

Southern Illinois University Carbondale

**OpenSIUC**

---

Capstone Projects

Graduate School

---

Fall 11-17-2023

## **Disability Critical Race Theory and Its Application to Law Schools**

Vivian Hardison

Follow this and additional works at: [https://opensiuc.lib.siu.edu/gs\\_caps](https://opensiuc.lib.siu.edu/gs_caps)

---

### **Recommended Citation**

Hardison, Vivian. "Disability Critical Race Theory and Its Application to Law Schools." (Fall 2023).

This Article is brought to you for free and open access by the Graduate School at OpenSIUC. It has been accepted for inclusion in Capstone Projects by an authorized administrator of OpenSIUC. For more information, please contact [opensiuc@lib.siu.edu](mailto:opensiuc@lib.siu.edu).

DISABILITY CRITICAL RACE THEORY AND ITS APPLICATION TO LAW SCHOOLS

by

Vivian Hardison

M.S., Southern Illinois University, 2016

B.S., Southern Illinois University, 2011

A Capstone

Submitted in Partial Fulfillment of the Requirements for the  
Doctor of Education Degree

School of Education  
in the Graduate School  
Southern Illinois University Carbondale  
December 2023

**CAPSTONE APPROVAL**

DISABILITY CRITICAL RACE THEORY AND ITS APPLICATION TO LAW SCHOOLS

by

Vivian Hardison

A Capstone Submitted in Partial

Fulfillment of the Requirements

for the Degree of

Doctor of Education

in the field of Educational Administration

Approved by:

Saran Donahoo, Ph.D., Chair

Christopher Behan, J.D., Committee Member

Brad Colwell, Ph.D., Committee Member

Gary Kelly, Ph.D., Committee Member

Graduate School  
Southern Illinois University Carbondale  
November 10, 2023

## **AN ABSTRACT OF THE CAPSTONE OF**

Vivian Hardison, for the Doctor of Education degree in Educational Administration presented on November 10, 2023, at Southern Illinois University Carbondale.

**TITLE: DISABILITY CRITICAL RACE THEORY AND ITS APPLICATION TO LAW SCHOOLS**

**MAJOR PROFESSOR: Dr. Saran Donahoo**

Using Disability Critical Race Theory (DisCrit) and its tenets, I have created a training manual for law schools to address that barriers that their current policies and procedures may create for Black/Brown students with disabilities. This begins by detailing the history of disability accommodations in academia and how they are established in higher education. Next, an analysis of how legislation combined with disability critical race theory can guide how law schools in improving their practices with Black/Brown students with disabilities is completed. Finally, the appendix is the training guide to be presented to law schools. It includes details of what each DisCrit tenet may look like and how it is applicable to experiences that faculty and student may have while being in law school.

## **ACKNOWLEDGMENTS**

I would like to acknowledge and thank my committee chair, Dr. Saran Donahoo. This experience has felt impossible to complete at times, and she never failed to breathe life into me again and again so I could finish. I hit one of the hardest moments of my life while working on this project and she was my first call. She has supported me, inspired me, uplifted me, and carried me when I had no resolve to do so on my own. I owe her this accomplishment and the success that my daughter I both now get to experience. The amount of love, guidance, and leadership Dr. Donahoo has provided is unmeasurable. I am in complete awe and thankful for the blessing that Dr. Donahoo is and I thank God everyday for crossing our paths.

## **DEDICATION**

I dedicate this capstone project to my daughter Mariana Hardison, my parents Dora and Haskin Hardison, and my twenty-two plus honorary one.

My daughter, Mariana A. Hardison is my eternal cheerleader. She is the constant drive in my life and we have now taken on four college degrees together. She is literally the best part of me and none of this would have been possible if she wasn't here to push me. This one is for you.

To my parents who always believe in my big dreams and have sacrificed so that I could accomplish all them, I am forever indebted to you both. You have talked me out of quitting, prayed for me, motivated me when things got hard, allowed me to live unapologetically as myself, and serve as a constant reminder of what love, light, and support is. This one is for you.

Lastly, to my twenty-two plus honorary one. The amount of love and support you all have given is incomparable. Between the prayers, texts, and calls I could not ask for a richer sisterhood. You have uplifted me in prayer and believed in me in times that I thought I would not finish. You all have served as a beacon of love and light. This one is for you.

## TABLE OF CONTENTS

<u>CHAPTER</u>	<u>PAGE</u>
ABSTRACT.....	i
ACKNOWLEDGMENTS .....	ii
DEDICATION.....	iii
CHAPTERS	
CHAPTER 1– Introduction.....	1
CHAPTER 2 – Literature Review .....	9
CHAPTER 3 – Project Design.....	17
CHAPTER 4 – Findings .....	19
CHAPTER 5 – Summary, Conclusion, Recommendation .....	23
REFERENCES .....	26
APPENDIX – Law School DisCrit Training Guide. ....	34
VITA .....	35

## **CHAPTER 1**

### **INTRODUCTION**

Having a disability influences the academic experiences of college students. The limitations and effects of having a disability follow students throughout all levels of their education including admissions examinations, graduate, professional schooling, and licensure and certification processes (Dunn, 2013). Minority student with disabilities experience difficulty receiving accommodations on the Bar exam in part due to the intersectionality of their race and disability. Crenshaw (2017) compared the racial contestation of the knowledge of legal education to ballot boxes and lunchroom counters to civil rights advocates experiences. Crenshaw (2017) went on to describe institutions as apolitical arbiters that will not participate in exploring how to equitably exercise social power. This sentiment applies to ableism and issues related to disabilities as much as it applies to race.

Laws, policies, and ableist procedures effect all people with disabilities. If minority students with disabilities are not able to complete the requirements necessary for their professions, they are left without access to the careers they strived for and that profession miss out on diverse employees and perspectives, which can help to innovate the industry. Historically, the study of disability follows the medical model that views disability as a deficit (Garland-Thomson, 1997). Due to this, many view students with disabilities as incapable of competing or succeeding in professional schools from the moment these students request their educationally permissible accommodations.

