

## Legal Brief

### Current Legislative Considerations: Addressing Racial Disparities in Special Education



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Public-school students in the United States are not monolithic. Many have differences based on language, socioeconomic status, race, gender, sexuality, and disability. These social categories ultimately intersect to create or support unfair systems of oppression for students with several minoritized identities (Proctor et al., 2017). For example, many students with disabilities live in homes where multiple languages are spoken. However, English may not be a students' first language, which puts them at a disadvantage in schools that don't leverage students' multilinguistic resources in their special education programs. This is a system of oppression.

#### Disproportionality in Special Education

Over half of public-school students in the United States identify in minoritized racial or ethnic groups (National Center for Education Statistics, 2021). Yet, most practitioners are white females who only speak English (U.S. Census Bureau, 2016). This cultural disconnect impacts how students are treated, oftentimes marginalizing students of color with disabilities. There are many documented examples of this: Black families face inaccurate and delayed diagnoses for their children (Pearson et al., 2021), and autistic Black and Latinx children are evaluated later than autistic white children (Zuckerman et al., 2013). Black parents report delays in their children's access to early intervention services (Pearson et al., 2021). Additionally, "students of color and students with dis-

abilities [SWDs] have continued to be disciplined at higher rates than their peers, even as overall rates of suspensions and expulsions declined in many areas" (Blad, 2021, para. 12). Further, there is data to show that "many underrepresented families face culturally insensitive service provision" (Pearson et al., 2021, p. 137). While these disparities are well documented, only about 3% of the nation's districts are federally recognized as having significant racial disproportionalities (Samuels, 2019).

#### Disproportionality and the Individuals with Disabilities Act

Previous regulations under the Individuals with Disabilities Education Act (IDEA) allowed states to determine how they would measure district disparities, which meant states didn't hold all districts to the same standard. To address this, the U.S. Department of Education (USDOE) revised IDEA with changes known as "Equity in IDEA" in 2016. Equity in IDEA required states to standardize their approach to determining whether there was "significant disproportionality" in special education based on race or ethnicity (USDOE, 2016). If a state found significant disparities in how a district: (a) identified students for special education, (b) disciplined SWDs, or (c) educated SWDs separately from their peers without disabilities, the district would have to use 15% of its federal special education funding to address those disparities (Samuels, 2019).

The goal of Equity in IDEA was to have all states use the same measures by the 2018-2019 school year and then compare issues across states (USDOE, 2016). However, in 2018, the federal government put a two-year hold on this, citing potential financial impact. This decision implied that these regulations increased the chances that more districts would be found with significant disparities and, in turn, would need more federal funds (Samuels, 2019). The USDOE also cited the fear that districts would create quotas to avoid penalties, thus resulting in students of color with disabilities not receiving the services they required (USDOE, 2016).

The Council of Parent Attorneys and Advocates sued the USDOE for this delay, and in March 2019, the U.S. District Court ruled that the USDOE "failed to show a reasoned explanation for the delay and to consider the costs of the delay" (Samuels, 2019, para 100). However, it took until January 2021 for a new administration to issue an executive order for federal agencies to reexamine ra-

cial equity in schools (Federal Register, 2021a) by studying policy guidance, technical assistance, and other resources related to racial equity (Federal Register, 2021b). In June 2021, the USDOE sought public input to determine “how best to support and build schools’ capacity to promote positive, inclusive, safe, and supportive school climates in a nondiscriminatory manner” (Blad, 2021, para. 2). We are waiting to see how the current administration plans to effectively measure and address disparities. Conclusion

The intersection of one’s race and disability increases risks of oppression for students of color with disabilities (Fuller et al., 2021) who are marginalized and given disparate opportunities as compared to their white peers. Therefore, it is critical that federal legislation guides educators into recognizing the increased challenges students with minoritized identities face. If not, the experiences—and, in turn, the opportunities—of students of color with disabilities will continue to be oppressed (Fuller et al., 2021).

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