Disturbing Inequities: Exploring the Relationship Between Racial Disparities in Special Education Identification and Discipline

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INTRODUCTION

Students with disabilities are entitled by law to receive special education, which includes individualized supports and services, including behavioral supports if needed, to help them succeed in school. So it is especially disturbing that nationally, in 2011-12, their out-of-school suspension rate for grades K-12 was more than twice as high as their nondisabled peers.[1] They are also more likely than their non-disabled peers to be suspended repeatedly.[2] Furthermore, in 2011-12, across K – 12, the rates were much higher for students with disabilities who were Black and male, with one out of every five having been suspended at least once (see Table 1).[1]

Table 1. National (K-12) suspension risk by race, disability, and gender 2011-12.

U.S.	American Indian/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander	Black/ African American	Latino	White
Male	13%	3%	7%	20%	9%	6%
Female	7%	1%	3%	12%	4%	2%

Source: Tables 1-A. and 1-B. U.S. Department of Education Office for Civil Rights Data Collection: Data Snapshot (School Discipline) March 2014.

The data from different school levels (elementary, middle, and high) reveal even deeper disparities. For students with disabilities, the risk for suspension at the elementary school level is 4.1%. This rises to 19.3% at the secondary level.[3] While students with disabilities are about twice as likely as their nondisabled peers to be suspended at each level, the 2 percentage point gap at the elementary level increases fivefold at the secondary level to a 10 percentage point gap. When we look at the intersection of race, disability, and gender at the secondary level, we find that 24% of Black secondary students, 31% of Black secondary school students with disabilities, and 36% of Black secondary school males with disabilities were suspended from school in 2009-2010.[3]

It is worth noting that these national averages mask even more extreme situations. For example, using U.S. Department of Education data for the 2009-2010 academic year, of the 1,136 U.S. school districts that have at least 50 Black males with disabilities, 211 had suspension rates for Black males with disabilities at the secondary level of over 50%.[3] These are averages for large districts, which means there are individual schools in each of these high-suspending districts with even higher suspension rates.

Researchers have consistently found that getting suspended from school correlates with a dramatic increase in a student's risk for involvement in the juvenile justice system.[4,5] Unfortunately, our national data-collection efforts do not rigorously track the number of students incarcerated by race and disability status. Despite this weakness in the data collection, the Office of Special Education Programs' (OSEP) national data consistently show dramatic disparities. When we examined the OSEP 2011-12 data, we found that Black students with disabilities constituted 19% of all

students with disabilities, yet they represented 50% of students with disabilities in correctional institutions.

We assert that this status quo must be rejected because federal, state, district, and school level policies and practices are likely contributing to the high rates of disciplinary exclusion experienced by all students with disabilities, particularly Black students with disabilities. We seek to promote a better understanding of the relationship between race, risk for being identified as having a disability, and patterns of school discipline. Specifically, we centered our analysis on Blacks with disabilities because they have the highest risk for suspension, and because the federal Individuals with Disabilities Education Act (IDEA) requires that every state reviews each district's data and address significant levels of disproportionality by race with regard to identification, placement and discipline. It is worth noting that on June 19, 2014, the U.S. Department of Education submitted a request for public comment on the actions that the Department should take to address the fact that

> Data collected by the Department's Office of Special Education Programs (OSEP) and Office for Civil Rights (OCR) shows significant racial and ethnic disparity… including identification by disability category, educational placement; and disciplinary action. Based on these data, the Department has been concerned about the very small number of Local Educational Agencies (LEAs) that have been identified by their States as having significant disproportionality, and the resulting limited funds that LEAs are required to use for [coordinated early intervening services] CEIS to address that significant disproportionality.[6]

Not only are few states identifying any districts pursuant to the IDEA,[7] those districts that are identified often do not understand what factors contribute to the disparate patterns within their district.

DIFFERENTIAL EXPOSURE TO INEXPERIENCED TEACHERS

First and second year teachers tend to have comparatively lower classroom management and instructional skills due to their inexperience, and researchers have suggested that therefore, the low level of experience of novice teachers contributes to the higher likelihood that students in general are suspended from school.[8] Research has also established that poor and minority students are more likely than their counterparts to be taught by novice teachers. This differential exposure to novice teachers would be expected to contribute to the increased risk for suspension documented for Black students and Black students with disabilities.[3] For a variety of reasons, researchers have suggested that novice teachers may also be more likely than their experienced colleagues to refer minority students for special education evaluation. Specifically, a review of the research by the National Academy of Sciences (NAS) in the 2002 publication *Minorities in Gifted and Special Education*,[9] concluded that "the school experience itself contributes to racial disproportion in academic outcomes and behavioral problems that lead to placement in special and gifted education…" at least in part because "schools with higher concentrations of low-income, minority children are less likely to have experienced, well-trained teachers."[9]

Although the impact novice teachers (one or two years of experience) have on the suspension rates of Black students with disabilities was not studied directly by the NAS researchers, we would expect that being taught by novice teachers would predict a statistically significant increase in this group's risk for suspension from school. The NAS report also suggests that the impact of teacher inexperience may be greatest in urban districts.[9] Rothstein[10] stated similarly that one of the greatest inequities in education is the uneven distribution of teachers within urban districts.[1] The Elementary and Secondary Education Act (ESEA) requires that each state ensure that poor and minority students are not taught at higher rates by inexperienced teachers. By its own admission, the U.S. Department of Education has stated that this federal requirement has not been effectively implemented[11].