#### **Problem Statement**

The problem surrounding students with disabilities includes the admissions and educational processes used in legal education disadvantages students with disabilities by



complicating or even denying them the opportunity to utilize their accommodations. Dunn (2013) described the Law School Admission Council (LSAC) as a necessary administrator that provides objectivity in higher education. Dunn (2013) stated the LSAC developed from a counter-elitist movement that sought to equalize the application process. Although the hope was that this process would provide equal opportunity, it negatively impacts people with disabilities by limiting their ability to receive accommodations in the LSAC review process (Dunn, 2013). Crenshaw (2017) described the failure of Harvard Law School in solving the student pool problem as the inability to constructively critique its norms and practices. Crenshaw (2017) further described that without reevaluating and rethinking the norms and practices of the law school, it consistently reinforced unwarranted exclusionary criteria for students. Professional schools' policies and procedures cause barriers for students with disabilities.

Historically, white, middle-class people with disabilities receive the best benefits available. Annamma and Handy (2021) described disability critical race theory (DisCrit) as addressing how disability and race intersect and how that further oppresses marginalized populations by a set of laws, policies, and ableist procedures. Non-white persons with disabilities experience layered and intersecting discrimination as the combination of their race and their disability doubly limit their academic and professional opportunities (Annamma et al., 2013). Linton (2006) described the concept of "passing" as common in African American, gay/lesbian, and disabled communities to avoid discrimination and ostracism. Linton further described this may be done unconsciously by internalized self-loathing or self-protection from a hateful society.

Wolbring (2008) described racism and ethnicism as being partially driven by ableism in that one is superior to the other and/or is more cognitively able. Link and Phelan (2014)

described different avenues in which stigmatization can happen. These include structural discrimination, institution practices, social policy, intersectional discrimination all lead to a stigmatized status that lowers status assignment and promotes exclusion.

### **Research Questions**

The questions that guided this study were:

- How does higher education address disability accommodations in professional law school?
- How does legislation and disability critical race theory guide law schools in improving their practices with Black/Brown students with disabilities?

### **Statement of Purpose**

The purpose of this study is to develop a training program to help law schools apply DisCrit to accommodate students with disabilities. It also aims to understand how the use of disability critical race theory could improve law school practices for students with disabilities. This can educate professional schools on disability critical race theory, so they address the inequities people with intersecting identities experience. This study aimed to examine and recommend the influence of racism and ableism on the academic opportunities offered to these to students. This study strived to explain why disability is pertinent to diversity, equity, and inclusion and how separating disability causes division for people who belong to multiple marginalized groups.

### **Disability Critical Race Theory**

This study utilized disability critical race theory (DisCrit) as a framework for examining and analyzing ways the LSAC and other elements of legal education limit opportunities for students with disabilities. DisCrit is the combination of disability studies and critical race theory.

Annamma et al. (2016) coined the term DisCrit to describe the framework that captures how conceptions of normality grew out of the interdependency of racism and ableism. The authors described DisCrit in seven tenets:

- Tenet 1: DisCrit focuses on ways that the forces of racism and ableism circulate inter-dependently, often in neutralized and invisible ways, to uphold notions of normalcy.
- Tenet 2: DisCrit values multidimensional identities and troubles singular notions of identity such as race or dis/ability or class or gender or sexuality.
- Tenet 3: DisCrit emphasizes the social constructions of race and ability and yet recognizes the material and psychological impacts of being labeled as raced or dis/abled, which sets one outside the cultural norms.
- Tenet 4: DisCrit privileges voices of marginalized populations, traditionally not acknowledged within research.
- Tenet 5: DisCrit considers legal and historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of some people of color and disabled people.
- Tenet 6: DisCrit recognizes Whiteness and ability as property and that gains for people labeled with dis/abilities have largely been made as the result of interest convergence of White, middle-class citizens.
- Tenet 7: DisCrit requires activism and supports all forms of resistance. (Annamma et al., 2016)

All these tenets together aim to further address the gaps found between disability and DEI efforts. DisCrit training is more inclusive and covers more topics and identities than DEI training does on its own. These tenets each address an issue commonly found in society and

putting the tenets into practice can create a more cohesive training for programs to utilize.

### **Research Design**

This project included two phases. Focusing on legal education, the first phase examined the disability accommodations process and opportunities provided to students at professional schools. Building off this foundation, the second phase applied the tenets of DisCrit to the creation of a training guide law schools can use during their new student orientation week and faculty/staff training to combat the intersecting limitations posed by racism and ableism. To that end, the training guide specifically addresses how following the tenets of DisCrit can change and improve the policies, procedures, and teaching methods of the law school. Based on my experience, I created case studies and provided examples of where faculty and administrators could have applied DisCrit tenets and offer suggestions on how they can act equitably in the future. In writing this training guide, I also address how grant funding for psychosocial and academic battery assessments can remove barriers in coursework as well as licensure exams for students with disabilities.

### **Positionality**

The Center for Education Statistics (2016) reported 19% of undergraduates and 12% of graduate students reported having a disability. I have been in the disability field at a university for over 10 years. I have met with students to establish disability accommodations for six of those years and have been the only coordinator of color for all of them. Over the years, I have had many Black students seek me out by word of mouth from a friend I have helped, and I made them feel safe. I also translated institutional materials for Spanish speaking students and their families before and after I became a coordinator. I have also read Spanish exams, met with the Spanish teaching professors in the Foreign Language department and have served as translator

during student right and responsibility panels. At conferences held for disability professionals, the number of Black professionals is limited, and it decreases more with other minority groups. If the number of disability minority professionals continue to be low, it is less likely students will meet and establish services with professionals who look, share cultural ideologies, and have similar experiences like them.

Issues of receiving accommodations on the Bar exam has noticeably become an issue for students during the second semester of their third year. As a Black, Latina, rehabilitation counselor, I have become deeply invested in the success of the minority students I assist, specifically the ones in professional school as the barriers they encounter are different and more difficult than other programs. While funding is not the only issue, it is a large contributor to assessment requirements for receiving accommodations on the Bar exam. Researching DisCrit and how it may affect professional schools could assist me in creating a training guide for law schools on adopting DisCrit to their policies and procedures and address the funding need for assessments while also removing racial and disability barriers minority law students experience.

I worked in the disability office of a university for 10 years. The office served between 500-600 students a year. In that time, I learned how the policies and procedures applied to academic departments and where the gaps in accommodations versus access were in the university. Departments often leaned into the disability office on guidance on how best to approach accommodations. Hiraldo (2021) described university efforts to recruiting minority students as a step to making the university more diverse, but if it does not address the need to change campus climate inclusivity, it may not maintain a diverse population. When policy and procedure fail to be inclusive in all aspects; it fails to meet the standard of what civil rights are meant to be and continues to perpetuate the stereotypes of marginalized groups.

