

IDEA's Double Bind: A Synthesis of Disproportionality Policy Interpretations

Exceptional Children
2019, Vol. 85(4) 395–412
© The Author(s) 2019
DOI: 10.1177/0014402918818047
journals.sagepub.com/home/ecx


Amanda L. Sullivan¹ and Daniel Osher¹

Abstract

Disproportionality research has been subject to multiple reviews, but there has been less critical examination of the policy dimension of this enduring educational problem. Given the relevance of federal policies, and interpretations thereof, to educators' and scholars' conceptualization of disproportionality and schools' resultant policies and practices, we provide a brief overview of disproportionality scholarship before focusing on its policy dimensions. We describe the role of federal policy and resultant interpretations to how disproportionality is addressed and our approach to identifying and synthesizing these interpretations. We then analyze the themes apparent in these interpretations: requirements for states' numerical analysis of "significant disproportionality," parameters for school systems' allocation of resources for early intervening services when significant disproportionality is found, and schools' obligations for nondiscriminatory application of policies and procedures. Finally, we distill implications for school policies, practices, and procedures. We close with discussion of implications for how disproportionality is conceptualized and studied.

Keywords

special education, disproportionality, disproportionate representation, policy, law

Scholarship on minority disproportionality in special education has long been linked to concerns for potential differential treatment of racial-ethnic minority students, disparities and ineffective practice in general and special education, and inequitable enactment of educational policy (for seminal works, see Artiles & Trent, 1994; Donovan & Cross, 2002; Dunn, 1968; Heller, Holtzman, & Messick, 1982). Debate surrounding the causes and consequences of, and appropriate responses to, disproportionality surged following recent studies and critiques of related policy and practice (for examples, see Collins, Connor, Ferri, Gallagher, & Samson, 2016; Ford & Russo, 2016; Morgan et al., 2015; Skiba, Artiles, Kozleski, Losen, & Harry, 2016). Given the centrality of policy to conceptualizations of disproportionality in schools' activities, we reviewed applicable federal policies and resultant legal guidance, analyzing the tensions created by competing

mandates—the double bind inherent in states' obligations to identify all eligible students while facing sanction and financial penalty if racial-ethnic groups are not identified equally—and reviewed interpretations in federal guidance, civil rights complaints, due process decisions, and case law to elucidate the policy dimensions of disproportionality. In particular, we isolated interpretations related to school systems' obligations to determine "significant disproportionality" and resultant funding and provision of early intervening, along with schools' related obligations in the treatment of individual students.

¹University of Minnesota

Corresponding Author:

Amanda L. Sullivan, Department of Educational Psychology, University of Minnesota, 56 E. River Road, Minneapolis, MN 55455, USA.
E-mail: asulliva@umn.edu

Background

Disproportionality commonly refers to group differences in special education identification, both under- and overidentification, and other outcomes for students from marginalized sociodemographic groups (Coutinho, Oswald, & Best, 2002). Dunn (1968) offered one of the earliest discussions of disproportionality when he criticized special classes and schools as means of segregating “socioculturally” different students, noting the inequity inherent in the inappropriate labeling of students not provided adequate general education and unlikely to receive effective special education (pp. 5–6, 8). Since then, disproportionality in special education has been the subject of numerous studies, commentaries, and federal reports, including two by the National Research Council. The earlier report framed disproportionate identification of intellectual disabilities as problematic due to inappropriate instruction and assessment practices in general and special education contexts (Heller et al., 1982), whereas the latter emphasized prevention of misidentification of a range of disabilities (Donovan & Cross, 2002).

Disproportionality research has largely focused on racial differences in identification of learning disabilities, emotional disturbance, and intellectual disability, with most studies focusing on overrepresentation of Black students relative to their White peers (Waitoller, Artiles, & Cheney, 2010), albeit with inconsistent findings (e.g., Cruz & Rodl, 2018; Morgan et al., 2015, 2017; Skiba, Poloni-Staudinger, Simmons, Feggins-Azziz, & Chung, 2005). Recently, researchers have used large-scale, multilevel analyses to explore child, family, and contextual factors related to racial-ethnic students’ disability identification with somewhat divergent results (e.g., Hibel, Farkas, & Morgan, 2010; Kincaid & Sullivan, 2017; Morgan et al., 2015; Shifrer, Muller, & Callahan, 2010; Sullivan & Bal, 2013). Others have highlighted distinct patterns and correlates of identification among English learners (e.g., Sullivan, 2011; Umansky, Thompson, & Diaz, 2017). There is little consensus about the determinants of disproportionality, with variability

at least partially attributable to conceptual, theoretical, methodological, and geopolitical differences in researchers’ approaches and interpretations (for discussion, see Collins et al., 2016; Cruz & Rodl, 2018; Skiba et al., 2016). Most scholars and policy analysts agree, however, that overidentification may be due at least in part to avoidable misidentification (e.g., U.S. Government Accountability Office [USGAO], 2013; Sullivan & Proctor, 2016). Recently, some researchers have also emphasized the potential consequences of underidentification (e.g., Morgan et al., 2015, 2017, 2018; Sullivan, 2013), though scholars have offered markedly divergent interpretations of this phenomenon and resultant policy and practice implications (for example, see Cohen, Burns, Riley-Tillman, & Hosp, 2015; Morgan & Farkas, 2015; Skiba et al., 2016). In addition, concern for the inadequacy of school systems’ responses to disproportionality policy abound (Albrecht, Skiba, Losen, Chung, & Middleberg, 2011; Cavendish, Artiles, & Harry, 2014; Kramarczuk Voulgarides, Aylward, & Noguera, 2014; Tefera & Kramarczuk Voulgarides, 2016; USGAO, 2013), underscoring the need for clarity on the policy dimension of disproportionality.

The Disproportionality Policy Landscape

There are multiple levels of policy actors, from individuals within school settings to federal agencies and officers (Crammond & Carey, 2017), all of whom are relevant in understanding how policy is enacted to affect individual learners. Scholarship on disproportionality policy has generally focused on issues related to the implementation of the Individuals With Disabilities Education Act (IDEA; 2006) by individual school systems (e.g., Kramarczuk Voulgarides et al., 2014; Tefera & Kramarczuk Voulgarides, 2016; Thorius, Maxcy, Macey, & Cox, 2014) and state departments of education (Albrecht et al., 2011; Cavendish et al., 2014). There has been less attention to interpretations by policy actors at the more distal, macro levels of

educational systems (e.g., federal agency representatives or judges) who may influence implementation across settings. These distal policy levels encompass more than the policy itself, as policy is generally vague and allows multiple “reasonable” interpretations by policy actors at all levels and intersections with other policies. The focus of this article is on the distal levels and their potential implications for local implementation.

There are multiple levels of policy actors, from individuals within school settings to federal agencies and officers (Crammond & Carey, 2017), all of whom are relevant in understanding how policy is enacted.

Past policy and evaluation. Schools’ policies, procedures, and funding decisions related to disproportionality are tied to IDEA’s rules, regulations, and subsequent interpretations. Following the 1997 reauthorization of IDEA, states were required to operationalize “significant disproportionality” and determine whether it occurred in local education agencies’ (LEAs) identification, placement, and discipline of students with disabilities by race-ethnicity (20 U.S.C. § 1418[d][1]). IDEA’s 2004 reauthorization further stipulated that LEAs with significant disproportionality reserve 15% of their federal special education funds for coordinated early intervening services (CEIS) for K–12 students without disabilities. It also required that LEAs review and revise inappropriate policies, practices, and procedures that might contribute to disproportionality (20 U.S.C. § 1418[d][2]). Yet these regulations left open to states how to define significant disproportionality, implement CEIS, and determine what might constitute inappropriate policies, procedures, and practices, allowing for substantial interstate variability in state and LEA implementation.

