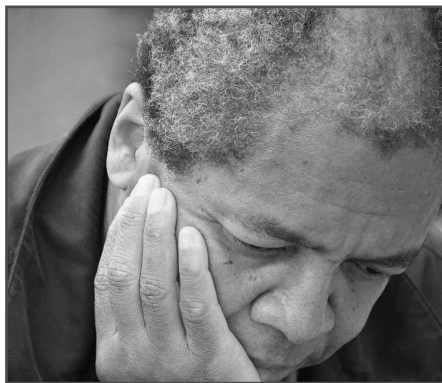

Ensuring Equal Access for People with Disabilities



A Guide for Washington Administrative Proceedings

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I. Introduction

Access to administrative hearings is essential for people with disabilities. An administrative hearing¹ is the first and often only venue where disputes are heard on a vast range of legal issues with dozens of state agencies. In 2008, Washington state agencies considered over 50,000 cases², more than the total number of criminal filings in all county Superior Courts combined.³ Since most litigants do not appeal to the state court system⁴, the administrative hearing is often the only opportunity to be heard and to receive justice.

Additionally, the administrative hearing system is the primary social justice system for people living in or near poverty, a group that includes a disproportionate number of people with disabilities.⁵ Agencies, not courts, are the place where people with disabilities can attain access to benefits that relate directly to survival, including income, food, healthcare, training, and child care.⁶ In fact, for many people with disabilities, the state provides their *only* source of income or medical care.⁷ When a person's disability is not accommodated in the administrative hearing process, the consequences can be terrible for the litigant and her/his family, not due to lack of eligibility, but due to lack of meaningful access and ability to participate.

Providing access is required by law. Accommodating a person's disability is not only morally compelling, it is required by law. The Americans with Disabilities Act (ADA) and the Washington State Law Against Discrimination (WLAD) require that people with disabilities be afforded equal access to government buildings and services. This includes all aspects of the administrative hearing process, from request for a hearing to appeal of a decision. Agency staff may even be held personally liable for failure to accommodate a person with disabilities.

The vast majority of litigants in administrative hearings appear *pro se*⁸ (without a lawyer). This widespread lack of legal representation presents unique challenges to providing accommodations in administrative hearings. People with disabilities experience additional impediments to access when they appear *pro se*. Whether a cognitive disability limits their understanding of the hearing process or a physical disability prevents them from collecting documents to submit as evidence, *pro se* litigants generally require additional accommodations. Sometimes the only effective accommodation is appointing a legal advocate.⁹

The purpose and scope of this guide. Dozens of state agencies conduct administrative hearings, but the vast majority are conducted by the Office of Administrative Hearings. For this reason, this guide is written with Administrative Law Judges in mind. Additionally, given the disproportionate number of litigants with disabilities in public assistance appeals, many examples are given in that context. This guide is also written to help all state administrative agency personnel comply with the law. Information is provided on what the law requires, some common disabilities and how they might be accommodated, access issues unique to administrative hearings, and some best practices relative to *pro se* litigants.



II. What the Law Says About Accommodating Disabilities

Access to an administrative hearing is a fundamental right under the state and federal constitutions. State and federal statutes require that people with disabilities be afforded equal access to government buildings and services. Their access must be just as effective as the access provided to other members of the public.

In some circumstances, hearing officers and agency staff can be held personally liable for failing to accommodate a person with disabilities.

A. Sources of the Law Requiring Accommodation of Disabilities

1. The Americans with Disabilities Act (ADA)

Congress enacted the ADA after finding that people with disabilities encounter discrimination in access to public services, have a history of unequal treatment, and have been relegated to political powerlessness based on stereotypes that do not reflect their true ability to participate and contribute in society.¹⁰ The ADA is intended to eliminate discrimination against individuals with disabilities, to provide clear, strong, consistent, enforceable standards, to ensure access for those individuals with disabilities, to ensure enforcement of those standards by the federal government, and to provide remedies.¹¹

In Title II, the ADA prohibits discrimination in public services and mandates that persons eligible for receipt of services shall not, because of disability, be excluded from participation or from the benefits, services or activities of a public entity.¹² Congress intended to make it *difficult* for government to avoid compliance with the ADA.¹³

Administrators of public programs must take steps to accommodate persons with disabilities, unless the accommodation fundamentally alters the nature of an activity or program or constitutes an undue administrative or financial burden.¹⁴ This obligation may be enforceable by a suit for declaratory or injunctive relief, or money damages.¹⁵

2. The Washington Law Against Discrimination

Long before the ADA, the Washington State Legislature enacted the Washington State Law Against Discrimination (WLAD):

The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person are a matter of state concern, that

such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.¹⁶

The WLAD declares that “full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement,” free from discrimination because of disability or the use of a trained dog guide or service animal, “is recognized as and declared to be a civil right,” enforceable by an administrative complaint or a civil action for damages.¹⁷ Places of public accommodation are broadly defined.¹⁸ Generally, the WLAD is broader and more protective than the ADA.

(Note: Many county and city ordinances also prohibit discrimination on the basis of disability.)

3. The United States Constitution

Because access to the judicial process is a fundamental right, the United States Supreme Court has held that Title II of the ADA is constitutionally valid. In *Tennessee v. Lane*, the Court held that “Title II unquestionably is valid...as it applies to the class of cases implicating the accessibility of judicial services [.]”¹⁹ The Court observed that the “duty to accommodate is perfectly consistent with the well-established due process principle that ‘*within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard*’ in its courts.”²⁰ This applies equally to administrative hearings.²¹

4. The Washington Constitution

The Washington State Supreme Court has held that the right of access to the justice system is fundamental and preservative of all other rights and that denial of access on the basis of poverty violates the Washington State Constitution.²²

B. What Is a Disability?

Under the ADA, “disability” is a physical or mental impairment that substantially limits one or more major life activities.²³ A person is also considered disabled for purposes of the ADA if s/he has a record of such an impairment or is perceived as having such an impairment.²⁴ The state statutory definition is also broad in scope, stating:

“[a] disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job[.]”²⁵

The table on the opposite page provides examples of disabilities and possible accommodations to illustrate the diversity of impairments that must be accommodated. The list is far from complete, and the accommodations listed may not be applicable to everyone with the associated disability. *Always* consult the individual with the disability about her/his accommodation needs. Necessary accommodations will vary according to an individual's unique circumstances.

Disability

Possible Accommodation

Urinary Tract Infection	Provide frequent restroom breaks during hearing
Anxiety Disorder	Allow presence of a companion animal
Sight Impairment	Send hearing notices in large print
Intellectual Disability	Allow use of a "cognitive interpreter" ²⁶
Attention Deficit Hyperactive Disorder	Reduce visual and auditory distractions
Chronic Fatigue	Appoint a legal advocate
Back Injury	Provide a reclining chair
Unable to leave home due to Multiple Sclerosis	Conduct hearing in litigant's home
Deaf	Provide an American Sign Language Interpreter
Mobility Impairment	Remove architectural barriers, conduct hearing in accessible hearing room
Manic Episode during hearing (Bipolar Disorder)	Continue hearing to a different date
Learning Disability (Dyslexia)	Read written information orally
Obsessive-Compulsive Disorder	Allow for a different seating arrangement
Traumatic Brain Injury	Divide longer questions into a series of shorter ones



III. Required Actions by State Agencies

A. Overview of Complying with the ADA and WLAD

State and local agencies that conduct administrative hearings are places of public accommodation, and therefore fully subject to the ADA and the WLAD.²⁷ These laws apply to all aspects of governmental services, viewed in their entirety.

Access must be provided at **all stages** of the hearing process: the hearing request, the notice of hearing, access to the building and hearing room, the hearing itself, the initial or final order, and everything in between.

Access must be provided to **all participants**: parties, representatives, witnesses, hearing officers, interpreters, observers, and staff.

Generally, the law requires agencies to:

- (1) make reasonable efforts to identify and remove barriers to access, including physical barriers, procedural barriers, and communication barriers; and
- (2) take affirmative steps to implement accommodations such that all services are equally available to people with disabilities.

Specifically, the law requires hearing officers and agency staff to:

Furnish “auxiliary aids and services” at agency expense;²⁸

Examples:

- Provide an assistive listening device for someone who is hard of hearing.
- Provide a magnifying glass for someone with a sight impairment.
- Provide a sign language interpreter for a deaf individual.
- Provide a legal advocate for someone unable to represent themselves *pro se* due to her/his disability.

An agency must give primary consideration to the requests of an individual with a disability.²⁹

The agency must give primary consideration to an individual's preference for an auxiliary aid or service and must honor it unless the agency can provide another equally EFFECTIVE means of communication.

Make “reasonable modifications” to rules, practices, and policies;³⁰

Examples:

- Allow a continuance rather than a default when a litigant fails to show up at her hearing due to her /his disability.
- For a litigant with severe anxiety, schedule the hearing at a location where s/he is comfortable, such as her/his home, advocate's office, or by phone.

Ensure that communication is as effective for people with disabilities as it is for others;³¹

Examples:

- Allow the presence of a support person or a support animal, to provide the comfort necessary for full engagement in the hearing process.
- Divide long questions into a series of shorter ones for someone with trouble maintaining concentration or understanding of longer material.
- Allow the use of a "cognitive interpreter," usually a friend or family member, who can "translate" complex questions into words and a form understood by the person with a cognitive disability.

Create a procedure by which an accommodation can be requested and investigate and ascertain what accommodation is reasonable.

The 9th Circuit has said:

A public entity's duty on receiving a request for accommodation is well settled by our case law and by the applicable regulations. It is required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation... [T]he Acts create a duty to gather sufficient information from the [disabled individual] and qualified experts as needed to determine what accommodations are necessary.³²

The Washington State Supreme Court has recognized the need for a uniform accommodation request procedure and has adopted General Rule (GR) 33, which establishes such a procedure for state courts. To help ensure compliance with state and federal law, state agencies should adopt similar rules for administrative hearings. A Model Rule is provided in Appendix A.

Designate an employee to receive ADA complaints and publish procedures for handling those complaints.³³

All costs must be borne by the agency, and may not be passed on as a surcharge to the individuals accommodated.³⁴ The law does not require agencies to make fundamental alterations to their programs or make changes that would result in undue financial or administrative burdens.³⁵ Additionally, no action is required that would threaten the significance of a historic site.³⁶

B. Staff May Not Be Immune from Individual Liability

1. Sovereign Immunity Does Not Apply

The ADA expressly does away with state sovereign immunity.³⁷ In *Tennessee v. Lane*, the U.S. Supreme Court upheld this abrogation as a valid use of Congressional authority under the 14th Amendment of the U.S. Constitution.³⁸ Under both the WLAD and Title II of the ADA, public entities — including all state agencies — are subject to suits for declaratory relief, injunctive relief, and damages.

2. Judicial Immunity May Not Apply

To the extent a hearing officer performs quasi-judicial functions, judicial immunity is protective.³⁹ However, it is not always clear whether judicial immunity applies to a failure to accommodate a disability. At least one federal circuit

has held there is no judicial immunity from prospective and injunctive relief when a judge violates the ADA.⁴⁰ In contrast, in a local case, *Duvall v. Kitsap County*, a judge who denied a motion for real-time transcription as an ADA accommodation was held absolutely immune.⁴¹

Judicial immunity may not protect administrative staff. In *Duvall*, a question of fact existed as to whether a court administrator who denied the accommodation request was acting in an administrative capacity (providing no immunity) or a quasi-judicial capacity (immune).⁴²

Whether immunity protects someone who wrongly denies accommodation as an administrative act is doubtful. "Absolute judicial immunity does not apply to non-judicial acts, i.e., the administrative...and executive functions that judges may on occasion be assigned to perform."⁴³

To avoid liability, hearing officers and agency staff should err on the side of accommodation.

C. Accommodating Pro Se Litigants with Disabilities

The vast majority of litigants in administrative hearings appear *pro se*. When a person with a disability represents her/himself, there may be no intermediary between the agency and the litigant on the subject of necessary accommodations. In these circumstances, it is extremely important for hearing officers and agency staff to be alert to potential disability issues, communicate effectively and respectfully, and determine the appropriate accommodation if necessary.

The litigant with a disability may not be aware of the possible barriers to access or the accommodation process. S/he may not specifically request an accommodation, but will need one. The hearing officer and agency staff should be alert and look for potential disabilities that could present access issues and suggest possible accommodations.

Additionally, there are several aspects unique to the administrative hearing process where people with disabilities may need special accommodations when they are not represented by a legal advocate. The following sub-sections provide "Best Practices" on how to accommodate issues specific to *pro se* litigants.

1. Best Practices: When The Litigant Does Not Appear – Is It Because Of A Disability?

At a significant number of hearings (over 70% of public benefits hearings⁴⁴), the litigant fails to appear. When this occurs, before issuing a default order it is important for the hearing officer to first inquire whether the litigant may be absent due to a disability that has not been accommodated. The following steps are recommended, and most can be completed in less time than originally scheduled for the hearing:

- First, check to see if the litigant requested an accommodation when s/he requested the hearing. For example, the litigant may have told agency staff by phone that s/he needed large-print notices, but was not provided any.
- Check any proposed exhibits previously submitted by either party to see if there is any information about whether the litigant has a disability, or evidence of such a disability. (Note: This inquiry is only for the purpose of ascertaining if an accommodation is necessary and is separate from the hearing itself, so documents may be consulted for access issues even if they have not yet been admitted as part of the hearing record.)
- In hearings when the appealing party is DSHS, ask the fair hearing coordinator if the litigant has an "Equal Access" plan⁴⁵ (formerly "Necessary Supplemental Accommodation" or "NSA"), even if such a plan has not been submitted as an exhibit. If there is an Equal Access plan, it will inform the hearing officer as to what accommodations may be necessary.

After the above inquiry, if it appears the litigant may have a disability that was not accommodated and the lack of accommodation may have been a reason the litigant did not appear, continue the hearing to provide an opportunity for further inquiry.

It is important to ensure that a person's disability does not limit her/his access to an administrative hearing. When there is an indication that a disability may not have been accommodated, it is important for the hearing officer and staff to be proactive.

2. Best Practices: Helping *Pro Se* Litigants with Disabilities Develop the Record

It is important that the record be as complete as possible. Hearing officers have an affirmative duty to develop the record to the extent necessary to reach a fair and informed decision. This includes impartially questioning witnesses, calling additional witnesses, and requesting additional exhibits.⁴⁶

Some litigants with disabilities may have limitations as to how much they can provide for the record. As a result, the hearing officer may be required to take on a larger role in developing the record. For example, someone with a physical disability may lack the mobility to collect documents from various locations. A person with a cognitive disability may not understand the legal aspects of her/his situation well enough to tell the part of her/his story that could be dispositive.

In such instances, the hearing officer should be inquisitive in questioning the litigant and witnesses. The hearing officer should request specific records from the parties and leave the record open to provide time to submit them. Other accommodations may also be necessary to help someone with a disability provide evidence for the record. For example, the hearing officer may need to subpoena account records from a financial institution.

3. Best Practices: When the Litigant Is Not Capable of Representing Herself Because Of A Disability

A hearing officer's duty to develop the record includes the responsibility to determine if the litigant has the capacity to effectively present her/his case *pro se*. This capacity includes not only the ability to provide oral testimony, but also the ability to gather and submit relevant evidence and present a cogent argument.

It may not be clear initially that the litigant lacks the capacity to appear and represent her/himself *pro se*. For example, many persons with psychiatric or cognitive disorders are able to mask their disability effectively. Refer to the "Pro Se Capacity Questionnaire" in Appendix F to help determine a person's capacity to represent one's self.

When a litigant's disability prevents her/him from effectively representing her/himself, providing the services of a legal advocate is the only effective accommodation. A wide variety of disabilities could require a legal advocate as an accommodation. Some examples:

- A person with an intellectual disability does not understand the proceeding.
- The stress of the hearing puts a person with chronic heart disease at risk of a heart attack.
- The stress of the hearing results in a person acting irrationally or inappropriately, or on the other hand, receding into silence.
- A person with a learning disability cannot submit relevant documents as evidence because s/he cannot read them.
- A person with Parkinson's disease does not have the energy to fully participate in the hearing.

