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# Disproportionality Fills in the Gaps: Connections Between Achievement, Discipline, and Special Education in the School-to-Prison Pipeline

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## Abstract

*The focus on the achievement gap has overshadowed ways in which school systems constrain student achievement through trends of racial disproportionality in areas such as school discipline, special education assignment, and juvenile justice. Using Critical Race Theory, we reframe these racial disparities as issues of institutionalized racism. First, we examine specific education policies and laws that contribute to racialized populations becoming part of the School-to-Prison Pipeline. Second, using a state-level case study in Colorado, we illustrate through critical race spatial analysis the increasing overrepresentation of students of color as they move through the School-to-Prison Pipeline from public schools to the juvenile justice system. Finally, we discuss suggestions for improving racial equity and reducing the flow of the School-to-Prison Pipeline.*

*Keywords:* school-to-prison pipeline, Critical Race Theory, special education

Racial disproportionality<sup>2</sup> in test scores, often referred to as the achievement gap, has been consistently documented in research and the media (Ladson-Billings, 2006). Dominant discourse has attributed the achievement gap to problems in students' cultures, communities, or internal deficits (Valencia, 1997). In other words, the achievement gap

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<sup>2</sup> In this paper, we will use the terms racial disproportionality, racial disparities, and overrepresentation interchangeably. We recognize that Asian students often experience underrepresentation nationally (Donovan & Cross, 2002) as do English language learners in particular regions (Artiles, Rueda, Salazar, & Higareda, 2005), which is also a form of racial marginalization (e.g., students miss additional services because of the particular racial or linguistic group to which they belong). However due to space constraints, we have limited our discussion to racial disproportionality through overrepresentation.

focuses on *student* underperformance along racial categories. However, the focus on the achievement gap has overshadowed other ways *school systems* enable or constrain student achievement through other means, including disciplinary actions and special education assignments. Gregory, Skiba, and Noguera (2010) ask whether the achievement gap and the discipline gap are actually two sides of the same coin; they believe racial disparities in discipline contribute to racial disparities in test scores. We agree that lower achievement for certain racial groups can be connected not only to racial disproportionality in discipline, but also to special education and juvenile justice assignment. In other words, it is disproportional treatment and practices across a number of interconnected educational systems that result in the disproportionate outcomes in the School-to-Prison Pipeline (“Pipeline”).

Researchers and educators have documented the serious ramifications of the overrepresentation of students of color in suspensions and expulsions, linking that to patterns of overrepresentation in juvenile and adult prisons (Meiners, 2007; Quinn, Rutherford, Leone, Osher, & Poirier, 2005). Literature on the Pipeline also often acknowledges that special education placements can be a trapdoor, funneling students into incarceration (Kim, Losen, & Hewitt, 2010; National Association for the Advancement of Colored People, 2005). Yet focus on the intersections between special education status, race, and the Pipeline has been minimal (Kim et al., 2010).

In this paper, we draw attention to the institutional factors that link the achievement gap with the overrepresentation of students of color in school disciplinary actions, special education assignment, and juvenile justice placement. First, we frame these racially disproportionate trends in special education and disciplinary actions within specific education policies and laws that contribute to overrepresentation in the Pipeline using Disability Critical Race Theory (DisCrit; Annamma, Connor, & Ferri, 2013). Our analysis of state and federal educational laws and policies and their implementation in Colorado illustrate how these legal instruments have historically influenced, and continue to impact, racial disproportionality in these interconnected areas, thereby contributing to institutionalized racism.

We then provide a state-level case study of Colorado using descriptive statistics to illustrate the intersections between disciplinary actions, special education, and juvenile justice, each representing one step of the Pipeline. Using Critical Race Spatial Analysis (Pacheco & Velez, 2009), we exhibit the increasing overrepresentation of students of color as they move through the Pipeline from public schools to the juvenile justice system. These representations are included to provide a critical spatial understanding of how the Pipeline is manifested. By taking the interdisciplinary approach outlined above, we reveal trends in the removal of students of color from general education through disproportionate discipline practices and special education assignment and relate these trends to particular legal and policy contexts. In our discussion, viewing racial disproportionality from an institutional lens, we present suggestions for improving racial equity and dismantling the Pipeline.

### **Theoretical Framework**

We frame this work with Critical Race Theory (CRT) and DisCrit, a branch of CRT, to inform an intersectional analysis and make visible how students of color, particularly those with disabilities, are positioned in the Pipeline (Annamma et al., 2013; Crenshaw, Gotanda, Peller, & Thomas, 1995). Goodwin (2003) reminds us, "Labeling provided the vehicle to move the undesirable from common view and public space" (p. 231). CRT and DisCrit provide an opportunity to explore the phenomena and impacts of educational labeling by centering race and its intersections with disability. Below we summarize the evolution of CRT and DisCrit and then share the affordances of this framing.

#### **Critical Race Theory**

Sojourner Truth, Anna Julia Cooper, W.E.B. DuBois, and others laid the groundwork for CRT by foregrounding race in discussions of inequities, listening to those who had been traditionally marginalized, and analyzing inequities with an intersectional lens (Lynn, 1999; Rabaka, 2007; Solórzano & Yosso, 2001). Developing CRT, Derrick Bell and other legal scholars took up the call of their intellectual ancestors and critiqued the Critical Legal Studies movement for scholarship that analyzed class but ignored race (Crenshaw et al., 1995). Recognizing school integration as interest convergence (Bell, 1979), centering the voices of racialized communities (Matsuda, 1987), and abandoning uni-dimensional approaches to identity (Crenshaw, 1991) were some strategies CRT scholars used to counter the ways the legal system perpetuated racialized inequities. Education scholars soon recognized the potential of CRT to address inequitable schooling practices and applied it to racialized education resources and outcomes (Ladson-Billings & Tate, 1995). CRT boundaries stretched across disciplines and grew to address intersections of racialized experiences with gender, language, and immigration status; these offshoots of CRT developed into FemCrit and LatCrit (Solórzano & Bernal, 2001; Wing, 2003). Several other branches have further expanded the boundaries of CRT addressing issues of rights and legal status of indigenous people (TribalCrit), the intersections between race and sexuality (QueerCrit), and more (Brayboy, 2006; Misawa, 2010). CRT scholars have also explored Whiteness, the ideology of White supremacy, and the societal impacts of both (Gillborn, 2005; Haney-López, 1996; Harris, 1993; Leonardo, 2004).

#### **DisCrit**

DisCrit was developed to explicitly connect "ways in which both race and ability are socially constructed and interdependent" (Annamma et al., 2013, p. 5). Building on the foundation of disability studies, DisCrit repudiates educational frameworks that focus on the search for, diagnosis of, and remediation of learners who are different without considering context, culture, and history; in other words, it renounces the medical model of disability (Brantlinger, 1997; Nocella, 2008). DisCrit also rejects schooling practices that place blame for academic and/or behavioral failure solely on the student through labeling children at-risk, deficit, and/or disabled without considering the social, political, and economic context and consequences (Artiles, 1998; Collins, 2003; Gutiérrez & Stone, 1997). The great weakness of disability studies, however, is that it often employs

Whiteness as a tool and claims a singular disabled identity, ignoring or superficially addressing the ways race and ability are intertwined (Bell, 2006; Blanchett, Klingner, & Harry, 2009; Connor, 2008). To resist White supremacy, DisCrit culls from CRT; both jettison deficit perceptions of children of color and their potential ability levels, recognizing these views as a-historical and a-theoretical (Lynn, 2004). However, previously, CRT has historically ignored or only superficially mentioned intersections between race, labeling, and special education (Artiles, 1998; Erevelles & Minear, 2010; Ferri, 2010; Patton, 1998). DisCrit addresses the ways deficit views of children of color manifest in traditional special education literature.

In order to rebuff the false binary between normal and abnormal, between ability and disability, and between general and special education, DisCrit forces the unstable connections of these dialectical relationships into the open. DisCrit seeks to bridge the chasms by confronting the mutually constitutive nature of race and ability and by exploring how unmarked norms of White and able-bodied-ness influence perceptions of both. DisCrit examines ways that “race, racism, dis/ability and ableism are built into the interactions, procedures, discourses, and institutions of education, which affect students of color with dis/abilities qualitatively differently” (Annamma et al., 2013, p. 7).

This conceptual framework of CRT and DisCrit provides several affordances that inform the framing of the study from our research questions to our analysis. First, understanding that racism and ableism are common occurrences, not aberrations, this conceptual framework exposes how “neutral”<sup>3</sup> discourse, policies, and pedagogy reinforce normative standards of White and able-bodied, marking those that differ from these norms as problematic (Delgado & Stefancic, 2001; Rabaka, 2009). Foregrounding race provides an opportunity that other traditional and critical theories miss, as it allows us to focus attention beyond how issues are often classed toward understanding how they are raced (Dalton, 1987). For example, special educators who subscribe to the medical model consistently offer poverty as an explanation for why more children of color are in special education. The argument goes that poverty causes health problems, which, in turn, cause physiological delays that produce higher rates of disabilities. However, centering race illustrates how these explanations are incomplete at best and an attempt to ignore the racialized nature of inequities in schools, at worst. In contrast, research suggests that even in wealthier districts, Black males are disproportionately labeled mentally retarded (Oswald, Coutinho, & Best, 2002); when poverty is accounted for, overrepresentation of children of color in special education remains.

