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The Texas Special Education Cap: Exploration into the Statewide Delay and Denial of Support to Students with Disabilities[1]

David E. DeMatthews
University of Texas at Austin
&
David S. Knight
University of Texas at El Paso
United States

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Abstract: State accountability systems have been a primary school reform initiative in the US for the past 20 years, but often produce unintended negative consequences. In 2004, the Texas Education Agency (TEA) implemented the Performance Based Monitoring and Analysis System (PBMAS), which included an accountability indicator focused on the percentage of students found eligible for special education under the Individuals with Disabilities Education Act (IDEA), the nation's special education law. From 2004 through 2016, the percentage of students found eligible for special education in Texas declined

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significantly, while the national rate held constant. Eventually, the U.S. Department of Education (ED) investigated TEA and the statewide implementation of IDEA. The purpose of this study is two-fold: (a) to evaluate the potential impact of the the PBMAS indicator on manipulation of special education identification practices; and (b) to describe how the indicator may have influenced school and district personnel. We highlight several concerning trends in state and district data and, through an analysis of publicly available reports from the ED, show how district and school personnel knowingly and unknowingly acted in ways that delayed and denied special education to potentially eligible students. We conclude with recommendations for TEA and implications for future research and policy.
Keywords: special education; disproportionality; education policy; high-stakes accountability; response to intervention

El límite de educación especial de Texas: Exploración del retraso y la denegación de apoyo a los estudiantes con discapacidades por parte del Estado

Resumen: Los sistemas estatales de rendición de cuentas han sido una iniciativa de reforma de la escuela primaria en los Estados Unidos durante los últimos veinte años, pero a menudo producen consecuencias negativas no deseadas. En 2004, la Texas Education Agency (TEA) implementó el Performance Based Monitoring and Analysis System (PBMAS) que incluía un indicador de responsabilidad centrado en el porcentaje de estudiantes elegibles para educación especial bajo el Individuals with Disabilities Education Act (IDEA), ley de educación especial de la nación. Desde 2004 hasta 2016, el porcentaje de estudiantes elegibles para educación especial en Texas disminuyó significativamente, mientras que la tasa nacional se mantuvo constante. Finalmente, el Departamento de Educación de los Estados Unidos (ED) investigó la TEA y la implementación estatal de IDEA. El propósito de este estudio es doble: (a) evaluar el impacto potencial del indicador PBMAS en la manipulación de las prácticas de identificación de educación especial; y (b) describir cómo el indicador puede haber influido en el personal de la escuela y del distrito. Destacamos varias tendencias concernientes a los datos del estado y del distrito y, a través de un análisis de los informes de ED disponibles al público, mostramos cómo el distrito y el personal escolar actuaron a sabiendas e inconscientemente de una manera que retrasó y negó la educación especial a los estudiantes potencialmente elegibles. Concluimos con recomendaciones para TEA e implicaciones para futuras investigaciones y políticas.
Palabras clave: educación especial; desproporcionalidad; política educativa; responsabilidad de "high-stakes"; intervención

O limite de educação especial do Texas: Explorando o atraso e a negação de apoio a alunos com deficiências do Estado

Resumo: Os sistemas de responsabilização do Estado têm sido uma iniciativa da reforma do ensino primário nos Estados Unidos nos últimos vinte anos, mas muitas vezes produzem consequências negativas não intencionais. Em 2004, a Texas Education Agency (TEA) implementou o Performance Based Monitoring and Analysis System (PBMAS), que incluiu um indicador de prestação de contas focado na porcentagem de estudantes elegíveis para educação especial sob a Individuals with Disabilities Education Act (IDEA), a lei de educação especial do país. De 2004 a 2016, a porcentagem de estudantes qualificados para educação especial no Texas diminuiu significativamente, enquanto a taxa nacional permaneceu constante. Finalmente, o Departamento de Educação dos Estados Unidos (DE) investigou o TEA e a implementação estadual do IDEA. O propósito deste

estudo é duplo: (a) avaliar o impacto potencial do indicador PBMAS na manipulação de práticas de identificação de educação especial; e (b) descrever como o indicador pode ter influenciado o pessoal da escola e do distrito. Destacamos várias tendências relativas a dados estaduais e distritais e, por meio de uma análise de relatórios de DE disponíveis ao público, mostramos como os funcionários do distrito e da escola agiram consciente e inconscientemente de uma maneira que atrasou e negou a educação. especial para alunos potencialmente elegíveis. Concluímos com recomendações para ASD e implicações para futuras pesquisas e políticas.
Palavras-chave: educação especial; desproporcionalidade; política educacional; responsabilidade de "high-stakes"; intervenção

Introduction

Since the enactment of the No Child Left Behind Act (NCLB) in 2001, and its subsequent reauthorization as the Every Student Succeeds Act (ESSA) in 2015, state accountability systems monitored by the U.S. Department of Education (ED) have been a critical national school reform policy. Each state education agency (SEA) adopted standards, testing, and accountability policies as a mechanism for school improvement and to address long-standing equity problems. SEAs are provided with flexibility to maintain their priorities and incentives for the implementation of federal programs. The flexibility offered to SEAs has led to idiosyncratic accountability policies that have, at times, produced uneven results across similar contexts (Reback, Rockoff, & Schwartz, 2014).

NCLB catalyzed SEAs to apply sanctions to districts and schools for low-performance, which in some cases created fear and uncertainty for district and school personnel. This uncertainty provoked both positive and negative responses (Amrein & Berliner, 2002; Harris & Herrington, 2006; Nichols & Berliner, 2005). Some researchers claim accountability policies have been successful at increasing student achievement (Hanushek & Raymond, 2005; Hursh, 2005), while others highlight negative unintended consequences (Amrein-Beardsley, 2009; Booher-Jennings, 2005; Figlio, 2006; Menken, 2006; Nichols & Berliner, 2007; Thompson & Allen, 2012). Most research on the subject has ignored the intersection of special education and accountability policy.

The Individuals with Disabilities Education Act (IDEA, 2004), the US's special education law, requires SEAs to monitor the implementation of special education. IDEA requires SEAs to monitor districts and school compliance and provide technical assistance to ensure schools deliver appropriate special education services (IDEA, 2004).[2] In 2016, the *Houston Chronicle* released an investigative report criticizing TEA's state accountability system known as the Performance Based Monitoring Analysis System (PBMAS), and one particular indicator (Indicator 10) focused on the appropriate identification of students with disabilities for special education. TEA adopted PBMAS in 2004, and between 2003-04 and 2016-17, Texas had a significant decline in students found eligible for special education under IDEA (from 11.6% in 2004 to 8.6% in 2016; Rosenthal, 2016a). The *Houston Chronicle* claimed that PBMAS Indicator 10 "led to the systemic denial of [special education] services by school districts to tens of thousands of families of every race and class across the state." (Rosenthal, 2016a)

The purpose of this study was (a) to evaluate the relationship between the PBMAS Indicator 10 and special education identification practices and (b) to explore administrator and educator perceptions of PBMAS. To do so, we relied on enrollment data and publicly available documents. The first research aim was to descriptively examine documents and national and state special education data for evidence suggesting manipulation in special education identification in Texas between 2004 and 2016. After we verified manipulation likely occurred, we focused on our second aim: to describe how PBMAS Indicator 10 influenced district and school personnel. We utilized interview data published in *Houston Chronicle* reports and in an ED (2018) monitoring report to understand how district and school personnel were influenced. We verified claims using publicly available district documents, such as district corrective action plans and district demographic data reported to TEA annually and made publicly available through TEA and district websites.

Empirically documenting the effects of TEA's PBMAS Indicator 10 not only contributes to the literature on state accountability systems but can also raise attention to special education policy issues. In what follows, we review research focused on state accountability systems, special education, and the requirements of IDEA. Next, we describe the methods used to conduct this

[2] See 34 C.F.R. § 300.149

study. Then, we present findings aligned to the stated aims of this article. Finally, we conclude with a discussion of findings and policy and research implications.

State Accountability Systems and Special Education Law

In this section, we review research and underlying theories of action of state-level accountability systems. Next, we provide an overview of federal special education policy and accountability. This overview includes a discussion of areas of IDEA relevant to this study, including the Child Find mandate, identification and disproportionality, and response to intervention (RTI). Each area of IDEA is germane to evaluating what occurred in Texas following the implementation of the PBMAS in 2004.

