

# Professor Kimberlé Crenshaw defines Intersectionality

Turn on your speakers and follow this link to a 2-minute video where Professor Crenshaw defines and discusses intersectionality

<https://www.youtube.com/watch?v=ViDtntfQ9FHc>

# Considering Intersectional Claims in Disability Discrimination

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# Introduction:

## Getting to know who is in the room

Please tell us what your role is:

- a. Attorney
- b. Advocate
- c. Law Student
- d. Community Member

What areas/ institutions does your work impact?  
(short answer)

# Introduction: Agenda

1. Introductions
2. Learning Objectives
3. Definition of Intersectionality from Professor Crenshaw herself
4. Case Example: *Black Parallel School Board et al. v. Sacramento City Unified School District et al.*
  - a. Using Data to Identify the Issues
  - b. Building the Legal Claims
  - c. Working with Co-Counsel

# Introduction:

## Learning Objectives

- Attendees will be able to name possible areas of the law that intersect with disability rights.
- Attendees will be able to name possible data sources, including individual client experiences, to identify claims and craft a meaningful complaint narrative.
- Attendees will be able to seek-out co-counsel based on co-counsel's experience and credibility in intersectional area.
- Attendees will be able to explain to their colleagues why intersectional cases are important

# Defining intersectionality

- Raise your hand if you feel like you have a basic understanding of intersectionality.
- Raise your hand if you were able to watch the YouTube video in the waiting room.

# Defining Intersectionality

## Intersectionality

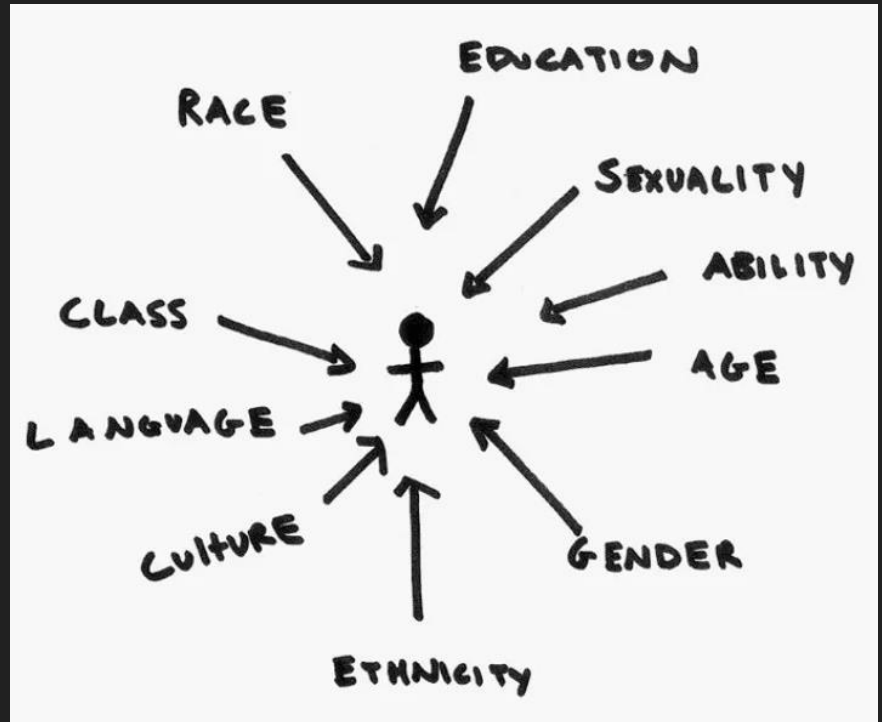
Introduced by legal scholar Kimberlé Crenshaw, intersectionality is a framework for understanding the ways that the multiple aspects of our identities intersect, influence one another, and compound to create unique experiences. The concept is regularly used to describe the ways that societal privilege and oppression is complicated by the different parts of our identity that are marginalized or privileged in society.



# Defining Intersectionality

“A metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves.”

-Kimberlé Crenshaw





# Short Answer Response: Intersectionality

Think of your own lived experience. Share how your own experience is intersectional.

# Revisit the Agenda

- ~~1. Introductions~~
- ~~2. Learning Objectives~~
- ~~3. Definition of Intersectionality from Professor Crenshaw herself~~
4. Case Example: *Black Parallel School Board et al. v. Sacramento City Unified School District et al.*
  - a. Using Data to Identify the Issues
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# Verification Code # 1 for Attorney CLE Credit

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# Developing an Intersectional Case: Identifying the Issues

## BPSB v. SCUSD

- On September 6, 2019, BPSB, with three individual students, filed a case against SCUSD
- The lawsuit claims that SCUSD discriminates against students with disabilities – particularly against Black students with disabilities.



# 2017

- Long-standing problems with how SCUSD educates students with disabilities were described in a 2017 report by the Council of Great City Schools.
- [The report described ways that SCUSD fails to provide equal opportunities to students with disabilities.
- The District did nothing in the year following the report.
- Western Center on Law and Poverty developed coalition with co-counsel organizations and community organizations

# 2018

- A 2018 report by the California Community College Equity Assessment Lab named SCUSD as “the most egregious suspension district for Black males in the State of California.”
- Advocates met with Superintendent Aguilar to express their dismay over the District’s continuing failures and demand immediate action.
- SCUSD promised meaningful reforms but didn’t deliver on those promises.

