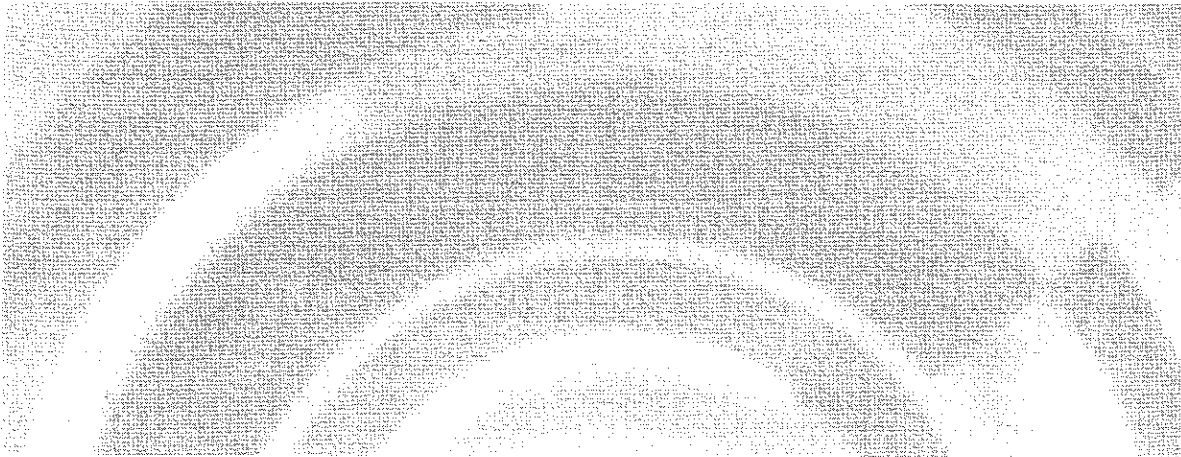


Week 3

Chapter 6

The SAGE
Handbook of
**Special
Education**



Edited by
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The disproportionate placement of ethnic minorities in special education

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Ethnic disproportionality in special education refers to the fact that students from certain historically excluded minority groups have been placed in special education programs at rates that are disproportionate to their presence in the student population as a whole.

For a variety of reasons that will be explained in this chapter, this pattern, noted in the US since the inception of the Education of All Handicapped Children's Act (EHA) in 1975, has been the source of controversy regarding whether disproportionality represents discriminatory decisions that result in the excluding or stigmatizing of historically oppressed minorities. The EHA was re-authorized in 1990 under the name of The Individuals with Disabilities Education Improvement Act (IDEIA, 2004).

While the term disproportionality includes both over and underrepresentation, the focus of this chapter will be on overrepresentation, since this continues to be the main issue of concern to educators. Further, the concern with disproportionate placements is confined to the 'high incidence' disability categories, which are determined by clinical judgment, rather than the 'low incidence' categories, which rely on evidence of biological or

organic anomalies. Of the 13 disability categories identified by the IDEIA, consistent evidence of minority disproportionality has been found only in Specific Learning Disability (more commonly known as LD), Mild Mental Retardation (MMR), and Emotional Disturbance (ED). According to Donovan and Cross (2002), in the low incidence categories, 'few would question the professional judgment or accuracy of a diagnosis' (p. 54). In contrast, the lack of proof in the high incidence categories challenges the veracity of the clinical judgments leading to disproportionality, and points to the elusive nature of the dividing line between low achievement and 'disability'.

Although the focus of this chapter is on the situation in the US, low achievement and/or special education placement of certain ethnic minority groups are of concern in many countries. An international view provides us with a key insight: first, it is not race, as a biological construct, which accounts for low educational achievement, but rather the historical status of a given 'minority' group within a society. Thus, 'race' is really a proxy not just for low socioeconomic status as some have

argued (MacMillan & Reschly, 1998), but for an enduring history of discrimination and exclusion. A second insight essential to the argument of this chapter is that the high incidence disabilities represent social constructions by which relatively arbitrary points on the continuum of achievement are designated as 'disabilities'. When both race and disability are viewed as socially constructed categories, it is easy to see how the educational difficulties of minorities are statements about societies rather than about children. In brief, the argument of this chapter is that the main reason the overrepresentation of ethnic minorities in programs for students with 'high incidence' disabilities is problematic is that it is rooted in a paradigm of categorization and classification which, despite good intentions, tends to perpetuate inequities historically ingrained in the society.

THE IMPACT OF ETHNIC MINORITY STATUS ON EDUCATIONAL ACHIEVEMENT: CROSS-CULTURAL VIEWS

Cross-cultural studies of the educational performance of minorities indicate that the lowest achievers are typically those minority groups who have experienced a history of exclusion and stigmatization within a society. Integral to this pattern are education systems with a history of having provided inferior schooling for these groups and having excluded their cultures or languages from the curriculum. It is clear that, while these minority groups may or may not be racially different from the mainstream, their relegation to the lowest rungs of the society reflects their history as outsiders or dominated peoples within the society. In discussing the 'social construction of difference', Gillborn and Youdell (2000) observed that groups defined socially by gender, ethnicity, race, or class are 'defined by social convention, not by inherent, fixed, or "natural" differences' (p. 4). Hence, there can be no assumption of intrinsic differences in group members' capacity to participate successfully in the educational arena.

Collections of studies by Skutnabb-Kangas and Cummins (1988) and Gibson and Ogbu (1991) exemplify the global pattern of minority underachievement. For example, 'outsiders' include Koreans in Japan, Finns in Sweden, West Indians, Pakistanis, and Bangladeshis in Britain (Gillborn & Youdell, 2000; Office of Standards for Education, 2002), and Moroccans in Spain (Escandell, 2002). These studies and others show that indigenous minorities fare even worse than immigrant groups: To name but a few – the Burakumin in Japan (De Vos & Wagatsuma, 1966), the Sami in Finland, Aboriginal natives in Australia (Jordan, 1988), the Maori in New Zealand (Barrington, 1991), and Gitanos ('gypsies') in Spain (Enguita, 1999).

