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A collaborative program between the
Southwest ADA Center, Great Lakes ADA Center and members of the ADA National Network

The Session is Scheduled to begin at 2:00pm Eastern Time
We will be testing sound quality periodically

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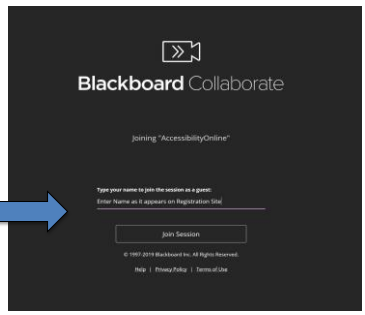

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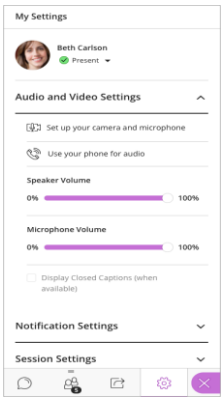

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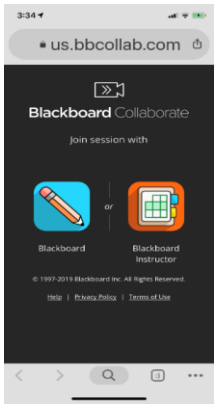

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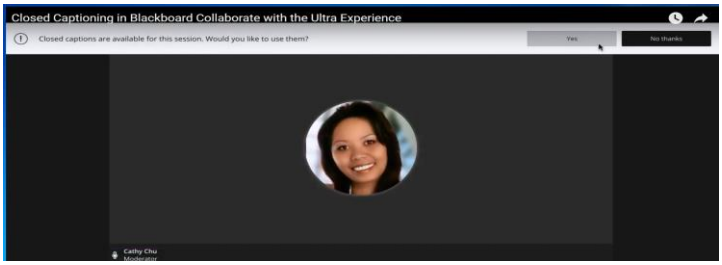

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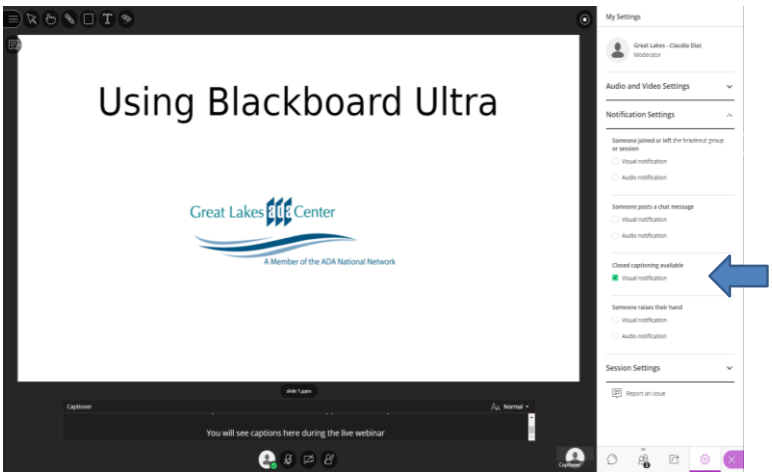

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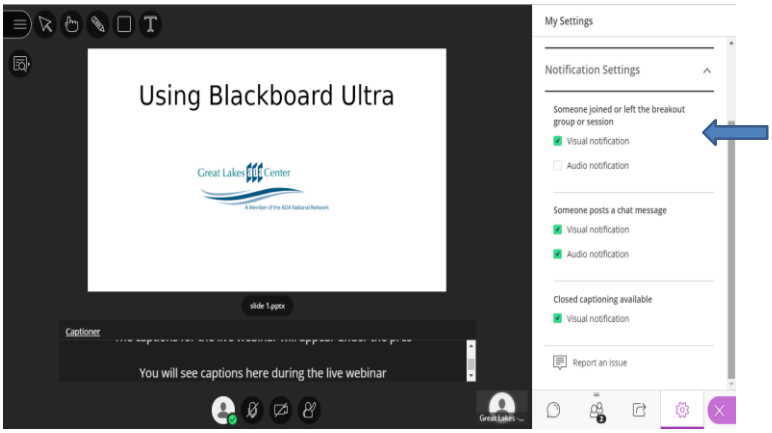

