



## Minnesota Education Equity Partnership | MnEEP

### EXCLUDED

## THE ROLE OF RACE AND EXCLUSIONARY PRACTICES IN MINNESOTA'S SPECIAL EDUCATION

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Minnesota's racial disparities in educational outcomes remain some of the highest in the nation. What's more, the overrepresentation of students of color and American Indian students in special education services throughout the state continues to serve as a form of sanctioned segregation that is excluding students from their fundamental right to an education under Minnesota law.

This brief explores how implicit bias and racialized perceptions of ability and disability lead to special education identification, placement into restrictive educational settings, and exclusionary discipline<sup>1</sup> that negatively impact educational outcomes for students of color and American Indian students.

**DisCrit combines tenets of Critical Race Theory and Disability Studies to examine linkages between notions of perceived ability and race in education.**

Critical Race Theory (Crenshaw, 1995)  
Disability Studies (Valle & Connor, 2018; Connor & Ferri, 2012)

#### THIS BRIEF WILL COVER HOW:

- Notions of ability have origins in structural racism and have changed over time
- Intersections of race and ability in Minnesota's public schools play a role in:
  - Special education identification
  - Student placement into restrictive educational settings
  - Exclusionary disciplinary<sup>1</sup> practices (e.g. suspension or expulsion) for students who are of color and American Indian students with disabilities.

The brief concludes with recommendations for stakeholders and policy makers.

In this brief, we use the DisCrit theoretical framework, which combines the tenets of Critical Race Theory and Disability Studies, to examine the linkages between notions of perceived ability and race in education.

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1: The term “discipline” as used in this policy brief will refer to in-school suspensions, out-of school suspension, expulsion and/or removal from the classroom as a result of any of the forms of discipline listed under IDEA section 618(d) (20 U.S.C. 1418(d)) and §300.646.





## I. BACKGROUND

### What is Happening in Minnesota and Changes in Federal Policy

In Minnesota and throughout the country, students of color and American Indian students with or without disabilities continue to be placed on failing school trajectories through their overrepresentation in special education identification, placement into restrictive educational settings, and schools' exclusionary disciplinary practices.

For example, in Minnesota, students who are American Indian are more than 4 times more likely to be identified with a disability than their peers. In addition, once identified with a disability, students who are of color and American Indian are at an increased likelihood of being placed in restrictive education settings such as separate special education schools or buildings. For example, in Minnesota, Black<sup>2</sup> students are more than 6 times likely to be placed in more restrictive special education, i.e., Federal Setting IV (separate special education schools or buildings for over 50% of the school day).

Discipline numbers are no different. According to the 2015-2016 reporting of the Minnesota Disciplinary Incident Reporting System (DIRS),<sup>3</sup> American Indian students make up 2% of the student population, but account for 7% of all disciplinary incidents in Minnesota. Black students constitute 12% of Minnesota's student population, yet they account for more than 42% of disciplinary incidents.

Recent changes in federal policy further impact students with special needs who are of color and American Indian. As part of President Trump's regulatory reform efforts, Education Secretary Betsy DeVos rescinded 72 policy documents outlining the rights of students with disabilities (Balingit, 2017), citing President Trump's Executive Order 13777. The Executive Order stipulates that federal agencies must eliminate "unnecessary regulatory burdens placed on the American people." (E.O. 13777 of Feb 24, 2017).

This order essentially delays the 2016 Obama regulation requiring states to use a standard method in monitoring whether students with disabilities have been inappropriately and unfairly identified as students with special needs, placed in restrictive settings and/or subjected to expulsion/suspension. Under this Obama regulation, states would have been required to identify the school districts where students with disabilities were overrepresented in exclusionary discipline

practices, placed in restrictive educational settings, and identified as students with disabilities based on race and ethnicity.

Districts that did not meet the threshold established by their respective states would be required to set aside 15 percent of their federal special education funds to address the issues causing the disproportionate identification, placement in restrictive settings, and discipline for students of color with disabilities. However, with Secretary DeVos' proposal,<sup>4</sup> school districts across the country will continue to have little or no accountability because states do not have to implement the Obama regulation until 2020 "at the least."

#### In Minnesota...

#### American Indian Students

are **more than 4X** more likely to be **identified with a disability**.

#### Black students

are **more than 6X** more likely to be placed in **restrictive special education**.

2: The terms Black and African American are used interchangeably to describe persons of African descent.

3: This analysis is based on data that was obtained from the Minnesota Department of Education by the Mid-Minnesota Legal Aid, MN Disability Law Center under the Minnesota Data Practices Act, Minn. Stat. §13 through Minnesota Department of Education (MDE). The data was requested by the Minnesota Disability Law Center under the Minnesota Data Practices Act (Minn. Stat. §13)

4: Minnesota State Department of Education web-based management system where public school districts report suspensions, expulsions, special education and dangerous weapons



## Methodology

To understand how race plays a role in these practices in Minnesota, we conducted a secondary analysis of 2011-2016 trend data obtained from the Minnesota Department of Education (MDE). The data was obtained by a request under the Minnesota Data Practices Act, Minn. Stat. Ch. 13, to the Minnesota Department of Education submitted by Mid-Minnesota Legal Aid/ Minnesota Disability Law Center in 2017. Our analysis incorporated tenants of DisCrit as a theoretical framework to determine how the intersection of race and perceived ability influences students' school trajectories. The guiding questions for our analysis were:

- 1) How does race play a role in special education identification and placement into restrictive settings for students who are of color and American Indian?
- 2) How does race play a role in the use of exclusionary disciplinary practices for students of color and American Indian students with disabilities?

