

CHAPTER 5.

CHASING TRANSPARENCY: USING DISPARATE IMPACT ANALYSIS TO ASSESS THE (IN)ACCESSIBILITY OF DUAL ENROLLMENT COMPOSITION

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Research Problem: Dual enrollment (DE) programs are touted as giving the opportunity for “all students” to gain college credit in high school. Many DE FYW courses require pre-college assessment for enrollment. When test score data is not transparent or available, disparate impact and fairness of a chosen pre-college assessment genre is indeterminable.

Research Questions: What are the implications of assessment genres that determine student eligibility and access of Dual Enrollment programs? Do assessment genres that determine student access and DE FYW placement produce evidence of fairness?

Literature Review: This chapter relies on Rhetoric and Composition Studies scholarship, which includes DE FYW specific scholarship, and DE scholarship from the field of Education. This chapter also relies scholarship that explains methods and theories for determining the fairness, validity, and reliability of assessment genres—primarily disparate impact analysis as proposed by Poe and her colleagues (2014) for validation studies.

Methodology: This chapter narrates the complications of conducting a disparate impact analysis when data and information is not transparent or available. To understand the implications and fairness of DE FYW student access and placement, I sought AC-CUPLACER WritePlacer® test scores that determine student placement at my chosen research site to replicate the disparate impact analysis model for validation studies as proposed by Poe and her

colleagues (2014). While test score data was not disaggregated by the institution or publicly available, I found that my research site was previously under investigation from the Office of Civil Rights. Information about the OCR complaint was also confidential. I then utilized multiple methods for obtaining information about both the scores and OCR complaint. This inquiry included email and telephone correspondence with the Office of Civil Rights, the U.S. Department of Education, and Arizona Board of Education. I also filed formal requests with the legal department at my research site as well as Freedom of Information Act (FOIA) requests on the state and federal levels.

Conclusions: Without transparent data and accountability for that data to enable validity studies such as disparate impact analysis, an assessment genre cannot be deemed valid, reliable, or fair. The lack of comparable data to understand how assessment is influencing access to DE writing courses is a violation of students' civil rights.

Qualifications: My chosen research site was not legally bound to provide me as an outside source with test score data—scores may have been made available to someone within the institution. Other DE programs may keep more clear records of assessment scores, including those of the ACCUPLACER WritePlacer.

Directions for Further Study: Overall, there is a need for continuing research of the transparency, validity, reliability, and fairness of assessment genres that determine student access and placement in DE and DE FYW courses. One idea for further study would be to—where scores are available—utilize Poe and her colleagues' (2014) model to conduct a disparate impact analysis of DE FYW access and placement assessment genres.

In at least the last sixty years, dual enrollment (DE) courses have become an increasingly popular way for students to earn college credit. Students who participate in these courses do so dually—as high school students that upon access, placement, and admission, enroll and obtain credit for their high school and college course(s) simultaneously. Since the advent of dual enrollment (DE) courses in the 1950s (Estes, 1959; Radcliffe & Hatch, 1961), enrollment has grown rapidly. The most recent data records at least 1.277 million students enrolled in the United States in 2010-2011 (Marken et al., 2013). The number of students enrolled in college-level first-year writing (FYW) courses as well as the number of FYW DE programs in the US is not known. However, it is record-

ed that college-level first-year writing was one of the first courses to be offered to high school students for dual credit. “College-level English” (described as a course in composition and literature) (Estes, 1959, p. 332) has been available at the self-proclaimed “longest running” DE program in the US—the University of Connecticut’s Early College Experience—since the program began in 1955 (University of Connecticut Early College Experience, 2016).

There are multiple reasons that college-level first-year writing was one of the first courses offered in this setting—all of which seem to have been a response to the instillation of the first-year writing requirement at Harvard—and Charles Eliot’s role in that creation—in 1885. At this point Harvard, other colleges and high schools, and national organizations began seeking ways to better prepare high school students for college. In 1885, Charles Eliot approved the first-year writing requirement (shortly thereafter, many institutions also developed required first-year college-level writing classes). The same year that Eliot approved the first-year writing requirement, in what seems to be a response to what Robert Connors (1991) refers to as the creation of the “first literacy crisis” in American colleges (p. 66), Eliot suggested a national board to develop and administer college entrance examinations (Schudson, 1972).¹

In 1892, Eliot was appointed chairman of the National Education Association’s Committee of Ten, a committee “charged with formulating a better curricular mesh between school and college” (Schudson, 1972, p. 43). In 1900, chief publicist of the report of the Committee of Ten, Nicholas Murray Butler, (with the support of Charles Eliot) went on to head the creation of the College Entrance Examination Board (CEEB). English was one of the nine subject areas included on the first CEEB examination given in 1901 (Schudson, 1972). It should be noted that a writing sample was not a part of English—or any portion—of the exam until 1959 (Valentine, 1961).

Although a writing sample was not a part of the CEEB exams prior to 1959, English and writing was an area of focus for those seeking ways to prepare students for college—prior to entry. In 1952, the General Education in School and College committee released a report of the 1951 graduating class of Harvard that aided in further development of college-level writing courses prior to college. In the report, it was found that many students were repeating courses in college that were required in high school. Therefore, the committee recommended particular courses of study for high school to be followed by achievement tests to “enable qualified students to enter college with sophomore standing” (Jones, 2010, p. 49). English language and literature were two of the eight separate curricular areas proposed by the committee. According to Joseph Jones (2010),

1 For more details about the events leading up to the creation of the CEEB, see Schudson (1972).

among other things, this report highlighted how the teaching of writing was “primarily the responsibility” of the high schools (p. 50) and led to practices that would exempt high school students from college-level first-year writing.

