



People with Disabilities in the Legal Profession:

Understanding the Barriers, Challenges and Opportunities
to Improve Diversity

It's like there are two highways running side by side. One is paved, well-marked, and you can go as fast as you want. We're on a parallel dirt road, and the two never meet.

- Michelle Duprey

**EXECUTIVE
SUMMARY**

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One of the core tenets of the legal profession is the importance of confronting discrimination. Yet within the systems designed to educate, train and employ potential lawyers there are challenges along the pipeline that create barriers for people with disabilities.

Research is scant for this underserved population and many of the data sources are incompatible. For example, there are more than 30 definitions of disability used by various federal agencies alone.ⁱ In this report, the data for the educational pipeline is drawn from sources that have similar definitions, while the data for employment is drawn from the only available source (the Disability Occupational Projections), which has a narrower definition.ⁱⁱ ⁱⁱⁱ Many data sources also rely on people with disabilities to self-disclose their disability, and the willingness to do so can vary significantly. (See appendix for additional information, data and resources referenced throughout the report.) Even so, in reviewing data, research and interviews, a consistent story emerges. Among the key findings:

- Educational Pipeline
 - o The proportion of people with disabilities (“PWD”) in the educational pipeline declines steadily from [secondary school](#) (13%) through law school (7.7%)^{iv}.
 - o Although PWD are underrepresented in law school, this is not caused by law schools losing PWD to other graduate schools. In fact, law school has the highest prevalence of PWD among graduate programs.^v

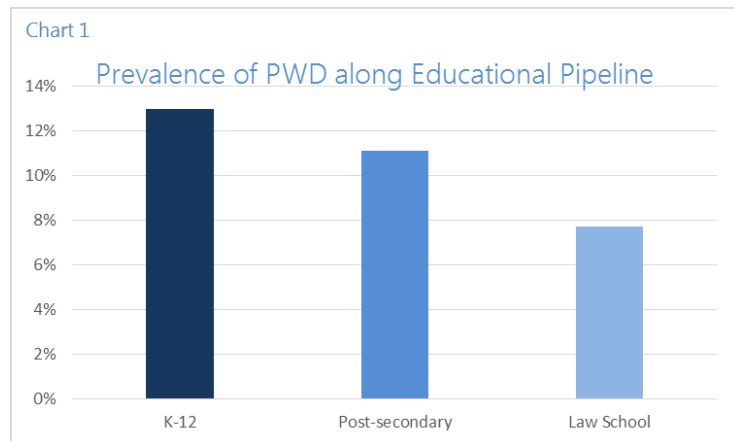
- Employment
 - o People with disabilities are strikingly underrepresented in the legal profession. Using a narrow definition (more restrictive than the Americans with Disabilities Act (ADA) definition), [10.1% of Americans](#)^{vi} between the ages of 18 – 64 have a disability, but only [3.5%^{vii} of lawyers](#)^{viii} between the ages of 18-64 have a disability.
 - o Even people with disabilities who hold professional degrees (including law degrees) are underemployed. PWD with graduate degrees are employed at less than 2/3 the rate of those without a disability (47% vs. 87% in 2014)^{ix}.

While the statistics are daunting, some people with disabilities have beaten the odds. In the course of our interviews, we met [Michelle Duprey](#), an attorney who uses a wheelchair and has carved out a rewarding, successful career that started at a law firm and transitioned to a solo practice. She now uses her legal training in her current position in the Department of Services for Persons with Disabilities for the City of New Haven. However, her story, which we explore throughout the report, illustrates some of the major challenges that people with disabilities must overcome along the educational and employment pipeline.

THE DECLINING PIPELINE

Employment challenges faced by people with disabilities in the legal profession actually begin in secondary school, long before they are ready to enter the workforce. People with disabilities are less likely to graduate, and those who graduate are less likely to enroll in the next stage of education, leading to a steady decline along the pipeline.^x

Our research suggests that while some challenges and supportive factors are constant, others vary significantly at each step along the way.



