Introduction

Disproportionate representation for American Indian and African American students happens when their placement in special education programs exceeds what would be expected given their numbers in the general population, or when their placement rates are compared to that of students from other racial groups. The state of Minnesota first responded to the concern of the disproportionate representation of American Indian and African American students in special education programs in 1998, when the first publication of the Reducing Bias Manual (A Vision for A Better Education) was produced.

The subtitle of the original guidelines, A Vision for a Better Education, was deliberately aspirational. Disproportionate representation has causes and effects that extend beyond the walls of individual classrooms or schools. A directed effort by educators, administrators, and collaboration with caregivers and community leaders is necessary to address the factors that contribute to disproportionate representation.

Special education programs are modifications to educational programs based on the needs of student associated with categories of disabilities established by federal guidelines\(^1\). The Individuals with Disabilities Education Act (IDEA\(^2\)) established federal categories of educationally related disabilities.

Public schools have the responsibility of meeting the needs of students identified as having a disability that interferes with their education, and for developing interventions that support students in need of such services. Examples of services include programs for students with learning disabilities, cognitive challenges, difficulties with managing emotions or behaviors, or autism spectrum disorders.

Since the original publication of the Reducing Bias manual, disproportionate representation nationally and within Minnesota has remained a concern. The state has responded again to promote promising practices in 2014 and beyond with a renewal and revision of content focused on information and methods to support fair assessment of American Indian and African American students in public schools.

A collaborative effort was conducted to review and revise content from the original Reducing Bias manual. Members of this collaborative included professionals from the University of Wisconsin – River Falls, St. Scholastica in Duluth, St. Mary’s University in Minneapolis, Winona State, community consultants, parent representatives, staff from the Minnesota Department of Education (MDE), school district administrators, and professionals with expertise in the areas of cultural competency, racial development, linguistic diversity, and special education issues. The exclusive focus of this work is on the needs of American Indian and African American students.

\(^1\) [http://www.ldinfo.com/categories.htm](http://www.ldinfo.com/categories.htm)
The guidelines contained within this document are designed to promote promising practices in general and special education services in decision-making about the needs of American Indian and African American students. A **specific outcome of the information contained in these guidelines is the reduction of the overrepresentation in special education programs of American Indian and African American students.** The guidelines are also designed to provide educators and families with knowledge of strategies about school environment issues that proactively contribute to supporting students while helping to reduce negative outcomes for American Indian and African American students.

Throughout the discussion within this manual the broader term **caregiver** is used to represent parents, guardians, or other relatives responsible for making educational decisions for a student. Family units among students are varied and the term caregiver is more inclusive; recognizing that those providing direct care to the student could be parents, but also may be grandparents, aunts, uncles, brothers, sisters, or legal guardian who do not have a familial relationship to the student.

It is important to support expectations for success and achievement of American Indian and African American students. Negative outcomes for American Indian and African American students happens when students are suspended or expelled from programs, or are unnecessarily removed from traditional classroom settings. With removal or inappropriate special education placement students lose access to traditional services that support their growth and development. **A point of emphasis of these guidelines is the promotion of a positive school climate to support American Indian and African American students as they progress through their schooling in Minnesota public school districts.**

Within this manual a comprehensive perspective to address the educational, social, and emotional needs of American Indian and African American students is presented. These guidelines address educator awareness, knowledge, and issues related to collaboration with parents, families, and caregivers when cross-cultural communications and cultural competency are necessary.

The strategies recommended within these guidelines can be used regardless of a student’s race, ethnicity, or primary language. They were particularly designed for settings where American Indian and African American students make up a significant percentage of the student population, and where their presence within special education programs exceeds what would be expected through statistical probability. Many aspects of the material on race and culture may be applied to a larger discussion of race and cultural identity of students within educational settings. This discussion is important and sets the stage for learning, growth, development, and positive change.

Settings seeking to improve their decision-making approaches with American Indian and African-American students should engage in on-going data collection and assessment. Assessment is commonly used to refer to a process of evaluating the needs of students. Assessment can be both formal and informal. As used within these guidelines, **assessment is generally defined as the collection and interpretation of information that forms the basis of good decisions about strategies, services, or interventions to benefit the individual student, or**
to support caregivers and families in their work with students. Assessment can also be used from the systems perspective with regard to accountability efforts, system appraisal, and data collection to inform good practice and make adjustments to support the needs of students.

