Memorandum on Special Education of African American Students:

James Hiramoto, Ph.D.

School Psychologist

Lodi Unified School District

CASP Assessment Specialist Co-Chair

Email: help@jameshiramoto.com

Who is this James Hiramoto?

www.jameshiramoto.com

Nearly 30 year as a school psychologist, 10 years+ as professor/program director (MA & PsyD) in educational & school psychology, 7 years with the Diagnostic Center, North-CDE. Provided professional development trainings statewide (including 25+ SELPA's and County Offices of Education, 25+ school districts, CASP and CASP Affiliate Associations) nationally and internationally. Content expert for the state's www.askaspecialist.ca.gov website on areas of special education assessment. Serve(d) many roles in CASP including: Region II Rep, Editor of CASP Today and currently and past 5 years as Chair/Specialist of Assessment as well as been a member of many committees. Written and co-authored CASP Position Papers. Resource Papers ad articles for CASP Today. Currently work for Lodi Unified as a school psychologist.

Who are you?

- School Psychologist working in California
- 1st 5 years, 6-10 years, 11-20 years 20+?

Objectives

- Understand the history of Larry P.
  - What took place before Larry P.
    - Brief history of intelligence testing and its abuses
  - The Larry P. Case itself
    - Little known facts
  - The court cases that followed
  - The 2 CDE Memorandum that followed
    - Why we've been doing what we've been doing but most of us have never read them.
- The latest Memorandum from the CDE
- What does it mean…
- What should we do now…

Before Beginning

- Breaks

- Handouts: Copies are available as well as available to download as pdf’s.

Norms

- Eat, drink and be (quietly) merry
- Keep cell phones turned off
- Mute yourselves, until you have a question and then speak up
- When we do a break comeback on time
- Ask questions for clarification

A history lesson…

Who wrote this?

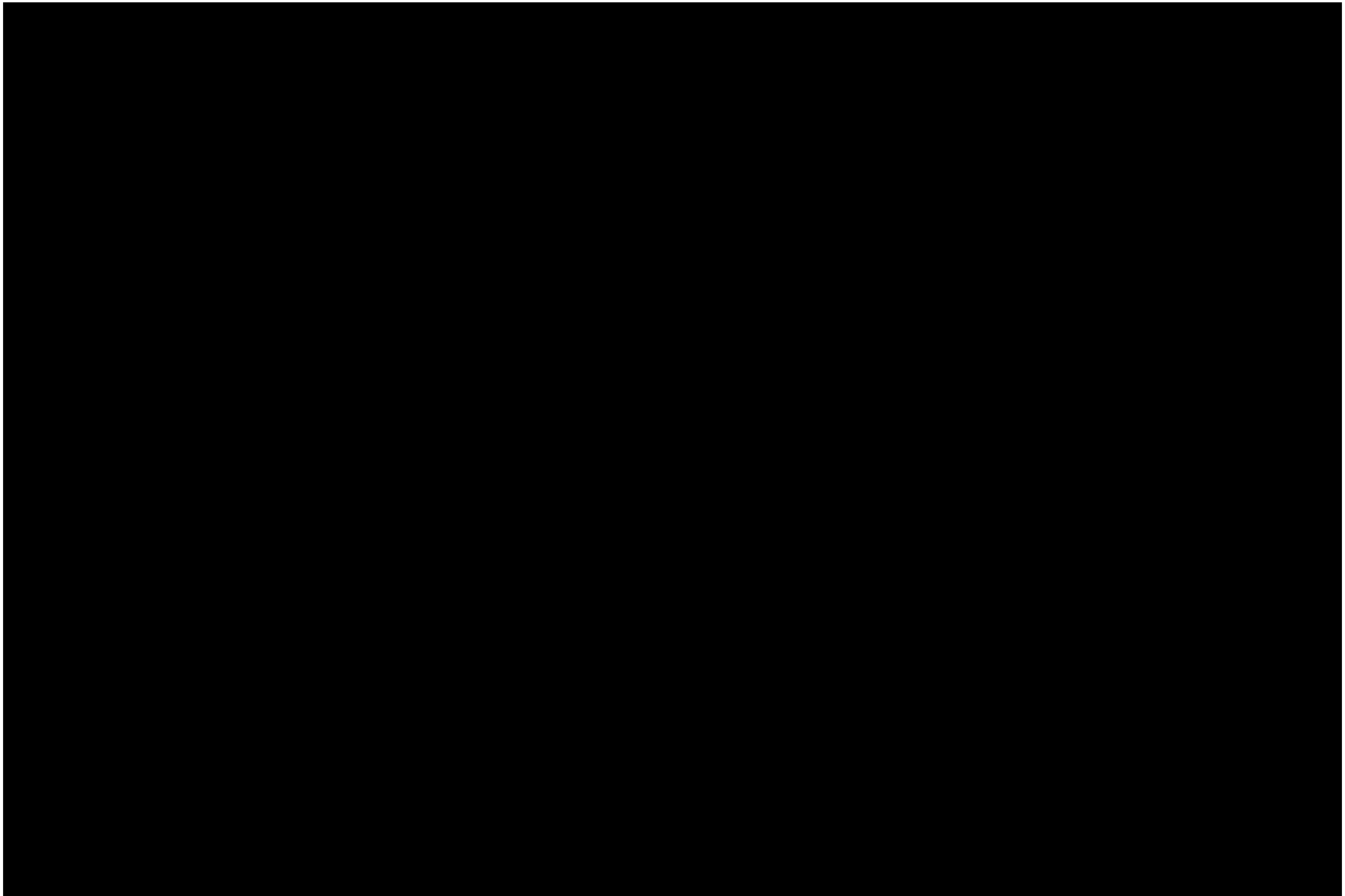
“We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence.

