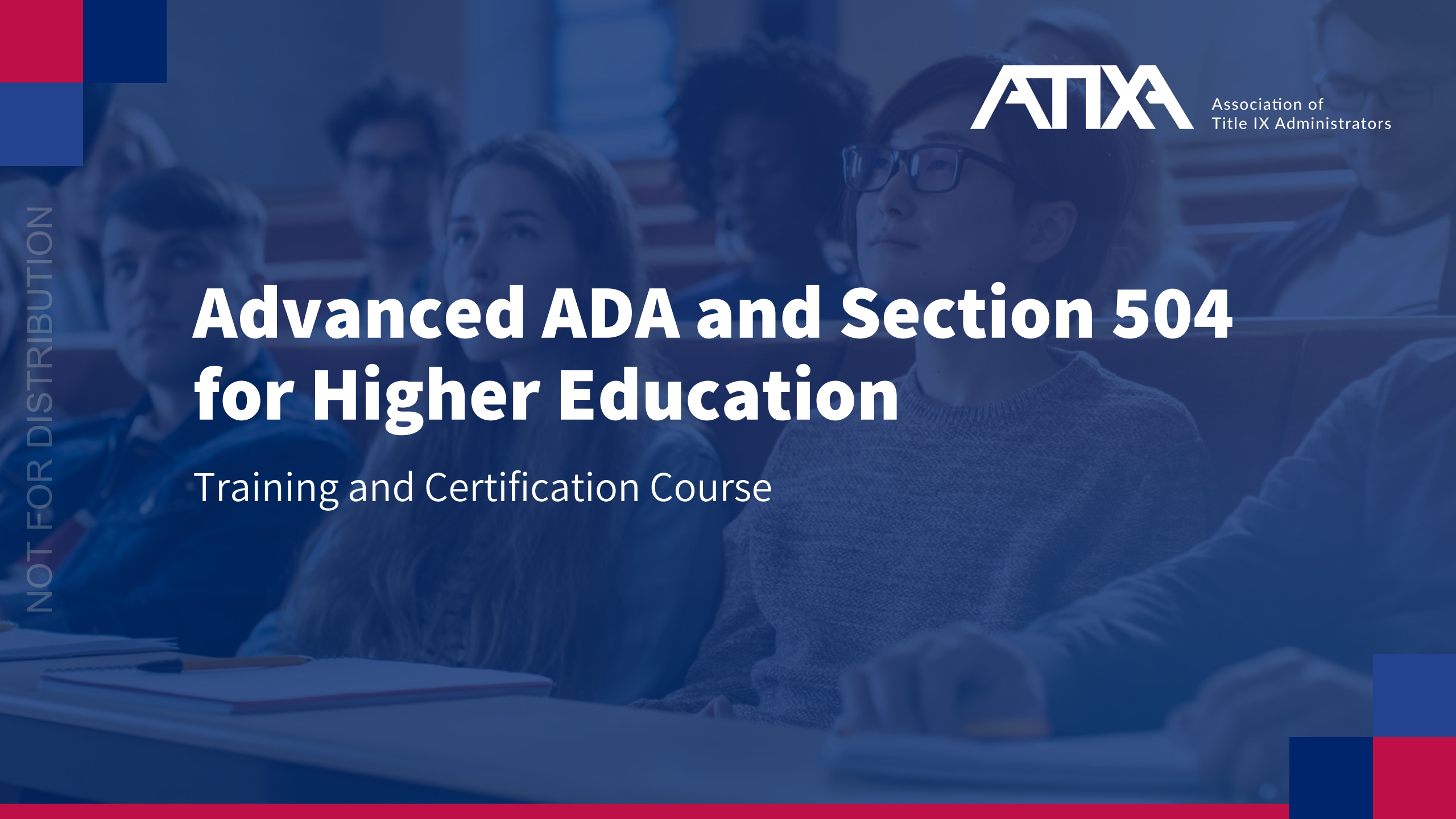

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Advanced ADA and Section 504 for Higher Education

Training and Certification Course

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Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Introduction

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The primary focus of this course is to explore accessibility issues involving students and employees with disabilities.

Administrators must ensure that institutional policies and practices are inclusive of ADA and Section 504 protections and grievance processes.

Our goal is to provide an in-depth exploration of complex issues and offer opportunities to practice applying the concepts in this course.

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Review of ADA and Section 504 in Higher Education

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Core Concepts Refresher

- Section 504 of the Rehabilitation Act of 1973 (504) and the Americans with Disabilities Act (ADA) (1990) are designed to **provide equal opportunities for access,** for qualified individuals with a disability, **not to ensure equal results**
- Accommodations and auxiliary aids are provided for qualified individuals with disabilities to address their functional limitations or barriers presented by their disabilities
- Institutions may provide a different or separate benefit or service than one that is requested