The point at which low achievement comes to be interpreted as 'disability' represents the intersection of general and special education. Besides the US, only a few countries have so far explicitly noted that disproportionately low minority achievement leads to disproportionately high placement in special programs for the 'disabled'. These cases support the view that historically oppressed minorities are particularly vulnerable to inappropriate use of the construct of 'disability', with the intentional or unintentional result of further discrimination. Most notably, in the Czech Republic, the charge that special classes were being used for the purpose of discrimination was brought to public attention in 1999. The Roma, a formerly nomadic people commonly known as 'gypsies', whose history is marked by exclusion and discrimination across Europe, charged that their children were grossly overrepresented in special schools for the disabled. While the court ruled that discrimination could not be proven, there was no dispute that 50 per cent of Romani students were in special schools as compared with 1.80 per cent of non-Roma students (European Roma Rights Center, 2005). Similar charges were made in Slovenia, where the government has set up a commission to investigate the overrepresentation of Roma children in classes for children with 'special needs' (Petricusic, 2004).

A review of information on discrimination in education against immigrant and non-migrant ethnic minorities in 15 member states of the European Union (Luciak, 2004) pointed to the socially constructed nature of the identity of minorities. Noting the difficulties of gaining accurate comparative data, Luciak cited differences in data collection, terminology and classification of ethnic groups, different types of ethnic groups, and different educational systems. For example within the European Union, nine of the 12 member states identify students by their national origin, so that children born in the country of immigrant parents 'disappear' from the statistics on minority groups. In the UK, by contrast, school records distinguish students on the basis of a mixture of skin color and nationality, such as White (with many subcategories based on national origin), mixed, Asian or Asian British, Black or Black British. Further, it is notable that the Roma are identified in Europe as an ethnic rather than a racial group but, in Britain, they are among the groups identified as 'White' (Luciak, 2004). Despite these differences in data collection, Luciak's study revealed that several member states evidenced an overrepresentation of migrant and ethnic minority groups in 'educational institutions with lower academic demands, an overrepresentation in special education, as well as disproportional early dropout and expulsion rates' (p. 2). As in the studies of indigenous groups cited earlier, these difficulties were evidenced more intensely by students from non-migrant ethnic groups, a pattern that Luciak linked to the distrust in the educational system engendered by 'a history of social exclusion, assimilationist tendencies, and a monocultural orientation in education' (p. 3).

In the US, the concern with race as the main marker of minority status has resulted in a categorization system that simultaneously reflects the nation's over-simplification of race, yet also its increasing racial heterogeneity and complexity. For example, the five official 'racial' categories represent a mixture of skin color and ethnic designations, namely,

'White', 'Hispanic (regardless of race)', 'Black (not of Hispanic origin)', 'Asian/Pacific Islander', and 'American Indian/Alaskan Native'. It is clear that Hispanic and Asian/Pacific Islander are broadly generalized categories that include a wide variety of racial, ethnic and linguistic features, while White, Black and American Indian/Alaskan Native presumably represent recognizably discrete racial, and possibly, ethnic groups. It seems the US classification system does not consider color an important dimension in identifying its 'Asian' and 'Hispanic' citizens, but does care to distinguish between citizens who are White, Black, or American Indian. This approach is not as nonsensical as it appears. Rather, it is a reflection of America's historical and continuing preoccupation with a presumed Black/White binary and with the history of exclusion and oppression of what Ogbu (1987) referred to as America's involuntary minorities – those of African origin who were brought to the North American continent through enslavement and the native peoples of the continent who were conquered by the European invasion.

As Ogbu (1987) argued, a history of oppression also includes peoples whose nations, through historical annexation or colonization, stand in a subservient relation to the dominant society. Thus, a look at the performance of Hispanics in the US, for example, shows those of Mexican and Puerto Rican origin to be less successful in schools than those who came to the US with a history relatively free of US domination.

Similarly, an intriguing example of this trend exists within the 'Asian/Pacific Islander' sub-group known as Native Hawaiians, who are known to be disproportionately represented in programs for MMR (US Department of Education, 1999). This is the only group of Americans of 'Asian' origin whose culture, language, and religion were outlawed by virtue of conquest by the US, and who therefore fit Ogbu's categorization as an 'involuntary' minority group. Whether or not one agrees with Ogbu's theory, the trends within sub-groups of minorities indi-

cate that historical oppression in the US has left a legacy of structural discrimination that is hard to undo and that continues to have the most negative impact on those ethnic groups who experienced intense historical exclusion.

The concept of the social construction of categories, which was first explicated by Berger and Luckman (1966), is now a well-known framework for understanding how social decisions come to be reified through institutionalization. As with race and minority status, the high incidence disability categories, as defined in the US, are socially constructed categories that have little to do with disability and everything to do with the effects of the society's historical cultural agenda on the education system. I will begin with an overview of the extent of ethnic overrepresentation in the three categories of concern, LD, MMR, and ED. I will then discuss the implications of these patterns, placing the discussion in the context of historical educational structures in the United States.

RATES OF ETHNIC DISPROPORTIONALITY IN THE HIGH INCIDENCE CATEGORIES

The continuing pattern of ethnic disproportionality in the US has been so troubling that the Office for Civil Rights (OCR) has collected data on the high incidence categories since the early 1980s, and the Office of Special Education Programs (OSEP) has done so since 1997. In addition, two panels of the National Academy of Sciences (NAS) have studied the issue (Heller, Holtzman, & Messick, 1982; Donovan & Cross, 2002). In outlining the extent of the problem I will rely on data from the latter report, which offers a synthesis of current knowledge on the topic.