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccinations is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.”

Associate Justice of the U.S. Supreme Court, Oliver Wendell Holmes, Jr.

Holmes wrote the 1927 majority opinion (8 to 1) upholding Buck v. Bell and the Virginia, Eugenical Sterilization Act of 1924. This case upheld the Superintendent of the Virginia State Colony for Epileptics and Feeble Minded decision to have Carrie Buck sterilized.

Couldn’t happen in California…



But this couldn't happen in liberal California now though…right?

time.com/2905750/female-inmates-sterilized-illegally/

TIME

California State Audit Says Female Inmates Were Sterilized Illegally

Tooga Productions, Inc.—Tooga

By **TIME VIDEO** June 20, 2014

A state audit into the California prison system has revealed some shocking new information about female inmate sterilization procedures. The California State Auditor looked at 144 cases of tubal ligation, the process of getting one's tubes "tied," and found that 39 procedures occurred without lawful consent.

Doctors in several of the cases falsified consent forms in order to bypass a state law saying that at least 30 days must pass after inmates consent form have been handed in before the surgery can be performed, the audit says.

U.S.

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Well at least…

Secure | https://www.medicalbag.com/grey-matter/california-first-state-to-ban-sterilization-of-femal

December 11, 2014

California First State to Ban Sterilization of Female Inmates Without Consent

Share this content:

Private Prison Sterlization

Between 2006 and 2010, at least 148 female prisoners at 2 California facilities were sterilized without required state approval. Even worse, some of the women have claimed that they were pressured, harassed, and even tricked into signing forms agreeing to the sterilizations. The procedure is known as tubal ligation and involves cutting, clamping, or blocking a woman's fallopian tubes to prevent eggs from reaching the uterus. But finally, in September 2014, California Governor Jerry Brown signed SB 1135 into law, which will ban sterilization as a form of birth control in the state's women's prisons beginning January 1, 2015.

Larry P.

- It is not a law. He's a person (Darryl Lester)
- Injunction 9th Circuit Court decision, limits IQ testing and those tests at the time that purported to be substitutes for IQ test (language tests) for African Americans/black for EMR and EMR class placement because the court determined them to be biased based on evidence present.