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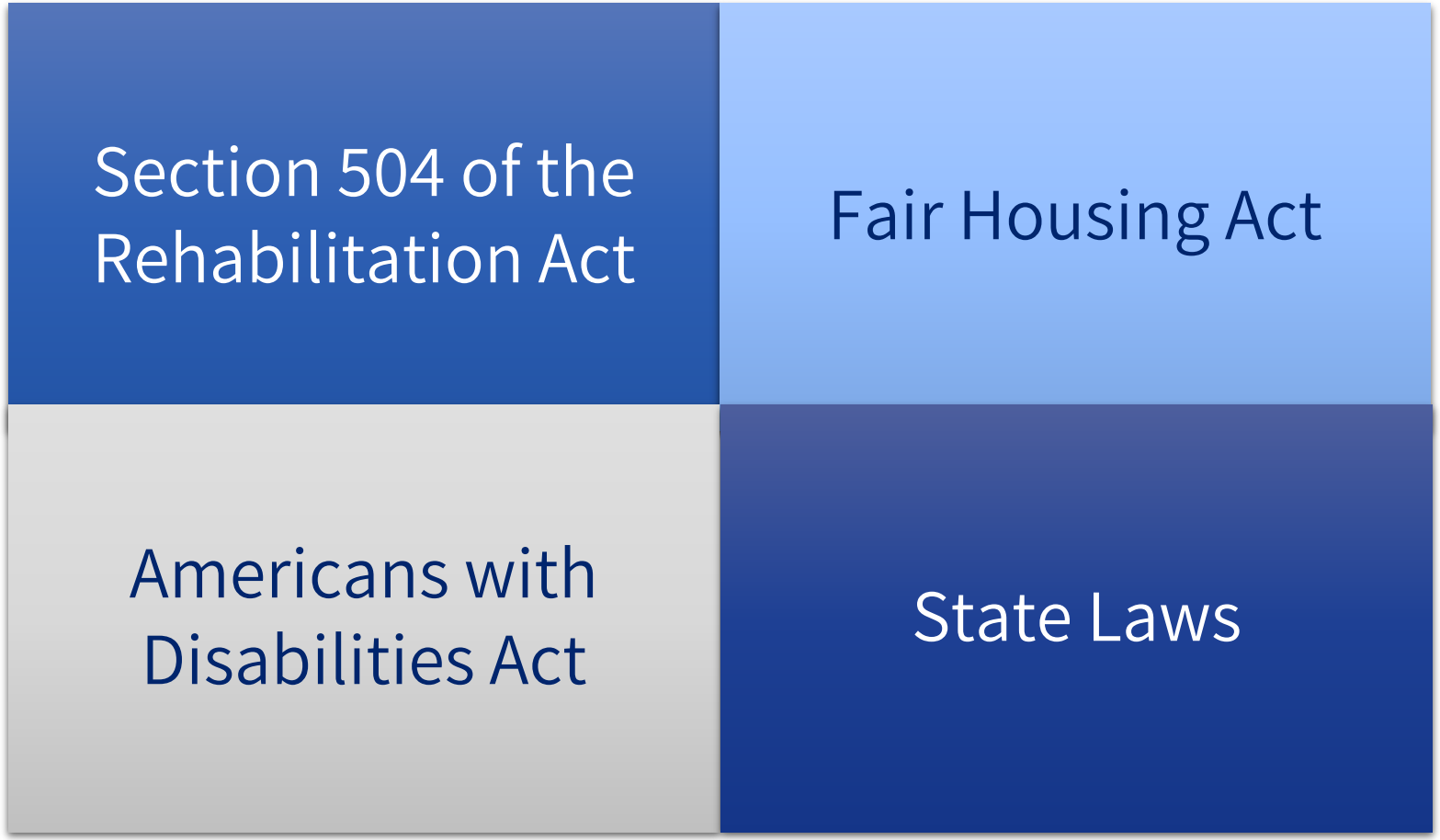
Four Key Laws



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Section 504 vs. ADA

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Between the two laws, all government-funded programs are covered

Section 504 (1973)

- Created to protect individuals with disabilities from discrimination for reasons related to their disabilities
- Applied protections to programs or businesses that receive federal funds

ADA (1990)

- ADA Titles I-III strengthened 504 by:
  - Requiring accommodations for individuals with a disability
  - Extending it to private institutions, workplaces, and to state and local government-funded programs

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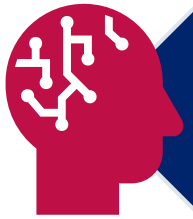
Who is a Qualified Individual with a Disability Under Section 504/ADA?

Has a Physical or Mental Impairment

- Which substantially limits one or more major life activities

Record of Having an Impairment

- Mental or physical



Regarded as Having an Impairment

- Mental or physical

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Required Standard Notice

In accordance with the requirements of 504 of the Rehabilitation Act of 1973 and Titles I and II [or Title III if a private school] of the Americans with Disabilities Act of 1990 (ADA) the Recipient will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The Recipient does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Dept. of Education, the U.S. Dept. of Justice, and the U.S. Equal Employment Opportunity Commission.

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Mental Health and Disability

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ADA/504 Guidelines Regarding Mental Illness

- A student with a documented mental disorder that impacts a major life activity, is considered a “qualified person with a disability” even if they are on medication to control the disability
- **Both the ADA and Section 504 apply**
  - Section 504 gives recourse to students who are discriminated against on the basis of a recognized disability
  - ADA entitles students, who are otherwise qualified to participate in the programs and activities, to reasonable accommodations once they seek qualification through the institutional disability/accessibility services office

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Safety Concerns Related to Mental Health Disabilities

- **Legitimate safety concerns**
  - Self-harm
  - Suicidality
  - Threats to others
  - Disruptive behaviors
- **Always follow the process**
  - Reasonable accommodations to reduce the impact (when applicable)
  - Student conduct process (when alleged behavior violates the conduct code)
  - Voluntary and involuntary medical leave policy and procedures
  - Role of Behavioral Intervention Team (BIT)/CARE Team and other supports

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Psychiatric Disabilities and Mental Health

- Must accommodate disabilities that arise from psychiatric conditions
- Some mental health conditions can result in behavioral concerns:
  - Behaviors that disrupt the community in some way
  - Threat of self-harm, including suicidality
  - Threat of harm to others
- Suicidality is not in itself a protected disability, but suicidality is often accompanied by a mental illness

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The Intersection of Disability and Conduct

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All Students and Employees Must Meet

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Conduct Codes

Behavioral Expectations

Academic/ Technical Curriculum Standards

Essential Job Functions and Requirements

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Interactive Process vs. Conduct Process

- All students and employees may be held accountable for behaviors that violate the student conduct code or employee handbook, even those with disabilities
- Exempting a student or employee from a conduct standard is **not** a reasonable accommodation
- Address the behavior, regardless of disability status/mental health diagnosis
  - Examples: classroom disruption, threatening behaviors, failure to comply
- Always consider whether accommodations could help to address the concerns
  - Accommodations could mitigate risk or support behavior change
  - Examples: housing change, schedule adjustment, or other academic support

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Student Conduct Process and Mental Health

