# Principle 7: Good Practice Respects Diverse Talents and Ways of Learning, and Conclusion: Adapting the Seven Principles to Legal Education

Paula Lustbader

# Principle 7: Good Practice Respects Diverse Talents and Ways of Learning

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> There are many roads to learning. People bring different talents and styles
> of learning to college. Brilliant students in the seminar room may be all
> thumbs in the lab or art studio. Students rich in hands-on experience may not
> do well with theory. Students need the opportunity to show their talents and
> learn in ways that work for them. Then they can be pushed to learning in ways
> that do not come so easily.[1]

If you want to stop conversation around you, just say the word "diversity."
Especially in these times of debate over affirmative action, when "diversity"
comes up, it's as if E. F. Hutton had spoken. Everyone gets quiet to hear what
will follow. "Diversity" is so powerful because the word itself can be narrowly or
broadly construed, the concept can mean different things to different people,
and diversity policies require us to weigh our values. Because diversity is a
sensitive topic, I want to address two issues at the outset. The first is a
definition of the diversity that I will discuss. The second is the legitimate
concern that somehow, if we find ways to value diversity, we will lower stan-
dards of excellence.

The seventh principle asks educators to respect all forms of diversity—not
only differences in ethnicity, race, gender, age, sexual orientation, and cul-
tural and socioeconomic background, but also diverse learning styles, forms of
intelligence, previous experiences, levels of preparation for learning, external
environments, values, and goals.

Certainly the former sorts of diversity—race, gender, etc.—have a signifi-
cant impact on the learning environment. It is well established that persons
representing those types of diversity face numerous obstacles in law schools
and other academic institutions. But those forms of diversity are not the
explicit focus of this essay. Instead, I will focus on the issues that flow from the
latter set of diversities—diverse learning styles, forms of intelligence, and so
on. These issues have yet to be thoroughly explored. Exploring them should

1.  Arthur W. Chickering & Zelda F. Gamson, Seven Principles for Good Practice in Under-
    graduate Education, AAHE Bull., Mar. 1987, at 3, 6.

broaden our definition of diversity and enrich our understanding of the complexities involved in addressing diversity in all aspects and at all levels.

Respecting diversity does not require us to lower standards and compromise the profession. It does require us to expand our definition of excellence to include a more comprehensive range of skills and abilities. If we understand that there are multiple types of intelligence and that successful professionals use them in combination, we will see that the traditional educational experience is limited because traditional modes of teaching and evaluating focus on only one type. Once we realize that our current standards of excellence are incomplete, we may revise our standards by adding mastery of more than one type of intelligence and skill. As we maintain high standards and employ a wider variety of educational experiences, our educational institutions will actually help a greater number of students perform to this revised standard.

Institutions that respect diversity must have diversity as an explicit institutional goal. Programs that actively nurture and support diversity are central to the institution's mission—not merely token or marginal. Respect for diversity is evident in the institutional and classroom climate; admissions processes and selection criteria; academic policies; student support services; the composition of student body, faculty, and staff; the curriculum; evaluation of student performance; and pedagogy.

### Institutional and Classroom Climate

The overall climate in an effective institution reflects more than mere tolerance of difference: it embraces difference as a positive and desirable element of a learning environment. The effective institution creates a safe learning environment for all types of learners and welcomes the contributions of each member of the learning community. Faculty, staff, and students participate in programs that help them appreciate diversity. The effective institution understands that, in a healthy learning environment, both the teachers and the students learn. Orientation programs for incoming students include information about diversity and learning styles; they involve administration, faculty, upper-level students, and staff.

The overall climate in most law schools tends to be competitive and hostile, not cooperative and supportive. For many students, this creates a great deal of psychological distress[2] and decreases their motivation to learn.[3] The lack of content relevant to students' lives, the absence of any collaborative learning, and the traditional modes of grading and evaluating performance tend to increase their feelings of alienation.

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2. See G. Andrew H. Benjamin et al., The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers, 1986 Am. B. Found. Res. J. 225; Michael E. Carney, Narcissistic Concerns in the Educational Experience of Law Students, 18 J. Psychiatry & L. 9 (1990); Thomas A. Dye, Law School's Contribution to Civility and Character, 22 No. 7 Law Prac. Mgmt. 40, 42 (1996); James B. Taylor, Law School Stress and the "Déformation Professionelle," 27 J. Legal Educ. 251 (1975).