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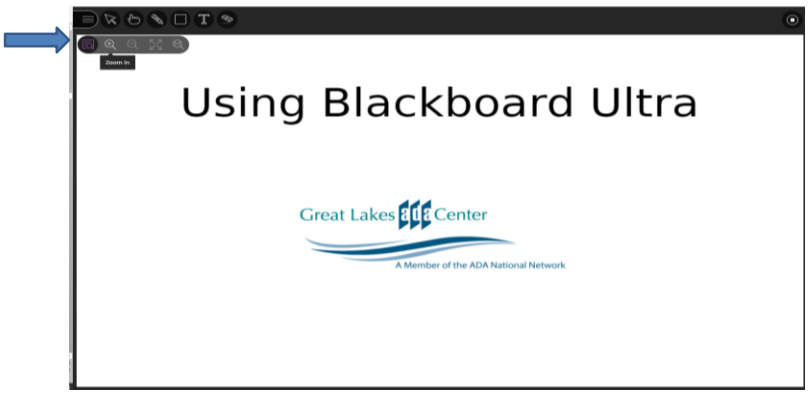

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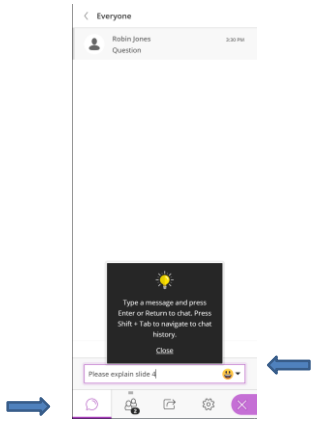

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The ADA and Religious Institutions

Vinh Nguyen
Southwest ADA Center
March 18, 2020

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Americans with Disabilities Act (ADA)

Prohibits discrimination on the basis of disability

- Title I – Employment
- Title II – State and local government
- Title III – Places of public accommodations

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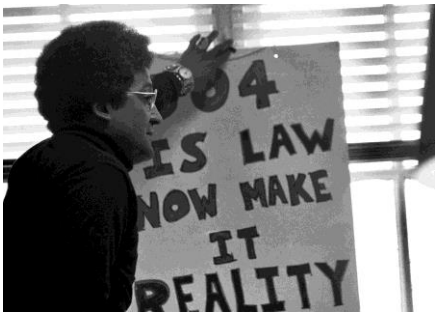
Section 504 of the Rehabilitation Act

Prohibits discrimination on the basis of disability by federal agencies and recipients of federal funding



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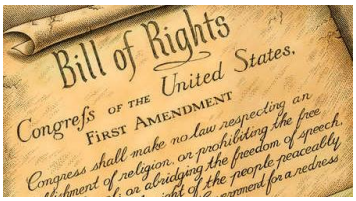
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…



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Title III of the ADA

Prohibits discrimination on the basis of disability by places of public accommodation

Religious organizations are exempt from Title III.

- Places of worship
- Public accommodations that they own or operate
  - Schools
  - Hospitals
- In cases where they are the landlord, this exemption does not extend to non-religious tenants.

Mount Sinai Hospital

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What is a religious organization?

Factors that courts look at:

- Non-profit?
- Are its day-to-day operations religious?
- Do their articles of incorporation state a religious purpose?
- Is it owned, affiliated with, or financially supported by a formally religious entity?
- Does the formally religious entity participate in the management
- Does it hold itself out to the public as sectarian or secular?
- Does it regularly include prayer or other forms of worship in its activities?
- Is there religious instruction in the curriculum if it's an educational institution?
- Is its membership composed of people who practice the religion?