- **All students are entitled to due process/fundamental fairness protocol** before taking disciplinary action
- **Common mistake:** sidestepping the conduct process when mental health concerns are present
- Conduct process could result in/coincide with:
  - Voluntary agreement for assessments
  - Mandated assessments if student is found responsible
  - Connection to BIT/CARE Team and case management services
- Avoid discriminatory outcomes:
  - Imposing discipline **outside** of the normal conduct process based on perceptions about a student's mental health
  - Imposing **harsher** disciplinary outcomes on a student with mental health concerns, even through the conduct process

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Employee Mental Health and Conduct

- Employee must be able to perform the essential functions of the job, with or without reasonable accommodations
- Conduct expectations extend to the workplace as well
- Consider resources to evaluate and respond to workplace behaviors:
  - Human Resources
  - BIT/CARE Team (if team scope includes employees)
  - Employee Assistance Program (EAP)

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Fitness for Duty Examinations

- Important that essential job functions are clearly articulated
- Equal Employment Opportunity Commission (EEOC) has guidelines for when fitness exams/evaluations are permissible
  - An employer can require a fitness exam/evaluation when the employer has a reasonable belief, based on objective evidence, that:
    - An employee's ability to perform essential job functions will be impaired by a medical condition; **or**
    - An employee will pose a direct threat based on a medical condition

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Activity: Case Study #1

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Jordan – Background

- Jordan, a second-year undergraduate student, has epilepsy and experiences frequent seizures, which can occur unpredictably, sometimes multiple times per week
- He registered with disability services and was approved for accommodations upon enrollment
- Recently, Jordan's seizure activity has increased due to a medication change
- Jordan has begun missing classes and experienced seizures during a large lecture course on two separate occasions
- On both occasions, classmates were visibly concerned, and the instructor cancelled the remainder of the class for the day
- After several absences, an instructor emailed Jordan concerned that Jordan was "missing too much class to pass" and suggested that Jordan consider withdrawing from the course
- The instructor also noted that frequent disruptions during class were "not fair to other students"

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Jordan – Action Steps

- Jordan is worried that his disability is being viewed as a behavioral or academic failure rather than a medical condition
- He met with disability services and shared that he has been working with his doctor to develop a seizure action plan
- The plan notes that Jordan's seizures are typically non-life-threatening, resolve on their own within a few minutes, and do not require emergency medical services (EMS) unless specific warning signs are present (e.g., seizure lasting longer than five minutes, repeated seizures without recovery, or injury)
- Jordan formally requested that the institution not call EMS when he experiences a seizure on campus

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Jordan – Recent Seizure

- Several weeks later, Jordan experienced a seizure during a lab session
- A classmate panicked and called campus security, who in turn contacted EMS
- When Jordan regained consciousness, he was disoriented but alert and repeatedly stated that he did not want to be transported to the hospital
- Despite Jordan's objections, EMS arrived and transported Jordan to the emergency room "out of an abundance of caution."
- Jordan missed the remainder of the lab, incurred medical costs, and feels his expressed wishes were ignored

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Jordan – Discussion

- What are your primary concerns?
- What other issues do you spot?
- How should the institution proceed?

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Behavioral Intervention Team Collaboration

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Behavioral Intervention Teams

- BIT/CARE Teams are school/institutional officials who meet regularly to:
  - Gather and review information about individuals in the institutional community who are at risk
  - Assess level of risk using an objective tool
  - Deploy support, resources, and interventions
- BIT/CARE Teams address all types of incidents, and can be a resource to assist with an individualized safety and risk analysis for concerning disability-related behavior

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BIT/CARE Team Scope

BIT/CARE Teams address all levels of concern from **early intervention** to **threat assessment**

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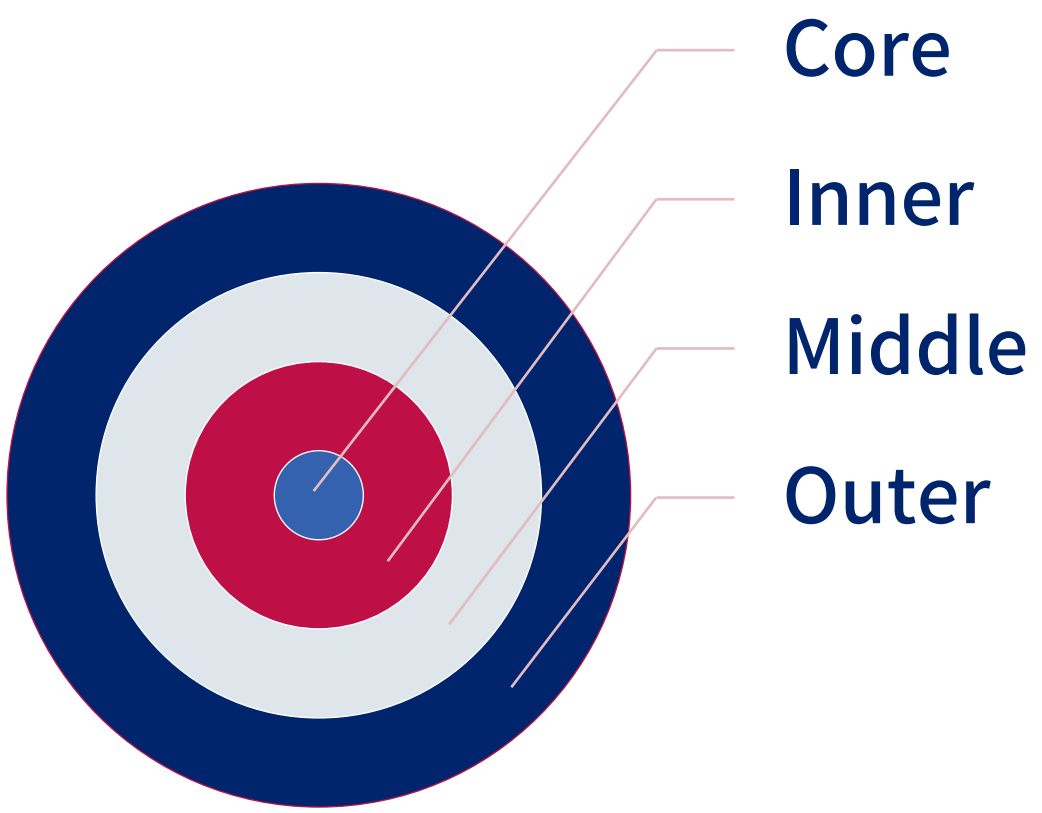
BIT Participation