I served as the long-time liaison to the law school at the university I worked for and became familiar with the policies and procedures. To address the barriers I have seen, I plan to create a training guide on DisCrit and how to apply it to a law school. I want to note that this is not a direct criticism of any specific law school and other graduate programs may find this information helpful. Perouse-Harvey (2022) stated teaching racism, diversity, and inclusion is difficult in teacher education because it assumed the world is in a post-racial society. Perouse-Harvey (2022) further stated for teachers to dismantle the inequitable practices that harm minority families, they must understand the intersecting identities and how complex the inequalities affect the families socially.

### **Significance of the Study**

This study is crucial to individuals with intersecting identities. DisCrit framework focuses on encompassing all part of a person and how each part needs to be tended to. It aims to assist programs to identify and then respond to the needs of student with disabilities who also belong to other marginalized groups. Programs failing to recognize and respond to intersecting identities is an equity issue because it is not addressing the need of all students. This study explains how programs can be inclusive in a more robust way than previously identified through common diversity, equity, and inclusion (DEI) training.

### **Definitions**

- Accommodations: Modifications or adjustments to the tasks, environment or to the way things are usually done that enable individuals with disabilities to have an equal opportunity to participate in an academic program or a job (U.S. Department of Education, 2007).
- Disability: A disability is any condition of the body or mind (impairment) that makes it

more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions). – need a citation for this.

- Disability Critical Race Theory (DisCrit): The framework that captures how conceptions of normality are upheld by the interdependency of racism and ableism (Annamma et al., 2016).

### **Limitations and Delimitations**

This project focused on addressing the needs of students with disabilities in professional schools. Even so, this project concentrated on guidelines and policies, and thus, does not include direct data collected from students. The use of vignettes provided an opportunity to describe the conditions students encounter, while also protecting their identities.

Moreover, this project focused the practices of law schools and law exams. As such, this project made no direct effort to address the experiences of undergraduate students or provide any direction in addressing their needs. I discuss other professional programs, but the focus of my study and capstone was on law schools and legal education. This did limit the population to only the legal field and make no attempt to discuss other professional schools or earlier levels of education.

### **Overview of Study**

This chapter described my position on DisCrit and why this was an important topic. In the next chapter, my literature review includes the history of accommodations, professional school accommodations, and the role DisCrit can play in training professional programs. Chapter three includes descriptions of each tenet of DisCrit, project design, and the research questions.

## **CHAPTER 2**

### **LITERATURE REVIEW**

The purpose of this chapter is to detail the history of disability in education and the influence of the laws protecting people with disabilities on educational access and opportunities. Through this history, this chapter describes how higher education institutions execute disability accommodations and how strict documentation requirements create barriers to licensing and certifications exams for students seeking diagnoses and accommodations. This chapter also addresses the process for accommodations in schools. Finally, this chapter describes what role DisCrit has in establishing a more inclusive and equitable experience for minority students who have disabilities specifically in law schools.

#### **History of Disabilities in Academia**

Institutions that receive federal funding are required to offer students reasonable accommodation per the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101 – 12213 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796l. Snyder and Dillow (2015) estimated, in the United States, over 2.5 million students identify as having a disability in postsecondary institutions and this number continues to rise. Dong and Lucas (2016) described the purpose of disability offices as reducing or mitigating the barriers students encounter in higher education. College students with disabilities face academic difficulties and due to this, the discussion of disability services is vital to the academic success of students (Blasey et al., 2022). Blasey et al. (2022) suggested lower cumulative GPA's and time of graduation are common for students who only received accommodations later in their college career. The researchers also suggested institution employees should encourage students to register early with disability offices because of the positive relation of accommodations and



academic outcomes.

In 2008, amendments were made to the ADA (1990), ADA Amendments Act of 2008, 42 U.S.C. §§ 12101-1223, which broadened the definition of disability and lessened the rigorous process and documentation necessary to approve disability benefits. After this legislation, the number of individuals receiving accommodation in higher education rose to 11% of undergraduates reporting having a disability (Snyder et al., 2016).

Deckoff-Jones and Duell (2018) described the common accommodations on university campuses are academic and accessibility accommodations. Academic accommodations are described as those that will assist in improving the student's chances of completing coursework (Deckoff-Jones & Duell, 2018). When students have more information about the services available to them on campus and are familiar with their legal rights as a person with disabilities, they are more successful in higher education (Becker & Palladino, 2016). Academic accommodations remove disability related barriers for students to complete their coursework, not to lessen the rigor or alter the intent of the courses (Becker & Palladino, 2016). Although disability services are available to students, they may not know the resource is available to them and often transfer if an institution is not meeting their disability needs (De Los Santos et al., 2019). Blasey et al. (2022) found there was a lower academic outcome depending on the type of disability and not the accommodation students received. The researchers also noted having three to four specific accommodations (e.g., testing, technology, and program accommodations) positively predicted the GPA for students with disabilities.

Deckoff-Jones and Duell (2018) suggested having disability offices and providing accommodations is not enough to address the need for students with disabilities. Universities should offer programs that assist students with disabilities to become acclimated to the social

environment, start peer and mentor groups so students can speak openly about their disability, and provided education programs that aim to reduce the stigma associated having a disability and receiving accommodations (Deckoff-Jones & Duell 2018). In postsecondary education, the sense of belonging improves perception of campus and social interactions increase the retention and success of students with disabilities (Mamiseishvili & Koch, 2011). Accommodations are individual and specific to each student, but students with disabilities will still try to go through their coursework without accommodations due to peer perceptions (Deckoff-Jones & Duell 2018). Higher education institutions are expected to increase student retention and on time graduation, because of this, research is increasing on the need for support services, which positively impacts students with disabilities (De Los Santos et al., 2019).

