

DISABILITY DISPARITIES IN POST-SECONDARY
EDUCATION: COMPARING CIVIL RIGHTS THEORIES
WITH EMPIRICAL DATA ON EQUAL ACCESS

KENDRA J. MULLER, ESQ.

I. INTRODUCTION: DISPARITY IN POST-SECONDARY EDUCATION.....	210
A. Application of Civil Rights Theories and A cknowledgement as Class.....	211
B. Introduction to the Study of Disability.....	213
C. Definition of Ableism.....	215
D. Definition of Disability.....	216
E. Historical Background on Classifying Disability as a Civil Rights Group.....	218
i. Origins.....	218
ii. Pre-Civil Rights.....	219
iii. Post-Civil Rights.....	221
F. The Empirical Case for Disparate Post-Secondary Education.....	226
II. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A TRADITIONALIST LENS.....	230
A. External Diagnosis.....	230
B. External Prescription.....	232
C. Internal Diagnosis.....	234
i. Willpower and “Faking” Disability.....	234
ii. Severe Disabilities and Uselessness.....	235
D. Internal Prescription.....	236
III. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A REFORMIST LENS.....	239
A. External Diagnosis.....	239
i. Disability Matters.....	239
ii. Integration is Key.....	241
B. External Prescription.....	243
C. Internal Diagnosis.....	246
D. Internal Prescription.....	249
IV. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A DISABILITY CRITICAL RACE THEORY LENS.....	253
A. External Diagnosis.....	253
B. External Prescription.....	257
i. Combat Systemic Discrimination: Bring Disabled Voices to Forefront.....	257

ii. Equal Access Is Not a Controversy	260
iii. Universal Design	262
C. Internal Diagnosis	263
D. Internal Prescription	264
i. Avoid Contributing to Their Own Subordination....	264
ii. ADA Enforcement	265
V. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A LIMITED SEPARATIST LENS	266
A. External Diagnosis	266
B. External Prescription	267
C. Internal Diagnosis	272
D. Internal Prescription	274
VI. CONCLUSION	278
VII. TABLES AND FIGURES	279

ABSTRACT

In recent years, the topic of disabled students and their right to equitable access has become increasingly controversial at post-secondary institutions. Partially due to high-profile cheating scandals involving the fraudulent use of disability accommodations, some individuals have sought to reduce the level of access to disability accommodations. The high dropout rate of disabled students has been well-documented, causing concern for disability equity as higher education becomes increasingly important in enabling individuals to achieve economic stability. Disabled individuals already have a much lower employment rate than non-disabled individuals, illustrating how higher education access may be key in addressing disparities in poverty and unemployment.

Using four overarching civil rights legal theories originally proposed by leading civil rights and jurisprudence theorist Dr. Roy L. Brooks, this paper seeks to take the reader on a civil rights journey through legal theory to show how each theory (1) views disability as a civil rights group, and (2) prescribes solutions for disabled students' access to education. Viewing disabled students' right to access to education through the eyes of (1) traditionalists, (2) reformists, (3) critic theorists, and (4) limited separatists. These theories both contradict and build upon one another. While there is a need to discuss theory in-depth and show the various methods and diagnoses put forth by each theory for completeness, none of the theories themselves need to be mutually exclusive.

In addition to applying the issue of disabled education access to each legal theory, the paper also includes startling scientific data on the current lack of equity in post-secondary education. Original tables and graphs located at the bottom of this article are made to be easily accessible and present disability-related data in novel ways. These can enable a better understanding of the critical need to find creative solutions that improve the disabled community's access to education.

AUTHOR BIOGRAPHY

Kendra J. Muller (*she/they*) is a disabled, queer attorney employed at Disability Rights California (“DRC”), the nation’s largest non-profit disability rights firm. As a part of the Civil Rights Practice Group, she assists in complex impact litigation and direct services to provide intersectional legal analysis to challenge civil rights violations and provide advocacy for historically marginalized and underserved communities, including LGBTQ+ individuals, veterans, unhoused persons, people of color, multilingual individuals, seniors, and low-income communities.

Muller’s scholarly research emphasizes synthesizing public policy, science, and law to find solutions for disability justice, public health, and human rights. Muller’s most recent publication explored the impact of COVID-19 relief laws among the disabled community, analyzing the consequential effects of laws implemented in the United States and the United Kingdom. Muller serves as a board member for Disability Rights Now—assisting disabled individuals in pursuing post-secondary education and professional careers—and an advisor to the San Diego County Bar Association’s Diversity, Equity, and Chair of the Disability Justice Group (“DJG”). With DJC, she has crafted legislative proposals regarding equal opportunity and regulations for both professionals and students in the disability community. Prior to entering the legal field, Muller founded the Equal Access & Disability Rights Commission that used the theories of her prior work on the international legal theories of truth commissions to engage students with disabilities and advocate for access solutions at higher education institutions.

ACKNOWLEDGMENTS

I thank Dr. Roy L. Brooks, for his integral scholarship of civil rights theoretical frameworks and jurisprudence, which guided this

research. I express my deepest appreciation for his impact and encouragement of innovative thought and discourse in his classes.

I. INTRODUCTION: DISPARITY IN POST-SECONDARY EDUCATION

The transformative power of education has long been proven as one of the largest factors leading to greater opportunities in political and economic life,¹ creating social mobility,² and reducing poverty.³ Those who do not attend post-secondary education make an annual median of \$34,540, bachelor's degree holders make \$60,705, and those with doctorate degrees make more than \$101,000.⁴ Equal opportunity in post-secondary education has become increasingly vital as poverty and educational gaps for disabled individuals have increased over the years.⁵ Four-year college graduates aged 25 to 32 have a 3.8% unemployment rate, while high school graduates in the same age bracket have a 12.2% unemployment rate.⁶ Similarly, only 5.8% of four-year college graduates aged 25 to 32 are in poverty, compared to 21.8% of high school graduates aged 25 to 32.⁷ These statistics prove that post-secondary education is still a vital part of economic success in the United States.

1. See David E. Campbell, *What Is Education's Impact on Civil And Social Engagement?*, MEASURING THE EFFECTS OF EDUC. ON HEALTH AND CIVIC ENGAGEMENT: PROCEEDINGS FROM THE COPENHAGEN SYMP. 25, 25 (2006).

2. See *Education Transforms Lives*, U.N. EDUC., SCI., AND CULTURAL ORG. (2013), <https://unesdoc.unesco.org/ark:/48223/pf0000223115>.

3. See generally Yusuf Sayed, *Education and Poverty Reduction/Eradiation: Omissions, Fashions and Promises*, EDUC. & POVERTY REDUCTION STRATEGIES ISSUES OF POL'Y COHERENCE: COLLOQUIUM PROCS. 53, 53 (2008); Katharine M. Broton, *Poverty in American Higher Education: The Relationship Between Housing Insecurity and Academic Attainment*, 1 J. OF POSTSECONDARY STUDENT SUCCESS 18, 20 (2021), https://doi.org/10.33009/fsop_jpss129147.

4. *PINC-03. Educational Attainment—People 18 Years Old and Over, by Total Money Earnings, Work Experience, Age, Race, Hispanic Origin, and Sex*, U.S. CENSUS BUREAU (Aug. 17, 2022), <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-03.html>; *PINC-03. Educational Attainment—People 25 Years Old and Over, by Total Money Earnings in 2020, Work Experience in 2020, Age Race, Hispanic Origin, and Sex*, U.S. CENSUS BUREAU (2021), https://www2.census.gov/programs-surveys/cps/tables/pinc-03/2021/pinc03_1_1_1_1.xlsx.

5. See Jameel Hampton, *The 1970 Chronically Sick and Disabled Persons Act—Fifty Years On*, 35 DISABILITY & SOC'Y 831, 833 (2020) (discussing the disability legislation landscape in Great Britain and how the “pay gap” and “comparatively poor opportunities and outcomes in education and employment” continue to be issues for the disabled community).

6. Paul Taylor et al., *The Rising Cost of Not Going to College*, PEW RSCH. CTR. (Feb. 11, 2014), <https://www.pewresearch.org/social-trends/2014/02/11/the-rising-cost-of-not-going-to-college>.

7. *Id.*

Although disability is now a statutorily protected civil rights class,⁸ the full recognition of “equal access”⁹ in post-secondary education has been a misunderstood concept for the group.¹⁰ Because education is such a vital part of civil rights law, stemming from the groundbreaking case of *Brown v. Board of Education*, it has long been a vital fighting ground for all civil rights groups and will continue to be a topic of significant importance to study.¹¹ This paper will seek to provide a holistic analysis of disparities in post-secondary education for disabled Americans.

A. *Application of Civil Rights Theories and Acknowledgement as Class*

This paper seeks to apply the four civil rights theories as put forth by legal scholar Dr. Roy L. Brooks adapted to disabled Americans to analyze the holistic issue of disparities in post-secondary education. Although explicitly declaring that the theories originally created for Black liberation cannot entirely transfer over to different historically marginalized groups, the application of such theories is an innovative and insightful way to analyze a civil rights group.¹² One must begin with a “careful definition of the post-civil rights problem facing each group.”¹³ The determined struggle for Black civil rights was an instrumental force and archetype for all other subordinated groups in America.¹⁴ “Civil rights” only came about due to the groundbreaking and arduous courage of Black individuals demanding the end to horrific enslavement, legal bases of violence and discrimination in Jim Crow, and the history of

8. *Guide to Disability Rights*, U.S. DEP'T OF JUST., C.R. DIV. (June 16, 2022), <https://www.ada.gov/resources/disability-rights-guide> (outlining federal laws protecting the civil rights of Americans with disabilities, such as the Americans with Disabilities Act, Individuals with Disabilities Education Act, and the Rehabilitation Act).

9. ROY L. BROOKS, *RACIAL JUSTICE IN THE AGE OF OBAMA*, xiv–xv (2009) (This paper adopts the definition of “theory” as outlined by Brooks as “Modern Civil Rights Theory,” which incorporates external (outside an individual’s control) and internal (within an individual’s control) factors that impact an individual’s civil rights.).

10. See Doris Zames Fleischer & Frieda Zames, *Disability Rights: The Overlooked Civil Rights Issue*, 25 *DISABILITY STUDIES Q.* (2005), <https://dsq-sds.org/index.php/dsq/article/view/629/806> (explaining how disabled students are often overlooked in public education).

11. See generally *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (concluding “that in the field of public education the doctrine of ‘separate but equal’ has no place”).

12. See BROOKS, *supra* note 9, at 2 (limiting the application of the civil rights analysis to only one race as each group “warrant[s] separate treatment”).

13. *Id.* at 109.

14. *Id.* at 2.

compulsory segregation. The work of Black Americans broke through an indomitable society of racism to instill in America a hugely inclusive expansion of rights with the Civil Rights Act of 1964.¹⁵ Brooks' application of civil rights theories seeks to disrupt the current political, social, and economic thinking in America using the framework of scholarship instead of politically charged discussions.¹⁶

Civil rights groups cannot and should not be compared directly in any meaningful or advantageous way. This paper does not seek to in any way compare them. However, civil rights *theories* can be construed to the unique needs of each marginalized group.¹⁷ Because each civil rights group, including people with disabilities, has a unique historical background, one must take each group individually, closely analyzing the history and needs of the particular group.¹⁸ Although this paper will focus on disability as a civil rights group, this paper acknowledges that the majority of other recognized civil rights groups also experience disparate impacts in education.¹⁹ Additionally, this paper will focus on disabled individuals, acknowledging that "disability" overlaps with other marginalized groups.²⁰ To have a complete theory for disabled civil rights, one must acknowledge how the experience of race,²¹ color, religion or

15. See generally *Women's Rights and the Civil Rights Act of 1964*, NAT'L ARCHIVES, <https://www.archives.gov/women/1964-civil-rights-act> (last visited Feb. 19, 2023); Jo Freeman, *How "Sex" Got Into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 MINN. J. OF L. & INEQ. 163, 163 (1991); *History of the Federal Sector Equal Employment Opportunity Complaint Process*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (last visited Feb. 19, 2023) (In 1967, sex was included in employment discrimination. In 1973, disability was included in the definition of "discrimination" after the passage of the Rehabilitation Act. By 1979, President Carter's Executive Order 12067 included "race, color, religion, sex, national origin, age, or handicap.").

16. See generally BROOKS, *supra* note 9, at xvi.

17. See *id.* at 2.

18. See *id.*

19. See generally *id.* at xiii (discussing racial education disparities).

20. See generally Ayesha Vernon, *The Dialectics of Multiple Identities and The Disabled People's Movement*, 14 DISABILITY & SOC'Y 385, 389 (1999).

21. See generally Jasmine E. Harris, *Reckoning with Race and Disability*, 130 YALE L. J. F. 916, 922 (2021); Brad Lomax, *Uniting the Civil Rights and Disability Rights Communities*, THE CTR. FOR LEARNER EQUITY (Feb. 12, 2021), <https://www.centerforlearnerequity.org/news/brad-lomax-uniting-the-civil-rights-and-disability-rights-communities>.

creed,²² national origin or ancestry,²³ sex,²⁴ gender identity,²⁵ sexual orientation,²⁶ age, veteran status,²⁷ genetic information, and citizenship may affect a disabled individual's experience.²⁸ The paper also acknowledges and seeks to remedy the historical harm caused by the disability community prioritizing white, educated, cisgender, or male voices over the voices of marginalized disabled people.²⁹ Using Brooks' "theory of completeness," this paper will analyze the four civil rights theories and use disaggregation to better articulate disparities specific to those with disabilities.³⁰

B. Introduction to the Study of Disability

The global number of disabled individuals is conservatively estimated as 15% of the world population, or approximately one billion individuals.³¹ Disability population estimates are contested and yield widely varying figures.³² To understand an academic discussion of disability in light of "unvarnished truth," I will be including all estimates of federally accepted disability data as two different databases

22. See generally Stephen Thompson et al., *Freedom of Religious Belief and People with Disabilities: A Case Study of People with Disabilities from Religious Minorities in Chennai, India 2* (Coal. for Religious Equal. & Inclusive Dev., Working Paper No. 7, 2021).

23. See generally James Staples, *At the Intersection of Disability and Masculinity Exploring Gender and Bodily Difference in India*, 17 J. OF THE ROYAL ANTHROPOLOGICAL INST. 545, 546 (2011).

24. See generally Angel Love Miles, "Strong Black Women": African American Women with Disabilities, *Intersecting Identities, and Inequality*, 33 GENDER & SOC'Y 41, 42 (2019).

25. See generally Ashley Mog & Amanda Lock Swarr, *Threads of Commonality in Transgender and Disability Studies*, 28 DISABILITY STUD. Q. (2008), <https://dsq-sds.org/article/view/152/152>.

26. See generally Ryan A. Miller, *Toward Intersectional Identity Perspectives on Disability and LGBTQ Identities In Higher Education*, 59 J. OF COLL. STUDENT DEV. 327, 330 (2018).

27. See generally Karli Kondo et al., *Health Disparities in Veterans: A Map of the Evidence*, 55 MED. CARE, S9, S9 (Supp. 9 2017).

28. See generally Pushpa Naidu Parekh, *Gender, Disability and The Postcolonial Nexus*, 4 Wagadu J. of Transnational Women's and Gender Studies: Intersecting Gender and Disability Perspectives in Rethinking Postcolonial Identities, 142, 147 (2007).

29. See generally Angel L. Miles et al., *An Open Letter to White Disability Studies and Ableist Institutions of Higher Education*, 37 DISABILITY STUDIES Q. (2017), <https://dsq-sds.org/article/view/5997/4686>.

30. BROOKS, *supra* note 9, at 1–2.

31. *Disability Inclusion*, THE WORLD BANK, (Apr. 14, 2022), <https://www.worldbank.org/en/topic/disability#:~:text=ResultsOne%20billion%20people%2C%20or%2015%25%20of%20the%20world's%20population%2C,million%20people%2C%20experience%20significant%20disabilities>.

32. LEX FRIEDEN, *IMPROVING FED. DISABILITY DATA 4–7* (Nat'l Council on Disability 2004); Elena M. Andresen et al., *Reliability and Validity of Disability Questions for US Census 2000*, 90 AM. J. OF PUB. HEALTH 1297, 1298 (2000).

to measure disability are used interchangeably in academia.³³ In the United States, there are two primary estimates of the number of disabled individuals: the Centers for Disease Control and Prevention (“CDC”) reports 26.7% of Americans are disabled,³⁴ while the United States Census Bureau (“Census”) reports 18.7% of all Americans are disabled and 12.6% of Americans have a “severe” disability.³⁵ (See fig. II). The Census also indicates 16.5% of Americans ages 21–64 are disabled.³⁶ These differing statistics are due to different definitions of disability and methodologies for counting.³⁷ Other scholars have stated the actual number of disabled individuals could be higher as many disabled individuals feel they cannot self-identify as having a disability for fear of retaliation.³⁸

Although disability is extremely common, it is still primarily seen as a negative identity trait or “unstable category.”³⁹ Regardless of differing statistics, United States law has proclaimed “[d]isability is a natural part of the human experience.”⁴⁰ This paper will thus

33. BROOKS, *supra* note 9, at 1 (discussing the “unvarnished truth” as something that is difficult to find and devoid of political prejudices).

34. *United States, DC & Territories: Disability Estimates*, CTDS FOR DISEASE CONTROL & PREVENTION, <https://dhds.cdc.gov/SP?LocationId=59&CategoryId=DISEST&ShowFootnotes=true&showMode=&IndicatorIds=STATTYPE,AGEIND,SEXIND,RACEIND,VETIND&pn10=Chart,false,YR4,CAT1,BO1,,,,AGEADJPREV&pn11=Chart,false,YR4,DISSTAT,,,,PREV&pn12=Chart,false,YR4,DISSTAT,,,,AGEADJPREV&pn13=Chart,false,YR4,DISSTAT,,,,AGEADJPREV&pn14=Chart,false,YR4,DISSTAT,,,,AGEADJPREV> (last visited Feb. 22, 2023) (featuring graphs of various data points for disability status in the US, including one reflecting the fact that 26.7% of American adults have a disability).

35. MATTHEW W. BRAULT, *AMS. WITH DISABILITIES: 2010*, at 4 (U.S. CENSUS BUREAU 2012), <https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>. Compare U.S. CENSUS BUREAU, *AM. CMTY. SURVEY ACCURACY OF THE DATA* (2019), https://www2.census.gov/programs-surveys/acs/tech_docs/accuracy/ACS_Accuracy_of_Data_2019.pdf, with CTDS FOR DISEASE CONTROL & PREVENTION, *BEHAV. RISK FACTOR SURVEILLANCE SYS.* (2021), https://www.cdc.gov/brfss/annual_data/2020/pdf/overview-2020-508.pdf (While methodologies are different, the questions used by both federal data compilations are the same. The CDC primarily collects statistical data by phone and on samples of the adult population (18+), which may be more applicable to adult students entering post-secondary education, while the Census collects statistical data by mail and in person and samples ages 0+ onward, Census data has also had serious issues with undercounts, meaning it cannot be looked at as a completely accurate total count but rather a survey.).

36. *Id.* at 4 tbl. 1.

37. Andresen et al., *supra* note 32 at 1298.

38. See Mitchell E. Loeb et al., *Approaching the Measurement of Disability Prevalence: The Case of Zambia*, 2 *ALTER* 32, 39–40 (2008); Nick Watson, *Well, I Know This Is Going to Sound Very Strange to You, But I Don't See Myself As A Disabled Person: Identity And Disability*, 17 *DISABILITY & SOC'Y* 509, 514–16 (2002).

39. *Parallels In Time: A History of Developmental Disabilities*, THE MINN. GOVERNOR'S COUNCIL ON DEV'L DISABILITIES, <https://mn.gov/mnddc/parallels/four/4b/8.html> (last visited Feb. 22, 2023) (recognizing the historic discrimination and negative narrative around the community of people with disabilities).

40. Individuals with Disabilities Education Act, 20 U.S.C. § 1400(c)(1) (2018).

be framed in the way disabled communities have been studied as a civil rights group in the law as well as the perspective of the disability community itself. Statutory protections for disabled individuals are a recent concept; thus, the aspirations and identities of disabled groups are still frequently misunderstood.⁴¹ Prevailing assumptions characterize disabled individuals as untalented,⁴² unemployable,⁴³ or uneducated.⁴⁴

C. Definition of Ableism

To further explain and define the systemic oppression of disabled students, many scholars use the term “ableism” as a word to encompass the intentional or unintentional subjugation of disabled individuals. Ableism is the “discrimination or prejudice against individuals with disabilities.”⁴⁵ Disabled scholar and attorney Talila A. Lewis further explains ableism as:

[a] system that places value on people’s bodies and minds based on societally constructed ideas of normality, intelligence, excellence, desirability, and productivity. These constructed ideas are deeply rooted in anti-Blackness, eugenics, misogyny, colonialism, imperialism and capitalism. This form of systemic oppression leads to people and society determining who is valuable and worthy based on a person’s language, appearance, religion and/or their ability to satisfactorily [re]produce, excel and “behave.” You do not have to be disabled to experience ableism.⁴⁶

41. See generally Damon A. Young & Ruth Quibell, *Why Rights Are Never Enough: Rights, Intellectual Disability and Understanding*, 15 *DISABILITY & SOC’Y* 747, 754 (2000).

42. Joey Pagano, *Ableism Is Everywhere—Even the Paralympics*, *SYRACUSE POST-COURIER* (Sept. 17, 2021, 10:28 AM), <https://www.syracuse.com/opinion/2021/09/ableism-is-everywhere-even-the-paralympics-guest-opinion-by-joe-pagano.html>.

43. See generally Philippe T.J.H. Nelissen et al., *How and When Stereotypes Relate to Inclusive Behavior Toward People With Disabilities*, 27 *THE INT’L J. OF HUM. RES. MGMT.* 1610, 1613 (2016).

44. See generally Samantha G. Daley & Gabrielle Rappolt-Schlichtmann, *Stigma Consciousness Among Adolescents with Learning Disabilities: Considering Individual Experiences of Being Stereotyped*, 41 *LEARNING DISABILITY Q.* 200, 200 (2018).

45. *Ableism*, *MERRIAM-WEBSTER*, <https://www.merriam-webster.com/dictionary/ableism> (last visited Feb. 22, 2023).

46. Talila A. Lewis, *January 2021 Working Definition of Ableism*, *TL’S BLOG* (Jan. 1, 2021), <https://www.talilalewis.com/blog/january-2021-working-definition-of-ableism>.

Disabled individuals are often seen as an inferior group that needs a non-disabled representative to make policy decisions for the group itself.⁴⁷ Many well-meaning, able-bodied individuals have often spoken for the community, and the lack of research into the needs of disabled individuals has led to inaccurate perceptions of the disabled community.⁴⁸ Allowing disabled scholars such as Talila Lewis to inform us of the social, political, economic, and cultural norms within the insular group of disability can provide a realistic and accurate representation instead of merely “sensitizing” information to appeal to non-disabled individuals.⁴⁹

D. Definition of Disability

As shown in statistics and legal arguments,⁵⁰ the definition of disability itself has been a contested subject; therefore, laying a groundwork is helpful to achieve a more complete understanding of the group.⁵¹ Society has often separated disabled persons into two different sectors: physical or visible and mental or invisible.⁵² Indeed, individuals with “visible” versus “invisible” disabilities often experience different types of subordination.⁵³ For example, invisible disabilities are associated with higher degrees of implicit bias,⁵⁴

47. Gisela Schulte Agyeman, *White Researcher-Black Subjects: Exploring the Challenges of Researching The Marginalised And 'Invisible'*, 6 ELEC. J. OF BUS. RSCH. METHODS 77, 82 (2008) (discussing the importance of being able to share the perspective of the community that is central to the research or writing); see also Melanie Chapman et al., *Speaking Up About Advocacy: Findings From A Partnership Research Project*, 40 BRITISH J. OF LEARNING DISABILITIES 71, 78 (2012) (encouraging independent advocacy as most effective for disabled individuals).

48. A.J. Withers et al., ROUTLEDGE HANDBOOK OF RADICAL POL., 120, 189 (2019).

49. Lennard J. Davis, THE DISABILITY STUD. READER 5 (2006), https://uniteyouthdublin.files.wordpress.com/2015/01/lennard_davis_the_disability_studies_reader_secbookzz-org.pdf.

50. See generally Peter David Blanck & Mollie Weighner Marti, *Attitudes, Behavior and the Employment Provisions of the Americans with Disabilities Act*, 42 VILLANOVA L. REV. 345, 404–05 (1997).

51. Samuel R. Bagenstos, *Subordination, Stigma, and “Disability,”* 86 VA. L. REV. 397, 405–06 (2000).

52. Bruce H. Gross & Harlan Hahn, *Developing Issues in the Classification of Mental and Physical Disabilities*, 15 J. OF DISABILITY POL'Y STUD. 130, 131 (2004).

53. See Sheila Riddell & Elisabet Weedon, *Disabled Students in Higher Education: Discourses of Disability and the Negotiation of Identity*, 63 INT'L J. OF EDUC. RES. 38, 38–39 (2014).

54. Jenna A. Harder et al., *Demographic, Experiential, and Temporal Variation in Ableism*, 75 J. OF SOC. ISSUES 683, 700 (2019).

while visible disabilities are associated with higher degrees of microaggressions.⁵⁵

However, from a macro perspective, these are simply examples of the overall discrimination towards disabled individuals, and both groups experience implicit bias and microaggression.⁵⁶ In addition, separating such a group does not take into consideration that many people with “visible” disabilities can simultaneously have “mental” or “emotional” disabilities and vice versa.⁵⁷ This separation does not factor in temporary disabilities, neurodiversity, developmental, and chronic disabilities—all of which may blur the lines between the two sectors.⁵⁸

This paper argues that socially constructed lines between different types of disability can be traded for a holistic analysis of the disabled community as a legal civil rights group.⁵⁹ The historic combination of disability into one sociocultural group assisted in the passage of the Americans with Disabilities Act (“ADA”).⁶⁰ The passage of disability legislation has extended rights to people with all “types” of disabilities in public accommodations, employment, and other societal institutions.⁶¹

For simplicity, this paper will loosely use the international definition of disability found in the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”): “persons with disabilities include those who have long-term physical, mental,

55. Shanna Katz Kattari, *Development of the Ableist Microaggression Scale and Assessing the Relationship of Ableist Microaggressions with the Mental Health of Disabled Adults*, 1283 ELEC. THESES AND DISSERTATIONS 1, 88-89 (2017).

56. For example, a noticeably physically disabled person may be a target of stigma based on the visual cues others identify, denying them equal opportunity. However, someone with an invisible disability will experience the same societal stigma that interprets their lack of physical symptoms as an absence of a disability, denying them equal opportunity and resulting in the same forgone conclusion.

57. Noah Fromson, *Mental Health is an Issue for People with Spinal Cord Injury. Chronic Pain Makes It Worse*, U. OF MICH. HEALTH (Feb. 7, 2022, 2:11 PM), <https://labblog.uofmhealth.org/lab-notes/mental-health-an-issue-for-people-spinal-cord-injury-chronic-pain-makes-it-worse> (discussing the overlap of visible spinal cord injuries with invisible psychological issues such as depression and anxiety).

58. See e.g., *id.* (demonstrating chronic pain from spinal cord injuries as on such disability where visible and invisible lines are often blurred).

59. Americans With Disabilities Act Of 1990, Pub. L. No. 101-336, 104 Stat. 327, 337 (1990) (codified as amended at 42 U.S.C. § 12112) (“The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.”).

60. NAT’L COUNCIL ON DISABILITY, EQUAL. OF OPPORTUNITY: THE MAKING OF THE AMS. WITH DISABILITIES ACT 66 (2010), <https://files.eric.ed.gov/fulltext/ED512697.pdf>.

61. *Id.* at 66–67.

intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”⁶² The CRPD has been ratified by 181 countries,⁶³ and it was crafted by global disabled leaders.⁶⁴ This definition is arguably the closest one can come to homogenizing “disability” as a civil rights group across a multitude of contexts.⁶⁵ This paper will discuss disability in accordance with this framework.