The Gordon Commission (20133), asserted that assessment of student achievement after a period of learning, and assessment to adjust and improve learning must both be tailored for their specific purpose. The Gordon Commission stated that “assessments do more than document what students are capable of and what they know. To be as useful as possible, assessments should provide clues as to why students think the way they do and how they are learning as well as the reasons for misunderstandings (p.10).

Free and Appropriate Public Education (FAPE) & Special Education Services

An expectation within public education is equal opportunity and support for all students, typically referred to as a free and appropriate public education (FAPE). For years concerns have been reported about the disproportionate representation of American Indian and African American students, and other culturally and linguistically diverse (CLD) students in special education programs (Specific Data on the performance of American Indian and African American Students in Minnesota Schools is provided in the School Climate chapter).

American Indian and African American students are typically under-represented in programs for students identified as gifted. While special education and other alternative education settings are designed to provide interventions for students who have qualified for services, educators, administrators, and the public at-large have legitimate concerns when students are placed in specialized programs for reasons other than an educational need. When placements occur in special education programs for reasons other than the student meeting actual eligibility requirements, the concept of an appropriate public education is challenged.

Issues related to diversity factors and cultural differences have a major impact on the special education process. In terms of referral and assessment, the aspects of diversity of most concern to educators are factors related to racial identity and cultural affiliation, communication patterns and practices, and socioeconomic factors4.

Special education programs are designed to provide individualized and small group instruction based upon individual needs and specific disability categories recognized by the federal government. These programs are implemented through state and local education agencies. The goals of special education programs are to improve student academic achievement and functional performance while supporting their self-esteem and maximizing their independent functioning.

Concerns about the special education process and negative outcomes for American Indian and African American students include lowered expectations about the ability of students to meet academic expectations, loss of access to the general K-12 education program and their ability to meet progress standards, and reduced access to postsecondary opportunities. These negative

4 Shindler, J., Jones, A., Williams, A.D., Taylor, C., & Cadenas, H. Exploring the School Climate – Student Achievement Connection: And Making Sense of Why the First Precedes the Second. Alliance for the Study of School Climate, California State University, Los Angeles www.calstatela.edu/schoolclimate
consequences are important to avoid for all students, yet American Indian and African American students are particularly at-risk for special education or alternative placements that do not match their needs. Serious questions are raised about an appropriate public education when students are placed in programs for reasons other than the presence of an actual disability.

**Intended Benefits of Special Education Services**

According to federal regulation, the purpose of special education is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”

Generally, special education services are designed to offer:

- Access to specialized services
- Specially designed individualized and small group instruction
- Individualized curriculum
- Specialized instruction in coping strategies and social skills
- Improved rates of learning and improved self-esteem
- Preparation for adult life, including instruction geared toward employment, independent living, and self-advocacy
- Greater family input on educational goals through the IEP process
- Access to general education curriculum with modifications

The services offered through special education placement often involve modification of the standard curriculum for students to implement developmentally appropriate instruction. A concern with prolonged exposure to a special education curriculum substantially different from general education requirements is that students within special education programs are sometimes diverted from curriculums that help them achieve success on state standards. For other students post-secondary choices such as college may not be achievable because they have been in programs lacking rigorous preparation to provide a foundation to achieve success at the college level. In other situations college pre-requisites involving language study or higher-level mathematics are eliminated. Access to a rigorous curriculum and equitable education is a goal for all students, regardless of program placement.

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The Concept of Over-Representation

As stated by the Council for Exceptional Children, “over-representation in special education occurs when a group’s membership in the program is larger than the percentage of that group in the educational system or within a given disability category (e.g., learning disability, cognitive disability, emotional disturbance, etc.)” (Addressing Over-representation, 2002, p.16). Data consistently indicate American Indian and African American students are susceptible to over-representation (Vincent, Randall, Cartledge, Tobin & Swain-Bradway, 2011). Such differences in placement are difficult to justify and is a cause for concern.

<table>
<thead>
<tr>
<th>Social issues</th>
<th>(poverty, racism, family stability)</th>
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<tr>
<td><strong>General education system issues</strong></td>
<td>(capacity of schools to adapt to changing student demographics)</td>
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<tr>
<td><strong>Higher education issues</strong></td>
<td>(teacher recruitment and training, particularly among members of underrepresented populations)</td>
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<tr>
<td><strong>Special education system issues</strong></td>
<td>(screening and assessment practices).</td>
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Special education identification and placement of students rests upon a complex system of referral, individualized assessment, and identification practices that are based upon statewide eligibility criteria. This takes place within the context of the public education system, staffed by individuals trained in institutes of higher education and supported by administrations.

