

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION BRIEFING

MINORITIES IN SPECIAL EDUCATION

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MONDAY, DECEMBER 3, 2007

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The briefing convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 10:00 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
 ABIGAIL THERNSTROM, Vice Chairman
 JENNIFER C. BRACERAS, COMMISSIONER
 GAIL L. HERIOT, COMMISSIONER
 PETER N. KIRSANOW, COMMISSIONER
 ARLAN D. MELENDEZ, COMMISSIONER
 ASHLEY L. TAYLOR, JR., COMMISSIONER
 MICHAEL YAKI, COMMISSIONER (via telephone)

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
 CHRISTOPHER BYRNES, Attorney Advisor to the OSD &
 Acting Deputy General Counsel, OGC
 DEMITRIA DEAS
 PAMELA DUNSTON, Chief, ASCD
 MONICA KIBLER
 ROBERT LERNER, Assistant Staff Director for OCRE
 EMMA MONROIG, Solicitor/Parliamentarian
 KARA SILVERSTEIN
 AUDREY WRIGHT
 MICHELE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMELCHEL
KIMBERLY SCHULD

PANEL 1:

THE HONORABLE STEPHANIE MONROE, Assistant Secretary
for Civil Rights at the U.S. Department of Education
DR. MARTIN GOULD, Director of Technology and Research
at the National Council on Disability
REGINALD FELTON, Director of Federal Relations at the
National School Boards Association

PANEL 2:

DR. MATTHEW LADNER, Vice President of Research for the
Goldwater Institute
DR. DANIEL RESCHLY, Professor of Education and
Psychology in Peabody College, Vanderbilt University
HILARY O. SHELTON, Director of the Washington Bureau
of the National Association of the Advancement of
Colored People (NAACP)
PETER A. ZAMORA, The Washington, D.C. Regional Counsel
for Mexican American Legal Defense and Educational
Fund (MALDEF)
WILLIAM H. HURD, Attorney, Troutman Sanders

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P-R-O-C-E-E-D-I-N-G-S

(9:57 a.m.)

CHAIRMAN REYNOLDS: Okay. On behalf of the Commission on Civil Rights, I welcome everyone to this briefing on minorities in special education.

I. INTRODUCTORY REMARKS BY CHAIRMAN

CHAIRMAN REYNOLDS: At this briefing, we have a panel of experts who will discuss whether racial and ethnic - whether blacks, Hispanics, or Native Americans are misplaced in special education programs. Recent studies indicate that these students are more likely to be placed in special education classes than their white peers.

For example, a 2002 report of the National Academy of Sciences found that 2.6 percent of black students have been identified as mentally retarded compared with 1.2 percent of white students, and roughly 1.5 percent of black students are labeled as emotionally disturbed compared with .91 percent of white students.

Similarly, the American Institute for Research found that black children are approximately three times more likely than whites to be labeled mentally retarded, and approximately two times more

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1 likely to be labeled emotionally disturbed.

2 Hispanic students are also statistically
3 overrepresented in emotionally disturbed categories in
4 New York, Connecticut, and Pennsylvania. Among the
5 possible causes of this misidentification are 80
6 percent of these students identified as having
7 specific learning disabilities are so labeled because
8 they have not learned to read. Another cause is
9 students with limited proficiency in English are
10 misidentified as having a disability because of a lack
11 of English language skills.

12 Current special education systems offer a
13 bounty formula, at least some of them, and this
14 formula unintentionally rewards the segregation of
15 students labeled as learning disabled, poorly trained
16 teachers, racial stereotyping, and, finally, African-
17 American and Hispanic students arrive at school less
18 prepared to meet academic and behavioral standards.

19 So this briefing will examine the nature,
20 extent, and possible causes of any misidentification
21 of minority students requiring special education
22 programs, and what the Federal Government, schools,
23 and parents can do to address the problem.

24 The record will be open until January 3,

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1 2008, and the public comments should be mailed to the
2 U.S. Commission on Civil Rights, Office for the Staff
3 Director, Suite 700, at 624 Ninth Street, N.W.,
4 Washington, D.C. Zip is 20425. This --

5 COMMISSIONER YAKI: Mr. Chairman?

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: The record is supposed
8 to close two days after the New Year. I would suggest
9 that we extend it a week.

10 CHAIRMAN REYNOLDS: Any objections?

11 (No response.)

12 Okay. Commissioner Yaki, there is no
13 objection to it, although this is not a -- this is a
14 briefing, and ordinarily we don't entertain motions,
15 but I don't anticipate a problem pushing it back a
16 week.

17 COMMISSIONER YAKI: I was just trying to
18 make it so people can enjoy the holidays.

19 CHAIRMAN REYNOLDS: I know. I understand,
20 and I agree. Okay.

21 VICE CHAIR THERNSTROM: Mr. Chairman, can
22 I make one remark on your opening comments --

23 CHAIRMAN REYNOLDS: Sure.

24 VICE CHAIR THERNSTROM: -- before we

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1 start? The question of misidentification is open, and
2 so, you know, are these child misidentified? And the
3 way you summarized I think the subject here was based
4 -- was assuming that the question of misidentification
5 is celled, and the question is why. That's number
6 one.

7 And number two, we're talking -- in terms
8 of disparities, we're talking about the
9 underrepresentation, allegedly, of both whites and
10 Asians. So the Asians need to be in this picture,
11 because there are, in fact, very few Asians in special
12 education.

13 CHAIRMAN REYNOLDS: Okay. I think that
14 those are good points.

15 Okay. The first panel will present views
16 of three government -- well, the first panel will
17 present the views of three government and school
18 officials dealing with this topic. The participants
19 are The Honorable Stephanie Monroe, Assistant
20 Secretary for the Office for Civil Rights (OCR) at the
21 U.S. Department of Education; Dr. Martin Gould,
22 Director of Technology and Research at the National
23 Council on Disability; and Reginald Felton, Director
24 of the Federal Relations at the National School Board

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1 Association.

2 The first speaker will be The Honorable
3 Stephanie Monroe. Ms. Monroe is, as I said earlier,
4 the Assistant Secretary for OCR. Previously, she
5 served as Chief Counsel for the Senate Committee on
6 Health, Education, Labor, and Pensions, from 2001
7 through 2005. From 1989 through 2001, she served as
8 Chief Counsel and Staff Director for the Senate
9 Committee on Labor and Human Resources Subcommittee on
10 Children and Families.

11 After Ms. Monroe, we have Dr. Gould. Dr.
12 Gould is the -- as I said earlier, the Director of
13 Technology and Research at the National Council on
14 Disability (NCD). He has worked at the NCD since
15 2000. He previously served as the Director of
16 Outcomes Research at an international nonprofit
17 agency. Dr. Martin earned his Doctorate in Education
18 and Behavioral Science Research from Johns Hopkins
19 University.

20 Mr. Felton is responsible for developing
21 and implementing comprehensive legislative strategies
22 and representing the interests of local school boards
23 and NSBA at the federal level on a variety of issues
24 affecting student achievement in public education.

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1 His program areas include No Child Left Behind, IDEA
2 and FIFRA, labor and emerging federal issues impacting
3 the business operations of local school boards.

4 Okay. On behalf of the Commission, I
5 welcome all of you, and we will start with the
6 Assistant Secretary.

7 Oh, I'm sorry, one last thing as a
8 housekeeping matter. Okay. Please -- I have to swear
9 you in. Please raise your right hand.

10 (Whereupon, the panelists were sworn.)

11 Okay. We will start with the Assistant
12 Secretary.

13 **II. SPEAKERS' PRESENTATIONS**

14 ASST. SEC. MONROE: Thank you very much.
15 Good morning, Commissioners. I'm very happy to
16 represent the U.S. Department of Education, Office for
17 Civil Rights, at this briefing to discuss two civil
18 rights issues that have been a priority for my agency
19 since 1993 -- that being the disproportionate
20 representation of minorities and limited English
21 proficient students in special education.

22 It's clear that greater understanding of
23 these issues will better enable school districts to
24 serve students more effectively in both regular

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1 education programs and in special education programs
2 where appropriate placement decisions have been made.

3 The No Child Left Behind Act of 2001 was
4 designed to ensure that all students are appropriately
5 assessed, included in the accountability system, and
6 prepared to attain grade level proficiencies in
7 reading and math.

8 While giving states the flexibility to use
9 the best methods of instruction, No Child Left Behind
10 requires that states and local education agencies
11 establish English proficiency standards and carry out
12 language instruction programs that are based on
13 scientific research and implemented by highly
14 qualified and effective teachers, the goal being to
15 advance equal access and opportunity for all students,
16 as required by the Brown and Lau decisions, and
17 Title VI of the Civil Rights Act of '64.

18 Fifty years ago, the U.S. Supreme Court
19 ruled in its monumental decision in Brown that the
20 segregation of children in public schools solely on
21 the basis of race deprives students of the minority
22 group of equal educational opportunities. Forty years
23 ago, Congress enacted Title VI prohibiting
24 discrimination on the basis of race, color, or

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1 national origin, which included discrimination on the
2 basis of limited English proficiency.

3 In the landmark Lau v. Nichols decision 30
4 years ago, a unanimous Supreme Court held that there's
5 no equality of treatment merely by providing the same
6 facilities, textbooks, teachers, and curriculum, for
7 students who do not understand English are effectively
8 foreclosed from any meaningful instruction.

9 Through these major legal developments,
10 Congress and the courts have established that all
11 students have a basic right to equal educational
12 opportunities.

13 In 1982, the Office for Civil Rights
14 commissioned a study by the National Academy of
15 Sciences which resulted in a report entitled "Placing
16 Children in Special Education: A Strategy for
17 Equity." This study provided a number of important
18 insights into the issue of disproportionate
19 representation of minorities in special education,
20 including linkages between effective instruction and
21 placement in special education, the uses and misuses
22 of testing and assessment for special education
23 services, and other generally external factors which
24 affect whether or not a child will be placed in

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1 special education.

2 Later, in 1992, a nationwide survey was
3 conducted to determine if minority students were
4 disproportionately placed in special education
5 programs and whether any patterns existed with regard
6 to this placement. Thirty-five hundred schools were
7 surveyed.

8 The results indicated that the
9 disproportionate placement of minority students in
10 special education was a nationwide issue. Reports
11 showed that nationwide, in 1992, African-American
12 students accounted for 16 percent of the total student
13 population, yet African-American students accounted
14 for 32 percent of the students in programs for mildly
15 mentally retarded, 30 percent of students in programs
16 for moderately mentally retarded, and 22 percent of
17 the students in programs for serious, emotional, or
18 behavior disorders.

19 In some instances, the disparities that we
20 found were up to 74 percent. These disparities were
21 most prevalent in the southeast. Sadly, those
22 disparities have not changed significantly. OCR's
23 data from more recent surveys revealed nearly
24 identical disparities in these categories.

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1 The National Academy of Sciences concluded
2 that while federal regulations implementing an IDEA
3 define mental retardation, the translation of those
4 guidelines into assessment practices is neither direct
5 nor uniform. Thus, the category of EMR is
6 operationalized in different ways at different times
7 and in different areas.

8 Furthermore, despite the mandates of
9 federal law and regulations, imprecision and looseness
10 in the referral, the assessment, and placement
11 decisions can lead to personal bias affecting
12 placement decisions.

13 In the summer of 1993, OCR held a national
14 conference in Washington to discuss this issue. Those
15 in attendance included parents, psychologists, special
16 education school personnel, advocacy groups, and
17 others. Those in attendance provided various reasons
18 for the disproportionate placement of minority
19 students in special education, including economics,
20 bias of referring teachers, culture, bias of
21 evaluative instruments, bias of the evaluators, and
22 lack of resources.

23 Following this conference in 1993, OCR
24 initiated proactive compliance activities regarding

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1 the MINSPEd issue in the same year. Since 1993, OCR
2 has conducted hundreds of compliance reviews in this
3 area. In 2003, OCR launched another major compliance
4 initiative regarding the MINSPEd issue. In the past
5 five years, OCR has conducted 61 MINSPEd compliance
6 reviews and received an additional 144 complaints
7 concerning the MINSPEd issue.

8 Throughout these years, OCR has
9 consistently identified the following compliance
10 concerns: teachers referring minority students for
11 special education testing, but not referring similarly
12 situated white students; evaluators using different
13 types of tests, more testing, or different
14 interpretations of test results to determine that
15 minority students need special education; schools
16 placing minority special education students in self-
17 contained classrooms while similarly situated white
18 students are placed in regular classrooms; and delays
19 in evaluating and placing students that affect
20 children of all races and national origins.

21 OCR has addressed these concerns by
22 investigating the practices and policies of school
23 districts and obtaining voluntary resolution
24 agreements. Some of the key components of those

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1 agreements include requiring training of regular
2 education teachers on appropriate reasons for
3 referring students for special ed, requiring review of
4 evaluation instruments and how eligibility decisions
5 are made after testing is completed, and requiring the
6 reevaluation of students who have been affected by
7 discriminatory practices.

8 A study conducted by OCR in 1998 on the
9 impact of the first tier of compliance reviews
10 revealed that in 76 percent of the reviews that were
11 in monitoring for three or more years there was a
12 decrease in the number of minorities that were
13 referred and/or placed in special ed. And this
14 success is ongoing.

15 In addition, OCR has worked with numerous
16 state education agencies to provide technical
17 assistance to local agencies on employing strategies
18 to address the inappropriate placement of students in
19 special ed.

20 Our proactive work in this area has
21 yielded life-changing results for real students. Our
22 goal is to ensure that schools provide access to more
23 effective education opportunities for all students, so
24 that those students who legitimately need special

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1 education services can in fact receive those services.
2 Those students who have been inappropriately referred
3 for services must then be provided an opportunity to
4 participate in the regular education curriculum, and
5 in many instances an opportunity to participate in
6 high-level academic programs as well.

7 In one particular case that was recently
8 closed, OCR monitored the implementation of the
9 resolution agreement that called for the District to
10 completely overhaul its practices to ensure that
11 students were appropriately referred, evaluated, and
12 placed in special education programs. For example,
13 the District reevaluated 61 educable mentally disabled
14 students, and of those only 23 continued in the EMD
15 classification.

16 Sixteen were reclassified in a different
17 disability category to better serve their needs, and
18 22 were determined not to have a disability at all,
19 and, thus, not to need any special education services.

20 The District is also providing transition
21 services to the 22 students now in the general
22 education program to ensure that they have the
23 resources they need in order to succeed. It's
24 important to note that when OCR initiated this review

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1 in 2004 there were a total of 242 EMD students
2 compared to 150 in 2006 and '07.

3 There were 100 academic students
4 identified as EMD in the 2006 and '07 academic year
5 compared to 176 when OCR initiated its compliance
6 review in the 2004 and '05 academic years.

7 Along with our focus on the issue of
8 minorities in special education, OCR has focused on
9 the issue of access by minority students to gifted and
10 talented programs. In one major urban school
11 district, as a result of OCR's review, the District
12 created gifted and talented programs in traditionally
13 underserved areas, enrichment programs and multi-
14 source notices to parents in each community,
15 implemented a new multiple criteria test to assess
16 student eligibility for the programs, and established
17 training to provide professional development for
18 teachers in those programs.

19 An equally important issue for the Office
20 for Civil Rights is the treatment and placement of
21 children with limited English proficiency. Throughout
22 the years, the Department of Education has worked to
23 clarify the responsibility of recipients toward its
24 LEP students. In May of 1970, the Department issued a

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1 policy memorandum entitled "Identification of
2 Discrimination and Denial of Services on the Basis of
3 National Origin" -- and affirmed in Lau v. Nichols --
4 clarifying the Department's policy under Title VI on
5 issues concerning the responsibility of school
6 districts to provide equal educational opportunity to
7 LEP students.

8 This policy memorandum states in part that
9 school districts must take affirmative steps to remedy
10 language barriers and may not assign students to
11 special education services on the basis of criteria
12 that essentially measures and evaluates English
13 language skills.

14 In 1991, OCR supplemented this policy by
15 memoranda providing that school districts must
16 identify which of its national origin minority
17 students have limited English proficiency (LEP),
18 provide them with an effective language assistance
19 program that affords them meaningful access to the
20 District's educational services, and ensure that
21 students are not exited from the program until it is
22 objectively determined that they can speak, read,
23 write, and comprehend English sufficiently to
24 participate meaningfully in the District's educational

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1 services.

2 Over the last 10 years, while the number
3 of LEP students has increased by 61 percent, from 2.6
4 million to 4.2 million, the number of LEP students in
5 special education has more than doubled from 120,000
6 to 248,000. In the past five years, OCR has conducted
7 35 SPEDLEP compliance reviews and received an
8 additional 273 complaints regarding the SPEDLEP issue.

9 Our records over the last 14 years have
10 consistently identified the following compliance
11 concerns: lack of consistent affirmative steps to
12 address language barriers, referrals for special
13 education testing that did not take the LEP students'
14 language and culture into account, special education
15 eligibility decisions that were based on a student's
16 limited English proficiency, and the lack of
17 meaningful communication with parents.

18 Similar to MINSPED compliance reviews, OCR
19 has addressed these concerns by obtaining voluntary
20 resolution agreements, and our proactive work in this
21 area has yielded life-changing results to students as
22 well. For example, OCR recently closed the monitoring
23 of one case where as a result of OCR's work with the
24 District the District initiated or instituted

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1 alternative language programs in 10 additional
2 schools, trained school staff members and
3 administrators through various training initiatives,
4 and moved 26 students, nearly half of the LEP
5 students, out of special ed because it was determined
6 that they had been inappropriately placed in special
7 ed.

8 The Brown case was the lesson that we must
9 not rest until all students, regardless of their race
10 or ethnicity, have an opportunity to receive a high
11 quality education. And we think that processing
12 cases, looking at compliance reviews, providing
13 assistance to school districts who are endeavoring to
14 serve students of whatever race, whatever language,
15 really helps us to fulfill the goals of Brown.

16 Thank you.

17 CHAIRMAN REYNOLDS: Thank you, Ms. Monroe.

18 Dr. Gould?

19 DR. GOULD: The National Council on
20 Disability would like to thank the Commission on Civil
21 Rights for the opportunity to provide remarks at this
22 public briefing. NCD is an independent federal agency
23 composed of 15 members appointed by the President and
24 confirmed by the Senate.

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1 Our purpose is to promote policies and
2 practices that guarantee equal opportunity for all
3 individuals with disabilities, regardless of the
4 nature or severity of the disability, and empower
5 individuals to achieve economic self-sufficiency,
6 independent living, and integration into all aspects
7 of society.

8 Disproportionality in special ed programs
9 in the United States has been among the most critical
10 and enduring problems in the field of special
11 education for many years. Although the presence of
12 minority overrepresentation has been consistently
13 documented, it's fair to say that the full complexity
14 of the problem has not yet been understood, nor has a
15 clear picture emerged at the national level concerning
16 the causes of disproportionality or the solutions.

17 The 2004 Individuals with Disabilities
18 Education Act, or IDEA, summarized the problems as:
19 a) the disproportionate representation of children
20 from diverse backgrounds in special ed; b) an
21 overidentification of poor African-American students
22 labeled with mental retardation; c) unacceptably high
23 rates for diverse children in special ed; and d) lack
24 of appropriate services to students of limited English

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1 proficiency.

