Beyond the Americans with Disabilities Act

INCLUSIVE POLICY AND PRACTICE FOR HIGHER EDUCATION

An introduction to a new book launching at the NASPA 2014 Annual Conference

A Disability KC Webinar

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NASPA and AHEAD Collaboration

Introducing the Presenters

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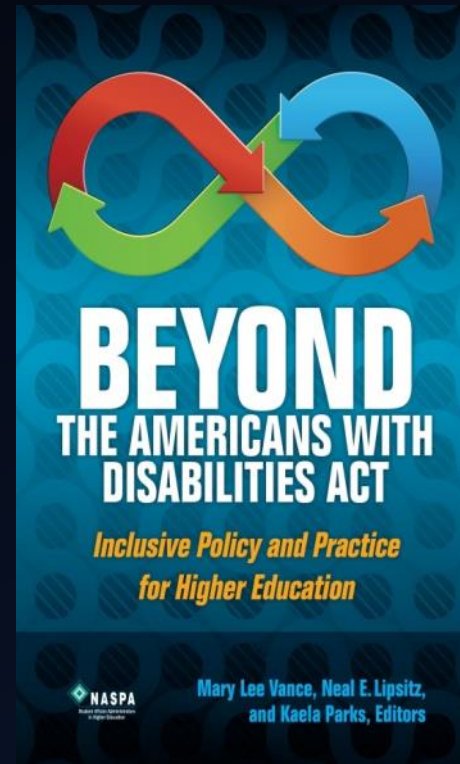*Worcester, Massachusetts*

Disclaimer

The contents of this webinar and any materials associated with this webinar are provided for **informational purposes only** and **are *not*** to be construed as **legal advice**.

You should seek the advice of your college counsel or independent counsel to resolve any legal questions or matters that you are responsible for addressing.
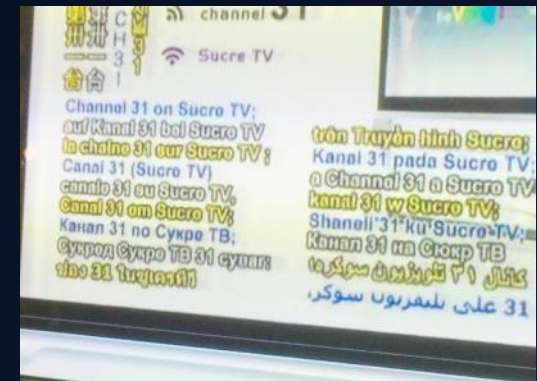
Overview of this Webinar

- Why this book needed to be written
- The new baseline
- Why accommodation must be coupled with proactive planning
- The themes of the text
- Q and A

In the Beginning, There was this...   and now this!

Running Theme #1

- Each chapter will reflect the spirit of Universal Design, Universal Access or other Universal pedagogy as the ultimate vision, versus maintaining ADA minimal standards as a mission

Running Theme #2

- For the purpose of consistency, we prefer the usage of person first language, as in students with disabilities or people with disabilities, versus disability first language such as disabled person or disabled student. However, it is acknowledged this is a controversial issue, and is addressed in the introduction of the publication. In the end, what is "correct" is what the individual prefers.
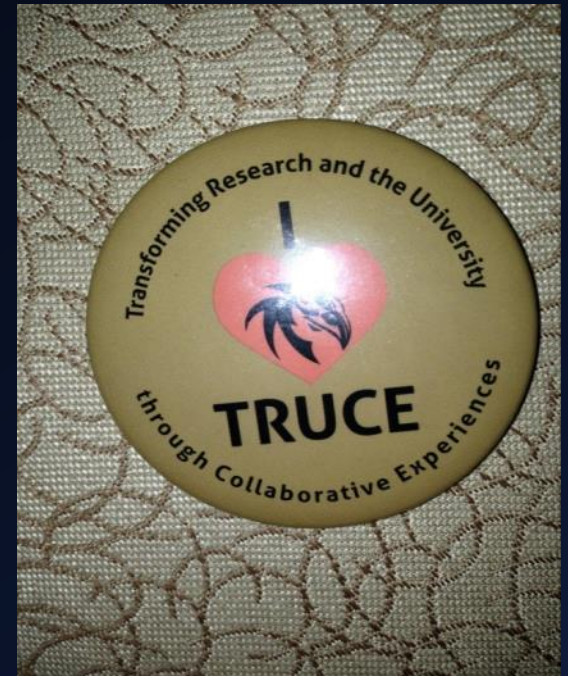
- So, if in doubt, ask!

