The Gestalt of the School-to-Prison Pipeline: The Duality of Overrepresentation of Minorities in Special Education and Racial Disparity in School Discipline on Minorities

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THE GESTALT OF THE SCHOOL-TO-PRISON PIPELINE: THE DUALITY OF OVERREPRESENTATION OF MINORITIES IN SPECIAL EDUCATION AND RACIAL DISPARITY IN SCHOOL DISCIPLINE ON MINORITIES

TORIN D. TOGUT*

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INTRODUCTION

A United States Department of Education Office for Civil Rights survey reveals that since the 1970s there has been persistent overrepresentation of minorities in certain special education eligibility categories.\(^1\) The greatest overrepresentation occurs for black students.\(^2\) In the 1980s, black students represented only 16% of the total school population while representing 38% of children in classes for the intellectually disabled.\(^3\) Almost forty years later, little has changed—black children constitute 17% of total school enrollment and 33% of enrollment in classes for the intellectually disabled.\(^4\)

The reasons for the growing disparity in the identification of black students in certain special education disability categories are complex. There are several interacting factors contributing to the disparity, “including unconscious racial bias of educators, large resource inequities that run along lines of race and class, unjustifiable reliance on [intelligence tests], educators’ inappropriate responses to the pressures of high-stakes testing, and power differentials between parents of students of color and school officials.”\(^5\) In one of the most cited examples explaining the occurrence of the overrepresentation of minorities in special education, Representative Chaka Fattah testified before the U.S. House of Representatives Committee on Education and the Workforce on October 4, 2001, about the story of Billy Hawkins:

[F]or the first fifteen years of his life, Billy Hawkins was labeled by his teachers as “educable mentally retarded.” Billy was backup quarterback

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2. Id. at xx; see also Jacob Hibel et al., Who is Placed in Special Education, 83 Soc. of Educ. 312, 314 (2010) (noting that the overrepresentation of black students has been accepted as evidence of racial discrimination).


for his high school football team. One night he was called off the bench and rallied his team from far behind. In doing so, he ran complicated plays and clearly demonstrated a gift of the game. The school principal, who was in the stands, recognized that the “retarded boy” could play, and soon after had Billy enrolled in regular classes and instructed by his teachers to give him extra help. Billy Hawkins went on to complete a Ph.D. and is now Associate Dean at Michigan’s Ferris State University.6

Another troubling finding is that black students are twice as likely as white students to be educated in a more restrictive environment.7 Among the majority of racial groups, there has been a modest decline in percentages of students labeled intellectually disabled.8 However, for the period between 2000 and 2001, U.S. Department of Education data indicates that at least thirteen states labeled more than 2.75% of black students intellectually disabled.9 Nationally, the prevalence of white students labeled mentally retarded was approximately 0.75% in 2001, and in no state did the incidence of labeling white students rise above 2.38%.10 Nearly three-quarters of the highest incident rates (2.75%-5.41%) occurred in the South.11 One promising sign is that the southern states showed the largest decreases in percentages of black students labeled intellectually disabled since 1979.12 Nevertheless, the trend continues toward overrepresentation of blacks in the eligibility categories of intellectual disability and emotional behavior disorders.13

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7. Hearings, supra note 6; see, e.g., Mary MacDonald, Mental Disability Report Finds Disparity in Schools, THE ATLANTA J. CONST., Jan. 8, 2004, at C1; see also Thomas Parrish, Racial Disparities in the Identification, Funding, and Provision of Special Education, in RACIAL INEQUITY IN SPECIAL EDUCATION 15, 26 (Daniel J. Losen & Gary Orfield eds., 2002). One report found that 25% of Georgia’s special education students spent at least 60% of the school day in special education classes. Only nine states had a higher percentage than Georgia’s students who spend most of the school day in special education classes. Surprisingly, Hawaii had the largest percentage with 31% of its special education students assigned to special education classes most of the day.

8. RACIAL INEQUITY, supra note 1, at xix.


10. Id.

11. Id.

12. Jeremy D. Finn, Patterns in Special Education Placement as Revealed by the OCR Surveys, in PLACING CHILDREN IN SPECIAL EDUCATION: A STRATEGY FOR EQUITY 322, 365 (Kirby A. Heller et al. eds., 1982).