2 There are a variety of views about how to
3 measure disproportionality, and there is also a sense
4 that traditional approaches to documenting
5 disproportionality through civil rights data
6 collection can and should be improved. And while
7 research has shown that reducing disproportionality
8 requires a comprehensive approach that includes
9 teacher training, culturally appropriate assessment
10 and instruction, home and school collaboration, and
11 effective pre-referral process, there is scant
12 evidence based on documented solutions at the school
13 and district level.

14 The problem with disproportionate
15 representation -- the public is concerned with
16 preventing the potential harm to a child misidentified
17 or served inappropriately. The concern is evident in
18 many public documents, including the equal protection
19 clause of the 14th Amendment, Title VI of the Civil
20 Rights Act of 1964, the procedures for evaluating
21 children suspected of a disability under IDEA, the
22 data collection and monitoring responsibilities of the
23 U.S. Department of Education's Office for Civil
24 Rights, and court decisions spanning more than 20

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1 years.

2 Disproportionate representation is evident
3 for some racial/ethnic groups across specific
4 educational disability categories as identified in
5 IDEA. Currently, IDEA recognizes 13 disability
6 categories, three of which are generally referred to
7 as judgmental disabilities, because usually there is
8 no medical diagnosis. These three areas are emotional
9 disturbance, mental retardation, and learning
10 disabilities.

11 According to many research students and
12 government reports, overrepresentation in special ed
13 is not a problem for all racial and ethnic groups.
14 While three of the five racial/ethnic groups --
15 African-American, American Indian/Native Alaskan, and
16 Hispanic children -- are overrepresented in the
17 judgmental disability areas, there is little
18 difference between the five groups in the non-
19 judgmental categories. Overrepresentation is not
20 reported as an issue for white students or students of
21 Asian-American descent. Indeed, children of Asian-
22 American descent are actually underrepresented in
23 special ed categories and overrepresented in gifted
24 and talented programs.

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1 Federal data sets -- national data on
2 disproportionate representation links information
3 about the racial/ethnic group of a child to
4 categorical membership in one of the high incidence
5 disability categories. These data are typically
6 aggregated from buildings to districts, then to
7 states, and finally to the federal level.

8 Evidence of overrepresentation most
9 generally cites the simple proportion of a
10 racial/ethnic group who qualified for special ed in a
11 specific disability category of eligibility. The
12 assumption made is that the proportion of children in
13 any one category should be approximately equal to the
14 proportion of that ethnic group in the school
15 population. If these two proportions are
16 approximately equal, then presumably no discrimination
17 exists.

18 Two federal data sets are used for
19 national monitoring of disproportionate representation
20 on an annual basis. Research regarding the extent of
21 the problem generally relies on the information
22 contained in them, with both consisting of information
23 reported annually by the local school districts and
24 maintained by the U.S. Department of Ed.

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1 The first data set is maintained by the
2 Office of Civil Rights, OCR, and the second by the
3 Office of Special Ed Programs, OSEP. Both of the
4 databases contain information about student enrollment
5 by category of special ed eligibility and by the
6 racial/ethnic group. Most of the national research to
7 date has used the OCR data, which typically monitors
8 racial/ethnic information across the three judgmental
9 special ed categories with which it is currently
10 concerned.

11 OCR data typically do not include all
12 districts across the country every year. It is
13 comprised of a comprehensive sample that meets
14 specific criteria.

15 Other important data, however, are also
16 reported, such as the age of children served, the
17 amount of time of their inclusion in general ed.

18 Concern about the definition in
19 measurement of disproportionality has been voiced by
20 researchers and policymakers for at least over the
21 last 10 years. There are generally four major
22 definition and measurement issues to contend with.
23 First, there are no precise nationally agreed-on
24 definitions that are consistent across states. IDEA

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1 sets forth guidelines for the 13 disability areas, but
2 there are no mandatory requirements for states to use
3 these definitions.

4 Second, in terms of each child's
5 disability, decisions are made about the category of
6 the child's eligibility by the IEP Committee.
7 Variability is introduced, as claimed by IEP
8 committees, in the judgmental categories where little
9 medical evidence is typically available to confirm or
10 refute the eligibility decision.

11 Third, problems with the definition of
12 disproportional representation occurred due to the
13 lack of consistency in the method of measuring
14 disproportional representation using various studies.
15 Some studies and reports cite a composition index,
16 some cite a risk ratio, some cites and use an odds
17 ratio.

18 When trying to assess the extent of
19 disproportionate representation, the calculation is
20 achieved by measuring the intersect of two categorical
21 variables: racial and ethnic group and disability
22 category. And as researchers have pointed out, and as
23 we've mentioned, both variables are -- both variables
24 are saddled with measurement errors.

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1 Fourth problem -- problems identified in
2 defining race and ethnicity include two areas --
3 first, the determination of a child's race; second,
4 the classification of bi-racial children.
5 Unfortunately, there are also no consistent
6 definitions for these terms used by schools,
7 districts, and states, or at the federal level.

8 The debate regarding solutions to
9 disproportionality involve several major viewpoints.
10 If disproportion in representation results from actual
11 higher disability rates in diverse populations, then
12 solutions need to focus on eliminating or reducing the
13 risk factors that are associated with the disabilities
14 needs to be undertaken.

15 On the other hand, if the differences
16 result from ineffective education programs and/or
17 discriminatory educational practices, solutions need
18 to address practices within the educational system
19 itself, including system change and specific special
20 education processes and programs.

21 However, if both social and educational
22 reforms are needed, then both social and educational
23 solutions must be implemented for change to occur. It
24 is very difficult for us to determine where the

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1 viewpoint is most accurate.

2 One of the solutions we suggest or we
3 think is important to focus on involves monitoring
4 technical assistance and enforcement. In its 2003
5 study measuring access to learning opportunities, the
6 National Academy of Sciences examined the continued
7 relevance and adequacy of the elementary and secondary
8 school civil rights compliance report, or E&S survey,
9 as a tool for enforcing civil rights laws in
10 education.

11 The NAS concluded that the survey
12 continues to play an essential role in documenting
13 disparities. It also concluded that the survey's
14 usefulness and access to the data should be improved.

15 NAS made a recommendation for strengthening survey
16 items and survey administration, for improving data
17 quality and availability, for increasing access to and
18 use of the survey data, and for disseminating findings
19 to a broader range of stakeholders.

20 Our review of the Department of
21 Education's website indicates that it has made good
22 progress in consolidating and connecting the
23 collection and maintenance of data use for program
24 management and policy decisions. This includes civil

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1 rights data collection sets for 2004, 2002, and 2000.

2 The Department of Ed has also established
3 a series of effective web interfaces that allow the
4 public ease of access to CRDC -- civil rights data
5 collection -- and other data collection efforts. The
6 part of the CRDC data set includes IDEA data.

7 Whether and how these improvements and
8 others are being -- others being made are making a
9 difference in their work with state and local school
10 districts in the area of disproportionality should be
11 explored by the U.S. Commission on Civil Rights.

12 The 1997 amendments to IDEA added the
13 requirement that states collect data for the purposes
14 of monitoring and reducing disproportionality. To
15 meet this mandate, the Department of Ed uses 20
16 monitoring priorities and indicators for its Part B
17 state performance plan and annual performance
18 reporting system.

19 An October 2007 report from the Department
20 of Education on characteristics of state's monitoring
21 and improvement practices, based on practices in
22 effect in schools in 2004, before the regulations for
23 IDEA took effect, asked state respondents questions
24 including, "During that school year, on what

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1 compliance performance areas did states focus their
2 monitoring efforts? And do these focus areas include
3 the priority areas identified by IDEA 2004?"

4 Among the many responses from the states
5 one in particular was of interest. Twenty-six states
6 indicated they focused on the disproportionate
7 representation of racial/ethnic groups in special ed,
8 and that was prior to when the IDEA amendments took
9 effect and they had to monitor for disproportionality.

10 How the remaining states and territories
11 who didn't indicate they were already focusing on that
12 are managing their monitoring responsibilities under
13 IDEA should be of interest to the U.S. Commission on
14 Civil Rights.

15 Concerns about future increases in the
16 number of children receiving services, the
17 appropriateness of those services, and the lack of
18 reported student educational outcomes are expressed
19 across the community. Experts agree that unless
20 disproportionate representation is effectively
21 addressed through systems change, then problems
22 surrounding representation will likely increase due to
23 the growing numbers of diverse and immigrant children,
24 the high percentage of the children living in poverty,

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1 insufficient early intervention, and effective
2 proponents of a special ed process, and the lack of
3 effectiveness in the state and results-based outcome
4 information reported by special ed programs across the
5 country.

6 Stakeholders understand the problems to a
7 certain degree and likely know some strategies for
8 addressing the problems. Nevertheless,
9 disproportionate representation continues. Without
10 proactively addressing the range of social and
11 educational factors through system change, without
12 carefully documenting systematic change and
13 improvement, the disproportionate representation of
14 diverse children in special ed will continue
15 definitely to grow.

16 Thank you for listening.

17 CHAIRMAN REYNOLDS: Thank you, Dr. Gould.

18 Mr. Felton?

19 MR. FELTON: Good morning. The National
20 School Boards Association representing 95,000 school
21 board members across the nation certainly takes --
22 very much appreciates the opportunity to speak to you
23 on this very important issue that's being addressed
24 both by local school boards as well as local

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1 communities.

2 You will probably hear from others
3 regarding the extensive research that has been
4 conducted that confirms what we all believe -- that
5 minority students and LEP students are
6 disproportionately represented in special education
7 programs in our public schools.

8 While much of the research finds a
9 disproportionate representation of these students,
10 however, the research appears to be very limited
11 regarding whether such students are in fact
12 misrepresented. In our view, misrepresentation
13 suggests that the students do not meet the legal
14 eligibility requirements to be designated for special
15 education.

16 The National School Boards Association
17 agrees that there is disproportionate representation
18 of minority and LEP students in selected categories of
19 students with disabilities in our public schools,
20 however, we believe that with few exceptions such
21 students placed in special education meet the legal
22 eligibility requirements for such services.

23 As the Commission is fully aware, students
24 in poverty and their families face greater challenges,

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1 whether it's related to access to quality housing,
2 quality health care, appropriate early childhood
3 education, safe and drug-free environments, adequate
4 compensated employment, and other aspects of quality
5 living.

6 Perhaps more disturbing, we know that
7 African-American, Latino, and LEP students are
8 disproportionately represented among students in
9 poverty. Therefore, to simply draw conclusions
10 regarding disproportionate representation of African-
11 American, Latino, and LEP students in special
12 education, without also identifying and addressing
13 other important relevant factors, would be misleading
14 and would, in all probability, result in the
15 development of remedies that may have little chance of
16 effectively eliminating the problem.

17 In addressing special education services
18 in our public schools, it is important for the
19 Commission to note that for over three decades
20 Congress has formally acknowledged the fact that
21 students with disabilities require additional
22 accommodations and innovative instructional programs
23 that are generally more costly than regular
24 educational services. In fact, as we know, Congress

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1 promised to support states and local communities by
2 contributing 40 percent of that cost.

3 Since that time, both regular education
4 and special education communities have drawn forces to
5 pressure Congress to keep true on its promise.
6 However, here we are, 30 years later, and still
7 Congress funds less than 20 percent of these costs,
8 leaving states and local communities shortchanged.

9 In practical terms what this means, is
10 there is no financial incentive for schools to
11 identify students for special education services, if
12 such students do not meet the eligibility
13 requirements. Further, the law mandates that when
14 students are identified, such services must be
15 provided even if the funds have to be reallocated from
16 other educational programs.

17 Therefore, this notion that schools profit
18 by placing more students in special education is
19 simply not true, because schools are never fully
20 funded at the level that matches the cost. However,
21 because of this rationale that is offered by many, the
22 National School Boards Association during the last
23 reauthorization of the Individuals with Disabilities
24 in Education Act was successful in securing two key

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1 provisions that would provide greater support.

2 The first provision allows school
3 districts to set aside funds to conduct evaluations of
4 students without requiring the students to be formally
5 designated as special education students. As a
6 result, some evaluations may be conducted by school
7 officials that would allow teachers, experts, and
8 their parents to make decisions regarding learning
9 disabilities without the labeling of students that may
10 be very, very unnecessary.

11 The second provision that we were
12 fortunate enough to secure in the new law requires
13 states to pass their own laws or to establish
14 memorandums of agreement to formally identify which
15 agencies would provide responsible, specific, non-
16 educational-related services that are necessary for so
17 many of these students.

18 The benefit, of course, is that local
19 school districts are no longer assigned costly
20 responsibilities by default. Rather, states must
21 consciously make decisions regarding which agencies in
22 the state must provide which kinds of services to
23 support the student with disability.

24 Another important factor for consideration

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1 by the Commission is that the definition of students
2 with disabilities is very comprehensive, with a full
3 range of categories, some requiring extensive, costly
4 support, while others only requiring minimal
5 accommodations.

6 Therefore, the National School Boards
7 Association would urge you to sponsor additional
8 comprehensive studies regarding the representation of
9 minorities and other -- and LEP students, among the
10 broad range of categories, as well as the differences
11 in per pupil level of funding needed to accommodate
12 these students.

13 We believe that you will find that the
14 representation of minorities and LEP students varies
15 among the categories, and, in fact, such groups may be
16 less represented among those categories requiring the
17 greatest support systems and, therefore, the greatest
18 costs. Local school districts across this nation
19 continue to be committed to improving both the
20 methodology for identifying and placing students in
21 special education programs.

22 In a student -- in a study conducted by
23 the NSBA Council of Urban Boards of Education, a
24 number of ongoing strategies have been identified.

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1 The most common strategies involve the use of pre-
2 referral assessments and accommodations to address
3 emerging behavioral and academic issues. Other
4 efforts include effective staff training focused on
5 both cultural and ethnic competency, special measures
6 in identifying LEP students, and monitoring of
7 individual schools for high referral rates.

8 Many school districts have reallocated
9 staff resources to conduct independent second-level
10 reviews of placement for appropriateness to ensure
11 culturally and ethnically diverse and competent
12 placement teams and to develop improved evaluation
13 guidelines.

14 Further, many school districts are using
15 various preschool assessment strategies. Commonly
16 identified techniques include assessing preschool
17 children upon referral, screening all children upon
18 entry into kindergarten. Other measures include
19 providing parents with information and training,
20 training for the instructional staff, and providing
21 transitional services for children entering
22 kindergarten.

23 School boards will continue to provide
24 leadership in the development of innovative ways to

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1 improve the process for both identifying and placing
2 these students.

3 Now I would like to turn your attention to
4 an emerging concept known as "universal design for
5 learning." Most of the discussion to date has focused
6 on specific improvements that could be made. However,
7 one emerging concept based in research that deserves
8 our full consideration is UDL. In the past few years,
9 UDL has emerged as one of the most promising research-
10 based strategies for improving education for all
11 learners, not just those students placed in special
12 ed.

13 UDL provides flexibility for curricula and
14 activities, in the ways information is represented, in
15 the ways students respond or demonstrate knowledge,
16 and in the ways students are engaged. The use of
17 technology is also important -- an important component
18 of UDL.

19 As we are aware, students come to the
20 classroom with a variety of needs, skills, talents,
21 and interests. Faced with an inflexible curriculum,
22 students, teachers, and principals are expected to
23 make extraordinary adjustments and are held
24 accountable for making measurable progress.

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1 UDL turns this scenario around, placing
2 the burden to adapt on the curriculum itself rather
3 than the student. A review of the literature on UDL
4 developed by the Center for Applied Special
5 Technology, CAST, suggests that educators, including
6 curriculum and assessment designers, could improve
7 educational outcomes for diverse learners by applying
8 the following principles: providing multiple and
9 flexible methods of presentation to give students with
10 diverse learning styles various ways of acquiring
11 information, providing multiple and flexible ways of
12 expression to provide diverse students with
13 alternatives for demonstrating what they have learned,
14 and providing multiple and flexible means of
15 engagement to tap into diverse learners' interests,
16 challenge them appropriately, and motivate them to
17 learn.

18 By incorporating supports for particular
19 students, it is possible to improve learning
20 experiences for everyone. For example, caption video
21 is a great help to deaf students, but is also
22 beneficial to students who are learning English,
23 students who are struggling readers, and students with
24 attention deficits, and even students working in noisy

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1 classrooms.

2 Such emerging concepts of UDL offer both
3 regular and special education communities an
4 opportunity to accomplish real reform in education at
5 a time when the number of students with disabilities
6 continues to increase, and the dropout rate among non-
7 Asian minorities in regular education are
8 approximately 50 percent. UDL represents one approach
9 that simultaneously addresses instructional methods,
10 classroom materials and assessments, through the use
11 of technology.

12 UDL may not be the all-encompassing
13 answer, but such concepts as UDL could change the
14 paradigm and eliminate the need to divide regular
15 education from special education in the future, and
16 thus ensure the delivery of high-quality educational
17 services for all students.

18 In closing, again, I would like to thank
19 you for the opportunity to come before you, and we
20 certainly urge the Commission to fully address the
21 concerns that we have identified in our statement.
22 Again, local school boards across the nation remain
23 committed to improving student achievement for all
24 students and preserving both equality and excellence

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1 in the delivery of educational services in our public
2 schools.

3 Thank you.

4 CHAIRMAN REYNOLDS: Thank you.

5 This has been a wealth of information. I
6 want to thank everyone for carving time out of your
7 busy schedule.

8 **III. QUESTIONS BY COMMISSIONERS AND**

9 **STAFF DIRECTOR**

10 CHAIRMAN REYNOLDS: And at this time, I'd
11 like to open up the floor for questions. Commissioner
12 Kirsanow?

13 COMMISSIONER KIRSANOW: Thank you. First
14 of all, I want to commend the staff for getting a
15 splendid panel.

16 I have several questions, but I'll just
17 pose one or two for the moment. My question is to Dr.
18 Gould. Perhaps I missed this in your presentation,
19 but what are the three judgmental disability factors
20 you were talking about, the ones that, you know,
21 there's some degree of judgment that's exercised in
22 determining whether or not someone is going to be
23 placed in a special educational program?

24 DR. GOULD: Emotional disturbance,

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1 learning disabilities, and mental retardation.

2 COMMISSIONER KIRSANOW: Okay.

3 DR. GOULD: It's judgmental in terms of
4 the -- having as a basis of the -- having as a basis
5 of the diagnosis in determination of eligibility a
6 medical factor.

7 COMMISSIONER KIRSANOW: Right. Is there
8 data out there that would indicate that controlling
9 for income, cultural issues, resources of the school,
10 why it is, if it is, that Asian students seem to be
11 placed at a lower level than Hispanic, black, Native
12 American students?

13 DR. GOULD: I do not know.

14 COMMISSIONER KIRSANOW: One of the
15 questions that I had for I think -- I can't remember
16 who it was now, but I believe it was Mr. Felton -- or
17 anyone who may have this, is there any data that would
18 show whether or not the placement of students in
19 special educational programs is -- retards their
20 advancement? In other words, is there a baseline that
21 would indicate how a student would progress had they
22 not been inappropriately placed in a special
23 educational program?

24 MR. FELTON: Well, it's certainly our

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1 perspective that any time a student is inappropriately
2 placed in whatever educational programs exist it
3 certainly adversely affects their performance.