E. Historical Background on Classifying Disability as a Civil Rights Group

Tracing historical events help illustrate the formation of the concept of disability and how disability became a statutorily protected class. History helps us understand why disabled students experience barriers to secondary education. Although a complete, overarching view of disability history and theory cannot be discussed in this paper, this paper seeks to provide a brief overview to establish a ground that future analysis can rest on.

i. Origins

The term “disability” has historically been a label of inferiority to any individual *regardless* of “actual” medical impairment.⁶⁶ Censuses and analyses of national and state populations historically used “disability” to categorize immigrants and criminals as “defective, dependent, and delinquent.”⁶⁷ Physicians used words like “disability” to identify LGBTQ+ individuals as being inferior or

62. G.A. Res. 61/106, annex, art. 1, Convention on the Rights of Persons with Disabilities (Dec. 13, 2006).

63. CRPD List of Countries by Signature: Confirmation: Accession: Ratification, DISABLED WORLD, (Feb. 27, 2020), <https://www.disabled-world.com/disability/discrimination/crpd-milestone.php> (Although the CRPD was brought to the U.N. by the U.S., the U.S. is one of nine countries that is a signatory of the CRPD but not yet ratified the CRPD. A full list of countries that have signed but not ratified the CRPD includes the United States, Bhutan, Cameroon, Lebanon, Solomon Islands, St. Lucia, Tajikistan, Tonga, and Uzbekistan.).

64. Arlene S. Kanter, *Do Human Rights Treaties Matter: The Case for the United Nations Convention on the Rights of People with Disabilities*, 52 VAND. J. OF TRANSNAT'L L., 577, 609 (2019).

65. See U.N. Dep't of Econ. & Soc. Affairs, *Convention on the Rights of Persons with Disabilities (CRPD)*, UNITED NATIONS, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> (last visited Mar. 12, 2022).

66. Douglas C. Baynton, *THE DISABILITY STUD. READER* 33, 34–37 (4th ed. 2013).

67. James W. TRENT JR., *INVENTING THE FEEBLE MIND: A HISTORY OF MENTAL RETARDATION IN THE UNITED STATES* 70, 78 (1994), <http://tankona.free.fr/trent1994.pdf>.

abnormal.⁶⁸ During the antebellum period, the complexity of disability was doubled by the lens of “racial inferiority” and so-called “natural defectiveness” of race, where those who actually were medically disabled or became disabled as result of the horrors of slavery were labeled in terms of their economic value that “gauged the effects of disability on a slave’s value as property.”⁶⁹ Enslaved Black individuals were viewed as disabled not only when they were deemed “unprofitable” but also when they did not hold up to white societal expectations.⁷⁰ Women were seen as mentally and physically unfit compared to men, particularly in historically male jobs.⁷¹ These ableist narratives continue to be preserved in the systematic racial, homophobic, xenophobic, and sexist discrimination in the United States.⁷²

ii. Pre-Civil Rights

Pre-civil rights, institutionalization was the primary educator for disabled Americans.⁷³ In fact, some laws made it a criminal act for parents to ask for their disabled child to be in non-disabled public schools.⁷⁴ Forced institutionalization in the United States has historically tried to conceal, suppress, humiliate, and isolate disability.⁷⁵ As the productivity of the physical body became a commodity, disabled individuals were forcefully sent away to be exhibited for other’s sport.⁷⁶ Later, in tandem with United States population growth, asylums and jails housed disabled individuals, subjecting them to

68. Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, 5 BEHAV. SCI. 565, 566 (2015).

69. David M. Turner, *African American Slavery and Disability: Bodies, Property, and Power in The Antebellum South, 1800–1860*, 29 DISABILITY & SOC’Y 1505–06 (2014) (internal quotation marks omitted).

70. Heidi M. Hackford, *Malingering: Representations of Feigned Disease in American History, 1800–1920* (2004) (Ph.D. dissertation, American University) (on file with American University Library).

71. See J. McGrigor Allan, *On the Real Differences in the Minds Of Men and Women*, 7 J. OF THE ANTHROPOLOGICAL SOC’Y OF LONDON cxcv, cxcvii (1869).

72. See generally Baynton, *supra* note 66, at 34.

73. See generally *id.* at 21 (identifying two primary issues identified by disability rights organizations: “institutionalization and education”).

74. See Mark C. Weber, *Disability and The Law of Welfare: A Post-Integrationist Examination*, 2000 U. ILL. L. REV., 889, 901 (2000).

75. See William Bronston, *Physician-Advocate for People with Cognitive and Developmental Disabilities: Exposing Conditions at Willowbrook State School in New York, Medical Director and Consultant for the State of California*, ONLINE ARCHIVE OF CAL. (2004), <https://oac.cdlib.org/view?docId=hb187001cx&brand=oac4&doc.view=entiretext>.

76. See *id.* (describing how disabled individuals were treated with less dignity than some animals, let alone humans).

inhumane conditions.⁷⁷ As a result, public institutionalization became commonplace, and disabled persons were isolated from their able-bodied counterparts.⁷⁸ This mass institutionalization in the nineteenth century dehumanized disabled persons, eventually birthing the eugenics movement.⁷⁹

When speaking of eugenics, the eradication of and medical experimentation on Jewish, disabled, and LGBTQ+ individuals in Nazi Germany is the most pernicious example. But notably, the United States was the first country to implement sweeping eugenics-based sterilization laws.⁸⁰ Eugenics became an academic pursuit, curbing the population through sterilization of any “inferior” individuals.⁸¹

Eugenics was heavily taught in schools.⁸² Many students were given “eugenic evaluations” to determine whether they had “unfit human traits.”⁸³ Of course, this pseudoscience defined “unfit” specifically to keep the white hegemonic society in power.⁸⁴ Thus, anyone that did not fit into the white, middle-class hegemonic mainstream (people of color, disabled, immigrants, LGBTQ+, and poor individuals), was determined to be “unfit.”⁸⁵ Traits like “feble-mindedness,” “insanity,” and “epilepsy” were specifically targeted.⁸⁶

77. Jeffrey L. Geller, *Excluding Institutions for Mental Diseases from Federal Reimbursement For Services: Strategy Or Tragedy?*, 51 PSYCHIATRIC SERV. 1397, 1397–98 (2000) (“More than nine-thousand idiots, epileptics, and insane in these United States, destitute of appropriate care and protection. Bound with galling chains, bowed beneath fetters and heavy iron balls, attached to drag-chains, lacerated with ropes, scourged with rods, and terrified beneath storms of profane execrations and cruel blows; now subject to jibes, and scorn, and torturing tricks, now abandoned to the most loathsome necessities or subject to the vilest and most outrageous violations.”).

78. *See Parallels In Time: A History of Developmental Disabilities*, THE MINN. GOVERNOR’S COUNCIL ON DEV’L DISABILITIES, <https://mn.gov/mnddc/parallels/four/4b/8.html> (last visited Feb. 24, 2023).

79. *See* Laura I. Appleman, *Deviancy, Dependency, and Disability: The Forgotten History of Eugenics and Mass Incarceration*, 68 DUKE L. J., 427, 427–34 (2018); *see also* David Pfeiffer, *Eugenics and Disability Discrimination*, 9 DISABILITY & SOC’Y 481, 489–95 (1994).

80. Robert A. Wilson, DEHUMANIZATION, DISABILITY, AND EUGENICS 173, 174 (Maria Kronfeldner ed., 2021); *see also* Julian Huxley, *The Vital Importance of Eugenics*, 163 HARPER’S MONTHLY 324, 324–31 (1941) (providing an example of a published article displaying U.S. eugenics propaganda in the 1940s).

81. *See generally* Steven Selden, *Eugenics and the Social Construction of Merit, Race and Disability*, 32 J. CURRICULUM STUD. 235, 237–38 (2000).

82. *Id.* at 235.

83. *Id.* at 237.

84. *Id.* at 240–41.

85. *See generally id.* at 237, 241.

86. *Id.* at 242.

By the late 1800s, municipalities began banning people with disabilities from public areas.⁸⁷ These so-called “Ugly Laws” targeted “overlapping categories of poor, homeless, and those with visible disabilities.”⁸⁸ Ugly Laws were primarily enforced during the early 1900s but continued to be enforced into 1974, when the arrest of a man with visible scars on his body led to protests and the eventual overturning of the laws.⁸⁹

People with visible disabilities were criminalized for going in public, but people with invisible or mental disabilities were even more isolated from society.⁹⁰ Institutionalization and Ugly Laws both segregated visibly disabled persons from the general public.⁹¹ Although the basis for the start of institutionalization is contested by scholars, it was likely a combination of lack of economic resources combined with a moral desire to solve the horrendous conditions of makeshift, already-existing institutions.⁹² But by the late 1800s, newly constructed institutions were overcrowded, due to the stigmatization of mentally disabled individuals.⁹³ The institutions’ missions changed from “rehabilitating patients with mental illness and sending them back to their home communities” to sequestering patients away from society.⁹⁴ By 1967, institutions in the United States were estimated to house 194,650 individuals.⁹⁵

iii. Post-Civil Rights

The passage of the ADA in 1990 ushered in the post-civil rights era for the disabled community.⁹⁶ Out of this law rose the most comprehensive disability rights law dedicated to giving equal

87. See Susan M. Schweik & Robert A. Wilson, *Ugly Laws*, EUGENICS ARCHIVES (Feb. 5, 2015), <https://eugenicsarchive.ca/discover/tree/54d39e27f8a0ea4706000009>.

88. *Id.*; Marcia Pearce Burgdorf & Robert Burgdorf Jr., *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a Suspect Class under the Equal Protection Clause*, 15 SANTA CLARA L. REV. 855, 863–64 (1975).

89. SUSAN M. SCHWEIK, *THE UGLY LAWS: DISABILITY IN PUB. 6* (2009) (explaining how the man was arrested under the guise of visible scars but was targeted for being unhoused, another stigmatized class).

90. See Appleman, *supra* note 79, at 422.

91. See *id.* at 421; see also Schweik & Wilson, *supra* note 87.

92. See generally PLINY EARLE, *THE CURABILITY OF INSANITY: A SERIES OF STUD.* (1877); Lawrence Goodheart, “*The Glamour of Arabic Numbers*”: Pliny Earle’s Challenge to Nineteenth-Century Psychiatry, 71 J. HIST. MED. & ALLIED SCI. 173, 181 (2015).

93. See Goodheart, *supra* note 92, at 183 (noting that overcrowding “undermined the premise that prompt hospitalization facilitated recovery”).

94. David L. Braddock & Susan L. Parish, *AN INST’L HIST. OF DISABILITY* (Gary L. Albrecht et al. eds., 2001), <https://omnilogos.com/institutional-history-of-disability>.

95. *Id.*

96. See *id.*

access to 20% of the United States population. The ADA is modeled after the Civil Rights Act of 1964 (*see* Table 1).⁹⁷ It provides that disabled individuals are:

a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.⁹⁸

Similarly, the ADA addresses discrimination in all five areas originally in the Civil Rights Act.⁹⁹ (*See* Table 1).¹⁰⁰

There is no doubt the ADA has changed the lives of disabled Americans. Nevertheless, the ADA still has many loopholes that permit discrimination, like the restrictions on covered disabilities,¹⁰¹ vagueness in employment claims,¹⁰² federal government agencies,¹⁰³ public walkways,¹⁰⁴ airline transportation,¹⁰⁵ or corporations with

97. *See generally id.*; 42 U.S.C. § 2000(d) et seq. (1964).

98. Americans with Disabilities Act, 42 U.S.C. §12101(a)(7) (1990).

99. *See* Christine J. Back, *The Civil Rights Act of 1964: Eleven Titles at a Glance*, CONG. RSCH. SERV. (Dec. 14, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11705#~:text=Title%20V%3A%20The%20U.S.%20Commission%20on%20Civil%20Rights&text=Among%20other%20operational%20matters%2C%20Title,are%20codified%20at%2042%20U.S.C.> (outlining how the Civil Rights Act addresses discrimination in voting, public accommodations, education, federal funding, and employment).

100. *See generally id.*; Richard B. Simring, *The Impact of Federal Antidiscrimination Laws on Housing for People with Mental Disabilities*, 59 GEO. WASH. L. REV. 431, 431 (1991) (discussing how the Civil Rights Act was amended to include fair housing discrimination, as reflected in Table 1).

101. Cheryl L. Anderson, *Ideological Dissonance, Disability Backlash, and the ADA Amendments Act*, 55 WAYNE L. REV. 1267, 1268 (2009).

102. Nicole Buonocore Porter, *The New ADA Backlash*, 82(1) TENN. L. REV. 1, 68, 73–75 (2014).

103. 42 U.S.C. § 12111(5)(B)(i) (The ADA does not apply to the executive branch of the federal government.).

104. Robin Paul Malloy & Sarah K. Spencer, *Sidewalks and The Americans with Disabilities Act*, 41 ZONING AND PLAN. L. REPS. 1, 2 (2018) (The ADA does not require cities to construct sidewalks in public spaces or residential neighborhoods).

105. Nondiscrimination on the Basis of Disability in Air Travel, 14 C.F.R. § 382.1 (2009); Air Carrier Access Act, 14 C.F.R. pt. 382, 49 U.S.C. § 41705 (Airlines have been exempted from the ADA, affecting disabled Americans' right to travel. Instead, the airlines

fewer than fifteen employees.¹⁰⁶ In addition, enforcement of the ADA falls to disabled individuals to bring the enforcement actions in court,¹⁰⁷ leading to a lack of civil rights implementation.¹⁰⁸ Essentially, the *only* established method to address unequal access through the ADA is a private lawsuit.¹⁰⁹ Research shows that in fiscal year 2020, only 1.7% of ADA civil rights cases litigated with the Equal Employment Opportunity Commission (“EEOC”) were successfully won by the plaintiff,¹¹⁰ and 63.9% claims of discrimination were simply dismissed.¹¹¹ In educational discrimination, post-secondary institutions won 81% of the time when the students filed discrimination claims against their institution.¹¹² Discriminatory treatment cases showed an even higher institutional success rate, with the institution winning of 87.7% of the time.¹¹³

Post-civil rights, infamous law and culture stereotypes still hold the predominant narrative and perception of disabled students through eugenics,¹¹⁴ the medical model,¹¹⁵ and Ugly Laws.¹¹⁶ Indeed, *Buck v. Bell*—a eugenics case involving a woman who was forcibly sterilized for being “disabled” and “inferior”—has yet to be

are subject to the Air Carrier Access Act, which was passed in 1986. Unfortunately, this law is distinct and detached from the ADA, causing disparities in flying. The Air Carrier Access Act is in need of serious updates, as shown by the colossal amount of discrimination complaints and assistive and mobility devices receiving extensive damage by airlines.).

106. 42 U.S.C. § 12111(5)(A).

107. David M. Perry, *Why Congress Is Close To Gutting A Key Provision Of The ADA*, PAC. STANDARD (Feb. 14, 2018), <https://psmag.com/social-justice/congress-is-close-to-gutting-a-key-provision-of-the-ada> (noting that “[w]hile there is a small division in the Department of Justice (DOJ) doing some oversight, the ADA generally depends on private citizens bringing complaints through damages-free lawsuits”).

108. *Id.* (noting that the limited avenues of recourse under the ADA are being threatened); Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of “Abusive” ADA Litigation*, 54 UCLA L. REV. 1, 9–20 (2006) (noting the weak incentives to bring ADA enforcement actions).

109. *Id.* at 10 (“Because the government does not fully enforce the ADA, private enforcement is essential.”).

110. *Americans with Disabilities Act of 1990 (ADA) Charges (Charges filed with EEOC) (includes concurrent charges with Title VII, ADEA, EPA, and GINA) FY 1997–FY 2021*, EEOC, <https://www.eeoc.gov/statistics/americans-disabilities-act-1990-ada-charges-charges-filed-eeoc-includes-concurrent> (last visited Feb. 24, 2023).

111. *Id.*

112. Margaret M. McMennamin & Perry A. Zirkel, *OCR Rulings Under Section 504 and the Americans with Disabilities Act: Higher Education Student Cases*, 16 J. POSTSECONDARY EDUC. & DISABILITY 55, 58 tbl.2 (2003).

113. *Id.*

114. *Buck v. Bell*, 274 U.S. 200, 205 (1927).

115. Paul Harpur, *From Universal Exclusion to Universal Equality: Regulating Ableism in a Digital Age*, 40 N. KY. L. REV. 529, 534–35 (2013).

116. SCHWEIK, *supra* note 89, at 1–20.

fully overturned by the Supreme Court.¹¹⁷ This shows a lack of priority for disabled autonomy.¹¹⁸

Bell was a case brought to the Court after a long legal battle trying to label Ms. Buck as inferior so the state of Virginia could forcefully sterilize her. Because of deeply held prejudices about preventing people deemed inferior from procreating, the Court decided Ms. Buck was “manifestly unfit” to procreate, although later information showed that the label of “feeble-mindedness” was based on the fact Buck had become pregnant out of wedlock when she was raped.¹¹⁹ At the time, out-of-wedlock pregnancy was enough to declare she needed to be sterilized as it was considered taboo to have an “illegitimate” child.¹²⁰

The Supreme Court’s 8-1 decision in *Bell* upholding a state’s right to compulsory sterilize facilitated the forceful sterilization of disabled Americans and created precedent to sanction the sterilization of Japanese women in U.S. concentration camps during World War II and a state’s right to forcefully sterilize prisoners.¹²¹ Horrifically, the case continues to rear its head post-civil rights, denying autonomy.¹²² Many small and unknown cases, like one heard by the Iowa Supreme Court in 2014,¹²³ hold disabled individuals can still be forcefully sterilized as long as there is court approval.¹²⁴ In 2020, a prominent case hit the news when a whistleblower reported that medical staff performed forced sterilization while simultaneously

117. *The Right to Self-Determination: Freedom from Involuntary Sterilization*, DISABILITY JUST. (2023), <https://disabilityjustice.org/right-to-self-determination-freedom-from-involuntary-sterilization> (noting that while the case was never overturned, “state statutes such as the one upheld in *Buck v. Bell* have been repealed, and its reasoning has been undermined by a subsequent Supreme Court decision striking down a law providing for involuntary sterilization of criminals”).

118. See generally Hilary Eisenberg, *The Impact of Dicta in Buck v. Bell*, 30 J. CONTEMP. HEALTH L. & POL’Y 184, 195–98 (2013) (explaining how state standards for sterilization are extremely varied, though the concept overall is disfavored).

119. Nathalie Antonios & Christina Raup, *Buck v. Bell (1927)*, EMBRYO PROJECT ENCYCLOPEDIA (2018), <http://embryo.asu.edu/handle/10776/2092>, <https://embryo.asu.edu/pages/buck-v-bell-1927#:~:text=In%201927%2C%20the%20US%20Supreme,defects%20to%20the%20next%20generation.>

120. *Id.*

121. See generally NANCY ORDOVER, AM. EUGENICS: RACE, QUEER ANATOMY, AND THE SCI. OF NAT’LISM 160 (2003) (discussing Representative Jed Johnson’s proposal “to sterilize Japanese-American internees” during the eugenics movement surrounding WWII).

122. See generally Eisenberg, *supra* note 118, at 195–96 (discussing *Buck v. Bell* in relationship with other reproductive rights cases, such as *Roe v. Wade*).

123. *In re Guardianship of Kennedy*, 845 N.W.2d 707, 708 (Iowa 2014).

124. *Id.*

refusing necessary medical treatment of immigrants with disabilities.¹²⁵ Even with many sterilization laws now overturned, many of the same unfavorable attitudes remain.¹²⁶ This creates a persistent trope that disability equals incompetence and otherness, continuing to harm the polyethnic disabled community, especially LGBTQ+, Black, Brown, poor, migrant, indigenous, and unhoused students with disabilities.¹²⁷

The blur between institutionalization and prison from the beginning of disabled history has had lasting effects in modern life.¹²⁸ Attitudes toward institutionalized or imprisoned disabled individuals leads to a disability invisibility.¹²⁹ This concept of disability invisibility is present in education; for example, students facing mental health issues are forced by post-secondary institutions into missing large amounts of school, improper treatment, or be kicked out of their programs entirely, contrary to medical advice¹³⁰ that deems them suitable for post-secondary education.¹³¹ Another example is the school-to-prison pipeline.¹³² In fact, the National

125. Jeremy Redmon, *Whistleblower blasts Georgia Immigration Detention Center's COVID-19 Response*, ATLANTA J.-CONST. (Sept. 14, 2020), <https://www.ajc.com/news/whistleblower-blasts-georgia-immigration-detention-centers-covid-19-response/G32IMGY3CBHRZF5G32GCNE6L5E>.

126. See Katie Eyer, *Claiming Disability*, 101 BOSTON U. L. REV. 547, 559 (2021) (discussing the widespread stigma and bias around disability).

127. See *id.* at 559–61 (discussing the damaging narrative which portrays disability as a negative characteristic).

128. See LAURA M. MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, *DISABILITIES REPORTED BY PRISONERS 1* (2021), <https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016> (stating that 38% of prisoners self-report as having a disability).

129. See Karen P. DePauw, *The (In)Visibility of Disability Cultural Contexts and "Sporting Bodies"*, 49 QUEST 417, 424 (1997) (discussing the concept of "invisibility of disability" within the context of sports); Joy Banks, *Invisible Man: Examining the Intersectionality of Disability, Race, & Gender In An Urban Community*, 33 DISABILITY & SOC'Y 894, 901 (2018) (showing how both disability, and the intersection of disability, race, and gender or other "double jeopardy" minorities renders an individual often more invisible).

130. See e.g., Sarah Butrymowicz, *Sent Home Early: Lost Learning in Special Education*, THE HECHINGER REP. (Mar. 25, 2021), <https://hechingerreport.org/sent-home-early-lost-learning-in-special-education> (discussing how disabled children are often sent home as "discipline" for not being able to "handle full days") (internal quotations omitted).

131. See Abigail Napp & Harsha Nahata, *The Dismal Academic Record*, NYCITY NEWS SERV., <https://campusmentalhealth.nycitynewsservice.com> (last visited Feb. 25, 2023); Order Dismissing Action at *1, *Mental Health & Wellness Coal. v. Stanford Univ.*, No. 5:18-cv-02895-NC (N.D. Cal. Oct. 29, 2019) (paying particular attention to the joint dismissal in agreement of settlement); Elena Kadvanly, *Lawsuit: Stanford Violated Students' Rights in Mental Health Response*, PALO ALTO WKLY. (May 25, 2018, 8:46 AM), <https://www.paloaltoonline.com/news/2018/05/18/lawsuit-stanford-violated-students-rights-in-mental-health-response>.

132. *BREAKING THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS WITH DISABILITIES 5* (2015), https://ncd.gov/sites/default/files/Documents/NCD_School-to-PrisonReport_508-PDF.pdf.

Council on Disability has acknowledged the school-to-prison pipeline cannot be addressed without acknowledging a disability framework as both students with disabilities and multi-marginalized students stereotyped with disabilities are much more likely to be labeled as noncompliant.¹³³ Consequently, the ADA has yet to be a cure for all discrimination.

F. The Empirical Case for Disparate Post-Secondary Education

Disabled people have historically possessed fewer educational opportunities.¹³⁴ Laws that promoted institutionalization instead of equal opportunity eliminated adequate education for people with disabilities.¹³⁵ Although courts have created strong precedent for K-12 equal access,¹³⁶ the area of higher education is still fiercely litigated across ideological and legal aisles.¹³⁷ Prophylactic access laws like the Individuals with Disabilities Education Act (“IDEA”)¹³⁸ do not apply to post-secondary education.¹³⁹ Thus, when students transition to college, only retroactive discrimination laws and protections apply, and one must be discriminated against before any solutions can occur.¹⁴⁰

133. See *id.* at 6, 47–50.

134. See Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773, 774–75 (describing the purpose for the law, which is for the federal government to assist state and local governments in providing programs “to meet the educational needs of handicapped children in order to assure equal protection of the law.”).

135. *Id.* at 781 (discussing the priority to educate children with disabilities alongside all other children and ensuring that “special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”).

136. *Pennsylvania Ass’n. for Retarded Child v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257, 1266 (E.D. Pa. 1971); *Mills v. Bd. of Educ. of District of Columbia*, 343 F. Supp. 866, 880 (D.D.C. 1972).

137. See generally *Your Rights in College*, DISABILITY RTS. N.C. (Apr. 27, 2021), <https://disabilityrightsncc.org/resources/your-rights-in-college/#:~:text=From%20High%20School%20to%20College,-Public%20elementary%2C%20middle&text=Public%20schools%20must%20also%20accommodate%20all%20students%20with%20disabilities> (explaining how access to college education is not protected by the same laws as K-12 public education; instead, colleges have “different responsibilities”).

138. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

139. Joseph W. Madaus, *Navigating the College Transition Maze: A Guide for Students with Learning Disabilities*, 37 TEACHING EXCEPTIONAL CHILD. 32, 33 (2005) (“Thus, as with an IEP, the services outlined in a secondary-level Section 504 plan end at graduation from high school. Although colleges may use these plans in decision making, they are not obligated to follow the requirements of these plans.”).

140. See Suzanne E. Eckes & Theresa A. Ochoa, *Students with Disabilities: Transitioning from High School to Higher Education*, 33 AM. SECONDARY EDUC. 6, 8–9 (2005).

Even with lack of legal and social support when transitioning to post-secondary education, disabled students have made significant progress in attending four-year colleges.¹⁴¹ Current data estimates around 19% of undergraduate students are disabled.¹⁴² While other data state about 11.1% of undergraduate students are disabled,¹⁴³ these percentages are similar to the adult percentage of 19–26% of Americans who are disabled.¹⁴⁴ Unfortunately, this data does not tell the full story, as disabled students drop out at much higher rates than their non-disabled colleagues.¹⁴⁵ Other studies show students with pre-existing disabilities are less likely to enroll in college to begin with.¹⁴⁶ In educational attainment, disabled individuals trail behind their non-disabled counterparts in all states. (See Figure VI).¹⁴⁷ It is vital to examine the full complexity of degree completion. People who do not finish their degree have median annual earnings of just \$39,362, over \$20,000 less than those who receive a bachelor's degree,¹⁴⁸ limiting a disabled person's economic position.¹⁴⁹

Only 10.9% of disabled Americans have a four-year degree, compared to 22% of the non-disabled population.¹⁵⁰ Disabled students are even less represented in post-baccalaureate programs. The largest percentage estimate found only 11.9% of post-grad students are disabled.¹⁵¹ Graduate degree attainment of disabled students is

141. See *Fast Facts: Students with Disabilities*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=60> (last visited Mar. 13, 2022).

142. *Id.*

143. JAY TIMOTHY DOLMAGE, *ACADEMIC ABLEISM: DISABILITY AND HIGHER EDUCATION* 22 (2017).

144. *Disability and Health Data System (DHDS)*, CTRS. FOR DISEASE CONTROL & PREVENTION (2019), <https://dhds.cdc.gov/SP?LocationId=59&CategoryId=DISEST&ShowFootnotes=true&showMode=&IndicatorIds=STATTYPE,AGEIND,SEXIND,RACEIND,VETIND&pn10=Chart,false,YR4,CAT1,BO1,,,,AGEADJPREV&pn11=Chart,false,YR4,DISSTAT,,,,PREV&pn12=Chart,false,YR4,DISSTAT,,,,AGEADJPREV&pn13=Chart,false,YR4,DISSTAT,,,,AGEADJPREV&pn14=Chart,false,YR4,DISSTAT,,,,AGEADJPREV>; BRAULT, *supra* note 35, at 4.

145. Janet E. Rosenbaum, *Disabilities and Degrees: Identifying Health Impairments that Predict Lower Chances of College Enrollment and Graduation In A Nationally Representative Sample*, 46 *CMTY. COLL. REV.* 145, 158 (2018).

146. *Id.* at 154.

147. INST. ON DISABILITY, 2019 ANNUAL DISABILITY STAT. COMPENDIUM 140 (2020) (The data represents the civilian, noninstitutional population. The study is based on a sample and subject to sampling variability.).

148. *PINC-03. Educational Attainment-People 18 Years Old and Over, by Total Money Earnings, Work Experience, Age, Race, Hispanic Origin, and Sex*, *supra* note 4.

149. See generally *id.*

150. INST. ON DISABILITY, *supra* note 145, at 140.

151. *Fast Facts: Students with Disabilities*, *supra* note 139.

much lower than non-disabled students in every U.S. state (See Figure VII.)