Meanwhile, in 1952 the Ford Foundation’s Fund for the Advancement of Education sponsored an experimental “Advanced Standing” program known as the “Kenyon Plan” at Kenyon College in Ohio. This program allowed select high school students to take courses that upon completion and examination would give them partial or full credit for college-level courses (Jones, 2010; Radcliffe & Hatch, 1969). With the help of the Educational Testing Service (ETS) the first tests—that were based on the course subjects—were administered in 1954 (Jones, 2010). Two separate exams were given for English—one in literature and one in composition. The pilot courses and subsequent exams and scores led to the interest and adoption of the Kenyon Program by the CEEB in 1955. Once the CEEB assumed responsibility, they renamed the program the Advanced Placement Program (Radcliffe & Hatch, 1961). As institutions began participating in AP programs, other institutions were developing individual advanced standing programs “in order to meet the needs of their particular communities” (Radcliffe & Hatch, 1961, p. 19). The earliest recorded advanced standing dual enrollment program began in 1955 as the University of Connecticut’s Cooperative Program for Superior Students. At least one of the original seven high schools to participate in this program, Manchester High School, offered “a ‘College Level English’ course since the inception of the program” (Estes, 1959, p. 332).

Although advanced standing, advanced placement, and therefore dual enrollment programs that enable students to gain college credit for writing in high school were an almost instantaneous response to the first-year writing requirement that began in 1885, there are currently fewer than 30 publications that focus on DE composition (Denecker, 2013; Frick & Blattner, 2002; Hansen & Farris, 2010). These works offer important details to understanding the construction and complexity of DE FYW, such as maturation of students (Anson, 2010; Tinberg & Nadeau, 2011), teacher training (Anson, 2010; Farris 2010; McCrimmon, 2010), curriculum, (Anson, 2010; Farris, 2006) and perceptions of efficacy of DE on college readiness (Franks, 2016), there has yet to be any data collection that focuses specifically on DE admission and placement practices.

In writing assessment scholarship, researchers have analyzed different assessment genres, such as placement exams, essays, and portfolios that rely on “traditional” student enrollment, i.e., students enrolled in a college writing class on a college campus, at least 18 years old, and possess a high school diploma or the equivalent (Huot et al., 2010, White, 2001; see also Williamson & Huot, 1993). Edward White and his colleagues (2015) explain that Writing Program

assessment should capture “all genres of writing assessment” and grapple with “limited and robust construct representation at all levels of the curriculum, from admissions to placement” (pg. 86). However, if we follow Carolyn Miller’s 1984 invocation of genre as social action, then we must understand that genres are not merely form but rise from different social exigencies. To that end, we need different evidentiary categories associated with various assessment genres to determine different social exigencies. Transparency is how we can link the social exigencies by which assessment genres arise and their consequences. In all, no composition-specific research accounts for the consequences of different assessment genres that determine access and enrollment for students that are seeking to be dually enrolled in high school English and college writing courses. In many cases, enrollment in DE FYW courses requires both admission and placement assessment. DE enrollment, then, refers to students that successfully meet both admissions and placement assessment requirements.

One question that obviously arises from such co-curricular programs is: How are students who have not completed high school or its equivalent assessed to qualify for DE and placed into college level DE writing courses? In fact, the ways students are assessed for placement into DE programs and DE writing courses varies depending on the state, high school, and institutions that offer courses. A related question thus follows: Do the programs produce evidence of fairness?

When the fairness of a practice is questioned, the social justice of the practice must also be questioned. In the same vein as FYW, DE FYW courses were developed for educational and therefore social mobility. The question of equity in admissions is particularly important in DE programs because co-curricular programs are attractive to an increasing number of students because they offer the opportunity to obtain college credit for writing more quickly (and in many cases, more cheaply) than would be possible after matriculating to the university context.

In the case of DE, many institutions rely on standardized placement tests (such as the CEEB’s ACCUPLACER WritePlacer® [developed by Pearson]) to determine which students will have the opportunity to gain college credit for writing in high school more quickly. Evaluating the validity of the placement practices (and/or tests) is one way to determine the fairness and therefore social justice of DE.

Michael T. Kane (2015) explains the importance in validating testing practices if it is anticipated that a genre is linked to “unintended consequences”—specifically “social consequences” (p. 10). According to Kane, there are currently two main concerns of social consequences in validation studies: “[1] differential impact against particular groups (which may or may not be associated with identifiable sources of bias) and [2] undesirable systemic effects

(particularly in education)” (2015, p. 10). Kane explains that there must be categories of evidence to support the fairness of an assessment genre as issues of fairness and validity are “basically the same” (2015, p. 181). In this way, validity and fairness studies focus on the implications of testing procedures or scores and the social consequences (and social justice) of the implemented procedures and use of the scores. However, a validity study (to determine aim and consequences) is only possible when a writing construct has been identified and sample constructs and supplementary data are transparent. Because no assessment practice can be deemed valid without analysis, and analysis is only possible with transparency, I argue that issues of transparency are “basically the same” as issues of validity and fairness. The 2014, American Educational Research Association *Standards* included for the first time a chapter on fairness, which Diane Kelly-Riley, Norbert Elliot, and Alex Rudiny explain, “elevated the concept of fairness to be a foundational consideration for tests, parallel in importance to validity and reliability (2017, p. 3). Therefore, conversations pertaining to assessment should be extended to account for the implications of assessment genres that are not supported with clearly accessible and transparent data to support fairness.

The makeup of students in FYW classes is dynamic and the work of many scholars has shown that students’ race, language, gender, and economic backgrounds should not impede their college and FYW experience (Inoue & Poe, 2012; Martinez, 2009; Matsuda, 2006; Ratcliffe, 1999; Wallace, 2009). Most DE courses are marketed as a means for “all” students to have more access and an easier transition to college. The purpose of one type of DE format—Early College (EC) high school programs—are to “serve low-income young people, first-generation college goers, English language learners, and students of color, all of whom are statistically underrepresented in higher education and for whom society often has low aspirations for academic achievement” (Jobs for the Future, n.d.). Despite the intended (and marketed) purposes of DE programs, Keith D. Miller and I (2016) found that while students of color are the majority in Texas, white students make up the majority of students enrolled in DE programs.

In this chapter, I build upon my previous research focused on DE enrollment to interrogate fairness issues surrounding student DE admission and placement assessment practices, interrogating the implications of practices that determine student eligibility and access to DE programs. While previous research was based on data from Texas, for the work in this chapter I chose a more localized system. This institution, which I will refer to as Arizona College (AC), is one of the largest community college systems in the US with DE course offerings at local high schools.

