Gender Disparity: Boys v. Girls in Special Education

Jennifer J. Haggerty
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Dear Articles Editor:

Please accept the enclosed article, *Gender Disparity: Boys v. Girls in Special Education*, for your consideration for publication. This article discusses why boys outnumber girls in special education classes in a ratio of 2:1. Gender disparity in special education is a severe problem which is increasing as there are relatively few male educators. Male educators are needed in the educational system to counteract female teachers’ tendencies to send male students to special education based upon behavioral characteristics, not upon educational disabilities.

Individuals with Disabilities Education Act (IDEA), formally known as the Education for All Handicapped Children Act of 1975 (EHA), poses several requirements of schools regarding students eligible for special education. One requirement is the Least Restrictive Means. To state simply, this requirement enforces the premise that if it is possible for a disabled student to be placed in general education classes with the help of aids and supplemental material, then this should be done. If however, the disabled students are in fact deterring from the other students abilities to learn appropriately then disabled children will need to be placed in a separate special education classroom.

However, this does not counteract the predisposition of female teachers to refer male students, based upon behavioral problems, to special education classes. Currently, there is no deterrent effect in force to prevent female teachers from referring a disproportionate number of male students to special education classes solely based upon their behavior. The courts are of little help due to the fact that there is no recourse for parents in the court system because teachers and school officials are deemed excluded from educational malpractice. Therefore, there is no incentive for a female teacher to not refer a child to a special education classroom based upon behavioral problems.

In short, gender disparity is a problem that is quickly growing in intensity. Without recourse in the court system, indemnity from educational malpractice coupled with the lack of male educators in the classroom, gender disparity in the classroom is only going to increase. This is a problem which needs to be addressed immediately both by educators and by the law.

This article will discuss the shocking statistical data as to the vast disparity between the sexes in special education classes as well as how a child gets referred to special education classes in the first place. There are three main theories scholars have identified to answer the question as to why there are more boys than girls in special education classes. These theories will be discussed and explored in turn. Each theory suggests that gender disparity not only has dire consequences on the dominate male gender but also on the underrepresented females. If a teacher feels that a female child is in need of special education classes, she might not get referred due to the fear that they will suffer from isolation and thus will suffer both physically and emotionally. Therefore, female students who are in actual need of these classes, will further suffer because they are being denied the education they are required to by law.
Further, “Gender Disparity” will set forth extra guidelines which IDEA should address and incorporate into their statute as well as a discussion about sex segregation in schools under Title IX. While educators may not be knowingly or intentionally sex segregating their students, sex segregation is exactly what they are accomplishing. As a result classrooms are dominated by male students.

I think that you will find that the text and footnotes of “Gender Disparity” will not require substantial editorial work. I believe the sources upon which I depend are all readily available, but if not I will be happy to provide you with photocopies of any materials that are difficult to locate. I would also be happy to provide you with an electronic version of the article in whatever formal you may require to help with the editing process. Please do not hesitate to contact me if there is anything else that I can provide.

Very truly yours,

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GENDER DISPARITY: BOYS V. GIRLS IN SPECIAL EDUCATION

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Gender is becoming an apparent problem in special educational as more than half of children in need of special education are males. Biological behavioral characteristics of boys are getting preferential treatment over girls with learning disabilities. This is partially due to female teachers dominating the teaching arena. Social science research demonstrates that female teachers tend to have less patience and tolerance for male children and their behavioral characteristics. As a result more male children are being referred to special education classes due to lack of patience and understanding on behalf of female teachers.

Part I of this article will discuss current statistics between the number of boys and girls in special education classes, the definition of what encompasses a disability, as well as behavioral characteristics of boys and girls. Part II will include an overview of the referral process of a child to special education classes as well as who is on a prereferal team and types of services that are usually recommended and provided to special education students. Part III will address three main theories to suggest why more boys than girls are in special education classes. These theories include: 1) learning styles: boys and girls simply learn differently, 2) differences in activity levels between boys and girls and, 3) teacher bias. Part IV discusses the differences in how boys and girls are affected by gender disparity in special education classes. Part V discusses three current laws in place which address individuals with disabilities in the educational setting. These laws include Title IX and the Education for all Handicapped Children Act of 1975 (EHA) and the Individuals with Disabilities Education Act (IDEA) discussing Free Appropriate Education (FAPE), Least Restrictive Environment (LRE) and the Individualized Education Plan (IEP). Part VI addresses causes of action under IDEA including the process for which a suit may be brought
and causes of action for parents under the statute. Part VII offers suggestions on how IDEA needs to change to alleviate gender disparity in special education classes. Finally, the paper will conclude in Part VIII.

I. INTRODUCTION

It is estimated that eight million children in the United States have some sort of disability.\(^1\) Congress stated that of these eight million disabled children, three million are underserved and one million are not being served at all by the public education system.\(^2\) Of students found eligible for special education classes in elementary schools, 65% are males.\(^3\) Another study estimated that boys outnumber girls in a ratio 2:1.\(^4\) This large percentage of males in elementary school special education classes recognizes a very severe problem and poses many questions. Are girls being underrepresented or under identified in elementary school special education classes? The inverse of this question is apparent, are boys being overrepresented or over identified in elementary school special education classes? Further, are the needs of the children as a whole, regardless of gender, being met by the public school system? If not, what laws need to be enacted or changed to meet the children’s needs?

Disability is a very broad term. Blacks Law Dictionary defines developmental disability as “an impairment of general intellectual functioning or adaptive behavior.”\(^5\) Students who are labeled as having a disability may have one of a multitude of actual impairments. Some disabilities that have been studied in the public school system include learning disabilities,

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1 Nancy Mamlin & Karen R. Harris, Elementary Teachers’ Referral to Special Education in Light of Inclusion and Prereferral: “Every Child Is Here to Learn...But Some of These Children Are in Real Trouble”, 90 J. EDUC. PSYCH. 385 (1998).
2 Id.
3 Karl J. Skarbrevik, Gender Differences Among Students Found Eligible for Special Education, 17 EUR. J. SPECIAL NEEDS EDUC. 97, 98 (2002).
4 Michael L. Wehmeyer & Michelle Schwartz, Disproportionate Representation of Males in Special Education Services: Biology, Behavior, or Bias?, 24 EDUC. & TREATMENT OF CHILDREN, Feb., at 28.
emotional disabilities, speech disabilities, visual and hearing disabilities, and mental and physical disabilities.  