SCHOOL ENVIRONMENT, SPECIAL EDUCATION IDENTIFICATION, AND DISCIPLINE

Of course, other factors besides differential exposure to novice teachers, including the possibility of unconscious bias[12,13] may contribute to higher risk that Black students are identified as having special education needs. Under the IDEA, it states, pursuant to their review of district level data for large racial/ethnic disparities identification; placement; and discipline; find "significant disproportionality" the district must take action to address the issues and must spend 15% of their federal special education funding on coordinated early intervening services. (20 U.S.C. Section 1418(d)). Towards the goal of understanding the extraordinarily high suspension rates of Black students with disabilities, and helping districts explore possible contributing factors they could control, we will explore whether schools that tend to identify a high number of Blacks students as having emotional disturbance (ED), intellectual disability (ID, formerly mental retardation), or specific learning disabilities (SLD) also tend to suspend Black students with disabilities at higher rates. The combination of factors that contribute to a greater likelihood that Black students will be identified for special education in these disability categories might also contribute to the disparate discipline of Black students with disabilities. If identification in these categories predicts higher suspension rates for Black students with disabilities but not for their White peers, it raises questions about systemic racial bias in the treatment of Black students with disabilities. In fact, prior studies have suggested that Black students with emotional disturbance do receive less and lower quality care than their White counterparts[14]. We would therefore expect to see lower rates of suspension in disability categories in which Blacks are not likely to be identified at higher rates than Whites, such as autism (AUT).

PURPOSE

The racial disparities in discipline are significant, in part because data indicate that extraordinary numbers of Black students with disabilities are subjected to out of school suspension. Numerous studies have shown that out of school suspensions are associated with very harmful outcomes.[15-17] Our analysis will explore two possible contributing factors to these higher rates of suspensions for Black students with

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[1]Skiba found that higher Black enrollment predicts higher out-of-school suspension rates for Black students in Indiana, after controlling for poverty and type of suspension rates. Although his study of statewide suspension rates did not find "teachers average years of experience" to predict higher Black suspension rates in the state of Indiana, our analysis focused exclusively on "novice" teachers.

disabilities. We chose differential exposure to novice teachers (1-2 years of experience) and risk for identification as having special education needs because they can possibly be affected by education policy, so that if our findings had statistical significance, they would more likely have policy relevance as well. Further, we chose these two factors because prior research suggests they are connected although our analysis looked at the degree to which each independently predicted higher suspension rates.

METHODS

DATA

Our dataset for this study comes from the 2009-2010 Civil Rights Data Collection (CRDC), conducted by the U.S. Department of Education – formerly the Elementary and Secondary School Survey (E&S Survey). The CRDC survey is administered to collect data pertaining to key education and civil rights issues in U.S. public schools. The CRDC questionnaire covers a variety of topics such as school characteristics, student outcomes, student enrollment, and educational programs and services. Most student data are disaggregated by race/ethnicity, sex, limited English proficiency, and disability. The data in this study come from 72,168 schools from nearly 7,000 school districts from nearly every state.

With a special emphasis on a relationship between suspension and disability identification for African-American students, the dependent variable for our analysis was the number of suspended students counted in school for the 2009-2010 CRDC data. We also broke down our analysis by specifying the dependent variable focusing on counts of suspended African-American students and counts of suspended White students for comparison.[2] Additionally, we ran separate analyses at the elementary school, middle school, and high school levels, respectively, in order to examine results by grade span.

As for explanatory variables, we employed several school demographic variables, including percentage of African-American students, percentage of White students, percentage of novice teachers (teachers with 1- or 2-year experience), and percentage of IDEA identification: serious emotional disturbance (hereafter referred to as emotional disturbance), specific learning disability, autism, and mental retardation (now referred to as intellectual disability). When it comes to the IDEA variables, we did not use a composite variable; instead, we included the four IDEA variables separately to investigate the magnitude and the direction of each IDEA variable, while controlling for the other predictors.

