

Peabody College

VANDERBILT UNIVERSITY

NASHVILLE, TENNESSEE 37203



The Alliance Project

Headquarters

Peabody College, Box 160
Hill Student Center, Rm. 101
(615) 343-5610
1-800-831-6134
Fax (615) 343-5611
alliance@vanderbilt.edu

Washington, DC Metropolitan Office

10860 Hampton Road
Fairfax Station, VA 22039
(703) 239-1557
Fax (703) 503-8627
Email: judysd@gte.net

Fall 1997

Disproportionate Representation: Can This Civil Rights Concern Be Addressed by Educators?

The following is a section of the *Nineteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*. The full text of the material is presented, but the table number has been changed for this free-standing version.

FOR STUDENTS who are either inappropriately placed in special education programs or denied access to appropriate special education services, the consequences are often serious and enduring. Disproportionate representation of minority students in special education programs also raises serious concerns about compliance with laws administered by the Department of Education. For these reasons, the disproportionate number of racial and ethnic minority students who are identified, referred, evaluated, classified and placed in special education classes or programs in relation to their representation in the overall school population has been a matter of longstanding concern within the Department.

Issues regarding minority students and special education have been a focus of concern for both the Office of Special Education Programs (OSEP), which administers IDEA, and the Office for Civil Rights (OCR). When P.L. 94-142, the Education of All Handicapped Children Act (now known as the IDEA), was enacted in 1975, it reflected two important concerns.

One concern was that large numbers of students with disabilities were either unserved or receiving services that did not meet their individual educational needs. A second important concern was that some students, particularly minority students, were being misclassified and inappropriately placed in special education programs.

The IDEA statute and its implementing regulations contain a number of provisions, particularly in the areas of protection in evaluation and due process procedures, which reflect these concerns. The research, demonstration, and technical assistance activities under the IDEA discretionary grant programs have also made a substantial contribution to the knowledge and understanding about the complex issues concerning minorities and special education.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (ADA), and Title VI of the Civil Rights Act of 1964 (Title VI). Section 504 and the ADA prohibit discrimination against individuals with disabilities. The protections of Section 504 and the ADA also apply to individuals who are perceived as having but do not actually have a disability, such as students who have been misclassified. Title VI prohibits discrimination on the basis of race, color and national origin.

Issues regarding minorities and special education have been of concern to OCR since its inception in 1965 because of concerns about placement in special education programs constituting a form of within-school segregation of minority students. Data from OCR's *Elementary and Secondary School Civil Rights Compliance Report* (formerly the *Elementary and Secondary School Civil Rights Survey*) has consistently identified persistent patterns of minority students being disproportionately represented in special education programs and classes, relative to their enrollment in the general school population.

Data from the OCR 1992 Compliance Report, as well as current OCR cases, document disproportionate representation of racial and ethnic minorities in special education as an ongoing problem nationwide, with continuing concentrations in particular regions and States. For example, the 1992 data show that, nationwide in 1992, African Americans accounted for 16 percent of the total student population, yet African Americans represented 32 percent of the students in programs for students with mild mental retardation (MMR), 29 percent of the students in programs for students with moderate mental retardation, 24 percent of the students in programs for serious emotional disturbance or students with behavioral disorders, and 18, percent of students with specific learning disabilities.

(See table 1 on the next page for details of representation in special education across racial/ethnic populations.)

Table 1
Selected Data From the 1992 OCR Compliance Report

	<u>Total</u>	<u>Percent of White to Total</u>	<u>Percent of Black to Total</u>	<u>Percent of Asian American/ Pacific Islander to Total</u>	<u>Percent of Hispanic to Total</u>
Total Universe Membership	42,239,455	67% 28,505,553	16% 6,872,017	3% 1,451,338	12% 4,969,313
Mild Mental Retardation	351,226	61% 213,538	32% 111,210	0.9% 3,129	5% 19,156
Moderate Mental Retardation	124,216	58% 72,600	29% 36,188	2% 1,967	9% 11,783
Serious Emotional Disturbance	295,810	67% 199,207	24% 70,162	0.7% 2,018	7% 20,559
Specific Learning Disability	2,233,141	68% 1,517,748	18% 397,984	1% 24,784	12% 262,696

Developed: February 25, 1997 by P. McCabe.