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<sup>3</sup> An example of “neutral” policies and discourse is to utilize racial categories in order to describe bodies even if the language is problematic (e.g., Hispanic). As we frame our study using CRT to outline structural factors for racial disproportionality, we work from existing statistical categories of ability and race, not because we believe they are biological realities but because these categories highlight socially constructed inequities. We feel this is important to state as we in no way wish to reproduce these classifications or impose naming on any one individual or group of people; instead we want to highlight how the process of structural racism externally imposes identities on individuals by applying socially constructed labels and associating specific actions and subsequent consequences to those so labeled. We thus acknowledge that while ability and racial categories are socially constructed, they do have real outcomes for the lived experiences of youth of color.

Second, CRT and DisCrit expose the normalizing processes that contribute to viewing race and disability as biological facts or inherent deficits while ignoring the economic implications of labeling some as different and less worthy of societal benefits relative to others (Ferri & Connor, 2009; Watts & Erevelles, 2004). Through this framework, we analyze disproportionality in disciplinary actions, special education assignment, juvenile justice placement, and achievement as mechanisms for labeling different as deficit; the Pipeline is the inequitable outcome associated with those constructions.

Third, issues viewed uni-dimensionally limit the understanding of how multiple subordinated identities interact (Solórzano & Bernal, 2001). CRT and DisCrit trouble singular notions of identity and demand a focus on counter-narratives, the lived experiences of oppressed populations, contrasted by the master narrative, the dominant ideology of privileged groups (Matsuda, 1987; Solórzano & Yosso, 2001). Dominant discourse surrounding the achievement gap suggests that it is the fault of students of color with disabilities that they are in the Pipeline—the inevitable consequences of being of color and less abled than their peers. CRT and DisCrit are useful in allowing us to examine systemic inequities that are illuminated from our quantitative analysis, shifting the focus from individual behavior as the problem to a structural examination.

Fourth, the focus on structural aspects of inequity centered within CRT and DisCrit allows us to explore some of the legal mechanisms that have historically impacted, and continue to impact, the lived experiences of youth. DisCrit builds upon CRT's legal foundations by recognizing that the legal system is a tool for maintaining and strengthening systemic racial inequities (Annamma et al., 2013). Therefore a legal analysis that addresses the ways youth achievement is impacted by legal structures is useful and necessary.

Finally, a CRT framework considers the spatial distribution of inequity using critical race spatial analysis (Velez, Solórzano, & Pacheco, 2007). Through a presentation of our data in both traditional graphic forms and geospatial displays, we hope to go beyond description of inequities to understand “how structural and institutional factors divide, constrict, and construct space to impact the educational experiences and opportunities available to students based on race” (Pacheco & Velez, 2009, p. 293). *Space Invaders*, “outsider” scholars who have connected the importance of spatial analysis to highlight how inequities are enacted over geographies, have always existed in CRT (Bell, 1992). As Aoki (2000) states:

(S)pace and place should matter... particularly to "outsider" scholars...many of whom are themselves space invaders of legal academia at large. By contesting our received notions about the inertness and apparent neutrality of space, these space invaders create intellectual room to consider the links between: (1) how the micro-politics of the daily lived experience of place relate to (2) the macro phenomenon...which are marked by their unevenness and masked by their seeming naturalness, even while they are driven by the manic logic of flexible capital accumulation; (3) dynamic constructions of race within U.S. borders and ways that an analysis of spatial outcomes within the United States may give

empirical support to arguments that racism in this country is not aberrant, it is pervasive and rational... (p. 956)

Here, we take up the mission of other Space Invaders by connecting the spatial location of students and the way in which youth experience racial inequity within schooling (Soja, 2010). Ultimately, this conceptual framing recognizes the multiple dimensions of the Pipeline and connects them through legal, statistical, and geospatial analyses.

### **Literature Review**

In order to create interdisciplinary work as it relates to disproportionality in experiences and outcomes, we review literature from a wide variety of fields including special education, school discipline, juvenile justice, and achievement. We believe that this analysis will offer a more complete picture of disproportionality in education institutions.

### **Racial Disproportionality in Special Education and Discipline**

School actions that label students as disruptive or disabled are the first step in the Pipeline, marking students as different from the norm and therefore problematic. There is a national pattern of overrepresentation of students of color in the special education categories that rely on the judgment of school professionals: Mental Retardation (MR)<sup>4</sup>, Emotional Disturbance (ED), and Learning Disability (LD) (Donovan & Cross, 2002; Heller, Holtzman, & Messick, 1982). However, this overrepresentation of students of color does not occur in disability categories that are medically defined<sup>5</sup> (e.g., blind, deaf; Harry & Klingner, 2006), indicating a problem exists when categories that rely on subjective assessments lead to school professionals finding students of color to be disabled more often than those categories that are defined by clear medical criteria (Parrish, 2002).

This same pattern of overrepresentation based on subjective judgments also appears in disciplinary actions in public schools. Students of color are more likely to be referred and punished for subjective infractions (e.g., loitering, excessive noise), whereas White students are punished for more serious, objective infractions (e.g., smoking, vandalism) (Skiba, Michael, Nardo, & Peterson, 2002). The overrepresentation of racially marginalized students in disciplinary actions cannot be explained away by socioeconomic

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<sup>4</sup> While disability terminology varies across states and studies, for clarity we use the terms that are used by the federal government in the Individuals with Disabilities Act (IDEA, 2004). Some of this language is extremely problematic (e.g., Mental Retardation). As we discussed in footnote 2, we work from existing statistical categories of ability and race, not because we believe they are biological realities but because these categories highlight socially constructed inequities.

<sup>5</sup> We recognize that even medically defined disability categories involve subjective judgments and can be problematic because hegemonic Whiteness situates people of color as disabled more often because they don't meet cultural normative standards. This occurs not only in education but in the medical and psychological fields as well (Metzl, 2009). However, again due to space issues, we will focus on the categories that show the greatest racial disproportionality in schools, often referred to as the "high incidence" or "judgment categories" (Harry & Klingner, 2006).

status or individual negative behaviors (Losen, 2011). These findings reinforce that race is salient in decisions of who, how, and when to discipline a student.

Intersections of student assignment to special education and disciplinary actions should also be considered. Students with a disability label are more likely to be referred for disciplinary actions and their chances of being suspended or expelled are more than double their general education peers (Cooley, 1995; Skiba, Peterson, & Williams, 1997). Students in special education are suspended as a result of a referral more often than students in general education (Parrish, 2002) even though over 90% of the disciplinary actions of students in special education are for reasons similar to those of their non-disabled peers (Cooley, 1995). In other words, students in special education are getting disciplined at higher rates than peers in general education for similar infractions. Thus, students in special education, many of whom are also of color, are more likely to be subject to disciplinary actions and become a part of the Pipeline (Meiners, 2007; Wald & Losen, 2003).

### **Racial and Disability Disproportionality in Juvenile Justice**

Students of color, who are overrepresented in special education and disciplinary actions, are also overrepresented in the juvenile justice system. Leiber (2002) reviewed juvenile justice data from 43 states and found "minority youth overrepresentation was evident in every state" (p. 10). Youth of color were on average more than twice as likely to be incarcerated as their White peers, with overrepresentation greatest for African American youth. Additionally, in some states youth of color were overrepresented in every decision point from arrest to adjudication to sentencing (Leiber, 2002).

Youth with disabilities are also overrepresented in the juvenile justice system. The incarcerated youth population with diagnosed disabilities averages between 33%-37% compared to the public school average for students with disabilities of 12%-14% (Quinn et al., 2005; Rutherford, Bullis, Anderson, & Griller-Clark, 2002; Young, Phillips, & Nasir, 2010). Students labeled under two judgment categories of special education (ED, 47.7% and LD, 38.6%) account for over 85% of incarcerated juveniles with disabilities (Quinn et al., 2005). Recalling that there is racial overrepresentation of students of color in the categories of ED and LD in public schools, this overrepresentation of students with disabilities suggests that many of these incarcerated youth are also students of color. In fact, African American youth with disabilities are arrested at a rate of 40% compared to 27% for White youth with disabilities (Oswald et al., 2002).

### **Racial and Disability Disproportionality in Achievement**

In addition to examining the life outcomes of youth of color with disabilities, we also wanted to examine achievement. Here, we define achievement beyond performance on a standardized test, to include dropout and graduation rates. In taking this view of achievement we examine not only performance on standardized measures, which are suspect from a CRT perspective, but also consider how a high school diploma offers life opportunities to traditionally marginalized youth.

Historically, most students of color have lower achievement scores than their White peers. These trends continue today even when controlled for income (Ladson-Billings,



2006; National Center for Education Statistics, 2011). Additionally, students of color have less access to advanced placement or honors classes resulting in fewer racially marginalized students admitted to college (Blanchett, 2006; Kozol, 1992). Graduation rates and dropout rates also continue to be impacted by race and disciplinary actions. Schools with high suspensions for students of color also demonstrate high dropout rates (Felice, 1981; Skiba et al., 2002).

The situation is often much worse for students of color with disabilities. The graduation rate for White youth with ED is considerably higher relative to Black youth with ED (48% and 27.5%, respectively). High drop out rates for African American students with ED (58%) put these students at risk of incarceration. Within three to five years of dropping out, 73% of all students with ED are arrested (Osher, Woodruff, & Sims, 2002). Thus, as high proportions of African American students with ED are dropping out and high proportions of those students are arrested, African American dropouts with ED are at increased risk for incarceration. This systemic disproportionality produces increased vulnerability for children at the intersections of race and disability and funnels them out of schools and into prisons.

