representation	10 <sup>1</sup>	89 <sup>2</sup>	37	136
Hearing Process	101	9	11	113
Large Font	84		11	95
Sign language	82			82
Scheduling	53		3	56
Communicate via Email	19	2	3	24
Visual	10	3	3	16
Assisted Listening Device	10	2	2	14
Mobility	10	2	0	12
Electronic Records	8	2	1	11
Real-Time Translation (CART)	5		5	10
Release for Nonsecure Email	7		1	8
Assigned Staff	4	3		7
Colored Paper	5			5
Allow Person to E-File				0 <sup>3</sup>

<sup>1</sup> The ADA coordinator found 15 individuals eligible for a representational accommodation, involving 22 dockets. Of these, only 10 individuals actually had a representative for the hearing process (8 suitable representatives appointed, 2 legal services declined appointments and accepted as community referrals). OAH was unable to find suitable representatives for three individuals and therefore denied the request and offered alternative accommodations. Two individuals later rejected the representative and OAH was unable to find another candidate. One individual made requests in both years. OAH approved the first request; however, for the second request OAH found two willing candidates but each withdrew after the party failed to meet. Two individuals not counted had appointments made in 2016-17 (although one’s hearings did not close until 2018). Overall, eight individuals completed the hearing process with an individual appointed by OAH as a suitable representative.

<sup>2</sup> The ADA coordinator denied 23 representative requests because the individual did not have a disability (16) or did not respond with information (7). The ADA coordinator denied another 63 requests after finding that alternative accommodations would meet the party’s disability-related needs and a representative accommodation was not necessary.

<sup>3</sup> OAH re-named some accommodations during the enhancement process. The zero total for E-file is misleading. Probably, staff recorded allowing a party to E-File as Electronic Records, a Hearing Process modification, or Assigned Staff (when local staff was required to facilitate document sharing with the opposing party).

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## Confidence Level in Accommodation Data:

I have confidence in the data gathered from the ADA team spreadsheet, especially regarding suitable representative accommodation activity. Carla Sullivan and I reviewed PRISM case notes and documents to confirm or clarify case outcome data for representative accommodations.

I am confident in the identification of Sign Language as a participant's language, and in the ability of the IT team to produce ADA data by completing a PRISM query.

However, PRISM data for non-representative accommodations is only as reliable as the input by OAH staff. I am not able to estimate the extent of under-reporting for non-representative accommodations.

## Alternative Accommodations

The types of alternative accommodations approved by OAH included Large Font, Sign Language, Scheduling, Communicate via Email, Mobility, Electronic Records, Release for Nonsecure Email, Assigned Staff, and Hearing Process. Examples of Scheduling accommodations include:

- Limiting hearings to afternoons only, or mornings only, or no start times before 11 a.m.
- Limiting hearings to specific days of the week
- Limiting the maximum time spent in hearing on a single day
- Requiring a hearing end early, no later than 3 p.m.
- Requiring a certain number of days between hearings, when scheduled over multiple days

The Hearing Process accommodation is broad. The Hearing Process accommodations are modifications that do not fundamentally alter the process or deny due process, including:

- Convert hearing (phone to in-person or vice versa)
- Hold hearing at home or facility
- Allow extra breaks, breaks of longer duration, increase frequency of breaks
- Give audio recording copies in real-time for review prior to cross-examination
- Extend due dates set by the Administrative Law Judge (ALJ)
- Arrange for quiet room, lack of distractions, rearrange seating
- Allow use of comfort device
- Allow food/beverage consumption during hearing
- Allow more time to answer, or to present cross-examination questions
- Communicate using webinar chat feature
- Arrange signal to alert ALJ to a need
- Alter sequence of testimony
- ALJ prompts to speak slowly, repeat, rephrase without acronyms, legalese, or terms of art, etc.
- Allow party to contact Call Center for oral reading of case records
- ALJ actions for self-represented parties under Code of Ethics, including: use plain language; assist to formulate a question for cross-examination, identify evidence needed to complete the record; change the sequence in which parties present evidence.

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## Case Outcomes: Requests for Representative Accommodation

There is insufficient data to draw meaningful conclusions from the raw data for the small population of 14 individuals identified as eligible for a representative accommodation. The outcomes were:

Favorable	6
Unfavorable	5
Open	3

When the ADA coordinator denied a party's request for a suitable representative, but approved alternative accommodations, the outcome data shows:

Favorable	10
Unfavorable	19
Mixed	2
Default	12
Withdrawal	9 <sup>4</sup>
Open	11

The data does not permit analysis of whether case outcomes would have improved with a representative to assist the party.

### Summary:

All but one of the parties eligible for a representative accommodation were recipients of Supplemental Security Income (SSI) and/or Social Security Disability Income (SSDI). Their appeals arose from several caseloads: unemployment insurance, child support, Medicaid, public benefits, licensing or regulation (like child protective or adult protective services), and, special education.

The party's disabilities sometimes impaired their ability to timely and meaningfully communicate with the ADA Coordinator. To date, about half the requests for a representative accommodation came from parties directly and not from ALJ referrals under the rule. Every OAH office was involved in delaying the scheduling of a hearing pending a referral to the ADA Coordinator under WAC 10-24-010.

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<sup>4</sup> The data for Withdrawal does not include cases in which information was available to show the action was due to a settlement in the party's favor. Favorable settlements that resulted in a party's withdrawal are included in the count of Favorable outcomes.