Through our analysis, we assert that understanding the intersectional analysis of racism and ableism puts into perspective the legal and historical aspects of **dis/ability**<sup>5</sup> and race and how both have been used separately and together to deny the rights of some citizens. For example, Erevelles and Minear (2010) suggested that systemically, “the association of race with disability has been extremely detrimental to people of color in the U.S.—not just in education, but also historically where associations of race with disability have been used to justify the brutality of slavery, colonialism, and neo-colonialism” (p. 132).

Baglieri, Bejoian, Broderick, Connor, and Valle (2011) have suggested that such systems of oppression in schools and society have continued to reproduce hierarchies of difference in which White, able, male, middle-class bodies are desirable and create the “normative center of schools” (as cited in Waitoller & King Thorius, 2016).

In this way, students who are White, have a structural advantage and benefit from being White. Students who are not White are thereby disadvantaged. Waitoller and King Thorius (2016) describe this social process as, “**Whiteness,**” where **race is considered an ability and form of property** i.e, social capital that positions some (students of color and American Indian) as low achieving, incapable, or intellectually inferior to their White peers.

Within schools, students of color and American Indian are then positioned against a perception of ability based on Whiteness. To that end, Schweik (2009) suggests that skin color becomes an indicator of performance. We assert that through this process, skin color also becomes an indicator for students to receive exclusionary disciplinary practices in that the lighter the skin, the lighter the discipline.

**ABLEISM as used in this brief refers to discrimination and social prejudice against a person based on “perceived ability.”**

—Davis (2013); Goodley (2014)

5: The “Dis/Ability” as used in this brief refers to a perception of ability or lack of ability based on the students race as used by Waitoller, F. R., & King Thorius, K. A. (2016). Cross-pollinating culturally sustaining pedagogy and universal design for learning: Toward an inclusive pedagogy that accounts for dis/ability. *Harvard Educational Review*, 86(3), 366–389. <https://doi.org/10.17763/1943-5045-86.3.366>.





## II. RACISM & ABLEISM

### The Historical Roots of Defining “Perceived Ability” Based on Racial Classification

Since the 1800s, scientific racism<sup>6</sup> and the pseudoscience study of human skulls has long negatively impacted people of color. Scientific racism was used to attempt to medically prove the inferiority and lower intelligence of African Americans as a means to justify racial segregation and inequitable treatment. Studies in phrenology and craniometry, in an effort to reinforce white superiority, maintained that the size and shape of someone’s skull indicated personality and intelligence. Such examples include: comparing skeletal and cranium sizes without regard to age or developmental conditions, and giving tests that required individuals to fill in details of pictures depicting things they have never seen before such as tennis courts or bowling (Annamma et al., 2013, p. 2).

Additionally, skulls were measured to create racial hierarchies, establishing similarities between enslaved African people and gorillas and chimpanzees. Enslaved African people who were careless in their work were said to suffer from the “disease” dysaesthesia, while those who run away from the masters were labelled as drapetomaniac (Waitoller & Thorius, 2016, p. 371).

By the mid-1800s, early conceptualization of dis/ability were operationalized through such labels as “imbeciles” and “idiots” and used to restrict unwanted immigration through use of the legal system. For example, the “Ugly Laws” in the mid-1800s forbade the display of dis/ability and “unsightly” physical

**By the 1900’s the eugenics movement consolidated the ethos of prior eras in tools still used broadly today (e.g., IQ tests, bell curve) to establish hierarchies in which race and disability are intertwined.**

characteristics, and racial and immigration groups were infrequently in that group (Schweik, 2009).

The intersectionality of race, sexuality, and even religion in the culture(s) of ugly laws presented a salient, yet seemingly rational, normalized form of discrimination. Schweik (2009) described this nexus: “Disability is commonly represented as a homogeneous and monolithic category in discourses that oppress disabled people. But gender, race, sexuality, religion, and national identity are inexorably intertwined with disability and class in the culture of ugly law, producing a variety of ugly identities” (p. 141).

By the 1900s, statutes against education of “feeble minded”, “mentally deficient,” and “nauseating” youth with dis/abilities in public schools despite compulsory public education laws passed in all states early that century (Yell, Rogers, & Rogers, 1998). Similarly, the eugenics movement of that time consolidated the ethos of prior eras in tools still used broadly today (e.g., IQ tests, bell curve) to establish hierarchies in which race and disability are intertwined, as reflected in the over representation of racial minority students in special education and more segregated environments (Willis, 2010, p. 125-126).

By the 1960s, the process of labeling students—ostensibly to better meet their needs via specialized settings and services—had steadily increased usage of terms such as Learning Disability (LD) and emotional or behavioral disorder (EBD) in the field of education (Gartner & Lipsky, 1987, p. 372-375). “The use of learning disabilities grew quickly because it allowed families of White middle-class children, who were unable to meet increased academic expectations of post Sputnik era curriculum reform, a different and less stigmatizing way to explain their children’s difficulties and also gain access to special services” (Ferri & Connor, 2005, p. 458).

In other words, the label allowed a new group of mostly White, middle-class children to receive educational supports without being mixed into the existing pool of special education students (Sleeter, 2010). Notably, recent studies show how the label of disability triggers disparate outcomes for White students and students of color. “Meanwhile for White students, special education eligibility is more likely to guarantee access to extra support, services, maintenance in general education classrooms, and accommodation for high status examinations” (Parrish, 2002 in Ferri & Connor, 2005 p. 454).

