The promises and pitfalls of mandating racial equity in special education

A focus on compliance with IDEA regulations may prevent districts from actually addressing racial disparities.

By Catherine K. Voulgarides

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Civil rights for Black Americans and for Americans with disabilities have long been closely linked. In 1968, Lloyd Dunn, who was then a former president of the Council for Exceptional Children, argued that racial inequity in special education was a civil rights concern, adding that it was "morally and educationally wrong" (p. 5) to continue referring students of color for special education services that would not serve them. Unfortunately, the Individuals with Disabilities Education Act (IDEA), as it has evolved over the years, has done little to address the problem. In fact, it comes with a set of unintended consequences that choke the pursuit of educational equity. Most important, IDEA has become a behemoth bureaucracy that is primarily focused on ensuring compliance with its mandates — and this compliance-based approach has failed to meet the needs of many students with disabilities.

Approximately 7.5 million students currently

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receive special education services in the United States (U.S. Department of Education [USDOE], 2020). Today, as in past decades, disproportionate numbers of those students are Black, Indigenous, and Latinx — the magnitude and extent of the disparities varies by such factors as locale, disability category, and ethno-racial identity (Ahram, Voulgarides, & Cruz, 2021; Fish, 2019; Shifrer & Fish, 2020). Note also that students of color who are placed in special education are more likely to be suspended than their white counterparts (USDOE, 2014, 2020). Further, and for students of all races, placement in special education has been associated with higher rates of involvement with the criminal justice system (Kim, Losen, & Hewitt, 2010); lower employment levels (Wells, Hogan, & Sandefur, 2003); and other negative consequences. And so, more than 50 years after Dunn's call for reform, racial inequity in special education remains a significant civil rights issue (Skiba et al., 2008).

From civil rights to procedural compliance

The civil rights victories of marginalized groups in the 1960s galvanized the disability community to pursue access and opportunity through the U.S. court system. Relying on the legal reasoning behind the 1954 *Brown v. Board of Education* decision (Minow, 2010), advocates argued that the segregation and exclusion of students with disabilities from educational services was a violation of equal protection and due process (Ong-Dean, 2009). The strategy proved to be effective, and not just in the courts — eventually, it led to the passage of the 1975 Education for All Handicapped Children Act, which served as the legislative basis for IDEA.

However, while civil rights concerns were key to rallying support for and passage of IDEA, they were not as central to the actual crafting of the legislation. Instead, the U.S. Congress focused on "procedural, rather than a substantive, standard of equal opportunity for students with disabilities, who had been denied access to education" (Zirkel, 2005, p. 263). And as a result, IDEA gradually became dense with rules and requirements, requiring educators and caregivers to develop extensive legal knowledge and complex systems and procedures of their own, to make sure they were following the law and applying it properly in schools (Harry & Ocasio-Stoutenburg, 2020; Zirkel, 2015). In other words, *compliance* became an overriding concern, over and above the desire to meet students' actual needs and ensure that they receive equitable opportunities to learn.

This focus on compliance as the chief measure of success has itself been a failure. The law requires local education agencies (LEAs) to show their state education agency (SEA) that they are in full regulatory compliance with IDEA, but 100% compliance has proven to be nearly impossible to achieve. In fact, more than 60% of states are out of compliance with IDEA (USDOE, 2019), and lawsuits and litigation have become defining features of the special education landscape (Mueller, 2015). Something isn't working.

Mandating racial equity

The dysfunction surrounding IDEA compliance and administration has exacerbated racial disparities in special education. Remarkably, though, the pursuit of racial equity was not addressed explicitly in IDEA legislation until the 1990s, three decades after Dunn and other advocates called out their concerns. In 1997, Congress created mechanisms to monitor and ensure equity in IDEA-funded programs, but they had little effect as racial disparities persisted despite the presence of these mechanisms (Albrecht et al., 2012).

Then, in 2004, when IDEA was reauthorized, the Office of Special Education Programs attempted to address the problem by developing state performance plan indicators that SEAs and LEAs must use to monitor an array of special education outcomes, including patterns of racial inequity related to the placement, classification, and suspension of students with disabilities (Albrecht et al., 2012). Not only did this, too, prove ineffective, but legislators inadvertently included two definitions of racial inequity, which created confusion for SEAs and LEAs (Skiba, 2013; USDOE, 2017). One definition, *significant disproportionality*, relates to overrepresentation and the use of a numerical threshold that alerts authorities to the issue. The other definition, *disproportionate representation*, refers to both over- and underrepresentation of students by ethno-racial

category receiving special education and/or related services that is the result of inappropriate identification for these services.