Logic and Outcomes of State Accountability Systems

State accountability systems focus on monitoring student achievement outcomes at district and school levels. Outcomes are disaggregated by race, economic status, first language, and disability status. SEAs are given flexibility developing their systems, which include selecting priorities, goals, and sanctions and incentives to promote compliance and performance. Under NCLB, states were required to administer sanctions to districts or schools that did not meet expectations, including: forced reduction in administrative funding, implementation of new curriculum, removal and replacement of personnel, altering governance arrangements, and appointing trustees in place of a school board or superintendent (ED, 2002). State accountability systems are grounded in several assumptions (Hursh, 2005; Jacob, 2017; Lipman, 2004). First, public education's primary goal is student achievement, which can be accurately measured by standardized assessments. Second, the application of incentives and disincentives motivate schools to improve and align efforts to focus on public education's primary goal. Third, parents and communities can make decisions about where they send their children to school based on publicly available achievement data, which incentivizes school improvement. Fourth, proper federal and state oversight minimizes or eliminates unintended consequences.

Many critics question the logic of accountability systems and whether performance on standardized tests accurately gauges learning and school improvement (e.g., Amrein-Beardsley, 2009; Booher-Jennings, 2005; Figlio, 2006). Some view accountability systems as divisive, anti-democratic, and a contributing factor to cheating, gaming, and other detrimental educational practices. Jacob and Levitt (2003) argued that "high-powered incentive systems, especially those with bright line rules, may induce unexpected behavioral distortions such as cheating" (p. 843). Drawing on data from Chicago Public Schools, Jacob and Levitt (2003) found teacher and administrator cheating occurred in a minimum of 4-5% of elementary school classrooms annually. Jacob and Levitt's findings are aligned with what Nichols and Berliner (2007) referred to as Campbell's law, which stipulated that "the more any quantitative social indicator is used for social decision-making, the more subject it will be to corruption pressures and the more apt it will be to distort and corrupt the social processes it was intended to monitor" (Campbell, 1979, p. 68).

Numerous studies document how accountability policies, at times, triggered: (a) teaching to the test, narrowing curriculum, and the de-professionalizing the teaching profession (Dee & Jacob, 2011; Reback, Rockoff, & Schwartz, 2014; Valli & Buese, 2007; Watanabe, 2007); (b) a medical model approach to identifying students deemed just below performance cut-offs (commonly referred to as "bubble kids") and "treating" them via targeted "interventions" at the expense of both lower and higher performing students (Amrein-Beardsley, 2009; Booher-Jennings, 2005; Nichols & Berliner, 2005); (c) a loss of trust with families coupled with a growing sense of disengagement in

educational governance processes (Rhodes, 2015); (d) harsh and exclusionary disciplinary policies that prioritize compliance and docility to minimize classroom disruption or the strategic discipline of low-performing students during testing windows (Figlio, 2006; Thompson & Allen, 2012); (e) reshaping student testing pools by removing, improperly promoting or demoting students, or pushing students out of school (Cullen & Reback, 2006; Vasquez Heilig & Darling-Hammond, 2008); (f) teacher turnover (Clotfelter, Ladd, Vigdor, & Diaz, 2004; Feng, Figlio, & Sass, 2018); and (g) cheating or tampering with testing materials (Amrein-Beardsley, Berliner, & Rideau, 2010.

The media and law enforcement agencies have examined numerous instances of cheating. For example, a former superintendent of the El Paso Independent School District (EPISD) was convicted with several district and school-based administrators for participating in a cheating scheme where students of Mexican descent (many of whom were English Language Learners (ELLs) were improperly promoted, demoted, or pushed out of school to avoid taking standardized tests (DeMatthews, Izquierdo, & Knight, 2017; El Paso Times, 2017). In Atlanta, teachers and administrators were convicted and sent to prison for participating in a cheating scandal that inflated test scores (Blinder, 2015). In the School District of Philadelphia, testing improprieties were found in at least 19 schools, including cases where administrators were giving answer keys to teachers, teachers were gathering secretly to change answers, and principals were taking exams and doctoring answer sheets (Rich & Hurdle, 2014). In New York City, several investigations revealed principals and teachers engaged in test tampering, grade inflation, and grade changing to improve achievement levels and graduation rates (Harris, 2015). At the time this article was written, the Federal Bureau of Investigation (FBI) and the ED were investigating the District of Columbia Public Schools about inflated graduation rates and the bullying of teacher/counselor whistleblowers (Jamison & Nirappil, 2018).

State Accountability and Special Education

Compliance measures. Much attention has rightfully been given to state accountability policies under NCLB/ESSA and the unintended consequences associated with high-stakes testing, but this focus largely ignored special education (Elbaum, 2014; Elliot, Erickson, Thurlow, & Shriner, 2000; Yell, Shriner, & Katsiyannis, 2006). The Education for All Handicapped Children Act (EAHCA) of 1975 laid the foundation for IDEA and accountability by guaranteeing the rights of individuals with disabilities to public education and providing federal funding. EAHCA mandated "zero reject," which established that all children with disabilities were entitled to a free and appropriate public education (FAPE) and that testing and evaluation for special education eligibility needed to be administered in a non-discriminatory manner. In 1990, EAHCA was amended as IDEA and subsequently amended again in 1997. President George W. Bush appointed a commission to issue a report on special education before the 2004 reauthorization of IDEA (ED, 2002). The Thomas Fordham Institute also released a series of reports in 2001 that identified challenges in special education eligibility (Finn, Rotherham, & Hokanson, 2001). The reports described special education as compliance-driven which led states to focus on process rather than outcomes. Both organizations recommended a results-oriented approach to special education.

The reauthorization of IDEA in 2004 was results-oriented and aligned with NCLB's principles of accountability (Turnbull, 2005). Within the ED is the Office of Special Education Programs (OSEP), which is tasked with providing leadership, financial support, and assistance to states and districts for improving results for students with disabilities.[3] IDEA required states to develop a State Performance Plan (SPP) and Annual Performance Report (APR) to evaluate the

[3] Throughout the article, we primarily refer to the Department of Education (ED) and its Office of Special Education and Rehabilitation Services (OSERs) and Office of Special Education Programs (OSEP).

IDEA implementation and improvement efforts. SEAs report on 20 indicators and the ED uses SPP/APR and public meetings to annually determine if the state is meeting IDEA requirements, needs assistance, needs intervention, or needs substantial intervention. Indicators 5, 9, and 10 are most pertinent for identification. Indicator 5 mandates that SEAs report the percent of children served through IDEA between the ages of 6 through 21 and the degree to which they have been included in the regular classroom. Indicator 9 requires SEAs to identify districts with "disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification" (IDEA, 2004).[4] Indicator 10 requires SEAs to identify the percent of districts in the state with "disproportionate representation of racial and ethnic groups *in specific disability categories* that is the result of inappropriate identification" (IDEA, 2004, emphasis added).[5]

Several problems concerning the efficacy of the indicators may result in the ED's inability to monitor special education implementation. A analysis of SPP/APR data found that even though high levels of disproportionality remained constant across the nation for decades (discussed in next section), most SEAs identify few or no districts with disproportionality that used inappropriate identification practices (Albrecht, Skiba, Losen, Chung, & Middelberg, 2012). In 2005 and 2006, TEA reported only 2% and 0.16% of districts, respectively, with disproportionate representation of racial and ethnic groups in special education and related services that were the result of inappropriate identification (Indicator 9 and 10) (see OSEP, 2018).[6]

Child Find. IDEA requires SEAs to proactively identify students with disabilities, remedy racial disproportionality, and utilize response to intervention (RTI) as necessary to support eligibility decisions.[7] Within IDEA (2004) is a Child Find mandate rooted in the principles of guaranteed participation of Setion 504, which requires all SEAs to have in effect policies and procedures to ensure districts proactively identify, locate, and evaluate all children with disabilities. The provision includes all children suspected of having a disability. If school staff or district administrators have reason to believe that a child has a disability, these individuals have an affirmative duty to refer the child for special education. Students receiving passing grades or advancing from grade to grade may still have a disability and may still be eligible for special education and related services.

The Child Find mandate also requires SEAs to ensure: "A practical method is developed and implemented to determine which children are currently receiving special education and related services" (IDEA, 2004). Implementing Child Find can be difficult and districts sometimes fail to identify students who are eligible for special education for many reasons. Judicial decisions have shaped Child Find policies. Regardless of challenges, schools must evaluate students suspected of having a disability within a "reasonable time" (see *W.B. v. Matula*, 1995). Parents are not solely responsible for triggering the referral process or ensuring their child is identified. SEAs, districts, and schools are all responsible for identifying and evaluating children (see *Schaffer v. Weast*, 2005).

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[4] See 20 U.S.C. §1416(a)(3)(C)

[5] See 20 U.S.C. §1416(a)(3)(C)

[6]The ED (2007) clarified this point in a memo to SEA special education directors: "each State has the discretion to define what constitutes significant disproportionality for the LEAs in the State and for the State in general" (p. 3). In Texas, districts are considered to have disproportionate representation when it exceeds a risk difference threshold of 11.95 percentage points (TEA, 2017).

[7] Section 504 of the Rehabilitation Act of 1973 made it "illegal to deny participation in activities, benefits of programs, or to in any way discriminate against a person with a disability solely because of their disability." Any program receiving federal assistant could not deny equal access to people with disabilities.