13. Congress has specifically found that African American children are identified as having mental retardation and emotional disturbance at rates higher than White
I. RACIAL DISPARITIES IN THE IDENTIFICATION AND PROVISION OF SPECIAL EDUCATION

A. The Meaning of Disproportionate Representation

Two terms of art describe disproportionate representation: misidentification and misclassification. Misidentification refers to inappropriately recognizing minority students from racial and ethnic minority groups as students with disabilities. Misclassification, on the other hand, refers to inaccurately labeling students who have been identified for special education services. In the educational system, minority students eligible for special education are both misidentified and misclassified. Researchers do not agree on the formulas to determine whether there is overrepresentation of minorities in a school, school system, or the state. One generic method to determine overrepresentation is to calculate the odds that students from one ethnic group have to be placed in special education compared to students from other ethnic groups (or compared to all other groups).

B. Possible Factors Leading to Overrepresentation of Minorities in Special Education

No one factor significantly contributes to overrepresentation of minorities in special education. To the contrary, research suggests a complex picture of the factors that may cause overrepresentation. Three primary variables contribute to overrepresentation: social-demographic contributions, general education and resource inequity, and the special education process.
1. Socio-Demographic Factors Influencing Overrepresentation

There are a number of demographic factors related to socioeconomic status that have an effect on student achievement. These factors include neighborhood and housing stability, the student’s home environment, family health care, and geographic location. The influence of poverty on a student’s development and achievement may not necessarily implicate poverty as a direct link in the disproportionate representation of minorities in special education. By contrast, minority students generally attend racially-isolated, low-performing elementary schools. Subsequently, they are more likely to enroll in lower track courses in lower performing schools with weaker academic standards. Thus, minority and low-income
students are much more likely to be grouped into average or low-ability courses, as compared to predominantly white, higher income schools, which often offer average, above average, and honors courses. In addition, there is some indication that teacher perceptions and expectations concerning race, either conscious or unconscious, play a role in creating and maintaining the Black-White achievement gap.

One study found that poverty does account for some of the over-identification of minorities in special education because some racial groups earned disproportionally low income. On the other hand, it is difficult to explain that poverty and socioeconomic factors alone account for the extreme differences between black overrepresentation and Hispanic underrepresentation in special education, which in some states is even greater than disparities between whites and blacks. For instance, “blacks in Alabama and Arkansas are more than seven to nine times as likely as Hispanics to be labeled intellectually disabled.” Nationally, the disparity for identification rates for intellectual disabilities and emotional behavioral disorders between blacks and Hispanics is greater than the disparity between blacks and whites. While both black and Hispanic students are at a greater risk of living in poverty than their white counterparts, the high incidence of overrepresentation of blacks who have similar levels of poverty and academic failure as Hispanics raises doubts on research that poverty, and not racial bias, is the cause of these disparities. Moreover, “as factors associated with wealth and better schooling increase, black males are at greater risk of being disproportionately labeled ‘mentally retarded.”

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28. Oswald et al., supra note 23, at 196.
29. Id. (noting that the poverty rate for African American families in the United States is approximately three times that of all other families); see also Donald L. MacMillan & Daniel J. Reschly, Overrepresentation of Minority Students: The Case for Greater Specificity or Reconsideration of the Variables Examined, 32 J. SPECIAL EDUC. 15, 19-20 (1998) (commenting that ethnicity and poverty are inextricably linked).
30. RACIAL INEQUITY, supra note 1, at xxiv.
31. Id.
32. Id.
33. Id. at xxiv-xxv.
Some researchers conclude that poverty is a strong variable contributing to the disproportionality of minorities in special education. One study found that although African American children are more likely to become eligible for special education services than white children, statistically controlling for socio-demographic status reduces the influence of race. This is not to say, however, that poverty is a direct contributing cause to special education placement; socio-economic status appears to play a varying role in the likelihood that a given child will be placed in special education depending on his disability category, the percent of minority enrollment, and per pupil expenditure of the school. The extent that poverty influences a child’s placement in special education is still not precisely known. In any case, it has been shown that early intervention services can make a significant difference in the educational performance of students with poverty-related risk factors.