STATISTICAL ANALYSES

School discipline research is often concerned with infrequently occurring events, such as counts of the number of school suspensions or expulsions. A histogram of such data usually shows a non-normal, positively skewed distribution. Therefore, analyzing this kind of count data employing an ordinary least squares (OLS) regression may yield inaccurate predicted values and may also result in a Type I error that one rejects a null

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[2] We ran the analyses for each ethnicity separately. For example, the predictors in the analysis for Black students' suspension rates were: % Black students, % White students, % novice teachers, % Black ED, % Black SLD, % Black AUT, & % Black ID.

hypothesis when it is in fact true. In order to examine low-frequency count data in a proper manner, a Poisson-based regression is more appropriate than an OLS regression; it has been employed in previous research studies, such as school violence research[18], crime prevention research[19], and violent offenses research[20]. However, if there is a concern about overdispersion - the situation when the observed variance of a variable is greater than what would be expected for the assumed distribution, – a negative binomial regression can be used rather than a Poisson model[21]. A negative binomial model is an extension of a Poisson model but accounts for the overdispersion issue. In our analyses, the observed variance of counts of suspended students was substantially larger than the mean value; thus, we employed a negative binomial regression model for our analyses.

In regard to the interpretation of negative binomial regression coefficients, unlike OLS regressions results, a one unit increase of X_1 is associated with b_1 unit increase in the natural log of Y. However, it is not intuitive to interpret these coefficients, so we need to exponentiate them to obtain readable results. Exponentiating coefficients is commonly done when interpreting logistic regression and Poisson regression results as well. For instance, in order to interpret the effect of proportion of African American students in school (b=0.015), we exponentiate the coefficient ($e^{0.015}$) and obtain an exponentiated value of 1.015, meaning that suspension counts would be expected to increase by 1.5%[3], if one unit increased in percentage of black students at school, adjusting for the other predictors.

CHOICE OF DISABILITY CATEGORIES

In 2002, the NAS noted that "racial disproportionality in special education was historically markedly higher in the high-incidence categories of mild mental retardation, emotional disturbance, and to a lesser extent learning disabilities, categories in which the problem is often identified first in the school context and the disability diagnosis is typically given without confirmation of an organic cause…" and nonexistent in categories typically diagnosed by medical professionals[9].

Our own analysis of the most recent national data available also shows that these three disability categories are three of the four in which students with disabilities are most likely to be suspended or expelled from school (see

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[3] Percent change = $|\exp(b) - 1| * 100\%$

Table *2*).

Table 2. Suspension Risk by Disability Category[a]

Disability Category	Suspension Rate
Emotional disturbance	32.88
Other health impairment	14.68
Specific learning disability	13.06
Intellectual disability (mental retardation)	10.17
Traumatic brain injury	8.00
Deafness/Blindness	7.06
Hearing impairment	5.94
Orthopedic impairment	5.74
Multiple disabilities	4.65
Developmental delay	4.52
Autism	4.32
Visual impairment	4.32
Speech or language impairment	3.68

a.   Forty-two states had complete data.

Sources: Civil Rights Data Collection National Estimations (2009-2010); IDEA Data Center: Part B-Child Count (2009-2010)

We added a school-level analysis of autism to these three historically problematic and subjective categories for two reasons. First, in the last 10 years the risk for autism has increased dramatically, such that it is no longer a "low-incidence" category. Like the high-incidence categories, diagnosing autism involves a degree of subjectivity. Second, it is one of the few categories in which Black students are at a substantially lower risk for identification compared to White students.

SAMPLE DESCRIPTIVES

To put the more detailed analysis in perspective, we first provide the values for the risk for special identification by disability category for the entire sample (see Table 3). It should be noted that these values apply only to the sample used in our analysis and are not identical to those for the nation.[4]

Table 3. Disability Risk for Identification by Category

2009-2010 Disability Category	American Indian	Asian/Pacific Islander	Black	Hispanic	White	All Races
AUT	.04	.31	.30	.23	.62	.45
ED	.30	.02	.81	.20	.56	.48
ID (MR)	.34	.10	1.25	.44	.56	.62
SLD	4.11	.71	5.32	4.67	4.03	4.19

[4]A comparison with national rates shows that our sample's rates tend to be slightly lower than rates reported by OSEP for the 2009-10 school year.

Next, in Table 4 we provide the risk for suspension for the school-level sample (combining elementary, middle, and high). These are not per-school averages; they provide the average risk for suspension by subgroup for students attending all the schools in the entire sample.

Table 4. Average Suspension Rates for All Schools in Sample

Subgroup	Percentage of Enrolled Students Suspended at Least Once (2009-2010)
All students	7.28
Black	16.60
Black with disabilities	23.77
Black males with disabilities	26.84
White	4.75
Whites with disabilities	9.16
White males with disabilities	11.19

To complete our review of the descriptive findings, we have grouped the schools in our study by increases in Black enrollment. Table 5 provides a general sense of how suspension rates for the subgroups we studied varied when the percentage of Black school-level enrollment rose. This is noteworthy because our additional analyses controlled for both Black and White enrollment. The pattern in the chart shows that the risk for suspensions for all Black students, Black students with disabilities and Black males with disabilities, rises steadily until Blacks make up about 30-40% of the total enrollment. This is the point at which suspension rates of Black students with disabilities appeared highest at 27.63% (K-12) although they are consistently above 20% risk for suspension in schools where they constitute more than 10% of total enrollment. Suspension risk levels for White students with disabilities similarly rises with increases in Black enrollment. Although beyond the scope of this analysis, the fact that the schools with enrollment of 95-100% Black students had markedly lower suspension rates for Blacks with disabilities is worth exploring further.

