FROM DESEGREGATION TO OVERREPRESENTATION: THE DAMAGING EFFECTS OF NATIONALLY STANDARDIZED ASSESSMENTS AND MISSIDENTIFICATION OF BLACK STUDENTS AS DISABLED.

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I. INTRODUCTION

While Brown v. Board of Education ended government-sponsored segregation in United States’ public schools,¹ San Antonio ISD v. Rodriguez legitimized de facto segregation and catalyzed the two-tier education system of contemporary America.² American schools today are as segregated by race as they were in the 1950s when Brown v. Board was decided.³ Moreover, when compared to white students black students are three times more likely to live in poverty⁴ and four times less likely to enroll in a post-secondary, degree-granting institution.⁵ Yet despite a bifurcated education system wherein poor, minority students receive an education far inferior to that of their richer, whiter peers, they are tested for learning disabilities and cognitive deficits on nationally normed assessments. This practice results in the overrepresentation of black students found disabled and provided special education services. Indeed, black students are three times

more likely to be labeled mentally retarded and twice as likely to be labeled emotionally disturbed when compared to all other racial/ethnic groups combined. For a poor, black student attending an under-performing school, a disability label further damages his chances of receiving an adequate education because the special education services at under-performing schools often are minimally effective, it creates hurdles to earning credits toward graduation and to graduating on time, and it will likely follow him throughout his time at school. Until legislatures or the Supreme Court dismantle the two-tier education system in America, recognizing equal education as a fundamental right, educators must mitigate the damage of misidentification and reduce overrepresentation of black students receiving special education services by norming assessments used for diagnostic purposes against an appropriate demographic rather than against a national norm.

II. OVERREPRESENTATION AND DISCRIMINATORY TESTING

In their 2001 article, Ralph Gardner and Antionette Halsell Miranda summarize the findings of key research related to the overrepresentation of minority students receiving special education services. The authors describe the impact of Brown v. Board, key lawsuits related to discriminatory testing practices in the 1970s, and Beth Harry and Mary G. Anderson’s 1994 research that first proved overrepresentation of minorities receiving special education services. Gardner and Halsell go on to cite discriminatory testing practices, “poor academic instruction,” “social and psychological barriers,” and “parental/community support” as the four major factors

for overrepresentation of black students labeled with mild disabilities. Gardner and Helsell provide valuable context regarding the overrepresentation of black students in special education. However, I will focus specifically on discriminatory testing practices because educators can immediately end discriminatory testing thereby dramatically reducing instances of misidentification. I will specifically argue that nationally standardized achievement assessments used in underperforming schools for the purposes of special education identification are discriminatory to minority students living in low-income communities. Rather than create and use nationally standardized achievement tests, education professionals should use achievement assessments standardized for an appropriate demographic.

III. THE SPECIAL EDUCATION LANDSCAPE

The Individuals with Disabilities Education Act (IDEA) governs special education in American public schools. It defines as a key feature of disability that the disability either negatively impact academic performance or that a discrepancy between ability and achievement be present. It stipulates that an assessment is required to diagnose a student with a disability and to determine appropriate special education services. While IDEA does not stipulate which assessment(s) are used, many educators use assessments normed on a national scale, such as the Woodcock Johnson III. This is problematic because, by definition, a student in an underperforming school performs less well on tests of academic achievement than the majority of his peers across the country. Assessing a student attending an underperforming school on a nationally normed achievement assessment provides inaccurate data on her achievement. More specifically, a student in an underperforming school earns comparatively, and thus inaccurately, low scores in academic achievement because he has received a substandard education. These
inaccurately low test scores place a student in an underperforming school at increased risk of recommendation for special education services and misdiagnosis of disability.