Perhaps unsurprisingly, researchers and federal analysts have found that over time, many states operationalized disproportionality such that no LEAs would be identified with significant disproportionality, raising

concern about efforts to avoid sanctions and thereby undermining the intent and effects of the federal regulations (e.g., Albrecht et al., 2011; USGAO, 2013). Others have called attention to the distinctions between LEAs’ technical or symbolic compliance with regulations and meaningful effort to reduce inequities (Kramarczuk Voulgarides et al., 2014; Tefera & Kramarczuk Voulgarides, 2016). Such symbolic compliance often occurs alongside the illusion of race neutrality and objectivity in students’ educational experiences, thus ignoring widespread “socio-contextual inequalities” (e.g., Cavendish et al., 2014, p. 33) and the nuances of educational processes subject to long-standing inequality and absence of evidence-based practices (Kramarczuk Voulgarides, Fergus, & Thorius, 2017; Sullivan & Proctor, 2016). This “loose coupling” of policy with its underlying goals and substantive change for equity underlies the law’s paradox in potentially conferring both benefit and harm to traditionally marginalized groups (Kramarczuk Voulgarides et al., 2014, p. 249).

Current policy developments. In December 2016, new IDEA disproportionality regulations were released after years of criticism and protracted public commentary (U.S. Department of Education [USDOE], 2016). The regulations had three notable components: (a) requiring a standard methodology for determining significant disproportionality, (b) broadening the scope of CEIS to include preschoolers and students with disabilities, and (c) requiring LEAs to identify and address “root causes” of disproportionality. Although the stated aim of the new regulations was transparency and comparability in states’ analyses, they included allusion to the potential to increase the number of sanctioned LEAs (USDOE, 2016, p. 92456). The regulations do not address underrepresentation, but commentary noted it is subsumed under IDEA’s child-find obligations, that is, states’ obligation to identify all eligible students (34 CFR 300.111), and may be addressed through CEIS. Therein lies the tension, or double bind, of IDEA’s disproportionality regulations—the

need to identify all eligible children with disabilities but being faced with financial sanction if all racial-ethnic groups are not identified equally—which can produce confusion among educational leaders and teachers when students' rights are pitted against LEAs' financial stakes. As with other elements of IDEA (e.g., Boynton Hauerwas, Brown, & Scott, 2013; Sullivan & Sadeh, 2014; Sadeh & Sullivan, 2017), the ambiguity of the law means that it is subject to varied interpretations by members of the professional and scholarly communities (e.g., Morgan et al., 2015; Skiba et al., 2016) and motley local enactment (USGAO, 2013).

Interpretation of IDEA. Interpretations by policy actors across federal agencies and courts are an important dimension of this policy landscape that can help clarify the opacity of federal law and influence how states and LEAs approach disproportionality. First, the USDOE Office of Special Education and Rehabilitative Services (OSERS) and Office of Special Education Programs (OSEP) issue guidance, particularly in the forms of “Dear Colleague” letters and official memoranda, interpreting IDEA’s rules and regulations for direct implementation by states and LEAs. Such documents are generally released in response to public queries about confusing aspects of the law to explain how federal officers interpret the law and expect it to be applied. All are publicly available via USDOE and disseminated via various professional channels (e.g., sent to state administrators, publicized by agencies and professional organizations). Second, disproportionality may be at issue in special education due-process hearings following public complaints where the appropriateness of IDEA implementation is contested. Hearing officers interpret the law in their decisions, and although they are not legally binding outside of the hearings per se, in any given state or region, judges may use many such decisions to aid their interpretation of IDEA and related guidance when cases advance through the courts. When cases cannot be resolved in hearings, they may proceed through the court system (for description, see

Sullivan & Sadeh, 2014, pp. 455–457), the result of which may inform actions by states, LEAs, and individual practitioners.

Third, the USDOE Office for Civil Rights (OCR) enforces Title VI of the Civil Rights Act of 1964 prohibiting discrimination based on race, color, or national origin. OCR’s purview includes disproportionality in special education resulting from discrimination by students’ race/ethnicity or language status (OCR, 2016). Following discrimination complaints, LEAs may enter voluntary resolution or settlement agreements before an OCR investigation is complete, forestalling formal proceedings. Otherwise, OCR investigates and issues a report either exonerating the LEA or finding discrimination and ordering corrective action (e.g., modifications to general or special education policy and procedures) based on OCR’s interpretation of the laws in the unique context. Finally, disproportionality may be disputed under either IDEA or Title VI through the courts; thus, judges interpret the law. Some cases establish binding precedent, and even nonprecedential cases can affect LEAs’ approaches to minimizing liability as well as subsequent state and federal policy (for discussion of the role of early cases in IDEA, see Donovan & Cross, 2002). Taken together, these four sources of policy guidance and interpretation contribute to the disproportionality policy landscape, yet understanding of them is limited because they (a) are scattered across federal agencies, offices, and courts; and (b) have not been the focus on disproportionality scholarship. They are important to schools and scholars to understand, however—and the focus of the present review—because they demonstrate how policy actors such as federal officials and judges interpret ambiguous and clashing federal regulations and rules to elucidate how educators are expected to apply the law.

Thus, the purpose of this review was to synthesize the spectrum of policy guidance relevant to disproportionality. In particular, we sought to ascertain interpretations related to states’ and LEAs’ obligations in determination of “significant disproportionality” and

LEAs' resultant CEIS, along with schools' related obligations in the identification of special education eligibility, including nondiscrimination. We examined how the four sources of policy interpretation have applied IDEA and civil rights provisions to queries and local disputes and explored the consistency and contradictions across sources to discern implications for state and LEA policies and practices to support equity.

Method

To identify applicable documents, we first searched the LRP Special Ed Connection online database (www.specialedconnection.com), which catalogues documents related to special education and the law, including statutes, regulations, guidance by administrative agencies, state and federal court decisions, due-process hearing decisions, and OCR investigation reports as well as articles, reports, and other documents. We isolated the category All Special Education Cases, consisting of administrative interpretations and decisions, including opinions from OSEP and OSERS, decisions from federal and state courts, state special education administrative due-process hearing decisions, and OCR compliance investigations. We searched for documents containing *disproportionality* and *disproportionate representation* from 1997 to April 2018. We also searched the USDOE's "Laws and Guidance" (<https://www2.ed.gov/policy>) and OCR's Reading Room (<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html>), where cases, resolutions, and resources are archived; no additional unique documents were retrieved. The goal was to identify any guidance documents or cases that explicitly addressed disproportionality or disproportionate representation under IDEA.

The two LRP searches yielded 46 and 30 documents, respectively, for a total of 43 unique documents after eliminating duplicates. Approximately half ($n = 27$) were retained for this analysis. Documents were first screened for applicability to IDEA and disproportionality in special education. Given

the variety of documents returned, screening involved searching each document for use of the terms to determine whether they were used in reference to special education and IDEA's disproportionality regulations in particular. Documents were deemed irrelevant if they pertained to issues wholly unrelated to special education despite containing the search terms (e.g., non-education cases concerning disproportionate treatment of employees, juries' disproportionate awards of damages in similar motor vehicle accidents) or did not directly reference disproportionality regulations of IDEA (e.g., cases concerning only categorical eligibility or educational issues unrelated to special education, such as religious liberty).

For each remaining document, the second author first coded the following in a spreadsheet: citation, agency (OSERS, OSEP, OCR) or court, and type (Dear Colleague letter, memorandum, OCR complaint, type of court case, other guidance). A column was used to record quotations from the source documents that addressed how IDEA's disproportionality regulations were interpreted or were to be implemented or other guidance explicitly linked to disproportionality. For court cases, these were drawn primarily from the case summary and analysis sections and primarily included interpretations of federal laws and the bases for judges' or administrative officers' decisions in the case. For OCR complaints, we relied primarily on the Conclusions sections wherein the bases for OCR's findings relative to federal laws were described. For all other documents, the full text was reviewed for instructive statements (e.g., those containing *should* or *must* or referencing obligations or responsibilities). The first author also reviewed all documents to verify screening and coding. To ensure reliable coding, the authors first co-developed the coding sheet and agreed on operational definitions. Initial disagreement in screening and coding (7%) was resolved by comparing each author's coded responses and collaboratively reviewing cases until reaching 100% agreement.

