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DISABILITY MATTERS: TOWARD A LAW SCHOOL CLINICAL MODEL FOR SERVING YOUTH WITH SPECIAL EDUCATION NEEDS

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This article examines the role that law school clinics could play in remedying a gap in legal services for youth with special education needs while simultaneously enhancing law students' awareness and understanding of disabilities and providing students with unique skills. The authors show that the Individuals with Disabilities Education Act (IDEA), recently reauthorized by Congress, places the burden of enforcement on parents but leaves these parents—particularly those marginalized by poverty, race, language or immigration status—without sufficient access to legal representation. The authors suggest that this representation gap is aggravated by lawyers' and law students' lack of awareness of the civil rights implications of this inequity and sometimes exacerbated still further by disability bias. The authors contend that law schools have an obligation to confront such "dis-awareness" by raising issues of disability discrimination and disability rights in the classroom and in clinical programs. Drawing on their informal survey of law school clinics that address the subjects of special education, child advocacy and juvenile justice, the authors assert that such clinics not only serve an essential unmet need for legal services but also further the pedagogical goals of fostering disability consciousness and teaching skills that are applicable to many areas of social justice practice.

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Sergio's mother discovered when her son was in elementary school that he had learning disabilities and needed special education in order to progress. A single parent who spoke limited English, Juanita trusted Sergio's teachers and wanted to work with the school. She sought out other Spanish-speaking parents of disabled children to talk about her concerns. Although they offered empathy, Juanita was still at a loss for what to do and who to turn to for help. At 17, Sergio was reading at a second-grade level and had few practical skills enabling him to live and work independently.

—East San Jose Parent¹

Michelle admitted to a classmate that there are some special education students who are intellectually capable and only need help because of their physical disabilities. She thought those students probably should be served because they have the capacity to learn and do something in the future. But she felt that services for students with more limited abilities are not economically justified.

—Santa Clara University Law Student²

INTRODUCTION

The situation confronting Sergio and his mother is not rare. Nor is Michelle's apparent lack of awareness about the lives, capabilities and rights of people with disabilities.³

Why aren't there adequate legal services for Sergio's mother? In her search for help, she eventually found some guidance from a local parent organization, including training in special education law and self-advocacy skills. What responsibility do law schools have to support access to justice for children like Sergio and for their families?

What obligation does the legal academy have to expose Michelle and students like her to a curriculum or practicum that addresses issues of disability and the civil rights of persons with disabilities? What possibilities exist to teach advocacy skills not traditionally emphasized

¹ Based on advocacy work at Parents Helping Parents (PHP), Santa Clara County (Spring 1999). This scenario is also typical of inquiries received by the Protection & Advocacy, Inc. (PAI) intake coordinators.

² Conversation with Patricia Massey (Spring 2002). Michelle is a pseudonym.

³ For the most part, we use "people first" language, e.g., "person with a disability," to accentuate the humanity, not the impairment or disabling condition. However, for the sake of brevity and variation, we also use "disabled" as an adjective from time to time—much to the chagrin of our purist colleagues. On the art and politics of labeling see Stephen A. Rosenbaum, *The Alien Cloak of Confidentiality: Look Who's Wearing It Now*, 4 JOHN F. KENNEDY L. REV. 23, 24 n.8 (1992) (choosing commonly used terms or those that reflect society's prejudice); Stephen A. Rosenbaum, *Aligning or Maligning? Getting Inside a New IDEA, Getting Behind No Child Left Behind and Getting Outside of It All*, 15 HASTINGS WOMEN'S L.J. 1, 4 n.14 (2004) (some activists and academics use "disability first" language out of habit or for emphasis, or reclaim antiquated or pejorative terms as statement of pride).

in clinics with a focus on individual service cases? What can we learn from those law schools that have undertaken the challenge to introduce students, through a clinical approach, to the under-utilized area of special education practice?

Aware of the critical shortage of attorneys available for special education representation, and intrigued by the potential for disability awareness through a clinical experience,⁴ we set out to locate those law schools that provide students a live-client opportunity to represent clients in special education disputes.⁵ We conducted an informal survey of existing clinics for the purpose of identifying general trends in structures of and approaches used in such clinics.

Part I of the article describes the significant need for legal services in the area of special education. The need is perhaps even greater now in light of last year's significant amendments to the cornerstone legislation, the Individuals with Disabilities Education Act or IDEA.⁶ Because states are charged under federal law with developing their own implementing statutes and regulations, the structure of the dispute resolution scheme may vary by state. The particular needs of California families illustrate the variety of forums in which parents may need legal support. Part II explores the "able-ism"⁷ that permeates the legal academy's curriculum, scholarship and community. Part III describes clinical structures and service areas that should be considered when establishing a special education clinic, to meet clients' needs and to expose students to disability issues. In so doing, we note the observations and experience of other clinicians, as revealed in our survey. In Part IV, we reflect on outcomes for clients and the growth of this area of practice and how that may affect the choice of structure and model.

Our objective in this article is to provide support for faculty, stu-

⁴ See text accompanying notes 75-111 *infra* (disability awareness in clinical education).

⁵ The initial identification and interview process was conducted by Patricia Massey during the period of January through March 2003, with results initially reported in *The Special Education Law Clinic: An Approach to Improving Special Education Enforcement for Disadvantaged Students in Santa Clara County*, Mar. 2003 (unpublished manuscript, on file with authors). All other interviews referenced here also were with Ms. Massey, unless otherwise noted.

⁶ Originally enacted in 1975 as the Education for All Handicapped Children Act, P.L. 94-142, 89 Stat. 773, the subsequently renamed Individuals with Disabilities Education Act is codified at 20 U.S.C. §1400 *et seq.*

⁷ The terms "able-ism" or "disable-ism" have been used more generally to describe a bias against, or oppression of, people with disabilities. See, e.g., FRED PELKA, *THE ABC-CLIO COMPANION TO THE DISABILITY RIGHTS MOVEMENT* 3 (1997); MARTA RUSSELL, *BEYOND RAMPS: DISABILITY AT THE END OF THE SOCIAL CONTRACT* 15 (1998); Stephen A. Rosenbaum, *Hammerin' Hank: The Right to Be Raunchy or FM Freak Show?*, 23 *DISABILITY STUDIES QTRLY.* (online journal), http://www.ds-qds.org/_articles_html/2003/summfall/dsq_2003_summfall_03.html, at text accompanying nn.25-27 & n.171 (2003).

dents and community members interested in establishing special education clinics.⁸ Beyond the obvious client and student needs to be fulfilled both inside and outside the law school walls, these clinics offer a number of opportunities for creative pedagogy and advocacy.

I. THE NEED FOR ARDENT ADVOCACY AND THE ROLE LAW STUDENTS CAN PLAY

Almost thirty years ago, Congress adopted the original Individuals with Disabilities Education Act (IDEA).⁹ Together with Section 504 of the Rehabilitation Act,¹⁰ this legislation promised children with disabilities educational access, opportunity, and a free appropriate public education. Yet, today, even in the face of a reauthorized IDEA,¹¹ many special education students remain segregated¹² and

⁸ A copy of a proposal made to the Santa Clara University School of Law for the establishment of a special education clinic can be obtained by contacting Patricia Massey at pmassey03@yahoo.com.

⁹ See *supra* note 6. In states receiving federal grants, each child with a qualifying disability is individually entitled, under IDEA, to a free, appropriate public education (FAPE) in the least restrictive environment. FAPE is in turn defined as special education and related services that are provided at public expense, under public supervision and direction, that meet state educational standards, and are provided in conformity with a student's individualized education program or IEP. 20 U.S.C. § 1401(8) (2000); 34 C.F.R. § 300.13 (2002). The term "special education" means specially-designed instruction to meet the unique needs of a child with a disability. 20 U.S.C. § 1401(25). Children with disabilities are to be educated with their non-disabled peers to the maximum extent possible; segregation is permitted only when the nature and severity of disability of the child is such that education in regular class cannot be achieved satisfactorily with the use of supplemental aids and services. *Id.*, § 1412(a)(5)(A). On the history of the legal developments leading up to enactment of the IDEA, see RUTH COLKER, ADAM A. MILANI & BONNIE POITRAS TUCKER, *THE LAW OF DISABILITY DISCRIMINATION* 286 (4th ed. 2003).

¹⁰ Rehabilitation Act of 1973, as amended (1978), 29 U.S.C. § 794; 34 C.F.R. § 104 *et seq.* (1990) (eliminating discrimination on the basis of handicap [sic] in any education program or activity receiving federal financial assistance).

¹¹ After more than two years of debate, Congress reauthorized the Act in 2004, with a number of significant changes. P.L. 108-446, 118 Stat. 2647 (Dec. 3, 2004). Although the Act was born again as the Individuals with Disabilities Education Improvement Act, we will use the acronym IDEA—and this too is with Congress's blessing. *Id.*, § 601(a). For a comparison of the existing statute and the 2004 reauthorization, see <http://www.napas.org/publicpolicy/publicpolicyissues.htm>. Many of the IDEA reforms were foreshadowed in a report published by the Thomas B. Fordham Foundation and Progressive Policy Institute, following a November 2000 conference of academics, lawyers, school administrators, journalists and others. See *RETHINKING SPECIAL EDUCATION FOR A NEW CENTURY* (Chester E. Finn et al. eds., 2001). See also *TASH and Allies Respond to IDEA 2004* (Dec. 2004) (on file with authors) (summary of key changes and continuing concerns prepared by TASH, in collaboration with other disability organizations under banner of National Committee of Parents and Advocates to Protect IDEA). Most provisions of the reauthorized statute take effect in July 2005 and regulations will not be issued for several more months.

¹² One mother complained to an advocacy organization about the "mall therapy" her son receives when his segregated class goes on a supposedly community-based outing. Telephone conversation between S.P. (name withheld to preserve privacy) and Stephen Rosenbaum (Feb. 14, 2005). The parallels to racial segregation and the aims of integrated

under-educated—whether isolated in classrooms and removed from non-disabled pupils, excluded from full inclusion in school activities¹³ or taught by teachers with emergency credentials.¹⁴ Students like Sergio¹⁵ are left “behind and unprepared in their education, excluded from their society of peers, and less able to find employment and reach independence when they reach adulthood.”¹⁶ As one disability activist recently observed, the law “is woefully and inadequately enforced. . . . Lots of people see IDEA as a funding stream and not a civil rights law. It needs to be taken seriously.”¹⁷

A. *The Critical Role of Parents in Enforcing IDEA Rights*

The IDEA provides for two levels of enforcement: governmental and parental. Government efforts are directed toward monitoring state and local systemic compliance. Under the federal enforcement scheme, the U.S. Department of Education, through its Office of Special Education Programs (OSEP), monitors a state’s performance in administering grant funds.¹⁸ Where it finds gross non-compliance, OSEP has the authority to withhold funds. To date, efforts to impose monetary sanctions on individual states have been thwarted, however, due to political pressure from Congress.¹⁹ States are also required to

education have been amply articulated. *See, e.g.,* Andrea P. McDonnell & Michael L. Hardman, *The Desegregation of America’s Special Schools: Strategies for Change*, 14 J. ASS’N FOR PERSONS WITH SEVERE HANDICAPS 68 (1989).

¹³ One active parent of a boy with autism, herself an attorney, reports that she is still subjected to bureaucratic obstacles every time she tries to arrange for her son to participate in a field trip. Telephone conversation between Valerie Montague and Stephen Rosenbaum (Jan. 27, 2005). At the other end of the spectrum is the well-intended but contrived inclusiveness of a high school student with significant cognitive impairments. *See, e.g.,* 4.0 GPA report card of David Rosenbaum Alfandary (Jan. 27, 2005) (on file with authors).

¹⁴ A prospective teacher without her full credential states that when she sought to be hired as a substitute teacher in a local school district, she was informed that only *special education* teachers could be employed with an emergency credential. Patricia Massey’s conversation with a neighbor (Mar. 24, 2003).

¹⁵ *See* text accompanying note 1 *supra*.

¹⁶ Kelly Mac, *Children with Disabilities*, CHILDREN’S VOICE (July/Aug. 2002), at <http://www.cwla.org/articles/cv0207childrendisabilities.htm>.

¹⁷ *Id.* (quoting Andy Imparato, President and CEO, American Association of People with Disabilities).

¹⁸ 20 U.S.C. § 1416(a)(1) (2000). OSEP, headed by an Assistant Secretary, is under the auspices of the U.S. Department of Education. For an overview of the federal monitoring and enforcement scheme, *see* Nat’l Council on Disability (NCD), BACK TO SCHOOL ON CIVIL RIGHTS: ADVANCING THE FEDERAL COMMITMENT TO LEAVE NO CHILD BEHIND 36-54 (Jan. 25, 2000) [hereinafter NCD REP. 2000]. The NCD is an independent federal agency working with the President and Congress to increase the inclusion, independence, and empowerment of Americans with disabilities.

¹⁹ *Id.* at 266-69. A letter signed by the Pennsylvania and Virginia congressional delegations urged removal of sanctions in the only instances in which OSEP had ever withheld state funds. The sanctions were ultimately withdrawn. For a critique of current government

monitor IDEA compliance by local school districts and to establish a complaint system for parents.

The record of federal-level ineffectiveness reflects the problems generally with this method of enforcement. In California, for example, there have been more than two decades of non-compliance.²⁰ Despite the establishment of state corrective action plans, resulting from several years of federal monitoring between 1980 and 1996, the California school system continues to be plagued by a variety of problems that stand in the way of the core IDEA entitlement to a free, appropriate public education (FAPE) in the least restrictive environment.²¹

State enforcement through monitoring is similarly limited in effectiveness. Under IDEA, state education agencies monitor overall procedural compliance by local school districts. In California, for instance, with over 1000 school districts, resources are stretched thin. Monitoring visits occur as infrequently as every five to seven years, with self-study reports issued in the interim.²² Where state agencies have not been given authority to levy penalties or where penalties are politically discouraged, monitoring does not even result in "paper" compliance with IDEA's procedural safeguards, let alone any examination of whether individual children actually receive the services to which they are entitled.²³ Given the limited effectiveness of both federal and state oversight, parents must turn to the other enforcement tools provided in IDEA.

The IDEA statute and regulations envision the parent as an equal member of the individualized education program (IEP) planning team, along with school personnel. To that end, there are extensive procedural protections for parents, as the educational representatives

enforcement efforts, *see id.* at 80-184. In a sweeping departure from the existing law on fund withholding and judicial review, the reauthorized Act sets out a detailed scheme for monitoring compliance and enforcement, including focused monitoring and submission of state performance plans. P.L. 108-446 § 616.

²⁰ NCD REP. 2000, *supra* note 18, at 139 *et seq.*

²¹ *Id.* at 140-41.

²² These data were reported by the California Department of Education to compliance and monitoring committees convened as part of a 1997-99 coordinated compliance review of categorical education programs. Patricia Massey was a committee member. The Department conducts "focused monitoring" in which so-called key performance indicators, supplied by school districts, are analyzed with a view to improving systemwide aggregate outcomes. *See* CALIFORNIA DEP'T OF EDUC. AND NATIONAL CENTER FOR SPECIAL EDUCATION ACCOUNTABILITY MONITORING, EVALUATION OF THE EDUCATIONAL BENEFITS REVIEW PROCESS (Apr. 2004), at <http://www.cde.ca.gov/sp/se/qa/documents/ncseam.pdf>.

²³ For example, although California currently places greater emphasis on actual benefit to individual students, the state's quality assurance monitoring relies on a record analysis sample of five students or fewer to arrive at a determination of school district overall quality and compliance. *Id.*

of their children. These include requirements for informed consent,²⁴ parental participation in meetings, parental involvement in the placement decision, the right to an independent individual evaluation and general notice requirements.²⁵ These procedural safeguards were provided in IDEA to balance the lack of substantive specificity of the individualized entitlement.²⁶ The safeguards were also meant to protect parents and children in the event they want to challenge school district decisions²⁷ through a due process hearing, for which attorneys' fees can be awarded to prevailing parties.²⁸

Congress intended each parent to contribute to educational planning as an expert on her child and to advocate for that child's needs. Yet, to do so, the parent is implicitly expected to participate in the complex task of monitoring the delivery of service—to recognize when a school is failing to comply with the agreed-upon plan, whether the plan is actually enabling the child to progress, to request further meetings as necessary, and to challenge school district decisions about goals, placement, and related services.²⁹ In the end, although IDEA includes the above-described institutional enforcement mechanisms, the primary role of enforcement falls as a practical matter on parents

²⁴ 20 U.S.C. §1415(a); 34 C.F.R. § 300.500.

²⁵ Notice is given before every IEP meeting and upon reevaluation or registration of a compliance complaint. 20 U.S.C. § 1415(d)(1) (2000); 34 CFR § 300.345(a)-(b). Under the newly reauthorized IDEA 2004, parent notification of procedural safeguards is to be given less frequently—upon initial referral of a student, annually or upon parental request. P.L. 108-446 § 615(d)(1).

²⁶ David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and Construction Difference*, 1991 DUKE L.J. 166, 174. For a critique of the procedural safeguards, see Rosenbaum, *Aligning or Malining?*, *supra* note 3, at 9-10, 13-18; Stephen A. Rosenbaum, *When It's Not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities*, 5 U.C. DAVIS J. JUV. L. & POL'Y 159, 169, 178-80, 196-98 (2001).

²⁷ Engel, *supra* note 26, at 177.

²⁸ 20 U.S.C. §§ 1415(i)(3)(B) (2000). Following *Buckhannon Bd. & Care Homes, Inc. v. West Va. Dep't of Health & Human Resources*, 532 U.S. 598 (2001), which drastically curtailed the definition of "prevailing party" for purposes of attorneys' fees awards under civil rights statutes, a number of federal rulings have left parents feeling worried about the continuing availability of lawyers to represent them in special education disputes. See, e.g., *J.C. v. Regional Schl. Dist. 10, Bd. of Educ.* 278 F.3d 119, 123-25 (2d Cir. 2002) (private settlement does not alter parties' legal relationship and lacks judicial imprimatur to warrant fees); *John T. v. Delaware Co. Intermed. Unit*, 318 F.3d 545, 555-58 (3d Cir. 2003) (*Buckhannon* is applicable to IDEA); *Shapiro v. Paradise Valley Unified Schl. Dist.*, 374 F.3d 857, 865 (9th Cir. 2004) (same as *John T.*, *supra*).

²⁹ In *Board of Education v. Rowley*, 458 U.S. 176, 178, 209 (1982), the first and, arguably, most important IDEA case decided by the Supreme Court, the majority confidently declared that parents "will not lack ardor" in making sure their children receive all the educational benefits to which they are entitled under the Act. The Court will soon take up the unresolved question of who has the burden of proving the adequacy of an IEP, the school district or parents? *Schaffer v. Weast*, 2005 WL 405756 (U.S., Feb. 22, 2005) (granting *certiorari* in *Weast v. Schaffer ex rel. Schaffer*, 377 F.3d 449 (4th Cir. 2004)).

and, where available, their advocates and attorneys.³⁰

Compliance complaints and due process hearings are the main tools for parental enforcement.³¹ If these administrative remedies do not yield adequate relief, parents have recourse to the courts (once the administrative remedies have been exhausted).³² Under the 1997 amendments to the Act, states were encouraged to offer mediation of disputes.³³ California was one of the states to require that mediation constitute an option for every party filing for an administrative hearing.³⁴

Compliance complaints can generally be characterized as retrospective in focus, while due process hearings are prospective. A complaint can be filed by a parent or any other party, alleging failure of the local school authorities to follow IDEA or to provide special education in accordance with a child's IEP. A due process hearing and the attendant mediation focus on resolving current or potential conflicts over what constitutes FAPE for an individual child. Generally, such disagreements arise when a parent or the local school district believes a particular educational service or placement is necessary.

B. The Inadequacy of Support for Parental Enforcement of IDEA

Because the Act places the burden of individual enforcement entirely on parents, with only limited legal support for families needing assistance,³⁵ "getting to FAPE" may depend more on luck than paren-

³⁰ NCD REP. 2000, *supra* note 1, at 7, 70. See also Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 12-13 (roles and limitations of parents and attorneys). "Lawyers . . . sometimes labor under the fiction that we provide technical assistance when in fact our clients are really not equipped to advocate on their own." *Id.* at 12 n.59.

³¹ 20 U.S.C. § 1221e-3 (2000); 20 U.S.C. §§ 1415(f)(2), (h) (2000). See NCD REP. 2000, *supra* note 18, for an examination of the role of parents and third party litigation in the "unofficial" enforcement of IDEA.

³² 20 U.S.C. §§ 1415(i)(2), (i)(3)(A), 1415(l) (2000).

³³ 20 U.S.C. §§ 1415(e); 34 CFR § 300.506 (local educational agency receiving IDEA grant funds must establish mediation process that, at minimum, is made available whenever a hearing is requested). For a discussion of the benefits of mediation in the special education context, see Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 193-94, 196 n.114; Patricia A. Massey, *Is There a Role for Mediation in California Special Education Disputes?* 22 (Dec. 2003) (unpublished manuscript, on file with authors).

³⁴ CAL. EDUC. CODE §§ 56500.3, 56503. In the first three-quarters of the 2003-04 fiscal year, the California Special Education Hearing Office (SEHO) received approximately 2,000 requests for hearings. Only 96 of these requests resulted in a hearing decision, with an almost equal number settling after the start of a hearing; the remainder were resolved in mediation or withdrawn. SEHO Selected Statistics, Tentative Data (Apr. 5, 2004) (on file with authors). For an account of the special education mediation experience in California, see generally GAIL IMOBERSTEG, *EVALUATION STUDY SPECIAL EDUCATION DISPUTE RESOLUTION ISSUES IN CALIFORNIA*, FINAL REPORT, Feb. 29, 2000, available at <http://www.cde.ca.gov/spbranch/sed/evalrpt.pdf>; Massey, *supra* note 33, at 6-11; Elaine Talley, *Mediation of Special Education Disputes*, 5 U.C. DAVIS J. JUV. L. & POL'Y 199 (2001).