2. Special Education Eligibility and Decision Making Processes

With respect to the special education referral process, research suggests that students may be treated differently depending upon their race. “Differences in the severity of reasons for referral for white and black students, however, lead [researchers] to conclude that black students may receive pre-referral interventions only when their academic or behavioral problems reach a higher level of severity.” Meanwhile, another study found that teachers referred minority students to a special education program more frequently than non-minority students, and often referred minority students for behavioral problems rather than academic

35. See Coal. to Save Our Children v. State Bd. of Educ., 901 F. Supp. 784, 820-21 (D. Del. 1995), aff’d, 90 F.3d 752 (3d Cir. 1996) (explaining that “when the poverty level is equalized between races, the disparity between races in special education participation narrows, but is not eliminated”), see also DEP’T. OF EDUC., EIGHTEENTH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF INDIVIDUALS WITH DISABILITIES EDUCATION ACT 86-88 (1996), available at http://www2.ed.gov/pubs/OSEP96AnlRpt/ (discussing Mary Wagner’s findings in The Contributions of Poverty and Ethnic Background to the Participation of Secondary School Students in Special Education (citation omitted)).

36. See Parrish, supra note 7, at 25 (“[D]ata suggest[s] that something more than the effects of poverty are causing black students to be disproportionately identified for some categories of disability.”), see also Yeargin-Allsopp et al., supra note 21, at 326.

37. See generally Donald P. Oswald et al., Community and School Predictors of Overrepresentation of Minority Children in Special Education, in RACIAL INEQUITY IN SPECIAL EDUCATION 1, 7-10 (Daniel J. Losen & Gary Orfield eds., 2002) (finding that sociodemographic factors play a role in determining the disproportionate representation of minorities in special education, but the effects are different for different groups and are not always intuitive).

38. Oswald, supra note 23, at 196.

39. MINORITY DISPROPORTIONALITY, supra note 18, at 4.

40. Id. at 7.

41. Id. (citing MacMillan & Reschly, supra note 29).
difficulties.\footnote{42 Id. at 7-8 (citing Jay Gottlieb et al., \textit{Parent and Teacher Referrals for a Psychoeducational Evaluation}, 25 J. SPECIAL EDUC. 155, 165 (1991)).}

In a more practical way, a teacher’s reaction to a particular student’s behavior that the teacher finds unfamiliar or uncomfortable may be counter-productive. For example, an African-American male that engages in behavior within the norms of the local black community may be perceived as disruptive or threatening to a teacher that is unfamiliar with that student’s cultural context.\footnote{43 Id. at 40 (citing Brenda L. Townsend, \textit{Disproportionate Discipline of African American Learners: Reducing School Suspension and Expulsions}, 66 EXCEPTIONAL CHILD. 381, 383 (2000)).} This unfamiliarity does not necessarily mean that referral for behavioral problems is inappropriate, although it may mean that African-American students are more likely to be referred by standing out, assuming higher levels of minority students are labeled as having emotional-behavioral disorders in the classroom setting.\footnote{44 Id.}

The regular education system serves as a conduit for the referral of undiagnosed students with disabilities.\footnote{45 Id. at xxv.} In an elementary way, the cause of racial disparity is rooted, in part, in the regular education system, which is part of the special education system.\footnote{46 Id.} Moreover, “most students referred for evaluation by the regular education system are deemed in need of services.”\footnote{47 Id.} Based on years of research, a cited study concludes that “[t]he point at which differences [in measured performance and ability] result in one child being labeled disabled and not another are totally matters of social decision making.”\footnote{48 Id. (citing Beth Harry et al., \textit{Of Rocks and Soft Places: Using Qualitative Methods to Investigate Disproportionality}, in \textit{Racial Inequity in Special Education} 71 (Daniel J. Losen & Gary Orfield eds., 2002)).} Importantly, other elements of subjective decision making that go unrecognized include school politics, relationships between school officials and parents, the quality of regular education, and classroom management of the referring regular education teacher.\footnote{49 Id.} There are also other race-linked factors such as poorly trained teachers that are employed at minority schools, beliefs in black and Latino inferiority accompanied by subsequent low expectations, express cultural insensitivity, and fear and misunderstanding of black males.\footnote{50 Townsend, supra note 43, at 383-88.}

Furthermore, overcrowded schools that are disproportionally located in school systems with a high percentage of minorities contribute to the faulty
identification process, which has a disparate impact on minority students.51