SECONDARY SCHOOL: Mandates and individualized accommodations

Early on in her schooling, Duprey’s parents were concerned that she wasn’t getting access to the support she needed to be successful. “We actually moved because of the lack of resources in our small town. Had we stayed, it would have been a very different educational outcome for me.”

Although high school graduation rates for PWD have been climbing, they are still low. In the 2012-2013 school year, the [graduation rate](#) for PWD was roughly $\frac{3}{4}$ that of the general population (62% vs. 81%). One of the key factors in the increase over time was the passage of the [Individuals with Disabilities Education Act \(IDEA\)](#) in 1990. IDEA mandates that each student with a disability has access to a free appropriate public education to meet his or her unique needs, paid for with public funds. It also requires that such education be provided in the “least restrictive setting” – a paradigm shift from decades of segregated schools. [Individual Education Plans](#) (IEPs) are the required mechanism for determining the individualized accommodations for each child.

Duprey attended high school before the IDEA was enacted, but even today there still are widely different levels of resources available from one school district to the next.^{xi} This occurs because the IDEA typically funds just [10-20% of the per-pupil](#) cost for special education and the balance must be filled with state and municipal funds.

While graduation rates are lower than the national average, the percentage of PWD with high school degrees [enrolling in post-secondary school](#) has more than doubled in recent years, rising from 27% in 2003 to 57% in 2009. For people without disabilities, the rates are 56% in 2003 and 63% in 2009 (the last year for which comparable data is available).^{xii xiii} Research and interviews suggest the changes in the IDEA reenacted in 2004 may have been an important factor. As of 2004, IDEA mandated additional

transition planning beginning at age 16, which helps students prepare for post-secondary activities. In addition, as a state special education consultant noted, IEPs “are now truly individualized to meet each student’s needs...We work with students to help identify interests and tie those interests to their education, and they’re more successful. This is especially helpful for students with disabilities.”

POST-SECONDARY SCHOOL:

Accessibility, support and self-disclosure

When Duprey started visiting colleges, she found that some schools were more accommodating than others. “Some of the schools I was interested in were not fully accessible. I couldn’t even enter the admissions offices.” Although Duprey visited the schools before the passage of the ADA, colleges and universities are still not required to make every classroom and every office accessible. For example, there are universities, such as Yale University, that have classrooms in historic buildings that are not accessible. At Yale, once students have signed up for classes each semester, the Resource Office on Disabilities reviews room scheduling so that every class attended by a student with a disability will be in a classroom accessible for that student.

Within eight years after high school, people with disabilities are much less likely to enroll in four-year institutions than the general public (19% compared to 40% of the general population), and are much more likely to enroll in two-year institutions (44% vs. 21%) and business, vocational and technical institutions (32% vs 20%)^{xiv}. While there is little definitive research as to why, our interviews suggest the following factors influence this decision: lower cost, open admissions, small classes, a more student-centered environment, better support services, and more transportation options.

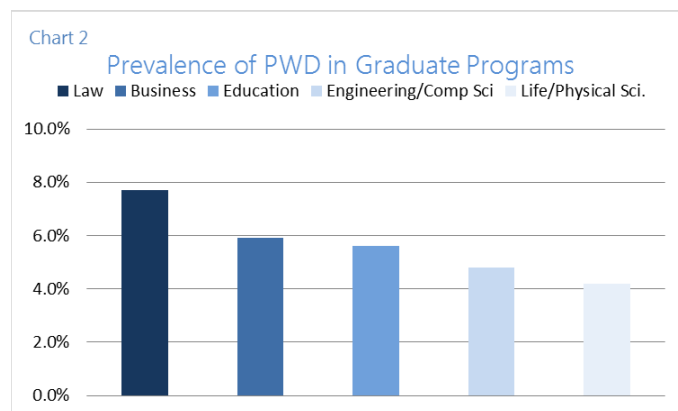
People with disabilities also are less likely to graduate from 4-year institutions (34% vs. 51%)^{xv}. Our interviews also noted a particularly sharp decline after the second year. Several factors may explain the drop-off and subsequent lower graduation rates:

- **Unwillingness to self-disclose:** Only 28% of students who received help for their disabilities in high school informed their college Office of Disability Services (or equivalent) that they needed assistance.^{xvi}
- **Fewer accommodations:** Regardless of whether or not they had informed the college of their disability, fewer than 1 in 5 college students with learning disabilities received accommodations, while nearly all high schools students with learning disabilities did (17% vs. 94%).^{xvii}
- **Technology gaps:** Proprietary testing or course software does not always interface with the assistive technology that particular students are familiar with using.
- **Lack of accessible materials:** Materials are not always in a format that is or can be made readily accessible in a timely way, e.g. scanned documents or texts from small publishers. This is particularly problematic in upper-level classes for individuals who are blind, have low vision, or require assistance in processing visual information.
- **Cost:** As with many of their peers who don’t have disabilities, PWD often find the financial burden too great, and leave before graduating.

Our interviews revealed a striking difference in campus culture and attitudes between institutions that accommodate students with disabilities for legal compliance, versus those that make an effort to attract and accommodate students with disabilities. This difference includes a strong commitment from top leadership, inclusiveness on web sites and in materials, a well-resourced office of disabilities, and support for affinity groups.

College diversity programs and initiatives are typically geared toward broadening the range of socioeconomic, racial, ethnic, and LGBTQ populations. As Duprey noted, “I recently visited the dean of a law school at a private university. I remarked that their campus was very well designed to accommodate students with disabilities. It hadn’t occurred to her that this was an untapped resource of excellent applicants.”

LAW SCHOOL, LSAT, AND THE BAR: Fewer accommodations every step of the way



The proportion of PWD in the educational pipeline drops by 31% between college and law school (11.1% to 7.7%). This drop is not caused by law schools losing PWD to other graduate schools. (In fact, law school has the highest prevalence of PWD among graduate programs.)^{xviii} Among undergraduates, the percentage of PWD going on to graduate school is significantly lower than that of people without disabilities: 11% vs. 17%.^{xix}

Unfortunately, time series with comparable data across years is not available, so it is not possible to determine the trend.

Our research and interviews suggest that, once enrolled, PWD face additional challenges in law school and in passing the Bar Exam:

- **Self-advocacy:** interviews suggest that students are reluctant to request accommodations.
- **Technology gaps:** The proprietary software for law school exams and bar exams work with a limited number of adaptive and assistive technologies.
- **Character and fitness test challenges:** PWD have a disincentive to get and disclose treatment for disabilities, particularly for mental disabilities. The prospect of enduring a fishing expedition into medical records as part of passing the Bar may also discourage some people from even applying to law school.

As Kathleen Flaherty, Associate Executive Director at the [Connecticut Legal Rights Project](#), noted, “When I self-disclosed that I had been hospitalized, the bar examining committee asked questions and made statements about my application that I believe were discriminatory.” Even with the protections of the

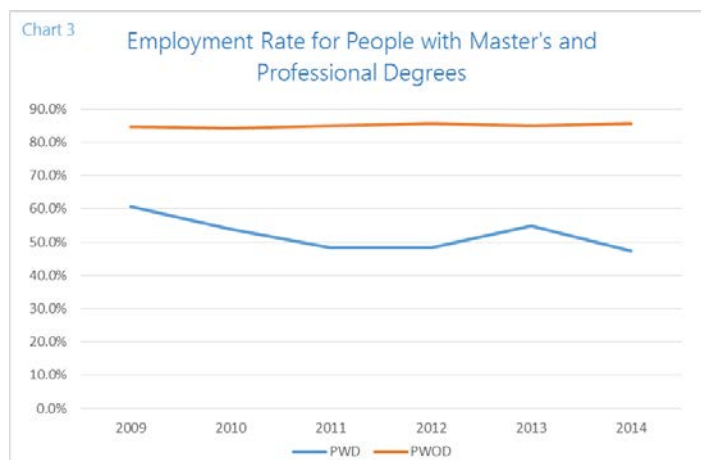
[ADA](#), she still sees questions on job applications that are against the law, especially with inquiries into mental health.

