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Equity and Inclusion as Unifying Principles

Dean Alena M. Allen*

INTRODUCTION

As the country grows more polarized politically, culture wars in higher education are widely reported across myriad news outlets.¹ Diversity, equity, and inclusion (DEI) have been maligned and linked to “wokeness.”² This alleged link precipitated politicians, especially in red states, to push for legislation curtailing DEI efforts across campuses in spheres ranging from human resources to the classroom.³ Since January of 2023, forty bills have been introduced that target DEI efforts in higher education.⁴ Since 2020,

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1. See, e.g., Brendan Cantwell, *The Culture Wars Have Come to Higher Ed: Now Is the Time for Academic Leaders to Fight*, CHRON. OF HIGHER EDUC. (July 12, 2021), <https://www.chronicle.com/article/the-culture-war-has-come-for-higher-ed/> [<https://perma.cc/4KG8-5KU6>]; Nick Anderson, *Political Polarization Is Sorting Colleges into Red and Blue Schools*, WASH. POST (Apr. 3, 2023, 6:00 AM), <https://www.washingtonpost.com/education/2023/04/03/red-blue-college-culture-war/> [<https://perma.cc/MG5L-X96N>].

2. Frederick M. Hess, *Rolling Back Woke Higher Ed*, NAT’L REV. (Dec. 1, 2022), <https://www.nationalreview.com/magazine/2022/12/19/rolling-back-woke-higher-ed/> [<https://perma.cc/7UHG-X724>] (“Faculty quietly lament the new reign of diversity, equity, and inclusion (DEI) enforcers but fear to speak up.”).

3. See, e.g., Bianca Quilantan, *The New Red Scare for Red States: Diversity Programs*, POLITICO (Mar. 19, 2023, 7:00 AM), <https://www.politico.com/news/2023/03/19/gop-culture-war-college-dei-florida-texas-00087697> [<https://perma.cc/M2AS-URY3>] (discussing efforts in Florida, Texas, and South Carolina).

4. See *Politics and Race: DEI Legislation Tracker*, CHRON. OF HIGHER EDUC., <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts> [<https://perma.cc/9GN3-VJJE>] (July 14, 2023).

750 anti-Critical Race Theory (CRT) bills have been introduced across the country.⁵

I. DISTINGUISHING CRT AND DEI

These efforts often confuse CRT and DEI. Although there can be overlap, CRT and DEI are not interchangeable. CRT examines how race lurks within established societal structures.⁶ Specifically, in the legal context, critical race theorists analyze the impact of race on shaping legal and social consciousness.⁷ In contrast, diversity is typically used to describe efforts and outreach. The goal of DEI is to increase the representation or participation of underrepresented groups.⁸ For example, one version of the American Bar Association’s [ABA] Diversity Plan proffered a goal “[t]o promote full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities.”⁹ Diversity is concerned with representation, whereas equity is concerned with access. An equity analysis focuses on removing any barriers that might prevent an individual from having an equal opportunity to access a good or service.¹⁰ Finally, inclusion can be defined as “the act or practice of including

5. See *CRT Forward*, UCLA SCH. L. CRITICAL RACE STUD. PROGRAM, <https://crtforward.law.ucla.edu/> [<https://perma.cc/F4G4-HBDA>] (last visited Sept. 23, 2023).

6. Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/article/what-is-critical-race-theory.html> [<https://perma.cc/EM4L-8CDK>].

7. See, e.g., Richard Delgado, *Critical Legal Studies and the Realities of Race—Does the Fundamental Contradiction Have a Corollary?*, 23 HARV. C.R.-C.L. L. REV. 407 (1988); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

8. See David Pedulla, *Diversity and Inclusion Efforts That Really Work*, HARV. BUS. REV. (May 12, 2020), <https://hbr.org/2020/05/diversity-and-inclusion-efforts-that-really-work> [<https://perma.cc/B2H4-TRU8>].