# Big Picture: Gathering Data

- California Department of Education – Dataquest
- US Department of Education Civil Rights Data Collection
- Public Record Act Requests / Freedom of Information Act Request
- Access Authority



# By the Numbers

SCUSD segregates **almost half** of its students with disabilities in separate classrooms or schools.

**Black students with disabilities** are even more likely to be segregated than other students with disabilities.

Students with disabilities are still about **twice as likely** to be suspended than those without disabilities.

Black students with disabilities are about **ten times as likely** as their non-Black peers without disabilities to be suspended.

# Understanding the Experience of those Impacted

- Finding plaintiffs
  - Access authority to request directory information
  - Working with community organizations
- Developing connections in the community

# Plaintiff S.A.

S.A. is a fifth-grade student who is Black and has been diagnosed with Autism Spectrum Disorder (“Autism”) and Anxiety Disorder. He is one of only a few Black students at his school and the only Black boy in his class.

- Exclusionary Discipline
- Identity-based bullying and harassment
- District recommended a segregated placement

# Plaintiff K.E.

K.E. is an eleventh-grade student who is Black and who has mental health conditions and a history of trauma. He attends a nonpublic school for students with disability-related behaviors.

- Inadequate mental health supports and assessments
- History of segregated placements
- Repeated exclusionary discipline

# Plaintiff C.S.

C.S. is a fourth-grade SCUSD student who is Black and has been diagnosed with Autism Spectrum Disorder, Dyslexia, a specific learning disorder with impairment in written expression, and Attention-Deficit Hyperactivity Disorder (“ADHD”).

- District delayed eligibility for services and supports
- Repeated excessive disciplinary exclusions
- Internalized that he was “the bad kid.”

# Connections with the Community

- Black Parallel School Board
- Parent Groups
- Local News
- School Board Meetings

# Short Answer Response:

What data sources have YOU used to inform your cases?

Or

What data sources do you think might be helpful in the future?

# Takeaways

- Use data to understand the big-picture
- Work with community and those directly impacted to understand the real-life implications of that data
- The data will show what is happening, the individual experiences will tell how and why that is happening.



# Developing an Intersectional Case: Building the Legal Claims

# Legal Claims in SCUSD

ADA

Section 504 of the Rehabilitation Act

Title VI of the Civil Rights Act of 1964

Equal Protection Clause of the U.S. Constitution

California Government Code Section 11135

# Framing the Class



SCUSD Discriminates  
against  
students with  
disabilities, especially  
Black students with  
disabilities

# Theme: Segregation



SCUSD segregates and denies students with disabilities, particularly Black students with disabilities, a meaningful opportunity to be educated side-by-side with their peers.

## From the Complaint

Sacramento City Unified School District created and perpetuates an unlawful school system that results in modern-day segregation and mistreatment of students with disabilities, particularly Black students with disabilities...

***Brown v. Board of Education*** began the long road to the racial integration of American public schools and made absolutely clear that “in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” 347 U.S. at 692.

In 1973, Congress echoed these values when passing the **Rehabilitation Act** of 1973. As Senator Hubert Humphrey then said, “The time has come ... to end the virtual isolation of millions of children and adults from society.” 118 Cong. Rec. 32310 (1972).

In 1990, Congress once again affirmed these values by passing the **Americans with Disabilities Act**... Congress specifically found that “segregat[ion]” is a “form[] of discrimination against individuals with disabilities.” Id. § 12101(a)(2).

## From the Complaint

“Modern-day segregation is subtler than it was in 1954 or 1973, but it is still just as harmful and insidious.”

It reinforces the unwarranted feelings of shame and humiliation these children experience as a result of being deemed unfit to learn alongside their peers.

Children who are placed in these restrictive and isolating environments receive a clear and discriminatory message: by virtue of their disabilities, they are unwelcome in and unsupported by their schools. As a result, these students are at high risk of extreme and ongoing frustration, greater anxiety, humiliation, lowered self-esteem, and depression, which further interfere with their ability to access education.

# Claims



SCUSD segregates and denies students with disabilities, particularly Black students with disabilities, a meaningful opportunity to be educated side-by-side with their peers.



# Claims



SCUSD uses excessive, exclusionary discipline on students with disabilities, particularly Black students with disabilities, for behavior caused by their disabilities, instead of providing the services and supports they need.



# Claims



SCUSD does not effectively address disability-based and race-based harassment directed at students with disabilities, particularly Black students with disabilities.

# Working with Co-counsel

# Reasons We Have Co-counsel

- Expertise
- Share costs of litigation
- Division of labor
- Opportunity to learn
- Many more reasons!

## Co-Counsel in BPSB v. SCUSD



Disability Rights California  
(DRC)



Equal Justice Society (EJS)



National Center for Youth  
Law (NCYL)



Western Center on Law &  
Poverty (WCLP)

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## Short Answer

Who have you co-counseled with?

OR

Who would you like to co-counsel with?\*

\* Check-out NDRN's List of Collaborators!

**Why are intersectional cases  
important?**

## Short Answer:

What would you say to a colleague who is afraid to take on intersectional issues?



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**[www.disabilityrightsca.org](http://www.disabilityrightsca.org)**

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