Many factors contribute to disproportionate identification and placement in special education of American Indian and African American students. Some factors are related to characteristics of the student, while other factors are related to the school setting and climate. Educators in some settings may not adjust their understanding of the student’s needs when diversity factors are present (language differences, differences in belief systems).

Other factors that contribute to disproportionate representation are related to the school setting and involve systemic issues such as educator recruitment and preparation and how well educators are prepared to work with students from diverse backgrounds. Instructional style preference of educators and learning style preferences of students are important to evaluate, as a mismatch between the two perspectives can create opportunities for misunderstanding.

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Special education assessment procedures can contribute to disproportionate placement in several ways.

**Traditional special education assessment processes contribute to inappropriate placement of students when they**

- use referral processes that bypass or minimize quality Tier 1 (Universal Interventions), Tier 2 (Targeted Interventions), or Tier 3 (Intensive Interventions)
- rely on standardized tests (particularly nationally standardized individualized tests of intelligence) with norming samples that are inconsistent with district population
- fail to take a holistic view of the individual student
- focus on student weaknesses to the exclusion of strengths (Can’t Do versus Can Do)
- blame the child/family rather than the consideration of other variables that may cause the presenting problem
- fail to adequately consider cultural and/or environmental factors in assessing the needs of a student.
- fail to consider other variables that may cause the presenting problem. Howard (2006\(^8\)) described a temptation to blame the student for difficulties.

The Government Accountability Office (GAO) has recommended that the Secretary of Education develop a standardized approach to define disproportionate representation to be used by all states. Within their report of February 2013, the GAO expressed concern that disproportionate representation of racially and ethnically diverse students in special education was a concern.

States have been given flexibility as to how they defined disproportionate representation. The GAO “found that the way some states defined overrepresentation made it unlikely that any districts would be identified and thus required to provide early intervening services”,\(^9\) therefore there is the need for a standardized definition of overrepresentation. The concern is that some settings report no disproportionate representation, however, such findings in some situations are likely due more to a poor definition of overrepresentation rather than an absence of a problem.

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8 Howard, G. (2006) We can't teach what we don't know: white teachers, multiracial schools. Teachers College Record.
IDEA requires that districts identified with disproportionate representation set aside 15% of their IDEA funds to provide early intervention service for students who require academic or behavioral support. Within IDEA three indicators are used to review information on disproportionate representation and to make determinations as to whether a district meets the criteria for overrepresentation. The three indicators are:

1. Disproportionate representation of racial and ethnic groups in special education due to inappropriate identification.
2. Disproportionate representation of racial and ethnic groups in special education in specific disability categories due to inappropriate identification.
3. Significant discrepancies in suspensions and expulsions.

Based on this approach, up to seven different measurements are available to states to assess disproportionate representation.

**IDEA Performance Indicators**

<table>
<thead>
<tr>
<th>Significant Disproportionality</th>
<th>Disproportionate Representation and Significant Discrepancies as a result of inappropriate identification</th>
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<tbody>
<tr>
<td>Overrepresentation of racial/ethnic Groups in special education</td>
<td>Overrepresentation in General Particular Impairment Category</td>
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<tr>
<td>Overrepresentation in general Particular Impairment Category</td>
<td>Overrepresentation in General Particular Impairment Category</td>
</tr>
<tr>
<td>Particular Educational Setting Disciplinary Actions</td>
<td>Disciplinary Actions</td>
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In Minnesota school districts are cited for overrepresentation when they meet the threshold for disproportionate representation for 3 consecutive years. **Overrepresentation of American Indian and African American students in special education programs within a district can be viewed as a sign that forces involving errors or potential bias are operating in schools within the district to the degree that they significantly and negatively impact specific groups of students.** Such forces need to be addressed. These forces can include lack of educator knowledge about the impact of cultural differences, faulty intervention and assessment systems; faulty decision-making processes when students from diverse backgrounds are involved, or institutional racism.

**Impact on American Indian Students**

Minnesota is the home of seven Anishinaabe reservations and four Dakota Communities. According to MDE data from 2008-2009, the statewide overall weighted risk ratio for American Indian students was the highest of all racial groups at about 1.7, *(this data suggests that American Indian students are almost twice as likely as their peers to be involved in special education programs; scores greater than 1 indicate over-representation).*

American Indian students were consistently rated at the highest identification rate for Specific Learning Disabilities, Developmental Cognitive Disabilities, and Emotional and Behavioral Disorders. This disproportionate representation is of concern as research shows that special education has limited exit strategies after students are placed, limited and less rigorous curriculum than the general classroom setting, limited access to academically able peers who serve as age-appropriate role models. Other concerns include reduced post-secondary opportunities and separation from peers based on race or culture.