Documents retained for this analysis were first grouped by type (federal guidance,

$n = 14$; OCR complaints, $n = 9$; court and due-process cases, $n = 4$) and then by aforementioned policy elements addressed: (a) numerical determination of significant disproportionality, (b) allocation and use of funds for CEIS, and (c) individualized special education decisions and inappropriate actions that may contribute to disproportionality, which correspond to dominant policy interpretations applicable at the state, district, and student levels, respectively. We focused on these themes because they align with the ambiguities in the law wherein the regulations allow for local latitude in implementation and, thus, the potential for confusion and poor implementation (for summary of documents and key points, see Supplementary Materials, Tables 1 through 3 and Figure 1).

Results

Numerical “Significant Disproportionality”

The USDOE has repeatedly offered its interpretation of how states should determine “significant disproportionality” (see Table 1 in the Supplemental Materials). This guidance is derived largely from memoranda and letters responding to queries to OSEP regarding the nature of the data that may be utilized or excluded. IDEA did not specify how states should determine whether an LEA has significant disproportionality, but OSEP and OSERS have interpreted it to require determination based strictly on numerical data and not any qualitative data or contextual considerations (e.g., Posny, 2007; USDOE, 2007). Early clarifications specified that states’ calculations for LEAs were to include any student receiving special education in an LEA even if the LEA, such as a secondary school district, did not make the original eligibility determination (Knudsen, 2008c) but may exclude those students unilaterally placed by the courts or medical providers (USDOE, 2009). States may not consider whether the LEA’s policies, procedures, and practices were consistent with the law or if a minority group is overrepresented due to legitimate causes (Musgrove,

2012). Thus, although states had authority to define “reasonable” thresholds for significant disproportionality (USDOE, 2009), OSEP’s interpretations of IDEA’s requirements simultaneously constrained consideration of qualitative information pertinent to ascertaining whether patterns indicate a disparity or inequity. Instead, states are to review an LEA’s policies and procedures *after* determining significant disproportionality. In this vein, OSEP has made clear that compliance with other aspects of the law does not negate sanctions if significant disproportionality is found. Finally, states are not allowed to consider whether a group is underrepresented, as this is considered an issue of child find, not disproportionality (Knudsen, 2008b).

Coordinated Early Intervening Services

The issue of CEIS appears to have garnered even more confusion among educators and scholars as it has been the focus of six queries to OSEP along with two other guidance documents (see Table 2 in the Supplemental Materials). Taken together, these interpretations have reiterated when and what proportion of funds must be allocated when LEAs are found to have significant disproportionality and the relations of this allocation to other special education expenditures. If an LEA has significant disproportionality, regardless of the cause of that disproportionality, it must reserve 15% of its federal special education funding for CEIS, and any unexpended CEIS allocations are forfeited to the federal government (Guard, 2008; Knudsen, 2008a, 2008b; Posny, 2007, 2010; USDOE, 2007). OSEP emphasized, “The obligation to reserve funds for CEIS occurs independent of any analysis of whether that disproportionality is the result of inappropriate identification” (Posny, 2007, p. 3); thus, CEIS is triggered regardless of the nature—discriminatory or legally defensible—of the observed disparities. Until recently, these funds were required to be spent exclusively on K–12 students not in special education (Posny, 2007) and had to be directed particularly, but not solely, to the particular

groups disproportionately overrepresented in special education (e.g., Black students in a specific grade; Knudsen, 2008b). This letter also noted that although funds may be directed at services within multitier systems of support (MTSS; e.g., response to intervention [RTI]), they could not be directed toward the universal tier of services unless “principally intended to address the needs of students who are struggling” (Knudsen, 2008b, p. 6); that is, funding cannot be directed to the benefit of all students but must instead be geared toward supports for those at risk for disability.

Additionally, LEAs with significant disproportionality may not reduce their annual local funding due to statutory requirements for maintenance of effort or consistency of funding from year to year (Duncan, 2009; Guard, 2009). Arne Duncan (2009) issued a letter regarding the impending release of funding under the American Recovery and Reinvestment Act of 2009 noting that generally, school districts could take advantage of this additional funding to reduce local spending on special education, but school districts with significant disproportionality were not permitted to redirect local funding, and he urged states to not redefine the criteria for significant disproportionality to enable districts to avoid this limitation. The USGAO (2013) report suggested states did not heed this recommendation. In addition, later guidance noted that the requirement for reallocating funding for CEIS should not affect allocations for students in private schools and could not be offset with Medicaid claims (Ryder, 2016).

Importance of Consistent Policy Implementation and Individualized Decisions

Whereas IDEA, and OSEP and OSERS by extension, emphasized numerical patterns of disproportionality while expressly prohibiting consideration of contextual information, this contextual information was the focus of decisions by OCR and others when discrimination was in question (see Table 3 in the Supplemental Materials). Indeed, numerical dispro-

portionality has been deemed an insufficient basis for determining discrimination. Instead, it is the context in which the disproportionality occurs that take primacy in determining the appropriateness of outcomes for individuals and groups. When discrimination was suspected or substantiated, early cases shared emphasis on monitoring numerical data for emergent or recurring indication of disparity (*Angel G. et al. v. Texas Education Agency*, 2004; *Lee v. Lee County Board of Education*, 2007; Pierre, 2011), but later decisions featured more nuanced and extensive prescriptions. Across the OCR cases, due-process decisions, and case law, decisions and agreements emphasized the importance of district and schools’ *consistent* implementation of reliable and valid intervention and assessment policies and procedures with all students, as well as reliance on individualized decisions when a student was evaluated for or received special education services. Students’ rights to timely, individualized services were repeatedly highlighted, particularly where students’ rights and LEA efforts to avoid disproportionality conflicted.

Notably, a federal appellate court held that numerical disproportionality alone was not evidence of discrimination because each student had been identified for special education via individualized processes (*Blunt v. Lower Merion School District*, 2014). In another illustrative due-process case, the district’s concern about disproportionality of Black students was deemed an illegitimate basis to decline to evaluate a child for special education even though the child was responding to regular education interventions and was provided services under Section 504 (*San Francisco Unified School District*, 2015). Thus, efforts to reduce numerical disproportionality cannot interfere with state and LEA obligations for child find and zero reject (i.e., no eligible student may be denied services under IDEA).

When OCR investigates disproportionality for discrimination, it endeavors to determine whether discrimination occurred in intervention, assessment, or individualized education program processes. Typically, disproportionality

results from facially neutral local policy (i.e., a policy that is not overtly discriminatory), so OCR applies the following analysis:

OCR will consider whether the policy results in an adverse impact on students of a particular race or national origin as compared with students of other races and national origins; whether the applicable policy is necessary to meet an important educational goal; whether the proffered justification is a pretext for discrimination; and even in situations where the policy is necessary to meet an important educational goal, whether there are comparably effective alternative policies available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected racial or ethnic group. (Blanchard, 2013, p. 3)

Thus, there are broad considerations of the circumstances, as well as valid alternatives, surrounding an identified disparity. Investigations also considered whether reliable, valid, non-discriminatory general and special education policies and procedures were in place. Where investigations indicated such practices were not in place or were not consistently applied, LEAs were found at fault and these activities were required (Hibino, 2014; Rapport, 2013a, 2013b). Then, whether resolved informally or resulting in official findings of discrimination, OCR resolutions often required review and dissemination of policies to all personnel, expansion of screening and referral processes, and ongoing monitoring of disparate impact and effectiveness of general education and special education processes (e.g., universal screening, informal classroom interventions, prereferral interventions, evaluation, and placement; Blanchard, 2013; Hibino, 2014; Murphy, 2012; Rapport, 2013a, 2013b).

