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“No IDEA”: Biopower and the School-to-Prison Pipeline for Students with Disabilities

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“No IDEA”: Biopower and the School-to-Prison Pipeline for Students with Disabilities

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Submitted in Partial Fulfillment
of the
Prerequisite for Honors
in Political Science
under the advisement of Laura Grattan

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Introduction

When my youngest brother was eight years old, he suffered a traumatic brain injury. Though he recovered miraculously for how extensive his injury was, the effects of the incident continue to impact his life nearly eight years later. The injury resulted in a diagnosis of ADHD, hearing impairments, memory and analytic issues, impulsivity and emotional volatility, and intense migraines – all of which affect his education. Importantly, my brother is also a person of color, as he is a South Korean adoptee. Witnessing my brother’s experiences as a student of color with a disability has been eye opening and deeply troubling for me on several levels. Over the years, I have watched as my family has fought for accommodations and compassion from administrators and educators in order for him to receive a comprehensive education. My parents have paid significant amounts of money for psychometric testing and evaluations in order to justify my brother’s classroom accommodations, and paid even more money for after-school tutoring just so he can get by. My sister has spent tens-of-hours sitting at the kitchen table with my brother to help him learn material that was taught in a way he couldn’t understand. My parents have had to meet with teachers and administrators multiple times in order to ensure that the accommodations my brother is supposed to receive are actually being carried out. My brother has even been forced to switch schools when teachers and administrators at his old school decided that providing his accommodations was just too hard.

Compared to many youth with disabilities, my brother is incredibly fortunate: his family has access to the resources necessary to give him the best education possible. However, for many disabled youth – especially low-income youth and/or youth of color – access to the “free and appropriate education” guaranteed by the Individuals with Disabilities Education Act (IDEA) remains out of reach. As my brother experienced, disability is often constructed as superfluous

and deviant in public education, ultimately positioning students with disabilities as burdens. When disability is combined with discourses of race and violence, disabled students morph from burdens to active threats. Schools often use this line of thinking, which policies like IDEA reinforce, to justify the removal of disabled students – whether that occurs via segregated educational environments, exclusionary discipline, or referrals to the juvenile justice system. As a result, the life chances of disabled youth are increasingly being diminished as they interact with the U.S. education system, forcing families like mine to continuously fight for their children’s futures.

This thesis is ultimately grounded in my own personal observations and experiences as someone who loves a student of color with a disability. Though my brother’s experience of disability is not representative of all disabled students, his difficult interactions with the education system are not unique. I recognize that every day that my brother succeeds in school is an act of resistance to a system that devalues his education and the education of so many disabled students. Importantly, the discourses that fuel this devaluation are operationalized through policies like IDEA that, while theoretically empowering disabled students, in many ways continue to reproduce oppressive understandings of disability. With this in mind, this thesis is therefore motivated by the following questions:

Does IDEA construct student identities and educational paths through reinforcing and shifting discourses and norms such that it contributes to the school-to-prison pipeline for students with disabilities? If so, how? What are the implications of this?

I attempt to answer these questions in several ways, including by examining theories of disability and how those theories are/aren’t reflected in IDEA; by considering the intersection of the operation of power with racism for students with disabilities; and by analyzing how IDEA as a

law interacts with other laws and policies to incentivize certain outcomes for disabled students. Ultimately, what is at stake in this thesis is no less than the life chances of students with disabilities. IDEA immensely impacts how youth like my brother experience the education that will set them up for the rest of their lives, and as such its interaction with modes of power deserves to be fully investigated.

IDEA: A Brief History

The legal requirement that public schools educate youth with disabilities is a recent one. Prior to 1975, millions of children with disabilities were refused public school enrollment, and millions more were receiving a substandard education. In fact, congressional findings from 1974 indicated that more than 1.75 million students with disabilities were not receiving educational services, while more than 3 million who were admitted to school were not receiving an education that met their needs.¹ This all changed with the passage of the Education for All Handicapped Children Act of 1975 (EAHCA). The EAHCA was the first federal law focused on ensuring a free and appropriate public education (FAPE) for students with disabilities, and remains the most significant increase in the role of the federal government in special education to date. In practice, the EAHCA allowed the federal government to offer grants to states that provided appropriate educational programs for students with disabilities, creating an incentive for public schools to serve disabled students. Since the EAHCA's passage, the law has been amended several times, with the most recent amendments occurring in 2015. Congress's most significant amendment to the law occurred in 1990, at which time they renamed it the Individuals with Disabilities Education Act (IDEA). The 1990 amendments were critical in explicitly positioning the law

¹ Antonis Katsiyannis, Mitchell L. Yell, and Renee Bradley, "Reflections on the 25th Anniversary

within the context of civil rights. As explained by the U.S. Supreme Court in *Honig v. Doe*, when Congress passed IDEA, it

“did not content itself with passage of a simple funding statute. Rather [IDEA] confers upon disabled students an enforceable substantive right to public education...and conditions federal financial assistance upon states’ compliance with substantive and procedural goals of the Act.”²

IDEA has therefore become a centerpiece of the disability rights movement in education.

In practice, IDEA’s implementation revolves around six central “pillars.” The first pillar is FAPE, which means that eligible students have the right to receive appropriate special education and related services at public expense.³ To achieve FAPE, each student who qualifies under IDEA is required to have an Individualized Education Plan (IEP), which is IDEA’s second pillar. An IEP is a written document that describes a student’s educational needs and lays out the accommodations and services that the school must provide to the student. IEPs are developed using IDEA’s third pillar: appropriate evaluation. Under IDEA, students receive special education services through an evaluation process conducted by a team of educators and psychologists. This evaluation must be conducted within the standards outlined by the law in order to be considered appropriate. In creating an IEP, educators must prioritize the “least restrictive environment” (LRE), which is the fourth pillar of IDEA. LRE mandates that students with disabilities be educated with their non-disabled peers to the maximum extent that is appropriate.⁴ Legal interpretations of FAPE and LRE have ultimately resulted in the understanding that “least restrictive means education in the ‘regular classroom’” whenever

² *Honig v. Doe* (January 20, 1988).

³ Katsiyannis et al., “Reflections on the 25th Anniversary of the Individuals with Disabilities Education Act,” 330.

⁴ *Ibid.*

possible.⁵ LRE works to ensure that disabled students are only segregated from their peers if it is determined that they are unable to receive an appropriate education in a general classroom. The IEP must also be developed with parent and teacher participation, which is IDEA's fifth pillar. Finally, as the sixth pillar, IDEA provides "procedural safeguards" to ensure that disabled students receive FAPE. These safeguards range from the requirement that parents be allowed to participate in all IEP meetings to the existence of a due process hearing when there is a disagreement between the school and parents on matters concerning identification, evaluation, or placement.⁶

Disability and the School-To-Prison Pipeline

It is impossible to separate IDEA (then EAHCA) from the time in which it was created – a time in which circulating discourses about education were focused on racialized gangs, school violence, the war on drugs, and the general perception of danger in public schools. These discourses' interaction with IDEA are exemplified by the fact that at the same time that activists were celebrating the passage of the EAHCA, students with disabilities - especially disabled students of color - were increasingly receiving harsher discipline in schools and were becoming more and more likely to become involved with the juvenile justice system.⁷ This phenomenon was also affecting students of color more broadly, especially black and brown youth. Among other things, this trend has been attributed to President Nixon's declaration of a "war on drugs"

⁵ J.M. McIntosh, "Chartered sites of exception: problematizing the construction of bare life for exceptional populations in the United States education system," *New York: Bank Street College of Education*, 2013, 23.

⁶ Katsiyannis et al., "Reflections on the 25th Anniversary of the Individuals with Disabilities Education Act," 330.

⁷ Kelly S. Thompson, "Limits on the Ability to Discipline Disabled School Children: Do the 1997 Amendments to the IDEA Go Far Enough?" *Indiana Law Review* 32 (1999): 565.

in 1971, which marked the beginning of a national shift in how our society conceptualizes crime. The Nixon administration refocused Americans toward more correctional and retributive discourse around criminal activity. This viewpoint was only further compounded by the rhetoric of the Reagan administration in the 1980s, ultimately spawning a movement to implement far more punitive policies and practices within the criminal justice system. It was under President Reagan that “tough on crime” policing and sentencing strategies were first implemented, which ultimately led to an exponential expansion of the prison population.⁸

As this harsher mentality became more standardized, the stricter disciplinary approach was also exported into schools. Generally speaking, the implementation of so-called “zero-tolerance” policies in the late 1980s and early 1990s mirrored the rising trend of mandatory minimums in the criminal justice system, creating predetermined discipline for certain offenses - particularly offenses related to weapons, alcohol, and drugs.⁹ While officials intended for these policies to deter students from dangerous behavior, research suggests that schools instead used these policies as a springboard toward the use of extreme discipline for more minor offenses (i.e. dress code violations, tardiness and absenteeism, and disruption).¹⁰ These policies led to a significant increase in the presence of police and security personnel in public schools, ultimately leading to a rapid rise in the use of exclusionary discipline practices (suspensions, expulsions, and alternative education placements) and the number of in-school arrests in the 1980s and early

⁸ “Test, Punish, and Push Out: How ‘Zero Tolerance’ and High-Stakes Testing Funnel Youth Into the School-to-Prison-Pipeline,” *The Advancement Project* (March 2010), 3.

⁹ Steven C. Teske, “A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents,” *Journal of Child and Adolescent Psychiatric Nursing* 24 (2011): 88-89.

¹⁰ Douglas J. Gagnon, Eleanor M. Jaffee, and Reeve Kennedy, “Exclusionary Discipline Highest in New Hampshire’s Urban Schools,” *University of New Hampshire Casey School of Public Policy*, no. 46 (Winter 2016): 3.

1990s.¹¹ These practices were eventually codified in the Gun-Free Schools Act of 1994, which provided monetary incentives to states for enacting zero-tolerance policies in public schools.¹²

Since zero-tolerance policies rose to prominence in the 1980s, the phenomenon of increased exclusionary discipline and in-school arrests (referred to as the “school-to-prison pipeline” by scholars and activists) has had devastating effects on our nation’s youth – despite the fact that such techniques have been found to be ineffective for reducing inappropriate behavior.¹³ For example, during the 2012-2013 school year, a significant number of the 954,773 students in Massachusetts public schools¹⁴ were suspended, expelled, and removed to an alternative setting a combined 128,599 times; this amounts to at least 208,605 missed days of school.¹⁵ While the sheer volume of classroom removals is alarming on its own, the disproportionate impact of these disciplinary measures adds a new layer of concern: in that same school year in Massachusetts, black students received 43% of all out-of-school suspensions and 39% of all expulsions despite making up only 8.7% of students.¹⁶ The impact of these disciplinary measures are significant, as the use of exclusionary discipline is associated with future disciplinary infractions, repeated suspensions, academic failure, increased disengagement, increased rates of school dropout, and greater risk of later court involvement.¹⁷

¹¹ “Test, Punish, and Push Out,” 4.

¹² Aaron J. Curtis, “Tracing the School-to-Prison Pipeline from Zero-Tolerance Policies to Juvenile Justice Dispositions,” *Georgetown Law Journal* 102, no. 4 (April 2014): 1254.

¹³ Amanda L. Sullivan, Ethan R. Van Norman, and David A. Klingbeil, “Exclusionary Discipline of Students with Disabilities: Student and School Characteristics Predicting Suspension,” *Remedial and Special Education* 35, no. 4 (2014): 199.

¹⁴ Massachusetts Department of Elementary and Secondary Education, 2012-2013 Enrollment Data.

¹⁵ Joanna Taylor, Matt Cregor, and Priya Lane, “Not Measuring Up: The State of School Discipline in Massachusetts,” *Lawyers’ Committee for Civil Rights and Economic Justice*, 2.

¹⁶ Taylor, Cregor, and Lane, “Not Measuring Up,” 3.

¹⁷ “School-to-Prison Pipeline,” American Civil Liberties Union.

Importantly, disability status plays a significant role in disciplinary outcomes, as students with disabilities are much more likely to experience school removal than their non-disabled peers. According to 2013 data from the U.S. Department of Education, students with disabilities are more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%).¹⁸ Additionally, students served by IDEA represent 25% of students who experience a school-related arrest, despite making up only 12% of the overall student population.¹⁹ The impact of disability on disciplinary outcomes is amplified when combined with race. For example, 27% of African American boys with disabilities and 19% of African American girls with disabilities received at least one out-of-school suspension in the 2011-2012 school year.²⁰ Even more notably, black students with disabilities represent 18.7% of the IDEA population but 49.9% of IDEA students involved with the juvenile justice system.²¹ These trends are intensified in predominantly low-income school districts.²²

Biopower and the School-To-Prison Pipeline for Disabled Youth

Scholars of criminal justice and educational inequities have studied and detailed at great length both the empirical and theoretical implications of the school-to-prison pipeline for youth of color and disabled students. Empirically, there has been a significant focus on the relationship between phenomena like zero-tolerance policies in schools and the rise in mass incarceration in the United States over the past decade. On a more theoretical level, scholars have used

¹⁸ “Civil Rights Data Collection Data Snapshot: School Discipline Issue Brief No. 1,” *U.S. Department of Education Office for Civil Rights* (March 2014).

¹⁹ “Civil Rights Data Collection Data Snapshot: School Discipline”

²⁰ *Ibid.*

²¹ “Breaking the School-to-Prison Pipeline for Students with Disabilities,” *National Council on Disability* (June 18, 2015), 11.

²² “Massachusetts’ School-To-Prison Pipeline, Explained,” *WBUR LearningLab*, April 2015.

Foucaultian concepts like biopower to understand the school-to-prison pipeline in the context of the devaluation of certain bodies in our society. As defined by Foucault, biopower is “an explosion of numerous and diverse techniques for achieving the subjugations of bodies and the control of populations.”²³ These techniques function to “incite, reinforce, control, monitor, optimize, and organize” entire populations.²⁴ As one scholar explains,

“[Bio-politics] is concerned with matters of life and death, with birth and propagation, with health and illness, both physical and mental, and...the optimization of the life of a population...the social, cultural, environmental, economic and geographic conditions...the family, with housing, living and working conditions, with what we call ‘lifestyle’...and the standards of living.”²⁵

In other words, biopower is power operationalized on and through human beings that serves to “make live and let die.”²⁶

Critically, biopower is not as focused on individual lives and is instead more interested in the management of an entire population. In her Foucaultian genealogy, Ladelle McWhorter describes how in the 19th century, science moved away from the notion of bodies as machines to the “idea that bodies were essentially developmental.”²⁷ This new scientific framing revolutionized how people thought about human beings, and they realized that the “developmental process could be controlled, channeled, and used to produce highly skilled, very obedient functioning soldiers, laborers, scholars, or whatever the situation called for.”²⁸

Consequently, bodies began to be measured and statistically analyzed, ultimately resulting in the

²³ Michel Foucault, *The History of Sexuality* (Harmondsworth: Penguin Books, 1992), 140.

²⁴ Michel Foucault, *The History of Sexuality: An Introduction*, vol 1 (New York: Pantheon Books, 1978), 136.

²⁵ Mitchell Dean, *Governmentality: power and rule in modern society*, 2nd ed. (London: Sage, 2010), 119.

²⁶ Michel Foucault and François Ewald, *Society Must Be Defended: Lectures at the Collège De France, 1975-1976* (Macmillian, 2003), 239.

²⁷ Ladelle McWhorter, “Sex, Race, and Biopower: A Foucauldian Genealogy,” *Hypatia* 19, no. 3 (2004): 44.

²⁸ McWhorter, “Sex, Race, and Biopower,” 44.

establishment of norms of human development.²⁹ Those bodies that existed outside of these norms were therefore considered deviant,³⁰ biopower is thus the control of these deviant or “abnormal” populations. Biopower’s population management relies on the use of “statistics, predictability calculations and surveillance of patterns within the social body” in order to assess how best to maximize the abilities of the population.³¹ Because developmental norms were created through scientific analysis, biopower therefore “wrests its authority through the use of ‘science.’”³² Examples of the scientific data-gathering techniques that biopower uses include mortality rates, reproductive rates, disease and disability rates, health risk calculation statistics, and so on.³³

Through these techniques, biopolitics represents a shift away from government’s sovereign power “over” its citizens toward “a government that rules for and through its populations” via state power residing “within subjected bodies and consciousnesses rather than over them.”³⁴ In the context of the school-to-prison pipeline, these techniques function via assigning value to certain kinds of youth over others and determining who is “useful” (often white and able-bodied youth) in a capitalist and functionalist society.³⁵ As institutions, schools

²⁹ Donna Kalmbach Phillips and Roberth Ch. Nava, “Biopower, disciplinary power, and the production of the ‘good Latino/a teacher’,” *Faculty Scholarship (COE)*, 2011, 3.

³⁰ Phillips and Nava, “Biopower, disciplinary power, and the production of the ‘good Latino/a teacher’,” 3.

³¹ Mona Lilja and Stellan Vinthagen, “Sovereign power, disciplinary power and biopower: resisting what power with what resistance?” *Journal of Political Power* 7, no. 1 (2014): 119.

³² Phillips and Nava, “Biopower, disciplinary power, and the production of the ‘good Latino/a teacher’,” 4.

³³ David T. Mitchell and Sharon L. Snyder, *The biopolitics of disability: neoliberalism, ablenationalism, and peripheral embodiment* (Ann Arbor: University of Michigan press, 2015), 8-9.

³⁴ Aaron Tanaka, “The Criminalization of Poor Youth of Color in the Bio-Security State,” April 2005.

³⁵ Henry A. Giroux, *Youth In a Suspect Society: Democracy or Disposability?* (New York: Palgrave Macmillan, 2009), 180-181.

are primarily tasked with dictating, monitoring, and enforcing “appropriate” behavior, acting as “sites for training bodies to behave in socially sanctioned ways.”³⁶ If one of the unstated purposes of education is to establish social control and manage these otherwise “unruly bodies,”³⁷ then biopower operates through school disciplinary practices by systematically punishing and removing deviant individuals in order to improve the student population as a whole. Schools work to teach citizens social norms via the creation of rules and routines to manage productivity for the good of society, and those who do not fit into these norms (and who therefore challenge their maintenance) must be penalized. Of course, not all students are equally threatening to these social norms; biopower operates with the economic and security interests of the state in mind, and those interests are not distributed evenly among the population. The state’s need to protect its white, wealthy, and able-bodied citizens means that students of color, students with disabilities, and low-income students pose the greatest threat to the maintenance of the population.³⁸ Students at the intersections of these categories are exponentially more alarming to the state due to their occupation of multiple threatening identities; it is these students who are therefore most vulnerable to the impact of the school-to-prison pipeline.

The impact of this biopolitical analysis of the school-to-prison pipeline for students with disabilities is situated within the relationship between biopower and disability more broadly. Critical disability theorists first began to use the idea of biopower when writing about the eugenics movement of the early 20th century, which was a time when society was focused on increasing the “quality” of the population (and, therefore, eliminating disabled people, criminals,

³⁶ Leda Cooks and John T. Warren, “SomeBodies(‘) in School: Introduction,” *Text and Performance Quarterly* 31, no. 3 (July 2011): 211.

³⁷ Nirmana Erevelles, “Educating Unruly Bodies: Critical Pedagogy, Disability Studies, and the Politics of Schooling,” *Educational Theory* 50, no. 1 (2000).