Running Theme #3

Since this book will not likely be updated for several years, the chapters must reflect not only current reality, but also demonstrate a forward thinking perspective.

Transformation is a continuous and ongoing process.

Collaboration is key!

Running Theme #4

Chapters must reinforce the importance of the student as self-advocate

Running Theme #5

Chapters must reinforce the role of disability and/or accessibility personnel as key partners in campus initiatives addressing not only the needs of students with documented disabilities, but also those who don't self-identify but would benefit from accessible design approaches

Running Theme #6

Disability must be addressed as part of the diversity fabric, and included in multicultural initiatives, since disability is an identity that is socially constructed.

Running Theme #7

Chapters should promote the role of DS providers as collaborators, not just providers of accommodations, and the institution as committed to providing choices proactively, thereby providing access in the context of a strong institutional commitment.

So, who needs this book? Everyone!

Before you can go beyond the law, you must know what it requires and comply with it.

WHAT WAS ONCE SUFFICIENT FOR COMPLIANCE HAS CHANGED IN MANY WAYS. NOW, THERE IS A NEW BASELINE TO MEET AND EXCEED.

Federal Disability Anti-Discrimination Laws Cover Us All

- Compliance with Federal disability rights laws is required of nearly every American college and university :
  - Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and,
  - Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131-34, or,
  - Title III of the ADA, 42 U.S.C. § 12181-89.

These Laws Apply Broadly

- Every program and activity is covered

- Every individual with a disability (students, employees, visitors) is protected

- Any employee has the potential to create noncompliance and many such individuals are unaware of recent changes and amendments (upgrades) to these laws – a new baseline

If you do not train everyone to comply with these laws, you cannot maintain compliance with the ADA, much less get beyond the ADA

Basic Principles

- These laws prohibit discrimination on the basis of disability
  - Admission
  - Program access
  - Facilities access
  - Hostile environment
  - Service animals, mobility devices
- These laws require "academic adjustments and auxiliary aids" for students with disabilities (reasonable accommodation)

Basic Principles

- "Reasonable" does not mean reasonable in the eyes of the average faculty member or what seems fair to other students

- "Reasonable" means
  - **Anything necessary** to equal participation in the program and/or to best ensure valid examination results
  - **Unless**:
    - A fundamental alteration or lowering of academic standards
    - An undue burden
    - A personal service
    - A direct threat to the health and safety of *others*

The New Baseline

- These laws have undergone the greatest change in 20 years

- The ADA Amendments Act of 2008, effective in 2009, clarified by EEOC regulations effective in 2011, have greatly expanded who is protected by these laws

- In 2010, the U.S. Department of Justice (DOJ) published new regulations implementing Titles II and III of the ADA. Respectively, 28 C.F.R. Part 35 (Title II) and 28 C.F.R. Part 36 (Title III).

The New Baseline

- On particular note, among other things, are new provisions concerning:
    - Documentation of "disability" in light of its new definition
    - Accommodation of individuals with sensory impairments
    - Service animals
    - Comprehensive architectural disability-access standards for new construction and altered facilities.
    - Wheelchairs and other mobility devices
    - Event ticketing for disability accessible seating

6 Important Changes to the Baseline Number 1: Definition of Disability (1)

- Due to the ADAAA it will be much easier for individuals to establish coverage
  - It will be particularly easy to establish coverage where the issue is just discrimination, not accommodation
  - The historic primary defense of "the plaintiff is not disabled" is much less viable and courts now will focus on discrimination and accommodation allegations

Number 1: Definition of Disability

- Many impairments are now per se disabilities but not LD or AD/HD
  - LD will focus on time, manner, and duration
  - Having a record of academic success does not make and individual with an LD ineligible for coverage

- Good news:
  - Your investment in students with disabilities will not be wasted when they must take board/licensing exams

6 Important Changes to the Baseline Number 2: Sensory Impairments

- Due to a series of court decisions, and DOJ guidance accompanying the new regulations, it is clear that students with sensory impairments should receive great deference in determining which forms of accommodation they should receive
  - What has work well in the past will be important
  - Administrative inconvenience will carry little weight

6 Important Changes to the Baseline Number 3: Service Animals (1)

- Only dogs are service animals
  - Under specific circumstances miniature horses, as an accommodation

- Service animals must be trained and engage in a need/response paradigm

- Service animals need not be registered with DSS and owners are subject to limited questioning:
  - is the animal required because of a disability; and,
  - what work or task the animal has been trained to perform?