3. See Cathaleen A. Roach, A River Runs Through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy, 36 Ariz. L. Rev. 667 (1994).

To create a more effective learning climate, law schools could adopt a pedagogy that connects content to student experience, incorporates students' values, and promotes collaboration. In addition, they could eliminate class ranking and the curving of grades. They could create honors and scholarships based on a broader range of talents, so that more students receive institutional recognition. For example, some schools allow students to write on to the law review rather than selecting students on the single basis of grades.

The effective classroom climate models respect for diversity. It encourages academic risk taking by promoting a safe learning environment and by providing opportunities for students to explore new ways of knowing and to think creatively. It is designed to build students' esteem. It is intolerant of sexist, racist, or otherwise offensive language or comments. It encourages teachers to help students consider and recognize the validity of perspectives that differ from their own. An effective classroom climate bases students' grades on more than one indicator of their performance.

Unfortunately, many students perceive the law school classroom as unsafe and so are reluctant to take academic risks. They avoid participating in discussions for fear of being humiliated. Teachers can foster a more effective classroom climate if they treat students with respect; combine the Socratic method with other teaching methods, especially cooperative learning exercises; incorporate different experiences that allow students to display their knowledge in a variety of ways; state their expectations explicitly; give students written questions and hypothetical problems before class; teach students how to prepare for class; and evaluate student performance in a variety of ways.

### Admissions and Selection Criteria

Institutions that respect diversity have broad admissions and selection criteria that go beyond statistical indicators based on standardized tests. A 1997 study demonstrates that overreliance on LSAT scores and undergraduate GPA, the traditional admissions indicators, would result in excluding a large number of minorities from legal education. And although the study supports the validity of those two indicators in predicting first-year law school grades, the study suggests "they are not significant predictors of graduation from law school."[4] Moreover, they do not take into account the effect of such interventions as academic support programs, which can help students outperform their low test scores.[5] Institutions that recognize the significant limitations of the traditional indicators look to other factors such as the applicant's background, work and life experience, undergraduate grades (not cumulative, but in specific, related courses), writing ability, and levels of motivation.

Although several law schools have some selection criteria that allow them to look beyond the statistical indicators, the current anti–affirmative action

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4.    Linda F. Wightman, The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions, 72 N.Y.U. L. Rev. 1, 34–35 (1997).

5.    Kristine S. Knaplund & Richard H. Sander, The Art and Science of Academic Support, 45 J. Legal Educ. 157, 161, 207 (1995).

initiatives and the concern that more open selection criteria compromise standards are making many schools cautious about such practices. We could eliminate much of the problem if we viewed broader selection criteria not as "affirmative action" but, instead, as a way to recognize the limitations of the traditional indicators.[6]

## Academic Policies

To respect diversity, an institution first needs to understand the unique circumstances each student brings to the learning environment. For law schools this is especially necessary because most law students do not have the luxury of making their studies their sole focus in life. Most law students must work during the school year. Many also have family and community obligations. As adult learners, they need to participate in determining what they will study, when they will study, and how they will study.[7] Consequently, institutions that respect diversity must have flexible academic policies that accommodate students' varying circumstances.

Academic policies that recognize diversity range from accommodating students with disabilities to being responsive to students' economic, scheduling, and advising needs. Economic policies such as financial aid and need-based scholarships, work-study opportunities, and loan forgiveness programs need to be developed and tailored to better meet the needs of the student. Scheduling policies—the time of day when courses are offered, the number of courses that a student must take per term, the length of time students have to complete degree requirements—all need to be responsive to the reality of students' lives. The ABA requirement that law students must complete their studies within five years exemplifies the type of rigid policy that does not allow students to take course loads that best fit with their learning styles, their outside obligations, or an unforeseen life crisis.