To illustrate, one case concerned a school district that evidenced overrepresentation of Black students in its alternative school programs (Hibino, 2014). OCR examined the district's applicable policies and determined that they were appropriate and thorough as they required a "data-intensive and well-documented pre-referral, referral, evaluation and placement process" (Hibino, 2014, p. 5). However,

OCR then reviewed the files of over 200 students and found that the district did not consistently implement its own policies (e.g., failure to document appropriate prereferral interventions). The district entered into a resolution agreement to address identified deficiencies via several required activities: convening a committee with expertise in addressing overrepresentation of minorities in special education, conducting a review to identify the causes of Black student overrepresentation in the alternative special education schools, collection of annual data to assess the effectiveness of its efforts to combat disproportionality, and distribution of written guidelines to staff regarding implementation of the district's prereferral policies. Such activities were common across cases.

A case decided in the context of desegregation illustrates the pitfalls of focusing solely on reducing numerical representation, particularly where numerical data do not indicate inequitable treatment. *Lee v. Lee County Board of Education* (2007) originated in 1963, when Black students sued to desegregate certain Alabama high schools, resulting in court oversight of desegregation. By 2000, one of the few remaining issues in the case was disproportionality in special education (*Lee*, 2007). When the state requested to end court oversight, advocacy groups objected, arguing that although numerical disproportionality had been reduced, the means of such reduction was discriminatory because it appeared that students were being denied initial identification, transferred to different eligibility categories, or inappropriately decertified. The objectors further noted that a substantial increase in suspension rates and decrease in graduation rates for Black students coincided with the LEA's efforts to reduce disproportionality, suggesting that these efforts denied students needed support. The objectors and the state agreed on informal resolution, and the court ended its oversight when the state provided further data and agreed to address objectors' concerns. If the court had limited its oversight solely to numerical analysis, the objectors would have lacked a

basis to question the appropriateness of practices and likely would not have obtained concessions to promote equity.

In general, discrimination cases were more broadly oriented than IDEA's dual foci on numerical disproportionality and CEIS for students at risk of disability. This broader orientation included attention beyond race-based disparities. Although not a common focus of the disproportionality guidance from OSEP and OSERS, OCR has repeatedly addressed the importance of appropriate consideration of language acquisition and involvement of staff with relevant expertise in special education decisions involving students who are English learners, particularly those from Hispanic backgrounds (August, 2014; Blanchard, 2013; Jackson, 2008). Most recently, Lhamon's (2016) letter explicitly addressed the intersections of Title VI with multiple federal disability laws applicable in schools and articulated extensive expectations for equitable general education practices to prevent disproportionality. These included nondiscriminatory referral practices, equitable general education intervention, and appropriate evaluation and identification practices. Lhamon reiterated that racial discrimination in special education referrals and identification, including underidentification, can result in violating students' rights under IDEA, Section 504, and Title VI. Accordingly, LEAs must identify and serve all students with disabilities, even if this identification may result in a finding of significant disproportionality under IDEA's regulations.

Discussion

The policy interpretations offered in guidance documents, OCR complaints, and various legal cases highlight the parallel thrusts of IDEA's disproportionality regulations and antidiscrimination law, which can place district obligations at odds. A decade of guidance on IDEA consistently indicates that determinations of significant disproportionality is to be made on the basis of numerical data alone, thereby triggering reallocation of

funding for CEIS that cannot be delayed or displaced. Conversely, where discrimination is of concern, contextual information about the formulation and implementation of general and special education policies, procedures, and practices is of prime importance. Next, we consider the relations of these interpretations to scholarship and offer recommendations for practice.

Where discrimination is of concern, contextual information about the formulation and implementation of general and special education policies, procedures, and practices is of prime importance.

Disparate Data Versus Disparate Treatment

Whereas OSEP maintains focus on numerical indication of overrepresentation, OCR is broadly concerned with disparate treatment and individuals' rights. School systems have distinct obligations related to each. States must define significant disproportionality and identify LEAs required to engage in CEIS. However, because of the corresponding funding mandate, local emphasis may be largely on numerical disproportionality, and it remains to be seen how "reasonableness" of numerical thresholds will be interpreted, especially in light of delayed compliance dates (USDOE, 2018). Although the new regulations require a standard method of determining disproportionality, states are free to adopt their own thresholds, cell sizes, and time periods within broad limits (34 C.F.R. § 300.647). Accordingly, it is likely that some, if not many, states will avoid finding disproportionality if they so choose, as appeared to be the case under previous regulations (e.g., Albrecht et al., 2011; USGAO, 2013). The new constraints for estimating disproportionality will increase the number of school systems obligated to invest in CEIS and investigate root causes of disparities only if thresholds reflect those used in disproportionality research and

evaluation (for discussions, see USGAO, 2013; Sullivan, 2011). If previous patterns hold, however, many states' thresholds and other requirements will be set to minimize findings of disproportionality, thus continuing to negate the potential effect of regulations. Nonetheless, schools without designations of "significant discrimination" may still be culpable for discrimination, as suggested by the cases and OCR complaints reviewed here. Accordingly, regardless of federal and state departments' potential inertia, administrators, educators, related service providers, and other stakeholders can advocate for evidence-based practices in screening, intervention, and special education processes as well as building- and district-level policy evaluation to identify potential disparities and levers for change.

One area where OSEP guidance is lacking is on how states and districts can determine the appropriateness of policies, procedures, and practices. The notion that schools can readily identify root causes of disproportionality and correct them through CEIS is questionable given the continued controversy among scholars about disproportionality's root causes in systemic, institutional, or historical factors relative to inappropriate educational practice and procedures (for recent examples, see Collins et al., 2016; Morgan & Farkas, 2015; Skiba et al., 2016). School systems may adopt an approach similar to OCR wherein disparate data—evidence of disproportionality—spur investigation of (a) the *appropriateness* of school policies and procedures relative to legal requirements, professional standards, best practice, and research evidence along with (b) the *consistency* with which they are implemented to ensure that no discriminatory practice, whether intentional or unintentional, occurs. Rather than waiting for state or federal investigations, LEAs can monitor the fidelity with which procedures are applied and ascertain equitability of treatment across student groupings, such as race-ethnicity and language status, and other salient dimensions of sociodemographic differences in local contexts.

Leveraging Early Intervening

Consistent with recommendations for reducing inappropriate disability identification, current regulations and interpretations thereof encourage school systems to reduce disproportionality through CEIS featuring research-based practices for preK–12 general and special education. It is especially important that CEIS efforts attend to improving the quality of instruction and intervention provided in general education, building on the research-based practices shown to reduce later difficulties (e.g., Scanlon, Vellutino, Small, Fanuele, & Sweeney, 2005). However, this is recognized as a persistent challenge of early intervening frameworks, particularly for diverse populations (Fuchs & Vaughn, 2012; Thorius & Sullivan, 2013). OCR resolutions provide guidance on how CEIS can be formulated to support positive student outcomes and reduce potentially ineffective or discriminatory practices. In addition to annual review of data on effectiveness of implementation of policies and procedures and potential differences by students' sociodemographic characteristics, OCR plans often featured ongoing professional learning, efforts to ensure clarity and awareness of policies, and expansion of screening and prereferral intervention. These common approaches to preventing inequitable treatment are consistent with the nationwide emphasis on MTSS, such as RTI, and can be integrated into ongoing efforts to bolster tiered intervention frameworks. Furthermore, the focus on improving general education and early intervening to reduce the emergence of potential special education disabilities is consistent with the intentions of the IDEA and guidance offered on the limits of CEIS. Crucially, such efforts should begin with intensive, professional development in research-based practice because training for classroom teachers is essential to promoting fidelity of implementation and is at least as effective in bolstering student outcomes as intensive, targeted direct intervention (e.g., Scanlon, Gelzheiser, Vellutino, Schatschneider, & Sweeney, 2008).