**Research questions.** The above review of literature illustrates that schools disproportionately remove students of color from general education through special education assignment and disciplinary actions. These school actions, when dealing with students of color, more often are based on subjective assessments by school staff. We are certainly not asserting that each school professional involved in labeling children is overtly racist; instead, as Harry and Klinger (2006) point out in the case of special education:

We argue that the process of determining children's eligibility for special education is anything but a science. Rather, it is the result of societal forces that intertwine to construct an identity... for children whom the regular education system finds too difficult to serve. (p. 9)

There are clear connections between the ways students are perceived to be abnormal emotionally, cognitively, or behaviorally, and life outcomes (Annamma, Boelé, Moore, & Klingner, 2013). What has been considered normal in schools has always been linked to dominant ideology (Tyack, 1974). We believe that we must look to the institutional factors in education that may affect the ways students are steered towards particular outcomes, such as prison.

Often, the literature focuses on overrepresentation in uni-dimensional categories. We agree with Crenshaw that this focus limits what can be accomplished. Racially marginalized students “suffer from the effects of multiple subordination, coupled with institutional expectation based on inappropriate non-intersectional contexts, shapes and ultimately limits the opportunities for meaningful intervention on their behalf” (Crenshaw, 1991, p. 1251). Our contribution to the existing literature is an intersectional approach examining how multiple variables (e.g., race, disciplinary actions, disability labels) interact with legal policies and the geography they occupy. By taking this approach, we seek to capture an understanding of the lived experiences of students as they move through their education in reference to oppressive legal and educational

measures they encounter in schooling. For example, instead of focusing solely on race as a factor in disciplinary actions, we examine ways gender and disability status interact with race in disciplinary actions. In other words, we provide a detailed and intersectional analysis of the Pipeline in our case study so as to make evident which populations are being marginalized by educational policies and practices in order to identify steps to improve the educational opportunities of youth of color with disabilities.

The following analysis examines racial disproportionalities across a state's school districts and the structures in which they operate. We have chosen Colorado as our case study and provide a rationale for this in our methods section. This interdisciplinary approach leads us to research questions that examine links drawn but rarely explored. Thus our research questions are threefold: (1) What is the representation of youth of color in school disciplinary and special education actions and outcomes in Colorado? (2) What is the representation of youth of color in achievement and incarceration outcomes in Colorado? and (3) What are the legal and policy contexts that may contribute to racial disproportionality in educational experiences and outcomes of youth in Colorado?

### **Methods**

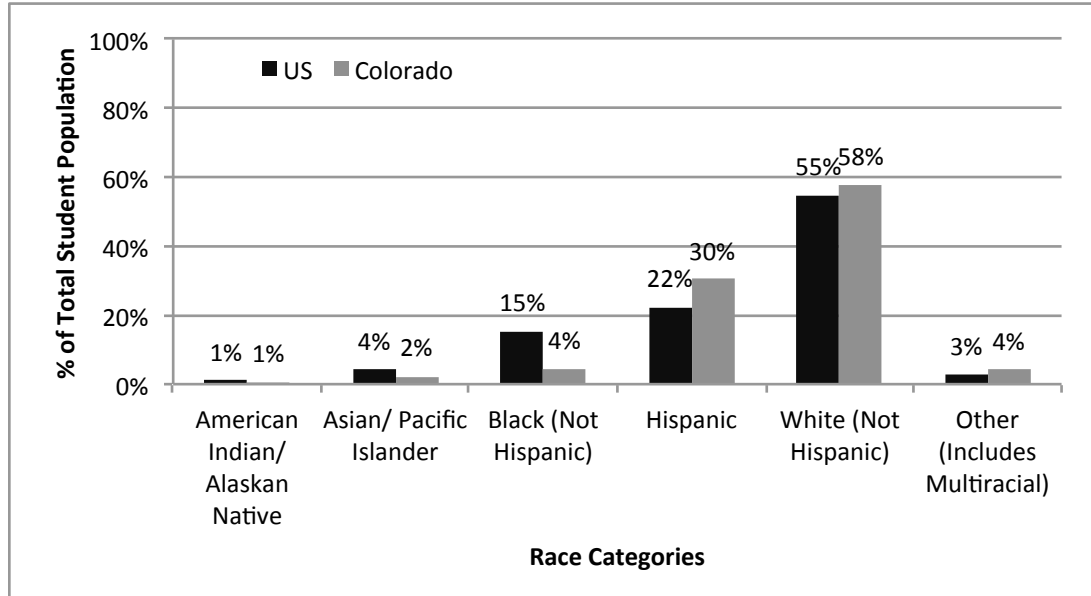
We use a representative case study approach (Yin, 2009), looking specifically at the racial and disability disproportionality in education and juvenile justice in the state of Colorado. Colorado youth are in many ways representative of youth across America. In 2009, racially marginalized students represented 38% of those in the U.S. and 35% in Colorado (Figure 1). Although Colorado has a smaller percentage of African American youth and a greater percentage of Hispanic youth, the overall percentage of racially marginalized youth is comparable to other states across the U.S.

### **Data Sources and Analyses**

In this paper we take an interdisciplinary approach to data sources and analyses, examining legal policy, educational statistics, and their geographic manifestations. As such, we present our data sources with our intended analyses for each disciplinary area in the order they are presented in our results section.

**State statutes and relevant case law.** Education is a societal good that is now considered a property right by most, if not all, citizens (Harris, 1993). By a societal good, we mean that all Americans benefit from educating America's youth. The good is evidenced through enhanced spending, reduced crime, and other outcomes. But, as a property right, we mean that privileged Americans see little to no reason to share educational resources—they own theirs. In considering legal policies and their effect on disproportionality, we analyzed the policies and practices put into place in Colorado that ultimately enable or constrain student achievement across all communities. In particular, we conducted a Westlaw search of relevant case law interpreting Colorado Revised Statutes §22-33-105 and 106, which govern discipline in Colorado schools. Title 22 of the Colorado Revised Statutes contains the statutes regulating education. Using a CRT lens, we then assessed the manner in which "raced" communities were implicitly and explicitly affected by these ostensibly "race-neutral" policies (Haney-López, 2003; Peffley, & Hurwitz, 2002). Next, we examined both historic and current laws as primarily

motivated by the maintenance of normative structures, goals, and privileges (Bell, 1987). In other words, we looked at how past and current laws work to maintain educational privileges. Finally, we explain how these factors have informed Colorado case law.



**Figure 1.** Percent of racial/ethnic representation of public school students pre-kindergarten through grade 12 in the U.S. and Colorado.

Note: U.S. data from the Current Populations Survey (CPS), 2009. Colorado data from the American Community Survey (ACS), 2009 (Aud et al., 2011).

**Educational statistics and analyses.** In this study, we used publicly available data from a wide variety of sources to show trends in racial disproportionality (see footnotes 2 & 3 for views on statistical categories). We limited our data to students in public schools as well as the juvenile justice system to ensure we had comparable data at both the national and state levels. We examined possible connections between these data trends and the laws and policies potentially influencing these outcomes. We chose to present our statistical analysis using descriptive statistics over other statistical methods as a first step towards exploring the connections between school policies, state legal contexts, and student outcomes. Further exploration through other quantitative methods would deepen the understanding of the nature of these relationships.

National statistical databases used to situate the Colorado case study include the U.S. Census, Civil Rights Data Collection (CRDC), Common Core of Data (CCD), and the Census of Juveniles in Residential Placement (CJRP). The Census uses a well-documented sampling strategy to estimate demographic statistics for various regions of America. From the Census we gather information about the racial, economic, and gender characteristics of the spatial area of interest at different scales in our analysis for the 2009-2010 academic year for public school enrollment (Aud et al., 2011). The CRDC in

the U.S. Department of Education data for 2006 was used to discuss disproportionality in suspensions and expulsions because more recent data was unavailable (Office for Civil Rights, 2006). The CCD is produced by the U.S. Department of Education's National Center for Education Statistics (Colorado Department of Education, 2010; NCES, 2010; Stillwell, Sable, & Plotts, 2011). We used the most current data from this source available for graduation rates (2009-2010), dropout rates (2009-2010), and academic achievement data (2009-2010). Finally, we used 2010 data on youth incarceration nationally from the CJRP produced by the Office of Juvenile Justice and Delinquency Prevention (OJJDP, 2011).

State statistical databases used to profile Colorado's discipline disproportionality by disability, race, and gender include those collected by the Colorado Department of Education (CDE) and the Colorado Department of Youth Corrections (CDYC) for 2009-2010. The data from the CDE (2010) and the CDYC (2010) are not a sample but a total reporting of youth statistics for students being educated and/or those involved with juvenile justice in the state. We used the available statistical categories for race within these databases and drew out information on students who were assigned to special education, were suspended and expelled from school, graduated, dropped out, and had contacts with the juvenile and adult justice systems. A total of 832,368 students are represented in the CDE data and 260,396 youth are represented in the CDYC data, though smaller numbers are used for different sections of the analysis depending on the variable of interest. CDE data provides us with categories of special education and disciplinary action for which there are complete descriptions in the associated metadata. In addition, the CDE data provides the total number of students by various characteristics and in specific regions that are in such categories. We are unable, due to privacy issues, to connect the CDE and CDYC data at the individual student level and thus are able to describe only the generalized situation of youth of color involved with special education and/or the CDYC at this time. However, it is our hope that the initial description of the racial disproportionate representation across special education, discipline, and incarceration at the institutional level will prompt others to follow individual student trajectories through the system to investigate the overlapping consequences of systemic racism in the real lives of youth.