**Impact on African American Students**

In Minnesota, African-America students are 1.5 times more likely to be in special education programs compared to other racial groups (all special education disabilities). Of additional concern is the high rate of students within special education who were suspended or expelled for more than 10 days. *African American students are three times more likely to be identified as having an emotional or behavioral disorder (EBD) when compared to their White Peers.* Repeated discipline referrals of students can establish negative or low expectations about the student, and such events are a persistent occurrence for African American students (Vincent, Randall, Cartledge, Tobin, & Swain-Bradway, 2011). Repeated use of discipline referrals and suspensions, without identifying the emotional and support needs of students or developing interventions, does not serve students, and does little to address meaningful interventions that enable the student to meet goals. An editorial from the Minnesota Star Tribune newspaper expressed alarm about the use of suspensions with Black students, reporting that there was no national evidence that black students engaged in

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misbehavior at a rate higher than other students. However, Black students were suspended more often than their peers, often for less-serious infractions than their peers.\(^\text{11}\)

**Commentary on Standardized Tests and Concerns About Bias**

Standardized tests of intelligence, achievement, adaptive behavior, or behavioral adjustment must be evaluated for use with students on a case-by-case basis. While appropriate for many students, standardized tests are not appropriate for all students. When standardized tests have content bias or technical limitations because of norming samples that are not sensitive to populations with a significant number of diverse students, evaluators must make decisions about the appropriateness of the instrument with their student population. Although standardized tests undergo rigorous review, it cannot be assumed that these instruments are completely free of biases.

Standardized tests may have greater validity for students who are more acculturated to the norms of the dominant culture and whose experiences are reflected in the content and norming samples of a given test. In determining whether a standardized test is appropriate for a given student, assessment teams need to consider whether a particular student’s life experiences are represented in the content of the instrument and whether he/she is similar to students included in the norming samples.

Standardized tests may have less validity for students who are members of a racial or diverse cultural group and/or who have not been exposed to a wider range of information and life experiences because of economic disadvantage. Inferences and interpretations from nationally standardized tests may be less valid for students living in a home where another language or dialect is spoken or where the use of English is influenced by the cross-generational use of another language. **Assessment teams must be vigilant to factors that weaken the reliability or validity of information gained from testing, particularly when placement decisions are considered.** Any limitations about measures should be communicated to parents and caregivers when results of assessment are shared.

When inferences or interpretations drawn from standardized tests have limited validity for American Indian or African American students, educators should use a variety of strategies to reduce bias and increase fairness. State guidelines require careful consideration of factors that could lead to biases in interpreting results from assessment.

\(^{11}\) [http://www.startribune.com/opinion/editorials/134938518.html]
Disproportionate representation in special education can result from failure to understand the cultural dynamics of American Indian or African American students. Other factors associated with the disproportionate representation of American Indian and African American students in special education or alternative services include:

1. Concerns about bias in referral procedures
2. Concerns about bias in assessment practices
3. Concerns about bias in how placement decisions are made regarding American Indian and African American students.

These factors combine with inequities in opportunity based on socio-economic factors such as poverty, and with curriculums that are not culturally responsive (Sullivan et al., 2009). Often, the orientation in conducting evaluations of students is deficit based. It is important to approach understanding students and their needs through focusing on their strengths. Educators involved with assessment and evaluation teams must maintain a student-centered approach in each step of the evaluation and programming process.

Disproportional representation has causes and effects that extend beyond repercussions for the individual student, classroom, or school. Educators working towards a more equitable system are seeking ways to (a) make good decisions about assessment and eligibility for individual students, and (b) advocate for an improved education system that meets the needs of all students.

**Test Taker Rights**

Persons who take tests have rights. Parents, caregivers and legal guardians have due process protections involving issues such as informed consent. Many professional organizations have collaborated on a set of fair testing practices to guide “professionals in fulfilling their obligation to provide and use tests that are fair to all test takers regardless of age, gender, disability, race, ethnicity, national origin, religion, sexual orientation, linguistic background, or other personal characteristics” (Joint Committee on Testing Practices, p.3). The standards can be found at [http://www.apa.org/science/programs/testing/fair-code.aspx](http://www.apa.org/science/programs/testing/fair-code.aspx). Issues covered within the standards involve development of tests, selection of tests, reporting and interpreting results, and informing test takers. As test takers in school settings are mostly minors, informing their caregivers becomes a key element in communications about testing issues.