Number 3: Service Animals (2)

- Comfort/companion/assistance animals do not need training and do not need to engage in a need/response paradigm
  - Should be treated like an accommodation
  - May be restricted to housing and housing common areas
  - Use in classroom is an unsettled issue in the law

6 Important Changes to the Baseline Number 4: Wheelchairs & OPMDs (1)

- A wheelchair "means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability…"
  - Walkers, canes, crutches, wheelchairs and scooters must be admitted anywhere you admit "pedestrians"

Number 4: Wheelchairs & OPMDs (2)

- OPMD: "[A]ny mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion."
  - E.g., Segways and ATVs
  - Treated as an accommodation but presumed acceptable unless college can demonstrate that the class of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the college
    - Five criterion test

6 Important Changes to the Baseline Number 5: Ticketing

- Don't leave this up to anyone who isn't well qualified

- Applies to required accessible seating:
  - Companion seats
  - Ticket sales and verification
  - Finding seats
  - Pricing seats
  - Transferring tickets and secondary market
  - Selling out
  - Older venues

Six Important Changes to the Baseline Number Six: Buildings and Facilities (1)

- "2010 Standards" – new from DOJ
  - Significant revisions and additions to 1991 Standards
  - Apply to new construction and alterations after March 15, 2012

- Types of facilities addressed for first time:
  - Access to swimming pools
  - Access to exercise equipment
  - Play areas, golf courses
  - Certain aspects of residences

- New approach to housing at a place of education

Six Important Changes to the Baseline Number Six: Buildings and Facilities (2)

- Generally, compliant existing features are "safe harbored"
  - If they comply with earlier standards, no need to change
  - E.g., existing light switch can stay at 54" if side reach; no need to lower to new 48" height
- BUT those listed in prior slide don't get the safe harbor

Six Important Changes to the Baseline Number Six: Buildings and Facilities (3)

- III) Facilities that aren't safe harbored were to be altered by March 15, 2012 --

  (1) If access to them is necessary for "program access" (access to program as a whole) (title II) or

  (2) As part of barrier removal (title III)

Number Six: Buildings and Facilities (4) Are You Where You Should Be?

- Consider those elements/spaces that are "safe-harbored" and those that aren't

- If you didn't come into compliance with program access/barrier removal requirements by March 15, 2012 (or policy provisions) –
  - Do a self-evaluation of policies, facilities
  - Develop an action plan and a transition plan for facilities

- Plans can be done in-house, with a consultant, or with a mix of approaches

- Implement the plans; then exceed them!

Accommodation Falls Short

Focusing on compliance with legal mandates is a necessary but not sufficient condition for ensuring equal access

Equally Effective Communication

- *Good Design is critical for online environments*

Review of Policy & Practice

Formal policies as well as day to day practice should be examined and refined for continual improvement

- *Dear Colleague Letters*

- *Legal Settlements*

- *Notice of Proposed Rulemaking*

- *Guidance*

Universal Design - Access

Universal Design can help to improve access and reduce the potential for discrimination

Collaboration is Critical

Collaboration is critical for success. No one area can do it alone, only when the pieces come together can we achieve our goal of ensuring equal access.
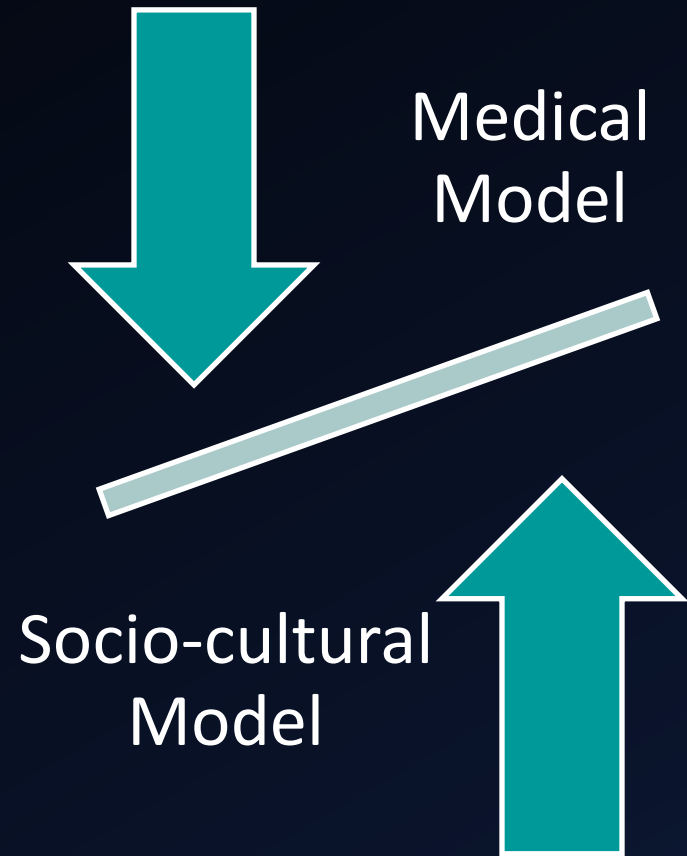
Themes of the Text