It may be very easy for a child to be labeled as having a disability or fall into a category of disabilities just because the array of disabilities is so large. However, this still does not answer the question as to why so many more boys than girls are in elementary special education classes. One might postulate that it would be just as likely for a girl to be labeled with a disability as it would a boy, but as this paper later discusses, it may actually be easier for a boy to acquire certain types of disabilities because of chromosomal differences to girls or to be labeled as having a disability based upon both behavioral differences between the two sexes and teacher bias.

Characteristically, girls tend to be more timid, feel isolated and hide their emotions. Children cannot learn in an environment where they are isolated, and underrepresented due to their gender ratio. Boys on the other hand tend to act out and show their aggression. Children also cannot learn in an environment where they are acting out and unwilling to submit to the tranquil style of learning which is required in the public school system.

Congress has enacted several laws for students who are disabled. One such law is Individuals with Disabilities Education Act. Another such law, not necessarily based on disability standards but on gender standards, is Title IX. Each of these laws will be discussed in detail. Currently, children with disabilities, whether male or female, are not getting a fair chance at the education which they are entitled. Further these laws will be examined to see how either

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6 http://www.iteachilearn.com/uh/meisgeier/statsgov20gender.htm
7 Martha J. Coutinho & Donald P. Oswald, State Variation in Gender Disproportionality in Special Education, REMEDIAL AND SPECIAL EDUC. Jan.—Feb. 2005, at 8.
they or the public education system, or perhaps both, needs to change to meet the individual needs of children with disabilities.

II. OVERVIEW OF THE REFERRAL PROCESS OF A CHILD TO SPECIAL EDUCATION CLASSES

Before one can address how gender disparity affects both males and females in special education classrooms, one needs to understand the referral process of a child to special education classes.

When a child appears to have trouble learning or behaving in a classroom, a teacher will notify the school counselor or psychologist and they begin assessing the child by gathering certain information. Information about the child will be obtained through meetings with parents, perhaps meeting with the student by observing the student and analyzing the student’s performance on schoolwork as well as analyzing behavioral characteristics of the child. All of these people make up the school instructional team otherwise known as the prereferral team.

Once this critical information has been gathered, school personnel will determine if the child needs additional help in the classroom and they will also determine if the child has a disability which is affecting his or her performance in the classroom. Disabilities that can be addressed include “learning disabilities, attention deficit hyperactivity disorder (ADHD), emotional disorders, mental retardation, autism, hearing impairment, visual impairment, speech or language impairment or developmental delay.” School personnel, parents, and doctors will evaluate the specific needs of the student and will develop a comprehensive evaluation report to comply with their findings and determine the extra skills the child needs to work on and how that

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10 http://kidshealth.org/parent/growth/learning/iefp.html
11 Id.
12 Mamlin & Harris, supra note 1, at 387.
14 Id.
can be accomplished. Once the comprehensive evaluation report is foundationally laid out, an Individualized Education Plan (IEP) will be developed to ensure that the school is meeting the needs set forth in the comprehensive evaluation report.\textsuperscript{15} At all stages of the process documentation is necessary to ensure that the child’s needs are being properly met.\textsuperscript{16}

IEP’s are developed to state the services the child needs and to state how, when, where and how often those services will be provided to the child.\textsuperscript{17} Services available to a child may include, but are not limited to, “special education, speech therapy, occupational or physical therapy, counseling, audiology, medical services, nursing, vision or hearing therapy.”\textsuperscript{18} The type of service(s) recommended for the child will determine where the child will go to obtain those services. For example, if it is a service that can be taught or integrated into the ordinary course material for the entire class then it will be done in that manner.\textsuperscript{19} If, however, it is a service that is special or unique to a certain child and cannot be integrated into ordinary course material, the child may need to be extracted from that class and taken to another class to receive the appropriate services for his or her special needs. It is important that the child remain placed in the least restrictive environment according to the Individuals with Disabilities Education Act (IDEA).\textsuperscript{20}

IDEA requires that if the child can be placed in an environment with students who are not in need of special services but can still benefit from those services that this should be done to achieve the least restrictive environment standard. If, however, the child cannot benefit or learn in a normal classroom, then he or she should be moved to another classroom where his or her

\begin{enumerate}
\item \textsuperscript{15} Id.
\item \textsuperscript{16} Mamlin & Harris, supra note 1, at 387.
\item \textsuperscript{17} http://kidshealth.org/parent/growth/learning/iep.html
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Id.
\item \textsuperscript{20} 20 U.S.C.S § 1400 (2009).
\end{enumerate}
needs would be better met and in this situation this would be the least restrictive environment. If
the child’s needs change and his or her environment changes to a more restrictive environment,
then it is the duty of the school to change that environment back to the least restrictive
environment. This may include placing the child back in normal classes or removing the child
from normal classes if these classes prove to be more restrictive.

III. THREE MAIN THEORIES TO SUGGEST WHY THERE ARE MORE BOYS THAN GIRLS IN SPECIAL EDUCATION CLASSES

Social science research has suggested three main theories that shed light on why more boys than girls are in special education classes. These theories include (1) the stereotype that boys and girls simply learn differently, (2) boys’ behavior is more of a problem in the classroom because they tend to be more rambunctious and troublesome when compared with a tranquil girls behavior and (3) teacher bias in the education system. Each of these theories will be discussed in turn.

A. Learning Styles: Boys and Girls Simply Learn Differently

Biologically speaking, girls are at a higher advantage than boys for not developing a learning disorder. This may be caused by differences in biological, hormonal or genetic factors, maturation and development, cognition, behavior and brain development. For example, boys tend to have more problems associated with birth, or at birth, than girls. Research indicates that boys are more susceptible to “higher rates of fetal mortality, postnatal mortality, complications

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21 http://old.nichcy.org/pubs/ideapubs/lb2tst.htm
22 Id.
23 Wehmeyer & Schwartz, supra note 4, at 29.
24 http://www.iteachilearn.com/uh/meisgeier/statsgov20gender.htm
26 Coutinho & Oswald, supra note 7, at 8.
during gestation and childbirth, and congenital malformations.\textsuperscript{27} All of these could lead to developmental disabilities in boys.