Within the guidelines a broad definition of tests is used, regardless of the mode of presentation (paper and pencil, computer-based tests, and performance tests). Although designed primarily for tests requiring formal or trained administration teachers are encouraged to use the guidelines as a method to help improve their testing practices with students.

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12 Sullivan et al., 2009  
Worldview, Educator Awareness, and Cultural Competence

Given the concern and statistical evidence of overrepresentation of American Indian and African American students in special education programs, it is essential educators consider the impact of the student’s culture within the process of developing interventions across multiple tiers of service or through a system of support for students used in their settings.

*Decisions that involve interventions, referral for assessment, placement in special education programs, or suspension/expulsion for an American Indian or African American student must consider the student’s culture, language, experience and worldview before changes are made in their programming.*

A person’s worldview involves consideration of the social, economic, and political climate surrounding the individual, combined with his or her family influence, individual characteristics, and cultural background. Other aspects of worldview include issues involving gender and sexuality (Flores, López, & De Leon, 2000). Educators who fail to consider their own worldview as well as the worldviews of their students can develop misperceptions about students, or have difficulty with communication when working with students and families whose worldview differs from theirs (Sattler, 1988).15

As proposed by Corey, Corey, & Callanan, (2007) persons in professional development programs (e.g. teachers, administrators, special educators, school counselors, school psychologists), “come into training knowing only their own culture, which can lead to cultural tunnel vision, a perception of reality based on a very limited set of cultural experiences” (p. 114). Another method to express this view is to consider the cultural lens each person has, or, as stated by Guerrero and Leung, (2008), “everyone has a cultural lens that affects their world view” (p.19).

Faulty vision or misperceptions about the ability, skills, or behavioral intent of African American or American Indian students contribute to erroneous judgment of those students, suggesting interventions that are not warranted or placement in services that are not appropriate. **Educator awareness of nonbiased strategies to assess the needs of American Indian and African American students, combined with understanding worldview, is a key to reducing problems with disproportionate representation.**

All educators, professional support staff, and administrators must work from a culturally-competent perspective. As part of profession training, education professionals in Minnesota typically have had diversity training as part of their licensure requirements. However, educators, program administrators and staff have a professional responsibility to continue to increase their

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knowledge of how race and culture, communication differences, and socioeconomic diversity influence special education assessment and decisions about students.

A review of position statements from educator disciplines affirms the importance of cultural competence, defined as a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals to enable those involved to work effectively in cross-cultural situations (Cross, Bazron, Dennis, & Isaacs, 1989\(^\text{18}\)). Chambers (2012\(^\text{19}\)) asserted that one of the responsibilities of teacher education programs is to create opportunities to discuss belief systems and perspectives that might influence classroom interactions. Culturally competency applies to all professional educators and administrators.

A culturally competent perspective is one that identifies behaviors, attitudes and policies within a school system and among professionals to enable the setting to be responsive to the needs of students. Tools like the Intercultural Development Inventory can foster self-awareness and growth in this area (http://www.idiinventory.com/).

**Racial and Cultural Diversity**

Race and culture are the terms most often identified when discussing diversity. However, race and culture are hardly discrete, and it is a challenge to separate the notion of race from that of culture.

At its most basic level the term *race* is used in the United States to refer to skin color and possibly to country of origin, often appearing as a category that must be checked on a form. For many people the choices provided to designate their race do not begin to correspond to their own complex, multi-racial identity.

Culture refers to a more complex web of values and behaviors. Culture includes the shared history or the stories people hear that shape their attitudes, beliefs and outlook toward the world. Culture is closely related to other aspects of diversity involving communication patterns. For education in general and special education assessment in particular, culture is a more relevant concept than race.

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It is helpful to remember that some aspects of culture are observable and some are not:

<table>
<thead>
<tr>
<th>Observable</th>
<th>Not Easily Observable</th>
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<tbody>
<tr>
<td>Food</td>
<td>Spiritual beliefs</td>
</tr>
<tr>
<td>Dress</td>
<td>Values</td>
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<tr>
<td>Language</td>
<td>Authority</td>
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<tr>
<td>Customs for greetings</td>
<td>Gender roles</td>
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<tr>
<td>Holidays</td>
<td>Attitudes toward education</td>
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<tr>
<td>Spiritual/Religious practices</td>
<td>Recognition of disabilities</td>
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<tr>
<td>Celebrations</td>
<td>Attitudes toward people with disabilities</td>
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</table>

Assessors should not make assumptions about a student’s cultural identity based only on aspects of culture that are easily observable. Culture is a complex pattern of the following factors:

- assumptions
- obligations
- behaviors
- beliefs
- activity level
- attitudes
- customs
- sanctions
- traditions
- time orientation
- sentiments
- values

While many American Indian and African American students have some characteristics that are common to their respective racial and cultural backgrounds, there will be variations among students involving their personal characteristics, environments, and experiences. An assumption that the experience for all American Indian and African American students is the same is flawed.

