IDEA’s Double Bind

What Can We Glean from Federal Policy Interpretations?

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Legal-Historical Context

Disproportionality in the Individuals with Disabilities Education Act (IDEA):

- States required to define “significant disproportionality” (i.e., over-representation) and identify districts accordingly
- Sig Dispro → 15% federal $ shifted to comprehensive early intervening (CEIS)
- Equity in IDEA: Standard approach + state definition of thresholds
- Identification of “root causes”

1997

2004

2016

2018/19


Disproportionality Reform?

- Little improvement in state patterns
- Intentional avoidance of sanction and change/improvement
- ‘loose’ coupling of policy, goals, and potential for change


Our Premise

- Disproportionality is multi-determined.
- Disproportionality is problematic.
- Policy is an important contributor.
- IDEA has multiple ambiguities that make important the interpretations thereof.
- Multiple policy actors interpret and apply federal law with ramifications across levels of educational systems.

Sources of Policy Interpretation

US Department of Education
- Offices of Special Education
- Offices of Special Education and Rehabilitative Services
- Office of Civil Rights

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<tr>
<td>Federal Agency Guidance</td>
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Our study: search, screen, and synthesis of sources since 1997

Major Themes of Synthesis

State
- Numerical determination of significant disproportionality
- Sources of guidance: OSEP memos and dear colleague letters (DCLs)

District
- Allocation and use of funds for CEIS
- Sources of guidance: 6 DCLs + 2 agencies documents

Site/Student
- Consistent policy implementation
- Individualized decisions
- Sources of guidance: investigations/ and resolutions
How can states determine disproportionality under IDEA?

• OSEP: use only numerical data
  – Context is irrelevant
    • Cannot consider qualitative data or appropriateness of identification
  – Calculations should include all students in the school systems regardless of when/where identified
    • Except students unilaterally placed by courts or medical providers
  – **Only overrepresentation** can be considered

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Double bind Defined

• a situation in which a person is confronted with two irreconcilable demands or a choice between two undesirable courses of action.
• a situation in which a person is given conflicting cues ... such that to obey one cue is to disobey the other
• a psychological predicament in which a person receives from a single source conflicting messages that allow no appropriate response to be made

Source: Merriam Webster dictionary
IDEA’s Double-Bind

Child Find (under-representation, zero reject) → Disproportionality (over-representation)

Increase identification → Reduce or equalize identification

IDEA’s Double Bind

Student Rights, Needs

District Sanction, Finance
Coordinated Early Intervening

• Significant dispro per state criteria → 15% federal funds to CEIS
  – Regardless of cause of disproportionality
  – Unexpended funds are forfeited back to USDOE
• Cannot:
  – be used to reduce/redirect local funding,
  – affect allocations for students in private schools, or
  – be offset by Medicaid claims.

The Nuances of CEIS

• CEIS funding can be used for RTI/MTSS but not universal tier unless such services are “principally intended to address the needs of students who are struggling” (Knudsen, 2008b, p. 6)
• Can be used for P12 students, including those with disabilities

https://ideadata.org/sites/default/files/media/documents/2017-09/idc_ceis_chart.pdf
from Larson, K., Bradshaw, C., Kea, C., Trent, S., & Sullivan, A. L. (2020, February). Reducing disproportionality in special education and exclusionary discipline. Symposium presentation accepted for the annual conference of the Council for Exceptional Children, Portland, OR. Contact: asulliva@umn.edu

**What If Discriminations Is a Concern?**

- **OCR:** Numerical data + context
- Numerical data are considered **insufficient** to determine discrimination, but are important for monitoring and evaluation of policy effects.
- Key concerns are appropriateness of formulation and consistency of implementation.

**Key Considerations:**
- Are assessment and intervention procedures based in reliable and valid practices?
- Are policies and procedures implemented consistently and fairly for all students?
- Are IDEA-eligible students subject to timely and individualized decisions?

**Disproportionality & Child Find**

- Efforts to reduce numerical disproportionality cannot interfere with state and LEA’s obligations for child find and zero reject
- Discrimination in special education referrals and identification, including under-identification, can violate students’ rights under IDEA, Section 504, and Title VI
How Has OCR Investigated Discrimination?

• Is the policy/practice facially neutral (i.e., not overtly discriminatory)?
• Does it have adverse impact on particular group(s) of students compared to others?
• Is it require to meet an important educational goal and is there no comparably effective alternative?
• Are reliable, valid, and nondiscriminatory general and special education policies and procedures in place?

When Discrimination Was Found

Required corrective action often included:

• Review/revise policies
• Disseminate and prep all personnel annually
• Expand screening and referral processes to incorporate systematic, research-based practices
• Ongoing monitoring of disparate impact and effectiveness of practices (universal screening, classroom intervention, pre-referral intervention, special education evaluation and placement)
• Identify causes of disparities by race, language, national origin, etc.
• Annually evaluate effects of efforts to reduce disparities
from Larson, K., Bradshaw, C., Kea, C., Trent, S., & Sullivan, A. L. (2020, February). Reducing disproportionality in special education and exclusionary discipline. Symposium presentation accepted for the annual conference of the Council for Exceptional Children, Portland, OR. Contact: asulliva@umn.edu