In regards to genetics, genetically boys only have one X chromosome while girls have two X chromosomes.\textsuperscript{28} If, by chance, a girl has a defect in one of her X chromosomes then her other X chromosome may make up for the first’s defect.\textsuperscript{29} Males who have an X-linked chromosomal abnormality, or defect, are susceptible to developing hemophilia and fragile x-syndrome because they do not have another X chromosome to make up for the abnormality, or defect, in the first chromosome.\textsuperscript{30} Both of these sex linked, chromosomal diseases can cause mental retardation in males.\textsuperscript{31} In addition to chromosomal differences between males and females there are also differences between the structures of the two sexes brains.\textsuperscript{32} Male tend to have one hemisphere of their brain dominant over another hemisphere which is suspected to lead to differences in learning styles.\textsuperscript{33}

Finally, girls tend to mature more rapidly than boys; this difference in maturation rate may affect how they learn in school.\textsuperscript{34} When a child is placed in school, at an early age, typically the curriculum is based on language skills and fine motor muscle development.\textsuperscript{35} Because girls may be more mature than boys they tend to already have learned many of the language and fine motor skills before they even enter school.\textsuperscript{36} But this may not be true for boys.\textsuperscript{37} When boys enter school at an early age, they are still developing their language and motor skills. Therefore,
boys may be at an increased risk of being placed in special education because they appear to be lagging behind the girls.  

**B. Differences in Activity Levels Between Boys and Girls**

Boys are more likely to act out in class. Boys may act out more because they tend to be “more active, combative and engage in a fight-or-flight response.” Teachers expect that once a child, whether male or female, enters school he or she will be ready to learn and behave accordingly. Many centuries ago, when humans were just beginning their reign, males were “required to develop special acuity, to be highly active, and to be physically aggressive.” Conversely, females learned verbal skills, how to multitask, and nurture their offspring. Because of the differences in expectations between the sexes throughout evolutionary history, differences in learning styles and behavioral styles have evolved.

The result of boys acting out in a classroom in a modern society has had a dramatic impact on their behavior and learning style. Humans are no longer in a Neanderthal world; they have evolved into a very sophisticated and educated society with expectations of tranquility. Today, a boy being aggressive and combative may be viewed as having a behavior problem which may lead to him getting referred for placement in a special education program. This is quite a different result from being viewed as the dominant species that has evolved into man over time.

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38 *Id.*  
39 *Wehmeyer & Schwartz, supra* note 4, at 29.  
40 *Stolzer, supra* note 9, at 87.  
41 *Id. at 85.*  
42 *Id. at 83.*  
43 *Id. at 87.*  
44 *Id. at 83.*
As a result of their apparent acting out, boys will typically get more attention from the
teacher than a girl who is not acting out but instead is quite tranquil.\textsuperscript{45} If a teacher has two
children, one boy (acting out) and one girl (not acting out), in a classroom, the boy acting out is
more likely to get referred for special education than the girl who is not acting out. This
discrepancy is based solely upon behavior. While the child who is acting out gets referred to
special education, the other child who is not acting out is ignored.\textsuperscript{46} This child may also be in
need of special education but those needs are dismissed simply based on behavioral differences.
This correlation between behavior and gender may lead to more males being placed in special
education than females. Behavioral problems are also greatly associated with teacher bias which
is discussed below.

\textbf{C. Teacher Bias}

Teacher bias may result from expectations of teachers that may not be accurate. These
inaccurate beliefs may be a detriment to identifying children with disabilities.\textsuperscript{47} As a result
teachers may pay different amounts of time and even use different education styles between boys
and girls.\textsuperscript{48} People tend to have different expectations based upon stereotypes of the two sexes.

It is expected that males will do better than females in school based upon their sex.\textsuperscript{49}

Gender bias in the classroom takes many forms, some direct and some indirect, with
teachers calling on boys more often than girls, encouraging more assertive behavior in
boys than in girls, evaluating boys’ papers for creativity and girls’ for neatness, and

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\textsuperscript{45}Skarbrevik, \textit{supra} note 3, at 98.
\textsuperscript{46}Id. at 99.
\textsuperscript{47}Margarita Bianco, \textit{The Effects of Disability Labels on Special Education and General Education Teachers’ Referrals for Gifted Programs}, 28 Learning Disability Q. 290 (Fall 2005).
\textsuperscript{49}http://www.iteachilearn.com/uh/meisgeier/statsgov20gender.htm
\end{flushright}
giving boys the time and help to solve problems on their own, but helping girls along by simply telling them the right answers.\textsuperscript{50}

As a result of these gender biases between male and female students, it is more likely that children will be misidentified for special education programs because an idea already exists that a child must fit into a neat box and if he or she does not fit then something must be wrong, even if in actuality nothing is wrong.

The gender of the teacher may also play a role in student bias. Craig J. Rice and Deborah Peters Goessling conducted a study which discovered that male teachers were more likely to identify a child as having a learning disorder than a female teacher at a ratio of almost 2:1. \textsuperscript{51} This is because female teachers are thought to be more caring, positive and thus better able to put up with children acting out or being rambunctious in class. \textsuperscript{52} This same study also stated that male teachers are more likely to pay less attention to male students which leads to them being less caring and supportive of their male students. Several other studies also indicate that female teachers are actually more likely than male teachers to refer students to a special education program. \textsuperscript{53} Because it is more likely for female teachers to refer children to special education programs based upon behavioral problems, the tendency for false diagnosis increases. As a result, males are overrepresented in the special education programs. \textsuperscript{54} Males tend to be overrepresented because they tend to act out, “display physically active behaviors that are


\textsuperscript{52} Id.

\textsuperscript{53} Lance L. McIntyre, Teacher Gender: A Predictor of Special Education Referral?, 21 J. LEARNING DISABILITIES 382. (1988).

