

# UNDERSTANDING THE LEGAL MANDATES WITHOUT BECOMING AN ATTORNEY

## OCTOBER 3

An old adage reminds us that, "you can't tell the players without a scorecard." BY the same token, in the field of DSS, you can't answer your own questions, or examine/explain/defend your policies, practices, and procedures without a firm understanding of the legal mandates that guide our efforts. This workshop will provide an introduction/review of the key legislation and court cases relevant to students with disabilities in higher education. What are the differences between ADA, 504, and IDEA — and why is it important for service providers to understand those differences? How are key terms defined in the law, and what practical examples from higher education will help to better understand the intent and the impact of those definitions on support/service programs in postsecondary education? Why/How can different authorities read the same case law and have such different opinions? All this and more!...

## WORKSHOP AGENDA

(These are topics to be covered and the order of presentation – no specific times are assigned to assure the free flow of information and adequate time for questions/answers, scattered throughout.)

### Setting the Stage:

- IDEA/Section 504/ADA
  - What is important to me... and WHY?
  - Laws that overlap
  - STUDENTS who overlap
- Statute/Regulations/Interpretive Guidance --
  - Who said what and how binding is it?
- District Court/Circuit Court/Supreme Court --
  - What influences their decisions besides the law?
- OCR Investigations
- 504/ADA are Civil Rights statutes -- or ARE they???
- Distinguishing Good Practice from Good/Bad Law!!!

### Most confusing Myths Regarding the Law:

- "Covered disabilities"
- "essential functions of the job"
- REASONABLE v. rEASONABLE Accommodations
- "I have a right to these accommodations"
- "my documentation says I should get..."
- testing must be "recent" (within 3 years)
- "you have to provide me with tutoring"

### Picking Apart the Definitions/Language of the Law(s)

- "Person with a disability"
- "physical or mental impairment"
- "substantially limits"
- "major life activities"
- "history (record) of impairment"
- "perceived (regarded) as having a disability"
- "Otherwise qualified"
- "solely on the basis of disability"
- illegal use of drugs
- no requirement for citizenship
- reasonable accommodation
- direct threat to the health or safety of others
- substantial change in an essential element of the curriculum
- substantial alteration in the manner in which the opportunity is provided
- undue financial or administrative burden
- technical standards and eligibility criteria
- prohibition regarding pre-admission inquiries

### Primary Applications of the ADA (and 504) to Higher Education

- No exclusion on the basis of disability
- No discrimination through eligibility criteria
- Modifications in policies/practices/procedures
- Presence and use of service animals
- No discrimination through association
- Examinations and courses must be accessible
- No harassment or retaliation
- Who bears the cost?

### What ISN'T Addressed by 504/ADA?

- Grievance Policies
- Confidentiality
- Documentation

### Related Laws of Note:

- Reauthorization of the Rehab Act and Interagency Agreements
- Chaffee Amendment
- FERPA
- Fair Housing Act

### Back to the Legal Landscape

- 5<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup> Amendments to the Constitution
- What have the courts defined/what have they confused
- From Davis to Bartlett with relevant stops in between --  
Major court cases that have shaped our PRACTICE in DSS/Higher Education
- What to watch for...