Identification and racial disproportionality. SEA monitoring requirements in the IDEA 1997 and 2004 reauthorizations acknowledged racial/ethnic disproportionality was a problem. IDEA (2004) required that the: "state has in effect policies and procedures … designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities." This statutory requirement, in part, led to the creation of the SPP/APR. The ED conducts audits of disproportioantelity across states. OSEP provides an annual report to Congress documenting the implementation of IDEA. Over-identification is persistently a problem. For example, in 2015 Black students ages 6 through 21 were 1.4 times more likely to be served under IDEA than children in all other racial/ethnic groups (ED, 2017). Black and Hispanic students were also more likely to be served under IDEA for several disability categories, compared to children in all other racial/ethnic groups (ED, 2017). The fact that Black and Hispanic students are more likely to be identified into these disability categories raised attention to racial bias in the identification and referral process (Blanchett, 2006). Specific learning disabilities (SLD) is the largest disability category under IDEA and represents 38.8% of all students identified with a disability and one in which Black and Hispanic students are perpetually over-represented (ED, 2017).

In response to over-identification, IDEA (2004) provided additional criteria for determining the SLD classification. A team may determine a child eligible for special education under the SLD disability category when the child does not achieve adequately for her or his age in one or more areas (oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving). A team may also determine the child eligible if the child does not make sufficient progress on state-approved-grade-level standards when using a "process based on the child's response to scientific, research-based intervention" (IDEA, 2004). Other factors must also be considered, but RTI is an essential process for accurately identifying students with disabilities as well as providing support to any struggling learner regardless of whether they qualify for special education.

RTI was posed as an alternative method for providing early intervention to struggling students. The ED does not support one RTI framework, but rather a core set of characteristics.[8] The lack of clarity may have led schools to inappropriately use RTI to delay or deny special education identification. In a 2011 Dear College letter from ED (Musgrove, 2011), all SEA directors of special education were informed of the following: "States and LEAs have an obligation to ensure the evaluation of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy" (p. 1). The letter specifically stated that parents could request an initial evaluation at any time. The letter reminded SEAs that districts can deny a parent's request for an initial evaluation, but must do so in writing with the basis for the decision.

Methods

The purpose of this study is twofold: (a) to descriptively evaluate national and state special education data and documents for evidence of manipulation in the identification process in Texas between 2004 and 2016; and (b) to describe educator perceptions of the PBMAS indicator, in particular, how PBMAS may have led school and district personnel to engage in practices that

[8] The DOE defines RTI as a: "Schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors…schools identify students at-risk of poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness" (Musgrove, 2011, pp. 1-2).

denied or delayed eligible students with disabilities. Evaluating the statewide denial of eligible students with disabilities is controversial, especially after publicly released reports by the *Houston Chronicle* and ED. TEA's actions, and the actions of district and school personnel may very well lead to legal action. In this context, interviewing personnel would be potentially harmful to participants if identifying information were released. Rather than engaging in research that could assume risk, we utilized a mixed-method approach that consisted of a quantitative analysis of special education data and a qualitative analysis of publicly available documents. A mixed-method approach allowed us to triangulate data and provide a "confluence of evidence that breeds credibility" (Eisner, 1991, p. 110). Our mixed-methods approach has the added benefit of corroborating findings across quantitative and qualitative data. We begin by describing the quantitative methods that we apply to secondary datasets and then describe the qualitative data collection and analysis process that corroborated our quantitative findings.

Quantitative Analysis of Special Education Data

Data collection. To address our first research aim, we apply quantitative analysis to publicly available federal special education enrollment data. We constructed a district-level datatset that combines National Center for Education Statistics (NCES) data on student demographics, including special education enrollment rates for each district, with data from the U.S. Census Bureau that includes information about child poverty rates. The data include all school years from 1994-95 to 2014-15.

Data analysis. Our quantitative analyses include three analytic strategies that together evaluate the relationship between implementation of the PBMAS indicator and the likelihood a Texas student is identified as having a disability. First, we examine statewide trends in special education enrollment before and after implementation of PBMAS, and compare those trends to all other states. Although the percent of students in special education may change over time for a variety of reasons, a signifcant change in Texas that coincides with implementation of PBMAS (in the years following 2004-05) is suggestive of policy-induced manipulation of special education identification practices. Distinct changes in the percent of students in special education in Texas following 2004-05 may be related to overall national trends. We therefore use all other states as a comparison group for Texas, and examine whether there are changes in special education enrollments at the national level in the years following 2004-05.

Prior literature suggests that districts face varying degrees of accountability pressure. Our main hypothesis – that the accountability pressure associated with PBMAS caused district administrators to systematically reduce the percent of students in special education for reasons not related to actual disability rates – can thus be further tested by examining whether districts facing greater accountability pressure were more likely to reduce their special education enrollment levels following implementation of PBMAS. As noted earlier, districts with high rates of special education enrollment likely faced a greater degree of accountability pressure, compared to districts with lower special education enrollments prior to implementation of PBMAS. Our second quantitative analytic strategy is to test whether accountability pressure may explain differences in district responses to PBMAS. We run OLS regressions predicting special education enrollment, based on particular district characteristics including the pre-PBMAS special education enrollment rate. We include year fixed effects, δ_t, and interact year fixed effects with dummy variables for whether the district fell in the highest or lowest quintiles of special education enrollment, prior to the implementation of PBMAS. We suspect that districts with highest rates of special education enrollment likely faced greater pressure to reduce special education enrollment rates. We conduct similar analyses for high- and low-poverty districts, urban, suburban, and rural districts (based on NCES classifications), and

for larger and smaller districts. We run the following model for all Texas districts for school years 1994-95 to 2014-15, indexing for year (*t*) and district (*d*):

$$\%SPED_{dt} = \beta_0 + \beta_1 \, High\text{-}SPED_t + \delta_d + \delta_d * High\text{-}SPED_t + X_{dt}'\alpha + \varepsilon_{dt}$$

The vector X_{dt} includes district poverty rate, enrollment size, and whether the district is urban, suburban or rural (we also include dummy variables for low-SPED so that the reference group is districts in the middle three quitniles of pre-PBMAS special education enrollment rate). We hypothesize that the decline in special education enrollment rates will be greater for districts that face greater accountability pressure because of their high rates of special education enrollment prior to PBMAS. In alternate models, we exchange the high-SPED and low-SPED variables with indicators for high- and low-poverty, district size, and whether the district is urban, suburban, or rural. These alternate models examine whether changes in special education rates following implementation of PBMAS were related to poverty rate, district size, or urbanicity.

Our third quanitative analytic approach examines the overall distribution of the percent of students in special education, across districts in the most recent year of data. The rate of child disability is not uniformly distributed across districts (Baker & Ramsey, 2011). Rather, variation in the percent of students in special education across districts typically results in a roughly normal distribution centered around the mean. Under the hypothesis of no manipulation in special education identification practices, we expect to find a normal distribution with no significant "jumps" in a graph of the distribution of special education enrollment rates across districts. Jumps in the distribution near the PBMAS target of 8.5% of students suggests that there may be manipulation in the special education identification practices. In particular, if a significantly greater number of districts report special education enrollment rates just below 8.5%, while significantly fewer districts report rates just above 8.5%, then districts are likely strategically lowering the proportion of students receiving special education services. We use the McCrary test (McCrary, 2008) to determine whether any inconsistency in the distribution of the percent of students in special education across districts is statistically significant. This same statistical test is used in regression discontinuity studies to test whether there is manipulation in a "running variable." However, we do not specify a traditional regression discontinuity design because our goal is simply to identify manipulation in special education identification, not to estimate the causal impact of a program or policy.

Qualitative Document Analysis of Publicy Available Documents

Data collection. We relied on publicly available documents and applied a qualitative document analysis approach (Bowen, 2009; Yin, 2018). Documents provided data on background and context, a means for tracking change and development over time, and served as a tool for verifying findings (Bowen, 2009). As noted by Yin (2018), documents are often readily available online (especially state and federal government documents), they are often exact in that they document names, references, and details, and they can cover a long span of time across various settings. The strengths of document analysis fit well with our research aims of exploring manipulation of the identification process and examining the role of the PBMAS indicator, although we recognize that document analysis has several inherent limitations. Documents are often produced for a purpose other than research, they can lack specific detail concerning the researcher's questions, some documents are not publicly available, and organizations may purposefully release or fail to publish documents based on priorities, agendas, and policies (Bowen, 2009; Yin, 2018). Given these limitations, we outline our document collection and analysis process and provide in Appendix 1 a list of all primary documents.

