Promoting Just Special Education Identification and School Discipline Practices

NASP firmly believes that every student is entitled to an education that affirms and validates the diversity of their cultural and individual differences, fosters resilience, and facilitates well-being and positive academic and mental health outcomes. NASP opposes educational disparities and disproportionality that result from discriminatory or ineffective policies, procedures, or practices marginalizing students from historically minoritized backgrounds.

NASP represents school psychologists who work with students, families, educators, administrators, and communities to ensure all of our students have the supports they need to be successful. School psychologists provide direct and indirect interventions to support student social–emotional learning, mental and behavioral health, and academic success. Positive educational and social outcomes for all children and youth are possible only in a society—and schools within it—that guarantees equitable treatment to all people, regardless of race, class, culture, language, gender, gender identity, religion, sexual orientation, nationality, citizenship, ability, and other dimensions of difference.

DEFINITIONS

In general, disproportionality refers to group differences in a specific outcome or differences in individuals’ risk for an outcome due to their group membership (Sullivan & Osher, 2019). In the context of special education, disproportionality may refer to group differences in special education identification, services, placement in the least restrictive environment, and discipline, or other outcomes, such as exiting special education programs or high school completion. Such disproportionality can include complex patterns of over- and underrepresentation across subgroups or individual risk for a given outcome. Notably, this broader definition of disproportionality is common in the related scholarship but is distinct from federal special education law where only overidentification is considered to constitute significant disproportionality in identification, placement, or discipline (for discussion, see Sullivan & Osher, 2019). Discipline disproportionality typically refers to differential risk for exclusionary discipline, the broad class of practices that remove students from their typical education environment and reduce opportunities to learn for specified time periods (e.g., timeouts, office referral, in- and out-of-school suspension, expulsion) or other harmful disciplinary practices including seclusion, physical restraint, corporal punishment, and referral to law enforcement.

CONTEXT

Disproportionality is a threat to equity and social justice as it signals differential treatment or outcomes resulting from inequitable practices or policies. Although the specific or proximal determinants of disproportionality may vary from one context to the next, there are widely accepted root causes—most notably discrimination, systemic racism, and its many manifestations in educational systems (e.g., Skiba et al., 2016). Further, disproportionality is considered to be part of the complex constellation of
educational disparities and structural inequities that disadvantage learners from historically minoritized backgrounds (Sullivan et al., 2015). These disparities include differential educational opportunity, participation, expectations, and relationships that manifest in disparate achievement, discipline, special education identification, juvenile justice involvement, and educational attainment (Weeks et al., 2020). Given school psychologists’ ethical obligations to promote fairness and justice, correct discriminatory practices, and support equitable and just educational opportunity (NASP, 2020b, Principle 1.3), systematic effort to reduce disproportionality is warranted.

**SPECIAL EDUCATION DISPROPORIONALITY**

Concern for discriminatory identification and treatment of learners from traditionally marginalized backgrounds via racist testing, disability labeling, and resultant segregation into specialized classes predates formalization of the special education system (e.g., Dunn, 1968; Winston, 2020). Spurred by early misuses of special classes and schools in the wake of compulsory education and racial desegregation policy, early scholarship and landmark case law emphasized apparent misidentification of students from marginalized communities (e.g., students of color, immigrants, multilingual learners) as having cognitive, learning, and emotional disabilities, followed by placement in poor quality classes and programs (Sullivan et al., 2019). Although controversial, the preponderance of more than 50 years of scholarship suggests that students from racially minoritized backgrounds, and particularly Black and Indigenous learners, are overidentified for special education and disproportionately subject to subpar educational opportunities and outcomes (Skiba et al., 2016). Patterns vary by the group and unit of analysis (e.g., student, school, district, state, nation; Sullivan et al., 2020), which complicates inferences about the nature of disproportionality. Nonetheless, most scholars agree that disproportionality is multiply determined and at least partially attributable to systemic inequity, including structural racism reflected in systematic differences in educational opportunities (McIntosh, Girvan, et al., 2014; Skiba et al., 2008; 2016). The weight of this accumulated evidence is reflected in federal rules and regulations supporting elimination of disproportionality (Sullivan & Osher, 2019).

Despite the spirit and supportive intent of federal special education law and associated practices, the overidentification of disabilities and segregation in special education classes and schools remains an area of concern for families, students, educators, scholars, legislators, and communities because of the negative outcomes associated with special education identification and services (Sullivan & Proctor, 2016). As such, special education is recognized as a double-edged sword that grants essential access for some while stigmatizing and restricting opportunities to learn for others (Donovan & Cross, 2002). Yet disproportionality is likely perpetuated by symbolic compliance with legal requirements that avoid substantive changes to the school and district policies, procedures, or practices that contribute to inequity (e.g., reviewing disproportionality data without examining root consequences; Sullivan & Osher, 2019). In addition, the range of negative consequences associated with special education identification, including lack of academic gains and elevated risk of exclusionary discipline, dropout, unemployment, and long-term challenges—particularly among students from historically minoritized backgrounds—necessitate caution in the identification of special education disabilities (Sullivan & Proctor, 2016).

