Institutionalizing Inequity: Ableism, Racism and IDEA 2004

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Abstract

For thirty years, the Individuals with Disabilities Education Act (IDEA) has been regarded as a civil rights legislation intended to fight discrimination against individuals with disabilities. While the sincerity of this claim is not in question, I contend that ableism is deeply ingrained within IDEA. Covert forms of discrimination, such as institutional ableism and racism, are far more insidious than overt discrimination because they are so difficult to question—as is the case with the Individuals with Disabilities Education Improvement Act of 2004 [IDEA 2004]. Using some of the techniques developed by scholars of both disability studies and critical race theory, I detail how IDEA 2004 embeds unintentional discrimination within the policies, structures and practices of the educational system. I argue that the institutions themselves (policies, practices, schools) become instruments of discrimination despite their stated purpose to end discrimination.

Keywords: Disability Studies, policy

The intersection of disability and race as a means of discriminat...
More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

In the 1998—1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

This is not to suggest that the disproportionate representation of minority students in special education is a new issue. Overrepresentation was addressed in the 1997 reauthorization of IDEA and has been identified as an issue for more than 30 years (Losen & Orfield, 2002; Tomlinson, 1982).

In this paper, I contend that American society uses the Individuals with Disabilities Education Improvement Act of 2004 (IDEA, 2004) and a combination of institutional ableism and racism to discriminate against students with disabilities—a violation of the stated intent of the law. First, I define institutional ableism. Then, I deconstruct the meanings and understandings of disability contained within U.S. case law, public law, and policy interpretations that have been built around IDEA. Lastly, I illustrate how the very components of the law that prohibit discrimination against disabled and minority students, in fact, actively contribute to and maintain existing discrimination.

Institutional Ableism

I believe that the body of scholarly work discussed below collectively establishes the existence of what I refer to as institutional ableism. Specifically, I contend that discriminatory structures and practices, as well as uninterrogated beliefs about disability deeply ingrained within educational systems, subvert even the most well-intentioned policies by maintaining the substantive oppression of existing hierarchies.

I would argue that scholars within both disability studies and inclusive education—without coining the term institutional ableism—have begun over the last quarter century to make an argument for the existence of such a concept in relation to disability. Vic Finkelstein (1980; 1981), Mike Oliver (1981; 1983), and Irving Kenneth Zola (1981; 1982), for example, were among the first to apply an understanding of the social model of disability to larger societal practices and structures, illuminating a multitude of the barriers encountered by disabled people in U.S. and British society.

In 1982, Sally Tomlinson looked at the materialist structures and policies that artificially constructed West Indian students in England as educationally subnormal. Tomlinson's *A Sociology of Special Education* is arguably the first major disability studies in education text and was also one of the first books to challenge the belief that disabled students' inequitable position within the education system is the result of their individual and inherent deficits.

Barton (1986) examined the underlying politics and unquestioned beliefs that shaped educational policies and practices in England, arguing that they served as a built-in obstruction to more traditional educational pathways—a "safety valve for the mainstream system." This was an early development within a much larger body of sole-authored and edited work (e.g., Barton, 2003; 1988; Barton & Slee, 1999) that focused upon identifying intended and unintended discrimination and oppression built into educational systems. This task has been furthered by a number of researchers, most notably Roger Slee (1999a; 1996; 1993a; 1993b) and Gillian Fulcher (1999).
Clough (1988) charted the ways in which discrimination is built into curriculum. This was an important step as, until this point, the inclusive education/integration/mainstreaming[ii] debate had largely focused on the issue of location as the main institutional barrier to disabled people accessing education. Since this time, research has begun to elaborate on the discriminatory effects of pedagogy (Allan, 1999; Benjamin, 2002; education reform (Bowe, et al, 1992; Peters, 2002; Slee, 1993b), school funding practices (Marsh, 1998), and teacher education (Barton, 2003; Booth, 2003; Nes & Strømstad, 2003).

Relevance of Critical Race Theory to Disability Studies in Education

In reaction to persisting evidence of institutional racism, many scholars of race and racism turned to the burgeoning field of critical race theory as a means of interrogating this phenomenon (Ladson-Billings, 1998). Critical race theorists deconstruct meanings and understandings of race embedded within both case and common law to better understand how those meanings and understandings create existing inequities (Crenshaw, 1995; Ladson-Billings, 1998; Parker & Stovall, 2004).

