



Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

Workshop
4C

Beyond the ADA: How Legal Skills Faculty Can Help
Students With "Non-Visible" Disabilities
Bridge the "Accommodations Gap" Between
Law School and Practice

Alexis Anderson – Boston College School of Law

Alexis Anderson is an associate clinical professor at Boston College Law School and Director of its civil litigation clinic at the Legal Assistance Bureau (LAB) in Waltham, MA. She joined Boston College Law School in 1983 and has taught a range of clinical and legal history courses. From 1983-1989, she was a full-time faculty supervisor at LAB.

Following that opportunity, she supervised BC Law's extern program and taught and coordinated its first year simulated legal skills/ethics course. From 2001-04, she served as Director of Advocacy. In 2005, she returned to LAB where she remains one of its clinical supervisors and its Director. Prior to coming to Boston College Law School, Professor Anderson was a litigator in a large, civil practice law firm in Philadelphia. She received her law degree and her Masters in Legal History from the University of Virginia.

Norah Wylie – Boston College School of Law

Norah Wylie has been dean for students at Boston College Law School for the past eleven years. In that role, she oversees disability accommodations for the law school. In addition, she also teaches Semester in Practice, an externship program, and Education Law and Public Policy, and has taught Legal Reasoning Research and Writing and Introduction to Lawyering and Professional Responsibility.

Prior to joining the administration at BC Law, she was the deputy chief of the Family and Community Crimes Bureau in the Massachusetts Attorney General's Office, and also practiced law at the Disability Law Center in Massachusetts. She received her law degree *cum laude* from Boston College Law School.

BEYOND THE ADA: HOW LEGAL SKILLS FACULTY CAN HELP STUDENTS
WITH “NON-VISIBLE” DISABILITIES BRIDGE THE ACCOMMODATIONS GAP
BETWEEN LAW SCHOOL AND PRACTICE

Alexis Anderson & Norah Wylie
Boston College Law School

Traditionally, legal skills courses in law schools have played a key role in bridging the gap between the study of the law and its practice. Two recent studies, one undertaken by the Clinical Legal Education Association¹ and another by the Carnegie Foundation for the Advancement of Teaching, confirm that legal education needs to balance doctrinal analysis with contextualized teaching of lawyering skills and professional ethics.²

Over the past three decades, legal educators have felt increased pressure to ensure that law schools respond to the academic needs of disabled students. First, the Rehabilitation Act of 1973,³ and then the Americans with Disabilities Act of 1990 (hereinafter the “ADA”),⁴ mandated that law schools make reasonable accommodations in their programs of instruction for qualified law students with disabilities. The faculty and administration’s ability to meet the needs of these students is particularly critical given the mounting evidence that lawyers with disabilities are more likely to face unemployment or lower compensation once employed.⁵ Changes have begun to occur:

¹ The first is a report of the Clinical Legal Education Association entitled *Best Practices in Legal Education*, which provides law schools a template for reforming legal education. Clinical education plays a central role in the proposed curriculum. CLINICAL LEGAL EDUC. ASSOC., *BEST PRACTICES IN LEGAL EDUCATION*, at viii (Roy Stuckey, ed. 2007) [hereinafter *BEST PRACTICES*].

² The second major study comes from the Carnegie Foundation for the Advancement of Teaching. It challenges the academy to deliver legal instruction responsive to the demands of practice and to the needs of the public the profession is pledged to serve. *EDUCATING LAWYERS 4* (William Sullivan, *et. al.*, eds.2007).

Even before release of the two studies, the ABA had adopted a new accreditation standard for law schools which required that every student be given substantial instruction in those professional skills “generally regarded as necessary for the effective and responsible participation in the legal profession.” ABA Standards for Accreditation, Standard 3.02 (a) (4), adopted in August, 2004; *see also* Interpretation 3.02 (2): “Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302 (a) (4).”

³ Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701-797(a) (1994)).

⁴ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 611 (1994)). *See also* Sande Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 *SAN DIEGO L. REV.* 137, 185-86 (1999).

⁵ ABA Comm. on Mental and Physical Disability Law, Goal IX: A Report on the Status of the Participation of Persons with Disabilities in ABA Section, Division and Forum Leadership Positions 2 (2007).

physical barriers have come down and technological tools and adaptive devices have become more accepted throughout the institution.⁶

But students do not present with only physical disabilities. Increasingly, students with “non-visible” disabilities⁷ are seeking accommodations for a range of mental health, cognitive, and learning disabilities. Law schools have become more adept at providing qualified students with documented disabilities accommodations in their academic classes. Note-takers, special testing and attendance rules, and access to academic support programs are common features of most law schools’ disability law protocols.