³⁵ 20 U.S.C. § 1415(j) (2000); 34 C.F.R. § 300.513. See *infra* notes 62-63 and accompa-

tal effectiveness.³⁶ To be successful, parents must understand their rights, act on them, and, when needed, manage to access the legal resources to assure school district compliance. This means that parents must be knowledgeable about their child and his disability. They must also be able to understand the proceedings of the IEP meetings, voice disagreement and seek clarification and be willing to utilize the processes described above to resolve conflicts.³⁷ Successful decision-making and implementation require skills and knowledge beyond the reach of many.³⁸

The skills required are not necessarily conventional lawyerly skills. One non-special education academic offered this observation about the attorney who represented a young student from a monolingual family at an IEP meeting:

He was truly masterful: he calmed the parents who were deeply distressed, and then, exercising exquisite diplomacy and good judgment, tamed the fifteen or so teachers, special education specialists, speech therapists, psychologists, directors of this and that, school district attorneys, interpreters and on-lookers that the district had amassed to argue that it was correct in its judgment about R. . . 's deficiencies.³⁹

In a context in which even well-educated, English-speaking parents find it difficult to succeed as special education advocates, non-English speakers with little formal education often fare far worse. Florence Roisman, although a law professor, recalls that she needed an attorney to assist her in securing an appropriate education for her own

nying text (recommendations to increase funding for lawyers to provide legal advice to parents).

³⁶ See MICHAEL F. GIANGRECO, *FLYING BY THE SEAT OF YOUR PANTS: MORE ABSDURITIES AND REALITIES OF SPECIAL EDUCATION* 49 (1999) ("Looking for Luck").

³⁷ For a description of the trials and frustrations inherent in the IEP design and implementation, see Rosenbaum, *supra* note 26, at 166-67, 172-86. See also Written Remarks of Martin Gould, Senior Research Specialist for the National Council on Disability, OSEP Task Force, President's Commission on Excellence in Special Education (Apr. 26, 2002), at http://ncd.gov/newsroom/testimony/gould_04-26-02.html (noting parents' impression that compliance with the law is exception rather than the rule and also referring to parents' frustrations in working year after year with recalcitrant school systems).

³⁸ On the perceived need for lawyers in the decision-making process, see Imobersteg, *supra* note 34, at 46. Sometimes the parent needs more support than actual advocacy. See Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLIN. L. REV. 227, 243 (2000) (describing collaborative relationship with counselors, victim advocates and other service providers prevalent in domestic violence context). But see Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 10-13 (noting downside of self-advocacy approaches and invoking Court's language in Rowley, *supra* note 29, on need for more "ardent advocacy" on behalf of parents).

³⁹ Letter from Lily Wong Fillmore, Professor Emerita, Graduate School of Education, University of California, Berkeley to Catherine Blakemore, Executive Director, PAI (Nov. 4, 2004) (on file with authors).

child when a dispute arose with the school district; she later advised a Latina custodian of the law school to follow suit in obtaining the assistance of counsel.⁴⁰

Parents generally have no training in recognizing disability and tend to rely on school personnel to call attention to ways in which their child is an atypical learner.⁴¹ Some parents may deny signs of disability out of concern that the child might suffer stigmatization. Given the desire of many administrators to limit the number of eligible students, the absence of parental pressure in these and other situations can result in delays in evaluation and considerable school resistance to the identification of pupils who need specialized education.

Other characteristics of parents that may interfere with their ability to advocate for FAPE for their children include: fear of retaliation against the student; a desire to maintain good relations with the school; cultural norms that place educators in positions of unquestioned authority; feelings of shame about having a child with a disability; and a sense of powerlessness.⁴² In addition, parental support staff report that parents are often confused about available options and typically lack the services of legal advocates.⁴³ The stress, frustration, and anger that many parents experience may interfere with their ability to present their concerns in due process or in mediation.⁴⁴ A lack

⁴⁰ Conversation between Patricia Massey and Florence Roisman, Indiana University School of Law, Clinical Legal Education Association Luncheon, Atlanta (Jan. 3, 2004).

⁴¹ Over one-half of all IDEA eligible students in California are served under the learning disability category. Enrollment data on special education students in California, through 1999, are available at <http://www.cde.ca.gov/spbranch/sed/enrldata.htm#table1>. A 1995 Roper poll shows the depth of misunderstanding about the needs and capabilities of those with disabilities and those with learning disabilities in particular. The poll found that 85% of the general population believed that learning disabilities were associated with mental retardation and that 79% of teachers held the same belief.

⁴² See Rosenbaum, *supra* note 26, at 166, 176-80.

⁴³ Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) in each state provide training and information to parents of infants, toddlers, children, and youth with disabilities and to professionals who work with children. This assistance helps parents to participate more effectively with professionals in meeting the educational needs of children and youth with disabilities. The Parent Centers work to improve educational outcomes for children and youth with all disabilities (emotional, learning, mental, and physical). See <http://www.taalliance.org> (The Technical Assistance Alliance for Parent Centers). PTIs and CPRCs are funded by the U.S. Department of Education through discretionary grants authorized under Part D of IDEA.

⁴⁴ Engel, *supra* note 26, at 189. See also Martin A. Kotler, *The Individuals with Disabilities Education Act: A Parent's Perspective and Proposal for Change*, 27 U. MICH. J.L. REFORM 331, 364 (1994) (IEP meetings described as "highly formal, non-interactive, and replete with educational jargon"); Steven Marchese, *Putting Square Pegs into Round Holes: Mediation and the Rights of Children with Disabilities Under the IDEA*, 53 RUTGERS L. REV. 333, 351 (2001) (parents face school officials "often speaking to each other in technical terms"). A few years ago, one witness testified before the National Council on Disabil-

of negotiation skills or familiarity with “educationese” contributes to the power imbalance, as does limited training in evaluating and marshalling evidence.

A disproportionate burden falls on parents from marginalized groups. The parents who manage to avail themselves of procedural due process appear to be largely white, upper- to middle-class, English-speaking, and well educated.⁴⁵ Yet, one-third of special education parents are low-income, and one-third of the mothers of children with disabilities have not completed high school.⁴⁶ “Numerous studies have shown that as poverty increases, so does the number of people with disabilities. Because poverty is not equally distributed across racial and ethnic lines, disability is not either.”⁴⁷ According to one recent study, low-income families are 50% more likely to have a child with a disability than higher-income families, and single mothers receiving welfare themselves have a 38% rate of disability.⁴⁸

The inability to read and write English proficiently is itself a barrier to successful advocacy. Under IDEA, certain documents are to be translated into the parent’s native language⁴⁹ and an interpreter must be present to enable parents to participate meaningfully in IEP meetings.⁵⁰ Anecdotal reports from non-English speaking parents indicate, however, that competent translation or interpretation frequently is not provided. Sometimes, custodians, secretaries or other support staff are called in to translate, or parents have to rely on translation by older children.⁵¹ There is even a congressional finding

ity: “I was one of those parents who left . . . IEPs like someone who has left a foreign movie without the subtitles. I felt a very small and incidental part of this procedure. . . .” NATIONAL COUNCIL ON DISABILITY, IMPROVING THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: MAKING SCHOOLS WORK FOR ALL OF AMERICA’S CHILDREN 108 (May 9, 1995).

⁴⁵ Telephone interview with Tom Newcomb, California Special Education Hearing Office Mediator (Feb. 2003). Newcomb confirmed that, in his experience, families from marginalized communities seldom participate in mediation. *See also* Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 30 & n.165 (noting parental divisions along lines of race, language and class and explaining that more affluent and better-educated parents appear to be able to obtain better quality placements and services for their children).

⁴⁶ JO ANN SILVERSTEIN, *SERVING HANDICAPPED CHILDREN: A SPECIAL REPORT*, Number One 5-18 (1988) (statistical analysis of characteristics of parents of children with disabilities) (on file with authors).

⁴⁷ Disability Statistics Center, 1996 at <http://dsc.ucsf.edu/main.php>.

⁴⁸ Women’s Policy Research, National Organization on Disability, <http://www.nod.org/content.cfm?id=1105> (visited Apr. 6, 2004).

⁴⁹ 20 U.S.C. § 1415(b)(4) & (d)(2) (2000) (notices of placement decisions and procedural safeguards to be provided in parents’ native language unless “clearly . . . not feasible”).

⁵⁰ *See* 34 C.F.R. §§ 300.345(e) (requiring interpreter at IEP meetings). *See also* CAL. EDUC. CODE §§ 56321, 56329 (notices, assessment plans and IEPs to be translated); 22 CAL. CODE REGS. § 98211(c) (failure to provide interpretation or translation may constitute discrimination by agency receiving state funds).

⁵¹ The statement in the text is based on statements made to PHP and PAI intake staff

that “[s]tudies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.”⁵²

Parents from marginalized communities are also likely to have greater difficulties utilizing compliance complaints, alternative dispute resolution (ADR), mediation, and due process hearings when such mechanisms are needed to secure FAPE for their children. When asked about the proportion of filings and compliance complaints made by parents from diverse communities, one state agency official responded that such data are not collected.⁵³ Of course, the lack of complaints and due process filings by these parents is not necessarily a sign that all is well at school.⁵⁴

C. The Insufficiency of Legal Assistance and the Resulting Impairment of Parents' Ability to Challenge Violations

Free legal service providers such as Protection and Advocacy, Inc.,⁵⁵ and Community Alliance for Special Education⁵⁶ are limited by staff capacity, case priority and service guidelines. Legal Advocates for Children and Youth, which in the past has focused on suspension and expulsion cases, has been forced by staff limitations to restrict its special education representation to children involved in juvenile court cases.⁵⁷ Securing representation under the current system is not a real

(1999-2004).

⁵² 20 U.S.C. §1400 (7)(F) (2000). “The Department of Education has found that services provided to these students often do not respond primarily to the pupil’s academic needs.” *Id.*

⁵³ Telephone interview with Karen Johnson, ADR Coordinator, California Department of Education (Oct. 2002). *See also* IMOBERSTEG, *supra* note 34, at 47-48 (mediation and hearing systems may be unfamiliar and inaccessible for parents of certain cultures, language minorities or economic classes). In the 2000 report by Ms. Imobersteg, stakeholders recommended that the state collect data to determine whether the anecdotal information on the absence of equal access is accurate. They further recommended that if “there is not equal access . . . to the hearing and mediation systems, resources, procedures, and policies must be established that provide equal access and are responsive to a broad spectrum of cultural, linguistic, and economic differences.” *Id.* at 70.

⁵⁴ *Id.* Imobersteg concludes that marginalized families do not take advantage of special education dispute resolution.

⁵⁵ PAI is part of a national network of protection and advocacy systems and receives government funding to provide legal services for individuals with disabilities. 42 U.S.C. §§ 6000 *et seq.*, 10801 *et seq.* (2000). *See also* PAI Advocacy Services Plan, 2003-08 (outlining specific organizational goals and objectives in advocacy on behalf of disabled children and youth), <http://www.pai-ca.org/pubs/540201.pdf>.

⁵⁶ The Community Alliance or CASE, celebrating 25 years in 2005, is a San Francisco-based, non-profit organization that utilizes trained advocates and *pro bono* attorneys to represent students in special education proceedings.

⁵⁷ Legal Advocates for Children and Youth or LACY is one of five free legal services programs of The Law Foundation of Silicon Valley, a non-profit agency. It was recently awarded a grant by the Santa Clara County Board of Supervisors as part of the Educa-

possibility for most low-income and middle-income families. One parent in the San Francisco Bay Area reported being told that she could expect to wait a year for an appointment with a private-sector special education attorney.⁵⁸ Some parents in California have had to mortgage their homes to retain a lawyer.⁵⁹ Unable to obtain the assistance of an attorney or advocate and facing the likelihood of defeat in navigating the system on their own, marginalized families often give up advocating for their children.⁶⁰

The situation in California parallels what is happening across the nation. Recognizing the impediments to enforcement, the National Council on Disability (NCD) has made a number of recommendations to increase the availability of attorneys, technical assistance and self-advocacy services.⁶¹ The Council called on the Department of Education to fund a greater number of lawyers to counsel clients, and to set up and maintain a national back-up center and self-advocacy training programs for students with disabilities and their parents.⁶² Given the particular need of poor and underserved families, the NCD specifically recommended that a lawyer be available at each parent training and information—or community resource—center.⁶³

Yet, despite the well-documented need for increased legal repre-

tional Rights Project to fund the representation of youth in the juvenile justice and dependency systems. The demands of the grant currently consume most of the resources of the two agency attorneys. Interview with Ritu Goswami, LACY Staff Attorney (Oct. 8, 2003). The impact of the current California budget deficit threatens all county discretionary programs.

⁵⁸ Conversation between Patricia Massey and Susan McArthur, a credentialed teacher, law student and parent of a child with autism (Jan. 2003).

⁵⁹ IMOBERSTEG, *supra* note 34, at 67.

⁶⁰ Periodic conversations from 1995 to 2000 between Patricia Massey and PHP Special Education Advocates Rosa Solorzano and Anna Nguyen. Ms. Solorzano also works as a parent liaison for Court Monitor Mark Mlawer in a school district where the special education program is governed by a federal court consent decree. *See infra* note 202.

⁶¹ NCD REP. 2000, *supra* note 18. Experimentation with self advocacy or client self-reliance models is occurring in a number of legal arenas. *See, e.g.,* Trubek & Farnham, *supra* note 38, at 227 (chronicling lay advocacy and professional collaborative experiences in addressing at-risk families, domestic violence and community economic development). A Bay Area group of lawyers and self-help providers recommends the distribution to parents of “advo-kits” as part of a grassroots campaign to increase self-advocacy. Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 10. *See also* IMOBERSTEG, *supra* note 34, at 8 (stakeholders agree on need for dissemination of more materials on collaborative decision-making, problem-solving and conflict resolution).

⁶² Recommendation VII.7, NCD REP. 2000, *supra* note 18, at 217-18. The Council also wanted to engage attorneys not traditionally associated with disability rights, such as those in private bar associations and legal services. *Id.* at 218.

⁶³ *Id.* at 217. *See supra* note 43. The community resource centers were specifically created to give training and information to the “underserved parents of children with disabilities,” including those who are low-income, have limited English proficiency or are themselves disabled. 20 U.S.C. § 1483 (2000). Only minor changes were made to this provision of IDEA 2004. P.L. 108-446, §671.

sentation for parents, political antipathy toward lawyers and national budgetary priorities all but rule out the growth in government funding for parent attorneys in the near future. The political realities are readily apparent in the actions of a congressional conference committee during last year's reauthorization of IDEA. The committee came very close to adopting a cap on parent attorneys' fees.⁶⁴ Although that deterrent to parental enforcement was averted, the committee did adopt a provision awarding attorneys' fees and sanctions against parents and their attorneys for prosecution of claims deemed frivolous or improper.⁶⁵ The latter measure will leave parents, many of whom already are reluctant to pursue enforcement of their children's rights and fearful of retaliation, even less likely to pursue claims, with or without representation, because of the financial risk. The IDEA amendments are filled with other impediments to effective advocacy and parental participation: notice of procedural safeguards will be provided less frequently;⁶⁶ parents must complete more technical requirements when filing for a due process hearing and attend a mandatory "resolution session" before going to hearing;⁶⁷ the statute of limitations for due process filing has been shortened;⁶⁸ short-term objectives and progress reports are no longer mandatory for all students;⁶⁹ and there may be damaging short-cuts in IEP team attendance and other measures in the name of "paperwork reduction."⁷⁰

D. A Potential Role for Law Clinics in Addressing the Unmet Need for Legal Assistance to Disabled Students

In some regions, law school clinics are making a difference in meeting the needs of children with disabilities. Such intervention by

⁶⁴ One proposed amendment to H.R. 1350 would have authorized state governors to set a fee cap on parent attorneys' fees, while not setting a parallel fee cap for school district counsel. See <http://www.dredf.org/rrn/briefing25.html>. The Senate version contained no similar provision.

⁶⁵ P.L. 108-446, §615(g)(3)(B). At a time when federal policymakers are considering restrictions on the capacity of students and parents to file suit, local school officials are pooling public funds to better defend themselves in court and the legislature against demanding and litigious parents. In California, the Orange County Special Education Alliance binds 27 school districts in their battle against rising special education costs. In the words of one superintendent, "We're getting clobbered. It's just out of control." The "brotherhood," as he dubs the Alliance, tithes member districts 50 cents for every enrolled student. Joel Rubin, *Special Ed Costs Uniting Schools*, LOS ANGELES TIMES (Orange Co. ed.), Oct. 6, 2004 at B-1.

⁶⁶ P.L. 108-446 §615(d).

⁶⁷ *Id.*, §615(f).

⁶⁸ *Id.*, §615(b)(6), (f)(3)(D).

⁶⁹ *Id.* §614(d)(1)(a)(i)(I)(cc) (short-term benchmarks required only for children subject to alternate achievement standards and testing).

⁷⁰ *Id.* §609. But see Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 18-20 (benefits of pilot programs and paperwork reduction).

clinics often leads to favorable results for individual clients. Moreover, policy analyses conducted by clinics have resulted in legislative change.⁷¹ Beyond traditional representation, students have provided training for parents' on-going advocacy needs. Finally, students may engage in community organizing.⁷²

Admittedly, law school clinics are not primarily legal services organizations. Moreover, low-income clients' need for legal assistance far exceeds what law school clinics can hope to provide, especially given the low caseloads that clinic students can handle. But clinics can make a difference, especially by setting precedents in individual cases and by engaging in legislative and systemic advocacy.

As the next section will show, such involvement by clinics in the special education arena can also have significant pedagogical benefits. Special education representation offers important opportunities to apply the lessons of social justice and civil rights courses—in respect to race, poverty, gender, and disability. The failure to meet the educational needs of students with disabilities contributes to poverty, resulting in “deep neglect of children with disabilities.”⁷³ Moreover, by bringing law students in contact with children with a broad range of disabilities and their families, clinics make it possible for law students to examine their own attitudes about the capabilities of individuals and to understand the relationship between disability-based discrimination and discrimination against other legally protected classes. In this manner, law students can come to realize that “discrimination against children with disabilities is just as horrific as discriminating against [other groups].”⁷⁴

II. DIS-AWARENESS

Michelle, the student whose comments are summarized at the outset of this article,⁷⁵ typifies the “dis-awareness” among members of the law school community and the public in general. During a discussion of the problems of inadequate education funding, she expressed

⁷¹ See text accompanying notes 200-05 *infra* & notes 202-03.

⁷² See text accompanying notes 161 & 206-25 *infra*.

⁷³ Mac, *supra* note 16. Compared with an overall public school prevalence rate of 10 to 12%, at least 30 to 60% of incarcerated youth have disabilities and require specialized education services. While disability does not cause delinquency, school failure and educational disabilities do significantly increase the risk for court involvement and incarceration. The National Center of Education, Disability, and Juvenile Justice, *Overview* at <http://www.edjj.org/focus/prevention/overview.html>. See also Office of Special Education and Rehabilitative Services, “Special Education Facilities,” in *Twenty-first Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (1999) available at http://www.edjj.org/Publications/list/osep_rehabsvrs-1999.html.

⁷⁴ Andy Imparato, *quoted in* Mac, *supra* note 16.

⁷⁵ See text accompanying note 2 *supra*.

skepticism about the provision of funding for special education students at a time when youngsters without disabilities do not receive what they need. Interestingly, people like Michelle are actually part of the first generation of law students to personally experience the presence of—and even friendships with—disabled schoolmates in their elementary or secondary schools.⁷⁶ Yet, like the racial and ethnic divide that occurs with entry into middle school, contact between peers with and without disabilities diminishes throughout the secondary school years and in college. It is because of this divide that bias may persist in later years and may cloud students' judgment in their law clinic relationship with disabled clients.⁷⁷ Students may even utter words like "retard" or "nutcase" in casual or off-hours references to clients.⁷⁸

The scholarly literature provides evidence of a lack of awareness of disability on the part of legal educators—including clinical teachers—and law students. Even law review articles and notes that are specifically on the topic of bias against minority groups and/or cross-

⁷⁶ See, e.g., Lou Brown, Elise Long, Alice Udvari-Solner et al., *The Home School: Why Students with Severe Intellectual Disabilities Must Attend the Schools of Their Brothers, Sisters, Friends, and Neighbors*, 14 J. ASS'N FOR PERSONS WITH SEVERE HANDICAPS 1, 2-4 (1989) (attending neighborhood school promotes social relationships with non-disabled persons and prepares all children for a pluralistic society); McDonnell & Hardman, *supra* note 12, at 68 (desegregation promotes full social integration and active participation in regular classes). Writing after the *Rowley* decision (see *supra* note 29), Martha Minow posited a radically different approach to the education of children with disabilities. In her discussion of a "difference stance," Professor Minow put forward a model in which the non-disabled students in the classroom are made part of "the problem," challenging the entire instructional mode which treats the problem as attributable to the disabled or "different" student. MARTHA MINOW, MAKING ALL THE DIFFERENCE 82-86 (1990). See also Theresa Glennon, *Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities*, 60 TENN. L. REV. 295, 313-28 (1993) (constrained pattern of thinking, based on medical and punitive models, informs our understanding of children with emotional disabilities).

