

DISABILITIES & THE LAW
Spring 2024
Syllabus and Course Policies

“If I want to go to vote or use the library, and these places are inaccessible, do I need a doctor or a lawyer?” – Simi Linton

Jessica L. Roberts
Leonard H. Childs Chair in Law
Professor of Medicine (by courtesy)
Director, Health Law & Policy Institute

Contact Information:
Office: 431S
Phone: 713.743.2105
Email: jrobert6@central.uh.edu

I. Introduction

Welcome to Disabilities and the Law! This semester, we will explore the social meaning of disability, along with the legal rights afforded by three key federal statutes:

- (1) Americans with Disabilities Act
- (2) Rehabilitation Act
- (3) Individuals with Disabilities Education Act

I’m very excited to be your professor this term. As I want the class to be as engaging and as useful as possible, I encourage questions and welcome feedback. Please feel free to contact me with questions regarding the readings, your assignments, or just the course in general. I look forward to spending the semester with you!

II. Logistics

Course Reading

All course reading appears on Canvas. I will also post supplemental materials and reviews. You can log on through the Access UH website: <https://accessuh.uh.edu/login.php>.

Class Hours & Location

We will meet Tuesdays and Thursdays, from 10:30 AM to 11:50 AM in Room 311 of the Law Center. When you attend class, please also sign into Zoom. Our link for the semester is: <https://us02web.zoom.us/j/87691689992?pwd=V0FMc3ZyNk92VDlUby9vY0ZqQjdIdz09>. I will send a Passcode to the class before the first day. Please do not share this passcode with anyone.

Office Hours

I will hold office hours Tuesday from 12:00 PM to 1:00 PM and by appointment (in-person or Zoom). You can always email me your questions, as well.

Course Policies

Accommodations and Psychological Services:

If you have a disability and require an accommodation, please contact the Center for Students with Disabilities and forward the required documentation if you've not done so already. You can speak to me as well. All students should let me know what I can do to maximize your learning potential, participation, and general access during this course. I want to make the course material accessible, and I want you to succeed as a student. If aspects of the course or the assignments pose accessibility problems, we can discuss alternatives.

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus: http://www.uh.edu/caps/outreach/lets_talk.html.

Attendance:

To the extent possible, please attend all class sessions in-person for the entire class period. I will take attendance via an online attendance tracker located here: <https://forms.gle/59L2qYcMQdKSNRs67>. As with paper attendance, you may only sign in for yourself and only for a class during its designated time (e.g., you may not sign in for Tuesday's class on Thursday). This form is valid for the duration of the semester. At the beginning of class, I will provide a "password" for that day. When you click on the link, you will enter your last name and the word of the day in the two blanks on the page. You will receive confirmation from the website. If the website times out, you may submit again. It is your responsibility to assure that your attendance was recorded properly. If—for a technical reason—you are present in the class but unable to submit your attendance in time, please contact me and my assistant, Jess Rodriguez (jesrad2@central.uh.edu), and we will make the correction. Falsifying attendance—such as signing the attendance form without attending class or attending remotely without notifying me first—violates the Law Center's Honor Code and is, therefore, grounds for disciplinary action.

Pursuant to the Law Center's policy, you must attend at least 80% of all class meetings; however, you should strive to attend 100%. In other words, you can miss no more than five classes. Missing more than five classes will result in your being dropped from the course. You can attend no more than six classes via Zoom, in addition to our Zoom-only classes on March 19 and on April 18. Classes attended remotely do not count against your five absences.

Chosen Names and Pronouns:

My pronouns are she/her/hers. I want to address each of you in a manner that corresponds to your identity. Although mistakes happen, all names and pronouns must be respected in my classroom. Please feel free to reach out to me at any time if you want to make me aware of your pronouns or chosen name, or if you have concerns about how I or your classmates address you.

Course Website:

Course reading appears on Canvas. You can log on through the Access UH website located at <https://accessuh.uh.edu/login.php>.

Grading:

Students have the option to take this course pass/fail.

Learning Outcomes:

Over the course of the semester, students will: (1) familiarize themselves with various areas of federal disability law; (2) engage in legal analysis and reasoning across those areas; (3) think critically about the possible need for reform.

Sexual Misconduct:

The University is committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. As such, Law Center employees and faculty members are not confidential resources.