Historical facts not in evidence at the time shared by Dr. William Thomas at CASP 2013 Spring Institute in Sacramento.

Back in the 70's SFUSD did not have enough school psychologist or psychometricians to do special education evaluations. SFUSD trained college graduates over one weekend how to administer the WISC-R. These "trained" individuals then tested students who were instructed to send their protocols to the school secretary who would score the test.

Once scored the school secretary would give the WISC-R protocols to the school's principal, who would then determine if the student was going to an EMR class or not.

So when the law suit happened, SFUSD wanted Larry P to be about the test not about their poor assessment practices.

This is not to say that the then WISC-R did not have its problems. The problem with the test's norms, and problems with specific items are were well documented in the case, which is why the judgment in the case happened the way it did. But, what we do not know is, had qualified people been doing the assessment would Darryl Lester still have been identified as EMR?

These tests are not infallible as nothing is perfect but when taken as a part of a whole process of assessment, we limit these issues as much as humanly possible. This was the finding of the PACE case which followed Larry P. in Chicago. (Parents in Action on Special Ed. (PASE) v. Hannon No.74 C 3586. 506 F.Supp. 831(1980) United States District Court, N.D. Illinois).

"…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.”

What happened next…

- Larry P Settlement Agreement 1986
  - Expanded the injunction (ban on intelligence tests for African American/Black students from EMR and placement decision into EMR classes and their substantive equivalents) to all 13 handicapping conditions.
- Crawford v Honig 1992
  - Concluded that the expansion of the ban to all 13 eligibility categories was misapplied, and that the Larry P injunction applied only to the one handicapping condition (EMR and placement in EMR classes and their substantive equivalents).

What happened next.

CALIFORNIA ASSOCIATION

APR 10 2003

BILL HONIG
SUPERINTENDENT OF PUBLIC INSTRUCTION

OF SCHOOL PSYCHOLOGISTS

LO: 1-92

LEGAL ADVISORY

DATE: September 10, 1992

CALIFORNIA STATE DEPARTMENT OF EDUCATION
721 Capitol Mall, Sacramento, CA 95814

CONTACT: Barry A. Zolotar
PHONE: 916-657-2453

TO : County and District Superintendents of Schools
(Attn: Directors of Special Education)
: Special Education Local Plan Area Administrators
: Special Education Administrators of County Offices
: Local Directors of Pupil Personnel Services
: State Directors of Special Schools and School Superintendents

FROM : Office Of The General Counsel
Legal and Audits Branch

SUBJECT : ANALYSIS OF JUDGE PECKHAM'S AUGUST 31, 1992 DECISION IN LARRY P. v. RILES AND CRAWFORD v.HONIG

On August 31, 1992, the United States Federal District Court for the Northern District of California, Judge Robert F. Peckham, issued a Memorandum and Order concerning the 1986 stipulation and directive which expanded the scope of the original 1979 Order in Larry P. v. Riles. The 1986 stipulation has been vacated (i.e., rescinded) by the Judge.

However, the new Memorandum and Order has not altered the original 1979 Order. The court specifically ruled that the "vacation of the 1986 stipulation leaves the original Larry P. ruling standing." (Mem. & Order, p. 22:24-25.) **All media accounts to the contrary are inaccurate.**

The decision concerning the '86 stipulation was based upon procedural grounds, inasmuch as the court found that the interests of some African-American students and their parents were not adequately represented at the time it was affirmed by the court. The court made no ruling as to whether the prohibition of IQ testing of some African-American students is a violation of their constitutional right to equal protection of the law.

Stated in terms of the Court's criteria and concerns: it is the position of the CDE that, in order to comply with the 1979 Order, LEAs should administer alternative (non-IQ based) assessments to African-American students if, as a result of the assessment, the pupil could be enrolled in a program where (a) students typically do not receive the regular curriculum and fall farther and farther behind students in regular classes, (b) fewer than 20% of students in them are returned to the regular classroom, and (c) African-Americans are disproportionately represented.