\textsuperscript{54} Id. at 383.
inappropriate in classrooms, in which lengthy periods of seatwork and attention to cognitive task are required.” 55

Another problem associated with teacher bias is that the educational system has so many more female teachers than male teachers. 56 As a result it is harder for female teachers to identify and address the learning styles of male students. 57 Recently, an idea was proposed that “if there were more male teachers in general education settings, there would be fewer referrals of boys to special education.” 58

However, five factors exist indicating why education is vastly dominated by female teachers: (1) low social status, (2) low salary, (3) idea that teaching is women’s work, (4) potential false accusations for child abuse and sexual harassment and (5) few male peers to identify and relate to. 59 A possibility exists that because female teachers tend to be less lenient toward boys in special education, more male teacher representation would actually help the situation by allowing male teachers to tune into the needs of male students. This might decrease their representation in special education.

IV. BOYS AND GIRLS ARE AFFECTED DIFFERENTLY BY GENDER DISPARITY IN SPECIAL EDUCATION CLASSES

A. How Gender Disparity Affects Female Students

Due to the fact that boys are overrepresented in special education classes, some teachers neglect to refer girls to these same classes because the girls will be so underrepresented. 60 This

55 Id.
56 Id.
58 Id. at 348.
59 Id. at 347-348.
only further exacerbates the problem. Males and females exhibit their behavior in different ways. Females may present mood disorders or depression which could be linked to disabilities.61 This should, in theory, require them to be referred to a special education class to learn how to manage their behavioral difficulties. But again, teachers may perceive that girls are just moody or more depressed than boys and therefore these feelings will pass as the child becomes older. As a result girls do not get the opportunity for the help they need or deserve. While moodiness may pass in some instances one can never be sure that moodiness or depression is indicative of the fact that the child happens to be a girl. Girls should not be ignored because of the common misperception that girls are moody. They deserve to be given the attention that they require, stereotypes aside. This bias in believing that girls are just moody may be one important reason why girls are underrepresented in special education classrooms. Differing signs of behavior between boys and girls cannot be ignored simply because teachers expect that behaviorally girls will be moody and boys will act out.

One recent study described four characteristics of children with emotional and behavioral disabilities and what effect special education classes have on them and their behavioral differences.62 “(1) Girl’s problems are hidden; (2) Girls’ minority status in special education leads to isolation; (3) When girls are physical it means something different; and (4) Girls are isolated from their female peers physically and emotionally.”63 The first and fourth characteristics tend to deal with behavior and how behavior is perceived by teachers in the classroom. This study had two participants who were quoted as saying, regarding the differences in behavior between boys and girls that, “The girls are much more quite on the surface but they hold a lot of things in and they like to walk away. That’s their mechanism of coping. . . is to

61 Id. at 556.
62 Id. at 555.
63 Id.
walk away versus becoming physically aggressive.”64 The other participant, speaking of boys’ behavior, was quoted as saying, “Boys’ behavior is much more overt and acting out and calls for attention, are more obvious, than the girls who may be going through the same crisis and will retreat and sit quietly.”65 Based upon this study and the responses from some of the participants it is clear that boys do act out more than girls and because of this behavior they are more likely to get some sort of attention, whether it is a referral to special education or a referral to behavioral management. But on the other hand, it is also quite clear that some girls, due to their quiet, repressive nature, are more likely to be ignored and not have their needs dealt with properly.

Characteristics two and four tend to deal with some of the problems girls face when they do get placed in special education classes. A girl who is referred to attend special education may find that she is the only female in the class because teachers have referred mostly males. This male domination will make it extremely difficult for girls to develop friendships and feel included in the classes when they are the minority.66 Feelings of isolation in the classroom will make it more difficult for a girl to learn and to identify with her other peers. This is precisely the opposite result from what was desired. Special education classes are meant to be a place for a child to learn based upon his or her individual learning styles and needs.

B. How Gender Disparity Affects Male Students

Teachers in public school systems tend to be female. Female teachers are less likely to understand and educate male students to their fullest potential.

Our schools generally do not have the curricula and teaching methods designed to meet boys’ specific needs and interests. . . They have not addressed boys’ unique learning styles and developed teaching methods that take them into account. And most of our elementary and middle schools have a dearth of male teachers. This sends an early and

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64 Id. at 556.
65 Id.
66 Id. at 557.
faulty message to our boys—that education and learning are primarily for girls and women.\textsuperscript{67}

The lack of male teachers in education can be devastating to both boy and girl students. But primarily for the boys there is a lack of a male role model to identify with or to approach. Men are great role models for children especially in education where they can be a principal, coach or teacher for the children to confide in, look up to and relate to.\textsuperscript{68} Each gender needs a person of the same sex with whom he or she can relate to while at school. This can be very difficult when the teacher population is vastly female. While girls may have many female role models to relate with boys are left with relatively few male role models, if any, to relate to. The lack of male role models for boys due to the lack of male teachers is a severe detriment to boy’s education. Not only would more male teachers serve as role models for male students but they also would help to offset the gender disparity seen in special education referrals. The theory is that male educators are less likely to refer a male student to special education classes; as a result fewer boys would be referred to these classes and the gender gap would begin to shrink.\textsuperscript{69}

\textbf{V. THREE MAIN LAWS REGARDING INDIVIDUALS WITH DISABILITIES IN THE EDUCATIONAL SETTING}

\textbf{1. Title IX}

Title IX prohibits discrimination based upon sex in the education setting. Title IX also prohibits discrimination based upon sex in educational facilities if those facilities are receiving federal funding.\textsuperscript{70} The two principal purposes of Title IX of the Education Amendments of 1972 (20 USCS 1681 et seq.)--which forbid sex discrimination under any education program or activity receiving federal financial assistance--are to (1) avoid the use of federal resources to

\begin{itemize}
\item \textsuperscript{67} Rice & Goessling, \textit{supra} note 57, at 347 (quoting Pollack, \textit{supra} note 57).
\item \textsuperscript{68} Id. at 348 (citing J. Basinger, \textit{Two Colleges Train Black Men to Work in Special Education}, 45 CRON. HIGHER EDUC., A12-A13 (1999)).
\item \textsuperscript{69} Id.
\item \textsuperscript{70} 20 U.S.C.A. § 1681(a)(3)-(9) (2009).
\end{itemize}
support discriminatory practices, and (2) provide individual citizens effective protection against those practices.”

Most public schools are receiving federal funding. Under IDEA (see infra discussion in text at 16-19) schools receive money based upon the number of children diagnosed with a learning or behavioral problem which needs to be addressed. Schools are receiving more federal money for boys based upon the vastly large disparity between the representation of boys and girls in special education settings.