- The ADA and Changing Disability Pedagogy
- Information and Communication Technology
- Emerging and Growing Populations and Their Impact on Higher Education
- Best Practices

Universal Design

Changing Disability Pedagogy

Enriching our understanding of disability with a more inclusive perspective of social and cultural constructions

Medical Model

Socio-cultural Model

The Student Affairs Response

- Transitioning from the language of *services* and *support* to *resources* and *facilities*

- Addressing disability access as the *shared responsibility* of each department

Information and Communication Technology

Individual "Accommodations"

Institution-wide Commitment Leads to "Access"

The Student Affairs Response

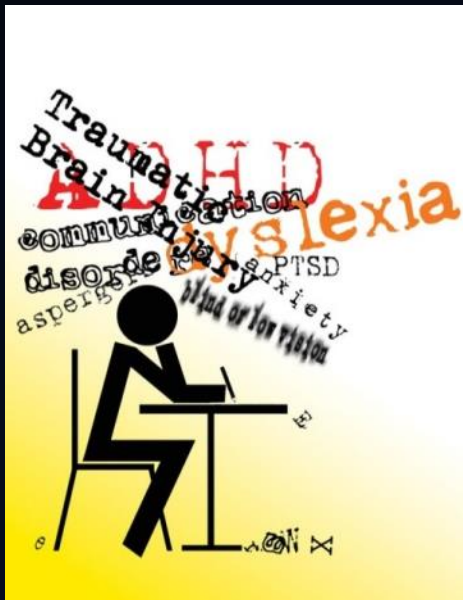***Technology access must be an institution-wide priority***

o Technology is an extension of campus climate and provides opportunities for full inclusion

o This necessitates providing equal physical access to technical equipment, as well as access to visual and audio enhancement (e.g. large or high-contrast font, text-to speech options)

Emerging and Growing Populations

And their impact on higher education
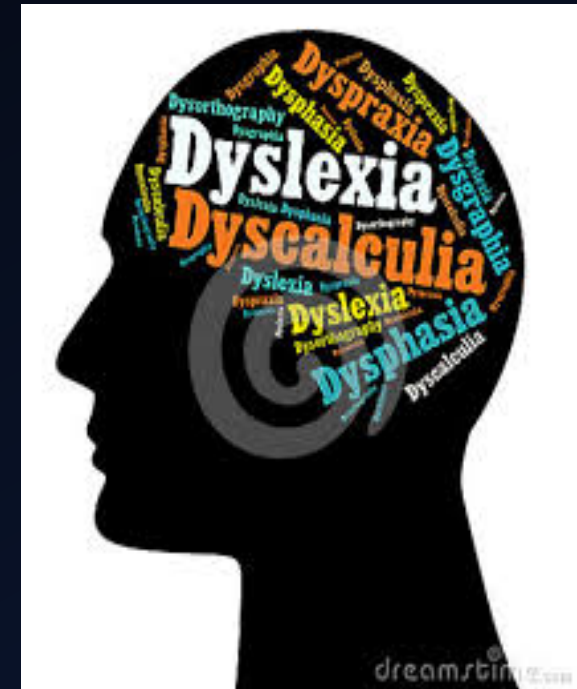
➢ *Students with Hidden Disabilities*