Zoom:

We will use Zoom this semester to record the class and to run in-class polls. When you attend class in person, please also sign on to Zoom muted with your camera off. You can attend class remotely for illness or other reasons up to six times this semester. Please let me know in advance if you need to attend remotely. As indicated above, if you have not gotten my approval to attend remotely prior to the class, signing the attendance tracker constitutes falsifying attendance and is an Honor Code violation. You are limited to six remote classes because, pursuant to ABA rules, if you attend more than one third of class sessions remotely (eight total classes), the class becomes an online course, which could jeopardize your ability to graduate on time. We have Zoom-only classes on March 19 and on April 18, which leaves room for six additional remote sessions. We may need to further reduce this number over the course of the semester if emergency reasons, such as weather or Covid exposure, require us to meet over Zoom. Accordingly, you should reserve remote attendance for only when it is completely necessary.

III. Assessment Methods

This course has three key requirements: (1) preparing for and attending class sessions; (2) participating in ***at least two*** discussion panels; and (3) completing a three-hour, take-home exam.

- (1) **Attendance and Preparedness.** You should arrive on time and prepared for all our class sessions. As explained above, you may miss no more than five classes, pursuant to Law Center policy. If you wish to attend via Zoom, you must clear it with me in advance. While participating remotely does not count toward your five absences, you cannot Zoom in more than six times this semester (in addition to our Zoom-only classes on March 19 and on April 18). This number is subject to change based on extenuating circumstances. For further details, please refer to the Course Policies on Attendance and Zoom.
- (2) **Class Participation (Discussion Panels).** To facilitate our class discussion, we will use discussion panels in lieu of an on-call system.¹ You must sign up for at least **two**

¹ By allowing you to choose when you are on-call, you can select topics that are of particular interest to you, as well as the timing that best suits your needs. Please choose your panels carefully because once the panels are set, they cannot be changed.

discussion panels, using an on-line tool called “Sign Up Genius.” Before our first class, you should receive an email invitation to sign up. The web address is <https://www.signupgenius.com/go/10C0945A4A82EA5F58-46995589-discussion#/>. Please let me know if you don’t have access. If you do not sign up for the required number of panels by **Friday, January 26**, I will randomly assign you to under-enrolled panels. On the days of your panels, you should have prepared extensively for class and should expect to be called on. I will email the class a list of the panel members and a series of four to six discussion questions the day before our class meeting. Members of the discussion panel will be my “go-to” people for that day; however, I reserve the right to call on any member of the class. Students with outstanding participation will be eligible for an upward adjustment of a partial letter grade (e.g., from a B to a B+, or from a B+ to an A-).

- (3) **Exam.** Finally, you will complete a three-hour, take-home exam using Electronic Bluebook (EBB). The exam will consist of a combination of issue-spotting and policy questions. You will take the exam remotely during our scheduled time slot, **Friday, May 3, 9:00 AM to 12:00 PM**. During the exam, you may consult three things: (1) your casebook, (2) course reading and materials (including PowerPoint reviews), and (3) your course notes. The EBB software will prevent you from accessing the internet during the exam, so please ensure that you have downloaded or printed any materials that you would like use. More details regarding the exam format and content will be discussed as the exam date approaches.

IV. Course Reading

These reading assignments are subject to change based on the pace of our discussion. I will announce any changes in class and by email.

I. Introduction to Course Concepts

Week One—Theoretical & Historical Contexts

January 16

Ramona L. Paetzold, *Why Incorporate Disability Studies into Teaching Discrimination Law*, 27 J. L. STUD. ED. 61 (2010)

Lennard J. Davis, *Disability, Normality, and Power*, in THE DISABILITY STUDIES READER 1-14 (5d ed. 2017)

Ani B. Satz, *Overcoming Fragmentation in Disability & Health Law*, 60 EMORY L.J. 277, 304-14 (2010)

War on the Weak (in class)

January 18

Guest Lecture: Lex Frieden, Professor, UT Health Science Center; Director, Independent Living Research Utilization & Southwest ADA Center

Week Two—Meaning of Disability

January 23

Introduction to Disability Rights (CB pp. 1-14)
Susan Sturm, *Equality and Inequality: Legal Aspects*, in INTERNATIONAL
ENCYCLOPEDIA OF SOCIAL AND BEHAVIORAL SCIENCES (2001)

January 25

What is a Disability? (CB pp. 15-17)
Definitions
ADAAA (CB pp. 17-27, 35-48)
IDEA (CB pp. 55-60, 64-68)