One of the ways that critical race theory can serve this end is to generate informed perspectives designed to describe, analyze and challenge racist policy and practice in educational institutions. The connection between critical race theory and education would entail linking teaching and research to general practical knowledge about institutional forces that have a disparate impact on racial minority communities (Parker & Stovall, 2004).

Critical race theory formalizes the application of a number of practices and uses them to place understandings of race at the center of the analysis of particular policies (Ladson-Billings & Tate, 1995, Ladson-Billings, 1998; Parker and Stovall, 2004). None of these practices are exclusive to critical race theory, and in fact, all are used extensively throughout social science research. For example, narrative/counter-narrative has been employed in relation to class, race, and gender by both Michael Apple (1999) and bell hooks (2000). Likewise, deconstruction has been used by a range of theorists and researchers, from philosophers such as Jacques Derrida (1982) to feminist theorists such as Hélène Cixous (1986).

Disability studies scholars have also begun to utilize these same means to place disability at the center of a number of areas of theory and research. For example, Morris (1989; 1991) and Thomas (1999) use narratives of disabled women to gain an understanding of their experiences of both disability and oppression. Corker (1999) relies upon deconstruction as a way of understanding competing discourses within disability studies, while Armstrong (2003) deconstructs the meanings and understandings of "inclusion" and "exclusion" to gain new insight into the positioning and experience of disabled people within the English and French educational systems. It has been argued that such deconstructive strategies allow for an understanding in which both macro and micro level perspectives become clear.

Deconstructing IDEA

I would like to deconstruct the ways in which the meanings of disability embedded within IDEA actively construct disabled students' marginalized positioning within schools. Derrida (cited in Armstrong, 2003) expands upon the both the analytical and the transformative power of Deconstruction:

...when I first met, I won't say 'Deconstructive architecture' but the Deconstructive discourse on architecture, I was rather puzzled and suspicious. I thought at first that this was an analogy, a displaced discourse, and something more analogical than rigorous. And then... I realised that on the contrary the most efficient way of putting
Deconstruction to work was by going through art and architecture. As you know, Deconstruction is not simply a matter of discourse or a matter of displacing the semantic content of the discourse, its conceptual structure or whatever. Deconstruction goes through certain social and political structures, meeting with resistance and displacing institutions as it does so. I think that in these forms of art and in any architecture, to deconstruct traditional sanctions — theoretical, philosophical, cultural — effectively you have to displace... I would say 'solid' structures, not only in the sense of material structures but 'solid' in the sense of cultural, pedagogical, political, economic structures (pp. 75-76).

While Derrida is speaking in relation to his own examination of art and architecture, I apply deconstruction to the structures, institutions, mechanisms, and discourses built around IDEA. I have no delusions of this process displacing structures as Derrida suggests, but hopefully some understandings and perceptions of IDEA will be displaced.

Since its inception, IDEA has been portrayed as an anti-discrimination law in the same vein as the civil rights laws of the 1960's.

...for far too long children with disabilities were closed out of those kind of opportunities, trapped in a system without guideposts, influenced by stereotypes, dominated by assumptions that people like Josh couldn't take the course that he just enumerated. In 1975 Congress began to change that when the IDEA was enacted. It has meant the right to receive an education that all children deserve. It has given children who never would and never have had it, the right to sit in the same classrooms, to learn the same skills, to dream the same dreams as their fellow Americans. And for students who sat next to them in those classrooms, it has also given them a chance to learn a little something. To get rid of the baggage of ignorance and damaging stereotypes, and to begin to understand what we have in common is far more important than what divides us (Bill Clinton, June 4 1997; on the Reauthorization of IDEA).

IDEA might be about civil rights, but can it be called anti-discriminatory? It is an improvement on the institutions it shut down, but being an improvement on institutionalization is hardly a grandiose claim. What does it do and how does it do it?

The 1975 passage of IDEA was a case of the government trying to catch up with the law. In 1971 and 1972, U.S. district courts agreed to two consent decrees which declared that in states guaranteeing a right to education, denying disabled students an education amounted to a violation of the equal protection clause of the fourteenth amendment. IDEA formalized the right to education that the courts had recognized and attempted to fund it (Gilhool, 1997; Rothstein, 2000).