While it is illegal to discriminate based upon sex Title IX does have some exceptions. Examples include fraternities and sororities, certain religious organizations contrary to religious tenets, boy or girl conferences and scholarships for beauty pageants. However, none of the exemptions under Title IX allow for discrimination based upon differences in behavior between boys and girls in educational classrooms. An example of a case dealing with Title IX exemptions is *Jeldness v. Pearce* which involved exemptions of prisons. In *Jeldness*, female inmates alleged that the Oregon State Department of Corrections discriminated against women, but not against men, when providing educational opportunities to the inmates. These female inmates claimed Title IX discrimination in six educational programs offered by the Oregon penal system. Programs included prison industries, forest camp, farm annex, apprenticeships, vocational programs, and college courses. Female inmates were not denied access to these programs, the programs were just laid out in a way that men and women had access to them in different ways. This included women being searched before they could travel back and forth from the women’s

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72 Stolzer, supra note 9, at 87.
73 http://www.dol.gov/oasam/regs/statutes/titleIX.htm
75 *Id.*
76 *Id.*
77 *Id.*
to men’s prison and vice versa.78 Women were also not allowed to participate in certain apprenticeship activities such as mechanical trade.79 The court reasoned that in a prison context Title IX does not require equality but instead parity.80 The court concludes that Title IX does not require gender-integrated educational classes in prison institutions.81

2. Education for all Handicapped Children Act and Individuals with Disabilities Education Act

The Education for All Handicapped Children Act of 1975 (EHA) is the predecessor for the Individuals with Disabilities Education Act (IDEA). Both acts require that children with disabilities have the right to public school education and should not be discriminated against because of their disabilities.82 Because EHA rolled into IDEA, from here on this paper will refer to IDEA and its requirements.

A. FAPE

IDEA mandates a free appropriate public education (FAPE) for all students regardless of their disabilities. IDEA requires a free appropriate public education be made available to all children with disabilities.83 Section 1400 of 20 U.S.C.S. states that its purpose is “to ensure that all children with disabilities have available to them a free appropriate education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”84 The statute requires school districts to

78 Id. at 1223.
79 Id.
80 Id.
81 Id. at 1228.
offer special education programs that benefit the child based upon his or her disabilities and needs. Schools that receive funds under IDEA must provide a FAPE for all disabled students regardless of funding dilemmas.

Monies that are received under section 1463 of IDEA are to be used to “support activities to improve services provided under this title including the practices of professionals and others involved in providing such services to children with disabilities that promote academic achievement and improve results for children with disabilities.” One way that these funds can be used is to promote academic achievement by “providing training for both regular education teachers and special education teachers to address the needs of students with different learning styles.” To promote the idea that students have many different learning styles and different learning disabilities is one step in the right direction. But it is not enough. Not only do teachers need to be better able to recognize and identify different learning styles to better educate each and every child but teachers also need to obtain skills to properly identify children who may or may not have an actual learning disability. It is obvious from the near two to one ratio of boys to girls in special education, stereotypes harvesting in teachers minds, and boys’ and girls’ different learning styles that teachers are not promoting the idea of providing equal education. Nor are they providing adequate training to education teachers, as provided by the statute, to stop this gender disparity.

Not only are teachers not properly trained to handle multiple levels of students and behavioral temperaments in the classroom, but teachers are not providing children with a well balanced education. As previously discussed, relatively few male teachers are in the classroom.

86 Id. at 163.
88 Id.
(discussed *supra* in text at 11). This leaves boy students without a male role model for almost half of the day while they are at school. It also leaves them with no one to relate to or to talk to when they are feeling dominated by female teachers. If all that children learn is being taught by one gender then they are missing another perspective. The IDEA needs to make clear that children require to be taught by both sexes to have their fair chance at an equal education. In general, it is estimated that schools have few male teachers in the classroom because of several reasons: (1) low social status, (2) low salary, (3) the idea that teaching is women’s work, (4) potential false accusations of child abuse and sexual harassment, and (5) few male peers with whom to identify.  

Many of these factors stem from a gender stereotype that teaching is women’s work, with its accompanying low status and low salary. Because the educational system is predominately female, boys are being taught over the generations that indeed teaching is women’s work. Until this gender stereotype can be reversed, teaching will continue to remain women’s work. If this remains the case, then the vicious cycle of boys being placed in special education classes by female teachers who do not want to deal with them since they tend to be loud and rambunctious will continue.

To attract more male educators to special education a support system needs to come into existence for these male educators to utilize, including people with whom male teachers can to relate and talk with about their days or dilemmas which arise among the students. If a support system is not infiltrated for men into special education then this will continue to discourage men from teaching these children. By society continuing to discourage men from teaching, children are being harmed. Male teachers are more tolerant of a male student being in their classroom and are less likely to send a male child to be evaluated for special education classes because they

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89 Rice & Goessling, *supra* note 57, at 347-348.
can more easily identify with each other.\textsuperscript{90} Gender disparity between boys and girls in special education can be offset by retaining more male teachers and therefore sending fewer boys to special education. IDEA needs to create a section in their statute that allows for students to be evaluated by teachers of both genders instead of just the gender of the teacher which initially referred the student to special education.

\textbf{B. LRE and IEP}

IDEA also requires that children be placed in the least restrictive environment (LRE). Section 1412 of 20 U.S.C.S. states that:

\begin{quote}
\textit{to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, or education with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that education in regular classrooms with the use of supplementary aids and services cannot be achieved satisfactorily.}\textsuperscript{91}
\end{quote}

In short, students are required to be in general education classrooms to the maximum extent possible unless they are not learning properly or if they are preventing other children from learning properly. A child’s least restrictive environment is designated through their Individualized Education Plan (IEP) and parental consent.

According to the child’s IEP the parent must be involved in all steps of the process.\textsuperscript{92} The parent will receive a notice that the school intends to evaluate the child and determine if the child has a disability as well as notice to initiate an IEP proceeding which will list out all of the additional instructions and remedial measures that need to be taken for that child to receive their FAPE.\textsuperscript{93} In this IPE a child’s LRE will be discussed. Usually the child will be placed in general education classrooms with aids and supplemental materials. If his or her needs cannot be met this

\textsuperscript{90} \textit{Id.} at 348.
\textsuperscript{91} 20 U.S.C.S § 1412.
\textsuperscript{93} \textit{Id.}
way then they will be placed in special education classes where their needs will be more properly met. This is how the LRE is designed: start in general education and move to special if need be.