³⁸ Morgan Bassichis and Dean Spade, “Queer Politics and Anti-Blackness,” *Queer Necropolitics* (Routledge, 2014), 194.

and certain minority groups entirely). Scholars have considered the rise in institutionalization, involuntary sterilization, marriage prohibitions, confinement, and public inaccessibility for people with disabilities that characterized this time period in the context of biopower. Many have argued that these practices were employed “not just to physically control, but to statistically graph and determine in minute detail the cultural parameters of life within which disabled people find themselves enfolded” for the purposes of scientific study and, ultimately, elimination of disability from the population.³⁹

While the most dramatic aspects of such practices are no longer common (though certainly still in existence), disability theorists maintain that biopower continues to operate today through the maintenance of scientific norms that label certain bodies and/or minds as “dysfunctional” and “abnormal” and then understands individuals based on that label. Martin Sullivan provides an example of what this might look like for someone who has suffered a spinal cord injury: “during the process of rehabilitation, the body of the spinal-cord-injured individual would be objectivized as *paralyzed*, the individual would be subjectivized as *paraplegic*, and the subject would come to know itself in these terms.”⁴⁰ In this example, biopower is operating not only via the identification of a deviant bodily experience – in this case, an injured spinal cord – but also by re-subjectivizing this individual in relation to their deviant body. Disability status becomes a totalizing category (you are either disabled or not, there is no in-between) through this process – though that category has different implications depending on the type of disability. For people with physical disabilities, the “disabled” label implicitly denotes complete social inability. As Lennard Davis notes:

³⁹ Mitchell and Snyder, *The Biopolitics of Disability*, 7.

⁴⁰ Martin Sullivan, “Subjected Bodies: Paraplegia, Rehabilitation, and the Politics of Movement,” in *Foucault and the Government of Disability* (University of Michigan Press, 2005), 30.

“The point is that successful [physically] disabled people - the Julius Caesars, the Itzak Perlman, the Sarah Bernhardt - have their disability erased by their success. And as for the more famous people with remembered [physical] disabilities - John Milton, Ludwig van Beethoven, Franklin Delano Roosevelt, or even Stevie Wonder - we tend to see them as people who overcame their disabilities...”⁴¹

In other words, biopower operates for those with physical disabilities by making the category of disability synonymous with powerlessness and impotence, and therefore incapability of existing within the “normal” society. For people with cognitive and intellectual disabilities, however, the label of “disabled” connotes not feebleness but danger. This is evidenced by the long history of institutionalization of the “insane” in mental asylums and the large number of people with disabilities who continue to be locked up in prisons. While those with physical disabilities must be segregated from society because they are unable to function at the same level as “normal” individuals, people with cognitive and/or intellectual disabilities must be segregated for society’s protection. In both cases, disabled people are inherently incompatible with normality (and, by extension, the possibility for social inclusion). Power therefore operates on and through the bodies of people with disabilities to categorize them as deviant, to study and manage them, and ultimately to isolate them from the general population.

When the operation of power on people with disabilities in general is combined with the biopolitical project of the school-to-prison pipeline, students with disabilities are placed in a unique position of existing at the intersection of dual (and sometimes conflicting) power schemas. For students with physical disabilities, the logic of the disability category that views these students as powerless is combined with the danger-based rhetoric of the school-to-prison pipeline to make these students simultaneously invisible and hypervisible. This analysis is backed up by data, as one study found that the suspension rate for students with physical

⁴¹ Lennard J. Davis, *Enforcing Normalcy: Disability, Deafness, and The Body* (Verso Books, 2014), 9.

disabilities is 7% (which, while not huge, is significant, as this population makes up only 3% of the IDEA population).⁴² In direct contrast, the societal view of people with cognitive and intellectual disabilities is exponentially amplified when combined with the logic of “zero-tolerance” policies, as these students are inherently seen as dangerous to begin with. As a result, students with these disabilities are at much greater risk for experiencing exclusionary discipline, with the same study finding that 21% of students with learning disabilities, 18% of students with intellectual disabilities, and 47% of students with emotional disturbance were suspended during the 2009-2010 school year in one urban district.⁴³ Clearly, then, biopower is operating uniquely on students with disabilities in such a way that their exclusion from the public school system works to systematically surveil and segregate these students from their non-disabled peers.

Defining and Explaining Terms

As noted, the definition of disability under IDEA is very specific, meaning that only certain disabled students qualify under the law. To qualify under IDEA, students must have their school performance be “adversely affected” by a disability that falls into one or more of thirteen disability categories. The categories are: Specific Learning Disability (e.g. dyslexia, auditory processing disorder), Autism Spectrum Disorder, Emotional Disturbance (e.g. schizophrenia, bipolar disorder), Speech or Language Impairment (e.g. stuttering, voice impairment), Visual Impairment (both partial sight and blindness), Deafness, Hearing Impairment (hearing loss not covered under Deafness), Deaf-Blindness, Orthopedic Impairment (any physical impairment), Intellectual Disability (e.g. Down Syndrome), Traumatic Brain Injury, Other Health Impairment

⁴² Sullivan et al., “Exclusionary Discipline of Students with Disabilities,” 203.

⁴³ Ibid.

(any condition that limits a child’s strength, energy, or alertness, e.g. ADHD), and Multiple Disabilities.⁴⁴

Clearly, IDEA covers students with a wide range of disabilities. Importantly, all students who qualify under IDEA are required to participate in the same evaluation process and are guaranteed the same protections, regardless of the type of disability. Because the law does not differentiate between cognitive, physical, and intellectual disabilities in this way, I will often use the term “students with disabilities” or “disabled students” as all-encompassing terms in this thesis. While disabled students may have very different experiences of disability based on the category they fall into, the law does not provide such a distinction, and so when discussing the impact of IDEA on these students I will often group them together. However, there are certain points at which the type of disability a student is experiencing will become relevant, and as such I will disaggregate the category of “students with disabilities” when it is necessary for my analysis.

In addition to distinguishing between different kinds of disabilities when it is relevant to my argument, I will also disaggregate students with disabilities by race, class, and gender at appropriate points. As I have previously noted, the school-to-prison pipeline impacts disabled students of color at higher rates than all other students.⁴⁵ In addition, students of color are disproportionately identified under IDEA – black, Latinx, and indigenous students are overrepresented among students identified with a Specific Learning Disability and Emotional Disturbance,⁴⁶ but underrepresented among students identified with Autism Spectrum Disorder.⁴⁷

⁴⁴ Andrew M.I. Lee, “The 13 Conditions Covered Under IDEA,” Understood.

⁴⁵ “Breaking the School-to-Prison Pipeline for Students with Disabilities.”

⁴⁶ Dara Shifrer, Chandra Muller, and Rebecca Callahan, “Disproportionality and Learning Disabilities: Parsing Apart Race, Socioeconomic Status, and Language,” *Journal of Learning Disabilities* 44, no. 3 (2011): 247.

Asian American and Pacific Islander students are also underrepresented in learning disability identifications.⁴⁸ In addition to racial differences, class is also an important factor for IDEA-eligible youth. Students of color are disproportionately likely to attend underfunded schools with less rigorous diagnostic resources, and students from low-socioeconomic status backgrounds are generally more likely to be identified as having a learning disability.⁴⁹ In addition, class plays an important role in the IEP process for students with disabilities, as families with higher socioeconomic statuses are more easily able to access resources outside of the school (i.e. diagnostic testing, lawyers, tutoring services) that can impact the IEP hearing process or improve a child's performance at school. Finally, gender plays a significant role under IDEA, as two-thirds of IDEA-identified students are male.⁵⁰ The possible implication of this gender imbalance in special education suggests that schools are over-identifying male students with a disability while under-identifying female students. In regards to discipline, male students are also disproportionately impacted; for example, during the 2012-2013 school year, male students in Massachusetts public schools represented roughly half of total enrollment but over 70% of disciplinary incidents.⁵¹ With these disproportionalities in mind, I will disaggregate the category of "disabled student" by race, class, and/or gender when the all-encompassing term is not accurately able to reflect the experiences of certain disabled students.

⁴⁷ David S. Mandell et al., "Race Differences in the Age of Diagnosis Among Medicaid-Eligible Children with Autism," *Journal of the American Academy of Child & Adolescent Psychiatry* 41, no. 12 (2002).

⁴⁸ Shifrer et al., "Disproportionality and Learning Disabilities," 247.

⁴⁹ Clancy Blair and Keith G. Scott, "Proportion of LD Placements Associated with Low Socioeconomic Status: Evidence for a Gradient?" *The Journal of Special Education* 36, no. 1 (2002).

⁵⁰ Daniel P. Mears and Laudan Y. Aron, "Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge," *The Urban Institute*: 35.

⁵¹ *School Discipline in Massachusetts – How are We Doing?: An Analysis of the First Year of the State's New School Discipline Law*, Massachusetts Appleseed Center for Law and Justice (Spring 2016), 6.

Situating This Thesis

There has been a limited amount of work focusing specifically on the disproportionate number of students with disabilities impacted by the school-to-prison pipeline. At present, the majority of the research around the issue of the school-to-prison pipeline is focused solely on this phenomenon's impact on youth of color. Nirmana Erevelles is one of a handful of academics that have produced scholarship that specifically addresses the criminalization of youth with disabilities, and her work does so by integrating aspects of critical race theory.⁵² Similarly, legal scholars McWilliams and Fancher have produced work on the disproportionate diagnosis of disabilities for students of color and the ways in which this is fueled by racist notions of the aggressiveness of black and brown people.⁵³ However, all of this scholarship related to disability and the school-to-prison pipeline has almost completely excluded any analysis of biopower or biopolitics that has been used in other areas of disability studies. As a result, a discussion of the way that power operates on these students' lives remains mostly unexplored; the three disciplines of political theory, critical disability studies, and education justice largely continue to not interact. Using the Individuals with Disabilities Education Act as the point of entry, I therefore aim in this thesis to intervene in discussions of the school-to-prison pipeline for students with disabilities by placing the theories put forth by these disciplines in conversation with one another.

Before I continue my analysis, it is essential to acknowledge that IDEA is not an inherently "bad" law. In fact, IDEA has revolutionized the education system in the United States

⁵² Nirmana Erevelles, "Crippin' Jim Crow: Disability, Dis-Location, and the School-to-Prison Pipeline," in *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (New York: Palgrave Macmillan, 2014).

⁵³ Mark McWilliams and Mark P. Fancher, "Undiagnosed Students with Disabilities Trapped in the School-To-Prison Pipeline," *Michigan Bar Journal* 89, no. 28 (August 2010).

in many ways and has achieved remarkable gains for disabled youth in terms of access. But any discussion of the law must acknowledge the ways in which students with disabilities are still being failed. The key idea that serves as the foundation of a discussion of IDEA must continue to be: how do we balance advocacy for increasing access to existing educational structures with working to create entirely new structures for students with disabilities? The importance of accessibility for people with disabilities should not be minimized, but access often isn't enough. Too often, our structures and institutions are built without disabled people in mind, and accommodations for these individuals are then brought in only as an afterthought; disabled people's needs are almost never seen as fundamental. With this in mind, in this thesis I therefore attempt to center the voices and experiences of students with disabilities in discussions about power and school discipline in a way that they often aren't, ultimately calling for disabled students' needs to be centrally – rather than peripherally – considered in how we structure our education system.

Chapter 1

The Construction of Disability via IDEA

Youth with disabilities face many unique challenges in our society, particularly around accessing education. Policies like the Individuals with Disabilities Education Act (IDEA) have attempted to mediate these challenges by creating tools aimed at increasing educational accessibility for these students. Among other ways, IDEA works by giving students with disabilities access to educational accommodations (known as Individual Education Plans, or IEPs) that fit their needs.⁵⁴ However, these accommodations are not easy to acquire, and are not equally available to all students; in order to gain access to accommodations the student and their family must first prove to an assembled body of educators, administrators, and other “experts” that they qualify for them. This evaluation process is incredibly complicated and arduous, and largely puts the burden of proof on the student and their family.⁵⁵ As a result, many students with disabilities do not receive the accommodations necessary for them to succeed academically, and are therefore forced to put in extra effort just to get by when they could otherwise be thriving. With this in mind, the underlying assumption of policies like IDEA, which is that one can “prove” disability, must be further analyzed as an exercise of biopower. This analysis must consider not only how our society defines disability, but also how that definition does or does not legitimize certain ideas of “normal bodies” through societal discourses. Using this framework, I will therefore argue that policies like IDEA, while important for students, ultimately rely on an individualized understanding of disability focused on the framing of certain abilities as desirable over others. By creating this hierarchy of ability within individual bodies, such policies both

⁵⁴ Andrew M.I. Lee, “How IDEA Protects You and Your Child,” Understood.

⁵⁵ United States, National Council on Disability, *Individuals with Disabilities Education Act Burden of Proof, On Parents or Schools?: Schaffer v. Weast Pending in the Supreme Court of the United States: Position Statement*, Washington, D.C., 2005.

implicitly and explicitly create space for interventions by the carceral state into the lives of disabled students. These interventions, which range from segregated education and increased surveillance to school removal and in-school arrests, work to amplify the already-prevalent control and regulation of the movement and bodies of disabled individuals within our society.

(Dis)able-bodied: Theories of Disability

To understand how the U.S. education system conceptualizes disability via the evaluation process, I will first consider theories of disability more broadly. In discussing disability, scholars have made a distinction between two terms that are often colloquially used interchangeably: *impairment* and *disability*. The most commonly cited definitions of these terms come from the World Health Organization (WHO). Impairment, in this definition, is focused specifically on the body, and according to the WHO is “any loss or abnormality of psychological, physiological or anatomical structure or function.”⁵⁶ However, unlike impairment, disability is focused less on structural aspects of the body and more with functional limitations, defined as “any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.”⁵⁷ In other words, while impairment in this definition focuses on abnormal physical, psychological, and biological structures, disability focuses on the effects these impairments have on everyday life.

With an understanding of these terms in mind, I will now turn to the ways that scholars and activists have theorized disability. In disability studies, there are two main frameworks of disability that have received the most attention: the individual model and the social model. These

⁵⁶ *International Classification of Impairments, Disabilities, and Handicaps: A Manual of Classification Relating to the Consequences of Disease* (Geneva: World Health Organization, 1980), 47.

⁵⁷ *International Classification of Impairments, Disabilities, and Handicaps*, 143.

two models encapsulate differing conceptions of not only what disability is, but also what justice for people with disabilities (physical, learning, and intellectual) would therefore look like.

Firstly, the individual model of disability (which is the model understood through the WHO definitions) focuses its attention on disability through a medical lens as a biological phenomenon. As explained by scholar Lorella Terzi, “According to [the individual model], disabilities are attributable primarily to individual biological conditions that depart from normal human functionings and cause handicaps to be experienced as disadvantages.”⁵⁸ This model’s reliance on the existence of biological normality implicitly defines certain bodies as abnormal and assumes that it is this deviance from the norm that directly causes a person’s status as disabled. Consequently, through the individual model “disability is considered mainly a target of treatment and rehabilitation intended to achieve as much as possible an approximation to normality.”⁵⁹ Justice in the individual model, then, is understood as a disabled individual’s ability to live in society in the same way as a non-disabled individual; in practice, this means providing disabled individuals with equal access to the services and systems available to the rest of the population through accommodations.

Many disabled activists and scholars have criticized the individual model, arguing that it ignores the role of social structures in defining disability. Furthermore, critics have pointed out that this model’s reliance on defining normal bodies is incredibly dangerous in its connotations of natural superiority, which can be (and have been) used to justify exclusionary policies and attitudes in society such as segregated education and exclusion from the traditional labor force.⁶⁰ It is at the site of these critiques that the social model of disability attempts to intervene. The

⁵⁸ Lorella Terzi, “A Capability Perspective on Impairment, Disability and Special Needs: Towards Social Justice in Education,” *Theory and Research in Education* 3, no. 2 (2005): 199.

⁵⁹ Terzi, “A Capability Perspective on Impairment, Disability and Special Needs,” 200.

⁶⁰ Ibid.

social model begins by challenging the essentialist understanding of disability that underlies the WHO definitions. Unlike the individual model's defining of terms, the social model "sees disability, by contrast with impairment, as something imposed on disabled people by oppressive and discriminating social and institutional structures."⁶¹ In other words, while the social model still recognizes that there can be a biological impact of impairment, it instead locates the source of disability outside of the individual body and firmly within the oppression of the social world. This framework dismisses the individual model's focus on a hierarchical normality, and instead there is a renewed focus on acknowledging physical and/or cognitive difference. Furthermore, the social model challenges the individual model's understanding of the relationship between impairment and disability as one of necessity (i.e. that restricted functioning is a necessary outcome of impairment). Instead, proponents of the social model link larger systemic inequalities between the disabled and non-disabled to effects of oppression and discrimination.⁶² In practice, rather than focusing on increasing individual proximity to normality, the social model's vision of justice therefore advocates for "disabling barriers and material relations of power" that prevent certain individuals from fully participating in society.⁶³

The social model makes important interventions around the issues brought up in the individual model. Through the social model, there is room for a more nuanced understanding of the role played by forces outside of the individual on the experience of disability. However, despite these important additions, the social model still has its flaws. Namely, scholars have argued that the social model overstates the social reality of disability, as it does not provide an

⁶¹ Ibid., 201.

⁶² Solveig Magnus Reindal, "Disability, Capability, and Special Education: Towards a Capability-Based Theory," *European Journal of Special Needs Education* 24, no. 2 (2009): 157.

⁶³ Solveig Magnus Reindal, "A Social Relational Model of Disability: A Theoretical Framework for Special Needs Education?," *European Journal of Special Needs Education* 23, no. 2 (May 2008): 139.

adequate framework to understand how factors outside of the social world (bodily pain, for example) create barriers to functioning for people with physical and/or cognitive disabilities. This absence of the connection between pain and mental constraint in the social model is critical: while social forces certainly play a role in the experience of disability, we cannot forget the centrality of bodies. Scholar Elaine Scarry has theorized pain as a disabling force extensively in her work, particularly considering the ways in which pain is often left out of conversations about disability. Scarry argues that bodily pain “actively destroys” language in such a way that it is inherently unshareable, and as a result it is nearly impossible for others to truly understand how it impacts an individual’s life.⁶⁴ With this critique in mind, it is clear that “both [the individual and social models]...fail to provide a definition of disability that can adequately inform the design of inclusive institutional and social schemes.”⁶⁵ As such, the social model’s lack of full consideration for the role that physical bodies play in experiences of disability limits its usefulness as a framework for understanding lived experiences of disability more specifically.

With this in mind comes the introduction of a third and even more nuanced framework for theorizing disability: the capability model. The capability model was first outlined by Amartya Sen and applied to disability by Sophie Mitra. In the context of disability studies, this model re-frames our understanding of disability from one of restriction to one of potential.⁶⁶ The capability approach focuses on the *capability to function*, which is “what a person can do or can be.”⁶⁷ To accomplish this, Sen distinguishes between *functionings* and *capabilities*; while functionings focus on activities “constitutive” of a person’s well-being⁶⁸ such as being healthy or

⁶⁴ Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1988), 4.

⁶⁵ Terzi, “A Capability Perspective on Impairment, Disability and Special Needs,” 203.

⁶⁶ *Ibid.*, 204.

⁶⁷ Reindal, “Disability, Capability, and Special Education,” 159.

⁶⁸ Terzi, “A Capability Perspective on Impairment, Disability and Special Needs,” 204.

being happy, capabilities refer to the opportunity an individual has to achieve that state of well-being.⁶⁹ Through the capability model, therefore, “disability occurs when an individual is deprived of practical opportunities as a result of an impairment.”⁷⁰ This understanding of disability is useful in reframing what questions we are asking about people with impairments. For example, instead of the individual and social models’ question of “What resources or accommodations do impaired people have access to?” the capability model sets us up to ask questions like: “What are impaired people able to do and be with these resources?” and “What kind of life are impaired people able to live with these resources?”⁷¹ This reframing ultimately understands justice for people with disabilities not solely as an issue of resource allocation and institutional barriers as it is in the social model, but also as an issue of recognizing agency and individual potential beyond the normative framework of success.