## Student Support Services

Effective institutions provide all students with comprehensive support services, including academic advising, academic support, counseling, and career services. Advising practices encompass a broad range of scheduling advice and provide all-important student-faculty contact. On the basis of their backgrounds and areas of interest, all students are assigned a faculty adviser/mentor/advocate for the duration of their stay in law school. This adviser not only helps the student make decisions about what courses to take and in what order, but also guides the student through the maze of academic policies and administrative processes. In addition, the faculty adviser counsels the student on ways to handle other aspects of the student's life that affect learning, and

6. Wightman's study supports the validity of these traditional indicators for the purposes for which they were intended (i.e., as indicators of acquired academic skill), but cautions us that admissions decisions made solely on these two criteria will result in a discriminatory selection process. Wightman, *supra* note 4, at 53.

7. See Gerald Hess, Listening to Our Students: Obstructing and Enhancing Learning in Law School, 31 U.S.F. L. Rev. 941, 942–43 (1997).

may refer the student to an appropriate outside resource such as a financial aid specialist, an academic support program, or the student counseling center.

In the last several years, many law schools have developed some type of academic support services—in large part, as a response to the increasing diversity of the student body and an increasing awareness of different learning styles. Effective academic support programs are aware of the risk of generating stigma and backlash for the students they primarily serve. Academic support programs that are marginalized make the students feel marginalized. Effective academic support programs are incorporated into the mainstream:

- Many academic support professionals teach regular courses, team-teach, and work with other faculty to help increase the effectiveness of the learning experience for all students.
- The director is a professional with status within the institution.
- The program's office is centrally located.
- The program provides some services to the general student population.
- Student participation is voluntary (with the exception of a required orientation or preparatory program).
- The program's emphasis is on excellence, not remediation; participants are not viewed as deficient.

Such programs recognize the various factors that influence academic success, treat the different talents and abilities of the students as assets, and maintain high expectations for their students.

Effective institutions give their students access to counseling services. This is particularly important for law students because a significant proportion suffer psychological distress. Studies indicate that, at entry, law students roughly match the general population in their incidence of clinical depression or other psychological symptoms such as obsessive-compulsive behavior, phobic anxiety, paranoid ideation, and social alienation and isolation. By the third year of law school, however, nearly one-third are clinically depressed, and their symptom levels do not "significantly decrease" during the first two years of practice after graduation.[8] To help students cope with emotional stress, some law schools incorporate stress reduction presentations into their orientation programs. In addition, they offer individual and group counseling sessions for students, as well as counseling sessions for spouses, partners, and family and friends.

Effective career placement offices recognize the different experience levels and different goals of the students. They offer assistance with résumés and cover letters and help students market their strengths. They provide information and networking opportunities for job placement in a wide variety of areas,

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8.　See Benjamin et al., *supra* note 2, at 246. The authors found that the symptoms did decrease although not significantly "with the direction of the decrement suggesting that some amelioration may occur." *Id.* at 248. They suggest that further studies are needed over longer periods of time—5, 10, 15 years after graduation.

from traditional private practice to less trodden career paths. Several placement programs host job fairs where students can interact with professionals who work in public service and nontraditional practices (as mediator, for example, or in-house counsel), or in fields unrelated to law where their legal education has given them an entree.

### Composition of Student Body, Faculty, and Staff

Principles 1 and 2 encourage student-faculty contact and cooperation among students. The most significant way an institution can encourage these relationships is to provide students with role models and peers to whom they can relate; institutions that respect diversity have aggressive recruitment practices. The presence of diversity in the institutional population and specifically in the faculty has a strong correlation with the academic success of diverse students. Another aspect of having a diverse community is the understanding that the entire learning environment is enriched by diverse ideas, experiences, and values. In fact, given the rapidly changing demographics of our society, our graduates will need to relate to a much more heterogeneous clientele than ever before.

### The Curriculum

A curriculum that respects diversity recognizes that both the sequencing and the content of courses must be responsive to the diverse needs of the students. The sequencing of courses should build from the students' existing knowledge base and experience, lay an appropriate foundation and provide context for the subject matter, and develop levels of sophistication progressively.[9] In law schools, first-year courses should begin with an orientation to the legal system, jurisprudential concepts, and legal methods. Doctrinal courses need to begin with a simplistic overview and then gradually add more detail and abstract concepts. The content of the curriculum should follow a logical sequence in which each course builds on prior courses. Some institutions structure upper-level courses into subject clusters and encourage students to work as a learning community in their chosen subject. Effective curriculum design also integrates skills with substantive courses; provides interdisciplinary course options; helps students see the relationships among their courses; incorporates supplemental and background materials; and includes diverse content, perspectives, and values. The effective curriculum design provides various learning options outside the classroom, such as clinical courses, externships, independent studies, and small seminar courses. Finally, effective institutions regularly evaluate the curriculum and actively solicit the views of faculty and students, then respond by making appropriate changes.

