

*AHEAD July 17, 2025*

Presented By: Judith Risch  
**REGULATORY CRYSTAL BALL**



# MEET YOUR FACILITATOR



## Judith Risch

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Judy is one of the nation's foremost experts on digital accessibility and as a twenty-year veteran of the Office for Civil Rights (OCR), has extensive experience in all aspect of civil rights enforcement and compliance. At OCR's National Digital Accessibility Team, Judy oversaw a national team of attorneys and investigators spread across twelve regional offices that enforced digital accessibility policies and advised educational institutions on compliance with federal disability discrimination laws. Judy has advised senior leadership in state and local educational systems to ensure compliance and provide them with forward looking guidance. Additionally, Judy was involved with the new ADA Title II amendments that cover digital accessibility.







THIS IS NOT LEGAL  
ADVICE

# AGENDA

- Good News
- The Unknown
- Litigation
- Conclusion







# **TIMING IS EVERYTHING**

Proposals for this session were due before the election life has changed.

# REGULATORY PROCESS – QUICK OVERVIEW

Agencies create regulations

1. Notice the agency is considering regulations and people can provide input.
2. Agency drafts regulations and does analysis of the cost of the regulations.
3. Other agencies review the drafts regulations and the draft cost of the regulations.
4. Public sees the draft regulations and can comment. (About 90 days)
5. Agency looks at the comments and updates the draft regulations to reflect the public input.
6. Many other agencies get to review.
7. Final regulations are issued.





# GOOD NEWS!



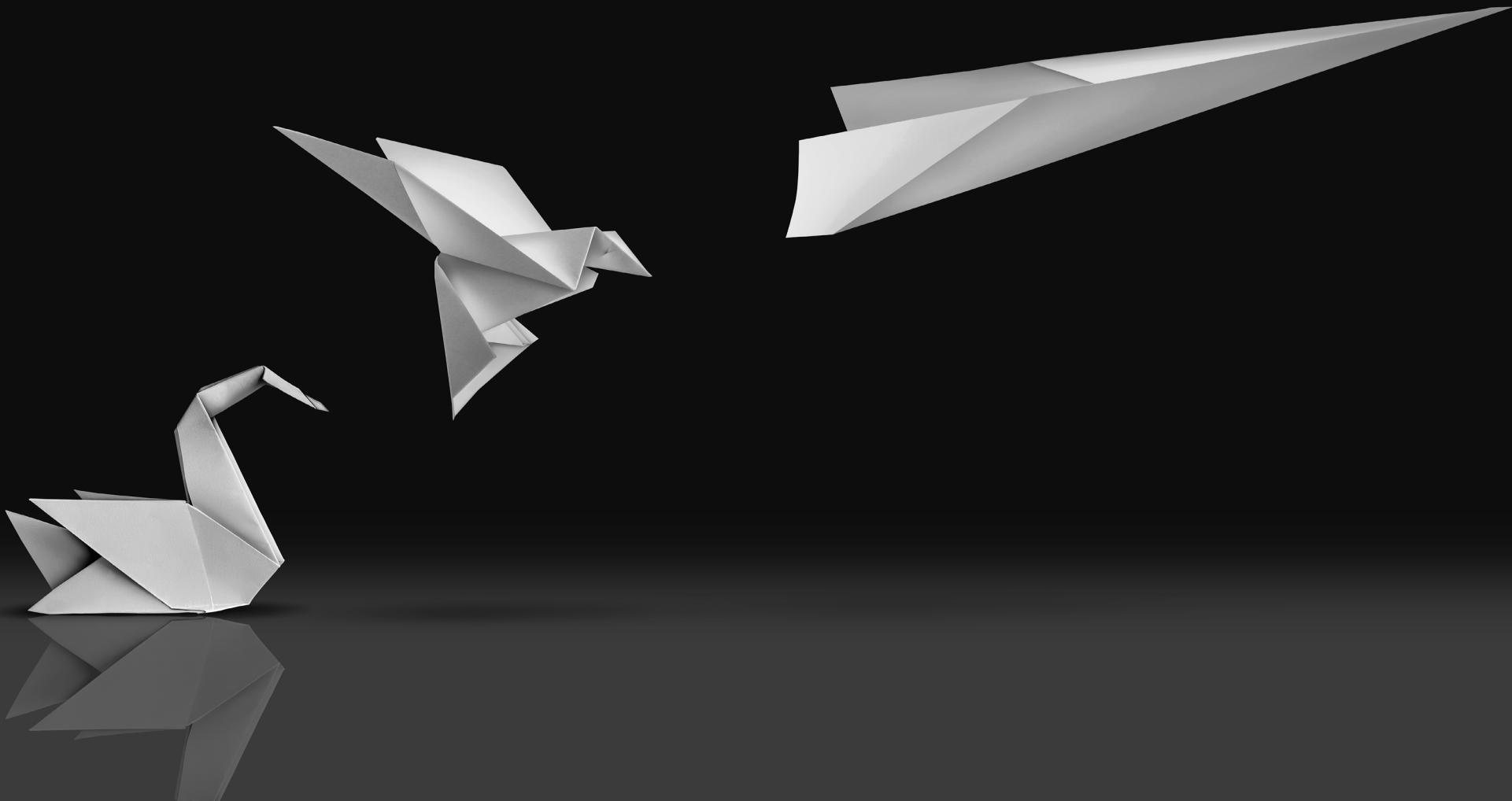
KIM RICHEY



# FEDERALIST SOCIETY WEBINAR

- Recorded on June 8, 2023
- Format: there was Kim Richey, a Federalist Society Member and Robert Dinerstein, Professor of Law and Director, Disability Rights Law Clinic, American University Washington College of Law, someone with a different perspective but also an expert.
- Generally, this was very collegial.
- It was very K12 focused.
- [You can watch the webinar.](#)





**THIS GIVES ME HOPE**



# NEW SECTION 504 REGULATIONS (MAYBE)

- Kim said: “I fully support -- if we had had another term under the Trump administration, this would have been, I think, at the top of my recommendations list. I do think that we are long overdue as far as updating the 504 regulations. And I think there's a real opportunity for just basic cleanup.”