Unlike the individual and social models, the capability model focuses on the interpersonal and individual variation that exists depending on the resources available, the environment, and personal characteristics. In other words, what the capability model does or doesn’t consider a disability relies not only on the individual’s impairment and the structural social context, but also on the context of what capabilities are options for an individual and how impairment affects their ability to choose amongst these options. Terzi provides an example of a person with a physical disability that illustrates this difference:

“Now consider an impaired person who uses a wheelchair....The capability approach allows us to say that being a wheelchair user may be considered a disadvantage when the wheelchair is not provided or the physical environment is not designed properly. In the same way many persons would be disadvantaged would stairs or lift not be fitted between flights in buildings, since very few people would be able to move floor to floor. *The*

⁶⁹ Sophie Mitra, “The Capability Approach and Disability,” *Journal of Disability Policy Studies* 16, no. 4 (2006): 238.

⁷⁰ Mitra, “The Capability Approach and Disability,” 241.

⁷¹ Reindal, “Disability, Capability, and Special Education,” 160.

provision of a wheelchair and wheelchair accessibility is a matter of justice on the capability approach, because these contribute to the equalization of the capability to pursue and achieve well-being [emphasis added].”⁷²

As Terzi demonstrates with this example, through the capability model we can understand a wheelchair-user’s experience of disability not only through their bodily impairment (their inability to walk) or the social structures that make their wheelchair a disadvantage (the presence of stairs instead of elevators), but also through a consideration of what is fundamental to the achievement of well-being for this particular individual (for example, becoming a manager of the company located in that building). Furthermore, this model also allows for an understanding of bodily experience that the social model loses in its assumption that disability is entirely divorced from the body. The capability model recognizes that pain and other bodily experiences can restrict functionings and thus yield a disability if they prevent an individual from achieving well-being, even absent social barriers.

While Terzi’s example understands the capability model in relation to a physical disability, it is important to note that the model can be applied to cognitive and learning disabilities as well. For example, consider a child who has been diagnosed with dyslexia and who as a result struggles completing class assignments. The individual model sees this child as disabled because of a biological difference in how her brain processes words, and as a result her teacher might attempt to make up for that difference by having another student take notes for her or replacing written instructions on assignments with visual ones. Under the individual model, the school provides these accommodations in order to overcome what is seen as the child’s inherent weakness around the ability to read. In the social model, however, the view of this student as disabled changes: her difficulty with reading is only a disadvantage in an educational

⁷² Terzi, “A Capability Perspective on Impairment, Disability and Special Needs,” 208-209.

system that centers the ability to read quickly and easily in measuring academic achievement. In a hypothetical system that valued visual-spatial reasoning over reading comprehension, for example, this student's dyslexia would no longer disable her, as the social model defines disability relative to societal structures and therefore advocates that such structures be reimagined. The capability approach then takes the social model's acknowledgement of the impact of social structures and adds to it by integrating the student and her family's definition of her educational well-being. The capability model calls for the school to utilize the student's different way of taking in information as an asset to her education rather than a detriment; in practice, this might look like increased integration of visual-spatial activities (such as sketching, puzzles, and maps) into the curriculum. As evidenced in this example, this framework of capability is therefore incredibly useful for understanding how to better accommodate youth with disabilities in schools, as it allows us to reframe justice for children with disabilities in education as enhancing capabilities rather than solely eliminating barriers, as is the focus in the individual and social models.

IEPs, Individualization, and Translating Disability

With an understanding of the different ways that disability has been theorized, I will now turn to an exploration of how policies like IDEA draw upon these theories and the resulting effects on youth. Currently, most of the policies surrounding students with disabilities rely heavily on the individual model. IDEA clearly demonstrates this individualization of disability. Of course, the focus on accommodating individuals is in itself not inherently problematic, as we know via the capability model's framework that each person has unique capabilities and therefore unique needs. However, there is a difference between tailoring to an individual's

unique needs to maximize their capabilities and tailoring to an individual's unique needs in order for them to adhere to existing standards, practices, and pathways. Under IDEA, the process of obtaining an Individual Education Plan (IEP) operates heavily through an understanding of normality, as in order to receive accommodations the student must prove that they are not otherwise able to perform in school in the same way as other students. As described by scholar B. Scott Titsworth, through IDEA “[s]tudents are evaluated as they attend school and then [effectively] labeled ‘normal’ or ‘disabled’ learners.”⁷³ By drawing on the idea of providing accommodations to abnormal students so that they can achieve in the same way that normal students do, IDEA is very much operating within the individual model.

An important component in the application of the individual model is the focus on medical diagnoses and the privileging of knowledge by “the expert.” Within the individual model disability is a direct result of biological “deficiencies,” and as such the medical vocabulary becomes central to determining accommodations for youth in schools. Under IDEA, an important part of “proving” that a child qualifies for accommodations is some sort of diagnosis or recommendation from a medical professional. Disability theorists have taken up this idea of medicine as an external validator of disability at great length. For example, scholar Susan Wendell has written about how our society does not give the knowledge and experiences of disabled people as much weight as the knowledge of the medical world. As she describes, “Medical professionals have been given the power to describe and validate everyone’s experience of the body.”⁷⁴ It is not enough for a child or a child’s family to say that they have a disability; instead, there must be an evaluation done to determine how “disabled” that child

⁷³ B. Scott Titsworth, “An Ideological Basis for Definition in Public Argument: A Case Study of the Individuals with Disabilities in Education Act,” *Argumentation and Advocacy* 35 (Spring 1999): 181.

⁷⁴ Susan Wendell, “Toward a Feminist Theory of Disability,” *Hypatia* 4, no. 2 (1989): 120.

really is. Therefore, if a child is experiencing a disability outside of what the medical field recognizes as such (for example, certain manifestations of ADHD), the school denies them full access to the accommodations they require and tells them that they do not have a disability -- regardless of what the child knows to be true. Furthermore, “[e]ven when your experience is recognized by medicine, it is often re-described in ways that are inaccurate from your standpoint.”⁷⁵ Applied to IDEA, this means that the individual model silences the experiences of students and relies on an external determination of how normal a child is in order to provide them accommodations.

Much of the evaluation process to obtain an IEP relies on this idea of an external interpretation of a student’s experience. This occurs not only through the aforementioned medical diagnoses, but also through psychometric testing and classroom observations of the youth. It is of note that a substantial amount of the information used to determine a child’s access to an IEP (for example, how a child interacts with their peers) is incredibly subjective. Even the supposedly more objective means of evaluating student ability (such as IQ tests and standardized test scores) actually communicate very little about a student, as it has been shown that such tests are a better reflection of a student’s culture and prior experiences than their intelligence or performance in school.⁷⁶ Through this evaluation process, the IEP team compares a students’ abilities to those of the “normal” child their age, and administrators then turn this abstract scientific and observed information into tangible accommodations such as altered testing formats, access to teacher notes, or preferential seating. In these evaluations, the student’s personal experience is not as important as the word of the parents, teachers, medical

⁷⁵ Wendell, “Toward a Feminist Theory of Disability, 120.

⁷⁶ Deborah Meier, *In Schools We Trust: Creating Communities of Learning in an Era of Testing and Standardization* (Boston: Beacon Press, 2002), 95-136.

professionals, and administrators; in fact, IDEA does not require administrators to invite students to IEP team meetings until meetings begin to focus on transition services after high school (these meetings must begin no later than age 14).⁷⁷ Because IEP meetings involve not just a disabled person but also a child, the effect of the student's voice being silenced is therefore doubly apparent. The child, and often the families, do not have access to the language that is necessary to obtain accommodations in the same way that these outside bodies do, and therefore others must speak on their behalf in order to successfully navigate the system. Only those families who are able to afford their own psychiatric testing and have access to doctors who can give a diagnosis that will best support their child have the privilege of having a say in the IEP process.

The Role of Power in Developing IEPs

Ultimately, the actualization of the individual model through IEP evaluations is an exercise of power. From the outset, power is exercised via the discourses that make certain behaviors legible as “normal” and disability understood as an individual phenomenon. Importantly, these discourses go beyond the usage of language and signs to encompass the “practices that systematically form the objects of which they speak.”⁷⁸ As understood by Foucault, discourses implicitly function as systems of rules that define what people can say and understand in our society; put differently, discourses are concerned with *meaning making*. Policies like IDEA and their usage of the individual model of disability are clearly engaged in creating such meaning around disability. For example, meaning is created through the defining of students with disabilities' right to a free appropriate public education (FAPE), as this central

⁷⁷ R. Brian Cobb and Morgan Alwell, “Transition Planning/Coordinating Interventions for Youth with Disabilities,” *Career Development for Exceptional Individuals* 32, no. 2 (2009): 71.

⁷⁸ Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (Great Britain: Tavistock Publications Limited, 1972), 49.

tenet of IDEA is framed as an entirely individualized program focused on increasing access to existing systems of education rather than creating new ones. As scholars have noted, “the very act of making decisions about which children deserve which resources for what purpose....constitutes the construction of meaning-making about how we conceive a free and appropriate education.”⁷⁹ Furthermore, power is operating through the privileging of certain voices, as Foucault also noted that an examination of discursive power must consider “who does the speaking, the positions and viewpoints from which they speak, [and] the institutions which prompt people to speak...and which store and distribute the things that are said.”⁸⁰ In the context of an IEP meeting, it is clear who is doing the speaking and from what position, as educators, administrators, and psychologists are “initiating, dominating, and terminating the discourse” while viewing the knowledge of parents and students as inexpert (and therefore less relevant) in its lack of scientific verification and existence outside of the technical vocabulary.⁸¹

The cumulative effect of these discourses around disability in education is a Foucaultian understanding of biopolitics in which expert authorities adjudicate life chances.⁸² I focus on Foucault’s notion of biopolitics rather than simply disciplinary power in analyzing the IEP process for a reason, as I argue that the government’s framing of people with disabilities moves beyond a concern with managing and training bodies; instead, “a *population* takes center-stage as a political and scientific problem” in the methods through which IDEA understands disabled

⁷⁹ D. Kim Reid and Jan Weatherly Valle, “The Discursive Practice of Learning Disability,” *Journal of Learning Disabilities* 37, no. 6 (2004): 466.

⁸⁰ Michel Foucault, *The History of Sexuality* (Random House, 1978), 11.

⁸¹ Jan W. Valle, *What Mothers Say About Special Education: From the 1960s to the Present* (New York: Palgrave Macmillan, 2009), 42.

⁸² Majia Holmer Nadesan, *Governmentality, Biopower, and Everyday Life* (Routledge, 2010), 129.

students.⁸³ Importantly, the entirety of IDEA relies upon “the assumption that it is both legitimate and possible to expose, measure, and categorize normal and abnormal cognitive, emotional, and behavioral phenomena within individuals.”⁸⁴ Furthermore, IDEA’s “Child Find” mandate requires schools to actively identify, locate, and evaluate children with disabilities, providing incentives for schools to single out “abnormal” students.⁸⁵ Both the IEP process and the “Child Find” mandate exemplify a biopolitical focus on categorizing and managing a population that deviates from the norm.

IDEA is based in discourses of normality, which in educational settings exist through the creation of the imagined average student; disability as a concept is then constructed as deviancy from this norm. The discourses of functionalism that underpin much of our society’s understanding of disabled people compound this view of disability as deviant. As a sociological theory, functionalism views society as an interconnected system - much like a biological system – in which the function of the entire system is dependent on the function of each individual part; therefore, in a functionalist view it is necessary to “repair” any aspect of society that is malfunctioning in order to maintain social order and return society to a state of balance or equilibrium.⁸⁶ In such a view, disabled individuals are therefore understood as a hindrance to the function of society and are ultimately pathologised.⁸⁷ In school settings, this leads to a view of

⁸³ Melina Sherman, “Foucault, Then and Now: On Modalities of Power and the Making of Subjects,” April 13, 2015.

⁸⁴ D. Kim Reid and Jan Weatherly Valle, “Learning Dis/ability as the Intersection of Competing Discourses: Implications for Classrooms, Parents, and Research,” in *Learning About Learning Disabilities*, ed. Bernice Wong, 3rd ed. (Academic Press, 2011), 516.

⁸⁵ Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, Stat 2647 (2004).

⁸⁶ Carol Thomas, *Sociologies of Disability and Illness: Contested Ideas in Disability Studies and Medical Sociology* (Basingstoke: Palgrave Macmillan, 2009), 16-17.

⁸⁷ Dan Goodley and Katherine Runswick-Cole, “The Violence of Disablism,” *Sociology of Health & Illness* 33, no. 4 (2011): 603.

students with disabilities as students who exist outside of the “normal” functioning classroom and educational experience, and who therefore require assistance from outside authorities in order for the classroom to operate successfully. The continued dominance of functionalism cannot be understated in our individualized society that is so reliant on order and structure to maintain the status quo; its dominance both informs and exacerbates the discourse of students with disabilities as hindrances for schools that require Foucaultian “experts” to intervene and manage.

This understanding of the disabled student is itself an exercise of power, as it positions students with disabilities as passive, helpless subjects who require assistance from institutionalized resources in order to succeed. This exercise of power has real consequences as it becomes internalized by the youth over time, often becoming a self-fulfilling prophecy as both stereotype threat is activated and students begin to believe that they are limited in their capabilities.⁸⁸ This internalization of norms is intentional on the part of the institution, as “by labeling some students as ‘abnormal,’ accountability for learning is taken away from the institutions of education and placed on the individual.”⁸⁹ This focus on the individual reveals a central belief of policies like IDEA: the law requires states to give students with disabilities the opportunity to succeed, but the responsibility for achievement is still ultimately placed on the student.⁹⁰ Therefore, policies like IDEA directly and explicitly work to individualize disability and make disabled youth see themselves as “abnormal.” In practice, this works to determine life paths for these youth by limiting what students with disabilities understand as possible or

⁸⁸ Caroline Desombre, Souad Aneqmar, and Gérald Delelis, “Stereotype threat among students with disabilities: the importance of the evaluative context on their cognitive performance,” *European Journal of Psychology of Education*, 2017.

⁸⁹ Titsworth, “An Ideological Basis for Definition in Public Argument,” 177.

⁹⁰ Ibid.

appropriate for them in their education, careers, and personal lives. This narrowing of imagination occurs while simultaneously preventing these students from putting the onus for their future achievements on the larger system.

IDEA and Criminalization: The Section (K)(6) Loophole

Beyond the individual impact these discourses have on students and their understanding of themselves, IDEA's use of the individual model also impacts how school systems understand their role in the lives of students with disabilities. The role of schools in general has shifted throughout the past several decades, illustrated especially by the rise in zero tolerance policies across the nation in response to racialized fears about school violence. As one scholar explains: "Once seen as an invaluable public good and a laboratory for critical learning and engaged citizenship, public schools are increasingly viewed as sites of crime, warehouses, or containment centers."⁹¹ As a result of this evolving view, schools often understand students from low-income backgrounds and students of color through the lens of crime and therefore seen as a population requiring control and surveillance in order to prevent deviant behavior.⁹² This view of certain students as requiring management is replicated for students with disabilities and in many ways is exacerbated by the individual model; disability in this view is already inherently deviant, though this deviancy looks different across different disabilities (while the physically disabled are often constructed as powerless, those with cognitive disabilities are viewed as dangerous). Furthermore, both the laws of our society and disciplinary codes in schools are largely created by and for nondisabled individuals, meaning that deviancy in these contexts often intersects with the

⁹¹ Henry A. Giroux, *Youth in a Suspect Society: Democracy or Disposability?* (New York: Palgrave Macmillan, 2009), 97.

⁹² Giroux, *Youth in a Suspect Society*, 97.

deviancy of being disabled. Combining these factors, the individual model of disability inherent to IDEA therefore sets up students with disabilities as threats to the social order of schools from the start, creating spaces for logics of the carceral state to enter into the classroom.

The connection between policing and students with disabilities is not merely theoretical: scholars and government representatives have begun to note the increasingly formalized relationship between the police and schools. In particular, there is a growing focus on the progressively prevalent role School Resource Officers (law enforcement officers employed by local police who are responsible for security in schools) play in detaining and/or arresting students on school property.⁹³ While there has been much discussion about the problematic nature of this phenomenon and calls for it to change, there has been less of a theoretical examination of the relationship between our discursive construction of students with disabilities and the increasing criminalization of these students. In particular, IDEA as a public policy deserves more consideration for its role in facilitating these interactions, as the IEP process is theoretically supposed to serve as a replacement for more punitive forms of discipline. Ultimately, I argue that the way in which IDEA's framing of disability wields power in creating direct relationships with law enforcement is directly connected to disabled students' increasing interactions with the criminal justice system.

For students with disabilities, IDEA is intended to function as an alternative to the disciplinary procedures in place for the general student population by making disciplinary removal next to impossible.⁹⁴ This aspect of IDEA's purpose arose out of an understanding that many student behaviors that were receiving discipline in schools were actually manifestations of

⁹³ Catherine Kim, Daniel J. Losen, and Damon Hewitt, *The School-to-Prison Pipeline: Structuring Legal Reform* (New York: New York University Press, 2012), 121.

⁹⁴ Russel J. Skiba, "Special Education and School Discipline: A Precarious Balance," *Behavioral Disorders* 27, no. 2 (February 1, 2002): 82.

a student's disability; the argument was successfully made that, beyond a certain point, long-term suspension and expulsion of students with a disability for behavior that was a manifestation of their disability amounted to a denial of that child's right to a free appropriate public education (FAPE) – perhaps the central tenet of IDEA as a policy. As outlined in Department of Education guidance on the IDEA Amendments of 1997: “There must be a balanced approach to the issue of discipline of children with disabilities that reflects the need for orderly and safe schools and the need to protect the right of children with disabilities to a free appropriate education (FAPE).”⁹⁵ As such, IDEA outlines a set of conditions under which students with disabilities may or may not be removed from school (considered under IDEA as a “change in placement”), which is based on a history of case law around special education.⁹⁶ For example, in *Honig v. Doe (1988)*, the Supreme Court set a standard of 10 days as the point at which short-term discipline becomes a long-term change that triggers the FAPE guarantee for students with disabilities.⁹⁷ This means that administrators cannot remove students with disabilities from school without a change in IEP placement a) for more than 10 consecutive school days or b) if a pattern of removal occurs that in sum lasts for more than 10 days in a school year.⁹⁸ In practice, IDEA's 10-day rule makes it difficult for schools to use suspensions and expulsions as tools for disciplining students with disabilities in the same way that they are increasingly being used in the general student body, leaving educators with fewer options for intervening in behavior perceived as disruptive or dangerous.

⁹⁵ United States Department of Education, Office of Special Education and Rehabilitative Services, *Memorandum: Initial Disciplinary Guidance Related to Removal of Children with Disabilities from their Current Educational Placement*, by Judith E. Heumann and Thomas Hehir (1997).

⁹⁶ Skiba, “Special Education and School Discipline,” 82.

⁹⁷ *Honig v. Doe* (January 20, 1988).

⁹⁸ Skiba, “Special Education and School Discipline,” 83.

In theory, the FAPE guarantee is an excellent policy intervention that forces schools to educate and include students with disabilities even when it is difficult rather than simply segregating them from the general student body. However, IDEA does not go quite that far in ensuring that students with disabilities are able to receive a full education. From the law's original enactment in 1975, school systems have heavily resisted the perceived restraints placed on their autonomy by IDEA, as "the exclusion of behaviorally problematic students from school has been a long-standing phenomenon in school systems."⁹⁹ There have been several court cases in the past 30 years that have dealt with schools attempting to remove students with disabilities for behavioral reasons.¹⁰⁰ Particularly in the 90s as a response to the growing fear around drugs and gangs (exemplified in President Clinton's 1994 Crime Bill), the central question in these cases was how to balance the FAPE guarantee with school safety. School districts were particularly focused on how to prevent violence that involved students with disabilities, with many school districts arguing that IDEA tied their hands in responding to dangerous situations. For example, in the *Morgan v. Chris L. (1994)* case, the school system involved filed a certiorari petition arguing that

"...If a student is holding another student or a teacher at gunpoint or a serious gang fight involving disabled students breaks out in the school, school officials would be in violation of the IDEA if they called the police because the student may be ultimately incarcerated."¹⁰¹

It is worth noting that this hypothetical is based on a falsehood: IDEA has never prohibited schools from making referrals to police in situations in which a crime has been committed.