To further explain how nationally standardized achievement assessments administered to undereducated students for the purposes of special education identification are discriminatory, I will examine the six points above in greater detail. The fact that the definitions of various disabilities require that the disability either negatively impact academic performance or that a discrepancy between ability and achievement be present is particularly relevant. IDEA identifies 13 categories of disabilities. A child may only be diagnosed disabled in one of these 13 categories if, and only if, the symptoms “adversely affect a child’s educational performance.” Moreover, other frequently used definitions of disabilities such as Learning Disabled and Specific Learning Disability revolve around a “discrepancy” between cognitive ability and academic achievement. Researchers Kavale, Holdnack, and Mostert explain:

“Identification of a "specific learning disability" (SLD) has been a long-standing issue for special education. The problem centers around the lack of consensus about the best way to operationalize the formal definition articulated in the Individuals with Disabilities Education Act (IDEA). To provide assistance, the then U.S. Office of Education (1977) issued rules and regulations formalizing discrepancy as the primary criterion for SLD identification (Mercer, Jordan, Alsopp, & Mercer, 1996).”

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9 Id.
While the lack of clear definitions for disabilities is cause for concern, what is clear is a connection between disability and substandard academic performance. In determining a student’s eligibility for special education services, the student must undergo an educational assessment.

In assessing a student’s educational achievement, many educators use the Woodcock Johnson III. The test assesses all areas of achievement listed in IDEA and can be administered in a relatively short amount of time. Moreover, it is useful as both a diagnostic and formative assessment for a student of any age. Upon completion of the test, the assessor uses the included score report software to generate a report which includes the student’s raw score, standard score, and age or grade equivalency on each subtest.

All of the data gleaned from the Woodcock Johnson III reflects the student’s score in relation to the standard scores of American students in his same grade or year. If the student attends an underperforming school he will likely underperform in comparison to the national norm. The achievement assessment results, upon which eligibility for special education is in large part based, are thus an inaccurate reflection of the student’s achievement. The assessor cannot determine whether the student’s scores indicate a disability or lack of adequate instruction. Even if both a lack of adequate instruction and a disability caused the substandard scores, the assessor cannot accurately determine the extent to which each influenced the results.

Assessing students in underperforming schools using a nationally normed assessment discriminatorily diagnosis poor students, many of whom are minorities, as disabled. Poor, black students who have received an education inferior than that received by the average American student are assessed according to the standards of their better-educated peers. Not only is such assessment grossly unfair and discriminatory, the results of the assessment are used to label
students disabled. Once diagnosed and deemed eligible for special education services, the student receives services of “limited effectiveness.” In 1999 Arthur J. Reynolds and Barbara Wolfe researched the effectiveness of special education programs in inner city Chicago. The authors summarize their results writing:

“…These services have limited effectiveness. Only in the earlier grades, and only for children with disabilities other than learning disabilities (such as hearing, sight, or physical handicaps) does the program seem to add in a significant way to achievement in reading and math. Although we do not know with certainty what their performance would have been without these services, the use of their test scores in the year prior enables us to capture a reasonable approximation of the counterfactual.”

Moreover, participation in special education services creates hurdles to graduating with a high school diploma. On one extreme, students diagnosed as mentally retarded are often placed on a ‘certificate track’ whereby they graduate with a certificate of completion effectively eliminating their ability to earn any post-secondary credentials. For students diagnosed with less extreme disabilities, such as learning disabilities, part of their special education program may include remedial classes which often do not count as a graded credit or fulfill any graduation requirements. In addition to having “limited effectiveness,” remedial classes force students to forgo the opportunity to attend other classes in which they could earn credits required for graduation with a diploma. By taking such remedial classes, a disabled student will struggle to earn credits required to graduate on time. Moreover, he is likely to feel frustrated by an

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12 Id.
obstructionist educational process and either become truant or drop out of school altogether. Indeed, analysis of Chicago Public School (CPS) data indicates a strong correlation between special education and poor attendance.\textsuperscript{13} Comparison of CPS’s 10 highest performing schools and its 10 lowest performing schools indicates a - .73 correlation between average student attendance and percentage of students receiving special education services. The lower the percentage of students receiving special education services, the higher the attendance rate. Attendance strongly correlates (.89) to freshman on track to graduate.