IDEA is a funding bill. States accepting money under the law are required to adhere to certain principles. There were five principles in the original act [iii]:

1. All children with disabilities, regardless of the nature of their disability, have a right to and must be provided with a free appropriate public education (FAPE).
2. All children with disabilities will have a right to and must receive an Individual Education Program (IEP) that is tailored to address the child's unique learning needs.
3. Children with disabilities must be educated in the least restrictive environment (LRE) with their nondisabled peers to the maximum extent appropriate.
4. Students with disabilities, must have access to all areas of school participation.
5. Children with disabilities and their families are guaranteed rights with respect to non discriminatory testing, confidentiality and due process (P.L.
For the purposes of this paper, I focus only on the principle of LRE as a significant factor in the institutional ableism within the U.S. public school system. This is not to imply, however, that the other requirements are not deeply involved in embedding ableist discrimination within the law.

**The Least Restrictive Environment and its Qualifiers**

While IDEA does not specifically mention the concept of inclusive education, the principle of least restrictive environment (LRE) has been taken by many to imply it. As stated in the 2004 authorization LRE requires:

(5) **LEAST RESTRICTIVE ENVIRONMENT**

(A) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (P.L. 105-17; p. 30).

The idea that IDEA encourages or promotes inclusive education originates in this definition of LRE, which implies preference for educating disabled students in the same environment as nondisabled students. While much of the literature has focused on the meaning and interpretation of "least restrictive environment" (e.g., Crockett & Kaufman, 1999; Daugherty, 2001; Lipton, 1997), the words that dominate the clause are "to the maximum extent appropriate." The word "appropriate" serves as a qualifier that overshadows the rest of the section. The law itself does not define appropriate.

This term is much broader than mainstreaming in that the LRE for a student with a profound or multiple disability might be a self contained special class located in a neighborhood elementary or secondary school. The key here is the term 'appropriate', which requires an individually designed educational program (IEP) based on the child's specific educational needs. If the IEP can only deliver the needed resources by means of special classes staffed by special educator and related service personnel (...) then that becomes the LRE for that child (Henderson, 1993; p. 94).

The importance of the word "appropriate" comes in the implication that what the law refers to as "the regular educational environment" is not appropriate to the same level for all children. This is important, for a number of reasons, not the least of which is the assimilationist intent implicit within IDEA. In other words, the onus is on disabled students who, given the necessary "supplementary aids and services, "must find a way to fit into "the regular educational environment."

This is by no means exclusive to IDEA. Slee (1999b) has described the same phenomenon within the Australian context.

...discursive practices form an alliance that pursues an assimilationist agenda described in a language of 'Inclusion'. In other words, residual professional interests of those working in the field of special education, have necessitated resilience over changing political imperatives. Predominantly unchanged practices are described in new terms. Inclusion is practiced by the same people who presided over exclusion. The aim is to have 'othered' children fit schools we provide with a
The aim is to have 'othered' children fit schools we provide with a minimum of fuss and without disrupting the institutional equilibrium. This is assimilation (p. 127).

One of the problems with an assimilationist approach is that it establishes an instant hierarchy between those being assimilated (in this case disabled students) and those students for whom the system was designed. This hierarchy is reflected in a reading of the least restrictive environment clause, which ends with a statement to the effect, that if a disabled student cannot reasonably fit into the existing system, it is acceptable to segregate them.

There are a number of things built into IDEA that serve to complement and augment this hierarchy. Most notable is the law's definition of disability:

(B) CHILD AGED 3 THROUGH 9.–The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—
(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services (P.L.108-446; pp. 6-7).

This definition operates wholly from within a deficit model understanding of disability. The conflation of impairment and disability is something that has long been criticized within both disability studies and disability politics (Corbett, 1996; Oliver, 1990; UPIAS, 1976). Proponents of the social model of disability argue that by not distinguishing between impairment and disability, disabled people become constructed as problematic. Deficit understandings do not account for or recognize disability as socially constructed; rather, disability is conceptualized as an internal deficit located solely within the individual (Altman, 2001; Oliver, 2004; 1990).