9. *Goal III: Eliminate Bias and Enhance Diversity*, A.B.A., https://www.americanbar.org/groups/diversity/disabilityrights/initiatives_awards/goal_3 [<https://perma.cc/N7QP-A2KW>] (last visited Sept. 11, 2023) (alteration in original).

10. See Kristen Norman-Major, *Balancing the Four Es; or Can We Achieve Equity for Social Equity in Public Administration?*, 17 J. PUB. AFFS. EDUC. 233, 238–39 (2011) (“Such policies help assure fairness and equal access to government programs and services; that is, equal opportunity to participate and receive services.”).

and accommodating people who have historically been excluded (as because of their race, gender, sexuality, or ability).”¹¹

Governor DeSantis made Florida the epicenter for legislative activity targeting DEI efforts and CRT in higher education by steering multiple new bills into law.¹² One law targets DEI programs at public higher education institutions in Florida by prohibiting institutions from using “any state or federal funds to promote, support, or maintain” DEI programs.¹³ Further, another legislative act restricts how race and gender may be taught in general education courses by providing that curricula may not be “based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities.”¹⁴

When signing these controversial bills into law, DeSantis stated that “DEI is better viewed as standing for discrimination, exclusion[,] and indoctrination.”¹⁵ With DeSantis and others stoking fears about colleges indoctrinating wokeness,¹⁶ misleading

11. *Inclusion*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/inclusion#citations> [<https://perma.cc/4HVW-RHW7>] (last visited Sept. 11, 2023).

12. See Dylan Abad, *DeSantis Signs 3 Bills Ending CRT, DEI Spending in Higher Education*, WFLA (May 15, 2023, 11:03 PM), <https://www.wfla.com/news/sarasota-county/desantis-speaking-at-new-college-of-florida-in-sarasota/> [<https://perma.cc/4Z56-ACPB>].

13. Section 1004.06(2) of the Florida Statutes was amended effective July 1, 2023, to provide that:

(2) A Florida College System institution, state university, Florida College System institution direct-support organization, or state university direct-support organization may not expend any state or federal funds to promote, support, or maintain any programs or campus activities that:

(a) Violate s. 1000.05, Fla. Stat.; or

(b) Advocate for diversity, equity, and inclusion, or promote or engage in political or social activism, as defined by rules of the State Board of Education and regulations of the Board of Governors.

Act of May 15, 2023, ch. 2023-82, sec. 4, § 1004.06, 2023 Fla. Laws 6.

14. FLA. STAT. § 1007.25(3)(c) (2023).

15. Jaclyn Diaz, *Florida Gov. Ron DeSantis Signs a Bill Banning DEI Initiatives in Public Colleges*, NPR (May 15, 2023, 5:46 PM), <https://www.npr.org/2023/05/15/1176210007/florida-ron-desantis-dei-ban-diversity> [<https://perma.cc/K3VV-5UH3>].

16. See, e.g., Maya Yang, *Greg Abbott Signs Law Banning Diversity Offices in Texas Higher Education*, GUARDIAN (June 14, 2023, 7:55 PM), <https://>

sound bites have flooded the airwaves. Although conflating concepts might garner votes, they also stifle needed efforts around equity and inclusivity in classrooms by making administrators and faculty weary of becoming political targets.¹⁷ Yet, creating an equitable and inclusive learning environment should be a shared goal, regardless of political leanings. The goal of creating an educational environment in which all individuals can feel welcomed, respected, supported, and valued should be uncontroversial.

Law schools, in particular, have an increasingly diverse student body, yet data suggests much work needs to be done to achieve equity and inclusion.¹⁸ For example, white students are most likely to report being comfortable being themselves on campus, with only twelve percent noting they are not.¹⁹ However, about one out of every five law students who identify as Native American, Black, or Latinx report that they “do not feel comfortable being [themselves] at [their] institution.”²⁰ The fact that a significant group of students do not feel comfortable being themselves is problematic, but it is merely a symptom of a much larger problem.

