

Chapter 3

Pursuing Equity: Disproportionality in Special Education and the Reframing of Technical Solutions to Address Systemic Inequities

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In the review, we examine what is known about disproportionality with the intention of informing the direction of policy and practice remedies. We outline the definition, contours, and characteristics of disproportionality and examine some of the prevailing explanations as to why the issue persists. We then pivot the review to consider how policy, through the Individuals with Disabilities Education Act (IDEA), has sought to address disproportionality in special education and disciplining of students with disabilities. We question why a legally sound civil rights law like IDEA has been unable to abate disproportionality for nearly 40 years. We then turn our attention to review interventions embedded in IDEA that have been recommended to address disproportionality and question why they have not improved outcomes for “nondominant” students in special education. We conclude with some recommendations for disrupting disproportionality.

The United States is experiencing large demographic shifts. In the span of three decades, between 1980 and 2008, the U.S. White population has declined from 80% to 66%; the Black population has remained steady around 12%; and the Hispanic population has more than doubled from 6% to 15% (Aud, Fox, & Kewal Ramani, 2010). While the country’s racial demographics continue to shift and diversify, education research has repeatedly documented achievement differences associated with race (Jencks & Phillips, 1998), wealth and income levels (Duncan & Murnane, 2011), linguistic and ethnic differences (Fry, 2008), gender (DiPrete &

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Buchmann, 2013), and lack of educational opportunity associated with the increasing segregation of students of color in America's schools (Orfield, Ee, Frankenberg, & Siegel-Hawley, 2016). Race, gender, language status, and other social markers of difference consistently stratify students and directly influence academic success and attainment (Alexander, Entwisle, & Olson, 2014; Gamoran 1986; Hallinan, Bottoms, Pallas, & Palla, 2003; Lucas, 1999; Oakes, 1985; Rosenbaum, 1980). Thus, as the nation diversifies, education research continues to show *who* a student is matters more for their educational attainment more so than *how* a student performs in school.

One of the most perplexing “durable inequalities” (Tilly, 1998) related to social markers of difference in American society is racial disproportionality in special education. The issue has been documented for over 40 years (see Donovan & Cross, 2002; Dunn, 1968; Heller, Holtzman, & Messick, 1982) in education research despite advances in policy and practice. Disproportionality is defined by a group's over- or underrepresentation in an educational category, program, or service in comparison with the group's proportion in the overall population (Donovan & Cross, 2002).

METHOD

In the review, we examine what is known about disproportionality with the intention of informing the direction of policy and practice remedies. We outline the definition, contours, and characteristics of disproportionality and examine some of the prevailing explanations as to why the issue persists. We then pivot the review to consider how policy, through the Individuals with Disabilities Education Act (IDEA), has sought to address disproportionality in special education and disciplining of students with disabilities. We question why a legally sound civil rights law like IDEA has been unable to abate disproportionality for nearly 40 years. We then turn our attention to review interventions embedded in IDEA that have been recommended to address disproportionality and question why they have not improved outcomes for “nondominant”¹ students in special education. We conclude with some recommendations for disrupting disproportionality.

We relied on descriptive, explanatory, and theoretical studies on disproportionality to construct the review. The majority of the articles included in the review provide some critical recognition or discussion of race, equity, and/or inequity in special education. We identified mixed-method, quantitative, and qualitative studies that are empirically based (including experimental and quasi-experimental) on the topic. We searched for empirical studies on disproportionality with a priority on the past 15 years (2000–2015). Some empirical studies were included outside of the 15-year time frame because of their seminal contributions to knowledge on racial disproportionality in special education. In addition, theoretical literature was included in the review that challenges common understandings of race as a social construct, disproportionality, and the efficacy of current remedies to address disproportionality. Literature was excluded from the review if it did not explicitly focus on race and/or disproportionality in special education.

Terms used to identify studies in the review were drawn from prominent research on the topic and available on electronic databases (e.g., EBSCO, Wilson Web Social Sciences Full Text, ERIC, Google Scholar, PsycInfo, ProQuest, JSTOR) as well as nonmainstream sources (e.g., newspapers, magazines, dissertations, conference papers, and technical reports). Several keywords such as “disproportionality,” “underrepresentation,” “overrepresentation,” “Individuals with Disabilities Education Act,” “race,” “discipline,” “classification,” “placement,” and “special education” were used in various combinations until similar studies were consistently identified. The synthesis process involved reading and summarizing findings of each study including research design, analytic foci, numbers and populations of participants, and main findings. The following criteria were generally applied to studies included in the review: studies pertaining to disproportionate discipline and special education placement and classification of historically underrepresented racial and ethnic groups; studies published between 2000 and 2015; and studies within United States K–12 schooling environments.

TRENDS IN DISPROPORTIONALITY: OVER- AND UNDERREPRESENTATION

Nondominant students are overrepresented in the high-incidence (subjective) disability categories (Donovan & Cross, 2002; U.S. Department of Education, 2009) and/or are disproportionately subject to exclusionary disciplinary practices (Losen, 2014).² The high-incidence disability categories include emotional and behavioral disorders, learning disabilities (LD), intellectual disability, and speech and language impairments. The students most affected by disproportionality tend to be low-income, Black, and American Indian youth with disabilities (Coutinho & Oswald, 2000; Fierros & Conroy, 2002; Losen & Orfield, 2002; Oswald, Coutinho, & Best, 2002; Parrish, 2002; Skiba et al., 2011; U.S. Department of Education, 2009; Waitoller, Artiles, & Cheney, 2010; Zhang, Katsiyannis, Ju, & Roberts, 2014). In contrast, English language learners (ELLs) tend to become overrepresented later in the schooling process and in districts that serve large populations of ELLs (Artiles, Rueda, Salazar, & Higareda, 2005; Samson & Lesaux, 2009; Sullivan, 2011).

