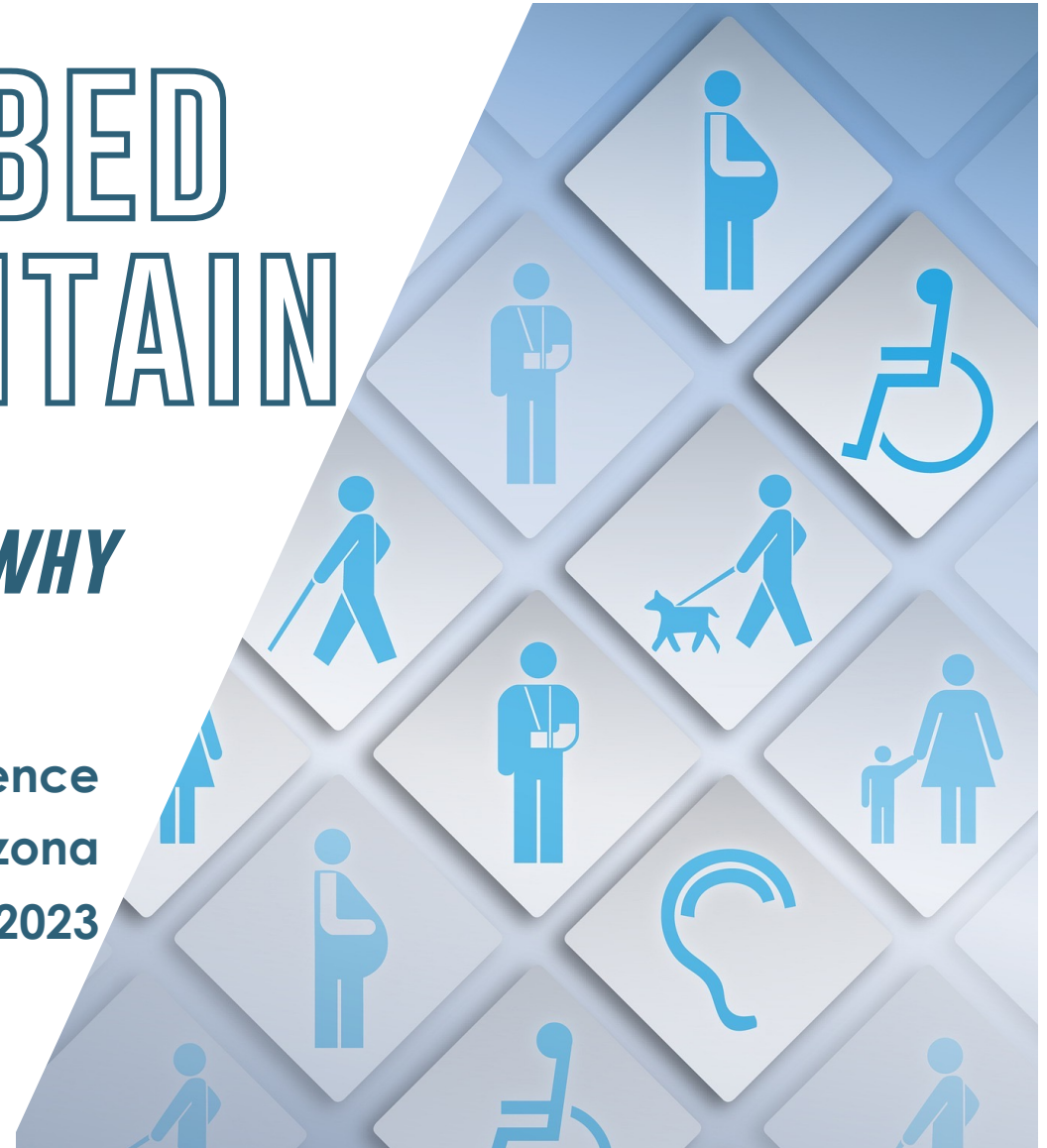# The Bear Climbed Over The Mountain

When it comes to accessibility, why We Can Never Stop

SCCE Higher Education Compliance Conference

Phoenix, Arizona

June 12, 2023

Introduction

Views Expressed Disclaimer

The opinions expressed within the content are solely the presenters and does not reflect the opinions and beliefs of our affiliated institutions.

Agenda

Introduction
History of the ADA
Physical Accessibility
Digital Accessibility
Challenges
Culture
What's Next?