We have chosen to present our statistical analyses in both traditional graphical displays as well as through spatial representations. We believe that the use of spatial data displays, a tool for critical race spatial analysis (Pacheco & Velez, 2009), provides an additional nuance in understanding how the Pipeline is manifested. Spatial data displays were created from the same data sets described above; however, these data were mapped onto school districts (educational administrative units) or judicial districts (justice system administrative units). The demographic distribution of youth of color across the state was available at a school district level, whereas the percentage of youth of color overrepresented in incarceration was only available at the judicial district level. To facilitate comparison among spatial figures, we mapped the judicial districts to the school districts with these boundaries shown on all images. A small degree of misfit error exists (35 of 179 school districts did not fit completely within a judicial district). In such cases, overlap was usually less than 20% and in any of these 35 instances, the school district

was assigned to the judicial district in which it had 50% or greater area. It was our intent to include such spatial displays to examine if the Pipeline varied spatially in ways that may be important to consider.

### **The Law's Role in Disproportionality**

Racial disproportionality does not just happen. Statisticians have taught us that in the absence of external variables, probability should lead to proportionality. Law is one external variable that affects levels of proportionality and, while other factors are relevant, the law has always had a primary role in defining how America educates its children and allocates its resources.

### **Historical Context for Colorado's Discipline Policies**

In 1954, a historic moment in American education occurred with the U.S. Supreme Court's decision in *Brown v. Board of Education*. With a new mandate for racially integrated schools, school districts across the nation, including Colorado, made significant efforts to avoid compliance with the integration mandate (*Keyes v. School District No. 1*, 1973). Most American schools struggled to adjust to an unfamiliar population, which resulted in an unprecedented delay in the implementation of a U.S. Supreme Court decision (Bell, 2004). During that time, the United States District Court mandated that Colorado public schools were to be desegregated by busing procedures (Nicoletti & Patterson, 1974). Busing involved school systems taking affirmative measures to create schools that were integrated in reality as well as in law. In 1974, by citizens' initiative, the Colorado constitution was amended so that no student could be assigned or transported to any public education institution for the purpose of achieving racial balance (Oesterle & Collins, 2002, p. 212).

Such evasions could be labeled as "interest divergence," the opposite of interest convergence (Delgado & Stefancic, 2001). Bell (1979) used the *Brown* decision as evidence that Whites would only act in a manner beneficial to Blacks when their interests converged. Here, we suggest that dissimilar goals of Whites and Blacks, or interest divergence, explain this refusal to follow the law and continue to render the education of historically marginalized communities sub-par (Bell, 1979; Haney-López, 2003; Locust, 1988). Sometimes, with National Guard support, districts were forced to desegregate schools (Tyack, 1974). While some schools were desegregating, re-segregation was occurring *within* schools through programs such as special education where students of color were assigned to special education at vastly higher rates than White children (Sleeter, 1986).

During this same time period, Colorado's policies that provided for the disciplinary removal of students from general education found their genesis in the state Constitution and statutes. While Article IX of the Colorado Constitution had created the Colorado public school system that existed without substantial structural modification for nearly 100 years, the Colorado laws that allowed for a student's suspension, expulsion and denial of admission, were adopted in 1963 (Colo. Revised Statutes, Title 22, Art. 33, §105-106, "Colorado Disciplinary Statutes"). Colorado's legislative sessions prior to 1973 were not recorded, so it is impossible to explicitly link desegregation to the

Colorado Disciplinary Statutes. However, in December 1958, four years after *Brown* and five years before the enactment of the Colorado Disciplinary Statutes, the Colorado Legislative Council published *Research Publication No. 25: Juveniles in Trouble: Probation—Parole—Mental Health* (1958). Consider the following passage from the report:

At the committee's regional meetings, many school officials pointed out that by the third grade they could identify youngsters who were potential delinquents, or who might have serious problems later. Except in a few communities very little is done for these youngsters once they have been identified...

It is unfortunate that more help is not provided at the pre-delinquent level. The earlier that disturbed youngsters can be identified and treated, the better the chance of helping them. The longer these juveniles go without help, the less chance there is of doing anything for them except through long-term intensive and expensive treatment. Many of them begin a cycle of delinquent and criminal behavior which usually results in confinement for many years, and at considerable expense to society, in industrial schools, reformatories, and penitentiaries. (p. 31)

This passage evidences that the relationship between schools, special education, and incarceration raised in this article was identified and debated in the years following *Brown*. Concurrently, children from historically marginalized communities, in some Colorado districts, were still attending separate schools while others were being integrated into White schools (*Keyes v. School District, No.1*, 1973). More specifically, in 1963, Colorado first codified a public school's permission to expel and suspend students through the Colorado Disciplinary Statutes as states "negotiated" how to implement *Brown*. As CRT scholars, we recognize the timing and the content of these statutes as concerning. The timing of these disciplinary codes with desegregation suggests to us an additional legislative answer to integration in addition to special education assignment: disciplinary removal of children of color from classrooms.

### **Current Colorado Disciplinary Statutes**

Our concern with the high number of racially marginalized students suspended and expelled begins with the timing of the Colorado Disciplinary Statutes and moves into the content of the statutes themselves. We argue below that "race neutral" laws have clear racial implications.<sup>6</sup>

**Colorado revised statutes §22-33-105.** Existing "race neutral" statutes provide principals and school administrators with the power to make subjective disciplinary

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<sup>6</sup> While copying the ideas, if not the exact same words, the Colorado statutes and interpretations that support disproportionality are also found in the other Rocky Mountain states: Montana, Idaho, Wyoming, Utah, Nevada, Arizona, and New Mexico (Jackson, 2014). Though it is beyond the breadth of this article to more fully dissect each state as done with Colorado, the point is that similar statutes exist and can produce similar results.

decisions but do not provide checks against misuse. Colorado Revised Statutes §22-33-105 is entitled "Suspension, expulsion, and denial of admission." It begins with a presumption of participation in public schooling by all children between the ages of six and twenty-one. The section then sets out exceptions. While original authority to suspend or expel a student rests with the board of education, it may also be delegated to a school principal or any individual designated by the principal (§22-33-105(2)(a)). These statutes create reasons for concern because the racial composition of the board members, school principals, or designees, such as teachers or school psychologists, within a school or district, is often not proportional to the racial composition of the communities served (Skiba & Sprague, 2008). Thus, those instilled with the power to suspend and expel may not be aware of the community cultural wealth of the students and families they serve (Yosso, 2005). As a result, the "behaviors" and "abilities" of the students served may not be commensurate with the expectations of board members, principals, and their designees, such as teachers and school psychologists (Annamma, 2014b). Because an evidentiary hearing occurs only when one is requested, the lack of school personnel's understanding of community cultural wealth may contribute to disproportionate representation.

Colorado's statutes mandate an alternative to suspension (§22-33-105(4)), which may be invoked when a parent, guardian, or legal custodian attends class with the pupil. While this clearly provides for the optimal outcome—a student's presence in school—the lack of capital, namely "free time" during working hours for working families likely leads to disproportionate outcomes.

Moreover, the Colorado statute says that there shall be a denial of any court intervention (§22-33-105(5)(c)). This raises suspicion given the success, albeit limited, of historically marginalized communities to address educational discriminatory concerns in Colorado and elsewhere through the courts (*Brown v. Board of Education*, 1955; *Milliken v. Bradley*, 1977; *Westminster School District v. Mendez*, 1947). However, Colorado codified such exclusion for some petitions once filed (not necessarily adjudicated) in juvenile or district court (§22-33-105(5)(a)). For these instances the statute dictates: "No court which has jurisdiction over the charges against a student who is subject to the provision of this subsection (5) shall issue an order requiring the student to be educated in the education program in the school in contradiction of the provisions of this subsection (5)" (§22-33-105(5)(c)). In other words, as the school shuffles the designated students out, a court shall have no authority to shuffle them back in, regardless of any legal impropriety.

An evidentiary hearing to fight the disciplinary action occurs only if the child's parent or legal guardian requests one, which is difficult for parents who may lack the institutionally-valued cultural, linguistic, and financial resources to successfully challenge these disciplinary actions. Specifically, Klingner and Harry (2006) found multiple reasons that parents may not attend school meetings: (a) hostile environment created by school personnel (e.g., insensitivity, ignoring parent perspective, lack of professionalism), (b) inadequate translation services, and (c) lack of response to parents' scheduling concerns. Additional reasons parents may not come or may not participate in these types of meetings include difficulty with logistical issues (e.g., lack of child care,

transportation services), communication difficulties (e.g., use of jargon), and lack of information provided (e.g., parental rights, parents' roles) (Turnbull & Turnbull, 1986).

