

Racial Inequity
in
Special Education

Edited by

DANIEL J. LOSEN

GARY ORFIELD

Foreword by

SENATOR JAMES M. JEFFORDS

The Civil Rights Project at Harvard University

Harvard Education Press

Copyright © 2002 by President and Fellows of Harvard College

Chapter seven, "Disability, Race, and High-Stakes Testing of Students,"
© 2002 by Jay P. Heubert

All right reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval systems, without permission in writing from the publisher.

Library of Congress Control Number 2002107059
ISBN 1-891792-05-9 (cloth)
ISBN 1-891792-04-0 (paper)

Published by Harvard Education Press,
an imprint of the Harvard Education Publishing Group

Harvard Education Press
8 Story Street, 5th Floor
Cambridge, MA 02138

Cover Design: Alyssa Morris
Cover Photo: © Susie Fitzhugh
Editorial Production: Dody Riggs
Typography: Sheila Walsh

The typeface used in this book is Adobe Garamond, a contemporary typeface based on one created by Claude Garamond in the early 1500s.

To Sammy and Lenny



Contents

- ix Foreword
Senator James M. Jeffords
- xiii Acknowledgements
- INTRODUCTION
- xv Racial Inequity in Special Education
Daniel J. Losen and Gary Orfield
- CHAPTER ONE
- 1 Community and School Predictors of Overrepresentation of Minority Children in Special Education
Donald P. Oswald, Martha J. Coutinho, and Al M. Best
- CHAPTER TWO
- 15 Racial Disparities in the Identification, Funding, and Provision of Special Education
Thomas Parrish
- CHAPTER THREE
- 39 Double Jeopardy: An Exploration of Restrictiveness and Race in Special Education
Edward Garcia Fierros and James W. Conroy
- CHAPTER FOUR
- 71 Of Rocks and Soft Places: Using Qualitative Methods to Investigate Disproportionality
Beth Harry, Janette K. Klingner, Keith M. Sturges, and Robert F. Moore

CHAPTER FIVE

- 93 Schools Make a Difference: The Overrepresentation of African American Youth in Special Education and the Juvenile Justice System
David Osher, Darren Woodruff, and Anthony E. Sims

CHAPTER SIX

- 117 English-Language Learner Representation in Special Education in California Urban School Districts
Alfredo J. Artilles, Robert Rueda, Jesús José Salazar, and Ignacio Higareda

CHAPTER SEVEN

- 137 Disability, Race, and High-Stakes Testing of Students
Jay P. Heubert

CHAPTER EIGHT

- 167 Legal Challenges to Inappropriate and Inadequate Special Education for Minority Children
Daniel J. Losen and Kevin G. Welner

CHAPTER NINE

- 195 Evaluating the Office for Civil Rights' Minority and Special Education Project
Theresa Glennon

CHAPTER TEN

- 219 IDEA and Disproportionality: Federal Enforcement, Effective Advocacy, and Strategies for Change
Thomas Hehir

CHAPTER ELEVEN

- 239 Ending Segregation of Chicago's Students with Disabilities: Implications of the *Corey H.* Lawsuit
Sharon Weitzman Soltman and Donald R. Moore

273 About the Contributors

277 Name Index

285 Subject Index

Foreword

I was a freshman member of Congress in 1975, one of only seventeen Republicans elected to the House of Representatives in the wake of Watergate. As such, I was named the ranking Republican on the Select Education Subcommittee and charged with helping to write what would later become the Individuals with Disabilities Education Act (IDEA).

As you will learn from reading *Racial Inequity in Special Education*, the benefits of special education are not always extended equally to students with disabilities, despite the best intentions of the law. These alarming disparities suggest that we need to do better. We *must* do better.

I commend the authors for taking a hard look at this subject. This book provides important direction, for those of us in Congress and for those in our schools. The authors show us where we need to do better to ensure equal educational opportunities for *all* of our students, whatever their race or socioeconomic status. Where school leadership fails to address those issues that have an adverse impact on children of color and children with disabilities, we must bolster our efforts to protect every child's civil rights.

There is no doubt that successfully addressing the issues raised in this book, particularly as they relate to children of color, will require an infusion of funding for higher quality teaching in both general and special education, early intervention, increased training for school administrators and teachers, and greater access to effective special education supports and services in the least restrictive environment. We must also ensure that even the highest poverty school districts have the means necessary to provide the free appropriate public education that all children with disabilities are entitled to.

I see this as part of a larger issue—to get adequate resources properly targeted for all children who need them. When the initial special education legislation was being drafted in 1975, twenty-six federal court decisions had been consolidated to make the case that children with disabilities had a constitu-

tional right to receive a free and appropriate education. We had to see that this was enforced, and it was not an easy task. As we labored over the details, those of us who worked on the bill agreed that this was a difficult but extremely important step.

We knew it would be costly, and we all believed that since it was a federal constitutional guarantee, the federal government should bear a good portion of the cost. In the end, we agreed that 40 percent of the additional costs of special education would be paid by the federal government.

We have seen much progress since we passed the initial legislation. Children with disabilities are now being educated alongside their peers in unprecedented numbers. We have shown that education helps these children lead more independent and fulfilling lives. We have learned that investing in special education enriches society as a whole.

But we have fallen woefully short on our funding commitment. Today, the federal government pays only 17 percent of special education costs. The chronic underfunding of special education is inexcusable. It was also a major factor in my decision to leave the Republican Party in 2001 and declare myself an independent.

When I went to battle with the Bush administration last year over reaching the 40 percent funding figure, the administration argued against approving any increase until the overidentification of special education children, specifically minorities, was fully studied. I countered that by not fully funding special education we were robbing other vital educational programs, such as early education, which are such a critical part of our system.

The evidence overwhelmingly shows that quality early education dramatically reduces the need for special education placement in later years. Therefore, it could be said that the lack of early educational programs such as Head Start is more likely the reason for high identification of special education needs. My arguments were made to no avail.

States and towns are left to bear the burden of the federal government's failure to live up to its long-ignored promise. In my home state of Vermont, and in the nation, this is a trend that cannot be sustained. If we had met our 40 percent commitment, Vermont's share of special education funding would have been \$32.6 million in fiscal year 2002, rather than \$13.2 million. I have heard the cries for help, from parents, teachers, local school boards, and legislators. In fact, state legislatures throughout the country have made full funding of IDEA a top priority.

This problem will only grow worse as the number of children enrolled in special education continues to grow. Figures recently released by the U.S. Cen-

sus Bureau suggest that one out of every twelve children in the United States has a physical or mental disability, a sharp increase from the previous decade. Special education enrollments have spiraled in the past decade, and more children are being diagnosed with multiple disabilities.

The solution is not difficult. I have proposed legislation to boost special education funding by \$2.5 billion each year until 2007, at which time Congress will have met its 40 percent commitment. I will continue these efforts for as long as I serve in the U.S. Senate, and I remain hopeful that we will eventually succeed. The gaps in our system are not entirely about money, but fully funding special education would ease the pressures on schools throughout the country.

We have come a long way since 1975, but there is still much work to be done.

SENATOR JAMES M. JEFFORDS
Independent-Vermont



Acknowledgements

The editors are deeply grateful to have worked with the authors who contributed papers to this volume. Their diverse perspectives, work, and insights have made putting this book together an exciting and extremely rewarding experience.

Carolyn Peelle deserves an especially warm thank you. She did a tremendous amount of editing, and her tireless efforts were essential to the successful completion of this volume. Much credit also goes to Dody Riggs of the Harvard Education Press. Without her good-spirited time management, careful edits, and coordination of the publishing process this work would not be possible.

Dennis Hayes, the membership of the NAACP, and numerous other civil rights advocates must be thanked, as it was their inquiries that prompted the Civil Rights Project at Harvard University to explore the racial inequities in special education.

The research presented in these chapters was first introduced during our 2000 conference, "Minority Issues in Special Education," which was made possible by a grant from the Spencer Foundation, to which we are grateful. We are also grateful to the Carnegie Corporation, the Ford Foundation, the John D. and Catherine T. MacArthur Foundation, and the Charles Stewart Mott Foundation for their support of work on K-12 education issues at the Civil Rights Project.

We were extremely fortunate to have the collective wisdom of professors Martha Minow, Christopher Edley, Jr., Tom Hehir, and Beth Harry to guide us in approving paper proposals and helping plan our original conference. We owe special recognition to the American Policy Youth Forum and the National Institute for Urban School Improvement for their important contributions following the conference.

This book is the product of intensive collaboration with experts in the field. The entire staff of the Civil Rights Project has also provided an enormous amount of support for the production of the book in countless ways; our special thanks go to Elizabeth DeBray, Johanna Wald, Marilyn Byrne, John Yun,

Angelo Ancheta, Laurent Heller, Alison Harris, Scott Palmer, and Stelios Koutnatzis.

Dan Losen would also like to acknowledge the love, help, humor, and generosity of his wife Sarah Novogrodsky, and of his parents, Stuart and Joyce Losen, all of whom, as public school educators, have inspired him with their hard work and dedication to improving the education experiences of disadvantaged children and their families.

Dan would also like to express deep gratitude to his mentors in education law and policy, Christopher Edley, Jr., Thomas Mela, and Martha Minow. He has had the good fortune to benefit from their caring, support, acumen, and wisdom. Finally, as this book evolved from research conference concept to book publication, Gary Orfield has been a constant source of encouragement, inspiration, leadership, and levity. The critical insights Dan has gained from working with these mentors has enlightened him in immeasurable ways and enabled him to better serve the goal of racial justice in education.

Gary Orfield expresses his deep admiration for the dedication, care, understanding, and endless hard work of Dan Losen, without whom this important work could never have been accomplished.

INTRODUCTION

Racial Inequity in Special Education

DANIEL J. LOSEN

GARY ORFIELD

Before Congress passed the Education for All Handicapped Children Act—now known as the Individuals with Disabilities Education Act (IDEA)—nearly half of the nation's approximately four million children with disabilities were not receiving a public education.¹ Of the children who were being educated in public schools, many were relegated to a ghetto-like existence in isolated, often run-down classrooms located in the least desirable places within the school building, or sent to entirely separate facilities.² Since its passage in 1975, the IDEA has brought tremendous benefits: today, approximately six million children with disabilities enjoy their right to a free appropriate public education.³ IDEA's substantive rights and procedural protections have produced significant and measurable outcomes for students with disabilities: their graduation rates have increased dramatically, and the number of these students who go on to college has almost tripled since 1978 (though it is still quite low).⁴

Despite these improvements, the benefits of special education have not been equitably distributed. Minority children with disabilities all too often experience inadequate services, low-quality curriculum and instruction, and unnecessary isolation from their nondisabled peers. Moreover, inappropriate practices in both general and special education classrooms have resulted in overrepresentation, misclassification, and hardship for minority students, particularly black children.