Source: 1992 Elementary and Secondary School Civil Rights Compliance Report; National Projected Data for Universe Membership and Selected Disability Categories.

For minority students, misclassification or inappropriate placement in special education programs can have significant consequences, particularly when these result in the child's being removed from regular education settings and being denied access to the core curriculum. Of particular concern is that, often, the more separate that a program is from the general education setting, the more limited the curriculum and the greater the consequences to the student, particularly in terms of access to postsecondary education and employment opportunities. The stigma of being misclassified as mentally retarded, seriously emotionally disturbed or as having a behavioral disorder may also have serious consequences in terms of the student's own self-perception and the perception of others, including family, peers, teachers, and future employers.

In some districts, the disproportionate representation of minority students in special education classes also results in significant racial separation. This raises concerns that unlawful racial segregation may be occurring, in violation of Title VI. This is a matter of particular concern in school districts that once had laws requiring racial segregation.

As a result of its concerns, OCR commissioned a study by the National Research Council (NRC) of the National Academy of Sciences which resulted in the 1982 report, *Placing Children in Special Education: A Strategy for Equity* (Heller, Holtzman, & Messick, 1982). The study provided a number of important insights into the problem, including the linkage between lack of access to effective instruction in regular education programs and placement in special education programs; the uses and misuses of testing and assessment for educational purposes; the multiplicity of factors, many external to the child, affecting whether a child would be labeled mentally retarded; and the underlying patterns of placement of minorities in special education reflected in OCR's data.

At the time it was issued, the NRC report represented an important reconceptualization of the nature and origins of the problem and how to address the underlying causes through a focus on educational approaches. Of particular importance was the report's focus on the issue of access to effective instruction prior to special education referral and placement. The NRC observed:

An almost uniform feature of the selection process for . . . [special education] . . . placement is that it begins with an observation of weak academic performance. . . . [R]eferral for . . . placement seldom occurs in the absence of weak academic performance. . .

While academic failure is often attributed to the characteristics of the learners, current achievement also reflects the opportunities to learn in school. If such opportunities have been lacking or if the quality of instruction varies across subgroups of school-age population, then school failure and subsequent . . . referral and placement may represent a lack of exposure to quality instruction for disadvantaged and minority children.

Slavin et al. (1993) have concluded that, for most children who are referred for special education evaluation, academic failure will be related to problems in learning to read. One initiative, the America Reads Challenge, is designed to marshal local resources to improve reading levels in the United States. The goal of the initiative is to help ensure that all children can read on an appropriate level by the end of third grade. National Assessment of Educational Progress (NAEP) reading results show that in 1992, 29 percent of fourth graders were reading at or above the proficient achievement level and that in 1994 the results were virtually unchanged at 30 percent (NCES, 1995). Being unable to read well by the end of third grade increases the student's risk for dropping out of school, having fewer job options, and increased delinquent behaviors (Lloyd, 1978).

OCR and OSEP have continued to seek solutions to this critical civil rights issue by allocating additional resources to address the issue as a programmatic priority. Through its discretionary grant programs, OSEP has funded important research and technical assistance activities that have provided insight into the issues concerning minorities in special education and effective strategies to resolve the concerns. This research has played a critical role in advancing the knowledge and understanding about how to address more effectively the multiplicity of complex issues concerning minorities and special education. For example, under an agreement with OSEP, Project FORUM held annual policy forums in 1993, 1994, and 1995 on ways to address these issues. For each forum, a proceedings document was written and

disseminated. In addition, Project FORUM produced four other documents exploring the topic of disproportionate representation of minorities in special education [Project FORUM at National Association of State Directors of Special Education (NASDSE)].

The Center of Minority Research in Special Education at the University of Virginia will also serve as an important focus for gaining new insights into a number of complex issues and developing effective implementation strategies. Through a variety of activities, OSEP has also encouraged the development of partnerships among regular education, special education, and Title I personnel.