The newest IDEA regulations were again silent on underrepresentation as an actionable dimension of disproportionality despite ongoing controversy, with the commentary instead situating it under states' child-find obligations (USDOE, 2016). OCR has addressed underrepresentation, however, where disparate treatment of these groups—that is, denial of needed special education—is considered a violation of Title VI (Lhamon, 2016). Increasing legally sound identification of consistently underidentified groups—generally, students identified as Hispanic, Asian, and limited English proficient (Donovan & Cross, 2002; Morgan et al., 2018; Sullivan & Bal, 2013)—may push the boundaries of professional competence and bias. For example, capacity to effectively engage learners from these groups and others remains limited among educators and related service providers, and butts against both official (albeit unlawful) and unofficial policies precluding dual identification for English language services and special education (Lhamon & Gupta, 2015). Yet states and LEAs can leverage available resources to support development of appropriate policies and procedures for these groups (e.g., Park, Martinez, Chou, 2017). In preventing inappropriate underidentification, OCR and due process cases highlighted the importance of systematic screening and prereferral intervention processes, involvement of professionals with expertise in language acquisition, use of varied and valid assessment procedures and tools, and integration of parents throughout decision making processes—all of which are consistent with IDEA and professional guidelines and standards. Special educators, school psychologists, and other related service providers can assist with developing and implementing screening and intervention procedures, either within a framework of MTSS or an independent of one. Moreover, they can help ensure that best practices in data-based decision making and psychoeducational assessment are followed throughout general and special education assessment processes (Christ & Arañas, 2014) and that professionals safeguard against biased decisions in group processes (Gutkin & Nemath, 1997).

It is important to note that although CEIS has been emphasized in IDEA for more than a decade, the effect in reducing disproportionality appears limited (Albrecht et al., 2012; USGAO, 2013). Studies are mixed, but there is research support for the potential of high-quality RTI to reduce referrals and identification for special education (e.g., Hosp, Huddle, Ford, & Hensley, 2016). Conversely, consistent with findings of minimal change under past regulations, research also points to inadequate professional preparation and fidelity of implementation in limiting the effectiveness of CEIS (e.g., RTI; Sullivan & Long, 2010; Vujnovic et al., 2014). As such, where past efforts for CEIS have not reduced disproportionality, inertia may reflect large-scale weaknesses in the preparation for, and conceptualization and implementation of, CEIS rather than failure of the framework. Consistent with a common requirement of the OCR agreements, implementation of CEIS should be paired with intensive and ongoing professional learning necessary to ensure understanding and implementation of the component instruction, intervention, and assessment practices. Likewise, as recommended by OCR, all efforts should be yoked to ongoing monitoring of implementation and effectiveness to ensure fidelity and attainment of desired outcomes.

Unavoidable Double Bind?

Artiles (2013) noted,

The quest for educational equity has been elusive and fraught with paradoxes throughout the history of American education, particularly for racial minorities and disabled learners. . . . Remedies for one group can have deleterious consequences for the other, thus muddling the effects of well-intentioned justice projects. (p. 329)

The various legal aspects discussed throughout—IDEA's orientation to disproportionality and CEIS on one hand and child find on the other, OCR's interpretation of the intersections of Title VI with disability laws—present a double bind for school systems

where disproportionality is not readily attributable to inappropriate policies and practices, and likely muddle efforts to support minority students who may have special needs. Federal guidance and treatment of individual cases within OCR, due process, and the courts makes clear that this conflict cannot be avoided. Schools must identify all eligible students through appropriate child-find activities and individualized decisions, including nondiscriminatory practices, even if it results in “significant disproportionality” and financial penalty. Rather than merely seeking to avoid sanction, LEAs must craft policies and practices consistent with the spirit and requirements of IDEA and civil rights law even when they result in determinations of significant disproportionality under IDEA. Schools cannot seek to simply reduce measured disproportionality if doing so denies services to eligible students or creates disparities in educational access other educational outcomes (e.g., discipline, graduation). Instead, schools must find a balance of these competing policy mandates that prioritizes student rights so as to ensure that the promise of IDEA is fulfilled without regard to race (Lhamon, 2016). Further, equity in special education is integral to our commitment to effectively educate and support all students, because, as OCR reminded us, unlawful treatment of students from minority backgrounds “deprives all students in that school, who are thereby consigned to learn in a discriminatory and more racially segregated environment” (Lhamon, 2016, p. 5; italics added). Perhaps the best approach is for LEAs to reduce potential development of educational disabilities that can be related to environmental factors. This can be accomplished by enhancing opportunities to learn and social-emotional supports for all students.

LEAs must craft policies and practices consistent with the spirit and requirements of IDEA and civil rights law even when they result in determinations of significant disproportionality under IDEA.

Where special education needs are not evenly distributed across sociodemographic groups, school systems must ensure appropriate identification and service of all students and accept the potential sanction under IDEA’s disproportionality mandate in order to comply with IDEA, Title VI, Section 504, and the Americans With Disabilities Act (ADA). In these contexts, the double bind may be unavoidable due to differential need, but this dynamic does not negate competing responsibilities for ensuring child find, zero reject, nondiscrimination, and reducing disproportionality. The most recent IDEA regulations allow for use of funds to support students in both general and special education, so funds could be distributed such that the appropriately overrepresented students may also benefit. This conflict may be especially salient in communities where child development is adversely affected by exposure to experiences or substances that affect brain development and resultant cognition, behavior, and social-emotional functioning (e.g., Lanphear, 2015; Romano, Babchishin, Marquis, & Fréchette, 2015) and, consequently, increase risk of eligible special education needs. For instance, a pending lawsuit against California’s Compton Unified School District may require district actions that result in significant disproportionality because the plaintiffs assert that a large proportion of the student population has been denied needed services for trauma-related disorder that should trigger protection under disability policies (*Peter P. v. Compton Unified School District*, 2015). If plaintiffs succeed, substantially more students from racial-ethnic minority and low-socioeconomic-status backgrounds will likely be eligible for special education due to the effects of childhood trauma (for discussion, see Lawson, 2017).

Similarly, a disproportionate number of racial minority students may be eligible for special education in communities disproportionately affected by exposure to hazardous substances. Such disparities may result from socioeconomic differences in environmental exposure to toxins with pervasive

developmental effects, such as lead, which is associated with depressed cognitive functioning and increased risk of mood and behavior disorders (e.g., Bellinger, 2008; Martin & Acs, 2018). In 2016, for example, several Michigan families filed suit against the state department of education and local school systems on behalf of their children and others (American Civil Liberties Union of Michigan, 2018). The families alleged violations of IDEA, ADA, and related state laws pertinent to child find following schools' failure to identify students with special needs resulting from the effects of the lead-contaminated city water supply in Flint, Michigan. The resulting 2018 settlement agreement required state funding for a registry of lead-exposed children in order to facilitate screening and identification, efforts to maximize children's school participation and interagency collaboration on their behalf, and professional development for school leaders and staff in order to ensure identification of special needs and appropriate special education services for affected students. Flint is a majority-Black city (U.S. Census Bureau, 2018), so compliance with the settlement agreement and child-find requirements more generally may result in significant disproportionality.

Thus, school systems serving populations subject to severe economic, social, and environmental inequities and injustice may bear the brunt of the catch-22 in current disproportionality policy. Nonetheless, this is unlikely to be the case in *most* school systems even where substantial overrepresentation of some groups is observed. Instead, such patterns should evoke reconsideration of the nature of disability, purpose of special education, and roles of effective general education practices to ensure that special education serves only students with *disabilities* as opposed to difficulties that should be addressed through improved general education instruction and intervention (Sullivan & Proctor, 2016).