A recent a case, *Payan v. Los Angeles Comty. Coll. Dist.* (2021), is unprecedented for its time. Students at Los Angeles Community College District (LACC) had accessibility issues in their courses. Students Mason and Payan are both blind and did not have reasonable access to the information in a format necessary for them to have access. The lower court originally entered a final judgment in favor of Mason and Payan, this appellate court overturned and vacated this decision (*Payan v. LACC*, 2021). This result left these students without the accommodations needed to function as college students. This case almost went to the Supreme Court as the plaintiffs argued the college violated their rights Under Title II of Section 504 (Section 504) and LACC argued no wrongdoing. Even so, LACC chose not to proceed due to impending court costs. Disability rights and lawyers played a significant role as they dedicated their time and expertise to the *Payan v. Los Angeles Comty. Coll. Dist.* (2021) case as they saw this is a monumental step backwards and a violation of the civil rights of people with disabilities.

This case affected the landscape of students seeking accommodations as it reinforced the

barriers students face. The vary barriers the ADA strives to remove. The initial decision did not allow students necessary and reasonable accommodations, the students were discriminated against on the basis of disability, and the case seemed like a significant step back in how institutions treat students with disabilities.

### **Delivery of Accommodations in Higher Education**

To make accommodation determinations, disability professionals utilize a three-prong process called the interactive process. The Office of Civil Rights (OCR) will investigate and specifically look if an institution engages in the interactive process with a student when deciding accommodations. This process includes documentation, personal testimony, and coordinator observation. Common documentation students provide are individualized educational plans (IEPs), 504 plan documentation (when a student returns after a serious injury or illness), medical history, and provider letters. Documentation is helpful but not always required. During this process, the disability professional will be able to determine if they need documentation to apply specific accommodations (Axelrod & Grossman, 2022).

Individualized educational plans (IEP) and 504 plan documentation may be helpful to establish accommodations, but due to the broadening of the definition of disability in the amendments to ADA (2008), it may not be necessary in higher education to receive accommodations. A higher education institution is not responsible for identifying students with disabilities nor are they required to deliver the same services students receive in K-12.

Students consistently live with their disability, they are experts on how it affects them, what limitations they experience, and what mitigating measures help them. Listening to their personal testimony helps the disability professional and the student understand the needs and gives them an opportunity to build a rapport (Andrews, 2022). Disability professionals are

trained with specific questions to ask students so they can better understand how a student's disability impacts them and limits their functionality. Reasonable accommodations are established after this process and are then implemented for the semester (Andrews, 2022).

If, at any time, the student needs to make adjustment to their accommodations, the parties will go through the interactive process again and determine if the new requested accommodations are reasonable and applicable (Andrews, 2022). Some accommodations may not be implemented due to the timing in the semester, or limitations of the classes, but are available for a student to use in the following semester. Adjustments to student's accommodation are made, and different ones can be tried until the appropriate ones to supply equal access have been identified (Andrews, 2022).

After this, students may be responsible for obtaining the disability specialist documentation if necessary (Axelrod & Grossman, 2022). After receiving documentation, the two parties go through the process again to determine if the requested accommodations are reasonable. Accommodations, like attendance modifications, assignments, or remote attendance, typically require additional documentation. If approved, the process of negotiating terms with professors may begin. Once an accommodation like attendance modifications is approved, students notify the disability specialist what classes they will need the accommodation in, and the disability specialist will negotiate it with the professor. This is also part of the process of seeking an accommodation all the way through to implementation (Axelrod & Grossman, 2022).

### **Establishing Accommodations in Professional Schools**

Locally, the professional school has its students meet with the disability office. A United States Department of Justice (2014) settlement found the disability department would meet with students for disability-related accommodations and modification. The result in this case was

rooted in the denial of an accommodation without going through a process to determine whether the accommodation was reasonable or not. Prior to this decision, the associate dean of the law school made disability determination. Since then, a coordinator at the disability office is the law school liaison so there is a direct person to ensure the requirements of the Department of Justice settlement (United States Department of Justice, 2014).

The Illinois bar exam requires students to provide documentation such as psychosocial evaluation with description of current impairment level. The documentation must be within three years for cognitive disabilities and year for psychiatric disabilities. This requirement goes beyond what a law student would need to receive accommodation during their coursework (Illinois Board of Admissions, n.d.). The Association for Higher Education and Disability (AHEAD) shares guidance on making determinations for accommodations. This step is called the interactive process and it includes three prongs: documentation, personal testimony, and coordinator observation. Documentation is helpful, but not required for all accommodations nor for all disabilities (Axelrod & Grossman, 2022).

Students are experts on their symptomology, how their disability affects them, and sharing their personal testimony assists in determining appropriate accommodations. Compiling all this information, a plan of accommodations is then available for students to use. Students are immediately put at a deficit when they apply for accommodations on the bar exam if they have not had a recent evaluation. Moss (2020) stated if a bar exam reviewer has biases of students with psychiatric disabilities and views them from a medical model of needing to be cured, the stigma of being less than is reinforced rather than the reviewers being seen as bias.

Lawyers must be able to exhibit competence to practice law; from an ethical framework, it is concerning if a person has a psychiatric diagnosis. However, with accommodations under

the Americans with Disability Act (ADA) 1990, competence can be attainable (Moss, 2020). The American with Disabilities Act Amendments Act (ADAAA; 2008) became laxer about the requirements of documentation and licensing and credentialing bodies operate under a different title. This study seeks to understand if DisCrit has any impact on students receiving disability accommodations in professional schools, their licensing exams, and if training in DisCrit can assist law schools to better prepare students in receiving accommodation for the bar exam.

Other institutions have a person on each campus to ensure accommodations are implemented (Axelrod & Grossman, 2022). The demands and caseload for a whole school is considerable but schools that do not respond to requests can receive an Office of Civil Rights case. Institutions that do have this, have larger disability offices in their central campus and collaborate with each other to ensure students do not go without the accommodations they need. There is still a large stigma attached to professional school as having a disability, not having the appropriate staff and office is also a barrier. It discourages students from seeking out necessary accommodation and leaves them to think disability accommodations are not an option because no office exists.

Anderson and Wylie (2008) stated law school graduates who have physical disabilities are more likely to be unemployed or have lower compensations when they are employed. They further found the move to make accommodations is primarily for the students with physical disabilities and there are fewer recommendations on how to apply accommodations for those with invisible disabilities. Earlier in this chapter, I discussed how accommodations are decided and if accommodations may fundamentally alter the course, it cannot be implemented. Adams (1998) described law schools may deem accommodations such as not speaking, for a deaf student or one with a severe speech impediment in a course heavily based in the Socratic

method, moot court, and distance learning as not reasonable as it fundamentally alters the course. While this may sound like it will fundamentally alter the course, the interactive process with a disability specialist, student, and law professor will decide whether an accommodation is reasonable and can be implemented. Dunn (2013) argued the LSAC failed to satisfy the purpose of the ADA by denying valid accommodations requested. Denying the accommodation increased the difficulty of the LSAC by ignoring the limitations a test taker experiences due to a disability (Dunno, 2013).