When Duprey applied to take the Bar Exam, she was assigned to a room that wasn't wheelchair accessible: "I had to provide medical documentation from two physicians indicating why I needed extra time and accessibility. Getting accommodation for the LSAT was very easy compared to getting it for the Bar Exam." And Duprey was relatively fortunate: many students have struggled to receive [accommodations for the LSAT](#) or [State Bar Exams](#) and some have been forced to resort to [lawsuits](#) to get the accommodations that they needed.^{xx xxi} The Law School Admissions Counsel (LSAC) recently entered into a [consent agreement](#) resolving allegations that the LSAC failed to reasonably accommodate applicants with a disability and "flagged" test scores of individuals who received accommodations.

LOW LEVELS OF EMPLOYMENT

People with disabilities who hold legal degrees report challenges in finding employment. Duprey noted, "I had a very difficult time finding work... I started part-time. After a brief stint at a boutique firm and then searching for more than two years, I decided to start my own practice."

In 2014, 47% of people with disabilities with masters and professional degrees (which includes law degrees) were employed, compared to 87% of people without disabilities. (No national data is available just on the employment rate of PWD with legal degrees.) And the trends are discouraging: the employment rate for PWD with masters and professional degrees declined from 61% to 47% from 2009 - 2014, while the employment rate of people without disabilities with similar



degrees was relatively stable over the same period^{xxii}. Even more troublingly, in 2014 employment rates of PWD with master's and professional degrees is lower than that of people without disabilities who have less than a 9th grade educational level (47% vs. 64%).^{xxiii}

The challenges employers perceive regarding the hiring of PWD include higher health care costs, inability to do all the work required, and impact on customers and co-workers. Research has shown that none of these is a significant issue, but the perceptions remain.^{xxiv}

Unfortunately, underrepresentation becomes a self-perpetuating cycle. According to Trevor Finneman, staff attorney for the [Disability Rights Legal Center](#) (DRLC) in Los Angeles, the legal profession "is not welcoming to attorneys with disabilities—especially younger attorneys....Employers, and even courts, have struggled to provide basic accommodations."

Duprey's experiences highlight some of these issues. "When I started sending out resumes, I didn't disclose my disability. I arrived for interviews, everyone was surprised, and it became a distraction. After a few experiences like this, I decided to include something about my disability in the cover letter. If a firm wasn't interested in hiring me because I use a wheelchair, then it wasn't a place where I wanted to work."

The issue of self-disclosing a disability has been observed by employers as well. Terence Cox, a founding partner at a firm in San Francisco noted, "I've interviewed and hired hundreds of lawyers, interns and support staff. Only one applicant, an intern, addressed the issue of his disability beforehand. That proved to work to his advantage, because it allowed us to make some accommodations and it worked out well for everyone."

An unwillingness to disclose appears to increase along the pipeline from secondary school to employment.^{xxv} As noted above, only 28% of students who received help for their disabilities in secondary school acknowledged in college that they needed assistance. There is some evidence that suggests the self-disclosure rate drops even further in the workplace. For example, a [NALP survey of law firms](#) noted that just .03% of lawyers identified themselves to the firm as having a disability, when best estimates are that 3.5% of lawyers have a disability.^{xxvi}

Why the reluctance to disclose? For college students, the most important factor is that the students don't consider themselves to have a disability, even though they received accommodations in secondary school.^{xxvii} In the workplace, disclosing raises concerns such as the fear of not being hired, that opportunities for promotion will be more limited, and that the employer may focus more on the disability than on actual work.^{xxviii}

