



OAH's New Accommodation Rule: WAC 10-24-010

[WAC 10-24-010](#) codifies that OAH refers to its policy to respond to accommodation requests. OAH Policy 200 addresses Equal Access to OAH Facilities and Services. An accommodation is the minimum modification to services and facilities necessary to ensure access by customers with disabilities.

ALJs and local supervisors receive, review, approve and implement most accommodation requests. That has not changed. This new rule outlines our process for when we provide an accommodation in the form of a person to be a representative for a party with a disability.

Why did OAH decide it needed an accommodation rule?

Even after providing other types of accommodations, OAH has always had some parties who are unable to participate in a meaningful way in a hearing. ALJs have suggested that the party connect with legal services or volunteer attorneys. ALJs would do the best they could to provide due process to the unrepresented party with a disability. In 2006, Thurston County Superior Court ordered OAH to appoint a suitable representative for a party if the ALJ found the party did not have sufficient capacity to understand the hearing process. The case name was *Bussing v. DSHS*.

- In 2007, the Washington courts adopted an accommodation rule known as General Rule 33 (GR 33). It permits the courts to appoint attorneys when appropriate or necessary to provide access to the court proceedings.
- In 2011, the Washington State Access to Justice Board, Justice without Barriers Committee, published *Ensuring Equal Access for People with Disabilities: A Guide of Washington Administrative Proceedings*. The Guide was endorsed by OAH but we did not adopt its model rule or pursue formal rulemaking at that time.
- In 2015, Thurston County Superior Court ordered the Board of Industrial Insurance Appeals (BIIA) to appoint counsel at public expense for a party who was disabled. The case name was *Weems v. Board of Industrial Insurance Appeals*.
- In June 2016, a Washington resident, the Fred T. Korematsu Center for Law and Equality, and Disability Rights Washington, all petitioned OAH to adopt a rule. Chief ALJ Lorraine Lee authorized a two year rule-making process to gather input from multiple stakeholders, with workgroups to recommend development and implementation of a rule.
- The initial approach was to amend the Model Rules of Procedure chapter 10-08 WAC. In the end, Chief Lee decided to apply the process to proceedings before OAH only. A new chapter 24 was added to title 10 of the WAC. OAH filed WAC 10-24-010 on August 16, 2017, with a delayed effective date of January 1, 2018.

What is in the new accommodation rule?

[WAC 10-24-010](#) codifies a process to approve an accommodation in the form of a person who is appointed to represent a party with a disability. The rule has 22 sections:

Section 1: Purpose

Section 2: Definitions



Section 3: Referral by ALJ

Sections 4-7 Assessment by ADA Coordinator

Section 8-9: Decision on appropriate accommodations by ADA Coordinator

Sections 10-11: Factors for appointment considered by ADA Coordinator

Section 12-16: Appointment by Chief ALJ; notice of appearance or notice of withdrawal by the Suitable Representative; termination of appointment

Section 17: Network of Suitable Representatives established

Sections 18-20: Training of all OAH staff and of Suitable Representatives

Sections 21-22: Data and evaluation for two-year period through 2019

Here are some key points to keep in mind about the new accommodation rule:

- **Disability-related.** The party's needs must be due to one or more physical or mental disabilities.
 - Lack of English proficiency, education, or limitations due to poverty and other non-disability factors are not a basis for referral.
 - We consider all other accommodations first.
- **Context.** The context for the assessment and determination process is the OAH adjudicative proceeding (not what the party might need for employment or in some other setting).
 - Unlike attorneys appointed for formal court proceedings under GR 33, here the context is an OAH hearing where the process already has:
 - Relaxed rules in the Administrative Procedure Act (APA)
 - Evidence rules as guidelines, relaxed hearsay
 - [RCW 34.12.010's](#) expectation for "greatest degree of informality consistent with fairness and the nature of the proceeding"
 - ALJ Code of ethics to advance needs of pro se party while remaining neutral
 - 40,000+ parties annually, most *pro se* (meaning self-represented)
- **Request.** A party can make a request for a Suitable Representative at any time during the process.
- **Referral.** Even if a party does not make a request, the ALJ may stop the proceedings with the party's consent and refer the party to the ADA coordinator for an assessment.
- **Consent.** A party must be able to consent to referral and to the appointment.
- **Not a right to a lawyer.** The rule does not give a right to a lawyer. A common theme we hear from pro se parties is "if only I had a lawyer I could win." This is an ADA accommodation. The rule anticipates that persons other than lawyers may qualify to be suitable representatives.
- **It's a start.** We do not have all the answers. We will gather data and feedback for a two year period to improve the process.