### **Gaps in the Literature**

While there is a lot of research done on Discrit, there is little on how it applies to law schools. There is limited research on disabilities and law schools in general. Due to these gaps, my research results will come from marrying the available research, my personal expertise in disability, and experience from being a disability liaison to a law school.

## **CHAPTER 3**

### **PROJECT DESIGN**

I present the training guide in PowerPoint form. I include an introductory slide, a brief history of DisCrit slide, a slide for each tenet of DisCrit, slide of real-world examples of DisCrit tenets, hypothetical slides, recommendations slide, ABA standard slide, FAQ slides, and conclusion slide. The template is simple and straightforward, so it does not cause distraction or make it difficult to navigate. The font for the title of each slide is 32 inches and the content is 20 inches for low vision accessibility. Any graphics include a bubble description. My intent with this training guide is to share how DisCrit can assist in making the school more inclusive in their policies and procedures, instruction, and mission. I used this format for the training guide for its simplicity and accessibility. PowerPoint materials can be easily changed if necessary to accommodate the needs of participants. The ability to change the slides and/or method of delivery increases the likelihood that institutions will consider using it in training their staff on DEI.

In my experience, disability has either been excluded from DEI trainings entirely, or it was a stand-alone topic separate from DEI. No program or training is foolproof or an absolute, applying practices from a theoretical framework may minimize the amount of time working from a reactionary vantage point and move into a more universal design model that lessens the disparities across marginalized groups. DeMatthews (2020) urged faculty to reject notions of normality and to problematize singular identities to keep from perpetuating deficit and flawed thinking. Perouse-Harvey (2022) found, in her research, faculty may experience dissonance after learning critical frameworks that call them to disrupt previous notions of racism and ableism. They may quietly adopt new learnings, and some may have resistance as it challenges previously



held notions. Ideally, faculty and staff will feel equipped and empowered to be able to recognize, name, and challenge, anything in a policy, their instruction, and procedures that is negatively affecting marginalized groups.

### **The Role of Disability Critical Race Theory in the Training guide**

This training guide reinforces and communicates standards by redescribing ableism and its importance in diversity, equity, and inclusion (DEI). Thirty-one years after the ADA, there are still gaps in how to address people with disabilities and wider gaps in intersecting identities. This training will go beyond the ADA standards because it is addressing most of the intersecting identities of a person. The ADA was written specifically for people with disabilities. While revolutionary for its time and necessary for society, it benefited the majority and not the minority. In my opinion, DisCrit is the theoretical linking of ADA and the Civil Rights Act. This training guide will illustrate a stronger commitment to equity as in an encompass all approach.

### **Summary**

In this chapter, an overview of the project design was covered. The chapter explained why a DisCrit training guide is necessary and beneficial for institutions to implement in addition to DEI trainings. A brief history of my experience with law school accommodations was provided. The reinforcement and link between the ADA and DisCrit are discussed. Next, the training guide will be created and advertised to a local institution for implementation.

## CHAPTER 4

### FINDINGS

In creating the training guide, it was difficult to balance the need for more inclusive training while also considering the spirit of the Socratic Method and its place in law schools. Smith (1999) described the Darwinist approach of sink or swim as anathematic in teaching law students with disabilities. While rapid fire questioning is a common practice and skill law students need to develop, it can often play against certain disabilities which limits a student's capacity to do well in courses. In writing, it was difficult to understand the need and the limitations the Socratic Method imposes. It begs the question of is it the best approach and if not, is it appropriate or moral to separate out students by the skills they can and cannot obtain due to disability? While the law promotes equality and disability accommodations are civil rights, my research has led to consider what is the boundary of success versus access and how much of that is reflected in American Bar Association (ABA) standards.

There is an exuberant amount of data related to disabilities in K-12. While K-12 is where most accommodations should start, disability professionals in higher education often see a gap in accommodations coming to higher education from students of color. Parrish (2002) highlighted, in researching accommodations in higher education, the data available are not nearly as robust. The research for professional schools is even smaller. In creating the training guide, I had to rely heavily on the information from DisCrit articles and how it can apply to organizations that work in tightly controlled pedagogies and practices. Linton (2006) described how the ambiguous social position people with disabilities, people of color, and people who are LGBTQIA can take an enormous toll and may come with declaring what you are as unacceptable.

As students flow from K-12 to higher education, to professional school, their identity

changes and things like race and disability may contribute to what type of adult they will be. Khasnabis et al. (2019) described teacher educators as responsible for teaching pre-service teachers' racial literacy and antiracist practices so they can better serve students. As the training guide was developed and my experience being with seasoned law school staff and faculty, the data I reviewed showed there is a need for training before individuals work with students. However, pre-service teachers are within the K-12 realm so while it is great that they are a targeted audience, there is a gap in training for higher education and professional schools. The use of this training guide in professional schools may be critical to faculty/staff who have limited or indirect exposure to diversity, equity, and inclusion information.

In the 2023-2024 ABA Standards and Rules of Procedure for Approval of Law Schools, the word "race" is mentioned 13 times, "ethnicity" 12 times, "disability" 11 times, and "color" 9 times. Almost all the time these words are mentioned, it is under a non-discrimination and equal opportunity section that lists who and what groups are protected. The ABA acknowledges these groups should not be discriminated against, they do not address the issue of why or how to go about ensuring that its upheld. The training guide aims to address the application of how and why these guidelines are upheld. Perhaps it is not necessary to go into detail on how these groups are protected, but the information seems limited on how it is applied. Buhai (1999) discussed externships for law students and described ensuring reasonable accommodations at that externship as the duty of the law school. Buhai further argued law school must offer students with disabilities comparable opportunities as those without disabilities in intern and externships. This may be helpful information in guidelines and procedures, so students are aware of their options when they are entering the workforce while still being students.