Between September 2017 and February 2018, we collected documents by using keyword searches on Google, the *Houston Chronicle*, TEA, and ED websites. The terms "special education," "student identification," "PBMAS," "state level accountability," and several other key words were used to search these websites. Most documents collected spanned between a publication date of 2004, when the PBMAS system was first initiated, and January 2018, when the ED released its final report and TEA responded with a draft corrective action plan. Primarily, we identified three types of documents: (a) media-related documents, such as the *Houston Chronicle's* investigative report and other related coverage in various Texas and national media outlets; (b) government documents produced by TEA and ED; and (c) internal district documents made available via a *Houston Chronicle* website and through directly accessing school district websites. The *Houston Chronicle* completed an extensive report that included state and district documents that we read and reviewed. In total, the *Houston Chronicle* conducted over 300 interviews with experts, current and former Texas educators and administrators, and parents. In response to the *Houston Chronicle's* allegations, the ED conducted an investigation and provided a report based on their investigation. The ED's investigation included two primary data collection periods. First, ED held public hearings in December 2016 in multiple cities. Parents and families shared their experiences and the ED posted a blog for parents to publicly comment, which received over 400 posts in two months. In March 2017, ED visited 12 Texas districts, interviewed district/school leaders and teachers, and reviewed district documents. Afterward, the ED interviewed TEA staff.

Data analysis. We began the document analysis process by creating a database (See Appendix Table A1). We read and re-read each document and classified documents based on chronology, who created the document, the document's purposes, its intended audience or recipient, how the document was used, and on what occasion might the document be used (Savin-Baden & Major, 2013). In assessing the quality of these documents, we asked the following questions, is the document: authentic and credible, is it representative, and what does it mean (Scott, 1990). Concerning credibility, we considered the creator and viewpoint of each document. Documents collected and presented publicly by the *Houston Chronicle* may have some inherent bias given they are written for the general public and may be sensationalized to sell newspapers.

Next, we read each document and conducted a content analysis to identify information (such as interviews with teachers and principals or district generated documents). For example, all educator and administrator quotes were isolated, coded, and organized by date and topic. We arranged documents chronologically to help us tell the story of how the PBMAS indicator and other TEA policies impacted districts and schools. We also read and identified different perceptions, unspoken policies and practices, assumptions, and instances where district and school-based administrators and teachers admitted to purposefully or unintentionally denying or delaying eligible students with disabilities. We coded these topics, read through the selection of codes, and used these codes to generate our findings. When possible, we verified and triangulated the claims made by interviewees using publicly available data.[9] Lastly, we had two current district administrators review our findings and provide feedback.

Findings

We report findings in two sections, in line with our two research aims. We first describe our results concerning the development of PBMAS and the potential manipulation of special education

[9] For example, later in this article we provide a quote by Fort Bend ISD special education director and use publicly available data on the district's special education enrollment to verify the director's claims.

identification practices related to PBMAS. Then, we present findings related to educator perceptions of PBMAS, which demonstrate how PBMAS Indicator 10 may have influenced district and school personnel behavior.

Manipulation of Special Education Identification

PBMAS. In 2004, special education enrollment was 11.6% of the student population in Texas. That year, TEA began implementing the Performance-Based Monitoring Analysis System. According to TEA (2018), PBMAS is an "automated data system that reports annually on the performance of school districts and charter schools in selected program areas." PBMAS includes progress indicators focusing on specific student populations that help inform the development of TEA-required district improvement plans when district's do not meet TEA expectations. TEA administrators monitor PBMAS ensure a baseline of student performance and program compliance. According to TEA policy, when the state identifies noncompliance, student performance, or program effectiveness concerns, "districts are required to participate in these activities [e.g., continuous improvement, improvement planning, progress reporting] and may also be subject to additional sanctions and interventions, including on-site reviews" (TEA, 2018).

PBMAS Indicator 10 awarded districts a perfect performance level if fewer than 8.5% of students received special education (other performance cut-offs were at 11% and 15%). The impact of PBMAS Indicator 10 was somewhat immediate as we will show, but significant decreases in special education enrollment occurred over time. Table 1 provides a timeline of PBMAS and subsequent investigations. More than 12 years after PBMAS was adopted, on September 10, 2016, the *Houston Chronicle* published the initial investigative article entitled, Denied: How Texas Keeps Tens of Thousands of Children Out of Special Education (Rosenthal, 2016). *Houston Chronicle* journalist Brian Rosenthal continued to publish a 7-part investigative report through 2016.

Table 1
Timeline of events leading to the ED investigation

Date	Author	Document/Action	Description
9/10/2016	Brian Rosenthal, *Houston Chronicle*	Denied: How Texas Keeps Tens of Thousands of Children Out of Special Education	Part 1 of the *Houston Chronicle's* report on the Texas special education cap
10/3/2016	Acting Assistant Secretary Sue Swenson, Department of Education	Untitled Memo: "Inquiry into *Houston Chronicle* Allegations"	ED requires written response to allegations from TEA within 30 days.
10/22/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Schools Push Students Out of Special Education to Meet State Limit	Part 2 of the *Houston Chronicle's* report on the Texas special education cap
11/2/16	Deputy Commissioner of Academics Penny Schwinn, Texas Education Agency	TEA Response to 10/3/16 ED Letter	TEA responses to allegations with supplemental documents: • Response to Allegations • 2014 Summary of Public Comment on PBMAS

Table 1 cont.
Timeline of events leading to the ED investigation

			• 2016 Summary of Public Comment on PBMAS • Child Count Rates from 2000-01 through 2015-16 • Longitudinal Special Education Representation Rates in Texas Not the Whole Picture: Letter from HISD Assistant Superintendent Sowmya Kumar
11/9/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Mentally Ill Lose Out as Special Education Declines	Part 3 of the *Houston Chronicle's* report on the Texas special education cap
11/17/2016	Deputy Commissioner of Academics Penny Schwinn, Texas Education Agency	Reminder about Important District Responsibilities under the Individuals with Disabilities Education Act	Letter to all Texas administrators about their Child Find obligations and related policies.
12/10/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Texas Schools Shut Non-English Speakers Out of Special Ed	Part 4 of the *Houston Chronicle's* report on the Texas special education cap
12/24/2016	Susan Carroll and Brian Rosenthal, *Houston Chronicle*	Denied: Unable to Get Special Education in Texas, One Family Moved	Part 5 of the *Houston Chronicle's* report on the Texas special education cap
12/27/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Houston Schools Systematically Block Disabled Kids from Special Ed	Part 6 of the *Houston Chronicle's* report on the Texas special education cap
12/29/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Special Ed Cap Drives Families Out of Public Schools	Part 7 of the *Houston Chronicle's* report on the Texas special education cap
6/28/2017	Acting Director of Office of Special Education Programs Ruth E. Ryder, Department of Education	Chief State School Officer [2017 Needs Assistance Determination]	Annual determination letter that provides DOE's reasons for determining Texas "Needs Assistance" in implementing Part B of IDEA.
1/2018	Department of Education, Office of Special Education and Rehabilitative Services	39th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2017	Annual national report describing progress on the implementation of IDEA with a focus on national and state-level implementation.
1/11/2018	Department of Education	2017 Full Monitoring Visit Letter	Findings Letter from Department of Education Investigation

On September 11, 2016, the ED was provided copies of the *Houston Chronicle's* report. On October 3, 2016, the ED contacted TEA commissioner Mike Morath expressing concern and requiring a written response. TEA responded on November 2, 2016, claiming that the report had numerous inaccuracies, but committed to no longer using PBMAS Indicator 10. In

December and January, 2016-17, the ED toured Texas, spoke with concerned families in Dallas, Houston, El Paso, Edinburg, and Austin, and conducted interviews with TEA officials to gain information about state policies, procedures, and practices. On January 11, 2018, the ED provided TEA a written summary of TEA's noncompliance:

1. TEA failed to ensure that all children with disabilities residing in the State who are in need of special education and related services were identified, located, and evaluated, regardless of the severity of their disability, as required by IDEA section 612(a)(3) and its implementing regulation at 34 CFR §300.111.
2. TEA failed to ensure that FAPE was made available to all children with disabilities residing in the State in Texas's mandated age ranges (ages 3 through 21), as required by IDEA section 612(a)(1) and its implementing regulation at 34 CFR§300.101.
3. TEA failed to fulfill its general supervisory and monitoring responsibilities as required by IDEA sections 612(a)(11) and 616(a)(1)(C), and their implementing regulations at 34 CFR §§ 300.149 and 300.600, along with 20 U.S.C. 1232d(b)(3)(A), to ensure that ISDs throughout the State properly implemented the IDEA child find and FAPE requirements. (ED, 2018, p. 4).