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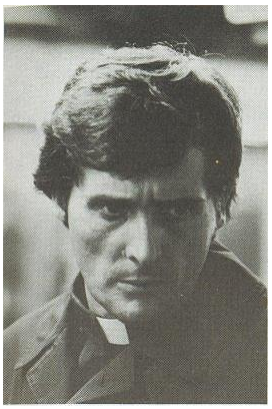
White v. Denver Seminary, 157 F. Supp.2d 1171 (D. Co. 2001).

Graduate student at seminary school. Has ADHD, Tourette's, and OCD

School required him to:

- Take time off for counseling and medications as conditions to continue his studies.
- Take the MMPI test twice
- Enter into a learning contract
- Complete a training and mentoring program



Is the seminary school exempt from Title III?

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Rose v. Cahee, 727 F. Supp. 2d 728 (E.D. Wis. 2010)

- Surgeon at a clinic allegedly refused to operate on a patient with HIV due to concerns about her viral load.
- Another surgeon decided her gall bladder needed to be removed and did it. Her HIV status played no role in the decision.
- Clinical site and facilities owned by Agnesian Healthcare
  - Sponsored by The Congregation of the Sisters of St. Agnes (Roman Catholic)
  - A religious organization need not directly determine the rates for medical services or directly engage in the hiring and firing of employees to control a healthcare institution.
  - Requiring a religious organization to be involved in the daily operations of its social service providers in order to qualify for the exemption undermines the intended broad application of the statute.
- Service corporation owned by physicians

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Sloan v. Community Christian Day School, LLC, 3-15-0551 (M.D. Tenn. 2015).

Plaintiff sued Christian school for not having accessible parking outside its facilities.

- Plaintiff's argument:
  - School's LLC operating agreement speaks of profits and losses, distributions, capital, indemnity and expenses but does not speak of God or faith or the Bible.
  - Does not claim 501(c) tax exempt status
  - Owned by two people who are not ordained by any ministry
- Defendant's argument
  - It teaches Christian principles to kids.
  - It selects faculty and staff based on their relationship to Jesus

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Title II and Section 504

Prohibits discrimination on the basis of disability

Title II of the ADA

- State and government programs, services and activities. They are also responsible for who they contract with.

Section 504 of the Rehabilitation Act

- Federal programs, services, and activities. This includes recipients of federal funding.
- There is no exemption for religious entities!
- No distinction between social services done for spiritual reasons and social services done for secular reasons. *Doe v. Salvation Army* (6th Cir. 2012).

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Cole v. Saint Francis Medical Center, 1:15 CV 98 ACL (E.D. Mo. 2016).

- Dispute over interpreting services with hospital.
  - Deaf patient agreed to test out new VRI system in conjunction with live interpreter
  - VRI was not effective so she refused to continue using it. Hospital also withdrew the live interpreter.
- Hospital was affiliated with Roman Catholic Church
- Exempt from Title III of the ADA but plaintiff could still sue under Section 504 (Medicare / Medicaid).

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Rose v. Cahee, 727 F. Supp. 2d 728 (E.D. Wis. 2010)

Surgeon at a clinic allegedly refused to operate on a prison patient with HIV due to concerns about her viral load.

- Clinical site and facilities owned by Agnesian Healthcare
  - Exempt from the Title III of the ADA
  - Not exempt from Section 504
- Service corporation owned by physicians
  - Not exempt from Title III of the ADA
  - Exempt from Section 504 – not considered a direct recipient of federal funding

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Title I of the ADA

- Prohibits discrimination on the basis of disability in employment.
- Applies to employers with 15+ employees
- This includes religious organizations

- BUT there's an exception because of the First Amendment, a **ministerial exception**.

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Werft v. Desert Southwest Conference, 377 F.3d 1099 (9th Cir. 2004)

Andrew Werft, a pastor with ADD, dyslexia, and heart issues, sued his former employer. He resigned after they had failed to accommodate him.

