

CASP's Response to CDE's Memorandum on Special Education of African American Students - Sept 14, 2022

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History:

- In 1979 the 9th Circuit Court decision in *Larry P. v Riles* limited the use of IQ tests in California and those that purported to be substitutes for IQ tests for African Americans for the eligibility of EMR (Educably Mentally Retarded) and EMR classes because the court determined them to be biased based on evidence presented.
- In 1986 the *Larry P. Settlement Agreement*, expanded the court 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 special education eligibility handicapping conditions.
- In 1992 the 9th Circuit Court decision in *Crawford v Honig*, concluded that the expansion of the ban by the CDE to all 13 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).
- In 1992 and 1997 CDE wrote subsequent memorandums that stated regardless of *Crawford v Honig* that the ban on intelligence tests and their equivalents for African American students would still be enforced.
- **That has been the practice in California, however the latest CDE Memorandum changes that.**

On September 14, 2022, the California Department of Education (CDE) issued a Memorandum on Special Education of African American Students. It was intended to clarify assessment practices for African American students. Despite the memo's intent, confusion on the use of IQ tests for African American students remains. Seeking clarity, CASP spoke with representatives from CDE, including the previous State Director of Special Education, Heather Calomese (who was the author of the Memorandum), as well as current CDE Special Education leadership. Based upon CASP's conversation with the CDE and our reading of the Memorandum we believe the following information to be clear:

- **Is there a modern day equivalent of EMR and is the original Larry P. injunction still in place? Yes to both questions.** 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.” 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.**
- **Does the Larry P. injunction still apply to all special education disability categories? According to the memo, CDE is no longer expanding the Larry P. injunction to all other disability categories.**

 - 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 currently 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. **As CDE Memorandums are not law and in this case past memorandums went against the court’s decision (Crawford v Honig), this current Memorandum clarifies what the Larry P. ruling is to apply toward, ID eligibility and special education placement decisions in ID 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.” (Memorandum from Sept 14, 2022). **If CDE intended to continue the expansion of the ban to all other disability categories, they would have addressed it within that statement. So unless ID is a suspected area of disability, school psychologists are able to exercise their judgment on what assessment tools (IQ tests) to use or not.**

- **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.
 - 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.
- 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 education⁴. 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 ability⁶”**
 - **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 written paper on the topic (<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.

Resources

Sullivan & Proctor NASP -

[https://www.nasponline.org/publications/periodicals/spf/volume-10/volume-10-issue-3-\(fall-2016\)/the-shield-or-the-sword-revisiting-the-debate-on-racial-disproportionality-in-special-education-and-implications-for-school-psychologists](https://www.nasponline.org/publications/periodicals/spf/volume-10/volume-10-issue-3-(fall-2016)/the-shield-or-the-sword-revisiting-the-debate-on-racial-disproportionality-in-special-education-and-implications-for-school-psychologists)

Woods & Graves CASP (CSP) -

<https://link.springer.com/journal/40688/volumes-and-issues/25-2>

Codrington & Fairchild ABPsi -

<https://www.abpsi.org/pdf/specialedpositionpaper021312.pdf>

APA Publications

<https://www.apaservices.org/advocacy/news/black-youth-mental-health>

<https://www.apa.org/news/apa/2023/black-youth-mental-health>

<https://www.apa.org/pi/families/resources/task-force/resilience-af-am>