In studying the extent of ethnic disproportion in special education, scholars have determined two main ways of describing the data – a composition index and a risk index; an odds ratio can also be calculated, comparing the risk rates among groups (Donovan & Cross, 2002). The composition index exam-

ines ethnic composition in a program: that is, it compares the ethnic group's composition in the student population to their composition in the special education program. For example, the OCR data for 1998 revealed that African Americans constituted approximately 17 per cent of the school population but 33 per cent of the mentally retarded (MR) population, indicating that they were placed in MR programs at almost double their rate in the school population as a whole. The risk index examines the rate of placement within an ethnic group and compares it to the rate within other ethnic groups. For example, OCR data for 1998 indicated that 2.64 per cent of all African American students were placed in MR programs, as compared with 1.28 per cent of American Indian/Alaskan Natives, 1.18 per cent of Whites, 0.92 per cent of Hispanics, and 0.64 per cent of Asian/Pacific Islanders. While there are advantages and disadvantages to either perspective, the finding of relative disproportionality obtains with both methods. However, the risk ratio is more economical for purposes of reporting since it does not require noting percentages in both the program and the school population.

Since we know that the 'high incidence' and 'low incidence' categories have distinctly different profiles, it is not helpful to aggregate data across these categories. Differential patterns of disproportionate placement occur across the high incidence disability categories, over time, across geographical regions, and even across school districts. Looking first at the general pattern of disproportionality that currently exists, Figure 6.1 displays the risk indices for all ethnic groups in the categories of LD, MMR and ED as reported by Donovan and Cross (2002). In MMR, the predominant pattern of overrepresentation is for African American students, who are more than twice as likely as Whites to be so designated. In LD, American Indian/Alaskan Native students are at the greatest risk of placement, although the rates are high for all but Asians. In ED, African Americans are one and a half times as likely as Whites to be so identified. Overall, despite

many regional variations on the pattern of overrepresentation, Donovan and Cross (2002) concluded that, 'both black and American Indian/Alaskan Native children are at heightened risk for identification as having mental retardation and emotional disturbance' (p. 82).

Figure 6.1 OSEP data by disability and ethnic group: risk index

(Source: adapted from Donovan & Cross, 2002, p. 57. Reprinted with permission from *Minority Students in Special and Gifted Education* ©(2002) by the National Academy of Sciences, courtesy of the National Academies Press, Washington, DC)

Mental Retardation	Risk Index
AI/AN	1.20%
A/PI	0.57%
Black	2.63%
Hispanic	0.98%
White	1.12%
Total	1.33%
Learning Disability	
AI/AN	7.30%
A/PI	2.25%
B	6.58%
H	6.81%
W	6.08%
Total	6.14%
Emotional Disturbance	
AI/AN	1.00%
A/PI	0.27%
B	1.56%
H	0.68%
W	0.98%
Total	1.10%

(AI/AN: American Indian/Alaskan Native; A/PI: Asian/Pacific Islander)

Beyond these general patterns there are many contradictory trends. First, we note the dramatic changes in these figures over time. According to Donovan and Cross (2002), between 1974 and 1998, the following trends obtained in the student population as a whole: a reduction in the use of MMR from 1.58 per cent to 1.37 per cent; an 'epidemic' (p. 47) increase in the use of LD, from 1.21 per cent to 6.02 per cent; and an increase in the use of ED, from just over 1 per cent to just over 5 per cent.

Second, when examined by geographical region, the issue of variable categorization

intensifies. Zhang and Katsiyannis (2002), analyzing nation-wide data from the 22nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA) and the National Center for Education Statistics (NCES), found extensive variability in LD, MMR, and ED placement rates among Hispanics and African American students according to five geographic regions of the nation. Specifically, rates of placement of Hispanics for all disabilities were significantly higher in the North East than in the other five regions, while rates for African Americans in all three categories varied widely by region. On the other hand, research by Artiles, Rueda, Salazar and Higareda (2002) arguing for a more discriminating examination of subgroups within the population of English Language Learners (ELL's), reported that secondary age ELLs in 11 urban school districts in California were twice as likely as English-proficient students to be placed in special education programs. Overall, Donovan & Cross (2002) indicated that, while nation-wide figures show African Americans and Hispanics to be not overrepresented in LD, the rates differ widely across states:

The nationally aggregated data have been interpreted to suggest no overrepresentation of either black or Hispanic students in LD. But state-level data tell a more complex story. For black students, for example, the risk index ranges from 2.33 percent in Georgia to 12.19 percent in Delaware. For Hispanic students, the risk index ranges from 2.43 in Georgia to 8.93 in Delaware. Clearly there is overrepresentation for these two minorities in the LD category in some states. (p. 67)

The third dimension of variability is at the level of the school district. One line of work has examined the relationship between socio-demographic features of school districts and patterns of placement by each of the high incidence disability categories as well as by gender (Coutinho, Oswald, & Best, 2002; Coutinho, Oswald, Best, & Forness, 2002; Oswald, Coutinho, Best, & Nguyen, 2001). Focusing on two competing hypotheses – either that there is bias in the placement process, or that

ethnic groups are differentially susceptible to disabilities – these researchers found such complexity in the data that they concluded that disproportionality is ‘multiply determined’ (Coutinho, Oswald, & Best, 2002, p. 55). For example, just taking the variable of the relative presence of White and non-White students in the school population, the researchers found exactly opposite effects for Black as compared with American Indian students. In the ED category, placement of Black students increased in the presence of *high White enrolment* while, conversely, ED placement of American Indian students increased in the presence of *high non-White enrolment*. Moreover, although these researchers’ findings indicated that poverty increases the likelihood of special education placement, even poverty worked in opposite directions for Blacks as compared to Whites, with White students more likely to be labeled LD in higher income neighborhoods, and Black students more likely to be so placed in low income neighborhoods. With relation to the EMR category, the opposite was true – that Black students were more likely to be so labeled if they were in higher income neighborhoods with a higher proportion of White peers.

