FROM DESEGREGATION TO OVERREPRESENTATION: THE UNLAWFUL AND DAMAGING EFFECTS OF NATIONALLY NORMED ASSESSMENTS AND MISSIDENTIFICATION OF BLACK STUDENTS AS DISABLED

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INTRODUCTION

While Brown v. Board of Education (1954) ended government-sponsored segregation in United States’ public schools,¹ San Antonio ISD v. Rodriguez (1973) legitimized de facto segregation and catalyzed the two-tier education system of contemporary America.² American schools today are as segregated by race as they were in the 1950s when Brown v. Board was decided.³ Moreover, when compared to white students, black students are three times more likely to live in poverty⁴ and four times less likely to enroll in a post-secondary, degree-granting institution.⁵ In this bifurcated education system wherein poor, minority students receive an education far inferior to that of their richer, whiter peers, they are tested for learning disabilities and cognitive deficits on nationally normed assessments. This practice results in the overrepresentation of black students found disabled. Indeed, black students are three times more

likely to be labeled mentally retarded and twice as likely to be labeled emotionally disturbed when compared to all other racial/ethnic groups combined.  

In this article, I will show that until school districts abandon the practice of using nationally normed assessments for the purposes of diagnosing a student as disabled, minority students in low-income schools will continue to receive an inadequate and unlawful education. For a poor, black student attending an under-performing school, a disability label damages his chances of receiving an adequate education in three distinct ways. First, the special education services at under-performing schools often are minimally effective. Second, the disability label makes it difficult to earn credits toward graduation and harder to graduate on time. Finally, the disability label will likely follow him throughout his time at school. Not only is the disability label damaging to a misidentified student, the practice of identifying students based on a nationally normed assessment and the education often provided in response thereto is unlawful.

In their 2001 article, Ralph Gardner and Antionette Halsell Miranda summarize the findings of key research related to the overrepresentation of minority students receiving special education services. The authors describe the impact of Brown v. Board, key lawsuits related to discriminatory testing practices in the 1970s, and Beth Harry and Mary G. Anderson’s 1994 research that first proved overrepresentation of minorities receiving special education services. Gardner and Halsell go on to cite discriminatory testing practices, “poor academic instruction,” “social and psychological barriers,” and “parental/community support” as the four major factors

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for overrepresentation of black students labeled with mild disabilities. Gardner and Helsell provide valuable context regarding the overrepresentation of black students in special education. However, in this article I will focus specifically on discriminatory testing practices because educators can immediately end discriminatory testing thereby dramatically reducing instances of misidentification. Until legislatures or the courts dismantle the two-tier education system in America, recognizing equal education as a fundamental right, educators must mitigate the unlawful damage of misidentification and reduce overrepresentation of black students receiving special education services by norming assessments used for special education diagnostic purposes against an appropriate demographic.

II. THE SPECIAL EDUCATION LANDSCAPE AND RELEVANT LAW

A. IDEA Mandates

The Individuals with Disabilities Education Act (IDEA) governs special education in American public schools. Section 300.173 addresses overrepresentation and requires states to implement policies and procedures to prevent overrepresentation. Section 300.8 defines a disability as a condition that adversely affects a child’s educational performance and identifies 13 categories of disabilities. To evaluate academic performance, IDEA outlines an evaluation procedure in Section 300.304. The relevant portions of the section provide that an evaluation consist of multiple measures, which can include response to intervention, and utilize only those

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8 The United States’ legislative bodies and her courts have done a grave disservice to American students and families by perpetuating unequal education. However, the purpose in this paper is to highlight one specific problem in our schools and offer a solution that can be implemented immediately.


assessments that are “technically sound.” Next, the section stipulates that assessments be administered by a professional. Finally, the assessments must “not to be discriminatory on a racial or cultural basis.” Nationally normed assessments, used with students in underperforming schools who are of a minority race or culture, violate IDEA. Finally, IDEA explicitly states a “child may not be identified of having a learning disability if there was a lack of appropriate instruction in reading or math, of if the child has limited English proficiency.”

B. Unlawful Evaluation Practices

While IDEA broadly defines how a student with a disability is diagnosed and requires that such diagnosis does not result from discriminatory testing, it fails to stipulate which specific assessments may be used. Therefore, educators at the school level determine which assessments to use and they most often choose a nationally normed individual IQ or achievement test. Using a nationally normed assessment is both damaging to the assessed student and in violation of IDEA. By definition, a student in an underperforming school performs less well on an assessment than the majority of his peers across the country. More specifically, a student in an underperforming school earns comparatively, and thus inaccurately, low scores on nationally normed assessments because he or she has received a substandard education. These depressed test scores place a student in an underperforming school at increased risk of recommendation for special education services and misdiagnosis of disability. Such evaluation procedures are illegal under 300.304 due

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12 Id.
to their discriminatory nature and under 300.173 in states without policies and procedures to expressly forbid the practice.