Over the years, the gap between disabled and non-disabled students has increased. (See Figure IX, X, and XI for a comparison between 2010, 2015, and 2020 data sets of educational attainment). In 2010, 33% of non-disabled students received four-year degrees compared to 15% of disabled students. (See Figure IX). However, in 2020, 41% of non-disabled adults received a four-year degree compared to only 18% of disabled adults.¹⁵² (See Figure XI). In addition, 20% of disabled Americans do not have a high school diploma, compared to 9.8% of the overall population (See Figure VIII).¹⁵³

While on campus, 23% of disabled students report witnessing disability discrimination.¹⁵⁴ Disabled students' overall level of comfort on campus was 10% lower than their non-disabled peers.¹⁵⁵ During post-secondary education, few disabled students seek accommodations because of potential denial or because the generic list of accommodations given by disability centers are too poor of quality to truly help and may not even truly apply to one's disability.¹⁵⁶ For example, extended time or a notetaker, common accommodations, may not truly meet the needs of the disabled student but rather an amorphous approach to create some semblance of assistance.¹⁵⁷

152. See *Total Number of Persons 25 to 64 Years Old, Number with Disabilities, and Percentage with Disabilities, by Highest Level of Educational Attainment and Other Selected Characteristics: 2010 and 2020*, NAT'L CTR. FOR EDUC. STAT. (July 2021), https://nces.ed.gov/programs/digest/d20/tables/dt20_104.75.asp.

153. INST. ON DISABILITY, *supra* note 145, at 138 tbl.13.5.

154. WENDY S. HARBOUR & DANIEL GREENBERG, NCCSD RSCH. BRIEF: CAMPUS CLIMATE & STUDENTS WITH DISABILITIES 6 (2017), <http://files.eric.ed.gov/fulltext/ED577464.pdf>.

155. *Id.* at 5 fig.1.

156. See Barbara S. S. Hong, *Qualitative Analysis of the Barriers College Students with Disabilities Experience in Higher Education*, 56 J. COLL. STUDENT DEV. 209, 220–21 (2015); Laura Marshak et al., *Exploring Barriers to College Student Use of Disability Services and Accommodations*, 22 J. POSTSECONDARY EDUC. & DISABILITY 151, 157–58 (2010); LYNN NEWMAN ET AL., *THE POST-HIGH SCHOOL OUTCOMES OF YOUNG ADULTS WITH DISABILITIES UP TO 8 YEARS AFTER HIGH SCHOOL* 32 fig.10 (2011), <https://ies.ed.gov/ncser/pubs/20113005/pdf/20113005.pdf> (highlighting the issue of individuals choosing not to get accommodations, because while 87% of disabled students received accommodations in high school, only 19% of disabled students received accommodations in postsecondary education).

157. See Marshak et al., *supra* note 154, at 157; Allison R. Fleming et al., *Student Voices: Recommendations for Improving Postsecondary Experiences of Students with Disabilities*, 30 J. OF POSTSECONDARY EDUC. & DISABILITY 309, 314–15 (2017); Valérie Van Hees et al., *Higher Education Experiences of Students With Autism Spectrum Disorder: Challenges, Benefits And Support Needs*, 45 J. AUTISM DEV. DISORDERS 1673, 1682 (2015).

Education also impacts other vital life needs.¹⁵⁸ Those without a high school diploma or GED education are 4.5 times more likely to experience homelessness.¹⁵⁹ There is also some research to suggest that finishing a post-secondary degree does lead to greater likelihood of homeownership.¹⁶⁰ Notably for disabled students, students with post-secondary education have overall better health outcomes.¹⁶¹ Education has been correlated with a less rapid onset of “functional decline.”¹⁶² An analysis of the health factors indicates that education level may be an even stronger predictor of health than income level.¹⁶³

Only 15% of disabled individuals are employed when they have less than a high school degree, compared with 62% of non-disabled populations (See Figure XII). Fifty-three percent of disabled individuals with a master’s, J.D., or Ph.D. are employed, but 86% of non-disabled individuals are employed with the highest degree attainment (See Figure XII). Thus, non-disabled Americans who did not finish high school are employed more than disabled people with doctorates.

Even when employed, disabled individuals make disparately less: 20.7% of non-disabled Americans make \$75,000 or more annually, compared to just 12.3% of those with disabilities.¹⁶⁴ In contrast, 15% of disabled Americans have an income of less than \$5,000 per year, but the rate is only 8.1% for non-disabled Americans.¹⁶⁵ Nearly 20% of disabled individuals have an income between \$5,000 and \$14,999.¹⁶⁶ (See Figure III). The median annual earnings of

158. See e.g., Broton, *supra* note 3, at 31 (discussing the relationship between housing security and educational success).

159. MATTHEW MORTON ET AL., MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AM. 13 (2017), https://www.chapinhall.org/wp-content/uploads/ChapinHall_VoYC_National_Report_Final.pdf.

160. See Jamaal Abdul-Alim, *College Degree Completion and Home Ownership*, DIVERSE (Apr. 4, 2017), <https://www.diverseeducation.com/home/article/15100261/college-degree-completion-and-home-ownership>.

161. Michael Hout, *Social and Economic Returns to College Education in the United States*, 38 ANN. REV. OF SOCIO. 379, 393–94 (2012).

162. Pamela Herd et al., *Socioeconomic Position and Health: The Differential Effects Of Education Versus Income on the Onset Versus Progression of Health Problems*, 48 J. HEALTH & SOC. BEHAV. 223, 231 (2007).

163. *Id.*

164. *S1811: Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status*, U.S. CENSUS BUREAU (2019), <https://data.census.gov/cedsci/table?q=S1810%3A%20DISABILITY%20CHARACTERISTICS&tid=ACST1Y2019.S1811>.

165. *Id.*

166. *Id.*

\$37,262 drop to \$25,270 for Americans with disabilities.¹⁶⁷ (See Figure IV). Further, 19.5% of disabled Americans live below the poverty level compared with 9.7% of non-disabled Americans.¹⁶⁸ (See Figure V for complete data).

The empirical evidence of disparity in post-secondary education is undeniable; however, what factors sustain the problem, and what solutions can be given? Using empirical and sociocultural evidence through the lens of civil rights, we may be able to come closer to finding a long-term solution for disabled success in America.

II. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A TRADITIONALIST LENS

A. *External Diagnosis*

A traditionalist lens describes the dominant viewpoint still housed in the U.S., emphasizing the need for classical hierarchy, moral order, past historical and conservative values, meritocracy, and internal self-help principles. When examining the disability experience in the U.S., many traditionalists do not dispute the statistics that show disparities in education between disabled and non-disabled people.¹⁶⁹ However, they do not believe these statistics are evidence of an institutional problem of discrimination.¹⁷⁰ Although there may be some individuals who maliciously discriminate against disabled students, they are few and far between, and historical discrimination does not mean there are still current systematic lingering effects.¹⁷¹ Thus, traditionalists like Bill O’Riley reason that because there are negligible effects from external factors, current disparities are due to individuals’ internal lack of self-reliance,¹⁷² encouraged with the “explosion” of handouts to disabled individuals.¹⁷³ Dr. Thomas Sowell

167. *Id.*

168. *Id.*

169. See generally BROOKS, *supra* note 9, at 20 (discussing how most civil rights “traditionalists do not regard statistical disparity as problematic in itself” within the context of race).

170. See *id.* at 20–21, 26–27 (explaining how many traditionalists will consider non-racial factors when assessing statistical disparities within the context of civil rights).

171. See generally *id.* at 16–17, 26–27 (discussing how overt racism is less common, yet the long-lasting impact of discrimination remains).

172. See *id.* at 23–24.

173. See TRANSCRIPT: *Full Interview between President Obama and Bill O’Reilly*, FOX NEWS (Dec. 20, 2015, 7:36 PM), <https://www.foxnews.com/politics/transcript-full-interview-between-president-obama-and-bill-oreilly>.

describes these external handouts as a “war on achievement.”¹⁷⁴ George Leef makes it clear accommodations are what “keeps people from learning tough lessons.”¹⁷⁵ Indeed, traditionalists view the pro-diversity policies of many universities as discriminatory *in favor* of disabled individuals.¹⁷⁶ Policies that differentiate between disabled and non-disabled students are what traditionalists view as the primary problem exacerbating higher education disparities.¹⁷⁷ Traditionalists’ view of disparities in post-secondary education focuses on the belief that disability-neutral policies will increase educational success for all students.¹⁷⁸

Traditionalists often argue that widespread cheating arises from allowing higher education institutions to provide accommodations.¹⁷⁹ Most traditionalists, such as Dr. John Hosterman, point to “high-stakes” testing to argue in favor of disability neutrality.¹⁸⁰ They reason that educational testing is based on merit and therefore accommodations for disabled students will provide for an unfair advantage to individuals who otherwise may not meet the test’s high standard.¹⁸¹ Traditionalists argue that if people are not able to succeed on the standardized tests without extra help, they are “less proficient,” and by extension, not qualified for higher education.¹⁸²

Contrary to the belief of many disability rights theorists, traditionalists do want “equal access” in education for disabled students.¹⁸³ For traditionalists, however, “equal access” is defined differently: the right for every student to enroll in classes or take standardized tests,

174. Thomas Sowell, *The War Against Achievement*, CREATORS (Nov. 19, 2013), <https://www.creators.com/read/thomas-sowell/11/13/the-war-against-achievement>.

175. George Leef, *Helping Hand or Unfair Advantage?*, THE JAMES G. MARTIN CTR. FOR ACAD. RENEWAL (Mar. 30, 2010), <https://www.jamesgmartin.center/2010/03/helping-hand-or-unfair-advantage>.

176. See *Rothberg v. Law Sch. Admission Council*, 102 F. Appx. 122, 127 (10th Cir. 2004) (McConnell, J., concurring) (expressing concern that a student may have “an unjustified advantage” on a test due to accommodations); Leef, *supra* note 175.

177. See generally BROOKS, *supra* note 9, at 6, 21–22 (describing why civil rights traditionalists are often anti-affirmative action).

178. See generally John Hosterman et al., *Testing Accommodations: The Perils of the Approve Everything Model*, 3 J. NAT’L COLL. TESTING ASS’N 2, 3–4 (2019) (discussing the difference between ensuring student success and student access through accommodations).

179. See generally *id.* at 9–10 (discussing how certain approaches to accommodations could lead to “serious test integrity and security challenges” such as cheating).

180. *Id.* at 3.

181. *Id.* at 2–3.

182. See generally Michelle Tenam-Zemach, Daniel R. Conn, & Paul T. PARKISON, UNRAVELING THE ASSESSMENT INDUSTRIAL COMPLEX: UNDERSTANDING HOW TESTING PERPETUATES INEQUITY AND INJUSTICE IN AM. 8–9 (2021) (discussing the “commodity value of education and efficiency of schooling”).

183. Hosterman et al., *supra* note 178, at 3.

with every student receiving the same setup and environment.¹⁸⁴ Those who are successful academically worked hard without receiving accommodations or other aids.¹⁸⁵ As Brooks states, traditionalism believes that all civil rights groups are entitled to “equal treatment” but not “special treatment.”¹⁸⁶ Extracting valid test results is the most important goal for traditionalists and one that is severely compromised by testing accommodations that they perceive as giving disabled students an unfair advantage over their able-bodied peers.¹⁸⁷

An example of what a traditionalist would use as evidence for how accommodations ruin academic integrity is the Operation Varsity Blues scandal. Varsity Blues was an investigative finding that catapulted the idea of accommodations fraud into the media spotlight when wealthy white parents were shown to be able to bribe “high-stakes” test administrators to give accommodations to their non-disabled children.¹⁸⁸ A wiretapped phone call between a parent and a fraud facilitator showed that there was pervasive abuse of accommodations on ACT testing.¹⁸⁹ Hardworking students were devastated by the knowledge that affluent students were able to succeed by exploiting disability accommodations through fraudulent means.¹⁹⁰

B. External Prescription

Traditionalists are focused on internal prescriptions and do not prescribe external solutions. This is for several reasons. First, because testing accommodations are not disability-neutral, they are deemed an external prescription, which is at odds with the traditionalist theory. Second, traditionalists state accommodations can easily fail to “level the playing field,” instead giving an unfair advantage to non-disabled individuals.¹⁹¹ In particular, traditionalists believe there can be students with “fake disabilities” or with types of

184. *Id.*

185. *See generally id.* (explaining the difference between equal access and equal success).

186. BROOKS, *supra* note 9, at 14.

187. *See* Hosterman et al., *supra* note 178, at 3.

188. Valerie Flugge & Nanci K. Carr, *Did You Fail to Tell Me Something, Mom? Nondisclosure Fraud in the Wake of Varsity Blues*, 46 U. DAYTON L. REV. 245, 246–48 (2021).

189. Laura Smith, *Affidavit in Support of Criminal Complaint*, DEP'T OF JUST. 1, 11, 80 (Mar. 11, 2019), <https://www.justice.gov/file/1142876/download>.

190. Nick Anderson, *Abuse of 'Extended Time' on SAT and ACT Outrages Learning Disability Community*, WASH. POST (Mar. 29, 2019, 10:00 PM), https://www.washingtonpost.com/local/education/abuse-of-extended-time-on-sat-and-act-outrages-learning-disability-community/2019/03/29/d58de3c6-4c1f-11e9-9663-00ac73f49662_story.html.

191. Hosterman et al., *supra* note 178, at 2–3.

disabilities traditionalists diagnose as minor should not be given accommodations, which would be an external solution which is not within the traditionalist ideology.¹⁹² Although disabled students may have deficiencies, they must also compete within the same structure as others and use hard work instead of entitlement.¹⁹³ Traditionalists who work at post-secondary institutions have the opportunity to be vocal about their view of unfair advantages accommodations give and can deny such accommodations they deem unfair.¹⁹⁴ Traditionalist administrators may also cite the cost of accommodations as a sign that disabled students are the beneficiaries of extra spending from the institution, contributing to inequality between students.¹⁹⁵

In addition, disabled individuals have been characterized as incompetent for many years; thus, the giving of accommodations may be the product of patronization.¹⁹⁶ This argument has a basis in the patronization and infantilization of disabled individuals,¹⁹⁷ however, research has shown that post-secondary institutions do not give out accommodations as freely or easily as the traditionalist argument would suggest.¹⁹⁸

Many traditionalists prescribe eliminating accommodations in favor of a single method of learning that caters to the majority non-disabled population, but other traditionalists are open to prescribing

192. Richard K. Scotch, *Models of Disability and the Americans With Disabilities Act*, 21 BERKELEY J. EMP. & LAB. L. 213, 219–20 (2000).

193. See generally ABA Comm'n on Disability Rts., *Implicit Biases & People with Disabilities*, A.B.A., https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias (last visited Mar. 13, 2022) (explaining how people with disabilities are often subject to implicit bias in their everyday lives).

194. George Cummings, *Professor Says Helping Disabled Student Gives Unfair 'Advantage'*, N.Y. POST (Sept. 15, 2017, 3:16 PM), <https://nypost.com/2017/09/15/professor-says-helping-disabled-student-gives-unfair-advantage>; see also *Access UChicago Now: Insights*, UNIV. OF CHI., <https://accessibility.uchicago.edu/about/insights> (last visited Mar. 13, 2022); Dalun Zhang et al., *University Faculty Knowledge, Beliefs, and Practices in Providing Reasonable Accommodations to Students With Disabilities*, 31 REMEDIAL & SPECIAL EDUC. 276, 283–84 (2010).

195. DOLMAGE, *supra* note 143, at 82; see also Tema A. Cohen et al., *College Students' Access to Academic Accommodations Varies as a Function of School Type, Selectivity, and Cost*, 4 J. EDUC. & CULTURE STUD. 130, 140 (2020).

196. See generally Carolyn L. Weaver, *Incentives Versus Controls in Federal Disability*, in *DISABILITY & WORK: INCENTIVES, RIGHTS, & OPPORTUNITIES* 3, 3–17 (Carolyn L. Weaver ed., 1991) (discussing the concept of workplace accommodations from an economic perspective).

197. *Infantilization of adults with disabilities needs to stop*, UREVOLUTION, <https://www.urevolution.com/blogs/magazine/infantilization-of-adults-with-disabilities> (last visited Feb. 27, 2023).

198. DOLMAGE, *supra* note 143, at 24–25. See generally Cheryl A. Hurtubis Sahlen & Jean P. Lehmann, *Requesting Accommodations in Higher Education*, 38 TEACHING EXCEPTIONAL CHILDREN 28, 28 (2006).

more tailored accommodations to the individual student's needs rather than a generic package of accommodations that are given to all disabled individuals, regardless of disability type.¹⁹⁹ Traditionalists who permit high-stakes testing accommodations want to flag test takers who used accommodations to allow post-secondary institutions to ensure academic honesty by knowing who used accommodations and who did not.²⁰⁰

C. Internal Diagnosis

The disabled community's lack of success in higher education and subsequent employment is the primary concern in traditionalist frameworks.²⁰¹ Traditionalists maintain that there is a severe lack of willpower amongst disabled students that contributes to laziness.²⁰² Traditionalists view the non-disabled body as superior, stemming from the nineteenth-century medical model theory that concluded any inability to be successful was solely a deficiency of the individual.²⁰³

i. Willpower and "Faking" Disability

Traditionalists view certain disabilities as less severe and negligible enough in their effect, so students with these disabilities are just not adequately trying to succeed.²⁰⁴ Traditionalists agree that "[t]he secret to getting a [] good job is education."²⁰⁵ Thus, the lack

199. Hosterman et al., *supra* note 178, at 4–5.

200. See generally Michael Edward Slipsky, *Flagging Accommodated Testing on the LSAT and MCAT: Necessary Protections of the Academic Standards of the Legal and Medical Communities*, 82 N.C. L. REV. 811, 811–13 (2004).

201. See generally Gabriella M. Nepomuceno et al., *The Value of Safety and Practicality: Recommendations For Training Disabled Students in the Sciences with a Focus on Blind And Visually Impaired Students in Chemistry Laboratories*, 23 J. CHEM. HEALTH & SAFETY 5, 7 (2016).

202. *Id.*; Dawn Beckley, *Gifted And Learning Disabled: Twice Exceptional Students*, THE NAT'L RSCH. CTR. ON THE GIFTED AND TALENTED (1998), <https://nrcgluconn.edu/newsletters/spring984>.

203. Lisa I. Iezzoni & Vicki A. Freedman, *Turning the Disability Tide: The Importance of Definitions*, 299 J. OF THE AM. MED. ASS'N 332, 332 (2008); Murray K. Simpson, 22 *Othering Intellectual Disability: Two Models of Classification from the 19th Century*, THEORY & PSYCH. 541, 542 (2011).

204. See generally Bradley A. Areheart, *When Disability Isn't "Just Right": The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma*, 83 IND. L. J. 181, 181-231 (2008) (discussing the narrow legal definition of disability and the social perception of disabled persons).

205. TRANSCRIPT: *Full Interview between President Obama and Bill O'Reilly*, *supra* note 171.

of hard work put into their degree is what traditionalists argue prevents disabled students from obtaining work.²⁰⁶

Traditionalists argue that any equal-access tools for testing “severely undermine[]” the validity of the testing by allowing individuals with minor impairments to obtain a significant advantage through accommodations.²⁰⁷ They also fear that an increase in disability accommodations will lead to less rigorous assessments, making the tests “a less accurate measure of intelligence.”²⁰⁸ Thus, traditionalists are inferring that the mere existence of disability accommodations is enabling “less intelligent” disabled students to enter higher education when they would not otherwise be intellectually qualified.

ii. Severe Disabilities and Uselessness

In contrast to their stance on the invalidity of individuals with “less severe” disabilities, traditionalists posit that individuals they label genuinely disabled with “more severe” disabilities cannot reasonably succeed in higher education and subsequent employment due to physical impairment and/or a significant lack of intelligence.²⁰⁹ Traditionalists argue that being able-bodied is a desirable trait for private parties²¹⁰ and thus, it is rational for traditionalists to discriminate against the disabled.²¹¹ Furthermore, they are alarmed that “anti-discrimination laws penalize *rational* discrimination against the disabled . . . interfer[ing] with the ordinary working of the market and, bluntly put, effect a wealth transfer from able members of the population to the disabled.”²¹² For traditionalists, there is no value in an educational system that supports individuals with severe

206. See generally Neeta P. Fogg et al., *The Impact of the Great Recession upon the Unemployment of Americans with Disabilities*, 33 J. OF VOCATIONAL REHABILITATION 193, 196–97 (2010) (revealing statistics that demonstrate the labor force participation rates of people with and without disabilities).

207. Craig S. Lerner, “Accommodations” for the Learning Disabled: A Level Playing Field or Affirmative Action for Elites?, 57 VAND. L. REV. 1043, 1048 (2004) (referring to Educational Testing Service’s (“ETS”) decision to stop flagging which exams were taken with accommodations).

208. *Id.*

209. See generally *id.* at 1046–47 (discussing the potential “agency costs” borne by universities that accommodate students with disabilities as they must “examine such requests carefully” to prevent “exploit[ation]” and the market impacts of employing individuals with disabilities) (Author note: Disabilities that are deemed real for traditionalists often fall to disabilities that are visible and physically noticeable, and invisible disabilities are often seen as easily overcome or even a ruse to get extra attention or help).

210. *Id.* at 1047.

211. *Id.*

212. *Id.* (emphasis added).

disabilities whom they deem unable to contribute to society when they leave the educational system.²¹³ These factors indicate to traditionalists that it is disabled Americans' medical deficiencies that cause the lack of education, not outside barriers to higher education.²¹⁴

Because of both viewpoints of the traditionalist, disabled students often feel the need to "prove" they are fully capable and sufficiently competent to engage in rigorous coursework, often choosing not to disclose a disability if they know there is an underlying presumption that accommodations are an excuse to take the easy route.²¹⁵ The "lack of willpower" argument and the "too physically impaired" argument are still the predominant view in many post-secondary institutions.²¹⁶ This persistent narrative has been widely studied in students across the United States and has shown to be a major factor in the lack of disability disclosure across a meta-analysis of studies.²¹⁷

D. Internal Prescription

Traditionalists contend that to simplify these difficult discussions, one should simply put a disability-neutral, non-accommodation policy in place.²¹⁸ A traditionalist lens prescribes that disability should not be considered as a factor in testing or in the classroom.²¹⁹ Accommodations create an unfair advantage, as each student "brings

213. See generally Robert Evert Cimera et al., *Too Disabled to Work: A Crossroad Once Thought Passed*, 39 RSCH. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES 240, 240–47 (2014) (discussing the social perception of vocational rehabilitation for people with disabilities and its impact on access to services); Debbie Jolly, *A Critical Evaluation of the Contradictions for Disabled Workers Arising from the Emergence of the Flexible Labour Market in Britain*, 15 DISABILITY & SOC'Y 795, 800–01 (2000) (discussing perceptions of unemployment toward people with disabilities in the U.K.).

214. See Jolly, *supra* note 213, at 799–801.

215. Riddell, *supra* note 53, at 45.

216. See generally DOLMAGE, *supra* note 143, at 82–83.

217. See *id.* at 22–23, 82; Donna M. Korbel et al., *Collaboration Strategies to Facilitate Successful Transition of Students with Disabilities in a Changing Higher Education Environment*, DISABILITY SERV. & CAMPUS DYNAMICS 20 (Wendy S. Harbour & Joseph W. Madaus eds., 2011); Hong, *supra* note 156, at 219–20, 222; Michael Lyman et al., *What Keeps Students with Disabilities from Using Accommodations in Postsecondary Education? A Qualitative Review*, 29 J. POSTSECONDARY EDUC. & DISABILITY 123, 128, 130 (2016); Marshak et al., *supra* note 156, at 154–56, 158.

218. See generally BROOKS, *supra* note 9, at 21–22 (describing how traditionalists within the race-based civil rights context prefer internal prescription measures over racial preferences).

219. See generally *id.*; *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973) (declining to use strict scrutiny to examine the Texas public education system despite inequalities of education due to socioeconomic status because there is no fundamental right to education).

to the table a different set of personal strengths and weaknesses as well as social advantages and disadvantages.”²²⁰ When accommodations are used to single out disabled individuals, students are treated differently. To a traditionalist framework, that is not just.²²¹

Traditionalist theory argues that the statistical disparities in educational attainment do not mean that disabled students must receive accommodations.²²² Instead, they argue that disabled people need to make lifestyle adjustments so they can succeed at the same level as their non-disabled counterparts.²²³ This may come by requiring disabled students to enroll in a life skills class on how to be more assertive.²²⁴ Classes and programs are available to some high-school-age students with disabilities that discuss how to be more prepared for college life with as few accommodations as possible.²²⁵ This method, traditionalists argue, creates responsibility and adaptation in disabled students.²²⁶ This viewpoint easily fits the larger American cultural narrative to work for what you want and not ask for handouts.²²⁷

Traditionalists encourage implementing a grueling, complex internal accommodations process so only the students with the most severe and deserving disabilities will obtain them.²²⁸ Once a student personally follows the steps to receive accommodations, many traditionalists prescribe a self-help doctrine.²²⁹ This ideology implies that one should help oneself through hard work and improve your

220. BROOKS, *supra* note 9, at 20 (reflecting Thomas Sowell’s traditionalist view within the context of race-based civil rights).

221. See generally Hosterman et al., *supra* note 178, at 3 (discussing how accommodations can sometimes create “an altered playing field” instead of “a level playing field”).

222. See BROOKS, *supra* note 9, at 20; Lerner, *supra* note 205, at 1060–61.

223. See Lerner, *supra* note 207, at 1123–24; BROOKS, *supra* note 9, at 21–22.

224. See M. Laxton et al., *Teaching Assertiveness Skills to People with Learning Disabilities: A Brief Report of a Training Programme*, 1 J. LEARNING DISABILITIES FOR NURSING, HEALTH, & SOCIAL CARE 71, 71 (1997).

225. See generally Alies Poetri Lintangari et al., *Are Students with Disabilities Ready for College? The Influence of College Readiness to College Engagement*, 10 INT’L J. EVALUATION & RSCH. IN EDUC. 845, 846 (2021).

226. See generally DOLMAGE, *supra* note 143, at 90–92 (discussing the initiative and responsibility required on behalf of students with a disability who attempt to navigate university disability services); Lerner, *supra* note 205, at 1123–24.

227. See generally BROOKS, *supra* note 9, at 25 (discussing this American narrative within the racial justice context).

228. Lerner, *supra* note 207, at 1061. (Author note: Disabilities which are considered “deserving” are often the most visible disabilities, while others simply less visible are also deemed “less deserving.”).

229. See generally DOLMAGE, *supra* note 143, at 92 (discussing a self-help approach to accommodations that requires students to directly inform the professor of their need for accommodations).

position in life by their own efforts to attain academic achievement. As such, traditionalists firmly believe in self-advocacy at all times in academia.²³⁰ However, traditionalists look down on disabled students who self-advocate for accommodations, as this is not considered truly your own hard work and subsequent achievement but instead getting handouts or making it easier to achieve in the academic environment.²³¹ Some traditionalists remain in the middle of these two sides, encouraging students to only ask for and receive the bare minimum, touting accommodations as a sign of weakness and instead encourage students to adapt to their environment.²³²

Other traditionalists who cite the rising cases of learning disabilities to support their stance state that accommodations should not be given at all.²³³ These traditionalists believe that it sends the wrong message to disabled students: they are inferior to students without disabilities.²³⁴ Students with this mindset will not make any real attempts to solve their problems and will engage in the “Cult of Victimology” if they know they are going to get accommodations, or as traditionalists believe, “handouts.”²³⁵ Giving accommodations in higher education creates “infantilization” of disabled students, traditionalists argue, and creates a mentality where lack of effort is accepted.²³⁶ Psychological and cognitive disabilities are hardest hit by this mindset, because in traditionalists’ view, these disabilities can and should be overcome.²³⁷ If individuals have not yet overcome these kinds of disabilities, it is viewed as a sign that they have a lack of willpower.²³⁸ These same students frequently appear non-disabled

230. See generally BROOKS, *supra* note 9, at 27–28 (discussing how the traditionalist approach to racial justice favors internal prescription where the “onus is on the individual”).

231. See DOLMAGE, *supra* note 143, at 92; Lyman et al., *supra* note 215, at 128, 130.

232. See generally DOLMAGE, *supra* note 143, at 24, 74–75, 80, 91; Jack Trammell & Melissa Hathaway, *Help-Seeking Patterns in College Students with Disabilities*, 20 J. POSTSECONDARY EDUC. & DISABILITY 5, 6–7 (2007); Lerner, *supra* note 205, at 1123–24.

233. See generally Benjamin J. Lovett, *Educational Accommodations for Students with Disabilities: Two Equity-Related Concerns* 6 FRONTIERS IN EDUC. 1, 1–2 (2021); *Teachers Weigh-In: Do We Over Accommodate? Join the Debate...*, THE WRIGHTSLAW WAY (Apr. 11, 2012), <https://www.wrightslaw.com/blog/teachers-weigh-in-do-we-over-accommodate-join-the-debate>.

