

Inclusive Education in the (New) Era of Anti-immigration Policy:

Enacting Equity for Disabled English Language Learners

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Abstract

The authors present a qualitative study which investigates the intersections between English Language Learner (ELL) status, disability, and special education in a mid-sized urban school district in Upstate New York. They explore how teachers conceptualize and implement New York State Education Department policies which affect the inclusive education of ELL students. The authors discuss how the discourse used in these policies, along with teachers' limited access to guidance and support, could lead to the exacerbation of educational inequities and exclusion of ELLs, despite the promise to support inclusion and success for all students. The Disability Critical Race Theory (DisCrit) framework is used as an intersectional tool to help re-frame existing inclusive policies and practices.

Key Words: English Language Learners, Inclusion, Special Education, Policy, Teachers' Practices

Introduction

In the “post-truth” era, where debate is framed based on emotions and not facts, immigration is widely perceived as a controversial issue generating uncomfortable public quarrels. As Dolmage (2018) affirms, immigration in the North American context has never been solely about the migration of people from one place to another. Anti-immigration propaganda and immigration policy have been tied to racist and ableist ideas which construct (im)migrant bodies as dangerous and undesirable. Upon arrival, (im)migrant bodies¹ continue to be considered as less ‘abled’ and less ‘human’ (Dolmage, 2018), through the persistent use of discourses and technologies of control and power, reinforcing the ideology of ‘perfect’ functioning and assimilation into societal ‘norm’ (read white, cis-gendered, abled bodied, middle class man) . To fully understand the disabling and racializing force of anti-immigration rhetoric and its violent reproduction in schools, via suspensions, expulsion, bullying, harassment, and other routes to the school-to-prison nexus (Annamma, 2018; Evan-Winters, 2017; Losen & Skiba, 2010; Morris, 2016), it is necessary to challenge the construct and practice of inclusive education (Patel, 2013). This paper resists comfort-fantasies of inclusion by critically exploring existing New York State Education Department (NYSED) inclusive policies for English Language Learners (ELLs)², and the manufacturing³ process of labelling ELLs as disabled. The term ‘comfort-fantasy’ of inclusion is

¹ In line with postmodern disability studies perspective and Judith Butler’s notion of the performative, as expressed in *Bodies that Matter*, we use the term ‘bodies’ to refer to the sites of construction of what is ‘normal’, through the gaze of heteronormative subjects.

² We use the term “English Language Learners” as well as its acronym (ELLs) and “ELL students” interchangeably throughout this article, rather than terms such as “migrant” or “emergent bilingual.” This is because “ELL” is the student classification used in the New York State policy context within which this study was conducted. We worked directly with New York State policy documents and teachers who used variations of the term “ELL” and use this term to facilitate continuity across data, findings, and discussion sections. In the New York State education context, English as a New Language (ENL) is used to refer not to the children who are classified as ELLs, but to the specific kind of instruction such students must receive under Commissioner’s Regulations Part-154. In other words, ELL is considered a student classification, whereas ENL is considered a student service or learning context. Further, roughly 66% of students who are classified as ELLs in New York State are born as U.S. citizens (Sugarman & Geary, 2018). As such, terms such as “refugee” or “(im)migrant” do not encompass all students within this educational classification.

³ We borrow the concept of “manufacturing disability” from Sally Tomlison (2017). She argues that within a contemporary global digital economy, school systems are more inclined to demonstrate the likely inherited incapacities of marginalized groups of students, via a new eugenics and notions of fixed ability, ‘low IQ’, ‘deprived brains’, and several other attempts to produce inability.

used here to refer to the illusion that school systems will serve ELL students with disabilities by providing them with one type of support that operates separately from other supports, for the most part. This paper provides concrete examples of the ways in which students' needs are siloed: if they are in need of special education and language acquisition supports they - by proxy of the system- are afforded one or the other, not both. Evidence for practices that, in reality, harm or further oppress these students is demonstrated in teachers' conceptualizations of inclusion, and perceptions of the services provided for these students.

United States education policy, such as the Every Student Succeeds Act (hereafter ESSA, U.S. Department of Education, 2016), centers specific student populations with special education needs within state and federal reform initiatives which emphasize discourses around teacher and school accountability and student performance through alignment with education standards, assessment, and compliance (Migliarini, Stinson, & D'Alessio, 2019). As the focus of these reform initiatives, student identities emerge as minoritized subgroups subjected to a comfort-fantasy of inclusion. In this fantasy, exclusionary practices are sanctioned by state and federal policy under the guise of academic achievement, service delivery, and individual rights to education (Ferri & Ashby, 2017), which leave existing institutional mechanisms of power and control comfortably unchallenged. Major policy reforms by NYSED regarding ELL students, the Commissioner's Regulations (CR) Part-154, demonstrate the ways this comfort-fantasy of inclusion is preserved through persistent attention to (subjective) processes of student "identification" despite circulating discourses of collective accountability and "ELL success" (NYSED, 2015).

CR Part-154, a comprehensive collection of regulations regarding equity and inclusive education for ELLs, has significantly changed across the past decade, typically through addenda and revisions focused on the needs of six ELL subgroups: newcomer ELLs, developing ELLs, long-term ELLs, former ELLs, students with limited or interrupted formal education (SLIFEs), and ELLs with disabilities (NYSED, 2017a). This *ad hoc* approach to policy revision resulted from

“reactive forces of ‘inclusion’” (Migliarini, Stinson, D’Alessio, 2019), in which policymakers used existing frameworks to engage a limited (re)imagination of students’ rights as specific issues arose within each ELL subgroup. One example of this can be seen in the ways CR Part-154 emphasizes the “spatializing” of student learning through push-in and pull-out “services,” a familiar practice for special education professionals seeking to remediate perceived individual and/or group deficits (Naraian, 2016). Although students with specialized education needs remained at the center of these policy shifts and considerations (Hunt, 2011), student identification and shifting categories remain inextricably linked to this fixed conceptualization of ELL students’ rights.