Current research around law students’ well-being suggests that most law students, regardless of background, face mental health challenges at least some point during law school.²¹ In a

www.theguardian.com/us-news/2023/jun/14/new-texas-bans-law-diversity-of-fices-state-higher-education [https://perma.cc/4QXH-SHTY]; Simone Carter, *Texas Colleges Are Slowly Starting To Back Away from DEI*, DALL. OBSERVER (Feb. 24, 2023), <https://www.dallasobserver.com/news/university-of-texas-systems-pauses-dei-gov-greg-abbotts-memo-prompts-civil-rights-advocates-to-sound-the-alarm-15999119> [https://perma.cc/7S9E-PYKK].

17. See, e.g., Joseph Contreras, *‘Hostile Takeover’: The Tiny Florida University Targeted by Ron DeSantis*, GUARDIAN (Jan. 29, 2023, 2:00 PM), <https://www.theguardian.com/us-news/2023/jan/29/ron-desantis-florida-university-new-college-woke-war> [https://perma.cc/UNN3-HHKS].

18. In 2022, thirty-six percent of first-year students identified as people of color. See Stephanie Francis Ward, *Law School Class of 2022 May Be Most Diverse Entering Class in History, LSAC Says*, A.B.A. J. (Dec. 21, 2022, 11:32 AM), <https://www.abajournal.com/news/article/entering-law-school-class-of-2022-may-be-most-diverse-in-history-says-lsac> [https://perma.cc/V623-H5U5].

19. Meera E. Deo, *Director’s Message*, in THE LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT 2020 ANNUAL SURVEY RESULTS: DIVERSITY & EXCLUSION 5 (2020), <https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf> [https://perma.cc/8WP5-ESW6].

20. *Id.*

21. See Jessica R Blaemire, *Analysis: Well-Being in Law School—Law Students Aren’t OK*, BLOOMBERG L. (Feb. 3, 2023, 5:00 AM), <https://news>

recent study, the majority of law school respondents reported experiencing anxiety (seventy-seven percent), disrupted sleep (seventy-one percent), and depression (fifty-one percent).²² In addition, other research found that law students tend to be more stressed than other graduate student populations, surpassing even medical students.²³ Taken as a whole, these findings suggest that the law school climate is inhospitable to most students. As such, embracing inclusive teaching pedagogy should be an essential task for legal educators. Thus, educators must disentangle what should be universally embraced as best practices from what has been attacked as “woke indoctrination.”

The essential challenge facing legal academia involves how to deliver legal education in a manner that provides all students with a meaningful opportunity to succeed. In any class, a student’s individual circumstance will impact their ability to successfully engage in the course, but there are unifying principles that can help achieve greater equity and inclusion in the law school environment—destigmatizing seeking help, normalizing accessibility, and emphasizing student success. Embracing these three principles will benefit all students.

II. DESTIGMATIZING SEEKING HELP

Law students are not alone in their mental health struggles. Lawyers also report high rates of mental health problems.²⁴ In one recent study, twenty-eight percent of attorneys had at least mild levels of depression, and nineteen percent had at least a mild level of anxiety; one in five lawyers had problematic alcohol use.²⁵ Study participants identified two main reasons for not seeking treatment. These included “not wanting others to find out they needed help

.bloomberglaw.com/bloomberg-law-analysis/analysis-well-being-in-law-school-law-students-arent-ok [https://perma.cc/RJV6-4VPR].

22. *Id.*

23. See Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 359–60 (2004).

24. See Jeena Cho, *Study Indicates Lawyers Struggling with Substance Use and Other Mental Health Issues*, FORBES (July 30, 2016, 11:13 AM), <https://www.forbes.com/sites/jeenacho/2016/07/30/study-indicates-lawyers-struggling-with-substance-use-and-other-mental-health-issues/?sh=7dfc5f77b854> [https://perma.cc/LA29-KY4A].