As I illustrate in this chapter, DE enrollment data at this institution was not reported or available. Therefore, there is not transparency of the scores that are necessary to determine the fairness, reliability, and validity of the institution's pre-college assessment for students seeking to be enrolled in courses that allow students to gain high school and college credit simultaneously. In this way, the scores are not transparent, therefore the fairness, reliability, and validity of the instruction's chosen assessment genre is not transparent. And in instances when data from institutions may not be reported or available, other avenues that do have the authority to gather such data, such as the Department of Education's Office of Civil Rights (OCR) serve as important resources to understanding the problematic implications of the lack of transparency in assessment practices. When claims of discrimination are made, the OCR compiles and analyzes data using what is called a burden-shifting approach. This three-step process has been taken up by Mya Poe and her colleagues (2014) in the form of a validation tool that identifies unintentional forms of discrimination—disparate impact analysis.

This chapter is organized into the following sections. I first give an overview of DE composition and associated areas of concern to highlight how assessment practices that determine enrollment requires more data-driven inquiry. Such orientation situates how Moreland and Miller's work necessitates more empirical scholarship that focuses on if—and where—discrimination in DE is happening outside of Texas. I then detail my research site, how enrollment in these DE FYW courses rely on ACCUPLACER WritePlacer test scores, and how there is no data publicly available or internally compiled data regarding these placement scores. While there are no records of data, there are records of how AC was investigated by the OCR for discriminatory practices regarding, among other things, how students gain knowledge about and access DE courses. Therefore, I also include explanation of these claims and the larger functions of the OCR. To determine if the chosen research site is operating in a way that discriminates students via ACCUPLACER WritePlacer test scores, I explain disparate impact analysis as a validation tool, as proposed by Poe and her colleagues. Finally, I conclude by demonstrating how the lack of data available at my chosen site complicates the disparate impact approach presented by Poe and her colleagues and emphasize the need for transparency in testing practices and scores as to better understand the intended and unintended social consequences.

DE ASSESSMENT AND ACCESS MET WITH GROWTH IN ENROLLMENT AND CONCERNS

In Stephanie Marken and colleagues' 2013 report, it was found that 25% of institutions that offer DE courses in the US “reported eligibility for high school

students in grade 9” (p. 3), meaning that in some cases, students qualify at the age of 14.² DE researchers have raised concerns over the age of students in DE programs given that how students write at any level is informed by their cognitive abilities (MacArthur & Graham, 2015; Taczak & Thelin, 2009), their level of maturation (Anson, 2010; Tinberg & Nadeau, 2011), and various other, age-related facets that influence writing (White et al., 2015).

Second, inconsistent DE admissions standards means that DE enrollment is based on varied assessment practices. In 2015, for example, 27 states required standardized test scores, such as the ACT or SAT, to determine student access (Zinth, 2015). In the remaining states, there was no state policy; the institutions constructed unique eligibility requirements. ACCUPLACER WritePlacer test scores are commonly used in institutions with and/or without state policy to determine student eligibility for DE writing courses. In the end, according to the U.S. Department of Education Reports from 2010–2011, only 46% of colleges offering DE courses held students to the same admission standards of the institution (Marken et al., 2013), despite calls from organizations such as CCCC that programs offering DE should reflect the “sponsoring college composition program” (Farris et al., 2012). It is extremely important to understand here that in the case of DE composition, in instances where the ACCUPLACER WritePlacer test scores are used, placement into the course determines a student’s ability to enroll at the college. For example, if a student is seeking to enroll in only DE composition, they must first take the placement exam and receive a score that places them into DE FYW and then they can enroll in the college. However, if the student does not receive the recommended score for the course, they will not be admitted to the college.

The varied rhetorical situations and communities in which students who are immersed in DE courses write leads to a third inconsistency: curriculum. According to Esther B. Hugo (2001) high school and, therefore, DE curriculum play a large role in DE students’ eventual success in college. However, David E. Schwalm (1991) argues that writing courses taught on college campuses are “impossible to replicate in a high school senior English class” (p. 53). Chris Anson (2010) (in reference to Farris, 2006) writes that some dual credit programs have “slapdash’ curricula that exploit high schools and do a disservice to aspiring students” (p. 245). WPAs at many institutions that accept DE credits have no voice in the curriculum design for DE programs and there is minimal, if any, communication with the local offering institutions. In fact, Melinda Mechur Karp and colleagues (2004) report that less than one-third of states with a dual enrollment policy have policies about course content or curriculum. The lack of

2 In Schneider’s study of the TECHS (Toledo Early College High School) program, there were 100 ninth grade students enrolled. One student participant of this inquiry was 14.

state and institutional policy lends to inconsistent DE curriculum guidelines. Ultimately, unlike FYW that looks to WPA guidelines for program construction and evaluation, DE courses largely function to meet the standards of outside sources, such as the National Alliance of Concurrent Enrollment Partnerships (NACEP).

NACEP is an organization that was designed specifically for the advancement of another variation of DE courses—Concurrent Enrollment (CE). A large function of NACEP is to accredit programs; one aspect of accreditation is that the curriculum of the programs must be the same as that of the providing college. But policy does not always influence or dictate practice, especially when policies are not in place.

A fourth inconsistency in DE programs arises in the ways instructors are trained to teach. Until recently, there was no agreed-upon, research-based way that teachers receive preparation or training to teach DE FYW classes (Anson, 2010; Farris 2010; McCrimmon, 2010). In October 2015, the Higher Learning Commission (HLC) adopted a policy revision to Assumed Practice B.2. This will require all instructors, including those of DE courses to have “18 graduate credit hours in the discipline or subfield in which they teach” by September of 2017 (p. 2). This policy revision was largely influenced by dual credit courses:

The institution must assure that the faculty members teaching dual credit courses hold the same minimal qualifications as the faculty teaching on its own campus. This requirement is not intended to discount or in any way diminish the experience that the high school teacher brings into a dual credit classroom. Yet it is critical that the content of the dual credit course match the complexity and scholarly rigor of the same course delivered to the student population on the college campus. With millions of high school students now earning college credit through dual credit programs, the advancement of higher education and the value of student learning rely extensively on the adequacy of faculty preparation and demonstrated qualifications among dual credit instructors. (HLC, 2015, p. 4)

This adoption has added new problems for dual enrollment and writing programs across the country, as community colleges that are largely involved with DE course offerings do not offer graduate-level courses and many of the high school instructors do not hold an M.A. or Ph.D. (much less degrees in Rhetoric and Composition Studies or Literacy). Among other things, the HLC’s revision is causing WPAs to “scramble” to create more graduate-level course offerings for

instructors seeking to meet the qualifications; there is also a concern with finding ways to pay “for the additional credit hours, [and] encouraging high school teachers to participate” (Smith, 2015).