A potential problem with LRE is that a child, usually a boy, because they are presumed to be harder to deal with, is placed in general education, with a female teacher. The teacher is likely to say that the child is still being disruptive to the other children in the classroom. While this may be the child’s LRE, he is removed because of the same problem; the teacher does not want to deal with this child and the parents have no recourse. Until the root of the problem is solved and teachers learn more effectively how to handle boys in general the situation is only going to continue to get worse. Boys will continue to be placed in special education classrooms, which may not be qualified as their LRE, but placed there anyway because of the teacher’s desires.

VI. CAUSES OF ACTION UNDER IDEA

If a person feels that IDEA has been violated he or she may state a cause of action under IDEA in two ways. 94 First he or she may assert a violation of IDEA’s substantive provisions or secondly he or she may assert a violation of IDEA’s procedural requirements. 95 A plaintiff is required to prove “that the public agency responsible for providing educational services to a disabled student failed to develop an individualized education program that was reasonably calculated to provide educational benefit to the student” to establish a violation of IDEA’s substantive provisions. 96 To establish a violation of procedural requirements, a plaintiff must prove that,

the public agency responsible for providing educational services to the disabled student failed to comply with: (1) the IDEIA’S identification, evaluation, or placement procedures or (2) the IDEIA’S procedural safeguards, including the opportunity to make

95 id. (citing 20 U.S.C.S. 1400 § 14)
96 id. (citing 20 U.S.C.S. 1400 §§ 4-7, 15)
a complaint, to receive notice of a proposal or refusal to change a student’s placement, and to have an impartial due process hearing.  

Several cases have discussed parents trying to bring suit under IDEA for placement in programs with which they do not agree. In Koopman v. Freemont County School District #1, a child who was in special education classes wanted to participate in Training Corps., an extracurricular after school activity. He was denied the right to participate and to go on special field trips with the Training Corps. because he was disabled. His parents brought suit in district court because he was being denied his FAPE. The court ruled that Koopman could not collect damages in district court because his complaint arose under IDEA and FAPE. Under IDEA one must file a civil action before he or she can file in court. “In other words, parties cannot circumvent the IDEA’s exhaustive requirements by asserting claims under other law while deliberately avoid asserting a cognizable claim under the IDEA.” IDEA does not allow parents to go through an alternative means of litigation unless they have complied with all of IDEA’s guidelines first.

Further, in Rogers v. Memphis City Schools, plaintiff requested that her child be placed in special education classes. Rogers was placed in special education classes but mostly remained in general education classes. The mother brought suit under tort theory for educational malpractice. The court held that “IDEA is the exclusive avenue for a child asserting the right

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97 Id. (citing 20 U.S.C.S. 1400 §§ 8-12, 15)
98 Koopman v. Freemont County Sch. Dist. #1, 911 P.2d 1049, 1051 (1996).
99 Id.
100 Id. at 1053.
101 Id.
102 Id.
103 Id.
105 Id. at *2.
106 Id.
to a free appropriate public education.” 107 In essence, based upon this case law, a parent can only bring suit under IDEA since IDEA is viewed as the exclusive means for pursuing a suit. But under IDEA the initial suit is conducted by an educational agency. 108 Only once the state’s educational agency has reached a conclusion can one appeal to a civil suit. 109 A state educational agency likely would tend to side with the teachers who teach within that state. Therefore, parents would not receive the impartial due process hearing to which they are entitled.

This does not offer relief to parents who have male children. If a parent has a boy who has been misplaced in special education classes based upon his naturally rambunctious behavior, it is likely that the state educational agency will side with the teacher and/or school board and agree that the child is indeed in need of special education services even if the child is not actually in need of them.

Even if the parent goes through IDEA and filed a suit with the educational agency, if the parent does not get the decision which he or she wants they will have to bring a civil suit which can be appealed. All of these suits are going to cost parents money and time. Money and time that cannot necessarily be economically feasible to many of these families.

IDEA also does not recognize the theory of educational malpractice. “‘[E]ducational malpractice’ claims have been unanimously rejected by those few jurisdictions considering the topic.” 110 This is because causes of action brought under the theory of educational malpractice would bring undue burden to “the already strained resources of the public school system to say nothing of those of the judiciary.” 111 Courts are unwilling to hear cases of educational malpractice because they believe that the school boards and superintendents are better able to

107 Id. at *7.
109 Id. at 20.
111 Id. at 488.
decide a case of educational malpractice.\textsuperscript{112} Courts are unwilling to second guess the
determination of teachers on what classes better suit a child’s needs.\textsuperscript{113} The dissent argues in
\textit{Hunter v. Board of Education Montgomery County} that educators are professionals and that if a
person may be sued for professional malpractice then teachers should not be absolved but should
instead be held liable through educational malpractice.\textsuperscript{114} Another case, \textit{Hoffman v. Board of
Education}, held that, educational malpractice is not a theory that would be entertained, as a
matter of public policy, by the courts in the State of New York.\textsuperscript{115}

Also, the court in \textit{Smith v. Alameda County Social Services Agency} reviewed several
cases involving claims of children being negligently placed in wrong classrooms.\textsuperscript{116} The court
concluded that there were no cases, which they reviewed, that stated that a school district may be
held liable for negligently placing a student in a special education class.\textsuperscript{117}

Teachers will not be punished under the tort theory of educational malpractice, but the
male students will be. Courts will only intervene in the administration of the public school
system in the most extreme and exceptional cases involving “gross violations of defined public
policy”.\textsuperscript{118} IDEA needs to recognize that if teachers are sending boy students to special
education classes for being boys than this is a “gross violation of defined public policy”. This is a
situation where the courts need to interfere.