6: See Annamma, S. A., Connor, D., & Ferri, B. (2013), referencing Du Bois’ 1920 essay, Racial Intelligence to explain scientific racism as a chronicled attempt throughout history to use racial classification as a tool to “prove” people of African descent possessed limited intelligence and were therefore not quite fully human.



## EVOLUTION OF ASSESSING INTELLECTUAL ABILITY

1800's

### SCIENTIFIC MODELS REINFORCE STEREOTYPES

1800's

Scientific models used to rationally justify race based classification of student abilities.

1900's

States bypass compulsory education requirements and pass statutes against educating youth with dis/abilities.

Testing tools introduced.

### INTELLECTUAL TESTING TOOLS REINFORCE STEREOTYPES

1960's

Demands of increased academic rigor and the academic struggles of many white middle class students result in a two track system in which students labeled as special education receive different levels of support than those labeled as having a Learning Disability (LD) or Emotional or Behavioral Disorder (EBD).

Today

Implicit bias and racialized conceptions of ability continue to allow certain special education categories to be used as a tool for continued racial segregation.

Today

## III. DIS/ABILITY AS A SANCTIONED FORM OF SEGREGATION

Contrary to the public rhetoric abhorring racial legal segregation, disability continues to be a more socially accepted, even normalized, category of exclusion from educational opportunities for students of color, according to Kauffman and Hallahan (1995). Exclusion based on disability is often seen as warranted (Kauffman & Hallahan, 1995 in Ferri & Connor, 2005, p. 454). Recent analyses of the Supreme Court's *Brown v. Board of Education* decision have called into question the overall efficacy of the case that was once regarded as the single most important court decision and the most significant inclusion case (LaNear & Frattura, 2007).

Notably, Carrier (1986) and Patterson (2001) has argued that during the 1950s, as "Brown was becoming a reality, a sharp rise in the standardized testing helped establish a set of rigid norms regarding academic ability based on White, middle class American experiences, values and expectations" (Ferri & Connor, *Reading Resistance*, p. 45).

Through institutionalized practices, the testing movement simultaneously identified and created groups of students

who deviated from the "normal" or "average" student. The result was the seemingly beneficent provision of separate classes. Furthermore, "All of our children are 'gifted'" (1995, Jun 12) contended that as schools become more diverse, teaching became more challenging, separating children by disability was one way to make it easier (as cited in Ferri & Connor, 2005, p. 458).

Yet, because of biased notions of race and ability, "special" classes became increasingly populated by minority, immigrant, and other already marginalized students. Hence, Ferri and Connor (2005) pointedly wrote: "Children of different races have been classified into different categories, with Black and Latino students most likely to be overrepresented in most in the 'intellectual disability' and 'emotional disturbance' special education categories and placed in more restrictive educational settings" (p. 454-455).

White privilege and racialized conceptions of ability continue to allow parents and educators to use certain special education categories as a tool for continued racial segregation.

**"Children of different races have been classified into different categories, with Black and Latino students most likely to be overrepresented in most in the 'intellectual disability' and 'emotional disturbance' special education categories and placed in more restrictive educational settings."**

—Ferri & Connor

Moreover, racial implicit bias continues to undergird thinking about desegregation and inclusion (Ferri & Connor, 2005).

Within the discourse of exclusion are the perceptions of Black and disabled people as unequivocally inferior (p. 468-469). Such widespread deficit-model perceptions continue to be deeply entrenched in the cultural imagination and are evident in the oppressive legislation, educational practice, as well as in the distorted portraits of "others" in academic scholarship, literature, media, and film (Ferri & Connor, 2005; Dávila, 2015). Implicit bias and racialized conceptions of ability continue to allow parents and educators to use certain special education categories as a tool for continued racial segregation.



## IV. A DATA DRIVE

### Examining the Numbers on Race, Dis/ability, Special Education, and Discipline

Students who are of color and American Indian in Minnesota continue to be overrepresented in three main areas: Special education identification; Placement into particular restrictive educational settings and; Discipline including incidence, duration, and type of disciplinary actions including suspensions and expulsions.

#### Notes on Data:

It is important to note that data analyzed in this brief was obtained by a request under the Minnesota Data Practices Act, Minn. Stat. Ch. 13, to the Minnesota Department of Education submitted by Mid-Minnesota Legal Aid/Minnesota Disability Law Center in 2017. Therefore, data analysis may show some variance from other data sources (i.e. The 2017 Dangerous Weapons and Disciplinary Incidents Report to the Minnesota Legislature and/ or the FY2016 Districts' Progress in Reducing the Use of Restrictive Procedures Legislative Report). Specifically:

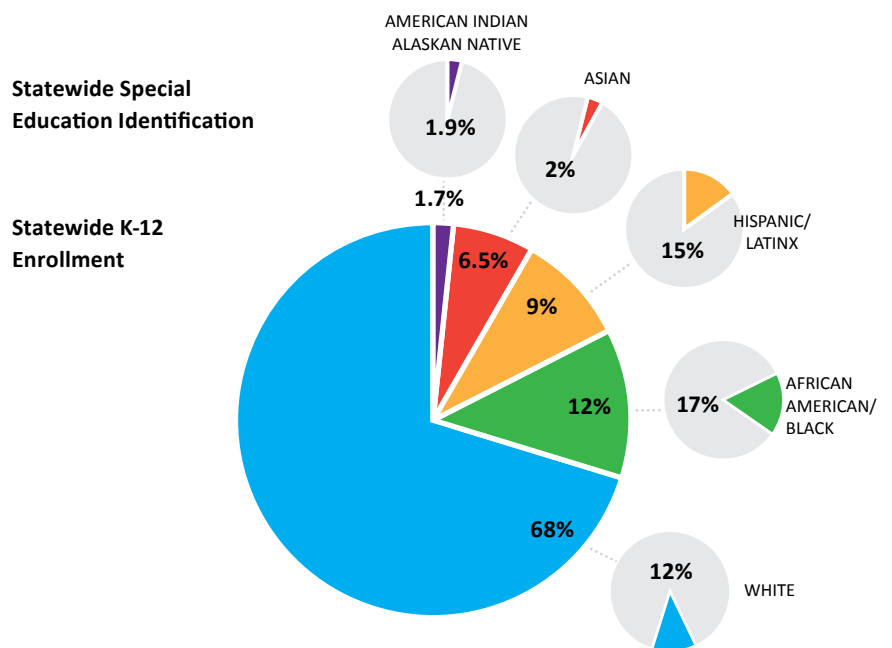
The Minnesota Automated Reporting Student System (MARSS) is an individual student record system that serves as the Minnesota Department of Education's primary reporting system for student data. A variety of student data are collected that are used to compile student counts, including October 1 enrollments, December 1 child counts, and average daily membership. (MDE, MARSS Student Accounting, 2017)

Another noted limitation is that our analysis also incorporates data from two different school years: 2015-16 and 2016-17. In spite of this limitation, data trends continued to show overrepresentation of students of color and American Indian in special education, placement in restrictive educational settings, and exclusionary discipline.

#### Special Education Identification Disparities in Minnesota

Based on the information obtained by a request under the Minnesota Data Practices Act, Minn. Stat. Ch. 13, to the Minnesota Department of Education submitted by Mid-Minnesota Legal Aid/Minnesota Disability Law Center in 2017, students who are White made up the largest student group comprising roughly 68% of the student population, yet they represent roughly 12% of students in special education. African Americans make up the second largest student group at about 12%, yet they represent roughly 17% of students in special education. Hispanic and Latinxs represent about 9% of the student population, but make up about 15% of students in special education.

#### COMPARISON OF STATEWIDE STUDENT POPULATION AND STATEWIDE SPECIAL EDUCATION IDENTIFIED STUDENTS BY RACE



Source: Dangerous Weapons and Disciplinary Incidents Report to the Minnesota Legislature, 2017

Source: Mid-Minnesota Legal Aid, MN Disability Law Center (a request for data under the Minnesota Data Practices Act, Minn. Stat. §13, dated July 5, 2017)



### Placement into Particular Restrictive Educational Settings in Minnesota

African American and American Indian students are disproportionately represented in restrictive placement settings. According to the Minnesota Department of Education’s (MDE) 2016 Restrictive Procedures Report, African American students accounted for approximately 12% of the special education student population, and are overrepresented in both the physical holding and seclusion data. Restrictive procedures includes both physical holds and seclusion.

Seclusion as used in this report means students who are removed from the classroom for discipline and left or assigned to an isolated setting. (See Figure 1)

- American Indian students, who account for approximately three percent of the special education population, are also overrepresented in the physical holding and seclusion data.
- Black students experience physical restraint in higher proportions; Black students constitute 33% of physical restraints, yet they only represent 12% of students with disabilities generally.

Further, as shown in Figure 2, students who have a disability diagnosis for Emotional Behavioral Disorder will account for more than half of all students experiencing the use of restrictive procedures. This has significant impact on students of color and American Indian students who continue to be diagnosed with emotional behavioral disorders at high rates.

For example in 2015, Black students in Minnesota accounted for 11.8% of the entire special education population, yet made up almost 18.80% of all EBD referrals, according to the Minnesota Department of Education.

**Students who have a disability diagnosis for Emotional Behavioral Disorder will account for more than half of all students experiencing the use of restrictive procedures.**

FIGURE 1

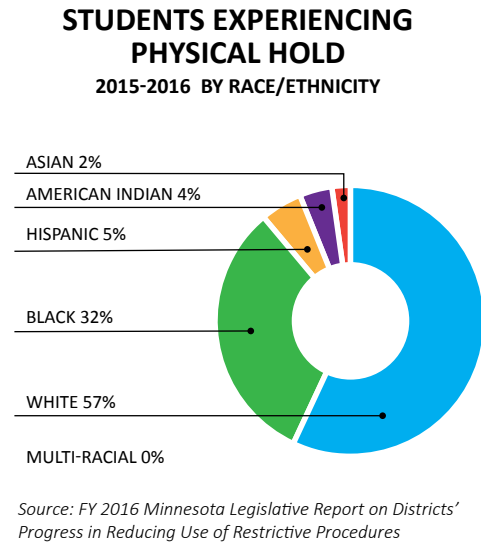
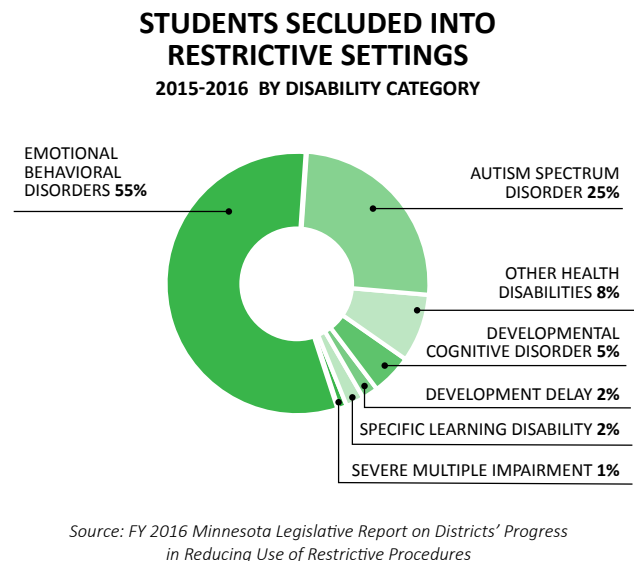