Which brings us to the focus of this session. At the very time that the importance of experiential learning is being trumpeted as critical to the preparation of all law students for practice, all too little attention has been given to its role in helping students with non-visible disabilities succeed in their chosen careers. We believe that legal skills instruction, including clinics, trial practice courses, and legal research and writing classes, offers such students an opportunity to identify and experiment with accommodations which would assist them in practice. In this session we will focus on what law schools can offer students with mental health impairments, neurological disorders, and learning disabilities, whether or not they technically qualify for ADA protections, to prepare them most effectively for practice.⁸

PROPOSED BEST PRACTICES FOR LAW SCHOOL ADMINISTRATORS AND LEGAL SKILLS FACULTY

When working with students with mental health, neurological, or learning disabilities, legal skills faculty look for tools and protocols to assist their students as they prepare for practice. What follows are guidelines we propose for discussion. We invite others to share their experiences and to join this debate.⁹

⁶ See generally ABA Standard 213 (setting forth need for accommodations for qualified students); see also *id.* Standard 211 (detailing the non-discrimination policy).

⁷ We recognize that there are various terms for classifications of disabilities; we use the term “non-visible” disabilities to refer specifically to mental, neurological, and cognitive disabilities, including ADD/ADHD, and not to other types of limitations which might also not be immediately apparent to an employer. See 42 U.S.C. § 12102(2)(A)-(C). See Bruce Familant, *The Essential Functions of Being a Lawyer with a Non-Visible Disability: On the Wings of a Kiwi Bird*, 15 COOLEY L. REV. 517, 517 n.1 (1998).

⁸ This session will build upon the work we have previously undertaken on the role of clinics in assisting law students acquire the tools to succeed in practice. See Anderson & Wylie, *Beyond the ADA: How Clinics Can Assist Law Students With “Non-Visible” Disabilities to Bridge the Accommodations Gap Between Classroom and Practice*, 15 CLIN. L. REV. 1 (2008).

⁹ Several of the proposed recommendations for best practices are modeled after those proposed in the ABA Report on Employment of Lawyers with Disabilities. COMM. ON MENTAL AND PHYSICAL DISABILITY LAW, GOAL IX REPORT TO THE ABA (2006). The National Conference on the Employment of Lawyers with Disabilities: A Report from the American Bar Association for the Legal Profession, available at http://www.abanet.org/disability/docs/conf_report_final.pdf (noting the under-representation of persons with disabilities in the legal profession).

Overcoming Barriers to Disclosure

A threshold issue involves increasing the likelihood that students with disabilities will disclose their impairments. Only then are schools required to comply with the ADA, and only then can the institutions begin to work with such students to prepare them for the demands of practice. The following proposals are designed to help overcome disclosure barriers at the institution and in the legal skills curriculum:

1. The disability officer of the law school should oversee dissemination of information about access to accommodations, protocols for triggering disability services, and the range of accommodations available. The school's confidentiality guidelines should be included in that information. Attached as Appendix 1 is an example of such outreach to incoming law students and upper level students.
2. The disability officer should coordinate with any formal or informal academic support services to ensure that any students who do not initially disclose their disabilities have access to services should they elect to disclose during the course of their educational program.
3. Legal skills faculty should disseminate information about access to accommodation and protocols for triggering disability services for law students generally, and in legal skills courses such as trial practice, appellate advocacy and upper level writing and research classes. Procedures for handling confidential information received from students with disabilities should be included. We have appended a sample communication to incoming clinic students.¹⁰
4. Legal skills faculty should publicize the essential functions required of students in their courses and clinics. That catalogue of responsibilities should be updated regularly to ensure that it represents students' current required duties, and not marginal functions. This compilation should be more comprehensive than a general course description. Included in the Appendix is an example of this type of material prepared for a civil litigation clinic in which students serve as front-line lawyers.
5. The Dean for Students and/or disability services staff should review course selections for students who are receiving accommodations prior to their entry into live client legal skills clinics in order to discuss with the students whether they will disclose to the clinicians, and, if so, whether an accommodation will be necessary or possible.¹¹

¹⁰ Attached as Appendix 2 is a copy of an email sent to incoming clinic students in one civil litigation clinic.

¹¹ We recognize that this may be a controversial recommendation, because it could be easily construed as "vetting" which students should be admitted into clinics. That is not the intention of this suggestion. Instead, such a proactive review by staff in student services or disability services could result in conversations with the student about whether to disclose a disability early on to a clinical supervisor and how to structure a request for accommodation.