Once it becomes clear that the litigant lacks the capacity to represent her/himself due to a disability, the following steps are recommended:

- Immediately stop the hearing and continue it to a later date. If the proceedings commence before an accommodation is provided, it could be a violation of Title II of the ADA.
- Try to ascertain if the litigant currently has a guardian, legal advocate, or other representative who is not present at the hearing. If so, that person should be contacted to determine if they will be representing the litigant at the re-scheduled hearing.
- If the litigant does not currently have a representative, provide for the appointment of a legal advocate.

The Washington State Supreme Court has adopted GR 33, which provides a procedure for appointing an attorney

at public expense as an accommodation in court proceedings. State agencies should adopt similar procedures for appointing a legal advocate for people whose disabilities impair their access to the administrative hearing system. See the Model Rule provided in Appendix A.⁴⁷

4. Best Practices: De-escalating Tense Hearing Situations

For a *pro se* litigant, attending a hearing is often stressful, confusing or overwhelming. Sometimes frustration can lead to strong expressions of emotion, the raising of one's voice, or other behavior that is not conducive to an efficient proceeding.

Such behavior can occur with anyone, regardless of whether they have a disability. However, sometimes an impairment will be a contributing cause of the anxiety or confusion, or a psychiatric disorder could lead to behavior outside of social norms. In such instances, de-escalating the situation becomes necessary as an accommodation.

Here are some tips on de-escalating a tense situation:

- **Acknowledge the emotion.** Let the person know that the emotion they are feeling is legitimate; it is the behavior that is not acceptable. For example, "Mr. Jones, I understand that you are frustrated; and that's okay. But it is important that we all speak at an appropriate volume and one at a time."
- **Emphasize institutional constraints.** For example, "It's important we all speak slowly so the audio recorder can pick up everything we are saying."
- **Take a break.** Sometimes the easiest way to stop the escalation of emotion is to take a five minute break from the hearing. It is important to communicate that the recess is not punishment and will not affect the disposition of the case.
- **Let them vent.** Sometimes a person just needs to get something off their chest. If they are in control of their behavior and their tone of voice is not unreasonable, it is acceptable to allow emotional testimony.
- **Try to empathize.** Participating in the hearing process without representation is intimidating. The stress is compounded if an unfavorable ruling could lead to an inability to pay one's rent or the termination of medical treatment. Understanding the gravity of someone's situation will help to find the patience to practice the techniques outlined above.
- **Do not reciprocate.** Speak slowly in a calm, respectful voice. Breathe slowly and deeply. Model the demeanor and behavior that you want to see reciprocated.

5. Best Practices: Challenges of Phone Conference Hearings When Accommodating Disabilities

A phone conference can sometimes be a convenient method for holding a hearing, but it presents its own challenges. During an in-person hearing, the hearing officer can often see whether a disability is being effectively accommodated. For example, the hearing officer can see the litigant or a witness hold a document close to her/his face to try to read it, a look of confusion, or the beginning signs of an anxiety attack.

In a phone hearing, a lot of these barriers to access are invisible to the hearing officer. Someone may be reluctant to raise the issue on the phone or may not realize that an accommodation is available. Therefore, the hearing officer should ask questions early and often to screen for access issues.

It is important, if possible, to establish that all participants have their impairments accommodated at the very beginning of the hearing. Some examples of questions to ask:

- "Can you hear me all right over the phone? If at any point you don't hear or understand what someone says, don't hesitate to let us know and we'll repeat it."
- "Are you in a place right now that is comfortable for you?"
- "Do you have the exhibits in front of you now? Are you able to read them? If at any point someone starts talking about a document that you don't have in front of you, let me know right away."

- "If at any point during the hearing anyone wishes to take a break, just let me know."

Periodically during the hearing, check in to see if the participants can still hear, need to take a break, or are becoming physically or mentally uncomfortable. When someone starts to speak about an exhibit, ask if everyone else has it in front of them. Wait until they find it before proceeding.

D. Alternative Hearing Locations

Sometimes a litigant's disability will limit her/his ability to attend her/his hearing at the scheduled hearing location. For example, s/he may be unable to travel to the location or unable to enter the hearing room on a mobility device. A psychiatric disability may leave her/him unable to handle the stress of sitting for an hour in a small confined space with strangers. In many cases like these, the litigant may welcome a telephone hearing as a reasonable accommodation.⁴⁸

However, a telephone conference is not an adequate accommodation for a litigant who requests an in-person hearing. In public assistance cases, litigants have a right to request an in-person hearing and do not have to show good cause.⁴⁹ Litigants may want in-person hearings for a variety of reasons. For example, they may want to see the person who will decide their case, or they believe it is most fair to them to be seen and heard in person.

There are often cases where it is important for the hearing officer to see the litigant face-to-face. Credibility can be difficult to determine by phone and this difficulty can be compounded when the litigant has a disability. Often a litigant's disability or limitation itself will be an issue for the hearing.

When a litigant requests an in-person hearing but cannot access the typical location, an alternative hearing location is required. In public assistance cases, state law requires a "location in Washington convenient to the litigant."⁵⁰ This may include a nursing home or other institutional residence, a hospital room, or the litigant's residence.

An in-home hearing is sometimes necessary for a litigant who is unable to travel for medical or associated reasons. For example, someone with multiple sclerosis may not be able to leave her/his home. For litigants with an anxiety disorder such as agoraphobia (fear of public places), the hearing should be held with the hearing officer in a location where the litigant is comfortable, which may be her/his home or the home of a loved one. This accommodation may also require that the fair hearing coordinator and/or witnesses appear in person at the alternative location, rather than by phone.

E. Hearing Notices

The hearing notice is sometimes the most important document in the hearing process. It informs the litigant when and where the hearing will be held, how to request any necessary accommodations, and possibly what phone number to call to seek a free legal advocate. If the litigant cannot read the hearing notice or does not understand it due to a disability, s/he is denied access to the administrative hearing system from the start.

The hearing notice should be written in the plainest language and communicated by the most effective means possible. It is also important to draw attention to the most essential pieces of information and avoid burying them in the middle of paragraphs.

The notices should provide clear instructions on how to request an accommodation and what accommodations are available. Often when a person reads the word "accommodation," they think of wheelchair accessibility or sign language interpreters, but not an accommodation that may apply to their situation. For example, someone may not realize they can request frequent breaks from the hearing to accommodate their anxiety disorder. For this reason, a non-exhaustive sample of accommodations should be listed. For example:

- schedule the hearing for a different day
- schedule the hearing for a different time

- allow frequent breaks during the hearing
- provide documents in large print
- have document content communicated in sound
- conduct the hearing in an alternative location
- provide a sign language interpreter
- provide a legal advocate
- allow a friend or family member to attend and help explain what is happening.

The notice should also attempt to fully inform the litigant of the availability of free legal counsel. Seeking legal representation should be *encouraged*. It should make it clear that available services are completely independent of the government and having a legal advocate will not negatively affect the disposition of their case. For many people with disabilities, having a legal advocate is the accommodation necessary for full and meaningful access to administrative hearings. A “Model Notice” is provided in Appendix B.



IV. Providing Access: Psychiatric and Cognitive Disabilities

A. General Considerations

Ensuring access for someone with a psychiatric or cognitive disability is just as important as accommodating a physical or sensory disability. However, the appropriate accommodation is not always obvious and the person with the disability may not know to request it.

First, the person with the disability may not realize that an accommodation is available. For example, a person who has trouble concentrating for long periods of time may not realize that frequent breaks may be provided. Second, a hearing is a unique event where people may confront impairments that are not generally experienced in their daily life. For example, someone may not generally experience anxiety attacks, but the stress of the hearing could lead to one unexpectedly.

For these reasons, hearing officers and agency staff should be proactive in identifying potential impairments and suggesting available accommodations. This chapter is intended to help facilitate this process by providing descriptions of common diagnoses, the impairments that often accompany the diagnoses, and ideas for accommodating the impairments.

The impairments experienced by people with psychiatric and cognitive disabilities vary greatly between individuals – even between individuals with the same diagnosis. What constitutes a reasonable accommodation depends upon the particular individual and the particular circumstances.

Terminology and the Structure of This Chapter

Attempting to divide mental disorders into categories risks over-generalization and arbitrary distinctions. Even the diagnosis of particular disorders is an inexact science. The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) states the following:

[T]here is no assumption that each category of mental disorder is a completely discrete entity with absolute boundaries dividing it from other mental disorders or from no mental disorder.⁵¹

However, some categorization is necessary to organize information effectively. With the above caveats in mind, this chapter organizes the common causes of mental impairments in two categories: psychiatric disabilities and cognitive disabilities.

Psychiatric disabilities are sometimes referred to as “mental illness.” The most common diagnoses are anxiety disorders (such as panic disorder or post-traumatic stress disorder), mood disorders (such as depression or bipolar disorder), and schizophrenia disorders.⁵² Many individuals with psychiatric disabilities fall in the same range of

intelligence and cognitive function as individuals without any mental impairments.

Cognitive disabilities are characterized by impairments to attention, orientation, memory, problem solving, judgment, information processing, or behavior.⁵³ Cognitive disabilities include intellectual disabilities (a type of developmental disability formerly known as “mental retardation”) and certain learning disabilities (such as dyslexia), and can also stem from organic brain syndrome, Alzheimer’s Disease and other dementias, and stroke.⁵⁴

While psychiatric and cognitive disabilities share some common features, it is important not to broadly generalize all mental impairments. A person with depression may be offended if someone assumed she had a low IQ, just as a person with an intellectual disability may be offended if someone assumed she had a mental illness.

It is also important to remember that it is the *impairment* that is being accommodated, not the diagnosis. This chapter provides information on disabilities to help hearing officers, agency staff members and others identify potential impairments and suggest accommodations.

B. Psychiatric Disabilities

Psychiatric disabilities vary greatly in type and severity. Psychiatric disabilities can affect learning, judgment, and communication, but many people have no cognitive limitations, and, when they are not experiencing symptoms, are fully capable of understanding and participating in the administrative hearing system. Many people experience symptoms episodically, and are able to work and actively participate in the community much of the time.

1. Assessing Credibility

Sometimes when a person with a psychiatric disability offers testimony, the traditional non-verbal markers of credibility may not be present. For example, s/he may not answer questions directly, or may talk rapidly and stray off topic. But while a disability or medication may cause someone to speak or behave in a way that is atypical for their culture, in most cases it should not affect an assessment of credibility.

Even the testimony of a person who is experiencing delusions should not be wholly dismissed as lacking credibility. For example, someone may testify about a governmental conspiracy against her/him and how s/he was called by a government employee. The testimony about the phone call may be credible, even if the interpretation of a conspiracy is not.

2. Accommodating the Side Effects of Medication

Most psychiatric disorders can be effectively treated, but the side effects of medications can cause impairments. For example, some anti-psychotic medications (used to treat schizophrenia disorders) can cause anxiety, insomnia, motor restlessness, and involuntary muscle contractions.

Anti-depressant medications (used to treat depression and sometimes bipolar disorder) can cause nausea, diarrhea, agitation, dry mouth, blurred vision, drowsiness, and dizziness. Benzodiazepines (used for treating anxiety disorders, epilepsy, and alcohol withdrawal) can cause drowsiness, dizziness, and decreased concentration.

3. Common Disabilities and Impairments

a. Anxiety

According to the National Institute of Mental Health (NIMH) “more than 19 million adult Americans ages 18 to 54 have anxiety disorders.” Symptoms can range from mild discomfort to anxiety attacks. The anxiety could be a reaction to large crowds, public places, confined spaces, or situations similar to past traumatic events. In severe cases, a person may rarely leave their home.

Common impairments: difficulty coping with stress and emotions, dealing with change, maintaining concentration, and disorganization.

Special accommodation issues: If someone has an anxiety attack during the proceeding, allow for an extended break or continue the hearing and provide for accommodations that will reduce the risk of future anxiety attacks, such as an alternative hearing location. (See Chapter III, Section D.)

b. Post Traumatic Stress Disorder (PTSD)

PTSD is a debilitating condition that can occur after one is exposed to a traumatic event in which s/he experienced harm, was threatened with harm, or witnessed someone else experiencing harm. Traumatic events most often associated with PTSD include sexual assault, combat exposure, childhood neglect or abuse, an automobile accident, and physical attack.⁵⁵

Common impairments: difficulty coping with stress and emotions, dealing with change, maintaining concentration, memory deficits, diarrhea/vomiting/nausea, and disorganization.

c. Depression

Depression is an illness that involves feelings of sadness lasting for two weeks or longer, often accompanied by a loss of interest in life, hopelessness, and decreased energy. Such distressing feelings can affect one's ability to perform the usual tasks and activities of daily living.

Common impairments: difficulty coping with stress and emotions, maintaining concentration, maintaining stamina, and memory deficits.

d. Bipolar Illness

Bipolar illness is characterized by alternative periods of mania and depression, each of which can last days, weeks or months. These extremes may or may not be separated by periods of "normal" mood.

Periods of mania can include increased energy, restlessness, racing thoughts, euphoric feelings, extreme irritability, unrealistic belief in one's abilities, poor judgment, abnormal behavior, and denying anything is wrong. Periods of depression can include feelings of sadness, loss of interest in life, hopelessness, chronic pain, and decreased energy.

Common impairments:

- Mania: problems coping with stress and emotions, hyperactivity/impulsivity, and maintaining concentration.
- Depression: difficulty coping with stress and emotions, maintaining concentration, maintaining stamina, and memory deficits.

Special accommodation issues: If the person with bipolar disorder generally has periods of a "normal" mood between manic and depressed periods, but is in a manic or depressed state during the hearing, it may be worth rescheduling the hearing until after the manic or depressed episode has ended.

e. Schizophrenia

Schizophrenia is characterized by abnormalities in the perception or expression of reality. It can manifest as distortions in perception, delusions, or disorganized speech or thinking. Antipsychotic medication is often effective, but side effects can include anxiety, insomnia, motor restlessness, sedation, or involuntary muscle contractions.

Common impairments: difficulty completing paperwork, coping with stress and emotions, maintaining concentration, maintaining stamina, and disorganization.

C. Cognitive Disabilities

Many people with cognitive disabilities have limited education or were provided an alternative education. If you suspect that a person has a cognitive disability, an inquiry about their education is a respectful way to help determine what impediments s/he may encounter.

Often the best accommodation for people with cognitive disabilities is to ask short, simple, targeted questions. Sometimes this is the only accommodation necessary. But as with any disability, what constitutes a reasonable accommodation depends upon the particular individual and circumstances. The major barriers to access for persons with cognitive disabilities are unnecessary complexity and ineffective communication.

1. Independence

Most persons with cognitive disabilities are capable of making (and are entitled to make) their own choices and decisions. Very few have guardians who act for them. A person who has a guardian will still have preferences and want to make choices, and often the authority of a guardian is limited.

Family members, friends, and service providers may play a major supportive role. Agency staff can look to these individuals for help, so long as care is taken to preserve confidentiality and avoid conflicts of interest between the person with the disability and her/his helpers. Agency staff should consult the person with the disability before asking others for information or decisions.

2. The Importance of Respectful Language

Many people with cognitive disabilities, especially those with intellectual disabilities, have been teased and exploited throughout their lives. Agency staff and hearing officers should be careful about language. The term “retarded” persists in legal documents and medical practice, but it is a common taunt and is often a slur. Labels can usually be avoided. Where a descriptive term is necessary, “intellectual disability,” “developmental disability,” “cognitive disability,” or “learning disability” are acceptable. Staff may ask for and use the term the person uses when referring to her/his disability.

3. Documents and Forms

For those with cognitive disabilities, legal language is a particular challenge. A few steps will make a big difference:

- **Content:** Eliminate unnecessary complexity. Most laypeople have trouble understanding hearing notices or completing forms — those who have cognitive disabilities are at an even greater disadvantage. Get rid of unnecessary legal jargon. Use simple language.
- **Simplicity:** Shorten forms — ask only for information that is needed.
- **Font:** Large print (greater than 12 point) is easier for slow readers to follow.
- **Assistance:** Assistance with the completion of documents can make all the difference to a person with limited literacy who is trying to navigate an unfamiliar system. Information is always appropriate (“this form is for people who have children”). Remember to avoid giving advice as to what the person should choose when there are options.⁵⁶ In some cases, appointment of a legal advocate is the appropriate accommodation.

