

GENDER DYSPHORIA AND SECTION 504

**Wisconsin ADA Coordinators Association
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WEBINAR SERIES: WISCONSIN ADA COORDINATORS ASSOCIATION

Disclaimer

This webinar hosted by the Wisconsin ADA Coordinators Association is not meant to be legal advice. Although we may refer to the Americans with Disabilities Act (ADA) or similar state and local laws, this presentation is provided as an educational resource. Our goal is to give public entities a framework for accessibility and providing accommodations or modifications. We encourage attendees to seek guidance about their obligations from their own legal counsel.

AGENDA

- **Section 504 Requires**
- **ADA & Gender Dysphoria**
- **Title VII/EEOC Expectations**
- **Wisconsin specifics**
- **Procedures, Policies, Pitfalls**



Who's Covered

- Recipients of federal financial assistance
- Employment practices included
- 504 borrows ADA standards (29 U.S.C. §794(d))

SECTION 504 & WHO'S COVERED



What Duties

- Recruitment TO termination
- Reasonable accommodation
/ undue hardship
- Non-retaliation

504 DUTIES

ADA & GENDER DYSPHORIA

Statute and Case Law

- ADA exclusion text ≠ automatic bar
- *Williams v. Kincaid* (4th Cir. 2022)
→ **Dysphoria may be a disability**
- Treat requests seriously;
start **interactive process**

CASES ARE NOT NEW

Other Trans Rights Cases


- **Smith v. City of Salem, Ohio (6th Cir. 2004) - Upheld**
- **G.G. v. Gloucester County School Board (4th Cir. 2020) – Upheld**
- **Adams ex rel. Kasper v. School Board (11th Cir. 2020) - Denied**



TITLE VII AFTER BOSTOCK

Statute and Case Law

- Transgender status
= **sex discrimination**
- Applies to harassment,
terms & conditions



FEDERAL PUSHBACK – TEXAS V. KENNEDY (~~BECERRA~~)

Case to Watch

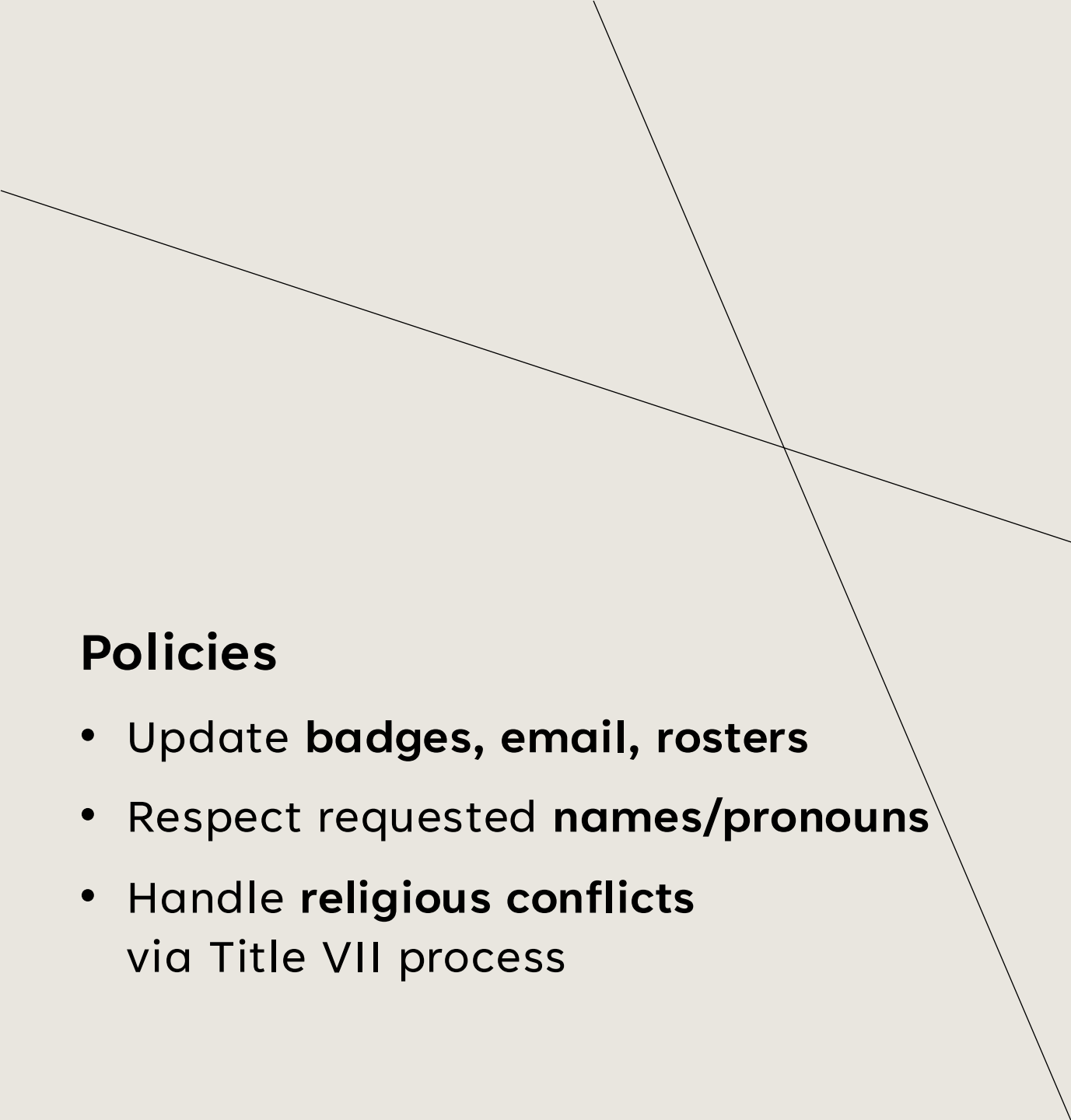
- Forum Shopping – Filed in Lubbock, TX
- Preamble of new Section 504 Rulemaking
- Gender Dysphoria plus all of Section 504



