



Regarding African American Student Achievement and Success

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Inequity never equals equity. The California Department of Education's (CDE) continued enforcement of the original Larry P. injunction¹ prohibiting the use of intelligence tests, "for the identification of black² E.M.R. [Educable Mentally Retarded or a substantially equivalent category] children or their placement into E.M.R. classes [or other special classes serving substantially the same functions]", and expanding the ban to all special education categories places school psychologists working in public schools throughout California in an untenable position in that they are required to perform assessments that are substantively different for African American students than for any other group. This practice is counter to the Mission³ and Vision⁴ Statements of the California Association of School Psychologists (CASP) and the National Association of School Psychologists (NASP) Principles for Professional Ethics⁵. CASP always encourages school psychologists to determine the most appropriate assessment tools to collect the information relevant to the questions of disability.

This is more than just a special education issue. CASP is compelled to make clear its position on what must be done regarding African American Student Achievement and Success to CDE, to the parents of African American students and to CASP's membership at large. Cultural insensitivity, lack of preparation, or institutional racism does not excuse the significantly disproportionate suspensions and expulsions, over identification of Emotional Disturbance, and special education placements for African American students. This crisis prompted the California Legislature to pass laws (AB 1729, AB 1909, AB 2537, AB 2616 and SB 1088) to address these educational inconsistencies. As educators, we may have preached equity in the form of differentiated instruction and making accommodations for each student, but when it came to discipline we treated everyone as equals. Looking at the data and how skewed it is, cultural insensitivity is just a polite way of identifying an ugly truth we'd like to ignore. Current research points to poverty and lack of opportunity, not ethnicity, as the underlying cause of underachievement (Reardon 2013 and Sharkey 2013).

A complex web of action and inaction has led to little being done to resolve the real issue of increasing disproportionality of African American students in special education.

Disproportionality is known by many other names in education, “The Achievement Gap,” “The School to Prison Pipeline,” to name just two. Disproportionality is an educational institutional problem, not a problem of special education (Voulgarides, C.K. & Fergus, E. 2017). This topic has been written on extensively in *CASP Today*, most recently in a three-part series, “Larry P. Moved Down the Hall”: from EMR [Educable Mentally Retarded] to ED [Emotional Disturbance] (Summer & Fall 2012, and Winter 2013), as well as in an article (Winter 2017) regarding what assessments school psychologists can or cannot use as professionals. The articles refer to an event that happened long before the growing majority of CASP’s membership was born and assumes nothing has changed. Longitudinal data from the time of the Larry P. expansion are not available, but calculated for this paper (Hiramoto, 2017) are comparisons of risk ratios from 2000-2001 to 2016-2017. While Intellectual Disability (ID) and Specific Learning Disability (SLD) risk ratios are not more significantly disproportionate than the National Example Risk Ratio, SLD is inching closer to it (see Table 1).

Table 1.

	2000-2001	2016-2017	% change	National example Risk Ratio (which is equal to two Median Absolute Deviations above the median risk ratio for the nation)
ID	1.49	1.64	+10%	2.48
SLD	1.81	1.79*	-1%	1.97

*Approaching Significant Disproportionality statewide

The move down the hall can be seen in Table 2 below:

Table 2

	2000-2001	2016-2017	% change	National example Risk Ratio (which is equal to two Median Absolute Deviations above the median risk ratio for the nation)
OHI	1.27	2.16*	+70%	2.37
ED	3.52	3.24**	-8%	2.96

*Approaching Significant Disproportionality statewide

**Significantly Disproportionate statewide

The 70% increase in Other Health Impairment (OHI), while still lower than the 2.37 national example risk ratio threshold, is getting closer to significant disproportionality. And while there has been an 8% decrease in Emotional Disturbance (ED) in these intervening 16 years, this decrease is most likely due to downward pressure from the federal government. California is

considered significantly disproportionate because it exceeds the national example risk ratio threshold of 2.96.