4 COMMISSIONER KIRSANOW: But how? And what
5 data show that specifically? I mean, it seems to be
6 intuitive, but I'm wondering whether or not there is
7 any baseline data that shows that the inappropriate
8 placement of a student -- and I'm not sure what --
9 there may be several reasons why someone is placed in
10 a special educational program, but is there any data
11 that shows that that student, had they not been placed
12 in that program, would have progressed at a faster
13 level or more appropriate level? I'm not sure what
14 kind of --

15 MR. FELTON: Right.

16 COMMISSIONER KIRSANOW: -- I should be
17 using, but --

18 MR. FELTON: I'm not aware of any specific
19 research on that, and perhaps my other colleagues can
20 comment on that. But we do know from Dr. Sanders and
21 research that we know that when students in fact are
22 not exposed to high-qualified, effective teachers for
23 extended periods of time, the gap can be as much as 50
24 percent.

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1 So if you carry that over, you would have
2 to assume, whether special education or regular
3 education, if a student is actually placed in a
4 situation where they are not -- there is not a
5 rigorous curriculum, and they are not fully engaged,
6 their rate of performance, of course, is in fact
7 adversely affected. But that's the only information I
8 can --

9 COMMISSIONER BRACERAS: If I could just
10 follow up on that a little bit, I can see how that
11 would be true particularly in the high school years
12 and middle school years. But in the early elementary
13 years, I'm curious about that proposition, because I
14 find in the town that I live in, which is a wealthy,
15 upper middle class town, that parents fight to get
16 their kids into special ed, because it's one-on-one
17 attention for the basics -- reading, writing,
18 arithmetic.

19 And there is probably an overabundance of
20 kids in special ed -- most of those kids are white in
21 our town -- and the parents are fighting like cats and
22 dogs to get kids into those programs, if their kids
23 are in any way struggling in school, to get the kids
24 in -- classified as special ed, and they realize they

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1 have to jump through a series of hoops and they need
2 to use specific terminology and phrases. And if the
3 right words aren't said, the kids aren't going to get
4 the special ed label. And they want it, because they
5 get the attention that they would not otherwise get in
6 the regular classroom.

7 MR. FELTON: From my experience on the
8 local school board in the area, you're absolutely
9 correct that in more affluent neighborhoods parents,
10 of course, view themselves as empowered, and they
11 follow up very closely in terms of the opportunities
12 that their students have. In most cases, it's the two
13 extremes. It's either the lower end, where they
14 simply want the accommodation, so their students will
15 perform well on standardized tests, meaning give them
16 more time --

17 COMMISSIONER BRACERAS: Right.

18 MR. FELTON: -- and on the extreme other
19 end it's because the services are very, very costly,
20 and they believe that by law local school districts
21 support that.

22 I think the discussion here has been that
23 when we begin to look at the full range of categories
24 of disabilities, there are many, as Dr. Gould

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1 identified, where students are identified but there,
2 one, may not be appropriate follow up; and, two, if
3 the students are placed, no one comes back later to
4 say, "Have we really made a difference in educating
5 this particular child?"

6 COMMISSIONER BRACERAS: Right.

7 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

8 VICE CHAIR THERNSTROM: Okay. Like
9 Commissioner Kirsanow, I have a whole bunch of
10 questions, but I will -- I won't lay them all out.

11 To begin with, though, there is an
12 assumption running through, it seems to me, the
13 testimony of all three of you that proportionality of
14 the proportional representation of racial, ethnic, and
15 perhaps other groups, national origin, whatever,
16 groups is the test of a system that is not
17 discriminatory.

18 Now, that is a very questionable
19 assumption. I mean, we don't have proportional
20 representation in any corner of American life of all
21 groups. And so the question is simply, I mean,
22 proportionality or disproportionality is a head count.

23 So the question is: are children being
24 misidentified? And, if so, why?

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1 Now, as Commissioner Braceras said -- I
2 spent 11 years, actually, on the Massachusetts State
3 Board of Education. As Commissioner Braceras said,
4 parents fight to get their kids into special ed, and,
5 in Massachusetts at least, the civil rights groups
6 were very ambivalent about those placements, because
7 on the one hand they worried about the numbers. On
8 the other hand, they liked the extra attention.

9 So, and by the way, it just -- the state
10 was just sinking under the costs of special ed and
11 neglecting a lot of other educational demands. But in
12 any case, my basic point here, that disproportionality
13 in itself doesn't say anything about the legitimacy of
14 the placements -- is to begin -- is my first point.

15 And there were several references to
16 "culture" as a reason for disproportionality and the
17 need to be sensitive to diverse learning styles.
18 Well, I don't know what the word "culture" means in
19 that context, and I don't know what the phrase
20 "diverse learning styles" means either.

21 I mean, do African-American children have
22 to learn their times tables in a distinctive way? Is
23 there a diverse learning style here that means that
24 arithmetic has to be taught to Latino kids different

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1 -- let's just put aside the language question there --
2 differently than it has to be taught to Asian kids?

3 Well, I'll stop there for the moment.

4 CHAIRMAN REYNOLDS: Mr. Felton?

5 MR. FELTON: Yes, I'd like to comment.
6 First of all, Commissioner, I did mention very early
7 that we believe that disproportionality did not
8 necessarily mean that there had been discrimination.
9 In fact, the issue was: were these students
10 misrepresented, and, therefore, were they in fact not
11 eligible? Did they not meet the requirements? And,
12 certainly, if they met --

13 VICE CHAIR THERNSTROM: You did. I think
14 the other two witnesses kind of --

15 MR. FELTON: Okay.

16 VICE CHAIR THERNSTROM: -- glided over
17 that point. You did.

18 MR. FELTON: Okay. I'll let them respond
19 to that. But the other issue in terms of cultural
20 competency and ensuring that teams understand the
21 issue -- again, it's because of the broad range of
22 categories among the disability -- students with
23 disabilities.

24 So for those who are viewed as having an

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1 emotional disability, very often in the absence of
2 cultural and ethnic competency, then an assumption is
3 made by a teacher that the student's behavior is such
4 that it doesn't fit in with the rest of the class.
5 Therefore, the student should be referred.

6 VICE CHAIR THERNSTROM: Well, it doesn't
7 fit in with the rest of the class. Here -- I mean,
8 I've spent a lot of time in schools. Doesn't fit in
9 with the rest of the class means you've got a
10 classroom of students in general -- I'm making a broad
11 generalization here. This is obviously not true
12 across the board.

13 But a classroom of students of, let's say,
14 18 kids and two of them are extremely disruptive and
15 means that the other 16 aren't learning. So the
16 teacher ends up referring those two very disruptive
17 kids for special ed. I mean, you can say those kids
18 are not emotionally disturbed, but the fact is that
19 they are disrupting the learning of the other kids.

20 MR. FELTON: We could probably have a
21 followup conversation, but certainly disruptive
22 behavior doesn't necessarily mean that one has an
23 emotional disability.

24 VICE CHAIR THERNSTROM: No. It just means

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1 the teacher wants that child in some way removed such
2 that the other 16 children can --

3 MR. FELTON: Certainly. And we believe
4 every student has the right to an environment where
5 they can learn, but you don't misuse the system
6 because you're not sure how to deal with discipline.
7 And that's obviously one of the challenges.

8 VICE CHAIR THERNSTROM: Well, you're
9 perfectly right on that. There's a problem with
10 classroom management.

11 MR. FELTON: Did you want to comment on --

12 ASST. SEC. MONROE: Yes, I absolutely
13 agree to what Mr. Felton just said. And I think that,
14 you know, we want to make sure that teachers have a
15 lot of tools in their toolbox. But using special ed
16 as one of those tools as a way to sort of control the
17 classroom environment or increase learning
18 opportunities for people really is not the correct
19 tool. They're using it inappropriately.

20 I think you're absolutely right when you
21 suggest that certainly our office does not look only
22 at proportionality. We look at the statistics. They
23 give us pause to go in and dig deeper. And certainly
24 when we've conducted compliance reviews and have shown

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1 up to a 74 percent disparity, when we've actually gone
2 out and retested those children and found that, in
3 fact, they don't qualify for special ed, that I think
4 sometimes bears out the fact that for whatever reason
5 they weren't placed there.

6 And what that means, obviously, for a
7 system that's struggling is that they are taking up a
8 slot from a child -- the Asian, whomever -- who should
9 have been placed in that position, but can't now
10 because the school is serving children who should not
11 have been placed in that position.

12 We're very hopeful that with the progress
13 that we're seeing through No Child Left Behind,
14 through the great efforts that we're seeing with our
15 teachers, and moving them to more of a highly
16 qualified status, that we're going to have an improved
17 educational system that is going to give teachers the
18 ability to serve kids legitimately in a regular
19 classroom setting where they are.

20 We also need to make sure that kids --
21 Commissioner Kirsanow asked a question about, you
22 know, whether we had statistical evidence about the
23 effect that spending time in special ed could have on
24 a student's trajectory.

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1 And I can say that I don't know that we
2 have really quantifiable, broad-based, random,
3 scientifically-based research, but certainly our
4 office has, for example, this year begun investigating
5 situations where kids in special ed who were there
6 because perhaps they needed a hearing aid or some
7 other type of a service that they might get through
8 either 504 or IDEA, they weren't being entitled to
9 participate in other kinds of coursework -- advanced
10 placement, for example.

11 There was an assumption that you either
12 were receiving these special ed benefits or you were
13 in one of these other programs. And so we're finding
14 ways to let schools understand that you need to really
15 evaluate the kids on a case-by-case basis where they
16 are, and simply being labeled by one of these very
17 broad categories of disability doesn't mean that you
18 can't participate in higher level learning.

19 COMMISSIONER BRACERAS: That goes back --
20 can I just follow up quickly?

21 CHAIRMAN REYNOLDS: You're jumping the
22 line, but you're entitled.

23 VICE CHAIR THERNSTROM: And I just -- I
24 want to answer with one sentence something that Dr.

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1 Monroe said, which is simply look for tools to deal
2 with disruptive kids. The teachers don't have them in
3 part because of the legal system.

4 COMMISSIONER BRACERAS: That's precisely
5 what I was going to say, because in my experience in
6 practice as a lawyer, but also as a parent in the
7 public schools, is that what I often see is when a
8 teacher tries to discipline a disruptive child, the
9 first thing the parent of the disruptive child does is
10 try to get them classified as special ed.

11 ASST. SEC. MONROE: Well, I'm also a
12 parent of kids in public school, and I have not -- and
13 I guess it depends on maybe regionally where you are,
14 and what kind of a school system you have, and who the
15 parents are. If the parents feel disengaged from the
16 school system, they're going to use whatever tool they
17 feel to be their child's best advocate.

18 One of the things that our office can do
19 when working with parents is to let parents know that
20 there are ways for you to access services for your
21 child and not drain the system, not inappropriately
22 have your child dealt with in that particular way.

23 A lot of us, I mean, you know, we've got
24 great teachers out there who are dealing with some

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1 very difficult circumstances. We've got parents who
2 are working two, three jobs. Everyone is taxed.
3 Everyone is trying to do what's best for these kids.

4 And what we need to do, which I think we
5 are on a good trajectory to do, is really to elevate
6 the standards that we have for all kids, including
7 kids in special ed, also to make sure that the parents
8 are at the table, that they are fully engaged as
9 advocates, that they understand and that they are part
10 of that classroom setting, that parents have access to
11 what's going on with their kids.

12 And, for example, my son -- I'll tell you
13 -- 16 years old, he had some issues with reading. He
14 didn't need to be classified as special ed. But I
15 worked with the school; they basically convened a
16 Child Study Committee for him. We brought all of his
17 teachers to the table. I was able to use the tools
18 that they had at that school, short of putting him in
19 a special ed environment, to get him the additional
20 reading specialist that he needed and to get him back
21 on the correct trajectory.

22 And I think those kinds of tools are
23 available, but it involves have an engaged principal,
24 engaged teachers, engaged parents.

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1 COMMISSIONER BRACERAS: I think sort of
2 two points. One is that the intersection between
3 discipline and special ed, which I know is a tangent
4 from what we're talking about here, it is an
5 interesting question, because lots of times I think
6 special ed is used inappropriately, either by teachers
7 or parents, to deal with discipline issues. So that's
8 one point.

9 The other point I'd like to make has to do
10 with the ability to get help for a struggling child
11 who is not actually special ed, because it has been my
12 experience, both professionally and personally, that
13 unless you get that label, you do not get the extra
14 help that you need. So if you have a child who is
15 borderline -- in other words, maybe, you know, at the
16 low end of -- at the low end of grade level, but still
17 grade level, the only way to get that child the
18 attention that they need from the school system is to
19 invoke the label of a disability.

20 And your experience with your son was not
21 that, but I can tell you in the town where I live you
22 need that label to get the attention, or those kids at
23 the low end of grade level are off everybody's radar.

24 And so going back to the issue of people

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1 who are misqualified -- miscategorized as special ed,
2 what I wonder is, there are some kids who clearly are
3 not special ed, should not be special ed, and are in
4 there inappropriately. But there's probably a smaller
5 group of kids that are borderline, maybe -- you know,
6 where it's discretionary, and those kids -- I guess
7 what I would ask is: what is the harm of classifying
8 them as special ed if it gets them help, even if under
9 some people's definition of "disability" they wouldn't
10 qualify?

11 In other words, you know, if they're
12 borderline. If that 10 percent, or whatever it is, of
13 children who could go either way, what's the harm of
14 putting them in?

15 VICE CHAIR THERNSTROM: It would cost the
16 state a fortune, Jennifer.

17 COMMISSIONER BRACERAS: No, no. I mean
18 from a discrimination -- you know, from a civil rights
19 perspective. I understand from an economic
20 perspective.

21 VICE CHAIR THERNSTROM: I mean, your kids
22 are deprived.

23 COMMISSIONER BRACERAS: What's that?

24 VICE CHAIR THERNSTROM: Your kids get

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1 deprived.

2 COMMISSIONER BRACERAS: But that's not my
3 question.

4 VICE CHAIR THERNSTROM: Yes, I understand.

5 COMMISSIONER BRACERAS: The purposes of
6 the Commission's analysis, does it harm a Latino or
7 African-American student who may be borderline to
8 misdiagnose them and put them in special ed if that
9 means they get extra help?

10 MR. FELTON: I think the broader challenge
11 is to ensure that every child has access to the
12 services that he or she needs without the labeling.

13 COMMISSIONER BRACERAS: Okay.

14 MR. FELTON: All right? And that ought to
15 be our goal.

16 COMMISSIONER BRACERAS: Yes.

17 MR. FELTON: And so that you don't have to
18 be special ed labeled in order to get additional
19 services. And as I had mentioned earlier in my
20 statement, our law now does provide for up to 15
21 percent of the Title B -- Part B funding, which would
22 allow at least the evaluations of some support
23 services.

24 But, clearly, the objective of the school

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1 is -- which is why I talked about universal design for
2 learning, is that we can change our paradigm by the
3 way we deliver instruction, and so theoretically every
4 student then has a need and it is tailored.

5 COMMISSIONER BRACERAS: I agree with you.
6 It's just I don't believe that that has filtered down
7 yet.

8 MR. FELTON: Well, it's very slowly --

9 COMMISSIONER BRACERAS: Yes.

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRMAN REYNOLDS: Okay. Commissioner
12 Melendez?

13 COMMISSIONER YAKI: Mr. Chairman, I want
14 to be in line as well.

15 CHAIRMAN REYNOLDS: You're next.

16 COMMISSIONER YAKI: Okay.

17 COMMISSIONER MELENDEZ: I thank you for
18 being here also. I wanted to ask Ms. Monroe a
19 question as far as -- it has to do with how early do
20 we identify disabilities. What is the position of the
21 Department of Education on universal screening
22 proposals which would test all children for learning
23 disabilities at an early age rather than relying
24 mainly on teachers who may or may not let their biases

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1 influence their judgment? And what research grants or
2 best practices is the Department providing on
3 universal screening?

4 ASST. SEC. MONROE: I'm not from the
5 office on special ed, and so I should I think
6 respectfully defer. I'm happy to perhaps put that
7 response in writing to you --

8 COMMISSIONER MELENDEZ: Okay.

9 ASST. SEC. MONROE: -- to answer that
10 question.

11 COMMISSIONER MELENDEZ: Anybody want to
12 comment on that?

13 DR. GOULD: I'm not familiar with the
14 phrase "university screening." I like it, just from
15 the sound of it.

16 MR. FELTON: I think you're going to hear
17 from some of the other colleagues later about
18 universal screening. And, again, the challenge is
19 that we use whatever instruments we have for the
20 purposes of diagnostic measures, and that we then put
21 in place something that will help the student.

22 The challenge is that we don't want to
23 make decisions about limitations of students because
24 of an assessment and then never follow up later. And

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1 so those are some of the practical challenges, but I
2 know some of my colleagues on the next panel will talk
3 about that.

4 DR. GOULD: Some of the issues that have
5 gone to the heart of early diagnosis, screening, and
6 treatment have revolved around school systems' ability
7 to access Medicaid and use Medicaid resources to do
8 some of that early diagnosis, and that continues to be
9 an issue for many school districts around the country.

10 The Center of Medicaid and Medicare
11 Services, in conjunction with the Department of Ed,
12 have been working with school districts, but the
13 challenge is a lot greater than you might imagine,
14 because it involves, you know, some things that aren't
15 necessarily just instructional-based, but they may be
16 technology-based, computer-based, and training around
17 that.

18 CHAIRMAN REYNOLDS: Okay. Commissioners
19 Yaki, then Taylor.

20 COMMISSIONER YAKI: Yes. Thank you very
21 much, Mr. Chair.

22 The question I have for this panel, and I
23 also for the next panel, is I have a personal interest
24 in --

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1 STAFF DIRECTOR MARCUS: Excuse me.
2 Commissioner Yaki? For the benefit of the Court
3 Reporter, could you try to speak a little bit more
4 loudly?

5 COMMISSIONER YAKI: I'm speaking in my
6 normal voice. Is there something wrong with your PA
7 system?

8 COMMISSIONER HERIOT: Maybe there is.

9 STAFF DIRECTOR MARCUS: We're not aware of
10 any problems, but we can check it later. For the time
11 being, I want to make sure that the Court Reporter
12 hears what you're saying.

13 COMMISSIONER YAKI: Well, then, how is
14 this?

15 STAFF DIRECTOR MARCUS: Very clear.

16 COMMISSIONER YAKI: The question that I am
17 posing to this panel, and that will interest me for
18 the next panel as well, is that from -- I have a
19 nephew who has been diagnosed with Asperger Syndrome,
20 a form of autism. He's a high functioning individual,
21 but nevertheless has some behavioral and other kinds
22 of issues that require him to receive special training
23 outside of the classroom.

24 What I found just in observing his

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1 progress is that it seems to be one of where people
2 can find a funding spot or a funding stream in which
3 to place him -- scholarship grants, what have you --
4 for the purpose of finding the appropriate instructor
5 who understands kids with this kind of -- this kind of
6 syndrome, and not necessarily one who will simply say,
7 "Well, he's special ed, he can just go in here," and
8 what have you, what happened is that after the first
9 year he was diagnosed, he received one-on-one tutoring
10 and what has occurred here become more and more a
11 cattle call with completely different learning and
12 other disabilities in the same classroom with the same
13 teachers who may not be qualified to deal with all --
14 any or all of these -- all of the different problems
15 or challenges posed by this syndrome.

16 I just want to get the reactions of this
17 panel as to whether or not it's part of the problem is
18 one where people try and plug them into where they
19 have money currently rather than trying to find out
20 whether or not they need to be specific and separate
21 or different kind of program to be created, albeit one
22 where they would have to dip into another set of
23 resources that may or may not be readily provided to
24 them by their local school district.