RESTROOMS & FACILITIES

Policies

- Use consistent with gender identity (EEOC/OSHA)
- Single-user is **optional**, not mandatory
- Train against **misgendering/outing**



NAMES, PRONOUNS, SYSTEMS

Policies

- Update **badges, email, rosters**
- Respect requested **names/pronouns**
- Handle **religious conflicts**
via Title VII process

INTERACTIVE PROCESS

Checklists

- Intake
 - → Clarify
 - → Options
 - → Pilot
 - → Confirm
 - → Review



Reasonable Accommodations

- Scheduling/leave
- Dress code
- Names/pronouns
- Facilities
- Remote during recovery

ACCOMMODATION EXAMPLES



BENEFITS & SECTION 1557

Affordable Care Act

- Watch plan **exclusions**;
evolving rules & injunctions
- Coordinate with counsel/TPA

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COMMON PITFALLS

Warning

- Forced single-occupancy restrooms
- Ignoring harassment/misgendering
- No paper trail for undue hardship



POLICY TUNE-UP

Revise Policies & Procedures

- Clear restroom policy
- Names/pronouns standard
- Complaint & non-retaliation language



SUPERVISOR PLAYBOOK

Make Handouts & Manuals

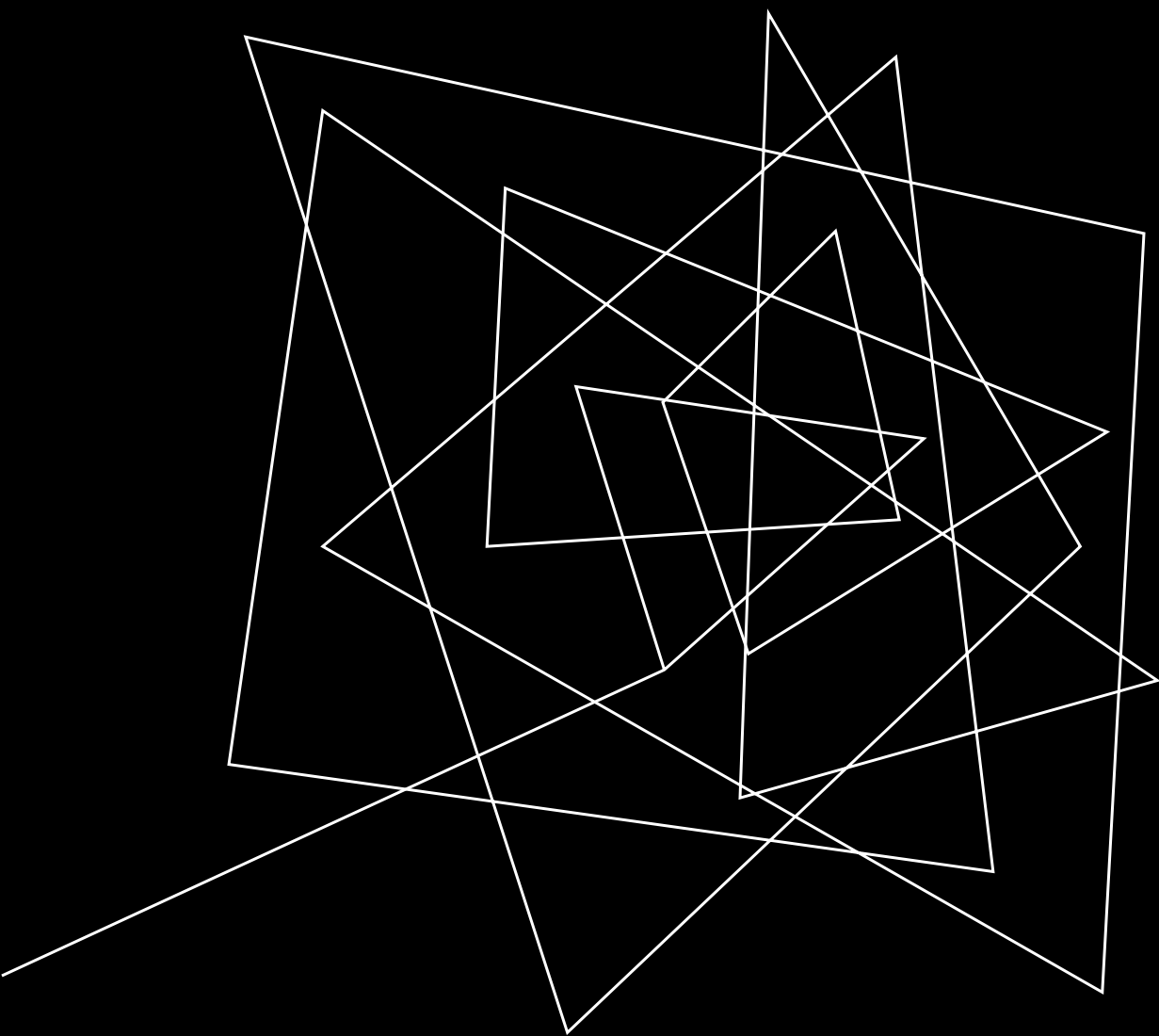
- How to respond to disclosure
- When to loop HR/ADA
- How to halt harassment now



KEY TAKEAWAYS

Baselines

- Start the **interactive process**
- Align with **EEOC/OSHA**
- Document, document, document



QUESTIONS & ANSWERS

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THANK YOU

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