234. See generally Hong, *supra* note 155, at 214 (providing examples of students feeling inferior after disclosing their disability or requesting accommodations).

235. BROOKS, *supra* note 9, at 25 (explaining the “Cult of Victimology” within the context of racial justice).

236. *Id.*

237. See generally Julio Arboleda-Flórez, *Considerations on the Stigma of Mental Illness*, 48 CANADIAN J. OF PSYCHIATRY 645, 646 (2003).

238. *Id.* at 647.

and therefore may never receive needed accommodations, causing them to potentially drop out of higher education as a result.²³⁹

III. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A REFORMIST LENS

A. *External Diagnosis*

A reformist lens seeks to resolve disparities by upholding incorporating minority groups into the majority of society, in other words, integration. This theoretical framework is prominently seen within the ADA's legislative vision to "integrat[e] people with disabilities into society" in general and economic life.²⁴⁰ Reformists, such as well-known deaf scholar Dr. Douglas Baynton, have applied comparative theories from prior civil rights groups to show the basis for disability to be included within the mainstream civil rights conversation.²⁴¹ Dr. Baynton argues that like in "mainstream" civil rights groups, external discrimination against disabled individuals is directly due to historic societal dehumanization and out-casting, and social, economic, financial, and employment disparities.²⁴² By exhibiting the subordination of a marginalized group through historical and current disparities, reformists seek to use such information to effectively persuade stakeholders that these barriers contribute to the post-secondary disparities.

i. Disability Matters

Reformists reject the traditionalist catch phrase "focus on ability, not disability" that creates the narrative of using the non-disabled body as the cultural default.²⁴³ Instead, reformists argue

239. See generally Hong, *supra* note 155, at 214 (providing an example of a disabled student who was entitled to flexible attendance yet still had to drop courses in multiple instances where professors were not accommodating).

240. See Elizabeth Clark Morin, *Americans with Disabilities Act of 1990: Social Integration Through Employment*, 40 CATH. U. L. REV. 189, 189–90 (1990).

241. Baynton, *supra* note 66, at 39–40.

242. *Id.* at 34–35.

243. See generally David Pfeiffer, *Eugenics and Disability Discrimination*, 9 DISABILITY & SOC'Y 481, 495–96 (1994); BROOKS, *supra* note 9, at xvii–xviii (discussing the damaging narrative that requires black individuals to conform to white culture or advocates for colorblindness); Morgan E. PettyJohn et al., *Therapeutic Utility of Discussing Therapist/Client Intersectionality in Treatment: When and How?*, 59 FAMILY PROCESS 313, 315 (2020) (provides a simplified visual of current culture and identities that are the default in this article (white, male, heterosexual, cisgender, able-bodied, upper middle class, English-speaking, U.S. citizen, etc.)).

disability matters, and focusing on the experiences of disabled individuals is vital.²⁴⁴

Disability matters because disabled students come to higher education with a systematic disadvantage—they are not part of the cultural norm of non-disabled individuals. Focusing on disability as a real and valid identity assists in the acknowledgement and analysis of discrimination.²⁴⁵ Once barriers are analyzed and acknowledged, reformists believe support and resources can enable disabled individuals to succeed in post-secondary education and subsequent employment.²⁴⁶ Acknowledging a disabled student may have external barriers to education helps that disabled student get the support they need.²⁴⁷ This is what reformists argue will achieve progress for the disabled community.²⁴⁸

Reformists argue there are correlations between the lack of post-secondary degree attainment and further success in the economy.²⁴⁹ Reformist theorists contend that the huge disparity between disabled students earning a post-secondary degree may be helped through affirmative action measures.²⁵⁰ This approach is in direct contrast with traditionalists, who argue that affirmative action is unnecessary because there are plenty of disabled students who are already in four-year programs.²⁵¹ Instead, reformists point to a wider range of statistics that show lower percentages of success for disabled

244. See generally Pfeiffer, *supra* note 243, at 495–96; BROOKS, *supra* note 9 at 35–36 (discussing how a reformist approach to racial justice advocates that “race still matters”).

245. See generally Pfeiffer, *supra* note 243, at 481–82.

246. See generally Trammell & Hathaway, *supra* note 232, at 6–8, 11 (researching help-seeking behaviors among students with disabilities and barriers to accessing accommodations).

247. See generally Dorothy F. Garrison-Wade & Jean Lehmann, *A Conceptual Framework for Understanding Students' with Disabilities Transition to Community College*, 33 CMTY. COLL. J. RSCH. & PRAC. 417, 424 (2009) (researching barriers faced by disabled students in the transition to post-secondary education in order to create a conceptual framework to improve institutional supports).

248. See generally *id.*

249. See generally *id.* at 418 (discussing the lower community college enrollment and completion rates among students with disabilities and the impact that has on their financial independence).

250. See generally Ann M. Beaton & Francine Tougas, *Reactions to Affirmative Action: Group Membership and Social Justice*, 14 SOCIAL JUST. RSCH. 61, 74 (2001) (discussing how affirmative action programs benefiting people with disabilities are more likely to be supported than other affirmative action programs); BROOKS, *supra* note 9 at 48 (explaining that within the context of racial justice “[r]ace-based affirmative action is the principal reformist prescription”).

251. See *Fast Facts: Students with Disabilities*, *supra* note 141 (evidencing that 19.4% of undergraduate students identify as having a disability); BROOKS, *supra* note 9 at 21, 27 (presenting the traditionalist perspective as opposed to affirmative action within the racial justice context).

students. According to one study, only 4% of 25–64-year-olds had completed a four-year degree, and only 27% of disabled Americans within this age group are employed.²⁵² Reformists argue that post-secondary education is a vital factor in obtaining further employment;²⁵³ thus, disparities between non-disabled and disabled students show that there is unequal access while in school and after graduation.²⁵⁴ As such, their prescriptions focus on acknowledging and combating disability discrimination in post-secondary institutions so students could complete their degrees. To do this, additional accommodations are needed to further integrate disabled individuals into post-secondary education.²⁵⁵

ii. Integration is Key

A second prong of the reformist lens is integration,²⁵⁶ a concept that was at the heart of the ADA's passage.²⁵⁷ The ADA directly proclaimed society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem. . . [in] critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.²⁵⁸

Reformists believe that integration in all these areas is key to advancing the civil rights of disabled individuals.²⁵⁹ For reformists, barriers to disabled students' access to post-secondary education are related to the forced institutionalization and segregation that continues in the United States to this day.²⁶⁰ As segregated educational institutions have been shown to severely abuse and dehumanize

252. JOEL MCFARLAND ET AL., *THE CONDITION OF EDUCATION 2017* 32–33 (2017).

253. *See generally id.* at 35 (providing data that educational attainment correlates with employment).

254. *See id.* at 38.

255. *See generally* DOLMAGE, *supra* note 143, at 90–93 (discussing the barriers to accessing accommodations in post-secondary education).

256. *See* Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895, 917 (2019) (discussing the role of integration within disability rights).

257. *Id.* at 921.

258. 42 U.S.C. § 12101(a)(2)–(3).

259. *See* Harris, *supra* note 256, at 916.

260. *See generally* Gi Lee & David Cohen, *Incidence of Involuntary Psychiatric Detentions in 25 U.S. States*, 72 PSYCHIATRIC SERV. 61, 61 (2021) (discussing involuntary psychiatric detention in the U.S.); *DRC Helps Ofelia Stay Out of a Nursing Home*, DISABILITY RTS. CAL. (Oct. 2, 2018), <https://www.disabilityrightscalifornia.org/post/drc-helps-ofelia-stay-out-of-a-nursing-home>.

disabled persons,²⁶¹ reformists primarily argue that education integrating both disabled and non-disabled students is important to solving disparity.²⁶²

Willowbrook State School, one of the hundreds of disability-segregated “schools” in the United States, remains one of the most oft-cited examples showing the importance of integration.²⁶³ At one point in its history, Willowbrook was the world’s largest institution housing disabled individuals.²⁶⁴ Journalist Geraldo Rivera exposed atrocities the school was committing against disabled children and published a whistleblower video revealing the horrific conditions documented during a covert visit.²⁶⁵ Rivera found dehumanizing conditions: dark, filthy, and empty rooms filled with naked disabled individuals. The institution “smelled of death.”²⁶⁶ Over three hundred patients who had only been deemed “physically disabled” were banned from leaving the institution and were required to aid the employees in caring for mentally disabled patients without compensation.²⁶⁷ Representative Mario Biaggi visited and said:

the children of many of our citizens, [are] subjected to what appears to be the worst possible conditions I’ve ever seen in my life. I’ve visited penal institutions all over the country. I’ve visited hospitals all over the country. I’ve visited the worst brigs in the military. I’ve never seen anything like it.²⁶⁸

261. See generally *N.Y. State Ass’n for Retarded Child., Inc. v. Carey*, 466 F. Supp. 487, 490–92 (E.D.N.Y. 1978); *Wyatt v. Aderholt*, 503 F.2d 1305, 1310, 1311 n.6 (5th Cir. 1974); *Wyatt v. Stickney*, 344 F. Supp. 373, 374 (M.D. Ala. 1972).

262. See Harris, *supra* note 256, at 917.

263. *Id.* at 917–18.

264. *Geraldo Rivera’s 1972 Expose of Willowbrook State School*, PENNHURST MEM’L & PRESERVATION ALL., <http://www.preservepennhurst.org/default.aspx?pg=1642> (last visited Mar. 1, 2023) (featuring a video of WABC-TV’s Channel 7 New York television broadcast from February 2, 1972).

265. *Id.*

266. *Id.* (Death from pneumonia was common by force-feeding individuals; further, 100% of residents contracted Hepatitis A after being in the institution for six months.).

267. *Id.*

268. *Id.* (Quoted language can be found in the embedded video at 12 minutes, 4 seconds. The New York State Mental Hygiene Commissioner, Dr. Alan Miller, infamously stated that the exposé documentary was overly harmful to Willowbrook, and that this was the first and only time such conditions had been observed. Of the documentary he said, “it certainly doesn’t tell the whole story. . . . if the public eye leaves Willowbrook and . . . perhaps if you were to come back a year from now and look at it, and you might see that we’d made headway.” Reporters did come back and reported no change.)

Although Willowbrook is the most well-known example, many institutions at this time were shown to have inhumane and unfathomable conditions.²⁶⁹ Reformists see these documented instances of discrimination as proof that disabled schools will be made to look presentable; however, they will be inadequate as negative disability stigmas will funnel greater educational funds to non-disabled students.²⁷⁰

Reformists may also cite the fact that in 2022, investigations of institutions are still showing abuse and neglect and that instances of forced institutionalization are increasing in many states.²⁷¹ Willowbrook alumni themselves reported continued allegations of abuse and neglect in 2020.²⁷² Reformists are strongly for integration especially in schools because forced separation has long had a direct connection to higher education institutions.²⁷³ Universities were often the founders of institutions so they could acquire disabled research subjects or in other words, so “one group of humans could be held and studied by another.”²⁷⁴ Arguably, higher education institution research is one of the most historically problematic examples of disabled segregation and dehumanization.²⁷⁵

B. External Prescription

Through a reformist lens, accommodations help integrate students into post-secondary education.²⁷⁶ Reformists contend that accommodations will not only achieve academic equity but also

269. See e.g., *Wyatt v. Aderholt*, 503 F.2d 1305, 1310, 1311 n.6 (5th Cir. 1974).

270. See generally Mei-lan E. Wong, *The Implications of School Choice for Children with Disabilities*, 103 YALE L.J. 827, 850 (1993).

271. Lee & Cohen, *supra* note 260, at 65 fig.2; Susan K. Livio & Ted Sherman, *Judge Grants Disability Advocates Access to N.J. Nursing Home Residents to Investigate Abuse, Neglect*, N.J. ADVANCE MEDIA (Mar. 12, 2022, 9:43 AM), <https://www.nj.com/coronavirus/2022/03/judge-grants-disability-advocates-access-to-nj-nursing-home-residents-to-investigate-abuse-neglect.html>.

272. Benjamin Weiser, *Beatings, Burns and Betrayal: The Willowbrook Scandal's Legacy*, N.Y. TIMES (Feb. 21, 2020), <https://www.nytimes.com/2020/02/21/nyregion/willowbrook-state-school-staten-island.html>.

273. DOLMAGE, *supra* note 143, at 50 (discussing the historic sorting of individuals in post-secondary education, which led to “cognitive homogamy”).

274. *Id.*

275. See generally Doe West, *Radiation Experiments on Children at the Fernald and Wrentham Schools: Lessons for Protocols in Human Subject Research*, 6 ACCOUNTABILITY IN RSCH. 103, 104 (1998); Emmanuel Thomas & T. Jake Liang, *Experimental Models of Hepatitis B and C—New Insights and Progress*, 13 NATURE REV. GASTROENTEROLOGY & HEPATOLOGY 362, 364 (2016).

276. See Hong, *supra* note 156, at 210, 224 (discussing how integration improves outcomes for students and how those accommodations can help students integrate into post-secondary education life).

integrate disabled students.²⁷⁷ Instead of segregating disabled students in their own rooms or institutions, accommodations give disabled students the tools they need while learning side-by-side with non-disabled students.²⁷⁸ Reformists argue that rigorous enforcement of accommodations at post-secondary institutions and litigation of disability discrimination cases can help ensure discriminatory practices are not tolerated at universities.²⁷⁹

In response to traditionalists who say accommodations are unfair, reformists would argue that accommodations are given to non-disabled students every day although they are not formally recognized as such.²⁸⁰ For example, buildings have specifically designed lighting structures so sighted people can adequately use the facilities, while blind people do not need this accommodation.²⁸¹ Desks with chairs are provided in every classroom for able-bodied students, although wheelchair users have no need for these extra accommodations.²⁸² Teaching methods are catered to non-disabled access.²⁸³ Non-disabled students regularly benefit from such informal accommodations that ensure they will have complete access to all aspects of higher education.²⁸⁴ Most of the world is set up for a particular type

277. See Xiangling Zhang et al., *Accessibility within Open Educational Resources and Practices for Disabled Learners: A Systematic Literature Review*, 7 SMART LEARNING ENV'TS. 1, 3 (2020) (discussing how accommodations are needed to achieve academic equity); Hong, *supra* note 156, at 210, 223 (discussing the need for integration and how integration is needed to equalize education outcomes for disabled and non-disabled students).

278. See generally Hong, *supra* note 156, at 209–10.

279. See generally Micah Barry, Comment, *Disabled Learning: Academic Deference in Post-Secondary Education*, 46 U. TOL. L. REV. 590 (2015) (discussing the challenges disabled students face in post-secondary education, the discriminatory practices of universities, and why disability rights law must be properly applied to correct those discriminatory practices and enforce necessary accommodations).

280. Northwest Health Foundation, *Confronting our Ableism*, MEDIUM (May 17, 2016), <https://medium.com/striving-for-disability-equity/confronting-our-ableism-5afbe437040e>.

281. *Id.*

282. See *id.*

283. See generally Hong, *supra* note 156, at 209 (describing the need for special accommodations for disabled students and the hesitance of many professors to adopt them, meaning that the teaching methods used generally cater to non-disabled students).

284. See generally Rioloriri, *Able-Bodied Privilege Checklist*, ARIZ. STATE UNIV., <https://projecthumanities.asu.edu/content/able-bodied-privilege-checklist> (last visited Feb. 12, 2023) (providing students with examples of how being non-disabled means they benefit from many informal accommodations that make life easier and mean they do not experience the same struggles as their disabled peers).

of body; thus, non-disabled students can take for granted that the school and classrooms are designed for them.²⁸⁵

Reformists believe that disabled students should similarly have full access to higher education through whatever accommodations they might need.²⁸⁶ Labeling disabled students' needs as "special" lowers their importance, and according to a 2016 study creates more negative perceptions as compared to simply stating students have a disability.²⁸⁷ Reformists argue more tailored accommodations to the individual's disability are needed for true integration, which may calm traditionalist concerns of accommodation unfairness.²⁸⁸ Reformists also argue for less degradation of equal access as disabled students often are seen as asking for too much when discussing the course or classroom that is not set up in a universal way.²⁸⁹ In contrast, when non-disabled students request design changes such as whiteboards, better technology, and updated restrooms, they are not seen as upsetting and burdening the school.²⁹⁰ Disabled student accommodations should be seen as benefits that improve the school similarly to the benefits of installation of better facilities for non-disabled students. Improvements in disability access will also help future disabled students down the line and attract them to the school, further encouraging integration.²⁹¹

285. See generally S. Kay Toombs, *The Lived Experience of Disability*, 18 HUM. STUD. 9, 12 (1995) (describing how the world is set up for a particular type of body); David R. Jones, *Reclaiming Disabled Creativity: How Cultural Models Make Legible the Creativity of People with Disabilities*, 28 CULTURE & PSYCH. 491, 496–97 (2022) (explaining how those with disabilities see the world differently).

286. See Zhang et al., *supra* note 277, at 3 (stating that "the learning experience . . . should be adjusted according to students' needs, including their disabilities").

287. See Morton Ann Gernsbacher et al., "Special Needs" Is an Ineffective Euphemism, 1 COGN. RSCH. 1, 3 (2016); David Oliver, 'I Am Not Ashamed': Disability Advocates, Experts Implore You To Stop Saying 'Special Needs', USA TODAY (June 11, 2021, 12:48 PM), <https://www.usatoday.com/story/life/health-wellness/2021/06/11/disabled-not-special-needs-experts-explain-why-never-use-term/7591024002>.

288. See Allison R. Fleming et al., *Student Voices: Recommendations for Improving Postsecondary Experiences of Students with Disabilities*, 30 J. POSTSECONDARY EDUC. & DISABILITY 311, 315 (2017) (discussing the wishes of students for resources to be tailored to their needs and perceptions of unfairness).

289. See Lyman et al., *supra* note 217, at 128.

290. See generally Northwest Health Foundation, *supra* note 280 (stating that changes requested by the able-bodied are not seen as burdensome, in contrast to changes requested by the disabled).

291. See generally Clark Edwards, *Integration of Disabled Students in Classroom with New Technology: Reasonable Accommodations Will Enrich Mass Media*, 47 JOURNALISM EDUCATOR 85, 86–87 (1992) (describing the necessity of role models and evidence of implementing the requirements of the ADA in achieving more integrated classrooms).

C. Internal Diagnosis

Reformists would diagnose internal problems of disabled individual's disparities as being buoyed by structural barriers to education.²⁹² Of course, reformists acknowledge that internal values like self-determination, hard work, and self-advocacy are necessary to the success of disabled students.²⁹³ However, reformists argue against the traditionalist notion that disparities are *solely* due to a failure of internal resilience.²⁹⁴

Reformists look to empirical research to rebut traditionalists' argument. Reformists see statistical disparities differently than traditionalists, citing them as proof full integration has yet to be achieved.²⁹⁵ (See fig. VI, VII, & VIII). Overall, only 42% of disabled individuals who obtain four-year degrees get a job compared to 83% of non-disabled populations, showing that even when disabled individuals commit to what traditionalists require of them, they still do not have equal opportunity.²⁹⁶

Notably, even when disabled students complete college, proving that they are capable, employable, and intelligent, they earn much less than their non-disabled counterparts.²⁹⁷ Additionally, recent research has shown those labeled with "more severe" disabilities, whom traditionalists posit will never contribute to the socioeconomic society,²⁹⁸ have actually proven to be fully employable.²⁹⁹ Scholars have also found that some students considered mentally disabled in

292. See generally BROOKS, *supra* note 9, at 52–53 (explaining how reformists within the racial justice context identify structures and systems as primary barriers and internal problems as secondary).

293. See generally Garrison-Wade & Lehmann, *supra* note 247, at 431 (explaining the importance of skills like self-determination and self-advocacy).

294. See generally *id.* at 420–21 (recognizing that disabled students face other challenges that lead to disparities in educational outcomes).

295. See generally INST. ON DISABILITY, *supra* note 147, at 139–41 (providing data on education level by disability status).

296. See *Total Number of Persons 25 to 64 Years Old, Number with Disabilities, and Percentage with Disabilities, by Highest Level of Educational Attainment and Other Selected Characteristics: 2010 and 2020*, *supra* note 152.

297. See MICHELLE YIN ET AL., AN UNEVEN PLAYING FIELD: THE LACK OF EQUAL PAY FOR PEOPLE WITH DISABILITIES 3–4 (2014), https://www.air.org/sites/default/files/2021-06/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities_Dec%2014.pdf (noting that people with disabilities earn much less than their counterparts despite identical education levels).

298. See David Mank et al., *Employment Outcomes for People With Severe Disabilities: Opportunities for Improvement*, 36 MENTAL RETARDATION 205, 205 (1998).

299. See *id.* at 206.

academic studies are then considered “normal” outside the academic environment.³⁰⁰

Furthermore, a groundbreaking research study sought to confirm whether the lack of success of those with disabilities is indeed due to a lack of effort.³⁰¹ According to national research, almost 70% of those with disabilities were actively striving to participate in the economy by obtaining a job, suggesting that laziness is not as diagnostic as traditionalists expect.³⁰² Across the board, no matter the level of educational attainment, the employment rate for disabled individuals is *at least* 33% lower than the rate for able-bodied individuals.³⁰³ Fifty-three percent of disabled master’s and Ph.D. holders are employed compared with 62% of non-disabled individuals who have less than a high school diploma.³⁰⁴ Reformists argue that disabled students can be just as successful as their non-disabled peers if they receive the appropriate accommodations.³⁰⁵ Because a degree itself is a societal signifier of employment readiness, if a disabled student does obtain an advanced degree, it should be held to the same societal assumption that they are employable. Holding a degree as a non-disabled individual does not necessarily display that one is employment ready; however, societal norms still treat it as a marker of such. This, this marker of success should be present for disabled degree holders as well.³⁰⁶ However, data displays there are still wide disparities between non-disabled and disabled degree holders.

300. See generally PRESIDENT’S COMMITTEE ON MENTAL RETARDATION, *THE SIX-HOUR RETARDED CHILD* 15 (1969), <https://files.eric.ed.gov/fulltext/ED038827.pdf> (discussing how a more holistic assessment of behavior in non-academic settings would likely prevent disability-related labels that are often attributed based solely on a test score).

301. See Vidya Sundar et al., *Striving to Work and Overcoming Barriers: Employment Strategies and Successes of People With Disabilities*, 48 J. VOCATIONAL REHAB. 93, 94 (2018).

302. *Id.* at 99–100.

303. PERSONS WITH A DISABILITY: LABOR FORCE CHARACTERISTICS—2021, at 7 tbl.1 (U.S. Dep’t of Lab. 2022), <https://www.bls.gov/news.release/pdf/disabl.pdf>.

304. *Id.*

305. See Hawa Allarakhia, *Academic Accommodations: They Do Make a Difference*, J. TEACHING DISABILITY STUD. (2017), <https://jtds.common.gc.cuny.edu/academic-accommodations-they-do-make-a-difference> (finding that disability accommodations positively impact academic performance).

306. See generally *Persons With a Disability: Labor Force Characteristics—2021*, *supra* note 303, at 6–7 (showing a positive correlation between employment rate and educational attainment among both disabled and non-disabled groups).

In 2021, 19.1% of disabled individuals were employed³⁰⁷ compared with 63.7% of non-disabled individuals.³⁰⁸ Although this low statistic is often dismissed as a result of retired elderly disabled Americans artificially inflating such numbers, across all ages, high unemployment for disabled individuals is essentially a given.³⁰⁹ Moreover, when only studying people 16 to 64 years of age, research has found unemployment actually *decreases* as disabled individuals' age rises.³¹⁰

Although reformists focus on external factors affecting student dropout rates, such as barriers to accommodations, patronizing or combative administration and faculty, and fellow student hostility, reformist theory acknowledges the internal self-hatred toward being a disabled person. Reformist theory recognizes that disabled students can often feel that they are “less than” and therefore have harmful internalized ableism toward themselves that can also contribute to a lack of success for disabled students.³¹¹ One aspect of this internalized ableism is the feeling of burdening others by using accommodations.³¹² Empirical studies show many disabled students “choose not to use accommodations that would have helped, rather than put an extra burden on others.”³¹³ Internalized ableism can also cause disabled students to gatekeep whether they thought other disabled individuals were “disabled enough,”³¹⁴ causing oppression within their own community.³¹⁵

307. *Id.* at 1, 6 (This definition includes any work and any number of hours getting paid.).

308. *Id.* at 1.

309. *Id.* at 1, 7 tbl.1; *Table 1. Employment Status of the Civilian Noninstitutional Population by Disability Status and Selected Characteristics, 2021 Annual Averages*, U.S. BUREAU OF LAB. STAT. (Feb. 24, 2022), <https://www.bls.gov/news.release/disabl.t01.htm>.

310. Neeta P. Fogg et al., *supra* note 206, at 197 tbl.5 (For example, 22.2% of disabled individuals aged 20–24 are unemployed, compared with 12.9% of non-disabled individuals of the same age. The unemployment rate of disabled individuals declines to 9% by ages 55–64, compared with 5.2% of non-disabled individuals. The difference in unemployment between the two groups is only 3.8% at the age of early retirement.); PERSONS WITH A DISABILITY: LABOR FORCE CHARACTERISTICS—2021, *supra* note 303, at 6 (In addition, the statistics do not count individuals temporarily absent from the workforce due to illness).

311. See Jason Olsen et al., *Reporting from The Margins: Disabled Academics Reflections on Higher Education*, 22 SCANDINAVIAN J. DISABILITY RSCH. 265, 269, 271 (2020).

312. Lyman et al., *supra* note 217, at 128.

313. *Id.*

314. Shanna K. Kattari et al., “You Look Fine!”: Ableist Experiences by People With Invisible Disabilities, 33 AFFILIA: J. WOMEN & SOC. WORK 477, 485 (2018).

315. See generally BROOKS, *supra* note 9, at 53 (discussing how racial oppression can create “angst, rage, and despair,” which leads marginalized individuals to “lash out at others within their own communities”).

D. Internal Prescription

Reformists would prescribe community support and self-help as interventions to address internal ableism and nihilism.³¹⁶ Students who feel they are burdensome and have no right to receive accommodations will likely drop out.³¹⁷ Because the national rate of disabled student dropouts is more than twice the rate of non-disabled students (34.5% vs. 15.9%), there must be supports in place for disabled students to succeed.³¹⁸ Instead of lectures from non-disabled mentors on how disabled students should pull themselves up by their bootstraps,³¹⁹ disabled students can get survival skills from other disabled students or recent graduates.³²⁰

To assist disabled students who feel they are unintelligent or not worthy of accommodations,³²¹ alumni and recent graduates can create a sense of loving one's self, including their disability.³²² For young disabled women, "participation in [a support group] boosted the[ir] self-concept and helped them fend off the internalization of others' negative attitudes and beliefs."³²³ As disabled students support each other and receive guidance from more experienced peers who have already experienced college, it will increase their self-confidence and help them "communicate their newfound self-

316. See generally Norma J. Mejias et al., *Influence of a Support Group for Young Women With Disabilities on Sense of Belonging*, 61 J. COUNSELING PSYCH. 208, 214 (2014) (discussing the impact that peer support groups for young women with disabilities had on the participants' self-confidence and senses of identity); BROOKS, *supra* note 9, at 36 (noting that racial reformists direct self-help programs at "internal factors of bad behavior and bad values").

317. See generally Common Core of Data, *Table 1. Public High School 4-Year Adjusted Cohort Graduation Rate (ACGR), by Race/Ethnicity and Selected Demographic Characteristics for the United States, the 50 States, and the District of Columbia: School Year 2015–16*, NAT'L CTR. FOR EDUC. STAT. (Oct. 25, 2017), https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2015-16.asp (showing a lower graduation rate for students with disabilities).

318. See *id.* (These numbers reflect the inverse of graduation rates among non-disabled and disabled students that were 84.1% and 65.5%, respectively.).

319. See generally Steven Perkel, Paul J. Tobin, & James Weisman, *Disability Wrongs, Disability Rights*, 24 JURY EXPERT 1, 1 (2012) (discussing how "pulling yourself up by your own bootstraps" is both a "mainstay of American culture" and a "myth of self-sufficiency that exemplifies an ableist ideology").

320. See Syreeta L. Nolan, *The Compounded Burden of Being a Black and Disabled Student During the Age Of COVID-19*, 37 DISABILITY & SOC'Y 148, 152 (2022) (explaining the usefulness of peer advocates within the disabled student community).

