

THE IMPLICATIONS OF DISPROPORTIONATE INDIVIDUALIZED EDUCATION PLAN CLASSIFICATIONS IN NEW YORK CITY SCHOOLS

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ABSTRACT

Over- and under-representation of students of color within disability classifications is a nationwide phenomenon that has a major impact on students' ability to thrive in school and is especially prevalent in New York City Department of Education schools. The present paper uses a Dis/Crit framework to analyze this phenomenon, revealing that disproportionality of disability classification is a symptom of underlying racism and ableism in the education system. Despite the relatively recent addition of policy to address both racial and disability discrimination in schools, students continue to experience inequitable educational opportunity both because of their race and their ability.

INTRODUCTION

There are widely-documented disparities in how special education services are provided in New York City (The Research Alliance for New York City Schools, 2019). These disparities can be seen in an over- and under-representation of the way students are labeled, or “classified” on their Individualized Education Plan (IEP), and are arguably a symptom of White supremacist and ableist values embedded in an education system that structurally oppresses both race and disability across all social systems (Connor, Ferri, & Annamma, 2016).

This paper seeks to show that the legacy of White supremacist values embedded in the US education system continues to use race and ability to disadvantage students of color, specifically students of color who are identified as needing special education services, by using DisCrit as a grounding theory. DisCrit is a theory that combines Critical Race Theory and Disability Studies to examine the ways in which race and ability are intertwined in widespread issues across education (Connor, Ferri, & Annamma, 2016).

The first part (“Background”) gives an overview of how the special education system functions, specifically in New York City (NYC). NYC’s school system provides a compelling example of the way structural inequities inherent in the education system are disproportionately impacting students of color, students with disabilities, and students of color who are being labeled as having disabilities. The lessons learned from NYC’s experience are especially valuable because NYC is the largest school district in the country and also has the highest percentage of students identified as needing

special education services (Mirakhur et al., 2018)

Part two provides a theoretical framework for how federal and NYC Department of Education (DOE) policies affect both students of color and students with disabilities (SWDs). Notable federal and NYC-specific policies created to afford educational rights for SWDs as well as educational rights for students regardless of race or ethnicity are examined chronologically, as well as some of their shortcomings. Part three will discuss the need for structural reform and propose ways of initiating broad structural reform.

PART ONE: BACKGROUND

The IEP is essentially a legal contract between the school, the school district, and the students' legal guardian(s). It outlines the educational needs of the student and what accommodations and services will be provided to the student to meet those needs (Stanberry, n.d.). Students must be evaluated to receive services, regardless of whether their challenges in school are behavioral or academic, then they are classified and often placed into special classrooms and sometimes different buildings, removing them both from the shared physical spaces with their peers and from the statistics of how the full student body is achieving. Federal law dictates that IEPs should be classified in different categories that, in theory, should help educators and schools provide appropriate support. There are thirteen different federal classifications that can be named on the student's IEP; some examples include "Autism," "Specific Learning Disability," or "Emotional Disturbance" (Individuals with Disabilities Education Act, 2004).

In New York City, the overall rate of classification for "Emotional Disturbance" (ED) for White, Asian, and Latinx students is 2-5%, while the rate of classification for Emotional Disturbance for Black students is 11% (The Research Alliance For New York City Schools, 2019). This data demonstrates that there is a gross overrepresentation of Black students classified with Emotional Disturbance, in comparison to their peers in other racial groups. Moreover, students with ED classifications also have the highest rates of discipline, suspension, absenteeism in comparison to other types of IEP classifications (The Research Alliance for New York City Schools, 2019). For these students, it is conceivable, and arguably even likely, that externalizing behavior in schools is more likely to be met with disciplinary responses instead of evaluation for an underlying learning difference.

Asian and Latinx students in NYC DOE schools are more likely to be labeled with a "Speech and Language Impairment." More than 35 percent of Asian and Latino students with IEPs are classified as having speech or language impairments, compared with 26 and 29 percent, respectively, for Black and White students (The Research Alliance For New York City Schools, 2019). These data likely demonstrate that students who are in the process of learning English are being mislabeled as having a speech and language impairment instead of being provided with the appropriate instruction for

language learners (The Research Alliance for New York City Schools, 2019).