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1 MR. FELTON: Well, this is Reggie Felton
2 with National School Boards Association. Autism is
3 clearly the fastest-growing identification -- more
4 students are being identified now in public schools
5 than any other category.

6 What some states are doing, because they
7 recognize that local school districts may be very
8 limited in their ability to support -- provide support
9 services is to establish special funds so that local
10 school districts can in fact tap into those funds to
11 ensure that the services are provided.

12 Clearly, the law mandates that the
13 services be provided, and the question, as you've
14 pointed out, very often is a particular local school
15 district may not have the resources, and so typically
16 they work with their states and in some cases they
17 work with state legislatures for special state laws to
18 be passed to address, you know, students with autism.

19 But certainly we can get back to you with
20 additional information.

21 DR. GOULD: This is Martin Gould,
22 Commissioner Yaki. Asperger Syndrome, as one of the
23 categories of subgroups of autism, is a fairly unique
24 category in that it represents people who have fairly

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1 sophisticated skills relative to the larger group of
2 people with autism, or students with autism, yet they
3 still present, as you know, challenges to their
4 families and to the instructional environment.

5 There are hotbeds of teacher preparation
6 that exist at certain universities around the country.

7 However, for the majority of teacher preparation
8 institutions, skills and experiences at the in-service
9 level -- I mean, at the pre-service level are
10 typically not available to teachers in training who
11 may ultimately work with students with Asperger
12 Syndrome, much less students with autism.

13 There is typically a generic set of skills
14 that are taught as part of teachers' pre-service
15 preparation in colleges, but it doesn't typically
16 include skill sets that would match up with students
17 who have Asperger Syndrome.

18 Hopefully, institutions of higher ed are
19 changing their approach and what they're including in
20 special ed curriculum. And as Mr. Shelton pointed
21 out, there is an increasing number of students with
22 autism in the public schools, and so it would -- it
23 would -- you would assume that institutions of higher
24 ed are ramping up their curriculum.

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1 COMMISSIONER YAKI: I guess because the --
2 the issue of especially Asperger Syndrome -- who
3 aren't familiar with it, a fairly high functioning
4 form of autism, you know, the one -- my nephew, for
5 example, has an amazing affinity for mathematics, for
6 numbers, not so much with -- not so much with the
7 spoken word.

8 He has difficulty with too much -- with
9 sensory overload, which of course, as we all know from
10 any of our visits to any normal American classroom,
11 there is nothing but sensor overload going on every
12 day in every classroom -- at recess, at lunchtime,
13 what have you.

14 And I am just wondering, though -- and I
15 don't want to take up too much time -- but I think it
16 goes to the question of: do we just simply create
17 categories of funding and dump the kids into those,
18 and then, you know, ask questions later, because that
19 seems to me part of what seems to be -- of doing that
20 or potentially given today from my own experience.
21 And maybe it's not anyone's fault, but simply one of
22 limited resources, limited ability to differentiate a
23 diagnosis, and yet still maintain the mandates of IDEA
24 or otherwise.

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1 CHAIRMAN REYNOLDS: Okay. Commissioner
2 Taylor, then Commissioner Heriot.

3 COMMISSIONER TAYLOR: Dr. Gould, I want to
4 make sure -- I think that I understood your testimony.

5 Is there an overrepresentation of minorities, save
6 Asians, in those categories that are defined by
7 judgmental factors?

8 DR. GOULD: That's what research and the
9 government reports indicate.

10 COMMISSIONER TAYLOR: Now, my next
11 question, then, is: is there an overrepresentation of
12 minorities in those categories that are defined by
13 objective factors -- that is, testing?

14 DR. GOULD: According to research and
15 government reports, objective factors --

16 COMMISSIONER TAYLOR: No?

17 DR. GOULD: -- including testing or
18 medical diagnosis as well?

19 COMMISSIONER TAYLOR: Well, is the medical
20 diagnosis part of their -- one of the three judgmental
21 factors?

22 DR. GOULD: Medical diagnosis is not part
23 of the -- is not part of the three categories of
24 students that are considered judgmental disability

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1 categories. That's why they're judgmental.

2 COMMISSIONER TAYLOR: So setting aside the
3 diagnosis category, then, there is not an
4 overrepresentation of minorities in the non-
5 judgmental --

6 DR. GOULD: Generally, that's what
7 government reports using OCR data have shown, and
8 that's what research reports, you know, have seemed to
9 reflect outside of government research.

10 COMMISSIONER TAYLOR: Well, what --

11 COMMISSIONER HERIOT: Excuse me. What
12 fits into these categories? I'm not following you
13 here.

14 DR. GOULD: There's learning disabilities,
15 there's emotional disturbance, and there's mental
16 retardation.

17 COMMISSIONER HERIOT: The others -- what
18 I'm talking about are the ones that are not
19 judgmental.

20 DR. GOULD: The not judgmental ones are --
21 include the other categories of disability under IDEA.

22 COMMISSIONER HERIOT: Meaning?

23 DR. GOULD: They include autism, they
24 include --

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1 MR. FELTON: Hearing impaired or --

2 DR. GOULD: -- hearing impairment,
3 blindness, deaf-blindness, orthopedic impairment,
4 other health impairment.

5 MR. FELTON: Medical-related.

6 VICE CHAIR THERNSTROM: Multiple
7 sclerosis, whatever.

8 COMMISSIONER HERIOT: Autism is thought to
9 be not judgmental in --

10 VICE CHAIR THERNSTROM: No, because it's a
11 medical --

12 DR. GOULD: There's a medical diagnosis
13 for that.

14 COMMISSIONER HERIOT: Medical diagnoses,
15 nevertheless, require judgment. That's not --

16 VICE CHAIR THERNSTROM: No, no, no, no.
17 But he's separating those out with some kind of --
18 that are based on some kind of objective evidence of a
19 medical sort.

20 DR. GOULD: Right. Medical versus non-
21 medical as part of the factor, and that is how it has
22 been separated out by researchers.

23 COMMISSIONER TAYLOR: So what that means
24 is that when we have objective factors or medical

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1 evidence or medical observations, we do not see a high
2 percentage of minorities in special ed.

3 DR. GOULD: That's what the research is
4 suggesting, yes.

5 COMMISSIONER TAYLOR: So to your point of
6 separating the overrepresentation question from the
7 misrepresentation question, when you put that
8 alongside what we have just said here with respect to
9 objective observations and judgmental factors, what
10 does that mean? What conclusions do you all draw when
11 you put those two issues side by side?

12 VICE CHAIR THERNSTROM: And let me just
13 add a kind of -- just a tail to that question. I
14 mean, so what you're saying is where we have objective
15 measures, the disproportionality does not tell us
16 anything about discrimination. We still have
17 disproportionality, but it -- you know, you can't --
18 one doesn't raise any questions. Is that part of what
19 you're saying?

20 COMMISSIONER TAYLOR: On the one hand, we
21 have -- and I will -- and I agree, I think we should
22 distinguish between the overrepresentation question
23 and the misrepresentation question. But then, what I
24 hear, that when we use objective measuring tools we

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1 don't find either overrepresentation or
2 misrepresentation. At least we don't find an
3 overrepresentation.

4 But then, when we move to the more
5 subjective judgmental factors, we find an
6 overrepresentation, and then we have to question
7 whether or not there is a misrepresentation. And to
8 me that -- those two go hand in hand.

9 I would have expected if we could -- if we
10 should differentiate between the misrepresentation and
11 the overrepresentation, that we should see the
12 overrepresentation in both categories, and we
13 shouldn't see a difference between objective
14 measurements and the judgment calls that are being
15 made.

16 VICE CHAIR THERNSTROM: That's why
17 overrepresentation -- that is, it's proportionately
18 overrepresentation in both categories.

19 COMMISSIONER TAYLOR: That's not true.
20 You don't have a disproportionately high
21 representation with objective --

22 DR. GOULD: Remember you have IEP
23 committees, you know, that have different compositions
24 in different school districts with people who have

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1 different levels of skills and experiences who, you
2 know, have introduced a huge amount a variability in
3 the assessment and diagnosis of students. And that
4 has been part of the issue, and that is part of what
5 Congress identified during reauthorization of IDEA in
6 2004 as a problem.

7 CHAIRMAN REYNOLDS: And what about earlier
8 -- disruptive students, that issue was brought up, and
9 the desire by some teachers to take disruptive
10 students out of the class. That would help explain
11 why when you use judgmental criteria you have this
12 misidentification whereas it doesn't occur using more
13 objective standards.

14 And in addition to that, wouldn't this
15 problem that we have identified be exacerbated by
16 children who come from homes where there is very
17 little intellectual stimulation? And these children
18 winding up being outliers in the classroom in terms of
19 their ability to keep up?

20 It seems to me that the public school
21 system believes that there is certain level of work
22 being done in the home with parents. They expect a
23 certain level, a certain capacity, that the students
24 will have when they arrive at school. And for those

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1 students who don't have that background, who don't hit
2 the baseline, it appears that schools aren't set up to
3 deal with these students.

4 MR. FELTON: But as I mentioned earlier,
5 you know, disproportionality of minorities in special
6 ed relate to the same disproportionality of minority
7 students who have, you know, poor housing, inadequate
8 health care, the full gamut. And there's enough
9 research out there that suggests that there is a
10 relationship between, again, poverty and health and
11 nutrition and learning abilities.

12 Now, to say that certainly the numbers
13 require some analysis, I would agree with you. The
14 question is: is the system capable, once having
15 looked at the data, to then validate whether that
16 placement is in fact correct or not? Or does it say,
17 because of other conditions that support that child,
18 as raised by some of the other Commissioners, that
19 that student ought to have the benefit of additional
20 support systems?

21 Now, again, long range as we move into
22 concepts like UDL, we approach educational delivery
23 differently, and so the benchmarks that we use will be
24 different, and we may find we'll have different data.

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1 So I think the question that, you know, you are
2 challenged with is, you know, is it discrimination, or
3 is there valid reason that supports the need for a
4 student to receive additional support services? And
5 if that is true, you know, what conclusions, then, do
6 you draw as a commission?

7 CHAIRMAN REYNOLDS: Okay. Ms. Monroe?

8 ASST. SEC. MONROE: Yes. With all due
9 respect, I think I do have to disagree with one
10 comment that you've made, which is about the poverty
11 linkage between whether kids who are impoverished
12 somehow can't learn.

13 MR. FELTON: No, no, I misunderstood. I
14 said, therefore, do not have access to health care and
15 nutrition, other things that affect --

16 ASST. SEC. MONROE: And that may be true,
17 but I think in what we have seen in a number of -- and
18 I think we are sort of engaging in some
19 generalizations here.

20 MR. FELTON: Right.

21 ASST. SEC. MONROE: But there certainly
22 are some very good models of schools, some of which
23 are in the District of Columbia even. You can visit
24 the KIPP School right up the street and see where the

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1 hardest to serve children, coming from the most dire
2 of circumstances, are more than excelling, probably in
3 a -- you know, one of these schools working at about a
4 50 percent rate.

5 I would guess about half of those kids
6 would have been labeled in need of special ed
7 services, but, in fact, they are in a school system
8 with highly qualified, engaged teachers, where parents
9 are involved, where parents are volunteering in the
10 classroom, where you have, you know, reasonable
11 teacher-to-student ratios, nothing extraordinary, you
12 know, 20, 25 kids to a classroom.

13 Those kids are excelling. These are the
14 kids that, you know, as the President talked about the
15 -- sort of the soft bigotry of low expectations, that
16 we would have I think been willing to just -- to put
17 aside over here and not assumed that these kids were
18 really bright, and what they really needed was engaged
19 one-on-one interactions from really good teachers.
20 And when given that environment, they have excelled.

21 And so I think we just need to be really
22 careful about assuming that, because of the place
23 where or position where a child is born, that's going
24 to somehow limit them in terms of what they are going

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1 to be able to accomplish.

2 CHAIRMAN REYNOLDS: Well, thank you, Ms.
3 Monroe. I assume that Vice Chair Thernstrom was about
4 to make that very same point.

5 ASST. SEC. MONROE: Okay.

6 CHAIRMAN REYNOLDS: However, I believe
7 that Commissioner Heriot was in the queue.

8 COMMISSIONER HERIOT: Okay. I wanted to
9 -- just another note on disproportionality. What
10 about gender? I have been told that boys are
11 disproportionately found to be mentally retarded, and
12 I believe that --

13 VICE CHAIR THERNSTROM: Of course they
14 are. We could say it in this room.

15 (Laughter.)

16 COMMISSIONER HERIOT: -- is not the case,
17 and when -- you know, what does that say about the
18 general disproportionality issue and whether or not
19 this is false or true disproportionality that we're
20 talking about here with regard to race and --

21 ASST. SEC. MONROE: Well, I think that
22 some of this we don't know -- we don't know as much as
23 much as we should know. We don't know whether they
24 really are mentally retarded --

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1 COMMISSIONER HERIOT: We know that they
2 are disproportionately diagnosed now.

3 ASST. SEC. MONROE: Yes, we do know that,
4 but we don't know whether it's because they received
5 more testing, whether the testing was accurate.

6 COMMISSIONER HERIOT: What about emotional
7 disturbance, that sort of thing?

8 ASST. SEC. MONROE: I think for all of
9 those reasons. I mean, I think that there is a lot of
10 judgment in terms of -- again, I think the issue of
11 misidentification versus, you know, correctly
12 identifying, but having a larger proportion, there's a
13 judgment that occurs about what kids will have access
14 to certain testing, about how you're going to
15 interpret that test, about who the test-giver is and
16 how he is going to interpret the results.

17 A lot of the testing on some of the more
18 judgmental disabilities is just that. It's very
19 judgmental, very subjective, in terms of who gets it,
20 who does it, how they interpret it, how often they get
21 it, what the test is that they're using. And those
22 are things that we have to work through.

23 COMMISSIONER HERIOT: Learning
24 disabilities -- if I heard correctly, we started out

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1 talking about how mental retardation and emotional
2 disturbances -- that those are disproportionately
3 minorities. And then, Commissioner Braceras was
4 mentioning her experiences in her hometown.

5 I have been reading, at least in, you
6 know, casual newspaper and magazine stories the notion
7 that learning disabilities are disproportionately the
8 other way around, that disproportionately whites are
9 diagnosed with learning disabilities, and it's just
10 sort of an upper middle class phenomenon.

11 Is there anything to that, or --

12 DR. GOULD: Well, if you look at the
13 annual reports of Congress for implementation of IDEA,
14 they have lots of data, and one of them is a table on
15 risk ratios. And students who are white have a lower
16 risk ratio for being identified as having specific
17 learning disabilities than students --

18 COMMISSIONER HERIOT: Is this broken down
19 into certain kinds of learning disabilities, or is it
20 just grouped together?

21 DR. GOULD: Specific learning disabilities
22 is the category that they report in, one of the 13
23 categories. Students who are Hispanic, students who
24 are African-American, and students who are American

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1 Indian/Alaska Native, have higher risk ratios for
2 being identified with learning disabilities.

3 COMMISSIONER HERIOT: What kind of
4 learning disabilities are we talking about?

5 DR. GOULD: Students that have either a
6 math discrepancy in their performance that's two
7 grades or greater, or reading discrepancies between
8 their age and between the --

9 COMMISSIONER HERIOT: It's just very
10 generic.

11 DR. GOULD: They're general, and it could
12 be a combination of both. It could be a reading and
13 math disability.

14 MR. FELTON: But that's the definition.

15 DR. GOULD: Yes.

16 CHAIRMAN REYNOLDS: Okay. Last question,
17 Vice Chair Thernstrom.

18 VICE CHAIR THERNSTROM: I want to go back
19 to the question of poor housing, poor health care,
20 etcetera, as some explanatory -- as explaining some of
21 the placements here.

22 I mean, number one, we have many for
23 instance impoverished Asians who live in poor housing,
24 and they're not in SPED. But -- and I'm delighted

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1 that you brought up the KIPP schools, because the
2 schools are -- I happen to be a big fan of KIPP. You
3 know, they assume you teach the kids who walk through
4 the door whatever their health care or history or
5 their housing, or whatever.

6 But in any case, what if inadequate access
7 to health care was the problem? I mean, or partly the
8 problem. What are the -- how -- the question is how
9 the schools are supposed to respond to that. The
10 schools cannot fix the inadequacies of American health
11 care, of housing, of whatever you want to name that
12 you believe is, you know, a problem of inequity in
13 this society.

14 So, again, going back to a school like
15 KIPP, the only thing that schools can do is teach the
16 kids who are sitting in the classrooms. And I just --
17 I don't see how it advances the conversation to say,
18 well, these kids, you know, need better health care,
19 they need better housing, they need whatever. That's
20 not the role of schools, and, in any case, I'm not
21 sure we know how to fix many of those problems without
22 unacceptable cost. I don't mean simply financial, but
23 in any case --

24 MR. FELTON: No, I agree with you. The

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1 comment was not made as an excuse for why students are
2 disproportionately represented. The question that I
3 was attempting to raise is that certain groups of
4 students, certain families, certain folks in this
5 country, simply have a different quality of life than
6 others, and that it ought to be the responsibility to
7 deal with this in a comprehensive way.

8 Certainly, the schools are very, very
9 limited, as you point out, limited resources. They
10 are expected to take a student when he or she arrives
11 at whatever level they are, and, of course, hopefully
12 that they will progress through graduation. But if
13 you talk to the teacher in the classroom, if you are
14 actually in the school, what that means in practical
15 terms is students need greater support services.

16 It doesn't mean that they have limited --
17 they do not have the ability to perform, but you
18 cannot simply say, "I'll invest at the same dollar
19 amount every child," because it is about equitable
20 educational services, which means it takes more for
21 certain students. And until we're willing to do that,
22 I was just suggesting we will continue to have the
23 disparity.

24 VICE CHAIR THERNSTROM: Well, I guess my

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1 response to that is if I go back to my experience on
2 the Massachusetts State Board of Education, look, you
3 can put health care clinics in schools, which to some
4 extent Massachusetts has done, and it is still a very
5 high hurdle with many families to get the parents to
6 use those health care services.

7 I mean, you've got a larger problem here
8 than simply financial resources, access, you know, is
9 Johnny has got a ear infection, the clinic has looked
10 at him, if Johnny's mother will actually bring him to
11 the clinic, then there's a prescription and the
12 medication isn't taken. I mean, I've been, you know,
13 deeply involved in this -- in this issue, and these
14 are very complicated questions.

15 And I would just suggest to you that the
16 school systems can't -- basically can't deal with
17 them. School systems have to teach. That's what they
18 have to do.

19 CHAIRMAN REYNOLDS: Okay. On that note,
20 I'd like to thank the panelists. This has been a very
21 interesting and enlightening exchange. Thank you.

22 We are going to take a five-minute break,
23 and then we'll start with the second panel.

24 (Whereupon, the proceedings in the foregoing matter

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1 went off the record at 11:24 a.m. and went
2 back on the record at 11:35 a.m.)

3 CHAIRMAN REYNOLDS: Okay, and if anyone
4 sees Ashley in the hallways, please let him know that
5 we've started.

6 Okay, welcome back. This is our second
7 panel. The lead off will be Dr. Matthew Ladner who is
8 the Vice President of Research for the Goldwater
9 Institute and author of numerous studies on school
10 choice, charter schools, and special education reform.

11 Dr. Ladner is a graduate of the University of Texas
12 at Austin, and he received both a master's and Ph.D.
13 in political science from the University of Houston.
14 Dr. Ladner previously served as Director of the Center
15 for Economic Prosperity at the Goldwater Institute and
16 as Vice President of Policy and Communications at
17 Children's First America.