⁷⁷ Michael L. Perlin, "You Have Discussed Lepers and Crooks": Sanism in Clinical Teaching, 9 CLIN. L. REV. 683, 722-23 (2003) (perception that clients with mental disabilities get a "free ride" from the government or have quality of life issues that do not count for much).

⁷⁸ *Id.* at 728. We note with dismay the currency among educated and otherwise sensitive university students of phrases like "That is so retarded." This goes beyond the reclaiming trend. See Rosenbaum, *supra* note 7, at text accompanying nn. 49-58 (discussing use of "retard" and reappropriation of outmoded identity terms and epithets). What about the judge who espouses therapeutic jurisprudence from the bench in one breath and refers to "Bezerk[eley]" in the next? (E-mail message of Jan. 28, 2005 from state court judge (name withheld to preserve privacy) to Stephen Rosenbaum) (on file with authors). Admittedly, the line dividing acceptable terminology from unacceptable can be blurry. For example, the word "crazy" is *verboden* in certain mental health circles—including references to an idea or inanimate object as in "That's crazy." See Jane Byeff Korn, *Crazy (Mental Illness Under the ADA)*, 36 MICH. J. L. REFORM 585, 609 (2003). This bewilders even individuals who consider themselves staunch disability advocates.

cultural awareness often fail to mention people with disabilities. On the rare occasions when disability is mentioned, the subject usually is not developed with the level of detail that is accorded to other forms of bias.⁷⁹

The subject of disability bias is left unexplored, and usually even unmentioned, even though the *MacCrate Report*⁸⁰—the ABA Legal Education Section's 1992 report on legal education and professional development, which articulated a vision of the "fundamental values of the profession"—included disability among the forms of bias that the profession should recognize and seek to eliminate⁸¹ and encouraged scholars to flesh out the report's initial articulation of this and other aspects of the report.⁸²

⁷⁹ See, e.g., Bill Ong Hing, *Raising Personal Identification of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993). Professor Hing's watershed article refers to "physical disability" in the title and contains a single reference to "disability" in a list of personal identification sensitivity issues that are recognized as contributing to good lawyering. *Id.* at 1823. See also Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 WILLAMETTE L. REV. 541 (1996) (reference to "disability" only in title of article urging that issues of identity and diversity be addressed in classroom).

⁸⁰ The official title of the report was "Legal Education and Professional Development—An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing The Gap" (1992). It is commonly called the "MacCrate Report" after the chair of the Task Force, former ABA President Robert MacCrate.

⁸¹ *Id.* at 216-17 (identifying the obligation of all lawyers to "striv[e] to rid the profession of bias based on race, religion, ethnic origin, gender, sexual orientation, age, or disability, and to rectify the effects of these biases" as "fundamental value" and pointing out that the "[e]limination of bias within the profession is essential in order to preserve 'public . . . confidence in the integrity and impartiality' of the profession and 'the system for establishing and dispensing justice which it administers'" (quoting AMERICAN BAR ASSOCIATION, CANONS OF PROFESSIONAL ETHICS, Preamble (1908))). See also *id.* at 214 ("fundamental values" call for "according appropriate dignity and respect to all people with whom [a lawyer] interacts in a professional capacity. . . [which] necessarily includes refraining from sexual harassment and from any form of discrimination on the basis of gender, race, religion, ethnic origin, sexual orientation, age, or disability, in one's professional interactions with clients, witnesses, support staff, and other individuals").

⁸² See *id.* at 130-31 (further explaining that the "Statement of Skills and Values" is a "work in progress," issued in its current form "to serve as a stimulus and starting point for an ongoing exchange within the profession"). The Report has been criticized for its failure to flesh out the values of promoting diversity. See Beverly Balos, *Conferring on the MacCrate Report: A Clinical Gaze*, 1 CLIN. L. REV. 349, 357-60 (1994) (clinicians' symposium on Report noted that while "[t]he question of diversity is raised" by Bar Task Force, there is little more than a description of changing demographics within legal profession). Yet not many commentators have accepted the MacCrate Report's express invitation to elaborate upon and refine its formulations of the values of combating bias and promoting diversity within the profession. For one of the few articles to accept the invitation, see Jane Harris Aiken, *Striving to Teach "Justice, Fairness and Morality,"* 4 CLIN. L. REV. 1 (1997). The current ABA law school anti-discrimination accreditation standards do include disability as a distinct discriminatory ground with respect to student matriculation and faculty/staff hiring, promotion and retention. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO

The fact that disability as an identifier was evoked at all in the early 1990s is perhaps remarkable,⁸³ for the ink was barely dry on the Americans with Disabilities Act⁸⁴ and the general public's association was at most with wheelchair users or ramps—not people with other kinds of impairments or accommodations.⁸⁵ Even where the subject of disability was broached in the law school setting, it was less about consciousness-raising than limiting liability.⁸⁶ Yet, even a decade later, a faculty supervisor's listserv query about how to accommodate an externship student with a visual disability, and the replies to that query, denote apprehension and moral duty rather than a sense of legal obligation.⁸⁷ Likewise, the subjects of mental disability law and the law school community's prejudicial attitudes toward mental retardation

THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2004-2005, Standard 212 (2004). Professor Gary Palm has urged the clinical community to propose adoption of an ABA accreditation interpretation requiring law schools to have a "critical mass" of racial and ethnic minority students, particularly in light of the narrow window of affirmative action opportunity offered by the Supreme Court in *Grutter v. Bollinger*, 539 U.S. 306 (2003). See <http://lists.washlaw.edu/mailman/private/lawclinic/2004-May> (posting of Gary Palm). Palm's objective is laudable but could easily be expanded to include a commitment to disabled students among other "victims of discrimination."

⁸³ This was also a time when terms like "disadvantaged" and "underserved" were used to describe relevant client communities, and "social justice" had not fully entered the lexicon of social change activists and clinicians. As to the distinction between "public interest" and "social justice," we have had numerous informal but ultimately inconclusive conversations. It appears that the former term is linked, in some people's minds, with white, liberal do-gooders, while the latter tends to be associated with causes affecting people of color or, more generally, civil rights. One explanation is that "social justice" has evolved into the *terme du jour* for advocacy on behalf of disenfranchised clients. See MARTHA R. MAHONEY, JOHN O. CALMORE & STEPHANIE M. WILDMAN, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW* 4-5 (2003) ("the broad term 'public interest law' no longer fully captures either the commitment to work on behalf of marginalized, subordinated, and underrepresented clients and communities or the value placed on transformation that characterizes lawyering for social justice"); Antoinette Sedillo López, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLIN. L. REV. 307, 310 n.18 (2001) (citing articles describing social justice history and mission of clinical legal education).

⁸⁴ 42 U.S.C. § 12101 *et seq.* (2000).

⁸⁵ See, e.g., Michael L. Perlin, *The ADA and Persons with Mental Disabilities: Can Sanist Attitudes be Undone?*, 8 J.L. HEALTH 15, 22-23 (1993-94) (attention paid thus far to ADA considered questions of physicality, not attitudes regarding persons with disabilities, including mental disabilities). See also Hing, *supra* note 79 (names only physical disability).

⁸⁶ See generally Laura F. Rothstein, *Disability Issues in Legal Education: A Symposium*, 41 J. LEGAL EDUC. 301(1991). At that time, an estimated nine percent of all law students were deemed to have some kind of disability. *Id.* at 305 (citing 1987 U.S. Dep't of Education survey).

⁸⁷ See Clinical Legal Education Association Listserv Archives, Oct. 9-10, 2003 at <http://lists.washlaw.edu/mailman/private/lawclinic/2003-October>. For an examination of the unique problems that arise in clinical settings for disabled students, see Sande Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 SAN DIEGO L. REV. 137 (1999).

and mental illness have not been the subjects of much scholarship.⁸⁸ In effect, disability is the identity that is marginalized-within-the-marginalized.

Professor Michael Perlin has commented extensively on the phenomenon of “sanism,”⁸⁹ pointing out the ways in which this irrational prejudice against persons with psychiatric disabilities is manifested in the attitudes of law school clinicians and their trainees.⁹⁰ Perlin’s observations about the law school view of mental disability actually could be taken a step further. First, the irrational prejudice—along with the resulting stereotypes, typification and de-individualization—is also manifested toward *other* forms of disability.⁹¹ Second, even if one doubts the accuracy of the label of prejudice or bias, there persists in law schools a lack of information about—or sensitivity to—issues affecting persons with disabilities, and a failure to recognize the rela-

⁸⁸ Perlin, *supra* note 77, at 715, 718. Perlin asserts that this stems from a view—even held by those who may themselves have a disability—that disability-based discrimination is not as “pernicious, harmful and morally corrupt” as other forms of discrimination. *Id.* at 718. In a striking illustration of the progressive academy’s disconnect and disrespect, an article appeared a few years ago in the Society of American Law Teachers’ (SALT) newsletter in which the author criticized a SALT conference keynote speech that had addressed mental disability but made no mention of the lack of racial diversity on law school faculties. *Id.* at 713.

⁸⁹ See generally *id.*; MICHAEL L. PERLIN, MENTAL DISABILITY LAW: CASES AND MATERIALS 23-26, *passim* (1999). Sanism is an irrational prejudice of the same quality and character as racism, sexism, ageism, ethnic and religious bigotry, xenophobia and homophobia. *Id.* at 24. The term was first coined by Dr. Morton Birnbaum in *The Right to Treatment*, 46 A.B.A. J. 499 (1960), cited in PERLIN, at 24 n.4.

⁹⁰ Perlin, *supra* note 77 at 684, 712-18, 720-26. Sanism is equally prevalent among non-clinical faculty and students who would describe themselves as liberal or progressive. *Id.* at 714. But see Marjorie Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259, 289-90 (1999) (guarded optimism that lawyers and society in general are increasingly receptive to examining issues of depression, other emotional problems and substance abuse). Professor Silver suggests that the “mainstreaming of mental health” is ushering in an era of de-stigmatization and more open dialogue. *Id.* at 290.

⁹¹ The general public still suffers from what might be diagnosed as “Jerry’s Kids” syndrome, a reference to the Jerry Lewis muscular dystrophy telethons, or fascination with the “disabled suicide plot” like the one hatched recently in Clint Eastwood’s box office hit, “Million Dollar Baby.” See HARRIET MCBRYDE JOHNSON, TOO LATE TO DIE YOUNG 48 (2005) (“It’s all about stirring up pity, when we don’t want pity. . . You know, I’m not Jerry’s Kid! Never was. . . .”); John Hockenberry, “And the Loser Is . . .,” <http://www.milliondollarbigot.org/loser.html> (visited Feb. 21, 2005) (lambasting movie critics for “accepting as utterly plausible the plot-twist that a quadriplegic would sputter into medical agony in a matter of months and embrace suicide as her only option in a nation where millions of people with spinal cord injuries lead full long lives”). See also PAUL K. LONGMORE, WHY I BURNED MY BOOK AND OTHER ESSAYS ON DISABILITY 131-46 (2003) (examining stereotypical images of people with physical and sensory disabilities in television and film); *id.* at 150 (disabled persons are subject to common set of prejudices and share common experience of discrimination). See *supra* note 7.

tionship of the disability rights movement⁹² to the overall civil rights agenda.

There is an ever-mounting mandate for new members of the profession to be culturally competent.⁹³ The fostering of cultural competence begins with instruction in cross-cultural lawyering skills and perspectives, which aids students in understanding their own reactions and their clients' reactions to them, and also, more broadly, the legal system's treatment of their clients.⁹⁴ A law school clinic that exposes students to special education issues has the potential to create a space for examining the phenomenon of disability in a legal context, both scholarly and practical, and for developing the cultural competence needed to represent persons with disabilities more effectively.⁹⁵

Sheila O'Connor is a case in point. As a student at Georgetown University's Law Center, Ms. O'Connor first had the opportunity to learn about disability rights and special education law in her course studies and clinical advocacy. She then went on to serve as the first staff attorney for Project YEA!, representing delinquent and dependent youth in need of special education services.⁹⁶ Unlike most attorneys practicing in this area, she had no personal or family experience that led to an awareness or concern for people with disabilities. Rather, her clinical and academic experiences were the foundation of

⁹² It was only after wounded soldiers began returning from World Wars I and II that systems of care and rehabilitation began to emerge, along with a growing awareness of disability issues. Veterans' programs, however, did little to reduce discrimination against those with disabilities generally, and did not assure any means to full participation in U.S. society for those who were born with, or developed, disabilities. Prior to the 1970s, disabled people were largely afforded charity or ignored and they were usually excluded from employment and education or isolated in institutions. JOSEPH SHAPIRO, *NO PITY* (1994) (chronicling history of disability rights movement and development of federal anti-discrimination laws).

⁹³ See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 38, n.11 (2001). See also Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 WASH. U. J.L. & POL'Y 133, 170-80 (2004) (need for educational models for developing cultural competence, which should be infused throughout law school curriculum, with attention to issues of power and oppression); Angela McCaffrey, *Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years*, 24 HAMLINE J. OF PUBLIC L. & POL'Y 1, 57-59 (2002) (teaching cultural competence and identifying bias in judicial system).

⁹⁴ Bryant, *supra* note 93, at 40.

⁹⁵ See, e.g., LONGMORE, *supra* note 91, at 223-24 (need for collaboration between scholars and activists).

⁹⁶ O'Connor provided legal services through project partner Legal Aid Society of Santa Clara County. Patricia Massey was instrumental in the project's initial design and implementation, which arose from the need for special education advocacy identified by the county's Special Committee on Education of Children of the Court. Other partners include PHP, LACY, Morrissey-Compton Associates and the county social services and probation departments.

her disability awareness, knowledge of the law and practice savvy.

This is not to suggest that students should immerse themselves in disability culture to the exclusion of all other forms of cultural understanding. It is merely a recognition that most of the discussion about cross-cultural learning in the literature is centered on ethnicity, sexuality, spoken language or immigration status, rather than deafness, physical impairment, or other disabilities.⁹⁷ Culture includes a wide array of beliefs, lifestyle and experiences that go beyond one's color, native language or house of worship.⁹⁸ Culture also embraces such concepts as "insider" and "outsider" status and the impact of these roles on lawyer-client trust, assessment of credibility and other factors that can affect the lawyer-client relationship.⁹⁹

The case studies and analyses involving disability culture are woefully under-developed, as are the opportunities for live-client legal interaction with disabled clients. Moreover, the existing body of scholarship and the traditional array of clinical offerings fail to sensitize students to the differences of perspective that may stem from different kinds of impairments¹⁰⁰ or that may differentiate the mind sets

⁹⁷ See, e.g., Bryant *supra* note 93, at 47, 64-67, 70-75. According to Professor Bryant, cultural groups and norms can be based, *inter alia*, on ethnicity, race, skin color, language, accent, nationality, gender, sexual orientation, age, economic or social status, marital status, family role, birth order, religion, accent or physical characteristics. *Id.* at 41. Only the last trait touches (remotely) on disability. See also Copps Hartley & Petrucci, *supra* note 93, at 170-80; Hing, *supra* note 79, at 1812-22. Even Professor Paul Tremblay's recent article, which addresses the adaptation of concepts of cultural competence and anti-bias from behavioral psychology to legal interviewing and counseling skills, focuses largely on ethnicity and to a lesser extent on gender and sexual orientation—but not at all on understanding disability culture. See Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373, 376 & n.8, 407, 407 n.152 (2002). See also Michelle S. Jacobs, *People From the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U.L. REV. 345, 405-07 (1997) (proposal for cross-cultural lawyer and student self-awareness training (CCLASS) prior to counseling indigent or "culturally dissimilar" clients, with specific reference to race, gender, class, ethnicity and sexual orientation).

⁹⁸ Professor Michelle Jacobs adopts a definition of culture from the psychological counseling literature: "a system of meanings in the heads of multiple individuals within a population." Jacobs, *supra* note 97, at 377 n.130. Historian Paul Longmore writes about the development of disability-based values and norms that are inherent in the creation of a disability culture. LONGMORE, *supra* note 91, at 215-24.

⁹⁹ Bryant, *supra* note 93, at 42 & n.26. Professor Jacobs identifies "non-majority" client inhibitors to conversation such as etiquette barriers and trauma. Jacobs, *supra* note 97, at 356 & nn.49-50. The former arises from a client's desire not to shock, embarrass or offend the non-peer listener, whereas the latter is manifested by a client who avoids thinking and talking about unpleasant past events. *Id.* Many of these inhibitors ring true for the client who is disabled or has a child with disabilities.

¹⁰⁰ Americans with disabilities are "a large and diverse population." Not only is disability "typical rather than rare," but it "is a normal part of life." Paul K. Longmore, *Introduction*, in DISABILITY WATCH (1998), reprinted in LONGMORE, *supra* note 91, at 30. Although the promoters of disability civil rights may pride themselves on being members

and attitudes of parents and family members¹⁰¹ from those of the disabled individuals themselves.

The treatment and mistreatment of disability are both like, and *unlike*, the handling of race and the impact felt by law students of color, as described by critical race theorists.¹⁰² For instance, African-Americans are sometimes called upon to articulate the minority viewpoint (what critical race theorists sometimes call the "ghetto perspective") on a given factual scenario (how it feels to attend a segregated school or suffer police harassment) or legal principle (such as, for example, a defense of hate speech).¹⁰³ Like their peers who are members of racial, ethnic or sexual minorities, disabled students may feel great ambivalence if invited to incorporate their identity or experience into their comments.¹⁰⁴ Students with mobility or communication impairments cannot comfortably retreat to the back benches: By virtue of a designated wheelchair space, a cane, or a captionist or service dog at their side, these students are almost always thrust into a prominent place.¹⁰⁵

The situation is even more complex when it comes to students like Sergio¹⁰⁶ with a learning disability or mental health diagnosis.¹⁰⁷

of a cross-disability movement, there are very real differences in the experience of the teen with cancer, the child who has significant cognitive impairments and the adult resident of a psychiatric institution. See, e.g., <http://www.peoplefirstca.org/history.htm#Beginning>. See also PELKA, *supra* note 7, at 96-97 (distinct features of developmental disability rights and self-advocacy movements); *id.* at 251-53 (brief history of psychiatric survivor movement); Peter Margulies, *The Cognitive Politics of Professional Conflict: Law Reform, Mental Health Treatment Technology, and Citizen Governance*, 5 HARV. J.L. & TECH. 25, 57 n.132 (1992) (need for persons with physical and mental disabilities to form political coalitions) (citation omitted).

¹⁰¹ The diversity of parental viewpoints, with particular reference to developmental disability and institutionalization, is explored in Robinsue Frohboese & Bruce Dennis Sales, *Parental Opposition to Deinstitutionalization*, 4 L. & HUM. BEHAVIOR 1, 17-37 (1980). See also PELKA, *supra* note 7, at 211 (history of association of family members of persons with psychiatric disabilities and inherent interfamilial tensions).

¹⁰² See, e.g., Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33 (1994); Jacobs, *supra* note 97.

¹⁰³ Crenshaw, *supra* note 102 at 36-42.

¹⁰⁴ *Id.* at 36.

¹⁰⁵ This assumes these students even make it through the classroom door. It was not that many years ago that a law student withdrew from a skills class at Boalt Hall, in part because the campus deaf services office could not consistently provide her an interpreter. See Memorandum of Feb. 9, 1994 from Stephen Rosenbaum to Ass't Dean Leslie Oster (on file with authors).

¹⁰⁶ See text accompanying note 1 *supra*.

¹⁰⁷ Of the more than 1,600 accommodation requests received by administrators of the LSAT in 1996-97, 45% involved learning disabilities and 16% involved attention deficit disorder. Susan Johane Adams, *Leveling the Floor: Classroom Accommodations for Law Students with Disabilities*, 48 J. LEGAL EDUC. 273, 273 n.2 (1998). See also M. Kay Runyan & Joseph F. Smith, Jr., *Identifying and Accommodating Learning Disabled Law School*

Persons with such “hidden” disabilities are not usually (or easily) outed.¹⁰⁸ But the (apparent) absence of such disabilities in the classroom may itself generate problems of a different sort. In a particularly poignant communication about stereotyping and bias, a student whom we will call Nathan sent the following e-mail message to his disability rights law professor:

While I was interviewing with [a lawyer from] one of the big-name law firms, I was talking about some of the good and bad experiences I’d had with direct client contact at my job . . . last summer (good—protecting people’s rights / bad—having clients break down crying in the office). He said that he could understand how dealing with client contact could be difficult “especially when you’re dealing with crazy people.” I was (naively) shocked to hear an educated person from my beloved, progressive Bay Area refer to my clients as “crazy” in a job interview, but I didn’t say anything. It made me upset that he called my clients “crazy” because I thought it was so condescending and dehumanizing to lump them into the category of crazy, with all its attendant stigma, merely because they had a mental health disability. It also bothered me because I didn’t think the characterization was accurate—most of my clients were fairly rational, normal people and he was pre-judging them. And of course, I had to take time off from law school because of my own mental health disabilities. I didn’t feel discriminated against, because I knew that he didn’t know that I was “crazy,” too, but it certainly made me feel like I never would choose to work with him if it meant that I was supposed to feel ashamed because of a medical problem.¹⁰⁹

Students like Nathan probably will not be called upon to “testify” about their personal experiences. Indeed, as his interview with a prospective employer suggests, the very notion that a law student might have a psychiatric disability is unfathomable, much less a subject for classroom “show and tell” or further intellectual exploration. And, while law students may encounter peers with physical or psychiatric

Students, 41 J. LEGAL EDUC. 317, 320 (1991) (citing data on percentage of law student population who have learning disabilities and noting that they constitute largest percentage of disabled student population). Professor Adams focuses on mobility, sensory and learning disabilities in her study. “Psychiatric disabilities are another matter.” Adams, *supra* at 273.