Eitle (2002) found similar, though even more complex patterns. Based on national survey data of 1,203 school districts, she examined the relationships between disproportionality and variables representing school district structural factors, local racial and political-economic structures, and school desegregation politics. Similar to Oswald et al. (2001), Eitle found increased Black overrepresentation in EMR programs in the presence of high White economic resources, but also in districts where there was court ordered school desegregation and in southern regions with a history of *de jure* segregation. Eitle interpreted these patterns of overrepresentation as ‘alternative forms of segregation’ (p. 599) and called for research that could delineate the social processes by which placement decisions are made.

Overall, the variability across categories, time, and place strongly contest the belief that

the high incidence disability categories represent meaningful interpretations of children’s difficulties in schooling. Rather, much evidence points to the enduring impact of America’s social history on the educational sorting of its students.

THE SORTING AND CLASSIFYING PARADIGM: THE CONVERGENCE OF RACE AND DISABILITY

Race and ability are inextricably woven into the history of American public education. The society’s project of racial exclusion was reinforced by the eugenics movement, in which presumed inherited deficits became inseparable from beliefs regarding the racial inferiority of non-White peoples. The nineteenth-century common school movement represented the society’s main tool for accomplishing a cultural program of ‘Americanization’ or assimilation of immigrant Whites and the marginalization of both immigrant and native non-Whites. In contrast to mandatory schooling for White students, policies such as separate schooling for Native Americans and anti-literacy laws regarding slaves reflected the fact that ‘White supremacy defined people of color as nonassimilable, ineradicably different, and therefore not full citizens’ (Tyack, 1993, p. 20).

Until the middle of the twentieth century, discrimination on the basis of ability and race represented two parallel streams of exclusion within the educational system. The Civil Rights movement of the 1950s–1960s, however, with its premise that separate cannot be equal, constituted the point on which these excluded streams would converge. The school desegregation ordered by the *Brown* (1954) decision represented the first official step towards the vision of education as a vehicle of equity. While the moral power of this decision remains unquestionable, it is also true that it resulted in at least two unintended consequences: first, racial desegregation, despite representing the beginnings of equal access to education, meant a loss of solidarity

and a re-framing of identity for many African American children who had to struggle with the experience of being rejected and viewed as deficient in integrated schools (Ferri & Connor, 2005; Irvine & Irvine, 1983; Morris & Morris, 2000; Siddle-Walker, 1996). Second, the reluctance of many states to comply with the *Brown* ruling resulted in the use of classes for 'slow' or 'mildly retarded' students as a means of continuing the marginalization of African American and other traditionally devalued groups.

This covert form of racial segregation was officially recognized by the courts in the 1971 case of *Johnson v. San Francisco Unified School District* (Prasse & Reschly, 1986). Of several subsequent cases charging racial discrimination in IQ testing and tracking, the most famous, *Larry P. v. Riles* (1979) and *Marshall et al. v. Georgia* (1984), resulted in opposite judgments. The court in the *Larry P.* case concluded that IQ tests were culturally biased against African Americans while the courts in the *Marshall* case disagreed. Despite different outcomes of these cases, however, the continuing salience of race was underscored by the fact that in neither case did the school districts deny the existence of significant overrepresentation of African Americans in low tracks and programs for the mildly retarded. Even if, as Reschly, Kicklighter, and McKee (1988) suggested, the discrepant placements were a result of poverty rather than race per se, this in itself points to the enduring intertwining of racism, economic inequity, and educational outcomes. The issue of overrepresentation in MMR programs was also brought to the courts on behalf of Mexican American and Native American children, the focus of these cases being language of testing (*Diana v. State Board of Education*, 1970; *Guadalupe v. Tempe*, 1972). The consent decrees in these two cases had immediate and lasting repercussions on educational policy and practice in the form of the requirement that, wherever feasible, testing be done in the native language.

THE CATEGORICAL FRAMING OF DISABILITY UNDER THE EHA/IDEIA

This history of classification and exclusion by race and disability left an indelible mark on the special education system. Essentially, the provisions of the EHA superimposed one more layer of categorization upon a system already built on a sorting and classifying paradigm, into which racial and socioeconomic inequities were tightly interwoven. In the words of Skrtic (1991), special education represents 'the institutional practice that emerged in the 20th century to contain the failure of public education to realize its democratic ideals' (p. 46). The categorical framing of the high incidence categories of LD, MMR, and ED purported to construct them as distinctly different conditions, but this effort has been confounded by definitional dilemmas that reflect close ties to issues of race and socioeconomic status.

Mental retardation or learning disability?

The construct of MMR is defined as 'substantially sub-average' development over a range of developmental tasks, to be determined by a score of 70 or less on a standardized IQ test. Prior to 1969, the cut-off point was 85, underscoring the socially constructed nature of the definition. The construct of Specific Learning Disability (LD) purports to represent an entirely different population, and was proposed in the 1960s as a category that would encompass children who were having serious difficulties in acquiring academic and/or communication skills, but whose overall intelligence appeared to be within the normal range.