In the attempt to fulfill our three-fold objective of (1) exploring the enactment of NYSED inclusive policies for ELLs and disabled ELL students, (2) analyzing teachers’ understanding of such policies and conceptualization of inclusion, and (3) highlighting challenges of implementation, while suggesting a way forward, we adopt the Disability Critical Race Theory (DisCrit) in Education as an intersectional and interdisciplinary framework (Annamma et al., 2013, Connor, et al., 2016). DisCrit centers the perspectives of multiply-marginalized students – or students at the intersections of oppressions, who are most aware of how oppression and inequity function, intertwine and their possible disruption (2016). DisCrit brings new understandings to how the intersection of (im)migrant and ELL status, race and disability enables or constrains the inclusion of ELL students, a topic that has been recently explored from the special education perspective (Artiles et al., 2007; Harry & Klingner, 2014; Klingner & Harry, 2006; Kangas, 2014), or from the Teaching English to Speakers of Other Languages (TESOL) and the raciolinguistic stance (de los Rios & Seltzer, 2017; Flores, et al., 2018; Rosa & Flores, 2017; Rosa, 2016; Vigouroux, 2017). DisCrit also represents a powerful theoretical and analytical tool to oppose those who construct different truths or fantasies of inclusion to pursue their political agenda, while discrediting educational research.

We come to this work with different experiences and perspectives which share commonalities with the participants within this study and within the larger field of ELL education. The poem *Sono uno del Mediterraneo* by Italian writer and migration activist Erri De Luca (2014) reads: “[I]’m one from the Mediterranean, which is not South or North, it is not East nor West. It is the liquid stomach between Asia, Africa and Europe. Those who are born on one of its coasts have in their blood an archipelago of people” (translated from Italian by first author). Born and raised in the heart of the Mediterranean for a significant part of her life, the first author is an English Language Learner and her positionality resonates with De Luca’s words. However, the first author’s constructions of dis/ability, diversity and education are tied to Western conceptualizations. As a white, able-bodied, non-colonized, young academic and ciswoman, she holds more significant privileges than the colonized and migrant communities considered in this paper. The first author is also a working single mother of a mixed-raced child within a patriarchal, racist, heteronormative society. This helps the first author in gaining a better understanding the psychological and material consequences of multiple forms of oppression that colonized and marginalized subjects face. Through her research, carried out both in Europe and the United States, she attempts to build trust with multiply marginalized and ELL students by spending time with them and interviewing them multiple times, by adopting transparent research methods, by being authentic in sharing findings, and by acknowledging her own biases.

The second author approaches this work as a white, nondisabled U.S. citizen who is a former English as a New Language teacher in Upstate New York. In her present work as a researcher and teacher-educator at a private university in a mid-sized city, she aims to remain accountable to and critical of the ways she has been complicit in the oppressive and exclusionary systems in the New York State education context through critically examining the policies and practices she once implemented as a teacher of disabled ELL students. The second author acknowledges her shared experiences with the interview participants in this study, who often unintentionally reproduce

educational inequities and harmful conceptualizations of student difference due to the uncritical approach to education policy in this context. These positionalities both inform and complicate our work, especially as we engage with DisCrit to explore how the inequities in ELL education might be addressed.

We begin with an introduction of DisCrit in Education, addressing the affordances provided to inclusion. Particular attention is given to the possibilities of DisCrit in showing the problematic aspects of existing policies and practices. Then, we address the methodology and policy data sources, which gave rise to the data used in this paper. The study presented in this paper draws from a larger multi-state research project sponsored by the Fulbright Schuman Commission, that I (first author) conducted in the 2017-2018 academic year. The discussion section focuses on the findings emerging from the Critical Discourse Analysis of *Guidance: Determining English Language Learner/Multilingual Learner (ELL/MLL) Status of and Services for Students with Disabilities* (NYSED, 2018a) and *The Blueprint for English Language Learner/Multilingual Learner Success* (NYSED, 2018b), as well as findings from the qualitative semi-structured interviews with ten teachers working in a mid-sized urban school district in Upstate New York. Initial findings point out how, despite apparent intention to support and include vulnerable populations through clear expectations for teachers and administrators, NYSED policy implementation leads to the emergence of the following challenges: (1) including through individualizing, (2) highlighting several barriers to inclusion, (3) relating inclusion to behavioral compliance, conformity and procedure.

DisCrit and affordances for inclusive education

Since the 19th and early 20th century, immigration has implied creating a dominant, normative identity, translating eugenic arguments about the value of bodies, into physical actions and the mapping of new ideas of borders between land and continents (Dolmage, 2018; Erevelles, 2011).

The legacies of such historical beliefs about ability, ethnicity, racialization and citizenship have intersected in complex ways that are relevant to our present time. There is still a disproportionate number of non-dominant racial, ethnic, linguistic students referred and placed in special education, especially in the high incidence categories, such as specific learning disabilities, that rely on subjective diagnostic processes (Losen & Orfield, 2002). In the contemporary context of special education, disability has been conceptualized through three lenses: the medical, the social, and the postmodern Disability Studies from which DisCrit builds on. The medical model is driven by the imperative to ‘healthy normalcy’ (Watermeyer, 2013, p. 29), whose defining characteristic is the location of disability within the individual with biological impairments, ignoring macro-sociopolitical contexts of racism, ableism, and other intersecting systems of oppression (Artiles, 2013). In contrast, the social model of disability affirms that disability is purely social—an oppression layered on top of impairment. Michael Oliver (1990) argues that impairment is not *part* of the body but is a *description* of the body. The Disability Studies lens contradicts the social model by suggesting that the separation of impairment and disability is an illusion (Dolmage, 2018). From the Disability Studies’ perspective, it is important to conceptualize disability and other identity markers as discursive constructions, with real material effects and value (Ferri, 2008; Leonardo & Broderick, 2011).