¹⁰⁸ Indeed, they are part of the “hidden minority” who, through institutionalization and negative attitudes and treatment, have been isolated from American mainstream society. STEPHEN PERCY, *DISABILITY, CIVIL RIGHTS AND PUBLIC POLICY* 1-11 (1989). See also Korn, *supra* note 78, at 605-06 (reference to “invisible disabilities”); Runyan & Smith, *supra* note 107, at 338 (recounting interviewee’s reluctance to disclose learning disability to avoid “disbelief or outright hostility”).

¹⁰⁹ E-mail message from student (name withheld to preserve privacy, but content of message used with permission) to Stephen Rosenbaum (Sept. 29, 2004) (on file with authors).

disabilities, or learning disabilities, they are not likely to share a classroom with students with mental retardation or other developmental disabilities.¹¹⁰

The particular value of a clinic is that it may expose law students to disabilities and disability culture in ways that cannot be matched in the lecture hall or student lounge. Other clinicians have made similar discoveries about issues of race, ethnicity or gender that are only partially addressed in an academic milieu.¹¹¹ Advising and representing students in special education matters will allow law students to have direct contact with disabled clients and their family members and support network.

III. THE RANGE OF STRUCTURES AND MODELS FOR A CLINIC THAT REPRESENTS THE INTERESTS OF PUPILS WITH DISABILITIES

“A man who moves a mountain begins by moving small stones.”¹¹²

In order to learn from the experience of existing clinics that represent pupils with disabilities and extrapolate some guiding principles, we conducted an informal survey, consisting of interviews, conversations and written exchanges with law school clinical professors, staff attorneys and directors, San Francisco Bay Area special education attorneys and other parties over a two-year period. The interviews consisted of questions about clinic structure, services and client outcomes.¹¹³

What we learned in these interviews, conversations and written exchanges shines a spotlight on the work that special education clinicians do in assisting parents from local, marginalized communities to secure their children's educational benefits. These clinics have the potential to change the scholastic experience for individual pupils, increase the knowledge of parents about their rights under IDEA and generally enhance parent participation and advocacy.

The experience of existing clinics also demonstrates that special education representation increases disability awareness among law students. Moreover, such clinics provide a forum in which to consider the public policy and civil rights implications of the challenges faced

¹¹⁰ *But see* Buhai, *supra* note 87, at 191-93 (describing accommodations that might be needed for clinical student with autism).

¹¹¹ *See, e.g.*, Cynthia Dennis, *Expanding Students' Views of the Dilemmas of Womanhood and Motherhood through Individual Client Representation*, 46 HOWARD L.J. 269, 281-85, 288-89 (2003) (students—including mothers and women without children—are challenged about prejudices regarding low-income single mothers through client contact in Women and AIDS Clinic).

¹¹² Chinese proverb (date unknown).

¹¹³ *See* Appendix 1 for a list of interviewees, dates of interviews and contacts.

by poor parents, families of color, language minorities and immigrants.

This section of the article will draw on the survey findings to examine structural and services issues relating to the establishment and administration of a clinic that represents pupils with disabilities. The following discussion will address various structural and pedagogical issues, linking the issues in each case to the needs of special education clients and law students.

A. Nature and Structure of the Clinic's Fieldwork

(1) Selection of Practice Area

Clinics representing special education students tend to fall into three general practice types, which we will call "system-focus clinics," "child advocacy clinics," and "special education-only clinics."¹¹⁴

System-focus clinics offer special education advocacy for youth with disabilities already involved in other institutional or legal "systems." Usually these are youngsters under the jurisdiction of the juvenile court. This structure is typified by clinics at the University of the District of Columbia and Seattle University¹¹⁵ schools of law and the Children's Rights Clinic at Georgetown University Law Center. These programs provide extensive training and support to facilitate special education representation for juvenile justice clients. There is a strong link between a pupil's involvement in the juvenile justice system, and educational difficulties that arise from unidentified disabilities and a failure of the schools.¹¹⁶ Other system-oriented youth and children's law clinics report that they offer special education advocacy, on a less regular basis, as is the case at Yale's Jerome N. Frank Legal Services Organization. The School of Law at the University of Nevada, Las Vegas, sponsors a "super model" systems clinic that provides representation to court-involved youth in separate juvenile justice and child advocacy clinic courses.¹¹⁷

¹¹⁴ See Appendix 2 for a chart comparing clinics by selected characteristics. This is a representative, but not exhaustive, listing of law schools offering special education representation as part of their clinical program practice.

¹¹⁵ E-mail message from Betsy Hollingsworth, Clinical Professor and Acting Director, Law Practice Clinic, Seattle University School of Law, to Patricia Massey (Feb. 26, 2003); Telephone interview with R. James Rosenfeld, Visiting Professor, Law Practice Clinic, Seattle University School of Law (Mar. 3, 2003).

¹¹⁶ Although disabled students make up approximately ten percent of the general school population, they constitute 30% to 70% of youth in corrections and detention. See <http://www.edjj.org>, the website of the National Center on Education, Disability, and Juvenile Justice. The Center is a collaborative project of the University of Maryland, University of Kentucky, Arizona State University, American Institutes for Research and the U.S. Department of Education-funded Parent Advocacy Coalition for Educational Rights.

¹¹⁷ The former involves youngsters in delinquency proceedings and the latter, foster

System-focus clinics afford access to representation through a single provider. For example, families and youth involved in the juvenile justice process receive help to navigate the court system and to identify and obtain education supports and placement. These families are often poorer and less educated and in greater need of advocates. For law students, system-focus clinics provide substantive and practical training in at least two areas of practice. Students exploring career paths in youth representation gain a broader view of the field and can develop skills and contacts across disciplines.¹¹⁸ The youths they encounter will not necessarily all be identified as disabled and are more likely to have a learning disability or emotional disturbance than a severe physical or cognitive impairment.¹¹⁹

Some system-focus clinicians voice concern that even with this limited scope of practice, they are unable to provide the desired depth of exposure to more than one body of law¹²⁰ during the course of a single semester. Another clinic director worried that his students could not be ready to deal with complex issues like special education in such a short period of time.¹²¹ This concern is also echoed in the clinical literature, but some academics contend that specialization allows for better supervision by instructors who need not spread themselves so thinly over several substantive areas.¹²²

Child Advocacy clinics adopt a holistic or whole-child approach to representation. These clinics offer representation in all, or most, areas of need of an individual child.¹²³ For example, where a child

youth in dependency court. Telephone Interview with Clinical Professors Katherine Kruse, Pamela Mohr and Rebecca Nathanson of William Boyd School of Law, University of Nevada, Las Vegas (Dec. 17, 2004).

¹¹⁸ Interview with Professor Dean Hill Rivkin, University of Tennessee College of Law (Mar. 14, 2004). Professor Rivkin notes that even where a juvenile justice clinic does not expressly feature special education representation, students engaged in this work will need to give consideration to the implications of disability and special education.

¹¹⁹ Thirty to seventy percent of youths in the juvenile justice system have learning, behavioral or emotional disabilities. See <http://www.edjj.org>, *supra* note 116.

¹²⁰ The specialized clinic may nonetheless meet with students' desire to learn one or two practice areas very well. See Philip G. Schrag, *Constructing A Clinic*, 3 CLIN. L. REV. 175, 191 (1996). Professor Schrag, one of the founders of the modern law school clinic, also observes that specialization promotes cohesion among clinic students with respect to their case work and group discussion. *Id.* at 191.

¹²¹ Rosenfeld Interview, *supra* note 115.

¹²² See, e.g., Schrag, *supra* note 120, at 191. For Schrag, the complexity dilemma is manifested where a clinic undertakes systemic rights-based litigation, requiring more faculty intervention. *Id.* at 192. For a contrary view on specialization, see generally Sedillo López, *supra* note 83. Professor Antoinette Sedillo López acknowledges that specialized clinics promote efficiency and make the teaching experience more predictable, *id.* at 309, but asserts that a single-subject matter focus fails to allow students to see identity issues "in the full context and not as decontextualized . . . cases" involving, e.g., gender or race. *Id.* at 321. The decontextualization argument could obviously apply to disability as well.

¹²³ For one child advocacy model, at the University of Michigan, see generally Donald

requires assistance relating to education, medical, and federal entitlement programs, his law student team would offer representation in each of those areas. Some of these clinics are interdisciplinary, offering practical training for graduate students in psychology, education, health, and other fields. Fordham University offers this type of clinic.¹²⁴ The Rutgers-Newark Child Advocacy Clinic is in the process of developing a fully interdisciplinary child advocacy clinic.¹²⁵ Rutgers Clinical Professor Randi Mandelbaum believes interdisciplinary clinics are on the cutting edge.¹²⁶

Whittier College School of Law has a different approach for providing child advocacy. There, a special education clinical course was added to an overall clinical program offered by the Center for Children's Rights.¹²⁷ Special education was an obvious choice for a program run exclusively by the law school, with no involvement of other departments, and where clinic practice areas all relate to the legal rights of children. A child with specialized instructional needs may also be represented by a Whittier law student enrolled in another course under the umbrella of the child advocacy clinic. This practice structure gives the clinical student exposure to substantive and practical knowledge in related areas.¹²⁸ The University of Nevada offers yet another variation: The School of Law's Child Welfare Clinic provides special education representation incidental to the needs of delinquent and dependent youth.¹²⁹

Special Education-Only clinics are less common than the other

Duquette, *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31 U. MICH. J. L. REFORM 1 (1997). See also McCaffrey, *supra* note 93, at 20 (describing two distinct children-centered clinics at Hamline University, Child Advocacy and Education Law, which are complemented by a Children and the Law curricular concentration). Syracuse University College of Law, which houses a non-clinical, multidisciplinary Disability Law and Policy program, also operates a children and family law clinic. The clinic has a limited number of special education clients, with claims unrelated to the IDEA, among its education caseload. E-mail message from Visiting Professor Suzette Meléndez to Stephen Rosenbaum (Feb. 11, 2005).

¹²⁴ Telephone interview with Beth Schwartz, Associate Clinical Professor, Fordham University School of Law (Mar. 2003).

¹²⁵ Telephone Interview with Randi Mandelbaum, Clinical Professor of Law & Director, Child Advocacy Clinic, Rutgers University School of Law-Newark (Feb. 2003).

¹²⁶ *Id.* The University of Michigan's interdisciplinary Child Advocacy Clinic has had success in securing staffing by a part-time faculty member and graduate student from the psychology department, as well as a child psychiatrist, social worker or pediatrician. Duquette, *supra* note 123, at 20.

¹²⁷ The clinical courses at the Center for Children's Rights address issues related to domestic violence, grandparent guardianship of minors, health care, and special education.

¹²⁸ Telephone Interview with Meredith Goetz, Adjunct Professor, Whittier College School of Law (Mar. 2003).

¹²⁹ Kruse et al. Interview, *supra* note 117. In Summer 2005, a new special education clinical program is to be introduced, serving youth other than those in the juvenile court system.

two prototypes. The law schools at Stanford, Rutgers-Newark, State University of New York at Buffalo, University of San Diego, Whittier and Pepperdine¹³⁰ all operate clinics that emphasize special education representation; Hastings College of the Law and Fordham University previously offered such clinics.¹³¹ Such clinics are usually established as a result of a faculty member's personal or professional experience with special education. That is the case, for example, at Stanford, Buffalo, Rutgers, San Diego and Whittier.¹³² These clinics address the concern that students in multi-practice settings lack sufficient time to learn the substantive law of special education. These are usually high-unit seminar or fieldwork programs, or they require that students take a prerequisite or concurrent course.¹³³

With the exception of litigation, special education processes often allow for the resolution of disputes within a relatively short time period, even where the case necessitates mediation or a due process hearing. Whittier, for example, is able to assure that each of its students will have the opportunity to represent a client at mediation during the semester.¹³⁴ Because parents will need to continue to advocate for their children on their own, students in special education-only clinics teach self-advocacy skills to parents and help them understand their rights.¹³⁵ There is likely to be exposure to a more diverse population of disabled youngsters.

A fourth prototype, ordinarily established by means of a partnership between a law school and a non-profit organization, is a set of attorney-supervised field placements or externships, or short-term "service learning" opportunities, which may be integrated into more

¹³⁰ The Whittier and Pepperdine law clinics are both funded by regional centers of the California statewide developmental disabilities service and support system for youngsters who are clients of that system. CAL. WELF. & INST. CODE § 460(a). Interview with Richard Peterson, Director of Special Education Clinic and Assistant Professor, Pepperdine University School of Law (Jan. 3, 2004).

¹³¹ See Appendix 2 and Interview with Miye Goishi, Clinical Attorney & Adjunct Clinical Professor, Hastings College of the Law (Feb. 11, 2003). Hastings discontinued its special education clinic when the clinician with expertise in this area accepted a position elsewhere. Fordham now incorporates special education representation in its Child Advocacy Clinic. Schwartz Interview, *supra* note 124.

¹³² Although the Stanford Law School Youth and Education Law Clinic (YELC) focuses on education issues broadly, it has placed an emphasis on special education representation. Some special education cases arise out of referrals related to suspension or expulsion of students not properly identified as eligible for special education and/or inappropriately served.

¹³³ See Appendix 2.

¹³⁴ Goetz Interview, *supra* note 128. Professor Schrag notes the general value of this "small case" approach, where the student has "the opportunity to celebrate th[e] success with a client." Schrag, *supra* note 120, at 192.

¹³⁵ See text accompanying notes 226-42 *infra* for a discussion of parent and self-advocacy training.

traditional black-letter law disability or education law courses. A consortium of seven northern California law schools headed by Santa Clara University, for instance, formed a partnership with the Disability Rights Education & Defense Fund (DREDF) in the late 1980s and early 1990s.¹³⁶ Currently, the Western Law Center for Disability Rights (Western Law Center) has a partnership with Loyola School of Law-Los Angeles.¹³⁷ Professor Ruth Colker of Ohio State University offers her law students a weekly service-learning placement in conjunction with the state education department.¹³⁸

Conceivably, a general disability anti-discrimination law clinic could handle cases involving the educational rights of students under IDEA—along with claims raised by employees, government beneficiaries, public accommodation customers, tenants or passengers pursuant to the Rehabilitation Act, the Americans with Disabilities Act,¹³⁹ Fair Housing Act Amendments¹⁴⁰ or related federal and state laws. However, we are unaware of any law school currently operating under this generalist model. The above-mentioned practice settings are all amenable for serving special education clients and teaching lawyering skills to law students.

(2) *Target Clients and Case Selection*

Among other structural considerations in creating a clinic are the processes for determining the target client population and case acceptance. Given the large need for legal services and limited clinic capacity, only a small portion of the special education families and children from marginalized communities can actually be served. Each of the clinics we surveyed restricted the potential client pool in ways that did not necessarily correspond to the prototypes described above. Some represent only low-income families, based on federal Legal Services

¹³⁶ Telephone Interview with Linda Kilb, Attorney, Disability Rights Education and Defense Fund (DREDF) (Mar. 2003). See also text accompanying notes 157-69 *infra* (externships and field placements as structural model).

¹³⁷ Telephone Interview with Eve Hill, Executive Director, Western Law Center on Disability Rights (Western Law Center) and Visiting Associate Professor, Loyola School of Law-Los Angeles (Jun. 8, 2004).

¹³⁸ Telephone Interview with Ruth Colker, Professor of Constitutional Law, Moritz College of Law (by Stephen Rosenbaum) (Feb. 9, 2005). On the concept of service-learning generally, see, e.g., Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research*, 10 CLIN. L. REV. 723 (2004); Mary Pat Treuthart, *Weaving a Tapestry: Providing Context Through Service Learning*, 38 GONZ. L. REV. 215 (2002-03). See also Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum through Experiential Learning*, 51 J. LEGAL EDUC. 51 (2001).

¹³⁹ 42 U.S.C. § 12101 *et seq.* (2000).

¹⁴⁰ 42 U.S.C. § 3602 *et seq.* (2000). Many disability law clinics tend to focus on adults. In one exception, students enrolled in the former DREDF clinic handled cases under the IDEA as well as the ADA. Kilb Interview, *supra* note 136.

Corporation or Department of Housing and Urban Development poverty eligibility guidelines.¹⁴¹ Others accept clients by referral from the courts or other public agencies—with or without income screening.¹⁴²

Some clinics have eschewed income guidelines because, as one director noted, few families whose children are in public education—including middle income families—have the means to afford representation in a due process hearing.¹⁴³

Some clinics narrow the target population on the basis of the type of disability. Two clinics are open to children with developmental disabilities, referred by quasi-public agencies without regard to financial need.¹⁴⁴ The Pepperdine University clinic responds to the volume of potential cases by emphasizing mediation and other alternative dispute resolution strategies.¹⁴⁵ The Whittier College clinic has a contract for handling a fixed number of cases.¹⁴⁶ Only one clinic¹⁴⁷ targets pupils with learning disabilities—like Sergio¹⁴⁸—who make up over half of the students enrolled in special education programs.¹⁴⁹

The selection of clients by type of disability inevitably has an impact on law student understanding of disability or marginalization. The experience of the regional center-contract clinics for law students with no prior knowledge of severe cognitive or other developmental

¹⁴¹ Georgetown, Fordham, Rutgers, Stanford, State University at Buffalo and Loyola. See Appendix 2 for selection criteria, where provided.

¹⁴² Kruse et al. Interview, *supra* note 117.

¹⁴³ Interview with Margaret Dalton, Adjunct Professor of Law and Special Education Clinic Supervising Attorney, University of San Diego, (May 4, 2004). Professor Dalton accepts cases based on pupil “need” and law student availability. *Id.* See also Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 13-14 & n.67 (costliness of due process proceedings).

¹⁴⁴ Peterson Interview, *supra* note 130, and Goetz Interview, *supra* note 128. Historically, the regional centers have served children without regard to family income. Beginning in 2005, parents whose income is more than 400% of the federal poverty level, must pay a share of cost for certain services. CALIF. WELF. & INST. CODE § 4783.

¹⁴⁵ Peterson interview, *supra* note 130. 20 U.S.C §1415(e) (requiring state education agencies to establish procedures for mediation of special education disputes). See text accompanying notes 189-99 *infra* (emphasis on mediation for conflict resolution).

¹⁴⁶ Telephone Interview with Melinda Sullivan, Assistant Director of Consumer and Family Services, Lanterman Regional Center (Mar. 31, 2004). The referral agency gives extensive training to its social workers and employs a staff attorney to screen cases. Educational difficulties that may be more properly characterized as personality conflicts or other non-legal issues are resolved in-house. *Id.*

¹⁴⁷ Telephone Interview with Janeen Steel, Director, Learning Rights Project, Western Law Center (Jun. 3, 2004). Due to the sheer volume of cases, the Loyola Law School clinic must take client income into account.

¹⁴⁸ See text accompanying note 1 *supra*.

¹⁴⁹ Percentage of students served by state and disability (2002-2003), U.S. Department of Education, Office of Special Education and Rehabilitation, Office of Special Education Programs at http://www.ideadata.org/tables26th/ar_aa7.htm.

disabilities will be completely different from those exposed to pupils with the more “invisible” learning disabilities or emotional disturbance or Attention Deficit/Hyperactivity Disorder (ADD/ADHD), who make up the majority of foster or delinquent youths.¹⁵⁰

Case selection policies thus provide an important mechanism for broadening the perspective of law students like Michelle,¹⁵¹ who come into a clinic with a view that there are “worthy” and “unworthy” students with disabilities in the public education system, and who may not ever develop a deeper understanding if their clinical experience is limited to serving students in the juvenile justice system. Representing poor families, parents with little formal education or parents who speak only limited English will expose law students to yet another learning experience in cultural competency.

Pedagogical objectives and student needs also influence individualized case selection. In some instances, emphasis is placed on skill-building opportunities, exposure to major impact advocacy, or the value of individualized representation as a catalyst for systemic change. Case selection at Rutgers, for instance, focuses on addressing the most egregious issues of special education non-compliance.¹⁵² The University of Nevada, on the other hand, reviews juvenile justice and child welfare cases informally referred by the Public Defender’s office, with an eye to those that will benefit from the education and social work professional staff available in its clinic.¹⁵³ In seeking to balance responsiveness to community needs with the goal of skills instruction, clinics often select a combination of cases that are likely to be resolved at the IEP meeting and negotiations level and those more likely to require due process administrative hearings.

Some clinics include the case selection process as part of the

¹⁵⁰ Professor Nathanson of the University of Nevada notes that it is “rewarding when the light bulb goes off” for students in the Child Advocacy Clinic. They can bear witness to how schools treat youths with disabilities and their parents. They also see how foster parents, repeatedly called to school to deal with their children’s behavioral incidents, are then less inclined to adopt. Kruse et al. Interview, *supra* at 117. Likewise, Professor Kruse reported that those enrolled in Nevada’s Juvenile Justice Clinic learn that pupils with behavioral problems are not often provided the interventions and supports required under IDEA. Instead, their behaviors escalate and they end up in the delinquency system. *Id.* “They’re not bad kids,” adds Nathanson, “but the school response may be inappropriate.” *Id.*

¹⁵¹ The skeptical law student described at the outset of this Article. See text accompanying note 2 *supra*.