BITs are comprised of four types of members, each of which varies in their level of communication, access to database, and attendance at meetings

Disability/Accessibility Services staff is often an inner circle member



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Information Sharing

BIT and Disability/Accessibility Services	
Status or updates related to registration with disability support services*	✓
Accommodations offered (e.g., academic, residential, other) and usage*	✓
Consultation related to accommodations the BIT may need to incorporate/provide/support	✓
Guidance related to behaviors that may be consistent with a known disability diagnosis	✓
Updates from BIT on shared cases regarding changes in risk rating, interventions, additional referrals, etc.	✓

*D/AS staff should be judicious in determining what information someone has an educational need to know

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Assessment Types

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- **General Risk Assessment**
- **Threat Assessment**
- **Psychological Assessment**
- **Violence Risk Assessment**

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Risk Assessment

- The team uses an evidence-based, objective risk rubric to assess every referral
- This is a **Generalized Risk Assessment**, or a triage tool
- When the risk is triaged at a **heightened level** (elevated or critical on the NABITA Risk Rubric), an **additional advanced assessment** is needed

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Jordan – Discussion Part 2

- How might collaborating with the BIT be helpful in Jordan's situation?

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Leave Processes

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Leave Policies and Procedures

- Distinct from the student conduct process and accommodation process
- Must always be applied in a non-discriminatory way

Voluntary

- Student initiates the leave of absence (LOA)
- Institutional policy sets forth the procedures for a student to take a LOA (e.g., medical leave policy)
  - Medical/mental health matters
  - Institution offers mitigation where possible
  - Conditions for return permitted

Involuntary

- Institution initiates the leave of absence (LOA)
- Must follow due process:
  - Student Conduct
  - Employee Policies
  - Direct Threat Test
  - Legitimate Safety Risk
- Conditions for return permitted

If a student leaves the institution separate from an official LOA, conditions for return are **not** permitted

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Implementing Leaves of Absence

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Initiating Voluntary Leaves of Absence for Students

- Must develop a process (e.g., medical leave process, hardship leave process)
- Process should be outlined in the student handbook, academic handbook, and disability/accessibility services webpage
- Process is the same for **all eligible students** regardless
- Institution may require supporting documentation if leave of absence (LOA) occurs mid-semester, or after withdrawal deadline, but must be the same for all students
- A voluntary LOA should not be a result of pressure, coercion, or feeling as though the school left them with no other option

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Returning from a Leave of Absence

- Conditions for return should be detailed at the onset of the leave and be related to the risk:
  - Risk/Threat must be reduced/averted, but not the disability or condition
- Establish process and procedures for all students who return from leave
- Consider accommodations upon return
- Support plan is critical
  - Role for BIT/Care Team

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Implementing Involuntary Leave

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Initiating Involuntary LOA/Withdrawal

- Use **rarely** (explore voluntary options first)
  - Common risk for discrimination concerns and claims
  - Avoid skipping to involuntary leave for students who present with suicidality or self-harming behavior
- Must follow and offer due process for removal, including:
  - Hearing
  - Appeal
- Establish and follow a process for determining the presence of a direct threat or legitimate safety risk

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Addressing Involuntary Withdrawal

- **Involuntarily removing a student or employee with a disability is complex**
  - Office for Civil Rights (OCR) asserts **due process** is necessary to challenge assumptions that behavior is a threat that would support involuntarily removing a student or employee
    - Consider involuntary leave only when behavior presents as a **legitimate safety risk** to self or a **direct threat** of harm to others
  - The institution must either:
    - Follow disciplinary procedures for students or employees who engage in conduct that would violate the codes of conduct; **or**
    - Apply the ADA-created "Direct Threat" Test prior to removing an individual from school or work, **unless** there is an immediacy of harm