321. See Mimi Corcoran, *OPINION: Fearful That They Will Be Seen As 'Lazy' or 'Unintelligent,' Most College Students With Disabilities Don't Seek Accommodation*, HECHINGER REP. (Nov. 28, 2017), <https://hechingerreport.org/opinion-fearful-will-be-seen-lazy-unintelligent-college-students-disabilities-dont-see-accommodation>.

322. See generally Mejias et al., *supra* note 316, at 208–20 (revealing how peer support can create a sense of disability pride).

323. *Id.* at 217.

perception to others around them and to claim their place in the world.”³²⁴

Reformists insist that disabled individuals are best situated to help other disabled students understand how to navigate university life, including the process for receiving accommodations and the skills needed to combat negative disability commentary that might affect students’ self-esteem.³²⁵ A glance through non-disabled advice to disabled students reveals a general discussion of things like attending class, arriving on time, and turning in neat assignments, advice that would likely feel patronizing to a disabled student who may follow all of these tips and still encounter barriers to their education goals.³²⁶

In contrast to this well-meaning but generic and non-targeted advice, disabled alumni are better able to talk about the specific issues facing disabled students.³²⁷ For example, they could discuss methods of advocacy with administrators regarding a broken mobility device or acquiring blind supports for advanced levels of math.³²⁸ Organizations like Disability Rights, Education, Activism, and Mentoring (“DREAM”) are post-secondary networking sites where individuals can find peer support for specific issues regarding denial of accommodations, innovative accommodations in higher-level classes, and classroom discussion of disability that educates and eliminates bias.³²⁹

Attitudinal change in institutions will also need to take place to provide disabled students with an environment that is not rife with backstage discrimination. Because academia has long been seen as

324. *Id.*

325. *See generally id.*; BROOKS, *supra* note 9, at 36 (describing how racial reformists promote self-help programs that “draw[] heavily upon the black middle class for support”).

326. *See How Can a Student with a Disability Develop College Survival Skills?*, UNIV. OF WASH. (Apr. 9, 2021), <https://www.washington.edu/doit/how-can-student-disability-develop-college-survival-skills> (One non-disabled source providing advice to disabled students listed the following as points of advice: “1. Develop strategies, study skills, and a network of support. 2. Always attend class. 3. Arrive on time, pay attention, and participate in class discussions and activities. 4. Talk to the instructor. Ask questions. 5. Complete and check all work. Turn in neat and clear assignments. 6. Monitor their own progress. If they begin to fall behind, they should ask for help.”).

327. *See generally 10 Students with a Disability Talk about the Difficulties of Accessing Inclusive Education in the USA*, GLOB. EDUC. MONITORING REP. (Apr. 6, 2022), <https://world-education-blog.org/2019/12/03/10-students-with-a-disability-talk-about-the-difficulties-of-accessing-inclusive-education-in-the-usa> (providing an example of how graduates with disabilities are better able to talk about specific issues relating to accessing education).

328. *Id.*

329. *DREAM: Disability Rights, Education, Activism, and Mentoring*, ASS’N ON HIGHER EDUC. & DISABILITY (June 18, 2011), <https://www.dreamcollegedisability.org>.

the sole domain of the “hyper-able” individuals, disabled students are essentially the antithesis of the status quo.³³⁰ Educating institutions is vital to creating a healthy environment.³³¹ There are many resources that can be given to administration and faculty to better explain important concepts such as ableism, the harm of condescending attitudes, the importance of accommodations as equal opportunity devices, and the fact that medical appointments and surgeries may cause absences that are not the fault of the student.³³²

Lastly, although traditionalists may continue to state that many people are using accommodations to cheat,³³³ empirical evidence shows that it is very difficult to get an accommodation because of attitudinal,³³⁴ economic,³³⁵ and bureaucratic³³⁶ barriers. The Varsity Blues scandal was shocking, but the fraud was only successful due to the wealth that enabled the extremely high payments. The vast majority of individuals do not have the resources to pay thousands of dollars for accommodations; thus, regular students must go through the normal protocol to receive accommodations, which has procedures to prevent cheating.³³⁷ The accommodation process itself is arduous, as accommodations that the student received in high school may not be approved in post-secondary

330. DOLMAGE, *supra* note 143, at 7, 9–10, 53, 84.

331. See generally *National Council on Independent Living, Disability Pride Toolkit and Resource Guide*, NAT'L COUNCIL ON INDEP. LIVING (Oct. 2017), <https://ncil.org/resources/disability-pride-toolkit-and-resource-guide> (educating others on disabilities and (identifying the lack of intersectionality is important education and “lack of accessible and inclusive services and communities” as barriers to creating a healthier environment fostering disability pride).

332. *Id.*; Kryz Méndez Ramírez, *Academic Ableism Fighting for Accommodations and Access in Higher Education*, DISABILITY VISIBILITY PROJECT (Sept. 23, 2019), <https://disability-visibilityproject.com/2019/09/23/academic-ableism-fighting-for-accommodations-and-access-in-higher-education>.

333. John Hosterman, et al., *Testing Accommodations the Perils of the Approve Everything Model*, 3(2) J. NAT'L COLL. TESTING ASS'N 9–10 (2019).

334. DOLMAGE, *supra* note 143, at 24, 82, 96; Hong, *supra* note 156, at 219–220, 22; Lyman et al., *supra* note 217, at 130; Marshak et al., *supra* note 154, at 158; Kathleen F. Stein, *DSS and Accommodations in Higher Education Perceptions of Students with Psychological Disabilities*, J. POSTSECONDARY EDUC. & DISABILITY, 26(2) 155–57 (2013); Allie Grasgreen, *Students with Disabilities Frustrated with Ignorance and Lack of Services*, INSIDE HIGHER ED (Apr. 2, 2014), <https://www.insidehighered.com/news/2014/04/02/students-disabilities-frustrated-ignorance-and-lack-services>.

335. Annie Tulkín, *Fees*, ACCESSIBLE COLL. (2022), <https://accessiblecollege.com/fees-2>.

336. See generally Cheryl A. Hurtubis et al., *Requesting Accommodations in Higher Education*, 38(3) TEACHING EXCEPTIONAL CHILDREN 28–34 (2006); Grasgreen, *supra* note 332 (stating that there are bureaucratic barriers regarding accommodations in higher education).

337. DOLMAGE, *supra* note 143, at 82.

institutions or high-stakes standardized testing.³³⁸ For example, the bar exam for lawyers can require “submitting stacks of medical records,”³³⁹ ten different sections of detailed information about past accommodations from childhood onward, all accommodation records from childhood, transcripts, and an essay about how their disability affects all aspects of the student’s life.³⁴⁰ This multi-step process includes required information from many third parties from different time periods across what can be twenty+ years of a student’s life, making it extremely difficult to “cheat the system.”³⁴¹ A state bar organization can take six months to review the accommodations application, and some students have shared that they have been given a denial just five days before taking the exam.³⁴² Thus, many students would not have the time and energy to “cheat” by going through the arduous process of accommodations unless they were absolutely necessary.³⁴³

Further, although disabled students anonymously self-report at high rates in post-secondary schools, only one-third of students register to receive any accommodations.³⁴⁴ Disabled students report that they do not seek accommodations because of the ostracization and stigmatization by disability offices and faculty members.³⁴⁵

338. *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities*, U.S. DEP’T OF EDUC. (Sept. 2011), <https://www2.ed.gov/about/offices/list/ocr/transition.html>.

339. Jane Easter Bahls, *Challenging the Bar Exam on Hidden Disabilities*, 27 STUDENT L. 21 (1998).

340. See CAL. BAR, TITLE 4. ADMISSIONS & EDUC. STANDARDS, https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div1-Adm-Prac-Law.pdf 21–26; *Requesting Testing Accommodations*, STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>.

341. See generally Sarah E. Silverman, *Why Are Academic Accommodations Positioned as “Situationally Sanctioned Cheating?”*, <https://sarahemilysilverman.com/2022/01/05/why-are-academic-accommodations-positioned-as-situationally-sanctioned-cheating> (arguing that academic accommodations should not be looked at as cheating, as they often are).

342. Bahls, *supra* note 339, at 21.

343. *Id.*

344. DOLMAGE, *supra* note 143, at 22; Grasgreen, *supra* note 334.

345. Wendy S. Harbour & Daniel Greenberg, *Campus Climate and Students with Disabilities*, 1 (2) NCCSD RSCH. BRIEF 1–25 (2017); Hong, *supra* note 156.

IV. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A DISABILITY CRITICAL RACE THEORY LENS

A. External Diagnosis

Institutions' role in perpetuating oppressive attitudes, policies, and practices is a central focus of critical race theorists. Disability Critical Race Theory (also known as DisCrit) will be utilized in this section, which is an subset of critical race theory and mirrors other subsets such as feminist critical race theory.³⁴⁶ Crit theorists argue that because institutions are frequently governed by the most privileged individuals (white, able-bodied, heterosexual, male, etc.), they fail to adopt policies that promote equal access for minority groups.³⁴⁷ Thus, DisCrit theorists, aim to address the "how racism and ableism, intersecting with additional oppressions, often have serious and sometimes deadly implications," highlighting the need for cross-sectional research.³⁴⁸ This theory emphasizes that post-secondary institutions have existed for decades or centuries and are often built on ableism and racism, and closed off to the needs of disabled students, privileging the ableist, white, male hegemony.³⁴⁹ This is evidenced by the fact that disability has only been recognized as a statutorily protected class for the last thirty-one years, thus, DisCrit theory seeks to build upon analysis and intersectional study of ableist structures that may impact other forms of oppression.³⁵⁰ The same institutions that are now accepting disabled individuals as students are the same institutions that not long ago used disabled individuals as research subjects and enabled anti-disability concepts like eugenics to proliferate throughout society.³⁵¹

Crit theorists argue that student disparities in higher education are due to systematic discrimination and subordination in large

346. See Subini Ancy Annamma et al., *Dis/Ability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Dis/Ability*, 16 RACE ETHNICITY & EDUC. 1, 5–6 (2013).

347. Sara H. Petit-McClure & Chelsea Stinson, *Disrupting Dis/Abilization: A Critical Exploration of Research Methods to Combat White Supremacy and Ableism in Education*, 3 INTERSECTIONS: CRITICAL ISSUES IN EDUC. 73 (2019).

348. Subini Ancy Annamma, Beth A. Ferri, & David J. Connor, *Disability Critical Race Theory: Exploring The Intersectional Lineage, Emergence, And Potential Futures of DisCrit in Education*, 42(1) REV. OF RSCH. IN EDUC. 46, 47 (2018).

349. Tenisha L. Tevis et al., *Disrupting White Hegemony: A Necessary Shift Toward Adopting Critical Approaches within the Teaching and Learning Environment*, 35 INT'L J. QUALITATIVE STUD. EDUC. 341, 342 (2022).

350. 42 U.S.C § 12101 et seq. (2022).

351. DOLMAGE, *supra* note 143, at 50.

post-secondary institutions and beyond.³⁵² Like reformists, crit theorists heavily cite the post-secondary statistics in degree completion, equal access and accommodation concerns, post-graduation employment, and income disparities.³⁵³ They argue, however, that this data exhibits a need for institutional reform and not just integration.³⁵⁴ Crit theorists can look to post-secondary education as a jumping-off point to eliminate subordination because higher education is shown to increase one's socioeconomic standing, reducing poverty and social mobility.³⁵⁵ Crit theorists see post-secondary inclusion as a major impetus for societal and socioeconomic change for the disabled population, empowering disabled individuals, and reducing the lack of disabled representation in positions of power.³⁵⁶ (See fig. V).

Crit theorists disagree with the idea that bodily difference is a defect.³⁵⁷ The vast diversity of the human body “exists on a continuum of human variation,”³⁵⁸ making disability a common facet of life.³⁵⁹

While a disability is an impairment, unequal access is what creates a *disabling* effect.³⁶⁰ Theorists view this definition of “disability” as a social construction manifested when the surrounding community interprets the impairment as a burden and subsequently declines to give equal access in the community.³⁶¹ The physical impairment is not what “disables” an individual; rather, it is the “reactions of the family and social group[s] toward [a disabled individual] as a non-typical member” that hinder the individual's full participation in society.³⁶²

Crit theorists like Stanford professor Subini Ancy Annamma who created DisCrit's theoretical framework, declares an intersectional lens of other socially constructed identities is necessary to

352. Ashley Taylor & Lauren Shallish, *The Logic of Bio-Meritocracy in the Promotion of Higher Education Equity*, 34 DISABILITY & SOC'Y 1200, 1202 (2019).

353. See *id.* at 1201–02.

354. See Patricia Silver et al., *Universal Instructional Design in Higher Education: An Approach For Inclusion*, 31 EQUITY & EXCELLENCE IN EDUC. 47, 50 (1998).

355. See, e.g., Yusuf Sayed, EDUC. AND POVERTY REDUCTION STRATEGIES: ISSUES OF POL'Y COHERENCE 53, 58 (Simeon Maile ed., 2008); Broton, *supra* note 3, at 20.

356. See DOLMAGE, *supra* note 143, at 27–29.

357. See, eg., Braddock, *supra* note 94, at 11–12.

358. Tonette S. Rocco, *From Disability Studies to Critical Race Theory: Working Towards Critical Disability Theory*, ADULT EDUC. RSCH. CONF. (2005), <https://newprairiepress.org/aerc/2005/papers/17>.

359. See *id.*

360. See Braddock, *supra* note 94, at 11.

361. *Id.*

362. See ALAN G. GOWMAN, THE WAR BLIND IN AM. SOCIETAL STRUCTURE 5 (1957).

understand their interaction with disability and the oppression found at the crossroads of marginalized identities.³⁶³

Crit theory has a firm emphasis that identities do not exist in a vacuum, thus it is vital to consider the whole individual when discussing their civil rights. By examining a disabled person's race, ethnicity, color, gender, sex, sexual orientation, gender identity, citizenship, language, housing status, national origin, class, socioeconomic status, or ancestry—the identities of which either result in oppression or privilege—crit theorists break from the norm of disaggregation, instead looking at the holistic individual to more accurately reflect a person's experiences with civil rights.³⁶⁴ Examples of crit theorist's intersectional analysis can be seen research conducted by leaders such as the Center for Black Deaf Studies,³⁶⁵ Autistic Women & Nonbinary Network,³⁶⁶ and the Center for Racial and Disability Justice.³⁶⁷

Unlike the traditionalist's medical model that posits that disability is solely the "problem of the person,"³⁶⁸ crit theorists recognize the additional issues of unequal or no access to the world, and this may be exacerbated by other identities, including disability and race.³⁶⁹ A crit theory lens contends that a disabled individual's "exclusion from society is not their disability but rather the physical, attitudinal, and legal barriers that prevent them from fully

363. See Subini Ancy Annamma et al., *supra* note 347, at 5–6 (2013); see also Kimberlé Crenshaw on Intersectionality, *More than Two Decades Later*, COLUM. L. SCH., <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later> (a brief overview of intersectionality as originally coined by Kimberlé Crenshaw, which also contains a link to the seminal 1989 paper, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, UNIV. OF CHI. LEGAL F.).

364. *Id.* (While the focus of this introductory article is theoretical civil rights frameworks and their application to disability, it would be remiss not to mention that there are many intersectional statistical analyses that can be performed to better understand the cross-sections of marginalized identities resulting in disaggregation and cross-tabulation. Because of the vast amount of data, further articles will be needed to delve into a cross-sectional basis regarding intersectional identities that result in multi-marginalized communities).

365. Center for Black Deaf Studies, GALLAUDET UNIV., <https://gallaudet.edu/center-black-deaf-studies> (last visited Apr. 7, 2023).

366. Autistic Women & Nonbinary Network, <https://awnnetwork.org> (last visited Apr. 7, 2023).

367. *Northwestern Pritzker Law Center for Racial and Disability Justice (CRDJ)*, NORTHWESTERN PRITZKER SCH. OF L., <https://www.law.northwestern.edu/research-faculty/racial-disability-justice> (last visited Apr. 7, 2023).

368. Lisa I. Iezzoni & Vicki A. Freedman, *Turning the Disability Tide: The Importance Of Definitions*, 299 JAMA NETWORK 332, 332 (2008).

369. See *id.* at 333.

participating as equal members in society,” as well as the other identities a disabled student may hold that contribute to systematic oppression.³⁷⁰

Crit theorists disagree with the long-held tendency to infantilize disabled individuals.³⁷¹ Instead, they push for self-determination primarily through holistic narratives told by disabled people and then seek to make those nuanced voices heard in positions of power.³⁷² The goal of crit theorists is to change institutions to reframe disabled individuals as “rights holders, rather than passive recipients of services.”³⁷³ An example of a successful implementation of this process was the CRPD, which brought disabled individuals from around the world to craft a declaration of disability rights with a goal of creating global systemic change.³⁷⁴

Crit theory has taken this social model of disability and further illuminated the context that surrounds society and its conscious impact on disability.³⁷⁵ The word “handicap” originates from how horse racers would purposefully put rocks and weights on horses to “handicap” them in a competition.³⁷⁶ This concept directly demonstrates the social model of disability where outside forces “disable” a person in all aspects of society.³⁷⁷ Whether being subjected to degrading and inhuman comments from family members,³⁷⁸ going to an inaccessible restaurant or school, encountering benevolent paternalism or lowered expectations, or living in an inaccessible home, historical and systematic oppression is what causes discrepancies in disabled students’ access to higher education.³⁷⁹

370. Kanter, *supra* note 64, at 597.

371. See FRED PELKA, *WHAT WE HAVE DONE: AN ORAL HISTORY OF THE DISABILITY RIGHTS MOVEMENT* ix (2012).

372. See Rocco, *supra* note 358.

373. Kanter, *supra* note 64, at 596.

374. See UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, U.N. DEP’T OF ECON. & SOC. AFF.’S 14 (2006), <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>.

375. See generally Emily Krebs, *Baccalaureates or Burdens? Complicating Reasonable Accommodations for American College Students with Disabilities*, 39 *DISABILITY STUD. Q.* (2019), <https://dsq-sds.org/article/view/6557/5413>.

376. See Jørn Hansen, *The Origin of the Term Handicap in Games and Sports—History of a Concept*, 65 *PHYSICAL CULTURE & SPORT* 7, 8 (2015).

377. See *id.* at 9–10.

378. See Mohammad Mehdi Tabatabainia, *Listening to Families’ Views Regarding Institutionalization & Deinstitutionalization*, 28 *J. INTELL. & DEV’L DISABILITY* 241 (2003).

379. See Krebs, *supra* note 375.

B. External Prescription

i. Combat Systemic Discrimination: Bring Disabled Voices to Forefront

Because crit theorists believe that institutions sustain ableism, perhaps their most important prescription is to ensure that disabled individuals, especially people of color with disabilities, are represented in leadership of institutions.³⁸⁰ Crit theorists go further than reformists to argue that not only is integration needed,³⁸¹ but institutional anti-subordination measures are vital to ensure disabled individuals have equal access.³⁸² Latinx Crit theorist Alexis Padilla describes the need to “engender dialogue among radically different categories of educators and emancipatory learning contexts.”³⁸³ By placing disabled individuals in authority positions within institutions, they will be better able to use their influence to deconstruct the ableist aspects of the institution and build up a pro-disability infrastructure that truly understands and caters to disabled students.³⁸⁴ Crit theorists like disability justice scholars Shain Neumeier and Lydia X. Z. Brown directly respond to the traditionalist perspective that discrimination is behind us by discussing the impact of thinly veiled anti-equity policies within academia.³⁸⁵

If openly disabled individuals make up a larger percentage of university professors and college disability office staff, faculty will be empowered to change the norms that currently discriminate and stigmatize disabled individuals for seeking accommodations and equal access.³⁸⁶ Disabled faculty members make up around 4% of

380. See, e.g., Ruth Colker, *Anti-Subordination above All: A Disability Perspective*, 82 NOTRE DAME L. REV. 1415, 1436–37 (2006).

381. See *id.* at 1417.

382. See *id.*

383. Alexis C. Padilla, *Race, Disability and the Possibilities of Radical Agency: Toward a Political Philosophy of Decolonial Critical Hermeneutics in Latinx Discrit* 1, 391 (Dec. 2018) (Ph.D. dissertation, University of New Mexico) (on file with University of New Mexico Digital Repository).

384. See Aleksandra Kosanic et al., *Researchers with Disabilities in the Academic System*, AM. ASS'N OF GEOGRAPHERS NEWSL. 1, 2 (Sept. 1, 2018), <http://researchonline.ljmu.ac.uk/id/eprint/13264/1/Kosanic%20et%20al%20%281%292018.pdf>.

385. See generally Shain A. M. Neumeier & Lydia X. Z. Brown, *Beyond Diversity and Inclusion: Understanding and Addressing Ableism, Heterosexism, and Transmisia in the Legal Profession: Comment on Blanck, Hyseni, and Altunkol Wise's National Study of the Legal Profession*, 47 AM. J. L. & MED. 76, 76–87 (2021) (revealing some of the ways the legal academy quietly promotes ableist culture).

386. See Rosa Ramirez, *Professors, Disabilities, and Other Soc. Identities; An Intersectional Look at Higher Education*, 1 MACKSEY J. 1, 8 (2020).

all faculty,³⁸⁷ and in prestigious post-secondary institutions, disabled individuals hold just 1.5% of faculty positions.³⁸⁸ Thus, faculty have just as much stigma, if not more, from the normative hegemonic ableist culture of universities that they must combat in a similar fashion to disabled students.³⁸⁹ Professors will likely be treated as less capable by other faculty members if they disclose a disability,³⁹⁰ therefore, faculty members must sacrifice these norms to create a better culture for students, a feat not easily done. Some faculty have indicated that they plan to disclose a disability or be a more vocal advocate only when they succeed in receiving tenure when employment is much more stable.³⁹¹ Further, those in a faculty minority as a person of color already are perceived as less qualified and their research less important than their white colleagues, creating additional barriers to tenure at the outset.³⁹² Crit theorists would maintain that faculty members that openly disclose and advocate for disability-related issues will change the systemic culture of post-secondary education.³⁹³

Disabled students will be greatly benefited from professors with the self-confidence to indicate a disability and still show they are an asset to the community.³⁹⁴ Disabled students will have a role model of a professor that is disabled but still in a high position of academia and professional authority.³⁹⁵ Of course, crit theorists would be sure to rebut the traditionalist mindset of “empowerment” should not be abused to state that *all* disabled people must make it to a prestigious tenured position, and those that do not are simply not working hard enough.³⁹⁶ Instead, crit theorists indicate that student empowerment is siphoned through the student not having feelings of self-hatred and inadequacy in a disabled professor’s

387. Lilah Burke, *A Difficult Pathway*, INSIDE HIGHER ED (May 12, 2021), <https://www.insidehighered.com/news/2021/05/12/faculty-disabilities-say-academe-can-present-barriers>.

388. Kosanic et al., *supra* note 384, at 1.

389. See Ramirez, *supra* note 386, at 2, 9.

390. See DOLMAGE, *supra* note 143, at 177; see also Ramirez, *supra* note 386, at 5.

391. See Ramirez, *supra* note 386, at 7.

392. Donnetrice C. Allison, *Free to Be Me? Black Professors, White Institutions*, 38(4) J. OF BLACK STUDIES 641, 642-44 (2008).

393. See *id.* at 8.

394. *Id.*

395. *Id.*

396. See DOLMAGE, *supra* note 143, at 70.

class.³⁹⁷ In addition, students now have a mentor³⁹⁸ to speak with about disability-related issues in post-secondary education without fear that faculty will disparage their intelligence, ignore them in class, or see the disability as illegitimate.³⁹⁹ Both of these factors contribute to reforming the culture of post-secondary education.

In addition, disabled voices must be clearly acknowledged and heard at all levels of an institution, both publicly and privately. Currently, non-disabled students are the norm at higher education institutions because historically few disabled students were able or allowed to attend.⁴⁰⁰ Even now, disabled students are often invisible to their peers and the institutional community.⁴⁰¹ More efforts must be made to amplify stories regarding the complex disabled experience at colleges and universities. In addition, crit theorists portray disability not in a vacuum, but in accordance with an individual's many intersecting identities that leads to complex narratives only they can portray.⁴⁰² The benefits of this are multidimensional, helping both non-disabled students to gain a better understanding and appreciation for the experiences of their disabled peers and helping disabled students feel more empowered by seeing themselves as full members of and participants in the institution.⁴⁰³

Like reformists, crit theorists point to the fact that 94% of high school students with learning disabilities receive accommodations, but only 19% of disabled students receive accommodations once they enter higher education institutions.⁴⁰⁴ Crit theorists contend that post-secondary educations have ableist cultures that actively seek to make students reluctant to seek accommodations, and if students seek assistance, they enter a convoluted and arduous

397. See Ramirez, *supra* note 386, at 5–6.

398. See Brigid M. Noonan et al., *Challenge and Success: A Qualitative Study of the Career Development of Highly Achieving Women with Physical and Sensory Disabilities*, 51 J. COUNSELING PSYCH. 68, 75 (2004).

399. Cf. Lyman et al., *supra* note 217, at 130 (highlighting some negative experiences students with disabilities have experienced with professors).

400. See DOLMAGE, *supra* note 143, at 59.

401. See *id.* at 9–10.

402. See generally Sumi Cho et al., *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 J. WOMEN IN CULTURE & SOC'Y, no. 4, 785–810 (2013); U.N. Convention on the Rights of Persons with Disabilities art. 24, *supra* note 371; ChrisTiana ObeySumner, #DisabilitySoWhite: Reflections on Race and Disability on ADA Day, EPIPHANIES OF EQUITY LLC (July 26, 2019) <https://www.christianaobeysumner.com/blog/2019/7/26/disabilitysowhite-reflections-on-race-and-disability-on-ada-day>; Ramirez, *supra* note 379, at 6 (articulating examples of intersecting identities to show how they create unique individual stories).

403. See Kosanic et al., *supra* note 384, at 2.

404. Newman et al., *supra* note 156, at 32.

process to receive the accommodation itself.⁴⁰⁵ Crit theorists would want a complete overhaul of the institutional system to eliminate the difficulty and stigma of equal access.⁴⁰⁶

ii. Equal Access Is Not a Controversy

Crit theorists respond directly to traditionalist cheating arguments by contending that comprehensive research has long held that the standardized tests *themselves*, not the accommodations, may be the external factor at issue for fairness.⁴⁰⁷ Standardized testing has been empirically proven to be an insufficient indicator of intelligence or merit, negating the traditionalists' core argument that such tests are fair on their face.⁴⁰⁸ The tests, especially high-stakes tests like the ACT, SAT, MCAT, and LSAT, are characterized by "conceptual incoherence"⁴⁰⁹ and are "surprisingly poorly written."⁴¹⁰ Indeed, the fact that wealthy white celebrities have been able to pay their way to a high standardized test score may indicate that the tests themselves should be abolished in favor of more holistic evaluations of college readiness and academic aptitude.⁴¹¹

Although the Varsity Blues scandal did show that accommodations were abused, wealth was the greater factor. Crit theorists point to the fact that real societal change must occur to give equal access to those who do not have a privileged socioeconomic status.⁴¹² Admissions scandal court documents revealed how wealthy families exploited the high stakes exams by paying \$15,000 to \$75,000 to ensure a high test score.⁴¹³ Although the Varsity Blues report gave the United States a case study in what wealth can provide, empirical studies have yet to do sufficient research in the area of socioeconomic inequality and accommodations.⁴¹⁴ However, anecdotal news

405. See DOLMAGE, *supra* note 143, at 22, 24, 93.

406. See *id.* at 82, 96; see Grasgreen, *supra* note 334.

407. See Saul Geiser, *Norm-Referenced Tests and Race-Blind Admissions: The Case for Eliminating the SAT and ACT at the University of California*, CTR. FOR STUD. IN HIGHER EDUC., UNIV. OF CAL., BERKELEY 1, 6–7 (Dec. 2017).

408. See *id.* at 7–9.

409. Richard Delgado, *Official Elitism or Institutional Self Interest—10 Reasons Why UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 UC DAVIS L. REV. 598–99 (2009).

410. *Id.*

411. *Id.*

412. Benjamin J. Lovett, *Disability Identification and Educational Accommodations Lessons from the 2019 Admissions Scandal*, 49(2) EDUC. RSCH'ER 128 (2020).

413. Laura Smith, *Affidavit in Support of Criminal Complaint*, U.S. DEP'T OF JUST. 1, 11 (Mar. 11, 2019), <https://www.justice.gov/file/1142876/download>.