While these disparities are a well-documented phenomenon nationwide (National Education Association, 2007), NYC's public school system is an especially relevant case study for the implications of inequity in IEP classifications. As the largest school district in the country (Mirakhur et al., 2018), there are over one million students in NYC's public school system, and about 20% of those students have an IEP (The Research Alliance for New York City Schools, 2019). This percentage of the population being identified as needing special education services is also disproportionately high in comparison to the other three largest school districts in the country: Los Angeles, Chicago, and Houston. In those cities, the numbers of students identified as needing special education services is 12%, 14%, and 7% respectively (Mirakhur et al., 2018). In other words, there are more students identified as needing special education services in New York City than there are in LA, Chicago, and Houston combined, by a margin approaching 100,000 (Mirakhur et al., 2018).

PART TWO: APPLYING A DIS/CRIT THEORY LENS

Approaching the issue of disproportionality of IEP classifications through a Dis/Crit framework, it is apparent that the correlation between IEP classification and race in New York City Schools is not incidental. Marginalized identities of non-White students with disabilities are negatively compounded in the education system, and the function of that structural oppression is to maintain the privileges inherent in a White supremacist and ableist structure.

An integral component of DisCrit theory is acknowledging the ways in which both race and ability have been socially constructed to create a norm that propagates White supremacy in the infrastructure of the United States' social systems. The political and social systems were initially designed only to accommodate property-owning or rich, White men (Carlin, 2002). Therefore, large social infrastructure was never intended to serve or accommodate participants who are not White.

Dividing students into different IEP classifications divides the student population and reduces the visibility of the larger issue that roughly 20% of the NYC DOE student population is being segregated from general education. Looking at the overall issue illuminates that the special education system labels are being utilized to segregate students, particularly students of color, who are recognized as needing academic support (The Research Alliance for New York City Schools, 2019).

When critically examining the disproportionate use of IEP classifications for students of color in schools, the question is raised of which metrics are being used to evaluate students for IEP classification and who created those metrics. Black students exhibiting the same externalizing behavior that their White peers present in schools are more likely to be met with an evaluation for emotional disturbance classification instead of

evaluating for an underlying learning difference (Colker, 2013). As these students are more likely to be perceived as having a mental health concern versus a learning disability, this could lead to an overrepresentation of ED classifications and an underrepresentation of learning disability classifications. Moreover, students with ED classifications are more likely to be assigned to specialized classrooms and schools, instead of being educated in inclusive settings with their general education peers (The Research Alliance for New York City Schools, 2019). Disproportionately classifying Black students with ED classifications ultimately segregates them into isolated education settings. Some would say IEP classifications enable students to receive supportive services, but others may argue IEP classifications operate to map a student's trajectory of lesser academic achievement.

PART THREE: POLICY ANALYSIS

Disproportionately referring students of color for special education services, and misidentifying or mislabeling their needs within the special education system, is having a major impact on those students' ability to thrive in school. Broadly, students identified as needing special education in NYC DOE schools are far less likely to graduate high school than their general education peers, even after receiving services that should have improved their ability to succeed academically (Advocates for Children of New York 2019). More specifically, New York University's Research Alliance for New York City Schools (2019) found that students in NYC DOE schools with an ED IEP classification are likelier to be segregated into separate classrooms and schools than their general education peers, likelier to be suspended or meet harsh disciplinary outcomes than other IEP classifications, and likelier to be chronically absent from school. As stated above, in NYC DOE schools, Black students are twice as likely as other students to be classified with ED (The Research Alliance For New York City Schools, 2019), and so Black students are also experiencing the brunt of these negative impacts.

However, the US education system, as with all US social and political systems, was never intended to serve populations of students of color or students with disabilities. It wasn't until relatively recently that policy has been enacted in an attempt to amend the education system and to afford educational rights and opportunity specifically for students of color and students with disabilities. As will be discussed below, the policies that were created essentially acted as a bandage and could not address the deeper structural flaws necessary to truly envision a more equitable system. An analogy would be changing a motorcycle into a four-person vehicle. The motorcycle was designed just for one person, and in order to change the basic design, additional pieces like a series of sidecars could be welded onto the sides. Those who are relegated to sitting in the sidecars will always be in a less safe and less comfortable position and will not be able to speak loud enough for the driver of the motorcycle to hear their needs and requests

while the motorcycle is on the road. Arguably, the policy reforms address symptoms of a structural issue rather than provide large structural change are inadequate to meet the needs of the people most affected.

Most think of *Brown v. Board of Education* in 1954 as the first example of the courts addressing race in schools. However, state courts considered racial inequity in schools even earlier. The court in *Mendez v. Westminster* (*Mendez v. Westminster School Dist.*, 1946) was the first to hold that separate-but-equal public institutions are inherently unconstitutional because of the 14th Amendment (*Mendez v. Westminster School Dist.*, 1946). While *Mendez v. Westminster* was ultimately overturned on appeal (on grounds not pertaining to the 14th Amendment), the lower court's decision was influential because it recognized the principle of equal educational opportunity for all students regardless of lineage (United States Courts, n.d.).