The Association of Black Psychologists (ABPsi) and the American Psychological Association (APA) have collaborated around evidenced-based practices for African American youth (APA, 2008). The dissemination of evidence-based research from ABPsi's, the *Journal of Negro Education*, and NASP's subcommittee for Black youth for interventions are available to school psychologists today. In 2012, after 40 years of holding very different political and social positions on this issue, ABPsi and CASP collaborated in conjunction with NASP to address disproportionality and high standards in assessment, intervention, and ongoing support for African American youth (NASP, 2013; Cordington & Fairchild, 2012). Out of this collaboration has also come the first empirical study by ABPsi and CASP that focuses on the perspectives of African American parents and their needs for support (Gamble, 2016; Gamble, 2017). Much of the prior writing about African American parents was not empirical and only had to do with whether Black parents thought intellectual quotient (IQ) based testing was helpful for things like Gifted & Talented Placement rather than about special education placement. The next phase in this collaboration is to provide more authentic information for parents and school-based educators to help them make more informed decisions regarding assessment and interventions. More needs to be done with respect to adult education, mentorship programs, et cetera, to support African Americans specifically, and students who have not typically had access to quality education, generally. The phenomena of stereotype threat (Aronson & Inzlicht, 2004; Aronson., Cohen, McColsky, Montrosse, Lewis, & Mooney, 2009; and Steele, 1997), is the situational circumstances in which individuals feel to be at risk of conforming to negative stereotypes about their social group. For African Americans' test performance, stereotype threat requires specific consideration. According to the American Psychological Association (2006), stereotype threat occurs when "negative stereotypes raise inhibiting doubts and high-pressure anxieties in a test-taker's mind." These challenges to strong test performance by African American students are real and must be addressed by educators. Only through continued public engagement with parents, community and professional groups can we change the odds in favor of students instead of against them. CASP is committed to continuing communication with parent groups and other professional organizations to address significant disproportional representation of minorities in special education, poorer academic outcomes in general education, increased dropout rate, inequity in school discipline practices, and the continuing education of school psychologists on these serious issues.

CDE's continued enforcement of the original Larry P. injunction prohibiting the use of intelligence tests, "for the identification of black E.M.R. [Educable Mentally Retarded or a substantially equivalent category] children or their placement into E.M.R. classes [or other special classes serving substantially the same functions]", and expanding the ban to all special

education categories, undermines California school psychologists' ability to determine the most appropriate assessment tools to collect the information relevant to the questions of disability.

CDE's continued support for this position (a position made clear in the 2010 Larry P Work Group Final Report dated April 28, 2011⁶) comes from Deputy General Counsel for CDE Barry Zolotar in his 1994 Legal Advisory⁷. What CDE's continued enforcement of this ban fails to acknowledge is that the ban on intelligence tests was never intended to be permanent. Within the original Larry P. decision itself are steps for the State Board of Education (SBE) to apply for permanent injunctive relief. In 1994, the Ninth Circuit Court in its findings for *Crawford v. Honig*⁸ states "[the] focus of the district court's inquiry was the disproportionate enrollment of African-American children in dead-end E.M.R. classes, not the use of I.Q. tests generally (Id at 988-89). Indeed, the district court stated that its decision "should not be construed as a final judgment on the scientific validity of intelligence tests" generally and held only that "[w]hatever the general scientific merits of the tests...defendants have failed to show a valid, legal justification for their use for Black E.M.R. placement" (Id. at 989). The reason for the ban on intelligence tests had to do with the failure to show a valid, legal reason for its use, not test bias.

CASP and the Ninth Circuit Court are aware of the legal and ethical requirement that discriminatory/biased tests are not to be used for the purposes of special education assessment. Given this, it is important to note that the Ninth Circuit Court did not see fit to use the same judgment that CDE used in the Larry P. Settlement Agreement of 1986⁹ (and continues to use), to expand the ban from EMR, presently known as Intellectual Disability (ID), to all special education categories (*Crawford v Honig*, 1994). All 50 states and territories are under the same federal laws precluding the use of biased or discriminatory tests, however only California maintains a ban. This was put to rest in the *Parents in Action on Special Ed. (PASE) v. Hannon* No.74 C 3586. 506 F.Supp. 831(1980) United States District Court, N.D. Illinois¹⁰ case. Immediately following *Larry P. v. Riles*, the *PASE v. Hannon* case reviewed intelligence tests (WISC, WISC-R and Revised Stanford Binet Form L-M) item by item with arguments for and against test bias and their efficacy of use as part of a comprehensive assessment. Judge John F. Grady goes into great detail in his Memorandum Decision and concludes:

"...plaintiffs have failed to prove their contention that the Wechsler and Stanford-Binet IQ tests are culturally unfair to black children, resulting in discriminatory placement of black children in classes for the educable mentally handicapped...The requirement that "materials and procedures" used for assessment be non-discriminatory, and that no single procedure be the sole criterion for assessment, seems to me to contemplate that the process as a whole be non-discriminatory. It does not require that any single procedure, standing alone, be affirmatively shown to be free of bias. The very requirement of multiple procedures implies recognition that one procedure, standing alone, could well result in bias and that a system of cross-checking is necessary.... I believe and today hold that the WISC, WISC-R and Stanford-Binet tests, when used in

conjunction with the statutorily mandated ["other criteria"] for determining an appropriate educational program for a child (20 U.S.C. § 1412(2)(D)(5), do not discriminate against black children in the Chicago public schools. Defendants are complying with that statutory mandate. Intelligent administration of the IQ tests by qualified psychologists, followed by the evaluation procedures defendants use, should rarely result in the misassessment of a child of normal intelligence as one who is mentally retarded. There is no evidence in this record that such misassessments as do occur are the result of racial bias in test items or in any other aspect of the assessment process currently in use in the Chicago public school system.”