**Colorado revised statutes §22-33-106.** While the discussion of §22-33-105 critically analyzed who may suspend and expel as well as the procedures, we now turn to §22-33-106 to view when such actions are permitted. The first is when a student exhibits “willful disobedience or open and persistent defiance of proper authority” (§22-33-106(1)(a)). While avoidance of chaos is obviously necessary for any educational setting, this subsection raises issues of subjectivity and bias similar to those raised above. Often those instilled with power to label and remove lack cultural competence to understand and engage with their students' norms and the family's culture (Harry & Klingner, 2006). School staff and educators may blur the lines between disagreement and defiance due to a misunderstanding of student behaviors and culture and translate these behaviors differently for children of color (Skiba et al., 2002). Students of color who challenge the status quo or traditional methods of learning are often considered disruptive instead of gifted (Ford, Grantham, & Whiting, 2008). Considering previous research that shows children of color are punished more often and more severely, we ask, “When is a challenge exactly what the founders envisioned of the citizenry and, therefore, rewarded, and when is it seen as militancy and, therefore, punished?” As CRT scholars, we argue that much of the disproportionate outcomes stem from a place of privilege—a place that is demographically segregated by race.

Herein, the intersections with (dis)ability are explicitly laid. When considering a student's behavior that creates a threat of physical harm to that child or other children, the statute goes on to state:

[I]f the child who creates the threat is a child with a disability pursuant to section 22-20-103(5), the child may not be expelled if the actions creating the threat are a manifestation of the child's disability. However, the child shall be removed from the classroom to an appropriate alternative setting... (§22-33-106(1)(c))

The statute's safeguards include a mandate that, within 10 days, the school shall reexamine the child's individual education plan (IEP) (§22-33-106(1)(c)). We question whether all communities have the socially-respected capital to continually negotiate, evaluate, and modify their youth's IEPs (Stein, 1983). A critical race theorist must ask: Who is best able to make the IEPs work for them and what groups struggle most with the IEP process? In other words, historically, privileged parents are able to maximize the benefits of protection of a disability label; conversely, a student of color with a disability label is more likely to lose access to education opportunities from the same label (Reid & Knight, 2006). Moreover, the provision allowing a child to be removed can further stigmatize and segregate a child with a disability and increases likelihood the child with a disability will end up in the Pipeline (Wald & Losen, 2003).

This state statute aligns with the federal IDEA statutes, which similarly allow for discretionary decisions by school officials, leading to disproportionality (Skiba et al., 2008). As opposed to their counterparts from historically marginalized communities, parents from historically privileged communities are better positioned to influence the decision-makers in their schools to make the best diagnoses for their children and thus



receive the most advantageous accommodations (Ong-Dean, 2009; Reid & Knight, 2006).

A nexus to criminal law can also be seen within this statute. Under Colorado's Habitual Offender Statute, a criminal offender is adjudged to be a habitual offender if the person is convicted of certain qualifying felonies three times (§18-1.3-801). Analogously, Colorado's educational statutes offer a "habitual disruptive student" status. To be so defined, a student has been suspended under this statute "three times during the course of the school year for causing a material and substantial disruption...." Under such a label, "expulsion shall be mandatory" (§22-33-106(1)(c)). An adult adjudged a habitual offender faces stiff penalties almost always resulting in time in prison. This removes the offender from society and reduces access to any opportunities not associated with jail. Similarly, a student identified as habitually disruptive is removed from the classroom, thereby reducing access to most, if not all, educational opportunities. Even if the student is returned to their respective community, they carry the habitual offender stigma with them; a stigma far more profound than nearly any other (Biddle, 1995; Dwyer & McNally, 1987; *Missouri v. Hunter*, 1983; Western & Pettit, 2002). Once applied, the habitual label carries lifelong consequences; habitual status makes long sentences longer and, once achieved, habitual status can never be lost.

Then, §22-33-106 returns to the application of its mandates to students with disabilities. Pursuant to §22-33-106(1)(d)(2):

Subject to the district's responsibilities under article 20 of this title, the following shall be grounds for expulsion from or denial of admission to a public school, or diversion to an appropriate alternate program:

- (a) Physical or mental disability such that the child cannot reasonably benefit from the programs available;
- (b) Physical or mental disability or disease causing the attendance of the child suffering there from to be inimical to the welfare of other pupils.

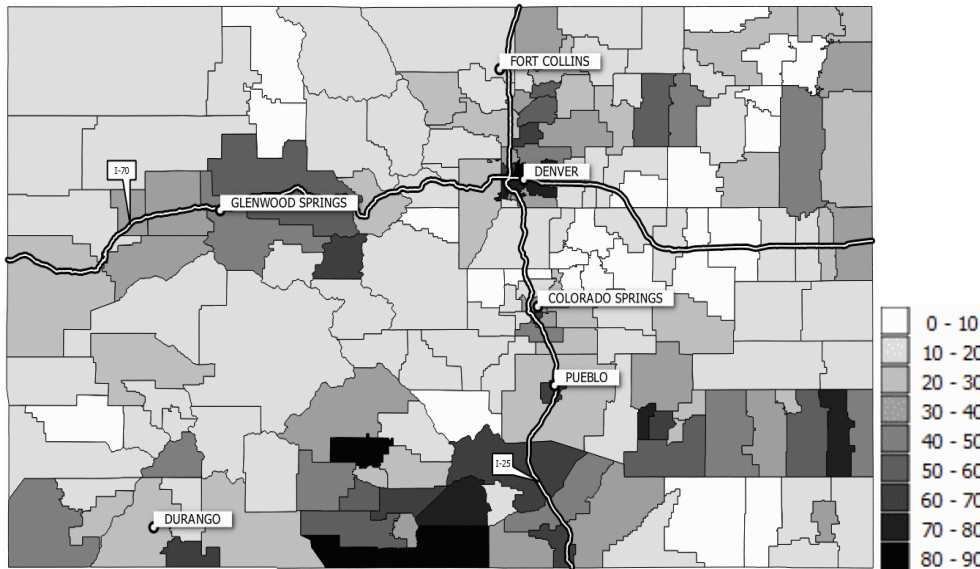
Subsection (b) is especially relevant as it provides an opportunity to exclude a student based on the perceived damage done to other students in the class by the student's presence. Evidence suggests that children of color are often viewed as more harmful or threatening, even when engaging in the same behaviors as their peers (Sagar & Schofield, 1980). This statute, among others, opens the door to biased treatment. Given the statistical evidence provided herein, the racial implications for expulsion, denial of admission, or diversion to an alternate education program appear quite clear. We suggest that it is the opportunity for subjective evaluation of student behavior without the evaluator being properly educated, which provides one systemic mechanism leading to disproportionality because such evaluations are often negative responses to students who are different from hegemonic normative standards. The subjectivity in the Colorado Disciplinary Statutes parallels the subjectivity in special education labeling, which heightens our concern. Instead of being protected by "race-neutral" policies, these legal contexts actually provide opportunity for disproportionate implementation, through

labeling and punishment of students who differ from “normal.” We next shift our attention to understand how this disproportionate treatment is spatially distributed.

### **Patterns of Disproportional Representation in Colorado**

The above legal and policy analysis allows us to predict a disproportional representation of youth of color within particular programs which have historically marginalized, criminalized, and generally removed educational opportunities for some children more than others. Here we present a description of the current status of disproportional outcomes for youth of color in Colorado in order to show possible consequences of Colorado’s legal and policy decisions as they impact youth. In our description we draw on statistics that are both graphically and spatially represented. Critical race spatial analysis of data allows us to argue that the issues of institutional racism are widely distributed and often tied to economic and social phenomena.

The 35% of students in Colorado who are youth of color are not equally distributed across the state (Figure 2). While there is spatial heterogeneity of the percent of youth of color across the state, higher populations are found in the Denver metro, the Western mountain resorts (between Denver and Glenwood Springs), and the southern agricultural areas (near Pueblo). These types of areas are often correlated with a higher percentage of low wage jobs (e.g., the service industry in ski resorts and agriculture) in which people of color are more often relegated (Bonilla-Silva, 2006).



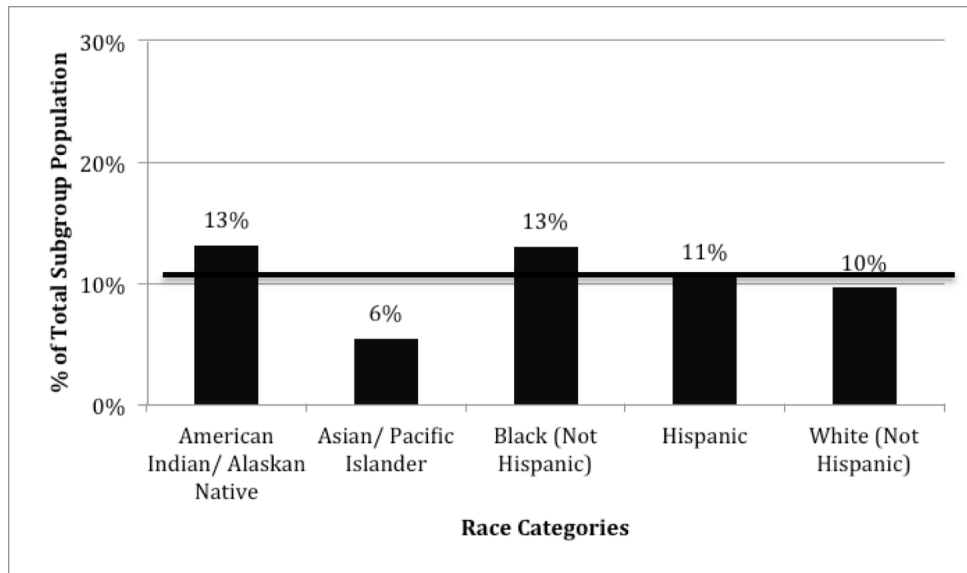
**Figure 2.** Spatial distribution of students of color in K-12 public schools in Colorado by school districts.