Early warning signs. In 2010, TEA's special education director was asked about a decline in special education enrollment during a state Texas Senate Education Committee. The director did not mention PBMAS Indicator 10. He responded: "We fundamentally believe it has a lot to do with improving general education" (Rosenthal, 2016.1). An analysis of SPP/APR reports from Texas and special education data suggested problems in the identification process in Texas between 2004, when PBMAS was first initiated, and 2016. TEA reported 2% and 0.16% of districts with disproportionate representation of racial and ethnic groups in special education that is the result of inappropriate (Indicator 9) identified in 2005 and 2006, and not one district between 2007 and 2014. These findings appear to be in stark contrast to findings presented in ED's annual report to Congress, which documents over-identification and disproportionality (ED, 2017). While disproportionality is not the same issue as under-identification per se, the contrast between a limited number of districts identified with disproportionate representation in a large state with more than 1,200 districts should have raised red flags to other issues like declining identification statewide. Moreover, between 2007 and 2015, Texas received a "needs assistance" or "needs intervention" status from the ED.

TEA responses. The ED required TEA to respond to the *Houston Chronicle's* allegations. TEA denied any wrongdoing and released a response:

> TEA strongly disagrees with statements in the article and with the overall premise of the article that Texas educators have been engaged in concerted, widespread efforts to deny eligible students with disabilities with needed special education services based on the special education representation indicator in the PBMAS. (TEA, 2016b, p. 1)

TEA claimed they did not have "specific evidence indicating there has been a systemic denial of special education services to eligible students" and that the "sole purpose of the special education representation indicator is to promote proper eligibility determinations so that only children with disabilities who require special education are placed in special education programs" (p.2).

In an attachment to the response, TEA included a document entitled "Response to Article Allegations" (TEA, n.d.-c). The document consisted of a two-column table (direct quotes of allegations from the *Houston Chronicle's* report in column one and TEA response in column two). In

some cases, TEA provided evidence to refute the *Houston Chronicle's* claims. The document also described the process in which the Indicator was developed:

> In 2004, after nine stakeholder meetings were held with diverse groups of individuals representing school districts, education service centers, professional organizations, advocacy groups, and others, these recommendations were proposed, and subsequently adopted, under the Texas Administrative Code (TAC)… The special education representation indicator in PBMAS does not indicate what percentage of students *should* get special education services. It is an indicator designed to report four different ranges that capture the various rates of special education representation among districts. (TEA, n.d.-c, p. 1)

TEA claimed all four cut point ranges were established based on a relative standard, which "are not tied to an absolute requirement or goal.. and there is not a state expectation that districts will achieve the relative standard over time" (TEA, n.d.-c, p. 1).

PBMAS Indicator 10 was publicly announced and described the public process in which PBMAS was adopted. This process included an announcement to nearly 16,000 listserve subscribers and the public posting of each year's PBMAS manual. TEA released 2014 and 2016 documents, both entitled, "PBMAS Rule-Making: Excerpt from Public Comments." Each document included generic comments and criticism for PBMAS Indicator 10 from several organizations. In 2014, Disability Rights Texas, the Texas Council of Developmental Disabilities, and the ARC of Texas expressed concern for the decrease of students being identified into special education. In 2016, Disability Rights Texas once again "expressed grave concern that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate" and that the group received "numerous complaints over the years about referrals not being made because of concern about the indicator" (TEA, n.d.-b, p. 1). The Texas Charter Schools Association argued that Indicator 10 was "at odds with the federal Child Find mandate" (p. 2). The ARC of Texas "suggested the indicator had a significant impact on the number of students enrolled in special education services and that enrollment mirrored the national average at 11.5% in 2006, but quickly dropped to 8.5% after the PL was implemented…" (p. 3).

TEA (2016a) also released a memo to all districts entitled, "Reminder about important district responsibilities under the Individuals with Disabilities Education Act." The letter noted that a district's failure to identify students eligible for special education "is a serious matter" and could result in the denial of a free and appropriate public education (FAPE). TEA (2016a) reminded districts that special education services to eligible students with disabilities "cannot be limited in any way by district's anticipated, or actual, PL assignments on Indicator 10" (p. 3). The letter also noted that reports had been made that districts may be delaying or denying special education referrals to complete RTI.

Evaluation of special education data. Much of the findings described above are confirmed in our analysis of special education data. Figure 1 shows changes in special education enrollment from 2000-01 to 2014-15, for Texas and for all other states. The vertical dashed line on school year 2005-06 indicates the first year in which PBMAS was active. In the years leading up to implementation of PBMAS, Texas had lower rates of special education enrollment compared to all other states, but the trend lines between Texas and other states were parallel. From 2000-01 to 2004-05, Texas special education enrollment changed from 11.9% to 11.8%. In all other states, special education enrollment changed from 13.1% to 13.9% over the same period. However, in the years following implementation of PBMAS, Texas school dsitricts saw substantial delines in special education enrollment, from 11.8% in 2004-05 to 9.0% in 2014-15. Meanwhile, the rate of special

education enrollment in all other states was relatively stable (going from 13.9% in 2004-05 to 13.2% in 2014-15).

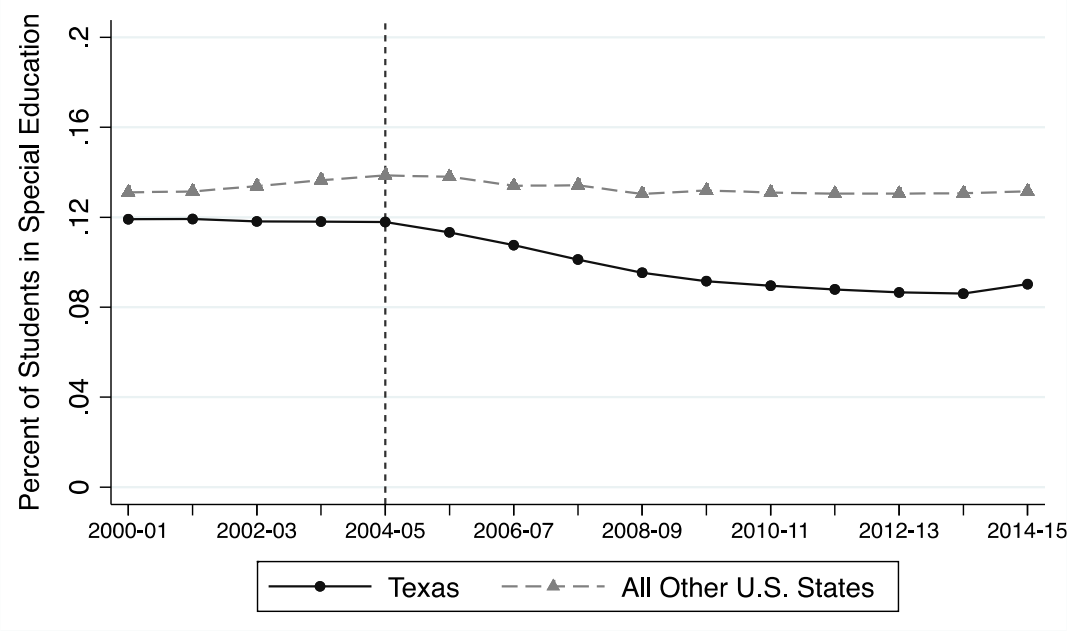

Figure 1. Special education enrollment rate in Texas and all other states, 2000-01 to 2014-15

Note. The vertical dashed line highlights the first school year in which PBMAS indicator 10 was in effect.

Figure 2 displays changes in special education enrollment over time for districts that may have faced particularly high special education accountability pressure – those with high rates of special education enrollment prior to PBMAS. We compare "high-SPED" districts (those in the top quintile of special education enrollment during the 2003-04 school year) to otherwise similar mid-SPED and low-SPED districts. That is, high-SPED districts are compared to mid- and low-SPED districts with similar overall enrollment size, poverty rates, and in the same urbanicity classification. Figure 2 shows that districts that likely faced the greatest pressure from the PBMAS Indicator 10 reduced their special education enrollments by the largest amounts. From 2003-04 to 2014-15, low-SPED districts reduced special education enrollment from 9.2% to 7.8%, a decrease of 1.4 percentage points or 15%. Over the same time period, high-SPED districts reduced special education enrollment from 18.7% to 10.1%, a decrease of 8.6 percentage points or 45.9%. In other words, districts with the highest special education enrollment rates prior to implementation of PBMAS – those that likely faced the most pressure to reduce the percent of students in special education – saw the greatest reduction after the implementation of PBMAS. That said, Figure 2 makes clear that while high-SPED districts experienced the greatest declines in special education enrollment, both in relative and absolute terms, even low-SPED distrcts (those in the bottom quintile of special education enrollment prior to implementation of PBMAS) experienced slight declines in special education after PBMAS was implemented.

As noted earlier, we ran the same model for districts with the highest and lowest student poverty rates and total enrollment and for urban, suburban, and rural districts. We found that otherwise similar high- and low-poverty districts experienced relatively similar decreases in the percent of students in special education. Relative changes in special education enrollment also did

not vary by district size. However, while urban, suburban, and rural districts all experienced declines in special eduation enrollment rates following implementation of PBMAS, the decline was significantly greater for rural districts than it was for otherwise similar urban and suburban districts.