A flood of concerns expressed by community leaders about minority children being misplaced in special education prompted The Civil Rights Project at Harvard University to commission the research for this book. Since the early 1970s, national surveys by the Office for Civil Rights (OCR) of the U.S. Department of Education have revealed persistent overrepresentation of minority children in certain disability categories.⁵ The most pronounced disparities then were black⁶ children who, while only 16 percent of the total school enrollment,

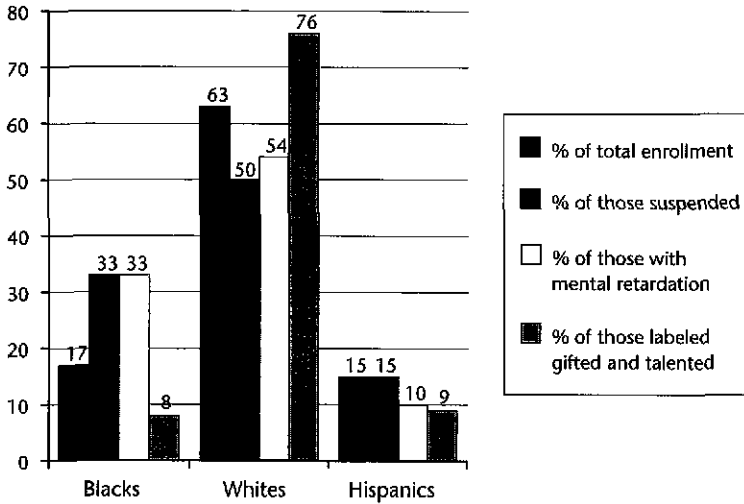
represented 38 percent of the students in classes for the educationally mentally retarded.⁷ After more than twenty years, black children constitute 17 percent of the total school enrollment and 33 percent of those labeled mentally retarded—only a marginal improvement.⁸ During this same period, however, disproportionality in the area of emotional disturbance (ED) and the rate of identification for both ED and specific learning disabilities (SLD) grew significantly for blacks.⁹

To better understand this persistent overrepresentation trend, as well as growing reports of profound inequities in the quality of special education, The Civil Rights Project set out to find the best research available. In the original call for papers we asked leading scholars from around the country to document and clarify the issues for minority students with regard to special education. As researchers pursued this task and analyzed possible contributing factors, our fears about the persistence of these problems, the complexities of the contributing factors, and the lack of proven solutions were confirmed.

Our primary purpose in presenting this information is to identify and solve the problem, not to assign blame. This research is intended to inform the debate on special education and racial justice and to provide educators, researchers, advocates, and policymakers with a deeper understanding of the issues as they renew their efforts to find workable solutions. Using national-, state-, district-, and school-level data, these studies document the current trends for minority students regarding identification and restrictiveness of placement. They explore some of the most likely causes, dispel some myths and oversimplified explanations, and highlight the complex interplay of variables within the control of educators at all levels of government. Recognizing the critical role that advocacy has played in securing the rights of all children to educational opportunity, this book also provides analysis of the evolving role of the law in stopping inappropriate practices that harm children of color, and in guaranteeing equitable benefits from special education.

The findings in this book point to areas where much improvement is needed and offer an array of ideas for remedies and suggestions for continued research. It is important to recognize that concerns about special education are nested in concerns about inequities in education generally. Special education overrepresentation often mirrors overrepresentation in many undesirable categories—including dropping out, low-track placements, suspensions, and involvement with juvenile justice—and underrepresentation in desirable categories such as gifted and talented (see Figure 1). Because special education inequities are often tied to general education issues, remedies should address shortcomings in both special and general education. The recommendations, which are aimed at improving policy and practice, were developed through ex-

FIGURE 1
Racial Disparities for Special Education Mirror Disparities in
Other Aspects of Schooling



Source: Office for Civil Rights 1998 data (see note 8).

tensive analysis of the efforts and experiences of educators, policymakers, attorneys, and civil rights enforcement agents. We hope the recommendations will help prevent harmful misidentification and inappropriate placements of minority students, and encourage effective and equitable leadership, enforcement, and distribution of resources to ensure that all children who need special education support receive appropriate and high-quality services.

ISSUES EXPLORED AND FINDINGS

Much of the empirical research in this book explores patterns of overrepresentation of minority children by disability category and whether, once identified, they experience relatively less access to the general education classroom than similarly situated white children. The evidence suggests that black overrepresentation is substantial in state after state. The studies reveal wide differences in disability identification between blacks and Hispanics and between black boys and black girls that cannot be explained in terms of social background or measured ability.

Both the statistical and qualitative analyses in this book suggest that these racial, ethnic, and gender differences are due to many complex and interacting factors, including unconscious racial bias on the part of school authorities, large resource inequalities that run along lines of race and class, unjustifiable reliance on IQ and other evaluation tools, educators' inappropriate responses to the pressures of high-stakes testing, and power differentials between minority parents and school officials.

This book examines whether the numerous causes of overrepresentation are likely race linked, which is a distinctly different inquiry from whether intentional racial discrimination is the primary cause. Absent a blatantly discriminatory (i.e., illegal as written) policy or practice, to establish that different treatment is purposeful and racist requires specific proof of intent, which is usually discovered through legal enforcement proceedings. The research in this book is obviously not specific enough to explore questions of intent.¹⁰

Overidentification

On October 4, 2001, the U.S. House of Representatives Committee on Education and the Workforce convened hearings about the overidentification of minority students in special education. In his testimony, Representative Chaka Fattah concluded with the following story of Billy Hawkins:

For the first fifteen years of his life Billy Hawkins was labeled by his teachers as "educable mentally retarded." Billy was backup quarterback for his high school football team. One night he was called off the bench and rallied his team from far behind. In doing so, he ran complicated plays and clearly demonstrated a gift for the game. The school principal, who was in the stands, recognized that the "retarded boy" could play, and soon after had Billy enrolled in regular classes and instructed his teachers to give him extra help. Billy Hawkins went on to complete a Ph.D. and is now Associate Dean at Michigan's Ferris State University.¹¹

Students like Billy Hawkins seldom get the "call off the bench" and an opportunity to shine in front of their principal. Instead, they are removed from the mainstream and never realize their talent. Unfortunately, some in Congress responded to findings we released in earlier reports and to stories like Dr. Hawkins' by opposing efforts to guarantee and fully fund special education at the level Congress originally intended,¹² claiming a need to "fix" special education before providing more funds.¹³ This book addresses discrete areas of deep racial inequity within a much larger system of special education. It would be

wrong to restrict or withhold promised expenditures for all students with disabilities in every state of the nation based on the issues identified in this research.

Of the inequalities in education experienced by minority schoolchildren, those in special education are better documented than most. In 1998, approximately 1.5 million minority children were identified as having mental retardation, emotional disturbance, or a specific learning disability.¹⁴ More than 876,000 of these were black or Native American,¹⁵ and black students were nearly three times as likely as white students to be labeled mentally retarded.¹⁶ Mental retardation diagnoses are relatively rare for all children, and the last twenty years have witnessed a modest decrease in the percentages of students labeled mentally retarded for nearly all racial groups.¹⁷

Despite this fact, U.S. Department of Education data from 2000–2001 show that in at least thirteen states more than 2.75 percent of all blacks enrolled were labeled mentally retarded. The prevalence of mental retardation for whites nationally was approximately 0.75 percent in 2001, and in no state did the incidence among whites ever rise above 2.32 percent.¹⁸ Moreover, nearly three-quarters of the states with unusually high incidence rates (2.75%–5.41%) for blacks were in the South.¹⁹ This is arguably a continuation of the problem as a southern phenomenon that was first observed in the National Research Council's data from 1979,²⁰ although both then and now many northern states also exhibit remarkably high rates. One positive sign is that southern states exhibited the largest decreases in sheer percentages since 1979.²¹

The data in these studies are generally analyzed in one of three ways. In one, a given minority group's percentage enrollment in the general population is compared to that group's percentage identification in a given disability category. In the second, the actual risk level for a minority group is calculated by dividing the number of students from a given racial group with a given disability by the total enrollment of that racial group. And in the third way, these risk levels are calculated for each minority group and then compared. These comparisons are described as risk ratios and are usually reported in comparison to white children.²²

In chapter two, Tom Parrish, a senior research analyst with the American Institutes for Research, calculates risk levels using U.S. Department of Education data based on the number of children eligible for special education reported by each state for children between the ages of six and twenty-one in 1998, and compares that with census estimates of children of the same age for each state for the same year. Parrish then calculates the risk ratios for each minority group by cognitive disability category for every state and for the nation.

He finds that black children are 2.88 times more likely than whites to be labeled mentally retarded and 1.92 times more likely to be labeled emotionally disturbed.

Blacks are the most overrepresented minority group in every category and in nearly every state.²³ The gross racial disparities that exist between many minority groups and whites in terms of mental retardation also exist in other cognitive disability categories, but are less pronounced. Nationwide, blacks and Native Americans are less often overidentified for specific learning disabilities (i.e., black children are more than twice as likely as white children to be found to have a specific learning disability in only nine states).

Parrish also shows the extent of overidentification of other minorities in the ED and SLD categories.²⁴ In the SLD category, for example, only in Hawaii are Asian Americans/Pacific Islanders identified at nearly twice the rate of whites. On the other hand, Native American children in six states are identified at more than twice the rate of whites.

Latinos and Asian Americans are generally underidentified compared to whites in most states and in most categories, raising the possibility of inadequate attention to their special needs; however, the state-level data may underreport the problem for some groups. According to a 1982 National Research Council (NRC) report, district-level data on Hispanics from 1979 suggested that a wide variety of both over- and underrepresentation tended to cancel each other out in aggregate state-level data.²⁵ Neither the 2002 NRC report, "Minority Students in Special and Gifted Education," nor the studies in this book conducted a district-level analysis with national data comparable to that contained in the 1982 study of Hispanic identification rates. However, Alfredo Artiles, Robert Rueda, Jesús José Salazar, and Ignacio Higuera, in their analysis of large urban school districts in California, reveal that disproportionate representation in special education is far more likely for (predominantly Latino) English-language learners in secondary school than in elementary school. Thus, the problem may even be hidden when elementary and secondary school data are aggregated at the district level.

Edward Fierros and James Conroy's research in chapter three, which does examine district-level data from throughout Connecticut and from selected U.S. cities, suggests that the state data may miss disturbing trends for minority overrepresentation in a given category or educational setting.²⁶ Generally speaking, the most serious racial disparities (both under- and overrepresentation) become apparent when data on minority children are disaggregated by race/ethnicity subgroups, cognitive disability category, gender, and placement—at least down to the district level.

Educational Placement

Readers should not forget that students with disabilities are entitled to receive supports and services in a setting best suited to their individual needs, and not to be automatically assigned to a separate place, subjected to low expectations, or excluded from educational opportunities. While substantially separate educational environments are certainly best for some individuals, it is equally well established in research that students with disabilities benefit most when they are educated with their general education peers to the maximum extent appropriate, and this is reflected in the law.²⁷

Fierros and Conroy's work demonstrates that, once identified as eligible for special education services, both Latinos and blacks are far less likely than whites to be educated in a fully inclusive general education classroom and far more likely to be educated in a substantially separate setting. The data Fierros and Conroy explore show a consistent trend toward less inclusion for minority children at the national, state, and district levels. The relationship between race and greater exclusion, also not examined in the NRC's 2002 report, suggests that, among students with disabilities, black and Latino children with disabilities may be consistently receiving less desirable treatment than white children. Fierros and Conroy further disaggregate the racial data by disability type for the state of Connecticut and find a lower level of inclusion for blacks and Hispanics compared to whites among each of the three disability types examined (students with mental retardation, emotional disturbance, and specific learning disabilities).