*For the purposes of these guidelines, it is necessary to be mindful that students, their caregivers as well as educators are unique individuals who are also members of groups.*

Individual racial and cultural identity is a combination of personal characteristics and characteristics adopted as a result of group affiliation. Examples include:

**Personal Characteristics and History:** Physical appearance and attributes, spiritual, emotional, and intellectual attributes, personal history, and environmental experiences.

**Group Affiliations and History:** Family role and membership, affiliation with groups that share spiritual or cultural beliefs, experiences, history, interests, and environment.
Socioeconomic Diversity

Socioeconomic status is another aspect of diversity. Students enrolled in public schools in Minnesota come from homes that represent all classes, ranging from wealthy to working poor and families in multi-generational poverty.

Demographic information indicates that many members of cultural and racial minority groups in Minnesota are poor. Their socioeconomic status overlaps with other cultural characteristics and can compound the challenges these students face in school. Educators should be aware of the possibility of confusing socioeconomic issues with racial and cultural differences.

In summary:

- Socioeconomic differences overlap and interact with cultural and racial differences.
- Socioeconomic differences shape group affiliations and individual identities.
- Socioeconomic classes can be thought of as cultures in and of themselves.

Impact of Poverty

Poverty affects children in many other ways. Students growing up in poverty may not have the range of experience and knowledge that is expected in order for them to do well in school and on standardized tests. This may be due to limited access to resources such as books or educational opportunities. Students faced with serious economic problems may also experience a great deal of stress and anxiety. Students who lack proper nutrition are at-risk for poor physical development and lower cognitive functioning. It can be difficult for a student to focus on lessons and learning when she or he is homeless or lacks food and clothing.

The struggle some families face in trying to provide for their children’s basic needs may result in very limited verbal communication among family members and limited language development in children. With these concerns identified it is important to avoid the assumptions that poverty means the student comes to school with deficits in their potential, ability, or motivation. A perspective that all students have potential for success and attainment of age and grade related goals serve the student better.

While it is important for those involved in the education system to respect a family’s privacy and dignity, gathering enough information about the child’s economic situation is important to the intervention and assessment process. Poverty is a factor that may influence a child’s experiential learning opportunities that may ultimately affect language and/or conceptual development. Children living in extreme poverty may not be able to demonstrate adequate academic skill development and as a consequence may not score as well as same age peers on standardized tests.
In some situations, the student’s reaction to economic factors, of which they have no control, are the primary contributor to the child’s underachievement and rule out eligibility for special education. For example, poverty would serve as an exclusionary factor for a child who learns at a normal rate but hasn’t had a wide range of experiences or who has missed school frequently because of homelessness.

**Multi-tiered Systems of Support**

In the domains discussed in this manual (School Climate, Assessment, American Indian Concerns, African American concerns) the use of a Multi-Tiered System of Support (MTSS) is emphasized as a foundation for providing services for all students and is considered to be a foundation to address the problem of disproportionate representation of American Indian and African American students.

Elements of a Multi-tiered system that are important include emphasis on prevention and problem solving at the classroom and individual student level. The perception that special education placement is the intended intervention must be eliminated.

The use of systematic data collection that is used to guide the development of strategies to benefit individual students is the goal. Typically, a tiered system of services will involve universal interventions (those intended for all students), targeted interventions for students at risk, and intensive interventions for students with significant need for services.

Within the school setting, a range of building level interventions should be available to assist students when parents and teachers express concerns about a student’s academic, social, emotional, adaptive or behavioral skills. At every stage of developing strategies to support students, parents and caregivers should be informed and involved. Educators should be assisted in identifying strategies to benefit students prior to a decision for a referral for special education assessment.

**Universal interventions under a Tier 1 format should be available to screen all students across various domains of development. Such efforts to identify the status of students across domains such as academic development, social skills, and self-regulation should be considered a proactive means to support students, and to communicate with parents and caregivers about the status of students with data to support concerns.**

A common model of systemic support involves the use of three tiers; each with an increasing degree of support provided to students identified for need of additional help. In settings where a multi-tier system of support is not in place, use of intervention teams to develop strategies to support students is an option.
Common among multi-tiered systems of support is using data on students’ response to intervention to enhance student learning, social-emotional well being, and/or mental health (RtI: VanDerHeyden & Burns, 2010). The goal of RtI is to optimize the potential for success in these areas for all students, including those students at risk but not necessarily eligible for special education services (VanDerHeyden & Burns, 2006).