It is the CDE's belief that these harmful consequences may exist in some special education programs for the mentally retarded (MR), seriously emotionally disturbed (SED), learning disabled (LD), and speech and language impaired (SL). For example, the CDE has conducted demographic and statistical studies which indicate that despite all of our efforts, it appears that very few racial and ethnic minority students assigned to resource specialist classes (classes comprised primarily by students assessed as MR, SED, LD or SL) are ever returned to the regular class. Unfortunately, the majority of these students may end up in special day

classes and ultimately drop out of public education. Thus, it is the CDE's belief that in some situations African-American students--and other racial and ethnic minority students--found to have the above-noted disabilities, may continue to be placed disproportionately in programs which are the substantial equivalent to the Larry P. "dead-end" placement. To the extent such placements exist, they are educationally unsound and unconstitutional.

Until the Court defines the "substantially equivalent" of E.M.R.[2], each LEA is advised to apply the above criteria in evaluating its own individual programs. It may not be useful to assume that the type of services or the nature of the disability is determinative of whether an LEA's programs are impacted by the 1979 IQ ban.

In terms of evaluating its own programs, we recommend that each LEA begin with a review of the diversity of enrollment in each program and within each disabling condition: does the LEA have a disproportionate enrollment in its special education programs?[3] If so, the LEA should then take a critical look at other factors such as: (a) instruction time in the core curriculum; (b) student progress as compared to students in the regular classroom; and (c) the likelihood of transfer back to the regular classroom.

More importantly, as many of you know, the CDE -- in the context of a strategic plan for educational reform -- is leading a broad educational effort to restructure the entire special education assessment process. Our aim is to eliminate the current diagnostic model which essentially determines what is physically, mentally, or emotionally wrong with a student who is not achieving well in school. It is anticipated that parents and educators, after all legally required public input has been considered, will support alternatives to the diagnostic model which have been referred to as "performance based," "portfolio," "dynamic," and "curriculum based" assessments.

These assessment methodologies are not dependent upon standardized, norm referenced tests. They will focus on many, if not all, aspects of how each child learns, their

unique approach to reading, writing, listening, and speaking; their home and school based achievements, abilities, developmental background, areas in which they do poorly and in which they do well; and, most critically, the educational contexts which are likely to help them overcome their learning problems.

If these assessment methodologies are approved after extensive field testing and public input, it should be commonly understood and accepted -- if not mandated by law -- that the new models will be effectively implemented without the need to administer standardized intelligence tests. Current law has never mandated the use of IQ tests, despite the fact that they have become a common component of the current diagnostic/medical model.

Given the CDE'S movement away from the diagnostic-medical model, it is also highly recommended that IQ tests not be utilized in special education assessments of other racial and ethnic minority students for these same reasons. Similarly, it is not advisable to administer IQ tests to African-American students and other racial and ethnic minority students who are being considered for the GATE program.

NOTICE

THE GUIDANCE AND LEGAL INTERPRETATIONS IN THIS LEGAL ADVISORY ARE NOT BINDING ON LOCAL EDUCATIONAL AGENCIES. EXCEPT FOR THE STATUTES, REGULATIONS AND COURT DECISIONS THAT ARE REFERENCED HEREIN, THIS LEGAL ADVISORY IS EXEMPLARY AND COMPLIANCE WITH IT IS NOT MANDATORY. (SEE EDUCATION CODE § 33308.5)

MEMORANDUM

Date: May 29, 1997

To: Special Education Consultants

From: Leo Sandoval

Subject: Clarification on the Use of Standardized Intelligence Tests with African-American Students for Special Education Eligibility Assessment

We are currently working with representatives of the California Association of School Psychologists and other interested parties to develop standards, criteria, and a review and approval process for recommendation of acceptable tests to be used in assessing African-American students' eligibility for special education and related services. We hope that this effort will result in a review process and a criteria that the State Board of Education will be able to approve by December 1997.