I also found that my initial approach had to change once I started writing the training

guide. My goal was to create a training guide with a voiceover and captions for access. What I found was that due to the professional standards being different per state, I would have to make a general training guide based on the ABA standards and when presenting to a law school, I would modify slides to fit that specific state. While this may be limiting, it does allow the opportunity to be more direct and concise with the training and to be more relevant to each school. The training guide will always be a working document for it to be customized to each school.

### **Case Study One**

Black student who is in a litigation course with a predominately White cohort is called upon by their professor. The student receives disability accommodations that correlate to their diagnosis of Generalized Anxiety Disorder and Social Anxiety Disorder. The professor rapid fires questions about a lengthy case that included 40+ pages of content. The student attempts to answer but can't keep up with the professor. They begin to sweat, fumble over their words, and soon feels immobilized by the exercise. The professor goes on to say that to be a lawyer, students need to be able to complete this type of exercise. The student leaves shortly after this and does not return to class.

- Limitations included the student's ability to participate, effects of being in a predominately White class, needing a rest break
- Can relate to DisCrit tenets one, two, three, and six

### **Case Study Two**

Latino student is in an evidence class where they have to handle physical evidence and write detailed notes on the items. Student has a diagnosis of Autism Spectrum Disorder. One of their impacts is difficulty with fine motor skills. Due to the limitation in their manual dexterity, the student has a lab assistant to manipulate the evidence and be their scribe. The lab assistant

and student both speak Spanish and do so in class as it's a better way for the student to communicate. The professors requires that they speak English only as they could be cheating by speaking in a language that they cannot understand.

- Addresses ethics of procedure and the best access to students needs to best learn.
- Can relate to DisCrit tenets one, four, five, and seven.

### **Case Study Three**

Black student provisionally receives disability accommodations while awaiting a formal assessment. Though the student is enrolled with the state rehabilitation services, due to COVID, the assessment continues to get pushed back. Student finally gets the assessment completed by a well-known and respected clinical psychologist during their third year of law school. The assessment is very detailed and robust. It reflexes that the student has a significant learning disability amongst other limitations. The date the assessment is completed falls within the required time frame for intellectual disabilities. The student applies to receive accommodations on the BAR exam. The accommodations they requested have historically been granted through the disability office and were also recommended in the assessment. Student receives a letter from the BAR stating that their accommodation request had been denied and that they believed that the student had attempted to falsify their scores and purposely answered wrong on the assessment so they could be diagnosed with a disability and receive accommodations.

- Accuses student unethical behavior and can minimize the psychological of a student with a disability.
- Fails to provide equal access to student and created barriers the student did not experience for courses.
- Addresses DisCrit tenets one, three, five, and seven

## CHAPTER 5

### SUMMARY

The purpose of creating a DisCrit training guide for law schools was for faculty, staff, and students to have a more inclusive approach to their policies, procedures, and teaching. I reviewed current and past literature to gain a better understanding of intersecting identities and how they each play their own role in how a student may experience law school. When examining incidents of discipline, vast representation of students of color in special education, and gaps in graduation rates, the question rises of why so many students of color who have a disability experience failure and/or are perceived to be failing (Annamma et al, 2013). Transferring those same ideas to higher education and law schools, it is necessary to consider this is a continuous issue but there is a way to address it.

In my experience, higher education has approached accommodations in law schools in the same way it approaches other disciplines. However, research has found that Black/Brown students are less likely to receive disability accommodations so they are at a disadvantage when they do have a disability. While disability offices can accommodate law students, there is still the BAR exam that requires much more documentation that a university will require.

In the training guide, I have described how the DisCrit tenets can, and why they should, be applied. Due to the rigorous nature of professional schools, it is no small feat to excel in courses as well as the bar exam. Following the tenets of DisCrit, in the training guide I created a way for faculty/staff to critically analyze their teaching methods, current policies and procedures, and possibly reframe the way they look at some groups of students.

Before the ADA fully took effect, people with disabilities lobbied, staged sit ins, and fought for their civil rights. At the inception of the ADA there were still milestones needing to be

met and now 33 years later, professional schools are still creating barriers to access. The largest aim in addressing the disparities is for law schools to uphold the law. Training lawyers and then being stringent on how the law is interpreted and applied is undermining the breath of the ADA. In interpreting the law, minority students with disabilities are left to a disadvantage due to being in multiple marginalized groups. The Civil Rights Movement was the blueprint to The Rehabilitation Act of 1973 which later own grew even more in the ADA. All these laws are in effect to increase equality, accessibility, and humanity.

### **Conclusions and Recommendations**

Currently, there is still a gap in addressing how identities intersect and how these compound students experience in society and law schools. There is still much to be learned about DisCrit but the theory continues to bridge concepts that view students in a multitude of ways yet as a whole at the same time. It is important to note students needing accommodations does not mean they do not have to do the work. They are still expected to learn the same content, take the same exams, and follow the same protocols as other students. When students of color who have disabilities do not receive diagnoses early, they are at a deficit even while having the civil rights to receive accommodations. Students who come from underprivileged backgrounds and have a low performance can be stereotyped because of their intersecting identities that consequently increase their vulnerability and stigmatization (Woodcock & Hitches, 2017).

The Socratic Method is widely used in law courses. While the Socratic Method can cause limitations to people with disabilities, evaluating its implications on student with disabilities will require a more in-depth analysis of it. Further research on the pedagogical intent and The Socratic Method would assist in better understanding why it causes limitations and what other teaching styles may be more inclusive.

While a DisCrit training guide may be beneficial to law school faculty/staff, there is a larger issue with the ABA and how those standards dictate the policies and procedures of law schools. Accreditation standards follow ABA while professional standards are established by each state. If one governing body can decide all accreditation standards, it should be similar for professional standards so there is consistency across states. Recommendations for professional standards to be consistent can lessen the opportunity for organizations to be discriminatory in their practices. In reviewing previous research, there is a continued disconnect between how the changes in the law will change the access to accommodations from K-12 to postsecondary education. Specifically, there is a disconnect on how having marginalized intersecting identities further oppresses students.