⁹⁹ Dean Hill Rivkin, "Decriminalizing Students with Disabilities," *New York Law School Law Review* 54 (2009/2010): 914.

¹⁰⁰ See: *Honig v. Doe (1988)*, *Morgan v. Chris L. (1994)*, *Community Consolidated Sch. Dist. #93 v. John F. (2000)*, *Joseph M. v. Se. Delco Sch. Dist. (2001)*, *E.B. v. NYC Dept. of Education (2015)*.

¹⁰¹ Rivkin, "Decriminalizing Students with Disabilities," 934.

Nevertheless, these alarmist arguments gained traction, and in the 1997 amendment of IDEA Congress added specific language that, while technically not making any changes to the existing policy, explicitly gave schools permission to involve police when dealing with students with disabilities:

“Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.”¹⁰²

At the time, advocates argued that this section - existing in the most current version of IDEA as section (k)(6) - essentially constitutes an open invitation for school systems to utilize the juvenile courts as an avenue for removing students with disabilities.¹⁰³ In practice, this has proven to be true: for example, one study on Virginia juvenile courts found that inappropriate referrals are overwhelming the juvenile justice system, particularly mental health and school-related cases.¹⁰⁴ A 2007 opinion by an IDEA hearing officer even went so far as to hold that if school officials subjectively believe that a student’s conduct might be characterized as “criminal,” they may report the student to the police.¹⁰⁵ Ultimately, then, section (k)(6) essentially serves as a loophole that undermines the goal of other IDEA policies like the 10-day-rule by allowing schools to use the criminal justice system as a way around FAPE requirements.

Our society’s view of youth with disabilities as inherently deviant is directly connected to the existence of policies like section (k)(6) that pathologize and criminalize these individuals in schools. It is important to acknowledge that this modern notion of deviance is heavily racialized

¹⁰² Individuals with Disabilities Education Improvement Act of 2004

¹⁰³ Rivkin, “Decriminalizing Students with Disabilities,” 936.

¹⁰⁴ *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, ABA Juvenile Justice Center (2002).

¹⁰⁵ *Marshall v. Harwich Public Schools* (Commonwealth of Massachusetts Bureau of Special Education Appeals, May 22, 2007).

and gendered, as the behavior of black and brown youth in particular is seen as more threatening and dangerous to the learning environment and is therefore disciplined more severely. When the model of individualization advocated by IDEA is mapped onto existing raced and gendered conceptions of deviance, policies like (k)(6) serve as express pathways within the school-to-prison pipeline for the most marginalized students with disabilities.

The lives of many students with disabilities, especially students of color, have been directly impacted by the reliance on the (k)(6) section of the IDEA. Some examples of juvenile court cases brought under the IDEA include: a Kentucky student charged with drug trafficking after a classmate pressured her into sharing some of her prescription Adderall; a Minnesota student charged with fifth degree assault and disorderly conduct after shoving a classmate and an education assistant and threatening a teacher (with no resulting damage or injuries); an Alabama student being arrested for violating his probation after he made a verbal threat to a teacher and used profanity in the principal's office; and two Minnesota students being charged with disorderly conduct after tipping off a classmate's hat and tapping his foot during class.¹⁰⁶ As these examples illustrate, the juvenile justice system is rife with inappropriate referrals of students with disabilities. This is able to happen because courts have assumed that police and prosecutorial discretion will serve as a check on inappropriate school referrals, when in reality this has not been the case.¹⁰⁷ In particular, this often doesn't occur because the responding police officer is usually unaware that a child has a disability. Ultimately, it is clear that schools' inability to easily suspend or expel students with disabilities under IDEA has not eliminated these students' removal, but instead has re-routed the removal process more directly through the

¹⁰⁶ Rivkin, "Decriminalizing Students with Disabilities," 942-943.

¹⁰⁷ *Ibid.*, 943.

criminal justice system. Section (k)(6) therefore serves to adjudicate the life chances of students with disabilities by creating an avenue through which biopolitical logics can enter the classroom.

Reimagining Justice under IDEA: Conclusions

Ultimately, the individual model's notion of justice for students with disabilities (exemplified by FAPE) is insufficient. It is not enough to simply give disabled students access to, and support within, our existing educational system; as policies like section (k)(6) demonstrate, receiving accommodations doesn't negate a capitalistic notion of personal responsibility or the consequences for violating norms of behavior. Success in this model is understood as the student's ability to achieve an educational experience as approximate as possible to that of a non-disabled student, and when the student inevitably fails to do so there is no accountability for the larger system. When students with disabilities fail to succeed in this system, educators and policymakers can then use this as evidence that people with disabilities are less capable by shifting responsibility to disabled students for their "inability" to succeed, reinforcing the logic of the individual model. Ultimately, then, IDEA's understanding of justice as primarily focused on access over achievement is failing our youth; the system is more concerned with giving students with disabilities the chance to achieve the American dream than ensuring that that dream is actually fulfilled.

In light of the failure of IDEA to provide real opportunities and support to students with disabilities, it is worth considering how a conception of disability outside of the individual model might allow for a different educational experience for disabled youth. The capability model's greatest strength is its ability to highlight inequity without sacrificing an analysis of standard of living, as the capability approach "focuses on the ends instead of the means of well-being, that is,

on capabilities instead of resources.”¹⁰⁸ Therefore, the capability model calls for us to think beyond access to tangible accommodations, instead prompting us to focus on individual agency and well-being. To make this shift, we must prioritize capabilities over barriers, asking not what students with disabilities are lacking but instead what educational success looks like to them and what resources they need put in place in order to achieve it.

Policies like (k)(6) make it impossible for schools to consider a student’s capabilities because they focus not on a student’s potential but on a student’s limits. A capability approach to IDEA would therefore require a centering of the student and their family as the foundation for all accommodations, and would see actions that would otherwise be labeled as disadvantages in a more nuanced light. For example, under IDEA teachers might give a child with ADHD who is unable to sit still frequent breaks or access to some sort of fidget toy to use during class; under the capability approach, however, teachers might view the student’s movement as an asset to their learning and encouraged rather than suppressed or rerouted. Through the capability approach, this child’s movement is only a disadvantage when the appropriate resources aren’t provided and the physical space is not designed appropriately; in this example, this means that the student’s constant movement is only a disadvantage in an educational system primarily focused on doing quiet work at a desk.¹⁰⁹ Instead of viewing such movement as a disability that requires management, under the capability model a teacher might instead integrate movement into the classroom environment through more kinesthetic activities. In this way, the student’s disability is not a barrier to their education but rather an asset, and is the source of potential new ways of learning in the classroom. Ultimately, then, success within the capability model looks

¹⁰⁸ Reindal, “Disability, Capability, and Special Education,” 159.

¹⁰⁹ Lorella Terzi, “Beyond the Dilemma of Difference: The Capability Perspective on Disability and Special Educational Needs,” *Journal of Philosophy of Education* 39, no. 3 (2005): 453.

different for each student, rather than the individual model's broad view of success as approximation to normalcy. In this way, a new way of imagining justice for disabled students is based not on minimizing the impact of a student's disability on their education, but instead on centering the voices of a student and their family and incorporating that student's impairment into their potential for achieving well-being, however they define it.

Chapter 2 Race, Disability, and the School-to-Prison Pipeline

While IDEA has in many ways significantly benefited the educational experiences of students with disabilities since its enactment in 1975, these benefits have not been equitably distributed. All students with disabilities face substantial barriers in accessing a full education, but youth of color with disabilities disproportionately experience “inadequate services, low-quality curriculum and instruction, and unnecessary isolation from their nondisabled peers” in ways that white disabled students do not.¹¹⁰ One way that this manifests is in how students of color are disproportionately identified as qualifying for IDEA; for example, black, Latinx, and indigenous students are over-identified in the categories of Specific Learning Disability, Emotional Disturbance, and Intellectual Disability, but under-identified in the category of Autism Spectrum Disorder.¹¹¹ In contrast, Asian American and Pacific Islander (AAPI) students are underrepresented in Specific Learning Disability identifications.¹¹² In congruence with this disproportionate identification, students of color with disabilities also experience exclusionary discipline, in-school arrests, and interactions with the criminal justice system that are incommensurate with their percent of the student population.¹¹³ These more punitive responses to disabled students of color reflect the focus on correctional and retributive responses to school infractions at the time of IDEA’s enactment, demonstrating the ways that discourses of racialized violence have become embedded into this policy. These disproportionalities ultimately

¹¹⁰ Daniel J. Losen and Gary Orfield, “Introduction,” in *Racial Inequity in Special Education* (Harvard Education Press, 2002), xv.

¹¹¹ Dara Shifrer, Chandra Muller, and Rebecca Callahan, “Disproportionality and Learning Disabilities: Parsing Apart Race, Socioeconomic Status, and Language,” *Journal of Learning Disabilities* 44, no. 3 (2011): 247.

¹¹² Shifrer et al., “Disproportionality and Learning Disabilities,” 247.

¹¹³ “Civil Rights Data Collection Data Snapshot: School Discipline Issue Brief No. 1,” *U.S. Department of Education Office for Civil Rights* (March 2014).

demonstrate how IDEA has failed to provide the same level of educational accessibility to disabled students of color that it provides to white students with disabilities, despite the fact that the law is prima facie racially neutral.

Over time, the relationship between race and disability in education has caught the attention of the federal government. In response, Congress first mandated the collection and monitoring of data on disproportionality in the IDEA amendments of 1997.¹¹⁴ Congress then made the problem of racial disproportionality a priority in 2004, primarily in response to the fact that neither the 1997 amendments nor the Department of Education's Office for Civil Rights (OCR) enforcement policy appeared to have made significant gains toward resolving the problem.¹¹⁵ Despite Congress's focus on this issue, however, there have been few gains toward the equitable treatment of disabled students of color under IDEA in the past decade, as racial disproportionality in identification and disciplinary action under IDEA remains significant. This phenomenon continues to go unaddressed for an important reason: while Congress's mandate of data collection is certainly important to understanding this issue, any discussion of inequities in special education must also include a discussion of power that is rooted in histories of race, class, gender, and disability in this country. This consideration of power is currently missing from mainstream discussions about race and IDEA, and as a result disabled students of color are suffering.

With this in mind, in this chapter I will examine both empirical data and the historical development of the disabled subject in the United States to understand how and why racial disproportionality under IDEA occurs. Through this chapter's analysis, I will attempt to expose

¹¹⁴ Susan Fread Albrecht et al., "Federal Policy on Disproportionality in Special Education: Is It Moving us Forward?," *Journal of Disability Policy Studies* 23, no. 1 (2011): 15.

¹¹⁵ Albrecht et al., "Federal Policy on Disproportionality in Special Education," 15.

the ways in which the social constructions of race and disability are mutually constitutive of one another in public education. As a law, IDEA both reflects and informs societal discourses about youth with disabilities, and it is important to recognize that these discourses are fundamentally intertwined with discourses of race. When non-whiteness is itself viewed as a disability, students of color become subsumed into that category regardless of their actual performance or behavior. A biopolitical perspective reveals these students as not merely different but burdensome – and potentially even threatening – to the rest of the student population. When combined, these discourses of race and disability therefore construct disabled students of color as deviant bodies that pose a threat to the social order. As a result, the removal of these “deviant” students from regular classrooms via seclusion, segregation, exclusionary discipline, and/or arrest becomes legitimized as a necessary course of action.¹¹⁶ In this construction, the needs of white and able-bodied students are always centered by the state, and as a result students of color with disabilities are forced into the margins of public education.

Racial Disproportionality Under IDEA: The Data

Since the law’s passage, data has shown that students of color are disproportionately identified as having a disability under IDEA. A 1970s national survey by OCR found that black children represented 38% of students in classes for the “educationally mentally retarded” despite making up only 16% of total enrollment.¹¹⁷ These imbalances were only marginally improved by 1998, with black children constituting 17% of total school enrollment and 33% of students

¹¹⁶ Yolanda Anyon, “Sociological Theories of Learning Disabilities: Understanding Racial Disproportionality in Special Education,” *Journal of Human Behavior in the Social Environment* 19, no. 1 (2009): 48.

¹¹⁷ Losen and Orfield, “Introduction,” xv-xvi.

labeled mentally retarded at that time.¹¹⁸ Today, black students make up 19% of students with disabilities and 16% of total enrollment.¹¹⁹ While these numbers show a significant improvement in the general trend of overrepresentation for black students under IDEA, a closer look reveals that dramatic disproportionalities still remain for certain disability categories; in particular, in 2006 black students made up 21% of students identified as having a specific learning disability (e.g. dyslexia, auditory processing disorder) and 28% of students identified as having an emotional disturbance.¹²⁰ Latinx students experience similar rates of overrepresentation in the category of specific learning disability, and indigenous students are even more likely than black students to receive services in these categories.¹²¹ Interestingly, AAPI students are actually at lower risk than all other students (including white students) of being identified as having either a learning disability or an emotional disturbance, and black and Latinx students are less likely to be identified as having Autism Spectrum Disorder.¹²² It is therefore believed that schools are over-identifying certain students of color as having a disability and, as a result, unnecessarily segregating and excluding them from the general classroom; simultaneously, it is believed that schools are ignoring other students of color who actually need these services, leaving these students to unnecessarily struggle in school. In both of these cases, the relationship between race and disability identification under IDEA severely impacts the life chances of students of color.

Once youth have been identified as needing services under IDEA, race continues to play a significant role in how these students experience their education. One vital educational aspect

¹¹⁸ Ibid., xvi.

¹¹⁹ Lauren Musu-Gillette et al., “Status and Trends in the Education of Racial and Ethnic Groups 2016,” *National Center for Education Statistics*, August 2016, 32.

¹²⁰ Christina A. Samuels, “Minorities in Special Education Studied by U.S. Panel,” *Education Week*, December 6, 2007.

¹²¹ Samuels, “Minorities in Special Education.”

¹²² Shifrer et al., “Disproportionality and Learning Disabilities,” 247.

that race impacts for students with disabilities is classroom setting. The most common instructional settings for disabled students are Inclusive, Resource Room, and Substantially Separate. Students are considered to be in an Inclusive setting if they receive special education and related services outside the general classroom for less than 21% of the school day, in a Resource Room setting if they receive services outside of the general classroom between 21% and 60% of the school day, and in a Substantially Separate setting if they receive services outside the general classroom for greater than 60% of the school day.¹²³ Disabled students of color, particularly black students, are more likely than other students to receive instruction in non-inclusive settings, even within the same disability category.¹²⁴ In particular, data has shown that black disabled students are more than twice as likely to be in Substantially Separate settings than their white disabled peers, especially black low-income students in under-resourced schools.¹²⁵ Within these settings, students of color are also more likely to experience physical restraint; for example, black students represent 19% of students with disabilities served by IDEA but 36% of these students who experience restraint at school through the use of a mechanical device or equipment designed to restrict freedom of movement (i.e. straps and belts).¹²⁶ Combined, restrictive and segregated settings have a significant detrimental impact on the lives of disabled students of color, as youth taught in these settings “are subjected to lower expectations and have diminished exposure to the general education curriculum that students need to be successful in school and in life.”¹²⁷ As a result, these students are more likely to receive lower grades, achieve

¹²³ Edward Garcia Fierros and James W. Conroy, “Double Jeopardy: An Exploration of Restrictiveness and Race in Special Education,” in *Racial Inequity in Special Education* (Harvard Education Press, 2002), 42-43.

¹²⁴ Albrecht et al., “Federal Policy on Disproportionality in Special Education,” 15.

¹²⁵ Fierros and Conroy, “Double Jeopardy,” 45.

¹²⁶ “Civil Rights Data Collection Data Snapshot: School Discipline”

¹²⁷ Albrecht et al., “Federal Policy on Disproportionality in Special Education,” 15.

lower scores on standardized tests, and attend fewer days of school than students in general education classrooms.¹²⁸ As I will argue in this chapter, this means that the ideology of a “separate but equal” education is still very much alive for students of color, with disability identification in many ways serving as a stand-in for racial difference.

In addition to experiencing increased restrictiveness and segregation from their non-disabled peers, disabled students of color also face disproportionate disciplinary measures when compared to all other students. In particular, disabled students of color are more likely to experience exclusionary discipline: more than one out of four boys of color with a disability and nearly one in five girls of color with a disability receives an out-of-school suspension.¹²⁹ Disabled students of color, particularly black students, also face a disproportionate likelihood of in-school arrest or referral to law enforcement. For example, in the 2011-2012 school year, black students with disabilities made up 7.8% of school-related arrests and 6.4% of student referrals to law enforcement despite making up only 2.3% of the U.S. student population.¹³⁰ Combined, this data overwhelmingly suggests that the school-to-prison pipeline is funneling students of color with disabilities into the criminal justice system at disproportionate rates.

Race and Disability: An American History

Why are disabled students of color experiencing disproportionate identification under IDEA? The answer to this question given by researchers and members of the Department of Education tend to fall under one of two positions: either “(a) disproportionality is the result of a system that works in a biased, discriminatory fashion, or (b) disproportionality is the result of

¹²⁸ Fierros and Conroy, “Double Jeopardy,” 42.

¹²⁹ “Civil Rights Data Collection Data Snapshot: School Discipline”

¹³⁰ Amanda Merkwae, “Schooling the Police: Race, Disability, and the Conduct of School Resource Officers,” *Michigan Journal of Race and Law* 21, no. 1 (2015): 157.

social factors that lead to higher rates of disability in some groups.”¹³¹ While both of these ideas are certainly important (and I examine them at length later in this chapter), few scholars have connected this phenomenon in our current special education system to the historical relationship between race and disability more broadly. As a result, most conversations about the disproportionate identification of students of color as disabled begin at IDEA’s passage in 1975. However, we must remember that Congress did not form IDEA, and other laws and policies that govern the lives of students with disabilities, in a vacuum – they created it in the shadow of this nation’s legacy of racism, and as a result we cannot disconnect the law from a larger history of disability in this country. Any complete history of disability in the United States *must* include a discussion of race, as both of these categories were historically constructed alongside one another. Just as the category of “disability” is traditionally viewed through the lens of the individual model (as discussed in Chapter 1), race is also most often understood as a biological and individualized aspect of a person’s identity rather than a socially constructed one. In particular, both race and disability have always been fundamental to the United States’ understanding of who is considered a citizen deserving of certain rights – in this case, the right to an education. To understand disproportionality in special education we must therefore take this history seriously and closely examine its connections to the experiences of disabled students of color today.

The relationship between disability and citizenship in the United States is a fundamental one. Historically, “Americans have feared and stigmatized disabilities, equating them with

¹³¹ Donald P. Oswald and Martha J. Coutinho, “What Is Disproportionate Representation?” *The Special EDge* 20, no. 1 (Autumn 2006): 6.

dependency and incapacity for full citizenship.”¹³² This idea of people with disabilities as inherently unable to handle the responsibility of citizenship has functioned historically to position disability as a threat to the nation, ultimately allowing the United States to justify inequality for disabled people. However, this line of justification for denying citizenship has not been limited only to this population; the concept of disability has also been used in a larger biopolitical project to justify discrimination against other groups through associating disability with that group.¹³³ As Douglas C. Baynton notes: “When categories of citizenship were questioned, challenged, and disrupted, disability was called on to clarify and define who deserved, and who was deservedly excluded from, citizenship.”¹³⁴ For racial minorities, the connection between race and disability has always been elevated in discussions about equal treatment. This connection began at the nation’s founding, as disability arguments dominated justifications of slavery in the late 1700s and early 1800s. The most frequently used argument in support of slavery was the positioning of slaves as threats by arguing that black people were inherently mentally deficient compared to white Americans but superior in strength and speed; in other words, the “weak” black mind was unable to control the “superhuman” black body. As a result of this threat, proponents of slavery therefore argued that black people were unable to participate equally in society as citizens, and that slavery was a necessary system to control this population.¹³⁵ Proponents of slavery used scientific “evidence” to back up this argument of mental inferiority; for example, an 1851 article in the *New Orleans Medical and Surgical Journal* explained,

¹³² Alison M. Parker, “Intersecting Histories of Gender, Race, and Disability,” *Journal of Women’s History* 27, no. 1 (2015): 179.