The following guidelines are provided for clarifying this issue and for guiding coordinated compliance reviews. As a context for the implementation of these guidelines, Special Education Division staff need to keep in mind that the judge in the 1979 Larry P. court decision found IQ tests to be racially and culturally biased against African-American students.[1] In addition, the Individuals with Disabilities Education Act[2] and state law[3] prohibit the use of discriminatory testing and evaluation materials. Thus, the following guidelines must be followed:

Compliance Guidelines

1. Based on the 1979 Larry P. court decision and a subsequent Department of Education legal advisory,[4] the use of those intelligence tests listed in Attachment A, Part I is prohibited. This includes tests that had been identified in state regulations[5] at the time of the court decision. Thus, school districts will be found out of compliance for using these specific tests, with African-American students.

2. The Department's Larry P. Task Force also recommended that several other tests that provide standardized measures of intelligence be prohibited from use with African-American students. These tests are listed in the Attachment A, Part II. Until they are validated as unbiased by the State Board of Education and approved by the court, school districts will be found out of compliance for using these tests with African-American

students. You are reminded that there may be other tests issued with similiar titles that are NOT prohibited.

3. The Larry P. Task Force also "cautioned" school assessment personnel about the use of other additional tests that might be regarded as IQ tests with African-American students. These are listed in Attachment A, Part III. These tests *may* be used by qualified school staff for *other* specific purposes indicated in publishers' test manuals, such as measuring the listening vocabulary, perceptual processing, or reading comprehension of African-American students. However, because these tests are designed to produce standardized intelligence scores as well as other specific measures for educational purposes, school districts will be found out of compliance for using these tests if there is noted scores that would provide a measure of intelligence of African-American students.

4. No other list of tests has been recognized by the Department of Education for the purpose of finding school districts out of compliance in testing African-American students for special education. Meanwhile, 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 that result in finding districts out of compliance for using tests that are *not* listed.

Attachment A - Part I

Prohibited Tests for Black Assessments for Special Education

The basic list of intelligence tests from Larry P. included (*Larry P. V. Riles*, 495 F. Supp. 926 (1979, p. 931):*

- Arthur Point Scale
- Cattell Infant Intelligence Scale
- Columbia Mental Maturity Scale
- Draw-a-Person
- Gessell Developmental Schedule
- Goodenough-Harris Drawing Test
- Leiter International Performance Scale
- Merrill-Palmer Pre-School Performance Test
- Peabody Picture Vocabulary Test
- Raven Progressive Matrics
- Slosson Intelligence Test
- Stanford-Binet
- Van Alstyne Picture Vocabulary
- WISC, WISC-R, WAIS, WPPSI

*This list was entered as evidence in the Larry P. case from an APA listing and from CAC Title 5 regulations in effect at that time.

Attachment A - Part II

Additional Standardized Intelligence Measures

The Larry P. Settlement (1986) prohibits the use of IQ tests with Black pupils for special education purposes. IQ tests are construed to mean any test which purports to be or is understood to be a standardized test of intelligence. Additional tests recommended as subject to the Larry P. prohibition would therefore, include but not be limited to the following:

- Cognitive Abilities Test
- Expressive One-Word Picture Vocabulary Test
- K-ABC Mental Processing Subtests
- McCarthy Scales of Children's Abilities
- Structure of Intellect Learning Aptitude Test
- Tests of Non-Verbal Intelligence
- Tests of Cognitive Ability from the Woodcock-Johnson (including the cognitive section of the Bateria Woodcock Psico-Educativa en Espanol)
- Cognitive Subtest of the Battelle Developmental Inventories

Attachment A - Part III

Additional Tests Which Might Be Regarded as IQ Tests

School assessment personnel are cautioned regarding the use of other tests which may be controversial in the multidisciplinary assessment of Black pupils. Such tests include but are not limited to the following:

- Detroit Tests of Learning Aptitude
- Detroit Tests of Learning Aptitude--2, abd Primary
- Peabody Picture Vocabulary Test--Revised
- Test de Vocabulario en Imagines Peabody

Criteria identical to those also cited by CASP were used to determine the appropriateness of these tests. See the Appendix for Task Force test reviews for the rationales in making these recommendations.