## REFERENCES

- Adams, S. (1998) Leveling the floor: Classroom accommodations for law students with disabilities. *Journal of Legal Education*, 48(2), 273–296.
- Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213.
- ADA Amendments Act of 2008, 42 U.S.C. §§ 12101-12213.
- Andrews, K. (Producer). (2022). *The student interview and the interactive process: Practical guidance*. [Video].
- Annamma, S., & Morrison., D. (2018). DisCrit classroom ecology: Using praxis to dismantle dysfunctional education ecologies. *Teaching and Teaching Education*, 73(1), 70–80.
- Annamma, S., Connor, D., & Ferri, B. (2013). Dis/ability critical race studies (DisCrit): Theorizing at the intersections of race and dis/ability. *Race, Ethnicity and Education*, 16(1), 1e31. <https://doi.org/10.1080/13613324.2012.730511>.
- Antony, P. J. (2012). Understanding the history, current status & future of special education in the United States. *Loyola Journal of Social Sciences*, 26(2), 251–265.
- Aquino, K. C., & Bittinger, J. D. (2019). The Self-(un)Identification of disability in higher education. *Journal of Postsecondary Education and Disability*, 32(1), 5–19.
- Blair, M. E., & Salzberg, C. L. (2007). Accommodations for licensure and certification examinations. *Journal of Disability Policy Studies*, 18(1), 14–22.  
<https://doi.org/10.1177/10442073070180010201>
- Bell, A., Jr. (2005). The unintended lessons in *Brown v. Board of Education*. *New York School Law Review*, 49(4), 1053–1067.
- Bell, C. (2006). Introducing white disability studies: A modest proposal. In L. J. Davis (Ed.), *The disability studies reader* (2nd ed.; pp. 275–282). Routledge.

- Bell, D. 1980. *Brown v Board of the Education* and the interest convergence dilemma. *Harvard Law Review*, 93, 518–533.
- Blasey., J., Wang., & Blasey., R. (2022). Accommodation use and academic outcomes for college students with disabilities. *Psychological Reports*, 0(0), 1–18.  
<https://doi.org/10.1177/00332941221078011>
- Boghossian, P. (2012). Socratic Pedagogy: perplexity, humiliation, shame and a broken egg. *Educational Philosophy & Theory*, 44(7), 710–720. <https://doi.org/10.1111/j.1469-5812.2011.00773.x>
- Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483. (1954).
- Buhai, S. (1999). Practice makes perfect: Reasonable accommodation of law students with disabilities in clinical placements. *San Diego Law Review*, 36(137), 137–194.
- Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964).
- Cho, A. R., & Sriram, R. (2016). Student affairs collaborating with academic affairs: Perceptions of individual competency and institutional culture. *College Student Affairs Journal*, 34(1), 56–69. <https://doi-org.proxy.lib.siu.edu/10.1353/csaj.2016.0003>
- Colatrella Jr., M. T. (2014). Learning “the true, the good and the beautiful” in law school: Educating the twenty-first century litigator. *Review of Litigation*, 33(4), 741–798.
- Crenshaw, K. W. (2017). Race liberalism and the deradicalization of racial reform. *Harvard Law Review*, 130(9), 2298–2319.
- Deckoff-Jones, A., & Duell, M. N. (2018). Perceptions of appropriateness of accommodations for university students: Does disability type matter? *Rehabilitation Psychology*, 63(1), 68–76. <https://doi.org/10.1037/rep0000213>
- Delić, H., & Bećirović, S. (2016). Socratic method as an approach to teaching. *European*

- Researcher*, 110(10), 511–517. <https://doi.org/10.13187/er.2016.111.511>
- De Los Santos, S. B., Kupczynski, L., & Mundy, M.A. (2019). Determining academic success in students with disabilities in higher education. *International Journal of Higher Education*, 8(2), 16–38.
- DeMattews, D. (2020) Addressing racism and ableism in schools: A discript leadership framework for principals. *The Clearing House*, 92(1), 27–34.
- Department of Justice. (January, 2014).
- Dieterich, C. A., & Smith, K. J. (2015). The impact of special education law on career and technical education. *American Secondary Education*, 43(3), 60–72.
- DiMaria, J. T. (2012). Disciplining students with disabilities: a comparative analysis of k-12 and higher education. *Brigham Young University Education & Law Journal*, 2012(2), 413–448.
- Du Bois, W. E. B. (1899). *The Philadelphia Negro: A social study*. University of Pennsylvania Press.
- Du Bois, W.E.B. (1935). Does the Negro need separate schools? *Journal of Negro Education*, 4(3), 328–335.
- Dunn, E. (2013). an opportunity to be heard: A call for impartiality in the law school admission council’s disability accommodation review process. *Boston College Journal of Law & Social Justice*, 33(1), 183–216.
- Eckes, S. E., & Ochoa, T. A. (2005). Students with disabilities: Transitioning from high school to higher education. *American Secondary Education*, 33(3), 6–20.
- Gagnon, R. J., Garst, B. A., Kouros, C. D., Schiffrin, H. H., & Cui, M. (2020). When overparenting is normal parenting: examining child disability and overparenting in early

adolescence. *Journal of Child & Family Studies*, 29(2), 413–425.

<https://doi.org/10.1007/s10826-019-01623-1>

Gersen, J. S. (2017). The Socratic method in the age of trauma. *Harvard Law Review*, 130(9), 2320–2347.

Gray, S. A., Zraick, R. I., & Atcherson, S. R. (2019). Readability of individuals with disabilities education act part b procedural safeguards: An update. *Language, Speech & Hearing Services in Schools*, 50(3), 373–384.

Green, D. A. (2019). Shhh!!!! Can you keep a secret? A cultural bias against disclosing a mental disability & its impact on seeking reasonable accommodations for the bar exam. *Texas Hispanic Journal of Law & Policy*, 25/26(2/1), 1–19.

Gundersen, T. (2012). Human dignity at stake: How parents of disabled children experience the welfare system. *Scandinavian Journal of Disability Research*, 14(4), 375–390. DOI: <https://doi.org/10.1080/15017419.2011.592955>

Hall, L. M., & Belch, H. A. (2000). Setting the context: Reconsidering the principles of full participation and meaningful access for students with disabilities. *New Directions for Student Services*, 2000(91), 5. <https://doi.org/10.1002/ss.9101>

Harbour, W. (2009). The relationship between institutional unit and administrative features of disability services offices in higher education. *Journal of Postsecondary Education and Disability*, 21(3), 138–154.

Individuals with Disabilities Education Act (Education of the Handicapped Act) (IDEA), 20 U.S.C. §§ 1400-1482.