¹³³ Douglas C. Baynton, “Disability and the Justification of Inequality in American History,” in *The New Disability History: American Perspectives* (New York University Press, 2001), 33.

¹³⁴ Baynton, “Disability and the Justification of Inequality in American History,” 33.

¹³⁵ Parker, “Intersecting Histories of Gender, Race, and Disability,” 182.

“It is this defective hematosiis, or atmospherization of the blood, conjoined with a deficiency of cerebral matter in the cranium, and an excess of nervous matter distributed to the organs of sensation and assimilation, that is the true cause of that debasement of mind, which has rendered the people of Africa unable to take care of themselves.”¹³⁶

In this way, slave owners relied on scientific racism that cited the dependent nature of black people to justify the necessity of slavery as an institution.

In addition to the idea that slaves were unfit for citizenship due to their dependency, proponents of slavery also relied on a contradictory argument that black people were “prone to become disabled under conditions of freedom and equality.”¹³⁷ To justify the continued enslavement of black people in the face of increased abolitionist rhetoric in the early 1800s, scientists pointed to the existence of mental illnesses like “Drapetomania,” a condition that supposedly caused slaves to run away as a result of their masters treating them as equals.¹³⁸ Researchers also warned that educating slaves was a disabling force, claiming that “an ‘educated negro,’ like a ‘free negro,’ is a social monstrosity, even more unnatural and repulsive than the latter.”¹³⁹ A similar logic of pathologizing resistance to oppression was also projected onto indigenous people, who were understood as “savages” in need of management. The government viewed indigenous people who resisted this control as disabled: from 1899 to 1933, indigenous people who “resisted reservation agents, refused kidnapping of their children to Indian Residential Schools, or violated laws that criminalized traditional spiritual practices were sent to the Hiawatha Asylum for Insane Indians in Canton, South Dakota.”¹⁴⁰ White Americans’ default

¹³⁶ Samuel A. Cartwright, “Report on the Diseases and Physical Peculiarities of the Negro Race,” *The New Orleans Medical and Surgical Journal*, May 1851.

¹³⁷ Baynton, “Disability and the Justification of Inequality in American History,” 37.

¹³⁸ *Ibid.*, 38.

¹³⁹ John H. Van Evrie, *White Supremacy and Negro Subordination; Or, Negroes a Subordinate Race, and (so-called) Slavery Its Normal Condition* (Horton & Company, 1870), 221.

¹⁴⁰ Andrea J. Ritchie, *Invisible No More: Police Violence Against Black Women and Women of Color* (Beacon Press, 2017), 91-92.

assumption was that black and indigenous people were threatening to white people and therefore required segregation and management; in this logic, anyone who they viewed as disobedient, unlawful, and/or un-orderly must therefore be disabled. In all of these arguments for maintaining the subordination of black and indigenous people, connecting race and disability was central.

The attribution of disability to justify discrimination has not historically been limited to black and indigenous people, as “the concept of disability was [also] instrumental in crafting the image of the undesirable immigrant.”¹⁴¹ Notably, the first significant federal immigration law, the Immigration Act of 1882, barred entry to any “lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge.”¹⁴² This law served as an explicit denial to people with disabilities as being eligible for citizenship, citing dependence as the factor most opposed to the nation. The creation of the category “likely to become a public charge” was significant in its vagueness, as it allowed over time for the government to steadily expand who fit into that category beyond people with clear disabilities. Eugenics rhetoric claiming that immigrants from nations outside of western Europe were mentally deficient dominated discussions of immigration in the early 1900s, and throughout the twentieth century the United States broadened this idea in order to “keep out poor Asian Indians and Mexicans” who it saw as a threat to the (white) nation.¹⁴³ In this construction, being non-white (that is, not hailing from a western European country) is almost a disability in and of itself. Clearly, the concept of disability has been central to the construction of race in the United States from the very beginning.

Race and Disability Identification in Public Schools

¹⁴¹ Baynton, “Disability and the Justification of Inequality in American History,” 45.

¹⁴² An Act to Regulate Immigration, 22 Stat. 214 (1882).

¹⁴³ Roger Daniels and Otis L. Graham, *Debating American Immigration, 1882-Present* (Rowman & Littlefield, 2001), 14.

The legacy of “the disabling of race and the racing of disability” in the United States can be directly connected to the experience of disabled students of color in public schools today.¹⁴⁴ Because the social construction of race in the United States has been mutually reinforcing of the social construction of disability, it is impossible to talk about one concept without the other. Youth of color’s identification as disabled at such high rates can therefore be better understood in this context of racism’s historical connection to the language of disability. This becomes especially apparent when considering what categories of disability students of color tend to be associated with. Students of color are disproportionately identified as having learning, behavioral, and intellectual disabilities, while rates of identification for physical disabilities remain relatively equitable across races.¹⁴⁵ It is noteworthy that students of color are disproportionately represented in the IDEA categories “related to subjective cognitive and behavioral disabilities,” as identification under these disability categories rely less on objective and observable information and more on subjective interpretations of a student’s behavior, abilities, and performance.¹⁴⁶ Just as proponents of slavery used the concepts of “mental weakness” or “insanity” to justify racism and oppression in the 18th and 19th centuries, public schools today often disproportionately map disability onto students of color to justify the disparate academic achievement rates of these students. This relationship between race and “soft” (or more subjectively identified) disabilities therefore illustrates the spaces in which social biases and assumptions are able to enter the classroom for students of color.

To understand the disproportionate identification of disabilities for students of color, it is important to remember that educational categories are not neutral or objective, but rather reflect

¹⁴⁴ Camille A. Nelson, “Racializing Disability, Disabling Race: Policing Race and Mental Status,” *Berkeley Journal of Criminal Law* 15, no. 1 (Spring 2010): 5.

¹⁴⁵ Anyon, “Sociological Theories of Learning Disabilities,” 45.

¹⁴⁶ *Ibid.*

particular ideologies and come about in response to social needs. For example, one educational phenomenon that our society considers to be “natural” and therefore rarely questions is the grouping of students by age. This phenomenon emerged in response to ideas about child development, but the truth is that it’s an arbitrary distinction; students aren’t inherently limited in their educational abilities based on how old they are. This same idea can also be applied to categories of disability. Students are not inherently “learning disabled” or “emotionally disturbed,” for example; instead, schools give students that label in relationship to statistically-derived standards of academic performance or social behavior – standards that emerge based on the equally arbitrary classification of what a student should be like at a particular age.

Like age-based schooling, disability categories emerge in response to specific social contexts. For example, Christine E. Sleeter argues that the category of “learning disability” emerged at a specific time for a specific purpose: “to differentiate and protect white middle class children who were failing in school from lower class and minority children.”¹⁴⁷ Sleeter details how the “learning disability” category’s creation in the early 1960s occurred in order to explain the failures of white middle class children in schools;¹⁴⁸ unlike other disability categories, “learning disability” could apply to students with high IQs, and therefore schools could differentiate white students who struggled academically from failing students of color by allowing white youth to be understood as “smart” students who were failing as a result of a condition that was out of their control.¹⁴⁹ This example of the origins of the “learning disabled” category demonstrates the ways in which race and disability categories are mutually constitutive

¹⁴⁷ Christine E. Sleeter, “Why Is There Learning Disabilities? A Critical Analysis of the Birth of the Field in Its Social Context,” in *The Formation of School Subjects: The Struggle for Creating an American Institution* (Palmer Press), 212.

¹⁴⁸ Sleeter, “Why Is There Learning Disabilities?,” 211.

¹⁴⁹ *Ibid.*, 226-227.

of one another in public education. Over the past 30 years, however, the underlying racial component of this category has changed; pressure from minority groups to end the use of categories like “slow learner” and “mentally retarded” (categories which were both used disproportionately for students of color) has resulted in a shift toward the use of the learning disabled category in their place.¹⁵⁰ While white students still make up the majority of students identified as learning disabled today, students of color are now identified at significantly higher rates than their white classmates. Importantly, the original intent of the “learning disabled” label (to remove responsibility from failing white middle class youth) has also morphed as the label has become connected to students of color, as learning disabled students of color are still seen as responsible for their actions in a way that their white peers are not. This difference in responsabilization reflects the contradictory logic and double standard of disability that had also existed under slavery.

Though we know that disability categories like “learning disabled” are highly socially constructed, educators often take for granted that these categories accurately reflect real differences among students. However, by accepting these categories, educators are also tacitly accepting the various underlying racial ideologies embedded within them. This interaction between ideology and educators is important, as teachers serve as the main connection between students’ performance in class and their identification as having a disability. Teachers have significant discretion in determining who is assessed for “soft” disabilities (i.e. learning disabilities, emotional disturbance, and intellectual disabilities), and as such it is critical to examine how and why teachers view their students as (dis)abled. Importantly, research has shown that teachers’ primary way of determining who should be assessed is based on “who [is]

¹⁵⁰ Ibid., 231-232.

causing the biggest problems in the classroom, be it passivity, failure to learn material, or aggressiveness.”¹⁵¹ In other words, teachers tend to associate disruption with disability. In practice, this means that teachers are more likely to refer students who attract more attention for assessment while tending to not identify children who are less noticeable.¹⁵²

If gaining teachers’ attention is directly connected to disability identification, then it’s necessary to ask: who do teachers notice, and why? To answer this question, it is important to consider who teachers are: as of 2016, 80% of all public school teachers are white.¹⁵³ This statistic is especially noteworthy given the rapidly diversifying student population, as students of color made up 50% of all students in 2014 and are projected to make up 55% by 2026.¹⁵⁴ As these statistics illustrate, white teachers are more likely than ever to be educating students of color. This is significant, as studies have found that white teachers perceive the behavior of students of color more severely than do teachers of color, due to factors including implicit biases and unexamined assumptions, cultural mismatch with students, and teacher preparation programs that insufficiently deal with issues of race.¹⁵⁵ As a result, this means that “most teachers prefer students who behave in ways that reflect values, attitudes, and expressive patterns of dominant racial and class groups.”¹⁵⁶ In addition, students of color are more likely than their white classmates to gain the attention of their teachers by “acting out” at school, as the dominant public

¹⁵¹ Anyon, “Sociological Theories of Learning Disabilities,” 48.

¹⁵² Ibid.

¹⁵³ U.S. Department of Education, National Center for Education Statistics, *Characteristics of Public Elementary and Secondary School Teachers in the United States: Results From the 2015-2016 National Teacher and Principal Survey* (August 2017), 3.

¹⁵⁴ U.S. Department of Education, National Center for Education Statistics, *The Condition of Education 2017* (May 2017).

¹⁵⁵ Walter S. Gilliam et al., “Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?” *Yale University Child Study Center*, September 28, 2016, 12.

¹⁵⁶ Anyon, “Sociological Theories of Learning Disabilities,” 53.

school curriculum is Eurocentric and oftentimes doesn't reflect non-white students' lived experiences. Studies have shown that students are more likely to exhibit "resistant behaviors" when there is a mismatch between the curriculum and their background;¹⁵⁷ as a result, students of color are more likely to become disengaged from their class material, resulting in behaviors that teachers might interpret as disruptive.¹⁵⁸ With all of this in mind, it makes sense that black, Latinx, and indigenous students are therefore more likely to gain negative attention from their white teachers and ultimately be referred for evaluation at higher rates. In fact, one study found that as the percentage of black teachers increased, overrepresentation of black students in the "emotionally disturbed" category decreased; this statistic illustrates the correlation between teacher discretion and disproportionate racial identification in special education.¹⁵⁹

Once a teacher has referred a student, race plays a continuing role in the evaluation process to determine if that student qualifies under IDEA. I have already detailed in Chapter 1 the ways in which the IEP evaluation process relies on arbitrary and subjective information in identifying if a student has a disability, but it is also important to consider how race interacts with this process in unique ways for students of color. For example, while researchers have demonstrated that means of assessment used in the evaluation process (i.e. IQ exams and standardized tests) communicate very little about students' school achievement in general, this is particularly true for students of color. These psychological assessment tools have "long been criticized for being culturally biased in favor of white, native-English-speaking, upper- and middle-class individuals."¹⁶⁰ Many of the standardized assessment tools were created with an assumption that youth all have a particular cultural context and socialization process (one that is

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Albrecht et al., "Federal Policy on Disproportionality in Special Education," 15.

¹⁶⁰ Anyon, "Sociological Theories of Learning Disabilities," 53.

dominant in white middle class communities), and as a result these tests are often unable to differentiate between a student's academic abilities and their experiences that may have resulted in different communication styles, language, and understandings of social norms.¹⁶¹ Diagnostic procedures can also vary dramatically depending on the school district and resources available, meaning that a student who might be considered learning disabled in one district might not be in another.¹⁶² This is especially relevant for students of color who are disproportionately in underfunded districts, as a lack of resources to adequately assess a child may result in an inappropriate identification of a disability. An analysis of the role of race in the IEP evaluation process is consequently vital to understanding the overrepresentation of students of color in special education.

Though trends of overrepresentation get significant attention, when talking about racial disproportionality under IDEA it is important to also discuss areas of underrepresentation. In fact, examining trends of racial underrepresentation can help us to better understand the phenomenon of disproportionality as a whole. For instance, AAPI students are significantly less likely than all students – including white students – to receive services under IDEA.¹⁶³ While not as studied as overrepresentation, scholars who have analyzed this trend for AAPI youth have considered the role of the “model minority myth” in how schools view AAPI students. The model minority myth is a stereotype that “Asian Americans have successfully assimilated into U.S. society, implying that racism is no longer a barrier to social mobility” for this population.¹⁶⁴

¹⁶¹ Ibid.

¹⁶² D. Kim Reid and Michelle G. Knight, “Disability Justifies Exclusion of Minority Students: A Critical History Grounded in Disability Studies,” *Educational Researcher* 35, no. 6 (2006): 19.

¹⁶³ Shifrer et al., “Disproportionality and Learning Disabilities,” 247.

¹⁶⁴ North Cooc and Man Yang, “Underrepresented and Overlooked: A Review of Asian American Children with Disabilities,” *Multiple Voices for Ethnically Diverse Exceptional Learners* 17, no. 1 (Spring 2017): 5.

This myth maintains the idea of Asian Americans as inherently intelligent and hard working, particularly when compared with other racial minority groups. In public schools, the model minority myth often translates into AAPI students being perceived as quieter and harder working than other students; it is probable that AAPI students are therefore often overlooked by teachers due to perceived “pro-academic” behaviors even when they might be struggling.¹⁶⁵ In addition to the underrepresentation of AAPI students in special education in general, black and Latinx students tend to be identified with Autism Spectrum Disorder much later than their white peers.¹⁶⁶ Though this topic is under-studied, researchers have tied this phenomenon in part to the significant association of autism with whiteness in popular discourse.¹⁶⁷ In addition, it has been noted that black and Latinx youth are more likely to live in low-income areas with underfunded healthcare and education resources that are important in providing an autism identification.¹⁶⁸

Combined, a trend of underrepresentation for certain disabilities and overrepresentation for others for different racial minority groups strongly suggests that disability identification actually reflects social differences rather than biological ones.¹⁶⁹ Of course, this idea has been disputed by some researchers and officials who have argued that certain racial minority groups are necessarily overrepresented in special education; proponents of this argument have pointed to public health factors like poverty, low birthweight, and lead exposure that racial minorities disproportionately experience as explaining the increased likelihood of racial minorities to

¹⁶⁵ Cooc and Yang, “Underrepresented and Overlooked,” 15.

¹⁶⁶ David S. Mandell et al., “Racial/Ethnic Disparities in the Identification of Children with Autism Spectrum Disorders,” *American Journal of Public Health* 99, no. 3 (2009).

¹⁶⁷ Paul Heilker, “Autism, Rhetoric, and Whiteness,” *Disability Studies Quarterly*, 2012.

¹⁶⁸ Heilker, “Autism, Rhetoric, and Whiteness.”

¹⁶⁹ Shifrer et al., “Disproportionality and Learning Disabilities,” 254.

experience cognitive and behavioral impairments.¹⁷⁰ But while it is certainly true that children living in poverty are less likely to have access to regular healthcare and are more likely to experience exposure to environmental factors that are detrimental to their health, this explanation doesn't account for the reality of disproportionality under IDEA. For example, if poverty and lack of access to healthcare is what accounts for overrepresentation for black, Latinx, and indigenous students, then why is it that over-identification of these racial minorities for special education is actually “particularly problematic in predominantly white, wealthy school districts?”¹⁷¹ Furthermore, how does this idea explain underrepresentation for certain racial minorities in some disability categories and not others? If poverty is what actually accounts for disproportionality, then AAPI groups who experience both poverty and lower academic achievement at greater rates than many other groups (i.e. Hmong and Cambodian youth) should experience overrepresentation in special education at similar rates to black, Latinx, and indigenous students – but this is not the case.¹⁷² Through examining disproportionate identification for students of color under IDEA, the social construction of disability in relationship with the social construction of race therefore becomes abundantly apparent.

The Intersections of Race and Gender in Disability Identification

When discussing racial disproportionality under IDEA, we must also talk about gender. The vast majority of all students identified as having a disability are male, particularly in the “soft” disability categories; for example, male students constitute roughly 70% of students

¹⁷⁰ Pennsylvania State University, “Minority Students’ Disabilities Less Likely to Be Identified in U.S. Schools,” Phys, November 16, 2017.

¹⁷¹ “Law Center Welcomes New Disproportionality Rule,” Public Interest Law Center.

¹⁷² Cooc and Yang, “Underrepresented and Overlooked,” 5-6.

identified as learning disabled and about 80% of students identified as emotionally disturbed.¹⁷³

The statistics for gender disproportionality are particularly striking when combined with race: black and Latinx males make up almost 80% of all youth in special education programs.¹⁷⁴

Unfortunately, very little research has been done on the reasons behind gender disproportionalities in special education - and the research on the intersections of disability and gender with race are almost nonexistent. Nevertheless, educators and policymakers cannot ignore the possible implications of these statistics. The significant number of boys of color identified under IDEA suggests that black and Latinx male students are being over-identified with a disability. This gendered component of disability identification further suggests a possible role of bias in special education referral and assessment procedures. A consideration of the over-identification of boys of color as disabled can therefore help us better understand racial disproportionality as a whole.

Like with racial disproportionality in general, researchers and officials have attempted to explain gender disproportionality in special education in two main ways. One argument is that male overrepresentation can be attributed to biological factors, with the hypothesis that boys “are more vulnerable to some genetically-determined disorders and pre-disposed to have some specific learning disabilities.”¹⁷⁵ Of course, this biological explanation does not add up when considering disability as a social construction. Furthermore, very little biological evidence exists to suggest that disability – especially learning disability – is gender specific or connected to

¹⁷³ The American Association of University Women, “AAUW’s Position on Educating Women and Girls with Disabilities,” July 2009, 2.

¹⁷⁴ National Education Association, “Race Against Time: Educating Black Boys,” *Focus On Blacks*, February 2011, 1.

¹⁷⁵ Michael L. Wehmeyer and Michelle Schwartz, “Disproportionate Representation of Males in Special Education Services: Biology, Behavior, or Bias?” *Education and Treatment of Children* 24, no. 1 (February 2001): 29.

particular sex-linked chromosomal abnormalities and risk factors.¹⁷⁶ A second argument for why gender disproportionality exists relies on a combination of behavioral differences and individual bias. Proponents argue that boys are more likely to have behavioral problems due to having higher activity levels than girls (and therefore causing more classroom disruption than their female peers). When this increased activity is combined with the gendered biases held by educators, they argue, male students are referred for evaluation at higher rates than female students.