4. Providing Training For Agency Staff

The single most important means of ensuring access for people with cognitive disabilities is to educate and motivate agency staff so they can provide effective assistance. Local advocacy organizations can be a resource for training in effective communication. Completing a program for all staff may take time, but the first and most important step is to include such training in the agency’s ADA compliance plan.

Training should include the following:

Recognizing cognitive disabilities. Some people have physical characteristics associated with a well-known cognitive disability. Usually, however, you cannot tell by a person’s appearance. Recognizing the presence of these disabilities is particularly challenging because many people try to conceal difficulties with writing, reading, or

other skills. Staff should learn to look for signs of decreased ability to reason and/or think independently, and how to offer help.

Communicating. When assisting a person with a cognitive disability, it is imperative to be calm, speak slowly and clearly, and use concrete, simple language. Staff should be taught how to show respect and patience while using their time well, how to communicate effectively in non-technical and jargon-free language, how to notice signs of frustration or loss of focus that may indicate a need for a break, and how to get other assistance when it is needed.

5. Suggestions for Accommodating Cognitive Impairments

- Use short sentences and basic, concrete vocabulary. Speak slowly. Break information down. Use pictures, audio, actions or examples to convey meaning.
- Speak directly to the person, in a neutral manner.
- Recognize “false positive” answers. Many people with cognitive disabilities have learned that it is easiest to just say yes, which may indicate they understand or agree when really they are completely lost or confused. A question like, “Do you understand?” often will get a false “yes” response, whereas “Would you like me to show you the way?” may produce a truly grateful response.
- Repeat instructions or questions using different phrasing.
- Be discreet. A person who is confused and lost may try to hide the fact, or be too embarrassed to say she cannot read the form she must fill out. Usually, however, there are signs of difficulty recognizable by those who are alert. Staff should not wait to be asked, but should offer help if it appears to be needed.
- Allow the presence of a “cognitive interpreter.” Some people with cognitive disabilities may have a friend or family member who is the only one able to explain things to her/him in a way s/he understands. Such a person is not just a support person; s/he serves as an interpreter, translating complicated language and circumstances for the individual with a disability.
- Appoint a legal advocate. Be alert to the possibility that an unrepresented person with a cognitive or other mental disability may need to have counsel appointed as an accommodation.⁵⁷

6. Common Cognitive Disabilities and Associated Impairments

Many diagnoses can lead to cognitive impairments, including multiple sclerosis, depression, alcoholism, Alzheimer disease, Parkinson disease, traumatic brain injury, chronic fatigue syndrome, stroke, and many others. Three examples are given below to illustrate how some impairments may be accommodated.

a. Intellectual Disabilities

A person’s level of intellectual disability is defined by intelligence quotient (IQ), and by the types and amount of support needed. Intellectual impairments are characterized by a significantly below-average IQ and by limitations in adaptive skills such as communication, self-care, and getting along in social situations and school or work activities. There are different degrees of impairment, ranging from mild to profound. Ten to forty percent of people with intellectual disabilities have a dual diagnosis. Examples of coexisting conditions include: cerebral palsy, seizure disorders, vision impairment, hearing loss, and attention-deficit/hyperactivity disorder.

Common impairments: disorganization, memory deficits, physical limitations, reading, and writing.

Special accommodation issues: With people with intellectual disabilities, it is important to provide emotional support with positive feedback.

b. Learning Disabilities

Learning disabilities can affect the ability to understand or use spoken or written language, do mathematical calculations, coordinate movements, or direct attention. Although learning disabilities occur in very young

children, the disorders are usually not recognized until the child reaches school age.

Learning disabilities are a lifelong condition; many people develop coping techniques through special education, tutoring, medication, therapy, personal development, or adaptation of learning skills. Approximately 15 million people have learning disabilities in the United States.⁵⁸

Common impairments: completing paperwork, disorganization, memory deficits, reading, spelling and writing.

c. Attention Deficit-Hyperactivity Disorder

People with AD/HD may develop some of the limitations listed below, but seldom develop all of them. Also, the degree of limitation will vary among individuals. Be aware that not all people with AD/HD will need accommodations; most may need only a few accommodations. The following is a sample of the many possibilities available. Numerous accommodation solutions may exist.

Common impairments: completing paperwork, disorganization, hyperactivity/impulsivity, maintaining concentration, and memory deficits.

Special accommodation issues:

Social Skills: Individuals with AD/HD may have limitations in adaptive skills, such as communicating with others, or exhibiting appropriate social skills. This might manifest itself as interrupting others or talking, demonstrating poor listening skills, not making eye contact when communicating, or inability to correctly read body language or understand subtle meanings or innuendo.

- Use training videos to demonstrate appropriate behavior in administrative hearings
- Provide sensitivity training (disability awareness) to agency staff
- Allow the person to provide taped or recorded testimony
- Adjust the method of communication to best suit the needs of the individual
- Use role-play scenarios to demonstrate appropriate behavior

Time Management: Individuals with AD/HD may experience difficulty managing time, which can affect their ability to mark time as it passes incrementally by minutes and hours.

- Divide long questions into shorter ones
- Provide a checklist for the points you need covered

d. Traumatic Brain Injury (TBI)

People with TBI may develop some of the limitations discussed below, but seldom develop all of them; it depends greatly on the nature of the injury. Also, the degree of limitation will vary among individuals. Be aware that not all people with TBIs will need accommodations and many others may only need a few accommodations. Numerous accommodation solutions may exist.

Common impairments: difficulty completing paperwork, coping with stress and emotions, maintaining concentration, maintaining stamina, reading, visual problems, writing, physical limitations, memory deficits and disorganization.



V. Providing Access: Sensory and Physical Disabilities

The following provides an introduction to some common types of physical impairments and information about some effective accommodations. What constitutes a reasonable accommodation depends on the particular circumstances; the information provided is not nearly comprehensive.

A person with a sensory or physical disability will often know what accommodation best fits her/his situation. In choosing among different alternatives, agencies must try to abide by the preference of the person needing the accommodation. The ADA requires public entities to give “primary consideration to the requests of the individual” in deciding what auxiliary aid or service is necessary.⁵⁹

A. Hearing or Other Communication Disability

Hearing loss varies greatly. A person with mild hearing loss may not be greatly affected in the activities of daily living. Once hearing loss is at a moderate level, however, it is likely that a person will not understand or misunderstand speech. Assistive technology can bridge the communication gap.

Communication disabilities may have many causes, including congenital, medical, developmental or other conditions. A stroke or accident can affect speech or hearing, illness can alter speech patterns, and some conditions such as autism can prevent voiced communication.

People with hearing loss or other communication disabilities may feel especially intimidated by administrative hearing proceedings. They may be distrustful and reluctant to acknowledge confusion or uncertainty. Patience and flexibility are vital.

Most people with hearing loss or communication challenges use some type of gestural sign language or assistive technology in order to communicate effectively. The agency must provide a qualified interpreter or other effective assistive technology at every stage of the hearing process for persons who are deaf, deaf/blind or hard of hearing, and should make this capacity known to the public.⁶⁰ RCW 2.42.180 gives the presiding officer in a legal proceeding discretionary authority to order visual recording of a proceeding involving a person with a hearing loss.

1. Sign Language Interpreters

Washington law requires agencies to provide qualified interpreters for a party or a witness “who because of a hearing or speech impairment cannot readily understand or communicate in spoken language[.]”⁶¹ (Note that many persons who are deaf consider the term “impairment” offensive.)

There are four common methods of interpreting:

a. American Sign Language (ASL). ASL is a language distinct from English. Its grammatical structure and syntax is different, sometimes requiring the interpreter to hear and understand the complete spoken sentence before interpreting its meaning. An ASL interpreter also utilizes bodily gestures and facial expressions.

b. Signed Exact English (SEE). This method involves a virtually verbatim translation of English words and phrases by signs, including the use of finger signs for letters to fingerspell words for which there are no signs.

c. Relay Interpreting. When a person is not able to communicate fully by use of ASL or signed English, a specially trained relay interpreter may be able to assist by “relaying” signs from an ASL interpreter to the deaf person. Relay interpreters are specially classified by the Registry of Interpreters for the Deaf as Certified Deaf Interpreters (CDI).

d. Oral Interpreting. This method involves the use of a combination of lip reading, interpreting body language, signs, and gestures to convey meaning, and is not literal. This is generally considered to provide the least accurate or comprehensive understanding to the deaf person.

Note on lip reading: Only five to 26 percent of what is spoken can be lip-read. Lip reading should not be considered an accommodation option unless specifically requested *after* other options have been offered. Lip reading is ineffective as an accommodation in all but specific situations when requested by the person with the disability.

2. Sign Language Considerations

Scheduling is often critical. Interpreters usually have multiple obligations that cannot be rescheduled if a hearing runs longer than expected. If interpretation is needed for more than 60 minutes, it will usually be necessary to have a team of two interpreters who can alternate with each other every 30 minutes, to avoid the fatigue that accompanies lengthy sign language interpreting.

The **physical layout** of the hearing room should consider sightlines and lighting, and seating arrangements should provide for the person who is deaf to clearly see both the speaker and the interpreter.

Sign Language Certification. Sign language interpreters are not regulated in Washington, and their skills vary. This makes it more difficult for agencies to identify qualified interpreters.⁶² There is, however, a professional certification system, through the Registry of Interpreters for the Deaf (RID). The RID certifies skill levels and competence for particular venues, including legal settings, and requires continuing education and compliance with ethical standards. RID certification is granted in levels based upon experience. There is a top-level certification for legal interpreting, but to date there has been little incentive for interpreters to acquire it. Administrative hearings in Washington must utilize either interpreters with some level of RID certification, or an interpreter who can “readily translate statements of speech impaired persons into spoken language.”⁶³

Hearing-loss specialist organizations can provide technical assistance in the selection process, and can assist in understanding how to hire and use interpreters, effective room layout for hearings, uses of technology, and can provide one-on-one communication assistance.

Ethics. It is inappropriate to have a family member, friend, student or volunteer act as a qualified interpreter in a court proceeding.⁶⁴ Sign language interpreters are never a source of information, and it is a violation of their ethical canons to disclose information gained as a result of an interpreting assignment.⁶⁵

Interpreter Referral Service Agencies. In many communities there are local interpreter referral services, and local service agencies may offer suggestions for effective communication. The law requires certain entities to maintain current lists of certified interpreters.⁶⁶ The Washington State Office of Deaf and Hard of Hearing is required to maintain this list and contracts with referral organizations statewide to provide interpreters from the list. It is best to use a vendor familiar with providing interpreters for legal settings.

Steps for the Agency. As with any interpreter, the hearing officers and agency staff should know the appropriate role of the sign language interpreter, including the interpreter’s ethical constraints and the procedures set forth in RCW 2.42.010, *et seq.* This process is facilitated if an appropriate agency staff person is identified to work with sign language interpreter referral agencies and other service providers (such as assistive technology experts and ADA

resource centers) to assure that appropriately screened and monitored professionals are providing services and that proper equipment is available. Continuing education for hearing officers and agency staff regarding use of sign language interpreters is strongly encouraged.

3. Assistive Listening Systems

Many people use assistive listening devices (ALDs) to facilitate effective communication in public settings. Note that the microphones used in many assistive listening systems are very sensitive and may pick up distracting sounds like the rustle of papers on the other side of the room. In addition, users of infrared (wireless) systems should consider that objects or people may inadvertently block signal transmission.

FM Broadcast

These devices utilize an FM transmitter, which can be worn by the speaker, and pocket-size receivers with earphones or neck loops connecting to personal hearing aids equipped to receive the signal. These systems can be highly portable. However, the signal is not confined to the room in which the system is located and can be picked up outside the room. Also, signals from nearby radio sources using the same or similar frequencies may cause interference in the signal transmission.

Infrared Light

The transmitter in these systems utilizes infrared light waves traveling by line of sight, broadcasting to individual pendant-type receivers connected to earphones or to neck loops connected to personal hearing aids. These systems are also available in a portable form. In large rooms, the sound system must have an output port that can be connected to a portable infrared transmitter, which can then be placed in a location that permits transmission to the receiving units. For small rooms, an omni-directional microphone connects to the portable transmitter. This system does not transmit through walls or solid surfaces and thus does not broadcast beyond the room in which the transmitter is located. The two principal potential disadvantages are that the system requires a direct line of sight between the transmitter and the receiver, and it is ineffective in direct sunlight.

Audio Induction Loop

In these systems, the transmitter sends an electromagnetic signal directly to personal hearing aids equipped with telecoils or to pocket size receivers connected to earphones. Portable systems are available. This technology requires installation of a loop in the ceiling or floor of the room and the receiving units must be within the loop to receive the signal. Adjacent rooms next to or directly above or below the loop system cannot use the same system because there is some “spill over” of the signal into those rooms.

CART: Computer-Assisted Real-Time Transcription; Note-Takers

For deaf persons who do not use sign language, those who are hard of hearing and others with a communication disorder who can read printed English words moving on a screen, CART is the most effective aid. A CART transcriber in the hearing room, or a remote transcriber using an internet connection, types a record of the activity in the room in real-time, which is then displayed on a large screen visible to everyone in the room. It is not an official transcript, nor is it usually retained for further use.⁶⁷ The literacy level of the user may require regular pauses to clarify the language on the screen. The court will also need a dedicated high-speed Internet access line, as most CART service providers operate from a remote location through the Internet. CART transcribers' charges are similar to those for court reporter services but may have longer minimums and may not accommodate short proceedings. (Some Internet based providers do one-hour proceedings.)

Additionally, professional note takers may sit next to a person with a communication disorder and provide individual written support using specialized software and equipment.

Teletypewriters (TTYs — also known as TDDs)

These small keyboard devices enable the parties in a telephonic “conversation” to communicate by typing out the words rather than speaking them. A TTY user types a message that either appears on the screen of a TTY at the other end of the line or is received by a relay service (see below) in which a relay operator reads the typed message to the other party. Current technology allows outgoing TTY calls to be made over the Internet, through various

providers such as Sprint and AT&T. Each agency office should have a TTY, and all personnel who make or receive phone calls as part of their work should be trained in recognizing TTY calls, using a TTY, and in the etiquette of using TTYs. The agency should advertise this capability in appropriate venues. Guidelines for provision of TTY phones can be found in the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG).⁶⁸

Telecommunications Relay Service

This is a 24-hour, free service that provides relay operators to facilitate telephone communication between two parties, only one of whom has a TTY. The operators translate written text received from a TTY into speech or vice versa. Toll free numbers for this service are provided in local phone directories. Dialing 711 will reach an operator nationwide. Staff should know how to use the relay service.

Videophones

Some state agencies are beginning to install the latest and best technology: Videophones. Videophones offer the ability to connect either point-to-point with another Videophone user, or by video relay to a remote sign language interpreter who can see the sign language and voice it to a hearing person (and vice versa) using the Videophone. This self-contained and portable technology allows faster and more accurate communication, and may be a resource for hearings in remote areas. Interpreter services are available for assignment through Internet-based providers, and can be contracted to perform interpreting through the Videophone. Internet based interpreting may be an especially good option in rural areas or for short proceedings.

Both TTY telephone numbers and Videophone addresses should appear on all official court communications, including jury summonses, along with instructions for requesting communication accommodation.

Hearing Aids

Use of personal hearing aids may be sufficient for some persons with hearing loss (there may be a need to change batteries in extended proceedings).

Training for Staff

Agency personnel should be trained in the use of commonly-used assistive aids, and should know how to offer assistive technology in an effective way.

4. Writing

Written communication should be used sparingly as a form of accommodation. Information that would be conveyed orally is often left out of written notes, and there are significant differences in grammar and syntax between English and other languages such as ASL. Additionally, some hard of hearing individuals were provided a childhood education entirely in ASL; they may not understand written English.

Written notes should be used only for simple communications such as requesting or giving a telephone number or address.

5. Direct Communication

When communicating with a person with hearing loss, it is vital to interact directly with the person, not with the interpreter. Keep your face within view, and do not cover your mouth while speaking. Many deaf or hard of hearing people use visual lip and facial cues even when an interpreter is present; objects in or near the mouth of the speaker may interfere with understanding. A person may need to sit close to the speaker and interpreter to receive the visual cues. A person with a hearing disability may be reluctant to interrupt to say that s/he cannot hear, so frequent but respectful checks should be made, and some signal should be established to indicate a need to slow down or have something repeated or explained.

