



December 13, 2017

The Honorable Tom Torlakson  
State Superintendent of Public Instruction  
California Department of Education  
1430 N Street  
Sacramento, CA 95814-5901

Dr. Michael Kirst  
President  
California State Board of Education  
1430 N Street  
Sacramento, CA 95814

RE: *The Ban on administering intelligence tests to African American students*

Dear Superintendent Torlakson and President Kirst:

California Association of School Psychologists (CASP) appreciates the California Department of Education's (CDE) concerns for disproportionality in special education placement for African American students. Currently, in an attempt to reduce disproportionality, CDE enforces the original 1979 Larry P. injunction prohibiting the use of intelligence tests "for the identification of (B)lack 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 function]," and expanding the ban to all special education categories, which includes categories of disability and gifted.

CDE's 40-year-old ban places school psychologists in the untenable position of being required to perform assessments that are substantively different for students whose skin happens to be black compared to other groups. CASP asks that the following actions be taken immediately to resolve this issue:

1. That the State Board of Education (SBE) revoke the expansion of the ban.
  2. That CDE no longer enforce the expansion of the ban.
- **The court ordered the State Department of Education to rescind its 1986 directive:** Since the 1979 injunction did not prohibit I.Q. testing "outside the context of E.M.R. assessments and placements..." the special interests of the Crawford plaintiffs were not affected by the 1979 Order (See, 1992 Order, p. 15-16). On page 22 of the 1992 Order, Judge Peckham "directs that the 1986 SDE directive promulgated under the 1986 modification order which prohibits the I.Q. testing of all African-American children referred for special education be rescinded." In fact, Judge Peckham's 1992 order rescinding the modification in the 1986 Order was affirmed by the Ninth Circuit Court of Appeals (Crawford v. Honig, 37 F.3d 485- 9<sup>th</sup> Cir. 1995).
  - **E.M.R. classes no longer exist:** There is presently no court order prohibiting the administration of I.Q. tests to Black children except when it involves placement in E.M.R. or substantially equivalent classes. By 1986, the category of E.M.R. had been completely eliminated from the California special education system (Education Code section 56515 which established classes for educating mentally retarded students was repealed in 1980. Stats. 1980, ch. 797).
  - **Federal Court found that I.Q. tests are not discriminatory to Black children:** The original Larry P. v. Riles decision held that I.Q. tests were discriminatory. In 1980, another federal district court found I.Q. tests not to be discriminatory (Parents in Action on Special Education v. Hannon, 506 F. Supp.831-N.D.III.1980).

- **Placement procedures have changed:** The initial complaint for declaratory and injunctive relief was filed against the San Francisco Unified School District and state defendants on November 23, 1971. It challenged the use of standardized intelligence tests for Black students' E.M.R. placement in San Francisco as unconstitutional. In addition, the practice to determine if a student was to enroll in an E.M.R. placement solely based on the student's intelligence test score was challenged. In the 1992 Order, Judge Peckham emphasized that his original Larry P. decision did not eliminate the use of I.Q. tests per se but eliminated what the court saw as an unfair and discriminatory procedure -- the placement and retention of children in isolated special day classes on the basis of only an I.Q. score (See, 1992 Order, page 11). Currently, the Education Code, Section 56026, states: "The IEP team shall take into account all the relevant material which is available on the child. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the child's eligibility for special education."
- **School Psychologists are best qualified to determine appropriate assessment tools:** Highly trained school psychologists are best qualified to determine appropriate assessment tools and qualified to interpret the results. Relevant California Commission for Teacher Credentialing standards for school psychologists' training in assessment and diversity include:
  - Standard 2: Growth and Development
  - Standard 3: Social Cultural Competence
  - Standard 4: Assessment
  - Standard 5: Comprehensive Prevention and Early Intervention for Achievement
  - Standard 6: Professional Ethics and Legal Mandates
  - Standard 11: Learning Theory and Educational Psychology
  - Standard 17: Psychological Foundations
  - Standard 18: Educational Foundations
  - Standard 19: Legal, Ethical and Professional Foundations
  - Standard 22: Individual Evaluation and Assessment
- **All 50 states and territories are under the same federal laws** precluding the use of biased or discriminatory test; however, only California maintains a ban. CDE's enforcement of the original Larry P. injunction prohibiting the use of intelligence tests for African American students, undermines California school psychologists' ability to determine the most appropriate assessment tools to collect the information relevant to the questions of disability. In addition, it ignores school psychologist ethics, standards and training to base eligibility and placement not solely on an intelligence test score, but on the whole child, meaning the child's daily living, communication, and social skills should also be observed and evaluated in making this decision.
- **Disproportionality is not the result of intelligence testing:** CASP supports school psychologists' efforts to reduce disproportionality of Black students in special education. In addition, CASP supports school psychologists' efforts to promote and implement Tier 1 and Tier 2 academic and social/emotional/behavioral interventions to prevent the disproportionate referral of Black students for special education assessment by offering updated training in assessment, cultural competency, advocacy, systems change, academic interventions, and social/emotional/behavioral interventions.

Furthermore, CASP supports the effort to reduce the disproportionate suspensions and expulsions of Black students, and to support the increase of Black students' academic achievement. Disproportionality is not the result of intelligence testing, but is a broader, systemic issue, which school psychologist are uniquely trained to join the discussion and promote solutions.

When a Black pupil is suspected of having a disability that interferes with educational progress, school psychologists are called upon to assist the school's multidisciplinary team to identify whether the student may have a disability as defined by California's Educational Code. Under the current CDE policy, school psychologists are prohibited to use all the tools available for a comprehensive assessment based on policy that has not stayed current to case law, current to updated standardized intelligence tests, current to school psychologists' training and standards of practice. Based on the above summary of the documents and case law, it is our conclusion that the CDE's policy that I.Q. tests should not be administered to African American students, is an untenable practice. Therefore, CASP respectfully asks the SBE to immediately repeal the expansion on the ban on administering intelligence tests to African American students, and that SBE/CDE appeal with CASP's assistance the original injunction of Larry P., which only prohibits intelligence testing for the identification of Intellectual Disability.

CASP requests a meeting to discuss the action the SBE/CDE may take to resolve this issue. These actions will not absolve Local Education Agencies or Special Education Local Planning Agencies from their responsibilities regarding decreasing significant disproportionality of African American students in special education.

Thank you for your consideration of our request. If you have any questions or comments, please contact Heidi Holmblad, CASP executive director, at 916/444-1595 or [executivedirector@casponline.org](mailto:executivedirector@casponline.org).

Sincerely,



Pedro Olvera  
CASP 2017-2018 President

CC:

Karen Stafp Walters, Executive Director, California State Board of Education  
Glen Price, Chief Deputy Superintendent, California Department of Education  
Assembly Member Patrick O'Donnell, Chair, Assembly Education Committee  
Senator Benjamin Allen, Chair, Senate Education Committee  
Gina Plate, Chair, Advisory Commission on Special Education  
Kristin Wright, Director, Special Education Division, California Department of Education  
State Board of Education members  
Advisory Commission on Special Education members