



Washington State  
Office of Administrative Hearings

## WAC 10-24-010: Suitable Representatives as ADA Accommodation Two-Year Assessment Report

Prepared by Lorraine Lee, Chief Administrative Law Judge  
Johnette Sullivan, Assistant Chief Administrative Law Judge

Date: August 1, 2020

---

Since January 2018, the Washington State Office of Administrative Hearings (OAH) has provided “suitable representatives” as a new form of accommodation under the Americans with Disabilities Act (ADA). OAH’s accommodation rule, WAC 10-24-010, provides a process to appoint a person to serve as a “suitable representative.” The accommodation is for self-represented parties when other accommodation measures are not sufficient to provide meaningful participation in OAH hearings. This report examines OAH’s experience implementing the new accommodation during the period January 1, 2018, through December 31, 2019, and evaluates its effectiveness to promote equal access to administrative justice for people with disabilities.

**Background:** In June 2016, OAH received a petition for rulemaking filed by three petitioners: C.B., a Washington Resident; Disability Rights Washington; and Seattle University Law School Fred Korematsu Center for Law & Equality. In response, OAH convened a stakeholder workgroup to develop a rule, resulting in the promulgation of WAC 10-24-010. The rule went into effect on January 1, 2018. (Appendix A – WAC 10-24-010). A second stakeholder workgroup helped develop implementation strategies. A stakeholder advisory committee oversaw implementation and served as a valuable resource and sounding board to OAH. (Appendix B - Stakeholder Participants).

**WAC 10-24-010 Purpose:** OAH complies with the ADA by providing the minimum necessary accommodation to meet a party’s needs. Specific rule objectives include:

- (1) Determine whether other accommodations are sufficient for the party to meaningfully participate in the hearing; if not,
- (2) Determine whether a suitable representative (SR) accommodation is necessary;

- (3) Establish internal processes for consistent review and handling of accommodation requests at OAH;
- (4) Establish training for all OAH employees who interact with parties with disabilities;
- (5) Establish training for individuals to qualify them to serve as SRs;
- (6) Establish a network of individuals qualified to serve as SRs; and
- (7) Establish internal processes for data collection and feedback for improving the rule.

OAH developed and implemented the rule based on three key assumptions:

1. Parties in OAH hearings do not need a lawyer to represent them; lay representatives can effectively serve as SRs with proper training.
2. Other types of accommodations may adequately address parties' disability needs.
3. Upon determination of eligibility for suitable representative accommodation, the party must be able to consent to the appointment of a SR.

**Implementation Highlights:** Assistant Chief (AC) Johnette Sullivan serves as the OAH ADA Coordinator and she has been the primary person implementing WAC 10-24-010. AC Sullivan is an administrative law judge with 30 years' experience holding OAH hearings in a wide variety of case types. She has extensive experience with self-represented parties and provides a critical perspective in determining whether a party's disabilities require a SR. Often, she determined that other forms of accommodation would meet the party's need to participate meaningfully in the hearing. AC Sullivan established internal processes for the review and handling of ADA accommodation requests, including requests for a SR. (Appendix C - SR Inquiry Process at OAH).

Training: AC Sullivan developed mandatory training for all OAH employees. OAH required more training for administrative law judges and other employees who interact directly with parties. OAH developed online training materials to qualify individuals (attorneys and non-attorneys) to serve as SRs. The online training is available on the OAH public website; it is self-paced and four hours in length. (Appendix D - Suitable Representative Uniform Training Checklist). The rule allows an individual to qualify as a SR by substituting prior education and experience for some of the training.

Suitable Representatives Network: To build a network of SRs, OAH conducted continuing legal education sessions for lawyers as a volunteer recruitment strategy. To raise awareness about this new approach, AC Sullivan and Administrative Law Judge (ALJ) Pamela Meotti wrote an article that the American Bar Association published in the Judges' Journal. (Appendix E – Representational Accommodation in Washington's Administrative Hearing Process). They also authored articles in local newsletters and blogs. In October 2019, the Washington State Bar Association sponsored a 90-minute continuing legal education webinar

about OAH's accommodation rule. OAH invited Washington lawyers to support OAH's efforts to build a network of SRs.

After two years, the network consists of six attorneys who have been qualified as suitable representatives and three legal services organizations (Northwest Justice Project, Solid Ground, and the Thurston County Volunteer Legal Services clinic). Some network SRs have not received an appointment because of their limits on case type and geography. More resources are needed to grow the network in order for it to be a sustainable, reliable source of SRs.