My experiences as a special education teacher in a large, public high school, further illustrates how nationally normed assessments administered to undereducated students for the purposes of special education identification are damaging and illegal. During my time as a teacher, all students evaluated for the purposes of special education diagnosis and services took the Woodcock Johnson (WJIII). The WJIII, a common assessment tool for special education teachers, assesses all areas of achievement listed in IDEA and can be administered in a relatively short amount of time. Moreover, it is useful as both a diagnostic and formative assessment for a student of any age. Upon completion of the test, the assessor uses the included score report software to generate a report which includes the student’s raw score, standard score, and age and grade equivalency on each subtest. In other words, the data gleaned from the WJIII reflects the student’s performance in relation to the standard performance of American students at his or her grade or age. If the student attends an underperforming school he will likely underperform in comparison to the national norm. The achievement assessment results, upon which eligibility for special education is in large part based, are thus an inaccurate reflection of the student’s achievement. The assessor cannot determine whether the student’s scores indicate a disability or lack of adequate instruction. Even if both a lack of adequate instruction and a disability caused the substandard scores, the assessor cannot accurately determine the extent to which each influenced the results.

C. Damaging Policies

Assessing students in underperforming schools using a nationally normed assessment is
discriminatory and illegal under IDEA. Such evaluation procedures are also bad policy on the
student level because once diagnosed as disabled, a student will likely receive special education
services of “limited effectiveness,”\textsuperscript{15} may experience more difficulty graduating from high
school on time\textsuperscript{16}, and may be more likely to become truant or drop out of school.\textsuperscript{17} On the district
and state level, nationally normed assessments resulting in an over-representation of students
receiving special education services unnecessarily increases costs because the cost of educating a
student receiving special education services is dramatically higher than that for educating a
student in general education.\textsuperscript{18}

In 1999 Arthur J. Reynolds and Barbara Wolfe researched the effectiveness of special
education programs in inner city Chicago. The authors summarize their results writing:

These services have limited effectiveness. Only in the earlier grades, and only for children
with disabilities other than learning disabilities (such as hearing, sight, or physical
handicaps) does the program seem to add in a significant way to achievement in reading
and math. Although we do not know with certainty what their performance would have
been without these services, the use of their test scores in the year prior enables us to
capture a reasonable approximation of the counterfactual.\textsuperscript{19}

Not only are special education services unlikely to help students diagnosed with special
needs, participation in them may make it harder to graduate from high school on time and with a
diploma. On one extreme, students diagnosed as intellectually disabled (formerly known as
mentally retarded) may be placed on a high school ‘certificate track’ whereby they graduate with

\textsuperscript{15} Reynolds, A., Wolfe, B., \textit{Special Education and School Achievement: An Exploratory Analysis
\textsuperscript{16} Please see discussion and graphs on following pages of this article.
\textsuperscript{17} \textit{Id}.
\textsuperscript{19} \textit{Id}.
a certificate of completion instead of a diploma. The differences between graduating with a
diploma and graduating with a certificate are stark. The certificate track effectively bars a student
from earning any post-secondary credentials while a diploma is a prerequisite for enrolling in
most post-secondary programs. Similarly, most employment opportunities require a minimum of
a high school diploma and a certificate of completion is insufficient.

For students diagnosed with less extreme disabilities, such as learning disabilities, part of
their special education program may include remedial classes, or resource rooms, which often do
not count as a graded credit or fulfill any graduation requirements. In addition to having “limited
effectiveness,” resource classes force students to forgo the opportunity to attend general
education classes in which they could earn credits required for graduation with a diploma. By
taking such remedial classes, a disabled student will struggle to earn the credits required to
graduate on time. For example, a student graduating from a Chicago Public Schools (CPS) high
school must graduate with a total of 24 credits and 21 of those credits are prescribed.20 Such
requirements impose an unfair burden on a student with special needs spending part of his or her
time in a resource room and who wants to graduate with a diploma.

The difficulty of graduating on time when receiving special education services in a
resource room setting is particularly burdensome for students with special needs in Chicago.
While unlawful evaluation procedures may misdiagnose a student as disabled, Corey H. v
Chicago Board of Education (1998)21 shows how the label can lead schools to violate the IDEA

20 Chicago Public Schools high school graduation requirements available at http://www.cps.edu/SiteCollectionDocuments/PromotionPolicy/HSGraduationReq_English.pdf
requirement that students learn in the least restrictive environment. In discussion of the case, Judge Gettleman references survey data from CPS indicating that:

Although up to 90% of children with “mild cognitive” disabilities can be served 50% or more of the time in regular classrooms, the Chicago public schools' own survey in 1997 indicated that only 15% to 22% of these children spent more than 50% of their school days in such regular classrooms.22

Indeed, students misdiagnosed as disabled face challenges to graduating from high school with a diploma because of illegal diagnostic evaluation procedures. In schools like those in Chicago found to violate IDEA requirements around least restrictive environment, such challenges are only exacerbated.