- He argued that the exception should not apply because there was no religious basis for not accommodating him.
- In terms of the relationship between the church and their ministers, it is the employment decision itself which is exempt from the ADA and other civil rights laws -- the courts may not even look into the reasoning.
- Exemption from review is just limited to hiring and firing, it includes everything about the working relationship between the church and its ministers.

The United Methodist Church

Starkman v. Evans, 198 F.3d 173 (5th Cir. 1999)

Melanie Starkman, a choir director, sued her church for firing her after failing to accommodate her after her knee surgery and also her chemical sensitivity.

Factors the court looked at whether position qualified for the ministerial exception:

- Employment decisions regarding the position made largely on religious criteria?
- Whether the person was qualified and authorized to perform the ceremonies of the Church.
- Are they engaged in activities traditionally considered ecclesiastical or religious?

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Hosana-Tabor v. E.E.O.C., 565 U.S. 171 (2012)

Cheryl Perich taught at Lutheran school. She took time off for narcolepsy so the school used a contract teacher to fill the position for the rest of the year. She wanted to be return to her position, but the school didn't think she was capable of returning. She threatened to pursue legal options. They fired her for insubordination and that threatening to sue was against the religion.

- Church distinguishes teachers between called and lay teachers
- Plaintiff accepted the call and was designated as a commissioned minister
  - Went through extensive training for her commission
  - Taught religion in addition to secular courses
  - led her students in daily prayer and devotional exercises
  - took her students to a weekly school-wide chapel service and led the service twice a year.

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Hosana-Tabor continued

Is she a minister?

- District court said yes
- Court of Appeals (Sixth Circuit) said no:
  - Her duties as a called teacher were identical to the duties of a lay teacher (the contract replacement)
  - 45 minutes a day were devoted to religious activities. The rest was devoted to secular.
- Supreme Court:
  - Confirmed that the inquiry is focused on the position the employee occupied, not the reasons for her termination.
  - The school considers her a commissioned minister
  - The issue is not one that can be resolved by a stopwatch. The amount of time an employee spends on particular activities is relevant, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and the other considerations.

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Grusgott v. Milwaukee Jewish Day School, Inc., 882 F. 3d 655 (7th Cir. 2018).

Miriam Grusgott, a teacher with a brain tumor, had a confrontation with a parent where the parent mocked her for her mental impairment. School terminated her.

Is she a minister?

- Not ordained
- Her job did not require religious training or commissioning.
- Taught an integrated Hebrew and Jewish curriculum - studying the Torah, using Jewish symbolism, and teaching about Jewish holidays. She said this was voluntary on her part.
- She argued that she approached the religion from a cultural and historical perspective rather than a faith-based one.
- Led and participated in daily prayers and taught prayers to students. She said this was voluntary too.

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Biel v. St. James School, 911 F.3d 603 (9th Cir. 2018)

Kristen Biel, a teacher, was diagnosed with cancer. Catholic school didn't renew her contract because they thought her management style wasn't strict enough and they think it was fair for the kids to have two teachers during the school year.

Is she a minister?

- No religious component to her degree or credential
- Was designated as a 5th grade teacher.
- Taught standard religion curriculum for 30 minutes each day, using a workbook from the school
- Joined her students in prayer but did not lead them
- Attended monthly mass with her students where her job was to keep them orderly

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Questions?

Contact Your Regional ADA Center

- TOLL FREE – (800) 949-4232
- Web: www.adata.org

To contact today's presenter, Vinh Nguyen

- Email: swdbtac@ilru.org
- Southwest ADA Center website:
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ADA National Network
Information, Guidance and Training on the Americans with Disabilities Act

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Next ADA Legal Webinar Series Session:

Mark your Calendar for **May 20, 2020**

Topic to be announced

Registration will be available soon:
www.ada-legal.org

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