The LD construct, first defined by Kirk (1962), grew out of the early work of researchers such as Strauss and Werner (1942) whose discovery of certain deficits in reading, writing, and/or communication among war veterans with known brain injury led to speculation that the presence of such deficits in otherwise normally developing

children might also indicate brain injury. Despite the leap in logic in making this inference, the field of special education quickly became enamored of the notion that normally developing children who demonstrated deficits in school learning had probably suffered 'minimal brain injury'. Although that original concept has since been discredited, research has continued in search of an organic cause for the symptoms of LD. In a series of studies, Shaywitz et al. (2003), using brain imaging technology during the performance of a reading task, noted differential patterns of brain activity between good readers and poor readers. Up to this time, however, these studies have not provided evidence of the direction of these effects, that is, of whether differential brain activity is a result or a cause of deficits in reading skills. Moreover, their finding that the brain activity of poor readers changed after intensive instruction in reading strongly suggests that the brain patterns are the result of reading and not the other way around.

The notion of an intrinsic cause remains a central tenet of both MMR and LD constructs. In the case of MMR, it was sufficient to require that developmental delays be manifested before the age of 18, with measures of deficit on tests of both intellectual and adaptive functioning. For LD, however, the tenet of intrinsic deficit resulted in a convoluted set of criteria for diagnosis, much of which revolved around the exclusion of competing explanations. Thus, the definition relied upon the logic of default, by which the clinician should determine that the child's difficulties were caused *neither* by other disabilities, such as mental retardation or sensory impairments, *nor* by social and environmental disadvantages such as poverty or family stress. Another central criterion was that there be evidence of a discrepancy between a child's intellectual potential as measured on an IQ test and his/her actual achievement. Thus, the element of *unexpected underachievement* was essential to a diagnosis of LD.

Keeping in mind the history of racist beliefs that were only just being challenged at

the time of the emergence of the LD construct, it is not hard to see how the foregoing definitions would come to work, in a paradoxical way, against ethnically diverse students, by making it less likely that low achievers within these groups would be assigned an LD label. First, LD was clearly a more desirable diagnosis than MMR, since it is less stigmatizing to be seen as having accidental damage to specific areas of the brain, than as having global deficits that affect one's total development. Sleeter (1986) argued that the differential social power of Whites was the driving force behind the pattern that quickly emerged in the years just preceding the EHA – a pattern of disproportionate incidence of White students in the LD category, as contrasted with the disproportionate incidence of non-White students in the MMR category. Updating this argument, Ferri (2004) noted that, as the placement of Black and Hispanic students in LD programs becomes more common, there is a concomitant and increasing focus on 'dyslexia and research aimed at identifying subgroups of students labeled as having LD' (p. 512). Ferri queried whether this development might 'serve the unanticipated function of resegregating the category of LD in ways that mirror earlier racial hierarchies' (p. 512).

In addition to the relationship between social desirability and social power, there was the fact that the LD definition itself would exclude many children whose environments could be construed to account for their learning difficulties – that is, children living in poverty, a disproportionate number of whom continued to be non-White. Further, as Collins and Camblin (1983) cogently argued, the cultural bias inherent in IQ tests meant that ethnically diverse students would be likely to earn scores that were too low to allow for the required discrepancy between IQ and achievement. In the absence of this discrepancy, minority children were more likely to be diagnosed as MMR than LD.

The result of these definitional and social discrepancies between the MMR and LD categories was that, from the time of the emer-

gence of the LD category in the 1960s until close to the end of the century, the overrepresentation of African American students in special education occurred in the MMR category. Over the past decade, however, an increase in representation of Black students in the LD category has been noted. For example, research by Gottlieb, Alter, Gottlieb, and Wishner (1994) found that 1 in 6 students classified as LD in urban New York schools met criteria for MMR. MacMillan and Reschly (1998) and MacMillan, Gresham, and Bocian (1998) reported similar findings in California, and interpreted this trend as a reluctance on the part of school personnel to use the MMR category and to use the LD category to serve 'an undifferentiated and non-specific group of children' (p. 324).

Coutinho, Oswald, and Best (2002), noting that increasing poverty was associated with higher rates of Black, Hispanic, and Asian male placement in LD programs, concluded that the clause excluding environmental effects was not being applied, and pointed out that this could be construed as a biased process that could result in disproportionately large minority placements in LD. These authors observed, however, that the converse to this argument could also be true – that if we believe that poverty and other environmental detriments do in fact contribute to LD, then to exclude them would mean excluding many minority students from services they need. Indeed, the conundrum of the LD category's desirability/undesirability was reflected in the case of *Crawford v. Honig* (1994), in which African American parents charged that their children were being excluded from needed LD services by virtue of the California courts ruling (*Larry P. v. Riles*, 1979), against the use of IQ tests for any purpose.

The debate around the IQ achievement discrepancy model has resulted in recent developments in research on LD, which propose an approach that seeks to rule out the possibility that poor achievement may simply be the result of poor instruction. Thus, identification of LD would be made only after intensive, tiered instruction has been implemented (for

example, Vaughn & Fuchs, 2003). The strength of this 'response to instruction' (RTI) movement was marked by a symposium of researchers organized collaboratively by Vanderbilt University and the University of Kansas (National Research Center on Learning Disabilities, 2003) and was acknowledged by the 2004 reauthorized IDEA as one alternative to the IQ-discrepancy model.

Emotional Disturbance, the third high incidence category with which we are concerned, is equally problematic in terms of definition and equally susceptible to social influences and to co-morbidity with cognitive difficulties such as LD or MMR (Montague & Rinaldi, 2001). The federal regulations for ED require that a child consistently, and in different settings, exhibits mood and relationship difficulties that cannot be explained by other disabilities. While the more extreme end of the spectrum includes mental illnesses such as schizophrenia, at the milder end it is evident that professional judgments will vary according to personal tolerance of non-compliance as well as to the social and cultural norms of different groups. Several authors have pointed to the many ways in which culturally conditioned behaviors may be interpreted depending on the cultural lens with which they are viewed (Cartledge, Kea, & Simmons-Reed, 2002; Obiakor et al., 2002; Townsend, 2000). Further, an increasing body of literature notes the disproportionate use of punitive disciplinary practices against African American youth (Leone, Walter, & Wolford, 1990; Maag, 2001; Skiba, Michael, Nardo, & Peterson, 2000).