Inclusive education is often misinterpreted as a progressive continuum stemming from a special education standpoint (Artiles & Kozleski, 2007; Slee & Allan, 2001). Yet, it is increasingly discussed nationally and internationally as the best principle to address issues of equity and diversity in education (Ainscow, Booth, & Dyson, 2006; Campbell, 2002; Florian, 2008; UNESCO, 1994). A common aspect of existing inclusive policies and practices is that they usually focus on disabled students or students with special education needs. In the context of the United States, inclusive education tends to address issues of equity, troubling mainstream ideas around inclusion (i.e. originating from special education and targeting mostly disabled students) and

attempting to consider the intersections of disability with race, class, gender and citizenship (Artiles & Kozleski, 2016). However, as Minow (1991) argues, inclusive education in the U.S. is still considered a white subject agenda, remarkably ignorant of its use for harming multiply marginalized students.

DisCrit, as an interdisciplinary framework, is useful to both those doing work in inclusive and special education, as it exposes the fault lines in ableist and deficit-oriented perspectives of disability, to illustrate how disability interconnects with other socially constructed identities (e.g. class, gender and sexual diversity). DisCrit analyzes ways in which both race and ability are socially constructed and interdependent, and how ability is distributed and withheld in schools and classrooms (Annamma, 2018; Connor, et al., 2016). This framework exposes the limits of comfort-fantasy notions of inclusion, providing the justification as to why learning supports strategies for all students, and specifically for ELL with disabilities, should operate intersectionally. Thus, by exploring the affordances of DisCrit for inclusive policies and practices, we attempt to recognize the humanity of ELL students and ELLs with disabilities in a more nuanced and accurate sense. We emphasize the various forms of oppression that intersect in the daily lives of ELL students and disabled ELLs, and consequently affect their behavior, academic performance, relationships, and how they “navigate educational and social institutions with savvy and ingenuity” (Connor et al., 2016, p. 22).

There are seven tenets of DisCrit that show the possibilities of re-imagining comfort-fantasy inclusive policies and practices; each tenet highlights why curriculum, pedagogy and relationships are conceptualized in hegemonic ways and how they can be reimagined in generative ways for students and teachers (Annamma & Morrison, 2018). First, DisCrit focuses on how racism and ableism are normal and interdependent (Collins, 2011). These mutually constitutive processes are systemic and interpersonal and are often rendered invisible to restrict notions of normalcy to the desired and to marginalize those perceived as ‘different’ in society and schools (Connor et al.,

2016). Once a child is perceived and labelled as different from the norm (whiteness), they are then imagined as less capable in academic contexts (Annamma, 2018). Inclusive education practices should tackle forms of racism and ableism together, not attempting to respond to one or the other form of oppression that students experience.

Second, DisCrit values multidimensional identities and troubles single notions of identities, such as race *or* disability. It acknowledges how experience with stigma and segregation often vary based on other identity markers intersecting with race and disability (i.e. gender, language, class) and how this negotiation of multiply stigmatized identities adds complexities. Multiply-marginalized students have a clearer sense of the mutually constitutive processes of oppression, and how these processes are visible within segregated or dysfunctional inclusive spaces. As such, an approach to inclusive education that takes distance from the comfort-fantasy perspectives should consider the voices of multiply-marginalized students to design inclusive practices.

Third, DisCrit rejects the understanding of both race and disability as primarily biological facts and recognizes the social construction of both as society's response to 'differences' from the norm. Simultaneously, DisCrit acknowledges that these categories hold profound significance in people's lives, as it is evident in the marginalization of students of color or migrant students with disability labels, who are more likely to be segregated than their white peers with the same label (Fierros & Conroy, 2002).

Fourth, DisCrit privileges voices of multiply marginalized students and communities, traditionally missing in research (Matsuda, 1987). Consequently, DisCrit recognizes those who have been pushed outside of the educational endeavor through the discourse and practices of special segregated classrooms. DisCrit positions multiply-marginalized students as knowledge-generators, capable of recognizing interlocking oppressions and creating solutions to those systemic, interpersonal inequities, and comfort-fantasy ideas of inclusion.

Fifth, DisCrit considers how historically and legally whiteness and ability have been used to deny rights to those that have been constructed as raced and disabled (Valencia, 1997). Schools have historically functioned as spaces to sort and fix multiply marginalized children, curing them of their disability or problematic behavior (Margolis, 2004). Through the present day, multiply marginalized students—especially (im)migrant students—often attend under-resourced schools where they have limited access to qualified teachers, engaging curriculum, and critical pedagogy (Fierros & Conroy, 2002). Even when attending resourced schools, students of color are often kept out of advanced placement/gifted classes, where creative thinking is valued (DeCuir & Dixon, 2004).

Sixth, DisCrit recognizes whiteness and ability as ‘property,’ conferring rights to those that claim those statuses and disadvantaging those who are unable to access them (Adams & Erevelles, 2016). Thus, when students are positioned as less desirable, they are barred access to engaging and accurate curriculum, culturally sustaining pedagogy, and relationships that are authentic (Leonardo & Broderick, 2011).

These tenets highlight the importance of resisting the existing state of education, which centers the ideal citizen and often segregates the unwanted into spaces less public (Erevelles, 2014). They also expose how multiply marginalized communities resist white supremacy in various ways. As such, work rooted in DisCrit commits to recognizing the values and gifts of such communities (Annamma, 2018).