In the end, the fragmented practices of DE mean that we have little understanding of what students’ varied age levels, teacher training, curricular differences, and admission standards yield in regards to equitable outcomes for various student groups and writing programs. Without meaningful and more transparent data, and analysis of that data, we simply cannot ascertain the fairness of DE and whether DE results in socially just outcomes for all students (and instructors) within these programs.

IMPORTANCE OF DATA FOR DETERMINING DISCRIMINATORY PRACTICES

Given that little is known about issues of equity in DE admission and the effects of DE over the course of a student’s college career, it is imperative that there be more data driven studies of DE evaluation. Of the few DE composition-specific publications, five—Denecker (2007), Denecker (2013), Frick and Blattner (2002), Post and colleagues (2010), and Taczak and Thelin (2009)—offer models for data collection and analysis that can act as models for future research. While these studies do highlight some aspects of writing assessment; in short, to my knowledge, there are no DE-specific validation studies in the composition research journals.

In regards to DE and social justice, data collection and analysis is needed to evaluate the validity and therefore fairness of assessment practices to see if these practices. As previously mentioned, Kane (2015) writes that issues of fairness and validity are “basically the same” (p. 181). Validity theory upholds the idea that: “It certainly is appropriate to evaluate a decision rule in terms of the extent to which it achieves the goals of the program, but it is also important to attend to unintended effects that have potentially serious consequences” (Kane, 2013, p. 55). Some potential negative impacts, or consequences, according to validity theory, are adverse (and/or disparate) impact.

Mya Poe and John Aloysius Cogan Jr. (2016) discuss how validity and/as fairness of test scores holds larger meaning for social justice:

Test scores may reflect social inequality, but the *use* of test scores works to create that social inequality. Racial isolation and structural inequality are not merely reflective of such social mechanisms; social mechanisms work to sustain racial invisibility, racial isolation, and structural inequality.

This “structural inequality” is precisely what the work of Miller and I (2016) found in the state of Texas based on enrollment data. In 2007, the state of Texas mandated that all high schools offer at least 12 hours of college credit to their high school seniors (Friedman et al., 2011). However, not all schools were able to pay for student’s courses and texts. Therefore, socioeconomically disadvantaged students were not always provided this option. In many instances, students that are at an economic disadvantage, and therefore have more disadvantages in regards to college placement tests because of a lack of resources in their high schools, are also students of color and/or from multiple language backgrounds (Zwick & Himelfarb, 2011). In our work, Miller and I (2016) looked at data from Lawrence B. Friedman and colleagues’ 2011 report that focuses on the then-current state of DE in Texas that highlights how although students of color outnumber white students in the state of Texas, white students are the majority in DE courses. Miller and I analyzed this data using whiteness theory as well as aspects of George Lipsitz’s *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* in which he identifies the ways that certain people—those categorized as white—benefit from structural racism in society. In regards to education, Lipsitz expands on the ways that, “[un]equal opportunities for education play a crucial role in racializing life chances in the United States” (2006, p. 33). In the end, our work shows how the promises of DE programs fail to meet the call for advancement of “all students” in the state of Texas, which we argue can be applied to the US as a whole.

Given our findings from the Texas study, it seems that claims regarding equitability of DE programs are suspect. Such findings beg the question whether equitability of DE is simply a matter of access—i.e., more poor students need access to DE—or whether equitability is related to assessment practices.

Thus, in the following study I sought to identify if enrollment patterns at a large institution in another state (Arizona) that offers DE is reflective of the enrollment patterns in Texas. After establishing whether there was a disparity in enrollment, I endeavored to identify some possible reasons for this disparity. Specifically, I ask why students of color do not seem to be accessing DE courses in the same ways or at the same rates as white students.

RESEARCH SITE OVERVIEW

In order to create a research project focused on determining if discrimination of students based on testing practices that lend to DE enrollment happens outside of Texas, I chose to focus on DE policies and assessment/placement practices in a large community college in Arizona. Arizona Community (AC) is one of the

largest community college systems in the United States. There are 10 different branches and, in 2014, a reported 128, 212 students enrolled (Office of Institutional Effectiveness). Approximately 15% or 19,103 of these students were enrolled in what is referred to as High School Dual/Concurrent Enrollment (Office of Institutional Effectiveness, 2014). Additionally, in 2014, the 10 colleges in the system provided more than 400 academic and occupational courses at over 50 “traditional” public, private, and charter high schools (High Schools with Dual Enrollment Courses, n.d.). In 2015, at one NACEP accredited branch of AC, it was reported that about 7,000 students took classes for college and high school credit simultaneously; 38 students received their associate degree before graduating from high school (The Republic, 2015). The number of these 7,000 students that participated in DE first year writing courses is not documented. However, in order for these students to obtain their associate degrees, they must have completed the required FYW courses.

DE ACCESS AND PLACEMENT AT AC BASED ON ACCUPLACER WRITEPLACER

At AC, placement into FYW courses—DE and otherwise—is based on the institution’s predetermined qualifying scores from the College Board’s ACCUPLACER WritePlacer exam. According to the ACCUPLACER website, the “WritePlacer is a direct measure of a student’s writing skills. The student’s response is scored electronically using an automated system, and scores are returned within seconds. Institutions can also use WritePlacer to assess English as a second language (ESL) writing skills” (ACCUPLACER, 2015a). As can be gleaned from the information provided by ACCUPLACER, students must take the test in English only.

While ACCUPLACER is touted as supporting “accurate placement decisions” (2015b) there are multiple accounts of how tests, such as the ACCUPLACER WritePlacer, incorrectly place students. Judith Scott-Clayton (Community College Research Center, Columbia University, 2012) reports that placement exams are “better predictors of success in math than in English” (p. 2). Paul Fain (2012) explains that “up to a third of students who placed into remedial English classes on the basis of the placement tests could have passed college-level classes with a grade of B or better.” Christie Toth (Chapter 4, this collection) suggests alternatives to standardized placement tests as they largely under-place students. Norbert Elliot and his colleagues (2012) report that “populations of diverse students may be disenfranchised” (pp. 304-305) as “ACCUPLACER failed to achieve statistical significance for females and for Asian,

Hispanic and Black students” (p. 300).

