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=ViDtnfQ9FHc
Considering Intersectional Claims in Disability Discrimination

Bridget Claycomb, Attorney
Lauren Lystrup, Attorney
Disability Rights California
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
   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.
"A metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves."

-Kimberlé Crenshaw
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

   a. Using Data to Identify the Issues
   b. Building the Legal Claims
   c. Working with Co-Counsel
For attorneys who wish to be credited with attending this session for Continuing Legal Education (CLE) purposes, **send verification codes # 1 and # 2 along with the name of this session to NDRNvirtualCLE@ndrn.org within 12 hours of completion of this session.**

Please see the conference website for full information regarding CLE credit.
Developing an Intersectional Case: Identifying the Issues
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.
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
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
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
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 bulling and harassment
- District recommended a segregated placement

Plaintiff S.A.
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
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
SCUSD Discriminates against students with disabilities, especially Black students with disabilities.
SCUSD segregates and denies students with disabilities, particularly Black students with disabilities, a meaningful opportunity to be educated side-by-side with their peers.
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).
“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.
SCUSD segregates and denies students with disabilities, particularly Black students with disabilities, a meaningful opportunity to be educated side-by-side with their peers.
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.
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)
Verification Code # 2 for Attorney CLE Credit

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

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