Research on disproportionate suspensions identifies patterns in which nondominant students (i.e., Black, Hispanic, and American Indian) are not only identified with a high-incidence disability (e.g., emotional disturbance, LD, speech and language impairments, other health impairment) but also suspended more severely for the same infraction as their White counterparts, are suspended more repeatedly, and most devastatingly, these patterns heighten the likelihood for youth to engage with the criminal justice system (Fabelo et al., 2012; Kim, Hewitt, & Losen, 2010). Black students are referred at higher rate for special education services stemming from behavioral issues (Planty et al., 2009). Research has also shown that Black males are the most likely to be disciplined or suspended for subjective reasons, as compared with their White peers, and to receive harsher and longer duration in punishments

(Achilles, McLaughlin, & Croninger, 2007; Bradshaw, Mitchell, O'Brennan, & Leaf, 2010; Cartledge & Lo, 2006; Mendez & Knoff, 2003; Rausch & Skiba, 2004; Skiba, Michael, Nardo, & Peterson, 2002; Vincent & Tobin, 2010). Office disciplinary referrals also indicate disproportionality, with Black students being two to four times more likely than White students to be referred (Skiba et al., 2011).

In addition, underrepresentation is equally as important, but less explored in disproportionality research. For example, Yoon and Gentry (2009) found, using Office of Civil Rights data, that at both the national and state levels, White and Asian American students are consistently overrepresented in gifted programs. On the other hand, American Indian, Alaskan Native, Hispanic, and Black students are underrepresented in gifted programs (Ford, 1998; Harris & Ford, 1999; Worrell, 2003, 2009). Although there is intra group variability within each racial category, the aggregate trends surrounding both over- and underrepresentation have been relatively consistent over time.

SOURCES OF DISPROPORTIONALITY

Disproportionality has multiple causes that extend beyond the special education system. The explanatory research on disproportionality in special education and suspension provide at least two terrains of inquiry—practice-based and sociodemographic “causal” factors—each raising questions on the role of bias specifically related to race.

Practice-Based Factors Explaining Disproportionality

The disproportionality research on practice-based factors maintains two theoretical arguments: (a) a cultural mismatch between middle class, White teachers and school administrators with low-income and/or racial and ethnic minority student populations and (b) gaps in the development and implementation of interventions and other referral systems, which cause disproportionate outcomes.

The cultural mismatch argument situates the notion of Whiteness and/or colorblindness as a default frame utilized in assessment, intervention, cognitive, behavior problem identification, and so on (Annamma, Connor, & Ferri, 2013; Artiles, 2009; Connor, Ferri, & Annamma, 2015). For instance, Miner and Clark-Stewart (2008) identified White teachers labeled externalizing behaviors as increasing among Black children as their age increases; meanwhile, these teachers identified non-Black children's externalizing behaviors as decreasing. Similarly, Skiba, Michael, and Nardo (2000) documented Black children receiving behavioral referrals more frequently for less subjective categories. Other studies found similar patterns, such as Neal, McGray, Webb-Johnson and Bridgest (2003) identified White teachers perceive Black children's walking and talking mannerisms as more fearful and related to lower achievement; and Skiba et al. (2006) also found White teachers were aware of not being prepared to deal with specific behavioral issues among racial and ethnic minority students and perceive special education as an appropriate placement.

Within the cultural mismatch research, various studies also explore how to identify interventions that improve cultural matching. For instance, Simmons-Reed and Cartledge (2014) argue for the development of culturally responsive interventions for Black males given the manner in which zero-tolerance policies target this population. Other researchers (e.g., Raines, Dever, Kamphaus, & Roach, 2012) argue for improved early identification metrics that minimize the propensity of racial and ethnic minority students to be situated as severely deficient; and others argue for addressing the mismatch in the core instructional program with more culturally responsive instruction (Griner & Stewart, 2013; Shealey, McHatton, & Wilson, 2011) or assessing schools' culturally responsive capacity (Fiedler et al., 2008).

The cultural mismatch argument also engages with the role of practitioner beliefs. Prior research on teacher beliefs highlights significant patterns between how beliefs intersect with race constructs and cognitive abilities. Ford, Scott, Moore, and Amos (2013) identify how teacher beliefs about cognitive ability relate to the identification of Black students in gifted programs. And yet other research suggests expectations about a group may have more impact on achievement than individual-level expectations because the group norm perception operates as a gauge for understanding individual student interactions (Agirdag, Van Houtte, & Van Avermaet, 2012; Van Houtte, 2011).

Beliefs alone do not result in disparate outcomes though. Discriminatory behaviors help mediate how beliefs effect overrepresentation, referral to special education, and/or discipline. Eccles, Wong, and Peck (2006) in a study of 11th-grade Black students identified how daily encounters of racial discrimination effect academic motivation and engagement. Gregory and Thompson (2010) in a study of 35 underperforming Black students identified variability in teacher perceptions of these students, and students who perceived teacher practice as unfair, were more likely to receive office disciplinary referrals. Thus, there is growing empirical evidence that teacher beliefs and expectations of students, based on race, relate to disproportionate outcomes.

Disproportionality has also been attributed to gaps in district- and/or school-level educational practices and policies that are "feeding the problem." This line of research demonstrates an adequacy and inadequacy argument regarding how practice can affect disproportionality rates. For instance, Kurth, Morningstar, and Kozleski (2014) explored national data on least restrictive environment and identified the increasing pattern of special education segregation among some subjective categories. Other studies focused on multiple dimensions of school-level practice such as limited interventions, procedures, and teams for implementing these interventions (Gravois & Rosenfield, 2006); differential implementation of referral processes (Harry & Klingner, 2006, 2014); inappropriate approaches to behavior management (Milner, 2006; Skiba, Peterson, & Williams, 1997; Weinstein, Curran, & Tomlinson-Clarke, 2003); inadequate framing of zero tolerance and other behavior management policies (Noguera, 2003; Skiba et al., 2002); and problematic beliefs about poverty, race, and

learning in framing of solutions to address disproportionality (Ahram, Fergus, & Noguera, 2011; Skiba et al., 2006).