Table 5. Average School-Level Suspension Rates for Sample, Disaggregated by Percentage of Black Students in Total Enrollment

% Black Enrollment	# of Schools	% Black Students Suspended			% White Students Suspended		
		All	w/ Disabilities	Males w/ Disabilities	All	w/ Disabilities	Males w/ Disabilities
0 – 5	30411	9.64	15.92	18.84	3.76	7.63	9.44
5 – 10	8589	11.48	18.50	21.45	4.50	8.82	10.79
10 – 15	5146	13.57	21.23	24.28	5.37	10.34	12.51
15 – 20	3482	14.15	22.14	25.21	5.72	10.64	12.90
20 – 25	2573	15.49	23.69	26.84	6.13	11.52	14.16
25 – 30	2139	17.07	26.02	29.32	7.15	12.62	15.15
30 – 40	3019	18.27	27.63	30.90	7.88	13.71	16.32
40 – 50	2241	18.25	27.22	30.93	8.31	14.14	16.76
50 – 60	1564	18.18	26.35	29.62	9.74	15.65	18.32
60 - 70	1210	19.09	26.05	29.04	10.73	15.63	18.11
70 -80	1064	19.26	25.97	29.04	10.71	14.06	16.92
80 - 90	1127	19.65	25.39	28.30	13.29	17.53	20.44
90 - 95	795	19.67	26.05	29.29	12.68	15.64	17.57
95 - 100	8808	16.27	20.76	23.04	12.74	13.02	15.12

RESULTS[5]

WHAT FACTORS PREDICT SUSPENSION RATES?

The main focus of this study is Black students with disabilities and an examination of the impact of novice teachers and disability identification on their suspension risk. We chose this subgroup because federal policy requires a review of racial disproportionality by disability status in identification and discipline. We also performed the same analysis for Black male students with disabilities and Black students in the aggregate to understand how our findings fit with the suspension trends we observed in the descriptive analysis. To understand whether the effects of the variables on suspension rates was unique to Black students with disabilities, or more universal, we conducted the same analysis for White students, White students with disabilities, and White male students with disabilities. Finally, because suspension rates are much higher at the middle and high school level than in elementary schools, we ran the analyses at each of these three school levels.

As stated previously, to explore the possible impact of our two factors: novice teachers and identification in certain special education categories on the risk for suspension, we controlled for the possible impact of enrollment and many other variables using negative binomial regression. For example, one of our analyses answers the question, "What is the effect of having a higher percentage of blacks identified as having emotional disturbance on the suspension rate of all black students

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[5] Full negative binomial regression coefficients tables available upon request of author (closingthegap@ucla.edu).

with disabilities after impact of the percent enrolled black students, percentage enrolled white students, percentage novice teachers, percentage blacks identified as having intellectual disabilities, percentage of blacks identified as having autism and percentage Blacks identified as having specific learning disabilities have been accounted for?

EXPOSURE TO NOVICE TEACHERS PREDICTED A SLIGHT INCREASE IN SUSPENSION RISK

Our regression analyses showed that across each school level, after controlling for the other factors (e.g., percentage of enrollment and risk of disability identification), a 1-percentage point increase in the level of novice teachers predicted a weak, yet statistically significant, increase in suspension rates for all students, all Black students, all White students, Black male students, White male students, and all Black students with disabilities (see Table 6). A similarly weak yet statistically significant predictive value for novice teachers was found for suspension of White students with disabilities, at the elementary level, but not at the middle or high school levels.

Table 6. Negative Binomial Regression Incidence Rate Ratios Representing the Effect of Percentage Novice Teachers on Suspension Rates Expressed as Percent Change[a,b]

Dependent Variable = Suspension Rate	Elementary	Middle	High
Black Students	0.3	0.2	0.4
White Students	0.3	0.3	0.2
Black Students with Disabilities	0.3	0.3	NSS
White Students with Disabilities	0.2	NSS	NSS
Black Male Students with Disabilities	0.3	0.3	NSS
White Male Students with Disabilities	NSS	NSS	NSS

a.   Number of schools varied by outcome.

b.   NSS = Not Statistically Significant

IDENTIFICATION IN SOME DISABILITY CATEGORIES STUDIED PREDICTED INCREASES IN SUSPENSION RISK FOR BLACK AND WHITE STUDENTS WITH DISABILITIES

EMOTIONAL DISTURBANCE

The results revealed that as the percentage of Black students identified as having emotional disturbance increased, so did their rates of suspension (see

Table 7). This association was found across all school levels. It also held for all Black students, Black students with disabilities and Black males with disabilities. The strongest finding for Blacks was that at the elementary school level, a 1-point increase in Black students' identification as having emotional disturbance predicted a 2.3% increase in the suspension rate for all Black students in elementary school. The findings for the association between the percentage of White students identified as having emotional disturbance and their suspension rates was similar to Black students and sometimes slightly stronger.