6. Voice Volume

A person who is hard of hearing may not realize how loudly s/he is talking. Speech volume should not be taken

for anger, nor trigger an angry reaction, until it is ascertained whether the speaker is hard of hearing. Conversely, it is not necessary to raise your voice to a hard of hearing or deaf person. It is most important to speak slowly and distinctly.

7. Other Considerations

- Confidential communications: It is important to ensure that private communications such as attorney-client discussions remain confidential.
- Extended time: Bridging communication barriers will likely increase the total time of a proceeding by a third to half.

B. Vision Disabilities

Vision limitations also vary greatly, and may range from mild or moderate losses of visual acuity to tunnel vision, night blindness or color blindness, to total lack of sight. Appropriate accommodations will be similarly varied, depending upon the specific nature and level of impairment. Only 10 to 15 percent of people with vision limitations 'see' total darkness. The majority can distinguish light, color, and/or form.⁶⁹

Enabling access for those with visual disabilities requires consideration of both communication and physical barriers.⁷⁰

1. Assistive Devices

For those who have some vision but have significant losses of visual acuity, assistive devices such as screen-reading software, specialized magnifying glasses or overhead projectors may be necessary for viewing documents and other exhibits. Such limitations may also require seating accommodations that place the person closer to witnesses or other evidence. For those with more substantial disabilities, accommodations may include providing documents in Braille or on audio tape, removing barriers to movement, or readers to read documents aloud. Useful new technology includes screen-reading software, which allows a blind person to "read" computer text by hearing it, and software that enlarges screen text. These programs are now inexpensive, and all websites should be made compatible.

2. Navigation

People must be able to navigate safely, locate offices and hearing rooms, and obtain information in a format they can use. They may need assistance traveling through crowded hallways or unfamiliar buildings. Agency personnel should be prepared to offer help, because the person with a vision disability will not likely know help is at hand. Not everyone will want assistance, so it is important to ask first.

Common types of navigation assistance include walking beside the person, offering your arm (it is not appropriate to take the arm of a person with a visual disability without permission), and giving verbal guidance, such as "There is a chair to your left." Unless there is imminent danger, never push or pull a person with a vision loss. In settings where more than one person is present, it is good practice for each speaker to identify themselves at the beginning of each statement. If you leave a blind person alone, let her/him know you are leaving. Respect boundaries, including those of guide dogs.

3. Noise

People with visual disabilities may depend upon auditory cues to identify nearby barriers, particularly when relying on the assistance of a sighted guide. Noisy environments or excessive background noise may make these important signals less effective.

4. Documents and Forms

People with visual disabilities often need help reading documents. Options include readers, taped texts, audio recordings, Braille, large print, or other methods of making visually delivered materials available to individuals with visual impairments.⁷¹ Braille is read by only a minority of people, but offers tremendous ease of use. Electronic media are likely to accommodate a broad group, because most people with visual loss will benefit from software that voices the written word or enlarges printed text (see “Assistive Devices” above).

Bold printing on white paper helps some people focus and read faster with less effort, while colored paper may benefit others. There is no single format for printing, because each individual has unique needs. Avoid background images, wrapping text, or shading. Use sans-serif fonts like Arial or Tahoma. Good color contrast is important, and a matte or dull paper finish is preferred.⁷²

Alternate formats for standard forms and notices should be available on request. For individually prepared documents such as initial or final orders, alternate formats should be made available in a timely fashion. Staff should be able to provide appropriate auxiliary aids and services, such as using a larger font, reading a document aloud, or completing forms for people who cannot see the blank spaces.

C. Mobility Limitations

People with mobility limitations may encounter obstacles getting to and entering the building where the hearing is located, or getting around once inside. The ADA mandates the “readily achievable” removal of architectural and structural barriers unless programs can be made accessible in some other way.⁷³ Whether or not barriers exist, the agency should ensure a continuous, unobstructed route from accessible public transportation and parking through an accessible public entrance into the areas where services are available.⁷⁴

The ADA does not necessarily require that each hearing room, office, or restroom be barrier-free. Rather, the services and accommodations of the agency, *viewed as a whole*, must be readily accessible and usable by people with disabilities.⁷⁵ When it is not feasible to serve a person in the same place others are served, the person must be served in the most appropriate integrated setting.⁷⁶

While a litigant with a mobility limitation might accept a telephone hearing as a reasonable accommodation,⁷⁷ a telephone conference is not an adequate accommodation for a litigant who requests an in-person hearing. Litigants have a right to request an in-person hearing and do not have to show good cause in public assistance cases.⁷⁸ (See “Alternative Hearing Locations,” in Chapter III, above.)

1. Navigation

The goal is to establish, clearly indicate, and maintain an accessible path of travel. There must be clear signage indicating the accessible route from parking and the exterior of the building to the hearing room. Care should be taken to prevent obstruction of the route by temporary barriers such as trash cans and construction work.

Identifying physical barriers is fairly easy using the ADAAG standards. Of particular concern are well-marked elevators, counter heights, the width of doorways, the force needed to open doors, the height of chairs and podiums, and clearance under tables. All staff must know the location of accessible restrooms.

2. Removing Barriers

There are many ways to remove barriers. Whenever possible, changes should be made before the time of the hearing to avoid calling undue attention to a disability.

3. Extending time

When persons move slowly, need assistance, or must travel to an accessible restroom, time for recesses should

be extended, and more recesses may be necessary. People with mobility limitations may tire easily and may need more frequent breaks.

4. Wheelchairs

Just as one would not suddenly or without permission touch another's body, one should not touch a wheelchair without permission or push a wheelchair without permission. Ask if the person wants help, offer to push, and then proceed carefully, minding your passenger's feet and the chair's turning radius, and keeping a safe distance from the vulnerable ankles ahead. Do not lean on a wheelchair.

Whenever possible, sit at the same level as a person using a wheelchair, and never loom over people using wheelchairs. Turning takes time in a wheelchair; do not suddenly or unexpectedly "appear" from behind.

5. Other Assistance

Wheelchair users vary in flexibility and strength. Doors can be a nightmare for anyone with a mobility limitation. Persons who are walking may need time to pass through crowded points, and may need the physical support of a railing or a cane. Carrying loose papers may be impossible. The key is to be watchful and provide assistance.

6. Planning for Emergencies: Do You Have an Exit Strategy for Everyone?

All state agencies must plan for disasters or other emergencies. Remember to plan for evacuation of people with disabilities.⁷⁹



VI. Accommodation Ideas for Common Impairments

The list below is not nearly comprehensive and is included to provide ideas of possible accommodations. The accommodation required will depend on the individual and the particular circumstances.

Making Paperwork Easier to Complete:

- Automate paperwork by creating electronic files
- Provide speech recognition software to enter text or data into electronic files
- Use pre-filled forms or adhering pre-printed stickers
- Use checklists in place of writing text
- Re-design commonly used forms
- Use simple language, avoiding legal jargon
- Use large font and double space or triple space
- Provide adequate space for hand written response
- Appoint a legal advocate

Coping with Stress and Emotions:

- Provide praise and positive reinforcement
- Provide sensitivity training for agency staff
- Provide a clear and simple description and explanation of the hearing process at the beginning of the proceeding
- Invite the person to ask for clarification if anything is confusing
- Provide written instructions
- Allow additional breaks to cope with frustration
- Allow the presence of a companion animal
- Allow the presence of a support person
- Train staff in de-escalation techniques
- Hold the hearing in a location where the litigant is comfortable
- Appoint a legal advocate

Dealing with Change:

- Recognize that a change in the environment may be difficult
- Maintain open channels of communication with the individual to ensure an effective transition
- Make changes step by step
- Allow the presence of a companion animal
- Allow the presence of a support person

Diarrhea/Vomiting/Nausea:

- Allow flexible restroom breaks
- Provide space for storing extra clothing or personal hygiene products
- Schedule the hearing for a time of day when symptoms are less severe

Disorganization:

- Minimize clutter
- Divide long questions into a series of shorter, simpler, targeted questions
- Label items or resources
- Assign a coach to assist in organization of testimony (not to provide the words)
- Provide a list of high-priority questions that need to be answered
- Appoint a legal advocate

Hyperactivity/Impulsivity:

- Provide structured breaks to create an outlet for physical activity
- Encourage others in the hearing to refrain from tapping or fidgeting

Maintaining Concentration:

- Reduce auditory and/or visual distractions in the room or change rooms
- Provide space enclosures
- Increase natural lighting or provide full spectrum lighting
- Reduce clutter in the environment
- Allow frequent breaks
- Divide longer questions into a series of shorter and simpler ones

Maintaining Stamina:

- Provide flexible scheduling
- Allow longer or more frequent breaks
- Provide additional time

Memory Deficits:

- Provide written information and checklists
- Provide verbal prompts and reminders
- Allow additional time to answer questions
- Use voice activated recorder to record verbal instructions

Physical Limitations:

- Install ramps, handrails, and provide accessible parking spaces
- Install lever style door handles
- Clear pathways of travel of any unnecessary equipment and furniture

Reading:

- Provide pictures, symbols, or diagrams instead of words
- Read written information orally
- Provide written information on audiotape
- Use voice output on computer
- Use a line guide to identify or highlight one line of text at a time
- Provide larger print
- Double space the text on print material
- Provide plastic covers in different colors to help make the text easier to read
- Provide materials that are typewritten in a font that is not italicized
- If handwritten material must be provided, use print, not cursive
- Use Optical Character Recognition (OCR)
- Use a reading pen

Visual Problems:

- Provide written information in large print
- Change fluorescent lights to high intensity, white lights
- Increase natural lighting.
- (see "Vision Disabilities" in Chapter V)

Writing:

- Provide templates or forms to prompt information requested
- Allow a verbal response instead of written response
- Allow a typed response instead of written response
- Use voice input on a computer
- Use spell-check on a computer
- Use a scribe to write the response
- Provide ample space on forms requiring written response
- Use line guides and column guides
- Supply bold line paper
- Allow use of personal computers, including Alpha Smart, Palm, tablet, PC, and Blackberry
- Use Inspiration software, a computerized graphic organizer
- Appoint a legal advocate



VII. Special Accommodation Issues

A. Guide Dogs and Service Animals

Guide dogs are the most widely recognized kind of service animal, but people with many types of disabilities use animals for assistance. A service animal must be allowed in any area open to the public.⁸⁰

A service animal is “an animal that is trained for the purpose of assisting or accommodating a disabled person’s sensory, mental or physical disability.”⁸¹ Service animals may alert a person to sound, pull a wheelchair, carry or fetch things, alert its owner to a seizure or other health issue before the owner is aware of symptoms, or alleviate anxiety by engaging in specific behaviors.⁸²

A service animal is not required to wear a cape, special harness, or other equipment, and there is no requirement that a service animal be licensed or certified as such by any government agency. Where the purpose of the animal is unclear, it is permissible to ask whether the animal is needed because of a disability, and what tasks the animal has been trained to perform. In most cases, one should accept a person’s statement that the animal is a service animal. The person using the animal is responsible for supervising the animal, and a service animal can be excluded if it poses a threat to property or to other people.⁸³

B. Companion Animals

Individuals with disabilities are sometimes accompanied by a pet that has no specialized training but may provide relief from anxiety. For example, a companion animal may help persons with extreme fear of crowds avoid panic attacks in public places. Although untrained animals are not entitled to the protection mandated by the service animals’ statute, treating untrained animals as service animals may constitute a reasonable accommodation in some circumstances.⁸⁴

C. Support Persons

Many people with disabilities, especially those with cognitive disabilities, are intimidated or confused by judicial proceedings. When such individuals appear *pro se*, the assistance of someone they know well, or who is skilled at explaining court proceedings in simple terms, may constitute a very effective accommodation. Support persons may explain paperwork or follow-up obligations, or identify signs of confusion or misunderstanding, or may simply

reduce the anxiety of administrative proceedings.

Caution: It is the prerogative of the individual to accept or refuse such assistance. Further, the presence of a support person during attorney-client communications may have an impact on privilege in certain circumstances.⁸⁵



VIII. Developing, Adopting or Improving Accommodation Plans

Any organization can improve the access it provides for people with disabilities. The following steps are recommended for creating and adopting or improving an accommodation plan:

First: Read this Guide. Even the brief treatment of disabilities contained in this Guide may help alert hearing officers and agency staff to the problems that may arise, and to the fact that ignoring an access impediment is illegal.

Second: Periodically review current practices. Systematically assess current practices in hearings and at agency offices in an objective, self-aware, and critical manner. Determine which policies are helping provide access and fairness, which are limiting access and fairness, and areas where there is need for new policies.

Third: Provide training. Providing training for both hearing officers and agency staff on accommodating disabilities, diversity, using sensitive language, and de-escalation is critical. It is important to train all employees to be ready to help all people achieve effective access to the court.

Fourth: Adopt an Accommodation Plan. When developing or improving the Plan, ensure that persons with disabilities and/or the organizations representing them have the opportunity to participate in the process. Such a plan should include the following features:

- Identify an ADA coordinator;
- Identify physical barriers and solutions, and provide for emergencies;
- Educate hearing officers and staff, as described above;
- Identify assistive technology aids, acquire and install them and train staff in their use;
- Disseminate information about available accommodations;
- Establish procedures for communicating with other agencies that provide venues for hearings (e.g., DSHS community service offices);
- Establish and publicize a procedure by which accommodation may be requested and swiftly investigated;
- Identify accommodations frequently requested, and ensure they are ready at hand;
- Identify someone to be the assistive technology expert;
- Identify someone to be the link to outside disability organizations;
- Prepare and maintain a directory of current local services available to assist in providing accommodations;

- Review notices, forms, and procedures, and simplify and change as necessary;
- Establish a procedure for receiving and acting on complaints;
- Regularly review and update the plan;
- Assign one individual with overall responsibility for the plan; and
- Periodically review and upgrade or modify the plan as needed.

Fifth and Finally: The progress of technology must be frequently recognized and utilized. Technology in this, as in other areas, is progressing and improving, often at a rapid pace. It is very important to stay updated because better technology often means better and more varied accommodations, better outcomes, a better experience, and perhaps a reduction of total hearing time due to the bridging of communication barriers. Effectiveness, efficiency and economy are attainable goals with the thoughtful, careful and values-driven use of technology. Having a statewide resource center for information on relevant technology and technological progress will help everyone, and can be accomplished collaboratively and inexpensively.



IX. Etiquette and Language Guidelines

It is important to remember that you are not working with disabilities; you are working with **people** who have disabilities. Please consider the following general guidelines as a starting point when working with people with disabilities.

- **Use common sense.** People with disabilities want to be treated with respect, as does everyone. Remember, a person is a person first, the disability comes second.
- **Don't be patronizing.** Show the person the same respect that you expect to receive from others. Treat adults as adults.
- **Be considerate and patient.** Be patient if the person requires more time to communicate, to walk, or to accomplish various tasks.
- **Don't be afraid to offer assistance.** If the person looks as if s/he needs assistance, ask if there is something you can do. Wait until the offer is accepted, then listen or ask for instructions.
- **Communicate directly with the person.** Do not communicate directly to the person's interpreter, companion or assistant. If the person wishes, the companion or assistant can offer suggestions to help you communicate effectively.
- **Listen.** Listen attentively and wait for the person to finish speaking. If you have difficulty understanding, ask short questions that require short answers, or a nod of the head. Never pretend to understand; instead, repeat what you understood and allow the person to respond.
- **Simplify.** Use plain language in explanations and questions. Avoid jargon, terms of art and acronyms. If you must use these terms, provide an explanation each time.
- **Relax.** Be patient with yourself in learning the specific needs of each person. Don't be embarrassed if you find yourself doing or saying the wrong thing. Just apologize and continue with good intentions to learn what to do in the situation.
- **Don't make assumptions based on appearance.** An individual's abilities – and disabilities – aren't always obvious. Many disabilities are hidden.
- **Respect the person's adaptive aids and equipment.** A wheelchair is part of an individual's personal space – don't lean on it! A service animal is doing a job — don't treat it as a pet!
- **Individualize.** Use these guidelines unless someone with a disability tells you they want something done a different way.