18 Next up we will have Dr. Reschly, did I
19 mangle your name?

20 DR. RESCHLY: Reschly.

21 CHAIRMAN REYNOLDS: Reschly, thank you.
22 Dr. Reschly is Professor of Education and Psychology
23 at Peabody College at Vanderbilt University and former
24 chair of the Department of Special Education. He has

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1 published widely on the topics of school psychology,
2 professional practices, system reform, assessment of
3 disabilities with minority children and youth,
4 behavioral consultations, and legal issues in special
5 education. He previously served on the National
6 Academy of Sciences Panel on Special Education Over-
7 representation.

8 Next, we'll have Hilary Shelton who serves
9 as the Director of the National Association for the
10 Advancement of Colored Peoples, Washington, D.C.
11 Bureau, the organization's Federal and Legislative and
12 National Public Policy Division. Prior to serving as
13 the Director of the Washington Bureau, Mr. Shelton
14 served as Federal Liaison and Assistant Director to
15 the Government Affairs Department of the College Fund,
16 also known as the United Negro College Fund here in
17 Washington, D.C. He is also a Board Member of the
18 Leadership Conference on Civil Rights, the Center for
19 Democratic Renewal, and the Coalition to Stop Gun
20 Violence, and finally, the Congressional Black Caucus
21 Institute, among many other distinctions.

22 Then we will have Mr. Peter Zamora who is
23 the Washington, D.C. Regional Counsel for the Mexican-
24 American Legal Defense and Education Fund, MALDEF.

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1 Mr. Zamora develops, implements, and manages MALDEF's
2 federal legislative strategies regarding voter rights,
3 federal education law and policy, immigration, and
4 other matters. He serves as co-chair of the Hispanic
5 Education Coalition. Prior to joining MALDEF, Mr.
6 Zamora served as a bilingual credentialed English
7 teacher in California public schools, a legal
8 consultant to the District of Columbia public schools
9 and as an attorney in a private educational law
10 practice here in Washington, D.C.

11 COMMISSIONER YAKI: Any mention of where
12 he went to university?

13 CHAIRMAN REYNOLDS: You want to help out
14 with that one?

15 MR. ZAMORA: Proud graduate of
16 UC/Berkeley.

17 VICE CHAIR THERNSTROM: He just shook his
18 head and said yes.

19 COMMISSIONER YAKI: I won't go there.

20 CHAIRMAN REYNOLDS: Finally, we have
21 William Hurd who is a partner with Troutman Sanders,
22 Richmond Officer. Mr. Hurd represented parents in
23 Schaffer v. Weast which addressed the burden of proof
24 at administrative hearings under federal special

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1 education law. He regularly represents and advises
2 parents on legal rights involving disputes with local
3 school divisions. In the United States Supreme Court,
4 Mr. Hurd has appeared on brief, both party and amicus
5 in more than 30 cases serving as principal author of
6 the brief in more than 20 cases. He has personally
7 argued the three cases before the U.S. Supreme Court,
8 including two cases involving the first amendment and
9 one involving federal special education law. Prior to
10 joining Troutman Sanders, Mr. Hurd served as Solicitor
11 General for the Commonwealth of Virginia.

12 Welcome, everyone. Let's get started.

13 Dr. Ladner? I'm sorry, at least I'm
14 consistent. Please raise your right hand everyone.

15 (The panelists were sworn.)

16 Thank you.

17 Mr. Ladner.

18 DR. LADNER: Mr. Chairman, thank you very
19 much for having me here. I very much appreciate the
20 opportunity.

21 I'm Dr. Matthew Ladner. I'm Vice
22 President of Research at the Goldwater Institute, and
23 we're a libertarian think tank based on Phoenix,
24 Arizona, but I've actually had the chance to study

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1 this issue for both left of center and right of center
2 think tanks, and so I guess I'll bring a bit of the
3 sort of the perspective of think tank research on this
4 particular issue.

5 In 2001, the Progressive Policy Institute
6 and the Thomas B. Fordham Foundation issued a joint
7 collection of studies on special education called
8 Rethinking Special Education for a New Century. In
9 that volume, it was an edited volume, Dr. Christopher
10 Hammons and I statistically examined racial special
11 education rates across districts and counties from
12 several different states testing for independent
13 effects of a number of separate variables on special
14 education rates and particularly studying the
15 disproportionality question.

16 After controlling for school spending,
17 student poverty, community poverty, and a number of
18 other factors, the research revealed that a common
19 pattern of predominantly white public school districts
20 placing minority students into special education at
21 significantly higher rates than districts with higher
22 percentages of minorities in their student bodies.

23 In the year 2000, the United States
24 Department of Education Office of Civil Rights

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1 surveyed all of the nation's public schools concerning
2 their special education populations. The resulting
3 data, known as OCR 2000 Elementary and Secondary
4 School Survey, allowed for the exploration of the
5 possible existence of racial bias and assignment of
6 special education labeling, much more specifically.

7 OCR data confirms not only information
8 about race and special education, but much more
9 specifically to issues of gender, and also disability
10 type.

11 In 2004, in a study for the Goldwater
12 Institute, I utilized OCR's data for Arizona public
13 schools. It reestablished the previously research
14 with much more limited data. Minority students
15 attending predominantly white public schools in
16 Arizona are significantly more likely to be placed in
17 special education programs than their peers.

18 Overall, when comparing the combined rates
19 of children with emotionally disturbed, mentally
20 retarded, and specific learning disability labels, the
21 judgmental categories we discussed earlier , both
22 American Indian and Hispanic males are labeled at a
23 rate 64 percent higher in schools that are 75 percent
24 or more white. Very white schools label American

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1 Indian and Hispanic male students much higher when
2 compared to schools that are 25 percent or less white.
3 The interesting thing about this research is that it
4 shows a very different pattern for Anglo students. As
5 schools get whiter, Anglo labeling actually declines
6 which, if you think about the relationship between
7 poverty and disability that we discussed earlier, you
8 would expect the exact opposite pattern for these
9 minority students. As they get into more
10 predominantly white and higher income school
11 districts, they're actually labeled in much higher
12 rates. So this, I believe is a very disturbing
13 finding.

14 On the subject of what can be done about
15 this, I broadly agree with the conclusions of the
16 President's Commission on Excellence in Special
17 Education a Report that was released in 2002. The
18 Commission recommended that the elimination of
19 perverse financial incentives in labeling. The
20 Commission also recommended altering what is known as
21 the "wait to fail" model by focusing on early testing
22 and academic remediation using both general and
23 special education funds.

24 The Commission also recommended greater

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1 options for parents dissatisfied with the services
2 provided in the public school setting. I believe that
3 these recommendations represent solid strategies for
4 addressing both over and under enrollment in special
5 education programs. The key is for us to identify the
6 students who actually do need special education
7 services and provide those students the services they
8 need. My review of the literature leads me to believe
9 -- and the question was asked earlier -- that children
10 who are enrolled in special education who, in fact, do
11 not have a disability, are not being helped. I think
12 there's a lot of well-meaning people in the public
13 school system that are doing those sort of things,
14 thinking that they're helping students, when in fact,
15 they're not.

16 I also believe and concur with some of the
17 conclusions discussed earlier, that there is a massive
18 amount of error in these judgmental categories. I'm
19 sure some of my fellow panelists may go on to discuss
20 the research of Dr. Reid Lyon who indicates that 70
21 percent over 2 million students nationwide in the
22 specific learning disability category have been put
23 there inappropriately. These children simply have not
24 been provided high quality reading instruction and in

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1 Dr. Lyon's term and this is medical research is that
2 these children have been teaching disabled, not
3 learning disabled. I'm actually a proponent of the
4 universal screening technique that she referred to
5 earlier. The basic idea is to use prevention, rather
6 than treatment. I think students should be tested,
7 all students should be tested early. We should find
8 out who is behind and we should attempt to remediate
9 problems before they develop and can be mistaken for a
10 special ed. program.

11 So although it's an ironic argument to
12 make for someone who works for a libertarian think
13 tank, I actually would pose the question sort of that
14 John Rawls, the greater liberal political philosopher
15 said -- Rawls' philosophy was based on the idea if you
16 imagine a theoretical next life in which you don't
17 know what your position will be, you may be born the
18 child of a billionaire and a genius, and you may be
19 born as a disadvantaged minority child in an urban
20 public school, you simply don't know what your
21 position is going to be.

22 Imagining that you might be born a
23 disadvantaged child, would you want the current system
24 to be the system that identifies you and treats, if

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1 you actually do have a disability or not, or if you
2 have something that might appear to be a disability,
3 would this be the system that you would want?

4 My answer to that personally is clearly
5 no. This is not the system I would want and I
6 believe that this system isn't good enough for me in
7 theory. It's not good enough for minority children,
8 real minority children in practice. And I thank you.

9 CHAIRMAN REYNOLDS: Dr. Reschly.

10 DR. RESCHLY: My name is Dan Reschly. I'm
11 a researcher in the area of minority
12 disproportionality. I've been researching in that
13 area since I was called by the Arizona Director of
14 Special Education in 1971 concerning the Guadalupe
15 case in Tempe, Arizona.

16 I served on the National Academy of
17 Sciences Panel on Minority Over-representation in
18 Special and Gifted Education. That report was issued
19 in 2002 and it's cited as part of my written materials
20 and I urge all of the people to take a good look at
21 that report.

22 The first thing I want to do is to direct
23 your attention, I'm going to move up to Slide 11 here
24 and it's Slide 8 on your handout. And the first thing

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1 I want to do is attempt to achieve clarity about the
2 numbers.

3 I do this and I don't actually you
4 actually -- well, I ask you to formulate an answer,
5 but you don't have to tell me the answer. These are
6 factual statistics from the Individuals With
7 Disabilities Education Act data. African-American
8 students constitute about 15 percent of the general
9 population, ages 6 to 21. African-American students
10 comprise 33 percent of the students who are classified
11 as mentally retarded and placed in special education.

12 Now the puzzle. What percent of African-
13 American students are classified as mentally retarded
14 and placed in special education? Have you thought of
15 an answer? I hope all of you have an answer in mind.

16 In fact, 1.7 percent. That is under two percent of
17 all African-American students are classified as
18 mentally retarded and placed in special education.
19 Does that surprise anybody? Again, I don't ask for
20 any -- I will tell you that the vast majority of
21 special educators, school psychologists, school
22 administrators, public policy advocates get this
23 wrong, get it badly wrong.

24 And the problem is the confusion between

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1 the risk statistic and the composition statistic.
2 Near the end of my written handout, I have a table
3 that I've formulated that provides current results
4 concerning risk which is the percentage of a group
5 from the general population in a particular category
6 or special ed. placement; composition which is the
7 proportion of persons in that category or placement by
8 race or ethnicity; and then the relative risk ratio.
9 So I'd urge you to look at these and my other written
10 materials. I have further explanations and give
11 computational examples.

12 The problem with confusing risk and
13 composition statistics is that it generates
14 unfortunate stereotypes, particularly about African-
15 American students. It generates the unfortunate
16 stereotype that a large proportion of African-American
17 students are classified as somehow defective and
18 placed in special education. In fact, that is not the
19 case. The numbers are disproportionate, but it does
20 not involve a large proportion of African-American
21 students.

22 Now on that table that I referred to
23 earlier, I provide data on all disabilities across all
24 13 categories, what is the risk for the 5 groups

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1 recognized in the U.S. Department of Education; across
2 the area of all disabilities, learning disabilities,
3 mentally retardation, emotional disturbance, and other
4 health impaired. In the far lower left corner of that
5 table, the actual population composition of persons
6 age 6 to 17 is provided.

7 Now let me move back to some specific
8 points. First, disproportionality is the culmination
9 of decisions about individuals, not groups. It's an
10 individual referral decision, individual child, not
11 referral of a group of persons by race of ethnicity.
12 Parental consent is required before an evaluation is
13 conducted. An individual evaluation is conducted by
14 specialists that almost always involves extensive
15 testing, as well as other kinds of observations. That
16 individual evaluation is then discussed by a multi-
17 disciplinary team that includes the parent that makes
18 decisions about eligibility, IEP, and placement. Note
19 that parental consent is required prior to determining
20 eligibility, formulating the IEP, or effecting the
21 placement. There's also an annual review and a
22 triennial re-evaluation.

23 So these are not by and large decisions
24 that are made capriciously or without considerable

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1 deliberation.

2 Here's a dilemma. Special education
3 involves the expenditures of greater resources on
4 behalf of the education of the individual, estimated
5 at from one and a half to three times the resources
6 spent in general education. The problem has to do
7 with the assumptions and the actuality of special
8 education. The concerns are with stigma. A second
9 concern is that special education is a place rather
10 than a set of services brought to students. Also,
11 special education has questionable outcomes.

12 Now earlier this morning we had some
13 discussion about why is it that so many parents in the
14 suburbs -- and I'm going to say clamoring for more
15 special education, fighting very hard to get their
16 students into special education placement, while at
17 the same time school districts and states are being
18 sued for over-representation of students in special
19 education. And the answer that we came up with in the
20 National Academy Panel was that special education in
21 the suburbs and the cities or special education for
22 the majority of white students and minority,
23 particularly African-American students, is different.
24 Special education for white students tends to be a

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1 set of services that are brought to students that are
2 struggling.

3 Special education for African-American
4 students all too often is a place where there's a
5 different curriculum and frankly, as a special
6 educator, I will say fewer educational opportunities,
7 particularly if children are misplaced. So that, I
8 think, helps explain some of that dilemma of why in
9 one community we have lots of people advocating for
10 much greater special education, much greater access to
11 special education, while at other communities and
12 across many of the analyses that will be presented to
13 this Commission, people are going to be very skeptical
14 about special education.

15 Understand the numbers.
16 Disproportionality varies by group. But before we go
17 into the disproportionality statistics, let me
18 emphasize again that the vast majority of all groups
19 of students are in general education. The vast
20 majority of all African-American, Hispanic-American,
21 etcetera, the vast majority of those students are in
22 general education. That's true now. It's always been
23 true. Please don't confuse the risk with the
24 compositional statistic. Traditionally, there are

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1 three problematic categories. The first is mild,
2 mental retardation.

3 Note that mental retardation is not -- I'm
4 sorry, I need to go back. There are two kinds of
5 mental retardation. One is mild, mental retardation
6 where people do not have any kind of physical or
7 biological basis for the deficits and behavior. For
8 example, Down Syndrome is an example. I'm sorry, the
9 other form of mental retardation is more severe and
10 has biological markers, for example, Down Syndrome.

11 So it's not right to say broadly mental
12 retardation is a judgmental category. Mild mental
13 retardation is a judgmental category, but the more
14 severe levels of mental retardation are not. I've
15 spent a lot of my life trying to get those two
16 separated without any success so far.

17 So the three problematic categories are
18 indicated there and you can look at those at a later
19 time.

20 Now, I've done studies of over-
21 representation since the early 1970s. Generally, the
22 minority students that are placed in special education
23 programs have greater needs than similarly situated
24 majority students in those programs. That is if

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1 there's any trend in those results it takes slightly
2 greater need for a minority student to be referred,
3 deemed eligible, and placed in special education.

4 Now the Office for Civil Rights data that
5 were presented this morning are also correct. What
6 they do is focus only on the minority students in
7 their studies in compliance monitoring with districts.

8 And what you will find in the study of only the
9 minority students, incidentally, you'll find the same
10 thing if you studied only white students, but there a
11 lot of flaws in the entire process, that there are
12 many mistakes made by the multi-disciplinary teams.
13 But those mistakes in our research, because we use
14 both majority and minority students, we find that they
15 occur with about equal frequency regardless of race of
16 ethnicity.

17 In the National Academy Panel, we
18 identified four broad categories of causes:
19 biological bases, social bases, general education
20 influences, and special education influences. I refer
21 you to the written paper. I will say off the top that
22 biological bases are a relatively minor factor
23 contributing to over-representation, but again, take a
24 look at the paper.

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1 I'm particularly interested in general
2 education with equitable distribution of resources and
3 highly qualified teachers. Our best teachers are
4 teaching the kids with the least needs, if you will.
5 Our teachers with the fewest qualifications and least
6 experience are teaching the kids with the most needs.

7 No Child Left Behind has established a mandate to
8 change that, but we're a long ways from getting there.

9 We need to markedly improve instruction in reading.
10 We endorse early screening, as long as early screening
11 is followed by early intervention.

12 Early screening to simply say kids have
13 problems isn't going to help the system at all. It's
14 only early screening followed up with effective
15 interventions and then response to interventions --
16 there's a response to interventions summit sponsored
17 by the Office of Special Ed. Programs on Thursday and
18 Friday of this week here in Washington, and I'll be
19 returning for that Wednesday afternoon. It's one of
20 those weeks where my wife is probably going to change
21 the locks.

22 (Laughter.)

23 If you want to see the source of over-
24 representation and I'm sometimes asked if you could do

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1 one single to change representation patterns, what
2 would you do, and I would say teach reading
3 effectively.

4 These are the National Assessment of
5 Educational Progress data on reading at the fourth
6 grade level. These are 2007 data. Over half of
7 African-American, half of Latino, and about half of
8 Native American students read below basic as they go
9 into fourth grade. And reading below basic, as you go
10 into fourth grade, has vast significance that I
11 discuss in the paper.

12 Special education needs to be changed
13 dramatically. Special education needs to be a set of
14 services rather than a place. We are seeing greater
15 accountability associated with special education and
16 we are seeing improved results, but we have a long
17 ways to go. And rigorous accountability in special
18 education is a relatively new phenomenon.

19 And the rest of it I think I've talked
20 about.

21 Solutions in terms of summary, much
22 greater emphasis on prevention, especially through
23 teaching reading effectively. Secondly, we need
24 rigorous special education evaluation and decision

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1 making, greater rigor than we have today. And we need
2 to markedly improve special education. Minority over-
3 representation is a problem because, in my view, due
4 to over-representation minority students are more
5 likely to be exposed to segregated classes in which
6 the general education curriculum is not taught
7 rigorously and effectively.

8 Thank you.

9 CHAIRMAN REYNOLDS: Thank you. Okay, Mr.
10 Shelton.

11 MR. SHELTON: Thank you very much. I'm
12 Hilary Shelton, Director of the NAACP's Washington
13 Bureau. The Washington Bureau is a federally
14 legislated and national public policy arm of our
15 nation's oldest and largest grassroots based civil
16 rights organization. We have membership units in
17 every state in the United States, but also on military
18 bases in Italy, Germany, Korea, and Germany.

19 The NAACP greatly appreciates the fact
20 that the Commission has decided to look into the issue
21 of over-representation of racial and ethnic minority
22 students and Limited English Proficient students in
23 special education classes throughout the country. The
24 NAACP views this as a crucial civil rights and high

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1 quality educational policy question.

2 As all of the data indicates, racial and
3 ethnic minority children, and specifically African-
4 American children, are placed into special education
5 classes at vastly disproportionate rates. While there
6 may be some disagreement about the precise disparity,
7 and while the disparity may vary slightly based on
8 region and in rural versus suburban versus urban
9 school districts, there can be no question that this
10 is an important problem, and that the problem exists
11 in almost every school district around our nation.