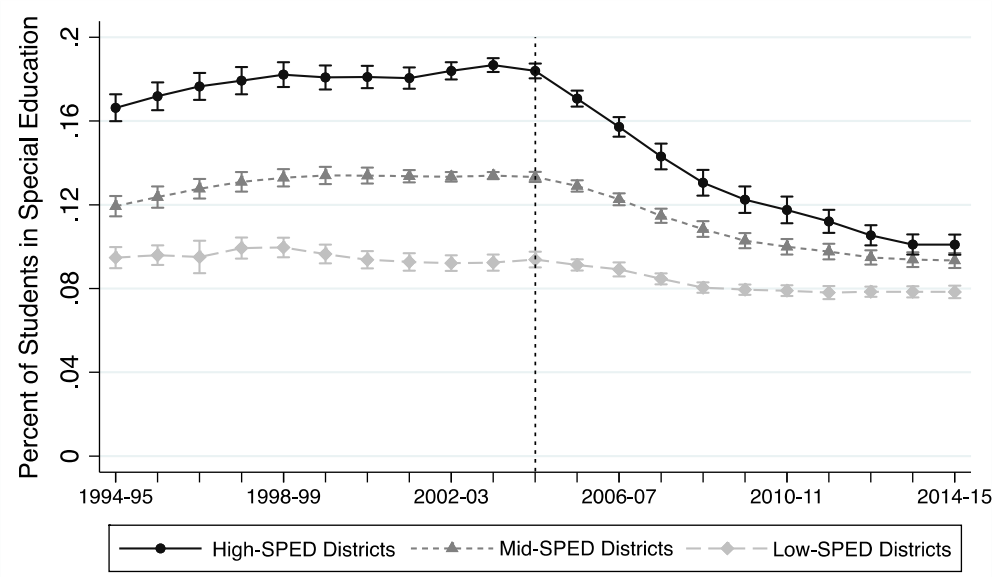

Figure 2. Percent of students in special education in Texas for districts in the top, middle, and bottom quintile of special education enrollment during the 2003-04 school year (the year PBMAS was implemented), 1994-95 to 2014-15

Note. High-SPED districts are those that fell in the top quintile of percent of students in special education during the 2003-04 school (the last year before implementation of the PBMAS special education accountability indicator). Mid-SPED and Low-SPED districts refer to those in the middle and bottom quintile (n=243 in each quintile). The vertical dashed line indicates implementation of PBMAS.

Finally, Figure 3 shows distributions of special education enrollment across districts. The figure highlights discontinuities near the PBMAS Indicator 10 cutpoint of 8.5%, for the 2014-15 school year. The left side of Panel A shows that a lower number of urban districts in Texas report just above the 8.5% special education enrollment accountability cutoff, compared to the number of districts reporting just below the accountability cutoff. Panels B and C show that these results are similar for suburban and rural districts. The graphs on the right side of Figure 3 report the same information for districts all other states. The distributions for all other states are generally smooth, suggesting a lack of manipulation, on average, in special education identification for districts outside of Texas.

Although not reported here, we also find similar discontinuities at the 8.5% cutoff for districts that were already in the bottom quintile of special education rate prior to PBMAS implementation (i.e., "low-SPED districts," defined above). In contrast, we find discontinuities at the 11% cutoff for districts that, prior to the PBMAS implementation, had higher rates of special education enrollment. As noted earlier, the special education accountability provision of PBMAS, Indicator 10, includes several levels of special education enrollment rates that districts are encouraged to achieve. Although our quantitative analyses focus primarily on the lowest rate of 8.5%, which provides the highest accountability rating under Indicator 10, districts are also encouraged to reduce special education rates to below 15% and below 11%.

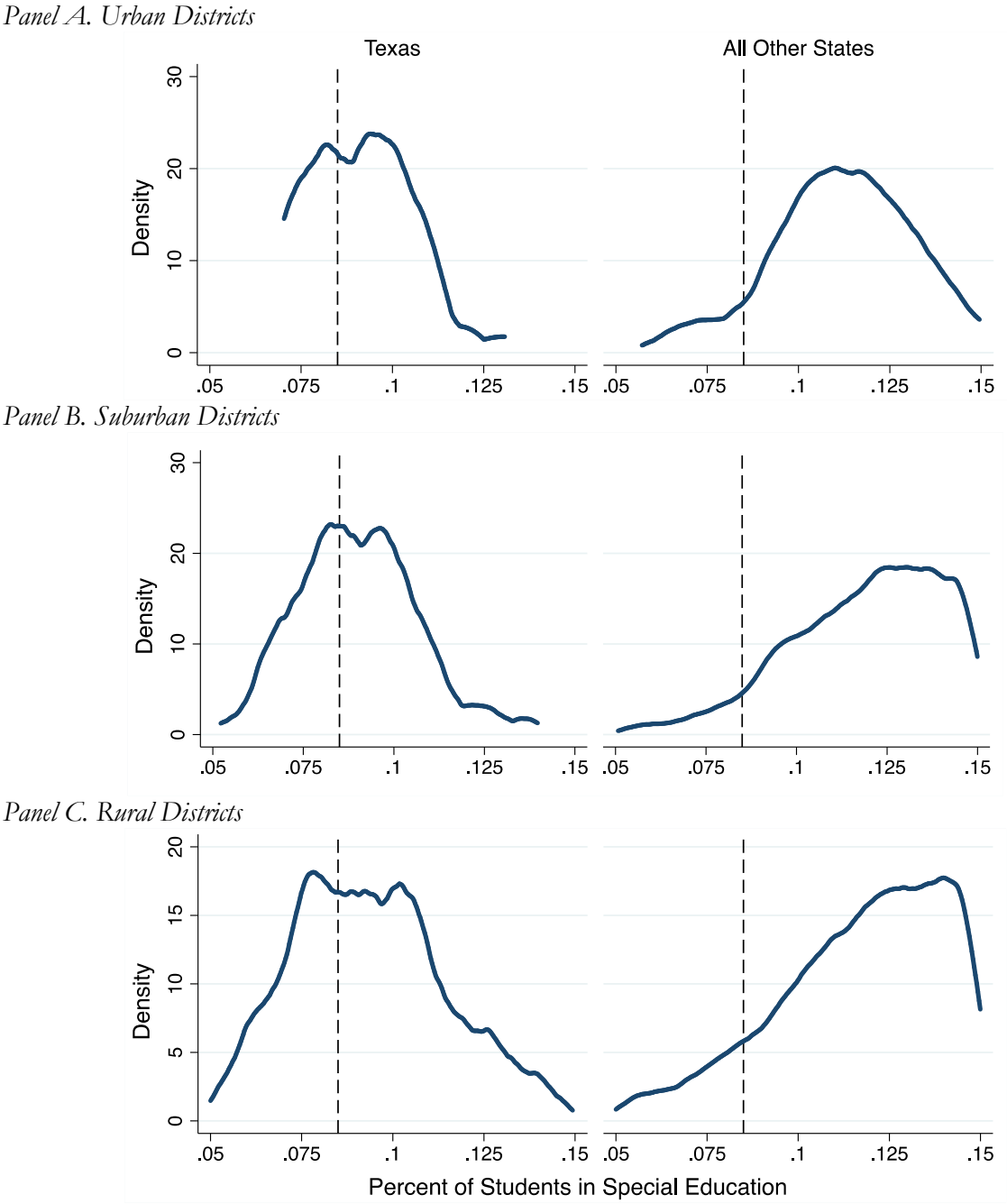

Figure 3. The distribution of the percentage of students in special education for urban, suburban, and rural districts in Texas and all other states, 2014-15

Perceptions and Actions of District and School Personnel

In this section, we examine the perceptions and actions of district and school personnel. We organized these findings by district administrator and educator perspective because of the top-down

failures by TEA to ensure district and school personnel were educated on special education identification policies and felt safe to implement these policies as intended. Generally, both district and school personnel lacked clear knowledge of IDEA policies related to identification and RTI. Some individuals took action to intimidate and bully subordinates to meet the 8.5% benchmark.

District administrator perspectives. Primarily, district administrators were either naïve or uneducated on the appropriate and legal implementation of the special education identification or felt pressured to comply with TEA despite recognizing that students were inappropriately delayed or denied. Superintendent Matt Underwood of Stephenville ISD reported that he held the belief that all states had similar monitoring systems with similar indicators or metrics until being contacted by the *Houston Chronicle*. After learning this was not true, he shared that, "Some [students with disabilities eligible for special education] have probably fallen through the cracks… I can't say how many. Even one would be bad. One would be terrible" (Rosenthal, 2016a). Another superintendent told the ED that he took efforts to reduce special education identification through monitoring the number of children in special education. He noted that he "leans on administrators" if the numbers are too high because the school board "leans on him" (ED, 2018, p. 4). He also told the ED that the district is "taking action to reduce the number of students being referred to special education services and ultimately reduce the number of students who require special education services" (p. 4). In this district, students in special education declined from 12.5 percent in 2005 to 7.8 percent in 2016.