An analysis of DE students’ ACCUPLACER WritePlacer scores at AC would allow me to better understand how this form of assessment might lend to student enrollment patterns. At AC, student placement first year writing, language skills, basic writing, and even honors FYW courses is based on scores that range from 0-8 (see Table 5.1).

Table 5.1. WritePlacer score and course placement at Arizona Community

WritePlacer Score	Course Placement
0-1	ENG 071 Language Skills, ESL077 or take CELSA if ESL
2	ENG 081 Basic Writing Skills, ESL 087
3-4	ENG 091 Fundamentals of Writing, ESL 097
5-8	ENG 101/107 FYC; Score of 7/8-Consider Honors

Students can re-test for course placement. The guidelines for re-testing are as follows:

Students will be permitted one re-test in English, reading or math level after at least a 24-hour waiting period. **ONE additional re-test is permitted no sooner than three months from the oldest valid score date at any course placement testing site.** Course placement scores, with the exception of the reading exemption scores, will be valid for two years from the date of the original or re-test assessment. (Course Placement Chart, 2015, emphasis in original)

An important thing to note here is that based on the institutions’ test scores and placement, students admitted through the normal college admissions process have access to basic writing. However, if a high school student does not place into ENG 101/107, they do not have the option of taking Language Skills, Basic Writing, or Fundamentals of Writing courses. Thus, if students do not meet placement criteria, they are denied access to DE FYW courses. Not allowing DE FYW students to take basic writing courses is not specific to AC. As of 2015, only nine states had clear options to allow DE students access to developmental coursework (Zinth, 2015). The state of Washington does offer high school students the ability to avoid developmental coursework in college when they participate in a Washington Bridge to College English course while in high school. While students will not earn college credit for the course, upon successfully completion with a B or better they earn direct placement in first-year writing courses at participating colleges (State of Washington, 2017).

TEST SCORES NOT COMPILED OR AVAILABLE

Given that the goal of my research was to understand the impact of DE placement assessment, my first task was to ascertain how many and which students were taking the ACCUPLACER WritePlacer exam for placement in Arizona Community's DE FYW courses. I also needed to know how many and which students were placing into the DE FYW courses. Based on these goals, I sought data regarding the ACCUPLACER WritePlacer scores at AC via five sources: ACCUPLACER, the college, corresponding high schools, the Arizona Department of Education, and later, the U.S. Department of Education.

Upon my initial inquiry, I found that these institutions' websites do not offer data or statistics regarding the ACCUPLACER WritePlacer scores. For this reason, the next step was to contact individual institutions. I first contacted ACCUPLACER where I was told that while they do make the test available, they do not have any data about the number of students taking the WritePlacer or their exam scores as the college is responsible for these scores. I then contacted two corresponding high schools of AC in which DE FYW courses are available and asked if they had data regarding how many of their students seeking DE writing courses took ACCUPLACER WritePlacer and how many placed into courses. They also informed me that they do not keep records of this. They suggested I contact AC and also the Arizona Department of Education. Arizona's Department of Education told me (via multiple phone conversations) that they do not have records of those scores either as these scores are for the colleges and college students. I must note here that this is concerning as the DE students are, in fact, still high school students which would seem to hold the state accountable for keeping data where it concerns these students.

I then sought data through AC. Via a telephone conversation with AC's Director of Research, Planning, and Development provided details for my data collection, I was told while the college does keep record of students' ACCUPLACER WritePlacer test scores, the records are not disaggregated based on students' testing for traditional versus DE writing courses. This data, I was told, would only be compiled and released upon *approval* of a formal request first submitted to the Director of Research, Planning, and Development at AC and then forwarded for approval. For this reason, I created a formal request. The information requested from the college is as follows:

1. The number of students taking the ACCUPLACER WritePlacer test for placement in English-Composition (FYW) courses as well as the age, race, gender, and educational level (educational intent) of these students.³

³ I requested FYW student information rather than dual enrollment-specific students, as I was made aware that students taking the tests do not have to specify if they are testing for DE or

2. The breakdown of the ACCUPLACER WritePlacer student test results based on the colleges' qualifying scores (0–1; 2; 3–4; 5–8) as well as the age, race, gender, and educational level of these students.
3. The number of students currently enrolled in English/Composition specific courses (ENG 071, ENG 081, ENG 091, ENG 101/107) as well as the age, race, gender, and educational level (educational intent) of these students.
4. The total number of students enrolled in Dual/Concurrent enrollment ENG 101/102 courses as well as the age, race, gender, and educational level (educational intent) of these students.

Once submitted, my hope was that the director and/or college would eventually get back to me with some of the information requested—at the very least, I thought I would receive an update of progress of the request. I never heard back from the college or the director at the college—even after multiple follow up emails to check on the status of my request. Since the information should be available under the Freedom of Information Act, this led me to inquire about this information through the college's legal department.

AC's Omsbud service provides the facilitation of “an external constituent's efforts to maneuver through what the constituent feels to be ‘bureaucratic red tape’” (Office of Public Stewardship, n.d.). I contacted the manager of the Office for Public Stewardship to get advice about how I might gain access to the data. I also asked if I could receive the raw data to sort on my own and was told that this request was not possible. I was told that I should send the same request I had previously sent to the college so that my inquiry could be processed to determine if the college has any legal obligation to release the data. After a short wait, I was informed that the college is under no obligation to release the data. More specifically, I was told via email that, “the data you are requesting does not already readily exist in the form of a record—thus—we are not required to generate a report under public records law—nor dispatch staff to create such” (Name redacted for confidentiality reasons, personal communication, December 22, 2015).