\textsuperscript{112} \textit{Id.}
\textsuperscript{114} \textit{Hoffman, 400 N.E. 2d at 319.}
\textsuperscript{115} \textit{Hoffman v. Board of Education Montgomery County} (1979).
\textsuperscript{116} \textit{Hoffman, 400 N.E. 2d at 319.}
\textsuperscript{117} \textit{Hoffman v. Board of Education Montgomery County} (1979).
\textsuperscript{118} \textit{Hoffman, 400 N.E.2d at 320.}
VII. NOTES ON HOW IDEA NEEDS TO CHANGE IN ORDER TO ALLEVIATE GENDER DISPARITY IN SPECIAL EDUCATION CLASSES

As previously indicated several problems are associated with IDEA that need to be corrected to change the gender ratio in special education classes and make a more even playing field between male and female students and their teachers. First IDEA needs to provide some means to attract and incorporate male teachers into the teaching arena. By incorporating more male teachers, theoretically fewer male students will be referred to special education classes and ideally more female students will be identified as having a learning disability which needs to be addressed. Male teachers can serve as a role model figure for male students when they are away from home. This can be especially helpful if those students are in a household being raised by a single mother; school may be the only avenue to interact with a male adult. This will effectuate better learning for both genders, but especially that of boys.

Relatively few male teachers exist. This is likely due to the harsh realization that male teachers are frequently targeted for sexual harassment. As a result of sexual harassment claims male teachers will often have to leave their teaching positions, whether the claim is substantiated or not. The result of finding another teaching position will be extremely difficult. A case that illustrates this point is *Canutillo Indep. Sch. Dist. v. Leija*. Here a child claimed that her teacher sexually molested her during a health class.\(^{119}\) The district court adopted strict liability as the standard for sexual abuse between a student and teacher for Title IX cases.\(^{120}\) However, the court was unwilling to hold the school district strictly liable for acts of its teachers.\(^{121}\) The health teacher was terminated from his employment as a result of these allegations.\(^{122}\) Similarly, in *Morlock v. West Cen. Educ. Dist.*, a student alleged that a teacher engaged in offensive sexual

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\(^{120}\) *Id.* at 396.
\(^{121}\) *Id.* at 399.
\(^{122}\) *Id.* at 402.
conduct directed at the student.\footnote{Morlock v. West Cent. Educ. Dist., 46 F. Supp. 2d 892, 898 (1999).} This conduct included staring “at her breasts, legs, buttocks, and crotch.”\footnote{Id.} The student told faculty about this conduct so they had knowledge of its occurrence.\footnote{Id.} However, because the student did not report the allegations to the correct authority as designated by school policy, the court reasoned that the school had no knowledge of the sexual misconduct occurring and therefore was not liable.\footnote{Id. at 920.} Finally in \textit{H.M. v. Jefferson County Board of Education}, a male student alleged that a male teacher had sexually abused him over a four year period of time.\footnote{H.M. and M.M. v. Jefferson County Bd. of Educ., 179 So. 2d 793, 794 (1998).} The teacher was terminated from employment and the school district was found not liable under Title IX because they acted promptly.\footnote{Id.}

These cases illustrate that even when a male teacher does enter a school, it is hard to escape the fear of allegations of abuse. Often when allegations arise the teacher is terminated and labeled, which makes it harder to find other teaching positions. As the cases illustrate, even when a teacher is sued for sexual allegations, the court is more concerned with the school district’s liability than liability on the part of the teacher in substantiating these allegations. This could deter male teachers from entering into the profession, i.e. if courts and schools are not going to support them then how will they succeed as a teacher. IDEA needs to incorporate into the statute a method for school districts to afford male teachers support if these allegations arise. If the school district is only concerned about its own liability under Title IX and discredits the teacher, the teacher has no remedy. IDEA needs to afford male teachers remedies in these situations. The thought that a teacher will be backed by schools and courts will be an incentive for more males to teach. This idea folds into Title VII. Title VII prohibits discrimination based upon sex in the

\begin{itemize}
\item \footnote{Morlock v. West Cent. Educ. Dist., 46 F. Supp. 2d 892, 898 (1999).}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id. at 920.}
\item \footnote{H.M. and M.M. v. Jefferson County Bd. of Educ., 179 So. 2d 793, 794 (1998).}
\item \footnote{Id.}
workforce.129 Title VII requires employers to address employees on capabilities not upon sex.130 If a male teacher knew that a school district was backing him up based upon his capabilities and not because male teachers are more likely to be accused of sexual abuse then this might encourage more males to become teachers.

Second, a clean slate needs to be applied to each student who walks into the classroom to help address the issue of teacher bias. Teachers cannot go into a classroom with a stereotype or prepercieved idea associated with their male students that may or may not be applicable toward each male student. Female teachers need to be more sympathetic, more apathetic when it comes to dealing with their male students. Female teachers need to understand that in some circumstances boys will be boys and maybe more difficult and rambunctious than a girl, but at the same time the correct method of teaching these kids is not to refer them to special education. Instead teachers need to focus boys’ energy or creativity in another way to better effectuate their learning capabilities.

While schools may not be intentionally segregating students based upon their sex, schools actually are. Title IX will allow sex segregated classes in certain situations.131 Schools may offer single sex classes if students are allowed to enroll in them voluntarily and the program provides equal educational opportunities to both sexes of students.132 Schools that offer single sex educational programs must also offer a coeducational class which is substantially equal in terms of providing the same amount and kind of information to students who choose to opt out of single sex programs.133 One example of a single sex school policy that does not violate Title IX

132 Id.
133 Id.
is physical educational classes. In *Board of Education of the City of New York v. Califano*, the court stated that separate physical education classes may be administered to males and females.  

Single sex classes have two objectives:

(a) to improve educational achievement of its students through an established policy to provide diverse educational opportunities if the single-sex nature of the class is substantially related to achieving that objective, or (b) to meet the particular, identified needs of its students, provided that the single sex nature of the class is substantially related to achieving that objective. The implementation of such an objective must be done in an even-handed manner.

Segregating students based upon one gender's predominant behavioral characteristic is not an objective single sex classes are designed to meet. Because special education classes are predominately comprised of male students, schools, while perhaps not intentionally, are segregating male special education students from the rest of the student body. These children have not voluntarily enrolled in special education and definitely have not voluntarily chosen to be in a sex segregated classroom. By schools removing males from coeducational classrooms and placing these children all in one classroom, sex segregation is occurring. Sex segregation is not occurring to achieve goals or educational opportunities or to meet particular needs of the students as required by the objectives. Instead, it is occurring because boys tend to have more behavioral problems which gets them isolated from females and placed in sex segregated classrooms. According to recent research, “the general consensus is that males do not flourish in single sex environments.”  