FIGURE 2





## Minnesota Federal Educational Settings

Special education settings describe the level of special education services a student receives. There are 8 Federal Settings, ranging from Federal Setting Level 1 (general education classrooms), to Federal Setting Level 8 (individualized tutoring in a restricted setting), such as a home or hospital. Consistent with the above, there is a correlation between EBD diagnosis and likelihood of placement into the “most educational restrictive settings” i.e students who were in a separate school specifically designed for special education students (Federal Settings IV and V) shown in Table 1.

## Discipline Including Incidence, Duration, and Type of Disciplinary Actions Including Suspensions and Expulsions, K-12

According to the 2015-2016 MDE’s Disciplinary Incident Reporting System (DIRS) data, districts (including charter schools) reported a total of 46,442 separate disciplinary incidents.

Rate of disciplinary action varies by cultural group.

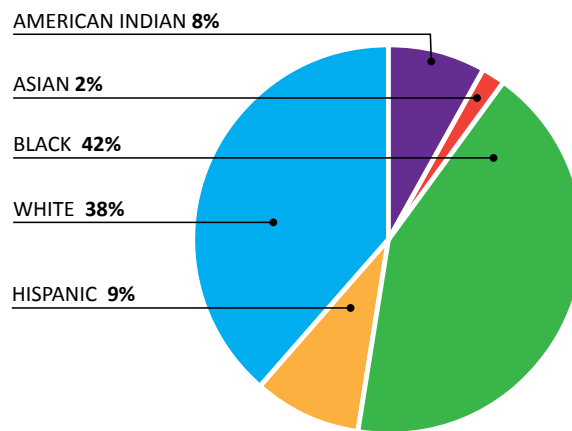
- Black/African American, non-Hispanic students constitute 10% of the Minnesota student population. Yet, they make up 42% of disciplinary incidents.
- American Indians make up 2% of the student body, but they receive 8% of disciplinary actions.
- White, non-Hispanic students constitute 69% of the Minnesota student population, they only accounted for 38% of disciplinary incidents.

TABLE 1  
**MINNESOTA FEDERAL EDUCATIONAL SETTINGS OVERVIEW**

MINNESOTA FEDERAL LEVEL SETTING	PERCENT OF TIME IN DESIGNATED LEARNING ENVIRONMENT PER SCHOOL DAY
FEDERAL SETTING 1	Less than 21% of school day outside of classroom.
FEDERAL SETTING 2	21-60% of school day outside of classroom
FEDERAL SETTING 3	Separate classroom over 60% of the school day
FEDERAL SETTING 4	Separate public day school building for over 50% of the school day
FEDERAL SETTING 5	Separate private day school for over 50% of the school day
FEDERAL SETTING 6	Public residential setting for over 50% of the school day
FEDERAL SETTING 7	Private residential setting for over 50% of the school day
FEDERAL SETTING 8	Home based, homebound, or hospital setting

Source: See A GUIDE TO THE INDIVIDUALIZED EDUCATION PROGRAM(IEP) FOR MINNESOTA PARENTS., (2018 Edition). PACER. Retrieved from <https://www.pacer.org/>

FIGURE 3  
**DISCIPLINARY INCIDENTS BY RACE**



Source: Report to the Minnesota Legislature, 2017

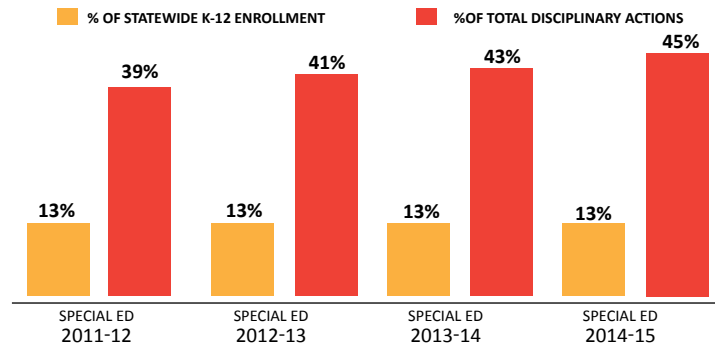




### Correlation between Discipline and Special Education Identification, 2011–2016

Even though they only account for 13% of Minnesota’s K-12 enrollment, between 2011 and 2016, the percentage of special education students accounting for total disciplinary actions in K-12 in Minnesota increased from 39% to 49%. This means that students identified as having a disability experienced about 23,000 disciplinary actions in 2015–2016 alone.