**EXCLUSIONARY DISCIPLINE DISPROPORIONALITY**

Like special education disproportionality, elevated use of exclusionary discipline with students from historically minoritized backgrounds is a concern given evidence that disciplinary outcomes are applied discriminatorily and undermine students’ short- and long-term outcomes in and out of school.
Discipline disproportionality begins in early childhood education (SRI Education, 2016) and is especially problematic for students of racially minoritized backgrounds, particularly Black boys and girls, students identified with disabilities, students from low-income and economically marginalized backgrounds, and sexual minority youth (Kosciw et al., 2018; Mittleman, 2018; Musu-Gillette et al., 2018). The preponderance of research indicates that discipline gaps are not the result of differences in disruptive behaviors but rather differential application of disciplinary consequences that result in harsher and more frequent consequences for students from racially minoritized backgrounds and other disadvantaged groups (Rocque, 2010; Skiba, 2015). In addition, exclusionary practices are not reserved for severe or dangerous behaviors and are instead applied to a range of subjective and innocuous behaviors (e.g., tardiness, disrespect, emotionality, loitering) among students from minoritized backgrounds.

The need to reduce and eliminate use of exclusionary discipline, particularly for students from multiply marginalized backgrounds, is further underscored by an abundance of research indicating (a) that exclusionary practices do not lead to improved behavior or safer school environments, and (b) far reaching detrimental outcomes are associated with suspension and other exclusionary discipline practices for students (e.g., academic failure, grade retention, dropout, involvement in juvenile justice). Furthermore, exclusionary discipline is associated with a host of negative consequences for teachers and schools (e.g., loss of instructional time, teacher burnout and attrition), families (e.g., risks to childcare and employment) and communities (e.g., future reductions in civil engagement and income, increased health care and social welfare needs and costs; American Civil Liberties Union, n.d.; Council on School Health, 2013; U.S. Government Accountability Office, 2018).

ROLE OF THE SCHOOL PSYCHOLOGIST

School psychologists are committed to fairness and justice for all as they help to preserve the dignity of all individuals in their professional practices and interactions (NASP, 2020b). To this end, NASP is committed to advancing social justice (NASP, 2017), as articulated herein:

Social justice is both a process and a goal that requires action. School psychologists work to ensure the protection of the educational rights, opportunities, and well-being of all children, especially those whose voices have been muted, identities obscured, or needs ignored. Social justice requires promoting nondiscriminatory practices and the empowerment of families and communities. School psychologists enact social justice through culturally responsive professional practice and advocacy to create schools, communities, and systems that ensure equity and fairness for all children and youth.

Relatedly, NASP is committed to supporting the educational and mental health needs of all students, regardless of race, culture, linguistic background, sexual orientation, gender identity, gender expression, socioeconomic status, nationality, citizenship, disability, educational need, or other dimensions of difference. All school psychologists, regardless of the settings in which they serve, are charged with advocating for culturally responsive, evidence-based practice, and with assisting their colleagues and professional communities with reforming policies and practices that contribute to inequitable outcomes. Further, NASP’s standards (NASP, 2020b, Guiding Principle 1.3) call for school psychologists to promote fairness and justice by cultivating safe, welcoming, and inclusive school environments. The following recommendations are offered for school psychologists in order to foster social justice by mitigating discrimination and ineffective practices that contribute to inappropriate special education identification and exclusionary discipline to students from minoritized backgrounds.
PREVENTING EDUCATIONAL DISPARITIES

Preventing disproportionality in special education and discipline begins with strong general education policies, programming, and implementation. Educational programs and practices should be designed to afford equitable and just opportunities, participation, and relationships for students from minoritized backgrounds. They should also be conceptualized and implemented to support antiracism and disrupt other systems of oppression that interfere with students’ opportunities to learn. This may be accomplished in part through early intervening and universal programming to enhance the basic floor of opportunity. School psychologists must support schools to ensure that core curriculum, instruction, and social–emotional–behavioral supports are rigorous and engaging by leveraging universal designs for learning framework and ensuring the cultural and linguistic appropriateness of curricula for all students served (O’Hara et al., 2016). This may be facilitated through multitiered systems of support when designed, implemented, and evaluated with explicit attention to social justice, educational justice, and authentic involvement of and support for marginalized students, families, and communities.