Sociodemographic Factors Explaining Disproportionality

The explanatory research on disproportionality in special education and suspension also explores the relative impact of sociodemographic factors on disproportionate outcomes. This research uses variables such as race, free/reduced-price lunch (FRPL) status, family structure, and so on, as either deficits of individual students or as factors related to structural disparities. There are several perspectives taken in this line of research.

The first line of research situates the variables as predictive and/or contributing to patterns of disproportionality. This approach inadvertently promulgates that these sociodemographic variables demonstrate compromised human development, in particular FRPL status (O'Connor & Fernandez, 2006). Studies such as Morgan Farkas, Hillemeier, and Maczuga (2012) and Morgan et al. (2015) promote the conclusions from the National Research Council (2002) report in which FRPL status is argued to minimize cognitive and behavioral development and in turn is a sufficient rationale for their inferential analyses. A subsequent step in such sociodemographic analyses is the treatment of race and FRPL as confounding variables, and by default conceptually arguing that race and FRPL both compromise human development. These conclusions are drawn despite decades of research that provides qualitative, quantitative, and mixed-method studies that explore the complexity of practice-based conditions as setting the stage for disproportionate outcomes. Thus, unintentionally, this line of explanatory research fails to situate the presence of institutionalized practice of racism and in turn uses a conceptual research frame that "blames the victim" for not being successful despite racism.

The second line of research on sociodemographic factors maintains a conceptual focus on the presence and intensity of disproportionality in special education and suspension. The focus is centered on the manner in which racial/ethnic minority and FRPL-eligible students are distributed in certain schools or experience special education or suspension. For example, Oswald et al. (2002) suggest disproportionality occurs because students have "differential susceptibility," or exposure to community, health, economic, school, and environmental resources which can lead to variation in identification of student disability. The sociodemographic studies tend to have varying and sometimes contradictory findings. However, they do establish that a school district's sociodemographics are strongly associated with the proportion of students identified for special education (Losen & Orfield, 2002). This relationship, however, depends on the disability category, on the methods used to measure disproportionality and the type of data collected.

In relationship to discipline, Beck and Muschkin (2012) identify student-level demographic factors (i.e., gender, race, parent educational level, eligibility for FRPL) as explanatory variables of disciplinary infractions. Additionally, they cite academic

differences comprise the largest racial difference contributing to behavioral infractions. Sullivan, Klingbeil, and Van Norman (2013) also identify a similar pattern between student-level demographic factors and discipline infractions. Moreover, Bryan, Day-Vines, Griffin, and Moore-Thomas (2012) identify students' race, gender, and teachers' postsecondary expectations as predictors of behavioral referrals, specifically race is treated as predictive of the distribution of teacher referral. More recently, Martinez, McMahon, and Treger (2016) identified in an individual- and school-level data set with 1,400 students moderation effects of student-teacher ratio and racial/ethnic student concentration as contributing to the rates of office discipline referrals. Also, Skiba et al. (2014), in a multilevel model, identify the varying influence of infraction type, individual, and school-level characteristics on out-of-school suspensions. The most salient findings include schools with higher proportions of Black students contribute to out-of-school suspensions; and systemic school-level variables are more important in determining Black overrepresentation in suspension. And in an attempt to understand whether disproportionate office discipline referrals are explained by school effects and/or student behaviors, Rocque (2010) conducted a nested analysis in which office discipline referrals are overrepresented by Black students; however, the inability of school effect variables to explain the pattern raised some significant questions.

In sum, these various lines of research provide a textured documentation of possibly flawed school practices and processes. But, more important, these studies point to the manner in which racism and/or other forms of bias are present in the schooling process. Despite the range of practice-based areas raised by this research, the research on practice-based remedies focuses on singular elements of practice shifting overall disproportionality rates. Simultaneously, the research on sociodemographic variables, which tends to use large-scale inferential analyses, conceptually situates these variables as representations of compromised human development or structural racism. Both topics, practice-based and sociodemographic factors, demonstrate complexities in the sources of disproportionality and a substantive representation of these studies suggest nuanced patterns of racism and other forms of bias.

EXISTING REMEDIES TO DEFINE, TRACK, MEASURE, AND ADDRESS DISPROPORTIONALITY THROUGH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

IDEA is a civil rights law based on the 14th Amendment, which ensures equal treatment of all U.S. citizens by providing equal educational opportunity to students with disabilities through a free and appropriate public education. The law was created to address and redress historical inequities associated with the education of students with disabilities in American schools and has governed how students with disabilities should be educated for nearly four decades (Minow, 2010). It was not until the 1997 reauthorization of IDEA that disproportionality was mentioned in the law despite the fact that research identified disproportionality in special education in the 1960s (e.g., Dunn,

1968). The 1997 amendment of IDEA [20 U.S.C. §1418(c), 1998] established a specific policy approach for identifying disproportionality in special education. The language included attention to data collection surrounding disproportionality:

Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and (B) the placement in particular educational settings of such children.

However, as various researchers argue (Albrecht, Losen, Chung, & Middelberg, 2012; Hehir, 2002), the regulations and guidance did not provide sufficient direction for what it meant to collect such information. Additionally, in a policy review memo, Markowitz (2002) identified 29 states, which developed criteria for collecting and identifying districts with disproportionality in special education. Among the 29 states, 26 utilized one criteria and 3 others focused on multiple criteria; the most common criteria included a discrepancy point or a significance test. Given the variation in data collection points, Office of Special Education Programs (OSEP; 2007) provided further guidance in the March 1999 Federal Register (Vol. 64, No. 48) and asked in addition to collecting data on disproportionality patterns, states were required to review policies, practices, and procedures associated with IDEA implementation.

