

**Racial Disproportionality and Legal
Compliance in Special Education**
New York University
Technical Assistance Center on
Disproportionality

**METROPOLITAN CENTER FOR RESEARCH ON EQUITY
AND THE TRANSFORMATION OF SCHOOLS**

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Special Education Law

There are three important laws that shape the delivery of special education in the United States. Collectively, the three laws dictate a nondiscrimination framework for students with disabilities in attempts to provide equitable outcomes for all students, both non-classified and classified. The laws are as follows:

- *Section 504 (1973)*: Section 504 protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the US Department of Education (USDOE).
- *Individuals with Disabilities Education Act—IDEA (1975)*: IDEA provides federal financial assistance to state and local education agencies in order to guarantee special education and related services are delivered to eligible children with disabilities.
- *Title II of the American Disabilities Act (1990)*: This law is not federally funded and prohibits against discrimination on the basis of disability in employment, public services, and accommodations by state and local governments regardless of whether they receive federal financial assistance.

Despite the presence of these laws, inequities persist.

Disproportionality

Racial disproportionality in special education is pervasive in the American educational system and has persisted for decades (Skiba et al., 2008). It is characterized by a racialized disparate impact in access to educational opportunity, high-quality interventions, and educational services in special education.

Disproportionality is problematic because placement in special education does not always ensure adequate or quality schooling by race/ethnicity (Donovan & Cross, 2002; Harry & Klingner, 2006; Losen & Orfield, 2002; Wells, Sandefur, & Hogan, 2003), and students of color are disciplined more often and for more subjective reasons than their white counterparts (Skiba, Michael, Nardo, & Peterson, 2002). Research indicates that mostly affluent and overwhelmingly white students generally receive higher-quality services in special education, while less affluent and overwhelmingly students of color are overrepresented in less rigorous programs and fare worse on educational outcomes (Donovan & Cross, 2002). In general, research on disproportionality suggests students of color labeled with a disability are negatively affected by the subjective judgments of practitioners, are more harshly disciplined, and receive fewer educational opportunities.

Disproportionality and Special Education Law

The US government has made disproportionality a point of concern in federal policy. The 1997 and 2004 reauthorizations of IDEA have included specific disproportionality monitoring indicators that state and local education agencies must comply with.

There are three indicators associated with disproportionality: indicators 4, 9, and 10.



- Indicator 4 monitors the suspension of students with disabilities by race and ethnicity.
- Indicator 9 monitors classification patterns of students with disabilities by race and ethnicity.
- Indicator 10 monitors the placement patterns of students with disabilities by race and ethnicity.

The indicators track whether or not school districts exceed a numerical threshold that alerts to disproportionate outcomes. With the 2004 reauthorization of IDEA, the Office of Special Education Programs (OSEP) at the USDOE adopted a twofold approach for monitoring disproportionality.

First, OSEP requires states to set a numerical threshold to identify significant disproportionality in states and districts. Each state has its own threshold for identifying disproportionality.

The following chart provides a brief overview of some of the methods used to identify disproportionality in special education.

Risk Index/Rate	Composition Index	Relative Risk Ratio
<p>The risk index identifies at what rate, or percentage of risk, students of a particular racial/ethnic group have in a particular outcome.</p>	<p>The composition index gives the proportion of students by race/ethnicity in a particular outcome. Composition indexes are used to determine if a particular group is over- or underrepresented in a particular outcome.</p>	<p>Relative risk ratios are comparisons of the risks of a particular outcome of one group to the risk of the remaining group(s) experiencing the same outcome.</p> <p>A risk ratio of 1 indicates that there is equal risk. An increase in risk ratio is indicative of increased risk.</p>

Second, if a citation is issued for disproportionality, OSEP requires local education agencies to examine their policies, practices, and procedures associated with IDEA for legal compliance. Again, each state has its own time frame and process outlined for assuring compliance with IDEA. Unfortunately, though, despite increased monitoring at the federal and state levels disproportionality persists relatively unabated to date.

For example, Albrecht, Skiba, Losen, Chung, and Middleburg (2011) analyzed state annual performance reports that were used to identify disproportionality across the United States. The authors found that despite increased monitoring by OSEP and states, high numerical levels of disproportionality persist and fewer districts report noncompliance with IDEA across the nation. Albrecht et al. (2011)



argue that OSEP’s approach for addressing disproportionality through compliance monitoring lies in “stark contrast” to over 30 years of research on inequities in special education.