This policy landscape is further complicated by the current political milieu. With the July 2018 decision by the USDOE

(2018) to delay the compliance date for the newest disproportionality regulations—despite extensive opposition (e.g., Leadership Conference on Civil and Human Rights, 2017)—states and LEAs may perceive a troubling state of limbo. This delayed enforcement, however, does not negate states' statutory responsibilities, so the recommendations hold. Further, it is crucial that educators, school leaders, and related personnel remain cognizant that whatever the federal stance on disproportionality, unchanged is our responsibility that decisions for any given student are individualized regardless of their group membership and formulated consistent with child-find obligations and antidiscrimination legislation. Yet child find itself is an equally complicated matter (for discussion, see Zirkel, 2015) intertwined with other ambiguous, contentious legal issues (e.g., compensatory education; Nelson, 2011). Thus, when engaging students from racially and linguistically diverse backgrounds, OCR's guidance may be especially helpful in light of OSEP's relative silence on the nuances of child find as they relate to disproportionality.

Conclusions and Research Implications

This review synthesized how the various agencies and policy actors throughout the federal agencies and courts have interpreted IDEA and civil rights provisions related to disproportionality. Disproportionality policy remains a complicated patchwork that seeks to address equality and equity but may lead to as many questions as answers given schools' competing legal obligations. Decades ago, in reporting to policy makers, scholars highlighted the quandary of whether special education disproportionality reflects inequity (Heller et al., 1982); this remains a perennial issue in federal policy and resultant school-based practice and legal action at various levels of educational systems. In the present analysis, we synthesized the policy guidance provided by USDOE, OCR, and due-process

proceedings and case law to elucidate how federal policy is interpreted generally and under local circumstances. Both research and the policy interpretations reviewed here suggest that it is not enough to have sound policies and procedures in place; they must be applied equitably—regardless of students’ sociodemographic characteristics—but research and investigations indicate this is often not the case, not only in special education (Donovan & Cross, 2002) but in a range of domains related to student behavior, performance, and ability that may, in turn, affect disproportionality (Skiba et al., 2011).

It is not enough to have sound policies and procedures in place; they must be applied equitably.

The intersection of disproportionality and policy is ripe for research. An ongoing focus of both disproportionality research and antidiscrimination policy is the nature of observed disparities. There is no consensus about the meaning of observed patterns or how the educational community should respond. Yet, IDEA’s regulations position overrepresentation as a problem to be resolved through identification of “root causes” and corresponding CEIS. Elucidating this quandary is a charge that can be taken up by scholars in partnership with schools (Skiba et al., 2008) in order to better understand and affect the multiple mechanisms by which disproportionality emerges. There is also substantial controversy about the nature and importance of underrepresentation, and OSERS has explicitly declined to take action on underrepresentation on the grounds that research into this area is inconclusive (USDOE, 2016); more research is clearly needed. Moreover, there is little research-based guidance for applying evidence-based interventions or procedures to reduce over- or underrepresentation (Skiba, Albrecht, & Losen, 2012). Further research into the efficacy of CEIS in addressing disproportionality is also warranted given the implications for school funding and practice, and the potential for the CEIS mandate to affect

more school systems under the newest regulations. School systems will need strong evidence-based guidance as they shift financial and professional resources.

States and LEAs are further affected by uncertainty at USDOE and OCR on regulations and procedures relevant to disproportionality given the current compliance delays for the newest disproportionality regulations (USDOE, 2018) and changes to OCR’s procedures for discrimination investigations (Sargrad, 2018). In a context of persistent educational disparities and loosening federal oversight, school systems and educators must move beyond technical compliance that allows for continued failure to meet students’ needs to engage in critical conversations about educational equity and change (Kramarczuk Voulgarides et al., 2017).

Supplemental Material

Supplemental material for this article is available online.

References

References marked with an asterisk indicate studies included in the review.

- Albrecht, S. F., Skiba, R. J., Losen, D. J., Chung, C., & Middelberg, L. (2011). Federal policy on disproportionality in special education: Is it moving us forward? *Journal of Disability Policy Studies, 23*, 14–25. doi:10.1177/1044207311407917
- American Civil Liberties Union of Michigan. (2018). *Flint water crisis: Settlement to launch groundbreaking program to assess impacts on flint children*. Retrieved from <http://www.aclumich.org/article/flint-water-crisis-settlement-launch-groundbreaking-program-assess-impacts-flint-children>
- *Angel, G, et al. v. Texas Education Agency, A-99-CA-035-SC (W.D. Tex. 2004).
- Artiles, A. J. (2013). Untangling the racialization of disabilities: An intersectionality critique across disability models. *DuBois Review, 10*, 329–347. doi:10.1017/S1742058X13000271
- Artiles, A. J., & Trent, S. C. (1994). Overrepresentation of minority students in special education: A continuing debate. *The Journal of Special Education, 27*, 410–437. doi:10.1177/002246699402700404

- *August, T. D. (2014). *Resolution agreement: Harmony (TX) Public Schools, Case No. 06-11-5004*. Retrieved from LRP Special Ed Connection. (114 LRP 50981)
- Bellinger, D. C. (2008). Lead neurotoxicity and socioeconomic status: Conceptual and analytical issues. *Neurotoxicology, 29*, 828–832. doi:10.1016/j.neuro.2008.04.005
- *Blanchard, T. C. J. (2013). *Resolution agreement: Schenectady (NY) City School District, Case No. 02-10-5001*. Retrieved from LRP Special Ed Connection. (113 LRP 43955)
- *Blunt v. Lower Merion School District, 767 F.3d 247 (3rd Cir. 2014).
- Boynton Hauerwas, L., Brown, R., & Scott, A. N. (2013). Specific learning disability and response to intervention: State-level guidance. *Exceptional Children, 80*, 101–120. doi:10.1177/001440291308000105
- Cavendish, W., Artiles, A. J., & Harry, B. (2014). Tracking inequality 60 years after *Brown*: Does policy legitimize the racialization of disability? *Multiple Voices for Ethnically Diverse Exceptional Learners, 14*(2), 30–40.
- Christ, T., & Arañas, Y. A. (2014). Best practices in problem analysis. In P. L. Harrison, & A. Thomas (Eds.), *Best practices in school psychology data-based and collaborative decision making* (pp. 87–98). Bethesda, MA: National Association of School Psychologists.
- Cohen, D. R., Burns, M. K., Riley-Tillman, C., & Hosp, J. L. (2015). Are minority students under- or overrepresented in special education? *Communique, 44*(2), 1, 22–23.
- Collins, K. M., Connor, D., Ferri, B., Gallagher, D., & Samson, J. F. (2016). Dangerous assumptions and unspoken limitations: A disability studies in education response to Morgan, Farkas, Hillemeier, Mattison, Maczuga, Li, and Cook (2015). *Multiple Voices for Ethnically Diverse Exceptional Learners, 16*(1), 4–12.
- Coutinho, M. J., Oswald, D. P., & Best, A. M. (2002). The influence of sociodemographic and gender on the disproportionate identification of minority students as having learning disabilities. *Remedial and Special Education, 23*, 49–59. doi:10.1177/074193250202300107
- Crammond, B., & Carey, G. (2017). What is policy and where do we look for it when we want to research it? *Journal of Epidemiology and Community Health, 71*, 404–408. doi:10.1136/jech-2016-207945
- Cruz, R. A., & Rodl, J. E. (2018). An integrated synthesis of literature on disproportionality in special education. *The Journal of Special Education*. Advance online publication. doi:10.1177/0022466918758707
- Donovan, S., & Cross, C. T. (2002). *Minority students in special and gifted education*. Washington, DC: National Academy Press.
- *Duncan, A. (2009, October 21). [Dear Colleague letter on state determinations on the performance of each local educational agency]. Retrieved from <https://www2.ed.gov/policy/elsec/guid/secletter/091021.html>
- Dunn, L. M. (1968). Special education for the mildly retarded: Is much of it justifiable? *Exceptional Children, 35*, 5–22.
- Ford, D. Y., & Russo, C. J. (2016). Historical and legal overview of special education overrepresentation: Access and equity denied. *Multiple Voices for Ethnically Diverse Exceptional Learners, 16*(1), 50–75.
- Fuchs, L. S., & Vaughn, S. (2012). Response-to-intervention: A decade later. *Journal of Learning Disabilities, 45*, 195–203. doi:10.1177/0022219412442150
- *Guard, P. J. (2008, February 1). [Letter to Frankie McCabe]. Retrieved from <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2008-1/mccabe020108disprop1q2008.pdf>
- *Guard, P. J. (2009, November 13). [Letter to Lana Michelson]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/letters/2009-4/michelsonandmayes111309moe4q2009.pdf>
- Gutkin, T. B., & Nemeth, C. (1997). Selecting factors impacting decision making in prereferral intervention and other school-based teams: Exploring the intersection between school and social psychology. *Journal of School Psychology, 35*, 195–216. doi:10.1016/S0022-4405(97)00005-8
- Heller, K. A., Holtzman, W. H., & Messick, S. (Eds.). (1982). *Placing children in special education: A strategy for equity*. Washington, DC: National Academies Press.
- Hibel, J., Farkas, G., & Morgan, P. L. (2010). Who is placed into special education? *Sociology of Education, 83*, 312–332. doi:10.1177/0038040710383518
- *Hibino, T. J. (2014). *Resolution agreement: Lynn (MA) Public Schools, Case No. 01-10-5004*. Retrieved from LRP Special Ed Connection. (114 LRP 29313)