The reauthorization of IDEA in 2004 [20 U.S.C. §1412(a)(22, 24)] further altered the educational policy approach for addressing disproportionality because the 1997 regulations provided very little change in reducing patterns of disproportionality (Albrecht et al., 2012; Hehir, 2002). The 2004 guidance added attention to least restrictive environment and discipline. The 2004 IDEA statute also included recognition that Black students continue to be overrepresented in special education in specific settings. OSEP recognized disproportionality was ever-present which led the reauthorization to include (a) guidance for states to monitor disproportionality, (b) to describe the formula used for identifying disproportionate districts, (c) to require districts found with “significant disproportionality” to set aside up to 15% of IDEA funds for coordinated early intervening services,³ and (d) require the school district to publicly report on the revision of policies, practices, and procedures.

There are two significant provisions related to the guidance and monitoring of disproportionality. The first involves the identification of disproportionality via performance indicators. States have to monitor special education outcomes through 20 quantifiable and qualitative indicators [20 U.S.C. 1416(a)(3)], known as State Performance Plan indicators. Three State Performance Plan indicators are focused on disproportionality.

- Indicator 9 refers to the disproportionate representation of racial and ethnic groups in *special education and related services* that is the result of *inappropriate identification*.

- Indicator 10 refers to disproportionate representation of racial and ethnic groups in *specific disability categories* that is the result of *inappropriate identification*.
- Indicator 4 has two components.
 - 4A refers to significant discrepancies in the rates of long-term suspensions of students with disabilities compared to districts in a state.
 - 4B refers to significant discrepancies in the rates of long-term suspensions of students with disabilities, based on race and ethnicity, compared with districts in a state *due to inappropriate policies, procedures, or practices*.

The second provision in IDEA 2004 provides for the identification of districts with “significant disproportionality,” though there is no clear definition of what “significant disproportionality” is. Significant disproportionality is identified around (a) overrepresentation in special education and a specific disability (b) overrepresentation in special education placement, and (c) the duration, intensity, and type of suspensions in special education (IDEA Data Center, 2014). Additionally “significant disproportionality” does not require a finding of inappropriate policies, practices, and procedures; however, it does require a review of, and if appropriate, revision of policies, practices, and procedures related to IDEA. The citation also triggers an automatic allocation of up to 15% of Part B funds to remedy disproportionality and public reporting on any revisions of policies, practices, or procedures.

Measuring Disproportionality and Assuring Compliance With IDEA

OSEP requires states to set a numerical threshold to identify significant disproportionality in school districts. The process of identifying significant disproportionality is fraught with inconsistencies because each state has its own threshold and way for identifying disproportionality. In addition, there are a variety of measures a state can use to identify disproportionality. The three most common are composition index, risk index, and risk ratio (Boneshefski & Runge, 2014; Donovan & Cross, 2002). The risk ratio is the most commonly used measure.

The risk ratio identifies a specific racial group’s risk of a particular outcome compared with that of all other students. It does this by comparing the risk of one racial group on a particular outcome to the risk of all other racial groups for the same outcome. Disproportionality is indicated through this measure when a particular group’s risk is higher than 1. Thus, a risk ratio of 1 implies equal risk for a particular outcome and a risk ratio below 1 indicates underrepresentation. There is little consistency across states over who should be the comparison group when using risk ratios. The U.S. Department of Education urges comparison against all other groups, while some scholars recommend using White students as the referent because they are the presumed norm.

In addition, as previously mentioned, OSEP’s monitoring of disproportionality is related to compliance with IDEA. If a citation is issued through numerical detection

of disproportionate outcomes in special education, OSEP requires local education agencies (LEAs) to examine their policies, practices, and procedures that are influenced by IDEA for compliance. A citation for placement and classification of students with disabilities requires examination into the *process* of special education referral and placement. However, when there is disproportionality in disciplinary outcomes, there are several procedural protections for students with disabilities. These include functional behavior assessments (FBAs), behavioral intervention plans (BIPs), manifestation determination meetings (MDs), and the provision of interim academic educational services.⁴

Despite the plethora of procedural protections in IDEA, nondominant students are still disproportionality excluded from schooling. Losen, Hodson, Ee, and Martinez (2015) argue that if schools were adequately meeting the legal requirements of IDEA and effectively serving students under IDEA, then nondominant students would not be disproportionality excluded. However, this is not the case. Hyman, Rivkin, and Rosenbaum (2011) also question why Black and Hispanic students are disproportionality suspended despite extensive procedural provisions in IDEA. As with detection of disproportionality, each state has its own time frame and process outlined for assuring compliance with IDEA. Thus some states may require extensive compliance monitoring, while others require very little of LEAs (Albrecht et al., 2012; Artiles, 2011).

Issues With Current Monitoring Structures

Overall, the development of disproportionality legislative policy and guidance provides increased opportunity for targeted data collection, identification of policies, practices and procedures related to disproportionality, and the reallocation of funds to remedy issues of inappropriate identification. However, the improvements between the 1997 and 2004 reauthorizations of IDEA have been fraught with complications. These include confusion regarding the interpretation of disproportionality and significant disproportionality, the allowance of states to provide definitions of disproportionality, and the latitude allowed for states to identify a threshold and develop a formula for identifying disproportionality. Recent reports and research (Albrecht et al., 2012; U.S. Government Accountability Office [GAO], 2013) argue state-level latitude has resulted in significant variations across states as to what constitutes disproportionality and conceptually challenges the notion of what is disproportionality. For example, the U.S. GAO (2013) reports Maryland, Iowa, and Louisiana identify districts as disproportionate based on a relative risk ratio numerical threshold of 2.0 or more, while South Carolina, California, Mississippi, and Connecticut use a 4.0 or more threshold.