Hiraldo, P. (2010). The role of critical race theory in higher education. *The Vermont Connection*, 31(7), 53–59.

- Keenan, W. R., Madaus, J. W., Lombardi, A. R., & Dukes, L. L. (2019). Impact of the Americans with Disabilities Act Amendments Act on documentation for students with disabilities in transition to college: Implications for practitioners. *Career Development and Transition for Exceptional Individuals*, 42(1), 56–63.
- Khasnabis, D., Goldin, S., Perouse-Harvey, E., & Hanna, M. (2019). Race and the Mona Lisa: Reflecting on antiracist teaching practice. *The Education Forum*, 82(3), 278–293.
- Lakševics, K., Pokšāns, A., & Zalāns, K. (2018). Falling through the cracks: Critical review of the deinstitutionalization process in a post-socialist state. *Scottish Journal of Residential Child Care*, 17(4), 1–22.
- Lalor, A. R., Madaus, J. W., & Dukes, L. L., III. (2020). Disability-related competencies for student affairs generalists: A Delphi study. *College Student Affairs Journal*, 38(2), 198–214.
- Lee, S. (2009). *Unraveling the model-minority stereotypes: Listening to Asian American youth*. Teaching Press College.
- Lewandowski, L., Wood, W., & Lambert, T. (2015). Private room as a test accommodation. *Assessment & Evaluation in Higher Education*, 40(2), 279–285.  
<https://doi.org/10.1080/02602938.2014.911243>
- Line, J., & Askheim, O. P. (2018). Empowering parents as co-producers: Personal assistance for families with disabled children. *Scandinavian Journal of Disability Research*, 20(1), 266–276.
- Link, B., & Phelan, J. (2014). Stigma power. *Social Science & Medicine*, 103, 24–32.
- Lyman, M., Beecher, M. E., Griner, D., Brooks, M., Call, J., & Jackson, A. (2016). What keeps students with disabilities from using accommodations in postsecondary education? A

- qualitative review. *Journal of Postsecondary Education and Disability*, 29(2), 123–140.
- Madison, B. V. (2008). The elephant in law school classrooms: Overuse of the Socratic method as an obstacle to teaching modern law students. *University of Detroit Mercy Law Review*, 85(3), 293–346.
- Magnus, E., & Tøssebro, J. (2014). Negotiating individual accommodation in higher education. *Scandinavian Journal of Disability Research*, 16(4), 316–332.  
<https://doi.org/10.1080/15017419.2012.761156>
- Mills v. Bd. of Educ. of D.C.*, 348 F. Supp. 866. (DCC 1972).
- Moss, H. (2020). Raising the bar on accessibility: How the bar admissions process limits disabled law school graduates. *American University Journal of Gender, Social Policy & the Law*, 28(4), 537–573.
- Nagro, S. A., Markelz, A., Davis, R., Macedonia, A., & Monnin, K. (2022). The evolution of access to education through landmark legislation, court cases, and policy initiatives setting precedent for the Gary B. court decision. *Journal of Disability Policy Studies*, 1.  
<https://doi-org.proxy.lib.siu.edu/10.1177/10442073221094806>
- Pennsylvania Ass'n for Retarded Child. V. Pennsylvania*, 343 F.Supp. 279. (E.D. Pennsylvania 1971).
- Perouse-Harvey, E. (2022). Seeing the unseen: Applying intersectionality and disability critical race theory (DisCrit) frameworks in preservice teacher education. *Teachers College Record*, 124(7), 51–81.
- Price, S. G. (2021). Invisible victims: Combatting the consequences of the college admissions scandal for learning-disabled students. *Columbia Journal of Law & Social Problems*, 54(3), 461–502.

Raj, C. (2021). The lost promise of disability rights. *Michigan Law Review*, 119(5), 933–985.

Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796l.

Reybold, L. E., & Halx, M. D. (2018). Staging professional ethics in higher education: A dramaturgical analysis of “doing the right thing” in student affairs. *Innovative Higher Education*, 43(4), 273–287. <https://doi.org/10.1007/s10755-018-9427-1>

Scott, S., Markle, L., Wessek, R., & Desmond, J. (2016). Disability services partnerships with faculty members. *Journal of Postsecondary Education and Disability*, 29(3), 215–220

Shapiro-Lacks, S. (2021). Rights and obligations: Commemorating the 30th anniversary of the Americans with Disabilities Act of 1990. *Touro Law Review*, 36(4), 1101–1108.

Schiller N. (2008). Finding a Socratic method for information literacy instruction. *College & Undergraduate Libraries*, 15(1-2), 39–56

Smith, K. M., & Bales, R. (2010). Education for Americans with disabilities: Reconciling IDEA with the 2008 ADA amendments. *Northern Kentucky Law Review*, 37(4), 389–413.

The new movement in disability education and advocacy. (2013). ASHE Higher Education Report, 39(5), 101–120.

United States. (2014) U.S. Department of Justice. United States. [Web Archive] [https://archive.ada.gov/southern\\_illinois\\_sa.html](https://archive.ada.gov/southern_illinois_sa.html)

Vallar, W. J. (2021). Can the reasonable person be religious? Accommodation and the common law. *Virginia Law Review*, 107(1), 189–226.

W., Sumers, The Grandfather Clause, 7 LAW. & BANKER & S. BENCH & B. REV. 39 (1914).

Yu, S., & Park, H. (2020). Early childhood preservice teachers’ attitude development toward the inclusion of children with disabilities. *Early Childhood Education Journal*, 48(4), 497–506. <https://doi.org/10.1007/s10643-020-01017-9>

Zirkel, P. A. (2015). Special education law: Illustrative basics and nuances of key IDEA components. *Teacher Education and Special Education*, 38(4), 263–275.



**APPENDIX**

Disability Critical Race Theory Training Guide

**VITA**

Graduate School

Southern Illinois University Carbondale

Vivian Hardison

Vivianhardison17@gmail.com

Southern Illinois University Carbondale

Bachelor of Science, Criminology and Criminal Justice, December 2011

Southern Illinois University Carbondale

Master of Science, Rehabilitation Counseling, December 2016

Southern Illinois University Carbondale

Master of Science, Rehabilitation Administration, December 2016

Capstone Title:

Disability Critical Race Theory and its Application to Law Schools

Major Professor: Dr. Saran Donohoo