The concern with the overrepresentation of minorities would be mitigated if the evidence suggested that minority children reaped benefits from more frequent identification and isolation. But as government officials acknowledge²⁸ and as data demonstrate, this does not appear to be the case.²⁹

Low-Quality Evaluations, Supports, and Services

In their chapter, David Osher, Darren Woodruff, and Anthony Sims illustrate how the issue is often not as simple as the false identification of a nondisabled minority child. Many minority children do have disabilities but are at risk of receiving inappropriate and inadequate services and unwarranted isolation. Osher et al. point out that, for some children, receiving inappropriate services may be more harmful than receiving none at all. For others, not receiving help early enough may exacerbate learning and behavior problems.

Both problems are reflected in disturbing statistics on outcomes for minority children with disabilities. As Donald Oswald, Martha Coutinho, and Al Best report in the opening lines of the book's first chapter, there are dramatic

differences in what happens to minority students with disabilities after high school:

In the 1998–1999 school year, over 2.2 million children of color in U.S. schools were served by special education (U.S. Department of Education, 2000). Post–high school outcomes for these minority students with disabilities are strikingly inferior. Among high school youth with disabilities, about 75 percent of African American students, as compared to 47 percent of white students, are not employed two years out of school. Slightly more than half (52%) of African Americans, compared to 39 percent of white young adults, are still not employed three to five years out of school. In this same time period, the arrest rate for African Americans with disabilities is 40 percent, as compared to 27 percent for whites (Wagner, D’Amico, Marder, Newman, & Blackorby, 1992).

In addition to these patterns, Osher, Woodruff, and Sims provide new data depicting substantially higher rates of disciplinary action and placement in correctional facilities for minority students with disabilities still in school. Based on their review of the data and other research, they suggest that investments in high-quality special education and early intervention are sorely needed and could reduce the likelihood that minority students with disabilities will develop serious discipline problems or eventually wind up in correctional facilities.

Racial Discrimination and Other Contributing Factors

In a society where race is so strongly related to individual, family, and community conditions, it is extremely difficult to know what part of the inequalities are caused by discrimination within the school. These studies, however, do uncover correlations with race that cannot be explained by factors such as poverty or exposure to environmental hazards alone. While the scope of this research does not attempt to depict a definitive causal link to racial discrimination, the research does suggest that unconscious racial bias, stereotypes, and other race-linked factors have a significant impact on the patterns of identification, placement, and quality of services for minority children, and particularly for African American children.

The researchers recognize that factors such as poverty and environmental influences outside of school contribute to a heightened incidence of disability in significant ways. All analysts who attempt to sort out the causes of inequality in U.S. institutions of course face the dilemma that some of the differences in subtracted control variables are themselves products of other forms of racial discrimination. For example, if a researcher determined that 40 percent of the association between race and shorter life expectancy could be explained by pov-

erty, we have to understand that the poverty in question may be influenced by employment discrimination or be due in part to a second-generational effect of segregated schooling. Therefore, despite the importance of statistical controls, it is well established that many controls will lower the estimates of the effect of race when race is examined as an isolated variable. What happens in school is only a subset of the far more pervasive impact of racial discrimination that affects minority families and their children.

Even when researchers assume that poverty is independent of race and subtract race and other background variables, many of the trends highlighted by this research appear to contradict the theory that poverty is primarily to blame and that race is not a significant factor. Those trends include the following: (a) pronounced and persistent racial disparities in identification between white and black children in the categories of mental retardation and emotional disturbance, compared with far less disparity in the category of specific learning disabilities; (b) a minimal degree of racial disparity in medically diagnosed disabilities as compared with subjective cognitive disabilities; (c) dramatic differences in the incidence of disability from one state to the next; and (d) gross disparities between blacks and Hispanics, and between black boys and girls, in identification rates for the categories of mentally retarded and emotionally disturbed.

The data on disproportionate representation is compatible with the theory that systemic racial discrimination is a contributing factor where disparities are substantial. Moreover, the trends revealed in this book are consistent with the theory that different racial groups, facing different kinds of stereotypes and bias, would experience racial disparities differently. States with a history of racial apartheid under de jure segregation, for example, account for five of the seven states with the highest overrepresentation of African Americans labeled mentally retarded—Mississippi, South Carolina, North Carolina, Florida, and Alabama.³⁰ This trend suggests that the “soft bigotry of low expectations” may have replaced the undeniable intentional racial discrimination in education against blacks that once pervaded the South.³¹ In contrast, *no* southern state was among the top seven states where Hispanic children deemed mentally retarded were most heavily overrepresented.³²

The effects of poverty cannot satisfactorily explain racial disparities in identification for mental retardation or emotional disturbance. Regression analysis suggests that race, gender, and poverty are all significant factors. Oswald, Coutinho, and Best specifically asked whether, “taking into account the effects of social, demographic, and school-related variables, gender and ethnicity are significantly associated with the risk of being identified for special education.”³³ Their examination of each factor at the district level (based on all of the districts surveyed in OCR’s database combined with the National Center for Education

Statistics, Common Core of Data) finds that, although disability incidence often increases with poverty, when poverty- and wealth-linked factors are controlled for, ethnicity and gender remain significant predictors of cognitive disability identification by schools.³⁴ Specifically, wealth-linked factors included per pupil expenditure, median housing value, median income for households with children, percentage of children in households below the poverty level, and percentage of adults in the community who have a twelfth-grade education or less and no diploma.

Most disturbing was that in wealthier districts, contrary to the expected trend, black children, especially males, were *more likely to be labeled* mentally retarded.³⁵ Moreover, the sharp gender differences in identification within racial groups, also described in the 2002 NRC report,³⁶ are not explained by the poverty theory.

Large demographic differences among minority groups are also discussed by Parrish and by Fierros and Conroy, and each confirms that the influence of race and ethnicity is significant, and apparently distinct from that of poverty. For example, Parrish reviews the data for each racial group across all fifty states and finds that, in comparison to whites, each minority group is at greater risk of being labeled mentally retarded as their percentage of the total enrolled population increases.³⁷

That poverty does account for some of the observed racial disproportions in disability identification comes as no surprise. Certain minority groups are disproportionately poor. Logically, one would expect poverty to cause a higher incidence of "hard" disabilities (e.g., blindness and deafness) among members of low-wealth minority groups, due to the impact of poor nutrition and inadequate prenatal care.³⁸ But the most recent research shows that blacks in any given state are substantially less likely to be overrepresented in these hard categories.³⁹

Finally, the theory that poverty and socioeconomic factors can explain all or most of the observed racial disparities fails to account for the *extreme* differences between black overrepresentation and Hispanic underrepresentation, differences that are even more significant in many states than disparities between blacks and whites.⁴⁰ For example, blacks in Alabama and Arkansas are more than seven to nine times as likely as Hispanics to be labeled mentally retarded.⁴¹ Moreover, nationally and in many other states,⁴² the disparity in identification rates for mental retardation and emotional disturbance between blacks and Hispanics is greater than the disparity between blacks and whites. Yet Hispanics, like blacks, are at far greater risk than whites for poverty,⁴³ exposure to environmental toxins in impoverished neighborhoods,⁴⁴ and low-level academic achievement in reading and math.⁴⁵ Thus, the high variation in identification

rates among minority groups with similar levels of poverty and academic failure casts serious doubt on assertions by some researchers that it is primarily poverty and not bias that creates these deep racial disparities.⁴⁶

Multiple Contributing Factors

Most students with disabilities enter school undiagnosed and are referred by regular classroom teachers for evaluations that may lead to special education identification and placement. Therefore, the cause of the observed racial disparity is rooted not only in the system of special education itself, but also in the system of regular education as it encompasses special education.⁴⁷ Most students referred for evaluation for special education are deemed in need of services.⁴⁸ If differential referral is a key element, then the perceptions and decisions of classroom teachers, as well as school-level policies and practices that have an impact on students in regular classrooms, are, likewise, key elements.

Based on years of research, Beth Harry, Janette Klingner, Keith Sturges, and Robert Moore conclude in their chapter that “[t]he point at which differences [in measured performance and ability] result in one child being labeled disabled and another not are totally matters of social decisionmaking.”⁴⁹ Special education evaluations are often presented to parents as a set of discrete decisions based on scientific analysis and assessment,⁵⁰ but even test-driven decisions are inescapably subjective in nature.⁵¹ The existence of some bias in test *content* is not the primary concern. Harry et al.’s research, for example, describes how subjective decisions creep into all elements of the evaluation *process*, including whom to test, what test to use, when to use alternative tests, how to interpret student responses, and what weight to give results from specific tests. All of these alter the outcomes.⁵² As Harry et al. point out, “a penstroke of the American Association on Mental Retardation (AAMR)” lowered the IQ score cutoff point for mental retardation from 85 to 70, “swiftly curing thousands of previously disabled children.”⁵³

School politics, power relationships between school authorities and minority parents, the quality of regular education, and the classroom management skills of the referring teacher also introduce important elements of subjectivity that often go unrecognized.⁵⁴ Other race-linked forces at work include poorly trained teachers who are disproportionately employed in minority schools (some of whom use special education as a disciplinary tool),⁵⁵ other resource inequalities correlated to race,⁵⁶ beliefs in African American and Latino inferiority and the low expectations that accompany these beliefs,⁵⁷ cultural insensitivity,⁵⁸ praise differentials,⁵⁹ fear and misunderstanding of black males,⁶⁰ and overcrowded schools and classrooms that are disproportionately located in school districts with high percentages of minority students.⁶¹ Add to these forces the

general phenomenon of white parents' activism, efficaciousness, and high social capital exercised on behalf of their children⁶² compared to the relative lack of parent power among minority parents,⁶³ and one can understand how the combination of regular education problems and the special education identification process has had a disparate impact on students of different races and ethnicities.

Sweeping reforms may also trigger harmful outcomes. For example, Artiles et al.'s preliminary examination of the "Unz Initiative," which eliminated bilingual education in California, suggests that English-language learners whose access to language supports is limited are more likely to be placed in restrictive special education settings. And as Jay Heubert describes in detail in his chapter, over the last ten years the use of high-stakes testing may have disproportionately punished poor and minority students, students with disabilities, and English-language learners.⁶⁴ "There is evidence that states with high minority enrollments in special education are also likely to have high-stakes testing policies."⁶⁵ Heubert goes on to cite evidence that "promotion testing is . . . likely to increase, perhaps significantly, the numbers of students with disabilities and minority students who suffer the serious consequences of dropping out."⁶⁶ He points out that the National Research Council has described simple retention in grade as "an ineffective intervention."⁶⁷ The aspirational benefits of raising standards aside, Heubert concludes that minority students with disabilities are at "great risk . . . especially in states that administer high-stakes promotion and graduation tests. . . ."⁶⁸

The Status of the Law and Enforcement Policy

Beginning with *Brown v. Board of Education*, litigation and enforcement under civil rights law has been essential to improving racial equity in education. Title VI of the Civil Rights Act of 1964 provided an important lever for racial justice in education that was especially effective when the federal government made enforcement a high priority.⁶⁹ Critically important was that, under the Title VI regulations, plaintiffs could use statistical evidence to prove that even a policy that was race neutral on its face had an adverse and unjustifiably disparate impact on children of color in violation of the law. As Daniel Losen and Kevin Welner describe in their chapter, the legal landscape shifted dramatically following the U.S. Supreme Court's 2001 ruling in *Alexander v. Sandoval*, which declared that there is no implied private right of action to bring legal challenges under "disparate-impact" theory. Therefore, court challenges that would rely on serious statistical disparities to prove allegations of discrimination are nearly extinguished today.⁷⁰ Although the government and individuals filing complaints with government agencies may still use the Title VI regulations to re-

dress the racially disparate impact of neutral policies, enforcement of disparate impact regulations is more vulnerable to an administration's enforcement policy preferences than ever before.