Table 7. Negative Binomial Regression Incidence Rate Ratios Representing the Effect of Percentage ED on Suspension Rates Expressed as Percent Change[a]

	% Black ED Students			% White ED Students		
	Black Students' Suspension Rate			White Students' Suspension Rate		
	Elementary	Middle	High	Elementary	Middle	High
All	2.3	2.0	1.3	1.9	2.1	2.3
w/ disabilities	1.7	1.2	0.9	2.1	2.0	1.5
Males w/ disabilities	1.5	1.0	0.5	1.8	1.7	1.2

a. Number of schools varied by outcome

SPECIFIC LEARNING DISABILITIES

As with ED, it was found that the percentage of Black students identified as having significant learning disabilities was associated with their suspension rates (see Table 8). However, the finding was strongest for all Black students collectively, as opposed to those with disabilities or Black males with disabilities. The strongest finding for Blacks was at the high school level, were a 1-unit increase in percentage of Black students identified as having specific learning disabilities predicted a 1.6% increase in Black students' suspension rate. Interestingly, the association between percentage of White students identified as having specific learning disabilities and their suspension rates was stronger and more consistent than for Black students.

Table 8. Negative Binomial Regression Incidence Rate Ratios Representing the Effect of Percentage SLD on Suspension Rates Expressed as Percent Change[a,b]

	% Black SLD Students			% White SLD Students		
	Black Students' Suspension Rate			White Students' Suspension Rate		
	Elementary	Middle	High	Elementary	Middle	High
All	1.6	1.6	1.9	3.3	3.3	3.0
w/ disabilities	1.3	NSS	NSS	2.2	1.1	1.4
Males w/ disabilities	1.6	0.4	NSS	2.7	1.3	1.3

a. Number of schools varied by outcome.

b. NSS = Not statistically significant.

AUTISM

Contrary to what was found for ED and SLD, being identified as having autism consistently predicted a decrease in the risk for out-of-school suspension and the autism results were among the strongest (see Table 9). For Black and White students, a 1-point increase in the rate of identification for autism predicted between a 1% and 5% decrease in the rate of suspension.

Table 9. Negative Binomial Regression Incidence Rate Ratios Representing the Effect of Percentage AUT on Suspension Rates Expressed as Percent Change[a]

	% Black AUT Students			% White AUT Students		
	Black Students' Suspension Rate			White Students' Suspension Rate		
	Elementary	Middle	High	Elementary	Middle	High
All	-3.8	-3.5	-3.4	-5.0	-5.1	-5.2
w/ disabilities	-3.1	-1.6	-1.0	-4.2	-3.0	-3.1
Males w/ disabilities	-3.1	-1.6	-1.0	-4.3	-2.9	-2.7

a.   Number of schools varied by outcome.

INTELLECTUAL DISABILITY

Our findings for Intellectual Disability were highly inconsistent and did not suggest a clear pattern or policy relevant finding. Therefore, the table is not presented. For example, for both Blacks and for Whites, a an increase in the identification rate for intellectual disability predicted a statistically significant *increase* in the risk for suspension for *all* Black students and for *all* White students but predicted a *decrease* in the risk for suspension among both Black and White students *with disabilities*. Furthermore, inconsistencies were found from one school level to the next.

IMPLICATIONS OF OUR FINDINGS FOR POLICYMAKERS

As mentioned previously, exposure to inexperienced teachers has long been thought to contribute to the overidentification of Black students in special education[9]. The results of our regression analyses show that greater exposure to novice teachers predicts a relatively weak but statistically significant higher risk for every subgroup's suspension risk, including Blacks with disabilities. The regression analysis for predicting Black students' risk for suspension, however, controlled for Black students identified as having emotional disturbance, specific learning disability, intellectual disability, and autism. It also controlled for the level of both Black enrollment. The analysis was done in parallel fashion for White students. In other words, the degree to which having novice teachers predicts an increase in discipline rates adjusts for any effect that higher identification for any disability category or enrollment demographics may have on these discipline rates. Therefore education policy aimed at ensuring a more equitable distribution of novice teachers might help reduce both the overidentification of Black

students in high-incidence categories as well as help reduce the high rates of suspension, including those experienced by Black students with disabilities.