People First Language Guidelines

When referring to a person's disability, use People First language.

- Do not refer to a person's disability unless it is relevant.
- Use **disability** rather than handicap or impairment to refer to a person's disability.
- Avoid negative or sensational descriptions of a person's disability.
- Don't use "normal" to describe people without disabilities; instead say people without disabilities, if comparisons are necessary.
- People with disabilities have very diverse abilities and characteristics. Avoid making assumptions or generalizations about their level of functioning.
- Don't describe people with disabilities who excel as overly courageous, brave, special, or super human.
- Specific disability-related information may be confidential.

People First Language	Labels Not to Use
People with disabilities	The handicapped; the disabled
A person with a cognitive disability	The mentally retarded; retarded; Mental Retardation
He has autism	Autistic
She has Down Syndrome	Down's kid; mongoloid
He has a learning disability	Learning disabled; slow learner
I am Deaf, hard of hearing	Hearing impairment
She has a physical disability; she has a mobility disability	Crippled; invalid; victim of; stricken with; suffers from; afflicted with; impaired
He has low vision; he is blind	Visual impairment
She has an emotional disability; psychiatric disability	Emotionally disturbed; crazy; psychotic
He uses a wheelchair	Wheelchair bound; confined to a wheelchair
A person without a disability	Normal person; whole person
He receives special education services	Special education kid
Congenital disability	Birth defect
Accessible parking, bathrooms, etc.	Handicapped parking, bathrooms, etc.
She needs support for...	She has a problem with...

Get Over It: Preconceptions and Stereotypes

When most of us think about disabilities, we may imagine a person who uses a wheelchair, or who is blind. We may assume that all people with disabilities have roughly identical needs. But when we stop to imagine how a disability would affect our day-to-day activities, we realize that each disability creates different challenges and different needs.

Unfortunately, our initial responses to people with disabilities often are formed by stereotypes and myths. It takes training to recognize and reject such responses. Very often, the first step is to learn a new vocabulary that conveys respect and avoids belittling or offense.

Ensuring equal access to justice chiefly depends on understanding that **people with disabilities are people**. They are not medical diagnoses like cerebral palsy; they are not devices like wheelchairs. They adapt to their disabilities and live their lives — go to school, work, get married, have families, shop for groceries, laugh, cry, vote, pay taxes, come to court — just like everyone else. Most people with disabilities prefer to be responsible for themselves. If we believe people have a right to equal justice, and if we remember that all of us can contribute to change, things will work out better and better.

Treating everyone exactly the same way does not ensure fairness. Truly equal treatment of people with disabilities often means treating them differently.⁸⁶



X. Conclusion

Fully accommodating an impairment is absolutely vital to ensuring that a person's due process rights are not violated. Justice can only be served if every individual has a full and meaningful opportunity to be fairly heard.

The information in this guide is far from exhaustive; it would be impossible to list every potential disability and every effective accommodation. Remember that every individual experiences unique impediments to access, and accommodations must be tailored to the circumstances.

Endnotes

¹ Various statutes and regulations refer to “adjudicative proceeding,” “administrative tribunal,” “reconsideration hearing,” etc. In this guide, the term “administrative hearing” is used and is intended to encompass all quasi-judicial proceedings conducted in executive branch agencies in Washington state.

² The Office of Administrative Hearings alone considered over 47,000 cases in FY2008. Washington State Office of Administrative Hearing, *2009-2015 Strategic Plan 5* (2009), available at http://www.oah.wa.gov/OAH_Strategic_Plan_2009-2015.pdf. The Board of Industrial Insurance Appeals considers approximately 7,500 cases per year. Brody and Lovrich, *Judicial Performance Evaluation 2* (2009), available at <http://www.biaa.wa.gov/documents/BIAA%20JPE%20REPORT.pdf>. Several additional agencies have smaller caseloads.

³ Washington State Administrative Office of the Courts, *Superior Court 2008 Annual Caseload Report 19* (2009), available at http://www.courts.wa.gov/caseload/superior/ann/atbl08_wo_staffing.pdf.

⁴ For example, in FY2006 fewer than 2% of public assistance cases were appealed to the state court system. Brodoff, *Lifting Burdens: Proof, Social Justice, and Public Assistance Administrative Hearings*, 32 N.Y.U. Rev. of Law & Soc. Change 130, 143 (2008).

⁵ Houtenville, *Disability Statistics in the United States* (2005), available at <http://www.disabilitystatistics.org>.

⁶ See, generally, Washington Administrative Code (WAC) Titles 170 and 388.

⁷ See WAC 388-400-0025 (General Assistance – Unemployable benefits) and WAC 388-475-0050 (SSI-related medical benefits).

⁸ For example, out of 11,722 public assistance hearing requests in FY2005, only 112 had attorney representation. Brodoff, *Lifting Burdens*, *supra* note 4, at 133.

⁹ See GR 33.

¹⁰ 42 U.S.C. § 12101(a)(7).

¹¹ *Id.* at § 12101(b); *id.* at § 12133.

¹² United States Department of Justice, *Title II Highlights* (2002), <http://www.ada.gov/t2hlt95.htm>, provides an excellent summary of the Act. A list of useful DOJ publications may be found in the Appendix.

¹³ See Gould, *And Equal Protection for All...The Americans with Disabilities Act in the Courtroom*, J. Law & Health, 123, 138 (1993-94).

¹⁴ 42 U.S.C. § 12182(b)(2)(A).

¹⁵ *Id.* at § 12133 (incorporating Rehabilitation Act remedies, 29 U.S.C. § 794(a)); 28 C.F.R. §§ 35.150(a)(3), 35.164.

¹⁶ RCW 49.60.010.

¹⁷ RCW 49.60.030 *et seq.*

¹⁸ See RCW 49.60.040(10).

¹⁹ 124 S.Ct. 1978, 1993 (2004).

²⁰ *Id.* at 1994 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)) (emphasis added).

²¹ In 2007, the North Dakota Office of Administrative Hearings was sued for not providing proper accommodations in an administrative hearing. In an unpublished opinion, the federal District Court of North Dakota cited *Tennessee v. Lane* and concluded that the state Office of Administrative Hearings was subject to Title II of the ADA. See *Voigt v. Wahl*, 2007 WL 1357113 (D.N.D., 2007).

²² *Carter v. University of Washington*, 85 Wn.2d 391 (1975). The following year, in *Housing Authority of King County v. Saylor*, 87 Wn.2d 732 (1976), the court overruled *Carter* insofar as *Carter* located the source of the right of access to the courts in Art. 1 § 4 of the Washington State Constitution. The *Saylor* court held Art. 1 § 4 is protective of political rights, not access to courts. However, the court observed that “[a]ccess to the courts is amply and expressly protected by other provisions” of the State Constitution. *Id.* at 742.

²³ 42 U.S.C. § 12102(2).

²⁴ *Id.* at 12102(2)(B).

²⁵ RCW 49.60.040(25).

²⁶ A cognitive interpreter is usually a friend or family member who can “translate” complex questions into words understood by the person with a cognitive disability.

²⁷ See, e.g., RCW 4.60.040(10); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1135-1136 (9th Cir. 2001) (implicitly holding courts are

places of public accommodation under Washington statutes).

²⁸ *Id.* at § 35.160(b)(1).

²⁹ *Id.* at § 35.160(b)(2).

³⁰ *Id.* at § 35.130(b)(7).

³¹ *Id.* at § 35.160(a).

³² *Duvall v. Kitsap*, 260 F.3d at 1139 (quoting *Wong v. Regents of the University of California*, 192 F.3d 807, 818 (9th Cir. 1999)).

³³ *Id.* at § 35.107. (The Rehabilitation Act of 1973 has long required recipients of federal funding to undertake many of the same responsibilities as public entities under Title II of the ADA. *See* 29 U.S.C. § 794.)

³⁴ 28 C.F.R. § 35.130(f).

³⁵ *Id.* at § 35.150(a)(3).

³⁶ *Id.* at § 35.150(a)(2).

³⁷ 42 U.S.C. § 12202.

³⁸ *Tennessee v. Lane*, 124 S.Ct. 1978 at 1993. *See also Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001) (Eleventh Amendment bars private suits for money damages under Title I of the ADA governing employment).

³⁹ *Taggart v. State*, 118 Wn.2d 195, 204 (1992).

⁴⁰ *See Livingston v. Guice*, 68 F.3d 460 (4th Cir. 1995) (unpublished; *see* Westlaw WL 610355). (*Note*: Facts are reported in *Livingston v. Guice*, 855 F. Supp 834 (W.D.N.C. 1994)).

⁴¹ *Duvall v. Kitsap County*, 260 F.3d 1124, 1138 (2001) (“Ruling on a motion is a normal judicial function, as is exercising control over the courtroom while court is in session.”)

⁴² *Id.* at 1135. *Duvall* contains a useful discussion of the interplay between the federal and state statutes, and sets forth the tests to be applied in 9th Circuit cases analyzing Title II claims, including the test for proof of intentional discrimination to support claims for money damages (the deliberate indifference standard).

⁴³ *Id.* at 1133. *See also Memmer v. Marin County Courts*, 169 F.3d 630, 634-5 (9th Cir, 1999) (litigant had visual disability; state court provided a reader, but refused to provide specific individual requested; federal district judge held judges immune; circuit court held plaintiff failed to show accommodation was unreasonable, and did not address immunity).

⁴⁴ Access to Justice Board Impediments Committee, *Recommendations and Work Plan 10* (2003), available at <http://www.wsba.org/atj/committees/impediments/systemsimpedimentsrecommendationreview60203.doc>.

⁴⁵ *See* WAC 388-472-0005, *et seq.*

⁴⁶ *See, e.g.* WAC 10-08-200(8), (9); WAC 388-02-0215(2)(f), (g).

⁴⁷ For an in-depth discussion of the issue, *see* Brodoff, McClellan, and Anderson, *The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon*, 2 Seattle J. Soc. Just. 609 (2004).

⁴⁸ A hearing may be conducted by telephone at the hearing officer’s discretion, but only when doing so does not prejudice the rights of the parties. RCW 34.05.449(3).

⁴⁹ WAC 388-02-0360(3) (*compare* WAC 10-08-180(1)).

⁵⁰ RCW 74.08.080(2)(b).

⁵¹ Diagnostic and Statistical Manual of Mental Disorders, fourth edition, DSM-IV-TR (American Psychiatric Association, 2000).

⁵² <http://www2.bu.edu/cpr/reasacom/whatis-psych.html>

⁵³ http://www.ncwd-youth.info/assets/training_materials/pacer/02_building_staff_capacity/session01/handouts/session01-Categories_Diverse_Disabilities.pdf

⁵⁴ http://www.colemaninstitute.org/article_braddock_1.pdf; <http://www.ct.gov/dss/cwp/view.asp?a=2349&q=304658>

⁵⁵ National Institute of Mental Health, 2008

⁵⁶ The Committee consulted with the Practice of Law Board in drafting this section.

⁵⁷ *See, e.g.* GR 33(a)(1)(C).

⁵⁸ National Center for Learning, 2006.

⁵⁹ 28 C.F.R. § 35.160(b)(2).

⁶⁰ *See* 28 C.F.R. § 35.160(b)(1); RCW 2.42.130, 140 (delineating between “qualified” and “intermediary” interpreters, and stating when and from what sources they are to be appointed). *See also* GR 11.1 (setting forth a code of conduct for court interpreters in Washington).

- ⁶¹ RCW 2.42.120(1) (also detailing the appointment and pay of interpreters).
- ⁶² A sample script for establishing interpreter qualifications may be found in the Appendix.
- ⁶³ RCW 2.42.110-150.
- ⁶⁴ See RCW 2.42.130. See also GR 11.1, ER 604 and comment. (There may be exceptions to this rule. For example, Judge Patricia Aitken presided over a murder case involving a Hmong defendant who could not hear, speak or read. Only one person, a family member, was able to communicate with him. A relay of interpreters was needed.)
- ⁶⁵ National Association of the Deaf and The Registry of Interpreters for the Deaf, Inc., *NAD-RID Code of Professional Conduct* (2005), available at <http://www.rid.org/ethics/code/index.cfm>. See also, GR 11.1.
- ⁶⁶ RCW 2.42.130(1).
- ⁶⁷ A court reporter ordinarily could not undertake this dual role because of conflict of interest concerns, the use of different software, and/or lack of CART training.
- ⁶⁸ 28 C.F.R. Pt. 36, App. A § 4.31.
- ⁶⁹ Washington State Dept. of Services for the Blind, <http://www.dsb.wa.gov/> (last visited May 26, 2009).
- ⁷⁰ The ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) provides standards for assuring that corridors and public areas can be used safely by people with visual disabilities. ADAAG 4.4 addresses objects that protrude into walkways. ADAAG 4.30.4 deals with raised and Brailled characters and pictorial symbol signs (pictograms). ADAAG 4.30.5 deals with the finish and contrast for word signs. Location and mounting of signs is covered by ADAAG 4.30.6.
- ⁷¹ See 28 C.F.R. 35.104(2).
- ⁷² King County Office of Civil Rights, *Guidelines for Accessible Printed Materials* (2004), available at <http://www.metrokc.gov/dias/ocre/checklist.htm>. See also ADAAG 40.3.5.
- ⁷³ 42 U.S.C. §§ 12182(2)(A)(iv), (v).
- ⁷⁴ See Dooley, Jeanne and Wood, Erica, 'Program Accessibility': *How Courts Can Accommodate People with Disabilities*, 76 *Judicature* 250, 252 (1993). Structural changes to make facilities accessible must follow either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). See U.S. Department of Justice, *Common Questions About Title II of the ADA*, available at <http://www.usdoj.gov/crt/ada/pubs/t2qa.txt> (last visited May 26, 2009).
- ⁷⁵ 28 C.F.R. §§ 35.130(a), 35.150(a).
- ⁷⁶ *Id.* at § 35.130(d).
- ⁷⁷ A hearing may be conducted by telephone at the hearing officer's discretion, but only when doing so does not prejudice the rights of the parties. RCW 34.05.449(3).
- ⁷⁸ WAC 388-02-0360(3) (*compare* WAC 10-08-180(1)).
- ⁷⁹ For more information about emergency and evacuation planning for people with disabilities, see U.S. Department of Labor, *Emergency Preparedness and People with Disabilities*, available at <http://www.dol.gov/odep/programs/emergency.htm> (last visited May 26, 2009).
- ⁸⁰ The Seattle Office for Civil Rights awarded a \$21,222 judgment to a woman who was required to leave her dog outside while patronizing a convenience store. Jennifer Sullivan, *Woman Wins Bias Case Over Service Dog*, *Seattle Times*, May 3, 2005.
- ⁸¹ RCW 49.60.040(23).
- ⁸² See *Storms v. Fred Meyer Stores*, 129 Wn. App. 820, (2005) (dog trained to alleviate anxiety disorder met definition of service animal).
- ⁸³ Valuable guidance may be found in U.S. Department of Justice, *Commonly Asked Questions About Service Animals in Places of Business* (2008), available at <http://www.usdoj.gov/crt/ada/qasrvc.htm>.
- ⁸⁴ Another category is therapy animals, which are specially trained to go into healthcare facilities to provide therapeutic contact with patients. Information about therapy animals is available from The Delta Society, <http://www.deltasociety.org/> (accessed May 26, 2009). See also Joan Froling, *Service Dog Tasks for Psychiatric Disabilities* (2007), available at http://www.iaadp.org/psd_tasks.html.
- ⁸⁵ See Walsh, *Applicability of Attorney-Client Privilege to Communications Made In Presence Of Or Solely To Or By Third Person*, 14 A.L.R. 4th 594 (1981).
- ⁸⁶ See WAC 162-26-060(2).

Appendix A

Model Agency Rule

Model Agency Rule on Representational Accommodation in Administrative Agency Hearings

The Authority of an Adjudicative Proceedings Presiding Officer

In cases where the party requests the appointment of a suitable representative, and in cases where the PRESIDING OFFICER has a reasonable basis to believe that, because of a physical and/or mental disability/impairment, a party is unable to understand the administrative proceedings or meaningfully participate in the proceeding, the PRESIDING OFFICER must conduct an inquiry into the party's ability to understand and participate before proceeding to the merits of the case.