The result is a crazy quilt of state policies, in which states vary in how they measure racial inequity and, when they find inequities, whether school districts are required to undergo IDEA compliance reviews. Several years ago, for example, the U.S. Government Accountability Office (GAO, 2013) reported that Maryland, Iowa, and Louisiana set a lower threshold for identifying districts as having racial inequity than did South Carolina, California, Mississippi, and Connecticut. Relatedly, researchers found that after being cited for racial inequities in special education, many school districts were able to restore themselves to IDEA compliance even though data continued to show significant problems (Albrecht et al., 2012). In short, it has become difficult to keep track of the magnitude and precise causes of racial disparities in local school systems across the country, and when disparities are found, IDEA's remedies often fail to work.

In my own research, I've sought to understand how the complex nature of racial inequity interacts with the confusing, cumbersome, and compliance-driven IDEA policy landscape. For example, I have conducted research in both urban and suburban districts that have been cited for racial inequity under IDEA, and I have worked with numerous district- and building-level leaders, teachers, and related service providers as they tried to determine how inequitable their own special education programs were and then use the IDEA compliance process to make improvements. Unfortunately, I have found that educators' good intentions are not enough to address these problems, and IDEA's rules and procedures do little or nothing to help. If anything, the logic of compliance generated by IDEA *sustains* racial inequity in special education outcomes (Voulgarides, 2018; Voulgarides et al., 2021). Two examples (adapted from Voulgarides, 2018; Voulgarides et al., 2021) help illustrate just how dysfunctional the system has become:

A horse and pony show

In one large suburban district, the community was becoming increasingly Black and Latinx, while the teaching force remained relatively white. Years of attrition in the district's special education leadership had left the department in disarray, and the district had been cited for disproportionately suspending Black students with disabilities. Due to these conditions, the newly hired special education administrative team was hyper-focused on getting the department into regulatory compliance, frequently sending the message to staff that they had to comply with IDEA at any cost. The district director of special education said to her staff, "We don't really have a choice [regarding compliance]" and "anything and everything we do is to prepare for litigation or state oversight" of the special education department's actions.

The focus on compliance often frustrated staff. Many felt as though they had to "comply, just to comply," regardless of what they thought might be best practice, as one related service provider shared in an interview. The assistant director of special education served as a self-described "foot soldier" and "hit man" for finding and addressing issues of noncompliance across the district. He indicated in an interview that he was able to "fix all of the noncompliance issues … in a few months" after the initial IDEA citation for racial inequity. The SEA official told the assistant director of special education he had never seen a district "become compliant so fast."

Yet, the assistant director confided to me that his compliance efforts were all a "horse and pony show" that required him to "finesse the files" and "triage" the ones he thought the state would target in an audit. For example, since the district was cited for suspensions, he would check to make sure individual education programs (IEPs) contained evidence of behavioral intervention plans (BIPs) and behavioral supports, regardless of whether they were substantively employed in practice.

Relatedly, a teacher said in an interview, "The [compliance] strategies we are asked to focus on, like BIPs, are ineffective. They are not the real solution or what is needed, but that is what we are pushed to do." The assistant director of special education

"Hit the 'like' button on your way out!"

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acknowledged that maintaining compliance "is great for me as a supervisor because I can fix little things, but it doesn't get to the root of the problem," which he described as being related to the racial and economic tensions within the changing community.

The need to comply at any cost infiltrated all aspects of the special education process. For example, a psychologist stated in a professional development meeting with the administrative team, "So, to stay in compliance, we are not really fixing anything, but we are just making it harder for everyone?" The district director of special education replied affirmatively, "Yes." Essentially, the psychologists were told to spend hours completing student paperwork, crossing their "t's" and dotting their "i's" to symbolically demonstrate evidence of IDEA compliance in case of an audit.

In summary, achieving compliance was nonnegotiable in this district, even though the strategies to do so ran counter to educators' instincts. As the district slowly moved into regulatory compliance, it continued to be cited by its SEA for high levels of racial inequity in the suspension of Black students with disabilities.

Ignoring the elephant in the room

Another large suburban district, one with a striking pattern of racial segregation across its public and private schools, was cited under IDEA for its disproportionately high suspension rates for Black students with disabilities. Of the approximately 30,000 school-age children in the community, around 25% attended the public schools, while the rest attended private schools. Children of color made up 90% of the public school enrollment; white children made up 90% of the enrollment in the private schools.

The racial politics associated with these divisions were intense. Private school parents won several school board positions, and they used their control of the allocations process to strip away roughly 80% of the public system's funding. The district's educators were left feeling powerless and demoralized. As a public elementary principal put it, we have "no resources at all, no extra staff . . . we just have the bare minimum," adding that "it feels like [the public school district is] just, yeah, dying a slow death."

Special education classifications within the private schools further exacerbated the public schools' financial problems. One resident explained to me that some parents in the private school community had fought to have their children classified with a disability, and then they argued that the school districts' lack of resources meant their children could not be adequately educated in the public schools. In turn, these classifications provided a "legal" basis for parents to force the district to pay their private school tuition, draining even more money from the public schools. Given these conditions, local media described residents as being "at war" with each other — the primarily white and religious private school community versus the primarily Black and Latinx public school community.