The fact that we found a consistent pattern of suspension prediction for novice teachers on suspension rates of both Black and White students with disabilities points to an issue with the distribution of novice teachers that schools and districts can control. With regard to identification in certain special education categories, again our study suggested a similar impact on both Black and White students with respect to suspension rates, but the category seemed to matter a great deal. Specifically, there may be a common problem with the behavioral supports and services provided to ED and SLD students that predicted an increase in suspensions. For these two categories our findings are consistent with the descriptive statistics described earlier, which showed that students with disabilities in these two categories (without regard to race) were the first and third most likely to be suspended.

One plausible explanation might be that students with emotional disturbance and specific learning disabilities simply misbehave more beca*use of their disability.* However, suspending students for behavior that is a manifestation of their disability is unlawful. Moreover, schools are obligated to determine whether the disability is causing the misbehavior, therefore, this possible explanation is connected to a factor schools control, namely their legal responsibility not to suspend children because of their disability.

Specifically, the IDEA contains both substantive requirements and procedural protections to help prevent schools from unlawfully excluding any students whose disabilities cause problematic behavior. If a student's disability manifests itself as inappropriate behavior of the kind or to a degree that interrupts the student's learning or that of others, the school is obligated to provide the student with a behavioral improvement plan, or to consider placing the student in a more restrictive educational setting if the special education team determines that it is appropriate, based on an individualized evaluation. When not used as a punishment, placement in a more restrictive setting to ensure appropriate behavioral supports and services are provided is not regarded as a suspension from school[22]. As an additional safeguard, Congress requires schools to conduct a manifestation determination hearing for a single (or cumulative suspensions) suspension in excess of 10 days in a given school year. If the behavior is found to be a manifestation of a student's disability the school may not remove the student from the current placement. Exceptions exist only when the student poses a serious physical threat to themselves or others. There are also many additional requirements in the IDEA, including requirements to conduct behavioral assessments and provide behavioral improvement plans intended to ensure that any individual student with disability, regardless of disability category, who exhibits behavioral problems, receives the individualized special education supports and services that student needs to succeed. No student with a disability may be denied access to education because of their disability.

If most schools were meeting their legal and moral obligations to these students and meeting the students' individual needs, including providing the needed behavioral supports and placements when warranted, then one would expect these students to be excluded from school at a rate similar to that of their nondisabled peers. The findings from our regression analyses, when combined with the descriptive data showing

students with disabilities at twice the risk for suspension as those without, raises many serious questions. Are some schools discounting the behavioral attributes of some disabilities? Are they failing to provide the needed supports, services, and procedural safeguards? If so, is this failure more common for some disability categories than others?

Students with disabilities are not supposed to be treated any differently if their misconduct is not directly caused by their disability. For example, having dyslexia should not protect a student from having to obey school rules. However, large disparities observed together with the fact that being identified as having ED or SLD predicts higher suspension rates suggests that schools may be overlooking the disability-connected behaviors, at least for these two -high-incidence categories.

It is also worth noting that, compared to White students, Blacks are overidentified in the two categories that consistently predict increased suspensions and underidentified for autism, the category that consistently predicts lower suspension rates for both Black and White students. In other words, this pattern of categorical over and underidentification may have a net disparate impact on Black students, and it may partially explain why Black students with disabilities are suspended out of school at much higher rates than White students with disabilities. Although they fall far short of proof, the empirical trends combined with the predictive values by category also raise the question of whether there is an unlawful racially disparate impact connected to the disparities in identification by disability category. As discussed in our recommendations, there are both law enforcement policies and extant statutory requirements intended to address many of the questions and concerns raised by these findings.

RECOMMENDATIONS FOR POLICYMAKERS

INCREASE FEDERAL EDUCATION RESOURCES FOR THE MONITORING AND ENFORCEMENT OF CIVIL RIGHTS LAWS

The disparate disciplinary exclusion of students with disabilities in general and the confluence of race and disability with regard to the same raise a host of law and policy issues. There are clear legal concerns regarding the right of students with disabilities to a free, appropriate public education[23]. It is also worth mentioning that formal guidance regarding discipline policies and practices that may violate Title VI on the basis of race, issued by the U.S. education and justice departments to states and districts in 2014, does make clear that the same "disparate impact" approach applies to students with disabilities[24]. One obvious recommendation is that a similar federal guidance on discrimination in discipline be issued specifically with regard to students with disabilities. Another straightforward recommendation is that the federal government direct more resources to the agencies responsible for monitoring and enforcing the legal protections against discrimination afforded to students with disabilities.

IMPROVE THE ENFORCEMENT OF THE IDEA'S PROVISIONS ON SCHOOL DISCIPLINE DISPARITIES

Equally important to education policymakers is the fact that federal statutory obligations pursuant to the IDEA require states to review discipline disparities, by race, among students with disabilities. Among the several IDEA provisions is the requirement that each state annually and publicly report data on the incidence and duration of school

discipline among students with disabilities, broken down by race, gender, English learner status, and disability category, including suspensions of one day or more (20 U.S.C. Sec. 1418 (a)). A review of all 50 states' public reporting reveals that only 16 are even approaching compliance with this requirement[25].