25. *Id.*

and concerns regarding privacy or confidentiality.”²⁶ Thus, law schools must act to disrupt the mental health crisis that is plaguing the legal profession. A crucial first step in addressing this crisis includes law schools finding a way to destigmatize seeking help.²⁷

Studies have shown that many law students will need assistance managing mental health issues at some point during their law school journey with many studies finding that law students’ subjective wellbeing declines between matriculation and graduation.²⁸ The sharpest decline in well-being occurs during the first year of law school; one study found the number of law students self-reporting depression approximately doubles by the end of their first year.²⁹ Another study found that one-quarter of law students test positive for alcoholism, almost one-third reported illegal drug use, and one-third test positive for moderate or severe anxiety.³⁰ Armed with this knowledge, law schools should introduce measures to sustain well-being at the very beginning of a law student’s journey. Law schools can start this during orientation and in their syllabi.

First-year orientation should include a discussion about student wellness and provide tips for coping with stress. Students should receive an overview of campus and law school services related to health and wellness. Additionally, explicitly summarizing available campus and law school resources in course syllabi not only provides a reminder that those resources are available but also signals to the students they should avail themselves of such resources. Individual syllabi also provide an opportunity for faculty to destigmatize seeking disability accommodations. An accessibility

26. *Id.*

27. *See id.*

28. *See, e.g.*, Andrea M. Flynn et al., *The Mental Health Status of Law Students: Implications for College Counselors*, 22 *J. COLL. COUNSELING* 2, 2 (2019); Adele Bergin & Kenneth Pakenham, *Law Student Stress: Relationships Between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students*, 22 *PSYCHIATRY, PSYCH. & L.* 388, 388, 390 (2015); Mary E. Pritchard & Daniel N. McIntosh, *What Predicts Adjustment Among Law Students? A Longitudinal Panel Study*, 143 *J. SOC. PSYCH.* 727, 728 (2003).

29. *See* Alan Reifman et al., *Depression and Affect Among Law Students During Law School: A Longitudinal Study*, 2 *J. EMOTIONAL ABUSE* 93, 99 tbl.1 (2001).

30. Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 *J. LEGAL EDUC.* 116, 145 (2016).

statement directing students to the disability services offices and expressing a desire to create an educational environment that is free of access-related barriers can help alleviate a lot of the anxiety surrounding seeking accommodations, particularly when the process of doing so is often fractured and difficult to navigate.³¹ The syllabus can be a powerful tool in setting the tone for an inclusive learning environment.

III. NORMALIZING ACCESSIBILITY

Having an accurately diagnosed disability is often a function of privilege. Lack of access and provider bias often lead to members of marginalized communities being over or underdiagnosed.³² Even for students who are accurately diagnosed with a disability, navigating disability services is often time-consuming and anxiety-provoking.³³ A culture of access creates a better learning environment for all students. Simple changes favoring access can be empowering and beneficial. For example, if a professor is using PowerPoints, circulating the PowerPoints before class allows students to convert the document to their preferred format prior to the class. Relatedly, turning on the close captioning feature during class makes the class

31. See Christine Charnosky, *I Felt Afraid to Ask: Law Students with Disabilities Are Often Torn Between Trying to Fit in and Seeking Accommodations*, LAW.COM (Apr. 26, 2022), <https://www.law.com/2022/04/26/i-felt-afraid-to-ask-law-students-with-disabilities-are-often-torn-between-trying-fit-in-and-seeking-accommodations> [<https://perma.cc/D9E2-DQMN>].

32. See, e.g., Maureen S. Durkin et al., *Autism Spectrum Disorder Among US Children (2002–2010): Socioeconomic, Racial, and Ethnic Disparities*, 107 AM. J. PUB. HEALTH 1818, 1824 (2017) (finding that minority children from lower socioeconomic backgrounds are less likely to be diagnosed with autism); Winston Chung et al., *Trends in the Prevalence and Incidence of Attention-Deficit/Hyperactivity Disorder Among Adults and Children of Different Racial and Ethnic Groups*, 2 JAMA NETWORK OPEN, Nov. 2019, at 1, 11, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2753787> [<https://perma.cc/R4XZ-5LSN>] (finding substantially lower rates of ADHD detection among minority racial/ethnic subgroups in the United States); Matthew C. Fadus et al., *Unconscious Bias and the Diagnosis of Disruptive Behavior Disorders and ADHD in African American and Hispanic Youth*, 44 ACAD. PSYCHIATRY 95, 96 (2020) (noting that white children are more likely to be diagnosed with ADHD while Black and Latino children are more likely to be diagnosed with oppositional defiant disorder).