There is much more evidence supporting this argument, as some studies have found that boys tend to be more active than girls for a variety of reasons “ranging from biology to sex-typed modeling to differential parent and teacher interactions based on sex-stereotyped roles.”¹⁷⁷ The gendered upbringing that children receive also has a direct impact on the kind of behavior students exhibit in the classroom, as our society socializes boys to be more assertive and take up more space in the classroom while socializing girls to be quieter and more obedient. As a result, boys are often more likely to exhibit “disruptive” behavior at school that will gain the attention of their teachers. When this socialization is combined with educators’ gendered expectations about how a “normal” girl or boy should behave, girls may often be under-identified with disabilities while boys are over-identified. Integrating gendered biases with racial ones leads to an even more devastating disproportionality for male students of color. The stereotype of the “superhuman” man of color who is unable to control his physically strong body positions black and Latinx boys as particularly threatening and disruptive in the classroom, leading to greater rates of identification. This racialized and gendered logic also applies to girls of color; while girls

¹⁷⁶ Wehmeyer and Schwartz, “Disproportionate Representation of Males in Special Education Services,” 30-31.

¹⁷⁷ *Ibid.*, 31.

of color are identified at lower rates than boys of color, they are still identified at higher rates than their white peers. Scholars largely attribute this trend for girls of color – especially black girls - to the historic representations of non-white femininity “coupled with contemporary memes – about ‘loud’ Black girls who talk back to teachers, ‘ghetto’ Black girls who fight in school hallways, and ‘ratchet’ Black girls who chew dental dams like bubble gum in classrooms” which have rendered girls of color “subject to a public scrutiny.”¹⁷⁸ This can ultimately lead to a view of girls of color as inherently disruptive upon entering the classroom, increasing the chances for inappropriate disability identifications.

Discipline, Race, and IDEA

In addition to the disproportionate identification of disabled students of color (especially black and Latinx males), these students also experience segregation, restraint, exclusionary discipline, and interactions with the juvenile justice system at higher rates than their peers. This is not surprising when considering the history of race and disability in this country, as “actual or perceived disability, including mental illness, has...served as a primary driver of surveillance, policing, and punishment” for people of color throughout U.S. history.¹⁷⁹ The historical connection between disability, race, and ineligibility for the rights of citizenship illuminates the ways in which our society operationalizes biopower to position disabled people of color as threatening to white American citizens and their rights (here, the right to an education). For students of color with disabilities, the right to a free and appropriate public education (FAPE) that is theoretically guaranteed to these students under IDEA is often conditional upon their

¹⁷⁸ Monique W. Morris, *Pushout: The Criminalization of Black Girls in Schools* (New York: The New Press, 2015), 12.

¹⁷⁹ Ritchie, *Invisible No More*, 91.

perceived threat to the general education classroom. This phenomenon can be attributed to what D. L. Adams and Nirmala Erevelles call “dis/respectability politics,” which they define as an idea that “casts the shadow of disability as dis/reputable so as to mute the violence in the everyday practices of schooling that justify the pathologization and criminalization of racialized bodies.”¹⁸⁰ While the term “respectability politics” has been used to describe the notion that people of color can supposedly counter negative racial perceptions by “aggressively adopting the manners and morality that the dominant culture deems ‘respectable,’”¹⁸¹ dis/respectability politics allows us to understand the ways in which disabled students of color are specifically punished for being unable and/or unwilling to adhere to accepted traditional modes of learning and behavior in schools.¹⁸² Through employing the assimilationist practices of dis/respectability politics, public schools ultimately work to move racialized and disabled youth along the trajectory of the school-to-prison pipeline.

One way this phenomenon manifests is through the segregation of disabled students of color. Though IDEA mandates that students with disabilities receive their education in the least restrictive environment (LRE) possible, a significant number of disabled students – especially disabled students of color – continue to be educated in segregated environments that are isolated from their non-disabled peers. The connection between a student’s race and what their school considers the LRE for that student is well documented, as it has been noted that white students are generally “only placed in more restrictive self-contained classes when they need intensive services. Students of color, however, may be more likely to be placed in the restrictive setting

¹⁸⁰ D. L. Adams and Nirmala Erevelles, “Shadow Play: DisCrit, Dis/respectability, and Carceral Logics,” in *DisCrit: Disability Studies and Critical Race Theory in Education*, (Teachers College Press, 2016), 133.

¹⁸¹ Tamara Winfrey Harris, “No Disrespect: Black Women and the Burden of Respectability,” Bitch Media, December 27, 2016.

¹⁸² Adams and Erevelles, “Shadow Play,” 133-134.

whether they require intensive services or not.”¹⁸³ For example, a 2008 report on special education in Massachusetts found that white students were 1.4 times more likely to be placed in a full inclusion setting than all other students, and as the setting became more restrictive their likelihood of being placed in those settings diminished.¹⁸⁴ In comparison, the report notes that black and Latinx students were half as likely as white students to be placed in a full inclusion setting, and as the setting became more restrictive their likelihood of being placed in those settings increased.¹⁸⁵ This trend is detrimental to youth of color, as segregated education environments are less academically rigorous and generally result in poorer academic and transition outcomes for students.¹⁸⁶

The data on racial segregation under IDEA indicates that schools are more likely to perceive students of color with disabilities as needing to be taken out of the general classroom than white disabled students. Using the notion of dis/respectability politics, I argue that this phenomenon serves as a biopolitical form of discipline for students of color, as segregation occurs not for the child’s benefit but for the benefit of others. As Yolanda Anyon notes, when disabled youth are placed into exclusionary settings “the beneficiaries are the other students in regular classes that have been disturbed by the student’s different needs, the teachers whose job is made less difficult by the student’s being removed from their classrooms, and parents who receive fewer complaints about their child’s behavior in class.”¹⁸⁷ Research has consistently shown that students do not benefit from being placed in these settings, yet their significant rate of

¹⁸³ Thomas Parrish, “Racial Disparities in the Identification, Funding, and Provision of Special Education,” in *Racial Inequity in Special Education* (Harvard Education Press, 2002), 26.

¹⁸⁴ Matthew Deninger, *Education Research Brief*, Office of Strategic Planning, Research, and Evaluation, Massachusetts Department of Elementary & Secondary Education (2008), 8.

¹⁸⁵ Deninger, *Education Research Brief*, 8.

¹⁸⁶ Beth A. Ferri and David J. Connor, “Tools of Exclusion: Race, Disability, and (Re)segregated Education,” *Teachers College Record* 107, no. 3 (March 2005): 458.

¹⁸⁷ Anyon, “Sociological Theories of Learning Disabilities,” 48.

occurrence for disabled students of color indicates that disability has in some ways become a more socially accepted category of marginalization for these youth.¹⁸⁸ As a consequence of their presence, students of color are inherently seen as a burden on the education of white students (both disabled and non-disabled), and in response these students are increasingly being labeled with a disability (regardless of whether or not it is appropriate) and isolated from their white peers. This has resulted in two largely separate and unequal education systems that are defined not only by disability but also by race: general education and special education.¹⁸⁹

Along with experiencing high rates of segregation, disabled students of color are also physically restrained and secluded at higher rates than all other students. Laws regarding physical restraint of students vary by state; as of 2016, 28 states have laws providing “meaningful protections against restraint and seclusion” for all children, and 38 states have these laws specifically for students with disabilities.¹⁹⁰ Massachusetts, for example, forbids physical restraint in public schools except if a student’s behavior poses an immediate threat. In practice, this means that Massachusetts has outlawed restraining devices and seclusion (confining students alone until they calm down), but in the case of emergency allows the use of physical holds like bear hugs or a restraint that pins students face-down on the ground.¹⁹¹ While these laws look very different depending on the state (Washington DC and New Jersey, for example, have either weak or nonexistent laws about restraint),¹⁹² research has found that disabled students of color are physically restrained and experience seclusion at significantly higher rates than all other

¹⁸⁸ Ferri and Connor, “Tools of Exclusion,” 454.

¹⁸⁹ *Ibid.*, 456.

¹⁹⁰ Jessica Butler, “How Safe Is the Schoolhouse?: An Analysis of State Seclusion and Restraint Laws and Policies,” *Autism National Committee* (2017), 4.

¹⁹¹ Collin Binkley, “Mass. Schools Physically Restrained Students 9,000 Times Last School Year,” WBUR, February 23, 2018.

¹⁹² Butler, “How Safe Is the Schoolhouse?,” 21-22.

students regardless of state laws.¹⁹³ This pattern is in alignment with the perceptions of people of color “as ‘deranged subjects’ prone to violence” who therefore require control.¹⁹⁴ When this racial threat is combined with the view of people with cognitive, behavioral, and intellectual disabilities as dangerous and requiring confinement, the restraint and seclusion of disabled youth of color almost becomes an inevitability.

While the impact of zero-tolerance policies is well documented for both students of color and students with disabilities, less attention has been paid to this phenomenon for the youth at the intersection of these identities. Importantly, “through the use of ‘zero-tolerance’ policies, schools have created institutions that police students through the surveillance of behavior and a hyper-vigilance directed toward students marked as both raced *and* disabled.”¹⁹⁵ The statistics for this trend are staggering: for example, approximately one-quarter of black, Latinx, multi-racial and indigenous boys with disabilities experienced at least one out-of-school suspension in the 2013-2014 school year – a figure that is double the rate among all disabled youth and over four times the rate for all public school children.¹⁹⁶ As I laid out in the Introduction, zero-tolerance policies that result in practices like suspension and expulsion are increasingly used inappropriately for more minor offenses like tardiness and disruption as opposed to their original intention of curbing the presence of weapons, alcohol, and drugs in schools.¹⁹⁷ This is especially true for disabled students of color, as acts of perceived “disruption” are responsible for a

¹⁹³ “Civil Rights Data Collection Data Snapshot: School Discipline.”

¹⁹⁴ Ritchie, *Invisible No More*, 96.

¹⁹⁵ Adams and Erevelles, “Shadow Play,” 137.

¹⁹⁶ *The School-to-Prison Pipeline: The Intersections of Students of Color with Disabilities*, U.S. Commission on Civil Rights (2017) (testimony of Kristen Harper).

¹⁹⁷ Douglas J. Gagnon, Eleanor M. Jaffee, and Reeve Kennedy, “Exclusionary Discipline Highest in New Hampshire’s Urban Schools,” *University of New Hampshire Casey School of Public Policy*, no. 46 (Winter 2016): 3.

significant amount of exclusionary discipline experienced by this population.¹⁹⁸ It has been suggested that this trend is a combined result of teachers receiving inadequate training and support in dealing with behavioral issues for disabled youth and teachers' individual biases that result in viewing youth of color as more dangerous than other students. Through this logic, schools perceive disabled students of color who do not participate in dis/respectability politics as willfully defiant and thus dangerous to the student population as a whole, ultimately requiring their suspension and/or expulsion for the benefit of the school community.¹⁹⁹

Disabled students of color are not only restrained, isolated, and suspended at high rates, but these students are also disproportionately arrested and/or referred to the juvenile justice system. For example, black students represent only 18.5% of disabled students but 29% of disabled students referred to law enforcement and 35% of disabled students subjected to school-based arrest.²⁰⁰ The majority of school-based arrests are completed by School Resource Officers (SROs), who are police officers that work in schools. It is well documented that SROs often arrest students for inappropriate reasons; in one study

“Seventy seven percent of SROs indicated that they had arrested a student in the past to calm that student down, 68% indicated that they made arrests to show students that actions had consequences; and 55% indicated that they had arrested students for minor offenses because teachers wanted the arrests to occur.”²⁰¹

¹⁹⁸ Mokoto Rich, “Suspensions Are Higher for Disabled Students, Federal Data Indicate,” *The New York Times*, August 7, 2012.

¹⁹⁹ Claustina Mahon-Reynolds and Laurence Parker, “The Overrepresentation of Students of Color with Learning Disabilities: How ‘Working Identity’ Plays a Role in the School-to-Prison Pipeline,” in *DisCrit: Disability Studies and Critical Race Theory in Education* (Teachers College Press, 2016), 150-151.

²⁰⁰ *The School-to-Prison Pipeline at the Intersection of Race and Disability*, U.S. Commission on Civil Rights (2017) (testimony of Eve L. Hill).

²⁰¹ Kerrin C. Wolf, “Arrest Decision Making by School Resource Officers,” *Youth Violence and Juvenile Justice*, 2013, 6.

In all of these cases, SROs made arrests based not on illegality but as an intervention tool for behavioral management. For disabled students of color, the impact of this trend is incredibly dangerous. SROs often receive little to no training on issues related to disability, and as a result are often unable to differentiate between an actual threat and behavior that may be a manifestation of a student's disability. For example, SRO interactions with deaf students are notoriously dangerous "because in the absence of interpretation, deaf people are perceived to be 'noncompliant.'"²⁰² Arrests and referrals to law enforcement are also more likely to occur when educators and SROs perceive students as "disrespectful," which is a common occurrence for students with disabilities who fail to adhere to dis/respectability politics.²⁰³ Finally, a student's race plays a significant role in SROs perceptions of situations involving youth, particularly related to culpability and whether or not an arrest is necessary.²⁰⁴ Therefore, when race and disability status are combined SROs are primed to view disabled students of color as dangerous and threatening.

Race, Gender, Disability, and Power: Conclusions

Ultimately, a biopolitical analysis of racial disproportionality reveals the ways in which the social constructions of race and disability are mutually reinforcing of one another in public education. Historically, the disabled subject in the United States developed alongside the racialized subject, and as a result we cannot fully analyze one without including an analysis of the other. Combining discourses of race and disability with gender further complicates how disabled students of color experience their education, ultimately exposing the IEP evaluation

²⁰² Ritchie, *Invisible No More*, 100.

²⁰³ *Ibid.*, 93.

²⁰⁴ Merkwae, "Schooling the Police," 169.

process as one based on social, rather than biological, realities. Furthermore, by using the framework of biopower we can more clearly see the ways in which disabled students of color are positioned as actively threatening to public schooling. As a result, the removal of these “deviant” bodies from regular classrooms via segregation, seclusion, exclusionary discipline, and/or arrest is able to become legitimized and normalized in our society.

Chapter 3

Disabled Children Left Behind: Incentives in Education Policy

In this thesis, I have primarily been concerned with the role that the Individuals with Disabilities Education Act plays in the lives of disabled students, and have focused almost exclusively on this law in my analysis. However, while perhaps the most important law impacting disabled students, IDEA is not the only applicable legislation. For example, both Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act impact how schools interact with students with disabilities. Both Section 504 and Title II prohibit discrimination on the basis of disability for recipients of federal funds and/or state and local government services, which include public school districts.²⁰⁵ I have prioritized IDEA over these other laws in my analysis because it is the only disability law that is exclusively concerned with public education (as opposed to Section 504 and Title II, which apply to government services more generally). But what I have yet to examine is how IDEA interacts with *other* laws and policies focused on issues of public education. Though IDEA remains the most significant legislation impacting disabled youth in schools, these students are also subject to the general education laws that impact all public school students. As a result, any discussion of students with disabilities in public education must include an analysis of how federal and state education policies (both those focused on issues of disability and not) define these students' educational experiences.

As I have emphasized throughout this thesis, IDEA as a policy does not exist in a vacuum; it interacts with other legislation, historical events, systems, ideologies, and discourses. Federal education laws are particularly worth examining in their relationship to IDEA, as public

²⁰⁵ PEER Project, "Section 504, the Americans with Disabilities Act, and Education Reform," Wrights Law.

education policies have changed significantly since IDEA's original passage in 1975 – and have consequently impacted how the federal government interprets and prioritizes the rights of students with disabilities. In some cases, IDEA and general federal education policies have appeared to contradict one another, forcing school districts and the courts to reconcile these very different policies. This is because - as is almost always the case for people with disabilities - general education policies are often built with only a tangential consideration of disabled students and their needs. Often, lawmakers assume IDEA as the “catch-all” legislation for all issues related to disability in public education, and as a result devote very little space to how new educational approaches will impact disabled students.

The emphasis on data-driven reforms in public education over the past 20 years is an important example of this lack of attention to disabled students, as legislators have inadvertently created incentives for schools to ignore, remove, and disproportionately identify students with disabilities. The funding mechanisms utilized to educate students with disabilities also play an important role in how schools identify these students and decide on the types of services they receive. Combined, these various federal and state policy mechanisms have put schools in the position of having to choose between educating their disabled students and the rest of the population, ultimately resulting in an education system that devalues students with disabilities. On top of this, the marketplace spawned by the rise in special education services over the past 50 years comes with its own incentives for identifying students as qualifying under IDEA. Using a biopolitical framework, I therefore argue that these various incentives ultimately serve to devalue the lives of students with disabilities and position these students as deviant and dangerous to schools' existence. This normalized view of disabled students is an exercise of power in which schools position these students either as liabilities or as a means to an end. School districts are

thus incentivized by these policies to sacrifice disabled students' right to a free and appropriate education for the supposed "good" of the school as a whole. As a result, this mindset works to facilitate the school-to-prison pipeline for these youth as they are ignored, manipulated, and removed in accordance with schools' need to meet their bottom line.

The Continued Impact of No Child Left Behind

By far the most sweeping piece of federal education legislation in the last 30 years is the No Child Left Behind Act of 2001 (NCLB). President George W. Bush signed NCLB into law in January 2002 and it remained in effect until December 2015, when the Obama administration's Every Student Succeeds Act (ESSA) replaced it.²⁰⁶ With the goal of improving educational achievement outcomes as a whole, Congress designed NCLB to give the federal government a greater ability to hold schools accountable for student outcomes. To do this, legislators attempted to bring "a 'bottom-line' economic logic" to public education "through the generation of market-like systems of efficiency and competition."²⁰⁷ In practice, this meant that NCLB required all public schools receiving federal funding to administer an annual statewide-standardized test to students in grades 3 through 8 and once in high school. After students took these tests, schools were then required to report the results for both the student population as a whole and for specific student "subgroups" (including English-language learners, racial minorities, students from low-income families, and students with disabilities).²⁰⁸ Ultimately, the idea was that these tests would serve as an objective and standardized way to measure student achievement by

²⁰⁶ Alyson Klein, "No Child Left Behind Overview: Definitions, Requirements, Criticisms, and More," Education Week, April 10, 2015.

²⁰⁷ Steven C. Ward, "No Child Left Behind Goes to College," American Association of University Professors, September/October 2015.

²⁰⁸ Klein, "No Child Left Behind Overview."

converting students' academic abilities into statistics that they could easily measure and manipulate to achieve certain goals.

Under NCLB, schools were held accountable via these standardized test results using a mechanism known as “Adequate Yearly Progress” (AYP), which was a numerical standard of annual achievement growth determined by the state that each school had to meet. If a school repeatedly failed to meet AYP, NCLB gave states the ability to intervene in many different ways, including hiring/firing staff, “mandatory public school choice and the possibility of complete school restructuring, as well as the redirection of federal funds.”²⁰⁹ In addition to this focus on testing, NCLB also mandated that all public school teachers be “highly qualified.” This requirement reflected the law’s embedded belief that unsatisfactory academic outcomes are largely the result of the failure of individual teachers and administrators (as opposed to systemic or other factors) - and that therefore student achievement will only improve when the government gives teachers and school districts incentives like AYP. Importantly, Congress included students with disabilities under the law in specific ways. For example, schools were required to include scores of students with disabilities in determining AYP, but only if the number of disabled students in the tested grades met a minimum subgroup size (which varied by state from 5 to 100 students).²¹⁰ NCLB also required all subgroups (including students with disabilities) to “have the same minimum percentage of members meeting proficiency or at least decrease the percentage of non-proficient students by 10 percent annually.”²¹¹

²⁰⁹ David N. Figlio and Lawrence S. Getzler, “Accountability, Ability and Disability: Gaming the System” (Working Paper no. 9307, National Bureau of Economic Research, Massachusetts, 2002), 13.