414. Lovett, *supra* note 404, at 127.

investigations have shown a high correlation of affluent school districts having much higher populations of students receiving accommodations compared with low-income districts.⁴¹⁵ Because of this inequality, crit theorists would look to overhaul the entire elitist system by eliminating timed tests altogether (the most oft-cited accommodation that causes controversy),⁴¹⁶ creating universal access systems for classrooms and tests,⁴¹⁷ providing free testing across the board,⁴¹⁸ eliminating legacy scholarships,⁴¹⁹ increasing access to healthcare to impoverished communities,⁴²⁰ and even the need for a complete dismantling of learning disability evaluations made by and for ableist hegemonic culture.⁴²¹ The ACT, SAT, LSAT, GMAT, and other institutional players need to eliminate the socioeconomic subordination baked into their functionality as a gatekeeper to higher education.

As a note, attention must be given to the preeminence of fraud in society at large, especially when combating the traditionalist theory of fraud in accommodations. For example, most of the affluent students scammed universities by fabricating an athletics background, not through accommodation fraud.⁴²² But few traditionalists have suggested that athletic or legacy scholarships should be eliminated.⁴²³ However, those abusing athletic scholarships obtained attendance at more prestigious schools like Yale, Stanford, UCLA, and

415. Dana Goldstein & Jugal K. Patel, *Need Extra Time on Tests? It Helps to Have Cash*, N.Y. TIMES (July 30, 2019), <https://www.nytimes.com/2019/07/30/us/extra-time-504-sat-act.html>.

416. Lovett, *supra* note 410; Greg Toppo, *Support Builds for Making the SAT Unlimited for Everyone*, 20(1) EDUC. NEXT at 2 (2020).

417. Sheryl Burgstahler, *Universal Design of Instruction (UDI) Definition, Principles, Guidelines, and Examples*, UNIV. OF WASH. (2020), https://www.washington.edu/doit/sites/default/files/atoms/files/UD_Instruction_06_15_20.pdf.

418. Goldstein & Patel, *supra* note 415.

419. See generally Peter Arcidiacono et al., *Legacy and Athlete Preferences At Harvard*, 40(1) J. OF LAB. ECON. 153 (2022).

420. Goldstein & Patel, *supra* note 415; Bea Waterfield & Emma Whelan, *Learning Disabled Students and Access To Accommodations Socioeconomic Status, Capital, and Stigma*, DISABILITY & SOC'Y 327, 1000–02 (2017); see generally Ernest Moy et al., *Preparing the National Healthcare Disparities Report Gaps in Data for Assessing Racial, Ethnic, and Socioeconomic Disparities in Health Care*, MED. CARE 19–116 (2005).

421. Waterfield & Whelan, *supra* note 418; *Apology to People of Color for APA's Role in Promoting, Perpetuating, and Failing to Challenge Racism, Racial Discrimination, and Human Hierarchy in U.S.*, AM. PSYCH. ASS'N (Oct. 2021), <https://www.apa.org/about/policy/racism-apology>.

422. Smith, *supra* note 413.

423. See generally Peter Arcidiacono et al., *supra* note 419.

Georgetown in comparison to those abusing accommodations.⁴²⁴ Although abuse and fraud should not occur at any institution, it is worth noting that fraudulent athleticism was a superior method of obtaining admission to prestigious universities.⁴²⁵ Overall, certain individuals commit fraud in many aspects of life, from Medicaid⁴²⁶ and corporate business,⁴²⁷ to taxes⁴²⁸ and athletics.⁴²⁹ Yet these programs and activities continue to exist and are important parts of society. Crit theorists state that programs supporting disabled students should not be eliminated simply because dishonest and deceitful people commit fraud.⁴³⁰ Instead, the focus should be on improving institutional access.

iii. Universal Design

Crit theorists would also prescribe “universal design” instead of reformist “accommodations,” which may lead to more extensive integration and appeasing traditionalists. Universal design standards create social change by making facilities that are accessible for all, regardless of impairment.⁴³¹ While universal design was first approached as a design theory for physical buildings and classrooms, it also encompasses classroom management, teaching methodology, and other student resources.⁴³² With universal design, all students as well as their intersecting identities are considered proactively, eliminating the need for accommodations or other adaptations.⁴³³ This prophylactic treatment of disability issues provides better education for all students, as the universal design of post-secondary courses will

424. Hannah Fry, *College Admissions Scandal Fallout: Stanford Students Sue UCLA, USC and Yale*, L.A. TIMES (Mar. 14, 2019), <https://www.latimes.com/local/lanow/la-me-ln-college-admissions-scandal-stanford-ucla-usc-lawsuit-20190314-story.html>.

425. *Id.*

426. See generally Alberto Coustasse et al., *Upcoding Medicare: Is Healthcare Fraud and Abuse Increasing?*, 18(4) PERSPECTIVES HEALTH INFO. MGMT. (2021).

427. See generally Alexander Dyck et al., *Who Blows The Whistle On Corporate Fraud?* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 12882, 2007).

428. See generally Tisha King & Jonathan Farrar, *To Punish or Not to Punish? The Impact of Tax Fraud Punishment on Observers' Tax Compliance*, 183(1) J. BUS. ETHICS 289, 289–90 (2022); Binnaz Coban, *Taxation of the Rich the Issue Revisited with the Last Pandemic*, 32(120) SAYIŞTAY DERGİSİ 35, 54 (2021).

429. See generally Paul Massaro et al., *Learn How Anti-Doping Legislation Potentially Impacts College Athletics Administrators*, 18(5) COLL. ATHLETICS & L. 4, 4–5 (2021).

430. Burgstahler, *supra* note 417.

431. See generally Sally S. Scott et al., *Implementing Universal Design in Higher Education Moving beyond the Built Environment*, 16(2) J. POSTSECONDARY EDUC. & DISABILITY 78, 78–89 (2003).

432. *Id.*

433. Burgstahler, *supra* note 417.

not only acknowledge disabled students but will not disadvantage non-disabled students. With universal access, all students are provided access to physical facilities, resources, and classroom methods that are accessible to everyone. An example of universal design may range from a flexible lab experience with all physical tools for any impairment to providing class materials in multiple forms for all students.⁴³⁴ This eliminates both the traditionalists' fear that disabled students will be unfairly advantaged while also taking the burden off disabled students to apply for and single themselves out in class when needing to use accommodations.

C. Internal Diagnosis

As in reformism, crit theorists also think that external factors dominate the discussion regarding disability disparities in higher education, meaning internal factors play a lesser role.⁴³⁵ Crit theorists reject traditionalists' "if you can't change your circumstances, you change yourself" theory as simplistic.⁴³⁶ Crit theorists posit the primary internal factor is when individuals contribute to their own subordination.⁴³⁷ This happens when disabled individuals allow discrimination to occur without opposing it. It can be extremely difficult for disabled students to develop the courage to advocate for themselves due to the stigmatization they face and their internalized fears of being viewed as a burden on society and the institutions that support them.⁴³⁸ However, if a disabled student simply accepts an unwillingness to allow equal access, they are only permitting ableist attitudes and practices to continue.⁴³⁹ A university that receives little to no pushback when denying accommodations will likely become more emboldened to continue this discriminatory practice, meaning future disabled students will also suffer.⁴⁴⁰

434. *Id.*

435. BROOKS, *supra* note 9, at 102.

436. Simon Sinek, *What Diversity & Inclusion is REALLY About* | Simon Sinek, YOUTUBE (Dec. 16, 2020), <https://www.youtube.com/watch?v=XisFCRrQivU> (showing traditionalist Simon Sinek talk about his version of diversity in business); BROOKS, *supra* note 9 at 102.

437. Simon Sinek, *supra* note 436; BROOKS, *supra* note 9 at 102.

438. Lyman et al., *supra* note 217, at 128.

439. *See id.*

440. *See id.* at 132.

D. Internal Prescription

i. Avoid Contributing to Their Own Subordination

When disabled students and faculty members speak out and discuss hidden and unconsidered barriers to higher education, social change can occur.⁴⁴¹ Crit theorists point to the fact that disabled students perform on par with non-disabled students in opposition to the traditionalist view of internal diagnosis.⁴⁴² Crit theorists have often prescribed protests, marches, fundraising, and partnerships with organizations to raise awareness to the issue of barriers for disabled students in post-secondary education.⁴⁴³ However, internalized ableism often prevents students from speaking out about potential discrimination.⁴⁴⁴ Disabled students must not be afraid to speak up and out about changes needed for the institution in order to remove systemic barriers. By continuing to allow post-secondary institutions to promulgate the stigma that disabled students are not as capable as non-disabled students, disabled students contribute to their own subordination.⁴⁴⁵ Disabled students may try to assimilate into the institution, but crit theorists contend that not speaking up keeps stereotypes alive regarding disability as an identity to “express profound and sincere sympathy for . . . while, at the same time, keeping them in a position of social and economic subordination.”⁴⁴⁶ Instead, for example, if a disabled person can speak up in a professional manner about an ableist comment, however unintended, social awareness of disability as inferiority can change.⁴⁴⁷

When there are competing interests at the university (i.e., an institution’s historical policy differs from a student’s accommodation), the final decision should always consider the student’s right to equal access ahead of the potential need for institutional innovation or change. Providing equal access to education should

441. See Nikki Rojas, *Raising Awareness About Disability Amid Pandemic*, THE HARV. GAZETTE (Jan. 18, 2022), <https://news.harvard.edu/gazette/story/2022/01/raising-awareness-about-disability-amid-pandemic>.

442. Richard Sparks et al., *College Students Classified with AD/HD and the Foreign Language Requirement*, 37 J. LEARNING DISABILITIES 169, 174 (2004).

443. BROOKS, *supra* note 9, at 102.

444. Fiona A. Kumari Campbell, *Exploring Internalized Ableism Using Critical Race Theory*, 23(2) DISABILITY & SOC’Y 151, 156 (2008).

445. BROOKS, *supra* note 9, at 102; Campbell, *supra* note 442, at 153.

446. Campbell, *supra* note 444, at 153.

447. See generally Emily Ladau, *I Am More Than An Empty Wheelchair: Speaking Up Against Ableism*, EMILY LADAU (Apr. 11, 2014), <https://emilyladau.com/2014/04/speak-up-against-ableism>.

be the institution's most important goal. This avoids putting the onus of worthlessness on disabled students.⁴⁴⁸ Crit theorists would argue the missions of post-secondary institution should be reflective and truly invested in all students' education to create transformative academic societies.⁴⁴⁹

ii. ADA Enforcement

Although crit theorists prefer complete institutional change in ADA legislation, they also prescribe "rigorous enforcement" of the current discrimination frameworks.⁴⁵⁰ The current power to achieve change in disability discrimination cases is lacking.⁴⁵¹ Although the ADA was seen as the pinnacle of disability rights in the United States, it has far to go to achieve real equity.⁴⁵² Crit theorists would want to ensure that even if the ADA is not expanded, ADA discrimination cases are taken more seriously than they currently are. Research shows that only 1.7% of ADA civil rights cases litigated with the EEOC were successfully won by the disabled plaintiff, and 66.2% claims of discrimination were simply dismissed.⁴⁵³ This is also mirrored outcomes in post-secondary education discrimination, where institutions won 81% of the time when the students requested academic adjustments.⁴⁵⁴ Discriminatory treatment cases showed an even higher institutional win rate of 87.7% of the time.⁴⁵⁵ Crit theorists would likely prescribe sociolegal change in the court system itself, educating lawyers and judges on the validity of disability. Unlike traditionalists, crit theorists argue that ADA disparate impact

448. Terry O'Banion, FOCUS ON LEARNING: A LEARNING COLL. READER 1, 2, 5 (2010).

449. John C. Scott, *The Mission of the University: Medieval to Postmodern Transformations*, 44(1) J. HIGHER EDUC. 1, 3 (2006).

450. BROOKS, *supra* note 9, at 50.

451. See Margaret M. McMenamin & Perry A. Zirkel, *OCR Rulings under Section 504 and the Americans with Disabilities Act Higher Education Student Cases*, 16(2) J. POSTSECONDARY EDUC. & DISABILITY 55, 55 (2003).

452. See Shruti Rajkumar, *The ADA Was A Victory For The Disabled Community, But We Need More. My Life Shows Why*, NAT'L PUB. RADIO (July 29, 2022), <https://www.npr.org/2022/07/29/1113535976/ada-disabilities-act-activists-more-protections>.

453. U.S. EQUAL EMP. OPPORTUNITY COMM'N, AMERICANS WITH DISABILITIES ACT OF 1990 (ADA) CHARGES (CHARGES FILED WITH EEOC) (INCLUDES CONCURRENT CHARGES WITH TITLE VII, ADEA, EPA, AND GINA) FY 1997–FY 2021, <https://www.eeoc.gov/data/americans-disabilities-act-1990-ada-charges-charges-filed-eeoc-includes-concurrent-charges>.

454. McMenamin & Zirkel, *supra* note 451, at 58.

455. *Id.*

cases also need to be strengthened.⁴⁵⁶ Because most discrimination is now more hidden than before the ADA,⁴⁵⁷ crit theorists argue dismantling the institutional norms will allow transformative equal access to post-secondary institutions.⁴⁵⁸

V. DISABILITY DISPARITIES IN POST-SECONDARY EDUCATION THROUGH A LIMITED SEPARATIST LENS

A. *External Diagnosis*

The theory of limited separatism envisions voluntary and non-exclusionary partial or complete uncoupling from the dominant hegemonic society, by a marginalized group. Importantly, this is very different from segregation, which is governmental or societal *forced* isolation. The theory comes from the fact that marginalized communities have been subordinated, oppressed, and dehumanized when trying to integrate or assimilate into the hegemonic society. Thus, *voluntary* separation creates a safe support system from oppression. Limited separatists also declare identity as an important part of a community, which ensures that those with similar life experiences and identities are creating opportunities, policies, and social norms that benefit those within the same identity community.

Limited separatists would diagnose the disparities in post-secondary education as one of forced integration to a majority non-disabled institution.⁴⁵⁹ External factors of outward discrimination as well as unconscious bias have created institutional environments in which disabled students encounter barriers to equal access.⁴⁶⁰ Non-disabled students and administrators do not understand disability and have skewed perceptions of disabled students.⁴⁶¹ This leads them to treat disabled students as “other,” falling outside the able-

456. *Payan v. L.A. Cmty. Coll. Dist.*, No.: 2:17-cv-01697-SVV-SK 2019 WL 2185138, at *11 (C.D. Cal. May 21, 2019) *rev'd*, 11 F.4th 729 (9th Cir. 2021) (Disabled students have come to the forefront of several Supreme Court cases that may be decided later this year. The Supreme Court is set to receive an appeal in March to dismantle higher education disparate impact cases. The L.A. Community College District may appeal to the Supreme Court in early March).

457. Amanda Morris, *Deaf And Unemployed: 1,000+ Applications But Still No Full-Time Job*, NAT'L PUB. RADIO (Jan. 12, 2019), <https://www.npr.org/2019/01/12/662925592/deaf-and-unemployed-1-000-applications-but-still-no-full-time-job>.

458. See Campbell, *supra* note 444, at 160.

459. See DOLMAGE, *supra* note 143, at 53.

460. *Id.*

461. *Id.* at 153.

bodied norm.⁴⁶² Integration of disabled students into universities controlled by able-bodied individuals merely attempts to force disabled students to pretend they are the non-disabled population.⁴⁶³ Limited separatists, like Jay Dolmage, illustrate this point further: “[t]he demand is that that one body be adapted to a curriculum (or structure or terrain) that is otherwise unwelcoming, inaccessible, inhospitable to that body and mind.”⁴⁶⁴ Limited separatists believe it is unlikely that non-disabled individuals will allow disabled individuals to become genuine decision-makers at universities as crit theorists hope.⁴⁶⁵ The non-disabled population is comfortable in their status as the dominant group and will not willingly switch places and allow disabled students to dictate institutional policies that may make non-disabled students the outsiders.⁴⁶⁶ Thus, the current framework of integrated institutions has the potential to isolate disabled students in non-disabled spaces and put pressure on them to conform to non-disabled norms, which is an unrealistic endeavor.⁴⁶⁷

B. *External Prescription*

Limited separatists would posit that disabled students are more likely to find success with those who understand disability intimately, namely disabled communities.⁴⁶⁸ Limited separatists push back against the reformist and crit theorist argument that “separate is inherently unequal.”⁴⁶⁹ Instead, limited separatists would argue that the solutions to disparities in post-secondary education would be to provide a loving and accepting environment though disability-focused institutions.⁴⁷⁰ Reformists’ argument in favor of forced integration is due to a fear of disabled students’ mistreatment.⁴⁷¹ However, limited separatists would contend that these concerns are less worrying in higher education with adult students who have the autonomy

462. *Id.* at 108–09.

463. *Id.* at 72; See BROOKS, *supra* note 9, at 68.

464. DOLMAGE, *supra* note 143, at 72.

465. See *id.* at 43 (discussing the “[M]ethodical exclusion of disabled people from planning, architecture, and design decision making.”).

466. BROOKS, *supra* note 9, at 65 (discussion of the limited separatist view of human self-interest).

467. See DOLMAGE, *supra* note 143, at 72.

468. Noonan et al., *Challenge and Success: A Qualitative Study of The Career Development of Highly Achieving Women With Physical and Sensory Disabilities*, 51 (1) J. COUNSELING PSYCH., 68, 77 (2004).

469. See Colker, *supra* note 380, at 1422.

470. *Id.* at 1423.

471. See *id.*

to choose their institution and can better report mistreatment.⁴⁷² In addition, limited separatists stress that a disability-focused institution will be made with disabled students' and faculty's best interests in mind.⁴⁷³ Although accommodations and support are often only given the bare minimum attention,⁴⁷⁴ a disability-focused institution can give an extraordinary education that supports disabled students from all angles.⁴⁷⁵

Like crit theorists, these disability-focused universities would like to maintain universal design as well as provide any unique accommodations that students may have.⁴⁷⁶ Universal design universities will push disability to the forefront, creating an environment that provides equal access to all.⁴⁷⁷ Universal design may also combat the argument that having disabled institutions for each disability will be too burdensome.⁴⁷⁸ Instead, limited separatists posit that providing the most equal access through universal design coupled with disability accommodations tailored to an individual will eliminate the need for separating out each "type" of disability by providing for all of an individual's intersecting identities.⁴⁷⁹ Limited separatists would argue that universal design can also be executed more effectively in disability-focused institutions because the ableist culture of a regular institutions' norms will not constantly be pushing back against equal access.⁴⁸⁰ Disability-led institutions managed by disabled faculty members and administration eliminate the guesswork of non-disabled administration trying to guess what disabled students need.⁴⁸¹ In addition, because limited separatist institutions

472. *See id.*

473. *Cf. id.* at 1465 (indicating a line of cases suggesting parents send their children to disability-only schools "[W]hen the public schools were not able to provide them with an adequate education for their children.").

474. *See generally Justice Department Reaches Agreement with Brown University to Ensure Equal Access for Students with Mental Health Disabilities*, U.S. DEP'T OF JUST. (Aug. 10, 2021), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-brown-university-ensure-equal-access-students-mental> (example of university following minimum regulatory ADA requirements but in the process, creating discriminatory issues); DOLMAGE, *supra* note 143, at 27.

475. Cecilia Simón et al., *Attitudes Toward Inclusion and Benefits Perceived by Families in Schools with Students with Autism Spectrum Disorders*, J. AUTISM DEV. DISORD. (2022).

476. Scott et al., *supra* note 431, at 83.

477. *See generally id.*

478. Burgstahler, *supra* note 417.

479. *Id.*

480. *See* DOLMAGE, *supra* note 143, at 72.

481. *See generally* David Harry Smith & Jean F. Andrews, *Deaf and Hard of Hearing Faculty in Higher Education Enhancing Access, Equity, Policy, and Practice*, 30(10) DISABILITY & SOC.

can “deny access to an individual belonging to another group . . . [if they] would destroy the institution’s identity,”⁴⁸² a majority of students would have disabilities.⁴⁸³ This will prevent the usual institutional response of there being too few students with disabilities to seriously think about proactively providing equal access across the university.⁴⁸⁴

Post-secondary institutions like Gallaudet University, a historically deaf college in D.C., is a prime example of the merits of disability-centric institutions.⁴⁸⁵ Unlike most colleges, all of Gallaudet’s “programs and services are specifically designed to accommodate deaf and hard of hearing students”⁴⁸⁶ while producing students who have professional success in the changing local and global communities.⁴⁸⁷ Gallaudet has turned disability “accommodation” on its head, instead providing all the tools for disabled success as the standard, influencing the very culture of the entire university.⁴⁸⁸

1521, 1521–36 (2015) (discussing solutions for institutions to integrate disabled faculty members using the same interventions that disabled students will also need).

482. BROOKS, *supra* note 9, at 76.

483. *See id.*

484. *See* DOLMAGE, *supra* note 143, at 42 (“There is a phrase that many disability studies teachers have heard from colleagues over and over again, . . . ‘but there are no disabled students in my class.’ . . . That wish or desire for higher education without disability is academic ableism in a nutshell But by more literally mapping disability as a reality and an important, contributing population in colleges and universities, there is a move to refuse this desire for academia and for an educational space without disability.”)

485. *See* Gallaudet University Mission & Vision Statement, GALLAUDET UNIV., <https://gallaudet.edu/about/#mission-vision> (“Gallaudet University . . . is a bilingual, diverse, multicultural institution of higher education that ensures the intellectual and professional advancement of deaf and hard of hearing individuals through American Sign Language (ASL) and English. Gallaudet maintains a proud tradition of research and scholarly activity and prepares its graduates for career opportunities in a highly competitive, technological, and rapidly changing world.”).

486. Kaitlin Luna, *Gallaudet University Named Location of the Month by the D.C. Office of Motion Picture and Television Development*, GALLAUDET UNIV. (Feb. 1, 2012), <https://gallaudet.edu/student-engagement-leadership/student-body-government/buff-blue/gallaudet-university-named-location-of-the-month-by-the-dc-office-of-motion-picture-and-television-development/#overview>.

487. *See* Gallaudet University Mission & Vision Statement, *supra* note 477 (“We will empower our graduates with the knowledge and practical skills vital to achieving personal and professional success in the changing local and global communities in which they live and work.”).

488. *See* Patricia C. Foley, *A Case “for” and “of” Critical Pedagogy: Meeting the Challenge of Liberatory Education at Gallaudet University*, 9(4) AM. COMM’N J. 1, 3 (2007) (“For D/deaf people at [Gallaudet University], everyday brings with it the joy of interacting with ease and equality within their own community . . .”).

The abnormal is now an individual who cannot communicate in ASL, different from most other universities.⁴⁸⁹

Gallaudet is a quintessential limited separatist institution, as it meets all three prongs of the theory.⁴⁹⁰ First, d/Deaf⁴⁹¹ individuals have historically been treated poorly and dehumanized, so an environment of Deaf pride is of great importance.⁴⁹² Second, Gallaudet allows individuals from the outgroup and has about 8% non-deaf students in the student body each year.⁴⁹³ Third, Gallaudet is cognizant of ensuring that only those who are respectful to disability and

489. See *id.* at 11 (“Throughout the history of the Deaf Community and [Gallaudet University], as well as in current times, the most important factors in achieving any goals that set are those of language use and language accessibility. To be an open, accessible campus where students and others can learn and achieve with equality, all activities must be conducted through ASL and visual communication.”).

490. See BROOKS, *supra* note 9, at 93–94 (“When writing about limited separatists many years ago, I developed a three-prong test The first prong requires the group employing limited separation to demonstrate a need to create a supportive environment free of debilitating . . . disadvantage The second prong requires institutions that operate under limited separation to grant access to individuals from outside the group, so long as these individuals are willing to support the institution’s mission The final prong permits a limited-separate institution to deny access to an individual belonging to another group only when . . . [it] would destroy the institution’s identity.”).

491. The signifier of “d/Deaf” indicates the distinction between being culturally Deaf (capitalized) and describing deaf as a medical condition. Those in the d/Deaf community often capitalize “Deaf” to indicate their cultural identity as a member of the Deaf community, including being immersed in Deaf culture, dialects of sign language, and customs. The word “deaf” with a lowercase “d” as primarily the medical hearing status of an individual. Here, I use both distinguishers because both deaf and Deaf individuals will be targeted and discriminated against by the predominantly non-deaf society. Of note, some of the Deaf community who embrace their deafness, often use identity-first language, instead of the word “disabled” to describe themselves as they have been brought up within the Deaf community. While holding space for these many identities, for purposes of legal definitions under state and federal anti-discrimination law, as well as the use of the social model for purposes of this article, deafness will be labeled a disability. d/Deaf people are discriminated against because of their hearing status. Kevin Morisod et al., *Interventions aimed at improving healthcare and health education equity for adult d/Deaf patients: a systematic review*, EUROPEAN J. PUBLIC HEALTH 32(4) 548–56 (2022); see also *Deaf History and Culture in the United States*, NPR, (March 30, 2021) <https://www.vpm.org/2021-03-30/deaf-history-and-culture-in-the-united-states>.

492. See Sara A. Kersting, *Balancing Between Deaf and Hearing Worlds: Reflections of Mainstreamed College Students on Relationships and Social Interaction*, 2 J. DEAF STUD. & DEAF EDUC., 252, 260–62, (1997) (discussing previous research on deaf culture and communities that describe D/deaf individuals as feeling alienated and suffering from discrimination).

493. See Lawrence Feinberg, *Gallaudet Admits Students With No Hearing Problems*, WASH. POST (May 24, 1986), <https://www.washingtonpost.com/archive/local/1986/05/24/gallaudet-admits-students-with-no-hearing-problems/723b3430-b510-4163-85f1-8a655c9a38dc> (“Yesterday, Gallaudet President Jerry C. Lee said the number of undergraduates with normal hearing will be limited at present to 8 percent of the undergraduate enrollment of about 1,200.”).

deaf culture can be allowed.⁴⁹⁴ Gallaudet lauds deaf culture that sees deafness as not a physical condition but rather a set of sociocultural identity, language, and practices.⁴⁹⁵ Legitimization of disability as a “normal” identity can create better outcomes for disabled students as those who go to schools like Gallaudet have much higher graduation rates on par with non-disabled students at other universities.⁴⁹⁶ About 95% of Gallaudet bachelor’s degree graduates were employed after graduation.⁴⁹⁷ This is a huge increase from the national average of disabled bachelor’s degree graduates, who have an employment rate of 42%.⁴⁹⁸ Limited separatists would argue this high rate of employment after graduating is due to the supportive environment students are given.⁴⁹⁹

494. *See id.* (“For the first year, all of the hearing students must have completed at least two years at other colleges and major in fields related to deafness such as education and psychology. [Gallaudet President Jerry C.] Lee said they will have to learn sign language, which is used in all Gallaudet classes.”).

495. *See I. King Jordan, Deaf Culture and Gallaudet*, WASH. POST (Jan. 22, 2007), <https://www.washingtonpost.com/archive/opinions/2007/01/22/deaf-culture-and-gallaudet/183e3514-30e7-4e4e-bc7a-dc5ee9fd09b9> (describing Gallaudet as having “a vision for an inclusive deaf university in which everyone is valued and respected and that offers educational programs to an increasingly diverse population of deaf, hard-of-hearing, deaf-blind and hearing students. A major priority in . . . [Gallaudet’s] strategic plan was to preserve Gallaudet’s rich cultural heritage and promote the study and appreciation of Deaf culture, deaf history and American Sign Language (ASL)”).

496. *See Gallaudet Graduation Rate & Retention Rates*, COLL. FACTUAL, <https://www.collegefactual.com/colleges/gallaudet-university/academic-life/graduation-and-retention> (“With a six year graduation rate of 66.7%, **returning** students in the Gallaudet class of 2016 who attended classes **full-time** were more likely than average to graduate in a reasonable time. After eight years, the graduation rate was 68.5%. Nationwide, the average graduation rate for **returning** undergraduates attending classes **full-time** is: 53.8% after six years and 55.1% after eight years.” (emphasis original)).

497. *See Fall 2018/Spring 2019 Annual Survey of Recent Graduates: December 2016 through August 2017 Alumni*, Gallaudet Univ. (2020), https://storage.googleapis.com/gal-media/documents/Institutional-Research/Alumni%20Survey/Alumni%20Survey_2018-2019_Final%20Report.pdf (“During the year since graduation and using all sources, the results show that in the year since graduation[,] [o]ne hundred and thirty-seven (96%) of undergraduate-level alumni were either working or pursuing additional education Post-graduation outcomes of working or pursuing additional education increased by 1% compared to last year in which 95% of the undergraduate-level alumni were either working or pursuing additional education.”).