¹⁵² Telephone Interview with Esther Canty-Barnes, Associate Professor and Director, Special Education Clinic, Rutgers University School of Law-Newark (Mar. 2003). In 2004, Professor Canty-Barnes was awarded the American Association of Law Schools (AALS) Clinical Legal Education division’s Shanara Gilbert Award for her work in special education representation.

¹⁵³ Kruse et al. Interview, *supra* note 117.

clinical experience. Law student involvement in case selection can provide a useful context for uncovering beliefs and attitudes about disability and the circumstances of disadvantaged families. At the University of San Diego, individual representation cases are generated in an advice clinic that serves parents of children with disabilities. Clinical students prepare a write-up of the issues and then "pitch" the case at the clinic seminar.¹⁵⁴ The need to articulate the concerns that brought the potential client to the advice clinic challenges law students to understand the impact of disability and how the struggle for services can influence the life of the child and family beyond the school context.¹⁵⁵ In other clinics, the clinician uses predetermined criteria to select cases, thereby avoiding any delays in case handling.¹⁵⁶

(3) *Externships as an Alternative or Supplement to In-House Clinics*

Some law schools enter into arrangements with non-profit organizations to offer attorney-supervised field placements or externships.¹⁵⁷ Loyola School of Law and the Western Law Center for Disability Rights, a non-profit organization located on the Loyola campus, offer representation in a collaborative venture to low-income families of children with learning disabilities. The two entities help law students develop skills in such areas as client relations, negotiation, and administrative advocacy.¹⁵⁸ Another non-profit law office, DREDF, served as the clinical placement setting for a number of northern California law schools in the early 1990s.¹⁵⁹

This kind of partnership can foster skills that are especially useful in addressing issues and procedures peculiar to special education stu-

¹⁵⁴ Dalton Interview, *supra* note 143.

¹⁵⁵ *Id.*

¹⁵⁶ Telephone interview with William Koski, Associate Professor of Law & Director, YELC, Stanford Law School (Feb. 2003).

¹⁵⁷ We use the terms "field placement" and "externship" interchangeably. Readers who can provide a useful distinction between "externships" and "internships" are urged to contact the authors posthaste.

¹⁵⁸ In 2000, the independent Learning Rights Project became a part of the Western Law Center. Attorney Janeen Steel, who herself has a learning disability, established the project to fulfill an unmet need—advocacy on behalf of youths with *learning* disabilities, the largest percentage of IDEA-eligible students in virtually any school district. The Project is funded mainly by foundation grants and is staffed by three attorneys and a post-graduate fellow. The Project attracts up to eight Loyola law clerks each semester. The current fellow is subsidized by Equal Justice Works. Steel Interview, *supra* note 147.

¹⁵⁹ Kilb Interview, *supra* note 136. As Managing Attorney from 1992-1995, Ms. Kilb headed the Disability Rights Clinical Legal Education Program. This consortium, overseen by Santa Clara University School of Law, was funded by the U.S. Department of Education from 1988 to 1996. In addition to Santa Clara, consortium member law schools included University of California at Berkeley and Davis, Golden Gate University, New College of California, Hastings, John F. Kennedy, and University of San Francisco.

dents and their parents. For instance, the staff in the Western Law Center litigation section work jointly with Learning Rights Project attorneys to help externs—who work on individualized cases—identify systemic discriminatory school district practices.¹⁶⁰ With this kind of technical support, law students can actually contemplate filing lawsuits.¹⁶¹ Project externs also gain skills in community lawyering. By participating in monthly parent special education training workshops, law students are able to make use of opportunities to help empower their clients to be self-advocates. Clinical work of this sort may permit students to gain a first-hand experience with issues of able-ism.

Even in the absence of a formal partnership,¹⁶² there are options for learning lawyering skills in a live-client setting. A substantive special education law course can be supplemented with community-supervised fieldwork or service learning, thereby providing service to families in need (particularly those from marginalized communities) and creating opportunities to increase law student disability awareness. Students enrolled in a disability discrimination law course at Ohio State University are expected to participate in a service-learning day each week. One option is to assist parents of disabled pupils who file complaints with the Ohio Department of Education.¹⁶³ A less formal approach is to offer a class in special education or disability law and channel interested students to traditional non-profit internships, with or without the opportunity to earn additional units.¹⁶⁴

¹⁶⁰ Steel Interview, *supra* note 147. Project externs are each assigned from two to four cases during the semester for which they provide fully supervised representation. Project lawyers also carry their own caseloads and are attorneys of record for families involved in due process hearings. Students actively participate in the hearings, including preparation of document production and direct examination. *Id.*

¹⁶¹ *Id.* In order to assure that law students are able to commit the time needed, strategic emphasis is placed on filing hearing requests in the spring semester so that the hearings will be scheduled during the summer, when as many as seven externs are working full-time in the Project. This contrasts with the part-time clinic approach described below, where the summer hearing calendar is intended to be unencumbered.

¹⁶² One drawback to the partnership model is that the funds needed for additional supervisory personnel at the non-profit placement may be difficult to obtain. Linda Kilb, DREDF's then-managing attorney, noted that funding for clinical programs is traditionally directed at law schools. Kilb Interview *supra* note 136.

¹⁶³ Colker Interview, *supra* note 138. In this unique collaboration, law students help parents who have filed complaints with the state educational authorities to articulate their claims regarding their children's special education services. In this role as facilitators and advocates, students are supervised by an adjunct law school faculty member with IDEA expertise, in addition to Ohio Department of Education staff. Beginning in Spring 2006, Professor Colker plans to establish a special education law clinic, in an ambitious partnership with the local civil legal services office. *Id.* Stephen Rosenbaum gives law students the option of working with peer- and self-advocates on discrete issues on an *ad hoc* basis, at a local psychiatric hospital, as a service-learning component of his substantive mental health law and policy course. See <http://www.law.berkeley.edu/courses>.

¹⁶⁴ This has been the *ad hoc* arrangement at Boalt Hall School of Law (Disability Rights

As with all off-site practicum settings, attorneys vary in their proficiency in instructional and mentoring skills and many have limited time to devote to supervising fieldwork interns.¹⁶⁵ Furthermore, where field placements are not offered for academic credit, students often are unable to commit the significant amount to time necessary to effectively represent individuals.¹⁶⁶

Because non-profit field placements and internships do not offer the intensity and consistency of fieldwork oversight that exists in in-house clinics, there is longstanding academic debate about their value.¹⁶⁷ Nevertheless, with enough local oversight,¹⁶⁸ the field placement or service-learning models warrant further consideration.¹⁶⁹

(4) *Integrating an Interdisciplinary Dimension*

An interdisciplinary clinic structure has particular advantages. For clients with disabilities and their families, these are not simply re-

Law; Mental Health Law, Advocacy & Policy) and Stanford Law School (Disability Rights Law). Both law schools offer field placements at PAI. See <http://www.law.berkeley.edu/courses> & <http://www.law.berkeley.edu/cenpro/clinical/fieldplacement.html>; <http://www.law.stanford.edu/courses> & <http://www.law.stanford.edu/programs/pip/externships.html>. Another approach would require that students enroll in a course comprised of regular seminars devoted to education law, policy and practice—coupled with a minimum number of internship hours at an approved special education advocacy placement.

¹⁶⁵ See Barbara A. Blanco & Sandi L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLIN. L. REV. 611, 620 (2004) (inherent conflicts in field supervision arise from field supervisor not being invested in goals of law school, her need to answer primary demands of employer and employment, and busy law practice).

¹⁶⁶ Kilb Interview, *supra* note 136. According to Kilb, students also frequently report the following concerns about internships: inconsistency in the level of supervision, fewer opportunities to do challenging and meaningful tasks, and limited exposure to substantive law. She also noted that the distance of the DREDF field placement from the participating law schools was a disincentive. Moreover, the type of work assigned to students may not necessarily include client representation or advocacy, thereby narrowing the actual skill development and experiences. *Id.*

¹⁶⁷ It is not our intent to debate the merits of field placements in this article. For background, see J. P. OGILVY, LEAH WORTHAM & LISA G. LERMAN, *LEARNING FROM PRACTICE* (1998) (student text for methodical approach to field placements, internships and externships); *id.* at viii-ix (field placement history and rationale). See also Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLIN. L. REV. 277, 282-84 (2000) (limitations of simulations and externships); Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 CLIN. L. REV. 123 (2000); J.P. Ogilvy, *Introduction to the Symposium on Legal Externships: Learning from Practice*, 10 CLIN. L. REV. 469 (2004).

¹⁶⁸ See, e.g., J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155 (2002-03).

¹⁶⁹ The stand-alone special education legal clinic may also offer a strong foundation for subsequent fieldwork or externships. Well-prepared clinical students can bring meaningful skills to private practice and non-profit firms in such fields as family law, landlord-tenant, wage and hour claims, public disability benefits, juvenile delinquency and dependency—and special education.

sources for advocacy but also for educational counseling and evaluation of instructional and therapeutic needs. For law students, there is an opportunity to confront their dis-awareness and learn from their peers in other professional fields.¹⁷⁰ The value of attorneys establishing a working relationship with a staff social worker, for example, has long been recognized¹⁷¹ and is particularly strong in the special education sphere. Social workers can perform services as varied as interviewing, evaluation, crisis intervention, casework, negotiation and referral.¹⁷² Through "one-stop shopping," parents may obtain a variety of services at little or no cost, often reducing the time for resolution of their dispute with the school district. Access to experts who can conduct pupil evaluations and testify at hearings is crucial to successful representation.¹⁷³

Apart from diverse teaching methodology and staff resources, a key aspect of the interdisciplinary model is the involvement of other graduate students alongside their law school peers in skills learning and service delivery. At the University of Michigan's Child Advocacy Clinic, a child psychologist and one or two clinical psychology graduate students join the law professors, social worker, pediatrician and 14 to 22 law students on staff. They attend weekly class sessions, instruct the law students on child development and related topics, and engage in case conferences in groups or with individual students.¹⁷⁴ The Rutgers Child Advocacy Clinic, also law school-centered, offers psychological, nursing, and social work services, provided by Rutgers' graduate students.¹⁷⁵

A clinic that combines more than one substantive area with special education representation may be staffed by one supervising attor-

¹⁷⁰ Mandelbaum Interview, *supra* note 125. On some of the difficulties of working across disciplines, see V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLIN. L. REV. 83, 101-02 (2002).

¹⁷¹ See, e.g., Jane Aiken & Stephen Wizner, *Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship*, 11 WASH. U. J.L. & POL'Y 63 (2003); Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of The Relationship*, 67 FORDHAM L. REV. 2123 (1999).

¹⁷² Galowitz, *supra* note 171, at 2126.

¹⁷³ Professor Galowitz distinguishes between social worker assessments and mental health intervention. *Id.* at 2126 n.12.

¹⁷⁴ Melissa Breger, Suellyn Scarnecchia, Frank Vandervort & Naomi Woloshin, *Building Pediatric Law Careers: The University Of Michigan Law School Experience*, 34 FAMILY L.Q. 531, 533 (2000). See also Duquette, *supra* note 123, at 20 (importance of interdisciplinary staffing at Michigan clinic and benefits of both short-term (practitioner) and long-term (tenure track) faculty).

¹⁷⁵ Mandelbaum Interview, *supra* note 125. Other interdisciplinary clinics may concentrate more on children's medical or health issues and are often located at hospitals or clinics affiliated with medical schools. *Id.*

ney with special education expertise and at least one attorney who has expertise in the other focus areas of the clinic. This is the model at Seattle University's juvenile court clinic. The expectation is that every student is assigned to work on a case that involves both a delinquency or dependency dimension and a special education dimension.¹⁷⁶

One of the biggest challenges of this model is getting "buy-in" from graduate faculty in other schools or departments. Although these university colleagues may be supportive in theory, a truly interdisciplinary clinic cannot be a reality without specific funding to support supervision of the graduate students from the other departments as well as planning and coordination.¹⁷⁷ At Nevada, the education faculty is committed by virtue of the fact that one clinic director has a joint appointment to the College of Education and to the Law School. The social work connection is bridged by a staff social worker who has teaching and supervisory duties in the law school clinic as well as the Social Work department.¹⁷⁸ Apart from their direct benefit to clients, social workers can also be helpful in "empathy training" or assisting lawyers to understand able-ism and other client realities.¹⁷⁹ This training can be applied in almost all client interactions, and particularly for clients from racially, ethnically and linguistically subordinated communities.

The truism expressed by private sector colleagues and law students alike—that what we do "isn't law, it's social work"¹⁸⁰—has particular resonance in working with disabled clients seeking educational or other services.¹⁸¹ Clinic staff skilled in instructional methodology, behavior intervention, nursing, medicine, child development or other

¹⁷⁶ Rosenfeld Interview, *supra* note 115.

¹⁷⁷ Mandelbaum Interview, *supra* note 125.

¹⁷⁸ Kruse et al. Interview, *supra* note 117 (education and social work faculty "buy-in" is perhaps made easier in light of law clinic's interdisciplinary orientation from inception, and affiliation with departments that had already incorporated clinical concept into respective curricula).

¹⁷⁹ Galowitz, *supra* note 171, at 2126-27. This has been referred to as "the human arts of lawyering." *Id.* at 2126 (quoting Gary S. Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 J. LEGAL EDUC. 5, 5 (1975)). See also Theresa Glennon, *Lawyers and Caring: Building An Ethic of Care Into Professional Responsibility*, 43 HASTINGS L.J. 1175, 1181-85 (1992) (creating caring relationships between clinical students and their clients and amongst clinic colleagues).

¹⁸⁰ Aiken & Wizner, *supra* note 171, at 63.

¹⁸¹ *Id.* at 75 (lawyer *qua* social worker serves her clients holistically and seeks to understand nature of all social diversity and oppression, including that which relates to mental or physical disability). The line between social work and law has its own variation in special education practice. Some of our lawyer colleagues play more the role of educational consultant, armed with the knowledge of best practices, and want to "make the IEP happen." Others choose to rely on parents and specialists in the field, and encourage the team to truly collaborate in developing a program.

therapies—even community organizing and policy analysis¹⁸²—can be of great support to parents and law students.

As children are still a relatively new client group for law schools, their “legal issues require both a sophisticated knowledge of an array of statutes and case law and a working knowledge of relevant material from disciplines as diverse as social work and medicine.”¹⁸³ Preparation therefore requires that faculty and students look outside the law school to obtain necessary knowledge.¹⁸⁴

The multidisciplinary dimension can also be found in the team assignment approach to case work. Most clinics assign cases to teams of two or more law students.¹⁸⁵ At Fordham, for instance, the team may include a social work or psychology graduate student.¹⁸⁶ Students may be assigned to more than one case and will have a different partner for each. At Boyd Law School’s Child and Family Institute in Nevada, each team pairs one law student and one social work graduate student. Graduate students in the School of Education act as consultants to all clinics when education issues arise.¹⁸⁷ In addition to the complementary disciplinary approaches, clinicians have reported a healthy tension between team members and a sensitivity to disability issues.¹⁸⁸

Beyond the structural benefits of the interdisciplinary model, there is a service benefit. Consultation with practitioners from other fields helps the law student better understand the needs of a child, leading to improved IEPs. This may also translate into help for the parent who, by better understanding her child’s needs, becomes a more effective self-advocate when clinic representation ends. All of this bodes well for the low-income client, and those marginalized by language or lack of formal education.

¹⁸² See text accompanying notes 200-25 *infra*.

¹⁸³ Breger et al., *supra* note 174, at 532. Professor Breger and her colleagues at Michigan’s Child Advocacy Clinic contend that children’s or “pediatric” law requires knowledge drawn from the fields of social work, medicine, child psychology, child development and ethics—in addition to law. *Id.*

¹⁸⁴ *Id.* at 532. Increasingly, lawyers in all practice settings are working with professionals across disciplines to resolve problems “in a more holistic, efficient, comprehensive and cost-effective fashion.” Enos & Kanter, *supra* note 170, at 88 (citation omitted).

¹⁸⁵ Appendix 2. Team caseloads vary by clinic and are generally between two and ten cases, depending upon their complexity. One director reported that her clinic completed fifty cases during its first year of operation. Goetz Interview, *supra* note 128.

¹⁸⁶ Schwartz Interview, *supra* note 124.

¹⁸⁷ Kruse et al. Interview, *supra* note 117.

¹⁸⁸ *Id.*

(5) *Non-Litigation Fieldwork*

(a) *Mediation and Other Forms of ADR*

Mediation and alternative dispute resolution, are, in many respects, at the heart of special education legal representation. Parents are more likely to encounter these informal resolution mechanisms than the due process hearing or compliance complaint.¹⁸⁹ These approaches are more amenable to long-term non-adversarial relations than adjudication and investigation. Moreover, the recently amended IDEA specifically encourages mediation and other forms of informal dispute resolution.¹⁹⁰ One commentator suggests that “a mediation clinic can do more to foster . . . party empowerment and self-help than, for all our talk of ‘client-centeredness,’ a litigation clinic can.”¹⁹¹ Not only does the clinical student learn to sharpen her own abilities, but she can learn how to impart skills to parents and other lay advocates.

All of the clinics we surveyed afford students the experience of attending IEP meetings and negotiations, and representing a family in a special education mediation. At the Pepperdine clinic, for example, law students may enroll in a two-unit substantive course on special education law and a clinic of equal unit value. The clinic has a heavy emphasis on informal dispute resolution skills.¹⁹² The Stanford clinic

¹⁸⁹ See SPECIAL EDUCATION: NUMBERS OF FORMAL DISPUTES ARE GENERALLY LOW AND STATES ARE USING MEDIATION AND OTHER STRATEGIES TO RESOLVE CONFLICTS (GAO-03-897) (Sept. 2003) (U.S. General Accounting Office study showing the actual number of due process hearings and state compliance complaints is small). See also text accompanying notes 33-34 *supra*. On the value of mediation or ADR in the special education context generally, see, e.g., Jonathan A. Beyer, *A Modest Proposal: Mediating IDEA Disputes Without Splitting the Baby*, 28 J. L. & EDUC. 37 (1999); Steven S. Goldberg & Dixie S. Huefner, *Dispute Resolution in Special Education: An Introduction to Litigation Alternatives*, 99 EDUC. L. REP. 703 (1995); Peter J. Kuriloff & Steven S. Goldberg, *Is Mediation a Fair Way to Resolve Special Education Disputes? First Empirical Findings*, 2 HARV. NEGOT. L. REV. 35 (1997); Andrea Shemberg, *Mediation as an Alternative Method of Dispute Resolution for the IDEA: A Just Proposal?*, 12 OHIO ST. J. ON DISP. RESOL. 739 (1997). See also Howard Schrag & Judy Schrag, *National Dispute Resolution Use and Effectiveness Study* (2004).

¹⁹⁰ P.L. 108-446, §§ 615(e) (ensuring mediation procedures) and 615(f)(1)(B) (adding mandatory “resolution session” for parties prior to formal due process hearing).

¹⁹¹ James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLIN. L. REV. 457, 502 (1996). See also text accompanying notes 228-41 *infra* (self-advocacy training). The key to successful mediation is access to skilled mediators and appropriate training for parent participants—especially those with less formal education and minimal English language proficiency. The Consortium for Appropriate Dispute Resolution in Special Education (CADRE), the National Dissemination Center for Children with Disabilities and the National Center for Cultural Competence at Georgetown University Center for Child & Human Development are among the organizations that have developed bilingual materials on mediation. See <http://www.directionservice/cadre>; <http://gucdc.georgetown.edu/nccc> & <http://www.nichy.org>.

¹⁹² Telephone Interview with William Bowman, Executive Director, Orange County Re-

similarly recognizes the importance of mediation although it also stresses the need for adequate preparation for due process hearings.¹⁹³

Even for those students not inclined toward special education or other education or disability issues, the prospect of practical training in mediation and informal dispute resolution could well be attractive¹⁹⁴ and offset the paradigmatic view of lawyering as a distinctly adversarial activity.¹⁹⁵ The Western Law Center, for instance, offers a mediation program apart from the Learning Rights Project that trains law students to be *mediators*.¹⁹⁶ The opportunity to practice mediation *representation* is limited to cases handled by the Learning Rights Project.¹⁹⁷

Some of the most creative work in alternative resolution of disputes is being done in the field of special education.¹⁹⁸ Clinical students can be in the vanguard of developing and implementing ADR models proposed by educators and academics from a variety of disciplines.¹⁹⁹ Skills that are practiced in the mediation setting can be ap-

gional Center (Mar. 29, 2004); Peterson Interview, *supra* note 130. As a practical matter, because mediation requests are often processed quickly, clinical students are assured an opportunity to have this experience in the course of a semester or quarter.

¹⁹³ Koski interview, *supra* note 156. The Syracuse clinic manages to avoid due process hearings through informal advocacy. Meléndez E-mail message, *supra* note 123.

¹⁹⁴ Peterson Interview, *supra* note 130.

¹⁹⁵ One clinical director observes that mediation training is unfortunately perceived as "against the dominant [adversarial] paradigm, and in certain respects, is subversive of values deemed fundamental in American legal culture." Stark, *supra* note 191, at 501.

¹⁹⁶ There were 34 established ADR clinical programs across the country, according to a directory published about a decade ago. 1995 ADR Clinic Directory, *cited in id.* These "clinics" include internship and externship placements, and clinics that are not devoted exclusively to mediation or ADR practice. A list of programs, requirements and contact information can be found in *id.* at 458 n.1. Most of these train students in the role of mediator in, for example, landlord-tenant disputes, disability discrimination claims or minor misdemeanors. *Id.* at 464-71.

¹⁹⁷ Steel Interview, *supra* note 147. In past years, Loyola offered mediation representation skills training through a special education law course. Hill Interview, *supra* note 137.