²¹⁰ Jennifer Harr-Robins et al., “Inclusion of Students With Disabilities in School Accountability Systems,” National Center for Education Evaluation and Regional Assistance, U.S. Department of Education (May 2012), x.

²¹¹ Figlio and Getzler, “Accountability, Ability and Disability,” 1.

While NCLB is no longer in effect, the ESSA (the Obama administration's replacement) reflects many of the same beliefs about the value of standardized testing in measuring student achievement. The ESSA keeps the annual standardized testing requirements of NCLB as a means of evaluating school performance, but shifts accountability measures to the states and ultimately allows more room for flexibility; for example, unlike under NCLB there are no federal penalties for struggling schools under ESSA, and schools can offer several smaller, interim tests throughout the school year instead of only one large test at the end of the year.²¹² But just because the state can no longer take over schools or fire staff solely as a result of these standardized tests doesn't mean that the tests aren't continuing to fuel how schools approach education. The notion that poor academic outcomes are a result of failures by individual teachers and administrators still remains, as does the stigma associated with a poor evaluation from the state due to results on standardized tests. Consequently, school officials and teachers have a substantial fear of being branded a "bad teacher" or a "bad administrator" by both their colleagues and themselves, ultimately pushing them to focus a significant amount of their attention on improving their students' scores.²¹³ Moreover, "data-driven decision making has become a new marker of legitimacy" in public education, and as a result schools continue to feel pressured to prioritize standardized testing results in making decisions about how to best approach education.²¹⁴

It is also important to remember that while the law has recently changed, many of schools' practices and teaching methods are still lagging behind; NCLB was in effect for 13

²¹² "The Difference Between the Every Student Succeeds Act and No Child Left Behind," Understood.

²¹³ Jennifer Booher-Jennings, "Below the Bubble: 'Educational Triage' and the Texas Accountability System," *American Educational Research Journal* 42, no. 2 (Summer 2005): 252.

²¹⁴ Booher-Jennings, "Below the Bubble," 238.

years, and it will take more than the two-and-a-half years since it ended for the effects of the law on education practices to fade. Furthermore, many of the youth whose educational placements occurred under NCLB policies are still in school under those placements, and therefore the harsher aspects of NCLB are still impacting many students. With all of this in mind, it continues to be important and relevant to discuss the impact of NCLB's standardized testing mandates on youth with disabilities, as these tests continue to significantly inform these students' education – and thus, their life chances – even after the more punitive measures of NCLB have been eradicated.

The Impact of Data-Driven Education on Students with Disabilities

Under NCLB, schools' existence relied on students' standardized test results; schools that repeatedly missed AYP could be shut down, taken over by the state, or turned into charter schools.²¹⁵ Schools also faced significant economics setbacks if student assessment results were poor: a school that missed AYP multiple years in a row had to give students the option to transfer to a better-performing public school in the same district and provide free tutoring, both of which were at that school's expense.²¹⁶ In addition, teachers' evaluations (and therefore their jobs) relied largely on student assessments. When all of this was combined, under NCLB schools clearly had a deep and vested interest in improving student test scores by whatever means necessary. Though these more punitive measures are no longer present under the ESSA, teachers' jobs continue to be significantly reliant on test scores in many states, as “with so much time and effort undertaken at the state level in the implementation of accountability measures”

²¹⁵ Klein, “No Child Left Behind Overview.”

²¹⁶ Ibid.

states have not completely abandoned their previous methods for evaluating teachers.²¹⁷ Coupled with the continuing mindset of holding improved test scores as the central marker of school achievement, this means that the incentive to prioritize students' standardized test scores over other aspects of their education is still very much present today.

Consequently, many schools have been put in the position of having to prioritize the education of students who have the most potential for improvement in order to boost overall test scores. This is what Booher-Jennings refers to as "educational triage," in which teachers ration resources to students who are most likely to improve by dividing students into three groups: safe cases, suitable cases for treatment, and hopeless cases.²¹⁸ Booher-Jennings notes that when put in a situation in which educational triage becomes necessary, teachers will prioritize "bubble kids," or students who are almost at passing level, in order to maximize the number of passing students. Of course, this focus on bubble kids comes at the expense of students in the other two groups, as the needs of both students who are above passing level and students who are significantly behind are largely ignored. Ironically, this focus on improving academic outcomes for only a small minority of the student population is actually antithetical to NCLB/ESSA's stated goals of improving educational achievement as a whole. Taking one Texas school district with a passing score of 70% on the state standardized test as an example, Booher-Jennings observed that, using this logic, "a large improvement, essentially doubling a student's score (22% to 40%) is seen as inconsequential relative to a moderate gain that propels a student above the district's established 70% mark."²¹⁹ In other words, the mindset behind data-driven education reforms forces schools into a position in which providing a comprehensive education to the majority of their students is

²¹⁷ Lisa Andrejko, "ESSA: Are you prepared for a change in the way you evaluate teachers?" TalentEd.

²¹⁸ Booher-Jennings, "Below the Bubble," 232-233.

²¹⁹ *Ibid.*, 242.

no longer the primary goal; instead, under this logic schools are invested in the education of a few students (“bubble kids”) to the detriment of everyone else.

As one can imagine, educational triage has particularly devastating consequences for students with disabilities – especially students identified as having a “soft” disability such as a learning disability, emotional disturbance, or an intellectual disability. Students with these disabilities have a historically poor performance on standardized assessments, and as a result districts are understandably concerned with how these students’ test results may reflect on their schools as a whole.²²⁰ This fear is certainly still present today, but it was exponentially heightened under NCLB; not only were schools’ reputations at stake, but there were also material consequences for failing to meet AYP. As a result, these policies often force school districts to view students with disabilities as burdens (and, under NCLB, as liabilities) to their school. This viewpoint echoes a biopolitical point of view, as in this construction disabled (read: deviant) bodies are understood as a threat to the school (read: population) as a whole. Following this line of reasoning, under this mindset schools therefore have a vested interest in removing this threat – whether through misidentification, exclusionary discipline practices, or incentivizing school dropout.

As I have noted, schools disproportionately identify students of color as qualifying under IDEA. In Chapter 2, I attempted to explain why this phenomenon occurs by pointing to the historical discourses that inform our understandings of disability and race today. But there is another factor that plays a role in disproportionality that I have not yet explored: the incentives tied to education policies. In particular, the data-driven education model championed by NCLB and ESSA has been shown to play an important role in how students with disabilities are (or

²²⁰ Antonis Katsiyannis et al., “High-Stakes Testing and Students with Disabilities: Challenges and Promises,” *Journal of Disability Policy Studies* 18, no. 3 (2007): 161.

aren't) identified to receive services. This is because, as I explained, students with disabilities' scores on state standardized tests often don't count toward schools' accountability measures. Under both NCLB and ESSA, these students' scores only count if the number of disabled students in the tested grade meets or exceeds a minimum subgroup size (which is determined by the state). So, for example, if a state's established subgroup size is 35, but a school only has 20 students with disabilities in the tested grades, then the school would not be held accountable for those students' scores and could potentially also remove 14 more students from the accountability pool.²²¹ In practice, this means that "schools could potentially improve their state-assigned grade or classification by taking their poorest performing students out of the testing pool" by identifying them as having a disability (regardless of whether or not this is actually the case).²²² It is important to note that the poorest performing students in schools are disproportionately students of color and/or low-income students.²²³ This means that schools therefore have a direct incentive via these policies to over-identify marginalized students as disabled. Over-identification can have significant consequences for these youth, as students identified as disabled often receive a less rigorous education than their peers and carry the stigma of the disability label, both of which can significantly impact their life chances and facilitate entrance into the school-to-prison pipeline.

In addition to the incentive to over-identify students with disabilities in order to remove underperforming students from the accountability pool, policies like NCLB and ESSA also incentivize over-identification for other reasons. Importantly, neither NCLB or ESSA ignore standards for disabled students entirely: separately from a school's overall performance rating,

²²¹ "Every Student Succeeds Act (P.L. 114-95) Analysis & Comments," The Advocacy Institute.

²²² Figlio and Getzler, "Accountability, Ability and Disability," 2.

²²³ Sean F. Reardon et al., "Patterns and Trends in Racial Academic Achievement Gaps Among States, 1999-2011," *Stanford University Graduate School of Education* August 2013.

schools still have to submit test scores for each subgroup (including students with disabilities). Under both NCLB and ESSA, the laws give subgroups their own goals for the percent of students meeting proficiency (which the state determines), with the intention of ensuring that disabled students' education is still prioritized. However, these intentions are largely not reflected in actual schools. In fact, it has been found that in some schools this policy has actually served as an incentive to misidentify higher-achieving students (who are likely to achieve proficiency) as disabled in order to meet the minimum requirements and raise the subgroup's overall average test score.²²⁴ Even more commonly, schools often misidentify "bubble" kids as disabled in order to allow them access to certain accommodations that will improve their performance on these tests.²²⁵

While education policies have many incentives for schools to over-identify students with disabilities, under-identification is also incentivized for some students. Similarly to schools' efforts to over-identify disabled students in order to remove students with poorer academic performances from the accountability pool, schools also sometimes refrain from identifying better-performing students who would qualify under IDEA in order to improve their state-assigned grade or classification.²²⁶ This means that the needs of students who would benefit from accommodations under IDEA are sometimes ignored in favor of keeping that student's decent score in the accountability pool. For a child who needs accommodations to succeed in school, the consequences of under-identification can include increased risk of academic failure (and thus school dropout) in ways that directly facilitate the school-to-prison pipeline. While purposefully

²²⁴ Figlio and Getzler, "Accountability, Ability and Disability," 13.

²²⁵ Ibid.

²²⁶ Ibid., 2.

not identifying a student who has a disability is in violation of IDEA, this practice was not uncommon under NCLB and continues to happen today.

Overall, the devastating impact of data-driven education measures on the lives of students with disabilities who are disproportionately identified under these policies is amplified when you consider how this mindset impacts the education that these students *do* receive. These measures' focus on holding individual schools (and individual administrators and teachers within those schools) responsible for student outcomes may sound like a good idea in theory, but in reality this practice denies all of the other factors outside of the classroom (i.e. racism, poverty, geography, health, family dynamics, resources, etc.) that impact students' academic performance. As a result, these policies often hold individual teachers culpable for school failure. In practice, this can lead to high rates of teacher turnover, causing a disruptive learning environment for students and particularly "negatively impacting the achievement of students in schools that host large numbers of students with disabilities and other minority status'."²²⁷ Furthermore, these policies may make teachers less likely to want to teach "at-risk" groups, such as special education, English-language learners, or students in poverty, out of a fear that these groups' "low-test scores would result in negative professional repercussions."²²⁸ Even more dangerously, students with disabilities may not receive an education at all: these policies may incentivize schools to allow students who are doing poorly to drop out in order to remove them from the accountability pool. When all of this is combined, it is clear that data-driven education policies like NCLB and ESSA can serve to incentivize the ignoring and/or removal of students with disabilities for the perceived good of the school as a whole.

²²⁷ Jessica Bacon, "The impact of standards-based reform on special education and the creation of the 'dividual,'" *Critical Studies in Education* 56, no. 3 (2015): 375.

²²⁸ Bacon, "The impact of standards-based reform on special education," 377-378.

Education Funding and Students with Disabilities

In addition to the implicit incentives in data-driven education policies to devalue students with disabilities, other education policy measures also come with their own incentives around this population. In particular, the funding mechanisms associated with IDEA - and the accommodations students receive under them – serve as a potential further motivator for schools to disproportionately identify certain students as disabled. This is particularly true in underfunded and under-resourced districts. Importantly, the funding sources used to educate disabled students are distinct from other students. This is because students with disabilities require additional accommodations, making the cost of educating the average student under IDEA over 90% higher than the cost for a general education student.²²⁹ While IDEA covered 33% of the cost of educating a student with disabilities in 2008 (which was still less than Congress’s original commitment of 40%), due to lack of federal support that percentage has dropped significantly to only 16% in 2014.²³⁰ As a result of this reduced funding from the federal government, states increasingly have to pick up a greater share of the cost of educating disabled students. The way that states have adapted to this funding need varies greatly: Wyoming, for example, fully funds special education for every individual student, while states like Alabama and New Jersey provide a fixed amount of funding to each district based on census data.²³¹ This means that the funding available for students with disabilities can vary drastically not only from state to state but also from school district to school district; while some districts have access to

²²⁹ Michael Griffith, “A Look at Funding for Students with Disabilities,” *Education Commission of the States*, March 2015, 3.

²³⁰ Maria Millard and Stephanie Aragon, “State Funding for Students with Disabilities,” *Education Commission of the States*, June 2015, 1.

²³¹ Millard and Aragon, “State Funding for Students with Disabilities,” 3-4.

plenty of funding for disabled students, others are barely able to meet these students' basic needs. This variance in economic resources ultimately means that each school district takes a different approach to identifying students under IDEA.

Different state funding formulas create different incentives for both over and under-identification of students with disabilities, depending on the district. One clear example of this can be found in the six states that use a fixed “census”-based formula, as in these states the number of disabled students in the state is averaged and each district is then given the same amount of money.²³² Under this formula it is implicitly assumed that each district has the same number of disabled students; in practice, this means that in these states a school district with 50 disabled students could receive the same amount of state funding as a school with 150 disabled students. As a result, this formula explicitly creates potential incentives for districts – especially districts that are already underfunded – to under-identify students with disabilities. In this system, schools don't receive IDEA funding per student but instead per-district, meaning that it is to the benefit of school districts that are already struggling to remain within their budget to identify as few students with disabilities as possible. Importantly, low-income students and students of color disproportionately attend underfunded schools, meaning that the students most impacted by these funding formulas' incentives for under-identification are those who are already most marginalized in our education system.

In contrast with the “census”-based formula, the majority of states (27) fund school districts based on some sort of “student-count” formula that allocates funding based on average daily attendance or student enrollment.²³³ Districts are funded per student in these states, meaning that “special education programs...receive more funding as their enrollment of

²³² Ibid., 3.

²³³ Ibid.

[disabled] students increases.”²³⁴ Half of these states (i.e. Kentucky and New Mexico) allocate different amounts of funding for each student depending on their disability category (mild, moderate, severe), while the other half provide the same amount of funding for each student regardless of identified disability (i.e. Maryland and New York).²³⁵ This funding formula therefore potentially provides incentives for schools to over-identify students with disabilities in order to receive extra funding. Identifying a lower-performing student who does not necessarily meet the eligibility requirements under IDEA, for example, has potential benefits for schools under this system, as they will receive additional funding to provide services for this student that in many cases they were already providing (i.e. tutoring, extra time). This is especially true in states that don’t differentiate between disability categories in funding allocation, as identifying a student with a disability that requires relatively minor accommodations (dyslexia, for example) will result in the same amount of funding as identifying a student with a disability requiring more extensive accommodations (i.e. moderate to severe Autism Spectrum Disorder). As I have noted, this practice of intentional misidentification is in direct violation of IDEA; however, the subjective nature of disability identification combined with a lack of oversight makes policies against over-identification nearly impossible to enforce. As a result, underfunded districts in particular often have significant incentives in these states to over-identify disabled students.

Outside of budgetary-based incentives, individuals within and outside of school districts also have funding-based motivations for over-identifying students with disabilities. As I alluded to in Chapter 1, the IEP evaluation process relies heavily on outside “experts” to determine whether or not a student qualifies under IDEA; as a result, a sort of identification “industry” has

²³⁴ Yolanda Anyon, “Sociological Theories of Learning Disabilities: Understanding Racial Disproportionality in Special Education,” *Journal of Human Behavior in the Social Environment* 19, no. 1 (2009): 48.

²³⁵ Millard and Aragon, “State Funding for Students with Disabilities,” 3.

emerged around this need. Members of this industry include not only those who identify students with disabilities, but also the companies who create and sell the assessment and intervention tools that people like school psychologists and neuropsychologists rely on when making an identification. Tutoring companies and companies that create psychometric tests, for example, therefore have a vested economic interest in the identification of students with disabilities in order for them to continue to exist. In practice, this may incentivize identification practices that over-identify disabled students; paradoxically, the employment of members of the identification industry “depends on the continuation of a problem that is their stated goal to eliminate.”²³⁶ With this in mind, it has been argued that the expansion of special education programs over the past 50 years may partially be attributed to “an effort on the part of certain professionals to expand their role, influence, and credibility in society.”²³⁷

Incentives, Biopower, and the School-to-Prison Pipeline

In all of the examples I have given in this chapter regarding potential policy and funding incentives for the disproportionate identification of students with disabilities, the driving force behind the incentive has not been the student’s best interest but instead the supposed “best interest” of the school and associated individuals and companies. Whether through NCLB/ESSA or state funding formulas, the government has made clear that schools can only mold successful young citizens by strategically (re)moving poor-performing and otherwise deviant youth from certain educational paths. In this way, the laws and policies associated with public education that interact with IDEA serve to make biopower visible by implicitly defining what deviancy in schools looks like and then literally forcing educators to single out these specific students

²³⁶ Anyon, “Sociological Theories of Learning Disabilities,” 48.

²³⁷ Ibid.

perceived as threatening to the school as a whole. It is no coincidence that these policies' specific definition of deviancy is more likely than not to encompass students of color, low-income students, and/or students with disabilities, as these students pose the greatest threat to the maintenance of the (white, wealthy, able-bodied) population. As a result, these policies' rewarding of schools that deprioritize and undervalue "deviant" students forces our most marginalized youth toward a future of low-quality education, limited access to resources, and, often, interactions with the criminal justice system.

The data-driven education reform measures of NCLB and ESSA are perhaps the most explicit example of the role of biopower in limiting the life chances of disabled youth, as when these policies force schools to literally test students to determine which ones are most threatening to the entire school population. These policies therefore condition teachers and school administrators to view disabled students as liabilities rather than as valuable members of the student body. As a result of this mindset, "students with disabilities often become scapegoats for school failure" and can even be the target of resentment if a school is not meeting its testing goals.²³⁸ Furthermore, these policies incentivize schools not to serve many marginalized students (i.e. low-income students, students of color, and/or disabled students), as "within a biopolitical society, schools...that host an aggregate of demographically diverse students are more likely to become labeled as failing."²³⁹ Combined, these incentives position disabled students as burdens before they even enter the classroom, meaning that these students often don't ever have a chance to receive the same comprehensive education as their non-disabled peers.

The focus on "objective" data in policies like NCLB and ESSA adds another layer to the role of biopower in facilitating life chances for disabled students. Under these policies, students

²³⁸ Bacon, "The impact of standards-based reform on special education," 367.

²³⁹ *Ibid.*, 372.

are largely understood as statistics – a process that is literally dehumanizing. In this way, the complexity of youths’ lives are boiled down to data points or digits, and educators are then “making choices about them based upon their potential to excel or fail, or based on the risk they represent.”²⁴⁰ Wrestling its authority on science and mathematics, “in this conception of data-driven practice such decision making is viewed as neutral and objective.”²⁴¹ When this mindset takes over, the data provided by these tests (and the actions taken in response to that data) cannot be easily contested; the labels students receive and the paths they are put on as a result of these tests therefore seem inherent and natural rather than socially constructed. This viewpoint ultimately reframes the role of educators in society from one of individual mentoring and empowerment to one focused primarily on maximizing statistical achievements. Educational success for students is also narrowly redefined as proficiency on standardized tests, making youth’s capabilities and ways of thinking or knowing that exist outside of these tests unintelligible within mainstream discourses. For disabled students who are often unable to reach the demands of becoming “proficient” on these tests, the less demanding educational paths they are put on therefore appear almost inevitable and serve to further reinforce societal beliefs about the (inferior) capabilities of people with disabilities.