12 If I may offer anecdotal evidence into the
13 record as well, I would like to say that the
14 misplacement of African-Americans in special education
15 programs is one of the topics that generates
16 significant concerns at NAACP gatherings across the
17 country. Whenever there is an NAACP-sponsored
18 discussion about the quality of public education, the
19 question of children being misplaced in special
20 education classes, and what can be done always comes
21 from participant members. This has sadly been the
22 case for decades and shows no sign of abating.

23 One especially grave concern is the over-
24 representation of African-Americans and especially

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1 black males in disability categories such as
2 "educationally mentally retarded", or EMR, or
3 "emotionally or behaviorally disordered", ED. Some
4 mislabeled students need no special education services
5 whatsoever. In my written testimony I've summarized
6 several examples to illustrate the problems and
7 responses.

8 Here in my oral statement, however, I will
9 discuss less on whether or not there is a problem,
10 most sensible people agree that there is a problem,
11 and more on the causes of this disparity as well as
12 the impact this disparity has on the children and the
13 families in question as well as on whole communities,
14 and our nation.

15 Let me say at this point that there is no
16 questions the students of all racial and ethnic
17 backgrounds who are eligible for special education may
18 get important help such as tutoring, extra teaching
19 attention and specialized instruction by teachers with
20 specific training. Special education means services
21 for children. It is not, at least in theory, a place
22 where children are sent. It has been a long-standing
23 goal of the NAACP to ensure that all American children
24 have access to adequate public education, once a child

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1 is determined eligible for special services, we then
2 often struggle to ensure that the services they
3 receive are appropriate and adequate.

4 Individuals with disabilities, in
5 addition, are often confronted with fear, prejudice,
6 and stigmatization. Students of color with
7 disabilities, or who are perceived as having
8 disabilities, are in double jeopardy of being
9 discriminated against, on grounds of both race and
10 national origin and disability.

11 Having said this, we must, unfortunately,
12 also note that special education has historically been
13 used as a vehicle for discrimination against
14 minorities. Soon after the Supreme Court's 154
15 decision in Brown v. Board of Education, the nation
16 witnessed an increase in placement of minority
17 students in separate special education classes. Since
18 1954, special education has been used by some
19 teachers, school officials, and in some instances
20 school districts as a substitute for more blatant
21 racial segregation, to segregate some students of
22 color.

23 Another cause of the problem of too many
24 African-American children being placed in special

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1 education which has been identified by people in
2 education as the criteria being set by the teachers
3 doing the initial referral. Too often, the teachers
4 are sending children with behavioral problems or who
5 are disruptive to be assessed for special education
6 needs. This would also explain the high incidence of
7 African-American males being placed in special
8 education. Often times, behavioral problems are
9 indicators of other issues, which may or may not be
10 addressed by special education classes.

11 Once a student has been referred for an
12 evaluation, they are often given a battery of tests,
13 most of which have been developed by middle class
14 educators and psychologists and are aimed at middle
15 class students with different life experiences than
16 many low-income, African-American and inner-city
17 students. For instance, when shown a picture of an
18 igloo and asked to identify it, a child in Alaska may
19 have no problem. A child who has spent his or her
20 life in inner-city Miami, though, would be much less
21 likely to identify the structure. Does this lack of
22 exposure to igloos qualify the student for special
23 education?

24 The NAACP has the same concerns about IQ

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1 and aptitude tests as we do about the "high stakes"
2 tests that have gained in popularity in the last
3 decade. A standardized test, which assumes that all
4 students have had the same or similar life
5 experiences, is inappropriate in our nation of
6 diversity and cannot adequately assess intelligence or
7 even learning ability.

8 In addition to an attempt to segregate
9 students by race or nationality and the inadequacies
10 of determining who should be placed in special
11 education programs that I have just discussed, there
12 are a myriad of other reasons that school districts to
13 have been and continue to fail whole segments of their
14 students, a disparate number of whom are African-
15 American, by misplacing them in special education
16 classes. The NAACP is committed to working with
17 parents, local school districts, states, and the
18 federal government to identify and eliminate all of
19 these issues.

20 I would like to take a minute now to
21 address the second part of my testimony; what happens
22 to the children who are erroneously placed in special
23 education classes, and what are the implications for
24 families, communities, and our nation?

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1 First of all, we all need to acknowledge
2 and agree that it is very difficult for a child who
3 has been placed in special education to get away from
4 that designation. Thus, children who are misplaced in
5 special education are essentially trained to
6 underachieve. And when they finish school, if they
7 finish school, they are given a certificate of
8 attendance as opposed to a high school diploma in too
9 many cases.

10 And so we have a while portion of our
11 society, people who as children were misplaced in
12 special education, who have been told again and again
13 that they are different and inferior, who often times
14 lack training and do not even have a high school
15 diploma, entering our society. We have, by a large,
16 condemned them to a life of menial, low income jobs
17 and job opportunities. This, in turn, has
18 ramifications for entire communities, communities that
19 have historically been faced with challenges and
20 denied opportunities. When a disproportionate number
21 of us are misplaced on the special education track as
22 children and it is impossible to even imagine that we
23 as a nation are able to meet our full potential when
24 so many are denied equal opportunity at such a young

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1 age.

2 As I said earlier in my testimony, the
3 NAACP is committed to working with students, parents,
4 local school districts, states, and the federal
5 government to try to find a solution to the disparate
6 number of African-American and limited English
7 proficient students who are misplaced in special
8 education classes.

9 The mix of solutions should include:
10 ensuring accountability where disparities are
11 significant; increasing federal oversight and
12 enforcement; and ensuring that parents and students
13 have a private right of action to seek judicial review
14 for individuals and classes of complainants specific
15 to racial disproportionality.

16 There are additional concerns, as the
17 misdiagnosis issue is but one dimension of a larger
18 challenge related to race and special education. As
19 suggested earlier, some children of color do need
20 special education services. But they are more likely
21 than whites to be removed from regular education
22 classrooms and put into resource rooms, substantially
23 separate classes, or separate schools, where they
24 commonly receive low quality services. The wrongful

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1 classification, segregation, and poor servicing of
2 students of color through special education denies
3 equality of opportunity and has devastating results in
4 communities throughout the country.

5 Thank you for the opportunity to share our
6 preliminary thoughts on this important issue. We look
7 forward to your questions as we move through this
8 process.

9 CHAIRMAN REYNOLDS: Thank you, Mr.
10 Shelton.

11 Mr. Zamora?

12 MR. ZAMORA: Thank you. On behalf of the
13 Mexican American Legal Defense and Educational Fund, I
14 commend the Commission for investigating the
15 misclassification of minorities in special education
16 programs. Founded in 1968, MALDEF is the nation's
17 leading Latino civil rights legal organization.

18 My testimony today will focus upon the
19 misclassification of English Language Learners (ELLs)
20 in special education, in particular. MALDEF is
21 particularly concerned with the academic outcomes of
22 the nation's 5.5 million English Language Learners
23 because nearly 80 percent of them are Spanish-speaking
24 Latinos. ELLS constitute the fastest-growing subgroup

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1 of students in U.S. public schools with an annual
2 increase of about 10 percent and experts predicted
3 that one quarter of our nation's K-12 student
4 population will be made up ELLs by 2025.

5 Despite common assumptions to the
6 contrary, native-born U.S. citizens predominate in the
7 ELL student population: 76 percent of elementary
8 school and 56 percent of secondary school ELLs are
9 U.S. citizens, and over one half of the ELLs in
10 secondary schools are second- and third-generation
11 citizens. So ELLs are not recently arrive immigrants.

12 On the contrary, they're students whose academic and
13 linguistic needs are not being met in our public
14 education system.

15 Consequently, ELLs typically under perform
16 on nearly every measure of academic performance. On
17 the 2005 National Assessment of Education Progress,
18 for example, only 29 percent of ELLs scored at or
19 above the basic level in reading, compared with 75
20 percent of non-ELL students. And ELLs also drop out
21 of schools at disproportionately high rates.

22 The misclassification of ELLs in special
23 education is a significant problem that impedes the
24 academic development of this large and growing student

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1 population. Many ELLs who require special education
2 services are not receiving them, while others without
3 disabilities are improperly placed in special
4 education programs that may deny them full access to
5 the standard academic curriculum. In 2001 to 2002,
6 there were approximately 357,000 ELL students
7 receiving special education services in U.S. public
8 schools. And researchers have estimated that as many
9 as three-fourths of these who were enrolled in special
10 education programs were improperly placed.

11 Nationally, however, the percentage of
12 ELLs in special education programs at 9 percent was
13 smaller in 2001 to 2002 than the percentage of all
14 students in special education. But research
15 demonstrates patterns of both over-identification and
16 under-identification of ELLs in special education with
17 significant variations between states and districts.
18 The majority of the special education ELL student
19 population was enrolled in a relatively small number
20 of districts. And generally, the fewer ELLs that a
21 district serves, the more likely it is to classify
22 ELLs as in special education programs. This may be
23 because districts with smaller number of ELLs have
24 less capacity to distinguish between low academic

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1 performance caused by language barriers and that which
2 is caused by learning disabilities.

3 Teachers and school officials generally
4 attribute the widespread misclassification of ELLs to
5 the challenges faced in distinguishing between second
6 language acquisition and disability as the source of a
7 student's academic deficiencies. ELLS who struggle
8 academically because of language barriers may share
9 characteristics of students with disabilities. These
10 shared features may include making articulation and
11 pronunciation errors, being distracted and having a
12 short attention span, reading below grade level, with
13 low vocabulary and comprehension, and having low self
14 esteem, shyness or anxiety.

15 A significant shortage of teachers and
16 school officials with sufficient training in both
17 special education and English language acquisition is
18 a primary cause of the misclassification of ELLs.
19 Staff that is untrained in distinguishing between
20 linguistic and cognitive barriers to achievement will
21 likely disproportionately misclassify ELLs.
22 Researchers have also found that inadequate
23 assessments are a likely cause of the
24 misclassification of ELLs. Assessments used to

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1 evaluate ELLs for disabilities often fail to identify
2 the level of ability of the student in each language.

3 And students with limited academic proficiency in
4 both their first language and their second language
5 are more likely than other students to be
6 misclassified as disabled.

7 I will now discuss MALDEF's
8 recommendations for improvement. The majority of ELLs
9 who struggle academically do so not because of a
10 learning disability, but because they are being taught
11 by under-qualified teachers who employ curricula and
12 instructional strategies that do not meet these
13 students' particular academic needs. Significant
14 improvements in the quality of academic services
15 delivered to all ELLs will permit them to develop
16 academic skills at a rate comparable to their peers
17 and avoid the risk of inappropriate placement.

18 In addition, our public education system
19 must increase its capacity to distinguish between
20 linguistic and cognitive barriers to academic
21 achievement. Despite the rapid growth of the ELL
22 population nationwide, most school districts do not
23 have policies, procedures, or mechanisms in place for
24 linking ELL and special education data or providing

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1 for collaboration across ELL and special education
2 programs. And improving special education evaluation
3 processes for ELLs is also critical to limiting their
4 misclassification.

5 The U.S. Department of Education, both
6 through the Office of Civil Rights and the Office of
7 Special Education, has a significant role in ensuring
8 that schools comply with federal laws requiring that
9 public education systems take affirmative steps to
10 help ELL students overcome language barriers. The
11 federal government and the states must also support
12 programs to encourage teachers and prospective
13 teachers to develop expertise in English language
14 development through the credentialing process or
15 professional development. We also need increased
16 research in ELL and special education and appropriate
17 identification practices.

18 Available research does suggest that
19 schools should implement pre-referral processes for
20 ELLs to limit their misclassification. Under this
21 model, schools created "teacher assistance teams" that
22 examine the quality of instruction received by under-
23 performing students and the validity of referral and
24 assessment processes. These teams are comprised of

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1 regular classroom teachers who meet to discuss
2 problems in the evaluation process, brainstorm
3 solutions, and develop action plans to correct
4 problems. This process precedes the involvement of
5 special education teachers and is under the authority
6 of the general education system. It's primary benefit
7 is that it identifies nondisability-related causes of
8 academic under performance and thereby limits the
9 over-identification of ELLs.

10 Another promising practice is the
11 "Responsiveness to Intervention" (RTI) models which
12 promotes early identification of students who may be
13 at risk for learning difficulties. RTI requires
14 school staff to conduct early screenings of academics
15 and related behaviors for all students and the results
16 of the monitoring determine which students need closer
17 monitoring or an intervention. RTI imposes three
18 graduated tiers of interventions and student
19 placements are made depending upon each student's
20 individual responsiveness. And this is a valuable
21 model, both because it successfully identifies
22 students with learning disabilities, while also
23 addressing the academic success of all students.

24 So in conclusion, the misclassification of

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1 ELLs in special education programs hinders the
2 academic progress of many in this large and growing
3 student population. Many ELLs with learning
4 disabilities are not receiving the academic
5 interventions necessary to allow them to succeed in
6 school and life. Conversely, many ELLs without
7 learning disabilities are being misidentified and may
8 be denied access to a rigorous standard in academic
9 curriculum.

10 The misclassification is caused largely by
11 the failure to distinguish between academic
12 deficiencies attributable to language barriers and
13 those caused by disabilities. Significant
14 improvements in the academic services delivered to all
15 ELLs are necessary to permit these students to perform
16 at the level of their peers and avoid inappropriate
17 placement. School systems also must develop specific
18 capacity to address the evaluation processes for
19 special education for the ELL student subgroup.

20 Finally, the federal government must also
21 enforce laws that require schools to take affirmative
22 steps to assist ELLs in learning English and in
23 participating fully and fairly in the U.S. public
24 education system.

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1 Thank you.

2 CHAIRMAN REYNOLDS: Thank you, Mr. Zamora.

3 Mr. Hurd?

4 MR. HURD: It's a pleasure to be here and
5 have a chance to speak to you as a litigator in the
6 area of special education. I devote a lot of my
7 practice to representing parents who have disputes
8 with their school boards. I don't represent school
9 boards, I represent parents. I've done so in IEP
10 meetings, in administrative hearings, federal courts,
11 both district and appellate and the U.S. Supreme
12 Court. And our perspective this morning may be
13 different from some others. I do not believe that my
14 comments will account for all of these numerical
15 anomalies, but they may account for some.

16 Let me begin, if I may, by reviewing
17 briefly how the special education system works.
18 Parents and school systems are supposed to be equal
19 partners in designing and Individual Education Program
20 (IEP) or an IEP for the child. In this model, this
21 equal partnership model is one that is obviously quite
22 different than what public educators are accustomed to
23 dealing with. In the majority education side, the
24 school system pretty much says what the curriculum

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1 will be and parents have very, very limited rights.
2 And for at least some, and I would say many, public
3 school educators the special education model is not
4 one that they really like. The parents and the school
5 system employees, sometimes others, form what is
6 called the IEP team. That team is supposed to decide
7 by consensus whether the child has a disability, what
8 the disability is, what the goals should be, and what
9 the services should be.

10 Generally speaking, the team which is a
11 consensus, that consensus may mean one of several
12 things. It may mean there's genuine agreement between
13 the parents and the school. Or it may mean simply
14 that the parents defer. They believe the school has
15 the expertise and has the best interest of the child
16 at heart. Or it may be the parent simply acquiesce,
17 feeling for a variety of reasons that they have no
18 choice but to go along.

19 Of course, what the law says is that when
20 parents and the school system reach an impasse, then
21 the parents have the right to ask for a hearing before
22 a supposedly neutral hearing officer, where they can
23 try to convince the hearing officer that the school's
24 program is inappropriate and that what the parents

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1 propose is appropriate. These due process hearings
2 are supposed to be relatively informal. But as Pete
3 White, one of the leading special education attorneys
4 in the country has remarked, they often involve all
5 the emotional turmoil of a domestic relations dispute
6 and the battle of experts of a medical malpractice
7 case. The parents, if they win, can ask for
8 reimbursement for their attorney's fees, but not for
9 their expert witness fees. And so, even if they win,
10 they're going to wind up having to pay. And there are
11 appeals that lie ahead in Federal District Court,
12 Federal Circuit Court sometimes, even up to the U.S.
13 Supreme Court.

14 Now, what does all this mean for
15 minorities? What does it mean particularly in light
16 of the fact that Americans of African and Hispanic
17 ancestry compose a disproportionate number of persons
18 with lower socio-economic status and resources. Based
19 on my experience it means that as a group, minorities
20 are at a disadvantage at every step in this process.
21 For example, minority parents are less likely to have
22 their own independent medical, psychological, or
23 educational evaluations, and therefore more likely to
24 depend upon evaluations conducted by the school

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1 system. Minority parents are less likely to have the
2 economic resources to retain the lawyers and experts
3 necessary to make a credible challenge to the school
4 system, either at the IEP meeting or in a due process
5 hearing. Minority parents are less like to be members
6 of parental support groups where information can be
7 exchanged and guidance obtained on how best to deal
8 with the school system.

9 The Commission may wish to look into the
10 percentage of due process hearings sought by
11 minorities compared to the percentage of minorities in
12 special education. I've not seen any such studies.
13 What I have seen, however, is a study by the General
14 Accounting Office that reported in 2003 a "significant
15 relationship" between household income and hearing
16 requests. Not surprisingly, households with lower
17 income are far less likely to seek a due process
18 hearing than households with higher income. And when
19 those income differences are correlated statistically
20 with race, the result is going to be, in my judgment,
21 a substantial under-representation of minorities in
22 the due process arena.

23 Now that effect has consequences earlier
24 in the pipeline. When a school system sits down with

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1 parents across the table in an IEP meeting, the school
2 system tries to figure out pretty quickly if these
3 parents are going to be compliant and take what they
4 are given or if they're going to cause problems and if
5 so, how far they will push. If the school system
6 thinks that the parents are not going to push very
7 hard, very far, then they will offer less.

8 Now to understand the dynamics of this
9 process, it is important in my judgment to realize
10 that school systems sometimes do not fully embrace
11 their duties under the IDEA. This is to some extent
12 continuation of the old attitude that the education of
13 children with disabilities is simply not the job of
14 the public school system. It is to some extent the
15 resistance that those in government often show when
16 called upon to share power with others. And it is to
17 a very large extent resentment over the fact that the
18 federal government has imposed special education
19 mandates, but has not provided very much in the way of
20 special education funding.

21 School officials will be quick to you that
22 when the law was passed 30 years ago, Congress
23 promised to fund 40 percent of the cost, but that
24 federal funding today is closer to 18 percent. State

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1 and local funding makes up the balance and inevitably,
2 paying those costs cuts into the ability of the public
3 school system to offer programs designed for the
4 majority of the students.

5 Special education advocates are concerned
6 that school officials often cut corners and often give
7 them less than what the law requires in order to
8 comply with their budgetary limits. Let me quote to
9 you what one Court has said, the Sixth Circuit: "Left
10 to its own devices, a school system is likely to
11 choose the educational option that will help it
12 balance its budget, even if the end result of the
13 system's indifference to a child's individual
14 potential is a greater expense to society as a whole."

15 In other words, there is an inevitable institutional
16 incentive for school districts to reduce costs by
17 minimizing a child's individual needs.

18 Minimizing a child's individual needs can
19 have a direct effect on the disability classification
20 given to the child and on the kind and intensity of
21 services that are provided. In my experience, for
22 example, some school systems resist classifying a
23 child as having autism and instead prefer to treat the
24 child as mentally retarded or as emotionally

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1 disturbed. Programs for the mentally retarded and
2 emotionally disturbed children are typically less
3 expensive than children having autism, their programs.