### Evaluation of Student Performance

Effective teachers maintain high expectations and explicitly communicate their expectations; they let students know ahead of time how they will evaluate

9. Paula Lustbader, Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students, 33 Willamette L. Rev. 315, 328 (1997).

student performance. They consider their expectations of students and their methods of evaluation when they plan their lessons. Such planning enables them to teach what they test and test what they teach.

Effective teachers evaluate student performance more than once a semester and provide frequent feedback. Prompt feedback facilitates students' metacognitive awareness. Students need rigid feedback mechanisms to help them evaluate how they are learning so they can modify their study approaches. Frequent grading also provides teachers with necessary feedback on how well students are learning.

Finally, effective teachers evaluate student performance in a variety of ways so that students can demonstrate what they know. For example, in some courses part of the grade depends on class participation, in-class presentations and oral arguments, research or writing assignments, and group exercises. Even final exams can offer greater variety: opportunities for open-book as well as closed-book exams, or a combination of essay, multiple-choice, and true/false questions. Multiple-choice or true/false exams should provide an opportunity for students to explain their answer if they find the question ambiguous or confusing.

## Pedagogy

The principle that effective pedagogy respects diverse talents and ways of learning is firmly grounded in theories of adult learning, metacognition, multiple intelligences, and learning styles.

Theories of adult learning indicate that "learning should be through mutual inquiry by teacher and student"; the "emphasis should be on active, experiential learning . . . ; learning should relate to concurrent changes in the students' social roles . . . ; and learning should be presented in the context of problems that students are likely to face . . . ."[10] Further, adult learners learn best when they are respected, involved in the design and content of their courses, and consulted on methods of evaluating their performance.[11]

Theories of metacognition indicate that learners maximize their learning and performance when they are aware of how they learn, match their learning method to the learning task, receive frequent and prompt feedback, and then modify their methods to increase their learning effectiveness.[12]

Theories of multiple intelligences define intelligence as "the ability to solve problems, or fashion products," that are of consequence in a particular cultural setting or community.[13] Intelligence is thus measured in terms of a biological aptitude toward a specific form of problem-solving, when that form

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10. Frank S. Bloch, The Andragogical Basis of Clinical Legal Education, 35 Vand. L. Rev. 321, 332–34 (1982).

11. See Hess, *supra* note 7, at 942–44.

12. See Paula Lustbader, From Dreams to Reality: The Emerging Role of Law School Academic Support, 31 U.S.F. L. Rev. 839, 852–53 (1997); Lustbader, *supra* note 9, at 324–25; Jeanne Ellis Ormrod, Human Learning Principles, Theories, and Educational Applications 26 (Columbus, Ohio, 1990).

13. Howard Gardner, Multiple Intelligences: The Theory in Practice 7 (New York, 1993).

is valued and nurtured in that cultural setting or community. Under this definition, seven types of intelligence have been identified: musical, bodily-kinesthetic, logical-mathematical, linguistic, spatial, interpersonal, and intrapersonal.[14] These are not mutually exclusive; in fact, most adults possess several kinds of intelligence that operate together. The majority of law schools emphasize and measure only the logical-mathematical type because the usual method of evaluating student performance is a single exam that asks students to analyze a complex set of facts, in a limited time period, in writing. Arguably, this is a limited view of intelligence that does not adequately reflect all the types of intelligence that the successful lawyer needs. Effective teachers find ways to teach and evaluate a broader range of intelligences, and they encourage their students to master more than one type.