¹⁹⁸ Drawing from experience in school districts throughout the nation, CADRE, *supra* note 191, issues publications, sponsors symposia and maintains a comprehensive website on alternative dispute resolution in the special education context. In many of its publications about mediation and other ADR modes, CADRE collaborates with The Technical Assistance Alliance for Parent Centers, *supra* note 43, and the National Information Center for Children and Youth with Disabilities, as well as the National Association of State Directors of Special Education.

¹⁹⁹ For example, one consortium of California Bay Area school districts recently held a series of training workshops for special education parents and administrators, with a view toward establishing local ADR panels to avoid disputes going to mediation or hearing. See e-mail message from David Wax, Director, North Region Alameda Co. Special Education Local Planning Area to Stephen Rosenbaum (Dec. 20, 2004) (on file with authors). The workshops were conducted by Indian Dispute Resolution Services, Inc., using their constantly revised training manual, *Mediation & Peacemaking Skills & Processes: Working Things Out By Talking Things Through* (1991-2004) (on file with authors). The motives for embracing ADR indeed vary. For some administrators, it is a less painful and less costly

plied to other aspects of disabled student education. The IEP meeting, advisory committees and *ad hoc tête-à-têtes* with school authorities are all venues in which program and policy decisions are made.

(b) *Legislative Lawyering*

Special education advocacy also occurs in decision-making venues other than the conference room or hearing office.²⁰⁰ The potential is great for conventional public policy analysis, legislative advocacy and participation in the regulatory processes.²⁰¹

Advanced students at Stanford's clinic work on public policy initiatives affecting disabled school children.²⁰² Professor Koski and his clinical students recently spent two semesters attempting to influence state policy and legislation affecting school-provided mental health services for youths, working closely with attorneys at Protection & Advocacy, Inc.²⁰³

pill to swallow than full-blown adjudicatory proceedings and attorney billings. Others are genuine believers in the arts of participatory decision-making or peaceful co-existence.

²⁰⁰ Clinical students confronted with the difficulties inherent in securing special education rights for children are eager to discuss alternative strategies for change, even when the effort to address the overwhelming demands of individual parents, and the irregularity of opportunities, makes this objective more elusive. Koski Interview, *supra* note 156. Professor Koski includes student discussion and implementation of strategies such as proposed legislation, in addition to test case and class action litigation. *Id.* Other clinics have afforded students the opportunity to file compliance complaints or litigate cases against school districts. Kruse et al. Interview, *supra* note 117 (Nevada Dep't of Education welcomes substantiated compliance complaints drafted by clinical students); Steel Interview, *supra* note 147 (Western Law Center with student externs successfully pursued litigation against San Bernardino County Office of Education for failure to provide FAPE for disabled juveniles in custody).

²⁰¹ A number of national coalitions have addressed the issues of increased federal funding and legislative changes to IDEA. See, e.g., the IDEA Rapid Response Network, a web-based listserv operated by DREDF, <http://64.143.22.161/rrn/rapid.html>. See also information distributed by the National Association of Protection & Advocacy Systems (NAPAS), <http://www.napas.org/publicpolicy/publicpolicyissues.htm>, and the Council of Parent Attorneys & Advocates (COPAA), an independent, nonprofit, tax-exempt organization of attorneys, advocates and parents established to improve the quality and quantity of legal assistance for parents of children with disabilities, http://copaa.net/policy_index.html.

²⁰² See, e.g., *Challenge & Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California* (2004), http://www.law.stanford.edu/clinics/yelc/YELP_Chapter_26-5_Report_May_20.pdf. Stanford Clinic Director Koski's students also worked on monitoring the *Emma C. v. Eastin* consent decree concerning massive and continuous local school district special education violations and weak California state agency oversight. See *Emma C. v. Eastin*, 985 F.Supp. 940 (N.D. 1997). For a complete account of the litigation and complementary strategies, see http://www.law.stanford.edu/clinics/yelc/YELP_ & COPAA Sixth Conference Materials (Mar. 11-12, 2004) at BRK-8-1 to 181 (on file with authors).

²⁰³ The California Legislature ultimately passed SB 1895, earmarking funds for local mental health services. One state agency official commented on the important impact the Stanford analysis had on state legislators and other policymakers. Remarks of Zoey Todd,

Likewise, many clinicians are interested in offering students the opportunity to do policy work.²⁰⁴ Professor Chai Feldblum, founder of Georgetown University Law Center's Federal Legislation Clinic, coined the term "legislative lawyer" to more accurately describe what others label a "lobbyist" or "public policy associate." Students in the clinic practice in a political advocacy context and aim to become adept at analyzing and drafting text, and understanding the political dynamics of legislative and administrative systems.²⁰⁵ Use of such an approach in the special education context enhances students' substantive knowledge of the IDEA, the Rehabilitation Act and other disability and education law, and provides students with opportunities to meet first hand with professionals and people with disabilities who are also players in these policymaking arenas.

(c) *Community Organizing and Alliance Building*

Special education clinics are well-suited to fostering parental group advocacy. After all, organized parents have played a significant role in the enactment and reauthorization of special education laws and have been the catalyst in seeing that schools address the needs of students with disabilities.²⁰⁶

Group advocacy encompasses anything from serving on a special education advisory committee or a consultative council set up under the No Child Left Behind Act²⁰⁷ to joining statewide disability or edu-

Children & Family Programs Policy, Calif. Dep't of Mental Health, webcast training session, (Nov. 17, 2004).

²⁰⁴ The University of Michigan Law School's child advocacy clinic, for example, helped draft part of the state's juvenile code. Duquette, *supra* note 123, at 17. Professor Duquette observes that not every legislative project is discrete enough for student handling, nor can the clinic always avoid contractual or political breaches, by acting as technical consultant rather than lobbyist. *Id.*

²⁰⁵ Chai Rachel Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 MCGEORGE L. REV. 785, 786 (2003). In her course on legislative lawyering, Professor Feldblum disaggregates the role of lobbyist into four separate and distinct players: strategist, legislative lawyer, policy researcher and (traditional) lobbyist. The work of the lobbyist is in turn complemented by an "outreach coordinator" or "grassroots organizer" and "communications person." *Id.*

²⁰⁶ Kotler, *supra* note 44, at 162; Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 30-37 (need for macro- as well as micro-advocacy).

²⁰⁷ 20 U.S.C. §§ 6316-7941 (2003). Under the NCLB Act, schools failing to demonstrate adequate yearly progress must develop school improvement plans. This must be done in consultation with parents—including those whose children are disabled—among others. 20 U.S.C. § 6316(e) (2000); 34 C.F.R. §§ 200.47(a)(5), 200.47(b)(2)(iii) (2003). The President's Commission on Excellence in Special Education, whose recommendations figured heavily in the recent IDEA reauthorization, urged that children with disabilities be considered "general education students first" and not left behind when it comes to federally mandated achievement testing and high standards. U.S. DEP'T OF EDUC., OFF. OF SPECIAL EDUC. & REHAB. SERVICES, A NEW ERA: REVITALIZING SPECIAL EDUCATION FOR CHILDREN AND THEIR FAMILIES 9 (2002). For a discussion of how the NCLB can be utilized to benefit

cation coalitions, *ad hoc* mass actions, agitation and mobilizations or forming on-going parent-led organizations.²⁰⁸ Some community organizers suggest that advocacy can also be encouraged through power-sharing and experience in more traditional and individualized activities such as educational planning, student support teams or study circles.²⁰⁹ Ultimately, this form of advocacy involves transforming mere parent "participation" into effective decision-making.²¹⁰ "Through one-on-one conversations, group dialogue and reflection, parents and other residents develop a strong sense of community, and learn how to use their collective power to advocate for school change."²¹¹

students with disabilities, see Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 26-30.

²⁰⁸ *Id.* at 30-37 (illustrations of local and state and federal forms of parent "macro-advocacy"). In a recent display of unity, a number of California organizations that focused on different aspects of educational equity, joined forces at the eleventh hour to oppose amendments to state regulations that would have restricted the ability of parents to file compliance complaints with the state department of education. See Californians Together/California Association for Bilingual Education (CABE) press release (Dec. 27, 2004) and exchange of e-mail messages between California Rural Legal Assistance, CABE, Public Advocates and Protection and Advocacy, Inc. (Jan. 3-4, 2005) (on file with authors).

²⁰⁹ Eric Zachary & shola olatoye, *A Case Study: Community Organizing for School Improvement in the South Bronx*, 2001 INSTIT. FOR EDUC. & SOC. POL'Y, NEW YORK UNIV. 6. See also M. Elena López, *Transforming Schools Through Community Organizing: A Research Review* 7-8 (Harvard Family Research Proj., Dec. 2003) (discussing various forms of schools-based organizing), available at <http://www.gse.harvard.edu/hfrp/projects/fine/resources/research/lopez.htm>. Successful organizing should also include development and implementation of a media plan. ROBERT BRAY, *SPIN WORKS!: A MEDIA GUIDE FOR COMMUNICATING VALUES AND SHAPING OPINION* 2 & 38-84 (2000). A special education clinic can also help teach media advocacy skills. See, e.g., RANDY SHAW, *RECLAIMING AMERICA* 251-87 (1999) (mobilizing strategies through media and internet); Michael S. Wald, *Comment: Moving Forward, Some Thoughts on Strategies*, 21 BERKELEY J. EMP. & LAB. L. 473, 475 (2000) (media strategy has to be part of any mobilization effort to shape public opinion on disability rights movement).

²¹⁰ Zachary & olatoye, *supra* note 209, Foreword (contrasting traditional parent involvement model with community-organizing model, which "talks unabashedly about building power and changing the culture of schools"). Parent *organizing* differs from *involvement* in a few key ways. First, the focus is on system change and school accountability on behalf of a group of students, rather than an individual child's success in school. Second, rather than relating to parents as individual consumers or "at risk" adults in need of repair, the organizer seeks to raise consciousness and increase parental awareness about the power to effect change. See, e.g., López, *supra* note 209, at 2. In her description of the distinguishing characteristics, the author delineates goals, roles, relationships and locus of power. *Id.* at 2-3. Third, education organizing focuses on the parents' power to act collectively in order to make change, to counter the "individualizing" tendencies of school personnel.

²¹¹ *Id.* at 2-3. See also Report of the Parent Self-Advocacy Working Group (Fordham Interdisciplinary Conference on Achieving Justice: Parents and the Child Welfare System), 70 FORDHAM L. REV. 405, 408-09 (2001) [hereinafter *Self-Advocacy Wkg. Grp.*] (through value- and skills-based training, professionals learn ways to empower parents to be strong and effective self-advocates). This is not to suggest that individualized strategies are *per se* coöptive or dispensable, as parents do need to support their youngsters' educational and therapeutic objectives. One middle school in a tiny California central coast school district, for example, makes effective use of an *enlace comunitario* (community liaison) to assist the

The academic literature addresses, to some extent, the role of an attorney in fostering client autonomy and empowerment and working with established groups or loosely organized groups. Commentators have explored the ambiguous and overused meaning of "organizing," the lawyer's role in that process,²¹² whether the attorney herself should take on an organizing function,²¹³ and whether the local organizing model for social change can sufficiently address racial isolation, poverty concentration or other identity concerns²¹⁴ (to name some of the issues that have relevancy in certain communities of parents of special needs children).²¹⁵

Good intentions notwithstanding, the skills needed to attain community organizing, coalition-building and global problem-solving skills are rarely found in the repertoire of most education advocates, legal services lawyers or clinicians. Such a form of practice demands a disciplinary perspective not to be found on most law faculties. There are few legal theoreticians or practitioners who teach students how to support community organizing. Among the exceptions are Professor Shin Imai of Osgoode Hall, who teaches students collaborative techniques to work with grassroots communities.²¹⁶ Collaboration requires more

large number of Spanish-speaking families in the intricacies of the academic, advocacy and bureaucratic processes. The *enlace*, herself a *Mexicana* and parent of a former student, relates very well to her constituents. Conversation between Margarita Alvarado, North Monterey Co. Unified Schl. Dist. and Stephen Rosenbaum (Dec. 17, 2004).

²¹² See, e.g., Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 460-69 (2001).

²¹³ *Id.* at 493-95, 500-01; Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COL. HUM. RTS. L. REV. 67, 123-26 (2000).

²¹⁴ Cummings & Eagly, *supra* note 212, at 480, 498. In their comprehensive analysis, these scholars also warn of the limitations of grassroots organizing with the advent of globalization and consolidation of corporate power. *Id.* at 465.

²¹⁵ Related to the need for organizing and mobilizing is the necessity of building alliances with other organizations that are not involved exclusively in special education or matters affecting persons with disabilities. Most organizers would agree that there is unity in numbers and more can be accomplished both long- and short-term if different interest groups unite around issues of common concern. See, e.g., Angelo N. Ancheta, *Review Essay: Community Lawyering*, 81 CAL. L. REV. / ASIAN L.J. 1363, 1393 (1993). See also Rosenbaum, *supra* note 26, at 193-94, for other examples of alliance-building.

²¹⁶ Through the experience of collaborative learning in class, "students should see the value of establishing a collaborative structure for their work in the community." Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLIN. L. REV. 195, 206 (2002). By undergoing a series of core communication and collaboration skills, Professor Imai's students have been trained for work mainly in indigenous and other communities of color in Canada. *Id.* at 201-24 (skills include practicing "plain English" and emotional engagement). Stephen Rosenbaum also teaches some organizing skills by using simulations in a longstanding law school course entitled Social Justice Skills and Practice Issues, which is a part of the clinical/skills and social justice curricula. See <http://www.law.berkeley.edu/courses>. On the limitations of skills courses for teaching about the institutional and other forces that shape clients' lives, see, e.g., Genty, *supra* note 167, at 282.

than calling a meeting, sitting in front of a room, outlining an issue and asking people what they think.²¹⁷ It is essential that special education advocates and organizers working in communities of color and immigrant and limited English circles understand this limitation and develop alternative models of collaboration.²¹⁸ Professor Katherine Kruse at University of Nevada, Las Vegas, writes about teaching skills for problem-solving for a client community²¹⁹ in what she calls the "larger context"—beyond the needs of individual clients.²²⁰

We must also turn to social workers²²¹ and professional organizers to teach about organization building, mobilization, education, consciousness raising.²²² This will require law schools to call on colleagues in social work, planning, education or other departments to augment the curricular offerings.²²³

²¹⁷ Imai, *supra* note 216, at 206. See also Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 10, on the need for more intensive and culturally-competent outreach ("go[ing] beyond workshops where a facilitator writes dutifully with colored markers on self-adhesive flipcharts . . ." and lawyers "talk[ing] alphabet soup . . . [to] polite audiences fortified by mediocre coffee and *pan dulce*. . .").

²¹⁸ *Id.* See also Aiken & Wizner, *supra* note 171, at 65 (social workers learn skills including participation in decision-making, cross-cultural awareness and consideration of "the 'system' within which the client exists").

²¹⁹ Katherine R. Kruse, *Biting Off More Than They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405, 408-09 (2002). Her methodology is applicable to students engaged in staffing *pro se* assistance centers, community education projects, legislative reform and other projects addressing clients' underlying politico-economic situations. Kruse emphasizes the need to see a project through to completion and recognizes that the students' lack of background and experience may lengthen the problem-solving process. *Id.* at 430 and Kruse et al. Interview, *supra* note 117.

²²⁰ As unstructured and unfamiliar as this may be for clinic students—compared with the traditional individual client representation model—Professor Kruse uses strategies of compartmentalization, connection, collaboration and continuity to build skills. Kruse, *supra* note 219, at 430-40. This is now commonly referred to as "thinking outside the box," *id.* at 427, 431 (a phrase that has been largely appropriated by establishment planners and thinkers) or "outside of it all." See Rosenbaum, *Aligning or Maligning?*, *supra* note 3, at 30 n.162. In the end, this will allow students "to leave school with a personal and professional responsibility to act as "problem-solvers for social justice issues." Kruse, *supra* note 219, at 433.

²²¹ Professor Galowitz catalogues the possible roles played by social workers, citing early advice given to legal aid lawyers by Heather B. Craig & William G. Saur, *The Contribution of Social Workers to Legal Services Programs*, 14 CLEARINGHOUSE REV. 1267, 1269 (1981). This would include teaching lawyers about working with community groups and community analysis. Galowitz, *supra* note 171, at 2131. See also Aiken & Wizner, *supra* note 171, at 65-66 (empowerment of groups and communities, and pursuit of social and economic justice and reform are central to social workers' professional obligations).

²²² Cummings & Eagly, *supra* note 212, at 481-84. The authors "unpack" in useful detail the meaning of the otherwise overarching term "organizing." They include legislative advocacy as an organizing component, *id.* at 481-82, whereas Professor Feldblum counts mobilizing or grassroots outreach as a part of effective legislative advocacy. Feldblum, *supra* note 205, at 786, 801.

²²³ This presents another interdisciplinary opportunity. Professor Sedillo López, *supra*

Involvement in systemic change activities may be more appropriate for students who already have been immersed in individual case advocacy and are returning to the clinic for an additional semester.²²⁴ Whenever that occurs, it is an excellent opportunity to learn community lawyering. This stands in contrast to the traditional advocacy model that most students take away from their law school experience generally, and from individual service clinics in particular.²²⁵

(d) *Education of Parents and Lay Advocacy Training*

Special education representation, unlike many other kinds of legal practice, requires attorneys to draw on their role as counselor in aiding families to obtain an appropriate education in the long term.²²⁶ As indicated above, successful parent advocacy for one's special education child demands not only an understanding of education rights and awareness of protections against discrimination, but also an understanding of a child's disability,²²⁷ how schools and other bureaucracies function, and how to articulate one's objectives and objections effectively.

Special education attorneys frequently provide parent education in the form of training classes and distribution of literature.²²⁸ At least one private attorney requires parents to take a class in parent special education law and advocacy as part of his representation.²²⁹ Others have "homework" for client parents to help them acquire a better understanding of specific rights, learn to relate these rights to their own child's needs, and contribute to the specific representation.²³⁰ Still other attorneys have information links on web sites or

note 83, at 325, is among the clinicians who stress the importance of students learning to "seek out solutions from other disciplines, or engage in community organizing and empowerment" when working with client communities.

²²⁴ Kruse et al. Interview, *supra* note 117.

²²⁵ The arguments for encouraging organizing among parents notwithstanding, we must recognize and respect the limitations of this model for resolving what are frequently particularized school placement and service issues. See, e.g., *Surviving Due Process: Stephen Jeffers v. School Board* (Wrightslaw DVD, 2004) (in preparing for hearing, attorney tells parent clients to "look out for *your* child . . . don't do it as a point to help other children. . .").

²²⁶ The ABA Model Rules of Professional Conduct, Rule 2.1 cautions that "[p]urely technical advice . . . can sometimes be inadequate."

²²⁷ Similar to the social work-lawyer division alluded to above, there is a conceptual distinction between those who believe an advocate must be intimately familiar with all aspects of a disability and therapeutic interventions and those who see their role as marshalling the best resources on behalf of a pupil and family.

²²⁸ Informal conversation between Patricia Massey and attorneys at COPAA Sixth Conference, San Francisco (Mar.12, 2004). See also *Surviving Due Process* (DVD), *supra* note 225.

²²⁹ Reported to PHP education staff member by a parent caller (1999).

²³⁰ Survival Guide for New Special Education Attorneys (Training), COPAA Sixth Con-

encourage parents to connect with parent support organizations during or after representation.²³¹ These “best practices” acknowledge the fact that the parent will continue in his advocacy role long after a particular special education dispute is resolved, and that it is neither necessary nor desirable to engage the services of an attorney every time a disagreement with a school district arises.

This kind of client counseling has helped to expand the number of parents and other lay people²³² who can serve as effective self- and peer-advocates at IEP meetings, in mediation or other ADR venues. As noted above, however, there is still a great need to augment the ranks of these advocates in culturally marginalized communities. Clinics can and should be more involved in this education and advocacy training effort. In Buffalo, parents assisted by a special education clinic can participate in a lay advocates training.²³³ At Loyola’s Learning Rights Project, parent training is an integral component.²³⁴

Child Advocacy clinics offer the greatest potential for self-advocacy.²³⁵ Law student clinicians may be able to work in partnership with other service providers incorporating parent advocacy training in the context of health care or counseling activities related to other systems of care. Integrating special education rights with other needs of the child gives parents the skills to learn how to advocate in different venues, such as hospitals, welfare departments, regional centers for developmentally disabled youth and schools.²³⁶

ference (Mar. 11-12, 2004).

²³¹ See, e.g., <http://www.wrightslaw.com/> and <http://www.reedmartin.com/>.

²³² The special education legal community and the bar generally do not uniformly support lay advocacy outside of the IEP consultation and negotiations forum. See, e.g., In re Arons, 756 A.2d 867 (2000) (upholding disciplinary counsel’s ruling that IDEA does not authorize lay advocacy; due process representation by nonlawyer advocates and parent information center constitutes unauthorized practice of law). Nonetheless, in most jurisdictions, Parent Training and Information Centers (*supra* note 43), and lay advocates are not barred from assisting families at administrative hearings. See, e.g., N. J. ADMIN. CODE §1:6A-5.1.

²³³ Telephone Interview with Jeffery Marcus, Clinical Instructor, State University of New York at Buffalo Law School (Mar. 2003).

²³⁴ Steel Interview, *supra* note 147.

²³⁵ We were unable to identify any clinic of the child advocacy prototype that emphasizes the teaching of self-advocacy skills.