Deficit-based views persisted throughout the public school system. For example, the district superintendent, in an interview with me, said that the children enrolled in the public schools (most of whom were Black and/or Latinx) were fundamentally "different" from the private school students (most of whom were white). The latter, claimed the superintendent, were not "acting-out children."

Within this context, it's no surprise that many educators in the public school system felt powerless to do anything about the fact that Black special education students were being suspended at disproportionately high rates. Said one educator, "Of course" the district would be cited, because the public school population was almost entirely made up of students of color, and "of course" there would be a higher number of Black students with a disability being suspended — that's just the way things are.

Nor did district officials think they could do much to address the disparity in suspension rates. For instance, the special education district administrator told me, "Our procedures are fine, our BIPs are fine, our IEPs are fine, but kids are still being suspended at a disproportionate rate, and [the state auditors] didn't touch that" in their review of district practices. He was frustrated with the state audit process, which focused on checking boxes, instead of getting at the root issue: "We literally go through about a 30-page booklet and look at different areas of the law. Are we doing this, and are we doing this? That's all great, but it doesn't really deal with [the real question]: Why are we disproportionate?" It was too easy, he explained, to fiddle with district policies and procedures and bring the schools into compliance with IDEA's disciplinary mandates. The IDEA citation didn't put much pressure on him or have any real effect on his orientation to his work. It just prompted him to tinker with some procedures and recalculate

some numbers. In short, while district and state officials were well aware of the underlying problem — the deeply disturbing racial power dynamics at work in the district — the IDEA compliance review did nothing to address, or even acknowledge, that problem. Rather, it ended up serving as a cover that allowed the district to claim that it had corrected its problems, even as racial inequities in special education persisted.

New directions for IDEA racial equity policy

Educational policy is rife with examples of well-intentioned policies gone awry. There will always be some drift from a policy's intent and its impact on practice (e.g., Ho, 2014). However, the drift of IDEA from its civil rights origins to a compliance-focused piece of legislation has done more harm than good, particularly with regard to racial equity in special education outcomes.

This does not mean that we should disregard compliance altogether. There is a lot to be said for holding school districts accountable to basic standards and requirements in special education, and we have come too far in securing the rights of students with disabilities to set those requirements aside. However, we must stop wasting our time, energy, and resources on compliance for its own sake.

As we think about IDEA reauthorization, we have to recognize that racial inequity in special education is not solely a *special education* issue that merits *special education remedies*. Racial inequity in special education is a miner's canary alerting us to broader equity issues (see Waitoller, Artiles, & Cheney, 2010) that just *happen* to be monitored by special education policy. State performance plan indicators should remain in place as an early warning system of sorts, serving to alert state officials of potential problems and prompting them to take a closer look at districts that show signs of inequitable practice. Further, the Obama administration's 2016 proposal to standardize the threshold for identifying disproportionality across SEAs and LEAs should move forward, creating more consistency in the field. This is important, but it is not enough.

The racial politics of LEAs and SEAs influence how schools operate and how the logic of compliance surrounding IDEA administration manifests in practice, as seen in the two districts described above. We must not allow technical policy mandates to continue to serve as a smokescreen, obscuring the root causes of inequitable student outcomes. As I've found in my research, regardless of the civil rights origins of IDEA, regardless of the good intentions of educators at the local level, and regardless of IDEA mechanisms designed to address racial inequity, disparities persist. Instead of blaming families and children for those disparities, it's time for a deeper and more honest examination of the ways in which racial politics play out in special education, shaping local practices and influencing student outcomes (see Fergus, 2016, for an example of how to do this).

Finally, IDEA administrators must acknowledge that, as things stand, the frequency with which districts are cited for racial inequities is closely related to district size and location (see Voulgarides & Aylward, under review; Voulgarides, Aylward, & Noguera, 2013). Given a district's classification as urban, suburban, rural, or town; its level of resources; its patterns of sociodemographic change, and so forth, we can predict its likelihood of being cited, re-cited, or remaining cited over time. If lawmakers recognize these patterns, then perhaps they can develop responses that are tailored to specific types of locales, while also funding new research into the differing ways in which racial inequities manifest themselves in differing contexts.

In summary, more procedures, more litigation, and a dogged focus on IDEA implementation fidelity will not give us a viable pathway toward racial equity in special education. A compliance-oriented ethos has done very little to advance justice and equity on the ground level and meet the actual needs of students and families. As we look toward IDEA reauthorization, we must seek to identify, challenge, and disrupt the inertia surrounding IDEA compliance and find policy remedies that advance justice and equity for *all* students. ■

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