Many factors have kept this in place.

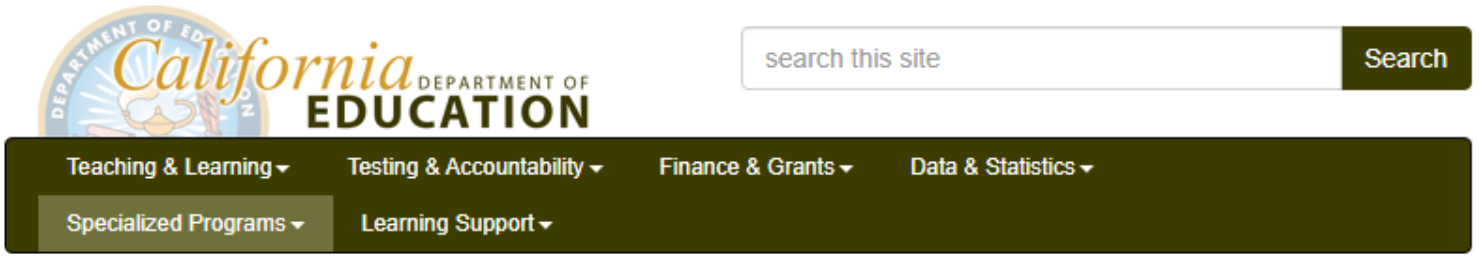
More recently CASP believes CDE educational consultants should no longer be citing LEAs for using the NEPSY-2, D-KEFS, WRAML 3, TOMOL 2, etc. Please let me know if they are. Also, I will explain why they were when we get to SLD.

https://casponline.org/regarding-african-american-student-achievement-and-success/

Regarding African American Student Achievement and Success

- CASP Letter Requesting Action on African American Assessments
- Regarding African American Student Achievement and Success
- Larry P v. Riles
- 2010 Larry P Work Group Report
- California Dept. of Ed. legal advisory 1992
- Crawford v Honig
- Education for All Handicapped Children Act (Public Law 94-142) 1975
- CDE Larry P memo for letter
- Larry P Task Force 1989 Report

https://www.cde.ca.gov/sp/se/ac/memo091422.asp



Is the original Larry P. injunction still in place? Yes

The memo states, “In 1979, the court permanently enjoined LEAs throughout California from using standardized intelligence tests for (1) the identification of African American students as EMR or its substantial equivalent or (2) placement of African American students into EMR classes or classes serving substantially the same functions. The court held that court approval would be required for the use of any standardized intelligence tests for African American students for the above purposes. The court laid out a state process for this.” The memo accurately indicates that “The court has never held hearings to determine the “substantial equivalent” of the EMR identification or placement, or whether IQ tests are appropriate for assessing African American students for identifications or placements other than the substantial equivalent of EMR.”

Is the original Larry P. injunction still in place? Yes

Some have read this to indicate that EMR is no longer an eligibility category, and thus conclude the Larry P. injunction no longer applies - *This is incorrect*. . The memo later notes that "Although the law on assessment has evolved… the Larry P. injunction remains in place." While the court has never held hearings to determine the "substantial equivalent" of EMR identification or placement, Intellectual Disability (ID) is the category that replaced Mental Retardation (of which EMR was once a subclassification with respect to level of service need). *The courts did not need to hold a hearing to determine that ID is the "substantial equivalent," because subsequent laws changed the label.* **In brief: Yes, the Larry P. injunction is still in place for ID and for placement in ID programs.**

Before you all complain…

You have to ask your self this question…

Has the original injunction had a positive effected for what it was intended? Has it reduced the overidentification of African American Students?