The following sections present the research design and findings from the study conducted in Upstate New York. Empirical evidence includes challenges and limitation of existing inclusive policies for ELLs and ELLs with disabilities, while highlighting the importance of applying DisCrit to reframe the school culture on inclusive education.

Methodology

The data presented in this paper are part of a larger corpus of data collected through qualitative case study methodology (Basse, 1999). The larger study looks at the contribution and possibilities of DisCrit within existing inclusive education policies and practices in different U.S. states. DisCrit and its tenets guide and inform all the components of the study including design, framing of the questions, methods, and analysis of the data. The research questions we answer in this paper are:

- How are disability, race, language and migratory status⁴ articulated within NYSED inclusive policies?
- How are these narratives translated within local education policies and teachers' practice?
- How is DisCrit contributing to highlight the limitations of existing models of inclusion for ELLs and ELLs with disabilities?

Research Design

The research we present in this paper follows two broad stages: (1) Critical Discourse Analysis (CDA) (Fairclough, 2010) of NYSED policy documents related to the education of ELLs and disabled ELLs and (2) semi-structured individual interviews with 10 teachers from a mid-sized urban school district in Upstate New York. The interviews were analyzed through the constructivist Grounded Theory methods of data analysis (Charmaz, 2014). For the purpose of the investigation addressed in this paper, we conducted CDA using the following policy guidance documents: *Guidance: Determining English Language Learner/Multilingual Learner (ELL/MLL)*

⁴ As Benhabib (2000) and Rumbaut (1991) highlight, there are several motives for migration. These motives determine whether a subject is called a migrant (or forced migrant), because he/she is fleeing by fear of persecution (political motives), or immigrant because he/she is traveling motivated by the aspiration of better material opportunities. In this paper we intentionally use "migratory status" as the general term indicating all different reasons determining migration. We believe that all the different classifications between migrant/immigrant/refugees do not do justice to the history and pathway of a subject. In addition, we think that the Geneva Convention, establishing the status of refugees, has significant limitations when currently defining who is and who is not a refugee, as compared to an immigrant, and certainly does not take into consideration colonial and post-colonial factors. However, we recognize that the state-imposed definitions of refugee or immigrant (and conversely illegal or undocumented immigrant) has a social, economical, educational impact on the life of people.

Status of and Services for Students with Disabilities (NYSED, 2018a) and *The Blueprint for English Language Learner/Multilingual Learner Success* (NYSED, 2018b), which are among the most accessible iterations of NYSED policy. They are the primary documents offered to teachers seeking clarification on specific policy items on the NYSED website and are written in familiar language, making them crucial to an investigation of teachers' beliefs and practice.

We chose to use Fairclough's (2010) model of CDA because its main purpose is to analyze the opaque and transparent structural relationship of dominance, discrimination, power and control, as manifested in linguistic "moments" (Fairclough, 2013). In the present study, we used CDA to explain the influence of special education frameworks in the establishment of educational rights for ELLs and ELLs with disabilities, such as the nebulous process of identification and labeling, to position teachers as benevolent agents of equity for ELL students. We examined the policy documents at the levels of interpretation and explanation in relation to practices (Fairclough, 2010). From this process, we analyzed words and phrases, such as "screening," "exposure," and "multiple needs," which underscored how linguistic identity was pathologized throughout NYSED policy, thereby contributing to the use of special education frameworks in establishing and enacting educational rights for ELLs.

The focus on DisCrit's tenets, as well as on power relations and on potential absences in the discourse around the effective inclusive and equal nature of disability- and ELL-related policies, has guided through the formulation of the interview schedule. The schedule contained open-ended questions, since they help to probe as well as resulting in unexpected or unanticipated answers that may suggest unthought-of relationships or hypothesis (O'Donoghue, 2007).

Following IRB approval, qualitative semi-structured interviews have been conducted with ten teachers. The process of data collection and analysis has been iterative, thus CDA of policy documents and analysis of interviews happened simultaneously. Guided by the tenets of DisCrit, interviews have also explored the following themes:

1. Including ELL students through individualizing
2. Highlighting barriers to the inclusion of ELL students with disabilities
3. Relating inclusion to behavioral compliance, conformity, and procedure

Participants

Ten educators working in elementary and secondary schools in a mid-sized urban school district in Upstate New York were selected through a combination of purposive and snowball sampling. Only one out of ten participants identified as having a disability, and all identified as white and female. Five participants were English as a New Language (ENL) teachers, two were general education teachers, two were special education teachers, and one was a speech therapist; all participants, however, worked closely with disabled ELL students. In order to establish the study's credibility and conformability (Guba & Lincoln, 2005), member-checking with participants and data triangulation with policy documents were done throughout the data collection process.

Findings

The following section presents initial findings from the Critical Discourse Analysis of *Guidance: Determining English Language Learner/Multilingual Learner (ELL/MLL) Status of and Services for Students with Disabilities* (NYSED, 2018a) and *The Blueprint for English Language Learner/Multilingual Learner Success* (NYSED, 2018b), as well as some of the emerging themes from the analysis of the qualitative, semi-structured interviews with the teachers. The analysis of the policy documents reveals how discursive frameworks preserve a comfort-fantasy of ELL inclusion, in which educators are positioned as agents of equity for ELL students while students' language and disability status are positioned as barrier-sites of deficiency. The emerging themes from the interviews considered for this paper are: (1) including through individualizing, (2) highlighting barriers to inclusion, (3) relating inclusion to behavioral

compliance, conformity and procedure. These themes represent how the language and values enshrined in existing NYSED policy documents center the ideal citizen at the level of local implementation as teachers imagine inclusion and equity only for students who are nondisabled, assimilated, and compliant. As such, we propose that a DisCrit approach to policy implementation would support teachers in practicing a more critical culture of inclusive education which resists values related to individual achievement and difference.