In sum, the ambiguities and contradictions outlined above, and the historical ties of the categorizing paradigm to racism and classism in the US, undermine the validity of the high incidence disability categories. The NAS report (Donovan & Cross, 2002) was clear in its assessment of these ambiguities:

In terms of cognitive and behavioral competence, students fall along a continuum ... there is no black and White distinction between those who have disabilities or gifts and those who do not. At the far ends of the continuum there is little dispute about

a child's need for something different ... But as one moves away from the extremes, where the line should be drawn between students who do and do not require special supports is unclear. A variety of forces push on the lines from opposing directions.

We have argued that where along the continuum of achievement the lines are drawn for specialized education is artificial and variable. Perhaps of greater concern, however, are factors that affect where a student falls along the continuum. For students having difficulty in school who do not have a medically diagnosed disability, key aspects of the context of schooling itself, including administrative, curricular/instructional, and interpersonal factors, may contribute to their identification as having a disability and may contribute to the disproportionately high or low placements of minorities. (pp. 25–27)

Coming as it does from the most influential and comprehensive publication on the topic of overrepresentation, this statement reveals the essential fallacy of the notion of high incidence 'disabilities'. If it is impossible to say where low achievement ends and disability begins, why should the field continue to use the frame of disability for the provision of services to students in the 'high incidence' categories? In the absence of 'a medically diagnosed disability', is the term 'disability' in fact a misleading misnomer that inappropriately implicates the abilities of minority children and youth? It is evident that these categories are social constructions that fall far short of science.

DISPROPORTIONALITY AND SOCIETAL INEQUITY

Along with many others (Artiles, 2003; Hilliard, 1995; Patton, 1998; Skiba, Knesting & Bush, 2002), I contend that minorities' disproportionately large share of difficulties in schooling represents an extension of the societal inequities to which historically oppressed minorities continue to be disproportionately subjected. As Wilson (1998) emphasized, 'the impact of the structure of inequality' (p. 508) must be understood as the context in which inequitable outcomes occur for individual members of minority groups in all areas of

society. To name but a few from Wilson's list – education, residential patterns, labor market, financial markets, government policies and corporate decisions. Special education, as a discrete arm of the education system, cannot be the sole answer to this mountain of inequity, especially because it perpetuates the deficit view of minority children.

The uniqueness of special education: the criterion of intrinsic deficit

Arguing that ethnic disproportionality in special education represents inequity reflects a painful paradox: why should a program that provides costly and specialized services be construed as inequitable? In the words of MacMillan and Reschly (1998), '*Something weighs so heavily on the minds of critics that it more than offsets these apparently desirable features*' (p. 22). These authors concluded that disproportionality is seen as problematic because of minority stakeholders' suspicion that it is tied to beliefs about inferior genetic endowment, and because special education programs are not seen to be effective. These are, indeed, two powerful concerns. But there is yet another, which is the simple fact that special education is unique in the educational system in its focus on intrinsic deficit. This alone is enough to render it suspect, except in the case of clear-cut (low incidence) disabilities, where performance deficits are incontrovertible, and where, in fact, ethnic disproportionality in placement *has not* been noted. Thus, for example, while Head Start, Chapter I and other compensatory programs for the poor are perceived as additions to children's educational opportunities, special education's unique focus on deficit in the high incidence disabilities is marked by four concerns: placement usually means removal of the child from the general education program; it is often, though not always, imposed rather than freely chosen by parents; there is a requirement for testing to confirm a 'disability'; and there is a societal stigma attached to the concept of disability. Against the context of historical and continuing dis-

crimination, why should minorities trust this process?

Inequity and risk in families and communities

The second NAS report, by Donovan and Cross (2002), in its search for causes of disproportionality, pointed to both home and school environments. In considering the former, the report focused on biological and environmental conditions typically occasioned by poverty, such as high lead content in urban homes, iron deficiency in the diets of infants, and poor access to health care. These were linked to problems such as developmental delay and hyperactivity. The social conditions identified implicated both socioeconomic status and ethnicity or cultural behaviors in matters such as drug or alcohol abuse, child rearing practices, and early educational activities such as introducing children to print or to basic numeracy.

These arguments gave rise to two concerns by critics. First, by not discussing the policy context that allows for such environmental inequities, the report gave the impression of a 'blaming the victim' argument by which minority groups' choices and behaviors were seen as the sources of their children's difficulties (Harry, Klingner, & Hart, 2005). As an example of the effects of policy contexts, the NAS itself, within the same year as its Donovan and Cross report (2002), published a separate report (NAS, 2002) presenting resounding evidence of active discrimination against minorities in health care. The second objection to the NAS's focus on environmental effects was that the report's analysis did not succeed in linking the detrimental practices and influences to actual special education placement rates (Losen & Orfield, 2002).

The notion of lasting effects of detrimental family and community environments has both an intuitive and research based appeal. For example, the work of Sameroff, Seifer, Baldwin, and Baldwin (1993) analyzed the effects of poverty in terms of a group of risk factors, which, when combined, can have

devastating effects on children's mental and physical health. These researchers argued that, since the IQ scores of children in poverty were found to remain stable when tested at early childhood and again in early puberty, this indicates the lasting power of early negative influences. In a similar argument, Blair and Scott (2000) concluded that neonatal factors such as low birth weight and mother's education accounted for low IQ scores in adolescence. There is, however, an important missing piece in these powerful correlational studies: namely, the effects of schooling in the years that intervened between the early measures and IQ testing at puberty.