➢ *Wounded Warriors*

➢ *Students with Intellectual Disabilities*
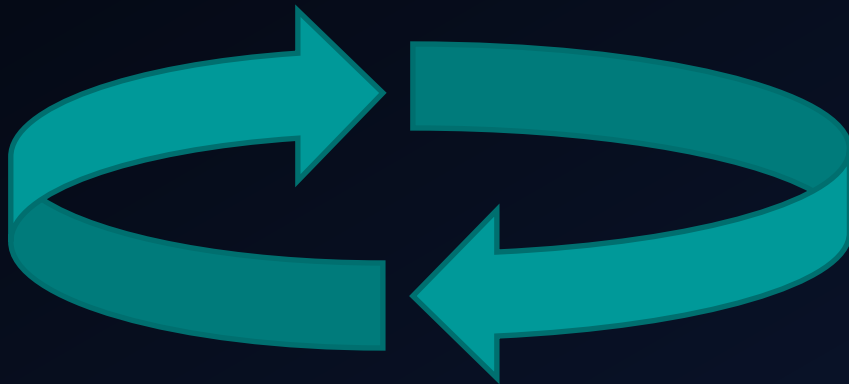
The Student Affairs Response

- Inclusivity and integration in campus programs

- Adult learning, employment and social connections for students with intellectual disabilities

- Hidden disabilities → fostering better personal strategies (e.g. time management, self-advocacy, organization) through challenges of transition

Best Practices and Collaborative Efforts

TAKING INITIATIVES "BEYOND THE MINIMUM" TO MAKE HIGHER EDUCATION UNIVERSALLY ACCESSIBLE:

- ✓ Seeking input from students and faculty with disabilities

- ✓ Holding all offices responsible for providing access

- ✓ Promoting collaborative planning and programming throughout different departments

The Student Affairs Response

- Maintaining accessible on-campus living

- Expanding study-abroad inclusive opportunities

- Engaging international students with disabilities

- Distinguishing between disability and issues of student conduct

- Providing accessible recreational and athletic opportunities

- Role of CSAO's

The Common Thread…
Universal Design

- Expanded access rather than individual accommodation

- Institution-wide response

- Technology, instruction, programming, architecture

QUESTIONS

CONTACT US

If you're not already a member of the Disability KC – sign up!

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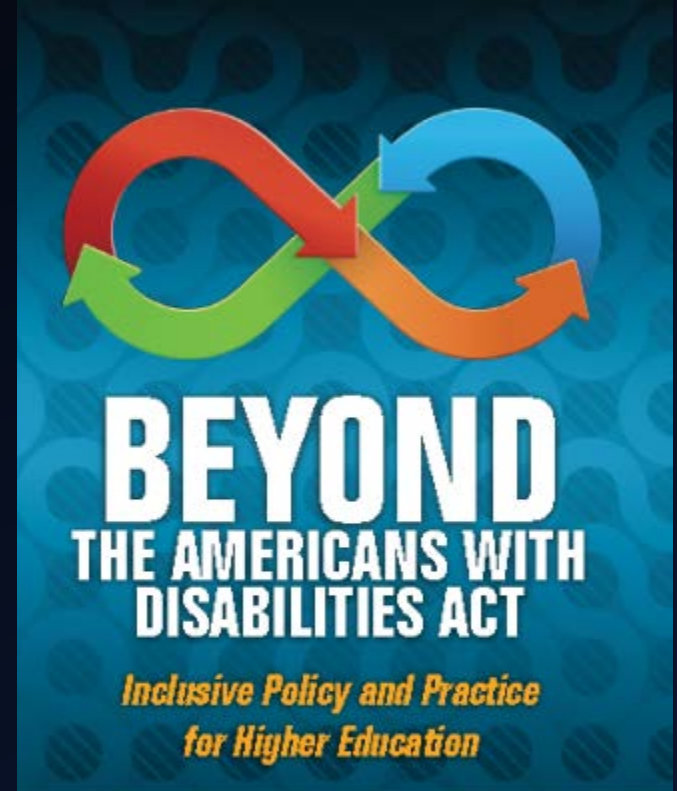- Eileen Berger - eileen_berger@gse.harvard.edu

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Additional Opportunities

All voting delegates will receive a complimentary copy of this book!

To order your copy at the NASPA member price visit http://bookstore.naspa.org or call 202-265-7500.

Additional Opportunities

At the Conference

The authors will be presenting the following session based on the book at the 2014 NASPA Annual Conference in Baltimore, Maryland:

- Monday, March 17, 11:05 to 11:55 a.m.

- *A book signing will also immediately follow from 12:15 to 1:15 p.m. near the NASPA Bookstore.*

This session will be audio and video recorded and available to Virtual Conference Participants!