3. Poorer Versus Wealthier School Districts

It is often believed that the quality of education is directly related to funding.52 If this is true, then it is expected that there would be higher special education enrollment in poor districts and lower enrollment in more affluent districts. There are three variables contributing to this hypothesis: (1) district-level per-pupil spending, (2) class size as a function of school resources, and (3) variations in teacher pay.53 Of these variables, class size and teacher pay are related to special education; resources do matter.54

Data collected demonstrates that in Florida and Texas, urban districts have a greater percentage of minority students as part of total enrollment than in rural districts.55 This disparity is certainly true in large urban areas such as Milwaukee, Philadelphia, St. Louis, Atlanta, and Birmingham.56 The more urban a school district, the lower percentage of minority students enrolled in special education classes.57 An urban district may, in fact, under-identify students with special needs.58 This under-identification


52. Rothstein, supra note 51, at 32.


58. See Jonathan Feldman, Racial Perspectives on Eligibility for Special Education: For Students of Color who are Struggling, Is Special Education a Potential Evil or a Potential Good?, 20 AM. U. J. GEN. SOC. POL’Y & L. 183, 190-92 (2011) (positing that because large urban school systems contain numerous students that could benefit from special education that students of color might well be under-represented, rather than over-represented, in special education).
occurs for two primary reasons. First, urban schools have different priorities. Second, urban schools face interacting stressors which impair their ability to fully recognize and contribute to children’s school functioning. Therefore, the data indicates that the percentage of minority students in a district is the driving force in determining the special education rate.

4. Percentage of Minorities Enrolled in School District

Primarily, white school districts enroll a greater percentage of minority students in special education than majority-minority school districts. One reason for this is that white districts maintain more rigorous academic standards than in-city, majority-minority districts. As a result educators in majority white districts often blame minority students for their underachievement, seeing the students as “difficult or culturally and linguistically deprived.” Yet this reasoning is seriously weakened by evidence that the racial composition of the school accounts more for minority student academic differences than academic standards such as dropout rate, test scores, spending, and level of urbanization.

5. High-Stakes Testing

High-stakes testing is another area that disproportionally affects placement of minorities in special education. High-stakes testing has increasingly been linked to grade retention and dropout rates, especially among poor and minority students. Every year, almost 2.4 million students are retained; the typical retained student is male, black or Hispanic, poor, and from a household where the parents did not finish high school. One study found that 20% of African-Americans between first

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59. See Esposito, supra note 54, at 365-77 (describing the importance of school climate for urban schools as a tool for development in light of chronic poverty and other challenges).
60. Id.
61. Ladner & Hammons, supra note 55, at 95.
62. Id. at 86. Congress found that schools with predominately white students and teachers have placed disproportionally high numbers of their minority students into special education. 20 U.S.C. § 1400(c)(12)(E) (2006).
63. Ladner & Hammons, supra note 55, at 101.
66. Id.
67. Torin D. Togut, High-Stakes Testing: Educational Barometer for Success, or False Prognosticator for Failure, THE BEACON, Fall 2004, at 12,
and eighth grade in Texas failed at least once and 42% will fail at least once between ninth and twelfth grade. The corresponding rates for Hispanic students were 21% and 44%. Certainly there is an inference that if minority students are retained at grade level because of high-stakes testing, they are more likely to be referred for a special education assessment. The increase in retention correspondingly has a greater impact on dropouts. In fact, grade promotion is the strongest predictor of which students will drop out of school—it is a stronger predictor than race, ethnicity, or socioeconomic status.

6. Assessment

States and school districts heavily rely upon intelligence and other tests as objective and scientific measures of a child’s ability and performance. This testing often drives educators to determine special education eligibility and placement. Evaluations are sometimes deemed subjective and are clouded by school politics, teachers’ perspectives, and cultural bias. Non-testing factors such as the management skills of the referring teacher and quality of regular education also influence assessment decisions. This method of testing leaves educators with wide discretion on whom to test, what to test, when to use alternative tests, interpretation of responses, and weight to be given to certain tests.

In the assessment and decision-making process, there is evidence that both regular and special education teachers refer minority students for a special education assessment given identical referral information. Information on race and socio-economic status may contribute to special


69. Id.

70. Id. at 2, 27 (controlling for academic performance and relevant social characteristics).


73. Id. at 111-12.

74. See Harry et al., supra note 48, at 71-92 (requiring the response of teachers and administrators to the child’s poor performance to move the student forward).