While the low employment rate of PWD with advanced degrees is problematic, it also could be an opportunity. If the employment rate of PWD with advanced degrees could be increased to the same rate as people without disabilities with advanced degrees, the number of PWD in the legal profession would nearly double, from 28,300 to 52,300, assuming that employment rates of PWD with legal degrees is consistent with employment of PWD with graduate degrees generally.^{xxix}

Research shows that companies can take effective action to increase employment of PWD. In a recent nationwide survey, 'disability-friendly' employers were most likely to be larger, (greater than 500 employees), federal contractors and/or nonprofits. For example, larger corporations were two to four times more likely to have implemented key practices that are associated with increased hiring of PWD. An example of a key practice: Corporations that hosted interns with disabilities were 4.5 times more likely to hire people with disabilities.^{xxx} While it's hard to know whether having internships for PWD led to more hiring, or whether a desire for more hiring of PWD led to internships, the point remains that corporations can create a culture that is more open to hiring PWD.

In spite of all the barriers, Duprey sees many opportunities as well: "I'm surprised by how few companies are aware of the benefits to hiring people with disabilities. We have a very high unemployment rate in our demographic. This is a huge untapped resource. Companies, including law firms, aren't accessing this pool of talented, educated people who want to work."

SUGGESTIONS FOR FUTURE RESEARCH

Determine the employment rate for PWD who hold legal degrees, and explore both barriers and opportunities to increasing employment. There currently is no data collected on a national basis on the employment rate for PWD who hold legal degrees. One approach to developing the data would be to work with state bar associations in association with national organizations such as the ABA and NALP to field an anonymous survey among bar association members focused on employment levels, barriers and opportunities. This would be supplemented by in-depth interviews with law firms, legal departments, federal agencies and nonprofits to develop an understanding of how barriers are being addressed in these various settings.

Develop a deeper understanding of the challenges to PWD success in four-year institutions, with a particular focus on the drop-off after the second year. Find and highlight promising practices for addressing these challenges and increasing the GPAs and graduation rates for PWD. A suggested approach would be to conduct in-depth research of two types of colleges: those which are noted by peers as having a good track record of attracting and supporting students with disabilities (such as University of California - Berkeley, California State University Northridge, and University of Illinois at Urbana-Champaign), and those which graduate significant numbers of students who go on to take a legal degree. These are likely overlapping but not identical groups. The research would include individual interviews, campus visits, focus groups with students, and a review of policies and procedures.