Related to challenges around graduating on time, a disabled student is also more likely to become truant or drop out of school altogether.23 Indeed, analysis of CPS data indicates a strong correlation between receiving special education services and poor attendance.24 Comparison of CPS’s 10 highest performing schools and its 10 lowest performing schools indicates a -.73 correlation between average student attendance and percentage of students receiving special education services. The lower the percentage of students receiving special education services, the higher the attendance rate. Attendance strongly correlates (.89) to freshman on track to graduate.

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23 Pease see data tables below.
Special Education, Attendance, and Graduation at CPS Schools

Note: The first 10 schools are the 10 highest performing high schools in CPS. The second 10 schools are the lowest performing high schools in CPS. Performance is based on average ACT scores.

IV. SOLUTIONS

A. Previous Proposed Solutions

Many scholars have rightly denounced the diagnostic practice of comparing achievement and ability to determine eligibility for special education services. In *Assessment of Childhood Disorders*, authors Deborah Speece and Sara Hines reference recent changes in regulations, which provide the “possibility of not requiring an aptitude-achievement disparity.”\(^{25}\) As an alternative to traditional assessments that measure cognition in relation to achievement or, as

\(^{25}\) Speece, 598.
current IDEA definitions of disabilities indicate, seek possible explanations for a student’s substandard educational performance, Speece and Hines recommend that students be assessed following a process of response to intervention (RTI). The authors note that, “regulations by the U.S Department of Education suggest that RTI approaches are favored.”

RTI was incorporated into IDEA in 2004 and defined as a method for diagnosing a learning disability. Researchers Kavale, Holdnack, and Mostert describe the RTI process:

"The process would proceed roughly as follows: (a) students are provided with empirically validated instruction, (b) progress is monitored, (c) students who do not respond receive either more intensive or different instruction, (d) progress continues to be monitored, and (e) failure to respond may qualify a student for special education.”

While RTI remedies the discrimination in more traditional assessment practices for determining eligibility for special education and disability diagnosis, it faces a problem similar to that of implementing special education programs in underperforming schools. By definition, underperforming schools do not provide adequate education to the students they serve. RTI requires high quality instruction, analysis of student performance data, a supportive administration and staff, and systemic organization necessary to implement a new program effectively. This combination of elements is simply often missing at underperforming schools.

**B. A Better Solution**

Traditional assessments for determining special education eligibility are discriminatory, unfair, and illegal. RTI, while avoiding the problems associated with traditional assessments, is difficult to integrate at underperforming schools. Until another alternative method of assessment is developed, education professionals should use achievement assessments standardized against

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26 Speece, 599.
27 Kavale, 4.
an appropriate demographic to diagnose students as disabled. Rather than norm students in underperforming schools against their better-educated peers, assessors should norm students against an appropriately aligned demographic.

Realignment could take place on a large-scale if the makers of the Woodcock Johnson III, for instance, provided a variety of normed scales from which the assessor could choose. The difficulty in providing normed scales on a national or test-maker level are that the bell curve is unlikely to provide a specific enough norm. It would not make sense, for example, to norm by state because there are huge variants in education quality within a given state. It is problematic, and indeed not useful, to norm by race or socioeconomic status. Norming could take place on a small-scale if, at the school level, the assessor collected school-wide student achievement and assessment data to redraw the bell curve on which individual students are compared. This norming process, however, is not ideal for the same reasons RTI often fails. The human capital, organization systems, and data collection and analysis processes needed to norm at the school level are likely missing at an underperforming school.

The best method would be for school districts to provide a norming scale based on district-wide student achievement and assessment data. Norming at the school district level provides a norm that is specific enough to eliminate overrepresentation and districts are equipped to manage the process.

Additionally, there are significant financial incentives for a school district to provide a norming scale at the district level. Diagnosing students against a district-wide scale is likely to lower the number of students who qualify for special education. On average, school districts in the United States spend 90% more to educate a student with special needs than they spend to
educate a typical, non-disabled student. By eliminating overrepresentation of students receiving special education services, school districts stand to cut costs dramatically.

V. CONCLUSION

My proposal for a realignment of norms on diagnostic assessments should not be seen as a permanent solution for addressing illegal and damaging practices in assessment of undereducated students for the purposes of special education identification and disability diagnosis. It is also not a solution to the root problem of segregation in schools and the two-tier American education system segregation propagates. All American citizens should be gravely concerned about the state of American education and should demand sweeping changes.

However, until the two-tier education system in America is dismantled, school districts should mitigate the damages of misidentification and reduce overrepresentation of black students receiving special education services by norming assessments used for diagnostic purposes against an appropriate demographic rather than against a national norm. The solution is small but it can be acted upon immediately to keep non-disabled students out of special education services. By norming special education diagnostics against an appropriate demographic, a school district can both cut costs and give more students the education they need.

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