- Hosp, J. L., Huddle, S., Ford, J. W., & Hensley, K. (2016). Learning disabilities/special education. In S. Jimerson, M. K. Burns, & A. M. VanDerHeyDen (Eds.), *Handbook of response to intervention: The science and practice of multi-tiered systems of support* (2nd ed., pp. 43–58). New York, NY: Springer.
- Individuals With Disabilities Education Act, U.S.C. §§ 1400 *et seq.* (2006 & Suppl. V. 2011).
- *Jackson, G. D. (2008). *Settlement agreement: Mount Vernon (WA) School District No. 321, Case No. 10-04-5002*. Retrieved from LRP Special Ed Connection. (108 LRP 64334)
- Kincaid, A., & Sullivan, A. L. (2017). Parsing the relations of race and socioeconomic status in special education disproportionality. *Remedial and Special Education, 38*, 145–158. doi:10.1177/0741932516671199
- *Knudsen, W. W. (2008a, June 3). [Letter to Francis F. Loose]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/letters/2008-2/loose060308disprop2q2008.pdf>
- *Knudsen, W. W. (2008b, September 25). [Memorandum to Chief State School Officers re: coordinated early intervening services under Part B of the Individuals With Disabilities Education Act]. Retrieved from https://www2.ed.gov/policy/speced/guid/idea/ceis_pg2.html
- *Knudsen, W. W. (2008c, November 4). [Letter to Robert Runkel]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/letters/2008-4/runkel110408disprop4q2008.pdf>
- Kramarczuk Voulgarides, C., Aylward, A., & Noguera, P. (2014). The elusive quest for equity: An analysis of how contextual factors contribute to the likelihood of school districts being legally cited for racial disproportionality in special education. *Journal of Law and Society, 15*, 241–273.
- Kramarczuk Voulgarides, C., Fergus, E., & Thorius, K. A. K. (2017). Pursuing equity: Disproportionality in special education and reframing of technical solutions to address systemic inequities. *Review of Research in Education, 41*, 61–87. doi:10.3102/0091732X16686947
- Lanphear, B. P. (2015). The impact of toxins on the developing brain. *Annual Review of Public Health, 36*, 211–230. doi:10.1146/annurev-publhealth-031912-114413
- Lawson, A. (2017). Straight outta Compton: Witness the strength of disability rights taking one last stand for education reform. *Syracuse Law Review, 67*, 552–581. Retrieved from http://lawreview.syr.edu/wp-content/uploads/2017/03/Vol-67.2_Lawson.pdf
- *Lee, v. Lee County Board of Education, 476 F. Supp 2d 1356 (M.D. Ala. 2007).
- Leadership Conference on Civil and Human Rights. (2017, December 2017). [Letter to Secretary DeVos re: enforcement of IDEA provisions regarding significant disproportionality]. Retrieved from <http://civilrightsdocs.info/pdf/policy/letters/2017/SigDisSignOnLetter120617FINAL.pdf>
- *Lhamon, C. E. (2016). *Dear Colleague letter: Preventing racial discrimination in special education*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>
- Lhamon, C. E., & Gupta, V. (2015). *Dear Colleague letter: English learner students and limited English proficient parents*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>
- Martin, S., & Acs, G. (2018). *The long-term benefits of preventing childhood lead exposure*. Washington, DC: Urban Institute.
- Morgan, P., & Farkas, G. (2015). Evidence of minority under-representation in special education and its implications for school psychologists. *Communique, 44*(6), 1, 30–33.
- Morgan, P. L., Farkas, G., Cook, M., Strassfeld, N. M., Hillemeier, M. M., Hung Pun, W., & Schussler, D. L. (2017). Are black children disproportionately overrepresented in special education? A best-evidence synthesis. *Exceptional Children, 83*, 181–198. doi:10.1177/0014402916664042
- Morgan, P. L., Farkas, G., Hillemeier, M. M., Mattison, R., Maczuga, S., Li, H., & Cook, M. (2015). Minorities are disproportionately underrepresented in special education: Longitudinal evidence across five disability conditions. *Educational Researcher, 44*, 278–292. doi:10.3102/0013189X15591157
- *Murphy, R. C. (2012). *Cooperative agreement: Norfolk (VA) City Public Schools, Case No. 11-08-1259*. Retrieved from LRP Special Ed Connection. (112 LRP 24918)
- *Musgrove, M. (2012, June 26). [Letter to Congressman Lynn Woolsey]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/11-026516r-ca-hill-woolsey-monitoring-6-26-12.pdf>
- Office of Civil Rights. (2016). *Delivering justice: Report to the president and secretary of education under Section 203(b)(1) of the Department of Education Organization Act*. Retrieved from <http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2015.pdf>
- Nelson, A. K. (2011, March). *Compensatory education: Where are we?* Presentation at