- She also noted the Biden administration could have regulations anytime soon.

# KIM'S FOUR THEMES FOR SECTION 504 REGULATIONS

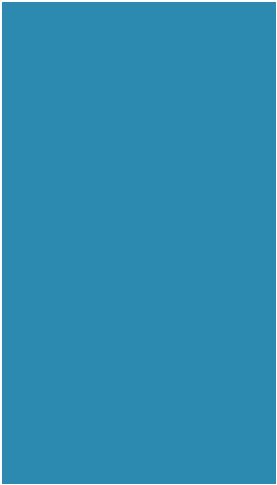
More clarity for procedural protections, especially to address behavioral issues.



Update and align OCR's current practices and the best practices from the field that have emerged over the last 45 years.



Mental Health – provide more clarity to when there is a mental health a disability.



Digital Accessibility





# STATEMENTS ABOUT HIGHER EDUCATION

At the very end of the session, they discussed the need for a better education and preparation for high school students on the transition to higher education.

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# THE UNKNOWN



# OCR CASE PROCESSING MANUAL

- This sets out the process to be followed in an OCR complaint.
- Located on the web and is 32 pages

**U.S. DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**



**CASE PROCESSING MANUAL  
(CPM)**

**EFFECTIVE DATE: FEBRUARY 19, 2025**

# WHAT OCR OFFICES ARE THERE

- Went from 12 offices to 5
- Some of these are the smallest offices
- San Francisco and Cleveland did great disability work are gone
- Backlog has gone from 21,000 to 25,000.
- McMahon v. New York is pending on the Supreme Court Shadow Docket as of June 17.







# LITIGATION





# LOPER BRIGHT DEFERENCE

The Supreme Court has done some interesting things to raise questions if regulations are valid.

Source: [Atlantic States Marine Fisheries Commission](#)

# LOOK AT THE LAWS

## Section 504

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Code of Federal Regulations, title 28 (2002):516-544

## ADA Title II (Public)

"...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).

## ADA Title III (Private)

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

Americans With Disabilities Act of 1990, 42 U.S.C. § 12182 et seq. (1990).





## ELLERBEE V. STATE OF LOUISIANA DIVISION OF ADMINISTRATION, OFFICE OF TECHNOLOGY SERVICES ET AL

- January 28, 2025: Decision by a district court:
  - The court would not dismiss the claims about accessibility of the state's website even though the Title II regulations have not gone into effect.
  - The court found there is a current requirement of accessibility under Title II and Section 504 even if the regulations are not currently in effect.
  - The case moves forward on the merits at this time.

# CONSTITUTIONALITY OF SECTION 504 CHALLENGE

- Texas v. Becerra – Now Texas v. Kennedy
- Filed September 26, 2024
- Lead by Texas – with 16 additional states
- The basics:
  1. The regulations exceeds the statutory authority because it has the term “gender dysphoria” under the term disability. The ADA and Rehab Act do not include gender identify disorders not resulting from physical impairments.
  2. The final rule is arbitrary and capricious.
  3. Section 504 is unconstitutional.
  4. The final rule is unconstitutional.

[Brief Filed in US District Court Norther District of  
Texas Lubbock Division](#)

[Filing History](#)

# UPDATE – FILING APRIL 11, 2025

- The stay is continued, and next filing is on June 21, 2025.
- A clarification stating the Plaintiffs will not seek relief on Count 3 (Constitutionality of Section 504).
- HHS put a statement in the Federal Register on April 10, 2025, that gender dysphoria is not a disability to override the statement in the regulations. The question is if there continues to be a claim regarding the regulations exceeding their authority because the regs use the term "gender dysphoria".

[Joint Status Report](#)





# PREDICTIONS / CONCLUSIONS



# CIVIL RIGHTS ARE STILL THERE

- We still need to follow disability laws. Section 504 and the ADA are still required.
- Enforcement will turn into litigation based.



# TRUMP ADMINISTRATION REGULATIONS

- There may be Department of Education Section 504 Regulations
  - 33% Chance of happening.
- Title III Digital Accessibility Regulations.
  - 10% Chance of Happening
- Title VI – Race, National Origin
  - 75% Chance of Happening





# NEXT DEMOCRATIC ADMINISTRATION

- Title VI – Race, National Origin  
*80% Chance of Happening*
- Department of Education Section 504 Regulations  
*90% Chance of happening.*
- Title III Digital Accessibility Regulations.  
*75% Chance of Happening*



# NEW LAWS

- A Federal Digital Accessibility Requirement  
*33% Chance of Happening*
- State Laws about disability discrimination

Examples:

- California
- Colorado
- Pennsylvania
- Washington



# Digital Accessibility

Policy Development & Review  
Training  
Consulting  
Investigations



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DECK AND RESOURCES

