

DEVELOPMENTAL DISABILITIES ADMINISTRATION
Olympia, Washington

TITLE: ATTORNEY GENERAL ADVICE AND REPRESENTATION POLICY 2.02

Authority: [Chapter 4.92 RCW](#) *Actions and claims against state*

PURPOSE

This policy describes the process for requesting assistance from the Office of the Attorney General (AGO): (a) for legal advice; (b) for assistance with or in an administrative hearing; or (c) in a lawsuit where you are a named-defendant regarding alleged acts or omissions as an employee of the Developmental Disabilities Administration (DDA). This policy is intended to eliminate duplicate requests, coordinate staff efforts, and facilitate communication of AGO responses to all appropriate Administration staff.

SCOPE

This policy applies to all DDA organizational units.

POLICY

A. Requests for Legal Advice Unrelated to Client Appeals

1. DDA Headquarters staff, Regional Administrators (RA), Field Services Administrators (FSA), and Residential Habilitation Center (RHC) Superintendents and Assistant Superintendents can contact their assigned Assistant Attorney General (AAG) directly for verbal consultation or to request advice in writing. Requests for advice may be made verbally or by e-mail, unless the AAG specifically asks that the request be made in writing on [DSHS 10-330](#), *Request for Legal Advice*.
2. Prior to contacting an AAG, DDA regional staff and RHC staff who are not subject to A.1 above should first consult with their RA, FSA, or RHC superintendent or assistant superintendent. If the outcome of such consultation is that AAG involvement is necessary, the assigned AAG can be contacted directly.

This procedure may be altered by prior agreement with the assigned AAG.

3. If any DDA staff believes that immediate AAG involvement is necessary and that insufficient time is available to allow for the prior consultation anticipated in A.2 above, the staff person should contact an AAG immediately for the necessary consultation.
4. For guardianship matters, including the establishment or modification of guardianships and guardianship fee issues, prior to contacting an AAG for verbal consultation or written advice DDA regional staff and RHC staff should first consult with their regional guardianship coordinator. If the outcome of such consultation is that AAG involvement is necessary, the AAG assigned to cover guardianship matters can be contacted directly. This procedure may be altered by prior agreement with the assigned AAG. If immediate AAG involvement is necessary, refer to A.3 above.

B. Requests for Legal Advice Related to Client Appeals/Administrative Hearings

The protocol for the involvement of the AAGs in regional administrative hearings is described in Attachment A of this policy. For any case in which an adverse decision for DDA could have broader application beyond the immediate case at hand, such as cases in which the appellant is challenging a DSHS rule, an AAG shall be contacted as soon as possible after the appeal is filed for consultation regarding witnesses, exhibits, and strategy.

C. Notification/Representation in a Lawsuit

1. If a DDA employee is named in a lawsuit arising from his or her job duties, the employee should contact the RA or FSA and the assigned AAG immediately.
2. If an Administration employee has reason to believe that a lawsuit may be filed against the employee or the Department, he or she should contact the RA, the assigned AAG, and the DDA Torts Manager to determine what documentation they should begin collecting.

SUPERSESSION

DDD Policy 2.02
Issued September 4, 2012

Approved: /s/ Donald Clintsman
Deputy Assistant Secretary
Developmental Disabilities Administration

Date: December 1, 2015

ATTACHMENT A

PROTOCOL FOR INVOLVEMENT OF AAGs IN REGIONAL ADMINISTRATIVE HEARINGS

Revised 9/3/2012

While the role of DDA's assistant attorneys general (AAG) is to provide legal advice and representation to the Administration, their availability to represent DDA in regional administrative hearings is limited to significant cases in which AAG representation is deemed necessary. The AAG will decide what level of involvement is needed and/or available (i.e., one-time consultation, review of case preparation, assistance with writing of legal motions or petitions for review, or assistance and representation at the hearing).

The following are guidelines for consulting with Central Office staff about DDA administrative hearings, and for determining when it is appropriate to request AAG involvement.

- A. Except for cases in which AGO staff has agreed to represent DDA at the administrative hearing, DDA regional staff will have primary responsibility for coordinating and preparing the case and representing the department at the hearing. When assuming this role, DDA staff can consult with an AAG regarding substantive or procedural issues in particular cases, consistent with this protocol.

If the region believes it can handle the administrative hearing without AAG assistance, they are encouraged to do so. AAG assistance can be requested at any stage of the administrative hearing process, including during appeals to department review judges.

- B. Generally, AAG representation at administrative hearings will be limited to cases involving complex issues, cases with large fiscal implications, significant cases in which the appellant has an attorney, or cases involving issues that could have broader legal implications for DDA or DSHS. In such cases an AAG shall be informed of the case and its implications and consulted regarding the necessity for AAG participation. For cases in which an AAG has agreed to represent DDA at an administrative hearing, the attorney will work collaboratively with DDA staff in preparing the case for hearing and submitting briefs and other documents to the Office of Administrative Hearings. Also, the assigned AAG will work with DDA staff regarding appeals.

- C. When requesting representation from an AAG, the following steps should be taken:
1. Consult other regional staff with knowledge of the program/decision in dispute. If needed, AAG assistance can be requested by the Administrative Hearing Coordinator, the Field Services Administrator, or the Regional Administrator.
 2. Prior to calling the AAG, send an email to the AAG (with a copy to the Central Office Administrative Hearing Coordinator) with basic information such as:
 - Which RCWs, WACs, or policies are involved with the appeal?
 - What is the basis for the department's decision?
 - What is the basis, if any, for the appellant's appeal?
 - Which employees need to be involved in the hearing?
 - What is at stake in the case? What are the implications of an adverse decision?

ATTACHMENT A

3. Consult with the Central Office Administrative Hearings Coordinator on WAC-related issues and defense strategy consultation. In cases where the appellant is represented by an attorney, the regions can contact the AAG directly to discuss the need for AAG involvement.
 4. In all cases where the applicant or recipient appeals an OAH decision to the DSHS or HCA Board of Appeals, the DDA representative at the administrative hearing shall inform an AAG that such an appeal has been filed in order to discuss whether AAG participation is needed. In cases where DDA wants to file an appeal of an OAH decision, the DDA representative should, if possible, first consult with an AAG. If such consultation cannot occur prior to the appeal deadline the DDA representative should file the appeal and consult with an AAG as soon as possible afterward.
- D. Regional Administrative Hearing Coordinators are expected to participate in the monthly Administrative Hearings conference call to stay informed on current issues/procedures.