How do we find out…we look at significant disproportionality.

https://www2.ed.gov/policy/speced/guid/idea/monitor/sig-dispro-reports-part-b.html#al

The Federal government allows states to determine what Risk Ratio determines significant disproportionality.

What is a Risk Ratio? A Risk Ratio for significant disproportionality is the ratio of risk of an event (being identified for a specific disability) in one group (race/ethnicity) verses the risk of the event (being identified for a specific disability) for all other groups combined (all other race/ethnic groups).

I'm using 2018 data because…well data since is a tad suspect. It's also pre Covid so there is some benefit to that.

The risk ratio in California is 1.61 for African American being identified as Intellectually disabled compared to all other groups combined. That doesn't sound great does it.

That is until you look at all the other states combined (less CA). Nationally, the risk ratio is 2.22. So if the average is that high there must be some states that are significantly disproportionate right?

Remember I said that each state gets to determine where they set the risk ratio for significant disproportionality?

The vast majority of states set their risk ratio at 3…including CA.

Only Maryland (2), Wisconsin (>2.0), Hawaii (2.25), Oregon (2.45) Indiana, Rhode Island, Texas (2.5), and Colorado (2.66) are lower.

Alaska, Arkansas, Main, Missouri, New Hampshire, North Dakota, Ohio (3.5), Alabama, Nebraska, New York, South Carolina, and Wyoming (4), New Mexico (5), District of Columbia and Utah (7).

Given such high values no state is likely to be significantly disproportionate although districts within the state maybe. But comparatively CA is doing better in this regard than the nation as a whole with respect to what Larry P. set out to do.

So before you act on CASP's guidance on the memorandum…

- Make sure to read it all the way through and answer the hard questions about, have you as a school psychologist and/or your district/LEA/SELPA significantly disproportionate or close to in any of these categories for the Black or African American students you serve?
- Have you as a school psychologist and/or your district/LEA/SELPA received continuing education on best practices in addressing the needs of the Black or African American students you serve (LCAP).

How to find out if your district is significantly disproportionate?

Overview

https://www.cde.ca.gov/sp/se/qa/disproportionality.asp

This main page.

https://www.cde.ca.gov/sp/se/qa/sigdisp.asp

This is a list for districts sig diff for 2021 2022

https://www.cde.ca.gov/sp/se/qa/sigdisplea.asp

This is a list for districts sig diff for 2022 2023

https://www.cde.ca.gov/sp/se/qa/sigdisplea2022.asp

Does Larry P. injunction still apply to all special education disability categories?

<u>According to the memo, CDE is no longer expanding the Larry P. injunction to all other disability categories.</u>

Memorandum from Sept 14, 2022, "This memo reflects the most current federal and state statutory, regulatory and case law, and supersedes any previous guidance on this issue." In Crawford v. Honig (1992) the Court ruled against CDE's 1986 Larry P. Settlement Agreement that expanded the Larry P.'s injunction to all 13 special education categories. The Court ruled that the Larry P. injunction applied only to the assessment of EMR and its equivalent, which is ID. Two Memorandums were generated by CDE, 1992 and 1997. Both Memorandums Of Understanding indicated that regardless of the Crawford v Honig decision, CDE would still apply the Larry P. injunction to all disability categories.

Does Larry P. injunction still apply to all special education disability categories?

<u>According to the memo, CDE is no longer expanding the Larry P. injunction to all other disability categories.</u>

As the CDE Memorandums are not law and in fact go against the court's decision, this current Memorandum clarifies that what the Larry P. ruling is to apply toward, ID and class placement decision of ID like classes only. "So long as LEAs follow legal requirements, generally speaking they have discretion in selecting which particular assessments to use in determining eligibility for special education."

Does this mean that tests of intelligence and/or tests of overall cognitive ability can be given to African American students for all other disabilities besides ID? Can IQ tests be used for identification of Specific Learning Disability (SLD)?