Untouched by *Sandoval* is the potential to challenge policies or practices where the racial disparities in special education identification or placement arise in the context of hearings on school desegregation. For example, in Alabama in 2000, a court review of consent decrees in that state resulted in a settlement yielding comprehensive state- and district-level remedies for overidentification of minorities.

Losen and Welner point out that disability law is becoming a relatively stronger basis for leveraging remedies from states and school districts where overidentification, underservicing, or unnecessarily restrictive placements are an issue. They explain further how systemic legal actions are better suited for seeking effective comprehensive remedies that could address contributing factors in both regular and special education. In her chapter, Theresa Glennon closely examines and evaluates the Office for Civil Rights' enforcement efforts where disability law and Title VI converge. Glennon's recommendations include better coordinated investigations and interagency information sharing, clearer guidance for schools, and more comprehensive compliance reviews by well-trained investigators.

Sharon Soltman and Donald Moore provide an extensive analysis of how to fashion a remedy through litigation in a case known as *Corey H.* Their thorough chapter combines many years of research on effective practices with models of school improvement. They set forth a roadmap for school district reform to ensure that children with disabilities in Illinois be educated in the least restrictive environment as required by law. The multitiered *Corey H.* remedy entails a ten-year process for change, in one set of schools each year. The plaintiffs also won a large infusion of state funding to make implementing the *Corey H.* requirements a fully funded mandate. Further research on the efficacy of the court-ordered remedy should prove extremely useful to policymakers and others seeking to guarantee that minority children with disabilities have appropriate educational opportunities.

The only study in this volume that explores restricting federal funds as a remedy does so in the context of analyzing the viability of the Department of Education's Office for Special Education Programs' (OSEP) enforcement mechanisms for redressing racial disproportionality. In that study, Thomas Hehir argues forcefully for more frequent exercise of partial withholding by enforcement agents that is narrowly targeted to leverage compliance by specific states or districts in certain areas. As Hehir points out, partial withholding

would allow OSEP to ratchet up its enforcement efforts without wholesale withdrawal of federal funds, which would heighten the risk of political backlash and have a negative impact on students in properly run programs. Likewise, federal policymakers should improve IDEA implementation and civil rights enforcement without imposing wholesale limitations on federal special education funding, which would have a negative impact on children with disabilities nationwide. Of course, there may be extreme cases in noncompliant districts where the only way to end serious violations is to cut off general funds, which proved very effective in spurring the desegregation of southern schools.⁷¹

Moreover, Tom Parrish's research suggests that some state funding formulas are contributing to problems of overidentification. Some of these formulas fail to follow the federal model, which relies on U.S. Census data to determine allocations. The most problematic state formulas instead channel funds by disability identification and/or program and are suspected of creating incentives for overidentification.

RECOMMENDATIONS

These studies and the NRC's 2002 report both suggest that special education issues faced by minority children often begin with shortcomings in the realm of general education well before teachers or parents seek an evaluation for special education eligibility.⁷² Therefore, policy solutions that fail to consider the connection with general education classrooms will unlikely bring about significant change.⁷³

A New Federal Initiative with Implications for State Accountability

Our nation's education policy is at a crossroads. Leaders demand an end to the "soft bigotry of low expectations" and our government has promised to improve the achievement of all children in 2002 through the new education reform act, known as the No Child Left Behind Act. Racial equity is rooted in the commitment to teach all children well, with particular attention to meeting the needs of minority children.

To tackle racial disparities in achievement and graduation rates, the president and Congress embraced three reform approaches: public reporting, accountability at all levels (school, district, and state), and mandatory enforcement. These three reform approaches could be used to address the gross racial disparities in special education identification, restrictiveness of placement, and quality of services.

For policymakers, there is no need to pinpoint a specific cause or allege race discrimination in order to achieve racial equity. Scholars report that many

schools today still operate under a deficit model, where school authorities regard students with disabilities as the embodiments of their particular disability and ask only *what the special educators are required to do in order to accommodate the student's problem.*⁷⁴ A universal commitment to equity in special education would help erode this deficit model by shifting the focus to *what all public educators should do to improve educational opportunities and outcomes for all children.*

There is bipartisan acknowledgement that special education issues faced by minority children need a federal legislative response. This apparent consensus holds promise for effective federal reform. Reform attempts in the recent past can be improved upon. In 1997 the IDEA was amended to require states to collect and review data on racial disproportionality in both identification and placement and to intervene where disproportionality is significant.⁷⁵ Before that, in 1995, the Office for Civil Rights made racial disproportionality in special education a top priority. The persistence of this problem suggests that states' legal obligations under IDEA and our civil rights enforcement priorities have not been met.

OCR was once a major force in the effort to desegregate our nation's schools, suggesting that the agency's efficacy is related to political will as much as it is to resources. It is apparent that there is a glaring need for stepped-up enforcement and oversight by both federal and state agencies. These actions must be geared toward encouraging the active participation of educators at all levels if there is to be any hope of meaningful and lasting improvement. Most important, aggressive efforts to remedy these issues are only the starting point. The efficacy of enforcement interventions and attempted reforms must be evaluated in terms of the outcomes for minority children.

Both general and special education teachers and administrators need better training to deliver effective instruction in the least restrictive, most inclusive environment appropriate. Meeting this need, along with the need for better data collection on racial and ethnic disparities and enhanced civil rights enforcement, would require an infusion of special education funds, which could be expected to result in net gains in education outcomes and savings in juvenile justice expenditures in the long term. By increasing federal oversight and by encouraging states to intervene where appropriate, the federal government could help improve the quality of instruction, supports, and services received by minority students in both regular and special education.

Although OCR still does not collect national data to determine racial disparities in the educational environment,⁷⁶ the 1997 IDEA amendments obligate the states to collect sampled data.⁷⁷ If the government required every state and school district to collect disaggregated data by race with disability category

and educational setting (all three together), research on overrepresentation would benefit tremendously.

Moreover, much general education reform law is predicated on the concept that public pressure at the local level from parents and community stakeholders will stimulate meaningful improvements. To generate local reform pressure, the Bush education program requires public reporting of test achievement by a number of student subgroups, including disability status and major racial and ethnic subgroups. Policymakers could likewise stimulate meaningful improvements in special education by amending the IDEA to require public reporting of racial disparities in special education identification and placement.

IDEA should also require states to intervene under specified circumstances (they now have complete discretion) and to provide technical assistance to effect reforms. Such required intervention and assistance would likely foster greater self-reflection and improvement at the district level. While adopting mandatory interventions would be helpful, given the context of shrinking state education budgets, an emphasis on rewards and continued supports to foster successful efforts must be an integral part of any new enforcement efforts.

Finally, new mechanisms for minority children to exercise their rights under IDEA, including legal services support, would help considerably.

Toward Comprehensive Solutions to Systemic Problems at the District Level

The research and analysis presented in this volume are intended to serve educators, advocates, and policymakers alike. In addition to raising awareness of the issues, suggesting changes in legislation, and improving the enforcement of existing requirements, much can be accomplished with greater determination by school leadership.

For communities of color, disproportionate representation in special education is just one facet of the denial of access to educational opportunity. Denial begins in the regular education setting with school segregation, low tracking, test-based diploma denial and retention, overly harsh discipline, less access to programs for the gifted, and resource inequalities that have a distinctly racial dimension.

Education leaders who suspect a problem at their school can accomplish a great deal by clearly stating that this problem is one that they and their staff can do something about, and that it has a racial dimension. By squarely shouldering responsibility and resolving to improve outcomes for all children as they tackle the racial disparities, school leaders can also reduce racial tensions among staff and in their school community and recover lives and talents that would otherwise be wasted. Tackling these issues should be a shared responsibility, not the

duty of the principal or special education administrator alone. Furthermore, technical assistance can be sought from state and federal agencies, including OCR and OSEP, without triggering legal action.

School leaders concerned with the issues raised above can also renew their efforts to involve parents and community in innovative ways. Some suggested methods include entering into partnerships with community organizations in order to boost minority parent involvement, and engaging school-based councils that would share decisionmaking power, working more closely with social service agencies to ensure that at-risk students receive high-quality services and that social workers and teachers are collaborating effectively, and increasing direct outreach to families.⁷⁸

Moreover, teachers need support to change their practice and improve classroom outcomes. In many cases regular classroom teachers have received little or no training in working with students from diverse backgrounds or with special education students, or have had little practicum experience in inclusive classrooms.⁷⁹ Similarly, many special education teachers have not had the degree of training in the core curriculum or on how to work in a full-inclusion setting.⁸⁰ Without both academic and multicultural training and time for special education and regular education teachers to collaborate, it is unrealistic to expect significant improvement.

Protecting the civil rights of all students benefits society at large. Obviously, it is much better if this problem is solved within the school than through external enforcement. Strong leadership at all levels could make an important difference. There is a great deal of work that can and should be done by schools, by districts, by states, and by federal lawmakers and enforcement agents that would improve educational opportunities for minority children in general, and make tremendous progress in solving the specific problems highlighted in this book.

There are no quick fixes. The problems explored in the pages that follow have many roots, and creating better outcomes requires difficult changes at many levels. Far more research is needed on the practices that produce inequality and the reforms that can successfully correct them. We need to reach the point at which every child is treated as if he or she were our own child, with the same tirelessly defended and protected life possibilities. In schools where we can predict the racial makeup of a special education class before we open the door, we must have leadership, if possible, and enforcement, if necessary, to ensure that each child receives the quality academic support and special services he or she truly needs without diminishing any of the opportunities that are any child's right in American society. We hope this book will contribute to that dream.