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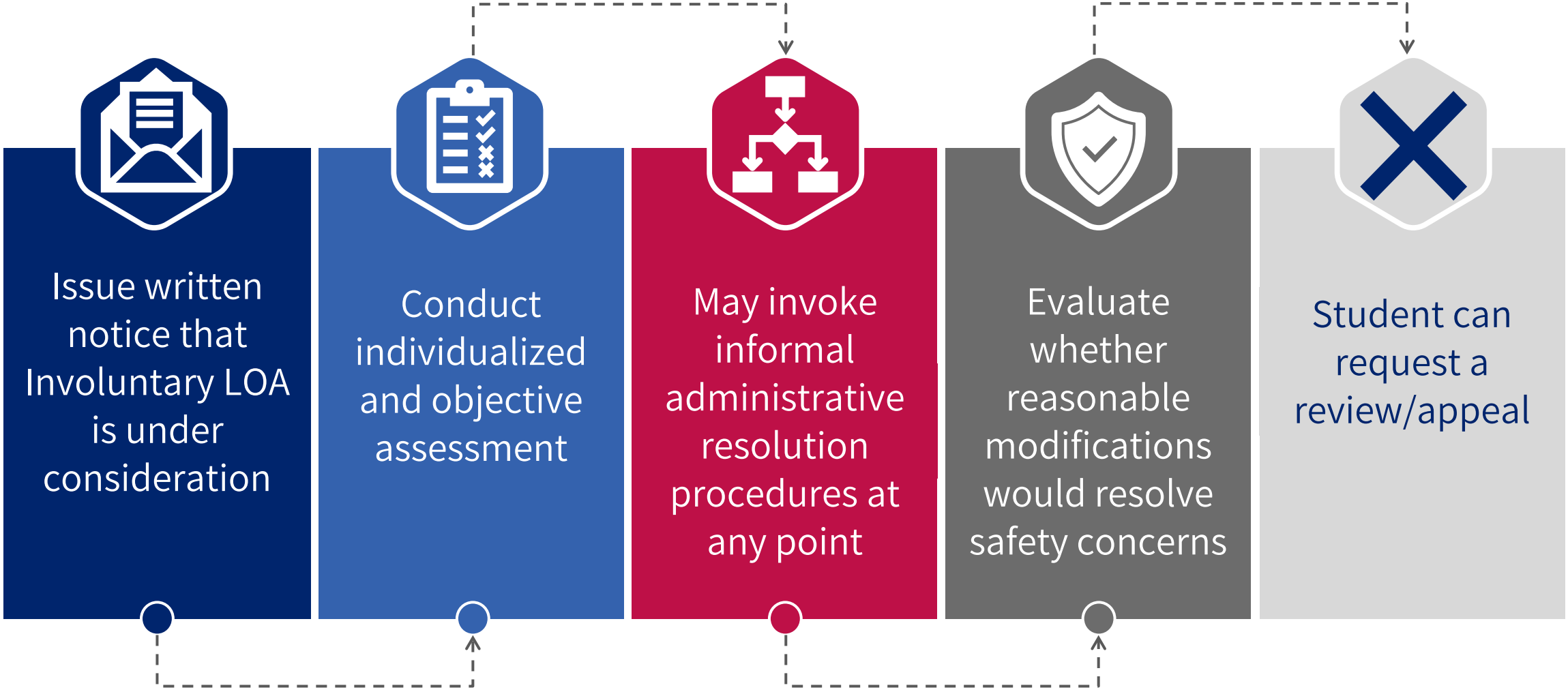
Involuntary Leave of Absence/ Withdrawal Process



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Threat to Others

- ADA provides a legal framework to evaluate threats and threatening behaviors
  - Direct Threat Test
  - Avoid generalizations, stereotypes, and discrimination
- Institution should have trained individuals available to assess students (and employees) when possible threatening behaviors occur
  - BIT/CARE Team
  - Violence Risk Assessment (VRA) protocols and tools

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ADA “Direct Threat” Test

- **“Direct Threat” – significant risk to the health or safety of others** that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services
  - A “Direct Threat” analysis applies to any individual who poses a “significant risk” of substantial harm or safety to others that cannot be eliminated or reduced by reasonable accommodation
- Due Process is necessary to challenge factual assumptions that behavior being exhibited represents a “Direct Threat” of harm that would support involuntarily removing a student or employee from the institution (only for so long as they continue to be a direct threat)

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Applying the ADA Four-Part Direct Threat Test

1. Individualized **and** objective assessment of the student's ability to safely participate in the institution's program
2. To rise to the level of a direct threat, there must be a **high probability** of substantial harm and not just a slightly increased, speculative, or remote risk
3. Assessment must be based on a reasonable medical judgment relying on the most current medical knowledge or the best available objective (non-medical) evidence
4. The assessment must determine:
   - The nature, duration, and severity of the risk
   - The probability that the potentially threatening injury will occur
   - Whether **reasonable modifications** of policies, practices, or procedures (accommodations) would sufficiently mitigate the risk

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Policy Implications

- The Direct Threat Test (as proscribed by the ADA) may only be applied when a student's conduct represents an "unreasonable threat of harm to others."
- The student conduct process should be applied when the student's conduct creates a disruption to the education environment or violates other behavioral standards
- Both approaches provide due process before involuntary removal from the institution
- Thus, offer appropriate due process and follow your process

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When Applying Direct Threat or Legitimate Safety Risk

- **Process for determining the presence of a direct threat or legitimate safety risk that suggests removal from school should include the following at a minimum:**
  - Letter of notice
  - Hearing or opportunity to request hearing to refute LOA determination
  - Objective evidence obtained and used in an individualized assessment related to the level of risk posed (ideally conducted by an institutionally provided Assessor)
  - Opportunity to have an institutional Advisor or select personal Advisor
  - Opportunity to respond to the information presented to support involuntary leave, and present (expert) witness/evidence to show standard met/not met
  - Opportunity to appeal

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Activity: Case Study #2

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Jed

- An English faculty member calls the dean's office, raising concerns about Jed, who has been "acting strangely" in class. Jed was supposed to turn in an essay, but instead turned in a large page-sized doodle of a dark cloud.
- The residence life office received a call from the parent of one of Jed's roommates, who reported that three nights ago, Jed's roommates brought Jed to the emergency room because he said he was "hearing voices from a distant realm." Jed spent most of the night in the emergency room but came back to campus in an Uber a few hours later.
- Jed's roommate's parent is concerned that their son has an unreasonable responsibility of caring for Jed.
- The director of dining services calls the dean's office to report that Jed had a major outburst at brunch on Sunday morning, screaming at some of the dining staff. It was not clear what prompted the outburst, but other students had to intervene, and Jed left the dining hall muttering.

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Jed – Discussion

- What additional information would be helpful to know about Jed?
- What are the conduct concerns, if any?
- What other issues do you spot?
- Is Jed a candidate for an involuntary leave? Why or why not?
- How should the institution proceed?