Yes, as long as ID is not a suspected or potential area of disability.

CASP recommends using best practice for all students being assessed for special education, which is by starting with Record review, Interviews with family and staff, and Observation(s).

This is the RIO of RIOT and the reason for T, "Testing" being at the end is intentional as the RIO informs what we are assessing for. The Sept 14, 2022 carefully reminds school psychologists of the laws and regulations to be included and considered as part of an evaluation for a SLD. By doing so we can address concerns if ID is an area of suspected disability, or a disability area that was not suspected but based on ROI is now a possibility.

To address potential ID, look at Adaptive Behavior:

- If "subaverage…deficits in adaptive behavior." are not present, then ID can be ruled out and there are no restrictions regarding intelligence tests or overall measures of cognitive ability being used for African American students.
- If subaverage Adaptive Behavior deficits are present and not better explained by Other Health Impairment (OHI), Emotional Disturbance (ED), Traumatic Brain Injury (TBI) or another disability area, and/or there is no evidence to support stronger problem-solving skills beyond assessed adaptive behavior (CCR 3030(b)(6), ID cannot be ruled out. In this case for African American students the ban would remain in effect, unless further information is gathered that can rule out ID.

To address potential ID, look at Adaptive Behavior:

- Using this along with other measures such as dynamic assessment, mediated learning, and/or other tasks that can indicate competency and/or skills outlined in the 1989 Larry P Task Force Report as well as the 2012 Best practices guidelines for the assessment of African American students. Cognitive processes manual. Diagnostic Center North, California Department of Education is also recommended.

Why is CASP so confident of this interpretation?

We are confident because of the wording in the Sept 14, 2022 Memorandum and our discussions with CDE "**So long as LEAs follow legal requirements, generally speaking they have discretion in selecting which particular assessments to use in determining eligibility for special education**[4]. When assessing for a learning disability, **LEAs are not required to consider whether the student has a severe discrepancy between intellectual ability and achievement**… **When assessing for a learning disability using a severe discrepancy model, LEAs are not required to use IQ tests to determine intellectual ability**[6]**" If the prohibition for Intelligence/Overall Cognitive Ability tests remained as part of an evaluation for SLD, CDE would have explicitly said they cannot be used instead of just quoting existing special education law as it has done in the 1992 and 1997 Memorandum.**

Things to carefully consider before changing your current practice

Your LEA should consult with your SELPA and their interpretation of the Sept 14th, 2022 Memorandum. They will have been made aware of the information shared in this CASP document. Ultimately, school psychologists must follow their LEA's directives regarding any change in practice in this area.

CASP's December 11, 2017 board approved paper https://casponline.org/pdfs/publications/larryp/1.%20Regarding%20African%20American%20Student%20Achievement%20and%20Success.pdf) contain in its conclusion, these statements and concerns: "CASP has shared and will continue to share these best practices at its annual conventions and institutes."

"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."

"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 mandating 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 has been found to have significantly disproportionate not only in ID or SLD identification, but for ED, OHI, Students Disciplined less than 10 out of school days, or Students Disciplined more than 10 out of school days. By addressing the needs of all students through the district’s Multi-Tier System of Supports with appropriate academic (which will soon include mandated Dyslexia screening K-2), behavioral interventions (that should include social emotional learning and for areas touched by violence trauma informed supports), listening to and working with parents and the community as a whole, will lead to better outcomes for students.

If you are concerned your LEA is not prepared, consult with your SELPA about required resources. CASP offers training on this and many other topics that benefit the practice of school psychology. Documents on this topic can be found at CASP website CASPonline.org in the Resources section (https://casponline.org/resources-for-school-psychologists/) under Resources by Topic Anti-Racism. If you have specific questions, please do not hesitate to contact us.

Additional Questions?

Please go through my website: jameshiramoto.com

And click on the Contact Me button.

Or email me at help@jameshiramoto.com