Components of RtI:

1. High-quality core instruction
2. Universal screening
3. Differentiated instruction or support based on student need
4. Implementation of increasingly-intensive evidence-based interventions targeting areas of identified need
5. Progress monitoring
6. Use of data to make various educational decisions (VanDerHeyden & Burns, 2010)

RtI is comprised of multiple tiers of service delivery that are typically represented visually as a triangle (see Figure 1).

![RtI Tiers](source: [www.sterncenter.org](http://www.sterncenter.org))

Figure 1: RtI Tiers from an Academic Perspective (source: [www.sterncenter.org](http://www.sterncenter.org))

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Tier 1

Tier 1, also known as the universal level, involves quality core instruction to which all students are exposed. Universal screenings in academic areas, social-emotional status, self-regulation and interpersonal skills, and/or mental health domains are conducted several times a year to learn how all students are responding to curricula. These screenings constitute the vital signs of learning “in that they can be used to reflect in a meaningful way whether children are at risk or not in their instructional programs” (VanDerHeyden & Burns, 2010, p. 722).

Screenings usually take place three times a year (e.g., fall, winter, spring), with the expectation that approximately 80% of students should respond successfully to universal curriculum and instruction. For the approximately 20% of students who do not respond successfully at the universal level, some type of intervention to attend to their areas of need is implemented (Burns, Appleton, & Stehouwer, 200523). Tier 2 is the next level of instruction, intervention, and assessment where the needs of this 20% are addressed.

Tier 2

Tier 2 involves the use of targeted instruction or intervention for those students identified as following in the lower 20% through universal screening. This instruction or intervention is delivered in some type of small-group format using groups that are flexible, fluid, and homogenous in nature, depending on baseline and progress monitoring data (VanDerHeyden & Burns, 201024).

Whereas assessment data at Tier 1 are used to make screening decisions, assessment data at Tier 2 are conducted to determine those prerequisite or other skills necessary that need to be taught to the student or augmented. Other adjustments at the Tier 2 level involve the determination of the instructional conditions that may accelerate a student’s learning trajectory. The data collected are also used to establish homogenous skill groups as a means of matching intervention to student needs.

The evaluations of student progress and response to interventions at Tier 2 also happen more frequently than what is done at the Tier 1 level. These assessment of student progress happen, every one to two weeks, so that a student’s progress, or lack thereof, can be monitored and the appropriate modifications to the intervention can be made as necessary. The ultimate goal is to return students receiving targeted instruction and intervention to the universal curriculum and developmentally appropriate instruction (i.e., Tier 1) as quickly as possible.

Tier 3

Even with Tier 2 services implemented, some students will continue to struggle (approximately 2%-5). These students would be advanced to Tier 3 to receive intensive assessment and intervention in their identified areas of need above and beyond what can be provided at Tier 2 (VanDerHeyden & Burns, 2010). Given the intensive learning, behavioral, and/or mental health needs of students at Tier 3, instruction and interventions at this level are based on individual student needs and they are tailored to her or him accordingly.

Due to the increased need for precision in identifying needs and frequency of monitoring growth, data at Tier 3 are collected at least weekly and can be conducted on a daily basis as necessary. Data collection at Tier 3 should be used to identify the cause or causes of a student’s less-than-optimal performance in the area(s) of concern (VanDerHeyden & Burns, 2010).

If after all of the efforts employed at Tiers 2 and 3, where the student fails to show progress at a rate that would lead to meeting goals, the movement towards a special education eligibility determination is likely warranted. It must be made clear that within Minnesota standards, Tier 3 data collection is not a special education evaluation. However, the data collected at the Tier 3 level, as well as information on student performance at Tier 1 and Tier 2, can be used to communicate information about the student in making special education decisions.

When students demonstrate difficulty with acquiring academic information or in meeting specific goals educators should not assume that the fault lies with the learner. Multiple factors can contribute to difficulty, and it is the responsibility of the team, working collaboratively with caregivers, to determine the combination of factors that best explains the difficulties shown by the student. Furthermore, apparent disinterest on behalf of the parent/caregiver should not be assumed. “Never judge a man until you have walked two moons in his moccasins (Creech, 1995).