Comfort-Fantasies of Inclusion: ELL Education Policy in New York State

New York State educators have paid close attention to CR Part-154 regulations regarding the duration and location of English as a New Language (ENL) instruction and support services based on students' English proficiency levels (NYSED, 2015a). Most school districts already implement these regulations using the "ENL Units of Study Tables," which delineate weekly minutes of ENL instruction provided to students within the general education, "integrated" settings and segregated "stand alone" settings (Table 1).

[Table 1. ENL Units of Study in CR Part 154]

This framework for English language instruction was intended to promote ELL students' academic achievement through ensuring access to general education curricula and supplemental English language development instruction. However, educators quickly realized that a universal template for ELL success insufficiently addressed the needs of ELLs with disabilities, who demonstrate the lowest four-year graduation outcomes of all ELL subgroups (NYSED, 2017b).

Recently revised CR Part-154 documents clearly emphasize the location of disability and ELL status within existing frameworks for ELL categorization. An initial critical discourse analysis (CDA) of NYSED documents revealed a nebulous identification process for ELL students with and without disabilities, which emerged as a "social wrong" (Fairclough, 2010, p. 235). Although the principles enshrined within Title III of ESSA (2016) sought national consensus via discourses

of equality of opportunity for ELLs, the tensions in its implementation at the state level in New York, evident in interviews which highlight sporadic teacher training and timely access to policy revisions to identify and accommodate the needs of all ELL students, show the extent to which the social order “needs” the social wrong (Fairclough, 2010, p. 238). That is, educators and policymakers “need” the pathologization of linguistic identity through nebulous identification processes in order to establish the comfort-fantasy of inclusion, which maintains educators’ benevolence through emphasizing the intention to provide educational rights.

As a critical example, *Guidance: Determining English Language Learner/Multilingual Learner (ELL/MLL) Status of and Services for Students with Disabilities* (hereafter *Guidance*) is a supplemental document for Subparts 154-2 and 154-3 of CR Part-154 published by NYSED in 2018. Although the title of the document purportedly centers issues related to services and status for ELL students, nearly the entire document hinges on the ELL identification process for students with qualifying disabilities who already have Individualized Education Programs (IEPs). A focused analysis showed how the document reifies an ELL/disabled student binary while failing to provide accessible instructions for teachers seeking clarification—as well as the positioning of disability as a barrier to ELL status and related services.

From the first page, *Guidance* draws on special education frameworks for identification, physical and temporal arrangements of bodies, and bureaucratic review processes to articulate the ELL identification process for students with disabilities. The use of diagnostic criteria to clarify ELL status exemplifies this framework, as well as elements of the discourse of pathology (Erevelles, 2000). For example, the document delineates the ELL identification process for students re-entering U.S. schools with IEPs, beginning with the “Initial Screening” procedure (2018a, p. 1). The use of the word “screening” suggests methodical surveillance due to presupposed deficit, positioning students as ambiguously deficient upon arrival to school. In addition, the section titled “Factors for LPTs to Consider” emphasizes the consideration of

students' "exposure" to languages other than English, specifying "[t]he extent of the student's exposure to language(s) other than English (i.e., evidence whether the student has had extensive/sustained or minimal exposure to other language(s))" (2018, p. 8).

Using the word "exposure" to discuss students' histories of language recasts their ties to linguistic identities and communities as contagions which potentially infect otherwise typical English language acquisition. This section consistently positions deficiency as an inevitable component of ELL and non-ELL disabled identity, especially when it suggests that educators consider ways to determine the cause and intensity of concerning student behaviors in English-dominant and non-English dominant contexts. The positioning of disability and second language acquisition needs further reinforces an ELL/non-ELL binary while contributing to the conceptualization of these differences as barriers to inclusion which emerged from participant interviews in this study.

Although interview data from this study underscored teachers' frustration and confusion regarding the identification and support of ELLs with disabilities, *Guidance* only provides clarifications for policy related to ELL students who "re-enter" the public-school system with an identified disability. The document is rigid in its definition of re-entering ELLs with disabilities and, because of this rigidity, establishes an exclusionary framework which centers fixed, political notions of disability and identity. For instance, the policy excludes newly entering ELL students from the identification process described throughout the guidance document, explaining that U.S. territories/polities are the only spaces of origin from which newly entering disabled ELLs might be accepted into this process. The policy also excludes students with suspected or invisible disabilities, even though they might have documentation or proof of disability from countries of prior residence. This directly challenges individual and/or cultural ways of claiming disabled identities by devaluing other ways of marking and acknowledging disability and instead compels

educators to rely on U.S. systems of documentation, marking, data collection, and recognizing disability.

The Blueprint for English Language Learner/Multilingual Learner Success (hereafter *Blueprint*, NYSED, 2018b) is another guidance document published as a supplement to CR Part-154 intended to clarify the roles of various educators and related professionals in supporting the equitable, inclusive education of ELLs with and without disabilities. Like CR Part-154 and its various subparts, *Blueprint* has also undergone multiple iterations “[in] response to the changing global economy” and “an increase in the number of ELLs/MLLs enrolled in NYS public schools” (NYSED, 2018, p. 1). While *Guidance* effectively (re)enforces binaries which make the processes of ELL identification nebulous, *Blueprint* delineates the roles of educators in including ELLs, once they are identified as such, in existing institutional mechanisms of schooling. *Blueprint* does not specifically name the educational rights of ELLs; rather, it names the responsibilities of educators and administrators to provide a discursive framework—or “blueprint”—for ELL inclusion. As an example, the first item of the plan reads,