Theories about learning styles indicate that learners have a preferred mode of learning, that people learn in different ways, that a variety of learning styles will be present in any classroom, and that no one teaching method is effective for all students. Students can enhance their learning and performance when they learn more about their own styles and when the instructional methods match their particular styles. Once students understand their own preferred style, they can use alternative learning strategies.[15]

Law teachers who respect different ways of learning teach students about learning styles, provide students with learning style assessments, learn about their students' styles, teach study strategies for the different styles, and use a variety of teaching methods.[16] For example, some law schools provide learning styles assessments to their entering students, and some have assessed the learning styles of the faculty. Others use learning style assessments in their career placement programs. Some teachers include learning style assessments as part of their course orientation. In addition, effective teachers incorporate writing exercises as well as experiential and collaborative exercises; they use visual aids, hand out problems before class, and allow time for reflection before calling on a student to answer a question.

Effective pedagogical practice respects diverse talents and ways of learning not only by teaching the skills of learning and using a variety of methods, but also by approaching the educational endeavor from a learner-based perspective. Learner-based approaches to teaching incorporate an understanding of, and appreciation for, the individuality of each student's ideas, values, interests, motivations, and backgrounds. Theories of schema development indicate that learners organize data into cognitive structures, or schemata. Learners come to the learning endeavor with existing schemata based on their previous experiences. They more easily assimilate new data when the new data relate to

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14. *Id.* at 8–9; see generally Howard Gardner, Frames of Mind: The Theory of Multiple Intelligences (New York, 1983); Daniel Goleman, Emotional Intelligence (New York, 1995).

15. Mary Deane Sorcinelli, Research Findings on the Seven Principles, *in* Applying the Seven Principles for Good Practice in Undergraduate Education, eds. Arthur R. Chickering & Zelda F. Gamson, 13, 22 (San Francisco, 1991).

16. See Vernellia R. Randall, The Myers-Briggs Type Indicator, First-Year Law Students, and Performance, 26 Cumb. L. Rev. 63, 74 (1995).

their previous experience and when teachers help them create new schemata for the new data.[17] Teachers need to learn the backgrounds of their students, relate new information and skills to those backgrounds, and help students form new schemata.[18] Further, a learner-based pedagogy follows a developmental progression. It uses the students' skills, knowledge base, strengths, and backgrounds as the foundation, then helps students acquire and refine newer skills and knowledge by explicitly providing a context and progressively adding more abstract and sophisticated concepts. For example, in a problem-oriented course, an effective teacher would begin with one-issue problems that address the basic area of law and then introduce multiple-issue problems that address more subtle areas or have greater ambiguity.

Effective law teachers are interested in, and actively learn about, their students' diverse ideas, values, interests, motivations, and backgrounds. Such information can come through writing assignments such as a personal statement, opinion paper, or survey. Another method is the talking survey: the teacher asks questions to the entire class and asks for students to raise hands. (A teacher should be sensitive to the level of safety the class feels before asking high-risk questions.) Talking surveys not only provide the teacher with information to improve the pedagogy, but have the extra benefits of closer faculty-student relations and greater cooperation among students.

Effective teachers use what they know about their students when they introduce new information. For example, they write (or have students write) hypotheticals that reflect students' experience or areas of interest. They may include surnames that are familiar to students. They select supplemental cases that reflect students' backgrounds or interests. They include a variety of perspectives. They make sure that all students have an opportunity to participate in class discussions.

Teachers also can use information they have gleaned to increase their sensitivity and the students' sensitivity toward other students. For example, a teacher in a Criminal Law class might ask students, on an anonymous written survey, if they have ever been the victim, or known a victim, or been accused, or known someone accused, of sexual assault. Then, before discussing a case involving sexual assault, the teacher could tell the class that $X$ number of students have had such experiences and, therefore, the class needs to be sensitive.

Effective teachers also provide a basic schema (an overview, or roadmap) of the subject matter and relate it to students' prior experience during the first

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17. Lustbader, *supra* note 9, at 325–26. See also Brook K. Baker, Beyond *MacCrate:* The Role of Context, Experience, Theory, and Reflection in Ecological Learning, 36 Ariz. L. Rev. 287 (1994); Gary L. Blasi, What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory, 45 J. Legal Educ. 313 (1995); Paula Lustbader, Teach in Context: Responding to Diverse Student Voices Helps All Students Learn, 48 J. Legal Educ. 402 (1998) [hereinafter Teach in Context]; John Mitchell, Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education, 39 J. Legal Educ. 275 (1989); Albert J. Moore, Trial by Schema: Cognitive Filters in the Courtroom, 37 UCLA L. Rev. 273, 279–83 (1989).