75. Id.

76. See generally id. (discussing the many areas of assessment and decisions schools and teachers make regarding students’ education).

77. NAT’L RESEARCH COUNCIL, supra note 72, at 113.
education referrals. Other evidence indicates that parents of minority students were contacted significantly less often to participate in the special education process than parents of white students, and recommendations to minority parents were often more restrictive and less diverse than recommendations for non-minority students. Interestingly, regular and special education teachers viewed referral to special education as the only resource for students with learning and behavior problems. These teachers prefer over-referral to the special education process to ensure that needy students receive all of the resources that they qualify for. Teachers will make these referrals regardless of whether the referral is validated by standardized assessment.

II. STRATEGIES TO REDUCE OVERREPRESENTATION

There are a number of recommended strategies to reduce overrepresentation of minorities in special education. One strategy is to create a successful school environment for all students and accurately distinguish disabilities from cultural differences. "An ecological approach that recognizes the influence of the learning environment on the process of teaching and learning is critical."

Other commentators have made recommendations to reduce racial inequity in schools by: developing a district-wide vision for the education of all students; forming policymaking bodies that include community members; involving families, particularly those of culturally and linguistically diverse students, in all stages of the student’s school experience and maintaining such involvement; recruiting racially and

80. MINORITY DISPROPORTIONALITY, supra note 18, at 20.
81. Id.
82. Id. at 50.
83. See Daniel Losen, New Research on Special Education and Minority Students with Implications for Federal Education Policy and Enforcement, in CITIZENS’ COMMISSION ON CIVIL RIGHTS 263, 263-84 (2000) (discussing educational research reforms and better targeting the regular and special education of minority children).
84. Id.
86. See Shernaz B. Garcia, Parent-Professional Collaboration in Culturally Sensitive Assessment, in ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION 87, 87-103 (Alfredo J. Artiles & Alba A. Ortiz eds., 2002); C. Warger & J. Burnette, Five Strategies to Reduce Overrepresentation of Culturally and Linguistically Diverse Students in Special
culturally diverse staff; making the general education classroom conducive to all children; enhancing learning through relevant curriculum,\(^8\) providing teachers that can distinguish the characteristics of a disability from characteristics that reflect cultural differences, and cultural knowledge, skills, and experience for instruction of racially diverse students with disabilities,\(^8\) using evaluators that have adequate training in reviewing and interpreting assessments in a culturally competent manner;\(^9\) linking assessment practices to a child’s individual educational needs, such as prevention and intervention,\(^10\) implementing nonstandard procedures, ecological assessments,\(^11\) and functional assessment;\(^12\) conducting research that provides better conceptual understanding of the variables that influence overrepresentation;\(^13\) and developing new federal initiatives with implications for state accountability that require states and school districts to collect disaggregated data by race with disability category and educational setting.\(^14\)

III. RACIAL DISPARITY OF SCHOOL DISCIPLINE ON MINORITIES

For more than thirty years, there have been extensive investigations of school punishment and its linkage with socioeconomic and racial disproportionality in the administration of school discipline.\(^15\) Although

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\(^{8}\) Warger & Burnette, supra note 86.


\(^{89}\) Id. This list is not exhaustive. Some of these suggestions do not realistically reflect the factors that work against creating a school environment that is racially and culturally sensitive to minorities and their families.

\(^{90}\) NAT’L ASSOC. OF SCH. PSYCHOLOGISTS, ASSESSMENT AND ELIGIBILITY IN SPECIAL EDUCATION: AN EXAMINATION OF POLICY AND PRACTICE WITH PROPOSALS FOR CHANGE 22-29 (1994) (explaining that the IDEA policies intended to promote comprehensive assessment practices unfortunately result in excessive attention to identifying and labeling the disability).


\(^{93}\) See, e.g., Oswald et al., supra note 23, at 194-206.

there is significant evidence for disproportionality, there has been little exploration of its causes. However, the little research that has been done has revealed several factors that contribute to racial disproportionality in school discipline.