Post-Disclosure Protocols

Once a student has triggered a law school's duty to comply with the ADA by disclosing a documented disability, the institution can bring to bear the full range of its resources to fine-tune that student's education to fit specific needs. We offer the following recommendations for both administrative staff and legal skills faculty:

6. The disability officer should coordinate with career services staff to ensure that students with disabilities receive guided, career counseling appropriate to their needs. All law students will benefit from access to complete and accurate information on the demands of particular practice settings. In addition, the career service office should ensure that information on non traditional career paths is available to all students. Finally, the career service office should maintain information relevant to the issues facing disabled lawyers (e.g. bar association reports and bulletins on career opportunities for lawyers with disabilities, EEOC guidelines on accommodations for attorneys with disabilities, etc.).¹²

7. The disability officer should coordinate with academic advisors to ensure that students with disabilities are counseled about the various legal skills opportunities available at that law school and how these courses could assist such students make the bridge to practice successfully.

8. The disability officer should help coordinate training programs for faculty on teaching students with disabilities. Particularly for law schools with university resources available, interdisciplinary programs which build on the insights learned from medical, social work, and teacher training would be very beneficial.

9. The disability officer should review the law school's academic standards to ensure that they comply with the ADA and make recommendations for any revisions that are necessary. The officer should attempt to balance the rights of students with disabilities with the equity considerations inherent in specialized treatment.

10. Legal skills faculty should convene regional workshops to discuss their experiences with helping students with disabilities transition from academia to practice. These conferences can provide opportunities for sharing practice accommodations developed for different disabilities.

11. Faculty who teach legal skills courses should call on disability officers and Deans for Students staff as necessary for assistance in discussing experiences and feedback with students in their classes who have disclosed their disabilities.

¹² The extent to which law school administrators have any duty to notify state bar examiners that students with disclosed disabilities have received accommodations in legal skills courses (or in any other law school course) is beyond the scope of this session.

Specific accommodations for students with mental health or learning disabilities

Once disclosure occurs, the student can engage in an interactive process with faculty and administration to develop appropriate accommodations. Not only are there a range of non-visible disabilities, but also each person's experience with a particular impairment will differ, requiring a unique accommodation plan.¹³ Therefore we offer the following suggestions as a first installment of what we hope will become a protocol for accommodations which law school administrators, legal skills faculty and employers can consult when working with students with disabilities.

11. Legal skills faculty, the school's disability officer, and the student who seeks accommodations should develop an appropriate accommodation plan in concert. Topics to be included are: a. specific workplace accommodations; b. impact, if any, on the evaluation/grading of the student's coursework; and c. confidentiality expectations, including protocols for what, if any information about the student's disability will be shared with other legal skills faculty, student partners, teaching assistants, seminar colleagues, and clients.¹⁴
12. With permission of the student, the disability officer should consult with the student's treating medical providers about reasonable accommodations appropriate to the particular practice setting.
13. Clinical faculty and a student lawyer engaged as the front-line lawyer under applicable student practice rules who is seeking accommodation should review the proposed accommodation plan in light of the ethical standards in the relevant jurisdiction, to ensure compliance with all professional duties.
14. In clinics, the accommodations development team should be reconvened to review progress at mid-term and to revise the accommodation plan as needed. Then, at the conclusion of clinic, the team should meet for a final debriefing of the experience and for career counseling.
15. Legal skills faculty should compile and make public a generic list of accommodations which have been successfully employed by students in legal skills classes.

¹³ It is beyond the scope of this session to attempt to outline specific accommodations best suited to help each student who presents with a non-visible disability. In addition to working with the student's medical professionals and the law school's disability officer, we hope that legal skills faculty will begin to develop a menu of accommodations. Thankfully, some trained professionals have already begun to compile compensatory techniques and accommodations designed to assist graduate students with non-visible disabilities. See, PAMELA B. ADELMAN & CAROL T. WREN, *LEARNING DISABILITIES, GRADUATE SCHOOL, AND CAREERS* 11-13, 27 (1993). *see also* Leah Christensen, *Law Students Who Learn Differently: A Narrative Case Study of Three Law Students With Attention Deficit Disorder*, 21 *J. L. & HEALTH* 45 (2008)(compiling list of study aids and learning accommodations which her subjects identified as helpful); Familant, *supra* note 7, at 552-58.

¹⁴ Attached as Appendix 3 is a template for such a clinic accommodation plan.

16. Legal skills/ practical training courses offer students excellent opportunities to try lawyering skills and determine what strategies are most effective in mastering these skills. For students with disabilities, these practical, skills courses can be particularly valuable in providing feedback for how they will tackle the challenges their disabilities may pose in practice. For example, a trial advocacy class could present a student with ADHD who has difficulty with organizational tasks the chance to break a complex task into more manageably sized assignments to undertake over an entire semester. The normal course structure of sequencing of legal skills assignments (e.g. pre-trial motions, opening argument, direct examination) over several weeks would assist such a student in self-evaluation of what tasks present the greatest challenges. Furthermore, the student could experiment with effective strategies for overcoming potential problems such as keeping detailed “to do lists” to stay on task or journaling to identify tasks that are most likely to pose problems.