18. Lustbader, Teach in Context, *supra* note 17.

class session. Moving through each of these categories, the teacher refers to the basic schema, and then develops the category being studied in greater detail and sophistication.[19]

For example, on the first day of a Civil Procedure class, the teacher might provide a general schema of the main doctrinal areas through an analogy to planning a big party. First, in planning a party, you need to determine where to have it. This is similar to *jurisdiction.* Then you need to decide how to invite people to the party. This is similar to *notice.* Then you need to determine what information to include in the invitation. This is similar to *pleadings.* Next, you need to determine who must be invited and who is optional. This is similar to *joinder.* Since it is a potluck, you want to know what each person will bring. This is similar to *discovery.* And so on. By the end of the first session, the teacher has completed a rough schema of civil procedure, with an accompanying visual aid that might look like this:

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**Figure 1**
**Introduction to Civil Procedure**

| *A Party* | *A Lawsuit* |
|---|---|
| *Where to have it* | Jurisdiction |
| *How to invite* | Notice |
| *What to include in the invitation* | Pleadings |
| *Whom to invite* | Joinder |
| *What information needed from guests* | Discovery |
| *How to cancel* | Adjudication without trial |
| *The party protocol* | Trials |
| *Dealing with unsatisfied guests* | Appeal |
| *Who can throw the same party* | Res judicata |

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Next, when beginning to deal with subject matter jurisdiction, the teacher would refer to the basic schema, and then add to the schema for jurisdiction:

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**Figure 2**
**Schema of Subject Matter Jurisdiction in Federal Court**



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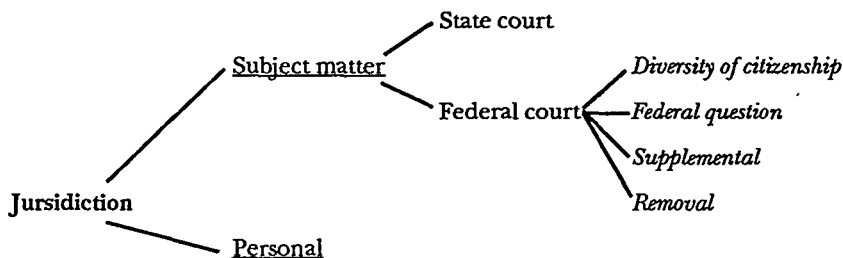
19. See Lustbader, *supra* note 9, at 328 n.34, summarizing two instruction theories: the Spiral Curriculum from Jerome S. Bruner, Process of Education 31 (Cambridge, Mass., 1960), and the Elaboration Sequence from Charles M. Reigeluth, Theory in Lesson Blueprints Based on the Elaborative Theory of Instruction, *in* Instructional Theories in Action: Lessons Illustrating Selected Theories and Models, ed. Charles M. Reigeluth, 245 (Hillsdale, 1987).

In addition to continually orienting students through the use of schemata, effective teachers use classroom assessment techniques[20] to solicit feedback from the students about how they are learning and how the teacher can make the class more effective. For example, some teachers use short writing assignments that ask students to identify the teaching/learning methods that have been most effective and least effective for them to date in the course. When students know that teachers really do want them to learn, they will give honest and objective feedback. Then teachers must let students know that they have listened to them: either they modify their lessons or explain to the class that they have considered the students' comments but for reasons $x$, $y$, or $z$ they cannot shift modes.

<center>* * * * *</center>

Respecting diverse talents and ways of learning may be the most radical of the seven principles in that it requires a significant shift for most educators. It threatens our notion of standards and causes us to broaden the way we define achievement and determine success. Such a shift may even cause us to add new standards of excellence, such as mastery of learning skills as well as content, and proficiency in more than one type of intelligence. Adopting a worldview that respects diversity challenges us to reconsider our values and modify our actions. But implementing this principle could have a significant impact on legal education and the legal profession. In respecting diversity, law schools will accept, teach, and graduate students who will be better equipped to address the legal needs of our changing society.

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20. Gerald F. Hess, Student Involvement in Improving Law Teaching and Learning 67 UMKC L. Rev. 343 (1998).