A number of social model theorists argue that the act of problematizing individuals amounts to a form of oppression (Abberly, 1996; Swain, French & Cameron, 2003; Oliver, 2004). In adopting deficit model understandings of disability, institutions and laws reinforce this oppression (Oliver, 1990). Embedded within IDEA is a conception of disabled people as "less than" in comparison to nondisabled people, and therefore not always worthy of equal treatment under the law. Looking again at the phrase "to the maximum extent appropriate," it becomes clear that its intended interpretation is "to the maximum extent appropriate to an individual's deficit." This is one example of how IDEA sends a form of ableism into the educational system regardless of the intent of the individuals within that system.

Case law interpreting the LRE clause has been inconsistent (Henderson, 1993; Rothstein, 2000). While almost all of the LRE cases have determined that the law implies that the regular educational environment is not always the least restrictive environment, there have been significant disagreements in the courts over how and on what basis this is to be determined. Case law interpretation is important because it is the court interpretation of the meaning of IDEA from which schools and school districts must take their cue. Just as the actual wording of IDEA has constructed ableist institutions, so has the judicial interpretation of IDEA.

In Board of Education of the Hendrick Hudson Central School District v. Amy Rowley (1982), the Supreme Court, focusing upon the FAPE requirement, expounded on what they saw as the proper interpretation of the term "appropriate." Justice Rehnquist wrote on behalf of the majority:

Thus if personalized instruction is being provided with sufficient
supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act" (Board of Ed. v. Rowley, 1982).

The ruling establishes the bare minimal standard of educational benefit as the final arbiter of appropriateness. Rehnquist argues that this interpretation stems directly from legislative intent.

By passing the act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the states any greater substantive educational standard than would be necessary to make such access meaningful. Indeed Congress expressly recognized that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome. (...)Thus the intent of the act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside" (Board of Ed. v. Rowley, 1982).

It is important to remember that Supreme Court rulings are the law of the land, as far as how any particular law is to be interpreted. This ruling says that states need only meet a standard of educational benefit for a program to be deemed appropriate. The ruling also reinforces a hierarchy between disabled and nondisabled students whose education is held to a higher standard, particularly in light of recent standards based reforms such as No Child Left Behind. While the ruling does not prohibit states from holding a higher standard, very few states have attempted to do so.

It is worth noting that the dissenting opinion expressed by Justice White considered the majority's opinion akin to unequal treatment. In fact, Justice White disputed Rehnquist's interpretation of legislative intent.

...if there are limits not evident from the face of the statute on what may be considered an 'appropriate education', they must be found in the purpose of the statute or its legislative history. The Act itself announces that it will provide a 'full educational opportunity to all handicapped children'.(...)This goal is repeated throughout the legislative history in statements too frequent to be 'passing references and isolated phrases'(...) These statements elucidate the meaning of 'appropriate'. According to the senate report for example the Act does 'guarantee that handicapped children are provided equal educational opportunity'. (...) Indeed, at times the purpose of the act was described as tailoring each handicapped child's educational plan to enable the child 'to achieve his or her maximum potential' (Board of Ed. v. Rowley, 1982).

If Justice White's assertion is believed[v], it becomes clear that the majority opinion embeds yet another layer of ableism within IDEA by allowing schools to provide lesser standards of education for disabled students than for nondisabled students.

Other cases have affirmed the interpretation that the regular education environment is not always appropriate (e.g. Roncker v. Walter, 1983; Daniel R.R. v. State Board of Ed., 1989) while still other cases have determined who gets to determine what is appropriate. For example, in Hartman v. Loudon County Board of Ed. (1997), the 4th circuit court of appeals determined that responsibility for determining the appropriate placement belonged to the school's IEP team rather than the courts. The significance of this is in its recognition of the privileging that IDEA gives to professional expertise. It is noteworthy that "expertise" does not apply to the entire IEP team—only the professionals on the team who have the "right to apply their professional judgement."

Yet another hierarchy is created in which professional expertise is officially valued...
Yet another hierarchy is created in which professional expertise is officially valued more highly than the knowledge and expertise of disabled students and their parents. A large body of work within disability studies has examined the oppressive nature of this hierarchy of expertise (Biklen, 1992; Corbett, 1996). For many of these professionals, their professional identity is strongly tied to the deficit understandings of disability discussed earlier (Reiser & Mason, 1995).