FIGURE 4  
DISCIPLINE AND SPECIAL EDUCATION IDENTIFICATION RATES, 2011–2016



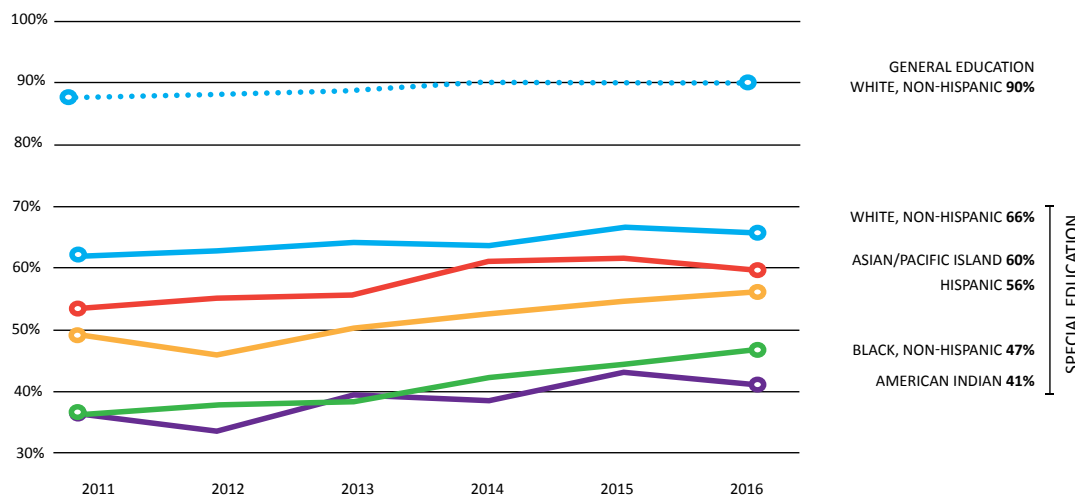
**We believe that behavioral referrals in general education are the precursors for special education identification especially in the area of emotional behavioral disorders. Based on the data we have been able to analyze, we continue to observe correlations between over representation for special education and incidence of exclusionary discipline for students of color and American Indian students.**

### Education Outcomes for Students with Disabilities, 2011–2016

This report understands graduation as one of the goals all K-12 schools have for all their students, regardless of race or dis/ability, and that the typical timeframe for completion of high school (9-12 grades) is 4 years. Figure 5 shows the disparities in four year graduation rates by both race and dis/ability status (dis/ability is understood as special education).

The race group with the highest graduation rate is White students in general education, who have a 90% high school graduation rate. Among students identified with a disability, White students have the highest graduation rate, at 66%. This means that 2 of 3 White students receiving special education services graduate in four years. This rate is higher than general education students who are Asian/Pacific Islander, in which 6 out of 10 (60%) graduate in four years. Students who are Black and American Indian with disabilities are among the groups with the lowest graduation rates, at 47% and 41% respectively.

FIGURE 5  
STATEWIDE FOUR YEAR SPECIAL EDUCATION GRADUATION RATES, 2011–2016



Source: This analysis is based on data that was obtained from the Minnesota Department of Education by the Mid-Minnesota Legal Aid, MN Disability Law Center under the Minnesota Data Practices Act, Minn. Stat. §13 through Minnesota Department of Education (MDE). The data was requested by the Minnesota Disability Law Center under the Minnesota Data Practices Act, Minn. Stat. §13.



## V. POLICY & PRACTICE RECOMMENDATIONS

Using a critical race framework as guidance, Minnesota Education Equity Partnership(MnEEP) offers the following policy and practice recommendations.

To understand racism and ableism, we have to know the historical intersection of race and ability as social constructs, not distinctive biological markers. This shift in understanding is necessary because the problem is not the person of color and/or the person with a disability, but rather, as Davis (2013) found, the ways normalcy and Whiteness are constructed to define certain groups of students as problems in order to rationalize their position in schools and society (as cited in Waitoller & King Thorius, 2016).

Reinforced by popular media, current cultural images reproduce and maintain narratives about people with disabilities as “completely incapable, as “in need of charity” (Schur, Kruse, & Blanck, 2013), as “inspirational heroes”, as “evil or magical” (Charlton, 2006), and as Kim (2011) enumerated: “asexual” (as cited in Waitoller & King Thorius, 2016, p. 374). Therefore, the continued policy and practice conversation in the field of education must include a critical race framework to unpack, understand, and address disproportionality and the social impacts of racial disparities in disabilities and special education outcomes in our communities.

### **1** Support Existing Efforts to Uphold Obama-era Regulations and Guidelines on Significant Disproportionality in Special Education Based on Race or Ethnicity.

On December 12, 2016, the U.S. Department of Education (U.S DoED) released final regulations under Part B of the Individuals with Disabilities Education Act (IDEA), aimed at addressing existing significant disproportionality in special education identification, placement in restrictive settings and discipline of students based on race or ethnicity (See C.F.R. § 300.647, 81 FR 92463 December 19, 2016).The regulations would have required states to use a common standard for how they identify school districts with significant disproportionality. This would have resulted in states having to identify more school districts with racial disproportionality in their special education identification, placement into restrictive settings and discipline for students with disabilities based on race or ethnicity.

The initial compliance date for the regulations was July 1, 2018. In February 2018, U.S DoEd under Secretary Betsy DeVos’ leadership released a notice of proposed rulemaking seeking comment on whether to extend the effective date of implementation by two years from July 1, 2018 to July 1, 2020, and July 1, 2022 for including children ages three through five in the significant disproportionality computations (See Docket ID ED–2017–OSERS–0128, 34 CFR 300.646; 34 CFR 300.647).



We recommend that Minnesota move ahead with the regulation, since states have an option to move forward as the federal government proceeds with regulatory review and analysis.

Currently, the legislative advisory group, the Student Discipline Working Group, reviews, among other things, racial disparities in Minnesota schools and submits written recommendations to the chairs and ranking minority members of the committees in the House of Representatives and the Senate with jurisdiction over education. But this group lacks authority to hold schools accountable or to provide incentives to remediate disproportionalities.