- (a) If the PRESIDING OFFICER determines that the party does not have a physical and/or mental impairment making him/her unable to meaningfully participate in the proceedings, the PRESIDING OFFICER may then proceed with a hearing on the merits. Where the PRESIDING OFFICER denies the request of a party to appoint a suitable representative, the PRESIDING OFFICER shall inform the party that she/he may appeal the decision.
- (b) If the PRESIDING OFFICER determines that the party does have a physical and/or mental impairment making him/her unable to meaningfully participate in the proceedings, the PRESIDING OFFICER shall:
 - 1. Seek the consent of the party to appoint a suitable representative to represent the interests of the party in the hearing on the merits as an accommodation of the party's disability;
 - 2. If consent is given, appoint a suitable representative for the party at agency expense and at no cost to the party;
 - 3. If consent is refused, proceed with the hearing on the merits.
- (c) If, due to a physical/mental impairment, the party is unable to give or refuse consent to the appointment of a suitable representative, the PRESIDING OFFICER shall appoint an administrative hearing facilitator to assist the party in making an informed decision whether to consent or refuse to consent to the appointment of a suitable representative. Where the party is unable to make an informed decision despite the assistance of the administrative hearing facilitator, the PRESIDING OFFICER has the discretionary authority to require the agency to seek appointment in a court of competent jurisdiction of a Guardian ad litem as the appropriate representative; however, the PRESIDING OFFICER may determine that someone other than a GAL would be a suitable representative.
 - 1. "Suitable representative" is defined as an attorney, or other legal representative qualified to practice before the agency who is specifically trained in the substance and procedure of that agency's hearings.
- (d) "Administrative hearing facilitator" is defined as an individual with experience and demonstrated competency in supporting effective communication with individuals with disabilities, appointed by PRESIDING OFFICERS for the purpose of assisting parties who cannot consent or refuse the appointment of a suitable representative due to limitations on capacity resulting from a physical or mental impairment.
- (e) The PRESIDING OFFICER shall initiate the inquiry at whatever stage of the proceedings he or she becomes aware of facts that support a reasonable belief that the party is unable to understand and meaningfully participate in the proceedings.
- (f) The record of the proceedings of the inquiry, and any supplementary documents generated in the course of the inquiry, shall be confidential, and shall be held as separate record apart from the hearing record.
- (g) Following appointment, the suitable representative shall serve until the administrative case is concluded, or the

party no longer consents to representation.

(h) All PRESIDING OFFICERS shall receive training on the implementation of this rule, which shall include information on the following:

1. common disability-related limitations on communication, listening, hearing, auditory processing, reasoning, and other attributes crucial to effective participation in a hearing;
2. stereotypes and misconceptions related to disability;
3. accommodation for disability-related limitations and removal of barriers in administrative proceedings.

Appendix B

Model Notice

Information for Persons with Physical or Mental Disabilities Who Need Accommodations to Access Administrative Hearings

Who may receive an accommodation? Anyone with a disability who needs assistance in order to participate in an administrative hearing. “Disability” is defined by federal and state laws, including the Americans with Disabilities Act and the Washington Law Against Discrimination and applicable regulations.

What information does the adjudicating agency need? Applicants must tell the agency why they need an accommodation and what accommodation they would like. This information will allow the agency to decide if the request may be granted. Medical records and medical information submitted in support of the request will be sealed and held confidential. If the agency lacks enough information to decide, it may ask the applicant for more information.

What accommodations may be requested? Applicants may request accommodations that allow them to fully and meaningfully participate in the administrative hearing. Applicants should request the accommodation that will best allow them to do that. A reasonable accommodation could be a sign language interpreter; changes to a courtroom’s layout to improve lighting, hearing, or mobility; large print or high contrast documents and forms; hearings held by teleconference; extended time for hearings and recesses; or assistive listening and seeing devices; personal assistance or someone who can help present the case or claim to the court.

When should the request be made? The request should be made as soon as the appellant knows she will need an accommodation. The agency will usually need to receive the request at least five days before the accommodation is needed. Requests coming in later than that will be granted if they are possible.

Who gets this information? The request should be given to [insert name and contact information for the appropriate person]: _____

Must all requests be granted? No. If, however, the applicant qualifies, the agency will deny an accommodation request only if it would cause an undue burden, if it would fundamentally alter the hearing, or it would threaten someone’s safety or well-being. The agency must explain how the requested accommodation meets one of these criteria.

Appendix C

Interpreter Statutes and Rules

RCW 2.42: Interpreters in legal proceedings

- 2.42.010 Legislative declaration — Intent.
- 2.42.050 Oath.
- 2.42.110 Definitions.
- 2.42.120 Appointment, pay.
- 2.42.130 Source of interpreters, qualifications.
- 2.42.140 Intermediary interpreter, when.
- 2.42.150 Waiver of right to interpreter.
- 2.42.160 Privileged communication.
- 2.42.170 Fee.
- 2.42.180 Visual recording of testimony.

2.42.010: Legislative declaration — Intent.

It is hereby declared to be the policy of this state to secure the constitutional rights of deaf persons and of other persons who, because of impairment of hearing or speech, are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the appointment of such interpreters.

2.42.050: Oath.

Every qualified interpreter appointed under this chapter in a judicial or administrative proceeding shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or other agency conducting the proceedings, to the best of the interpreter's skill and judgment.

2.42.110: Definitions.

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Impaired person" means a person who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, speech impaired, or hard of hearing.
- (2) "Qualified interpreter" means a visual language interpreter who is certified by the state or is certified by the registry of interpreters for the deaf to hold the comprehensive skills certificate or both certificates of interpretation and transliteration, or an interpreter who can readily translate statements of speech impaired persons into spoken language.
- (3) "Intermediary interpreter" means a hearing impaired interpreter who holds a reverse skills certificate by the state or is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of RCW 2.42.130, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a

hearing impaired person and a qualified hearing interpreter.

- (4) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision.

2.42.120: Appointment, pay.

- (1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.
- (2) If the parent, guardian, or custodian of a juvenile brought before a court is hearing impaired, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.
- (3) If a hearing impaired person participates in a program or activity ordered by a court as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified interpreter to interpret exchange of information during the program or activity.
- (4) If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. Whenever a law enforcement agency conducts a criminal investigation involving the interviewing of a minor child whose parent, guardian, or custodian is hearing impaired, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.
- (5) If a hearing impaired person is arrested for an alleged violation of a criminal law the arresting officer or the officer's supervisor shall, at the earliest possible time, procure and arrange payment for a qualified interpreter for any notification of rights, warning, interrogation, or taking of a statement. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.
- (6) Where it is the policy and practice of a court of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified interpreter for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case.

2.42.130: Source of interpreters, qualifications.

- (1) If a qualified interpreter for a hearing impaired person is required, the appointing authority shall request a qualified interpreter and/or an intermediary interpreter through the department of social and health services, office of deaf services, or through any community center for hearing impaired persons which operates an interpreter referral service. The office of deaf services and these community centers shall maintain an up-to-date list or lists of interpreters that are certified by the state and/or by the registry of interpreters for the deaf.
- (2) The appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the hearing impaired person, that the interpreter is able in that particular proceeding, program, or activity to interpret accurately all communication to and from the hearing impaired person. If at any time during the proceeding, program, or activity, in the opinion of the hearing impaired person or a qualified observer, the interpreter does not provide accurate, impartial, and effective communication with the hearing impaired person the appointing authority shall appoint another qualified interpreter. No otherwise qualified interpreter who is a relative of any participant in the proceeding may be appointed.

2.42.140: Intermediary interpreter, when.

If the communication mode or language of the hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the appointing authority who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

2.42.150: Waiver of right to interpreter.

- (1) The right to a qualified interpreter may not be waived except when:
 - (a) A hearing impaired person requests a waiver through the use of a qualified interpreter;
 - (b) The counsel, if any, of the hearing impaired person consents; and
 - (c) The appointing authority determines that the waiver has been made knowingly, voluntarily, and intelligently.
- (2) Waiver of a qualified interpreter shall not preclude the hearing impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding, program, or activity.

2.42.160: Privileged communication.

- (1) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law.
- (2) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

2.42.170: Fee.

A qualified and/or intermediary interpreter appointed under this chapter is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

2.42.180: Visual recording of testimony.

At the request of any party to the proceeding or on the appointing authority's initiative, the appointing authority may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding.

In any judicial proceeding involving a capital offense, the appointing authority shall order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding.

Appendix D: General Court Rule 33

(Effective September 1, 2007)

Requests for Accommodation by Persons with Disabilities

(a) Definitions. The following definitions shall apply under this rule:

(1) “Accommodation” means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by an applicant who is a qualified person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a qualified person with a disability.

(2) “Applicant” means any lawyer, party, witness, juror, or any other individual who has a specific interest in or is participating in any proceeding before any court.

(3) “Court” means any court or other agency or body subject to the rulemaking authority of the Supreme Court.

(4) “Person with a disability” means a person covered by the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 *et seq.*), RCW 49.60 *et seq.*, or other similar local, state, or federal laws. This term includes but is not limited to an individual who has a physical or mental impairment that limits one or more major life activities, has a documented history of such an impairment, or is regarded as having such an impairment.

(5) “Qualified person with a disability” means a person with a disability who is otherwise entitled to participate in any program, service, or activity made available by any court.

(b) Process for requesting accommodation.

(1) An application requesting accommodation may be presented *ex parte* in writing, or orally and reduced to writing, on a form approved by the Administrative Office of the Courts, to the presiding judge or officer of the court or his or her designee.

(2) An application for accommodation shall include a description of the accommodation sought, along with a statement of the impairment necessitating the accommodation. The court may require the applicant to provide additional information about the qualifying impairment to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated “SEALED MEDICAL AND HEALTH INFORMATION” and such information shall be sealed automatically. The court may order that such information be sealed if it has not previously automatically been sealed.

(3) An application for accommodation should be made as far in advance as practical of the proceeding for which the accommodation is sought.

(c) Consideration. A request for accommodation shall be considered and acted upon as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 *et seq.*), RCW 49.60 *et seq.*, and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the

applicant's disability and the feasibility of the requested accommodation.

(2) If an application for accommodation is filed five (5) or more court days prior to the scheduled date of the proceeding for which the accommodation is sought, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impossible for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(3) If an application for accommodation is filed fewer than five (5) court days prior to the scheduled date of the proceeding for which the accommodation is requested, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impractical for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant an alternative accommodation.

(d) Denial. Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation may be denied only if the court finds that:

(1) the applicant has failed to satisfy the substantive requirements of this rule;

(2) the requested accommodation would create an undue financial or administrative burden;

(3) the requested accommodation would fundamentally alter the nature of the court service, program, or activity; or

(4) permitting the applicant to participate in the proceeding with the requested accommodation would create a direct threat to the safety or well-being of the applicant or others.

(e) Order. The court shall issue an order consistent with its decision. If the court denies a requested accommodation pursuant to section (d) of this rule, the order shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court's order shall include a description of:

(1) the facts and/or circumstances that make the accommodation impossible under subsection (c)(2) or impractical under subsection (c)(3); and

(2) the reasons why the proceeding cannot be continued without prejudicing a party to the proceeding.

The court shall inform the applicant and the court personnel responsible for implementing accommodations that the request for accommodation has been granted or denied, in whole or in part, and the nature of the accommodation to be provided, if any.

(f) Duration of accommodation. The accommodation ordered shall commence on the date set forth in the order granting the accommodation and shall remain in effect for the period specified in the order, which may be extended as the court deems appropriate. The court may grant an accommodation for an indefinite period or for a particular proceeding or appearance.

COMMENT

Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

Appendix E

Sample Script & Instructions for the Use of Interpreters^{1*}

Establishing an Interpreter's Qualifications

Communication Needs (all interpreters, including sign language interpreters)

1. Have you had the opportunity to speak with the person in need of your services in this matter?
2. What kind of language skills does this person have?
3. Based upon the conversation, do you feel that you can communicate clearly with one another?
4. How could you determine that you understood each other?
5. Are you familiar with any dialect or idiomatic peculiarities of the language used by the person in this case?
6. Are you able to communicate despite these idiosyncrasies?
7. Are you able to interpret simultaneously without leaving out or changing anything that is said?
8. Are you able to interpret consecutively?
9. Are you able to do sight interpretation of documents?
10. For Sign Language Interpreters Only
 - a. What communication mode does this person prefer (e.g., American Sign Language, Signed English, Pidgin Sign)?
 - b. Are you fluent in that mode?
 - c. Are you certified by your professional organization (Registry of Interpreters for the Deaf)? When did you become certified? Are you certified at the level for court interpreting?
 - d. Are you assigned from an interpreter service? Name and address/phone?

Conflicts of Interest

1. What do you know about this case or about anyone involved in this case?
2. Have you ever interpreted for any of the parties, counsel or witnesses in this case?
3. Have you interpreted in any incident related to this case?
4. Do you anticipate being called as a witness?
5. Are you aware of any potential conflict of interest you may have, such as family or marital relationship?
6. Do you feel that you could remain fair and impartial in relationship to the parties and witnesses in this case?
7. Can you remain objective regarding the subject matter of this case?

Ethics

1. Have you read the Code of Professional Responsibility for Interpreters in the Washington State Court System

¹ *Caveat: This sample instruction was drafted by the Impediments Committee, now called the Justice Without Barriers Committee, and has not been endorsed by any other organization.*

(GR 11.1)?

2. Do you understand your duties with respect to the Court Code of Professional Responsibility?
3. Do you promise to adhere to the Code of Professional Responsibility during these proceedings?

Professional Training and Experience

1. Are you currently registered with any interpreter services or state agencies? Please name.
2. Have you interpreted in any other state? What are the requirements for interpreting in those states?
3. What languages do you interpret?
4. What language do you consider your first or strongest language?
5. How long have you been communicating in these languages?
6. What formal language training have you received?
7. Have you taken any formal interpreter training?
 - a. When did you take the training?
 - b. How long did the training last?
 - c. What did the training entail?
8. Did you graduate from a college sign language interpreter training program?
9. In what settings have you interpreted?
 - a. What form of interpretation did you use in these settings?
 - i. simultaneous
 - ii. consecutive
 - iii. sight interpretation of documents
 - b. How many times have you interpreted in these settings?

Other

1. Have you ever been disqualified from interpreting in any court or administrative proceeding or have you had any disciplinary actions initiated from your professional association? Please explain.
2. Hearing Officer to parties: Does either party have any questions for the interpreter?
3. Hearing officer to client/witness/defendant: Do you understand the interpreter who has been assigned to you?

Appendix F

Capacity for Self-Representation Questionnaire

Best Practices for Determining the Need for Representation as an Accommodation for Parties in Administrative Hearings

This Appendix is a guide for ALJs and hearing officers, as well as agency ADA coordinators, to assessing a party's need for a representational accommodation in the administrative hearing process. We have developed a step-by-step approach to determining when to appoint a representative, and what to do if the party either consents, refuses, or is unable to give an informed answer.

We envision three possible scenarios in which the appointment of a representational accommodation could come up (see the Model Agency Rule on Representational Accommodation):

1. The party makes a specific request to the agency for appointment of a representative;
2. The party does not make a specific request for appointment of a representative, but the hearing officer has reason to believe such an appointment may be necessary and, once raised as possible, the party consents to the appointment;
3. The party with the need for appointment of a representative lacks the capacity to consent to the appointment.

In each of these three situations, the hearing officer/ADA coordinator must *first* determine that:

- a. the party is a person with a disability;
- b. the disability, rather than lack of education, lack of English proficiency, or other non-disability factors, is the primary reason the party is unable to meaningfully participate in the hearing process; and
- c. representation is the accommodation needed to allow the party to meaningfully participate in the hearing process.

The **Factors in Assessing Disability**, **Factors in Assessing Need for Representation**, and **Subjects of Inquiry** set out below are suggested questions and considerations for helping decision makers make these determinations in each of the three scenarios.

Scenario # 1:

The most straightforward and easiest scenario is the first, where a person has the wherewithal and knowledge to make a direct request for representation in the hearing. Here, the party must let the hearing officer know what the nature of the claimed disability is and why representation is the correct accommodation. The hearing officer/ADA coordinator can use the Factors in Assessing Need for Representation and Subjects of Inquiry to determine whether or not representation is the appropriate accommodation for the stated disability. If so, there is no need to get further consent from the requesting party because s/he has already made the initial request.