My next step was to consult the U.S. Department of Education as they do accept requests for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, enacted in 1966. When a person or organization files a request for information, they will learn: 1) If records are available and 2) If the records

“traditional” FYW courses. It is for this reason I requested the educational level (educational intent) of the students, as the college system does document the educational intent. The categories for educational intent are: “Transfer to University,” “Enter/Advance in the Job Market,” “High School Dual/Concurrent Enrollment,” “Personal Interest,” “Meet University Requirement,” and “Undeclared” (Office of Institutional Effectiveness, 2014).

are releasable. However, it is possible that even if records are available and can be released, the data can cost the individual filing money out of pocket as well.⁴ I sent a formal email to the Department of Education's FOIA manager outlining my inquiry and the current complications as well as to request advice on possible steps to gain access to the data requested (FOIA request 16-00801-F, 2016). In an email response (with an attached letter) I was told to:

Please be advised that the Department of Education does not maintain those types of records/information. We recommend that you contact the School or the company that performs [performs] that task, as only they would be able to provide that information for you. (EDFOIA Manager, personal communication, February 4, 2016)

As discussed previously, neither the school nor ACCUPLACER is legally bound to release such data. Ultimately, through inquiry at multiple sites, there was little knowledge about how and where student assessment scores that determine student access and placement were located and could be accessed. This lack of data is highly problematic in regards to understanding how, on a large scale, the ACCUPLACER WritePlacer influences student assessment and subsequent enrollment in DE courses.

What is arguably more problematic is how the lack of responsibility and accountability of maintaining the data on a federal, state, and local level. Although AC offers DE FYW courses at multiple participating institutions—and all of the institutions rely on ACCUPLACER WritePlacer test scores for student placement—there are no known organized records of how many students are taking or placing into FYW (DE or otherwise) via the ACCUPLACER WritePlacer. On a federal level, FOIA is not responsible for maintaining records at state and local agencies as “most states, and some local jurisdictions have their own laws about access to state and local records” (U.S. Department of Education, 2016). However, as stated previously, since AC did not maintain records they were not required to generate the file “under public records law” (Name redacted for confidentiality reasons, personal communication, December 22, 2015). Here, both the federal and local education agencies deny responsibility of maintaining or producing these records.

In a Propublica (2016) article, multiple contributors recount difficulties in gaining access to public records under FOIA law. A common denominator in these requests is that:

4 There is an option to waive the cost if “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest” (template http://www2.ed.gov/policy/gen/leg/foia/samples_foia.html). Website: <http://www2.ed.gov/policy/gen/leg/foia/request.html>

local, state and federal agencies alike routinely blow through deadlines laid out in law or bend them to ludicrous degrees, stretching out even the simplest requests for years. And they bank on the media's depleted resources and ability to legally challenge most denials. (Weychert, 2016)

At AC, because there is a lack of accountability for any federal, state, or local agency to keep the records, there is no party responsible to ensure the fairness of the ACCUPLACER WritePlacer for DE FYW placement. And while President Obama did sign the FOIA Improvement Act of 2016 that was supposed to enable more transparency for those seeking records, "the act explicitly provides no new resources for implementing these provisions" (Weychert, 2016).

COLLEGE INVESTIGATED BY THE OFFICE OF CIVIL RIGHTS (OCR)

While searching for information about the institution and test scores, I inadvertently found that AC was recently under investigation from the U.S. Department of Education's Office for Civil Rights (OCR). The investigation was based on a claim made by a local, non-profit Civil Rights Center. According to Chen (n.d.), members of the Civil Rights Center claimed that, "the college system is creating an environment hostile to undocumented immigrants and is discriminating against minority students." AC applications asked "students for their immigration status" and the tuition rates were higher for students that are not residents of the county, which "discourages [students] them from pursuing higher education at the community college level (Chen, n.d.). This constitutes a violation of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in programs.

In a 2013 press release from the Civil Rights Center, it is written that because of the claim, the college will:

make changes to address the following allegations: . . . [that the college] 1. -Discriminated in the basis of national origin by engaging in practices that may chill or discourage the enrollment of High School students in their Charter Schools based on their or their parents' or guardians' actual or perceived citizenship or immigration status. 2.-Discriminated against national origin of minority individuals in [on] the basis of their limited English proficiency by failing to provide meaningful access to information and services and by failing to provide meaningful access to Board Meetings. (Cornejo, 2013)

In educational institutions that receive any type of government funding (e.g., grant monies, federal student loan programs, etc.), the OCR is where formal complaints of discrimination are made. In 2013–2014, the OCR received nearly 10,000 civil rights complaints, which is “the highest numbers in OCR history” (U.S. Department of Education Office of Civil Rights, 2015, p. 4). Complaints range, in addition to complaints about racial discrimination, from disability access claims to sexual assault on campuses. The work of the OCR highlights the ways that social injustices in education are as present today as they ever were. Ultimately, the mission of the OCR is to “ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights” (U.S. Department of Education Office for Civil Rights, “About,” 2012). In order to carry out their mission, the OCR resolves complaints filed “by anyone who believes that an education institution that receives Federal financial assistance has discriminated against someone on the basis of national origin as prohibited by Title VI of the Civil Rights Act of 1964; sex as prohibited by Title IX of the Education Amendments of 1972; disability as prohibited by Section 504 of the Rehabilitation Act of 1973; and/or age as prohibited by the Age Discrimination Act of 1975 (U.S. Department of Education Office for Civil Rights, 2012). In the case of AC, the persons filing the complaint were advocates for those they believed to have been victims of discrimination.

Given the research on ACCUPLACER WritePlacer’s potential discriminatory effects on students of color (Elliot et al., 2012) and the fact that AC was already under investigation by the OCR for its DE program practices, I look to Poe and her colleagues’ disparate impact analysis as a validation tool that was developed on the basis of the OCR’s burden-shifting approach for investigating claims of discrimination.

DISPARATE IMPACT ANALYSIS

Disparate impact analysis is a precedent used by the courts and adapted by OCR to investigate education discrimination claims. In their article, Poe and her colleagues (2014) explain how to utilize the OCR’s three-step burden-shifting approach as a validation tool for assessment practices to determine unintentional consequences specific to disparate impact. Disparate impact, it should be noted, is unlike intentional *disparate treatment*. Disparate treatment “requires direct evidence of discriminatory intent” (Poe et al., 2014, p. 593). On the other hand, disparate impact discrimination is “*unintended racial differences in outcomes resulting from facially neutral policies or practices that on the surface seem neutral*” (Poe et al., 2014, p. 593). Disparate impact approach then, as a type of legal

heuristic, is traditionally used to determine unintentional discrimination (Poe et al., 2014). The idea that institutions may be, intentionally or not, discriminating against students reflects the importance of utilizing disparate impact analysis as a validation tool, which is apparent in the work of Mathew Gomes (Chapter 6, this collection) and Michael Sterling Burns, Randall Cream, and Timothy R. Dougherty (Chapter 8, this collection).