Further evidence from the U.S. GAO in 2013 highlights the concern as to whether policy provisions are adding to the disparate outcome because of the absence of clarity in the policy, processes, and formula. The evidence on disproportionality suggests that despite extensive federal legal protections for students with disabilities, gross inequities and violations of educational rights persist—indicating current efforts to

address disproportionality through policy mechanisms are relatively ineffective (Albrecht et al., 2012; Cavendish, Artiles, & Harry, 2015; Skiba, 2013).

THE PARADOX OF IDEA

There is a perplexing paradox deeply embedded in the intersections between disproportionality and IDEA legislation. Artiles (2011) states, an interesting paradox

arises with the racialization of disabilities [because the] civil rights response for one group of individuals (i.e., learners with disabilities) has become a potential source of inequities for another group (i.e. racial minority students), despite their shared histories of struggle for equity. (p. 431)

The paradox essentially highlights a tension between technical understandings and application of IDEA and the sociocultural contexts within which policy is appropriated to practice. Cavendish et al. (2015) state the policies designed to address disproportionality “are not inherently discriminatory, but the impacts of the policy(s) on educational equity are hidden until we examine the consequences behind these engagements” (p. 3). Thus, the paradox calls for a deeper understanding into why technical solutions cannot address disproportionate outcomes.

The Limits of Technical Approaches for Understanding Disproportionality

Disproportionality is often framed as a technical issue that can be “fixed,” through interventions or programs. However, Artiles, Kozleski, Trent, Osher, and Ortiz (2010) highlight how problematic this view is and state “the reluctance to frame disproportionality as a problem stresses technical arguments that ignore the role of historical, contextual, and structural forces” (p. 281). The technical view of special education and IDEA is based on the idea that disability, and deficits, reside within individuals and can be fixed by individual remedies. Thus, the “structural underpinnings” of disproportionality are ignored when a technical approach is relied on (Artiles, 2011). Simply mandating “equal access” through IDEA is not enough to effectively address the historical, political, and economic power differentials associated with race in America (Cavendish et al., 2015).

Leonardo and Broderick (2011) suggest the very definitions associated with disproportionality are problematic. They state,

By conceptualizing the problem [disproportionality] as one of overrepresentation, there is risk of tacit reification and legitimization of the naturalness and neutrality of the bureaucratic system of special education as a whole, and, by extension, of the deficit driven and psychological understandings of “ability” and “disability” within which it is grounded. (p. 2208)

In a similar fashion, Artiles (2013) critiques the impact of individualized definitions of disability in federal law. He states that disability categories such as LD, when they are defined without consideration of culture and context “naturalizes the racialization of disabilities, marshaling evidence that conceivably legitimizes racial disproportionality”

(p. 338). This suggests that when labels, and remedies for addressing students embodying these labels, do not recognize the importance of context, students become deficitized. They are the issue, the source of disproportionality, and are thus justifiably classified, placed, or excluded from the education process.

In addition, when solutions for addressing inequities are applied in a technical manner, the impetus of the legislation, or the social justice project, becomes lost. McCall and Skrtic (2010) argue that the social agenda behind special education has been “depoliticized” through the bureaucracy of the system. They state,

Those whose needs had been politicized were recast as individual clients rather than participants in a political movement, thus re-positioning them as individual victims and passive recipients of predefined services rather than political agents involved in interpreting their needs and shaping their life conditions, thereby stripping them of their human dignity. (p. 12)

Under current legislative efforts, the focus on individual needs decenters the systemic nature of disproportionality.

Ideological Underpinnings: Examining Race- and Context-Neutral Assumptions in Disproportionality Policy

Behind technical approaches to addressing disproportionality lies a colorblind ideology, which fails to explicitly recognize how Whiteness is often viewed as race neutral. This taken-for-granted ideological assumption has consequences for groups that do not fit into the implicit cultural norms associated with Whiteness. Saito's (2009) study on urban public policies identifies the pernicious effects of unrecognized colorblindness embedded in public policies. He states,

People working to enact and support race-neutral public policies may ignore the ways in which race is already present in the ideologies and practices of the larger society that shape the formation and implementation of policies. As a result, policies that appear race neutral may in fact be structured in ways that have racialized outcomes. This occurs because the policies do nothing to counter the ways in which race is already present, and thus the policies serve to reinforce racialized practices. (p. 4)

Saito emphasizes that policies which appear to be racially neutral become racialized when the effects of the policy differentially affects racial groups. The same reasoning can be applied to IDEA.

On the surface, IDEA is a race-neutral policy. Although recognition of disproportionality through IDEA highlights a race-based outcome the remedies, procedural protections, and interventions embedded in IDEA do not explicitly attend to racial, ethnic, and cultural differences. Thus the race-neutral approach embedded in IDEA contributes to an understanding of disability that is separate from race and therefore racialized outcomes are located within an individual rather than in systems of oppression. This individual-centered and race-neutral approach limits the ability of research-based interventions to eliminate disproportionate outcomes in special education.

EXAMINING DISPROPORTIONALITY REMEDIES: INDIVIDUAL SOLUTIONS FOR A SYSTEMIC ISSUE

The next section is dedicated to understanding current interventions recommended in IDEA, legitimated in research and practice, as effective means for meeting the educational needs of students with disabilities and hence, for addressing disproportionality. However, as Sullivan, Artiles, and Hernandez-Saca (2015) state, special education interventions “may have been misconceived in foci” because they are “too molecular to affect the other interconnected and distal forces that drive disproportionality” (p. 131). Thus, although each intervention described below is research based, they do not collectively improve outcomes for *all* students.