It is clear that ableist understandings and mechanisms are firmly entrenched within IDEA. I have focused only on one clause within the law; however, I assert that ableism runs throughout IDEA. Its domination of the LRE clause alone should raise alarms for anyone concerned with equity. The remainder of this article will focus on the interplay between institutional ableism and institutional racism in IDEA’s attempts to address racial disproportionality in special education.

Disproportionality: Racist Ableism or Ableist Racism?

Institutional ableism is insufficient to understanding the disproportionate identification of minority students under IDEA. An understanding of institutionalized racism must also be brought into the picture. The importance of the concept of institutional racism lies not only in its recognition that racism is more than just individual prejudice, but also in the understanding that individual intent is irrelevant, even if an institution attempts to eradicate racist outcomes. If it does not succeed, it is still institutionally racist. For example, Gillborn (1995) studied a school committed to anti-racist education and found that, despite this activism, school structures and practices were still geared towards producing racist outcomes for students in terms of educational attainment.

In relation to disproportionality, institutional ableism (as will be discussed shortly) is very much a factor; however, it is impossible to take institutional racism out of the equation. It is difficult to find a more clearly racist outcome than the disproportionate segregation of minority students from general education. If ableism alone were involved, one could expect to find similar levels of representation across racial and ethnic groups.

The conflation of institutional ableism and institutional racism serves to make both stronger than either would be on their own. Society’s willingness to accept discrimination against disabled people as the result of individual deficiencies is used to make racism more palatable. As Reid and Knight (in press) point out:

To explain overrepresentation of minority students in special education, we first reveal U.S. historical conditions that have made institutionalized racism, classism, and sexism seem natural and just through their conflation with disability, a form of oppression based on ableism.

While much of the focus on institutional racism in education has been around the resegregation of public schools through a variety of covert mechanisms, including white flight (Johnson & Shapiro, 2003), testing (Brown et al., 2003; Gillborn & Youdell, 2000), ”color-blind” policies (Bonilla-Silva, 2003), and pedagogy (Gillborn, 1990; Sleeter, 2004), the use of ableist segregation of special education allows for a legal, overt, and systematized means of achieving the same end. IDEA does, legally and overtly, everything that the courts attempted to do away with in the Brown decision.

The 2004 incarnation of IDEA expands upon the attempts of earlier versions to address disproportionality. Whereas the 1997 version of IDEA stopped at requiring local education agencies (LEAs) to report, review, and, if necessary, revise policies, practices, and procedures aimed at preventing the disproportionate representation of minority students in special education, the 2004 version of IDEA mandates LEAs to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in
comprehensive coordinated early intervening services to serve children in
the local educational agency, particularly children in those groups that
were significantly overidentified under paragraph (1) (P.L.108-446; p. 94).

This full funding trigger located in section 618 d (B) of IDEA is written in a way
to suggest that it is intended to give more funds to LEAs for the purpose of fighting
existing disproportionality. Although there is no reason to question this intention, an
understanding of both institutional ableism and racism means that intentions are
irrelevant and there is a need to focus on outcomes. While it is too soon to determine
the outcomes of this clause, there is enough evidence to speculate upon
possibilities.

Anything that triggers maximum funding for a school or local education agency is an
incentive. In this case, rather than discouraging the disproportionate identification of
minority students as disabled, the clause serves as a bounty actively encouraging
overidentification as a means to higher funding levels. Greene and Forster (2002)
found that bounty funding systems in special education led to far greater growth in
special education than lump sum funding systems (no incentives):

The average special education enrollment rate for states that had lump-
sum systems at any time during the study period grew from 11.1% in the
1991—92 school year to 12.4% in the 2000—01 school year, an increase
of 1.3 percentage points. In the same period, the average special
education enrollment rate for states that maintained bounty systems for
the entire study period grew from 10.5% to 12.8%, an increase of 2.3
percentage points" (p. 7).

Although Greene and Forster (2002) focused upon the effects of bounty systems on
the identification of special education students, there is no reason to suggest that a
bounty targeting minority students would have a different outcome.