Albrecht, Skiba, Losen, Chung, & Middelberg, 2012 proposed eleven fundamental recommendations for federal policy. The Minnesota Department of Education and the state adopted many of these in some fashion. However, two recommendations among them we find especially prudent, pragmatic, and positive: 1) Shift attention “from a narrow focus on compliance with procedural aspects of special education identification to the systemic contributions to disproportionality that appear to begin well before special education referral” (Albrecht, et al., 2012, p. 23); and 2) establish a grant competition to encourage schools to explore the following:

- Study and develop interventions and systems reform efforts to address and reduce disproportionate representation in special education and school discipline;
- Improve teacher and administrator training in culturally responsive instruction and classroom management and discipline; and
- Improve school-based data collection systems for monitoring and disaggregating data and for training school personnel in interpreting and using such data to improve practices.

A fully-empowered, well-funded, and expressly-charged task force would be better equipped to not only broaden the focus from procedural compliance of special education identification, but to expand focus on the ecology of general education classrooms—and school administrative structures—that reproduce disproportionality.

## 2 Strengthen Systemic Coordination for Academic and Discipline Interventions.

Increased coordination across various systems, preventative care providers, and community resources would increase efficiency and, ultimately, greater equity for all. More robust coordination efforts would provide schools and community constituencies better access to preventative care services, which could translate into increased instructional and behavioral support for all students.

For example, if a student demonstrates low- or mid-level needs for support, the school can provide more efficient intervention through increased access to resources. Schools would be better able to deliver essential services of school nurses, psychologists, social workers, and other care providers in a timely manner. We believe a systematic and/or programmatic review of current networks of coordination and delivery is warranted in moving toward this goal.

## 3 Require Implicit Bias Training that Utilizes a Critical Race Theory Framework for School Personnel.

Most trajectories to special education begin within the fundamental feature of social life: social interaction. Close, highly personal social interactions between teachers and students in general education classrooms confirm or disconfirm shared assumptions and role expectations in given encounters to shape social reality.

Implicit bias plays an important role in student-teacher interactions and can lead to negative educational outcomes beginning in preschool classrooms (Girvan, Gion, McIntosh, & Smolkowski, 2017; Okonofua, Walton, & Eberhardt, 2016; Smolkowski, Girvan, McIntosh, Nese, & Horner, 2016). Given Minnesota’s teacher to student racial composition of 96% White teachers to 30% students of color and American Indian students (MDE Report Card), implicit bias deserves critical attention.

Researcher Walter Gilliam described implicit biases as “...subtle, often unconscious stereotypes that guide our expectations and interactions with people” (Montagne, 2016, September 28). Gilliam, et al. (2016) found that early preschool educators expected challenging behavior from Black children versus their White counterparts (p. 11-12). U.S. Department of Education (2016) noted that “Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as White preschool children” (p. 3). U.S. Department of Education (2016) found that “Black preschool children are 3.6 times as likely to receive out of school suspensions as White preschool parents” (p. 3).

Consequently, Minnesota schools need additional implicit bias training components in existing equity training. This required training would be taught annually to all teaching staff, including licensed teachers, paraprofessionals, teacher aides, administrators, and other staff who have direct student contact. The model would focus on historical trauma and how race and ability are often intertwined in the education system.

We recommend that a Critical Race Theory framework be applied to this training to help in understanding how power and privilege can conspire to produce racial inequities. A critical race component added to implicit bias training



design would center culturally sustaining pedagogies that are not centered on White, middle-class, monolingual, and monocultural norms of educational achievement. Equity training in implicit bias for all teaching staff is needed to reduce racial disparities in special education identification, disciplinary occurrences, and the number of students of color and American Indian students in restrictive settings.

## 4 Expand Positive Behavioral Interventions and Supports (PBIS) Training.

In 2017, the state of Minnesota signed PBIS into legislation as an “evidence-based framework for preventing problem behavior, providing instruction and support for positive and prosocial behaviors, and supporting social, emotional, and behavioral, needs for all students” (MN Statute, 122A. 627). PBIS is largely a restorative justice approach to handling behavioral issues in an education setting. PBIS has shown moderate decreases in the number of office discipline referrals for students by eliminating out-of-class and seclusion practices. According to Minnesota PBIS, as of August 2017, 641, or 31%, of schools completed training or are in training for the PBIS model. MDE should hold schools accountable for failing to complete training or not beginning the training for PBIS.

The PBIS training approach, however, maintains a social/cultural deficit lens that situates deficits in CLD students. We contest this approach in that it assumes pathological deficit, rather than cultural and linguistic (human) variation, as “verification” of what is otherwise a subjective process of arbitrary referral and assessment decisions (Harry, & Klingner, 2007).

PBIS needs to shift and specifically start to examine the intersection of race and disability. This could be done by closely looking at existing Tiered systems of support through a Critical Race Theory framework articulated in this policy brief. As PBIS evolves in its methods and practices we hope the program will move to adherence to greater culturally responsive ways of educating children.

## 5 Strengthen Collaboration Between the Minnesota Department of Education and the Minnesota Department of Human Rights to Harness Synergy in Combating Systemic Racism.

Hinrichs and Kaul (2018, February 2) reported that the Minnesota Department of Human Rights identified 43 school districts and charter schools that had large disparities in their student discipline data. The Minnesota Department of Education (MDE) and the Minnesota Department of Human Rights (MDHR) should collaborate to address disparities in discipline and other education outcomes. We see such synergistic collaboration critical to identification and provision of guidance to combat systemically racist practices. This collaboration would also foster greater transparency to bolster public trust and awareness.