All teachers are teachers of English Language Learners/Multilingual Learners and need to plan accordingly by...collaborating with school support personnel and community-based human resources in order to address the multiple needs of ELLs/MLLs. (NYSED, 2018b, p. 2)

In this *Blueprint* item, teachers and other school- and community-based professionals are named as collaborators in the effort to meet ELL students’ “multiple needs.” ELL students, families, and refugee or (im)migrant community leaders are left out of this collective effort to name and support ELL students’ needs—the actual aspirations of these students beyond their identified “multiple needs” notwithstanding. In this discursive framework for articulating students’

rights, teachers and related professionals remain empowered as central figures in the implementation of inclusive education policy. This leaves existing frameworks for understanding student difference, especially language and disability, unchallenged, thus preserving teachers' comfort as they conceive of equity, inclusion, and identity as they have always done.

The CDA of *Guidance* and *Blueprint* demonstrates how the discursive construction of teachers as agents of equity protects teachers from the ways NYSED policy frameworks position disability and language acquisition needs as barriers to inclusive education. DisCrit thinking provides a transformative alternative to these existing frameworks because it acknowledges the ways powerful individuals or groups negotiate multiply marginalized identities to address social, economic, or political interests. Specifically, DisCrit's emphasis of the value of multidimensional identities challenges the ways NYSED policy persistently seeks to disentangle students' intersecting characteristics to simplify implementation for educators. Further, DisCrit thinking holds space for the expertise and insight of multiply marginalized students and communities in naming and addressing their own education needs and desires. This disrupts current discursive frameworks for ELL equity in NYSED policy, which centers educators and other professionals as agents of student identification and success.

Uncomfortable Gaps: Emerging Themes from Teacher Interviews

1. Including through Individualizing

The 10 teachers interviewed in Upstate New York agree on the lack of systematic implementation of inclusive education policies at the state, district, and school building level. As a result, schools' approaches to inclusive education are largely based on teachers' own interpretations of existing policies, as they perceive services for ELLs and ELLs with disabilities as separate and individualized. As we have seen in the previous section, state and federal education systems establish these rights by deliberating over student classification and reclassification with

specific education labels, such as ELLs, to guarantee schools' accountability to subgroups in need of such individualized remediation. Such pervasive and deep concern for student categories is particularly evident in Andrea's description of how inclusion happens in her school:

“[I]f you're the special ed teacher in the room, the special ed kids are your kids, and like, the gen ed kids are the gen ed teacher's kid. [...] I feel like even administration even forgets about the kids or students with disabilities... and it's just like okay well [...] that's their plan. They have a label. [...] Like when we even go through and look at data, they'll immediately go, like, 'Oh, are they ENL? Oh, do they have an IEP?' and it's like, 'Nevermind interventions for them- they have ENL or they have an IEP' and it's like, okay, they are getting something, but does that mean they should be forgotten about?”

(Teacher_SY_Andrea)

Andrea is a white special education teacher who worked in a third-grade inclusive classroom. In this excerpt, Andrea highlights how students' classifications -both disability and ELL status- are primary signifiers of what kind of service is available to them and who will teach them. Andrea explains how ELL students and students with disabilities are also confined to have relationships only with teachers that offer them their individual services, with rare possibilities for interactions and learning with other teachers, administrators, or even students. Consequently, their educational and social experiences at school are compromised by the reification of the labels assigned to them. Similarly, teachers experience individualization, as they have few opportunities to interact with all the students and teachers in an inclusive classroom. Andrea's experience reflects the nebulous identification process presented by *Guidance*, whereby individual students (and teachers) are

formally and informally assigned to categories which eventually determine their participation and opportunities for inclusion. This leads us to the following theme emerging from the interviews: highlighting barriers to inclusion.

2. *Highlighting Barriers to Inclusion*

All of the teachers interviewed agreed that major barriers to implementing inclusion in practice are collective planning time, consistent interactions with members of staff, and the availability of resources. Teachers argue that general education, special education, and ENL teachers are not given enough time to plan together—or even interact—to cooperatively address students' needs. In addition, teachers feel they are not provided with the right resources to implement changes in the curriculum. Hollie, an ENL teacher, explains such barriers:

“Barriers would definitely be planning time, so it’s rare to have common planning time with everybody [..]. And then I think in general resources, and feeling like, okay, I’m provided with this curriculum, I need to have that version of this thing for this student and make sure all things are in place. [...] If I’m thinking about inclusion I’ll have a student who comes from a self-contained special ed classroom to my standalone class and that’s me, and my students so in that case I feel like a barrier it’s just not having the staff so that if she might need somebody to work closely with her then it’s me and then my other students are doing something independently. So, I think, not having staff and planning time. But being able to co-teach is more facilitating because we’re both there.”

(Teacher_SY_Hollie)

Hollie highlights the need for additional instructors to be able to co-teach every class, especially those with a significant number of ELLs and students with disabilities. Interestingly, she does not provide practical examples of how the curriculum should be modified collectively to create an inclusive setting. This suggests a gap in the enactment of inclusive education policy, despite the strong assertions of *Blueprint*, which emphasizes “collaborating...in order to address the multiple needs of ELLs/MLLs” (NYSED, 2018b, p. 2). Moreover, Hollie’s reference to co-teaching seems to respond to an idea of inclusion stemming from special education, and based on neoliberal reforms in education, that predicates importance of individualized interventions, attention to assessment standards and the organizing of teaching through students’ levels of ability.