Scenario #2:

The second scenario is likely the most common one – the party has not made a specific request for representation but her/his actions or lack of understanding lead the judge to reasonably believe that the person has a disability and may need a representational accommodation. Here, the judge is required to do an initial unilateral assessment of whether or not the person has a disability, and then determine if representation will accommodate it. The hearing

officer can use the Factors in Assessing Disability to help determine if the party has a disability, and then proceed to the Factors in Assessing Need for Representation and Subjects of Inquiry to determine whether or not representation is the appropriate accommodation for the stated disability. If it is determined that representation is needed, the hearing officer should let the party know of the availability of representation at no cost and ask for consent to the appointment.

Scenario #3:

The third scenario is likely the most rare of the three but is also the most difficult. Here, the party in the hearing does NOT ask for help (because the disability is so severe that it prevents her/him from asking), but clearly is unable to represent her/himself in the hearing due to the disability. Also, the cognitive disability makes the party unable to consent to the appointment of a representative. The Model Agency Rule on Representational Accommodation suggests creating an administrative hearing “facilitator” position to help the party make an informed decision on the representational accommodation, and, if that is not possible, to give the discretionary authority to the hearing officer to require the agency to seek appointment of a Guardian Ad Litem or other representative to make decisions on behalf of the party. Because this is a new and developing area of inquiry for hearing officers, we have not yet created a clear protocol for dealing with this unique situation. As we get more experience with this scenario, we hope to develop and publish additional Best Practices for it. In the meantime, hearing officers should use the Factors and Subjects of Inquiry to determine if the party has a disability and if representation is the appropriate accommodation.

Factors in Assessing Disability (see also, section III. C. of the Guide)

1. Is the purpose of the hearing to decide on eligibility for a disability related benefit?
2. Do any of the witnesses, documents, or proposed exhibits discuss possible disabilities of the party?
3. Has the party brought in another person who is trying to help her/him understand what is going on in the hearing?
4. Talk to the party about your concerns and ask whether or not s/he may have a disability that prevents her/him from meaningfully representing her/himself.

Factors in Assessing Need for Representation

Where representation as an accommodation for disability is considered, the Presiding Officer must first establish that the party has a disability. It must also be determined that due to the disability, accommodation is necessary for the party to effectively participate in the process.

Factors that may be considered in determining whether or not to provide representation in the hearing process include:

1. Is the case so complex that the party will not be able to participate effectively unless provided with a suitable representative?
2. Are there other accommodations that can address the specific limitations on the party’s ability to effectively participate in the hearing?
3. Is appointment of a suitable representative more efficient, and at least as effective, as alternative accommodations?

Subjects of Inquiry Regarding a Party’s Ability to Make His or Her Case

1. Can the party identify what is at stake in the hearing? Does s/he know what will be decided in the hearing, and the consequences of winning or losing his or her appeal?

For example: did the appellant request the hearing her/himself or did someone else complete it for them?

Can s/he articulate what s/he hopes to gain from the hearing – continued benefits, changes in number of authorized service hours etc.?

2. Can the party identify the issues in the case? Does s/he understand what caused the agency to take the adverse action?

For example: Was there a reassessment of service needs? Does the appellant understand that the agency action was related to the assessment?

3. Can the appellant articulate the reason why s/he disagrees with the agency action? Sometimes, appellants can say “I don’t want this to happen to me” but are unable to say why it happened or why it matters.
4. Was the party able to complete the paperwork and other tasks associated with the administrative appeal?
5. Is the party capable of gathering and producing evidence and witnesses necessary to support his or her case?

For example: If oral testimony is not sufficient to make a necessary point, does the appellant have the mental or physical capacity to obtain appropriate documentation? A case could turn on obtaining results from a previous medical test or a police report or employer performance evaluation. Is the appellant capable of negotiating the bureaucracies to obtain these documents?

6. Is the party able to understand and respond to the testimony and evidence presented by the adverse party? Does client’s disability cause a stress reaction to pressure or interrogation? Will s/he be able to think clearly and respond appropriately?

For example: If the appellant’s disability causes violent outbursts in response to stress, appointment of a representative may be the only accommodation appropriate for all of the issues to be presented fully. Similarly, depression and other mental disabilities cause some people to have racing thoughts. They are unable to focus. This is another situation where appointment of a representative should be considered.

7. Is the party able to respond accurately to questions, arguments, and proposals presented in the hearing and in negotiations by the other party and by the presiding officer?
8. Does the party have sufficient energy and stamina to complete the tasks associated with the administrative appeal?

For example: Some hearings last several hours and/or require in person attendance by the appellant. Is the appellant capable of sitting for the entire hearing? Focusing?

9. Would completion of the tasks associated with the administrative appeal compromise the party’s health?

For example: The appellant suffers from severe heart disease. Stress could put the person at risk of heart attack or stroke during the hearing. Would the appellant need representation because the stress of appearing pro se is a danger to their health? This situation could arise in a case where the claimant has been diagnosed with metastatic cancer and is treated with medications which create severe exhaustion or other side effects. Another example involves an appellant in a nursing home suffering from severe Parkinson’s disease which makes it too physically difficult for that person to do all the tasks associated with a pro se appearance.

10. Is the party able to file an administrative appeal of the initial decision? Is s/he able to file an appeal and request legal assistance in the event the final decision is contrary to her/his interests?

Appendix G

Resources

Websites

- **ATJWeb.org and the Access to Justice Principles**

www.ATJWeb.org is home to the ATJ Technology Principles, which were developed by the Washington Supreme Court's Access to Justice Board and adopted by the Supreme Court to ensure that the use of technology promotes and enhances, not reduces, equal and meaningful access to and the quality of justice for all persons in Washington State in all forums. The site also contains useful resources and links on how to make a website accessible at atjweb.org/resource-bank-access.

 - Order of the Supreme Court of Washington No. 25700-B-449, December 3, 2004, "In the Matter of the Access to Justice Principles": <http://atjweb.org/court-order>.
 - Access to Justice Technology Principles: <http://atjweb.org/principles>.
- **Assistive Technology and Accommodations Website:** http://www.courts.wa.gov/ADA_Assistive_Technology

The Court Access Program of the Washington State Administrative Office of the Courts ("AOC") developed this website to help courts and those who staff the courts evaluate their access and accommodation policies, processes, procedures and practices, and take all appropriate action to become fully compliant with the requirements of the Americans With Disabilities Act ("ADA"), the Washington Law Against Discrimination, and other relevant law and court rules, including Washington Supreme Court General Rule GR 33 - Requests for Accommodation by Persons with Disabilities. The website is also intended to help all those who appear and participate in and with the courts, including but not limited to litigants, lawyers, witnesses, jurors, guardians ad litem, and CASA workers.

In conformity with the Access to Justice Technology Principles, the website is also available not only to the courts and court participants, but also to guide, inform and assist others throughout the entire Washington State justice system. Its use by other actors, segments and participants in the justice system is encouraged. This includes, among others, administrative bodies engaged in dispute resolution and rule-making, and those who represent, assist or provide information to participants in those proceedings.

This website is also available for use by the general public to assure that all persons with disabilities who need accommodation to obtain equal access to justice can learn what technology and other accommodations are available to them, and how they can apply for and obtain the correct accommodation.

With a goal to make the process of requesting and providing accommodations for persons with disabilities as well-known, available, simple and straightforward as possible, this website: identifies and explains the goals associated with providing equal access; gives an overview of the ADA and other legal requirements; provides model policies, procedures and forms; and provides assistive technology and training information and resources.
- **Local Government Website:** <http://www.metrokc.gov/dias/ocre/courts.htm>

The King County Office of Civil Rights has developed a website to assist courts in providing access for persons with disabilities. It contains text files regarding etiquette, communication, and formats for printed materials.

Guidance Materials

- (1) **Access to Justice (ATJ) Technology Principles:**

The ATJ Technology Principles were adopted by Order of the Washington State Supreme Court on December 3, 2004 as authoritative guidelines to ensure that technology increases rather than diminishes access to and the quality of justice for all persons in Washington State. The Principles are to be used so as to be practical and effective for both the workers in and users of the justice system. The Principles state that the use of technologies in the Washington State justice system must protect and advance the fundamental right of equal access to justice. There is a particular need to avoid creating or increasing barriers to access and to

reduce or remove existing barriers for those who are or may be excluded or underserved, including those not represented by counsel.

- Order of the Supreme Court of Washington No. 25700-B-449, December 3, 2004, “In the Matter of the Access to Justice Principles”: <http://atjweb.org/court-order>
- Access to Justice Technology Principles: <http://atjweb.org/principles>

(2) **The United States Access Board**

1331 F Street, NW, Suite 1000

Washington, DC 20004-1111

Phone: (202) 272-0080

Phone: (800) 872-2253

TTY: (202) 272-0082

TTY: (800) 993-2822

Fax: (202) 272-0081

Web site: www.access-board.gov

The Access Board, a federal agency, offers a variety of useful publications that can help courts to identify and correct architectural barriers. These are available on their web site. The Board also provides training and technical assistance. Among the publications are reports, detailed explanations and diagrams of ADAAG, and technical bulletins covering the following:

- Accessible Information/Transaction Machines
- Assistive listening systems
- Automated Doors
- Detectable warnings
- Ground and floor surfaces
- Parking
- Standards for electronic and information technology
- Technical Requirements for Ramps
- Text telephones
- Using a TTY Electronic and Information Technology Accessibility
- Visual alarms

(3) **U.S. Department of Justice**

ADA Information and Technical Assistance

Phone: (800) 514-0301

TTY: (800) 514-0383

Website: www.wsdoj.gov/crt/ada

Publications web page: www.usdoj.gov/crt/ada/publicat.htm

Many DOJ documents are available by fax through the information line.

- **ADA Title II regulations**
- **ADA Questions and Answers** — This booklet gives an overview of the ADA’s requirements for ensuring equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation, and requiring the establishment of TDD/telephone relay services.
- **ADA Information Services** — This 2-page list provides telephone numbers and Internet addresses of Federal agencies and other organizations that provide information and technical assistance to the public about the ADA.
- **Myths and Facts** — This 3-page fact sheet dispels some common misconceptions about the ADA’s requirements and implementation, and contains basic information for businesses and State and local governments.

- **Title II Technical Assistance Manual** — This 56-page manual explains in lay terms what State and local governments must do to ensure that their services, programs, and activities are provided to the public in a nondiscriminatory manner. Many examples are provided for practical guidance.
- **ADA Guide For Small Towns** — This 21-page guide presents an informal overview of some basic ADA requirements and provides cost-effective tips on how small towns can comply with the ADA.
- **The ADA and City Governments: Common Problems** — This 9-page document contains a sampling of common problems shared by city governments of all sizes, provides examples of common deficiencies and explains how these problems affect persons with disabilities.
- **Accessibility of State and Local Government Websites to People with Disabilities** — This 5-page publication provides guidance on making state and local government websites accessible.
- **Commonly Asked Questions About Service Animals** — This 3-page publication explains the requirements of the ADA regarding animals that accompany and provide services for persons with a disability.
- **Commonly Asked Questions About Title II of the ADA** — This 6-page fact sheet explains the requirements of the ADA for state and local governments.
- **Common ADA Errors and Omissions in New Construction and Alterations** - This 13-page document lists a sampling of common accessibility errors or omissions that have been identified through the Department of Justice’s ongoing enforcement efforts. The significance of the errors is discussed and references are provided to the requirements of the ADA Standards for Accessible Design.

(4) **Useful Federal Regulations:**

- Electronic and Information Technology Accessibility Standards, 36 CFR Part 1194
- Telecommunications Act Accessibility Guidelines, 36 CFR Part 1193
- Accessibility Guidelines for Buildings and Facilities — State and Local Government Facilities; 36 CFR Part 1191

Agencies and Organizations

The following list is necessarily incomplete, and the information is subject to change. Updates will be posted periodically to the website.

(1) **National Center for State Courts**

Court Services Division

Provides technical assistance and consulting on ADA compliance for all levels of state courts.

707 Seventeenth Street, Suite 2900

Denver, CO 80202-3429

Phone: (800) 466-3063

Phone: (303) 293-3063

Fax: (303) 296-9007

(2) **The ABA Commission on Mental and Physical Disability**

Provides a number of publications on disability-related issues, including ABA Urges Equal Access to Courts for Individuals with Disabilities, Into the Jury Box: A Disability Accommodation Guide for State Courts, and Opening the Courthouse Door: An ADA Access Guide for State Courts.

website: www.abanet.org

(3) **Washington Governor’s Committee on Disability Issues and Employment**

Provides advice on disability issues and concerns, and makes recommendations to address those concerns, with emphasis on increasing opportunities for independence and employment.

Olympia Office:

PO Box 9046
Olympia, WA 98507-9046
Phone: (360) 438-3168
TTY: (360) 438-3167
Fax: (360) 438-3208
Spokane Office (Mailing Address Only):
6510 North Division Street, #336
Spokane, WA 99208-3993
Phone: (509) 482-3851
TTY/Fax: (509) 482-3852

(4) Northwest ADA Business and Technical Assistance Center

Provides consultation, technical assistance and training on the Americans with Disabilities Act, other disability-related laws, or accessible information technology.

Phone: 800-949-4232

Website: <http://www.esd.wa.gov/newsandinformation/legresources/gcde/>

(5) Washington State Human Rights Commission

The Commission sponsors many different free education forums, including direct training seminars, publications and brochures on the Washington State Law Against Discrimination. Information is available from the Olympia office or online. Offices are located in Olympia, Seattle, Spokane and Yakima.

Phone: (800) 233-3247

TTY: (800) 300-7525

Website: www.hum.wa.gov

(6) Disability Rights Washington

315 Fifth Ave S, Suite 850

Seattle, WA 98104

Phone: (206) 324-1521

(800) 562-2702

TTY: (206) 957-0728

(800) 905-0209

Fax (206) 957-0729

Website: www.disabilityrightswa.org/

(7) Washington State Office of Administrative Hearings

PO Box 42488

Olympia, WA 98504-2488

Phone: (360) 664-8717

Phone: (800) 558-4857

Website: www.oah.wa.gov

(8) Tacoma Area Coalition of Individuals with Disabilities

6315 S 19th St

Tacoma, WA 98466

Phone: (253) 565-9000

Fax (253) 565-5578

Email: tacid@tacid.org

Resources for Persons with Mental Illness

- (1) **National Alliance on Mental Illness**
NAMI — Washington is a statewide organization with 25 local affiliates. NAMI provides advocacy, public education, training and support for people with mental illness and their families.
NAMI — Washington
4305 Lacey Blvd SE, Suite 5
Lacey, WA 98503
Phone: (360) 584-9622
Website: http://www.nami.org/MSTemplate.cfm?Site=NAMI_Washington
Email: office@namiwa.comcastbiz.net
- (2) **Chelan-Douglas Regional Support Network**
Jill Dempsey, Jeff Howard, Erin Nelson
Mental Health Ombudsman Services
Aging and Adult Care of Central Washington
50 Simon St. SE
East Wenatchee, WA 98802-7727
Phone: 1-800-346-4529
Email: dempsj@dshs.wa.gov, howarj@dshs.wa.gov, nelsoec@dshs.wa.gov
- (3) **Clark County Mental Health Ombudsman**
Melanie Mairino
16420 SE McGillivray, Suite 130
Vancouver, WA 98683
Phone: 1-866-666-5070
Email: maiomel@aol.com
- (4) **Eastern State Hospital**
John Murphy, Eastern State Hospital
PO Box 800, Maple St.
Medical Lake, WA 99022-0800
Phone: (509) 565-4520
Email: murphyjo@dshs.wa.gov
- (5) **Greater Columbia Behavioral Health Regional Support Network**
Ti Nelson, Benton Franklin Dispute Resolution Center
5219 W. Clearwater, Suite 11
Kennewick, WA 99336
Phone: 1-800-257-0660
Email: tinelson@bfdrc.org
- (6) **Grays Harbor County Mental Health Ombudsman**
Theresa Mahar
Grays Harbor County Ombuds
Phone: 1-866-439-3064
Email: maharthe@yahoo.com
- (7) **King County Mental Health Ombudsman**
Dave Black
400 Yesler Ave, Yesler Building Rm. 402

Seattle, WA 98104

Phone: 1-800-790-8049

Fax: 206-205-5329

Email: ombuds.mhd@kingcounty.gov

(8) **Division of Behavioral Health and Recovery (HRSA)**

Hank Balderrama – Fair Hearing Coordinator for Mental Health

Division of Behavioral Health and Recovery

PO Box 45320

Olympia, WA 98504-5320

Phone: (360) 725-1736

Email: baldech@dshs.wa.gov

(9) **North Central Washington Regional Support Network**

Jeff Howard, Erin Nelson

Aging and Adult Care of Central Washington

1336 Pioneer Way, Suite 103

Moses Lake, WA 98837-2410

Phone: 1-800-346-4529

Email: howarj@dshs.wa.gov, nelsoec@dshs.wa.gov

(10) **North Sound Mental Health Administration**

Chuck Davis, Kim Olander

North Sound Regional Ombuds

330 Pacific Place

Mount Vernon, WA 98273

Phone: 1-888-336-6164

Email: chuckd@skagitcap.org, kimo@skagitcap.org

(11) **Peninsula Regional Support Network**

Diane Knight, Tricia Scott

PRSN Mental Health Ombuds

9004 Washington Ave. NW

Silverdale, WA 98383

Phone: 1-888-377-8174

Email: ombuds@kitsapdrc.org

(12) **Pierce County Mental Health Ombudsmen**

Bobbie Vann, Carolyn Glover

Pierce County Ombuds

3580 Pacific Ave.

Tacoma, WA 98418-7915

Phone: 1-800-531-0508

Email: bvann@co.pierce.wa.us, cglover@co.pierce.wa.us

(13) **Southwest Regional Support Network**

Bernie Altman

Southwest RSN Ombuds

1952 9th St.