A. Socioeconomic Status

Disproportionality can be seen between students from different socioeconomic backgrounds. For example, students who receive free lunches are at an increased risk for school suspension. Another study found that students whose father did not have full-time employment were significantly more likely to be suspended than those whose father worked full time. In addition, low-income students receive more severe punishment, such as being made to stand in the hall all day and being subjected to searches of personal belongings. High-income students, on the other hand, are more likely to receive more mild discipline, such as teacher reprimand and seat reassignment.

There is one school of thought holding that racial disproportionality in school discipline is due to the correlation in most schools between race and socioeconomic status, and if income status were controlled, these racial disparities would disappear. In a recent study, four measures of discipline were used: (1) office referrals per student, (2) suspensions per student, (3) proportion of referrals suspended, and (4) number of days per suspension. The results of this analysis suggest that racial disparity in school discipline for black students can be largely attributed to the prior disproportionate referral of black students to the school office. The likelihood of referral to the office follows this order: black male, white

96. Office Referrals, supra note 95, at 306.
99. Id.
102. Id. (finding that white students were more likely to be referred to the office for smoking, leaving the school without permission, vandalism, and obscene language, while black students were more likely to be referred for disrespect to teachers and administrators, excessive noise, and loitering); see also CARL J. HUBERTY, APPLIED DISCRIMINANT ANALYSIS (1994).
male, black female, white female. There is strong evidence that racial and gender disparities continue to exist even when controlling for socioeconomic status. Further, there is no evidence that racial disparities in school punishment can account for disproportionate rates of misbehavior. Thus, black students are referred for discipline and subjected to harsher consequences for less serious behavior and for more subjective reasons.

The racial disparity in discipline appears to be associated with an over-reliance on negative and punitive punishment. Schools with the highest rates of suspension also have the highest rates of suspended black students. Relying upon harsher disciplinary measures contributes to school rejection and dropouts. Racial stereotyping may occur because of cultural differences of teachers. Teachers that subscribe to the stereotype of adolescent black males as threatening and dangerous may overreact to minor infractions of school rules and authority. Cultural differences of teachers support varied perceptions of racial disparities in discipline. White students and teachers perceive racial disparities in discipline as unintentional and unconscious while black students perceive it as conscious and deliberate.

B. Minority Status

Overall, the rates of suspension for black students are between two to three times higher than suspension for white students in elementary, middle, and high school. In twenty-nine states, more than 5% of the African-American population was suspended while only four states suspended more than 5% of their white students. Between 1972 and 2000, the percentage of white students suspended for more than one day

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104. Id.
105. Id.
111. CHILDREN’S DEF. FUND, supra note 95.
rose from 3.1% to 6.1% while the percentage for black students had risen from 6% to 13.2%.\textsuperscript{113} For students with disabilities, black students are three times more likely than white students to be suspended and four times more likely than white students to be educated in a correctional facility.\textsuperscript{114} Black students are more frequently exposed to harsher disciplinary punishment such as corporal punishment than other students.\textsuperscript{115} There appears to be a direct link between school discipline and minority disproportionality. Overrepresentation of black students in school suspension and expulsion seems to increase as those disciplinary measures are used more frequently.\textsuperscript{116}

C. Correlation Between Overrepresentation of Minorities and Racial Disparity in Discipline

There appears to be a correlation between the discriminatory treatment of black children in school discipline and the overrepresentation of minorities in special education.\textsuperscript{117} Even if discrepancies in discipline are not racially motivated, the overrepresentation of black students and those of lower socioeconomic status in school discipline contributes to racial stratification in school and society.\textsuperscript{118} Although there is no absolute proof of racial discrimination, there is strong evidence that there exists some


\textsuperscript{114} Id. at 3. The ten states with the highest rates for black disciplinary out-of-school suspension in 2007-2008 were Neb. (36.76%), Wis. (34.39%), Nev. (30.92%), Del. (28.39%), Tex. (25.98%), Minn. (24.24%), R.I. (23.46%), S.C. (22.85%), La. (21.82%), Ga. (22.17%). The U.S. average is 16.64%. See Daniel J. Losen, Discipline Policies, Successful Schools, and Racial Justice, in National Education Policy Center, 1, 5 (Oct. 2011). States are required to collect data, disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities. 20 U.S.C. § 1412(a)(22) (2006). If such discrepancies occur, the State educational agency, if appropriate, should revise its policies, procedures, and practices relating to the development and implementation of Individualized Educational Programs, the use of positive behavior interventions and supports, and procedural safeguards to ensure such policies, practices, and procedures comply with the law. 20 U.S.C. § 1412(a)(22)(B).