498. *Labor Force Status of Persons 25 to 64 Years Old, by Disability Status, Highest Level of Education Attainment, Age, Sex, and Race/Ethnicity: 2015*, NAT’L CTR FOR EDUC. STAT. (Aug. 2016), https://nces.ed.gov/programs/digest/d19/tables/dt19_501.35.asp?current=yes.

499. *See BROOKS, supra* note 9, at 87 (“Limited separatists believe that the only prescription that has a proven record of success in redressing the external factors they identify as sustaining disparate resources . . . is the creation of beneficial forms of . . . isolation (i.e., limited separation).”).

C. Internal Diagnosis

Limited separatists believe internal issues of self-loathing have prevented disabled students from staying and graduating from universities.⁵⁰⁰ Discrimination and stigma have been shown to harm an individual's sense of identity.⁵⁰¹ Notable disabled writer Steven Kuusisto states that he was:

[r]aised to know I was blind but taught to disavow it, I grew bent over like the dry tinder grass. I couldn't stand up proudly, nor could I retreat . . . I reflected my mother's complex bravery and denial and marched everywhere at dizzying speeds without a cane. Still, I remained ashamed of my blind self."⁵⁰² Limited separatists use extensive research to indicate that when individual accepts and thrives with their identity and membership within a group, they will have greater resilience.⁵⁰³

500. See Roger D. Wessel et al., *Retention and Graduation of Students with Disabilities: Facilitating Student Success*, 21 J. POSTSECONDARY EDUC. & DISABILITY 116, 116–17 (2009) (“[T]he likelihood of earning a degree is decreased by the presence of a disability.’ . . . Belonging, involvement, purpose, and self-determination were identified as important factors affecting retention of college students with apparent and nonapparent disabilities.”); cf. BROOKS, *supra* note 9, at 90 (“Society’s pervasive rhetoric of color blindness, limited separatists argue, contributes to black nihilism because it measures civil rights success ‘by the extent to which society transcends race-consciousness.’ Given the death of Jim Crow, blacks have only themselves to blame for their problems. Unfortunately, limited separatists continue, many African Americans have imbibed this narrative and, as a result, think less of themselves and . . . limited separatists insist, leaves blacks with a kind of collective depression. This depression is so widespread among black students that one black educator described it as a ‘crisis of self-hatred.’”).

501. See Jennifer Katz et al., *Membership in a Devalued Social Group and Emotional Well-Being: Developing a Model of Personal Self-Esteem, Collective Self-Esteem, and Group Socialization*, 47 SEX ROLES 419, 428–29 (2002) (linking “membership in a devalued social group to emotional well-being[.]” and concluding that “members of devalued groups may internalize negative views about themselves as individuals.”); see also M. Catherine Cappadocia et al., *Bullying Experiences Among Children and Youth with Autism Spectrum Disorders*, 42 J. AUTISM & DEV. DISORDERS 266, 271–72 (2011) (describing children with Autism Spectrum Disorders having higher rates of victimization, and thus experiencing “higher levels of anxiety, hyperactivity, self-injurious and stereotypic behaviors, and over sensitivity[.]” and being “11 times more likely to have higher levels of internalizing mental health problems” compared to those children who were not bullied.).

502. Fiona A. Kumari Campbell, *Exploring Internalized Ableism Using Critical Race Theory*, 23 DISABILITY & SOC’Y 151, 156 (2008).

503. See Phillip Ferrigon, *Person-First Language v. Identity-First Language: An Examination of the Gains and Drawbacks of Disability Language in Society*, J. TEACHING DISABILITY STUD.

Identifying with the disability community has been shown to increase the levels of self-esteem of disabled individuals and protect them from psychological harm that comes from stigma.⁵⁰⁴

Although the concept of “disability pride” has been discussed for decades, it is still seen as a revolutionary idea. Many Americans still see disability as an inherently “bad” trait—not an identity to be proud of but rather an identity to be fixed back to a non-disabled identity.⁵⁰⁵ Limited separatists see this majority view as evidence that disabled individuals will not receive respect from non-disabled individuals unless they are able to “cure” themselves.⁵⁰⁶ Instead, disabled individuals would better flourish in a community that lifts and supports them as a whole human being. This community with other disabled individuals can enable disabled individuals to achieve their

(Jan. 3, 2019), <https://jtds.commons.gc.cuny.edu/person-first-language-vs-identity-first-language-an-examination-of-the-gains-and-drawbacks-of-disability-language-in-society> (asserting that, “[b]ecause society tends to view disability as a ‘problem,’ . . . this perpetuates myths and labels upon individuals medically diagnosed with a disability[,]” but by describing their disability positively, this provides a “method of empowerment” that helps “develop a person’s self-image . . .”); cf. Kate Cooper et al., *Social Identity, Self-Esteem, and Mental Health in Autism*, 47 EUR. J. SOC. POL’Y 844, 844–45 (2017) (“Having autism is likely to negatively impact . . . an individual’s ability to develop a positive social identity, thereby reducing physiological well-being. . . . This may be resolved through using identity management strategies . . . such as developing a sense of positive distinctiveness for the group This is likely to be associated with collective self-esteem, or a positive representation of the group, without which, group members are at risk of poor psychological well-being.”); BROOKS, *supra* note 9, at 94–95 (“Far from approaching racial nirvana, ‘integrated blacks’ faced loneliness, disaffection, and hypertension To resolve these external problems, limited separatists prescribe the legalization of a community-based black self-help program This community-based form of black self-help will create or reintroduce culturally defined institutions and traditions of black society from which young blacks, in particular, can acquire self-respect, a sense of purpose, and spirituality.”).

504. See Kathleen R. Bogart et al., *Disability Pride Protects Self-Esteem Through the Rejection-Identification Model*, 63 REHAB. PSYCH. 155, 155–56 (2018) (“Experiences of stigma have been associated with a number of negative physiological outcomes for minority group members . . . , including people with disabilities However, the rejection-identification model . . . argues that the negative impacts of stigma, that is, decreased self-esteem, may be mitigated when members of the stigmatized group reject a stigmatizing culture and choose to identify with each other rather than with the majority group.”); Brenda Major & Laurie T. O’Brien, *The Social Psychology of Stigma*, 56 ANN. REV. PSYCH. 393, 405 (2005) (“Group identification is positively correlated with self-esteem among stigmatized groups . . .”).

505. See Thomas P. Dirth & Nyla R. Branscombe, *Disability Models Affect Disability Policy Support Through Awareness of Structural Discrimination*, 73 J. SOC. ISSUES 413, 415 (2017) (“Likewise, because the medical model inherently treats disability as pathology, people with disabilities are subsequently perceived as defective and inferior to those without disabilities”); Lisa I. Iezzoni et al., *Physicians’ Perceptions of People With Disability and Their Health Care*, 40 HEALTH AFF. 297, 298 (2021) (“[P]hysicians’ bias toward disability could contribute to health care disparities.”).

506. Cf. BROOKS, *supra* note 9, at 91 (asserting that minorities will not receive respect from the majority until the minority conform).

full potential without non-disabled individuals constantly stereotyping them.⁵⁰⁷

Limited separatists respond to the traditionalist argument that disabled students are irresponsible or lazy individuals by further discussing identity.⁵⁰⁸ Limited separatists discuss that disabled students must already build character and hard work—just like their peers—for areas in which they are similarly situated.⁵⁰⁹ However, because institutions are set up specifically for the non-disabled identity, disabled students will run into unique barriers in areas where they are not similarly situated.⁵¹⁰ In addition, the identity of “multiple-marginalized dis[]abled students” creates further barriers to receiving accommodations.⁵¹¹ For example, the process to receive accommodations “ignores the barriers that students—particularly Black and Brown students and/or students who come from low socioeconomic status backgrounds—encounter as they seek to obtain documentation.”⁵¹² Thus, a disability-centric university will be much more cognizant of eliminating barriers.

D. Internal Prescription

Limited separatists would strongly prescribe that disabled students have a choice of post-secondary institutions.⁵¹³ A *choice* versus *compulsion* theory assists in creating strong identity wherever the student is.⁵¹⁴ Unlike choice, forced integration can be debilitating to students’ mental and physical health, as it requires students to often be the initial person in educating faculty members, combating stigma, and trying to change the culture of the institution.⁵¹⁵ This can lead to burnout from outwardly working to change the

507. See Major & O’Brien, *supra* note 505, at 405 (“Members of stigmatized groups may cope with identity threats by approaching, or identifying more closely with their group Groups can provide emotional, informational, and instrumental support, social validation for one’s perceptions, social consensus for one’s attributions, and a sense of belonging.”).

508. Cf. BROOKS, *supra* note 9, at 47, 101 (“[T]raditionalists believe disparate resources are sustained not by the external factor of race but by the internal factor of class—bad behaviors and bad values—within the African American community. . . . [L]imited separatists are asking blacks to embrace . . . ‘a positive shared identity.’”).

509. Cf. BROOKS, *supra* note 9, at 24 (“Another peculiarity about civil rights is that not all similarly situated groups receive the same level of opportunities created by civil rights.”).

510. Eddie Comeaux et al., *Dis/abled Student Campusmaking: Sites of New Possibility*, 11 (11) EDUC. SCIS. 1, 11 (2021); BROOKS, *supra* note 9, at 4.

511. *Id.*

512. *Id.*

513. *Id.* at 12.

514. *Id.* at 14.

515. Olsen et al., *supra* note 311, at 266.

culture and perpetuate personal worthlessness if students are not constantly vigilant to remember their identity is not a burden.⁵¹⁶

Limited separatists refute the notion that disabled students can only learn hard work by removing all supports when they attend post-secondary institutions.⁵¹⁷ The notion that disabled students are less likely to achieve is unfounded. Students are working to achieve level ground while being disadvantaged by the institution's composition.⁵¹⁸ Although all students must complete a transition to responsibility and adulthood when moving to post-secondary education,⁵¹⁹ disabled students are better off receiving a tailored education. This leaves disabled students more time to give back to their community through scientific research, academic pursuits, starting disabled-led businesses, and technological advancements to better disabled people's lives.⁵²⁰ Disabled students can better achieve academic excellence through institutions that have high expectations of students and are able to create a rigorous curriculum without stigma and barriers.⁵²¹ As Paul Gorski highlights, myths regarding the performance of historically marginalized students inhibit the ability to address the systemic inequities.⁵²² By attending institutions that uplift disability,⁵²³ students can achieve their full academic potential. Having disabled students all around provides a "sanctuary for healing internalized oppression."⁵²⁴ Instead of feeling the onus of burden, students

516. *Id.* at 268–69.

517. Krebs, *supra* note 375, at 2.

518. *Id.*

519. See generally Kennan Cepa & Frank F. Furstenberg, *Reaching Adulthood Persistent Beliefs About the Importance And Timing Of Adult Milestones*, 42(1) J. F. ISSUES 27 (2021).

520. *Deaf Research*, GALLAUDET UNIV., <https://www.gallaudet.edu/library/research/deaf-research> (explaining the cutting-edge deaf studies research from Gallaudet University); VICTOR PINEDA FOUND., <http://pinedafoundation.org> (Dr. Victor Santiago Pineda is one example of a disabled entrepreneur, businessperson, and scholar, who provides innovative solutions to accessible city design. While at UC Berkeley, he revived the Disabled Students' Union.); *Fredrick Ouko*, ASHOKA FELLOW, <https://www.ashoka.org/en-us/fellow/fredrick-ouko> (Fredrick Ouko is another disabled individual who went on to start Action Network for the Disabled ("ANDY"), assisting in targeting and eliminating barriers in employment for disabled individuals.).

521. Michael Fitzpatrick & Raschelle Theoharis, *The Law and the IEP: Establishing and Maintaining High Expectations for Deaf Students with Disabilities*, ODYSSEY: NEW DIRECTIONS IN DEAF EDUC. 15, 82 (2014) (discussing that best results come from institutions that have high expectations coupled with access to general curriculum).

522. See generally Paul Gorski, *The Myth of the 'Culture of Poverty'*, 65(7) EDUC. LEADERSHIP 32 (2008).

523. Westley James et al., *Disabling Barriers Experienced by Students With Disabilities in Post-Secondary Introductory Physics*, 16(2) PHYSICAL REV. PHYSICS EDUC. RSCH. 02011-1, 02011-17 (2020).

524. Campbell, *supra* note 444, at 155.

can create disability pride and acceptance within themselves, eliminating stigma and self-hatred in their identity.⁵²⁵

In addition, limited separatists would argue it is critically important to acknowledge the distribution of student resources.⁵²⁶ They argue crit theorists do not provide an adequate or feasible prescription to solving disparate resources in current ableist hegemonic institutions.⁵²⁷ Integration has not cured discrimination of disabled students.⁵²⁸ Thus, pushing for further integration may never lead to true equality for a disabled identity. Furthermore, integration can be harmful to disabled students' physical and mental health, whether they try to emulate the hegemonic norm (stifling their identity)⁵²⁹ or fight against it (creating burnout).⁵³⁰ Instead, limited separatists contend that instead of pushing back against the self-interest of massive institutions, which can be a constant uphill battle, disabled individuals should focus on creating a separate institution.⁵³¹ These institutions would be available by choice, and disabled resources would be placed first on the priority list.⁵³² This would free students from the hegemonic culture that pushes their bodies to the edge and causes further medical conditions⁵³³ instead allowing disabled identity to coexist with academic achievement. An accepting environment would eliminate the disability identity stigma so often discussed in regard to post-secondary education.⁵³⁴

Finally, reformists' argument for integration—that separation has been dehumanizing and inhumane—is why limited separatists vouch for the *choice* to attend disabled institutions.⁵³⁵ Limited separatists look at the historical treatment of disabled individuals at higher education institutions and prescribe that disabled students should be given the choice to not attend an unwelcoming

525. Laura M. Wasielewski, *Academic Performance of Students with Disabilities in Higher Education Insights from a Study of One Catholic College*, 20(1) J. CATH. EDUC. 138 (2016).

526. DOLMAGE, *supra* note 143, at 65.

527. *Id.* at 65; see BROOKS, *supra* note 9, at 101; Petit-McClure, *supra* note 345, at 73.

528. Petit-McClure, *supra* note 347, at 78.

529. Riddel, *supra* note 53, at 42.

530. Campbell, *supra* at note 444, at 155.

531. *Id.* at 154.

532. Alan L. Strauss & Amos Sales, *Bridging the Gap Between Disability Studies and Disability Services in Higher Education: A Model Center on Disability*, 23(1) J. POSTSECONDARY EDUC. & DISABILITY 82 (2010) (exemplifying some potential academic supports found in disability-led institutions not normally emphasized in current post-secondary universities).

533. Kattari, *supra* note 314, at 482–83; see also Megan Winkelman Creasman, *How Pregnancy Unmasked My Internalized Ableism*, 326(24) J. AM. MED. ASS'N 2473, 2473–74 (2021).

534. Comeaux, *supra* note 510, at 8, 11.

535. *Id.* at 2.

environment.⁵³⁶ Limited separatists would argue that disabled students cannot trust mainstream institutions to provide adequate resources as institutions are still showing abuse and neglect and instances of forced institutionalization are still happening in the present day.⁵³⁷ Limited separatists cite the post-secondary institutions' ableist, hegemonic culture that still perpetuates these norms to disabled students.⁵³⁸ Higher education institutions have historically subjugated disabled individuals through forced sterilization and unconsented research experiments, robbing autonomy, and not considering them for "student" status.⁵³⁹ The continued, though more subtle, discrimination faced by disabled students today has a severely negative influence on students' lives.⁵⁴⁰ In addition, although microaggressions are seen as much less frightening than historical abuse,⁵⁴¹ the current hegemonic, ableist culture is still pervasive enough within education that disabled students have internalized such ableism to justify physical and sexual abuse perpetrated against them.⁵⁴² Limited separatists contend that solutions have simply put too much weight on integration as a "cure-all."⁵⁴³ The subordination of disabled students through the mainstream culture will continue for the foreseeable future.⁵⁴⁴ Instead, limited separatist theorists prescribe innovative institutions that put disabled students as the top priority.

536. BROOKS, *supra* note 9, at 83.

537. Gi Lee & David Cohen, *Incidences of Involuntary Psychiatric Detentions in 25 U.S. States*, 72 PSYCHIATRIC SERVS. 61, 61–68 (2021); Susan K. Livio & Ted Sherman, *Judge Grants Disability Advocates Access To N.J. Nursing Home Residents To Investigate Abuse, Neglect*, N.J. ADVANCE MEDIA (Mar. 12, 2022), <https://www.nj.com/coronavirus/2022/03/judge-grants-disability-advocates-access-to-nj-nursing-home-residents-to-investigate-abuse-neglect.html>.

538. DOLMAGE, *supra* note 143, at 50.

539. See generally Doe West, *Radiation Experiments on Children at the Fernald and Wrentham Schools Lessons for Protocols in Human Subject Research*, 6 ACCOUNTABILITY IN RSCH. 103 (1998).

540. Ja Young Kim, *The Effect of Experiencing Discrimination On The Life Satisfaction Of People With Disabilities In South Korea The Mediating Role Of Disability Acceptance*, 36 SOC. WORK PUB. HEALTH 276, 283 (2021).

541. *Understanding Racial Microaggression and Its Effect on Mental Health*, PFIZER (2023), https://www.pfizer.com/news/articles/understanding_racial_microaggression_and_its_effect_on_mental_health.

542. Emily J. Hutcheon & Gregor Wolbring, *Voices of Disabled Post-Secondary Students Examining Higher Education Disability Policy Using an Ableism Lens*, 5 J. DIVERSITY HIGHER EDUC. 39, 43 (2012).

543. *Id.* at 48.

544. Samuel R. Bagenstos, *Subordination, Stigma, and Disability*, 86 VA. L. REV. 397, 420 (2000).

VI. CONCLUSION

Social policy must be thoroughly analyzed to produce an adequate, feasible, and long-lasting solution to the disability disparity in education, and this paper has attempted to provide such a synthesis. Because no civil rights theory is complete, a synthesis will provide the most holistic changes for disabled students. Limited separatist prescriptions are realistic for the near future of academia, as disabled students must be given superior resources and uplifting social treatment to eliminate the disparities in post-secondary institutions. Moreover, limited separatist arguments are often highly aware of the workings of societal issues all while creating an innovative solution less frequently discussed in current academia.⁵⁴⁵ In addition to seeking uplifting community support, limited separatists advise choice above compulsion.⁵⁴⁶ Thus, a successful and comprehensive plan must also take into consideration the disabled students choosing to go to a majority non-disabled school. Using a reformist lens, we can ensure students are not left without advocacy in integrated institutions by making certain students have a support system and equal access to the same material, lectures, tests, and extracurriculars that non-disabled students have. Traditionalists' theory of eliminating fraud can be better implemented when combined with a critical race theory analysis of the structural biases and discrimination in current, mainstream academic culture. This combination can pursue less corruption in school systems, creating a more equitable system that apprehends those using elite wealth-based fraud to obtain access to education. Focusing on crit theorists' form of discourse to lift disabled student voices to the forefront of the conversation within institutions will also tear down systemic policies and procedures created to disenfranchise. To ensure disabled students can achieve the best outcomes, incorporating many different theorist voices, as well as empirical evidence, can assist in feasible solutions to disparate impacts.

545. See Petit-McClure, *supra* note 347, at 73-75.

546. BROOKS, *supra* note 9, at 82-83.

VII. TABLES AND FIGURES

Table I: Protected Classes and Comparison and Application of Civil Rights Act and Modeled Laws (*Displaying the protected class of disability, and the roots and intricate crossovers between other insular groups*)

		Title II Public Accommodations	Title III Private Accommodations	Title VI Federal Government Funding	Title VII Employment Discrimination	Title IX Education Discrimination	
Race	1964 Civil Rights Act	X	X	X	X	X	X
Color	1964 Civil Rights Act	X	X	X	X	X	X
Religion	1964 Civil Rights Act	X	X	X	X	X	X
National Origin	1964 Civil Rights Act	X	X	X	X	X	X
Sex	Executive Order 11375	X ⁵⁴⁹		X ⁵⁵⁰	X ⁵⁵¹	X ⁵⁵²	X
Gender Identity ⁵⁵³	Executive Order 11375 (see <i>Bostock v. Clayton Cty.</i>)			X	X	X	X
Sexual Orientation ⁵⁵⁴	Executive Order 11375 (see <i>Bostock v. Clayton Cty.</i>)			X	X	X	X
Age	Age Discrimination in Employment Act					X	X ⁵⁵⁵

547. 52 U.S.C. § 10301.

548. *U.S. Department of Housing and Urban Development, Housing Discrimination Under the Fair Housing Act*, U.S. DEP'T OF HOUSING AND URBAN DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#_Who_Is_Protected.

549. Melissa Block, *Yes, Women Could Vote After The 19th Amendment—But Not All Women. Or Men*, NAT'L PUB. RADIO (Aug. 26, 2020), <https://www.npr.org/2020/08/26/04730251/yes-women-could-vote-after-the-19th-amendment-but-not-all-women-or-men> (explaining the 15th Amendment extended to white women in 1920, but Black women were not included as “[r]acism is a language that is shared by suffragists and anti-suffragists alike”).

550. *Types of Educational Opportunities Discrimination*, U.S. DEP'T OF JUST. (Mar. 24, 2022), <https://www.justice.gov/crt/types-educational-opportunities-discrimination#:~:text=Sex%2DBased%20Discrimination,and%20institutions%20of%20higher%20education>.

551. *Id.* (explaining the Equal Employment Act of 1972 extended Title VII to include education and federal government funding).

552. Exec. Order No. 11375, 32 Fed. Reg. 14303 (Oct. 13, 1967).

553. Movement Advancement Project, *LGBT POL'Y SPOTLIGHT: PUB. ACCOMMODATIONS NONDISCRIMINATION LAWS (2018)* (clarifying that many individual states provide protections against public accommodation discrimination for sexual orientation and gender identity).

554. *Id.*

555. Marcia Stewart, *What Kind of Housing Discrimination Is Illegal?*, NOLO, <https://www.nolo.com/legal-encyclopedia/free-books/renters-rights-book/chapter5-2.html> (clarifying that, although not explicit, age protections are housed under the broader prohibition of discrimination based on familial status).

Disability	ADA; Voting Accessibility for Elderly and Handicapped Act of 1984 ⁵⁵⁶	X	X	X	X	X	X
Veteran	ADA; Uniformed Services Employment and Reemployment Rights Act (USERRA)	X	X	X	X	X	X
Genetic Information	Executive Order 13145; The Genetic Information Nondiscrimination Act of 2008				X		
English Language Learners	Equal Educational Opportunities Act of 1974	X ⁵⁵⁷		X ⁵⁵⁸			
Citizenship	8 U.S.C. § 1324B. Unfair Immigration-Related Employment Practices					X ⁵⁵⁹	

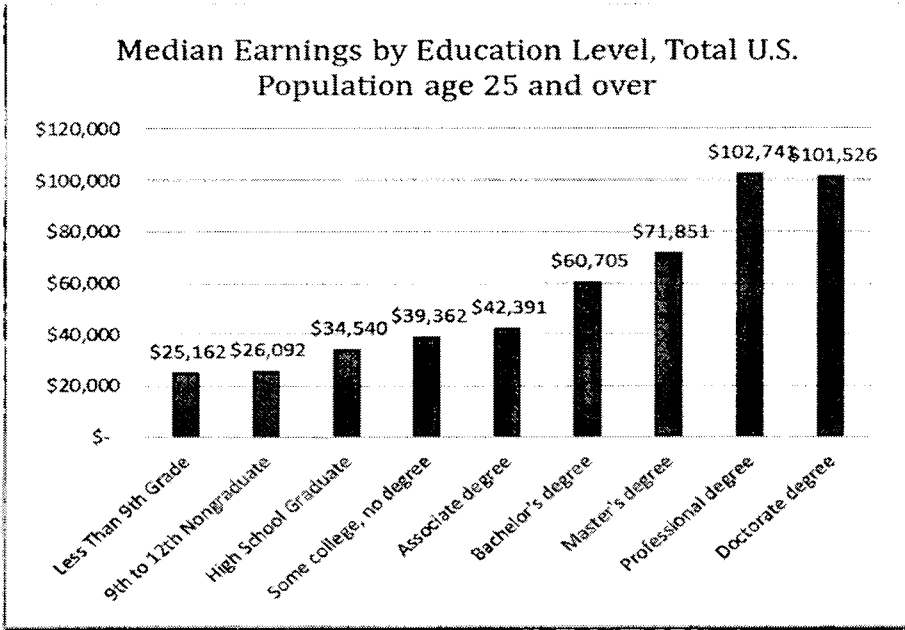
556. *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities*, U.S. DEP'T OF JUST. (Oct. 10, 2014), https://www.ada.gov/ada_voting/ada_voting_ta.htm.

557. Voting Rights Act of 1965, S. 1564, 89th Cong. (1965).

558. *Types of Educational Opportunities Discrimination*, *supra* note 541.

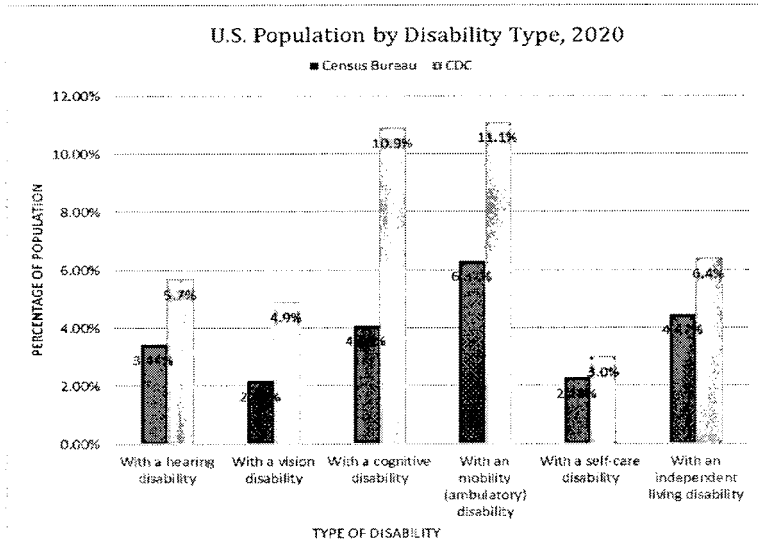
559. Unfair Immigration-Related Employment Practices, 8 U.S.C. § 1324b.

Figure I. Median Earnings by Education Level According to the 2021 Census⁵⁶⁰



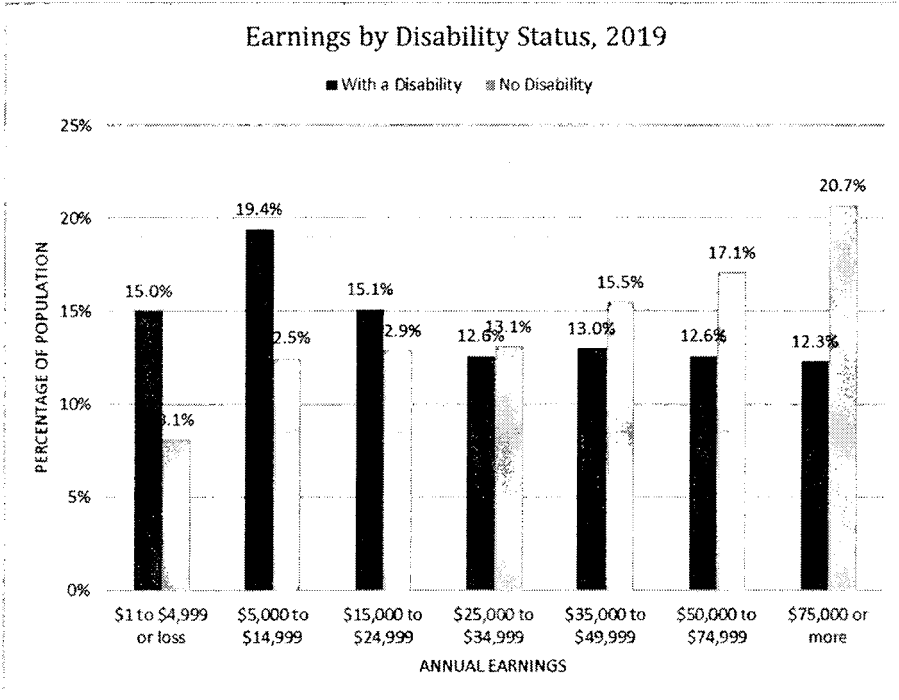
560. PINC-03. Educational Attainment—People 25 Years Old and Over, by Total Money Earnings, Work Experience, Age, Race, Hispanic Origin, and Sex, U.S. CENSUS BUREAU (Oct. 8, 2021), <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-03.html>.