Longview, WA 98632

Phone: (360) 414-0237

Email: swrsnombuds@yahoo.com

- (14) **Thurston-Mason Regional Support Network**
Ann Edington
Thurston County Public Health and Social Services Dept.
412 Lilly Rd.
Olympia, WA 98506
Phone: 1-800-658-4105
Email: ombuds@co.thurston.wa.us
- (15) **Timberlands Regional Support Network**
Theresa Mahar
Timberlands Ombuds
Phone: 1-866-439-3064
Email: maharthe@yahoo.com
- (16) **Western State Hospital**
Ilene Le Vee
9601 Steilacoom Blvd. SW
Tacoma, WA 98498-7213
Phone: (253) 879-7996
Email: leveeil@dshs.wa.gov

Resources for Persons with Cognitive Disabilities

- (1) **Arc of Washington State**
Arc of Washington State is a statewide organization with 11 local affiliates. Arc provides advocacy and training for people with developmental disabilities and their families.
The Arc of Washington State
2638 State Avenue NE
Olympia, WA 98506
Phone: (360) 357-5596, (888) 754-8798
Fax: (360) 357-3279
Website: www.arcwa.org
- (2) **People First of Washington**
People First is an organization of people with developmental disabilities, with local chapters.
People First of Washington
P.O. Box 648
Clarkston, WA 99403
Phone: (800) 758-1123
Fax: (509) 758-1289
Website: www.peoplefirstofwashington.org
Email: pfow@clarkston.com
- (3) **Self-Advocates of Washington**
Self-Advocates of Washington is an organization of people with developmental disabilities in the Tacoma area.
Self-Advocates of Washington
P.O. Box 825
Tacoma, WA 98401
Phone: (253) 565-3091

Centers for Independent Living

Provides information about accommodations for people with disabilities.

- (1) **Alliance of People with disAbilities (formerly Washington Coalition of Citizens with Disabilities)**
4649 Sunnyside Ave N, Suite 100
Seattle, WA 98103
Phone: (206) 545-7055
Phone: (866) 545-7055
Phone: (800) 724-8172
TTY: (206) 632-3456
Fax: (206) 535-7059
13615 NE 87th St, Suite B-3
Redmond, WA 98052
Phone: (425) 558-0993
Phone (outside King County): (800)
216-3335
TTY: (425) 861-9588
Fax: (425) 558-4773
Email: info@disabilitypride.org
Website: www.disabilitypride.org
- (2) **Center for Independence**
10828 Gravelly Lake Drive SW #112
Lakewood, WA 98499
Phone: (253) 582-1253
Fax: (253) 584-4374
Website: www.centerforindependence.org
- (3) **Central Washington Disability Resources**
200 E. 4th Ave.
Ellensburg, WA 98926
Phone/TTY: (509) 962-9620
Phone/TTY: (800) 240 5978
Fax: (509) 933-1571
Website: <http://mycwdr.org/>
- (4) **Coalition of Responsible Disabled**
912 North Maple St
Spokane, WA 99201
Phone/TTY: (509) 326-6355
Fax: (509) 327-2420
Website: <http://www.cordwa.info/>
e-mail: contact@cordwa.info
- (5) **Disability Resources of Southwest Washington**
2700 NE Andersen Rd, Suite D-5
Vancouver, WA 98662
Phone: (360) 694-6790
Fax/TTY: (360) 882-1324
Website: www.darsw.com

Email: disabilityresources@darsw.com

Extension office for Cowlitz and Wahkiakum Counties:

1339 Commerce Ave, Suite 302

Longview, WA 98632

Phone: (360) 425-0340

Resources for the Blind and Visually Impaired

- (1) **National Federation for the Blind**
P.O. Box 2516
Seattle, WA 98111
Phone: (425) 823-6380
Website: www.nfbw.org
Email: info@nfbw.org
- (2) **Washington Council for the Blind**
P.O. Box 30009
Seattle, WA 98113-0009
Phone: (206) 283-4276
Phone: (800) 255-1147
Website: www.wcbinfo.org
Email: info@wcbinfo.org
- (3) **Washington State Services for the Blind**
3411 S. Alaska St.
Seattle, WA 98118
Phone: (206) 721-4422
Phone: (800) 552-7103
Website: www.dsb.wa.gov
Email: info@dsb.wa.gov

Resources for the Deaf and Hard of Hearing

- (1) **National Association of the Deaf**
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
Phone: (301) 587-1788
TTY: (301) 587-1789
Fax: (301) 587-1791
Website: www.nad.org
Email: NADinfo@nad.org
Provides information and answers to frequently asked questions on its website.
- (2) **Department of Social and Health Services (DSHS)**
Office of the Deaf and Hard of Hearing (ODHH)
PO Box 45301
Olympia, WA 98504-5301
Website: www.dshs.wa.gov/hrsa/odhh
Phone/TTY: (800) 422-7930

Phone/TTY: (360) 902-8000
Fax: (360) 902-0855
Dlink Video Phone IP Address: 209.181.93.249
Dlink Video Phone Number: (360) 339-7382
Email: odhh@dshs.wa.gov

(3) **Washington Relay Service**

Dial 711

Website: www.washingtonrelay.com

(4) **Deaf and Hard of Hearing Regional Service Centers (listed alphabetically by agency):**

a. Eastern Washington Center for the Deaf and Hard of Hearing (EWCDHH)

Serves Okanogan, Douglas, Lincoln, Ferry, Chelan, Pend Oreille, Stevens, Spokane, Whitman and Grant Counties.

1206 N Howard St

Spokane, WA 99201

Phone/TTY: (509) 328-9220

Fax: (509) 327-4266

Website: www.ewcdhh.org

Email: info@ewcdhh.org

b. EWCDHH Interpreter Services:

Phone: (509) 328-3728

Email: Info@ewcdhh.org

D-Link Video Phone Number: (509) 315-2288

D-Link Video Phone IP Address: 64.3.28.96

c. Hearing Speech and Deafness Center (HSDC)

Serves Whatcom, King, Island, San Juan, Skagit and Snohomish Counties.

1625 19th Ave

Seattle, WA 98122

Phone: (206) 323-5770

TTY: (206) 388-1275

Fax: (206) 328-6871

D-Link Video Phone IP Address: 207.218.101.226

D-Link Video Phone Number: (206) 388-1275

Website: www.hsdc.org

Email: sburdick@hsdc.org

d. Hearing Speech and Deafness Center (HSDC) — Bellingham Satellite Office

Crown Plaza Building

114 West Magnolia Street, Suite 316

Bellingham, WA 98225

Phone: (360) 647-0910

TTY: (360) 647-8508

Fax: (360) 647-0923

D-Link Video Phone IP Address: bellingham.hsdc.org

D-Link Video Phone Number: (360) 647-8508

Website: www.hsdc.org

Email: info@bellingham.hsdc.org

- e. Southeastern Washington Service Center for the Deaf and Hard of Hearing (SEWSCDHH)**
Serves Benton, Franklin, Walla Walla, Columbia, Asotin, Garfield, Yakima, Kittitas, Adams and Klickitat Counties.
 124 N 5th Ave
 Pasco, WA 99301
 TTY: (509) 543-9649
 Phone: (509) 543-9644
 Phone/TTY: (888) 543-6598
 Fax: (509) 543-3329
 D-Link Video Phone IP Address: 65.103.154.99
 D-Link Video Phone Number: (509) 416-2221
 Website: www.sewscdhh.org
 E-mail: vizz@sewscdhh.org
- f. Southeastern Washington Service Center for the Deaf and Hard of Hearing (SEWSCDHH) –**
 Yakima Satellite Office
 505 N 4th St, Suite 5
 Yakima, WA 98901
 Phone: (509) 469-1845
 TTY: (509) 469-1847
 Fax: (509) 469-3965
 D-Link Video Phone IP Address: 63.230.133.94
 D-Link Video Phone Number: (509) 594-4300
 Website: www.sewscdhh.org/
- g. Southwest Washington Center for the Deaf and Hard of Hearing (SWCDHH)**
Serves Clark, Skamania, Lewis, Pacific, Cowlitz and Wahkiakum Counties.
 301 SE Hearthwood Blvd
 Vancouver, WA 98687
 TTY: (360) 695-9720
 Phone: (360) 695-3364
 Fax: (360) 695-2706
 D-Link Video Phone IP Address: 65.100.45.27 or vp.swcdhh.org
 Website: www.swcdhh.org
 e-mail: frontdesk@swcdhh.org
- h. Tacoma Area Coalition of Individuals with Disabilities (TACID)**
Serves Pierce, Thurston, Grays Harbor, Mason and Kitsap Counties.
 6315 S 19th St
 Tacoma, WA 98466
 Phone/TTY: (253) 565-9000
 Phone: (877) 538-2243
 TTY: (877) 551-3323
 Fax: (253) 565-5578
 D-Link Video Phone Number: (253) 565-3486
 D-Link Video Phone IP Address: 131.191.59.74
 Website: www.tacid.org
 Email: tacid@tacid.org

Sign Language Interpreter Referral Agencies

The following agencies have contracts with the State of Washington to provide American Sign Language services as of our publication date, April. Other agencies may also exist. To schedule an interpreter contact one of the agencies listed below, or contact the State Office of Deaf and Hard of Hearing.

- (1) **ASL Professionals**
3418 N Ferdinand St
Tacoma, WA 98407
Phone: 253-759-7653
Fax: 253-761-8936
Email: aslprofessionals@harbornet.com
Conner, Luanne
5512 NE 159th St
Vancouver, WA 98686
Ph: 360-576-7777
Fax: 360-258-3140
Email: dljconner@comcast.com
- (2) **Dynamic Language CTR, LTD.**
15215 52nd Ave South, Suite 100
Seattle, WA 98188
Phone: 206-244-6709
Fax: 206-243-3795
Website: www.dynamiclanguage.com
Email: web@dynamiclanguage.com
- (3) **Eastern Washington Center for the Deaf and Hard of Hearing (EWCDHH)**
1206 North Howard Street
Spokane, WA 99201
Phone: 509-328-3728
D-Link Video Phone Number: (509) 315-2288
D-Link Video Phone IP Address: 64.3.28.96
Email: Info@ewcdhh.org
Email: nancy@ewcdhh.org
- (4) **Northwest Interpreters, Inc.**
P.O. Box 65024
Vancouver, WA 98665
Phone: 360-566-0492
Fax: 360-566-0453
Website: www.nwiservices.com/contact.php
Email: vm@emarcus.net
- (5) **Signing Resources & Interpreters, LLC**
8002 NE Highway 99 # B705
Vancouver, WA 98665
Phone: 877-512-2246
Emergency services: dial (877) 512-2246 and press #7
Website: www.signingresources.com
Email: request@signingresources.com

(6) **SignOn: A Sign Language**

Interpreter Resource
130 Nickerson St, Suite 107
Seattle , WA 98109
Phone: 206-632-7100
TTY: (206) 632-7200
Fax: 206-632-0405
Video Phone IP Address: terps.signonasl.com
Website: www.signonasl.com
Email: vm@emarcus.net

(7) **Southeast Washington Service Center of the Deaf and Hard of Hearing (SEWSCDHH)**

124 N 5th Ave
Pasco, WA 99301
TTY: (509) 543-9649
Phone/TTY: (888) 543-6598
Phone: 509-543-9644
D-Link Video Phone IP Address: 65.103.154.99
D-Link Video Phone Number: (509) 416-2221
Fax: 509-543-3329
Website: www.sewscdhh.org/
E-mail: vizz@sewscdhh.org

(8) **Universal Language Service, Inc.**

PO Box 4147,
Bellevue 98009
Phone: 1-888-462-0500
Phone: (425) 454-8072
Fax: 877-516-4347
Website: <http://ulsonline.net/>
Email: unilang@gte.net

Suggested Reading/Video Materials

- Baynton, Douglas, *Forbidden Signs: American Culture and the Campaign Against Sign Language 1847-1920*, Chicago, IL: University of Chicago Press (1998).
- Biesold, Horst, *Crying Hands: Eugenics and Deaf People in Nazi Germany*, Washington, DC: Gallaudet University Press (1999).
- Charlton, James I., *Nothing About As Without Us: Disability Oppression and Empowerment*, Los Angeles, CA: University of California Press (1998).
- Condeluci, Al., *Interdependence: The Route to Community*, Winter Park, FL: CRC Press (2d ed. 1995).
- Gallagher, Hugh G., *By Trust Betrayed*, New York: Henry Holt and Company (1990).
- Montana Advocacy Program, *Hidden In Plain Sight: A Disability Awareness Video* (2004) (21 minutes, Videocassette).
- Hockenberry, John, *Moving Violations: War Zones, Wheelchairs and Declarations of Independence*, Madison, WI: Turtleback Books Distributed by Demco Media (1996).
- Liachowitz, Claire, *Disability as a Social Construct: Legislative Roots*, Philadelphia, PA: University of Pennsylvania Press (1988).
- Longmore, Paul K. and Umansky, Lauri, *The New Disability History*, New York: New York University Press (2001).
- Norden, Martin F., *The Cinema of Isolation: A History of Physical Disability in the Movies*, New Brunswick, NJ: Rutgers University Press (1994).
- Pernick, Martin S., *The Black Stork*, New York: Oxford Press (1996).
- Scotch, Richard, *From Good Will to Civil Rights: Transforming Federal Disability Policy*, Philadelphia, PA: Temple University Press (1984).
- Johnson, Allan G., *Power, Privilege and Difference*, Mountain View, CA: Mayfield Publishing Company (2001).
- Johnson, Mary, *Make Them Go Away: Clint Eastwood, Christopher Reeve and the Case Against Disability Rights*, Louisville, KY: The Advocado Press (2003).
- Shapiro, Joseph, *No Pity*, New York: Time Books Random House (1993).
- Harrington, Tim, *The Ten Commandments of Communication with People with Disabilities*, Irene M. Ward and Associates Productions (1994) (26 minutes, Videocassette).
- Thomson, Rosemarie Garland, *Extraordinary Bodies*, New York: Columbia University Press (1997).
- Treanor, Richard, *We Overcame: History of the Civil Rights of the Disabled*, Falls Church, VA: Regal Direct Publishing (1993).



Access to Justice Board
1325 Fourth Avenue, Suite 600
Seattle, WA 98101
206-727-8282
206-727-8310 (fax)
www.wsba.org/atj
