Appendix H

Washington State
Office of Administrative Hearings

DATE: February 12, 2020

TO: Lorraine Lee, Chief ALJ

FROM: Johnette Sullivan, Assistant Chief ALJ

SUBJECT: Surveys: Effectiveness of WAC 10-24-010

The Office of Administrative Hearings (OAH) is committed to assessing our programs and services to improve effectiveness. OAH is gathering feedback about our accommodation rule that went into effect on January 1, 2018: WAC 10-24-010. OAH's vision is to offer the people of Washington a convenient, easy to navigate system to request and receive independent review of state and local government actions. WAC 10-24-010 provides a process for OAH to comply with the Americans with Disabilities Act (ADA) and improve access for parties with disabilities.

As part of the two-year assessment of the impact of the rule, OAH surveyed several groups of people. Overall, people were thoughtful and raised interesting issues. No one surveyed disputed that there are parties with disabilities in need of a representative accommodation. No one surveyed suggested that OAH abandon the rule. Overall, people surveyed wanted to be more informed about the process and they wanted more training.

Who:

OAH surveyed these groups:

- All OAH administrative law judges (ALJs);
- OAH office managers and call center staff;
- Department representatives on-the-record when an ALJ referred a party under the rule;
- Parties with disabilities who were appointed a suitable representative; and
- Individuals appointed as a suitable representative.

Methods:

By Survey Monkey: Tarisse Injerd, a management analyst with OAH, sent invitations by email to ALJs, office managers, and department representatives, with links to Survey Monkey. The email invitations included a hyperlink to WAC 10-24-010.

By telephone: Laura Bradley, a judge with the Board of Industrial Insurance Appeals (BIIA), volunteered to contact the parties with disabilities and the individuals appointed as suitable representatives. Judge Bradley conducted the surveys by personal telephone call.

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Survey Results:

Overall, Tarisse and I were pleased with the Survey Monkey response rates. We agreed with some of the recommendations to clarify steps in the referral process and provide continued training.

Response rates:

- 42 of 110 ALJs
- 22 of 37 department representatives
- 7 of 13 office managers and call center staff

Judge Bradley endeavored to contact six people who served as a suitable representative, and five parties who received a suitable representative. She was able to speak to:

- 2 of 6 appointees
- 2 of 5 parties who received a suitable representative

One individual did not have a message box set up. Another returned the call and left Judge Bradley a voice mail encouraging OAH to continue the program, but has not spoken to Judge Bradley to answer specific survey questions.

Judge Bradley's report:

I have not summarized Judge Bradley's report here as it stands on its own.

Some statistics:

- 43% of responding ALJs had made a referral to the ADA Coordinator

- "Yes" I have received enough information/training about the Suitable Representative Referral Process:

    - 91% of ALJs
    - 57% of Office Managers & Call Center
    - 36% of department representatives

Suggestions to Improve WAC 10-24-010:

- Section (1): Comments seeking clarity about the process to make a request directly to the ADA Coordinator, separate from the referral by the ALJ during the adjudicative proceeding. Comment about potential confusion when Section (1) refers to requests for representation in cases where there is no request but the ALJ makes a referral under subsection (3). I believe these concerns do not require a rule change if addressed by updates to OAH's internal policy and training.

- Section (2)(c) and (4): Comment that the ADA Coordinator not be required to be an administrative law judge, and for outside entities to manage the process.

- Section (3): Comment to clarify that the ALJ should not be obligated to make a referral without having formed a reasonable belief, triggered only by another person having a reasonable belief. OAH could clarify the rule. However, in practice when a party does not share information for the ALJ to form a reasonable belief a referral is needed, the ALJ has not made a referral to the ADA Coordinator. Instead, ALJs have clarified if the party is asking to continue the hearing in order to contact the ADA coordinator. ALJs apply the good cause standard to grant or deny a continuance, considering any objections by the opposing parties.

    - Comments about lack of clear process for how department representatives can raise the issue *before* a prehearing conference or hearing. The comments noted sensitive topics including: when a department representative knows a party has not made an accommodation request to OAH; need to avoid confusion about roles because the department representative does not act on behalf of the party; obligation to inform the tribunal of pertinent information without delaying the proceedings. The ADA Coordinator has received similar inquiries and comments over the past two years. This raises a good point that merits further consideration.

  Other comments relating to Section (3) concerned the need for the party's consent for a referral. Some comments indicate a need for training about how legal competency is not the standard. Other comments indicate a need for training about rights of parties with individuals. They have the same right to make a choice as everybody else.

- Section (7): A request for more specificity about how OAH determines if a party is unable to "meaningfully participate." Some recommended an intake screening process to learn the party's needs and if a referral was necessary. I believe the factors listed in (7) and (8) are specific and this comment can be addressed through training. During rule development, the workgroups considered factors applied by courts to determine if a party who was incarcerated or who was disabled was denied the right to meaningfully participate.

- Sections (9) and (10) provide for notice to the party of determinations by the ADA Coordinator. Sections (12) and (13) are the process for the party to approve an appointment, and for the representative to file a notice of appearance. There are no rule provisions about notice of outcome of an ALJ referral to opposing parties.

    - Several commented that after a referral by the ALJ, the process needed more transparency for other parties, particularly when the determination process resulted in long delays. One commented the process was "mysterious." As the ADA coordinator, I received requests for status update from staff, ALJs and department representatives. This is a valid concern. I think OAH could addressed this in training. I recognize an "it's pending" reply without further details could be frustrating and seem mysterious.
    - Several comments from office managers, call center, ALJs, and department representatives concerned lack of information following an ALJ referral, particularly notice from the ADA coordinator whether a representative was

approved or denied. I believe OAH can address these concerns in training rather than rule making. It is important to distinguish ADA processes from due process rights. In addition, with more resources and development of a network of suitable representatives, the delays should diminish.

- Section (16): A comment from a department representative suggested that "in fairness" the grievance process should be open to the department. The rule has a process for a party with a disability to file a grievance with the Chief ALJ when denied a suitable representative. I am not entirely clear about the concern, but ADA is not a due process matter or a matter of fairness to other parties. It is a civil right of a party with a disability. I do not recommend this rule change.

Suggestions on training:

- All groups surveyed by Survey Monkey offered training ideas.
- For internal training, the ADA coordinator will:
    - Arrange with Philip Muirhead, OAH's Customer Service Manager, to improve training and resource materials available to call center staff.
    - Conduct quarterly lunchbox sessions for ALJs and all staff, for open questions & answer sessions to supplement OAH's annual ADA training.'
    - Develop scripts and examples of questions for ALJs to ask on the record when a need for referral arises
- For external training, I recommend OAH:
    - Continue to offer to make presentations during referring agency-sponsored training academies for their representatives who appear before OAH;
    - Develop a process to periodically inform agency representatives and stakeholders of the information and training materials available on OAH's public website
    - Consider informal opportunities for question and answer sessions, which might be useful for those department representatives who serve caseloads on which most clients have disabilities
    - Some training requests sought information about participation by alternative methods, like via webinar and use of a chat feature. OAH could invite department representatives to participate in test webinar so they could experience the process, and be in a better position to inform about accommodation options to their clients.