Just as data-driven policies position students with disabilities as threatening, IDEA funding formulas also dehumanize these students and view them solely as a means to an end. Under these funding policies, the actions of educators and administrators become less about the well-being of an individual child and more about a larger strategy to navigate a system in which public schools are underfunded and under-resourced. In this way, schools are forced to pit students with disabilities against the rest of the student body, putting educators in a position in

²⁴⁰ Ibid.

²⁴¹ Booher-Jennings, “Below the Bubble,” 244.

which what is sometimes seen as the best option is to “sacrifice” the education of a few disabled students for the “greater good” of the school as a whole. This biopolitical focus on population management prioritizes the educational needs of the majority (able-bodied students) to the detriment of the minority (disabled students). This view becomes even more embedded when the economic interests of members of the “identification industry” come into play. Ultimately, then, the identification of students as qualifying under IDEA becomes less and less about increasing equity and providing accessibility and increasingly about reinforcing dominant political, financial, and social systems around education at the expense of disabled students.

When all of these various incentives are combined, the surveillance, segregation, and exclusion experienced by students identified as disabled becomes normalized within our education system. Particularly in underfunded and under-resourced schools, students with disabilities’ status as liabilities – both financially and to a school’s rating and reputation – can incentivize educators to exclude these youth in whatever way possible. Whether it be through segregated educational settings, exclusionary discipline, referrals to the police, or simply encouraging school dropout, these policies have put educators in a position in which they may see removing disabled students from the classroom as the best course of action for improving academic outcomes as a whole. Consequently, disabled youth are overwhelmingly receiving lower-quality education, less attention, and fewer resources in school, often resulting in a significant reduction in their life chances and a direct connection to the school-to-prison pipeline.

Conclusion

Modeling Resistance and Re-Imagining Justice

As a policy, IDEA both reflects and shapes how we understand disability, achievement, and the role of education in our society. For students with disabilities and their families, the discourses and rhetoric undergirding policies like IDEA have significant social and material implications for their lives. Access to a comprehensive education is essential for achieving economic and social mobility, improving health, and avoiding interactions with the criminal justice system.²⁴² When schools deny disabled students that education – whether through segregation, exclusionary discipline, dropping out, or referrals to the juvenile justice system – their life chances therefore decrease exponentially. Beyond these tangible measures, disabled youth often end up internalizing the ideas and norms reinforced by policies like IDEA as they become reproduced both in and outside of the classroom. Critically, “educational policies and conditions are not understood, interpreted or *experienced* separate from how students feel about themselves and others, their bodies, future, and place in society.”²⁴³ As a result, our framing of disability via the individual model under IDEA can often work to devalue the lives of disabled youth in educational settings and ultimately normalize the oppression of people with disabilities in our society as a whole. When combined with other axes of oppression like race and gender, the devaluation of individual lives and the rapid decrease in life chances become even more apparent; the historical relationship between race and disability, for example, is critical to the positioning of disabled students of color as burdensome and threatening in public education. Finally, when these discourses of disability are put in conversation with the individualizing and

²⁴² Kenneth J. Fasching-Varner et al., “Beyond School-to-Prison Pipeline and Toward an Educational and Penal Realism,” *Equity & Excellence in Education* 47, no. 4 (2014).

²⁴³ Jessica Ruglis, “Mapping the Biopolitics of School Dropout and Youth Resistance,” *International Journal of Qualitative Studies in Education* 24, no. 5 (September/October 2011): 632.

economically motivated frameworks of other educational policies, these disabled students' lives are pushed even further into the margins of society.

In many ways, the barriers to success for youth with disabilities that I have described in this thesis seem insurmountable; how can we make change, we might ask, when disabled students seem to be systematically excluded, removed, and disciplined in our education system? Though the apparatus behind the school-to-prison pipeline for disabled youth is vast and complex, it is essential to know that the possibility for reform, resistance, and re-imagining for and by these youth is still very much present. We must learn about and be aware of the biopolitical project attached to the lives of disabled students, but the work does not stop there: to truly create change we need to begin re-envisioning justice for students with disabilities. The capability model is one such framework for re-thinking justice, as it improves on the individual model by reframing justice as enhancing a disabled student's well-being rather than simply creating access to systems and institutions that were never built with them in mind. In our society so focused on individual achievement and failure, we must also expand our notions of justice to imagine justice "built around interdependence."²⁴⁴ An interdependent understanding of justice moves beyond access for the sake of access,²⁴⁵ recognizing that providing accommodations for people with disabilities is necessary outside of the individual model's rhetoric of independence and self-sufficiency. Ultimately, a new version of justice for students with disabilities must center the voices and experiences of those students.

Importantly, disabled students are not waiting for us to act – they're already acting themselves. Though youth with disabilities face significant obstacles to receiving the free and

²⁴⁴ Subini Ancy Annamma, *The Pedagogy of Pathologization: Dis/abled Girls of Color in the School-prison Nexus* (New York: Routledge, 2018), 142.

²⁴⁵ Mia Mingus, "Access Intimacy, Interdependence and Disability Justice," *Leaving Evidence*, April 12, 2017.

appropriate education guaranteed to them under IDEA, these students and their families nevertheless continue to advocate for themselves and push for institutional change. Students with disabilities are not merely passive consumers of individual model-based rhetoric or labels of deficiency and criminality; instead, these students and their families actively resist these frameworks in ways both small and large, individually and collectively. The sites of this resistance vary widely, as students are pushing for justice in places all the way from the Supreme Court to juvenile justice facilities to their own classrooms and communities. Many educators are also joining these students in their efforts to resist the school-to-prison pipeline by developing critical disability pedagogy and re-imagining how they structure learning in their classrooms. Parents and disability lawyers and advocates have also pushed for accountability from educators and public officials, ultimately working to make laws like IDEA and individual school policies and resources more reflective of the needs of youth with disabilities. Ultimately, disabled students and those that care about them have recognized that while IDEA has provided significant access to education for so many young people, there is still so much more to be done. We do not have to allow the school-to-prison pipeline to continue to ensnare more of our disabled youth.

Redefining Capability and Youth Resistance

Advocates have already taken the fight for disability justice in education policy to one of the biggest stages possible: the Supreme Court. In early 2017, the United States Supreme Court heard arguments in the case of *Endrew F. v. Douglas County School District (2017)*. Significant lobbying by disability rights advocates forced the Supreme Court to address a critical but previously unanswered question: “What is the level of educational benefit that school districts

must confer on children with disabilities to provide them with the free appropriate public education guaranteed by IDEA?”²⁴⁶ In a unanimous decision, the Court held that, under IDEA, a child’s “educational program must be appropriately ambitious in light of his circumstances” and that “every child should have the chance to meet challenging objectives.”²⁴⁷ With this ruling, the court asserted that schools have the obligation to provide more than just “some” accommodations that provide only a *de minimis* benefit (as has been previously argued by school districts and held by lower courts); instead, disabled students’ accommodations must be substantial and meaningful. Critically, this ruling (and the more demanding standard used by the Court) begins to push IDEA toward a capability model mindset. This ruling understands accommodations not in terms of allowing the child to function “normally,” but instead in terms of providing “conditions and opportunities for the full development of their capabilities” however defined.²⁴⁸ Though the underlying ideas of disability present in IDEA are still very much reliant on the individual model, it is incredibly promising that the Supreme Court has unanimously interpreted the law in a more radical way that begins to reimagine the law’s purpose and what justice might look like for disabled youth. Within the capability framework, equal access to education for all children is an issue of justice, as education has the possibility to expand the capability sets available to individuals -- ultimately enhancing their well-being. This is especially true when considering issues of race, as the capability model allows educators to foreground the unique contexts and conditions of people of color in an analysis of what well-being looks like for disabled students of color. Keeping this in mind, *Endrew F.* demonstrates

²⁴⁶ “*Endrew F. v. Douglas County School District*,” Oyez.

²⁴⁷ Emma Brown and Ann E. Marimow, “Supreme Court sets higher bar for education of students with disabilities,” *The Washington Post*, March 22, 2017.

²⁴⁸ Lorella Terzi, “A Capability Perspective on Impairment, Disability and Special Needs: Towards Social Justice in Education,” *Theory and Research in Education* 3, no. 2 (2005): 220.

that there are real possibilities for policies like IDEA to begin to shift from an individualized approach to a capability approach by re-framing what “success” looks like, by centering the experiences and voices of disabled youth and their families, and by framing accommodations not as a means to making a student more “normal” but instead as a way of expanding a student’s opportunities.

While advocacy on the level of federal policy change is incredibly important, not all activism for disability and education justice needs to be on such a large scale. In fact, the vast majority of resistance by and for students with disabilities is much smaller and subtler - though certainly no less vital. Under a biopolitical regime, resistance is not just about making a political statement but also about *survival*. For disabled youth – especially low-income disabled youth and/or disabled youth of color – discourses about disability in education put their literal bodies and futures at stake, forcing them to resist in order to keep afloat. Oftentimes, this life-affirming resistance might not be read as such by educational institutions, as it does not always play into traditional reformist ideas of advocacy that focus on change within and through existing institutions, laws, and policies. Analyzing resistance more broadly, Dean Spade emphasizes a biopolitical framework as a tool for understanding that “our goal cannot be to get the law to say ‘good’ instead of ‘bad’ things about people who are marginalized...”²⁴⁹ Though reform is important to improving conditions, our educational institutions were not built in a way that considers the needs of disabled students as fundamental; as such, we must balance advocacy for increasing access to existing educational structures with creating entirely new structures for students with disabilities. Along this vein, scholars like Jessica Ruglis therefore consider how youth use disengagement from school, for example, as a tool of resistance in order to protect

²⁴⁹ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Durham: Duke University Press, 2015), 71.

their literal bodies from the systemic harm and devaluation that comes from the structure of public education.²⁵⁰

Though school dropout is obviously a negative outcome in many ways (and, as I have noted, contributes to the school-to-prison pipeline), Ruglis challenges us to think more critically about why youth are dropping out in order for us to better support them. In contrast with the traditional view of school dropout as a sign of individual failure, Ruglis argues that, “denied a rightful, flourishing self, school dropout is a form of biopolitical youth resistance: an attempt to ‘take life’ back, in the most serious, most essential and most biological of senses.”²⁵¹ Even when students do not completely drop out of school, significant disengagement with their education by not investing energy into learning can also serve as a form of resistance “against biopower and regimes of educational power that deny youth essential human capabilities and the opportunities to live a flourishing life.”²⁵² Importantly, disabled students experience significant bodily harm as a result of the individualizing and criminalizing gaze of the public education system, from the physical symptoms of stress (i.e. headaches and stomachaches) to the psychological manifestations of alienation and deprivation of dignity (i.e. depression and anxiety).²⁵³ This is of course not to mention the literal violence these students are sometimes exposed to via the use of restraints and the deployment of School Resource Officers. When all of this is combined, disengaging from school – whether through dropping out or simply not investing energy into learning – can be read as an act of resistance, as these students are refusing to engage with a system that does not value their capabilities and lives.

²⁵⁰ Ruglis, “Mapping the Biopolitics of School Dropout.”

²⁵¹ *Ibid.*, 634.

²⁵² *Ibid.*, 634-635.

²⁵³ *Ibid.*, 632.

Beyond serving only as a coping mechanism, school disengagement can sometimes act as a form of biopolitical resistance that works to expose the arbitrary violence of educational policies through refusing to accept schools' terms of engagement around acceptable behavior. Of course, this mode of resistance also poses some challenges, as it could potentially reinforce dominant views of disabled students as incompatible with public education and can potentially be part of a student's trajectory in the school-to-prison pipeline. Nevertheless, reading this act as resistance has important possibilities for activism. For some students we can potentially read school dropout as a denial of the dominant view of people with disabilities, as through dropping out students are rejecting the school's role as the primary authority on youth capability and value. This is not to say that school dropout or school disengagement is something that our society should celebrate or encourage, but rather that the way we often think about these issues is insufficient. Instead of viewing disengagement from the public education system as a failure of that student, advocates can re-frame dropout as a failure of the school to properly value and support that student. Whether disabled students are actively considering their dropout as a political act, opting-out of the system nevertheless serves to question the authority of schools in determining disability and life chances.

In addition to disengaging from schools, youth with disabilities also resist the school-to-prison pipeline by strategically (dis)engaging with individualizing and criminalizing rhetoric. In her interactions with disabled girls of color, Subini Ancy Annamma observed that many disabled youth are well aware of how individualizing discourses are used to justify disciplinary measures. Instead of internalizing these discourses and understanding them as true, however, Annamma notes that these youth with disabilities chose to take up the language of personal responsibility

only “when it suited them without wholly internalizing the message of blame.”²⁵⁴ These disabled girls of color were aware of the need to play into the disciplinary logic of the individual model by painting themselves as responsible for their behavior (i.e. apologizing for acting out, cooperating with intervention), as they understand engagement with this rhetoric as a way to avoid exclusionary discipline or arrest. However, they did not fully internalize this mindset as being true, as outside of certain interactions with the education system they were able to articulate the insufficiency of the individual model and point to failures that contribute to their behavior and academic performance (i.e. lack of resources and supports in public schools).²⁵⁵ In this way, disabled youth of color are not passive consumers of disciplinary rhetoric or the logic of the individual model, but instead are critically engaging with these mindsets in order to resist entrance into the school-to-prison pipeline.

Outside of rhetorical resistance, disabled youth are also resisting by creating informal spaces of safety and support outside of the traditional education system. In her work with disabled girls of color, Annamma also observed the ways in which youth with disabilities maneuver around the lens of criminalization “by building invented spaces imbued with creativity and resistance.”²⁵⁶ These spaces, which exist in the classrooms, hallways, and cafeterias of public schools, give disabled youth the opportunity to contest the violent discourses they are otherwise surrounded by in educational spaces.²⁵⁷ By making these spaces for themselves and other youth with disabilities, these students are able to express their anger, access coping skills, have empathy for themselves and each other, and take control over their lives in ways that they are otherwise unable to achieve in the classroom. For example, in these spaces disabled students

²⁵⁴ Annamma, *The Pedagogy of Pathologization*, 124-125.

²⁵⁵ *Ibid.*, 30-31.

²⁵⁶ *Ibid.*, 131.

²⁵⁷ *Ibid.*, 126.

can express to their friends their frustrations about school or demonstrate their alternative forms of knowledge that might otherwise be punished in the traditional classroom setting (i.e. knowledge produced via music, television, and other media). In creating these spaces, disabled students rely on the use of humor and the development of radical compassion for self and others, ultimately allowing youth with disabilities to thrive “even within institutions that divest in their potential and invest in their identities as criminals.”²⁵⁸

Finally, youth with disabilities and those who care about them are resisting by engaging in social and political activism. Across the nation, disabled youth have organized to demand systemic and institutional change – both in education and beyond. Through organizations such as “YO! Disabled and Proud,” and “Kids As Self Advocates (KASA),” youth with disabilities have created resources to help other disabled youth navigate the IEP process²⁵⁹ and have called for an end to high-stakes standardized tests.²⁶⁰ In addition, disabled youth have organized in support of disability history being taught in schools,²⁶¹ ending school bullying,²⁶² and more substantive mentoring for youth with disabilities.²⁶³ The families of students with disabilities are also engaging in political activism, as they have called attention to the issue of disproportionality in special education and are directly working to minimize the use of exclusionary discipline for disabled youth.²⁶⁴ Importantly, this resistance is complex, as by attempting to engage in reform within the existing system these youth and their families are in some ways reinforcing the logic of the individual model. Nevertheless, this simultaneous reinforcing and contesting of

²⁵⁸ Ibid., 132.

²⁵⁹ “Education Resources,” Kids As Self Advocates (KASA),

²⁶⁰ “Standardized Testing: What Youth with Disabilities Have to Say,” Kids As Self Advocates (KASA).

²⁶¹ “History United: The FAIR Education Act,” YO! Disabled & Proud.

²⁶² “Own My Power: Freedom From Bullying Campaign,” YO! Disabled & Proud.

²⁶³ “Happy Ed Roberts Day,” YO! Disabled & Proud.

²⁶⁴ “School-to-Prison Pipeline,” Disability Rights Education & Defense Fund (DREDF).

biopolitical power still serves as a means of resisting the more immediate threats to disabled students' well-being.

Educators of disabled youth are also engaging in activism by pushing for the implementation of critical disability pedagogy (pedagogy that centers and nurtures students with disabilities in the classroom) in public schools. These educators are also beginning to re-imagine what education could look like if approached using the capability framework, arguing that teachers should view youth's impairments as potential new ways of learning rather than as barriers to their education.²⁶⁵ Clearly, students with disabilities and many of their families and teachers are committed to resisting the school-to-prison pipeline for students with disabilities in ways both large and small. Though the biopolitical project associated with disabled youth in education is insidious and therefore incredibly daunting, we can follow the path that is already being paved by students with disabilities to reform, resist, and re-imagine education justice for disabled youth.

Looking Ahead

As I stated in the Introduction, the question that must serve as the centerpiece for all resistance to the school-to-prison pipeline for students with disabilities is: how do we balance advocacy for increasing access to existing educational structures with working to create entirely new structures for students with disabilities? It is important to note that working within the existing framework of IDEA via advocacy for law and policy reform certainly has many benefits for students with disabilities. Efforts to broaden school curriculum to include disability history or redefine FAPE in the courts, for example, can provide tangible and immediate relief to disabled

²⁶⁵ Annamma, *The Pedagogy of Pathologization*, 155.

students experiencing harm. Engaging in reform can also provide other benefits in resistance efforts, as “the limited effect of law and policy reform victories can also often build shared analysis among organizers about how empty legal equality can be, and can generate enhanced demands for transformation as organizing continues.”²⁶⁶ As such, working to increase disabled youth’s access to existing institutions of education is a worthwhile pursuit. But this work alone is not enough; reform efforts can only effectively contest biopolitical power when executed in the context of a larger strategy to imagine and work for more transformative change. At the same time as we are expanding access under IDEA, we must also work, for example, to end the use of standardized tests, re-define disability outside of the medical model, and/or re-imagine pedagogy to center non-normative needs and ways of learning. In reform-centered work, we must therefore focus not only on what the law says about disabled students, but also on “intervening in the law and policy venues” that most directly impact these students’ lives.²⁶⁷

Outside of reform, the less direct forms of resistance that I discuss (including school disengagement, strategic use of rhetoric, and the creation of alternate spaces) can begin to point us toward possibilities for imagining a new education system that centers, rather than marginalizes, the experiences and needs of students with disabilities. In each of these examples, disabled students are calling foundational assumptions of the education system into question: that academic performance is a superior and neutral indicator of value, that student misbehavior is a result of individual failure, and that the only acceptable ways of learning and knowing are those that are legible in the (white, able-bodied, middle-class) classroom. These modes of resistance are much more subtle than policy reform efforts, but they get at the root source of harm in a way that reform cannot. Rather than appealing to the current system for change, these forms of

²⁶⁶ Spade, *Normal Life*, 106.

²⁶⁷ *Ibid.*, 12.

resistance challenge the legitimacy and authority of the current system entirely - ultimately rejecting the premise that education should primarily center the needs of non-disabled students. In this way, students with disabilities have, on a small scale, demonstrated new and creative possibilities for future activism and resistance around the school-to-prison pipeline that undermines the legitimacy of the individual model and dismantles discourses of criminalization. These future possibilities include activism for critical disability pedagogy, working toward the abolishment of standardized testing, and challenging the categories of disability that IDEA relies on. Fundamentally, resistance to the biopolitical project of the school-to-prison pipeline for disabled students must make connections that lead to systemic (rather than individual) critiques of special education. In this way, we can ultimately begin to build an education system that allows students with disabilities to thrive.