Note: Source data is Fall 2009 Pupil Membership (CDE, 2010). The grey scale indicates the percentage of students of color in each Colorado school district relative to the total student body of those districts. For example, the darkest shading indicates 80-90% of the students in those districts are students of color.

**Disproportionality in School Measures—Special Education, Discipline, & Graduation**

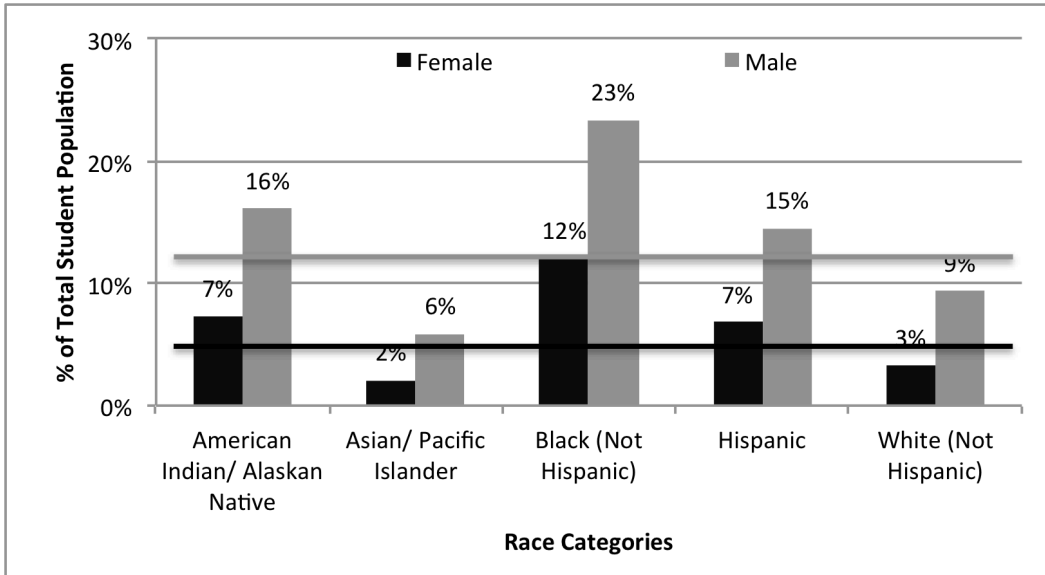
Overrepresentation of racially marginalized students in special education and school discipline in Colorado are similar to national trends. The Colorado average for assignment to special education is 10% of the total population; however, marginalized youth of color have higher rates of assignment (Figure 3).

School suspensions and expulsions average 8% (11.6% for male and 4.8% for female students respectively) in Colorado (Figure 4). Marginalized students of color, both female and male, are over-represented in suspensions and expulsions in Colorado. An example of the gender breakdown of these statistics can be seen when looking at school suspensions and expulsions where the overall female average is 4.8%. In contrast, 7% of Native American females, 12% of African American females, and 7% of Hispanic female were suspended or expelled. African American young women are suspended and expelled (12%) more often than White males (9%). The focus on male overrepresentation in school actions can detract from the realities that females of color face (Annamma, 2014a; Jones, 2009; Winn, 2011). Racial and gender intersections offer a more nuanced picture of the disproportionality in discipline for females of color. These data indicate racially marginalized youth are more likely to be assigned to special education, suspended or expelled in Colorado than White students, and these assignments are likely to intersect with other dimensions that are themselves disproportionate.



**Figure 3.** Percentage of youth by racial category designated for special education in Colorado relative to the state average.

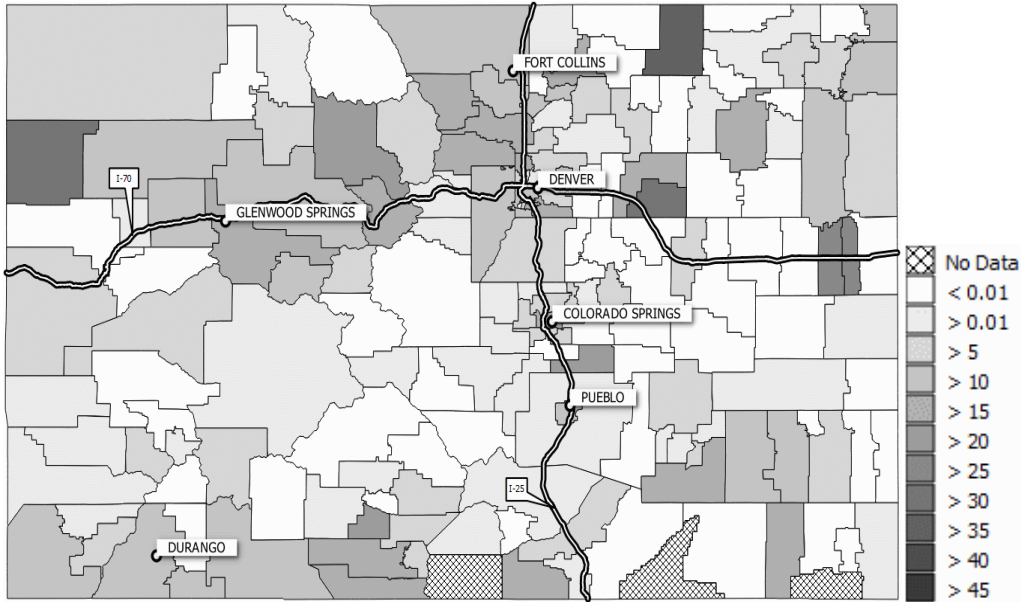
Note: Source data is from 2009-2010 (CDE, 2010). Percentages represent the proportion of students in each racial group and the solid line represents the state average. For example, of all the Hispanic students in Colorado, 11% of them are represented in special education.



**Figure 4.** Percentage of youth by racial category that were subject to school disciplinary actions in Colorado.

Note: Source data is from 2009-2010 Safety and Discipline Indicators (CDE, 2010). Percentages represent the proportion of students represented in that group and the solid line represents the state average. For example, of all the Asian/Pacific Islander Female students in Colorado, 2% of them are subject to school disciplinary actions.

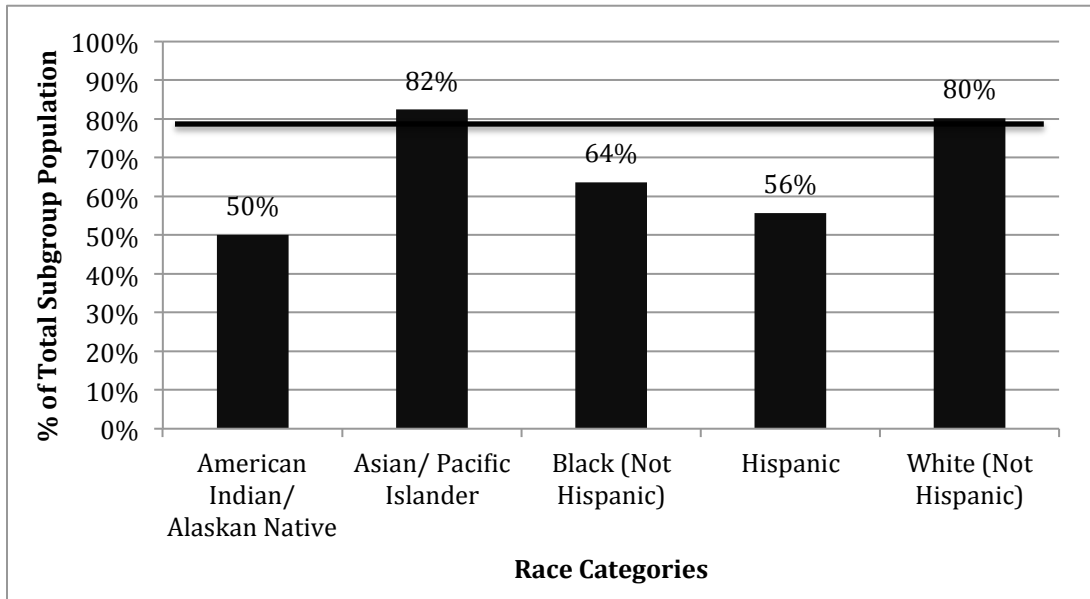
Spatial representation provides additional information about entry into the Pipeline. While data for special education assignment by race were not available at a district level due to concern for breach of privacy, we were able to examine school discipline data from a spatial perspective. In Figure 5, we show that the overrepresentation of historically marginalized youth of color (American Indian/Native Alaskan, Hispanic, and Black students) in disciplinary actions is not simply an urban issue but is also found in rural districts, those with more dispersed populations, and communities with smaller populations of students of color. Additionally, districts with both high and low percentages of youth of color (Figure 2) have a range of representations of youth of color in disciplinary actions. Finally, this analysis shows that the majority of the school districts within Colorado have overrepresentation of historically marginalized youth of color in disciplinary actions.



**Figure 5.** Percentage overrepresentation of youth of color in school disciplinary actions in Colorado by school district across the state.