Disparate impact as a validation tool, Poe and her colleagues write (2014), “connects testing and curriculum” and “speaks to our historical and current struggles to provide meaningful writing instruction to all students” (p. 605). Validation tools, according to Poe and her colleagues help understand “the local effects of writing assessment” and “may mean the difference between college success and failure for many students” (2014, p. 589). In validity studies, “information is at the center” and there are four main agreed-upon sources of validity evidence: scoring, generalization, extrapolation, and consequences (Poe et al., 2014, p. 590). Scoring establishes “performance through a scoring framework” (Poe et al., 2014, p. 590). Generalization evaluates “different conditions that impact student performance” (Poe et al., 2014, p. 590). Extrapolation is the “inference linking the test to a range of performances associated with the concept under investigation” and consequence is the “anticipation of intended outcomes, adverse impact, and systemic effects” (Poe et al., 2014, p. 590).

Poe and her colleagues (2014) extend these concepts to assert that a disparate impact analysis is beneficial for writing assessment in two important ways. First, this type of analysis can determine “the relationship between scores and the local context in which decisions about assessments are made” (Poe et al., 2014, p. 591). Additionally, the main sources of validity evidence—scoring, generalization, and extrapolation—when combined with disparate impact analysis are “not to be understood as a discrete set of categories. Rather, each is understood in terms of its integrated impact on diverse student groups” (Poe et al., 2014, p. 591). This contextualization of the evidence supporting the use of scores is vital as without this, “the validation process is suspect” (Poe et al., 2014, p. 591). In this way, Poe and her colleagues advance that using disparate impact accounts for both the legal responsibilities of writing assessment practices and also the local contexts where these assessment practices take place.

In order to model disparate impact approach as a validation tool, Poe and her colleagues (2014) adapted the OCR’s three-step burden-shifting approach, which investigates “disparate impact claims in education settings” (p. 591). The self-study design allows for writing programs to conduct their own analysis not to determine if writing programs comply with federal law, *per se*, but to utilize disparate impact as a validation tool for “an evidence-based approach to decision making that relies on quantitative information as well as contextualized reason-

ing” (Poe et al., 2014, p. 591). And while disparate impact analysis commonly focuses on race—as does the model provided by the authors—they note that this approach can be extended to include other classifications, such as nationality, gender, sexuality, international students, students’ socioeconomic status, students with disabilities, and students with limited English proficiency.

The three steps of the disparate impact self-study model that Poe and her colleagues (2014) adopted follows the OCR’s burden-shifting approach, and are as follows. The *first* step is to “show an adverse impact on students of a particular race as compared with students of other races” (Poe et al., 2014, p. 599). This step would begin with “a statistical analysis of the pass rates within the population of test takers, disaggregated by race” (Poe et al., 2014, p. 600).

The *second* step determines if the assessment practices are necessary to meet an educational goal; that is, if there is a justifiable educational need (Poe et al., 2014). This step is made up of multiple phases, each of which requires empirical evidence. The inquiry, Poe and her colleagues note, should include the following procedures: determine whether “the elements of writing that the test measures are important components of student writing ability”; ensure that the test results capture those components; document that “the basic writing course provides help to students for the identified writing deficiencies”; and demonstrate that the test “is predictive of or significantly correlated with students’ performance in college writing” (Poe et al., 2014, p. 601).

The *third* and final step is to determine if there are alternatives that meet the institution’s educational goal with less of a burden. This step “encourages” the imagining of “a wide range of alternative assessment practices” and could offer the possibility of “a method of assessment that would result in equally good outcomes for all its students but without the racialized score distribution” (Poe et al., 2014, p. 603).

For my study, using disparate impact analysis to find ways to “provide meaningful writing instruction to all students”—i.e., one of the stated promises of DE programs—would allow clarification of how the goals of DE are actually being carried out. In the case of AC, this type of analysis would be extremely beneficial to understand how their assessment practices are influencing “all students” access to DE FYW classes. The question was, however, would I be able to replicate the model analysis provided by Poe and her colleagues

REVISITING OCR

After a thorough search of the OCR’s database via their website, I found that while many resolution letters and agreements are available, neither the resolution letters and agreements nor the complaint number for the case against

AC's Early College High School was available on the website. I then contacted the OCR and was told that the complaint information may not be available on the website because the case might be either so small that the information would not be useful to audiences or there may have been a request to keep all documents confidential because they may be heavily redacted and they want to protect those involved; because of this, I would need to find the complaint number and then submit a FOIA request (U.S. Department of Education Office of Civil Rights-Denver, personal communication, February 8, 2016). To find the case number, I contacted the author of the press release that, as previously cited, explained the revisions mandated by the OCR (Cornejo, 2013) who was able to direct me to an individual that provided me with the complaint number. I then filed a FOIA request (16-00856-F) for documents pertaining to OCR case 08-112-2170. Within a few weeks, the OCR released the resolution letter for the complaint to me.

In the letter, it is written that the Complainant alleged that AC:

discriminated against national origin minority high school students by engaging in practices that may chill or discourage the enrollment of students based on their parents' or guardians' actual or perceived citizenship or immigration status. The Complainant also alleged that . . . [AC] discriminated against national origin minority individuals on the basis of their limited English proficiency (LEP) by failing to provide meaningful access to information and services" and to AC Board Meetings. (Ciapusci, 2013)

It is also noted in the letter that before the OCR had made any findings, AC took "voluntary steps to ensure compliance with Title VI," which allowed them to forgo any investigation:

Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and the OCR Office Director believes that doing so is appropriate, so long as the remedies align with the allegations. (Ciapusci, 2013)

As part of compliance, AC agreed to multiple things, including drafting "procedures to provide a mechanism for LEP students and parents" at the charter schools—both of which are a form of dual enrollment (an Early College High School and College Preparatory Academy)—to "ensure meaningful access to LEP individuals" (Ciapusci, 2013). In other words, AC was responsible for

implementing procedures to provide LEP students and their parents information about how students could access the Early College program.