²³⁶ See Enos & Kanter, *supra* note 170, at 100 (increasing number of legal programs use multidisciplinary approach to service delivery by partnering with other professionals). See also CADRE, *Steps to Success: Communicating with Your Child’s School* and *Los Pasos hacia el Exito: Como Comunicarse con la Escuela de Su Hijo*, available at <http://www.directionservice.org/cadre/>. This 6-step guide is disarmingly simple in its preparation of self-advocates for encounters with educators: “Clarify your statements if you see a puzzled expression on someone’s face and ask for clarification in return. . . . [W]ords that recognize the desires and difficulties for schools to meet every child’s needs, while refocusing on your child, can lead to a greater willingness . . . to say ‘yes’ to you and for your child.” *Id.*

Although self-advocacy training takes place to some degree in the context of counseling and individual representation, lay advocacy training for groups of former clients and community members can contribute greatly to enhancing parent skills and the capacity of school-based constituencies.²³⁷ Special education-only clinics, in particular, have embraced this as a way to serve the client community and provide unique learning opportunities for law students. The State University-Buffalo offers in-depth parent training through a lay advocate certification program that enables former client parents to help other parents become more effective advocates for their children.²³⁸ The Western Law Center's Learning Rights Project offers training as a component of its services.²³⁹

One law school offers advice clinics within a larger live-client framework.²⁴⁰ The advice clinics provide training, information and self-help strategies to those whose cases are not selected for direct representation.²⁴¹

Yet, for parents whose children have complex needs or life-threatening conditions, being able to "delegate" concern for the child's education may be desirable and even necessary. The involvement of an outside advocate may also be essential in system-focused clinics in those cases in which financial problems or competing time demands or other impediments prevent parents from effectively serving as an advocate or in which parents would be disinclined to do so and would have to be compelled by a juvenile court order. Parents who anticipate that their relationship with a child will not be long-term (for example, foster parents and sometimes even the biological

²³⁷ See Lilliam Rangel-Díaz, *Ensuring Access to the Legal System for Children and Youth with Disabilities in Special Education Disputes*, 27 HUMAN RIGHTS 17, 21 (2000) (calling for training more lay advocates for special education with public funds).

²³⁸ Marcus Interview, *supra* note 233. See *Self-Advocacy Wkg. Grp.*, *supra* note 211, at 408 (law schools and other institutions of professional education should be "targets of parents advocacy efforts"); Rangel-Díaz *supra* note 237, at 19, 21 (recommending law school-administered lay certification programs and parent empowerment training). See text accompanying notes 206-25 *supra* for a discussion of how clinic students can engage in community organizing and mobilizing to accomplish common educational objectives.

²³⁹ See text accompanying notes 160-61 *supra*. Clinics may also want to conduct regular training for case workers, educators, therapists, probation officers and other professionals in special education advocacy skills. Training for paralegals and other paraprofessionals should also be considered, notwithstanding the strong bias by the private bar and others against what is often viewed as unauthorized practice of law. See *supra* note 232.

²⁴⁰ Dalton Interview, *supra* note 143. The use of supervised students in an advice and referral role is not unusual. This is the practice, for example, for student law clerks and externs at Protection & Advocacy, Inc. Professor Gary G. Neustadter of Santa Clara University, however, espouses a strict and minority view on this role by students, believing that attorneys must directly oversee the dispensation of any advice to clients. Conversation with Stephen Rosenbaum (Sept. 23, 2004).

²⁴¹ Dalton Interview, *supra* note 143.

parents of delinquent youths²⁴²) may not have an adequate incentive to invest the time to hone skills that can be used in the future to advocate for the child within the educational system.

B. Students in The Clinic

(1) Law Student Selection

Client needs and pedagogical objectives drive the criteria for determining student enrollment in clinics. In addition to completing prerequisite courses, law students must have the maturity to deal with highly charged issues and the ability to examine their own disability bias.²⁴³ Some clinics require prerequisites or concurrent courses in special education law, disability law or, less frequently, education law.²⁴⁴ Whittier, Pepperdine and State University-Buffalo use this model.²⁴⁵ Fordham has adopted a variation, in which students are required to take a course in lawyering skills, including interviewing, counseling, negotiation skills, and case and document preparation. The substantive law is covered in the clinic seminars.²⁴⁶ The remaining clinics usually assign foundational readings in disability law and disability rights early in the clinic course.

At Rutgers' special education clinic, nearly all of the students have prior personal or work-related experience with disability or education. Maturity and sensitivity are deemed to be critical traits for building productive student-client relationships in the special education arena, where parents can be very "emotional."²⁴⁷

Rather than requiring prior coursework or experience, some clinics assign a high number of academic credits, with the assumption that students will invest a greater number of hours in the course, learning substantive law as well as clinical skills and values. Stanford, Rutgers, and University of Nevada adopt this approach, allocating six to eight credits to clinics. These courses include a substantive law and policy seminar as well as supervised case assignments.²⁴⁸ Less frequently,

²⁴² In Santa Clara County, parents of delinquent and dependent youth rarely, if ever, took advantage of specially designed parent advocacy programs offered by Project YEA! and the Educational Rights Project, resulting in the discontinuance of many of these programs.

²⁴³ See text accompanying notes 75-78, 93-110 *supra*. It is also imperative that clinics seek out law students of color and those with second language skills, if we are to transform the corps of attorneys who represent (marginalized) clients with disabilities.

²⁴⁴ Appendix 2.

²⁴⁵ Goetz Interview, *supra* note 128; Peterson Interview, *supra* note 130; Marcus Interview, *supra* note 233.

²⁴⁶ Schwartz Interview, *supra* note 124.

²⁴⁷ Cauty-Barnes Interview, *supra* note 152. The emotional content of the work has been noted in other clinics devoted to child and family representation. See, e.g., Duquette, *supra* note 123, at 17-19.

²⁴⁸ Appendix 2.

participation in a special education clinic requires a two-semester commitment. At Buffalo, for instance, students take the course for three units in the fall and for three to four units in the spring.²⁴⁹ All of the clinical programs we surveyed allow clinical students to repeat the course for credit, with the number of units for a second semester varying from two to six. Only one director mentioned the opportunity for part-time night students to participate in the clinic.²⁵⁰

All clinicians desire that their students eventually apply the skills they acquired at law school in their profession—and many would want that application to be in the interest of social justice. Some of the clinicians in the special education field have expressed a particular objective to “grow the practice”—and now more than ever in light of IDEA 2004. This may influence student selection.²⁵¹

Clinicians recognize that more must be done to support growth in practice.²⁵² Some highly competitive clinics with limited enrollment give priority to students who are most likely to utilize the experience in future child advocacy, educational policy, juvenile justice or related work. At Rutgers, students have been placed in settings as diverse as the Attorney General’s Office and local school boards.²⁵³ At Stanford’s Youth & Education Law Clinic, preference is accorded to students with a special interest in education, children’s law or policy.²⁵⁴

²⁴⁹ Marcus Interview, *supra* note 233.

²⁵⁰ Canty-Barnes Interview, *supra* note 152. See text accompanying note 262 *infra* for a discussion of part-time student involvement. Professor Mohr of the University of Nevada indicated that her law school has part-time clinic students, although most are daytime students who work at night. Kruse et al. Interview, *supra* note 117.

²⁵¹ A founding clinic student at Pepperdine, for example, currently practices disability law with non-profit legal services provider, PAI. Telephone Interview with Anahid Hoonanian (Mar. 2003). Two former Pepperdine students started a private practice in southern California. Four years later, they face such high demand for their services that they turn away potential clients. Goetz Interview, *supra* note 128. Similarly, Loyola graduates who participated in the Educational Rights Project find that their clinic work allows them to easily transition from graduate to practicing attorney. Steel interview, *supra* note 147. The growth in practice is not limited to those who come to law school knowing this is something they want to pursue. Margaret Adams attributes her decision to enter the field of special education law to her experience in the University of San Diego’s Special Education Clinic. Adams, first admitted to the California Bar in 2002, had originally intended to practice real estate law. In 2004, however, she received the State Bar of California 2004 Jack Berman Award of Achievement for Distinguished Service to the Profession and the Public for her more than 440 hours of *pro bono* special education representation of children of the juvenile court. Diane Curtis, *In a Second Career, Special Education Advocate Wins Jack Berman Award*, CALIF. BAR J., Nov., 2004.

²⁵² Breger et al., *supra* note 174, at 532. Another important aspect of a pediatric law program is the support of law students and graduates’ careers. Job opportunities must be identified and new lawyers must be introduced to the national network of private and public law offices that represent children. New lawyers must also be offered continuing legal education and other resources to maintain their specialized knowledge and skills. *Id.*

²⁵³ Canty-Barnes Interview, *supra* note 152.

²⁵⁴ Koski Interview, *supra* note 156. Two Stanford student symposium participants—

University of Nevada clinicians, who have an explicit objective of enlarging the small pool of juvenile law practitioners, including special education attorneys,²⁵⁵ report that the clinic experience is so empowering that they do not need to rely on preferential selection.²⁵⁶ Students are interviewed as to their ability to meet the time demands and what they hope to gain from clinic participation. The desire to gain legal experience and/or commitment to the demands of a clinic helping needy children are the key selection criteria. The new special education clinic is developing a mentoring program for graduates who make a two-year *pro bono* service commitment. These new lawyers will have access to clinic social work and education resources and professional mentoring by clinical faculty after they complete law school. The program also expands both the clinic's representation capacity and the special education private practice bar.²⁵⁷ The experience in representing children "inspires and nurtures altruism"²⁵⁸ and helps students understand the lawyer's responsibility to serve the community and underrepresented clients.

In another model, the Law School Consortium Project at the University of Tennessee helps new graduates and solo and small firm special education attorneys.²⁵⁹ Clinical fellowships for upper-division law students and recent graduates foster professional development at a number of clinics.²⁶⁰ Other strategies for increasing the ranks of special education practitioners include continuing legal education programs sponsored by clinics for attorneys practicing in the areas of

one, a former special education teacher and the other, the sibling of a person with a disability—related how as 1Ls they had positioned themselves for selection for enrollment by highlighting their personal experience and interest in practice. Conversation with Patricia Massey, *Santa Clara Law Review* Symposium (Feb. 2003). One of these students was later awarded a Skadden, Arps Fellowship upon graduation to establish a legal services organization program addressing the mental health needs of students with disabilities.

²⁵⁵ Kruse et al. Interview, *supra* note 117. Faculty at the University of Nevada's Boyd School of Law indicated that when the clinic began in 2001 there was only one juvenile public defender in the area and few private practitioners representing special education students.

²⁵⁶ *Id.* Of five newly hired juvenile public defenders, four were clinic participants, and a newly hired district attorney serving juveniles is also a clinic graduate. *Id.*

²⁵⁷ *Id.* In a state with few large law firms, most graduates of Nevada's only law school will enter the profession as solo or small firm practitioners. *Id.* See also Breger, *supra* note 174, at 540 & 545-46 (emphasizing importance of mentoring of new attorneys in expanding pediatric practice).

²⁵⁸ Duquette, *supra* note 123, at 12.

²⁵⁹ Rivkin Interview, *supra* note 118. The Children's Advocacy Project is the University of Tennessee College of Law's contribution to the Law School Consortium Project. For a project description, see <http://www.lawschoolconsortium.net/members/models/univoftn.html>.

²⁶⁰ Georgetown and University of Nevada-Las Vegas sponsor CLE programs. See <http://www.law.georgetown.edu/clinics/fac/index.html> (visited May 17, 2004); Kruse et al. Interview, *supra* note 117.

family law, delinquency and dependency.²⁶¹

(2) *Part-Time Students: The Untapped Potential*

Part-time students, who are often older and parents themselves, can bring emotional maturity, life experience, and perspective to legal advocacy on behalf of children and their families.²⁶² Although few schools offer clinical opportunities to part-time students, we need not presume that there are inherent barriers to part-time student participation. In an effort to provide equal curricular opportunity,²⁶³ some law schools are discovering that the associated logistical challenges can be overcome.²⁶⁴ Both clients and law students can derive benefits from clinic scheduling and accommodations for part-time law students²⁶⁵ and a special education clinic may be particularly well-suited to providing flexible learning and practice opportunities.

Providing live-client experiences to part-time students allows them to acquire practice skills, now recognized as a significant component of legal education,²⁶⁶ which are often difficult for part-time law students to obtain. Since most of these students are employed during the standard work-day, few can easily adjust their schedules to take advantage of typical clinic courses. For this same reason, they are often unable to register for summer internships or judicial externships. Emphasis should therefore be placed on finding a practice that permits clinical work to be done in the evenings and on weekends, supplemented by phone contacts, e-mail communications, and occasional meetings with key individuals. A legal practice limited to special education representation, unlike juvenile delinquency or dependency practice, has precisely these characteristics.

While most traditional legal business—e.g., court appearances and conferences with counsel—is conducted during the day, client meetings with working parents are often more conveniently scheduled at night or on weekends or holidays.²⁶⁷ In the experience of many

²⁶¹ Breger et al., *supra* note 174, at 532.

²⁶² Comments of Professor Mohr; Kruse et al. Interview, *supra* note 117.

²⁶³ Objective of AALS Part-time Division, <http://www.law.capital.edu/parttime/> (visited Apr. 2004).

²⁶⁴ "Clinical Education for Part Time Programs," AALS Annual Meeting, Atlanta, January 5, 2004 [hereinafter "AALS Panel"]. The presentation panel was composed of Professors David Chavkin, American University; Michele Gilman, University of Baltimore; Arthur Leavens, Western New England College; and Raven Lidman, Seattle University.

²⁶⁵ Canty-Barnes Interview, *supra* note 152 (part-time students at Rutgers-Newark can re-enroll for 4 units; full-time students can repeat for 6 units).

²⁶⁶ See, e.g., "MacCrate Report," *supra* note 81. Among other things, the much acclaimed report examined public and professional expectations of lawyers, the skills and values they need to fulfill those expectations, and how they go about acquiring skills and values during and after law school.

²⁶⁷ There will be some necessary daytime appearances—including attendance at IEP

parent training centers, parents frequently request phone and drop-in support on evenings and weekends. Furthermore, many lower-income or blue collar clients have less ability to take calls during the work day and are at greater risk of losing their jobs if they leave the workplace to address school issues. Flexible scheduling could thus benefit both the part-time law student and the parent of a special needs child.²⁶⁸

There are other aspects of special education law and procedure that are conducive to the part-time practitioner. Much of the fact-gathering, for example, is routinely conducted by means other than in-person interviews. IDEA authorizes written records requests.²⁶⁹ Independent consultants, who might review evaluations and make recommendations, frequently prefer to review the records and then prepare a report or communicate their information by phone or internet. Increasingly, teachers and administrators use e-mail and faxes to communicate with busy parents. This has the added benefit of creating a "paper trail" to document the school's awareness of the child's disability and the extent and character of the academic interventions offered to her.

The IDEA requirements that parents receive advance notification of formal meetings and that meetings be conducted at a time convenient to the parent²⁷⁰ permit the part-time law student and her parent client to set meeting times that accommodate both of their schedules. If cases are assigned to teams rather than to individual part-time students, clients can be assured of competent and consistent counsel.²⁷¹

meetings, mediations, or administrative hearings. However, law schools with part-time clinics report that, given the value students place on in-person representation, they are usually able to negotiate some time off with their employers if meetings or appearances are scheduled in advance. AALS Panel, *supra* note 264.

²⁶⁸ In order to facilitate clinical participation by part-time students, the law school must consider the availability of faculty for course instruction and supervision during evening and weekend hours. *Id.* Professor Mohr commented on the need to plan for evening and weekend supervision for part-time students as she develops an Education Clinic at the University of Nevada, involving representation in special education and school discipline matters. Kruse et al. Interview, *supra* note 117. A law school with an existing "day time" clinic may find that increased utilization of the clinic facilities is a benefit associated with a part-time clinical component.

²⁶⁹ Parents or their representatives have a right to inspect, review, and obtain copies of all educational records. 20 U.S.C. §1415(b)(1); 34 C.F.R. §300.501; CALIF. EDUC. CODE § 49069. California state law requires that these records be provided within five days of a written or oral request. CALIF. EDUC. CODE §§ 49069, 56504.

²⁷⁰ 34 C.F.R. § 300.345(a) (parents must be notified of meeting early enough to ensure opportunity to attend, and meeting is to be scheduled for mutually convenient time and place).

²⁷¹ Professor Gilman suggests that teaming part-time students allows one or both of them to attend all client-related meetings or appointments. AALS Panel, *supra* note 264.

In addition to assuring meeting coverage, most special education clinic directors indicate they prefer team assignments as a way to furnish the law student advocate with some peer support when assisting parents who are confronting highly charged issues related to their child's disability.²⁷²

Some schools offer these part-time oriented clinics for a high number of credits, with part-time students being limited to enrollment in only one other class. Students are then better able to make the "massive time commitment"²⁷³ required for competent clinical learning and representation.²⁷⁴

Most special education representation occurs during the traditional public school year from late August to mid-June. Scheduling the clinic course exclusively during the fall and winter semesters would enable part-time students—who typically take summer courses—to enroll in required bar classes while benefiting from the clinical learning experience during their time in law school. Although the calendaring of mediation sessions and hearings is not limited to the academic year, careful case selection can limit the need for the supervising faculty to complete representation during the summer months. This is just another consideration that makes a special education clinic a suitable option for part-time law students.

C. Clinic Funding and Costs

As noted above, the crisis in disabled pupils' access to justice reaches beyond the poorest families into the working poor and middle classes.²⁷⁵ Not surprisingly, nearly all the surveyed clinical programs offer representation or other special education services to low-income clients, based on LSC or other financial guidelines. Given that most special education youth and their families are legally disadvantaged,²⁷⁶ an argument could be made for utilizing a sliding scale. This

Professor Peterson of the Pepperdine clinic likes to pair an inexperienced student with an experienced one. Peterson interview, *supra* note 130. See also Schrag, *supra* note 120, and Sedillo López, *supra* note 83, on the value of teaming.

²⁷² On the grieving and coping that accompany the birth and care of a child with a disability, see Audrey T. McCollum, *Grieving Over the Lost Dream*, in *THE EXCEPTIONAL PARENT* 9 (Feb. 1984); Jerry Adler, *What If Your Worst Nightmare Came True?*, *ESQUIRE* 147 (Jun. 1988).

²⁷³ AALS Panel, *supra* note 264.

²⁷⁴ University of Nevada part-timers enrolled in the 6-unit clinic carry a maximum course load of 9 units. Under this scheme, clinic participation encompasses a substantive law seminar and live-client clinic hours, as well as supervisory meetings. Kruse et al. Interview, *supra* note 117.

²⁷⁵ See text accompanying notes 55-60 *infra* for a discussion of financial challenges faced by middle-class parents seeking special education representation.

²⁷⁶ See John Bradway, *The Legally Underprivileged*, 10 CAL. W. L. REV. 228 (1974) (coining term "legally underprivileged" for lower-income—not indigent—persons denied

would both increase access and defray some of the costs. Monetary contributions can also result in greater client responsiveness and investment in the matter.²⁷⁷ Outside of the usual legal services operating expenses, most clinic directors we interviewed consider special education clinics to be relatively inexpensive. The funding devices are typical for law school clinics.²⁷⁸

The IDEA, however, offers some unique features to supplement other sources of funding and increase access to services for the poorest and otherwise marginalized clients. Expert or consultant fees are some of the larger and more variable costs. Experts are essential for evaluation and testimony concerning appropriate programs and services. A key parental right under IDEA is to request, when necessary, an independent educational evaluation at district expense,²⁷⁹ and many clinics rely almost entirely on this IDEA provision to minimize costs.

There are other funding mechanisms. For instance, Hastings has utilized experts who provide services on a *pro bono* basis or in anticipation of school district reimbursement.²⁸⁰ Buffalo seeks low-cost providers who bill the parents in some cases.²⁸¹ The Stanford clinic budgets \$9,000 annually for experts in order to expedite cases.²⁸² Georgetown uses accumulated attorneys' fees awards to obtain expedited independent evaluations for new client families.²⁸³ Whittier looks to school districts for reimbursement, but also is able to fund evaluations through its regional center agency contractor.²⁸⁴ On the

justice due to inability to obtain legal representation). See also Stephen Wizner, *Can Law Schools Teach Students to Do Good? Legal Education and the Future of Legal Services for the Poor?*, 3 N.Y. CITY L. REV. 259 (2000) (identifying role of law schools in making students aware of lack of affordable legal services for most individuals of modest means and resulting injustice).

²⁷⁷ Matthew Cohen & Franklin Hickman, *Survival Guide for New Special Education Attorneys Training*, COPAA Sixth Conference Materials, *supra* note 230.

²⁷⁸ The University of Nevada, Hastings and Stanford fully fund their clinics out of the law school budget. Kruse et al. Interview, *supra* note 117; Goishi Interview, *supra* note 131; Koski Interview, *supra* note 156. State grants have been critical to Seattle University and State University-Buffalo. Rosenfeld Interview, *supra* note 115; Marcus Interview, *supra* note 233. The Whittier clinic is financed almost entirely through its contract with the regional center, which funds two clinician salaries and pays for pupil evaluations where necessary. Goetz Interview, *supra* note 128.

²⁷⁹ 20 U.S.C. §1415 (b)(1); 34 C.F.R. §§300.502(ii)(b) (parent who disagrees with evaluation obtained by public school district has right to request independent educational evaluation at district expense).

²⁸⁰ Goishi Interview, *supra* note 131.

²⁸¹ Marcus Interview, *supra* note 233.

²⁸² Koski Interview, *supra* note 156.