OCR has designated minority students in special education as a priority enforcement issue. It has conducted more than a hundred compliance activities on aspects of the issue, including the placement of students in programs for students with moderate MR, serious emotional disturbance, or behavioral disorders; equal access to pre-referral programs; and lack of access to programs in regular education settings. Issues concerning national origin minority students who are limited English proficient (LEP) -- both in terms of misclassification and denial of access to special education services -- represent another facet of minorities and special education that OCR is addressing through its priority enforcement efforts.

A significant aspect of both OCR's and OSEP's efforts to address the problem includes the development and dissemination of resource materials aimed specifically at preventing and correcting the problem of disproportionate representation (Markowitz, Garcia, & Eichelberger, 1997).

OSEP, the Early Childhood Institute of the Office of Educational Research and Improvement (OERI), and the National Institutes of Health (NIH) have funded a study, *Preventing Reading Difficulties in Young Children*, which will be completed in late 1997. This report will provide information on strategies to prevent one of the kinds of academic failure that often precedes special education referral.

Finally, the over-representation issue may be viewed as having three facets. The first phase concerns leading up to referral for special education evaluation, which for many children is the time from when they entered school until around the third or fourth grade. The second phase concerns the process of evaluating the child and making decisions about whether the child has a disability and the child's placement in special education. The third aspect concerns the nature of the program that the child receives after the determination has been made that the child has a disability. Will the child be placed in a separate classroom for the entire day or will the child receive instruction in the regular curriculum?

The complexity of this issue requires an integrated and multifaceted effort to promote greater educational access and excellence for racial/ethnic minority students that involves policy makers, educators, researchers, parents, advocates, students, and community representatives. The disproportionate representation of racial/ethnic minority students in special education programs and classes points to the need to:

- Make available strong academic programs that foster success for all students in regular and special education;
- Implement effective and appropriate special education policies and procedures for referral, assessment, eligibility, classification, placement, and re-evaluation;

- Increase the level of home/school/community involvement in the educational process; and
- Use diverse community resources to enhance and implement educational programs.

The Department of Education maintains a continuing interest in studies that result in improved academic achievement and that may reduce inappropriate referrals to special education.

REFERENCES

Heller, K.A., Holtzman, W.H., & Messick, S. (1982). *Placing children in special education: Theories and recommendations*. Washington, DC: National Academy Press.

Lloyd, D.N. (1978). Prediction of school failure from third-grade data. *Education and Psychological Measurement*, 38, 1193- 1200.

Markowitz, J., Garcia, S.B., Eichelberger, J. (1997). *Addressing the disproportionate representation of students from racial and ethnic minority groups in special education: A resource document* Alexandria, VA: The National Association of State Directors of Special Education.

Project FORUM at NASDSE (1993). *Disproportionate participation of students from ethnic and cultural minorities in special education classes and programs: Forum to examine current policy*. Alexandria, VA: The National Association of State Directors of Special Education.

Project FORUM at NASDSE (1994). *Disproportionate representation of students from ethnic/racial groups in special education: A synthesis of major themes and recommendations*. Alexandria, VA: The National Association of State Directors of Special Education.

Project FORUM at NASDSE (1995). *Disproportionate representation of culturally and linguistically diverse students in special education: A comprehensive examination*. Alexandria, VA: The National Association of State Directors of Special Education.

Slavin, R.E., Karweit, N.L., & Wasik, B.A. (1993). Preventing early school failure, *Educational Leadership*, 50(4), 10- 18.

U.S. Department of Education, National Center for Education Statistics. (1995). *NAEP 1994: Reading A First Look*. (Revised Edition.)

Office of Special Education Programs. (1997). Disproportionate representation: Can this civil rights concern be addressed by educators? *Nineteenth annual report to Congress on the implementation of the Individuals with Disabilities Education Act*. Washington, DC: U.S. Department of Education, pp. I-41 through I-48.

The Alliance Project (#8029K4085) is supported by the U.S. Department of Education, Office of Special Education Programs (OSEP). Opinions expressed herein are those of the sources and do not necessarily represent the position of the U.S. Department of Education.