II. Disability and Employment

Week Three—Reasonable Accommodation & Qualified Individual

January 30

Reasonable Accommodation
Discrimination
Reasonable Accommodation (CB pp. 69-88)

February 1

Discrimination (review)
Qualified Individual
Qualification Standards vs. Qualified Individual (CB pp. 110-33)

Week Four—Defenses & Relief

February 6

Defenses (subsections a-c)
Direct Threat (CB pp. 133-55)

February 8

Procedures & Remedies (CB pp. 189-210)

III. Disability and Government Services

Week Five—Statutory Overview & Introduction to the Access/Content Distinction

February 13

Part A
Coverage (CB pp. 225-49)

February 15

Basic Access/Content Distinction (CB pp. 250-60)
CVS v. Doe, Brief for Petitioners
Alison Frankel, *CVS's Abrupt Dismissal of SCOTUS Case Was Surprise to
Opposing Counsel*, REUTERS, November 12, 2021

Week Six—(De)Institutionalization

February 20

Basic Access/Content Distinction (cont'd) (CB pp. 260-83)

February 22

Applying the Distinction (CB pp. 283-307)

Guest Lecture: Masha Pobedinsky, Frank Delaportilla, Assessment of Texas

Olmstead Plan Research Team

IV. Disability and Public Access

Week Seven—Introduction to Title III & Physical Accessibility

February 27

Coverage (CB pp. 539-58)

Discrimination (subsection a)

February 29

Physical Accessibility (CB pp. 573-76)

Facilities

New & Modified Facilities (CB pp. 585-603)

Readily Achievable

Existing Facilities (CB pp. 603-609)

Title III Accessibility Checklist (during class)

Week Eight—Web Accessibility & Reasonable Modifications

March 5

Web Accessibility (CB pp. 558-73)

Jessica L. Roberts, *Innovating Accessible Health Care* (in progress)

March 7

Reasonable Modification (subsection b(2)(A)(ii))

Reasonable Modification (CB pp. 624-42)

Week Nine—Spring Break

March 12

NO CLASS

March 14

NO CLASS

Week Ten—Public Enforcement

March 19 (class via Zoom only)

Guest Lecture: Blake E. Reid, Associate Professor of Law, University of Colorado School of Law

March 21

Guest Lecture: Elizabeth Karpati, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas; Jimmy Rodriguez, Assistant U.S. Attorney, Deputy Chief of Civil Division, U.S. Attorney's Office, Southern District of Texas

Week Eleven—Private Enforcement

March 26

Standing & Pleading Requirements (CB pp. 693-715)
Amy Howe, *Justices Dismiss “Civil Rights Tester” Case*, SCOTUSBLOG.COM, Dec. 5, 2023

March 28

Notice & Serial Litigation (CB pp. 715-44)
Jason Grant, *California Judge Throws Out Prosecutors’ Suit Against Potter Handy Over Law Firm’s Alleged ‘Fraudulent’ ADA Suits*, LAW.COM, Aug. 31, 2022
Ron Russell, *Wheelchairs of Fortune*, S.F. WEEKLY, July 26, 2007 (optional)

V. Disability and Education

Week Twelve—FAPE Requirement

April 2

Free Appropriate Public Education
FAPE (CB pp. 775-95)
Amy June Rowley, *Rowley Revisited: A Personal Narrative*, 37 J.L. EDUC. 311 (2008) (optional)

April 4

FAPE cont’d (CB pp. 795-819)

Week Thirteen—Least Restrictive Environment & Related Services

April 9

Least Restrictive Environment
Least Restrictive Environment (CB pp. 819-835)

April 11

Related Services
Related Services (CB pp. 835-46)
12 ECLPR 39 District of Columbia Public Schools
34 C.F.R. § 300.8(a)

Week Fourteen—Process & Relief

April 16

Rule of Construction
Exhaustion (CB pp. 933-60)

April 18 (class via Zoom only)

Perez v. Sturgis Public Schools
Amicus Brief
Oral Argument (optional)
Guest Lecture: Rebekah Diller, Clinical Professor of Law, Benjamin Cardozo School of Law

Week Fifteen—Disability, Intersectionality, & Implicit Bias

April 23

Procedures & Remedies (CB pp. 911-33)

April 25

Exam Review

Exam

Friday, May 3, 9:00 AM-12:00 PM