Other significant barriers to inclusion are the consideration of students’ intersectional identities, and knowledge of the students’ life history, when designing and reflecting on educational practices, within a school culture where students are separated according to their label. In relation to this matter, Hollie argues:

“For us, a difficult thing has been the lack of information given to us about ESL, and that’s kind of the sticking point, because every year we have a student that is technically at the level 1, and you know they are non-verbal, so on the English test they are not going to score very high, no matter what language they know. [...] I had a bad experience where a special education teacher and I talked to each other and kind of said, oh well, this isn’t probably the best setting for the student to come, they are better off in this other setting [special education] where everything is very differentiated for them all day. But then, at the end of the year she says, ‘Oh well, my student hasn’t been given the ESL service all year’”.

(Teacher_SY_Hollie)

Hollie shows how teachers have insufficient knowledge of the educational pathway of ELL students before arriving in the U.S. Holly argues that all teachers, particularly ENL teachers, do not receive enough culturally relevant information to be able to understand and account for students' culture and attitudes. Additionally, Hollie highlights that her school, as well as the district as a whole, is not equipped to offer training on intersectional education practices that would respond to the needs of multiply marginalized students. Just as Andrea has argued, Hollie reinforces this idea of individualized service offered according to the label given to the student. If a student's identity is intersectional, he is only able to access one support service: in the case of ELLs with disabilities, such students are only able to access special education *or* ELL services. This is because NYSED policies still rely on building individual categories related to disability, ability, and language proficiency, despite the fantasy that intersectional needs will be met. A framework such as DisCrit, could develop a more critical approach to respond to such policies' pervasive individual categorization of students. Consequently, it could help teachers in developing pedagogical practices that respond to the intersectional needs of ELL students and ELLs with disabilities.

Importantly, teachers seem to lack reference to an intersectional framework, such as DisCrit, that could help them formulating a different approach to inclusive education that would create functional and ecological classrooms (Annamma & Morrison, 2018). For this reason, Helen, a third-grade general education teacher in an inclusive co-taught classroom, is skeptical of the idea of inclusion, and she keeps referring to a special education paradigm when it comes to ELLs students:

“I was thinking about the definition of inclusion and I thought back to college and I was like always thinking about the least restrictive

environment to prevent students with social access and access to curriculum. I really feel like inclusion derives from an extreme special ed and, in general, the stigma is still there [...]. So, I feel like we've done in our district since we have gone from self-contained to not-appropriately placing students [...]. I feel in our district inclusion has turned into a big mess of just various disabilities that it almost takes a superhero to differentiate them. [...]. So, we get students task for inclusion for CT trend, and these tests do not have comments for expectations, so we are setting kids even up for failure.”

(Teacher_SY_Helen)

Helen clearly identifies the need for reframing inclusion through an intersectional framework that would offer more practical strategies to respond more critically and effectively to the needs of multiply marginalized students. Her argument reveals a frustration between the theory of inclusion that she learned in college, and the reality that schools continue to rely heavily on individual practices and standardized assessment. Following her personal teaching experience, Helen believes that inclusion is just a theoretical utopia that, if applied into practice, can become a “big mess.” Thus, for her, the existing model of inclusion is done not so much to help the students, but more for the preservation of teachers' comfort: that is, teachers would feel pity in excluding a disabled student from an inclusive classroom. Helen's account, and those of all the other teacher participants, show how complex and controversial the issue of applying inclusion in school settings is, especially when targeting ELLs and disabled ELLs.

3. *Relating inclusion to behavioral compliance, conformity and procedure*

Across all interviews, teachers' conceptualization and enactment of inclusive education policy hinged on understandings of compliance, conformity, and procedure which were typically focused on student behavior and access to inclusive spaces or opportunities. Although many participants expressed unfamiliarity or frustration with state, district, and building-level policies regarding race and disability, most were able to describe the ways their schools addressed student behavior using Positive Behavior Supports (PBS) and "mediation" or "restorative" approaches. Rhonda, a middle school ENL teacher, explained her school's implementation of these practices,

"[W]e've moved a lot more towards a mediation plan for consequences instead of referrals and suspensions, so that's how I see that being implemented in our schools... like reset passes or sort of a check-in system, or a sort of tired warning system, and [students] can be sent to a behavioral intervention center and have time with sort of those tier two group of, like, specialists if things get...if things escalate."

(Teacher_SY_Rhonda_1.9.18)

In Rhonda's school, all students are supported through a "mediation plan" which incorporates warnings, check-ins with school staff, and an intervention system of "specialists" for persistent behavior concerns. Rhonda mentions the removal of students with significant needs to alternative spaces, where "specialists" provide specific interventions, but acknowledges the ways these students used to be removed from the school entirely before these alternative policies were adopted.

Beyond bodily removal, teachers expressed frustration related to the bureaucratizing of student behavior, wherein students and education professionals were responsible for documenting and tracking student behavior in ways which singled students out from peers and forced students to

discuss their behavior with adults. In these cases, students' behavioral needs were conceptualized as barriers to inclusion in general education spaces. Participants expressed ways that students were held accountable for their own membership in classroom and schoolwide spaces which implemented the kinds of behavior policies Rhonda described. The complex emotional and behavioral needs of some disabled ELL students were identified as barriers to successful implementation of inclusive behavior policy and individuals' access to behavioral support systems. For example, Karen, an elementary ENL teacher, expressed concern that students with emotional or behavioral disability labels were unable to "control" their behavior enough to even participate in these systems, saying,

“[W]ith students that have more of the emotional disabilities, sometimes the positive doesn't help as much...it doesn't make that much of effect with them. They're not in control of their emotions and their behavior...I don't care and I'll do it any—'...they can't bring it down...you know what I mean? (Teacher_SY_Karen_3.16.18)

Karen articulated the challenge of supporting students with emotional disabilities using existing PBS policies in her building, alluding to the need for a new approach to supporting students' behavioral needs. Karen's experience was common among the participants, all of whom communicated desperation for student support and success. Despite significant policy shifts away from suspension and referrals, teachers continue to practice within the special education framework familiar to them, rather than an inclusive education framework.