NOTES

1. Pub. L. No. 105-17, Sec. 601(c)(2)(B) and (C) (1997) (codified as amended at 20 U.S.C. § 1400 (c)(2)(B) and (C) (1994 & Supp. V. 1999).
2. NATIONAL COUNCIL ON DISABILITY, BACK TO SCHOOL ON CIVIL RIGHTS: ADVANCING THE FEDERAL COMMITMENT TO LEAVE NO CHILD BEHIND (2000) [hereinafter NCD 2000].
3. *Id.* at 6.
4. *Id.*
5. COMMITTEE ON MINORITY REPRESENTATION IN SPECIAL EDUCATION, NATIONAL RESEARCH COUNCIL, MINORITY STUDENTS IN SPECIAL AND GIFTED EDUCATION (M. Suzanne Donovan and Christopher T. Cross eds., forthcoming 2002)[hereinafter NRC 2002], available at www.nap.edu/books/0309074398/html (last visited July 22, 2002).
6. Where the data was collected using the term *black*, we use that term to describe the group otherwise referred to as African American.
7. PANEL ON SELECTION AND PLACEMENT OF STUDENTS IN PROGRAMS FOR THE MENTALLY RETARDED, NATIONAL RESEARCH COUNCIL, PLACING CHILDREN IN SPECIAL EDUCATION: A STRATEGY FOR EQUITY (Kirby A. Heller et al. eds., 1982) [hereinafter NRC 1982].
8. OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, ELEMENTARY AND SECONDARY SCHOOL CIVIL RIGHTS COMPLIANCE REPORTS (2000) [hereinafter OCR 1998 data], available at www.ed.gov/offices/OCR/data.html (Although issued in 2000, 1998 data are reported throughout).
9. NRC 2002, *supra* note 5, at 2-9, 2-10.
10. The National Research Council (NRC) describes eight separate studies over a span of twelve years that suggest that teachers made negative judgments of students due to race or ethnicity bias; see NRC 2002, *supra* note 5, at 5-10. However, based on other research, NRC states that the evidence is insufficient to draw a conclusion regarding the impact of racial discrimination. *Id.* at 2-21.
11. Testimony of Representative Chaka Fattah, available at http://www.house.gov/apps/list/press/pa02_fattah/misident.html (last visited, July 22, 2002). The story of Billy Hawkins was originally reported in *U.S. News & World Report* on December 13, 1993.
12. For a general description of the federal funding scheme under IDEA, see 147 CONG. REC. S1889 (2001) (statement of Sen. Jeffords); see also 143 CONG. REC. S4401 (1997) (statement of Sen. Gregg) (emphasizing that "the Federal Government has failed to live up to its obligation to fund 40 percent of the cost of special education.").
13. Representative John Boehner, Chairman of the House Education and the Workforce Committee, *IDEA Must Be Fully Funded—But First It Must Be Fixed* (fact sheet, April 16, 2002), available at <http://edworkforce.house.gov/issues/107th/education/idea/fact.htm> (last visited, July 22, 2002).
14. OCR data 1998, *supra* note 8.
15. OCR data 1998, *supra* note 8.
16. See Parrish, this volume.
17. NRC 2002, *supra* note 5, at Table 2-2.
18. The states were Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kentucky, Montana, Nebraska, Ohio, North Carolina, South Carolina, and West Virginia. During that school year (2000-2001), the national average for blacks was 2.06 and Hispanics 0.51; see U.S. DEPT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, DATA ANALYSIS SYS-

TEM (DANS), Table AA17, available at http://www.idcadata.org/tables24th\ar_aa17.htm (last visited July 22, 2002) [hereinafter OSEP 2001 Report].

19. *Id.*
20. NRC 1982, *supra* note 7.
21. JEREMY FINN, PATTERNS IN SPECIAL EDUCATION PLACEMENT AS REVEALED BY THE OCR SURVEYS, in NRC 1982, *supra* note 7, at 365.
22. Artiles et al., in this volume, perform the well-established statistical risk comparison called odds ratios, which calculates the actual odds of being identified with a particular disability for each racial group and then compares them. See, e.g., SCOTT MENARD, APPLIED LOGISTIC REGRESSION ANALYSIS 12-13 (1995).
23. Parrish, Table 2, this volume.
24. Hispanics are significantly overrepresented in the category of emotional disturbance in New York, Connecticut, and Pennsylvania. Native Americans are identified at nearly five times the rate of whites in Nebraska, and between two and five times the rate in nine states. *Id.*
25. See Finn, *supra* note 21, at 374.
26. These districts themselves have such a high degree of racial isolation (e.g., a 90% minority district) that they often lack the comparison group necessary to discuss inter-district racial disparities.
27. See, e.g., Losen and Welner, this volume.
28. According to Assistant Secretary of Education Judy Heumann, Director of the Office for Special Education and Rehabilitative Services under President Clinton, the system of both regular and private education is racially discriminatory because “[m]inority children are more likely not to receive the kinds of services they need in the regular ed[ucation] system and the special ed. system. . . . And special education is used as a place to move kids from a regular classroom out into a separate setting.” *The Merrow Report: What’s So Special About Special Education? (PBS television broadcast, May 10, 1996)* [hereinafter *The Merrow Report*], transcript available at <http://www.pbs.org/merrow/tv/transcripts/index.html> (last visited July 8, 2002).
29. See Oswald, Coutinho, and Best, this volume; James M. Patton, *The Disproportionate Representation of African Americans in Special Education: Looking Behind the Curtain for Understanding and Solutions*, 32 J. SPECIAL EDUC. 25-31 (1998).
30. See Parrish, Table 2, and Fierros and Conroy, Table 1, in this volume.
31. The 1982 study of national data by Jeremy Finn also found the highest levels of overrepresentation of African American children in “mental retardation” in the southern states. See Finn, *supra* note 21, at 364-66; see also John U. Ogbu, *Castelike Stratification as a Risk Factor for Mental Retardation in the United States*, in RISK IN INTELLECTUAL AND PSYCHOSOCIAL DEVELOPMENT 8-85 (Dale C. Farran and James D. McKinney eds., 1986).
32. Parrish, this volume, Table 2.
33. See Oswald et al., this volume.
34. See Oswald et al., this volume. Further, the impact of sociodemographic factors was different for each of the various gender/ethnicity groups. See *id.*
35. See *id.*
36. See NRC Report 2002, *supra* note 5 (Figure 2-11 depicts the largest gender gaps among blacks with MR at nearly a full percent (.97), where in all other groups the difference was always less than a third of a percent and ranged from .15 to .3.).

37. Parrish, Table 2, this volume.
38. "Hard" categories include physical disabilities that are generally discernable through a medical examination and are rarely disputed. See Parrish, this volume.
39. Parrish uses the benchmark of twice the rate of whites to define extensive overrepresentation. Parrish, this volume, Table 1. Table 1 shows that blacks are substantially overidentified (more than twice as likely as whites) for mental retardation and emotional disturbance in thirty-eight and twenty-nine states, respectively, yet overrepresented to a similar degree in hearing impairments and orthopedic impairments in only five and four states, respectively. *Id.*
40. Parrish, Table 2, this volume.
41. *Id.*
42. In twenty-four states the odds for blacks compared to Hispanics for mental retardation, and in thirty-six states the black to Hispanic odds for emotional disturbance, are larger than for blacks compared to whites. Parrish, this volume.
43. NRC Report 2002, *supra* note 5.
44. *Id.*
45. See, e.g., P. L. DONAHUE ET AL., THE NATION'S REPORT CARD: FOURTH-GRADE READING 2000, at Figure 2.3 (April 2001), available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2001499> (last visited, July 22, 2002). The NRC Report implies a connection between high lead levels and minority overrepresentation, yet fails to explore any data specifically linking overrepresentation in MR and risk of lead exposure. In fact, a recent study of exposure to lead paint commissioned by the Office of Lead Hazard Control, U.S. Department of Housing and Urban Development (April 18, 2001) shows that the risk is highest in the northeastern states and lowest in the south. ROBERT P. CLIKNER ET AL., NATIONAL SURVEY OF LEAD AND ALLERGENS IN HOUSING, VOLUME I: ANALYSIS OF LEAD HAZARDS, 3-2, 3-10, 4-4 (2001). It is important to note that for blacks, the incidence of MR is extraordinarily high in the majority of southern states and below the national average in northeastern states. See OSEP 2001 Report, *supra* note 18. These divergent demographics suggest that risk for lead exposure does not track closely the risk for MR identification experienced by black children.
46. See, e.g., Donald MacMillan and Daniel J. Reschly, *Overrepresentation of Minority Students: The Case for Greater Specificity or Reconsideration of the Variables Examined*, 32 J. SPECIAL EDUC. 15 (1998); Loretta A. Serna et al., *Intervention Versus Affirmation: Proposed Solutions to the Problem of Disproportionate Minority Representation in Special Education*, 32 J. SPECIAL EDUC. 48, 48 (1998) (suggesting that we do not have enough information to conclude that bias is a major cause of disproportionate representation). The Eighteenth Annual Report to Congress discusses research suggesting that poverty, and not race or ethnicity, is the most important factor influencing the disproportionality. See U.S. DEPARTMENT OF EDUCATION, EIGHTEENTH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 86 (1996), available at <http://www.ed.gov/pubs/OSEP96AnlRpt> (last visited, July 22, 2002) (citing MARY WAGNER, THE CONTRIBUTIONS OF POVERTY AND ETHNIC BACKGROUND TO THE PARTICIPATION OF SECONDARY SCHOOL STUDENTS IN SPECIAL EDUCATION (1995)). The report to Congress concedes that Wagner formed this conclusion despite the fact that her own study also found that when income is accounted for, statistically significant disproportionate representation remains in three categories, including mental retardation. *Id.* See also Daniel J. Reschly and John L. Hosp, *Predictors of Restrictiveness for African-American*

- and *Caucasian Students*, 68 *EXCEPTIONAL CHILDREN* 225-38 (2001). This study was developed for use by expert testimony on behalf of the defense of a school district charged with discrimination in *Coalition to Save Our Children v. State Board of Education of Delaware*, 901 F. Supp. 784, 821 (D. Del. 1995); 90 F.3rd 752, 763 n. 13 (3d Cir. 1996)). Dr. Reschly opined that "with better measures of poverty the [racial] gap would be further reduced if not eliminated."
47. Jim Ysseldyke, for example, discusses the importance of considering the opportunities to learn available to the student rather than simply focusing on a deficit that lies within the student when students' cognitive abilities are assessed, the clear implication being that what we assess as a cognitive disability may actually be a failure to provide a student with an adequate opportunity to learn. See Jim Ysseldyke, *Reflections on a Research Career: Generalizations from 25 Years of Research on Assessment and Instructional Decision Making*, 67 *EXCEPTIONAL CHILDREN* 295, 304 (2001).
 48. *Id.* at 303 (describing among other things how, "[o]nce a classroom teacher or parent refers a student [for an evaluation] it is likely that the student will be found eligible for special education services. . . . We have demonstrated repeatedly that teachers refer students who bother them.").
 49. See Harry et al., this volume.
 50. See *id.*
 51. See *id.*
 52. *Id.*; see generally Ysseldyke, *supra* note 46.
 53. Beth Harry and M. Anderson, *African American Males in Special Education: A Critique of the Process*, 63 *J. NEGRO EDUC.* 602, 607 (1994).
 54. See generally Ysseldyke, *supra* note 47, at 304 (stating "there are no reliable psychometric differences between those labeled learning disabled (LD) and low-achieving students . . . but most have chosen simply to ignore [these findings]"); Harry et al., this volume.
 55. For a review of the research about teacher quality and service of minority students, see the work of Linda Darling-Hammond, in particular Linda Darling-Hammond, *Teacher Quality and Student Achievement: A Review of State Policy Evidence*, 8 *EDUCATIONAL POLICY ANALYSIS ARCHIVES*, No. 1 (2000); see also Richard M. Ingersoll, *The Problem of Underqualified Teachers in American Secondary Schools*, 28 *EDUCATIONAL RESEARCHER* 26 (1999); Deborah L. Voltz, *Challenges and Choices in Urban Teaching: The Perspectives of General and Special Educators*, in *MULTIPLE VOICES FOR ETHNICALLY DIVERSE EXCEPTIONAL LEARNERS* 41-53 (2001). For a discussion of the use of special education placement to racially segregate children, see KENNETH J. MEIER ET AL., *RACE, CLASS, AND EDUCATION: THE POLITICS OF SECOND-GENERATION DISCRIMINATION* (1989). For a discussion of its use as a disciplinary tool, see Osher et al., this volume.
 56. These other resources include textbooks, library books, science laboratories, the schools' physical plant quality, class size, field trips, enriched courses, college counseling, and computer equipment. See Richard Rothstein, *Equalizing Educational Resources on Behalf of Disadvantaged Children*, in *A NATION AT RISK: PRESERVING PUBLIC EDUCATION AS AN ENGINE FOR SOCIAL MOBILITY* 31-92 (Richard Kahlenburg ed., 2000).
 57. See PAULINE LIPMAN, *RACE, CLASS AND POWER IN SCHOOL RESTRUCTURING* (1998); see also MICHELLE FINE, *FRAMING DROPOUTS: NOTES ON THE POLITICS OF AN URBAN PUBLIC HIGH SCHOOL* (1991).
 58. FINE, *supra* note 57; see also JEAN ANYON, *GHETTO SCHOOLING: A POLITICAL ECONOMY OF URBAN EDUCATIONAL REFORM* (1997).