²⁸³ See <http://www.law.georgetown.edu/clinics/fac/index.html> (visited May 17, 2004). Attorneys' fees have also been used to fund tutoring and speech and language services. See text accompanying note 28 *supra* on availability of fees.

²⁸⁴ Goetz Interview, *supra* note 128. See also *supra* note 130 (clinic funding scheme).

other hand, the University of Nevada is able to capitalize on the assessment capabilities of its interdisciplinary faculty or student staff. This not only expedites evaluations, but reduces the need for outside funding.²⁸⁵

Clinics are under increasing pressure to develop new sources of operating funds in the face of federal and state budgetary crises. The State University-Buffalo director, Jeff Marcus, is redesigning his clinic operation to take advantage of the attorneys' fees provisions of IDEA and will begin charging minimal fees to some clients.²⁸⁶ One of the two Special Education Clinic attorney positions at Rutgers-Newark is funded by the New Jersey Bar Foundation, while the law school funds the other. Director Canty-Barnes observes that while attorneys' fees are not critical to her clinic's funding, she seeks them as part of her litigation strategy in cases in which school district conduct was particularly egregious.²⁸⁷

Funding decisions may also have implications for the extent and character of disability awareness. Clinics that restrict service to a particular range of disabilities may influence law students' awareness of the wide range of discrimination that may be experienced.²⁸⁸ For example, students handling cases at a clinic financed by a regional center, such as Whittier's or Pepperdine's, will be exposed exclusively to legal, personal and technical issues involving cognitive and other developmental disabilities. Those who intern at the Western Law Center's Learning Rights Project will become familiar with learning-disabled pupils. Clinic students working in juvenile justice clinics are more likely to gain awareness of the capacities and limits faced by delinquent youth with learning disabilities, ADD/ADHD, and emotional disturbance.²⁸⁹

IV. SOME CONCLUDING REFLECTIONS AND SUGGESTIONS FOR CLINICIANS ON CREATING A CLINIC FOR YOUTH WITH SPECIAL EDUCATIONAL NEEDS

A law school's decision about the kind of clinic it wants to establish necessarily turns on the goals the school seeks to accomplish. We have described a variety of practice models that address the twin needs of serving clients and increasing student awareness about disa-

²⁸⁵ Kruse et al. Interview, *supra* note 117.

²⁸⁶ Marcus Interview, *supra* 233. See also *supra* note 28 regarding the bases for attorneys' fees under IDEA.

²⁸⁷ Canty-Barnes Interview, *supra* note 152. The New Jersey Bar Foundation was an initial donor to the Rutgers clinic. The University of Nevada is also pursuing attorneys' fees in settlement agreements. Kruse et al, Interview, *supra* note 117.

²⁸⁸ See *supra* note 91.

²⁸⁹ See text accompanying notes 145-50 *supra*.

bility and able-ism, as well as other structural and service considerations in support of those needs.

One way to gauge whether the service need is met is to look at client outcomes. Although there are no overall survey data, all clinic directors with whom we spoke reported considerable success in improving compliance with IDEA on behalf of their clients.

Special education clinics can, and are, protecting the educational rights of children. Meredith Goetz, Director of the Special Education Clinic at Whittier reported that in a recent year, her clinic students closed 107 cases. Of those cases, 100 were resolved in favor of the parents at IEP negotiations or at mediation. Of the remaining seven that went to due process hearings, the hearing officer ruled for the parents in all seven cases.²⁹⁰ Similarly, Esther Canty-Barnes reports that the Special Education Clinic at Rutgers-Newark School of Law has a "substantial impact upon whether parents obtain an appropriate education for their children."²⁹¹ Community-based lay advocates report that the work of law students at Stanford's clinic provides desperately needed representation.²⁹² The desired outcome for *clinics* is the implementation of student clients' individualized educational programs.²⁹³

A measure of the impact clinics have had in addressing the advocacy needs of disabled youth can be found in the favorable view that legal practitioners and others have expressed about clinical student representation. One California special education mediator commented that law students bring professionalism and "legal thinking" to mediation, helping parents become effective participants. He also observed that school districts are respectful of law students who represent clients and suggested that the student's presence balances the power of the parties in ways he is not able to do in his role as mediator.²⁹⁴

A supervising attorney at the non-profit legal services organiza-

²⁹⁰ Goetz Interview, *supra* note 128. An activity report for an 18-month period in the Whittier clinic shows that parents prevailed in 75% of the referred cases, and school districts prevailed less than 2% of the time. The disposition of the remaining cases includes referrals to private attorneys and case closures due to contact problems or lack of legal issues. *Whittier Special Legal Clinic Memorandum Re: Special Education Legal Clinic - Academic Year 2002-2004* (on file with authors).

²⁹¹ Canty-Barnes, *supra* note 152.

²⁹² Solorzano and Mlawer conversations, *supra* note 60; Interview with Jane Floethe-Ford, Coordinator of Education Resources & Jocelyn Penner, Education Resources Specialist, PHP (Dec. 2003).

²⁹³ In the words of one director, the "legal representation provided by the clinic has a substantial impact upon whether parents obtain an appropriate education for their children." "Rutgers Special Education Clinic Overview," prepared by Professor Canty-Barnes (on file with authors).

²⁹⁴ Newcomb Interview, *supra* note 45.

tion DREDF indicated that clinic students can be effective advocates.²⁹⁵ According to the clinic director at the State University of New York-Buffalo, a student's mere presence increases school district respect for parents at IEP meetings.²⁹⁶ A regional center administrator, who funds a clinic with a high rate of success, commented that even families that initially express displeasure about working with law students in lieu of lawyers, are at ease once they are helped by them.²⁹⁷

As noted above, clinics are also having an impact in expanding the extent of special education practice. A number of former California clinical students have obtained fellowships or are currently in public interest or private practice with a concentration in special education or disability.²⁹⁸ Law schools have established post-graduate networks of support and continuing legal education.²⁹⁹ Where the pool of special education or juvenile law practitioners has been small, clinics have been able to increase the ranks.³⁰⁰

We have also shown in earlier sections that choices about the clients to be served and the types of cases to be handled will affect service need. Income guidelines, type of disability, resolution at IEP meetings or at due process hearings all have an impact on client service.³⁰¹ Clinic funding has an obvious effect on the volume of service and the quality of supervisory staff.³⁰² Partnerships with entities outside the law school can harness additional resources, but may result in a diminution in the quality of oversight of student work.³⁰³ Cross-disciplinary clinics can enhance representation by expanding the types of services offered and the quality of the counseling.³⁰⁴ Similarly, clinics with non-traditional office hours can more easily serve working families.³⁰⁵ Clinics that teach alternative forms of advocacy, ranging from the "micro" and informal, individualized dispute resolution, to the "macro," group-based organizing, will influence the service needs of special education students and families.³⁰⁶ Parent education and training—although more challenging in the juvenile court venues and perhaps for families disadvantaged by language,

²⁹⁵ Kilb Interview, *supra* note 136.

²⁹⁶ Marcus Interview, *supra* note 233.

²⁹⁷ Sullivan Interview, *supra* note 146.

²⁹⁸ See text accompanying note 251 *supra*.

²⁹⁹ See text accompanying notes 252, 257 & 259 *supra*.

³⁰⁰ See text accompanying notes 255-57 *supra*.

³⁰¹ See text accompanying notes 141-50, 154-56 & 275-76 *supra*.

³⁰² See text accompanying notes 280-86 *supra*.

³⁰³ See *supra* notes 162, 166 & text accompanying notes 165-68 *supra*.

³⁰⁴ See text accompanying notes 170-73 & 179-81 *supra*.

³⁰⁵ See text accompanying notes 265, 267-68 & 270 *supra*.

³⁰⁶ See text accompanying notes 189-225 *supra*.

class and educational background—can have an enormous effect on the numbers of students served and their long-term effectiveness in school-based advocacy.³⁰⁷

Dealing with dis-awareness also turns on a number of the structural factors discussed above. Among the most significant are the choice of clients to be served and the types of cases to handle. Although advocates have worked hard to build a cross-disability movement and de-emphasize the particular disability and attendant labels, the fact remains that confronting emotional disturbance is not the same as relating to persons with mental retardation or mobility impairments.³⁰⁸ Interdisciplinary staffing will expose students to a range of specialists who can help the students gain a better understanding of the social, medical and cultural aspects of living with a disability.³⁰⁹ Through parent education, like any intensive client counseling function, law students will learn effective means of communication and empathy.³¹⁰ This is vital to increasing cultural competence.³¹¹ Similarly, training of lay advocates and exploring unconventional means of advocacy will encourage students and clinicians to be creative in designing strategies that are most effective for the various sub-classes of clients, particularly the marginalized ones.³¹²

Course requirements are also a means by which students can expand their awareness of the implications of disability across legal disciplines. Three of the surveyed programs have a pre- or co-requisite requirement in special education law, education law or disability law.³¹³ Schools housing system-focused clinics could draw upon students' instruction in criminal law, criminal procedure or juvenile court law. Similarly, schools with child advocacy clinics could continue consideration of children's disability issues that may have been briefly addressed in family law or children's law courses.

Yet, the presence of a clinic on a law school campus does little to affect the dis-awareness level of non-participating students. Of the 11 schools surveyed, only half offer courses in disability or disability discrimination law, special education law, or a general education law course.³¹⁴ Even when education law courses are offered, they often address the law from a constitutional law perspective, excluding con-

³⁰⁷ See text accompanying notes 226-42 *supra*.

³⁰⁸ See text accompanying notes 100-01, 107-10 & 150 *supra*.

³⁰⁹ See *supra* notes 183-84 & text accompanying notes 170, 173 & 184 *supra*.

³¹⁰ See text accompanying notes 179-80, 226-27 & 235-37 *supra*.

³¹¹ See text accompanying notes 93-99 *supra*.

³¹² See text accompanying notes 216-18 *supra*.

³¹³ See Appendix 2.

³¹⁴ Rutgers, Stanford, and San Diego do not offer a course in disability law, disability discrimination, or special education law (internet search of course catalogs, Feb. 6, 2004).

sideration of statutory rights, or merely covering Section 504 of the Rehabilitation Act or special education statutes in passing.³¹⁵ And even when a course specifically focuses on disability law or disability discrimination law, children's rights may not be highlighted or are only briefly discussed.³¹⁶

The existence of a clinic representing students with disabilities could stimulate further course development, including specialized classes such as those just noted or a more general incorporation of disability themes in the overall curriculum. Likewise, those clinical students who deal first-hand with disabled clients and their family members in any of the various practice settings may join with faculty in pressing for more disability-related courses or infusion of this subject into the general curriculum.

For those who are persuaded that there is an unmet need for special education representation in their surrounding communities, we suggest five general areas for further consideration in evaluating and developing a proposal for a new special education clinic:

1. The target population and extent and nature of need for legal services
2. Types of current local providers and their capacity to serve the need.
3. The nature of community support for the venture and the ability to secure financial support.
4. The existing law school resources as they relate to faculty support, existing course offerings, and facilities.
5. Law school skills and teaching objectives.

Data collection and identification of a target population should include not only consideration of the number of children with disabilities served in the community but also anecdotal and statistical information on the extent and need for legal services that can be provided by parent organizations. Many school districts have special education parent groups, and each state has at least one Parent Training and Information Center.³¹⁷ Interviews with local attorneys, school person-

³¹⁵ Review of course descriptions from surveyed schools (internet search of course catalogs, Dec. 5, 2004).

³¹⁶ This observation is based on the personal experience of Patricia Massey as a law student and a review of education law course descriptions (internet search of course catalogs, Feb. 6, 2004).

³¹⁷ See *supra* note 43. Each state education agency is required to collect data regarding the number of students served in special education, disaggregated by school district, age, disability, and type of placement. Parent Training and Information centers collect statistical data on their parent contacts as part of their grant obligations. Additionally, many training centers will be able to provide both quantitative and qualitative data on the issues raised by parents, by the community and the specific needs of marginalized families. The PTI or CPRC serving a particular area may be located at <http://www.taalliance.org/centers/>

nel, and parent organizations will contribute to an understanding of the availability of legal services, the nature of those services, and those populations currently unserved or *underserved*.

Community support is critical to the success of special education clinics. In the legal community, judges and attorneys engaged in juvenile law practice are customarily supportive of these kinds of clinics. Probation officers and social workers who are unfamiliar with the special education rights of the young people they serve often welcome assistance in obtaining appropriate programs. Outside of the legal community, parents, teachers, mental health professionals, and community organizations can be allies in seeking funding and demonstrating the ways in which a clinic addressing special education needs could serve the needs of the community.

In attempting to solicit faculty support, it is worth keeping in mind that disability does not discriminate. There are parents and family members of children with disabilities among all university and law school faculties. Each relative, immediate family member or friend of a child with a disability is likely to be aware of—or has personally faced—the difficulties of special education advocacy. Each has the potential to support this venture at a personal level. Of course, beyond the personal connection, faculty have pedagogical objectives and professional interests in research or activism. Law students, too, must be consulted in the process, for they may have the same familial connections and short- and long-term professional goals.

What the parents and family members of disabled children will understand from their own experience is the message that needs to be communicated to the other law school faculty members and administration: that there is an urgent need to expand the network of legal assistance for students with disabilities—particularly those from marginalized communities—and that addressing that need with law school clinics will help to broaden the understanding of law students and begin to overturn the disturbing historical pattern of disability discrimination and insensitivity in legal education and in the profession and society at large. As our survey indicates, there are many ways to configure such a clinic. Whatever form a school elects, a special education clinic deserves serious consideration by present, and would-be, clinicians and other community-based practitioners. The time is now.³¹⁸

index.htm.

³¹⁸ Perlin, *supra* note 77, at 685, 729 (urging immediate end to sanism, borrowing phrase from Bob Dylan's *Ballad of a Thin Man*: "... no one has contradicted [one critic's interpretation that the song] is about 'an observer who does not see.'" (citations omitted)).

APPENDIX 1 INTERVIEW AND CONTACT LIST

Sheila O'Connor	Slaveryoco@yahoo.com	Georgetown University Law Center (Former Fellow)	Interviewed 2/03
Miye Goishi	(415) 581-8915 goishimi@uchastings.edu	University of Calif., Hastings	Interviewed 2/11/03
Joseph Tulman	(202) 274-7317 jtulman@law.udc.edu	University of the District of Columbia	(Information based on prior contacts, publications and clinic website)
Linda Kilb	(510) 644-2555 lkilb@dredf.org	DREDF; University of California, Berkeley	Interviewed 3/24/03
William Koski	(650) 724-3718 bkoski@stanford.edu	Stanford University	Interviewed 2/03
Meredith Goetz	(714) 847-5531 mgoetz@law.whittier.edu	Whittier College	Interviewed 2/03
Anahid Hoonanian	(213) 427-8747 anahid.hoonanian@pai-ca.org	Pepperdine University (Former Student)	Interviewed 3/03
Randi Mandelbaum	(973) 353-3271 rmandelbaum@kinoy.rutgers.edu	Rutgers-Newark Child Advocacy Clinic	Interviewed 3/03
Esther Canty-Barnes	(973) 353-3268 ecantybarnes@kinoy.rutgers.edu	Rutgers-Newark	Interviewed 4/1/03
Laura Macklin	(202) 662-9535 macklin@law.georgetown.edu	Georgetown University Law Center	(Information based on contact with former fellow and clinic website)
Tom Newcomb	(530) 297-0144 lyle@den.davis.ca.us	Calif. Special Education Hearing Office (Mediator)	Interviewed 2/03
Betsy R. Hollingsworth	(206) 398-4146 hollings@seattleu.edu	Seattle University	Interviewed 2/03
James Rosenfeld	(206) 398-4143 rosenfeld@seattleu.edu	Seattle University	Interviewed 3/03

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Jeff Marcus	(716) 645-2257 hmarcus@acu.buffalo.edu	State University of New York-Buffalo	Interviewed 3/25/03
Cynthia Mertens	(408) 554-4025 cmertens@scu.edu	Santa Clara University	Interviewed 3/20/03
Jane Floethe-Ford Jocelyn Penner	(408) 272-5775 jane@php.com joclyn@php.com	Parents Helping Parents	Interviewed 12/03
Dean Hill Rivkin	(865) 975-1481 rivkin@ibra.law.ut.edu	University of Tennessee	Interviewed 3/12/04
Richard Peterson	(310) 506-4094 Richard.Peterson@pepperdine.edu	Pepperdine University	Interviewed 3/12/04
Margaret Dalton	(510) 260-4600 mdalton@sandiego.edu	University of San Diego	Interviewed 5/5/04
Janeen Steel	(213) 736-8366 janeen.steel@lls.edu	Western Law Center for Disability Rights (at Loyola—Los Angeles)	Interviewed 6/2/04
Eve Hill	(213) 736-1195 eve.hill@lls.edu	Western Law Center for Disability Rights (at Loyola—Los Angeles)	Interviewed 6/8/04
Katherine Kruse	(702) 895-2071 kate.kruse@ccmail.nevada.edu	University of Nevada, Las Vegas	Interviewed 12/17/04
Pamela Mohr	(702) 895-2071 pamela.mohr@ccmail.nevada.edu	University of Nevada, Las Vegas	Interviewed 12/17/04
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Ruth Colker	(614) 292-0900 colker.2@osu.edu	Ohio State University	Interviewed 2/9/05
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APPENDIX: 2

LAW SCHOOL CLINIC COMPARISON CHART

Law School	Type	Other Disciplines	Prerequisites	Students/ Professor	# Units/Hrs.	Caseload	Funding	Target clients
Seattle U	JJ w Special Education	Education	Evidence—WA student practice rule	20/2	6 units	Each student 2 cases-1 special ed, 1 juv. justice	State grant, some law school	Juvenile justice
Georgetown	Family Advocacy Clinic	No	Evidence, Criminal Justice, Civil Procedure—DC student practice rule	12 students, 1 teaching fellow, plus 2 clinical professors	9 units	2-3 cases each semester with different student partner for each case	No charge to families, but seek attorney fees at hearing	Low income
Fordham	Originally Special Education only; now interdisciplinary—child support, domestic violence too	Yes	No	6 law, 1 SW, 1 Psych/1 professor	2 units substantive course, 1 unit field work; 2d semester OK	4 cases per semester teams of two with Psych or SW student added as appropriate		LSC income guidelines; Don't limit age or dis. No pre-school, no EI, no post HS, no crim
Pepperdine	Special Education	No	No	24/1 substantive special ed law 14/1 clinical professor	2 units substantive course, 2 units clinic course, repeat up to 6 units	2 student teams	Regional Center of Orange County	RC clients
Rutgers-Newark	Special Education	No	No	15/2 clinical professors	8 units; 6 repeat; 4 night student repeat	2-3 cases	NJ Bar Foundation; law school	Indigent
Rutgers-Newark	Interdisciplinary	Yes—SW, Psych						
Whittier College of Law	Special Education	No	Next semester sped course concurrency (not previously)	9/2	2 units/semester 90hrs/unit 180 hr. min.	120/yr represented by the clinic. 2 student team	Lanterman Regional Ctr.	RC clients

Law School	Type	Other Disciplines	Prerequisites	Students/ Professor	# Units/Hrs.	Caseload	Funding	Target clients
Stanford Law School	Education/Special Education	No	No (Evidence preferred, but not required)	10-14/1 8 1st timers, 2-6 advanced	7 units (4 units are for fieldwork, 16 hrs/wk min.; 2-3 units for advanced students)	2-4 cases per semester with additional staffing for mediation or due process hearing. All students additional assigned to "system reform" work (impact case, policy research, advocacy) and community outreach and education	Law school	Students select cases. HUD low-income guidelines, Santa Clara, San Mateo Counties. Pre-screened for pedagogical value.
UC Hastings	Special Education	No	No			2 student team	Law school	
SUNY-Buffalo	Special Education	No	2 semester Ed law or 2 semester Legal Rts of Persons w Dis	18/1	2 semester commitment. 3 units-fall 3-4 units-spring	5-10 cases per 4-5 student team	State grant (ending); attorney fees	Low income
U of San Diego	Special Education	No	No	8/1 (avg)	1-4, may repeat up to ABA limit	Individual case handling—Number of cases varies depending upon complexity	Started with California Bar grant	No income limit
*Loyola Law School -Los Angeles/Western Law Center For Disability Rights	Special Education—includes representation in juvenile justice and dependency	Limited	No	8/2 (varies)	2 unit externship, may repeat	Generally individual assignments; teams for complex cases	Private grants	Low income, children with learning disabilities
University of Nevada, Las Vegas Boyd School of Law	Interdisciplinary—Juvenile Justice, Child Welfare, Special Education	Social Workers, Education	Professional Responsibility, required number of course units for state student practice rule	8/1 law; 8/1 social work; 12-16/1 education faculty	6 units semester, can repeat for fewer	J1 (3-4), Welfare (1-3), Education (probably more) 2 student teams—1 law, 1 social work	Law school	Low income

* Western Law Center for Disability Rights, an independent non-profit legal services organization located on the Loyola School of Law-Los Angeles campus, offers representation in a collaborative venture to low-income families of children with learning disabilities. This law school/private non-profit collaboration offers students and clients benefits similar to those of law school clinics. Loyola also offers a 2-unit special education law course taught by the Directing Attorney of the Learning Rights Project in which students are assigned to assist a family at an IEP meeting. The course is not a prerequisite for selection as a Learning Rights Project law clerk. Participation in clinic externships also fulfills the *pro bono* requirement for graduation. The Western Law Center projects afford law students a broad range of practice opportunities in areas related to disability rights, including impact litigation and mediation.