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Academic Accommodations

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Academic and Technical Standards

- Academic and technical standards (and professional standards where essential) govern the expectations of educational programs
- Elements of academic and technical standards:
  - Curriculum content and design
  - Learning outcomes
  - Assessment and evaluation
  - Resources and facilities, including technology

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Documentation

- Documentation of the individual's impairment and the impact on major life activities assists the disability/accessibility staff in establishing that the student is a qualified individual with a disability
  - Should be provided by health care provider or qualified learning needs specialist
- Information from the student's K-12 experience may be submitted as interim documentation:
  - 504 Plan
  - Individualized Educational Plan (IEP)
  - History of Response to Intervention (RTI)
  - Summary of Performance (SOP)

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Documentation Follow-Up

After reviewing the documents, interview the student to gather more information

- Understand how the disability impacts the student, explore barriers and functional limitations created by the disability, and consider possible ways to address them
  - This informs the interactive process to determine reasonable accommodations
- If a connection cannot be determined, the institution can request additional information, including getting permission to speak to the student's provider

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Interactive Process

- The interactive process is a critical step in the accommodation determination
- Always a **case-by-case assessment**
- Back-and-forth communication with the individual to “get it right.”
- May put same/typical accommodations in place for like situations, but always **remain flexible** and **follow interactive process each time**
- Essential to document each interaction

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Accommodation Determinations

- **The interactive process is a critical step in the accommodation determination:**
- **Consider the following questions:**
  - Is there sufficient understanding of how the student's disability creates a barrier or functional limitation in the education context?
  - What are common accommodations for this need?
  - Are additional limitations considered?
  - Is further information, such as from a doctor or third-party source, needed to fill in gaps?
  - Is the structure of the course or activity for which accommodations have been requested clearly understood?

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Fundamental Alteration and Undue Hardship

- A specific accommodation is **not required** when it would result in a **fundamental alteration** of the nature of the program, service, or job function or create an undue hardship (administrative or financial)
  - A fundamental alteration:
    - Changes a course or course of study so significantly that it alters the **essential nature** of a course or content of the curriculum
    - Changes an approved job description so significantly that it alters the **essential elements** of the job
- Students and employees are still required to meet applicable defined academic, technical, and conduct standards or essential job functions

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Fundamental Alteration Analysis

- Work with faculty to identify the course's essential academic and technical standards, the learning outcomes, and the goals for reaching those outcomes
- Determine modification options
- Understand why an essential standard cannot be altered
  - Would an alteration lower the academic standards of the course or program?
  - Are exceptions or alternatives permitted?
  - Is the standard required:
    - In similar programs at other institutions?
    - For licensure or certification?
    - For program accreditation?
- Not a decision to take lightly; high bar to defend

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OCR Guidance Regarding Fundamental Alteration

Every program is different, but factors to be considered in determining whether a standard is essential include:

- The nature and purpose of the program;
- The relationship of the standard to the functional elements of the program;
- Whether:
  - Exceptions or alternatives are permitted;
  - The standard is required in similar programs at other institutions;
  - The standard is essential to a given vocation for which the program is preparing students; **and**
  - The standard is required for licensure or certification in a related occupation or profession

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Accommodations Implementation

- Draft a letter clearly articulating the approved accommodations
  - Letter is provided to the student, and student selects if they wish to share with faculty members
  - When possible, letters should be available at the beginning of the term
- Faculty are responsible for providing accommodations as outlined, including regularly communicating with students to help address concerns
  - Engage faculty in training and provide support
- Include periodic reviews for accommodation effectiveness (e.g., by term, at student's initiation, annually)

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Common Academic Accommodations

- Audio recording of classes or note-taking assistance
- Extended time to complete exams, coursework, or graduation requirements
- Flexible attendance policies
- Modifications to assignments
- Modified test-taking/performance evaluations or settings for students with sensory, manual, or speaking impairments
- Substitution of nonessential courses for degree requirements
- Preferential registration or seating options

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Common Academic Accommodations, Cont.

- Breaks and self-regulation strategies
- Note-taking assistance
- **Specific examples:**
  - Access to research materials in accessible formats
  - Course materials in accessible formats
  - Electronic access to information
  - Permission to record
  - Permission to use a laptop or other device
  - Preferred setting

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Campbell v. Lamar Institute of Tech.

No. 15-41294 (5th Cir. 2016)

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Facts

- Campbell was a student at Lamar Institute of Technology (LIT) and was provided accommodations for his learning disability
  - Campbell had a brain injury impacting his ability to retain and process information
  - LIT provided extended time for all exams, a laptop, and a voice recorder to assist with note-taking
  - A faculty member gave a different final exam two weeks after the others took their exam

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Campbell v. Lamar Institute of Tech., Cont.

No. 15-41294 (5th Cir. 2016)

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Facts

- Campbell asked for two extra weeks of study time after the other students had taken the final for all his exams
  - Campbell provided a doctor's note that stated, "He needs a week to two weeks to retain new information prior to testing over that material"
- LIT refused the two extra weeks' request, as they considered it:
  - Unreasonable if faculty had to create two exams
    - The accommodation would give Campbell an unfair advantage over other students
    - Concern that it would cause faculty to lower the standards of their class

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Campbell v. Lamar Institute of Tech., Decision

No. 15-41294 (5th Cir. 2016)

- LIT met with Campbell and his wife and said he could ask individual instructors to accommodate him, but the College wouldn't require it
- Campbell met with instructors, who denied his request for two extra weeks to study, indicating it was not reasonable
- LIT offered to "provide reasonable accommodations supported by medical documentation and would waive tuition and fees for the next semester"
- Campbell refused LIT's offer
- Campbell filed a lawsuit alleging denial of accommodations
- The Fifth Circuit held in favor of LIT, stating their denial of the requested accommodations was not discriminatory

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Accommodation Appeals and Addressing Discrimination

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Accommodation Disputes

- The requesting individual may disagree with the disability/accessibility services staff's accommodation recommendations
- Institutions should have a process in place for the requesting individual to address accommodation disputes that may arise:
  - The dispute could include faculty
  - Should be overseen by the ADA/504 Coordinator
- Disputes related to offered or provided accommodations are not themselves a basis for discrimination, though they could become one in the future
- There should be a separate published process to address accommodation disputes vs. disability discrimination claims

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Disability-Based Discrimination Grievances

- Discrimination on the basis of disability, **OR**
- Harassment on the basis of disability
- Violations of ADA/Section 504 resulting in an inability to access the education program or activity
- Allegation that accommodation issue(s) had a discriminatory effect on the individual