4 Similarly, school system often resist
5 providing one-on-one services and summer services and,
6 when they do provide those services, they often offer
7 fewer hours than they would be willing to provide if
8 parents challenged them. Fewer hours of services
9 means less progress, and less progress means the child
10 will spend more years in special education. And as
11 the child grows older, the presence of unresolved
12 special education needs creates the risk the child
13 will lose self esteem, will suffer teasing and
14 bullying from peers with resulting emotional problems
15 that may also become disability issues.

16 In a nutshell, special education works
17 best when two things occur in combination: when
18 parents actually have the ability to assert themselves
19 and advocate for their child; and when school systems
20 recognize that parents have those abilities. Now
21 tying this race, let me offer three final
22 observations.

23 One, to the extent that minority children
24 receive less favorable treatment in special education

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1 than their white counterparts, it is not clear how
2 much of a difference is attributable to racial
3 attitudes and how much is attributable to those socio-
4 economic factors that are closely correlated with race
5 and that may affect the ability of parents to assert
6 themselves and advocate effectively for their child.

7 Secondly, to ascertain how much of the
8 difference is attributable to racial attitudes, there
9 would need to be a fairly detailed regression analysis
10 that factors out socio-economic factors and also
11 accounts for regional differences urban-suburban-rural
12 differences and other factors as well.

13 Third, to the extent that racial attitudes
14 can be isolated and quantified, it may not be racial
15 animus so much as a reflexive racial stereotyping.
16 Since a major goal in special education is to keep
17 cost to a minimum and another major goal is to
18 accommodate the convenience of school employees, the
19 school system when it sits down across the table at an
20 IEP meeting, if they are dealing with an African-
21 American family, for example, may make the assumption,
22 consciously or not, that the parents are less likely
23 to present a problem than white parents. Believing
24 that the black family would be willing to accept less,

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1 the school system starts out by offering less and
2 unless that family has the experience, the expertise
3 of the lawyers to assert themselves, they are likely
4 to wind up with less. And that fact pattern,
5 multiplied many times over, can result in some of the
6 disparate treatment that we have seen in the numbers.

7 Thank you.

8 CHAIRMAN REYNOLDS: Okay, gentlemen, thank
9 you.

10 Mr. Kirsanow?

11 COMMISSIONER KIRSANOW: Yes, thanks very
12 much. This is an exceptional panel. Thank you all
13 for your testimony.

14 I'd like to just jump on the last comment
15 made by Mr. Hurd and see if I can relate it to
16 something that Dr. Ladner talked about.

17 To the extent that there may be a
18 disparity in the use of the due process mechanisms in
19 assigning someone to a special educational class, have
20 you, Dr. Ladner, found that -- strike that.

21 In addition to that, I think Mr. Hurd
22 testified that some school districts, whether
23 consciously or not, may simply look at compliant
24 appearance and figure for lack of a better term, we

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1 can roll them. Not that they're doing it with any
2 degree of malevolence, but look, we've had incidence
3 here that we're concerned with here.

4 Have you seen in any data that you've been
5 able to adduce, whether or not -- you indicated there
6 was a greater proportion of minority students that are
7 assigned to special education classes, the higher the
8 proportion of majority is in that particular school
9 district.

10 DR. LADNER: Right.

11 COMMISSIONER KIRSANOW: Have you been able
12 to disaggregate that by specific racial or ethnic
13 group to determine whether or not, for example, this
14 also pertains to Asian students and further, whether
15 or not it is a function also of income regardless of
16 race of ethnicity, again, going to Mr. Hurd's point of
17 using the due process mechanisms?

18 DR. LADNER: Yes, this is a very
19 interesting question. The short answer is yes, the
20 patterns are different. They're opposite for Anglos
21 and for minority students. Anglo students who are in
22 predominantly white districts actually have -- their
23 disability rates go down. Although it is true that
24 you do see this suburban high income gaming of the

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1 vessel D levels. There's multiple things going on all
2 at the same time and it's very complex.

3 The pattern is opposite for minorities.
4 So minorities in leafy suburbs are more likely to be
5 labeled than minorities living in inner cities. I
6 think that Mr. Hurd's testimony on the use of due
7 process is also very interesting. There are profound
8 equity issues throughout this entire system and
9 nationwide, about two percent of special education
10 students actually attend private schools at public
11 expense. They are the ones who are able to avail
12 themselves to expert witnesses and to specialized
13 attorneys.

14 And I think, actually, a very interesting
15 program that the Commission should study carefully is
16 called the McKay Scholarship Program in Florida
17 because what it does is actually instead of saying if
18 you're profoundly dissatisfied with the services in
19 your public school delivering to you as a special ed.
20 student, rather than hiring these expert witnesses and
21 suing and going through all that to get out, what you
22 can do is simply take the money that is given to you
23 in the form of a scholarship and actually go to
24 another public or private school of your choice. This

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1 basically democratizes the opportunity where you don't
2 have to this really high income to be able to do this.

3 And also it turns the funding argument on its head
4 because public schools for decades have argued they
5 don't get enough money for special education students.

6 If that's true, then therefore they cannot complain
7 if those same students leave with their presumably
8 inadequate funding.

9 A study was done by the Manhattan
10 Institute by Dr. Jay Greene who found there were
11 18,000 students participating in this program in
12 Florida now and their parents are profoundly satisfied
13 with the education they're getting in the program.
14 They're less likely to be bullied in the schools
15 they've transferred to, they feel they're in smaller
16 classes. There's a whole variety of measures. So I
17 think it's a very interesting way to approach these
18 problems. These degradations are very large and very
19 real.

20 COMMISSIONER KIRSANOW: Professor Reschly,
21 I was struck by the NAEP data that you put up there
22 and it strikes me that the NAEP data may correlate to
23 some extent with the identification of students for
24 special educational classes. I think you indicated

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1 that one of the interventions that might be most
2 useful is or at least one of the factors that permit
3 you to identify whether or not someone is likely to be
4 placed in special educational classes, whether or not
5 they've got the ability to read.

6 Does anyone on the panel have an opinion
7 as to the degree to which the factor of being able to
8 read versus say due process issues are more likely to
9 place someone in a special educational class?

10 DR. RESCHLY: Well, reading is implicated
11 as either the first or second reason in at least 80
12 percent of all special educational referrals. If you
13 study referral behavior, you find that children who
14 read well have fewer behavior problems, are much less
15 likely to be referred.

16 You also find that it's extremely rare for
17 a referral or a student to be placed in special
18 education capriciously. Whether these students are
19 quote really disabled or not is a matter of I think
20 argument and whether special education is the best
21 place for them. I would definitely question, but the
22 overwhelming majority, 99.5 percent of all students
23 who are placed in special education have significant,
24 chronic achievement problems, and about two thirds of

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1 them have challenging behaviors that complicate their
2 performance in general education classrooms. Reading
3 is a huge factor.

4 DR. LADNER: If I could add to that real
5 quick, I mean the overall picture here, general
6 relationship between general ed. and special ed. is
7 very complex and very profound. If you look at things
8 like the average academic progress for low income
9 students in urban public school districts, they come
10 in a little bit below the average to start with. I
11 mean it's a little bit, maybe more than a little bit,
12 but the problem is is that in the early grades, they
13 simply don't, way far too often, learn basic reading
14 skills. By the fourth grade, what the literacy
15 research indicates is it's very hard to remediate not
16 learning after a certain point in life. And these
17 children fall, if you imagine this sort of being the
18 national average, they fall further and further behind
19 with each passing grade level. By the time they get
20 to middle school they're academically frustrated.
21 They don't imagine themselves going to college or
22 university. They see no point in being in the school
23 any more and they begin dropping out in large numbers.

24 As a part of that overall study, along the

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1 way some of these children are mislabeled as having a
2 disability, a neurological condition which is what
3 specific learning disability is supposed to be. Along
4 the way, some of them are labeled as being disabled
5 incorrectly, you know. And so improvement of the
6 general education system is absolutely key to
7 resolving some of these problems, but at the same time
8 we could be a lot more scientific about how we
9 identify kids for special ed.

10 COMMISSIONER KIRSANOW: In addition to
11 that, family structure may have something very
12 profound in terms of its effect, in terms of it's
13 highly unlikely or more likely that someone coming
14 from a poor and/or single-family home would get the
15 type of pre-school reading instruction and in addition
16 to that coming from a poor and/or single-family home
17 most likely -- less likely to invoke the kind of due
18 process protections talked about by Mr. Hurd.

19 DR. LADNER: I would agree with that,
20 although the errors compound over time.

21 MR. ZAMORA: I would like to jump in just
22 for a moment to address the reading issue because
23 that's a particularly prevalent concern for English
24 Language Learners. ELLs are less likely to have books

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1 in the home, less likely to have parents reading and
2 may not be getting high quality instruction in either
3 English or in the native language. So sometimes,
4 especially Spanish-speaking students are given
5 assessments in Spanish, but aren't being given
6 instruction in Spanish, so that doesn't become an
7 accurate measure of reading. And then especially in
8 English immersion programs that aren't the most
9 effective for ELLs, an English language assessment
10 won't tell you whether they can read or not either.
11 So that's a particularly problematic area for ELLs.

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

13 VICE CHAIR THERNSTROM: I want to follow
14 up, among other things, on this question of reading in
15 the value of kids to learn to read by third grade as
16 being responsible for a lot of SPED placements.

17 Mr. Ladner, you come from a libertarian
18 think tank despite I thought your disturbing use of
19 John Rawls, but in any case, so how come these kids
20 aren't learning to read by third grade? Where do you
21 put the responsibility here and specifically, would
22 you say that the misguided use by schools of whole
23 language reading instruction is, in part, responsible
24 here? And if so, we're into the whole educational

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1 culture and that is extremely difficult to address.

2 DR. LADNER: Yes, I agree with you. I'm
3 very interested by the research of Dr. William Sanders
4 on teacher quality and what his research shows is that
5 individual teachers make a profound difference in
6 academic outcomes, so much so that I've seen Dr.
7 Sanders present and he'll show you a chart with the
8 top 20 percent of teachers and we're talking about
9 analysis on a value-added basis, not just did they
10 pass a test or not, but where did they come in and
11 where did they end up at the end of the year.

12 What you find out is that some teachers
13 add a tremendous amount of value and a lot of teachers
14 are in the middle, and then there's a bottom 20
15 percent. The difference between having a top 20
16 percent teacher three years in a row and a bottom 20
17 percent teacher three years in a row is 50 percent, 5-
18 0, okay? And we're talking about that in terms of
19 early childhood literacy, you are literally talking
20 about the difference between illiteracy and literacy.

21 It's very difficult to catch up. So I think the
22 answer to your question is I think you suggested
23 earlier, if we did have every kid going to a KIP
24 school I think that these problems would be very much

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1 diminished. I think we need to increase the capacity
2 of the system, the existing public system.

3 I do think the curricular issues that you
4 referred to are very, very important and I think we
5 need to do -- push the envelope further on mechanisms
6 for parental choice in order to have people out there
7 trying new things like the KIP model in order to
8 address these problems.

9 VICE CHAIR THERNSTROM: So as a spokesman
10 for a libertarian think tank, you would put a lot of
11 emphasis on increasing choice in education in order to
12 gain access for parents and children to higher quality
13 schooling?

14 DR. LADNER: Absolutely. We talked
15 earlier about the universal screening model and my
16 colleague to the right is absolutely correct.
17 Universal screening is of no use unless you actually
18 remediate the problems you have, but then that runs
19 you right back into capacity issues, right?

20 Do these schools have the capacity to
21 remediate? And you have parents in the system who are
22 profoundly dissatisfied. In fact, I interviewed a
23 Hispanic mother one time with a child who had been
24 mislabeled and she described her very difficult

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1 process of trying to get out of the special ed. system
2 as a circle that you just can never get out of.

3 VICE CHAIR THERNSTROM: Right, right.

4 DR. LADNER: And that's why I do believe
5 that choice elements are crucial.

6 VICE CHAIR THERNSTROM: Mr. Hurd, I have a
7 question for you. You stressed very heavily, well,
8 not heavily, but you did mention the budget balancing
9 concerns of people, I believe it was you.

10 MR. HURD: Yes.

11 VICE CHAIR THERNSTROM: Of people who are
12 pushing back on the SPED spending. Again, as a former
13 member of a State Board of Education, I mean I have to
14 tell you -- you can't say that's a trivial concern
15 because it is just amazing how much special education
16 costs distort the whole funding of public education.
17 I don't know what the solution is and a lot of those
18 SPED costs are due to a small number of students who
19 are sent to very expensive private schools at taxpayer
20 expense, but I don't think that you can kind of
21 dismiss the concern with the impact on school budgets
22 of those who have to try to allocate funds fairly.

23 MR. HURD: Certainly at some level it is
24 an important policy concern and certainly it would be

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1 a lot better if more money were available. But where
2 I sit with the parent across the table from school
3 system employees, it really makes no difference at all
4 to me or my client. The law doesn't say that they
5 have an appropriate education if the school system can
6 afford it or wants to pay for it or wants to give them
7 some services as opposed to giving computers to all
8 the other students. It says they're entitled to an
9 appropriate education.

10 And my point really is and you can take it
11 for better or worse, understandable or not, that when
12 the school system sits down at an IEP meeting in my
13 judgment the top two things on their mind more often
14 than not are money and the convenience of their staff.

15 VICE CHAIR THERNSTROM: What does
16 convenience mean in that sense?

17 MR. HURD: Convenience means in that sense
18 --

19 COMMISSIONER BRACERAS: Don't ask them to
20 do more.

21 MR. HURD: Yes, things like are we going
22 to have this child in the general education classroom
23 or are we going to have the child put away in a
24 special education classroom? Are we going to require

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1 the reading teacher to follow a prescribed reading
2 course, Wilson Reading or Orton Gillingham, or are we
3 going to let them make up their mind as they go along
4 and do whatever they want, just as examples.

5 And another thing that I'll mention that I
6 see so often in sitting down in these IEP meetings and
7 I don't know that it can be addressed in any sort of a
8 macro level, but this is not a situation where all the
9 professionals come to the table with independent
10 judgment, free to speak their own mind, and make a
11 decision. This is more often than not, a situation
12 where all the school employees are either know in
13 advance what it is they're supposed to say, or they
14 know in advance who it is at the table they're
15 supposed to follow. Maybe it's the principal. Maybe
16 it's the central office, special education
17 representative, but they know they're supposed to
18 follow somebody's lead. And they know if they get out
19 of line that their jobs will be in danger. That's the
20 truth of the matter.

21 VICE CHAIR THERNSTROM: Tenure. They've
22 got tenure.

23 MR. HURD: In some systems they may and
24 others they don't.

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1 COMMISSIONER BRACERAS: It doesn't matter,
2 Abby, they all fall in line with the principal. I've
3 sat in those meetings.

4 DR. LADNER: And in fact, 20/20 actually
5 filmed an IEP meeting recently last year and even
6 though there was a camera in the room it was really
7 eye opening. The principal asked the person who was
8 assigned to this particular child if he met with him
9 and the person who is a football catch said well, no,
10 I've got to admit actually no, I haven't and the
11 child's mother was complaining that he wasn't making
12 academic progress and the principal just completely
13 dismissed her concerns. The whole process sounds very
14 scientific when you read it on paper, but the reality
15 of it, I think, leaves a lot to be desired.

16 VICE CHAIR THERNSTROM: Well, that could
17 be said of every aspect of most public schools.

18 MR. HURD: Which is why in the KIP program
19 in Florida, it really is such a good idea. We tried
20 it in Virginia, that is to say we tried to get it
21 through the General Assembly in Virginia. It passed
22 one house. It was killed in the other house and was
23 killed by the school systems.

24 VICE CHAIR THERNSTROM: Yes.

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1 MR. HURD: Who bring up the V words, this
2 is a voucher by some other name.

3 VICE CHAIR THERNSTROM: Right.

4 MR. HURD: Of course, that terrifies them.
5 But that too is a form of parental choice.

6 VICE CHAIR THERNSTROM: Of course.

7 CHAIRMAN REYNOLDS: Dr. Ladner, you spoke
8 about the importance of having high quality effective
9 teachers. I believe someone else, it may have been
10 you, mentioned that the teachers least prepared to
11 deal with these hard cases are the ones teaching them.

12
13 Would you agree that in order to
14 reshuffle, reallocate, reconfigure the school system
15 so you have your most qualified teachers assigned to
16 the kids that have the biggest challenges, that that
17 would entail a different approach to the collective
18 bargaining agreement?

19 DR. LADNER: Yes, but I actually think
20 we've got to go much further than that. I think if
21 you look at the big picture, what you see is we have
22 some very bright, very talented, very dedicated people
23 working in the public school system. But those going
24 into teaching we know from empirical, verifiable

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1 research that we're not on average getting the best
2 and the brightest students into our schools of
3 education. Of those that do go into the teaching
4 profession, many quickly become frustrated. They are
5 compensated according to a formulaic method that has
6 nothing to do with merit, more often than not. Many
7 of them wind up going into administration to make more
8 money or leaving the profession entirely, so your
9 supply of really highly effective teachers keeps going
10 down all the time. And then amongst those you still
11 have left, they do have some control over their
12 working conditions, not their salary. They're getting
13 paid, you know, but they're staying there until 7:30
14 each night. They're getting paid the same as someone
15 that tears out at 3:30. So they gravitate off to the
16 leafy suburbs. Of course, they do. Why would they
17 not? Right? No one is offering them combat pay.

18 I don't think combat pay, per se, which is
19 sort of the nickname for what you're describing, is in
20 and of itself a solution because basically what it is
21 proposing which I don't necessarily pose is
22 reshuffling the highly effective teachers, take them
23 away from other places and put them into the high need
24 areas. What we need to do is increase the overall

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1 supply of high quality teachers in addition to doing
2 some of those things that you suggest.

3 I think this can be done, but we're going
4 to have to fundamentally change some of our practices
5 in the public school system. Dr. Sanders' research
6 actually indicates, for instance, that the influence
7 of teacher quality is 20 times larger than that of the
8 impact of class size. Okay? And in our national
9 obsession with small classes, what we have actually
10 done is we've eliminated the amount of money we can
11 pay teachers and we've cut off access to high quality
12 teachers for a lot of students. I mean 20 times is a
13 mind-boggling figure and Dr. Sanders' research also
14 shows exactly what I described earlier, that there's a
15 profound difference in effectiveness on a value-added
16 basis between the high-quality teachers being out with
17 the easiest to educate kids.

18 So we're just kind of starting to take the
19 very first steps towards this. We've only recently
20 started to measure teacher quality on a value-added
21 basis. It's very revealing. It's revealing a lot of
22 profound equity issues, but overall, we're going to
23 have to increase the supply of highly qualified
24 teachers and that is going to absolutely necessitate

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1 us treating teachers as professionals and that has got
2 to -- I'm talking about merit pay. It has to happen.

3 If you want highly competent, ambitious, hard-working
4 people, you have to offer them a profession that is
5 going to reward them according to their own
6 accomplishments.

7 CHAIRMAN REYNOLDS: A follow-up question.
8 Assessment tools. Our ability to measure on value-
9 added basis teacher skills. Is that easy to do? Is
10 there a software program that any institution can use
11 or must you have a bunch of social scientists descend
12 upon the classroom and measure this?

13 DR. LADNER: Luckily, the answer to that
14 is no, nor would you want that.

15 And in the shape of things to come, there
16 are some very exciting things going on, just along the
17 lines you suggest. I've spoken to, for instance, some
18 people who develop just these kind of data management
19 systems that really allow principals and teachers to
20 use a diagnostic value of testing in a way that it is
21 just really exciting.