ENDNOTES

- ⁱ Linkow, Barrington, Bruyere, Figueroa and Wright, [Leveling the Playing Field: Attracting, Engaging and Advancing People with Disabilities](#). Conference Board, 2014. p 7.
- ⁱⁱ Ibid, p. 41
- ⁱⁱⁱ Newman, L., Wagner, M., Knokey, A.-M., Marder, C., Nagle, K., Shaver, D., Wei, X., with Cameto, R., Contreras, E., Ferguson, K., Greene, S., and Schwarting, M. (2011). [The Post-High School Outcomes of Young Adults With Disabilities up to 8 Years After High School. A Report From the National Longitudinal Transition Study-2](#) (NLTS2) (NCSE 2011-3005). Menlo Park, CA: SRI International. P.42
- ^{iv} Source: U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid Study (NPSAS:12). Retrieved from PowerStats by BWB Solutions.
- ^v Ibid.
- ^{vi} This data is drawn from [tables](#) produced are based on the Census Bureau's 2010-2012 American Community Survey, matched to the Bureau of Labor Statistics' 2012-2022 occupational projections.
- ^{vii} Disability Occupational Projections 2012-2022, Bureau of Labor Statistics
- ^{viii} Here the term "lawyer" includes lawyers, and judges, magistrates, and other judicial workers. It does not include paralegals and other legal support professionals.
- ^{ix} Current Population Survey, Annual Social and Economic Supplement, 2014 Calculations by BWB Solutions.
- ^x Data for Prevalence Chart: **K-12:** [ED Data Express](#); **College:** **NSPAS** Profile of Undergraduate Students: 2011-12, table 6.1; **Law School:** NCES NPSAS study BWB Solutions retrieval from PowerStats; **Employment:** Disability Occupational Projections 2012-2022
- ^{xi} Overview of Funding for pre-K – 12 Special Education, American Speech –Language - Hearing Association. <http://www.asha.org/Advocacy/schoolfundadv/Overview-of-Funding-For-Pre-K-12-Education/> accessed April 23, 2015.
- ^{xii} *National Disability Policy: A Progress Report*. National Council on Disability (2011). Table 9, Page18.
- ^{xiii} National Information Center for Higher Education Policymaking and Analysis web site, <http://www.higheredinfo.org/dbrowser/index.php?submeasure=63&year=2010&level=nation&mode=data&state=0#/-1/>, accessed April 28, 2015
- ^{xiv} U.S. Department of Education, Institute of Education Sciences, National Center for Special Education Research, [National Longitudinal Transition Study-2 \(NLTS2\), Wave 5 parent interview and youth interview/survey, 2009](#); Chapter 2, Figure 2.
- ^{xv} Newman, L., Wagner, M., Knokey, A.-M., Marder, C., Nagle, K., Shaver, D., Wei, X., with Cameto, R., Contreras, E., Ferguson, K., Greene, S., and Schwarting, M. (2011). *Op Cit*. p.48
- ^{xvi} Ibid, p.32
- ^{xvii} Ibid, p.40
- ^{xviii} Source: U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid Study (NPSAS:12). Retrieved from PowerStats by BWB Solutions.
- ^{xix} Source: U.S. Department of Education, National Center for Education Statistics, [2003-04 and 2007-08 National Postsecondary Student Aid Study \(NPSAS:04 and NPSAS:08\). Table 269](#). BWB Solutions calculations.
- ^{xx} Foster, A. Reasonable Accommodations on the Bar Exam Leveling the Playing Field or Providing an Unfair Advantage? Nova Southeastern University Shepard Broad Law Center, 2013. p. 23
- ^{xxi} See *Enyart v. National Conference of Bar Examiners*, 630 F. 3d 1153 - Court of Appeals, 9th Circuit 2011
- ^{xxii} Current Population Survey, Annual Social and Economic Supplement, 2014, BWB Solutions calculations

^{xxiii} Retrieved from US Census Bureau; American FactFinder; Current Population Study, Annual Social and Economic Supplement, 2014, Calculations, BWB Solutions.

^{xxiv} Lengnick-Hall: *Hidden Talent: How Leading Companies Hire, Retain, and Benefit from People with Disabilities*. Praeger, 2007.

^{xxv} Newman, L., Wagner, M., Knokey, A.-M., Marder, C., Nagle, K., Shaver, D., Wei, X., with Cameto, R., Contreras, E., Ferguson, K., Greene, S., and Schwarting, M. (2011). *Op Cit.* p.40

^{xxvi} Diversity Numbers at Law Firms Eke Out Small Gains, [NALP press release](#), February 2015.

^{xxvii} Newman, L., Wagner, M., Knokey, A.-M., Marder, C., Nagle, K., Shaver, D., Wei, X., with Cameto, R., Contreras, E., Ferguson, K., Greene, S., and Schwarting, M. (2011). *Op Cit.* p.42

^{xxviii} Linkow, Barrington, Bruyere, Figueroa and Wright, *Op Cit.* p 41.

^{xxix} Disability Occupational Projections 2012-2022, Bureau of Labor Statistics, BWB Calculations

^{xxx} [Research Brief: Disability Inclusive Recruitment and Hiring Practices and Policies: Who Has Them and What Difference Does it Really Make?](#), William Erickson

^{xxx} Linkow, Barrington, Bruyere, Figueroa and Wright, *Op Cit.* p 41.