**Rule Assessment:** OAH effectively applied the requirements of WAC 10-24-010 to establish internal policy and processes for consistent review and resolution of accommodation requests. OAH collected data, carefully documented activities and obtained stakeholder feedback. OAH used the information to evaluate the rule's effectiveness and implementation efforts. Subsection (22) of WAC 10-24-010 identified six factors to assess the rule's effectiveness after two years:

- (1) Timeliness of the process;
- (2) Case outcome (e.g., settlement, default, affirmance or reversal of agency action);
- (3) Number of SR requests granted and denied;
- (4) Sources of referral to ADA Coordinator;
- (5) Number and outcome of appeals of SR denials; and
- (6) Feedback from the parties, the ADA Coordinator, persons appointed as suitable representatives, administrative law judges and referring agency representatives on how provisions of the rule could be improved.

Number of SR Requests Granted or Denied: From January 1, 2018 through December 31, OAH received 136 requests for SR accommodation. The ADA Coordinator found 15 parties were eligible for a suitable representative. However, OAH was unable to find a SR to serve in five cases and was only able to provide alternative accommodations. Of those five, two parties rejected the suitable representative OAH identified and OAH was not able to find a substitute SR. The ADA coordinator denied 89 individuals their requests for a SR. Of these, OAH approved alternative accommodations for 61 of the 89 individuals.

OAH found a distinct need for a SR for a very small group of self-represented litigants in OAH hearings. The type of disabilities and needs vary between the individuals who were determined to be eligible for a SR accommodation. 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 parties' disabilities sometimes impaired their ability to timely and meaningfully communicate with the ADA Coordinator. (Appendices

F and G - ADA Coordinator Memo re Reflections on WAC 10-24-010 Implementation; ADA Coordinator Report: Two Years Implementing WAC 10-24-010).

OAH did not make an SR appointment when legal services organizations responded to the ADA Coordinator by accepting two parties as community referrals. For nine parties, the ADA Coordinator found lawyers who were willing to provide pro bono (free) services or contracted with a legal services entity to provide paid representation. Two of the nine later rejected the legal service organization and OAH was unable to find a substitute SR. In one case, the suitable representative appointed by OAH was a family member of the litigant.

Feedback: OAH surveyed administrative law judges, OAH office managers and call center staff, department representatives from referring agencies, individuals appointed as suitable representatives, and parties with disabilities who received a suitable representative. Overall, people were thoughtful and raised interesting issues. No one surveyed disputed that there are parties with disabilities in need of a suitable representative accommodation. No one surveyed suggested that OAH abandon or repeal the rule. Overall, people surveyed wanted to be more informed about the process and they wanted more training. (Appendices H and I - Memo re Surveys: Effectiveness of WAC 10-24-010; Report on Survey of Suitable Representatives and Recipients).

Other Assessment Factors: About half of the requests for suitable representation came from the litigants. OAH administrative law judges made referrals in 67 cases, which accounted for 10 of the 15 parties the ADA Coordinator found eligible for a SR. In four cases, department representatives alerted the ADA Coordinator that the parties might need a SR. The ADA Coordinator resolved most SR requests within the first three weeks of receiving the request. In the seven cases where the litigant filed a grievance of the SR denial, the Chief ALJ upheld the ADA Coordinator's denial. OAH has insufficient data from the small population of individuals who received representational accommodation to draw meaningful conclusions about the impact of appointing a SR to the case outcome.

**Conclusion:** In the first two years of implementation, OAH learned there is no easy, ready solution to address the varied needs of this small group of parties with disabilities that prevent their meaningful participation in OAH hearings. OAH effectively used WAC 10-24-010 to guide its efforts to update internal policy and create processes for consistent review and resolution of accommodation requests. The online, self-paced training materials OAH developed for SRs is accessible to help any party to prepare for their OAH hearing.

OAH also tested possible strategies to establish a resource network for SRs. Many network resources are limited to geographical service areas. Some qualified SRs never received an appointment because none of the parties determined to be SR-eligible resided within the SR's

limited geographical service area. The greatest impediment to establishing a network of SRs is the lack of professional liability coverage for non-lawyers, and for lawyers who are retired or not employed by an entity that provides such coverage. In order for consistent approval of SR accommodations for parties determined to be eligible, OAH needs to identify organizations or entities that are able to provide qualified SRs with professional liability coverage and few geographical limitations. Further, OAH needs to secure and maintain designated funding to build and sustain a viable, reliable network from which the Chief ALJ can appoint SRs for parties with disabilities.

--- End of Report ---

[Appendix A – WAC 10-24-010](#)

[Appendix B – WAC 10-24-010 Stakeholder Participation](#)

[Appendix C – SR Inquiry Process at OAH](#)

[Appendix D – Suitable Representative Uniform Training Checklist](#)

[Appendix E – ABA Judges’ Journal Article by Judge Johnette Sullivan and Judge Pam Meotti](#)

[Appendix F – ADA Coordinator Reflections on Rule Implementation Memo](#)

[Appendix G – ADA Coordinator Two-Year Report memo dtd 3-1-20](#)

[Appendix H – SR Rule Survey Responses Memo](#)

[Appendix I – Interviews with SR Recipients and Suitable Representatives](#)