Note: Source data is Fall 2009 Student Membership and the 2009-2010 Safety and Discipline Indicators (CDE, 2010). The grey scale indicates the difference in percentage points between the percentage of students suspended or expelled who were students of color and the total enrollment of students of color within a school district. For example, in Pueblo City District, 60 students of color represented 74% of all students disciplined that year; however, students of color represented only 65% of the student body overall. The difference between the 74% of students of color in disciplinary statistics and the 65% in total student population statistics indicates a 9% overrepresentation of students of color in school disciplinary actions for this district this year.

Student outcomes, such as graduation rates and dropout, also show disproportionality. For example, Figure 6 illustrates the low graduation rates for historically marginalized students of color. The Colorado state average for graduation is 73%. In comparison, American Indian/Native Alaskan students graduate at a rate of 50%, Black students at a rate of 64%, and Hispanic students at a rate of 56%; all of these historically marginalized youth of color are, therefore, disproportionately underrepresented as high school graduates. White and Asian/Pacific Islander students graduate at a rate of 80% and 82% respectively, resulting in their disproportional overrepresentation as high school graduates relative to the average. This disproportional representation is inversely related to the dropout rates with historically marginalized youth of color being overrepresented and White and Asian/Pacific Islander students being underrepresented relative to the state average.

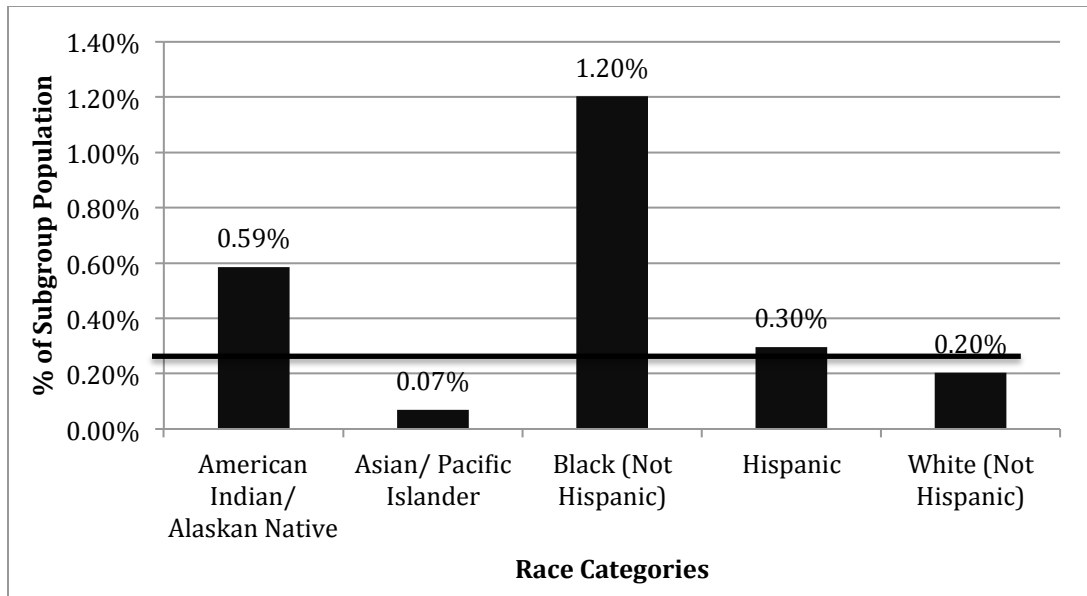


**Figure 6.** Variation in graduation rates from the state average for youth by racial category in Colorado.

Note: Source data is from Common Core of Data (CCD) 2009-2010 (NCES, 2010). Percentages represent the proportion of students represented in that group and the solid line represents the state average. For example, of all the American Indian/Alaskan Native students in Colorado (approximately 1% of the total student population), 50% of them graduate from high school.

**Disproportionality in Incarceration Rates**

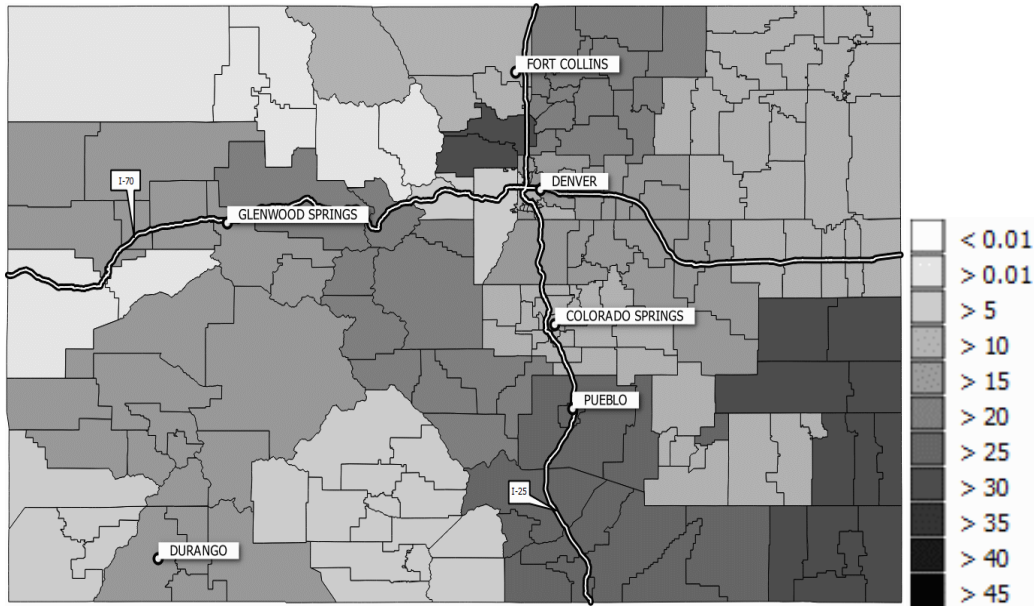
As illustrated in the above statistics, not all students graduate from high school and some experience the negative outcome of incarceration. Incarceration, like low graduation rates and high dropout rates, also disproportionately affects historically marginalized students of color (Figure 7). The Colorado state average for the youth incarceration rate is 0.29%. American Indian/Native Alaskan students were incarcerated at a rate of 0.59%, Black students at a rate of 1.20%, and Hispanic students at a rate of 0.30%; all of these historically marginalized youth of color are, therefore, disproportionately overrepresented in juvenile justice. In contrast, White and Asian/Pacific Islander students were incarcerated at a rate of 0.07% and 0.20% respectively, resulting in their disproportional underrepresentation in juvenile justice to the average.



**Figure 7.** Colorado youth incarceration by racial category.

Note: Data is from 2009-2010 Colorado Department of Youth Corrections database (CDYC, 2010). Percentages represent the proportion of students represented in that group and the solid line represents the state average. For example, of all the American Indian/Alaskan Native students in Colorado (approximately 1% of total student population), 0.59% of youth are incarcerated relative to the state average of 0.29%.

Student outcomes, or lived experiences, vary geographically across Colorado within racially marginalized student populations. For example, Figure 8 illustrates the distribution of youth of color incarcerated in Colorado, showing that all areas of the state have racial disproportionality in some degree. However, the relationships that exist between the degree of disproportionality and the characteristics of a location are not completely clear. For example, there is disproportional incarceration for youth of color in areas where there are more youth of color, such as the Denver metro area, the mountain resorts (between Denver and Glenwood Springs), and the southern agricultural areas of the state (around Pueblo), and also in areas where there are relatively few youth of color such as the Roaring Fork Valley region. Rural regions around the state vary greatly in their degree of disproportionality of incarcerated youth of color. What is clear from these data is that where you live may impact your chances of being incarcerated as a youth of color and that institutionalized racism is not only an urban concern. Youth of color have historically been treated more harshly and have experienced higher rates of arrest, intake, adjudication, and detention than White youth (Drakeford & Staples, 2006). Further research into the spatial variations of disproportional outcomes of youth of color will potentially improve our understanding of structural racism.



**Figure 8.** Percent overrepresentation of youth of color incarcerated in Colorado by judicial district.

Note: Data is from 2009-2010 Colorado Department of Youth Corrections database (CDYC, 2010). The grey scale indicates the percentage of youth of color by judicial districts of Colorado incarcerated relative to the total students of color in the corresponding school districts within the judicial districts. The lightest color indicates that the percentage of youth incarcerated is equal to or less than the overall percentage of youth of color in the student body, whereas the darkest shading indicates that the difference between the youth of color incarcerated and the overall youth of color in the student body is 45% or more. For example, the judicial district within which Pueblo sits (Judicial District 10) has 81% youth of color incarcerated relative to 53% youth of color in the student body within the corresponding school districts. This means that the youth of color in Judicial District 10 are overrepresented in incarceration by at least 28%, the difference between 81% and 53%.

The state trends presented above mirror national trends of racial disproportionality of youth placed in special education, disciplined in schools, and funneled into the juvenile justice system. We use these trends of disproportionality to highlight possible outcomes of Colorado laws’ historic and current role in the formation and maintenance of the racial disproportionality trends found in Colorado’s Pipeline. Next we will outline implications and recommendations from our findings.

### Conclusion and Implications

Critical Race Theory provides a lens through which to question why students of color are overrepresented in the School-to-Prison Pipeline. DisCrit allows us to focus that lens and to examine with greater precision how children of color may be labeled disruptive and disabled at higher rates, potentially removing them from general education and funneling them into the Pipeline.