17. However, in spite of the wealth of learning opportunities available for students in legal skills classes, “over-accommodating” a disability can in the long run hurt, rather than help, a student with disabilities. For example, in a legal writing class with clearly announced deadlines for written assignments, providing a blanket extension or waiver of all deadlines for a student with a disability is arguably not required by the ADA and also ultimately not helpful to the student. Deadlines are a fact of life in the legal profession, and a law student with a disability should consider tools available through self-accommodation. In addition to those strategies, rather than providing a blanket extension, a faculty member might work with the student by providing extra availability during office hours, or by establishing interim, yet nonbinding deadlines, to assist a student’s efforts to stay on track for completion of a large writing assignment.

18. Practical skills courses can also provide students with disabilities with essential feedback in identifying what areas of law for which they might be best suited. A student with an anxiety disorder may benefit greatly from taking a trial practice course. Participating in a mock trial could verify that public speaking is, in fact, too stressful an experience, providing that student with valuable feedback for decision making about what areas of practice to consider after graduation. On the other hand, such a course might allow another student the opportunity to develop techniques for overcoming anxiety.



Appendix 1 – Sample Correspondence between Administration and All Students

Dear Admitted Student,

Congratulations on your admission to Law School! We look forward to meeting you at orientation.

Over the years we have learned that students with disabilities may need special accommodations to assist them in succeeding in the study of law. Our goal is to identify these students early on, document the disability, determine what accommodations are

necessary and provide those accommodations in a timely manner. If you are a student who may require special accommodations or who has received such accommodations in the past, please complete the attached questionnaire and return to the address below as soon as possible.

Please be assured that your privacy will be protected and that the records pertaining to your disability will be kept separate from your other academic records. The only person who will review these records are the personnel in the Dean for Students Office and the specialists designated by the Law School to oversee the provision of services to students with disabilities. If you have any questions about the services available or need more information, do not hesitate to call our office.

Please return the completed questionnaire to:

Dean for Students
Disability Accommodations Office
[address]

Again, congratulations on your admission. We look forward to meeting you in the fall!

Dean for Students
Disability Accommodations Officer

Appendix 2 – Sample Correspondence Between Clinic Faculty and Registered Students

We are writing to welcome you to the Civil Litigation Clinic and to give you some information to help you hold your place in the course and plan for the clinical experience you are about to have.

On Monday at 2:30 p.m., we will hold a one-hour introductory meeting. The primary purpose of the meeting is to give you an orientation to the course, including the first week's schedule during which we conduct training before assigning cases to you. If you will have any difficulty attending this meeting please notify us and we will arrange to hold your slot, get materials to you, and bring you up to speed. Anyone registered, who neither attends this meeting nor contacts us in advance, will lose her/his slot in the clinic to a student on the waiting list.

Clinic is an opportunity for you to begin to transition from the classroom to practice. If you are a student who may require special accommodations or who has received such accommodations in the past, you should discuss how clinic staff can accommodate your needs during the semester at clinic with the Dean of Students. Please be assured that your privacy will be protected.

Appendix 3 – Sample Accommodations Plan for Clinic Student with Non-Visible Disability

Student's Name _____
Supervisor's Name _____
Number of Credits _____

Date: _____
Course # _____
Pass/Fail _____ Graded _____

Nature of Disability

- a. Primary: Affective disorder – primarily depression.
- b. Secondary: Anxiety disorder – panic attacks

Accommodations to be provided

- a. Student may work from home except during office hours; required in-office hours to be reduced from 7 hrs/week to 5 hrs./week.
- b. Student may arrange extension of time for completion of non-time sensitive, case related projects with supervisor.
- c. Student will be granted a three week extension on final seminar paper.
- d. Student will provide supervisor with detailed outline for any “performance” event (e.g., court-room or hearing event) one week before the scheduled hearing. Student will role play the advocacy with supervisor. Student and supervisor will determine after completion of those role-plays whether student will conduct the hearing/court event.

Review of Plan

Next scheduled review of this plan: midterm
Student and supervisor reserve the right to request an earlier review of this plan.

Confidentiality

- a. Student agrees that information regarding student's request for accommodations, the triggering disability, and this plan may be shared with clinic supervisors and the Dean for Students/Law School Accommodations Officer.
- b. Supervisor agrees that the information detailed in (a) above will not be shared with other clinic students, including student's partner, absent the student's express written approval.

Student

Supervisor