Many participants described using token economies to appeal to students' interests, as students could "purchase" access to schoolwide events, preferred activities, or tangible goods using tokens or points earned each time they demonstrated desired behaviors. Although all participants discussed how they used these approaches to extrinsically motivate student behavior and

compliance, many expressed gaps in this model of PBS. Rhonda discussed ways she and her colleagues strove to extrinsically motivate student compliance, saying,

“[S]tudents are on a team with a teacher and they earn up to 10 points throughout the week and the good thing about that is it’s points for how they transition between classes, their behavior...they get points for kindness, if they’re being kind...they have academic points...and this all culminates in an incentive at the end of the week...on Fridays they can do...lunch with the teacher...food or snacks, or do a movie or a dance party... all the students who it’s just not working for are the ones who don’t get it or have a disability or don’t understand it.”

(Teacher_SY_Rhonda_1.9.18)

Rhonda’s analysis of her school’s PBS system follows a framework like that of NYSED policymakers in the iterations of CR Part-154. That is, new learner subgroups are created to explain the shortcomings of education policy created to serve a specific group of students (ELLs) or subset of educational problems (student behavior). Using this line of thinking, policies and the professionals who implement them can never be solely responsible for the failure or inefficiency of these policies. Rather, a new category of student emerges as the minority who cannot access or “understand” policies due to a presupposed deficit situated within individual learners, and additional tiers of intervention or policy subparts are created to treat these minoritized students.

Discussion

NYSED documents such as *Guidance* (2018a) and *Blueprint* (2018b) carefully underscore the educational rights of ELL students to preserve the comfort-fantasy of inclusion shared by

policymakers and educators who address students' needs through instruction and services provided based on the way(s) students are identified. However, the pervasive use of medicalized language and the emphasis of dichotomous labels highlight the way these policies pathologize language difference to preserve familiar frameworks for understanding diversity. This contributes to the nebulous identification process, as teachers and administrators grapple with tensions they locate within the nuances of disability and language learning (Harry & Klingner, 2014).

Across all interviews, ELL educators emphasized the tensions associated with the tenuous construction of student identities enacted through NYSED policy, as well as the challenges of adequately understanding and supporting intersectional student needs. Although participants described several inclusive practices and efforts to build relationships with students' families to encourage trust, nearly all emphasized student compliance norms as articulated by the education institution as opposed to students' conceptualization of cultural or personal norms and values, especially relating to behavior (Bal, 2018). The teachers identified existing policies in their school buildings as inclusive of the needs of their diverse students but could not address the ways their students' perspectives and cultural knowledge were represented in the conception or implementation of these policies. This highlights teachers' need for approaches, such as DisCrit, to promote a renewed and more critical culture of inclusive education: a culture where teachers can value solidarity in the classroom beyond individual achievement, and where they can make more informed decisions that will lead to push for re-imagining education beyond existing comfort-fantasy frameworks (Migliarini & Annamma, Forthcoming).

Conclusion

In contemporary North America, and indeed globally, social and political change in tandem with xenophobic attitudes toward immigration play a crucial role in shaping policy discourses and national identities. Immigration has been increasingly constructed as a dangerous threat by its

opponents, but, as Dolmage (2018) argues, “immigration rhetoric can itself be viewed as one of the most dangerous threatening spheres of discourse in recent history” (p. 7). In this paper we have attempted to demonstrate how immigration intersects with disability, race, and citizenship to reaffirm a dominant, normative identity, as well as neoliberal forms of inclusive education. We have sought to interrogate the comfort-fantasies of inclusion as expressed within policies and practices implemented in a mid-sized urban school district in Upstate New York. By adopting DisCrit as an intersectional and interdisciplinary framework, we have attempted to create counter-narratives of inclusive education, showing how individualistic and neoliberal approaches can be camouflaged to continue to circulate in school communities.

This paper started by exploring the tenets of DisCrit and their affordances to re-think New York State inclusive policies and practices for ELLs and ELLs with disabilities. We have highlighted how analyzing documents through DisCrit shows how NYSED policies seek to disentangle students’ intersecting markers of identity to simplify implementation for educators. Additionally, DisCrit tenets seems to be crucial in helping teachers developing inclusive practices that respond to the intersectional needs of ELLs and ELLs with disabilities because they support a more critical stance towards deficit-based perspectives on ELL students and inclusion. We have drawn on an empirical study in Upstate New York, a region characterized by increasing diversity among ELL students, wherein state and federal institutions have relentlessly deliberated over students’ categorization.

We hope that the findings presented in this paper will prompt a critical reflection on the current limits of inclusion as framed in Upstate New York public schools, and on the benefits of applying DisCrit to bring about educational changes concerning pedagogy, curriculum, relationships, assessment and school organization. We aim to advance critical insights on the politics of inclusion, while shedding light on the largely unknown and often unspoken experiences of aspiration and denial that pertain to teachers as well as ELL students with and without disabilities.

We believe these ideas, guided by the tenets of DisCrit, will be useful to scholars and practitioners to refute facile and comfortable ideas of inclusion which equate educational equity with minimal access to some aspects of society's structures (Patel, 2013). The affordances of such an intersectional framework are crucial to the authentic enactment of equity for our students who have been written into the margins of education policy.

Acknowledgement

Both authors would like to acknowledge the teachers who participated in this study, and that opened their classroom doors during a short school visit in the Fall 2017. I (first author) would like to thank the Fulbright Schuman Grant Program which sponsored the study presented in this paper, during the academic year 2017-2018.

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