School psychologists use data to inform decision-making and work on a systems level to create environments conducive to the success of all students (NASP, 2020b). Using data to identify disparities is the first step to remediating educational inequities (McIntosh et al., 2018). In addition to reviewing academic and discipline data, school psychologists should examine other indicators such as attendance, graduation and dropout rates, and perceptions of school climate. Disparities in these indicators may help to explain identified academic and discipline disparities. Collected data should be disaggregated by social category (e.g., race/ethnicity, gender, socioeconomic status, disability status, sexual orientation) as well as the intersection of these identities (Gregory et al., 2014). Looking at single social categories likely obscures meaningful subgroup differences and ignores how social identities interact to create systems which oppress multiply marginalized students (Proctor et al., 2017).

While monitoring disaggregated data is important to better understand the practices that contribute to inequities, it is not enough (McIntosh et al., 2020). Schools must engage in critical questioning to examine the root causes of identified disparities, particularly the role of systemic racism and how it manifests in educator practices and school policies. To do this, schools should provide professional development grounded in antiracism that engages and challenges intersecting systems of oppression (sexism, ableism, etc.). These approaches help individuals reflect on their biases and experiences with race and racism; challenge their attitudes about power, privilege, and oppression; and understand how biases can influence decision making (LaForett & De Marco, 2020). This examination of bias extends beyond the individual level to school policies. Educators with unexamined biases may institutionalize these biases through the creation of school policies grounded in racist and deficit beliefs about minoritized groups. These policies are designed to be “race neutral,” ignoring the influence of racism in perpetuating disproportionate impact on minoritized students. Schools should consider the appropriateness of policies and procedures relative to best practices and the consistency with which they are applied (Sullivan & Osher, 2019).

PREVENTING INAPPROPRIATE SPECIAL EDUCATION DECISIONS

Preventing inappropriate and discriminatory special education decisions begins with strong systems to support data-based decision making. Schools must engage in data-based decision making based on multiple data sources, including universal screening for academic needs, and a continuum of early intervening services and interventions matched to students’ learning, social, emotional, and behavioral needs and monitored for fidelity of implementation (Sullivan & Osher, 2019). Students should also have access to
high quality special education evaluations and services when warranted, including appropriate and equi-
table mental and behavioral health services consistent with their rights under IDEA (2004) and Section
504 of the Rehabilitation Act of 1973. Caregivers should be informed of their educational rights,
volved in intervention efforts, and informed about students’ responsiveness to interventions through
timely continuous progress monitoring (O’Hara et al., 2016). Throughout the prereferral and evaluation
process, school psychologists should be mindful of the significant limitations—specifically, the tremen-
dous subjectivity and unreliability of assessment practices and associated special education eligibility
decisions (Sadeh & Sullivan, 2017; Sullivan et al., 2019). Problem-solving efforts should focus first in
ruling out contextual factors (e.g., gaps in curricula that led to skill deficits, insufficient/poor instruc-
tion, insufficient intensity of interventions or support). School psychologists and school-based teams
should use the socioecological model to consider the various root causes of the student needs being
presented for further evaluation (Sullivan et al., 2015). School-based teams should center their efforts
around root causes that require the least amount of inference (i.e., causes that can best be validated with
data) and also that are malleable and able to be addressed by the school before engaging in hypothesis
testing of root causes that require a high degree of inference (e.g., within child factors such as low
aptitude or psychopathology; Sadeh & Sullivan, 2017). Finally, school psychologists should apply cul-
turally responsive practices and procedures to support multidisciplinary evaluation teams to conduct
ecologically and culturally valid multidimensional evaluations (Jones, 2009; NASP, 2020b).

PREVENTING DISPROPORTIONALITY IN EXCLUSIONARY DISCIPLINE

Detecting and preventing discipline disproportionality is paramount to dismantling the school-to-prison
pipeline. NASP’s Framework for Effective Discipline (2020a) outlines a number of strategies schools can use
to reduce reliance on harmful exclusionary discipline and the discriminatory application thereof.
Promising approaches may include school-wide positive behavioral interventions and supports
(SWPBIS) or other tiered systems of social, emotional, or behavioral support with explicit attention to
racism and antiracism, as well as authentic engagement of students, families, and community members
throughout planning, implementation, and evaluation to ensure contextual relevance and appropriate-
ness to unique community context. Additionally, restorative practices may provide additional alternatives
to exclusionary discipline practices with potential to create space for repair of perceived harm that may
manifest in interactions between students and faculty (Wachtel, 2016). Regardless of the system, the
basic premises of (a) seeking stakeholder input (e.g., families, communities) to inform the disciplinary
system, (b) data-based decision-making, (c) quality relationships, and (d) professional learning around
bias will be crucial to promoting equitable discipline.