33. Ellie Fossey et al., *Navigating the Complexity of Disability Support in Tertiary Education: Perspectives of Students and Disability Service Staff*, 21 INT'L J. INCLUSIVE EDUC. 822, 828 (2017).

more accessible. For students with visual impairments, this small change allows them to have the material loaded onto their screen reader prior to class, which can often be the difference between being able to engage in class and feeling disoriented. For hearing-impaired students, closed captioning allows for greater engagement.³⁴ Even for students without disabilities, having early access can reduce anxiety by allowing them to better prepare for the flow of class.³⁵

Similarly, class recordings should be made readily available to students. Some students encounter physical or mental health challenges, bad luck, childcare difficulties, or family care issues that may require them to miss class. Making recordings readily available reduces the likelihood that students will fall behind when “life happens.” Additionally, students learn in many different ways. For some students, taking notes and listening are exceedingly difficult to do at the same time.³⁶ Kinesthetic learners³⁷ might find it helpful to listen to class lectures again while on a walk. If a student wants to invest additional time outside of class to reengage with the material covered, faculty should encourage them to do so.

Finally, designing class content and materials with accessibility in mind eliminates having to significantly alter classes if a student with an impairment enrolls in the course. Many institutions offer guidance about how to make course content more accessible.³⁸

34. See Anwar Alsalamah, *Using Captioning Services with Deaf and Hard of Hearing Students in Higher Education: A Systematic Review*, 165 AM. ANNALS DEAF 114, 115 (2020).

35. See ALFRED SOUMA ET AL., UNIV. WASH., ACADEMIC ACCOMMODATIONS FOR STUDENTS WITH PSYCHIATRIC DISABILITIES 2–3 (2012), https://www.washington.edu/doit/sites/default/files/atoms/files/Academic_Accom_Psych.pdf [<https://perma.cc/474H-5EXK>].

36. See Ann Maydosz & Sharon A. Raver, *Note Taking and University Students with Learning Difficulties: What Supports Are Needed?*, 3 J. DIVERSITY HIGHER EDUC. 177, 181 (2010).

37. *What Is A Kinesthetic Learner?*, BAY ATL. U. (Jan. 25, 2022), <https://bau.edu/blog/kinesthetic-learner/>.

38. See, e.g., Stanford Univ. Teaching Commons, *Designing an Accessible Course*, STAN. U., <https://teachingcommons.stanford.edu/teaching-guides/inclusive-teaching-guide/planning-inclusive-course/designing-accessible-course> [<https://perma.cc/C5QC-BE9X>] (last visited Oct. 1, 2023); Villanova Univ. Off. of the Provost, *Making Your Course Accessible*, VILL. U., <https://www1.villanova.edu/villanova/provost/learningsupport/faestaff/design.html> [<https://perma.cc/6T5Z-R2WQ>] (last visited Oct. 1, 2023); Univ. Minn. Off. of Info. Tech., *Canvas: Design an Accessible and Usable Course Site*, U. MINN.,

Practices with increasing accessibility are synonymous with best practices.

IV. EMPHASIZING STUDENT SUCCESS

Christopher C. Langdell, Dean of Harvard Law School, introduced case method teaching during the fall of 1870 in his contracts course.³⁹ Langdell believed that the purpose of teaching was to cultivate mastery of principles embodied in cases so a “true lawyer” could apply those principles to the “ever-tangled skein of human affairs.”⁴⁰ Langdell’s case method intended to “cast out the textbooks, and [in their place] used . . . cases, carefully selected and arranged to illustrate the meaning and development of principles of law.”⁴¹ The Socratic Method⁴² combined with the case method has been the dominant model of legal education for over a century.⁴³ As Duncan Kennedy aptly noted, “the line between adaptation to the intellectual and skills content of legal education and adaptation to the white, male, middle-class cultural style is a fine one, easily lost sight of.”⁴⁴

As such, there is scholarship that reminds the legal academy that they must not lose sight. The framework for legal education, and indeed how professionalism in the legal profession is defined, must be viewed in the context of who created the framework and standard. As noted, those standards were created by men who were

<https://it.umn.edu/services-technologies/good-practices/canvas-design-accessible-usable-course> [<https://perma.cc/5QE6-83AR>] (last visited Oct. 1, 2023).

39. Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell’s Emblematic “Abomination,” 1890-1915*, 46 HIST. EDUC. Q. 192, 193 (2006).

40. C. C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, at vi (1871); see also Note, *The Increasing Influence of the Langdell Case System of Instruction*, 5 HARV. L. REV. 89, 89 (1891); Sydney G. Fisher, *The Teaching of Law by the Case System*, 36 AM. L. REG. 416, 417 (1888).

41. See LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 531 (1973).

42. The Socratic method typically “involves a teacher asking a series of questions, ideally to a single student, in an attempt to lead the student down a chain of reasoning either forward, to its conclusions, or backward, to its assumptions.” See Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571, 1573 (1993).

43. Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 565 (2015).

44. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 605 (1982).

mostly white. Thus, inclusivity was not a relevant part of the discussion because legal classrooms were not diverse spaces, and neither was the legal profession. Given this history, it is not surprising that the existing framework for legal education has been critiqued as creating barriers for some groups to thrive in the law school environment. For example, in her book *Becoming Gentlemen*, Harvard Professor Lani Guinier chronicled the impact of the Socratic Method on female students.⁴⁵ She concluded that:

In training students to think of the process of asking and answering questions as an opportunity to put someone on the spot, to demonstrate how little that person knows, or to identify important hidden assumptions, conversation is valued for its adversarial style. . . .

Many men told us that this is in fact the way they see law school participation, as an exchange of verbal retorts. You win when you silence your opponent.⁴⁶

The Langdellian case method was designed by a white male and, in many respects, was intended to suit the population of law students at that time—a population of almost exclusively white male students.⁴⁷ The student body at law schools has changed dramatically over the years but the curriculum and teaching methodologies have not.⁴⁸

Over fifteen years ago, Edward Rubin wrote:

Here we are, at the beginning of the twenty-first century, using a model of legal education that was developed in the latter part of the nineteenth. Since that time, the nature of legal practice has changed, the concept of law has changed, the nature of academic inquiry has changed, and the theory of education has changed. Professional training programs in other fields have been redesigned many times to reflect current practice, theory, and pedagogy, but we

45. LANI GUINIER ET. AL, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* 58-59 (1997).

46. *Id.* at 13.

47. Rob Trousdale, Article, *White Privilege and the Case-Dialogue Method*, 1 WM. MITCHELL L. RAZA J. 29, 39-41 (2010).

48. See Ward, *supra* note 18.

legal educators are still doing the same basic thing we were doing one hundred and thirty years ago.⁴⁹

Educators are mistaken to ignore the mental health crisis facing the majority of law students and to conclude that what has worked for generations of lawyers will continue to work for generations to come. The legal academy is not immune from having to adapt and innovate. The time is ripe for collectively investing in student success. In practice, this means critically examining the curriculum and how it is delivered to assess whether student success is being furthered or hampered. This means committing to proactively helping every admitted student be successful in their law school journey.

This task is not easy, but we must undertake the task. Student success is related to what they experience inside and outside of the classroom. Faculty can create classroom environments that are nurturing or traumatizing. The standard model of instruction employing a faculty member teaching from a casebook, utilizing the Socratic Method, and calculating the final grade based entirely on one summative final exam can be a difficult experience for students. Providing constructive feedback through formative assessments instead—particularly in the first year—is often invaluable to students. Formative assessments provide students with a relatively low-stakes way in which to practice and master skills.⁵⁰ Furthermore, formative assessments give students the ability to course correct before their GPA is irrevocably harmed. The faculty members also benefit from formative assessments by gaining insights into how well students are learning the material covered.