To date, no other cases have been decided at the Circuit Court or Supreme Court level regarding test bias. For the other 49 states and territories in the United States, the issue is settled.

Problems compound as there is rampant confusion throughout California as to what is currently banned or what does or does not constitute an intelligence test. The last word from CDE is the 1997 Memorandum¹¹, by then State Director of Special Education Leo Sandoval, to CDE’s Special Education Consultants. This memorandum lists the original Larry P. 1979 banned tests, tests from the Larry P. Settlement Agreement of 1986, and other tests that might be regarded as IQ tests from the Larry P Task Force Report of 1989¹². Currently districts using the same tests (memory, neuropsychological processing, and cognitive processing tests etc.) are inconsistently issued corrective actions (or none at all) by CDE’s Special Education Consultants during Special Education Self Reviews (SESR) or Verification Reviews (VR). Some districts find themselves under costly corrective action to redact and reassess students using alternative tests, where other districts that have used the same tests are free of corrective action. This variability demonstrates a lack of understanding of the practice of school psychology, special education assessment and evaluation. Reportedly, CDE’s Special Education Consultants are arguing that tests that are not on the banned list should still not be used, “because they correlate with intelligence tests.” If this is the standard, then the Smarter Balanced Assessment of California and report cards should be banned as they too correlate with intelligence tests. CASP firmly believes that Special Education Consultants should not be in a position to make these judgments, as made very clear in the CDE 1997 Memorandum which states:

“...because the original Larry P. decision was not limited to a specific set or sets of standardized intelligence tests, school districts should be advised that any standardized measure of intelligence should not be used with African-American students until such time as they are validated as unbiased by the State Board of Education and approved by the court. There should be no “on-the-spot” judgements (sic) that result in finding districts out of compliance for using tests that are not listed. For any districts that you found out of compliance during 1995-96 or 1996-97 CCRs for using tests that are not identified for use with African-American students, please remove their non-compliance status on item III-S25.”

To date neither CDE or SBE have implemented the permanent injunctive relief of validating any test. New tests are always being developed which include new norming practices such as determining item bias, or the use of a comprehensive stratified random sampling using U.S. census data. The ban also doesn't take into consideration the years of research within the field and the development of new theoretical constructs that have substantively changed revised editions of tests on the banned list. In fact, some of these tests are on their fourth or fifth revision since the original ban took place.

CASP's past attempts in trying to make clear CDE's directives regarding Larry P. have been misrepresented. It has come to our attention that CDE is referencing CASP's reporting on what is or is not allowed as if it were CASP's idea. Some districts have assumed that CASP is validating these practices by reporting them. Because of these reasons, CASP is clarifying that it has only reported, through its convention and publications, what its members have been reporting to their region representatives on the actions CDE (through its Educational Consultants) has taken or not taken against LEAs regarding Larry P. To date, it has been a cautionary reporting of what is happening in districts in our state during SESRs and VRs, not one of conviction or belief in its practice. The variability throughout California in what testing instruments are or are not allowed; the recent reported inconsistent corrective actions to districts; and the compromising of our professional practice because of restrictions on the assessments instruments that this process requires, has culminated in this paper.

CASP respectfully finds itself in opposition to the continued ban of any test for use with African American students for any special education category.

CASP will support the CDE and the SBE in taking any steps necessary to:

- Support any and all efforts to address the real problems of significant disproportional representation of African Americans in special education, under achievement in general education, the imbalance of school discipline and school dropout.
- Resolve the original test ban issue for EMR (and its equivalent).
- Discontinue the expansion of the ban to all special education categories as the CDE and SBE have been out of compliance since Crawford v. Honig on this issue.
- Connect and collaborate with African American community based agencies and parent organizations that seek to support positive outcomes of academic progress and excellence in achievement for African American youth.
- Strongly encourage the Commission on Teacher Credentialing to mandate continuing education for school psychologists on disproportionality issues. This would mean that credentialed school psychologists would periodically be updated on best practices to address the needs of African American students. This would be all the more imperative when a local education agency is found to have significant disproportionality. Which

tests kits to give should not be the only focus on continuing education regarding success for African American students.