It could be argued that any incentive would be nullified by additional costs related to
a student being identified as needing special education services. Greene and Forster
(2002) have also answered this claim by pointing out that there is actually a cost
benefit tied to increased identification of students.

Some services that a school would have provided to a particular child no
matter what can be redefined as special education services if the child is
placed in special education; these services are not truly special education
costs because they would have been provided anyway. For example, if a
school provides extra reading help to students who are falling behind in
reading, the school must bear that cost itself. But if the same school
redefines those students as learning disabled rather than slow readers,
state and federal government will help pick up the tab for those services.
This is financially advantageous for the school because it brings in new
state and federal funding to cover "costs" that the school would have had
to pay for anyway. Furthermore, there are many fixed costs associated
with special education that do not increase with every new child. For
example, if a school hires a full-time special education reading teacher, it
will pay the same cost whether that teacher handles three students a day
or ten. However, the school will collect a lot more money for teaching ten
special education students than it would for teaching three (p. 4).

The funding mechanisms in terms of both funding received and cost benefits
becomes an institutionalized mechanism of inequity.

Is this a form of institutional ableism or institutional racism? It is neither and it is both.

In this instance, the two are indistinguishable. Neither offers sufficient explanation on
its own. Crenshaw (2003) argues in her analysis of the intersections of race and sex that focusing on either construction as discrete from the other:

"...creates a distorted analysis and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon" (Crenshaw, 2003; p. 23).

Disability and race are similarly conjoined in IDEA's disproportionality clause. It is ableist in that students' opportunities and experiences are being limited by mechanisms and structures built around constructions of disability, but it is also institutionally racist in the way it targets students by their membership in racial and ethnic minority groups. The racist outcomes could not be achieved without the ableist mechanisms.

Conclusion

We have heard for the last thirty years that IDEA is a civil rights legislation intended to fight discrimination. While the sincerity of this claim is not in question, I contend that ableism is deeply ingrained within IDEA. Covert forms of discrimination, such as institutional ableism and racism, are far more insidious than more overt discrimination because they are so difficult to question. IDEA's attempts to address disproportionality are perfect examples. The stated purpose of the clause indicates an anti-discriminatory intent, but the mechanism the clause creates to achieve this end is designed in a way that is most likely to cultivate the very outcome it intends to eradicate.

In merging the outcomes of both institutional ableism and racism, IDEA has created a powerful and institutionalized inequity. Society's acceptance of disability discrimination enables the acceptance of the otherwise unacceptable racial discrimination. Camouflaged in the language of good intentions, IDEA is protected against charges of either racism or ableism. It is necessary for researchers in disability studies and critical race theory to cross borders and engage with this interaction in order to address the inequities.

References


Hartman v. Loudon County Board of Education (4th Cir. 1997).


Roncker v. Walter (6th Cir. 1983).


**Endnotes**

i This is IDEA's terminology rather than my own. It is used consistently throughout the law. The law refers to minority groups, minority children, children with disabilities from minority backgrounds, and racial and ethnic groups. All of these terms appear to be used interchangeably within the law. There is little recognition that disproportionate representation affects some minority groups and not others, although African Americans are mentioned as one group significantly impacted by disproportionality. There is no mention of the historical context of racism in public education that has contributed to this. It is not even asserted that disproportionality is not a natural result of individual deficiency. The law merely asserts that disproportionality is something that needs to be queried to determine causality.

back to text

ii Different writers have used these terms in a variety of ways. At times, they have been used interchangeably, and at other times, they have been argued to be distinct from one another. While throughout this paper I focus on inclusive education, and use it as distinct from mainstreaming and integration, in this sentence I am highlighting the blurring of the terms within the overarching debate.

back to text

iii Other requirements have been added in the subsequent reauthorizations (including two significant additions in the 2004 act that focus on attorney fees and the reduction of paperwork).

back to text
The social model of disability emerged largely as a criticism of the medical model. Proponents of the social model of disability argue that disability is a socially constructed oppression (rather than an individually located problem) in which various impairments are used by society as the basis for group marginalization (Barnes, 1996; Finkelstein, 2004; Oliver, 1990).

White's opinion was joined by Justices Brennan & Marshall. The (...) within the quote represents citations from the congressional record which White uses far more extensively than Rehnquist in making the case for legislative intent.