Multitiered Systems of Support (MTSS) and Response to Intervention (RtI)

Response to Intervention emerged within the special education research community in the early 2000s in response to a commission by the U.S. Congress of a set of papers and related research conference to discuss U.S. special education (Finn, Rotherham, & Hokanson, 2001). The papers and conference centered on examining weaknesses in the traditional approach of determining a significant discrepancy between students’ academic achievement and intellectual ability, as measured by standardized achievement and intelligence test batteries, typically administered outside students’ classrooms by schools’ psychologists and special education teachers, as the basis for determining special education eligibility under the federal category of specific learning disability (SLD; Lyon et al., 2001), such approaches as “wait-to-fail” models whereby students who were struggling did not receive formalized supports until such a discrepancy could be evidenced (Bradley, Danielson, & Hallahan, 2002). Soon thereafter, RtI was included in IDEA 2004 as an option, state education agencies (SEAs) could allow LEAs (i.e., school districts) to utilize in special education eligibility determination processes, particularly related to SLD (Vaughn & Fuchs, 2003). Since, RtI frameworks have been well-documented in multidisciplinary education research, and have been the subject of scrutiny with regard for their adequacy in addressing issues of inequity in general and special education, including disproportionate representation of racial, ethnic, and linguistic nondominant students (e.g., Artiles, Bal, & Thorius, 2010; Thorius & Maxcy, 2015).

Although there is considerable variability in how RtI frameworks have been operationalized, key premises on which all frameworks are grounded include attention to prevention of school failure, reliance on curriculum-based measurements of students’ progress to determine the need for alteration of instruction or application of some form of academic or social intervention, and focus on early application of such intervention (Thorius & Maxcy, 2015). Several variations exist across the application of RtI frameworks; the first is in the number of framework “tiers.” This variation is reflected in a recent vernacular shift to the term MTSS (Jimerson, Burns, & VanDerHeyden, 2016) as both a synonym for RtI, and inclusive of students’ social and emotional functioning, intervention, and special education determination typically under the category of Emotional Disturbance addressed by Positive Behavior

Interventions and Supports (PBIS; described in the subsequent section) in addition to traditional RtI frameworks' focus on literacy (Vaughn & Fuchs, 2003). Second, RtI frameworks vary in relation to whether instruction and interventions are standardized in selection and application with students across similar performance profiles (i.e., standard-protocol models), or selected by educators as they interpret a student's individual performance (i.e., problem-solving models). Within the first tier across all RtI framework variations, students are to experience evidence-based general education instruction and have their progress monitored by educators for expected rates of improvement in relation to peers. Also common across all iterations of RtI is a reliance on instruction and intervention tested in experimental research, as well as reliance on monitoring students' progress using curriculum-based measures (Fuchs, Fuchs, & Stecker, 2010). Finally, across RtI frameworks, the intensity of interventions and supports increases as the number of students expected to require such supports as a result of failure to respond to less intensive evidence-based instruction and intervention within earlier tiers intensive tier of intervention decreases; students who reach the top, typically the third, tier (Fuchs, Fuchs, & Compton, 2013), are considered for special education eligibility on the basis of failure to respond adequately to all previous interventions and on the assumption that poor instruction as the reason for failure has been ruled out (Fuchs, 2002, as cited in Artiles, 2015). Several researchers and policymakers have expressed hope in the potential for RtI to address the disproportionate representation for nondominant racial, ethnic, and linguistic students in special education on the basis of redistribution of quality opportunities to learn earlier and more intensively on the basis of assessed student need (e.g., Artiles et al., 2010), yet also cautioned that such approaches must account for multilayered and nuanced understandings of culture which shape how RtI is conceptualized and enacted locally (Artiles, 2015; Thorius & Maxcy, 2015).

Recently, Artiles (2015) illustrated how RtI is imbued with a five-dimensional framework of culture shaping how students' cultures "IN the classroom" is or is not considered within RtI research, or when considered, done so without attention to students' "identity kaleidoscopes," (p. 14), echoing in part Thorius and Sullivan's (2013) review of existing research on RtI applications with ELLs, which found little attention to the quality of universal instruction in RtI's first tier. Moreover, concerns with the impact of RtI on special education disproportionality continue to mount; in 2010, McKinney, Bartholomew, and Gray found patterns of nondominant racial and linguistic student overrepresentation in RtI's second and third tiers and Bouman found that African American student SLD disproportionality in California actually increased over a 5-year period of RtI implementation despite overall reduction in SLD eligibility across all racial groups combined. More recently, Thorius, Maxcy, Macey, and Cox (2014) illustrated how urban elementary school educators enacted RtI in competition with other policy and political factors, and informed by normative and deficit assumptions about racially nondominant students and families, contributing to a local "zone of mediation" (Welner, 2001), where nondominant students were often considered for special education eligibility without or with limited interventions.

Taken together, we hope to have illustrated the need for RtI research that provides “insight into the apparent immutability of certain equity concerns such as the disproportionate representation of students of color in special education, along with contextual considerations for those who develop policy and introduce it into local sites” (Thorius & Maxcy, 2015, p. 7). With regard for the latter, contextual considerations for RtI (i.e., MTSS) policy development and introduction into local settings, we conclude that attention to strong “implementation” fidelity of RtI emphasized in the bulk of existing research with regard to instruction (e.g., VanDerHeyden, Witt, Gilbertson, 2007), progress monitoring (e.g., Busch & Reschly, 2007), interventions (e.g., Koutsoftas, Harmon, & Gray, 2009), and special education eligibility determination (e.g., Shinn, 2007) is not enough to examine why and how RtI enacted in everyday practice may or may not lead to the reduction of special education disproportionality for nondominant students. We contend that inquiry into the complexity of local factors shaping interpretation, implementation, and negation of RtI policy is of equal importance.