The ED reported that district and school staff did not always understand IDEA's special education identification requirements. For example, some district staff informed the ED that in certain cases, "a child suspected of having a disability and needing special education and related services can be served under Section 504 for about a year before a recommendation for an IDEA evaluation is considered" (ED, 2018, p. 10). Their belief is incorrect and led the ED to conclude that district and school personnel were unclear about IDEA guidelines and that accurate information was not always available for teachers and parents.

Several district-level special education directors openly acknowledged that they felt pressured from their district and TEA to reduce the number of students in special education. For example, Fort Bend ISD is one of the state's larger school districts serving over 75,000 students. In 2016-17, only 6.7% of students in Fort Bend ISD were identified as students with disabilities. Fort Bend ISD's special education director, beginning in June 2015 acknowledged that inappropriate delays for special education were occurring because of the PBMAS system. She stated, "It's something that's always in the back of your mind… You're being graded" (Rosenthal, 2016a). In 2016-17, 9.5% of Seguin ISD students received special education. The special education director in Seguin ISD was reported saying, "We live and die by compliance… You can ask any special ed. director; they'll say the same thing: We do what the TEA tells us" (Rosenthal, 2016a).

Educator perspectives. Teachers reported inaccuracies in their understanding of special education policy. Several teachers reported feeling pressured to reduce the numbers of students receiving special education. Some teacher interviews revealed situations where students with disabilities were not referred or evaluated for special education because the student was already receiving services under Section 504 (ED, 2018). The delay or denial was done despite the fact that a teacher suspected the student of being eligible for special education. The ED (2018) concluded, "even when a teacher suspects that one of these children [child receiving services through Section 504] has a disability and needs special education … the child may not be referred … in a timely manner if the child is receiving services under Section 504" (p. 9). The ED (2018) also found that teachers in different districts had different understandings of Section 504 and special education identification under IDEA which lead to unnecessary delays and denials for eligible students.

During the ED monitoring visit, targeted questions were asked to teachers about RTI. The ED (2018) found that many teachers believed that completing all tiers of the RTI process was required before a special education referral. Some teachers expressed a lack of clarity about the RTI process and how to monitor student progress within tiers and how they transition from tier to tier (ED, 2018). Investigators found that in specific instances, "staff members described suspecting that a child may have a disability and not making a referral for an evaluation under the IDEA, or delaying the referral, because the child was already receiving services through RTI" (ED, 2018, p. 8). A 35-year veteran special education teacher who retired from Houston ISD in 2015 said, "RTI is a huge roadblock… Every now and again, it would help a kid a little bit, but when you look at the number of kids denied, it's not even close to being worth it" (Rosenthal, 2016e). A retired Lamar Consolidated ISD teacher stated, "What happens is there are kids that you know right from the beginning have challenges and need special ed, and you have to try all of these interventions that you know won't work…It extremely slows up the process" (Rosenthal, 2016a).

Numerous teachers described how their district pressured them to lower the percentage of students identified into special education. Tyler ISD is a district of 18,000 students, in which 6.8% of students receive special education in the 2016-17 school year. A former teacher at Tyler ISD, said, "We were basically told in a staff meeting that we needed to lower the number of kids in special ed at all costs… It was all a numbers game" (Rosenthal, 2016a). Janice Brassard, who taught for 27 years and served on the school board for nine years in Beaumont ISD said, "It's very important to the district to stay below the TEA cap… [English learners] are getting language services, so they say, 'Well, they're already serviced'" (Rosenthal, 2016d). Beaumont ISD's special education identification rate for ELLs is 4.2%, while the overall rate in the district is 7.5%. In Houston ISD, 7.0% of students are receiving special education. Rebecca Amstutz, who was a math teacher in Houston ISD, recalled being told by a colleague, "Don't bother… They won't even take the request. Remember the cap," when she expressed concern for a sixth-grade student who she suspected of having a disability (Rosenthal, 2016e).

Teachers reported to the *Houston Chronicle* several ways to delay or deny special education. A middle school special education chair in Alief ISD claimed she was told to "go into all these meetings with parents of kids with different disabilities and tell them, 'Oh, Johnny is doing so much better. So we want to try him in general education, and of course we'll give him support" (Rosenthal, 2016a). A former teacher in San Antonio ISD said, "You look at these kids and they clearly need services, but you can't give it to them because you're already at 8.5, and you know that some of (those families) are going to give up… They're going to leave the system… We're abandoning them." A former school psychologist in Cypress-Fairbanks ISD (a district with more than 114,000 students) claimed that schools would suspend or expel students instead of requesting special education evaluations. She said, "It's a very intentional effort to get the individual to withdraw from school instead of access to special education" (Rosenthal, 2016c).

Teachers also reported feeling pressured by administrators. A veteran language arts teacher from Houston ISD said, "We had long, agonizing meetings where we tried to push as many special ed students as we could into general education just to meet TEA's mandate… You realize, this is not the best environment for these kids, but there's nothing you can do about it…" (Rosenthal, 2016e). He continued, "The principals and the other administrators had a pretty good idea of what was going on… If teachers referred too many kids, they'd say, 'Maybe it's a classroom-management issue.'… Your efficiency as a teacher was questioned" (Rosenthal, 2016e). Other teachers reported feeling pressure to push students out of school. A former school psychologist in multiple Houston area districts, reported: "Many districts pressure their discipline problems to pursue GED, online high school or home school to get them out of the system" (Rosenthal, 2016c). A former school

psychologist in Cypress-Fairbanks ISD claimed that schools would suspend or expel students instead of requesting special education evaluations because of the pressure from the TEA. She said, "It's a very intentional effort to get the individual to withdraw from school instead of access to special education" (Rosenthal, 2016c). A speech therapist in Laredo ISD said "We basically just picked kids and weeded them out… We thought it was unfair, but we did it" (Rosenthal, 2016a). Two co-workers reportedly confirmed Gonzalez's account.

Discussion

The purpose of this study was to evaluate the impact of TEA's PBMAS Indicator 10. In our evaluation of special education data, we compared state trends in special education enrollment rates leading up to and immediately following implementation of PBMAS. We showed that Texas experienced a significant long-term decline in special education that began immediately following the implementation of PBMAS. This trend was not experienced in other states, suggesting that PBMAS was likely the underlying cause of this trend. We then explored which types of districts responded most strongly to new accountability measure. Those districts with the highest rates of special education enrollment prior to the implementation of PBMAS experienced the greatest decline, both in relative terms (percent deline) and in absolute terms (percentage point decline). While districts size and student poverty rate were not related to changes in special education enrollment rates, we found that rural districts had significantly greater special education enrollment prior to PBMAS and experienced far greater delcines compared to suburban and urban districts. Finally, we showed that districts are more likely have have just under 8.5% special education enrollment, than just over 8.5%, suggesting that district leaders may have been taking special steps to ensure no additional students received special education services if the district was already near the accountability cut point for that year.

Publicly available documents from the ED, TEA, districts, and the *Houston Chronicle* also provided valuable insights into how PBMAS Indicator 10 and perceptions of the state's accountability system contributed to actions that led to the delay and denial of students in special education. Several district administrators, including superintendents, lacked an in-depth understanding of IDEA and the individualized nature of special education student identification. While TEA initially denied that the PBMAS Indicator 10 was problematic or causing special education denials, the ED and *Houston Chronicle* found evidence that superintendents were "leaning" on administrators to limit special education. Interview data was supported by district corrective action plans that detailed several districts' goals to uniformly decrease special education enrollment.

District special education directors reported that PBMAS Indicator 10 had a powerful effect on district and school practices. The directors noted that they "live and die by [TEA] compliance" and the state accountability system is something that is "always in the back of your mind." District and school personnel felt as if there was "no wiggle room" concerning special education identification rates. We found these comments troubling because these individuals are their district's most knowledgeable special education experts and are in a privileged position to advocate for students with disabilities. IDEA places an affirmative responsibility for school and district personnel to proactively refer any child suspected of having a disability. In some situations, special education directors disregarded this duty under the pressure of TEA. District personnel disregarding their duties is a difficult truth to accept, but corresponds to prior theory and research centered on accountability policies, bright line rules, and high-powered incentive systems (Jacob & Levitt, 2003).