While voluntary compliance could seem to be positive, early compliance could also create oversight. While I cannot be sure that data regarding placement procedures would have been collected or analyzed, an early compliance and lack of full investigation may have resulted in the lack of investigation into how students were testing and placing in DE Early College courses (including DE FYW) via the ACCUPLACER WritePlacer.

The lack of a full investigation into the discriminatory practices concerning LEP students seeking Early College courses made me wonder how the OCR may go about investigating claims of discrimination in which data is not being collected (as in the case of AC). Upon inquiry, I was told by the U.S. Department of Education Office of Civil Rights FOIA coordinator that all claims such as this would require a formal claim that, upon evaluation of the “subject matter,” may or may not be investigated (personal communication, February 8, 2016).

CONCLUSION: THE CALL FOR DATA TRANSPARENCY

As the work in this chapter has detailed, there are extreme and often unnecessary complexities in obtaining writing assessment data, which emphasizes the necessity and urgency for more transparent data for validity studies to determine the fairness of testing practices. In short, because test score data were not available from AC, I could not conduct a disparate impact analysis to see if there is evidence of negative consequences for the current use of the ACCUPLACER WritePlacer. While there cannot be certainty that an analysis of the scores (step 1) would result in reaching step 3, to “imagine a less discriminatory alternative” (Poe et al., 2014, p. 604), there should be transparency in test scores to analyze the implications of testing practices—especially those that are potentially discriminatory against students.

Poe and her colleagues explain: “Because discrimination flows from the test design, process, or use of test scores, rather than from the intent of the test giver, disparate impact analysis focuses on the *consequences* of specific testing practices” (2014, p. 593). The “*consequences*” of not having testing data to analyze to determine disparate impact at AC seems to have the possibility of a wide range of discriminatory practices that could have meaningful legal implications. I argue that the lack of comparable data to understand how assessment is influencing access to DE courses is a violation of students’ civil rights. Nicole I. Caswell and William P. Banks (Chapter 11, this collection) also faced bureaucratic red tape when attempting to collect demographic data specific to sexuality and gender identity to identify how programs are meeting the needs of LGBTQ students.

This is another instance where the lack of data is a violation of students' civil rights. Without self-studies, such as disparate impact analysis in place, writing programs could face OCR complaints.

There should be practices in place for student access to programs that are more transparent so that the positive and negative consequences are clearer. As Kane (2013) details:

A program can have substantial negative consequences and still be acceptable if the benefits outweigh any negative consequences. Negative consequences that are not offset by positive consequences tend to render a decision rule unacceptable (at least for stakeholders who are concerned about these consequences). (p. 54)

I argue that the stakeholders administering any tests *should* be “concerned” regardless of their decided approach for placement. At any school that requires the placement tests to determine student enrollment in FYW—DE or otherwise—such as the ACCUPLACER WritePlacer, data should be collected and recorded in a way that allows for an evaluation of the validity of the test and consequences (and the tests and consequences *should* be validated). This data compilation and evaluation would be a less discriminatory practice in that there can be a clear understanding of the positive, negative, and possible social consequences of the testing practices. In this way, disparate impact approach as a validation tool outlined by Poe and her colleagues becomes expanded to hold institutions more accountable for keeping data.

As there are social injustices present in many areas of writing assessment, there are undoubtedly social injustices present in DE writing assessment. The lack of transparency in data is, like intersectionality, mutually constructed by “unjust systems of power” (Collins, 2012, p. 19). Janet Alsup and sj Miller (2014) write: “It is nearly impossible to refute that schools and schooling are inequitable and that multiple injustices affect schooling environments daily” (p. 211). In regards to college admission testing, Kathleen Blake Yancey (2012) explains that, “testing constructs what it purports to measure as it serves *a predetermined end in social, economic, administrative, and educational institutions*” (p. 173).

While the lack of data available made it impossible to determine if the ACCUPLACER WritePlacer constructs what it purports to measure, the ACCUPLACER WritePlacer is one example of how testing companies are not held accountable for their products. Bob Broad (2016) explains that, “like other industries (e.g., tobacco, fossil fuels, and soft drinks), the standardized testing industry profits from selling a product that has repeatedly been shown to harm the public good”; yet, there has been little to no advancements towards eliminating,

regulating, or validating these tests.⁵

Using disparate impact analysis as a guide, this chapter's purpose was to examine the validity, fairness, and social justice of placement practices that determine DE FYW student eligibility. As my case study has shown, just because an assessment genre has evidentiary categories that support a validity argument does not mean that evidentiary categories are sufficient to support a fairness argument.

DE courses tout the opportunity for “all students” to gain college credit for writing in high school. However, this promise is faulty when the opportunity for students to learn in these courses is not clear or transparent. Kelly-Riley, Elliot, and Rudiny (2017) explain how “advancement of the opportunity to learn, subsumes all other assessment aims . . . [and] demand[s] articulated connections between the assessment and the instructional environment, and provide resources for the least advantaged students” (p. 18). The opportunity to learn, then, is a potential consequence of pre-college assessment. In this way, the visibility of test scores is vital to understanding the opportunity to learn as an intricate aspect of assessment. Therefore, my suggestion that institutions make data visible at the local level cannot be extremely beneficial if the theory used to analyze the data does not address the fairness of the practices. A standard for assessment must be transparency in the scores that supports fair practices regarding students' opportunity to learn.

Requiring a standard of fairness and transparency has the potential to enable a more fluid understanding of assessment genres that determine student placement in FYW and DE composition courses. A standard of transparency will be paramount to future research that focuses on how and if DE courses are living up to their intended goals of allowing “all students” an opportunity to advance in DE courses regardless of race, gender, socioeconomic class, language backgrounds, and other widely varied subjectivities that should be accounted for, rather than hinder, how students are testing and placing in DE FYW courses.

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5 Bob Broad suggests federal government regulation to “manage this industry for the same reasons and in similar ways that it manages other risky, profitable industries” (2016). I think that this is one important way that the test data would be more accessible. If the tests were regulated by the federal government, specifically the Department of Education, access to the scores and records would not be a responsibility of the local agency, therefore making the data of test scores available through FOIA requests, such as the one I submitted.

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