Discipline and Positive Behavioral Intervention Systems

There are two sections of federal policy that focus on discipline disparities—IDEA 2004 and Every Student Succeeds Act (ESSA) 2015. The former outlines a focus on the rates of suspension occurring among students with disabilities already discussed. The reauthorization of the Elementary Secondary Education Act (2015)—now described as the Every Student Succeeds Act (ESSA S. 1177)—also establishes a federal perspective and approach on discipline. The main approach of ESSA on school discipline is to reduce the overuse of exclusionary practices that remove students from the classroom.

These policy provisions provide some important movement forward in addressing discipline disparities. For instance, SEAs will now be required to collect data from school districts on different forms of exclusionary discipline practices; SEAs will receive funds to support activities and programs on behavioral interventions; and LEAs will identify schools with high rates of discipline disaggregated by subgroups. In the aggregate, these policy provisions require identification of a discipline problem, collection of data on the problem, and behavioral interventions to address the problem. Though ESSA does not explicitly highlight disproportionate discipline outcomes, the guidance package provided by the U.S. Department of Education/Department of Justice (2014) articulates the conceptual connection between disparate outcomes and some of the ESSA policy provisions. The guidance frames for LEAs that the racial disparities demonstrated in the Civil Rights Data Collection, collected by Office for Civil Rights, are not occurring by chance and as such LEAs need to be aware of their statutory obligations to ensure administration of discipline without discrimination on the basis of race, gender, color, or national origin. In order to prevent discrimination, the guidance argues LEAs need to understand “fair and equitable discipline policies” are components of a school environment that ensures all students learn and grow; “Equipping school officials with an array of tools to support

positive student behavior—thereby providing a range of options to prevent and address misconduct—will both promote safety and avoid the use of discipline policies that are discriminatory or inappropriate” (U.S. Department of Education/Department of Justice, 2014, p. 6).

Overall, the combination of IDEA 2004, ESSA 2015, and the U.S. Department of Education/Department of Justice guidance package “make room for schools” to consider additional remedies for handling student behavior differently such as considering social and emotional learning approaches. For example, the compendium directory in the guidance package for LEAs provides resources that cite trainings and interventions focused on social and emotional learning. Over the past 10 years, remedies such as PBIS have become prominent strategies for addressing disparate outcomes. However the research is mixed in understanding whether PBIS is structured to address disparate outcomes.

Influenced by public health models designed to change behaviors, PBIS uses a multitiered systems approach to proactively and positively address discipline in schools (Mrazek & Haggerty, 1994; Walker et al., 1996). PBIS is generally composed of three tiers that provide a continuum of behavioral interventions. Similar to RtI, the PBIS model has a universal, or primary tier to support all learners, a secondary tier which focuses on targeted groups of students, and a third tier which provides the most intense behavioral supports and interventions (see Sugai & Horner, 2002, for a thorough description).

The development of PBIS appears to hold a great deal of promise for identifying and changing micro-level teacher behaviors and school structures that may decrease the effectiveness of school discipline and classroom management. PBIS (see, e.g., Horner, Sugai, Todd, & Lewis-Palmer, 2005) uses the examination of local disciplinary data by school personnel as a springboard for reengineering disciplinary behaviors and structures in those schools. The federally sponsored National Technical Assistance Center on PBIS reports that, as of 2016, over 21,000 schools in 47 states (including Washington, D.C.) are implementing PBIS as it is defined by that Center.

Rates of problem behaviors appear to decrease with PBIS by increasing systematic and consistent use of active supervision, positive feedback, and social skills instruction (Colvin, Sugai, Good, & Lee, 1997; Heck, Collins, & Peterson, 2001; Kartub, Taylor-Greene, March, & Horner, 2000; Leedy, Bates, & Safran, 2004; Lewis, Colvin, & Sugai, 2000; Lewis, Sugai, & Colvin, 1998; Nelson, Colvin, & Smith, 1996; Putnam, Handler, Ramirez-Platt, & Luiselli, 2003). Positive behavioral interventions, based on FBAs, have demonstrated a positive impact on the functioning of students with serious problem behaviors (Fairbanks, Sugai, Guardino, & Lathrop, 2007; Ingram, Lewis-Palmer, & Sugai, 2005; Newcomer & Lewis, 2004). In general, there appears to be a high probability that, when implemented with fidelity, PBIS can contribute to reductions in school suspension and expulsion and other positive educational outcomes.

Despite its general promise as a method of making school discipline more efficient and less exclusionary, there is little to no evidence concerning how or indeed whether PBIS could be used to address issues of culture and disproportionality. Outside of

theoretical reviews, concerning what such a system might look like (see, e.g., Kozleski, Sobel, & Taylor, 2003; Utley, Kozleski, Smith, & Draper, 2002), the sole empirical investigation of a culturally responsive model of PBIS is Jones, Caravaca, Cizek, Horner, and Vincent (2010), who adapted schoolwide PBIS for an elementary school-serving Navajo students. Although the preliminary results of incorporating Dine language, culture, and history into one school's PBIS implementation suggested a substantial decrease in the overall rate of office discipline referrals, it is clearly impossible to offer practical guidance to the field from a single case study.

Although it might be presumed that an intervention that reduced suspension/expulsion rates in general might also reduce disproportionality in discipline, emerging data seem to contradict this assumption. Skiba et al. (2008) explored patterns of office disciplinary referrals in a nationally representative sample of 436 elementary and middle schools that had been implementing schoolwide PBIS for at least 1 year. Aggregated results appeared to show that schools that have been implementing PBIS tend in general to use an efficient, graduated system of discipline (e.g., minor infractions receive less severe punishments and more severe consequences are reserved for more serious infractions). A dramatically different pattern was exhibited, however, when the data were disaggregated. Across the national sample, African American and Latino students were up to five times more likely than White students to receive suspension and expulsion for minor infractions. Such data make a strong case that explicit adaptations will be required to ensure that all interventions, including PBIS, are culturally responsive.