### Special Education, Attendance, and Graduation at CPS Schools

![Graph showing special education, attendance, and graduation rates at CPS schools]

Finally, a student's disability label will likely follow him throughout his time at school. IDEA requires that a student be reevaluated every three years to determine his eligibility for special education and re-assess his diagnosis. The triennial assessment process is lengthy and underperforming schools may lack the personnel, administrative leadership, and systemic organization required to conduct a thorough triennial assessment. In addition to the laborious logistical process of removing the disability label, social processes at schools determine that, “once the discourse of disability is set in motion, it becomes a very difficult mechanism to interrupt.”

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Assessing students in underperforming schools using a nationally normed assessment is discriminatory and IDEA makes such practices illegal. Section 300.304 of IDEA states that assessments must be “selected and administered so as not to be discriminatory on a racial or cultural basis,” and that they “are used for the purposes for which the assessments or measures are valid and reliable.”

Nationally normed assessments, used with students in underperforming schools who are likely of a minority race or culture, violate IDEA. Additionally, IDEA explicitly states a “child may not be not be identified of having a learning disability if there was a lack of appropriate instruction in reading or math, of if the child has limited English proficiency.”

Many scholars have denounced the diagnostic practice of comparing achievement and ability to determine eligibility for special education services. In *Assessment of Childhood Disorders*, authors Deborah Speece and Sara Hines reference recent changes in regulations, which provide the “possibility of not requiring an aptitude-achievement disparity.” As an alternative to traditional assessments that measure cognition in relation to achievement or, as current IDEA definitions of disabilities indicate, seek possible explanations for a student’s substandard educational performance, Speece and Hines recommend that students be assessed following a process of response to intervention (RTI). The authors note that, “regulations by the U.S Department of Education suggest that RTI approaches are favored.”

RTI was incorporated into IDEA in 2004 and defined as a method for diagnosing a learning disability. Researchers Kavale, Holdnack, and Mostert describe the RTI process:

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17 Speece, 598.
18 Speece, 599.
"The process would proceed roughly as follows: (a) students are provided with empirically validated instruction, (b) progress is monitored, (c) students who do not respond receive either more intensive or different instruction, (d) progress continues to be monitored, and (e) failure to respond may qualify a student for special education."  

While RTI remedies the discrimination in more traditional assessment practices for determining eligibility for special education and disability diagnosis, it faces a problem similar to that of implementing special education programs in underperforming schools. By definition, underperforming schools do not provide adequate education to the students they serve. RTI requires high quality instruction, analysis of student performance data, a supportive administration and staff, and systemic organization necessary to implement a new program effectively. This combination of elements is simply often missing at underperforming schools.

IV. STANDARDIZING AGAINST AN APPROPRIATE DEMOGRAPHIC

Traditional assessments for determining eligibility for special education are discriminatory, unfair and illegal, and RTI, while avoiding the problems associated with traditional assessments, is difficult to integrate at underperforming schools. Until another alternative assessment is developed, education professionals should use achievement assessments standardized against an appropriate demographic in order to avoid misidentification. Rather than norm students in underperforming schools against their better-educated peers, assessors should norm students against an appropriately aligned demographic. This realignment could take place on a large scale if the makers of the Woodcock Johnson III, for instance, provided a variety of normed scales from which the assessor could choose. At the school district level, district officials

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19 Kavale, 4.
could provide a norming scale based on district-wide student achievement and assessment data. At the school level, the assessor could collect school-wide student achievement and assessment data and redraw the bell curve on which individual students are compared.

My proposal for a realignment of norms on diagnostic assessments should not be seen as a permanent solution for addressing discriminatory and illegal practices in assessment of undereducated students for the purposes of special education identification and disability diagnosis. It is also not a solution to the root problem of segregation in schools and the two-tier American education system segregation propagates. My solution merely represents a way to address one of the many hurdles poor, black students face in school. Until the two-tier education system in America is dismantled, educators must mitigate the damages of misidentification and reduce overrepresentation of black students receiving special education services by norming assessments used for diagnostic purposes against an appropriate demographic rather than against a national norm.