Research on accountability systems also indicates that schools strategically respond to accountability in ways that maximize their school's ratings or insulates them from potential threats

and sanctions (Amrein-Beardsley, 2009; Jacob, 2017; Nichols & Berliner, 2007). The ED and *Houston Chronicle* found that school personnel (e.g., teachers, principals) were not always knowledgeable about identification policies, the appropriate use of RTI, or how other policies like Section 504 fit with IDEA. The ED concluded that TEA failed at ensuring districts and schools were informed about policies, a key SEA responsibility under IDEA. Teachers and administrators also reported taking actions to delay or deny students suspected of having a disability. A Houston ISD educator noted that "RTI was a huge roadblock" and other educators shared that they or their school's administration purposefully manipulated parents to avoid special education identification.

Researchers and historians have documented a long history of principal practice aligned to managerial duties and compliance with top-down mandates (DeMatthews, 2018; Tyack & Hansot, 1982). Principals and other administrators were reported using their authority to encourage delays and denials. One teacher reported that a principal questioned a teacher's instruction and classroom management practices when referring a child for special education. Others claimed their district selected students at random to be de-identified, referred to as "weeding out." Perhaps, one of the more disgusting claims was that a school took intentional efforts for parents to withdraw a student from their school. These findings are in line with studies of high-stakes accountability focused on testing, where administrators pressure teachers and parents to respond to policy incentives (Nichols & Berliner, 2007).

TEA initially denied allegations and claimed that they had no evidence of cheating. Determining TEA's true intentions is beyond the scope of this article, but based on previous research on how districts, schools, and educators respond to bright line incentives and a basic understanding of IDEA, it seems clear to the authors that the 8.5% metric should have never been utilized as an evaluation metric. Issues of over-identification and disproportionality have long plagued the IDEA. Perhaps, there were well-intended state, district, and school personnel who engaged in practices to limit special education identification. Regardless of intention, sufficient evidence exists to suggest that TEA failed at its duties in implementing IDEA and that a statewide culture of fear manifested. A history of top-down accountability further attributed to naïve or fearful district and school personnel acting in ways that harmed thousands of children. Below we conclude with recommendations for how Texas should go about addressing these issues.

Conclusions

It is necessary for TEA and disability rights advocates to take full advantage of how educational data can be used as a tool for advancing educational equity in special education. The following steps can be taken by TEA to identify districts that have systemically denied or delayed special education to eligible students. First, TEA can identify district characteristics associated with the greatest decline in special education rates. Our analyses shows that rural districts and those that had the highest pre-PBMAS special education enrollment experienced the greatest decline. Second, TEA can examine "outlier" districts, which have lower average special education enrollment relatively to otherwise similar districts. In our prior work, we have demonstrated how such districts could be identified (Knight & DeMatthews, 2018). Once these districts are identified, TEA can take appropriate actions to support districts, schools, families, and students in making good on past wrongs and preventing future injustices.

A primary implication of our study is the need for more attention and research on special education accountability policies. The fact that a significant statewide decline in special education enrollment over 12 years occurred without being identified by educational researchers or research institutions is evidence to the need for more attention. We believe our study's findings provide the

foundation for several future avenues of research. This study was limited by its data collection process, which did not include interviews with state, district, school personnel, parents, or special education advocates. Moreover, this study was limited to just one aspect of special education accountability policy in one state. Our study primarily focused on a statewide analysis of data, rather than focusing on several districts. Future research might consider an in-depth qualitative approach that includes interviews with various stakeholders, a multi-case study approach that investigates district and school practices, and statewide personnel surveys to assess stakeholder knowledge of IDEA and problems with implementation.

Finally, we believe our study has significant implications for special education policy and accountability at the national and state levels. It is clear the ED struggled to identify states that are out of compliance. The ED's failure is evident by the fact that few states report having districts with racial disproportionality despite the national presence of this problem as well as the fact that the ED did not intervene earlier in Texas. Special education policies at the state-level cannot be compliance-driven, but policymakers must also be careful that results-driven accountability does not lead to manipulation. In part, improving the quality of special education policy implementation can be driven by ensuring states and districts have adequate funding, a continued problem across the state of Texas and nationally (IDRA, 2009; Knight, 2012, 2017). While money does not solve all problems, added resources and additional training at the state, district, and school-level surely would have mitigated some of the unethical practices that transpired between 2004 and the present.

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Appendix

List of Primary Sources

Date	Author	Title	Description
2/26/2008	Texas Education Agency	Laredo ISD Important Monitoring Information	TEA letter to Laredo ISD superintendent detailing problems with special education implementation, including the district's issues with overrepresentation.
2010	Gatesville ISD	2010-2011 Continuous Improvement Plan: Special Education Monitoring System	District document that requires a four-tiered process prior to a student being evaluated for special education.
2010	Karnack ISD	2010-2011 Continuous Improvement Plan: Special Education Monitoring System	District document that requires a school improvement team to meet a minimum of three times before a referral to special education is made.
1/22/201	Morgan ISD	Special Education Monitoring System 2009-2010: Continuous Improvement Plan	District document that sets goal to decline number of students found eligible for special education.
1/28/2011	Texas Education Agency	Marlin ISD letter to board of trustees and superintendent	TEA letter to Marlin ISD that documents history of systemic special education failure and the assignment of a conservator over the district's improvement process.
1/5/2012	Houston ISD	Comprehensive Program Improvement Plan 2011-2012	Improvement plan document released by Houston ISD and their Office of Special Education Services that includes a benchmark goal of 8% for special education identification.
9/10/2016	Brian Rosenthal, *Houston Chronicle*	Denied: How Texas Keeps Tens of Thousands of Children Out of Special Education	Part 1 of the *Houston Chronicle's* report on the Texas special education cap
10/3/2016	Acting Assistant Secretary Sue Swenson, Department of Education	Memo not titled "Inquiry into *Houston Chronicle* Allegations"	Department of Education requires written response to allegations within 30 days.
10/22/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Schools Push Students Out of Special Education to Meet State Limit	Part 2 of the *Houston Chronicle's* report
11/2/16	Deputy Commissioner of Academics Penny Schwinn, Texas Education Agency	Response to 10/3/16 Department of Education Letter	Written response to allegations with supplemental documents: • Response to Allegations • 2014 Summary of Public Comment on PBMAS • 2016 Summary of Public Comment on PBMAS

			• Child Count Rates from 2000-01 through 2015-16 • Longitudinal Special Education Representation Rates in Texas • Not the Whole Picture: Letter from HISD Assistant Superintendent Sowmya Kumar
11/9/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Mentally Ill Lose Out as Special Education Declines	Part 3 of the *Houston Chronicle's* report
11/17/2016	Deputy Commissioner of Academics Penny Schwinn, Texas Education Agency	Reminder about Important District Responsibilities under the Individuals with Disabilities Education Act	Letter to all Texas administrators about their Child Find obligations and related policies.
12/10/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Texas Schools Shut Non-English Speakers Out of Special Ed	
12/24/2016	Susan Carroll and Brian Rosenthal, *Houston Chronicle*	Denied: Unable to Get Special Education in Texas, One Family Moved	
12/27/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Houston Schools Systematically Block Disabled Kids from Special Ed	
12/29/2016	Brian Rosenthal, *Houston Chronicle*	Denied: Special Ed Cap Drives Families Out of Public Schools	
6/28/2017	Acting Director of Office of Special Education Programs Ruth E. Ryder, Department of Education	Chief State School Officer [2017 Needs Assistance Determination]	Annual determination letter that provides DOE's reasons for determining Texas "Needs Assistance" in implementing Part B of IDEA.
1/2018	Department of Education, Office of Special Education and Rehabilitative Services	39th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2017	Annual national report describing progress on the implementation of IDEA with a focus on national and state-level implementation.
1/11/2018	Department of Education	2017 Full Monitoring Visit Letter	Findings Letter from Department of Education Investigation
No Date	Texas Education Agency	TEA Plan and Response to Monitoring Letter (Initial Draft Proposal)	Outline of initial thoughts to address corrective action required by DOE.
No Date	Department of Education	Texas 2017 Part B Results-Driven Accountability Matrix	Overview of IDEA Part B implementation in Texas and with regard to OSEP indicators.

About the Authors

David E. DeMatthews
University of Texas at Austin
ddematthews@austin.utexas.edu
David E. DeMatthews, PhD, is an Associate Professor at the University of Texas at Austin in the Department of Educational Leadership and Policy, and the Program Director of UT Austin's Urban Principal Leadership Academy. He is a former a urban public school teacher, assistant principal, and central office administrator. His research focuses on issues related to K-12 school leadership, educational policy, and marginalized student populations in urban school districts.

David S. Knight
University of Texas at El Paso
dsknight@utep.edu
David S. Knight, PhD, is the Director of the Center for Education Research and Policy Studies and an Assistant Professor in the Department of Educational Leadership and Foundations at the University of Texas at El Paso. His teaching and research focus on economics of education and school finance. Specific areas of research include equity in educational resource allocation, cost-effectiveness analysis, and educator labor markets.

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