The difficulty that educators, especially White educators, have in openly talking about race and racism has been extensively documented (Haberman, 1991; Henze, Lucas, & Scott, 1998; King, 1991; Pollock, 2004; Skiba, Poloni-Staudinger, Simmons, Feggins-Azziz, & Chung, 2005). The typical understanding of racism, that one is either seen as "racist" or "nonracist" (Trepagnier, 2006), provides a strong motivation to avoid the topic, since any indication of a lack of cultural responsiveness induces a fear that one could be seen as "racist" (Pollock, 2004). Together these data make a compelling case that, although PBIS has proven to be a generally promising intervention for creating changes in school discipline and behavior management, PBIS implementation by itself in no way guarantees changes in ubiquitous racial and ethnic disparities in school discipline practices. Indeed, if interventions addressing disciplinary and management practices are framed within traditional institutional structures and perspectives that have historically advantaged students from the majority culture, it is possible they will be effective only with White students. This could *increase* the racial/ethnic disciplinary gap, even while appearing to reduce overall rates of referral, suspension, and expulsion.

RECONCEPTUALIZING EDUCATIONAL EQUITY REMEDIES TO ADDRESS DISPROPORTIONALITY

Currently, the field of special education is focused on interventions and remedies that are individualized, discreet, and proven effective through rigorous randomized

control experiments. For example, Trainor and Bal (2014), in their review of intervention research on transitions for students with disabilities, found there are very few studies that consider culture and context when an “effective” intervention is validated. This is highly problematic because IDEA legislation has an explicit “peer review” requirement that encourages states and districts, educational leaders, and practitioners to rely on rigorous peer-reviewed research to improve outcomes for students with disabilities.

A more nuanced approach is needed that allows for systemic factors (Kozleski & Smith, 2009), and culture (Artiles, 2015) and context (Thorius & Maxcy, 2015) to be included in efforts to improve outcomes for students with disabilities. To address deep-seated and systemic special education inequities like disproportionality, researchers and practitioners should actively engage with the implications of culture, context, and difference on practice (Sullivan & Artiles, 2011). Work done by principal investigators and staff of the National Center on Culturally Responsive Educational Systems—a U.S. Office for Special Education Programs funded technical assistance and dissemination center charged with eliminating special education disproportionality—take this perspective. For example, Kozleski and Zion created a systemic assessment of policies and practices related to special education disproportionality to be utilized by multiple stakeholder teams at the district level (Kozleski & Zion, 2006a, 2006b).

More recently, a new generation of scholars, many of whom studied under National Center on Culturally Responsive Educational Systems’ principal investigators have continued and extended this earlier work. For example, Thorius and Tan (2015) described how under the auspices of a regional equity assistance center, they and other center staff worked with a state department of education to apply and refine the use of Zion and Kozleski’s earlier work, including how such application shapes the identification of local priorities and professional learning with regard for eliminating special education disproportionality. In addition, Bal has led a group of colleagues (e.g., Bal, Kozleski, Schrader, Rodriguez & Pelton, 2014; Bal, Thorius, & Kozleski, 2012) in the application of formative intervention (Engeström, 2011) and more broadly, cultural historical activity theory (Foot, 2001; Gutierrez, 2008; Gutierrez & Larson, 2007) in the creation of, *learning laboratory methodology* within local enactments of PBIS to generate points of praxis for practitioners to facilitate systems change and address disproportionality in discipline. Efforts like these must continue in order to disrupt disproportionate outcomes. In conclusion, it is important that future work on disproportionality ceases to simply describe the issue or debate whether or not it exists. Rather, the research should dynamically frame the issue of disproportionality because it is a complex educational issue that cannot be solved with individualized remedies devoid of consideration of context and culture.

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NOTES

¹We use the term "nondominant" to collectively refer to groups most affected by disproportionality. We model this choice from Artilles (2015), where he states, "Following Gutierrez (2008), I use the term 'nondominant' to emphasize the oppressive role of power and power relations in the lives of these individuals. Note, however, that this term does not imply that non-dominant students are passively subjected to oppression; indeed, agency and active participation play key roles in the lives of these individuals" (p. 18).

²Some scholars have questioned whether overrepresentation exists by employing sophisticated quantitative research methods. For example, Morgan et al. (2015) used individual-level data, multilevel modeling that goes beyond the bivariate analyses of past studies, and the authors include more covariates. Their findings suggest students of color are underrepresented in special education.

³Coordinated early intervening service funds can be used for professional development activities that are focused on scientifically based academic and behavioral interventions and for educational and behavioral supports. However, despite the availability of these funds, very few states actually use them and tracking their usage has been inconsistent (Burdette & Sopko, 2010).

⁴Each procedural protection is individualized and designed to assure that a student with a disability is protected from being unfairly disciplined. The FBA and BIP are preventative measures tailored to individual student needs. An FBA is designed to provide insight into why a student behaves in a certain way and leads to a solution for that behavior through the development of a BIP. A BIP tries to proactively divert and change unproductive behaviors (Moreno & Bullock, 2011). In addition, students with disabilities are protected from being excluded from the school setting for more than 10 days when suspended through an MD meeting. An MD is convened with several school staff in order to determine whether a student's behavior is a manifestation of a student's disability. If the student's behavior is related to their disability, they cannot be suspended. If they have inflicted serious bodily harm, the student can be placed in an interim alternative education setting for up to 45 school days (Ryan, Katsiyannis, Peterson, & Chmelar, 2007) and still have access to the general education curriculum, the capacity to meet their Individualized Education Program goals, and receive an FBA or BIP as needed (Katsiyannis, Losinski, & Prince, 2012).

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