The first statement on racial desegregation in schools by a federal court was in *Brown v. Board of Education* (1954). This Supreme Court decision was a join of five different cases from five different states or U.S. territories that were being argued on the same grounds, namely that separate but equal education is unconstitutional. Despite this supreme court decision, desegregating schools was never successfully enforced (Legal Defense and Educational Fund, n.d.). In fact, more recent Supreme Court decisions such as *Milliken v. Bradley* (1974), which removed the burden from states to redistrict in the interest of desegregation (Nadworny & Turner, 2019), have further impeded efforts to desegregate. Schools now are more “more racially isolated” at any point in the past forty years (Legal Defense and Educational Fund, n.d.).

The Elementary and Secondary Education Act (ESEA), the first federal legislation specifically focused on creating educational rights for students, was passed by President Johnson in 1965 (Brewer & Picus, 2014). The ESEA is notable because it outlined affirmative rights for students, as opposed to prohibitions on schools. The legislation originally had six sections, which detailed how the funding would be distributed amongst different programs and students, with the largest allocation for low-income families (Brewer & Picus, 2014). Since then, the ESEA has been amended and reauthorized many times. However, while this act was intended to regulate public schools on a national level, some of the reauthorizations have been publicly criticized as having profoundly negative effects on the school system. For example, the No Child Left Behind reauthorization under the Bush administration is largely blamed for dramatically increasing the amount of standardized testing in schools (Klein, 2015), which is an assessment system that is widely recognized as racially biased (Rosales, 2018).

While certain opportunities were afforded to SWDs in the ESEA in 1965, the Individuals with Disabilities Education Act (IDEA), passed in 1975, is the federal law that most shapes the way SWDs experience U.S. public schools. Most notably, the IDEA introduced the terms “free and appropriate public education” and “least restrictive environment”

(Individuals with Disabilities Education Act, n.d.). These two terms have been interpreted in different ways over the past forty years, and the law does not provide clear guidelines for implementation (Zirkel, 2013). Since the IDEA's inception, SWDs have argued in courts all over the country about the correct construction of the word "appropriate" when it comes to the allocation of services by schools that are intended to support SWDs to have access to the same level of education as their peers. The term "least restrictive environment" is vague and ambiguous, and can be interpreted by schools to segregate SWDs, whether different classrooms in the same school or in different schools altogether. In New York, the range of environments a student can be placed in to receive services is called the Special Education Continuum (Advocates for Children of New York, 2016).

The concept of educating special education and general education students together in the same classroom did not become common practice in New York City until the early 2000s, and still has many flaws in its implementation (Stiefel et al., 2017, p.6). This type of setting is called an "inclusive setting" and is one of the least restrictive settings available for students on the special education continuum of services (Advocates for Children of New York, 2016). The type of IEP classifications listed on a student's IEP is highly correlated to what type of setting the student is placed in. In NYC schools, students classified with Emotional Disturbance and Intellectual Disability are less likely to be referred for inclusive settings, and because Black students are likelier to have these IEP classifications, this means that these students are less likely to be educated in classrooms with their general education peers (The Research Alliance For New York City Schools, 2019). Analyzing this outcome of increased segregation for Black students through a historical and systematic lens of oppression that the Dis/Crit framework suggests provides an argument that the inherent biases in the system continue to exclude Black students from partaking inequitable educational opportunity as their non-Black and non-disabled peers (Connor, Ferri, & Annamma, 2016).

Most recently, in New York City, to address the shortcomings of these federal laws in NYC schools, the NYC Department of Education created a three-year strategic plan called "A Shared Plan to Success." This plan had four main goals: "(1) provide SWDs with greater exposure to the general education curriculum, (2) provide SWDs with greater exposure to GEN students, (3) build school capacity to support SWDs, and (4) improve the academic performance of SWDs (NYCDOE, 2012 as quoted by Stiefel et al., 2017, p. 6)." These goals were guided by the principle that SWDs should access the same services and spend time in classrooms with their general education peers to the greatest extent possible (Stiefel et al., 2017, p. 6). Providing greater access for SWDs to general education settings and peers is beneficial because not only does the IDEA mandate that students are educated in the least restrictive environment, but research shows that integration of students with disabilities is advantageous to both students

with disabilities and general education students (The Research Alliance For New York City Schools, 2019). In many ways, these four outcomes are reminiscent of the arguments that students, families, and lawyers argued about racial inequality in *Mendez vs. Westminster* and *Brown vs. Board of Education*. “Separate but equal” education for SWDs is unacceptable.