Having one summative exam is pedagogically unsound, and tradition is not a sufficient justification for clinging to the model of a single final exam given at the end of the semester. Although ABA Standard 314 provides that “[a] law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback

49. Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 610 (2007).

50. See Julie Ross & Diana Donahoe, *Lighting the Fires of Learning in Law School: Implementing ABA Standard 314 by Incorporating Effective Formative Assessment Techniques Across the Curriculum*, 81 PITT. L. REV. 657, 664–65 (2020).

to students[.]”⁵¹ many legal educators have been reluctant to move away from the traditional model where the final grade is comprised entirely of one summative assessment. As a result, the ABA is considering a more robust formative assessment requirement in which at least one formative assessment would be required in all first-year courses.⁵²

The ABA is also seeking to add a requirement that faculty participate in workshops about pedagogy, course design, or assessment methods at least once per year.⁵³ But the faculty also needs administrative support to create useful formative assessments. Designing these assessments takes time, careful thought, and planning. Formative assessments are important to student success because formative assessments give students the opportunity to improve their academic standing during the course. The traditional one summative exam at the end of the course means that students are not given an opportunity to make adjustments to improve their academic performance during the course because students do not realize that they are underperforming or not meeting their goals until they receive their final exam grade. Because of this, faculty themselves and the feedback they provide are vital to efforts to improve academic support for students. Student success is not something that can be relegated to an academic support professional or a bar support expert. Student success is a shared responsibility between students, staff, and faculty. Framing it as such promotes an

51. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023-2024, at 26 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/2023-2024-aba-standards-rules-for-approval.pdf [<https://perma.cc/8X92-EG85>].

52. See Memorandum from Bridget Mary McCormack, Council Chair, Council of the Section of Legal Educ. & Admissions to the Bar, & William Adams, Managing Dir. of Accreditation & Legal Educ. to Interested Parties & Entities 5 (Aug. 30, 2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2023/23-aug-notice-comment-acad-freedom-outcomes-assessment-library.pdf [<https://perma.cc/QYV8-7G8B>] (“All courses in the first one-third of the credit hours earned by students in the JD program shall include at least one formative assessment. The formative assessments shall include feedback that allows students to evaluate their performance relative to the learning outcomes in the course. The law school shall provide academic support for students who fail to attain a satisfactory level of achievement on the formative assessments.”).

53. See *id.* at 6–7.

academic environment that fosters success rather than competition. It is a different model of legal education.

Beyond formative assessments, the ABA has recently mandated that law schools incorporate professional identity formation and cross-cultural competency and bias training into the curriculum.⁵⁴ How and what content is delivered to students are questions that are fundamental to legal education and to student success. Law faculty must think about how to best meet the needs of both current students and the profession. Beyond the confines of their curriculum, law schools should routinely provide faculty with periodic mental health assessment training.⁵⁵ Identifying students who need help and helping to ensure that they receive assistance is a task that all law schools must undertake.

As admissions procedures for law school have shifted toward a holistic process, so too must the procedures for teaching legal education. Law schools must holistically examine their curriculum to ensure inclusivity and equity.

CONCLUSION

Law students are more diverse than ever and face mental health challenges at levels that are unprecedented and alarming. In order to better meet the needs of law students, legal academia should embrace the values of equity and inclusion. Furthermore, by destigmatizing seeking support, normalizing accessibility, and emphasizing student success, the legal academy can begin the long and overdue process of modernization.

54. AM. BAR ASS'N, *supra* note 51, at 18 (mandating these curriculum requirements in ABA Standard 303(b)–(c)).

55. *See, e.g.*, MENTAL HEALTH FIRST AID, <https://www.mentalhealthfirstaid.org> [<https://perma.cc/V7NV-N4V7>] (last visited Sept. 20, 2023) (providing a popular lay training to better equip people to identify and help someone who is having a mental health crisis).