Beyond improvement to the public reporting of data, the IDEA's federal policy requirements regarding discipline disparities is one of three areas falling under the broader rubric of racial disproportionality in special education. At the outset, we mentioned that the federal government has itself noted concerns about the implementation of these requirements. Therefore it is worth reviewing the following details of the policy. Following federal guidance to the states from the Department of Education's Office of Special Education Programs, issued in 2007, makes the statutory requirements clear:

> States have a separate obligation, under 20 U.S.C. 1418(d) and 34 CFR §300.646, to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. States must make this determination on an annual basis. . . .
>
> [I]n the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, the placement in particular educational settings of such children, or disciplinary actions, the SEA must require the LEA to reserve the maximum amount (15%) of the flow-through funds it receives under Part B of IDEA to provide comprehensive coordinated early intervening services (OSEP, 2007).

Among the many activities that may be considered coordinated early intervening services are "(1) professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions . . . and (2) providing educational and behavioral evaluations, services, and supports" (20 U.S.C. Sec 1412 (f)).

Unfortunately, the U.S. Government Accounting Office issued a report criticizing the U.S. Department of Education for its poor implementation of the provisions regarding special education disproportionality. The report, which was issued in February 2013 for Senator Harkin, chair of the Senate Health Education Labor and Pensions Committee, pointed out that federal oversight had allowed states to define "significant disproportionality" to such a high bar that the states never identified any districts as having a problem (GAO, 2013). The results of this analysis clearly suggest that the disparate discipline rates for Blacks with disabilities are exacerbated by the disparate identification rates in at least two categories, ED and SLD, where Blacks are overidentified in comparison to Whites. However, our findings suggest that part of the problem may lie in the quality of behavioral supports and services provided to students in those categories, regardless of race. Therefore, where states identify districts as having significant disproportionality in discipline, or in identification, they should

consider looking at the possible connections between overidentification and higher rates of discipline.

IMPROVE PROCEDURAL PROTECTIONS TO ELIMINATE UNJUST DISCIPLINARY EXCLUSION

In addition, because our analysis raises serious doubts about the quantity and quality of the manifestation determination hearings, further research regarding these procedures is warranted. However, our study examined suspensions of one day or more. The procedural protections of a "manifestation determination" are triggered only when students with disabilities are suspended for more than ten days. One overarching concern is that these procedural protections are not working at all. Another may be that they are ineffective because they do not apply to the vast majority of students with disabilities who are usually suspended for ten days or less,(or because their cumulative suspensions may not exceed ten days in a given year). One solution may be to drop the annual resetting of the count of days of suspension and have the manifestation determination triggered when the cumulative suspension record of a student with disabilities exceeds the ten day point at any time in their academic career.

IMPROVE THE ENFORCEMENT OF STATE OBLIGATIONS TO ENSURE THAT POOR AND MINORITY STUDENTS HAVE EQUITABLE ACCESS TO EXPERIENCED TEACHERS

Our analysis of the impact of novice teachers shows a consistent albeit not robust influence on suspension rates for every subgroup we analyzed, including Black students with disabilities. There is already a federal requirement in Title I of the Elementary and Secondary Education Act of 2001 that every state receiving federal funding implement a plan to eliminate the greater frequency with which poor and minority students are taught by uncertified, inexperienced, and "out-of-field teachers". However, like the provisions for racial disproportionality, it has been criticized as having been poorly implemented. In 2014, the federal government acknowledged this failure. According to *Education Week,* Education Secretary Arne Duncan stated, "We don't have one district that systemically identifies their most successful teachers and principals and places them with the kids and communities that need them most".[11] Our analysis suggesting that novice teachers appear to be a factor in the likelihood of suspension, including for Black students with disabilities, further supports the need for additional policy work and better enforcement of current federal policy in this area.

Additionally, we know from other research that schools with high concentrations of poor and minority students tend to have higher concentrations of novice teachers. The descriptive analysis tracking suspension risks in schools by percentage Black enrollment and Skiba's findings[26] suggest that efforts to reduce racial and socioeconomic isolation might also help reduce Black student' overall risk for suspension.

Knowing what we do about the negative impact of out-of-school suspension, the data on all students with disabilities should be enough to call for a change to education policies and practices. The fact that particular subgroups of students with disabilities are suspended out of school at much higher rates than other groups suggests an urgent need for additional policy and practice remedies that will address the needs of the most vulnerable subgroups. Along these lines, and consistent with the concerns raised by

Blake,[27] more should be done to monitor and intervene where the disparities are found at the confluence of race, disability and gender.

STEP UP FEDERAL OVERSIGHT AND ENFORCEMENT OF CURRENT LAW

      Finally, the federal policy issues highlighted here all involve requirements that belong to state and local educational agencies. In other words, state and local educators are ultimately responsible for looking closely at the issues raised and taking action. While the findings we present do not point to any clear or simple solution, they do suggest that there are factors education policymakers can influence that could help reduce the grossly disproportionate impact of high suspension rates as experienced by Black students with disabilities.