59. For example, in the American Association of University Women's *How Schools Short-change Girls*, research is cited on student teacher interaction on the basis of gender, race, ethnicity and or social class. The studies indicate that white males receive more attention than males from various racial and ethnic minority groups; that black males are perceived less favorably by their teachers and seen as less able than other students; that black females receive less reinforcement from teachers than do other students. THE AAUW REPORT, HOW SCHOOLS SHORTCHANGE GIRLS 122-23 (1992); see also Harry and Anderson, *supra* note 51, at 610.
60. See Brenda L. Townsend, *Disproportionate Discipline of African American Children and Youth: Culturally Responsive Strategies for Reducing School Suspensions and Expulsions*, 66 EXCEPTIONAL CHILDREN 381 (2000); James F. Gregory, *Three Strikes and They're Out: African American Boys and American Schools' Responses to Misbehavior*, 7 INT'L J. OF ADOLESCENCE & YOUTH 25 (1997); James F. Gregory, *The Crime of Punishment: Racial and Gender Disparities in the Use of Corporal Punishment in the U.S. Public Schools*, 64 J. NEGRO EDUC. 454 (1996); Maurice C. Taylor and Gerald A. Foster, *Bad Boys and School Suspensions: Public Policy Implications for Black Males*, 56 SOCIOLOGICAL INQUIRY 498 (1986).
61. See *Campaign for Fiscal Equity v. New York*, 187 Misc. 2d 1 (2001); see also JONATHAN KOZOL, SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS (1991).
62. A parallel phenomenon occurs with regard to tracking and gifted placements. See Amy S. Wells and Irene Serna, *The Politics of Culture: Understanding Local Political Resistance to Detracking in Racially Mixed Schools*, 66 HARV. EDUC. REV. 93 (1996); Daniel J. Losen, Note, *Silent Segregation in Our Nation's Schools*, 34 HARV. C.R.-C.L. L. REV. 517, 525 (1999); for a discussion of social capital, see Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION (John G. Richardson ed., 1985).
63. Voltz, *supra* note 55; Harry and Anderson, *supra* note 53, at 612.
64. See ALFIE KOHN, THE CASE AGAINST STANDARDIZED TESTS: RAISING THE SCORES, RUINING THE SCHOOLS 35-41 (2000); Walt Haney, *The Myth of the Texas Miracle in Education*, 8 EDUC. POLY ANALYSIS ARCHIVES, 1 pt. 4 (2000), available at <http://epaa.asu.edu/epaa/v8n41> (last visited, July 22, 2002); Linda McNeil and Angela Valenzuela, *The Harmful Impact of the TAAS System of Testing in Texas: Beneath the Accountability Rhetoric* (2000), available at http://www.law.harvard.edu/groups/civilrights/conferences/testing_98/drafts/mcneil_valenzuela.html (last visited, July 22, 2002). See also NOE MEDINA & MONTY NEILL, FALLOUT FROM THE TESTING EXPLOSION: HOW 100 MILLION STANDARDIZED EXAMS UNDERMINE EQUITY AND EXCELLENCE IN AMERICA'S PUBLIC SCHOOLS (3rd ed. 1990); Jay Heubert, *High Stakes Testing: Opportunities and Risks for Students of Color, English-Language Learners, and Students with Disabilities*, in THE CONTINUING CHALLENGE: MOVING THE YOUTH AGENDA FORWARD (M. Pines ed., forthcoming) (manuscript at 5, on file with authors).
65. Heubert, this volume.
66. *Id.*
67. *Id.*
68. *Id.*
69. GARY ORFIELD, THE RECONSTRUCTION OF SOUTHERN EDUCATION: THE SCHOOLS AND THE 1964 CIVIL RIGHTS ACT (1969).
70. See Losen and Welner, this volume.
71. See Orfield, *supra* note 69.

72. NRC 2002 Report, *supra* note 5, at 10-1.
73. Of course in certain states or districts changing a particular special education policy or practice, i.e., the heavy reliance on IQ tests, that evidence suggests is a primary factor, could have a significant impact.
74. See, e.g., MARTHA MINOW, MAKING ALL THE DIFFERENCE 82-84 (1990).
75. 20 U.S.C. § 1400(c)(8)(A).
76. See Glennon, this volume
77. 20 U.S.C. § 1400(c)(8)(A).
78. Some of these suggestions come from Vincent L. Ferrandino, *Challenges for 21st-Century Elementary Principals*, 2001 PHI DELTA KAPPAN 440.
79. See Harry, this volume.
80. NRC Report 2002, *supra* note 5, at 5-32, 5-33.



CHAPTER ONE

Community and School Predictors of Overrepresentation of Minority Children in Special Education¹

DONALD P. OSWALD
MARTHA J. COUTINHO
AL M. BEST

THE CRISIS IN MINORITY STUDENT EDUCATION

In the 1998–1999 school year, over 2.2 million children of color in U.S. schools were served by special education (U.S. Department of Education, 2000). Post–high school outcomes for these minority students with disabilities are strikingly inferior. Among high school youth with disabilities, about 75 percent of African American students, as compared to 47 percent of white students, are not employed two years out of school. Slightly more than half (52%) of African Americans, compared to 39 percent of white young adults, are still not employed three to five years out of school. In this same time period, the arrest rate for African Americans with disabilities is 40 percent, as compared to 27 percent for whites (Wagner, D’Amico, Marder, Newman, & Blackorby, 1992).

In the face of such bleak outcomes, it is essential to better understand the overrepresentation of minority students in special education. This chapter addresses the question of the relationship between the overrepresentation of minority children in special education and a set of demographic, fiscal, and school-related variables. The intent of the study was to determine to what extent this overrepresentation can be explained by these predictor variables. The research was based on a conceptual framework of alternative hypotheses regarding overrepresentation. Hypothesis 1 proposes that ethnic groups are differentially susceptible to disability, while Hypothesis 2 proposes that overrepresentation is the result of special education referral, assessment, and eligibility

processes and instruments that are culturally and linguistically loaded and that measure and interpret the ability, achievement, and behavior of students differently across ethnic groups. We investigated these hypotheses using a national sample of school districts to examine the relationship between special education identification rates and predictor variables.

If overrepresentation is a function of genuinely higher disability rates among students of color, national and local responses must address the social conditions that are risk factors for disability. If, on the other hand, the problem arises from systemic bias and discrimination within the public education system, aggressive efforts are required to correct attitudes and behavior associated with the special education identification of minority children.

Our analysis of special education data suggests that both hypotheses may be important in understanding overrepresentation. Statistical models of these data indicate that social, demographic, and school-related variables are significantly associated with special education identification. In some cases, these relationships support the conclusion that toxic social conditions may be producing disproportionately higher rates of disability among children of color. Other findings indicate that a significant portion of the overrepresentation problem may be a function of inappropriate interpretation of ethnic and cultural differences as disabilities.

CURRENT POLICY AND PRACTICES: AN INEFFECTIVE RESPONSE

Advocacy groups, the research community, and policymakers have investigated, debated, and litigated the problems of equity and overrepresentation of minority students in special education for over thirty years (*Larry P. v. Riles*, 1979, 1984, 1986; *Marshall et al. v. Georgia*, 1984, 1985). There is widespread agreement that schools have failed to implement effective responses to disproportionate representation; that is, responses that lead to better educational experiences and acceptable outcomes for minority children (Harry & Anderson, 1994).

The U.S. Department of Education Office for Civil Rights (OCR) monitors and enforces U.S. statutes barring discrimination against minority students in education. However, for a number of important reasons listed below, this strategy has been insufficient and ineffective:

- Policy responses to overrepresentation of minority students in a particular disability category (e.g., mental retardation) may lead to reduced disproportionality in that category, but increased disproportional representa-

tion in another category (Oswald & Coutinho, 2001). In California, for example, between 1980 and 1994, overrepresentation of African Americans among students with mild mental retardation essentially disappeared; during the same time period, however, African American students experienced substantially increased disproportionality among students with learning disabilities (U.S. Department of Education, 1994).

- Keeping minority students who are already performing poorly in the general education systems that failed them (or inappropriately returning them there from special education) perpetuates inferior educational outcomes for these students (Macmillan & Balow, 1991).
- Accurate estimates of disproportionate representation are rarely available to inform policy responses. Statements characterizing overrepresentation are often based on nonrepresentative samples or unclear definitions of disproportionality, and findings are often selectively reported to support a particular viewpoint, creating an impression that either exaggerates the scope of the problem or inappropriately minimizes and dismisses it (Coutinho & Oswald, 1999, 2000).
- Educators and policymakers lack sound, empirically based information about the influence of community, fiscal, and school-related factors on minority disability identification rates. Monitoring approaches do not take into account the likelihood that demographic, school-related, fiscal, and community factors influence identification rates and that minority children are disproportionately exposed to the potentially toxic effects of such factors.

IMPROVING THE SPECIAL EDUCATION PROCESS AND OUTCOMES FOR MINORITY STUDENTS

A critical gap exists between what is now known and the knowledge that is needed to improve the experience of minority students. Sound, conceptually based empirical research is essential to provide policymakers and educators with information that can lead to significantly improved results. Such research must (a) consider alternative hypotheses regarding overrepresentation in order to improve our understanding of how community, school-related, and fiscal factors influence special education identification; and (b) systematically investigate the options available for improving the minority student experience. Considerable attention has been given to the hypothesis that disproportionality is the result of biased special education referral, assessment, and eligibility processes. Substantial research has also been devoted to questions of instruments that are culturally and linguistically loaded, which measure and interpret the ability,

achievement, and behavior of students differently across ethnic groups (Gottlieb, Gottlieb, & Trongue, 1991; Harry & Anderson, 1994).

An alternative hypothesis is that ethnic groups are differentially susceptible to educational disability; that is, that the underlying distribution of educational disability varies across ethnic groups, which in turn influences rates of referral and identification as disabled. Environmental, demographic, health, economic, community, and educational factors may differentially affect the susceptibility of different ethnic groups to educational disability (Coutinho & Oswald, 1999, 2000). An exploratory study by Oswald, Coutinho, Best, and Singh (1998) found that a set of community- and school-related variables accounted for a significant proportion of the variability in the rate of identification of mental retardation and emotional disturbance for African American students as compared to other students.

In sum, there is evidence to support both hypotheses, and each influences disproportionate minority representation. Technically sound analyses at the community level are needed to indicate how ethnicity influences identification for special education, once the effects of other relevant community variables are accounted for. Such research is required in order to guide policy changes that assure that (a) only children who are disabled are identified as such, and (b) proactive interventions occur at the community level to achieve equity and improved outcomes for students of color.