Again, these actions will not absolve LEAs' or Special Education Local Planning Agencies' (SELPA's) responsibilities regarding significant disproportionality of African American students in special education. However, LEAs and SELPAs that are making the aforementioned steps to address issues in a proactive manner should be supported, and not penalized, in their efforts to address disproportional placements of African American students in special education, suspensions, and/or limited enrollment in advanced courses. At the very least these LEAs and SELPAs should be afforded a waiver to the current test ban practice to substantiate that it is **not** the tests but the professional practice that reduces significant disproportionate representation. CASP has shared and will continue to share these best practices at its annual conventions and institutes. CDE and SBE should look to these groups to develop the continuing in-service trainings statewide that have yet to take place but were recommended in both the 1989 Larry P Task Force Report and 2010 Larry P Work Group.

Endnotes

1. Larry P. v Riles - see attached copy
2. The term 'black' is used when provided quotes from prior documents. All other times we will refer to the students and families who are the focus of this paper as 'African American'.
3. The Mission Statement of the California Association of School Psychologists: "To provide high quality educational and leadership programs, that maintain high standards of practice for school psychologists through legislative advocacy, professional development, communications, publications, ethics guidelines, and direct services to members, to enable the growth and development of the profession, and to ensure safe, healthy, and successful outcomes for the children, schools and communities we serve."
4. The Vision of the California Association of School Psychologists: "To foster the social, emotional and academic wellbeing of all students by collaborating with families, school staff, and the community to ensure that students are educated in schools that support equity, access, and respect for all."
5. National Association of School Psychologists' Principles for Professional Ethics: "Principle I.3. Fairness and Justice: In their words and actions, school psychologists promote fairness and justice. They use their expertise to cultivate school climates that are safe and welcoming to all persons regardless of actual or perceived characteristics,

including race, ethnicity, color, religion, ancestry, national origin, immigration status, socioeconomic status, primary language, gender, sexual orientation, gender identity, gender expression disability, or any other distinguishing characteristics.

Standard I.3.1 School psychologists do not engage in or condone actions or policies that discriminate against persons, including students and their families, other recipients of service, supervisees, and colleagues based on actual or perceived characteristics including race; ethnicity; color; religion; ancestry; national origin; immigration status; socioeconomic status; primary language; gender; sexual orientation, gender identity, or gender expression; mental, physical, or sensory disability; or any other distinguishing characteristics.

Standard I.3.2 School psychologists pursue awareness and knowledge of how diversity factors may influence child development, behavior, and school learning. In conducting psychological, educational, or behavioral evaluations or in providing interventions, therapy, counseling, or consultation services, the school psychologist takes into account individual characteristics as enumerated in Standard I.3.1 so as to provide effective services.²²

Standard I.3.3 School psychologists work to correct school practices that are unjustly discriminatory or that deny students, parents, or others their legal rights. They take steps to foster a school climate that is safe, accepting, and respectful of all persons.

Standard I.3.4 School psychologists strive to ensure that all children have equal opportunity to participate in and benefit from school programs and that all students and families have access to and can benefit from school psychological services.²³

Principle II.3. Responsible Assessment and Intervention Practices School psychologists maintain the highest standard for responsible professional practices in educational and psychological assessment and direct and indirect interventions.

...Standard II.3.2 School psychologists use assessment techniques and practices that the profession considers to be responsible, research-based practice.

- School psychologists select assessment instruments and strategies that are reliable and valid for the child and the purpose of the assessment. When using standardized measures, school psychologists adhere to the procedures for administration of the instrument that are provided by the author or publisher of the instrument. If modifications are made in the administration procedures for standardized tests or other instruments, such modifications are identified and discussed in the interpretation of the results.

- If using norm-referenced measures, school psychologists choose instruments with up-to-date normative data.

- When using computer-administered assessments, computer-assisted scoring, and/or interpretation programs, school psychologists choose programs that meet professional standards for accuracy and validity. School psychologists use professional judgment in evaluating the accuracy of computer-assisted assessment findings for the examinee.

...Standard II.3.3 A psychological or psychoeducational assessment is based on a variety of different types of information from different sources.

...Standard II.3.5 School psychologists conduct valid and fair assessments. They actively pursue knowledge of the student's disabilities and developmental, cultural, linguistic, and experiential background and then select, administer, and interpret assessment instruments and procedures in light of those characteristics (see Standard I.3.1. and I.3.2).”

6. 2010 Larry P Work Group Final Report (April 28, 2011) - see attached copy
7. 1994 Zolotar, B. “California Department of Education - Legal Advisory” see attached copy
8. Ninth Circuit's 1994 Affirmation of the Crawford v. Honig Decision – see attached copy
9. Education for All Handicapped Children Act (Public Law 94-124) 1975 – see attached copy
10. Parents in Action on Special Ed. (PASE) v. Hannon No.74 C 3586. 506F.Supp. 831(1980) United States District Court, N.D. Illinois
11. CDE 1997 Memorandum, State Director of Special Education Leo Sandoval to CDE Special Education Consultants – see attached copy
12. 1989, Larry P Task Force Report, California Department of Education – see www.casonline.org/publications

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