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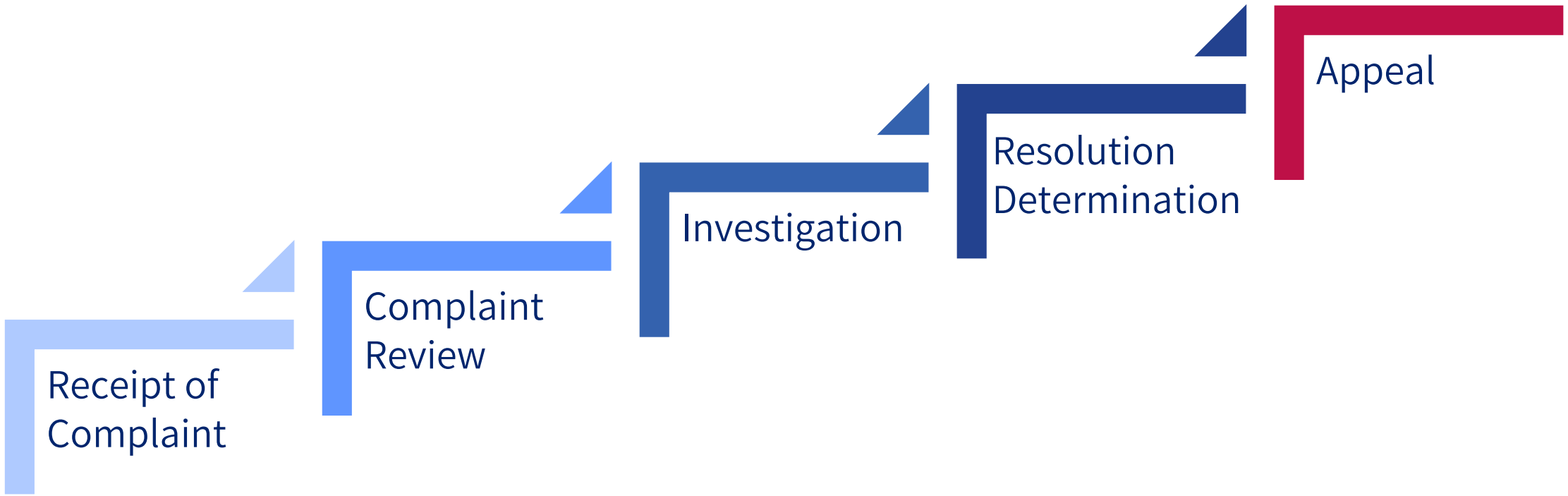
ADA/504 Discrimination Process Overview



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Activity: Case Study #3

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Kaleb – Background

- Two weeks into the fall semester, Kaleb, a sophomore majoring in psychology, submitted a request to the accessibility services office (ASO) for extended time on assignments and flexible class attendance for his Introduction to Statistics course based on severe anxiety
- The accessibility services director reviewed Kaleb's documentation from his healthcare provider, which confirmed an anxiety disorder diagnosis
- After meeting with the student and consulting with the faculty member to discuss the potential accommodations, Kaleb was accommodated by allowing him to miss up to 20% of the class sessions without penalty and providing the option to make up missed work within a specified timeframe
- Kaleb's flexible attendance appeared to alleviate his anxiety and improve his academic performance

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Kaleb – Recent Events

- However, in November, Kaleb's attendance became increasingly sporadic, and he began falling behind on assignments and quizzes
- Kaleb's faculty reached out to the ASO to discuss their concerns
- Kaleb had missed approximately 30% of class sessions and had failed to turn in several assignments on time, including the course midterm project
- The faculty member is willing to work with Kaleb and the ASO but is concerned about Kaleb's ability to meet the course learning objectives
- Kaleb cannot demonstrate a grasp of essential course concepts or participate in group discussions

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Kaleb – Discussion

- What primary concerns do you have for the student?
- After meeting with the faculty member, are there concerns about fundamental alteration?
- What additional information is needed to evaluate the situation?
- What additional supports or accommodations may be available to Kaleb?

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Title IX and Disability Intersections

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Title IX Grievance Process

- Title IX Coordinator (TIXC) should consult with accessibility/disability services staff to determine appropriate reasonable accommodations for individuals with disabilities participating as parties or witnesses in a Title IX Resolution Process
- May need to consult regarding appropriate sanctions
  - Is behavior related to a disability?
  - Crafting educational sanctions for individuals with cognitive disabilities

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Assessing Capacity for Students with Disabilities

- Some of the relevant evidence for determining capacity to consent for students with disabilities may be records maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party
- Use of such records in the institution's Title IX Formal Grievance Process is not allowed unless the institution obtains the party's voluntary, written consent
- Consider whether the student has capacity to engage in the Title IX Formal Grievance Process

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Pregnancy and Related Conditions

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Review

- Pregnant students and employees are protected by Title IX, in addition to other applicable federal and state laws
- Individuals who are pregnant or are experiencing pregnancy-related conditions should be supported by providing reasonable modifications to access their education and workplace
- Ensure individuals know and understand their rights under Title IX, including the role of the TIXC
- Pregnancy and related conditions are considered from the lens of sex discrimination under Title IX
  - 1975 Regulations apply

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Reasonable Modifications

- Reasonable Modifications to the institution's policies, practices, or procedures are essential to prevent discrimination:
  - **Individualized:** must consult with the student before offering
  - **Voluntary:** student may accept or decline each reasonable modification offered
    - If accepted, institution must implement
  - Fundamental alteration of education program or activity is **not** reasonable
- Reasonable modifications for employees are governed by other federal and state laws

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Supporting Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's attestation of their needs will be the least burdensome for the student and enable the institution to promptly meet the student's needs
- Should only be required in limited circumstances when:
  - **Necessary** and **reasonable** under the circumstances to determine:
    - Reasonable modifications to offer
    - Other specific actions to take

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Certification to Participate

- Must **not** require health care provider or other certification that the student is **physically able to participate** in the program or activity, including sports teams, unless:
  - The certified level of physical ability or health is necessary for participation;
  - The institution requires such certification of all students participating; **and**
  - The information obtained is not used as a basis for pregnancy-related discrimination

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Intersection of Pregnancy and Disability