Inequity and risk in schooling

In the case of the foregoing studies, which point to the lasting effects of pre-natal and neo-natal factors, the lack of attention to the mediating power of 'school risk' (Keogh, 2000) is a serious omission. The reason schooling itself cannot be excluded from a list of risk factors in a study based on IQ scores is that IQ scores represent knowledge and skills that children have had the opportunity to learn both in their homes and schools. A look at the popular Weschler Intelligence Scale for Children (WISC) (Weschler, 1974) test, for example, makes it clear that much of the verbal content represents information that can be learned at the dinner table, from the media and/or in the classroom. The NAS report described these tests as 'measures of what individuals have learned ... reflecting broad, culturally rooted ways of thinking and problem solving' (p. 284). Thus, while a 4-year-old child's home may not have prepared him/her well for the kinds of information valued on IQ tests, it would be reasonable to expect that six or seven years of effective schooling could make a difference to the same child's scores at age 14. When children's scores remain stable on a test that places high value on school learning, it should not be assumed that innate limitations account for this pattern. It is possible that the child has not received adequate schooling. As

Skiba et al. (2002) have argued, the reliability of standardized test scores may be an accurate summary of 'the tragic history of limited cultural and educational opportunity that led to those depressed capacities' (p. 70).

Numerous studies of the quality of curriculum, instruction, and human as well as material resources in schools verify that children living in poverty and many English language learners receive distinctly inferior schooling (Anyon, 1997; Darling-Hammond & Post, 2000; Kozol, 2005). Funding patterns account for the most important variables in the quality of education: teacher quality, class size, physical surroundings, and material resources. Funding structures that rely on property taxes obviously place students living in poverty at risk of inferior schooling. Moreover, Harry and Klingner's (2006) ethnographic study of 12 urban schools noted that decisions regarding hiring, assignment of principals, assignment of teachers to classes, and funding for paraprofessionals worked in favor of students from higher income backgrounds.

Inequity and risk in the special education placement process

Beyond the provision of inferior opportunities to learn, the process that leads to special education placement is often another contributor to the overrepresentation of minorities in special education. The first NAS panel on disproportionality (Heller et al., 1982) argued that disproportionality should be considered problematic if either the precursors to, or the outcomes of, placement are biased or inadequate. This perspective includes poor quality of instruction prior to referral, bias in the referral process, inappropriate or biased assessment, and ineffective instruction in the special education program. The discussion in the previous section focused on the provision of poor schooling prior to referral. In this section I reflect on the subsequent steps that lead to special education placement.

Efforts to determine bias in the placement process have focused on the process and outcomes of referrals. It is well established that

the vast majority of students who are referred for special education evaluation will be tested and the vast majority of those tested will be placed (Gerber & Semmel, 1984; Ysseldyke & Algozzine, 1983). According to Donovan and Cross's (2002), review of this topic, referred children, regardless of ethnicity, typically do exhibit severe academic and behavioral deficiencies for their age. The literature is not clear, however, on whether these children differ significantly from many of their peers who are not referred. Harry and Klingner's (2006) ethnographic investigation of referral processes found wide variability across 12 schools in the same school district, and concluded that although referrals for academic reasons were based on more objective criteria than were referrals for behavioral issues, even academic referrals were seriously influenced by local norms and by concerns about state-wide testing. Similarly, Mehan, Hartwick and Meihls (1986) found that referral and placement decisions were more driven by organizational concerns than by children's needs.

Another thorn in the side of the special education process has been the long standing debate about potential bias in testing. While it is beyond the scope of this review to detail this debate, the highlights must be mentioned. I have already alluded to the contradictory findings of the courts on this issue (see Reschly et al., 1988). Scholars, also, have come to differing conclusions about the possibility of bias (for a comprehensive summary of these studies see Harry, 1994). According to Travers (1982) key interpretations of this issue have turned on a contrast between technical and holistic interpretations of bias, the former focusing on bias in specific test items, as contrasted with the latter, which examine the possibility of an overall depressive effect on a group's scores as a result of cultural dissonance both in the process and content of testing.

Skiba et al. (2002) place the issue in the larger context of societal inequity, which is also the central argument of this chapter. These researchers contend that the historical

and continuing inequities that place minorities at a disadvantage in schools must be considered an essential part of the equation. They state: 'Neglecting the contribution of educational opportunity when interpreting minority test scores may in fact introduce statistical error, regardless of whether a specific test can be shown to be "unbiased" ... Failure to take into account issues of limited educational opportunity for disadvantaged students thus increases measurement error' (p. 71).

In Harry and Klingner's (2006) qualitative study, although school personnel believed that the psychological evaluation provides a scientific gateway to special education placement, the researchers' observation of assessments, examination of documents, and interviews with psychologists, contradicted this belief. These data identified six sources of influence on the assessment: the influence of teachers' informal diagnoses of children's problems; school personnel's negative perceptions of children's families; external pressures for placement, such as the desire to remove low achievers from state-wide testing; the exclusion of information on classroom ecology; variable choice and implementation of assessment instruments; and psychologists' varying philosophical orientations. The researchers concluded that the power of 'unofficial practices and influences' undermined the belief that the assessment is either scientific or objective.

Overall, regardless of proofs of the technical adequacy of IQ tests, the logic of the holistic argument is easy to see. In Hilliard's (1995) words: 'Item content is simply a matter of the arbitrary choices of an in-group of item writers. Certainly the Afro Americans are poorly represented, if at all. To many Afro-Americans the "norm" is abnormal' (p. 197).