PURPOSE OF THE STUDY

This chapter has three purposes. First, we present the results of a conceptually based empirical study of how a set of demographic, fiscal, and school-related factors are associated with the disproportionate representation of minority children in special education in the United States. Second, we provide specific recommendations for additional research needed to better understand how demographic, fiscal, and school-related variables influence disproportionality at the community level. Finally, we discuss policy recommendations as to how communities might respond to disproportionality within the context of community characteristics (e.g., demographic profile) and school resources.

METHOD

Data Sources

Every two years, the Office for Civil Rights (OCR) collects information on a nationally representative sample of school districts. The data are used to compile the Elementary and Secondary School Civil Rights Compliance Report,

the chief source of data on the status of civil rights in the nation's schools (U.S. Department of Education, 1998).² For this report, we considered only the information on enrollment and disability categories from the school year 1994–1995, the most recent survey data available at the time we conducted the study.

The National Center for Educational Statistics Common Core of Data CD-ROM (NCES-CCD93 Disc) has information on all school districts in the country. The information in this data set was matched with the OCR data so that only those districts that participated in the 1994 OCR survey were included. Nine sociodemographic variables from the National Center for Educational Statistics Common Core of Data were chosen as predictor variables. The variables were selected on the basis of several criteria: (a) the variable had been examined in earlier work in the literature and possessed demonstrable conceptual links to disability identification; (b) the variable operationalized a construct about which specific predictions could be generated, based on the alternative hypotheses being tested; (c) the variable was included in the NCES-CCD data set; and (d) the variable had few missing values in the NCES data set. In addition, the variables included some community characteristics that could be altered through political intervention (e.g., per pupil expenditure, student-teacher ratio) and some that are relatively fixed (e.g., percent non-white).

Variables selected from the Common Core of Data as predictor variables were: student-teacher ratio (STR), per pupil expenditure (PPE), percentage of children enrolled who are "at risk" (At Risk), percentage of enrolled students who are nonwhite (Nonwhite), percentage of enrolled students who are Limited English Proficient (LEP), median housing value in \$10,000 units (Housing), median income for households with children in \$100,000 units (Income), percentage of children in households below the poverty level (Poverty), and percentage of adults in the community with a twelfth-grade education or less and no diploma (No Diploma).

Analysis Methods

We examined the effects of gender, ethnicity, and sociodemographic factors on the students in a school district who are identified with Mental Retardation (MR), Serious Emotional Disturbance (SED), or Learning Disability (LD). The fourth disability category in this study, "None," included students with lower incidence disability conditions (e.g., Other Health Impaired, Autism), as well as all regular education students. Our study endeavored to answer the question, "Are these district-level and child-level variables significantly associated with the likelihood of being identified as a child with MR, SED, or LD?" More specifically, the analyses reported here addressed questions such as, "Does

TABLE 1
 Identification Odds Ratios for Gender/Ethnicity Group
 Compared to White Females

<i>Gender</i>	<i>Ethnicity</i>	<i>MR Odds Ratio</i>	<i>LD Odds Ratio</i>	<i>SED Odds Ratio</i>
M	American Indian	1.66	2.903	5.024
M	Asian Amer./Pac. Islander	0.50	0.783	0.915
M	Black	3.26	2.343	5.527
M	Hispanic	0.95	2.104	2.354
M	White	1.36	2.279	3.810
F	American Indian	1.21	1.339	1.374
F	Asian Amer./Pac. Islander	0.40	0.350	0.229
F	Black	2.02	0.978	1.376
F	Hispanic	0.70	1.021	0.588
F	White	1.00	1.000	1.000

the level of poverty in the community significantly affect the chances that a student will be identified as mentally retarded?" "Does being an African American male significantly affect the chances that a student will be identified as SED?" and, most important, "Taking into account the effects of poverty, housing, per pupil expenditure, etc., do ethnicity and gender *still* significantly affect the likelihood of being identified for special education?"

RESULTS

A simple analysis of the data showed that, without taking into account the effects of social, demographic, and school-related factors, gender and ethnicity are significantly associated with the risk of being identified for special education. To clarify this finding, using white females as the comparison group, we compared the likelihood of being identified as MR, SED, or LD for students in each of the gender/ethnicity groups. Thus, for example, white males were 3.8 times as likely as white females to be identified as a student with SED (i.e., odds ratio = 3.8), while black males were 5.5 times as likely (see Table 1). These data starkly represent the extent of the problem of disproportionality across gender and ethnic groups.

We also found that the sociodemographic conditions of a school district are strongly associated with the proportion of students identified; that is, without taking into account students' gender and ethnicity, some portion of the

variation in districts' identification rates can be explained by this combination of predictor variables.

We next sought to determine whether both individual student characteristics and districts' sociodemographic characteristics would continue to be significantly associated with identification in a combined model and whether the relationships between the predictor variables and identification rates were the same for each gender/ethnicity group. A model that included the nine sociodemographic variables, gender, and race was found to be significantly better than both the model with only the sociodemographic predictors and the model with only student gender and ethnicity characteristics. There were also significant predictor interactions between gender/ethnicity and sociodemographic characteristics. These findings indicate that, even after accounting for the effects of district sociodemographic characteristics, students' gender and ethnicity are important in determining the likelihood of identification. In addition, the model demonstrates that the impact of sociodemographic factors is different for each of the various gender/ethnicity groups.

Predictor Variables and Identification Rates

To illustrate the implications of the findings with respect to public policy and best practice, we examine in greater detail the relationship between three of the sociodemographic variables and identification rates. For the purpose of illustration, we selected Poverty, Nonwhite, and Per Pupil Expenditure (PPE) because they have implicit interest with respect to the alternative hypotheses regarding disproportionate representation, that is, differential susceptibility versus systemic bias.

Poverty The general consensus among advocates and researchers is that increased poverty is associated with increased risk for disability. Thus, if ethnic groups were differentially susceptible to disability, we would expect susceptibility to be positively related to poverty. Ethnic groups that experience more poverty should display increased risk for disability, and communities with more poverty should have higher rates of special education identification. Further, across the distribution of poverty, disproportionality may be driven in part by the fact that children belonging to minority ethnic groups are more likely to be found living in poverty than white children.

On the basis of the OCR data, the logistic model estimates identification rates for each gender/ethnicity group at every possible value of the sociodemographic predictors. Figure 1 shows the predicted values for MR identification across the full range of Poverty, while holding each of the other predictor variables at the median. Thus, the figure illustrates the relationship between MR

identification and Poverty, when the effects of all other predictor variables are statistically removed (i.e., held constant).

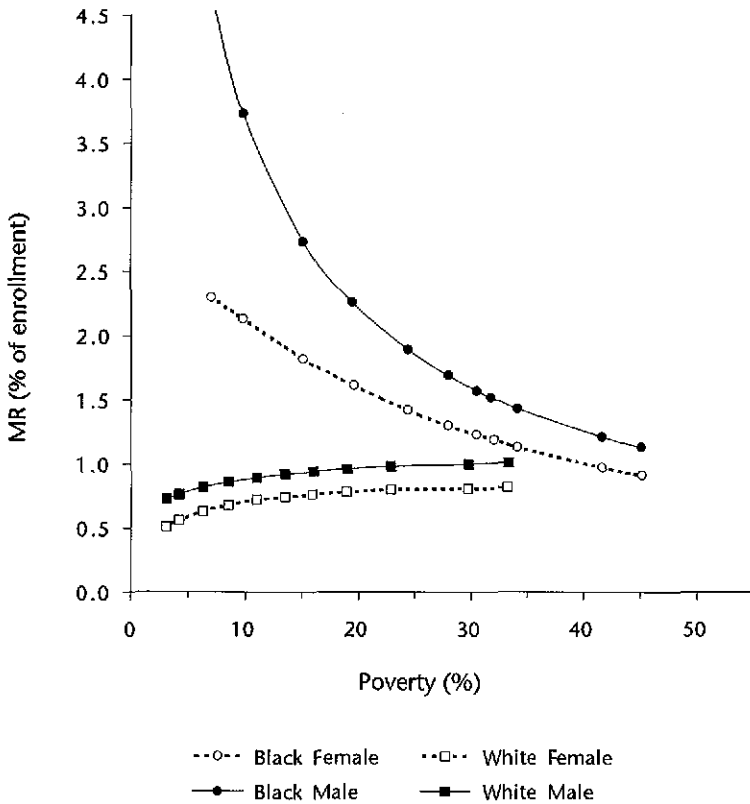
The data revealed some unexpected findings. For example, predicted values for MR identification among black students declined substantially as Poverty increased. Further, among the communities with the lowest Poverty rates, the identification rate for black males was substantially higher than even the most liberal prevalence estimates. Finally, disproportionality among Native American students, and even more strikingly among black students, was most pronounced in the relatively low-Poverty communities (for additional detail, see Oswald, Coutinho, Best, & Nguyen, 2001).

For SED and LD, the relationship between identification rate and Poverty was in the expected direction for black and Hispanic students; that is, as Poverty increased, so did identification. For white and Native American students, the trends for LD identification were less pronounced but generally in the opposite direction; communities with more Poverty tended to identify somewhat fewer students as LD (for additional detail, see Coutinho, Oswald, Best, & Forness, 2002).

The Poverty data can be viewed as supporting differential susceptibility for SED and LD among black and Hispanic students. The MR data, however, appear to support a hypothesis of systemic bias. Some portion of the disproportionality in low-Poverty communities may be due to white students with MR being given another disability classification, thus artificially depressing the white rate. Nonetheless, the absolute levels of MR identification among black students (especially black males) in low-Poverty communities suggest that a substantial number are being labeled MR inappropriately. The situation in high-Poverty communities is more difficult to interpret. However, the data suggest that, in these communities, the system may be breaking down entirely so that many students with MR go unidentified or are given another disability classification. For example, segregated, high-Poverty schools and districts may have less capacity to provide for students' needs.

Percentage of Enrolled Children Who Are Nonwhite With respect to Non-white, the expected relationship with disability identification is null. There is no apparent rational reason to hypothesize that living in a community that includes greater (or smaller) numbers of ethnic minorities should represent a risk factor for disability for students of any ethnicity. If such a relationship is observed, and particularly if the relationship is different for the various gender/ethnicity groups, one has little choice but to suspect systemic bias or discrimination.

FIGURE 1
Mental Retardation (MR) Identification Rates and Poverty



For MR and SED, white student identification rates are generally consistent with rational expectations; living in communities with greater or smaller numbers of ethnic minorities appears to have relatively little effect on identification. As communities become increasingly Nonwhite, however, white students are substantially less likely to be identified as LD. For black students, particularly black male students, living in a community with few Nonwhite students is a substantial risk factor for MR and SED identification, leading to marked disproportionality at that end of the distribution. Conversely, Native American students living in high-Nonwhite communities have substantially higher identification rates, particularly for SED. Figure 2 illustrates the relationship between Nonwhite and SED identification.

In sum, disability identification and Nonwhite proportion are related. The findings indicate a need to carefully scrutinize SED and MR identification in low-Nonwhite communities with an eye toward detecting inappropriate identification that is based more on difference than on disability. High-Nonwhite communities require some careful consideration with respect to SED identification among Native American students.