REFERENCES

1. U.S. Department of Education Office for Civil Rights. Civil rights data collection data snapshot: School discipline. 2014.

2. Losen DJ, Gillespie J. *Opportunities suspended: The disparate impact of disciplinary exclusion from school.* Los Angeles, CA: University of California, Los Angeles;2012.

3. Losen DJ, Martinez TE. *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools.* Los Angeles, CA: University of California, Los Angeles;2013.

4. Balfanz R, Byrnes V, Fox J. Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the 9th Grade. In: Losen DJ, ed. *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion.* New York, NY: Teachers College Press; in press.

5. Marchbanks III MP, Blake J, Booth EA, Carmichael D, Seibert AL, Fabelo T. The Economic Effects of Exclusionary Discipline on Grade Retention and High School Dropout. In: Losen DJ, ed. *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion.* New York, NY: Teachers College Press; in press.

6. Federal Register. Notices. 2014; http://www.gpo.gov/fdsys/pkg/FR-2014-06-19/pdf/2014-14388.pdf, 2014.

7. Skiba R, Losen DJ. Suspended education. *Montgomery, AL: Southern Poverty Law Center. Retrieved January.* 2012;5.

8. Morrison GM, Anthony S, Storino MH, Cheng JJ, Furlong MJ, Morrison RL. School expulsion as a process and an event: before and after effects on children at risk for school discipline. *New directions for youth development.* Vol 922000:45-71.

9. National Research Council. *Minority students in special and gifted education.* National Academies Press; 2002.

10. Rothstein R. Equalizing education resources on behalf of disadvantaged children. *A notion at risk: Preserving public education as an engine for social mobility.* 2000:31-92.

11. McNeil M. Scrutiny Rises on Placement of Best Teachers. *Education Week.* February 18, 2014: 1,26.

12. Harry B, Klingner J, Sturges KM, Moore RF. Of rocks and soft places: Using qualitative methods to investigate disproportionality. *Racial inequity in special education.* 2002:71-92.

13. Oswald DP, Coutinho MJ, Best AM, Nguyen N. Impact of sociodemographic characteristics on the identification rates of minority students as having mental retardation. *Journal Information.* 2001;39(5).

14. Osher D, Woodruff D, Sims AE. Schools make a difference: The overrepresentation of African American youth in special education and the juvenile justice system. *Racial inequity in special education.* 2002:93-116.

15. Shollenberger TL. Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth. In: Losen DJ, ed. *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion.* New York, NY: Teachers College Press; in press.

16. Skiba RJ, Arredondo MI, Rausch MK. New and developing research on disparities in discipline. Bloomington, IN: The Equity Project at Indiana University; 2014.

17. Fabelo T, Thompson MD, Plotkin M, Carmichael D, Marchbanks III MP, Booth EA. Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement. *The Council of State Governments Justice Center and Public Policy Research Institute (July 2011).* 2011.

18. Walters GD. Using Poisson class regression to analyze data in correctional and foresnsic psychology. *Criminal Justice and Behavior.* 2007;34:1659-1674.

19. Osgood DW. Poisson-Based Regression Analysis of Aggregate Crime Rates. *Journal of Quantitative Criminology.* 2000;16(1):21-43.

20. Hancock M, Tapscott JL, Hoaken PNS. Role of executive dysfunction in predicting frequency and severity of violence. *Aggressive Behavior.* 2010;36(5):338-349.

21. Long JS. *Regression models for categorical and limited dependent variables.* Vol 7. Thousand Oaks, CA: Sage; 1997.

22. US Department of Education. Q and A: Questions and Answers on Discipline Procedures. 2009; http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C .

23. Kim C, Losen DJ, Hewitt D. *The School-to-Prison Pipeline: Structuring Legal Reform.* NYU Press; 2010.

24. US Departments of Justice and Education. Nondiscriminatory Administration of School Discipline Guidance. In: US Departments of Justice and Education, eds. Washington, DC: US Departments of Justice and Education; 2014:32.

25. Center for Civil Rights Remedies & CSG Justice Center. Nationwide Survey of State Education Agencies' Online School Disciplinary Data. 2013; http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/online-data-resources/nation-wide-survey-of-state-education-agencies2019-online-school-disciplinary-data.

26. Skiba R, Trachok M, Chung CG, Baker T, Sheya A, Hughes R. Where Should We Intervene? Contributions of Behavior, Student, and School Characteristics to Suspension and Expulsion. In: Losen DJ, ed. *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion*. New York, NY: Teachers College Press; in press.

27. Blake J, Butler BR, Smith D. Challenging Middle-Class Notions of Femininity: The Cause of Black Females' Disproportionate Suspension Rates. In: Losen DJ, ed. *Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion*. New York, NY: Teachers College Press; in press.