Inequity and risk in special education programs

As many have observed (for example, Heller et al., 1982; MacMillan & Reschly, 1998), the problematic nature of ethnic disproportionality in special education cannot be discussed

without asking whether its outcomes are positive and equitable. This means not only whether special education overall has proven efficacious, but also whether minorities' treatment and outcomes are equal to those of their White peers. Key dimensions of concern are, the law's requirement that children be placed in the Least Restrictive Environment (LRE), relative drop-out rates, relative rates of return to the general education program, and overall program quality.

Restrictive programming appears to be the most detrimental effect of the high rates of overrepresentation of Black students in MMR and ED programs (Fierros & Conroy, 2002). While the case of *Corey H. v. Chicago* (1992) resulted in stringent requirements that the school district and the state of Illinois correct its pervasive use of restrictive placements for students with MMR (Soltman & Moore, 2002), the disproportionate segregation of minorities through restrictive programs continues to be evidenced across the country. The Twenty Second Annual Report to Congress (US Department of Education, 2000) indicated that, in 1999–2000, while 47.3 per cent of all students with disabilities were served outside of the regular classroom for less than 21 per cent of the day, when this is disaggregated by ethnicity, only 35.3 per cent of Black students met this criterion as compared with 52.9 per cent of Whites. Moreover, 31 per cent of Blacks spent more than 60 per cent of the day outside of the regular class as compared with only 15.3 per cent of Whites.

Parrish (2002) reported that disaggregated data on specific placements by ethnicity are not readily available in most school districts. However, in examining California data, Parrish found glaring disparities on several dimensions related both to the cost and the quality of services. For example, of all the children served in the ED category in California, Hispanic students represented 47 per cent of those placed under the jurisdiction of the California Youth Authority, compared to 15 per cent of White children. The situation was reversed in costly private special education residential schools, where Hispanics repre-

sented only 15 per cent of the students, as compared with 58 per cent of Whites. This meant that Hispanic students were roughly three times more likely to experience what Parrish described as the 'more punishing than remedial' (p. 27) services of the California Youth Authority than were their White peers. The California data also showed that Black students were more likely to be placed in the most restrictive settings than were Whites, who generally were only so placed when their need for intensive services was high.

With regard to the comparability of program quality by ethnicity of students, Donovan and Cross (2002) found no statistical evidence, but reported that studies of low parental empowerment and poor instructional quality in general education in schools serving the poor suggest that the situation would not be expected to be very different for special education. This was borne out by Harry and Klingner's (2006) ethnographic study of 12 urban schools, which found that special education class sizes for students with LD and/or mixed high incidence disabilities ranged from 6 to 24, the lowest numbers being noted in the schools serving the highest income populations. This study also noted that curriculum and instruction in most of the ED programs studied displayed a narrow focus on behavior management rather than academic learning and that punitive strategies were particularly common in these classrooms.

With regard to post-special education placement outcomes, accurate rates of exit from special education are difficult to find. OSEP data on exit are framed in terms of just about all means of exit except return to general education (US Department of Education, 2000). Graduation and drop-out rates for students in special education are further cause for lack of confidence in the efficacy of special education. The Twenty Second Annual Report to Congress (US Department of Education, 2000) indicated that almost a third of students with LD and ED failed to graduate from high school. Post-school outcomes are equally unsatisfactory: as reported by the National Longitudinal Transition Study of Students in Special Education (SRI International, 1995),

only 73 per cent of students with LD were engaged in employment or post-secondary education or training, and only 50 per cent of students with ED were employed.

CONCLUSION: SPECIAL EDUCATION AS A POINT ON THE CONTINUUM OF INSTRUCTION

In conclusion, there is no question that the disproportionate placement of minorities in special education reflects deep societal inequities embedded in the educational system. These inequities need to be addressed in all the society's systems. Clearly, recommendations regarding these systems are beyond the scope of this reviewer and this text. Thus, while calling for increased collaboration among researchers in these various fields, I conclude this limited discussion with suggestions for the field of education.

Notwithstanding the historical importance of the disabilities movement and its culmination in the 1975 EHA, the direction of special education is now in need of revision. What were once two parallel streams – exclusion by race and by disability – have converged in the special education system. Further, special education's categorical framing of the high incidence disabilities has resulted in decision-making that can be described, at best, as arbitrary, at worst, as discriminatory. The resulting placement patterns are so variable and contradictory as to defy accurate analysis and to produce outcomes that are seriously questionable. Overall, the ambiguities of the high incidence categories indicate that it is not worth while to continue using the construct of disability to provide services to children at the low end of the achievement spectrum. Rather, special education needs to be reconceptualized as a point on the continuum of instruction, rather than requiring a redefinition of struggling learners as 'disabled' and an arbitrary placement into categories of deficit.

To reconceptualize special education will require a restructuring of the funding, hiring,

and resource provisions that perpetuate inferior general education schooling for minorities. As recommended by a comprehensive report by Rouse, Brookes-Gunn, and McLanahan (2005), universal preschool opportunities should be a sine qua non in this wealthiest of nations. Incentives for teachers in the form of additional stipends, decreased class size, administrative and material supports, and ongoing professional development are essentials if the neediest children are to receive equitable schooling. Referral for special services should be reconceptualized to mean referral for specialized assistance, not for removal from the mainstream of general education. Assessment of children's learning and behavioral difficulties should be educational assessment, whose purpose is to determine instructional practices that will assist the struggling student. Instructional support should be offered by specialists trained in remediation, with no need for categorical labeling or placement.

Central to this entire argument is the need for the field to recognize that the obsession with categorization further entrenches the hegemony of a norm based on the achievement levels of the mainstream of the society. Those levels are the result of home, community, and school preparation, not of intrinsic capability. Thus, the criterion for special education services should be, simply, a specified level of achievement, rather than ambiguous 'proof' of some innate deficit.

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