The Colorado's Disciplinary Statutes were passed at a time of heightened controversy over race and education. Interest convergence suggests that Colorado, along with the nation, was forced to integrate schools because it was in the best interest of the White populace, who could no longer avoid their legal responsibilities and the international attention to segregation (Bell, 1979). Colorado responded to regional and national debate by creating new methods of segregating its student of color. Colorado's Disciplinary Statutes allow the disproportionate removal of students with disabilities and students of color without knowledge about their backgrounds and abilities and without authentic parent involvement. This was in addition to the national efforts to support special education, a new form of segregated education, which, upon its inception, was almost immediately populated disproportionately with children of color (Dunn, 1968). In other words, instead of responding to student differences as something to value and learn from, national and state legislators and educators treated race and disability status as biological facts and sought ways to exclude these children from education. The labels branded students unsalvageable and so removal was prioritized over education. As critical researchers and educators, it is incumbent upon us to question, dissect, and critique not only the methods employed by the state but also the implicit and explicit rationales.

The case study of Colorado's disproportional representations of youth of color presented here demonstrates a potential intersection between race and disability disproportionality in education and incarceration. Given the historic and current legal and policy environment in Colorado, there are significant routes for students of color to be labeled disabled, suspended, expelled, and/or removed from schools. These students, the ones the system finds most difficult to serve, are then more likely to find themselves within the juvenile justice system. Hence we see how the mechanisms to fill the Pipeline disproportionately with children of color have been enacted.

Critical race spatial analysis allows us to represent spatially the distribution of students in the Pipeline. By examining the cartographies of the Pipeline, we illustrated "an alternative representation of how race and racism can manifest within geographic locations" (Huber, 2008, p. 168). This alternative representation provided a sense of the Pipeline not simply as an urban problem, as it has previously been described. Instead, the Pipeline is strongly correlated with race, as is shown by the wide spatial distribution of inequity. That is, the Pipeline is not restricted to city schools but is enacted throughout the state in places where there are children of color. This new understanding of where the Pipeline manifests itself demands that there are solutions based on race.

In 2006, Gloria Ladson-Billings reframed the achievement gap between White children and students of color as an *education debt*. She argues that this debt, caused by years of inequitable education, is the reason behind the achievement gap, and that this gap will continue until we as a society pay this debt. Ladson-Billings (2006) asked, "What is it that we might owe to citizens who historically have been excluded from social benefits and opportunities?" (p.7). We agree with Ladson-Billings and view the rhetoric of the achievement gap as problematic for several reasons. As Ladson-Billings (2006) points out, it is ahistorical and apolitical, disregarding the ways in which society consistently underserves students of color. Additionally, not only does it define achievement in increasingly narrow ways, such as a test score, it also implies that

everyone currently has the same opportunities for potential outcomes. We argue that the legal policies and their implementation, along with other factors, create an outcome spectrum from incarceration to academic achievement.

As society consistently places racially marginalized students in under resourced schools, subjects them to harsh disciplinary actions, and labels them disabled, we are limiting their opportunities for particular positive life outcomes. In other words, there are disproportionate outcomes because of disproportionate treatment, not because there is anything wrong with our children, their families, or communities. We cannot be surprised that the achievement of students of color on standardized tests is low and that their incarceration rates are high when we place so many barriers in their way; students of color are disproportionately achieving the outcomes we steer them toward. We see this not as an achievement gap but an outcome gap created by societal institutions and policies. This is not to imply that students of color with and without disabilities have no agency. Many thrive despite the harsh conditions society has created. However many are not able to escape the systemic barriers that are placed in their paths. These societal institutions and policies make it much more likely that they will be negatively affected by this outcome gap.

Alexander (2010) finds that the increased incarceration of people of color in the last three decades has created a reorganization of a racial caste system, which she names the New Jim Crow, wherein people of color face the possibility they will become felons and then experience discrimination in education, employment, housing and rights, such as the right to vote or serve on a jury even after they have served their time. She states that a racial caste "denotes a stigmatized racial group locked into an inferior position by law and custom. Jim Crow and slavery were caste systems. So is our current system of mass incarceration" (p.12). We believe that if the soaring adult prison population is a re-creation of Jim Crow, then the Pipeline recreates another racial caste system; it is a re-assembly of the children's role during the slave trade. During slavery, children were often removed from their parents/their community in order to more easily manage their "slave work ethic." To not separate a child risked potentially strengthening the child, the family, and the community against the dominant or privileged strains of society. Today's children, who originate from those same communities, are being labeled and removed from mainstream communities in a manner that makes them more identifiable and manageable through the Pipeline. Funneling children out of their communities and into spaces where community members are working in the juvenile jails creates an economy based on the carceral state (Meiners, 2011; Weaver & Lerman, 2010). These incarcerated students of color are then taught a "new and proper" work ethic as their education focuses on control and regulation of their bodies, and students are taught to imagine themselves, their families, and their communities as at fault for their own marginalization (Annamma, 2013). This work ethic centers on surveillance and removal, and relies on authority, submission, and systemic hierarchies. Absent from this work ethic are practices of questioning, critiquing, and challenging (Rios, 2011).

In this Colorado case study, we have shown that racial disparities exist in special education assignment, disciplinary actions, and juvenile justice. These findings in conjunction with our legal and spatial analysis illustrate that "race-neutral" education and

legal policies lead to racially disproportionate outcomes, funneling students who differ from the hegemonic norm out of schools and communities, and into the Pipeline. We believe there are some simple gap-reducing strategies combining both education and legal practices to address disciplinary disparities for students of color with disabilities (Gregory et al., 2010). A great deal of existing research suggests that using restorative justice strategies (Gonzalez, 2012; Haft, 1999; Wearmouth, Mckinney, & Glynn, 2007), limiting the use of long-term disciplinary removal to only the most severe infractions (Losen, 2011; Noguera, 2003), educating school personnel about students' cultural practices (Gutierrez & Rogoff, 2003; Ladson-Billings, 2006), and increasing authentic parent and community involvement in education would all contribute to disrupting the Pipeline (Moll, Amanti, Neff, & Gonzalez, 1992). We agree and our findings suggest that, in addition, educators and researchers must take an intersectional view of students that recognizes the ways that disproportionality is not a uni-dimensional issue. Finally, our findings show that the Pipeline functions in rural and suburban districts as well as urban areas, suggesting that we widen the focus of our solutions.

Our legal, statistical, and critical race spatial analyses find that these "neutral" policies are enacted inequitably with predictable race-laden outcomes. These findings lead us to believe that "race-neutral" policies and practices allow for systemic disproportionate implementation and as such should be replaced with explicit race-based policies (Guinier & Torres, 2002). In other words, "color-blind"<sup>7</sup> laws and policies lead to color-laden outcomes, therefore requiring color-conscious policies. In order to dismantle the Pipeline, we must explicitly address race in our policies and practices. This strategy must be implemented through multiple simultaneous methods: (a) legislatively, through constitutions, statutes, and regulations; (b) executively, through administration and teachers who are appropriately educated and continually cultivated regarding the strengths of norms and differences; and (c) communally, through elected or appointed review boards that reflect an area's demographics. It is our hope that this research will emphasize the need to continue intersectional analyses, as well as consider the above recommendations to dismantle the School-to-Prison Pipeline.

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<sup>7</sup> The ideology of colorblindness explains racial inequities through nonracial dynamics (Bonilla-Silva, 2006; Gotanda, 1991). Though "colorblindness" is essential to identify and problematize, it is a questionable term. The term "colorblindness" conflates lack of eyesight with lack of knowing. Said differently, blindness is equated with ignorance. However, blindness is not ignorance; in fact, blindness provides unique ways of understanding the world to which sighted people have no access. So blind people are knowers. We put the term colorblindness in quotes to remind ourselves that we must examine the assumptions and standards our language perpetuates. As an alternative, Stubblefield (2005) suggests color-evasiveness, which resists the urge to position blind people as deficit and recognizes that there is an active evasion occurring when people refuse to discuss race in the face of racial inequities.

through an interdisciplinary approach. Specifically, she examines the interdependence of race and ability, how the two intersect with other identity markers, and how their mutually constitutive nature impacts education experiences. She centers this research in urban education settings and focuses on how those in schools, particularly students, can identify exemplary educational practices.

**Deb Morrison** is a doctoral candidate in the School of Education at the University of Colorado at Boulder and a science teacher with Boulder Valley Public Schools. Her primary research interests intersect science education, teacher education, and equity, particularly with regards to racial equity. Deb has worked as a scientist, science educator, and teacher educator in a variety of positions. She is active in local and national organizations involved in improving educational opportunities for historically marginalized students in science. Deb believes we need to constantly examine our actions and the systems we create and operate within to disrupt racial inequity.

**Darrell D. Jackson, J.D., Ph.D.**, is an Assistant Professor at the University of Wyoming College of Law. Previously, Dr. Jackson was a scholar-in-residence and fellow at the University of Colorado Law School. He earned his Ph.D. from the University of Colorado (Boulder) School of Education. Prior positions include: Assistant Dean and Director of Diversity Services at George Mason University School of Law (GMUSL), Assistant United States Attorney in Washington, D.C., and as an Assistant County Attorney in Fairfax County, Virginia. He earned his J.D. from GMUSL where he was Editor-in-Chief and co-founded the George Mason University Civil Rights Law Journal.

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