- the Academy for IDEA Administrative Law Judges and Hearing Officers, San Diego, CA.
- Park, S., Martinez, M., & Chou, F. (2017). *CCSSO English learners with disabilities guide*. Washington, DC: Council of Chief State School Officers.
- Peter, P. v. Compton Unified School District, C.D. Cal. Case No. LA CV-15-3726 MWF (PLAx), *Memorandum of points and authorities in support of plaintiffs' motion for class certification* (2015). Retrieved from <http://www.traumaandlearning.org/#!/summary-key-documents/c12wl>
- *Pierre, C. G. (2011). *Resolution agreement: Tallapoosa County (AL) School District, Case No. 04-11-1302*. Retrieved from LRP Special Ed Connection. (112 LRP 7371)
- *Posny, A. (2010, June 1). [Letter to John Andrejack]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/letters/2010-2/andrejack060110useoffunds2q2010.pdf>
- *Posny, A. (2007, April 24). [Memorandum to state directors of special education re: disproportionality of racial and ethnic groups in special education]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep07-09disproportionalityofracialandethnigroupsinspededucation.pdf>
- *Rapport, A. (2013a). *Settlement agreement: Iowa City (IA) Community School District, Case No. 05-10-5004*. Retrieved from LRP Special Ed Connection. (113 LRP 39248)
- *Rapport, A. (2013b). *Settlement agreement: Sun Prairie (WI) Area School District, Case No. 05-11-5003*. Retrieved from LRP Special Ed Connection. (113 LRP 45357)
- Romano, E., Babchishin, L., Marquis, R., & Fréschette, S. (2015). Childhood maltreatment and educational outcomes. *Trauma, Violence, & Abuse, 16*, 418–437.
- *Romine, J. A. (2011). *Resolution agreement: Albuquerque (NM) Public School District, Case No. 08-10-1234*. Retrieved from LRP Special Ed Connection. (111 LRP 49205)
- *Ryder, R. E. (2016, August 22). [Letter to Perry Zirkel]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/oseplettertozirkel8-22-16.pdf>
- *Ryder, R. E., & Dowling, M. (2016, August 23). [Letter to Martha Goodman]. Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-letter-to-goodman-private-school-children8-23-16.pdf>
- *San Francisco Unified School District California State Educational Agency, *Administrative Case No. 2014120778*. (2015). Retrieved from LRP Special Ed Connection. (115 LRP 39392)
- Sadeh, S., & Sullivan, A. L. (2017). Ethical and legal landmines: Causal inference in special education decisions. *Psychology in the Schools, 54*, 1134–1147. doi:10.1002/pits.22046
- Sargrad, S. (2018, March 7). Rolling back rights for students. *U.S. News & World Report*. Retrieved from <https://www.usnews.com/opinion/knowledge-bank/articles/2018-03-07/betsy-devos-education-dept-to-roll-back-help-for-students-with-disabilities>
- Scanlon, D. M., Gelzheiser, L. M., Vellutino, F. R., Schatschneider, C., & Sweeney, J. M. (2008). Reducing the incidence of early reading difficulties: Professional development for classroom teachers vs. direct interventions for children. *Learning and Individual Differences, 18*, 346–359. doi:10.1016/j.lindif.2008.05.002
- Scanlon, D. M., Vellutino, F. R., Small, S. G., Fanuele, D. P., & Sweeney, J. M. (2005). Severe reading difficulties: Can they be prevented? A comparison of prevention and intervention approaches. *Exceptionality, 13*, 209–227. doi:10.1207/s15327035ex1304_3
- Shifrer, D., Muller, C., & Callahan, R. (2011). Disproportionality and learning disabilities: Parsing apart race, socioeconomic status, and language. *Journal of Learning Disabilities, 44*, 246–257. doi:10.1177/0022219410374236
- Skiba, R., Albrecht, S., & Losen, D. (2012). *CCBD's position summary on federal policy of disproportionality in special education*. Retrieved from http://www.indiana.edu/~equity/docs/CCBD_Policy_Disproportionality.pdf
- Skiba, R. J., Artiles, A. J., Kozleski, E. B., Losen, D. J., & Harry, E. G. (2016). Risks and consequences of oversimplifying educational inequalities: A response to Morgan et al. (2015). *Educational Researcher, 45*, 221–225. doi:10.3102/0013189X16644606
- Skiba, R. J., Horner, R. H., Chung, C., Rausch, M. K., May, S. L., & Tobin, T. (2011). Race is not neutral: A national investigation of African and Latino disproportionality in school discipline. *School Psychology Review, 40*, 85–107.
- Skiba, R. J., Poloni-Staudinger, L., Simmons, A. B., Feggins-Azziz, R., & Chung, C. (2005). Unproven links: Can poverty explain ethnic disproportionality in special education? *The Journal of Special Education, 39*, 130–144. doi:10.1177/00224669050390030101
- Skiba, R. J., Simmons, A. B., Ritter, S., Gibb, A. G., Rauch, M. K., Guadrado, J., & Ghung, G. (2008). Achieving equity in special education: History, status, and current challenges. *Exceptional Children, 74*, 264–288. doi:10.1177/001440290807400301

- Sullivan, A. L. (2011). Disproportionality in special education identification and placement of English language learners. *Exceptional Children, 77*, 317–334. doi:10.1177/001440291107700304
- Sullivan, A. L. (2013). School-based autism identification: Prevalence, racial disparities, and systemic correlates. *School Psychology Review, 42*, 298–316.
- Sullivan, A. L., & Bal, A. (2013). Disproportionality in special education: Effects of individual and school variables on risk. *Exceptional Children, 79*, 475–494. doi:10.1177/001440291307900406
- Sullivan, A. L., & Long, L. (2010). Examining the changing landscape of school psychology practice: A survey of school-based practitioners' training and involvement in RTI. *Psychology in the Schools, 47*, 1059–1079. doi:10.1002/pits.20524
- Sullivan, A. L., & Proctor, S. (2016). The shield or the sword? Revisiting the debate on racial disproportionality in special education and implications for school psychologists. *School Psychology Forum, 10*, 278–288.
- Sullivan, A. L., & Sadeh, S. S. (2014). Differentiating social maladjustment from emotional disturbance: An analysis of case law. *School Psychology Review, 43*, 250–271.
- Tefera, A. A., & Kramarczuk Voulgarides, C. (2016). Is educational policy alleviating or perpetuating the racialization of disabilities: An examination of “big-P” and little-p” policies. *Teachers College Record, 18*, 2–24.
- Thorius, K. A. K., Maxcy, B. D., Macey, E., & Cox, A. (2014). A critical practice analysis of response to intervention appropriation in an urban school. *Remedial and Special Education, 35*, 287–299. doi:10.1177/0741932514522100
- Thorius, K. A. K., & Sullivan, A. L. (2013). Interrogating instruction and intervention in RTI research with students identified as English language learners. *Reading and Writing Quarterly, 29*, 64–88. doi:10.1080/10573569.2013.741953
- Umansky, I. M., Thompson, K. D., & Diaz, G. (2017). Using an ever-English learner framework to examine disproportionality in special education. *Exceptional Children, 84*, 76–96. doi:10.1177/0014402917707470
- U.S. Census Bureau. (2018). *Quick facts: Flint city, Michigan*. Retrieved from <https://www.census.gov/quickfacts/flintcitymichigan>
- *U.S. Department of Education. (2007). *Questions and answers on response to intervention (RTI) and early intervening services (EIS)*. Retrieved from https://sites.ed.gov/idea/files/07-0021.RTI_.pdf
- *U.S. Department of Education. (2009). *Questions and answers on disproportionality*. Retrieved from <https://www2.ed.gov/policy/specd/guid/idea/disproportionality-q-a.pdf>
- U.S. Department of Education. (2016). Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 81 Fed. Reg. 92376 (December 19, 2016) (to be codified at 34 C.F.R. pt. 300). Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30190.pdf>
- U.S. Department of Education. (2018). Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 83 Fed. Reg. 31306 (July 3, 2018) (to be codified at 34 C.F.R. pt. 300). Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2018-07-03/pdf/2018-14374.pdf>
- U.S. Government Accountability Office. (2013). *Individuals With Disabilities Education Act: Standards needed to improve identification of racial and ethnic overrepresentation in special education*. Washington, DC: Author.
- Vujnovic, R. K., Fabiano, G. A., Morris, K. L., Norman, K., Hallmark, C., & Hartley, C. (2014). Examining school psychologists' and teachers' application of approaches with a response to intervention framework. *Exceptionality, 22*, 129–140. doi:10.1080/09362835.2013.865530
- Waitoller, F., Artilles, A. J., & Cheney, D. (2010). The miner's canary: A review of overrepresentation research and explanations. *The Journal of Special Education, 44*, 29–49. doi:10.1177/0022466908329226
- Zirkel, P. A. (2015). The “red flags” for child find under the IDEA: Separating the law from the lore. *Exceptionality, 23*, 192–209. doi:10.1080/09362835.2014.986615

Authors' Note

The contents of this manuscript were developed under Grant No. H325K150304 from the U.S. Department of Education to the University of Minnesota. However, those contents do not necessarily represent the policy of the Department of Education, and readers should not assume endorsement by the federal government.

Manuscript received May 2018; accepted November 2018.