Placement of boys in single sex classrooms reinforces gender

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roles. Boys tend to learn survival skills and girls learn domestic skills. All characteristics of typical gender roles.

Schools need to be aware that by singling out one gender, in this situation males, schools are essentially sex segregating students. Sex segregation is not an outcome that is desirable for the school and especially not desirable for the students. If a student had voluntarily chosen to be in a sex segregated classroom to meet his or her specific educational needs then that would be one thing, but here male students are being taken from the coeducational student body and placed in classrooms, largely with other males. This does not further any educational objective other than place even more difficult burdens upon these students.

Third, an objective approach needs to be applied when placing students in special education classrooms. Research indicates that when teachers complete an objective behavior checklist no significant differences were found between boys and girls when it came to emotional, behavioral, social or language skills, motor coordination or academic achievement. This poses the idea that boys are getting referred simply based upon their behaviors and not upon their learning disabilities. When a subjective criterion is used to place children in special education then it is apparent that more boys are being placed than girls. This is also hypothesized to be due to behavioral characteristics of boys instead of disabilities. IDEA needs to adopt an objective approach and criteria for teachers to use when evaluating a child for special education so that males will be referred due to disabilities and not due to behavioral

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137 Id. at 495.
139 Oswald & Best, supra note 25, at 226.
140 Id.
141 Skarbrevik, supra note 3, at 99.
142 Id. at 103.
characteristics. This includes a checklist and report that indicate what the child is struggling with, what the child is achieving, and what can be done to make his or her learning more effective. Behavior should not even be listed as a criterion on the checklist, this will eliminate the possibility of students being referred to special education simply due to behavior, and instead referred based on learning difficulties/disabilities.

Fourth, IDEA needs to incorporate a section into the statute allowing for teachers and school boards to be held responsible, and liable, for decisions which they make that effect children’s lives. Currently nothing is listed within the statute to stop a teacher from referring a child to special education classes simply based upon behavior whether a learning disability is present or not. As the case law has demonstrated, no cases illustrate educational malpractice being effective as a theory in court. Courts do not wish to impose the burden upon schools to litigate a case that involves the decision of a teacher and the placement of a child. In a sense the teachers are almost indemnified by the courts for decisions that they make regarding placement of children. Indemnity toward educational malpractice does not effectuate better or more productive learning styles of students. Instead it actually harms them because teachers make decisions about which children would be easier to deal with on a day to day basis in their classroom. Teachers need to be held liable under the theory of educational malpractice. While educational malpractice is a tort and therefore not recognized under statutory law, it still is a theory that has weight, according to the dissent in Hunter, and needs to be implemented upon teachers and educational faculty.

Fifth, IDEA needs to be revised to get the courts more involved regarding parent’s rights. IDEA requires that a parent must go through the state’s educational agency before they may even consider a civil suit. The problem with proceeding through a state’s educational agency is that
states are not willing to rule against one of their own, a teacher. Courts fear that this will open up the floodgates to all different kinds of educational lawsuits. While more lawsuits may be true, it is important that every child, regardless of disability be allowed his or her fair chance at a free appropriate public education.\textsuperscript{143}

Last, by initiating contact with the courts through avenues other than the state educational agency, parents will likely have a better chance at a non biased lawsuit. By the time a parent goes through IDEA and its loopholes and files a civil suit, time and a great sum of money have already been spent. Most parents cannot afford to try multiple lawsuits until they find a solution that works for them and more importantly for their child. Parents need a non biased avenue and court system where cases can be tried under IDEA but tried in a way that represents parents needs also not just the needs of the school district. After all, the burden of proof is on the party seeking relief, and in these situations it is parents of male students.\textsuperscript{144} Parents do not have the resources that are available to school districts to hire experts to prove their case. The burden of persuasion should be shifted to the school district for two reasons. First, this would cause the school district to make sure that each student who is placed in special education is there for a reason, whether due to learning or mental disability, not just because they are boys and their behavior is loud. Second, this will give parents the ability to put the proof on the school district if they challenge placement of their child. However, courts do not agree that the burden of proof should be shifted to the school districts because shifting the burden of proof would require school districts to spend more time and money in making sure that children are receiving proper services.\textsuperscript{145} It is also argued that enough money is already spent on IDEA administration and no

\textsuperscript{143} 20 U.S.C.S. § 1400.
\textsuperscript{144} Schaffer v. Weast, 546 U.S. 49 (2005).
\textsuperscript{145} Id.
more should be allocated to litigating cases. While courts may be reluctant to shift the burden of proof to the school district, the shift would be beneficial because shifting the burden of proof to the school district will be another avenue to make sure that school districts are being efficient with their placements and also give awareness to school districts and teachers that liability is an option if proved they are careless.

VIII. CONCLUSION

In conclusion, research has proven that a definite gender ratio disparity of nearly 2:1 exists between boys and girls in special education classes. The high gender ratio may be attributed to teacher bias, natural behaviors of boys and lack of male teachers in the education area. However, several laws are in place, such as Title IX, EHA and IDEA, which address the education of students with disabilities. While EHA and IDEA have been very useful and have given disabled individuals a much greater education, changes are necessary to overcome the large gender disparity between the two sexes of students. By training teachers to be better attuned to male students’ needs instead of just looking at behavioral problems, it is likely that there will be fewer male students in special education classrooms and the gender gap will narrow toward a more even ratio between the sexes. Also by female teachers being more perceptive to male students and teaching each male as an individual instead of as a stereotype, hopefully males will be better educated and enjoy their learning experiences enough to enter teaching as a field for themselves. This will benefit gender equality in terms of ratios. However, all of this will be moot unless teachers are held accountable for educational malpractice. Teachers need to understand that decisions they make do affect children’s lives and they need to be held accountable for their decisions. A decision to place a child in special education is not one that should be taken lightly; therefore teachers need to be aware that they must operate in good faith.

146 Id.
and have valid concerns and proof that these boys are in need of special education. While it still may be true that there will be a higher number of boys in special education classes, the ones who are there will likely be there for a valid reason and have their needs met to the fullest extent possible as required by IDEA.