22 I talked to a public school principal from
23 Virginia who had helped develop this kind of a data
24 management -- it's all web-based. All the tests are

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1 done on line. All the data is there for everyone to
2 look at. They developed this in partnership, this
3 particular product, there are others, in partnership
4 with Northrop Grumman, and he described to me how it
5 was used at one point. It was -- he basically -- his
6 teachers actually develop assessment items based on
7 state standards. Okay. They're in control of what
8 these monthly assessments, just what they're doing to
9 judge themselves on a value-added basis. And he told
10 me a story about hiring a bad math teacher. How does
11 he know he's a bad math teacher because the system
12 identifies one month here. Here is the average or the
13 math department. Here's my highest performer. Here's
14 this particular teacher. It offers him the
15 opportunity to begin trying to remediate this bad
16 teacher right off from the beginning. The teacher in
17 this particular case did not respond to that sort of
18 remediation. So he kept working with him, but
19 eventually towards the end of the semester he said
20 look, you know, this is a right to work state. I
21 can't have you miseducating my students. So you
22 either need to do better or you need to find a
23 different professional career. This is a hugely
24 controversial idea of course, but I'll throw it out

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1 there.

2 The person's union representative came in.

3 This principal was able to say let's take the data
4 out and look at it. Here it is. It's all documented.

5 Over the course of the Christmas break, he made a
6 change. He then brought in a new teacher. The new
7 teacher was able to go into the system like it was
8 medical charting, called all up this data, know
9 exactly what those students knew and what they didn't
10 know down to the item level. They know this, but they
11 don't know that. By simply using the first five
12 minutes of each class to remediate the things that
13 they hadn't learned in the first semester, this new
14 teacher was able to get them back up to the school
15 average by the end of the year.

16 There are some things going on with
17 technology that are very exciting. They make me feel
18 like the public school that I went to was sort of a
19 cave man school in a lot of ways. But the first step
20 is to start measuring. We have to know who our rock
21 star teachers are and we need to treat them
22 appropriately and likewise when we have under-
23 performers, we need to either remediate them or get
24 people in there that will do the job.

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1 CHAIRMAN REYNOLDS: How do teachers feel,
2 how do they respond to being assessed?

3 DR. LADNER: The teachers in these schools
4 have actually completely bought into it because
5 they're in control of it. These gentlemen actually
6 did tell me that a lot of these products, the problem
7 with them is is they want to sell a test bank and the
8 teachers resist that. They don't feel that the items
9 are fair, but allowing teachers to develop their own
10 assessment items as a part of the professional
11 learning community seems to be an effective way to get
12 buy in and ultimately this is a very promising way to
13 improve education for the kids which is what our focus
14 ought to be.

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Mr. Hurd, you
17 described a somewhat adversarial process in terms of
18 the challenge by a parent to the determination that
19 someone should be placed into a SPED program and that
20 a parent would have to come up with their own
21 resources, hire an attorney possibly, or someone. Low
22 income families would have a difficult time doing
23 that, affording an attorney.

24 Do you have any recommendations for how

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1 possibly that entire process might be reformed to make
2 it more accessible by low-income parents or anyone
3 else who wanted to utilize the process? Or should
4 there even be such a process?

5 MR. HURD: Well, I think there must be
6 such a process. I think leaving it to the school
7 systems to decide these things unilaterally is recipe
8 for failure.

9 We have seen in Virginia some activity by
10 Legal Services groups in this area. But frankly,
11 there's not enough of it. Those folks have their
12 plates filled with many other things as well. But if
13 there were some way to redirect their focus more
14 towards special education needs I think it would pay
15 off in the long run for these parents and children.

16 MR. SHELTON: Just to add to that, a
17 Legal Services formulated approach to providing some
18 advocacy support for parents is a fantastic idea
19 in an awful lot of ways.

20 We've seen the support of Legal Services.
21 If we could find a way to actually add that to the
22 menu of options and support it on the federal
23 government level to the Legal Services Corporation, it
24 could prove to be extremely helpful in creating an

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1 education unit for those sections across the country.

2 It would be a very helpful move.

3 COMMISSIONER KIRSANOW: Mr. Shelton, you
4 remind me that -- this is unrelated -- that there are
5 certain deficits that in order to introduce, we're
6 placing into special education programs. About 40
7 years ago, Bill Cosby had a whole routine about
8 special ed. and the stigma that attaches, but I'm
9 wondering, are there any -- does anyone have any
10 information about any longitudinal studies that exist
11 that would show what, if any, detriments occur to
12 those individuals who were placed in special
13 educational programs vis-a-vis those who may be
14 similarly situated, but are not. I know that would be
15 difficult to do, but --

16 MR. SHELTON: I'm not aware of any
17 longitudinal studies along those lines. Everything I
18 know is purely anecdotal beginning with my personal
19 experiences. I grew up in St. Louis, Missouri. Went
20 to an all African-American elementary school at that
21 time from kindergarten through 12. Special education
22 was a class that was set up actually right off of the
23 boy's bathroom. As a matter of fact to get to that
24 classroom for the special education students, you

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1 actually had to cut through the boys bathroom and
2 there was a little partition that separated the door
3 from the special education class.

4 Even the stigma of students having to
5 attend those classes in there was insurmountable in so
6 many ways. But moving beyond that, certainly the
7 stigma that I think many of us carry when we think
8 about who was in special ed. as it was stated in a
9 couple of our testimonies this afternoon is it becomes
10 a place instead of a series of services that should be
11 provided to provide assistance to students.

12 I can also say as someone who has been
13 fortunate enough to make the kind of living that I can
14 forego my retirement and educate my children in
15 private school right now, indeed, when my children
16 have challenges, a team is assembled with all their
17 teachers along with counselors to take a look and
18 describe whatever that particular problem is at that
19 particular moment. And indeed, we sit down as parents
20 with them to discuss how we can address those
21 concerns, what kind of resources that school provides
22 as well as what kind of resources are willing to bring
23 to bear; what kind of additional testing we'll have to
24 pay for out of our pockets that most parents can't

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1 afford to pay for. And we're talking about the
2 African-American community, you're talking about a
3 community where 60 percent of our children are from
4 families at or below the poverty line, so we have a
5 real problem in our communities providing those kind
6 of services.

7 So again, I'm not as familiar with -- I
8 would love to see some longitudinal studies. I don't
9 know if you're aware of those. I would love to hear
10 about those, but the anecdotes are overwhelming.

11 DR. RESCHLY: Let me just comment on that.

12 Generally what I can tell you is that the outcomes
13 for students who arrive at fifth or sixth grade with
14 very low reading skills and some associated behavior
15 issues, I'm not talking about being emotionally
16 disturbed or even behavior disordered, but behavior
17 issues. Those outcomes, regardless of whether they go
18 into special ed. or not aren't very good.

19 Now the question is does placing them in
20 special education lead to better outcomes than if they
21 simply stayed in general education? And the answer
22 about that is that there are good special ed. outcomes
23 associated with high school work preparation programs.

24 COMMISSIONER KIRSANOW: Vocational?

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1 DR. RESCHLY: Vocational training,
2 vocational experience in high school. The K through
3 12 special ed. programs in terms of academic
4 achievement, it forces students in the disability
5 categories that we've been referring to, it's really
6 hard to show advantages and achievement from having
7 been in special ed. That's the status of the data.

8 Now let me add one more thing. You guys
9 have been beating up special educators a lot. The
10 fact of the matter is something on the order of over
11 95 percent of all parents of students in special
12 education regard those programs very positively.
13 That's fact.

14 If we had a school board's attorney here
15 and I certainly sympathize with the conditions you're
16 talking about. There are lots and lots of cases like
17 that, but if we had a school board's attorney here, he
18 or she would be telling you about some of the
19 outrageous interactions they've had with parents.
20 I've been a due process hearing officer and I've seen
21 both extremely intransigent, unresponsive school
22 officials. I've also seen parents that are absolutely
23 unrealistic in their expectations of the school.

24 There's a tendency for the law to be

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1 shaped by the extremes, unfortunately. In fact,
2 there's a whole lot in the middle. And it's not fair
3 to say that special educators or school administrators
4 are only looking at what's the least amount of cost
5 and the least amount of trouble. There are literally
6 tens of thousands of administrators and special
7 educators that do a really good job.

8 CHAIRMAN REYNOLDS: VICE CHAIR Thernstrom?

9 VICE CHAIR THERNSTROM: Well, I'm very
10 glad you said that. Just one more sentence on that.
11 In my experience, at least, in one state, SPED parents
12 are extremely well organized. So that the pressures
13 are enormous.

14 DR. RESCHLY: Well, as a group, they're
15 very well organized, but if you look at what
16 proportion of SPED parents are active in disability
17 advocacy groups and I think you'll find it's a
18 relatively small percentage.

19 VICE CHAIR THERNSTROM: Right.

20 DR. RESCHLY: Who are really active, and
21 the vast majority of students, parents of students in
22 special education are not real active or necessarily
23 very able to advance the interest of their children.

24 VICE CHAIR THERNSTROM: Absolutely, but if

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1 you have a lot of pressure --

2 DR. RESCHLY: Very strong advocacy groups.
3 Absolutely.

4 COMMISSIONER BRACERAS: I think what
5 happens is you have a lot of repeat players who are
6 activists and put a lot of pressure on the school
7 systems. Then when the other individuals come along,
8 I think as Mr. Hurd said, the schools immediately know
9 that they're not part of that group and therefore they
10 can get away with providing less because they're not
11 the people who are going to push. And sometimes those
12 parents are --

13 VICE CHAIR THERNSTROM: Well, I must tell
14 you that at the state board level, at least when we
15 dealt with a lot of funding issues and regulatory
16 issues and so forth, I mean those advocacy groups had
17 an enormous impact and there are other categories of
18 kids without such advocacy groups.

19 COMMISSIONER BRACERAS: But the individual
20 parents who go in to either advocate for their child
21 to get increased services or to advocate for their
22 child to be taken out of special ed. and mainstreamed,
23 those average parents are not the activists and are
24 easier to ignore when the school system is looking at

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1 cost issues and inconvenience issues.

2 VICE CHAIR THERNSTROM: Right.

3 DR. LADNER: Mr. Hurd is absolutely
4 correct. The school systems are very, very skilled at
5 figuring out who they can push around and who they
6 can't.

7 VICE CHAIR THERNSTROM: Right.

8 DR. LADNER: And to answer the
9 Commissioner's question, my view of this is that we
10 have to -- the fundamental thing we have to understand
11 is that special ed. is not remedial ed. A lot of
12 people kind of try to use it that way, but if you kind
13 of evaluate it on those terms, it's extraordinarily
14 expensive and not terribly effective.

15 VICE CHAIR THERNSTROM: Right.

16 COMMISSIONER KIRSANOW: In terms of
17 pushing people around, there are a number of issues to
18 be addressed by the Civil Rights Commission with
19 disability, but also race.

20 You've testified that there's an inverse
21 relationship to the percentage of mainly black
22 students in majority white schools and their
23 representation in a special ed. course. Have you been
24 able to divine from any studies whether or not

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1 schools, school districts, boards of education view
2 certain races, again, controlling for income and all
3 other variables, as more -- to use Mr. Hurd's term,
4 compliant than others? In other words, are certain
5 races being steamrolled?

6 COMMISSIONER BRACERAS: It might be
7 difficult, my opinion, in some cases to control for
8 income because lots of times when you have minority
9 students in a predominantly white area, they're there
10 because of a METGO program in Massachusetts or a
11 voluntary integration program. So they're coming, the
12 majority, not all, the majority of African-American
13 students in Massachusetts, suburban, primarily white
14 schools come from inner city Boston through the METGO
15 program. They don't live in the community. So you
16 wouldn't be able to separate out economics, for
17 example, at Concord-Carlisle High School, you get down
18 to a pool of four kids.

19 VICE CHAIR THERNSTROM: Well, you step
20 right out the free lunch kids. It's a lousy
21 measurement.

22 COMMISSIONER BRACERAS: I'm saying it
23 wouldn't answer his question because once you separate
24 it out, the free lunch kids or the kids that come from

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1 economically disadvantaged neighborhoods, you're not
2 looking at any African-American students.
3 Unfortunately, Massachusetts is a segregated -- I
4 don't want to use the word segregated, but a racially
5 isolated -- there are racially isolated schools.

6 DR. LADNER: Even more fundamentally, I
7 mean social science cannot discern what the
8 motivations of people are. We can have highly
9 suggestive evidence to say financial incentives play a
10 role here. I firmly believe that, and there's
11 research to show that. One of the gigantic problems
12 is that these judgmental categories are wide open to
13 abuse and then the evidence seems to suggest that they
14 are being abused and if we want to change that, for
15 instance, we can change -- half the kids in special
16 ed. are SLD. And Dr. Reid Lyon's research indicates
17 that 30 percent of those designations are actually
18 legitimate. They have an actual neurological
19 condition that when you subject it to medical testing
20 that it is real.

21 So one thing we obviously need to do is to
22 move SLD from being a category that is judgmental to
23 one that is much more scientifically based. And it's
24 really the kids that lose most in this misdiagnosing

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1 process in some ways are the kids who actually do have
2 disabilities.

3 CHAIRMAN REYNOLDS: One follow up, SLD,
4 what is that?

5 DR. LADNER: Specific learning disability.

6 COMMISSIONER KIRSANOW: Regardless, it's
7 very difficult to divine intent, obviously. But is
8 there any data to show that, for example, in majority
9 school districts, black students are more likely to be
10 placed in SPED courses versus Hispanic students versus
11 Native American students versus Asian students?

12 DR. LADNER: Asian student rates are kind
13 of flat and low across the board. For the others,
14 Native Americans, Hispanics, and African-Americans,
15 they're higher.

16 COMMISSIONER KIRSANOW: Is there any data
17 that would suggest a reason for why the Asian students
18 are flat, as you say, versus the other three minority
19 groups?

20 DR. LADNER: That's a good question and I
21 can't answer that.

22 DR. RESCHLY: I've tried to get research
23 funding to do that, but nobody is interested frankly.

24 VICE CHAIR THERNSTROM: Because they know

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1 the answer.

2 DR. RESCHLY: Do they know the answer?

3 CHAIRMAN REYNOLDS: Well, if you were to
4 speculate on what that answer was --

5 VICE CHAIR THERNSTROM: I mean the College
6 Board has done work on this. A lot of people have
7 done work on this. Whatever, let's go on.

8 COMMISSIONER KIRSANOW: Mr. Zamora, maybe
9 you have some data on in terms of the ELL students, is
10 there a difference between say Spanish speakers and
11 any other speakers that may be LEP or ELL courses?

12 MR. ZAMORA: That's a very good question
13 and what we found is that the data on the correlation
14 between special education and ELL is very limited.
15 And in fact, I think the most authoritative report was
16 submitted to the Department of Education in 2003 and
17 they had gone to districts and to states and had asked
18 them for their number of special education ELL
19 students and one of the officials didn't have that
20 data on hand and had to crunch numbers and so
21 generally the data isn't all that effective, but I do
22 work a lot with the Asian American Justice Center
23 some, and they found that in presenting issues of
24 Asian education that they confront this model minority

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1 stereotype essentially where -- and I think there is
2 research that I don't have currently available to back
3 that up, but that again, getting into attitudes and
4 subconscious or conscious bias in the subjective
5 processes that there's less likelihood to attribute
6 any sort of academic defect to disability for this
7 particular model minority.

8 COMMISSIONER KIRSANOW: Mr. Hurd, do you
9 encounter in your practice a greater percentage of say
10 Asian parents utilizing the due process system versus
11 other minority parents?

12 MR. HURD: No, in my practice we have
13 dealt almost exclusively with white parents. We've
14 had African-American clients, but not nearly in the
15 numbers that you would expect to have.

16 COMMISSIONER BRACERAS: And in your
17 practice, those clients are primarily trying to get
18 services or trying to get out?

19 MR. HURD: Some of each.

20 COMMISSIONER BRACERAS: Some of each. But
21 the white parents I've represented have to a single
22 case are trying to obtain more services or better
23 services than the school is willing to offer.

24 COMMISSIONER YAKI: Is this a pro bono

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1 program that your firm has?

2 MR. HURD: We do some of that. We do both
3 pro bono cases and fee-paid cases.

4 CHAIRMAN REYNOLDS: Commissioner Taylor?

5 COMMISSIONER TAYLOR: No questions.

6 VICE CHAIR THERNSTROM: Lunch

7 VICE CHAIR THERNSTROM: All right,
8 Commissioner Yaki, do you have additional questions?

9 COMMISSIONER YAKI: I have a question for
10 Mr. Ladner. I just wonder to what extent does any No
11 Child Left Behind has had an impact on the number of
12 referrals to special ed. over the past four years?

13 DR. LADNER: I would say if anything it's
14 been a positive development because one of the
15 problems used to be that the states would exempt
16 special ed. students from state testing and it
17 provided a perverse incentive to label kids and to
18 some extent that No Child Left Behind has mitigated
19 that.

20 MR. ZAMORA: And I think I would generally
21 concur with the parallel to the exclusion of the
22 English Language Learners prior to NCLB from
23 accountability systems and so I think we have seen
24 increased transparency and increased accountability.

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1 So there is an increased awareness now as to the
2 problem in terms of whether it's solved many of these
3 problems, I think we have a ways to go, certainly.

4 DR. LADNER: It's very important to
5 maintain that during the reauthorization.

6 MR. ZAMORA: Exactly.

7 CHAIRMAN REYNOLDS: Commission Melendez?

8 COMMISSIONER MELENDEZ: Yes, just one
9 question. The Individual With Disabilities Education
10 Act is going to expire in 2010. I was just wondering,
11 is there anything that you would suggest that we could
12 address as that comes up as far as any studies we need
13 to do or what would be a recommendation as the debate
14 closes on 2010, the issues that we're talking about?

15 DR. RESCHLY: One thing I'd suggest as a
16 strong influence toward making special education a set
17 of services brought to kids in general ed. rather than
18 a place. And to continue the very strong emphasis on
19 accountability in special education. The states for
20 the first time in 2006 had to report on a variety of
21 general outcome indicators. In 2006, and now 2007,
22 the Office of Special Ed. Programs is now ranking
23 states and there's -- accountability is relatively new
24 to special education. And it's very important that

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1 that accountability pressure continue for the
2 betterment of kids.

3 DR. LADNER: I think I heard a consensus
4 across the panel that getting the diagnostic process
5 correct is a very important thing and it's something
6 the President's Commission emphasized and it is
7 extremely important.

8 MR. SHELTON: I'd say too that the data
9 collected is very well desegregated.

10 CHAIRMAN REYNOLDS: I'm sorry.

11 MR. ZAMORA: Well, I would just very
12 quickly add the 2004 Reauthorization actually has some
13 significant improvements, both in that it allows for
14 the response to the intervention model, but then also
15 that it has strong language about the
16 misclassification of English language learners, that
17 language shouldn't be a cause of identification, but
18 it's really more implementation issues that we're
19 dealing with now.

20 CHAIRMAN REYNOLDS: Well, Mr. Zamora, you
21 had the last word.

22 Gentlemen, thank you very much. This has
23 been outstanding. We'll put together a dynamite
24 report with the wealth of information that you've

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1 provided.

2 VICE CHAIR THERNSTROM: Thank you very
3 much.

4 (Whereupon, at 1:13 p.m., the briefing was
5 concluded.)

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