- Pregnancy itself is not a disability under ADA/504, but some pregnancy-related conditions could manifest as temporary disabilities
- TIXC should collaborate with accessibility/disability services staff to determine reasonable accommodations for individuals with temporary disabilities
  - Ensure compliance with Title IX, ADA, and Section 504

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Example Pregnancy-Related Disabilities

Pregnancy-related conditions that may meet the definition of a disability under ADA/504 include, but are not limited to:

- Gestational Diabetes
- Nausea (e.g., morning sickness, hyperemesis gravidarum)
- Post-Partum Anxiety
- Post-Partum Depression
- Pregnancy-induced Hypertension
- Preeclampsia
- Prenatal Depression

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Web and Digital Accessibility

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The Case for Web and Digital Accessibility

- Allow all individuals to do the following with equivalent ease of use:
  - Obtain the same information and services
  - Engage in the same interactions
- Many disabilities affect website and technology access:
  - Auditory, cognitive, neurological, physical, speech, visual

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Laws, Guidance, and Enforcement

- **Web Content Accessibility Guidelines (WCAG)**
  - World Wide Web Consortium (W3C)
  - w3.org
  - Current standard: W3C Accessibility Guidelines 2.0 AA
  - Draft standard: W3C Accessibility Guidelines 3.0 (issued July 2023)
- On April 24, 2024, the Department of Justice published final rule updating Title II of ADA
  - Includes specific requirements about how to ensure that web content and mobile applications are accessible to people with disabilities
  - Applies to state and local government (including public institutions)
  - Compliance by June 2026 or 2027, depending on institution size

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Tips for Institutional Planning

- Understand the scope of needed changes
  - Who creates “web content” for your institution?
- Consider value of an Accessible Technology Policy and procedures
  - Communicates institutional values
  - Establishes technical requirements for campus stakeholders
- Provide learning design support for faculty and instructors
  - LMS and instructional applications
  - Textbook and course materials
- Address and improve procurement policies and procedures
  - Specify technological requirements for technology and other vendors

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On-Campus Housing and Dining Services

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Housing Accessibility

Housing-related Accommodations:

- Live-on requirements
- Requests for certain room types
- Requests for particular bathroom access needs based on disability

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Single Room Requests

Goal: provide equal access to housing

- Accessible hall and room design

- Evaluated on a case-by-case basis:
  - Space availability
  - Specific student needs and barriers presented

- **Requires:**
  - Documentation of a disability and how it impacts their housing needs
  - Interactive process
  - Request from the student
  - Review and approval
  - Room assignment

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Dining Accommodations

- Institutions must ensure equal access to campus dining facilities
- Dining accommodations may be requested based on the following needs:
  - Medical
  - Food allergies
  - Physical disabilities
  - Mental health
  - Religious practices*
- Students living on campus may require access to a kitchen for meal preparation if they are unable to access dining facilities

*Not a disability accommodation, but required accommodation under Title VI

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Dining Considerations

- Train dining staff on ADA requirements, accessibility awareness, and best practices for accommodating individuals with disabilities
  - Service animals may accompany disabled individuals in public spaces, and this includes dining halls
- Collaborate with disability/accessibility support services to accommodate students with specific needs
- Establish feedback mechanisms for individuals to provide input on dining accommodations and accessibility needs

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Other Accessibility Topics

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Supporting Deaf/Hard-of-Hearing Individuals

- Deaf individuals have profound hearing loss
  - Increasingly common to capitalize Deaf, but not deafness
  - Individuals may also have a strong identity/association with Deaf community
- Hard-of-hearing individuals have mild-to-moderate hearing loss
  - May rely on lipreading, hearing aids
- Not all individuals know/use American Sign Language (ASL)

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Supporting Deaf/Hard-of-Hearing Individuals, Cont.

- ADA requires institutions to "provide effective communication."
  - Ensure that a person can understand and be understood in the same way as a person without a hearing disability
  - Applies to students, faculty, staff, and visitors
  - Provide equal opportunity to participate and benefit
- Consult with the person needing the auxiliary aid
  - Title II requires consultation (public institution)
  - Title III encourages consultation (private institutions)
- Cannot charge for the auxiliary aid

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Sign Language/Interpreters

- **Institutions cannot:**
  - Charge for provision of an interpreter, but Deaf individual will typically request in advance
  - Require someone to bring their own interpreter, but if they would like to, accommodate the request
    - Example: Not charging for a second concert ticket
- **Interpreters:**
  - Must be qualified as interpreters
    - Just as with languages, a person who simply knows ASL is not a qualified interpreter
  - May require team interpretation, depending on factors
    - Highly technical content, length of program/class, size of the group, needs of the individual

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Supporting Blind/ Vision-Impaired Individuals

- "Effective communication" requirement applies to blind individuals, too
  - Students, faculty, staff
  - Visitors, including family members
- Tools:
  - Braille
  - Large print materials
  - Providing other methods than print to access materials
  - Screen-reader compatible materials

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Common Accommodations

- Communication Access Real-Time Translation (CART)
- Assistive listening devices (personal or installed in spaces)
- Notetakers/Digital recorders
- Captioned media
- Alternative communication devices
- Test/Exam modifications
- Preferred seating
- E-textbooks
- Emergency alert devices

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Physical Accessibility Challenges, Including for Visitors

- Lack of clearly marked travel paths and building entrances/exits
- Inoperable elevators and automatic doors
- Construction without alternative route directions provided
- Limited accessible parking and restrooms
- Lack of accessible classroom and lecture hall seating
- Space to store mobility devices
- Limited space for travel between furniture, in hallways, etc.
- Loose gravel, sand, etc. on travel paths

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Universal Design Approaches

- Visual aids (in course materials or elsewhere)
- Written notices for announcements made orally
- Digital message boards in classrooms, offices, and common spaces
- Ready access to microphones/amplification, including in classrooms
- Good lighting
- Seating arrangements in circle/semi-circle (for small classes/groups)
- Manage background sound
- Training for faculty/staff on teaching with ASL interpreters

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