An Educational Paradox

The contradictions that exist between persistent racial disparities in educational outcomes, a legal framework aimed at assuring equal opportunity, and increased regulation and monitoring of disproportionality in special education are problematic. Artiles (2011) argues that racial disproportionality in special education illustrates “an interesting paradox in the racialization of disabilities” because “the civil rights response for one group of individuals (i.e., learners with disabilities) has become a potential source of inequities for another group (i.e., racial minority students) despite their shared histories of struggle for equity” (p. 431).

Artiles essentially highlights how disability law, designed to protect students with disabilities, has created a space where certain racial groups have become further marginalized within the educational system, as evidenced through persistent disproportionality. Thus, the educational paradox that exists between heavy monitoring of special education practices and inequitable outcomes raises questions about how practitioners can better achieve equity through compliance with IDEA.

Thinking Critically About the Entrenched Complexities Associated with Legally Mandated Equity

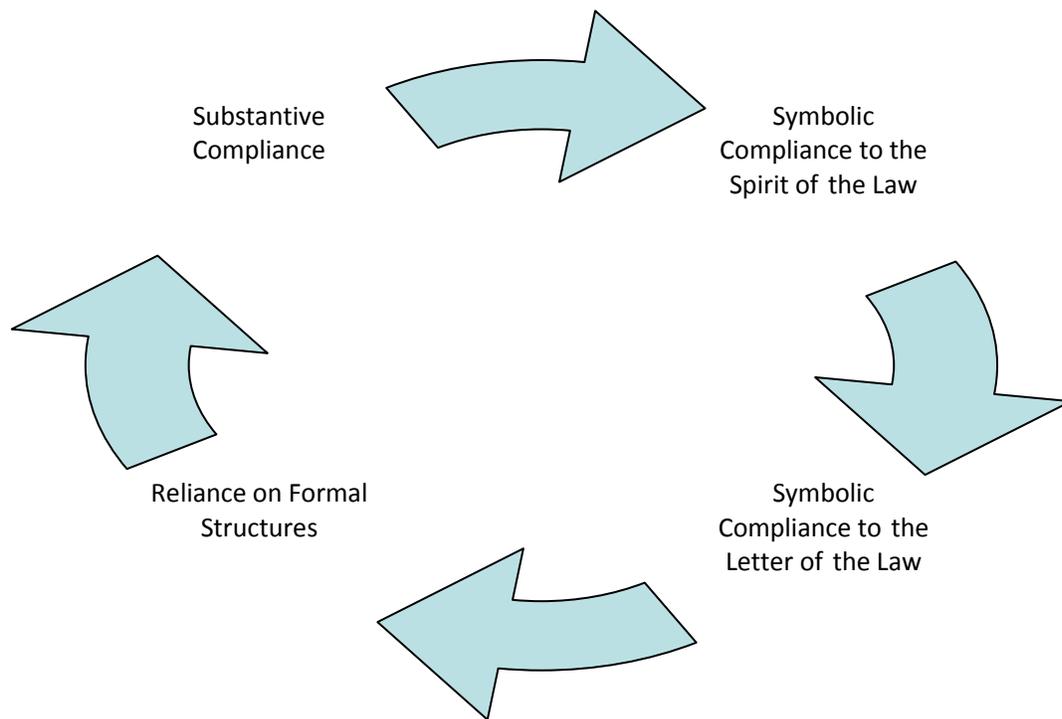
If and when a serious inequity like disproportionality is identified in a school district, practitioners must use the citation as a call to think critically and deeply about existing policies and practices. Additionally, because the crux of disproportionality monitoring by federal and state agencies is centered on compliance with IDEA, practitioners must be willing to reflect upon how their engagement with IDEA’s mandates may sustain, challenge, or support the presence of inequities.

Kramarczuk Voulgarides, Jean-Pierre, and Zwerger (In Press) conducted a study that explored how educational leaders use compliance with IDEA to address disproportionality in practice. The authors found that compliance with IDEA was often only part of the solution for addressing disproportionality and that practitioners who relied upon compliance alone did not engage with the complex root causes of inequities operating in their respective districts. The authors suggest practitioners, especially building and district administrators, reflect upon how they are engaging with policy through a compliance field. The compliance field emerged from analysis of qualitative interviews that were conducted with special education administrators working in districts that were cited for disproportionality in special education.

The compliance field is a conceptual tool that represents how policy becomes alive in practice and how it interacts with the professional capacities of the administrators, the informal norms and customs of a school district, and attempts to address inequities in practice. The compliance field has four categories and represents a fluid space where practitioners may fluctuate between different locations; however, they often reside in one of the categories more than others.