Per Pupil Expenditure Per Pupil Expenditure might be expected to have some relationship to identification in that schools that spend more money per pupil should be more likely to identify appropriate numbers of students with disabilities and less likely to sustain special education eligibility processes that are systematically biased.

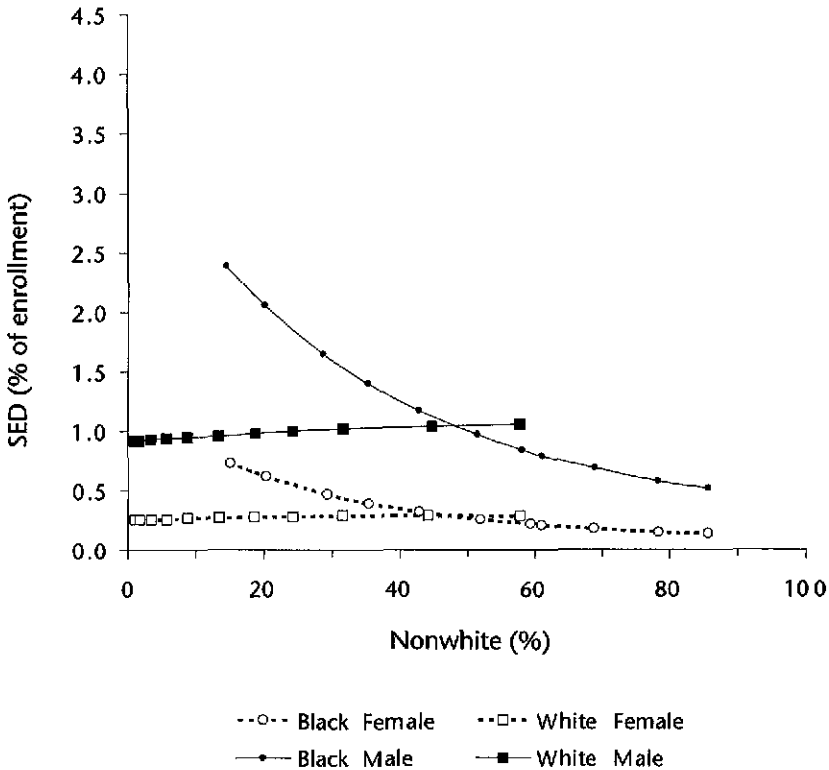
The observed relationships between identification rates and PPE, however, are complex. For students with SED, the trends match expectations reasonably well; systems that spend more also identify more students with SED. Disproportionality does not vary dramatically across the distribution except for Hispanic and Native American males, where increased PPE substantially increases disproportionality for these two groups. Disproportionality among students with MR also tends to increase across the distribution for black females and Hispanic students. At the low end of the Per Pupil Expenditure distribution (< \$5,000), disproportionality is higher for black and Hispanic students with LD.

In sum, Per Pupil Expenditure appears to have a modest relationship to identification. Communities that spend less money have somewhat more disproportionate identification of Hispanic and African American students as LD. However, for black females and Hispanic students with respect to MR, communities that spend more for education show greater disproportionality. While increased overall education expenditure may result from identifying more children for special education, there is no clear, rational explanation as to why it should be associated with increased disproportionality.

IMPLICATIONS AND RECOMMENDATIONS

The findings reported above demonstrate the complexity of factors that influence special education identification. Sociodemographic factors are clearly associated with identification rates and with disproportionate representation across gender and ethnic groups. Further, the effects of these factors are often different for the various gender/ethnicity groups and are sometimes counterintuitive. However, this work may help to identify the profiles of sociodemographic conditions that are associated with significant disproportionate identification.

FIGURE 2
 Serious Emotional Disability (SED) Identification Rates and Percent Nonwhite



In spite of the importance of sociodemographic factors, however, child gender and ethnicity also contribute to the likelihood of identification in important ways. This finding, along with the patterns observed in some of the sociodemographic variables, lend indirect support to the systemic bias hypothesis. Further study of the effects of sociodemographic variables may contribute to exploration of bias by highlighting the community characteristics associated with suspect patterns of identification.

Policymakers and educators need access to information that provides a profile of how community and school resources and other sociodemographic factors may contribute to the disproportionate representation of minority students in special education. Toward that end, a conceptually and empirically

guided research agenda is needed to disentangle effects related to differential susceptibility from those related to systemic biases in the special and regular education systems. Such research is needed at the community level to provide knowledge regarding the significance of disproportionality and recommendations regarding how to reform educational practices in a manner that yields equitable and effective educational experiences and improved education outcomes for all students.

NOTES

1. Preparation of this manuscript was supported in part by the Field-Initiated Studies Program of the National Institute on Educational Governance, Finance, Policymaking, and Management, Office of Educational Research and Improvement, U.S. Department of Education (Grant No. R308FG70020).
2. Additional details regarding the datasets and methods used for this report may be obtained by contacting Donald Oswald, Ph.D., Virginia Commonwealth University, Box 980489, Richmond, VA 23298-0489.

REFERENCES

- Coutinho, M. J., & Oswald, D. P. (1999). Ethnicity and special education research: Identifying questions and methods. *Behavioral Disorders, 24*, 66–73.
- Coutinho, M. J., & Oswald, D. P. (2000). Disproportionate representation in special education: A synthesis and recommendations. *Journal of Child and Family Studies, 9*, 135–156.
- Coutinho, M. J., Oswald, D. P., Best, A. M., & Forness, S. R. (2002). Gender and socio-demographic factors and the disproportionate identification of minority students as emotionally disturbed. *Behavior Disorders, 27*, 109–125.
- Gottlieb, J., Gottlieb, B. W., & Trongue, S. (1991). Parent and teacher referrals for a psycho-educational evaluation. *Journal of Special Education, 25*, 155–167.
- Harry, B., & Anderson, M. G. (1994). The disproportionate placement of African American males in special education programs: A critique of the process. *Journal of Negro Education, 63*, 602–619.
- Larry P. v. Wilson Riles. 343 F. Supp. 1306 (N.D. Cal. 1972) (preliminary injunction). Aff'd 502 F. 2d 963 (9th cir. 1974); 495F. Supp. 926 (N.D. Cal. 1979) (decision on merits). Aff'd (9th cir. No. 80-427 Jan. 23, 2984). Order modifying judgment, C-71-2270 RFP, Sept. 25, 1986.
- Macmillan, D. L., & Balow, I. H. (1991). Impact of *Larry P.* on educational programs and assessment practices in California. *Diagnostique, 17*, 57–69.
- Marshall et al. v. Georgia. U.S. District Court for the Southern District of Georgia, CV482-233, June 28, 1984.
- Oswald, D. P., & Coutinho, M. J. (2001). Trends in disproportionate representation in special education: Implications for multicultural education policies. In C. A. Utley & F. E. Obiakor (Eds.), *Special education, multicultural education, and school reform: Components*

- of a quality education for students with mild disabilities* (pp. 53–73). Springfield, IL: Charles C. Thomas.
- Oswald, D. P., Coutinho, M. J., Best, A. M., & Nguyen, N. (2001). The impact of socio-demographic characteristics on the identification rates of minority students as mentally retarded. *Mental Retardation*, 39, 351–367.
- Oswald, D., Coutinho, M., Best, A., & Singh, N. (1998). Ethnicity in special education and relationships with school related economic and educational variables. *Journal of Special Education*, 32, 194–206.
- U.S. Department of Education. (1994). *Office for Civil Rights E&S time series data: 1968–1994*. Washington, DC: Author.
- U.S. Department of Education. (1998). *Office for Civil Rights—fiscal year 1998: Annual report to Congress*. Washington, DC: Author.
- U.S. Department of Education. (2000). *Twenty-second annual report to Congress*. Washington, DC: Author.
- Wagner, M., D'Amico, R., Marder, C., Newman, L., & Blackorby, J. (1992). *What happens next? Trends in postschool outcomes of youth with disabilities. The second comprehensive report for the National Longitudinal Transition Study of Special Education Students*. Menlo Park, CA: SRI International.

CHAPTER TWO

Racial Disparities in the Identification, Funding, and Provision of Special Education

THOMAS PARRISH

This chapter examines the extent to which some minority students are overrepresented among students receiving special education, while some also may be underserved. Not only is this an issue of civil rights and equity, but it also has economic significance: annual special education expenditures are estimated to exceed \$50 billion in 1999–2000, or about 14 percent of total public education spending (Chambers, Parrish, & Harr, 2002).

In at least forty-five states, black children in special education are extensively overrepresented in some categories. Extensive overrepresentation is also found for American Indian children. Underrepresentation appears widespread for Asian American/Pacific Islander children in most categories, with Hispanic children being overidentified in some states and underidentified in others.

The category of disability where overrepresentation is most likely is mental retardation (MR). Each racial minority group shows overrepresentation in this category in at least one state. Blacks are the minority group for which MR overrepresentation is the greatest. Only twelve states do not overrepresent blacks to an extensive degree in the MR disability category. Furthermore, given the seeming variability in classifying students across the “soft” disability categories of MR, emotional disturbance (ED), and specific learning disability (LD), overrepresentation of black students appears even worse than the count of thirty-eight overidentifying states in the category of MR would suggest.¹ Of the twelve states that do not overrepresent black students in the category of MR, six overrepresent them in one of the other soft categories.²

It may be expected that certain racial groups would exhibit higher percentages of students with disabilities due to socioeconomic factors. For example,

black children in this country are known to have relatively higher rates of child poverty and malnutrition. However, the data analyzed for this study indicate that the high degree of racial disproportionality in special education cannot be attributed solely to the effects of poverty. Despite the anticipated positive relationship between poverty and health conditions as anticipated precursors to placement in special education (U.S. Department of Education, 1997), prior examination of this issue shows no significant relationship between identification for special education and poverty (McLaughlin & Owings, 1993).

It is well established that blacks, for example, are disproportionately poor, which could be expected to correspond with higher levels of special education identification due to related factors such as poor health, inferior schools, and family stress. However, comparisons of identification levels have shown that the degree of racial disparity in rates of identification for black children with "hard" disabilities that are easy to diagnose medically, such as visual or hearing impairment, is significantly smaller than the degree of racial disparity in rates of identification for the soft, subjective categories.

This chapter also examines the extent to which these patterns of over- and underrepresentation relate to the allocation of special education resources. Special education formulas that vary funding based on category of disability appear to show a troubling link with overidentifying and underfunding minority students. These funding formulas may over-emphasize disability at the expense of more important considerations, such as accurate identification, equitable funding, and the provision of appropriate services. Neutral funding formulas, such as those required for distribution of federal funds under the Individuals with Disabilities Education Act (IDEA), seem to be less associated with minority overrepresentation and are more likely to provide equitable special education funding for high-minority districts. These neutral formulas, along with enhanced monitoring and enforcement, are needed to ensure appropriate identification and labeling.

To decrease reliance on special education services for underachieving minority children, policymakers should address more directly the academic needs of students who are struggling to meet these new standards. For example, the current Bush administration calls for improving reading instruction in the early grades. Others have called for more extensive prereferral interventions in the general education setting. For example, efforts can be made to better tailor instructional methods and behavioral responses of teachers to an individual student's learning and emotional needs. The idea is that teachers should attempt a variety of educational strategies to reach students who are struggling academically or socially before referring them for special education evaluation (Hartman & Fay, 1996; Parrish, 2001).