\textsuperscript{118} Christine Bowditch, Getting Rid of Troublemakers: High School Disciplinary Procedures and the Production of Dropouts, 40 SOC. PROBLEMS, no. 4, 493, 506 (Nov. 1993).
The overriding principle is that overrepresentation of African Americans and lower social economic status in school discipline contributes to stratification in school and society.  

D. Recommendations to Address Racial Disparity in School Discipline

To address the cycle of fear and cultural discontinuity, teacher training in appropriate and culturally competent methods of classroom instruction can be used to address racial disparity in school discipline. Many teachers feel overwhelmed with the problems of classroom management. By teaching appropriate classroom management techniques, communication skills, and support of mental health staff and administration, a more supportive classroom environment can be created. There are additional strategies used to address cultural discontinuity, such as knowledge of linguistic or dialectic patterns of black students, family and community partnerships, multi-component training programs to enhance multicultural awareness, exposure to diverse communities, and instructional practices, among others. It has also been suggested that communities seek to improve the quality of educational service for all children. This improvement would include developing a set of district-wide standards and priorities, increasing resources to schools, developing procedures to ensure equitable distribution of resources across schools, conducting school resource inventories, instituting a methodology for implementation and evaluation across schools, backing legal challenges to inequitable practices such as tracking, and equalizing resource availability.  

CONCLUSION

In almost sixty years since the United States Supreme Court decision of
Brown v. Board of Education, the public schools of our country have experienced a different kind of discrimination: an overrepresentation of minorities in special education classes and programs and racial disparity in school discipline. This invidious discrimination not only segregates minorities from their white peers, it also segregates them into classes for students with disabilities. Does the unjustified identification and placement of minority children into classes for students with disabilities and racial inequity of school discipline constitute the twenty first century’s rebirth of “separate but equal” facilities for children of color? Simply put, the answer is yes.

By grouping children of color into “separate but equal” special education classes and disproportionally suspending and expelling students of color, we have committed the cardinal sin of repeating a dark period in our nation’s history. School districts and schools that perpetuate the overrepresentation of minority students in special education and engage in practices that result in a disproportionate number of children of color receiving harsher punishment for school disciplinary infractions are repeating the injustices of what was once considered a bygone era. But are these school districts and schools treating children of color differently for no other apparent reason than their race and national origin?

There is no simple answer to this question. No doubt, the perception of institutional racism still exists and may even flourish in various aspects of our society. Until and unless we eliminate all vestiges of racial discrimination in our country, overrepresentation of children of color in special education and racial inequity in school discipline will continue unchecked. On the other hand, if we acknowledge that racism exists, then we can move toward eliminating those vestiges of discrimination over time. We face a daunting task of finding long-term solutions to prevent children of color from being further disenfranchised from our society. Civil rights advocates and litigants are encountering more onerous legal hurdles to challenge overrepresentation of minorities in special education and racial disparity in school discipline on minorities. For this reason, we should

129. See Mary Giunca, Office of Civil Rights to Examine Discipline of Black Students, WINSTON-SALEM J., Mar. 24, 2011 (noting that the United States Office for Civil Rights visited six Winston-Salem/Forsyth County Schools in April 2011 to review whether the school disciplinary policies disproportionately punished black students).
130. The United States Supreme Court in Alexander v. Sandavol, 532 U.S. 275, 299-300 (2001), has made it increasingly difficult for civil right plaintiffs to enforce disparate impact claims of racial discrimination under Section 602 of Title VI regulations. See 34 C.F.R. § 100.3(b)(1)(iii)-(vi); see, e.g., Dan McCaughey, The Death of Disparate Impact Under Title VI: Dan McCaughey, Alexander v. Sandavol and Its Effects on Private Challenges to High Stakes Testing Programs, 84 B.U. L. REV. 247 (2004). Other legal avenues, such as filing a complaint with the United
take a closer look at utilizing non-litigation strategies to constructively change and significantly improve our nation’s schools so they will truly become colorblind rather than color conscious.