Visual Representation of the Compliance Field





Components of the Compliance Field

Substantive Compliance

This category represents the district administrators who expressed faith in IDEA and accepted the citation as a call to action to substantively evaluate and change district practices. Their responses tended to have the most congruency between the actions taken by the district to mediate noncompliance and the legal spirit of IDEA, which is to provide equal opportunity to all students. For example, one administrator stated,

We [the district] asked ourselves, okay, are we just doing a good job at a procedure and a process and the paperwork...or are we really implementing the programs? Are we taking the data that we should be on kids? Are we having high expectations? We are not admiring the student's conditions or the family anymore, but we are really doing a task analysis about what is it that this student needs to either close the gap, or to accelerate their learning? The IST teams started really talking about teaching and learning more than the problems, the issues that the student had or the family had or whatever type of blaming, you know, blaming the student.

Symbolic Compliance to the Spirit of the Law

This category represents the district administrators who expressed faith in IDEA but also reported an apparently contradictory or irresolvable tension between meeting legal mandates and attempting to maintain integrity to the legal spirit of IDEA. These administrators indicated that they



struggled to apply the law substantively because they felt intense pressure to comply with IDEA and state mandates. For example, one administrator stated,

It's been really difficult because we are trying to talk about these issues, train our staff on the tiers of RTI [response to intervention] and the new IEPs [individualized education programs]...so balancing out and making sure that staff knows what they need to be compliant with what the state is asking us to do, but also trying to keep focus on the identified areas of our citation is really difficult. Last year we were able to talk more about what we are doing and how we are doing it...This year it has really become paperwork and processes. It is time consuming and eating more time than, in my opinion, it should be.

Symbolic Compliance to the Letter of the Law

This category represents the district administrators who saw their citation as something that did not accurately reflect how the district operates. They were the least reflective administrators and tended to rely upon mediating their citation through literal adherence to the letter of the law. For example, one administrator stated,

I don't think that the district ever felt that it was treating and I still don't believe it believes that it is being insensitive or overidentifying students, although I know that is what the state is saying...Also, I don't know if the district was truly cited for anything aside from not having enough social histories on file...So the only change we made, and it really wasn't a change, was to more aggressively try to get parents to submit to completing social histories with our social workers...[and the committee on special education] would not proceed without all of the proper documentation for a child...and would require that the social history was complete.

Reliance on Formal Structures

This category represents the administrators who reported they addressed their citation through the adoption of numerous procedures, practices, and programs. They were overwhelmed by the abundance of policy pressures they faced. Their exasperation tended to hinder their ability to substantively engage with policy. For example, one administrator stated,

It kind of reminds me of a student that has failing marks all of the term versus a student who tends to be a straight A one and, you know, gets a C, D, or F. I find that districts like this one that are on so many lists kind of get numb to it...Every time I turn around we were getting cited for something else...With all of our citations, it feels like we are trying to rebuild the *Titanic* in the middle of the ocean.

Applying the Compliance Field to Practice

Practitioners must be cognizant of how they are interpreting and using IDEA's mandates. The compliance field provides practitioners with a reflective tool whereby they can contemplate how they understand and use policy to address inequities. Practitioners could benefit from having discussion



circles with their colleagues that allow them to identify places and areas where they may engage with different parts of the compliance field. They can then identify ways to strengthen their practice and more effectively address inequitable outcomes such as disproportionality in special education.

This type of reflection requires the use of a culturally responsive lens. A culturally responsive lens focuses on having practitioners develop a nuanced, reflective, and critical social consciousness and cultural competence about race, power, and privilege in society (Ladson-Billings, 1994, 1995a, 1995b, 2001). Thus, practitioners must reflect on their use of IDEA while also considering how race, power, and privilege affect their understanding of special education.

District and school leaders must also operate knowing there is no one simple solution for addressing disparate outcomes in practice and they cannot rely upon compliance alone. District and building leaders should engage with a transformational style of leadership (Bass, 1985; Hargis, Wyatt, & Petrowski, 2011; Lai, 2011; Turner, Barling, Epitopaki, Butcher & Milner, 2002) in which leaders take active ownership over organizational outcomes. Transformational leadership requires that leaders have a well-developed, forward-thinking vision about their work while also having an explicit intent to make a difference in the lives of all educational stakeholders. Heifetz and Laurie (1997) argue transformational leaders ask difficult questions, challenge people to move out of their comfort zones, and manage the distress associated with these changes. Transformational leaders are necessary for addressing disproportionality because they operate with the assumption that there aren't any quick fixes for addressing disproportionality and systemic changes must be pursued—strengthening the fact that compliance alone is never enough to address an educational issue such as disproportionality.



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