Figure II. Visual Comparison of Census Bureau and CDC Measurement of Disabled Americans in 2017⁵⁶¹ (*note methodologies are quite different, however; one of the most noticeable differences is the Census Bureau tries to include a sample of Americans from ages 0+, while the CDC only measures adults 18+. Both studies use the same division and markers of “disability types.”*).



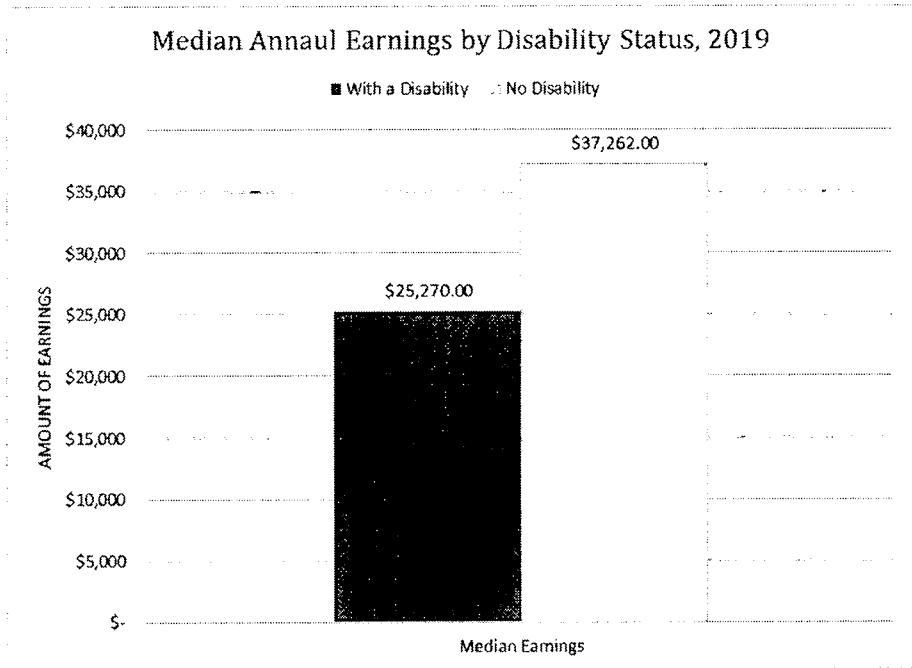
561. American Community Survey of Civilian Noninstitutionalized Population, U.S. CENSUS BUREAU (2020), <https://data.census.gov/table?q=Disability&tid=ACSST5Y2020.S1810> (see detailed methodology here: American Community Survey and Puerto Rico Community Survey 2020 Subject Definition, U.S. CENSUS BUREAU, https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2020_ACSSubjectDefinitions.pdf; American Community Survey Accuracy of Data, U.S. CENSUS BUREAU, https://www2.census.gov/programs-surveys/acs/tech_docs/accuracy/ACS_Accuracy_of_Data_2020.pdf; Disability and Health Data System (DHDS) CENTERS FOR DISEASE CONTROL AND PREVENTION, (2020) <https://dhds.cdc.gov/LP?CategoryId=DISEST&IndicatorId=STATTYPE&ShowFootnotes=true&View=Table&yearId=YR5&stratCatId1=CAT1&stratId1=BO1&stratCatId2=&stratId2=&responseId=Q6DIS1&dataValueTypeId=AGEADJPREV&MapClassifierId=quantile&MapClassifierCount=5>, (see detailed methodology here: Disability and Health Data System (DHDS) Methods, CNTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/ncbddd/disabilityandhealth/dhds/methods.html>, Behavioral Risk Factor Surveillance System, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/brfss/annual_data/2020/pdf/overview-2020-508.pdf, LLCP 2020 Codebook Report, CENTERS FOR DISEASE CONTROL AND PREVENTION, and https://www.cdc.gov/brfss/annual_data/2020/pdf/codebook20_llcp-v2-508.pdf). (Author’s note: 2020 data was used although there are more recent Census data released for 2021, because of lack of corresponding data for 2021 in the CDC for direct comparison. Also, note that there was a large fluctuation in number of disabled individuals before and after data taken during COVID-19 and data taken before the onset of COVID-19, which may affect recent data).

Figure III. Disability Earnings Brackets of Disabled Population in Comparison to Non-Disabled Population⁵⁶²



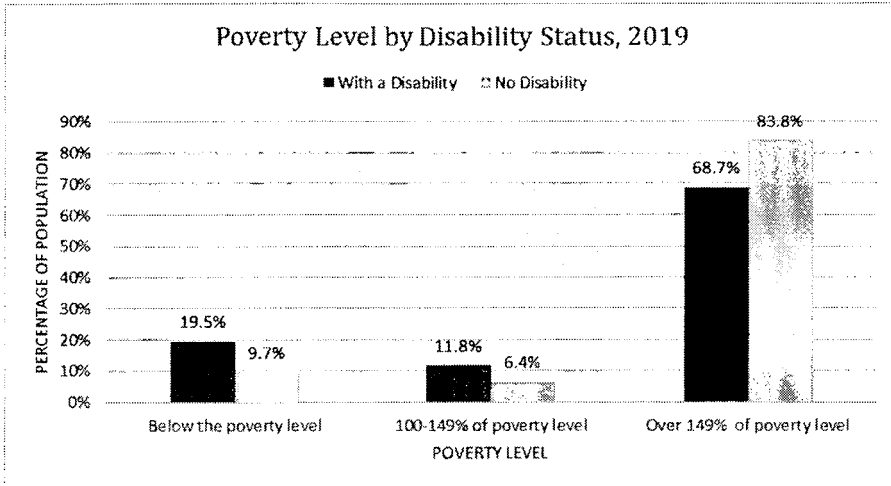
562. 2019 American Community Survey 1-Year Estimates, U.S. CENSUS BUREAU (2019) <https://api.census.gov/data/2019/acs/acs1/subject>.

Figure IV. Median Earnings of Disabled Population in Comparison to Non-Disabled Population⁵⁶³



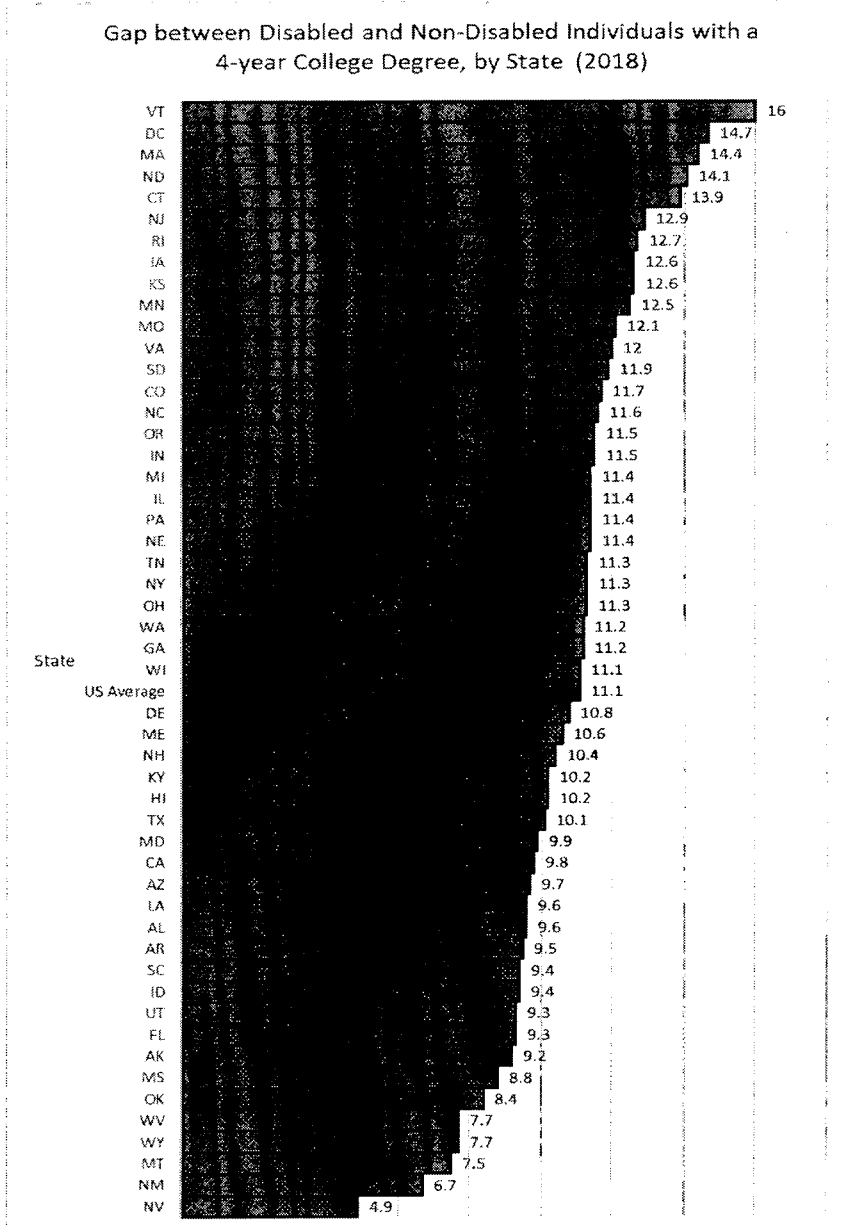
563. 2019 American Community Survey 1-Year Estimates, U.S. CENSUS BUREAU (2019) <https://api.census.gov/data/2019/acs/acs1/subject>.

Figure V. Census Bureau's National Poverty Levels of Disabled and Non-disabled Populations⁵⁶⁴



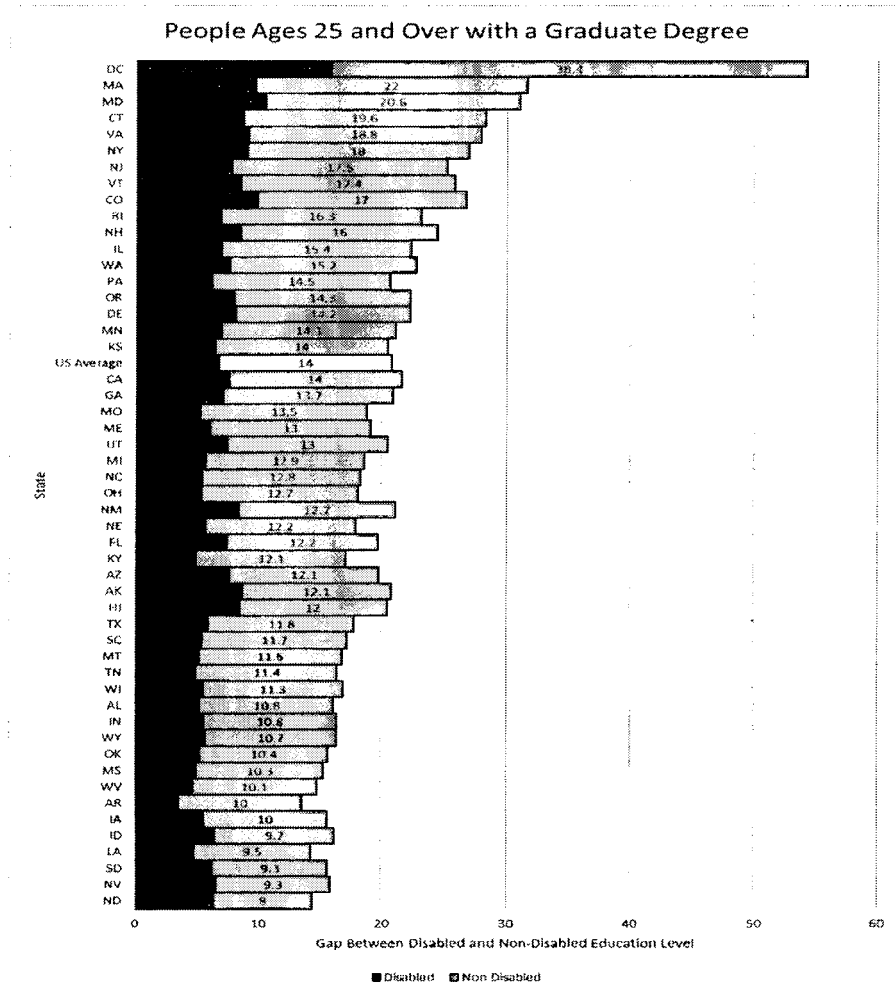
564. 2019 American Community Survey 1-Year Estimates, U.S. CENSUS BUREAU (2019) <https://api.census.gov/data/2019/acs/acs1/subject>.

Figure VI. Education Deficit between Non-disabled and Disabled Individuals with a 4-Year Degree⁵⁶⁵



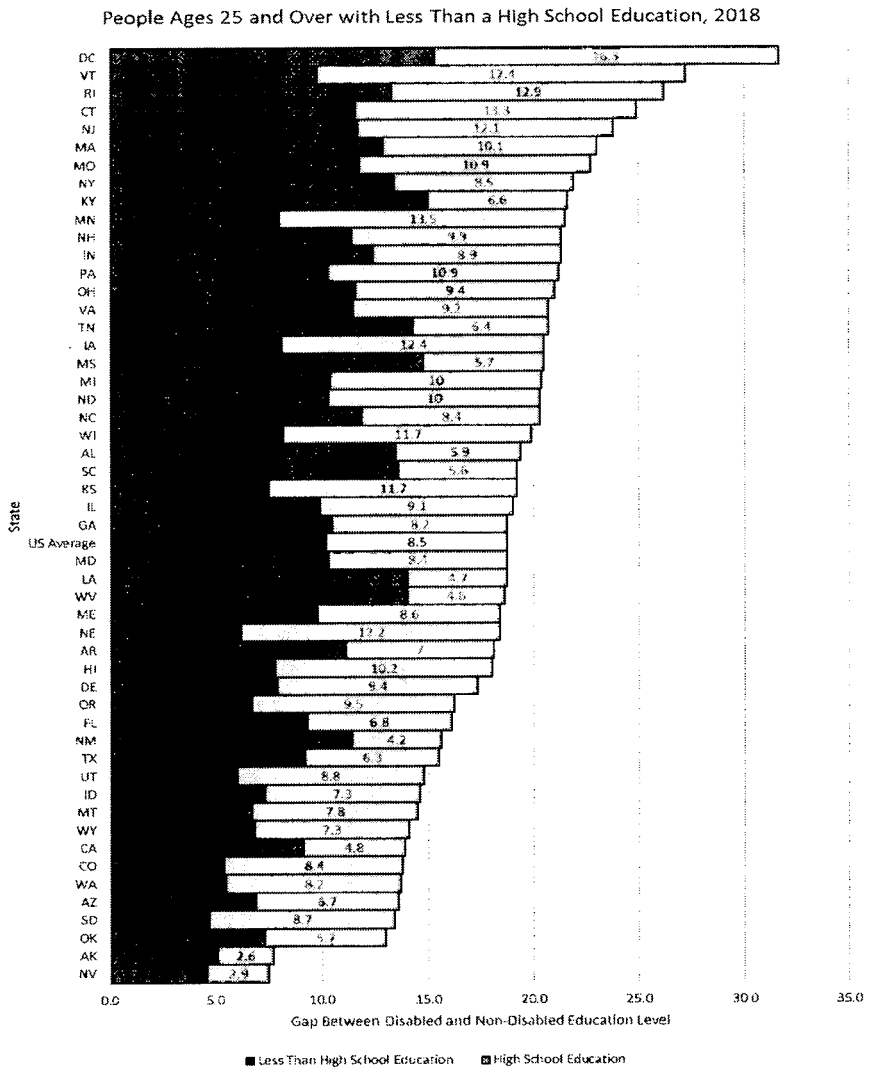
565. Eric A. Lauer, Sarah L. Boege, & Andrew J. Houtenville eds., *Annual Disability Statistics Compendium: 2019*, (Table 13.5), UNIV. N.H., INST. ON DISABILITY (2019); (Data represents the civilian, noninstitutional population. Based on a sample and subject to sampling variability); *American Community Survey, Public Use Microdata Sample*, U.S. CENSUS BUREAU (2017).

Figure VII. Graduate Degree Attainment of Disabled Population as Compared to Non-disabled Population by State⁵⁶⁶



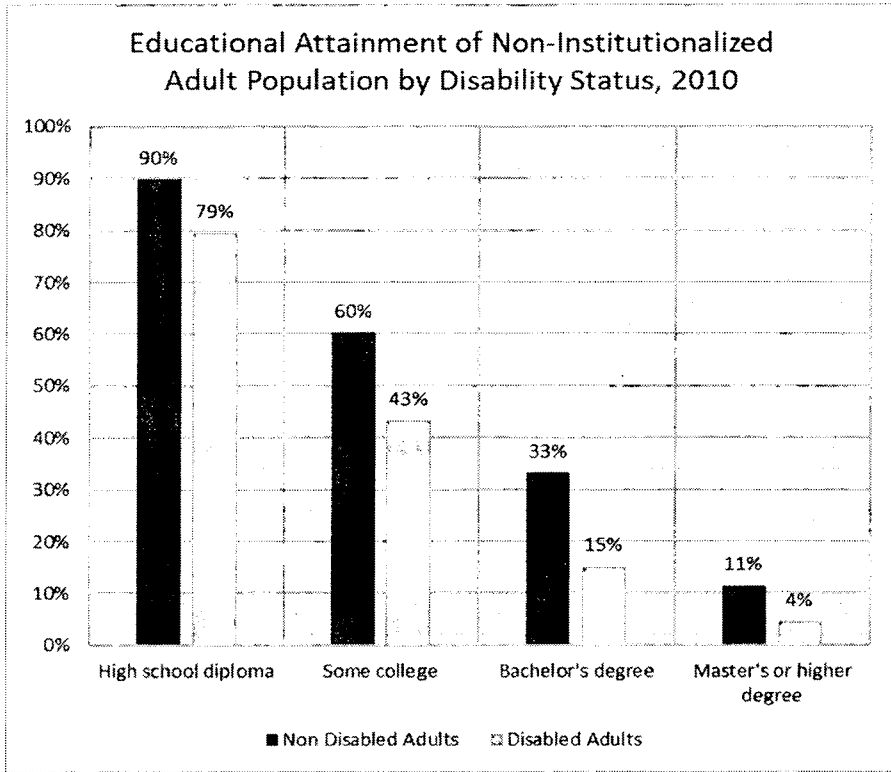
566. Eric A. Lauer, Sarah L. Boege, & Andrew J. Houtenville eds., *Annual Disability Statistics Compendium: 2019*, UNIV. N.H., INST. ON DISABILITY (2019); (Data represents the civilian, noninstitutional population. Based on a sample and subject to sampling variability); *American Community Survey, Public Use Microdata Sample*, U.S. CENSUS BUREAU (2017).

Figure VIII. Percentage of Disabled Population with Less Than a High School Education as Compared to Non-Disabled Population⁵⁶⁷



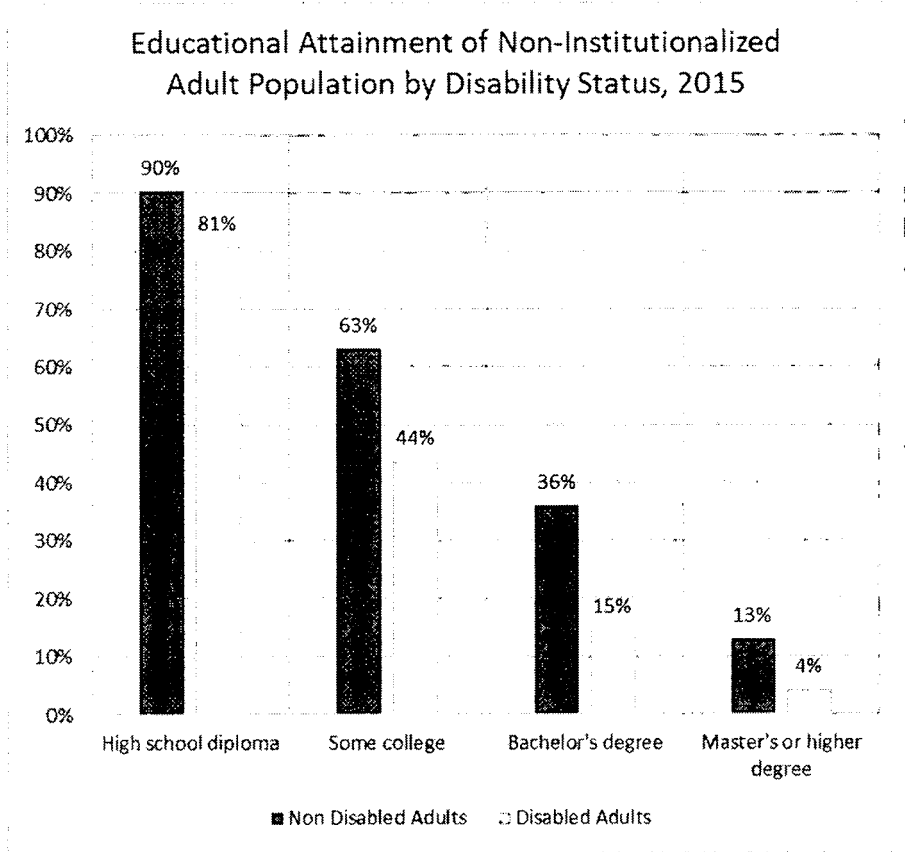
567. Eric A. Lauer, Sarah L. Boege, & Andrew J. Houtenville eds., *Annual Disability Statistics Compendium: 2019*, UNIV. N.H., INST. ON DISABILITY (2019); (Data represents the civilian noninstitutional population. Based on a sample and subject to sampling variability); *American Community Survey, Public Use Microdata Sample*, U.S. CENSUS BUREAU (2017).

Figure IX. 2010 Educational Attainment of Disabled Population as Compared to Non-Disabled Population⁵⁶⁸



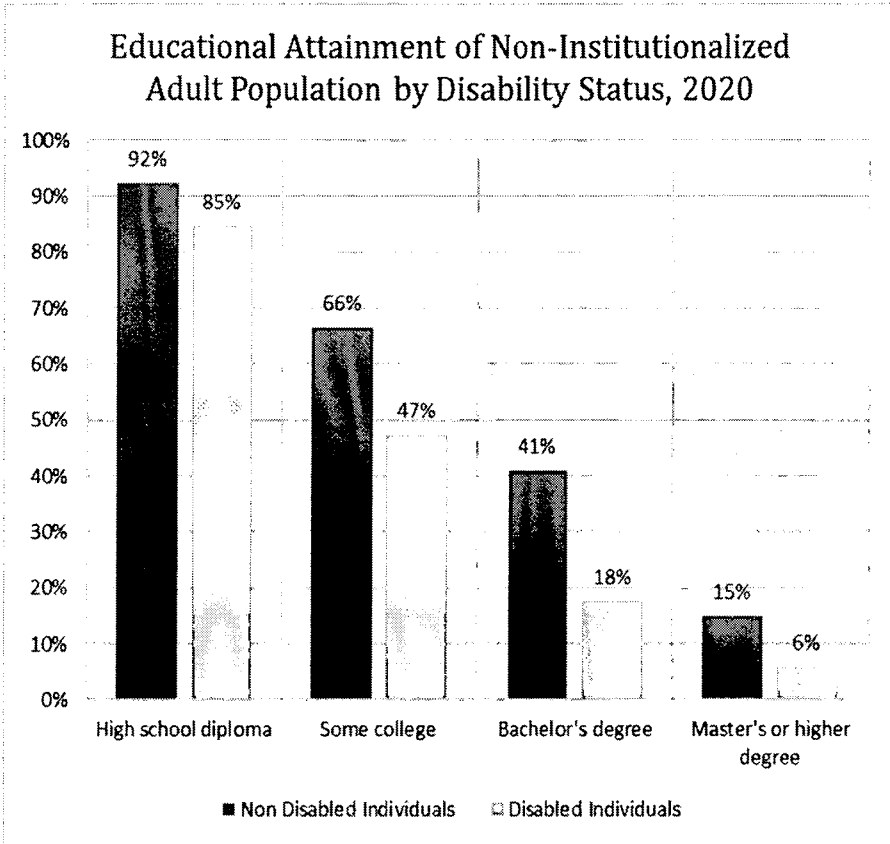
568. Digest of Education Statistics, Total Number Of Persons 25 to 64 Years Old, Number With Disabilities, And Percentage With Disabilities, by Highest Level of Educational Attainment And Other Selected Characteristics: 2010 and 2015, NAT'L CNTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d16/tables/dt16_104.75.asp.

Figure X. 2015 Educational Attainment of Disabled Population as Compared to Non-Disabled Population⁵⁶⁹



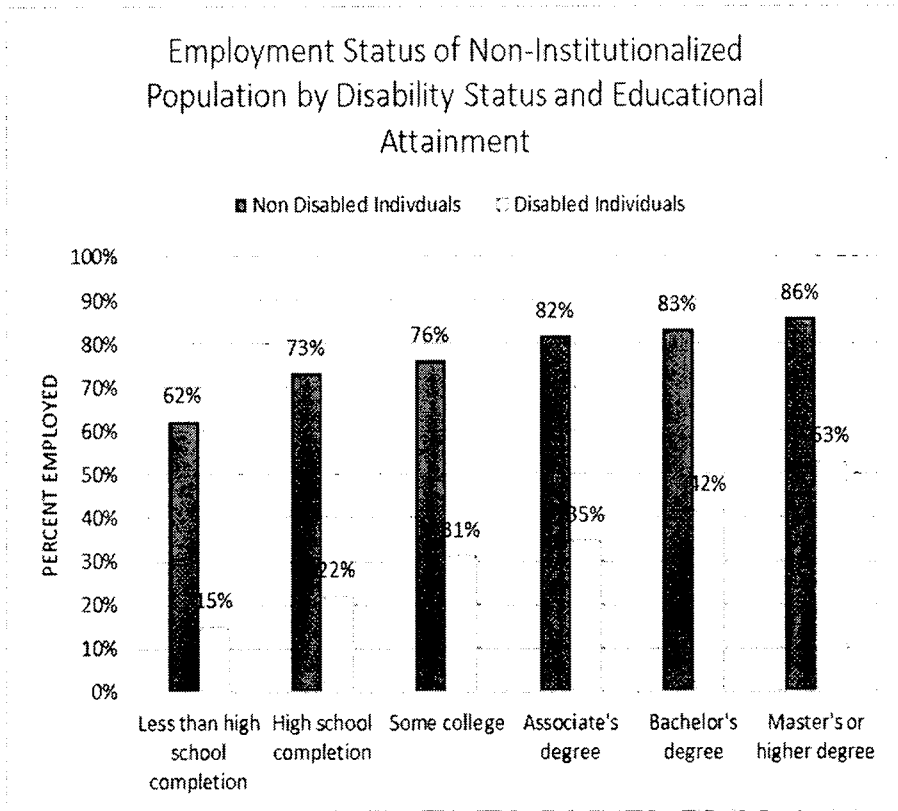
569. Digest of Education Statistics, Total Number Of Persons 25 to 64 Years Old, Number With Disabilities, And Percentage With Disabilities, by Highest Level of Educational Attainment And Other Selected Characteristics: 2010 and 2015, NAT'L CNTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d16/tables/dt16_104.75.asp.

Figure XI. 2020 Educational Attainment of Disabled Population as Compared to Non-Disabled Population⁵⁷⁰



570. Digest of Education Statistics, Total Number Of Persons 25 to 64 Years Old, Number With Disabilities, And Percentage With Disabilities, by Highest Level of Educational Attainment And Other Selected Characteristics: 2010 and 2015, NAT'L CNTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d16/tables/dt16_104.75.asp.

Figure XII. Employment Status Disabled Population as Compared to Non-Disabled Population by Degree⁵⁷¹



571. Digest of Education Statistics, Labor Force Status Of Persons 25 To 64 Years Old, By Disability Status, Highest Level Of Educational Attainment, Age, Sex, And Race/Ethnicity: 2015, NAT'L CNTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d19/tables/dt19_501.35.asp?current=yes.