For a student who is culturally diverse, some of the following factors could apply when the student has apparent difficulty meeting academic or social expectations:

- Gaps in learning (see mobility discussion within School Climate and also consider differences in curriculum from one school to another)
- Lack of opportunity to learn (unable to do homework due to other responsibilities or lack of resources assumed to be present by the school)
- Lack of knowledge of the expectations of the setting (raising hand before speaking, asking a question when unfamiliar with items)
- Lack of experience with standardized testing requirements (waiting for instructions, understanding that testing is a formal setting and not a game where creativity is allowed)
- Episodes of giving up easily when confronted with a frustrating task in the presence of someone the student is not familiar with, such as a tester
- Difficulty connecting materials to be learned to their life circumstances (questions of relevancy)
- Gap between expectations of educators and parents, or between caregiver and child

Educators can consult with caregivers and the student about the presence of any of these concerns, and work to identify strategies to support the student. *Educators should also work to support identification of strengths for students and families.* Administrative support within the school district for training on data collection and analysis, as well as support for training on cultural understanding is essential to developing a focused program that is respectful of the cultural characteristics of the student population that, if not addressed, could lead to errors in decision-making and the continuation of disproportionate representation. Negative expectations about students or their families should be challenged, and a strengths based orientation should be prominent in the work of those who engage families.

**Do No Harm and Ethical Responsibilities of Educators**

In determining the needs of students in public schools, equitable opportunity, treatment, and outcomes are paramount for all learners. From an ethical perspective, professional educators and others who work with students are obligated to do no harm (Williams, Armistead, & Jacob, 2008). As such to prevent harm to students action is required when overt injustices are present.

In some situations injustices may be covert, subtle, or difficult to detect. Nevertheless the failure to act where inequity is found contributes to harm of students. With the subtle but persistent concern throughout the United States of the statistical over-representation of American Indian and African American students, as well as other Culturally and Linguistically Diverse (CLD) students in specific disability categories (e.g., programs for students with Emotional or Behavioral Disorders, Learning Disabilities, or Cognitive Disabilities), action must be taken to reduce harm to students placed inappropriately.

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27De Leon, J. (2002). Designing instruction for English language learners. Presentation to the Arkansas State Department of Education Special Task Force on and Instruction of ELLs, Little Rock, AR.
The persistence of over-representation requires action to ensure that American Indian and African American students receive fair treatment throughout their educational experiences. Within the assessment or special education referral process, inadequate attention to procedures and decision-making rubrics can contribute to disproportionate placement in special education programs for American Indian and African American students.

Minnesota rules for educational services specifically address fair assessment and inclusion of caregivers and parents, two key issues for promoting equity in education. Those rules are as follows:

**Minnesota Rule for Efforts to Reduce Bias in Assessment**

Minnesota Rule 3525.2710 States:

Each district shall ensure that:

1. Tests and other evaluation materials used to evaluate a child under this part are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so;

2. Materials and procedures used to evaluate an English learner are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education and related services, rather than measure the child's English language skills;

3. Any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests;

4. The child is evaluated in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

5. Evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided;

6. If an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report;

7. Tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

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29 https://www.revisor.mn.gov/rules/?id=3525.2710
Promoting Fair Assessment and Reducing Disproportionate Representation

A preponderance of research indicates a framework of evidence exists to reduce disproportionate representation within special education programs and to increase the academic achievement of American Indian and African American students (Fullan, 2003\textsuperscript{30}, Johnson, 2002\textsuperscript{31}, Ladson-Billings, 2006\textsuperscript{32}).

Factors that promote positive outcomes include

(a) understanding the role of students’ native language and culture
(b) recognizing and supporting the importance of the perspective of caregivers
(c) understanding community values
(d) implementing culturally responsive instruction
(e) developing culturally relevant high standards
(f) promoting high expectations for American Indian and African American students.

Stakeholders must work collaboratively to share information to enhance understanding of the needs of American Indian and African American students, while also providing methods to improve skills of educators to work cross-culturally. Multiple factors contribute to Equity in education, from individual professionals operating from an ethical base that guides their work, through systemic dedication to honoring the culture, language, and background of all students.

Reduction in the disproportionate placement of American Indian and African American students can be achieved.

From the perspective of an individual educator throughout the system of a school district, respect for culture and language, and understanding of bias will be achieved. Change occurs when all of those touching the lives of American Indian and African American students engage in proactive actions to resolve inequities in education. Positive change will occur when students, caregivers, educators, and members of the community share a vision of high expectations for student achievement for American Indian and African American students.

\textsuperscript{32} Ladson-Billings, G. (2006) From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools Educational Researcher, 35(7) 3-12