Any approach implemented should include ongoing attention to fidelity and examination of implemen-
tation. This process speaks to the evaluation of outcome data to discern potential disparities in
application and treatment of students from minoritized backgrounds (e.g., office referral, suspension,
expulsion, restraint), as well as resulting modifications to programming, policy, and professional learn-
ing. School psychologists can play a vital role in supporting such program evaluation and data-based
decision-making. Additionally, evaluating the potential subjective infractions specific subgroups are
receiving (e.g., disruption, defiance, or disrespect) may support teams in determining which disciplinary
decisions might be influenced by bias or vulnerable decision points (VDPs). VDPs may be mitigated
through neutralizing routines to offset biases, such as delaying action or (c) debriefing with another
staff member (McIntosh, Barnes, et al., 2014). Engaging teams and staff in the process of identifying
and addressing their biases may take the form of intentional professional learning coupled with practice
and coaching. Addressing disproportionality in exclusionary discipline is critical to the educational
trajectory for students, families, and communities. The research regarding these disparate outcomes highlights the importance of dismantling the school-to-prison pipeline to provide an equitable learning environment for students to thrive.

SUMMARY

School psychologists are committed to eliminating discriminatory or ineffective policies, procedures, or practices disadvantaging students from historically marginalized backgrounds. Disproportionate application of discipline and inappropriate special education decisions leading to the overrepresentation of youth of color in programming is preventable. Specifically, school teams are encouraged to move beyond examining disproportionality data and critically examine the root causes of disproportionate identification and discipline especially the deep and long-winding tentacles of white supremacy living within our educational system.

POLICY RECOMMENDATIONS

- Address racist and inequitable school funding formulas that further the segregation of students based on low-income and economic marginalization and ethnicity.
- Fully fund expanded implementation of and technical assistance to support multitiered systems of high-quality supports.
- Work with colleges of education and other teacher preparation and educational leadership programs to ensure that preservice training for educators includes a deep understanding of the history of racism and discrimination within education and modern-day policies and practices that perpetuate it.
- Ensure local education agencies offer professional development on systemic racism, institutional oppression, diversity, White privilege, mitigating implicit bias, and culturally responsive and antiracist practices including effective discipline practices within the school context for all school staff.
- Require states to publicly report discipline data disaggregated and cross tabulated by race/ethnicity and disability status annually, including the number of students suspended and expelled and the reasons for suspension and expulsion.
- Assess and remediate disproportionality in special education identification, eligibility for gifted education, access to advanced/AP courses, and academic outcomes, including high school completion rates.
- Assess and remediate disproportionality in discipline, including suspensions, expulsions, and student arrests.
- Ensure that school resource officers and other school-based law enforcement have no role in student discipline.
- Support efforts to prohibit the use of seclusion, chemical restraints, and mechanical restraints and to restrict the use of physical restraint to instances when there is a threat of imminent danger to students or staff.
- Support investment in efforts to recruit and retain school psychologists, school counselors, school social workers, and other qualified personnel who can provide academic, social–emotional, mental health, and behavioral supports to students.
- Reinstate the 2014 joint U.S. Department of Education and Department of Justice school discipline guidance package.
- Oppose and resolve efforts that seek to systematically discriminate against children or youth on the basis of race, ethnicity, religion, socioeconomic status, gender, gender identification, gender
expression, sexual orientation, disability status, language proficiency, immigration status, or any other dimension of difference.

- Maintain data collection efforts to identify and intervene with schools that are disproportionally using exclusionary discipline practices with students with disabilities.
- Continue the existing efforts of the Department of Education and other relevant agencies to designate resources to help implement evidence-based, school-wide policies and practices that reduce bullying, harassment, violence, and discrimination for all students regardless of their race, ethnicity, religion, socioeconomic status, gender (including identification and expression), sexual orientation, disability status, language proficiency, immigration status, or any other dimension of difference.

RESOURCES

Please see NASP position statements on:

- Corporal Punishment (2014)
- Early Childhood Services: Promoting Positive Outcomes for Young Children (2012)
- Effective Service Delivery for Indigenous Children, Youth, Families, and Communities (2020)
- Ensuring High-Quality, Comprehensive, and Integrated Specialized Instructional Support Services (2016)
- Identification of Students With Specific Learning Disabilities (2011)
- Integrated Model of Academic and Behavior Supports (2016)
- Prejudice, Discrimination, and Racism (2019)
- Provision of School Psychological Services to Bilingual Students (2015)

REFERENCES


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