There are two other federal laws that afford students additional rights in schools and that are overseen by the Office of Civil Rights. These are the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 Title II rights for IDEA-eligible SWDs (Individuals with Disabilities Education Act, n.d.). Instead of affording specific rights to students with disabilities, these two acts are used to prevent discrimination against students because of their rights to additional services as SWDs (Individuals with Disabilities Education Act, n.d.).

Despite being entitled to “Free and Appropriate Public Education” in the “Least Restrictive Environment,” segregating SWDs from general education students inherently changes the quality of education those students are receiving. While the mechanisms for segregation of students because of race and disability have been obscured by purportedly helpful IEP classifications and special education law, the historical legacy of racism and ableism still functions in the American education system. Arguably, “Separate but equal” education for SWDs may be unlawful in the same manner that segregating students because of race has been found to be unlawful. The current education system structurally oppresses both race and disability; the oppression at the intersection of those identities is compounded. The function of that structural oppression is to maintain the privileges inherent in a White supremacist structure.

PART FOUR: OPPORTUNITIES FOR REFORM

As with most social issues in the US, disparities in IEP classifications are hidden in a complex web of bureaucratic systems that obscure the larger reality of how policy is impacting large groups of students. In the U.S., “special education law is a conservative, individualistic approach that requires each of us to put forward enormous energy to help one child at a time in a resource-starved context” (Colker, 2013). While individual advocacy for students and families remains key, the only way of addressing the disproportionately negative impact of the special education system on students of color is reconfiguring the policies and practices that shape the system. Policy reform that promotes the creation of safe and affordable housing, healthcare, and employment that pays a living wage equitably across race and ability lines, will lift up our education system and everyone who participates in it (Colker, 2013). Additionally, funding structures on federal, state, and city levels need to be adjusted to allocate more funds to under-resourced districts and schools; and decoupled from punitive standardized testing measures.

In envisioning and creating this policy change, the voices and

perspectives that were initially excluded in the creation of social systems need to be centered. Centering the voices of those who are most impacted by policy is taking a liberatory approach to school desegregation (Love, 2013). It is crucial for the families, students, and teachers who are most affected by education policy to be integrally involved at every step of the decision-making process. Integrating student, family, and teacher voices is the only way to truly envision the changes necessary to create an equitable education system.

Specific to the integration of students with disabilities, the NYC DOE should eliminate the requirement of IEP classifications as they segregate populations further and categorize students in unnecessary ways. IEP classification labels are abstract and unspecific, and do not give guidance about what types of support students who have them should receive. Just as race is socially constructed as a way to use language which organizes people into groups for the purpose of affording some rights and privileges to some and denying them others (SpearIt, 2012), so are the labels assigned to students regarding their needs in a classroom. Also important, as not talking about race or appearing to be “colorblind” isn’t an answer to addressing issues of race in the US (SpearIt, 2012), neither is ignoring disability and that some students need additional educational services and support in school to access the same educational opportunities as their peers. Moreover, as a society, the temptation to replace using IEP classifications with medical diagnoses as a catch-all replacement for IEP classifications needs to be avoided. Instead, this paper is a call to recognize the ways that both race and disability are socially constructed, and use direct and specific language about which interventions and services students need in the classroom and school building to remove barriers students experience in accessing education opportunity because of developmental delays, cognitive processing differences, and socioemotional challenges.

CONCLUSION

If students continue to be separated from their peers and the burden of providing support is placed on individual families, teachers, and school administrators, the problematic systems that perpetuate a structural disparity in IEP classifications will remain. Further, the more students are referred to by their IEP classifications, the less the trends of racial and disability segregation are visible. IEP classifications are not necessarily correlated to physical or mental disability diagnosis and have no bearing over what services students receive. Instead, IEP classifications serve the purpose of labeling students and segregating them from their peers. They should be removed from IEPs.

In implementing the structural change necessary to reform the education system, it is critical to center the voices of the stakeholders in the system that are most impacted and least likely to be heard: students, families, and teachers, especially Black, Latinx, and low-income students,

families, and teachers. Integrating student, family, and teacher voices is the only way to truly envision the changes necessary to create an equitable education system. As a current high school student who is also part of the Teens Take Charge student-led group wrote, “This stigma surrounding special education or needing extra help needs to stop. Because the more we focus on our weakness, the less we see our strengths, and the more we’re left behind” (Mejia, 2018).

ABOUT THE AUTHOR

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