History – The beginning

1986

The National Council on Disability (NCD) issues report.

1988-1990

Versions of ADA introduced to Congress. Passes and signed into law.

1991

Title I regulations issued by EEOC. Title II and III regulations issued by the DOJ. Title II and III transportation regulations issued by DOT.

1992-1994

Titles I – IV take affect.

1999-2002

Supreme Court rulings (i) narrow the definition of disability, and (ii) recognize that isolation of persons with disabilities is discrimination.

NYU

SCCE HCCA CCB COMPLIANCE CERTIFICATION BOARD

The University of Vermont

HISTORY – THE MIDDLE

2004

2008

2009

2010-2013

2014

NCD urges Congress to restore the original intent & scope of the ADA.

ADA Amendments Act (ADAAA) signed into law – counteracts SC narrow interpretation and provides broad protection from discrimination.

ADAAA takes effect.

Revised regulations for Title I – III take affect.

US Access Board and DOJ issue updated guidelines and rules.

History – Until now

2015 — 25-year anniversary of the ADA.

2017 — Chronicle of Higher Education published article titled, "One Activist Has Hundreds of Colleges Under the Gun to Fix Their Websites". Winn-Dixie decision is passed down.

2016-2019 — DOJ OCR issues a flurry of notifications to universities opening investigations into Title II violations for having inaccessible websites.

2020 — 30-year anniversary of ADA.

2023 — DOJ OCR and DOE OCR issue joint guidance

NYU

SCCE HCCA CCB COMPLIANCE CERTIFICATION BOARD

The University of Vermont

Digital Accessibility

- ADA – 1990 – People with disabilities can challenge discrimination.
- Public Accommodations
- "Same" & "Equally Effective"
- Resolution Agreements
- Examples

CHALLENGES

- Old buildings.
- Decentralization.
- Lip service vs. actions.
- Resources.

What's Next?

- The Future of ADA.
- Government Focus/ Enforcement Actions.

NYU

SCCE HCCA CCB COMPLIANCE CERTIFICATION BOARD

The University of Vermont

DOJ/DOE Joint Guidance

www2.ed.gov/about/offices/list/ocr/docs/postsec-online-access-051923.pdf

---

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights

May 19, 2023

Dear Colleague:

We write to make you aware of the Justice Department and Department of Education's ongoing efforts to address barriers that prevent people with disabilities from participating in online services, programs, and activities that colleges, universities, and other postsecondary institutions make available to students and the public.

Online Accessibility Challenges

Many colleges, universities, and other postsecondary institutions increasingly rely on their websites and third-party online platforms to provide services, programs, and activities to members of the public. This includes courses on learning platforms like edX, Coursera, and Kadenze, as well as podcasts and videos featuring lectures, conferences, sporting events, admissions information, graduation ceremonies, and other events on social media and third-party platforms like YouTube, Spotify, and Apple Podcasts. This online content is a service, program, or activity of the college, university, or other postsecondary institution, but much of it is often inaccessible to individuals with disabilities.

Many individuals with disabilities, including those who have vision or hearing disabilities, need auxiliary aids and services to access and interact with online content. For example, in order to access online content, people who have vision disabilities or reading disabilities may use screen readers, which are devices that speak the text that appears on a screen. People who are deaf or hard of hearing may use captioning to access information conveyed in a video with sound. And people whose disabilities affect their ability to grasp and use a mouse or touchpad may use voice recognition software to control their computers and other devices with verbal commands, or they may use keyboard commands to navigate online content.

Legal Framework

Two Federal laws, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504), require colleges, universities, and other postsecondary institutions to provide equal opportunities to people with disabilities in all their operations, including equal opportunities to participate in and benefit from online services, programs, and activities.

Title II of the ADA prohibits public colleges, universities, and other postsecondary institutions from denying qualified individuals with disabilities the opportunity to participate in or benefit from their aids, benefits, or services, including online programming and services, or providing an unequal opportunity to benefit.[1] Title III of the ADA prohibits private undergraduate, postgraduate, and other private places of education from, among other things, denying individuals with disabilities the opportunity to participate in or benefit from their goods, services, privileges, or advantages, or providing an unequal opportunity to benefit.[2] Public and private colleges, universities, and other postsecondary institutions must take appropriate steps to ensure

---

[1] 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i) and (2).
[2] 42 U.S.C. § 12182(b)(1)(A)(i) and (ii); 28 C.F.R. § 36.202(a) and (b).