## 6 Review State-wide Assessment Criteria for Identification of students for Emotional Behavior Disorders (EBD).

The subjective enterprise of identification of emotional behavioral disorders renders a capricious process open to intentional and unintentional misidentification of students. While acknowledging genuinely altruistic efforts towards delivering appropriate special education services, we must critically weigh the consequences and costs of misidentification.

Federal guidelines for evaluation materials and procedures for identifying students who might need special education services state: “A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent” (34 C.F.R. § 300.304(b)(1)). Assessment tools may include behavioral logs, report cards, and school health files for students under evaluation. For EBD diagnosis, schools commonly refer back to the behavioral log to review a student’s behavior in the past six months.

Because schools have differing behavior policies and protocols for relevant information for log entry, this heterogeneous mix makes it difficult to make anything but intuitive hypotheses and guesses in cross-institutional or cross-district analyses. Inconsistencies in the number of incidents of particular behaviors may also have an impact on decision-making.

Implicit bias, normalization of the disability deficit lens, and the entire complex of issues around the ecological or classroom context (Donovan, & Cross, 2002; Gutierrez, Asato, Santos, & Gotanda, 2002; Harry, & Klingner, J. K., 2006) add to the gravity and compelling nature of the problem. The entire evaluation process needs assiduous review to secure greater consistency, objectivity, and transparency.



## APPENDIX A: Working Definitions of Key Concepts

**Ableism:** Ableism as used in this brief refers to discrimination and social prejudice against a person based on “perceived ability.” Davis (2013); Goodley (2014).

**Critical Race Theory (CRT):** CRT as an intellectual movement puts race at the center of critical analysis that examines relationship between race, racism and power. CRT as applied to this specific brief will examine the intersection of race and dis/ability (DisCrit) based on the following tenets; 1) It is important to examine the relationship between race and dis/ability because it focuses on ways that the forces of racism and ableism circulate interdependently, often in neutralized and invisible ways, to uphold notions of normalcy, 2) Examining the intersection of race and ability recognizes the material and psychological impacts of being labelled as raced or dis/abled, which sets one outside of the western cultural norms, 3) Understanding Intersectionality analysis of race and ability puts into perspective the legal and historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of some citizens, 4) DisCrit recognizes Whiteness and Ability as property and that gains for people labelled with dis/abilities have largely been made as a result of interest convergence of White, middle class citizens. Crenshaw, (1995)

**DisCrit (Disability Studies & Critical Race Theory):** A theoretical framework that combines aspects of Critical Race Theory (CRT) and Dis/ability Studies to propose a dual analysis of race and ability or their lack of (dis/ability) to show that social construction of dis/ability depends heavily on race and can result in marginalization of students of color in special education. Annamma, Connor, & Ferri (2013); Annamma, Ferri, & Connor (2018)

**White Privilege:** An historically-based, institutionally-perpetuated system of often unwritten rights or advantages, and the institutional processes by which beliefs and values of the White dominant group are “made normal” and universal. In the U.S. White privilege exists even for low-income Whites due to the racial caste system. Minnesota Education Equity Partnership (2016).

**Education Debt:** The sum of all previously incurred deficits or opportunity gaps in education for American Indians communities and communities of color. The education debt includes four aspects: 1) the historical lack of access to formal public education for certain groups of people (historic debt); 2) historical and contemporary inequities in school funding, income disparities related to different levels of education, and general wealth disparity (economic debt); 3) the disenfranchisement of people of color at local and national levels (sociopolitical debt); and 4) the disparity between what we know is right and what we actually do (moral debt) (see Ladson-Billings, 2006 and pp. 7 of this Report for more explanation).

**Relational Systems:** Relational systems as will be used in this policy brief is based on the notion articulated by Waitoller & Thorius (2016) that one cannot define “disability” without defining “ability.” Because “ability” is based in Whiteness, anything not White is considered “the other” or not as “able.”

**Normalcy:** Normalcy as used in this policy brief refers to structural systems of oppression in schools and society that position White able, male, middle-class bodies as the standard for “normal” while locating deficits for anyone not meeting these criteria. Davis (2013)

**Institutional Racism:** Policies and practices in institutions or organizations that result in oppressing people of color and American Indians while maintaining White supremacy regardless of the intent or consciousness of individuals in the institution. Minnesota Education Equity Partnership (2016).

**Intersectionality Analysis:** Intersectional analysis as used in this brief examines how race and ability or disability have interacted to become a socially accepted or even normalized way to marginalization students of color with disabilities.

**Emotional or Behavioral Disorders (EBD):** Emotional or behavioral disorders (EBD) as used in this policy brief is a category used to characterize a pattern of one or more emotional or behavioral responses that adversely affect a child’s educational performance. The State of Minnesota uses the EBD category to define and create criteria and evaluation policies for the definition of emotional disturbance (ED) under Sec. 300.8 (c) (4) of the Individuals with Disabilities Education Act (IDEA). Under 10 Minn. R. 3525.1329 subp. 1, EBD is characterized as an established pattern of one or more of the following responses: “A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth; B. disordered thought processes with unusual behavior patterns and atypical communication styles; or C. aggression, hyperactivity, or impulsivity.” The pattern must adversely affect educational/developmental performance; be cardinal different from cultural, ethnic or age appropriate norms; and consistently presented in three or more different settings, two of which must be educational.



## APPENDIX B

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### MnEEP Mission

Minnesota Education Equity Partnership uses a race equity lens to transform educational institutions, organizations, and leaders to ensure that students of color and American Indian students achieve full academic and leadership success.