

# POLICY *report*

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## Race to the Bottom: Minority Children and Special Education in Arizona Public Schools

by Matthew Ladner, Ph.D., Senior Fellow, Goldwater Institute

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### EXECUTIVE SUMMARY

In the year 2000, the United States Department of Education's Office of Civil Rights (OCR) surveyed all of the nation's public schools concerning their special education students. The resulting data—known as the *OCR 2000 Elementary and Secondary School Survey*—allow for the exploration of the possible existence of racial bias in the assignment of special education labeling. Specifically, the OCR data contain information not only about the race of disabled students, but also about the type of disability labels they carry at the individual school level.

The OCR's data for Arizona public schools confirms the pattern established in previous research conducted with more limited data: minority students attending predominantly white public schools in Arizona are significantly more likely to be placed in special education programs than their peers. Overall, when comparing the combined rates of children with Emotionally Disturbed, Mentally Retarded, and Specific Learning Disability labels, both American Indian and Hispanic males are labeled at a rate 64 percent higher in schools that are 75 percent or more white than in schools that are 25 percent or less white. The same figure for white male students shows an almost 50 percent decline in disability rates. These results come about despite the fact that minority students attending predominantly white schools are less likely on average to grow up in poverty than minority students attending predominantly minority schools.

Arizonans should vigorously pursue remedies for the over-enrollment of students in special education. With the possible causes of misidentification—including perverse financial incentives, the avoidance of standardized testing, the misuse of special education as remedial education, and segregationist impulses—it is clear that the problem is a deep-seated feature of public education in Arizona that will require profound reform. The study suggests three possible remedies: changing the state's special education funding formula, instituting universal screening for the identification process, and creating a parental choice program for children with disabilities. These options do not represent mutually exclusive courses and, in fact, should be implemented simultaneously.

## *Race to the Bottom: Minority Children and Special Education in Arizona Public Schools*

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### **Special Education as Segregation: Magdalena's Story**

Magdalena enrolled in a suburban, predominantly white, Phoenix-area district as a kindergartner. A non-native English speaker, Magdalena had not learned to read and write in her native Spanish. Not surprisingly, Magdalena had some difficulty in her early course work.

When Magdalena reached third grade, school district officials approached Magdalena's mother, Maria—who does not speak English—about enrolling her daughter in a “special program.” District officials explained that Magdalena had a learning disability, and that she would be better served in this program. Maria says that school district officials never explained that they believed her daughter had a neurological condition that would impair her from learning. Nor did they explain to her that she had a right, under federal special education law, to have a separate evaluation of her daughter by outside experts at school district expense. The district's only effort to inform Maria of her rights as a parent was to give her a booklet that was not only written in English, but also written in what Maria described as highly technical language.

At the time, Maria had faith in the expertise and goodwill of school district

officials, and thus believed that special education would benefit her daughter. She gave her consent to enroll Magdalena in special education by signing the appropriate documents.

The school district removed Magdalena from normal classes and placed her into the special education program as a third-grader. It did not prove to be a positive experience. Magdalena faced harassment from other students—even from some classmates she had known almost her entire life—because of her placement in special education. By the time she proceeded to the fourth and fifth grades, Magdalena was increasingly bored with her classes. She noticed that the children in the other classes were frequently assigned homework, while she almost never received homework assignments. In the rare cases that she did receive homework, she noticed her teachers seemed indifferent as to whether she completed the assignment.

Worst of all, Magdalena noticed that the same concepts were repeated in her coursework year after year. Magdalena took math tests, finishing them in a matter of minutes, and found herself waiting for class to end. When she complained to one of her teachers, the teacher told her that she did not need to be in the special education program.

After listening to these complaints,

Maria was shocked to learn that her daughter had been repeating third-grade level material year after year since enrolling in the special education program. Maria also discovered that Magdalena had been tested on the same grade level material on every year's AIMS accountability exam. Worse still, her daughter had been given the same mathematics examination—with the same exact problems—several years in a row. Magdalena had been given the AIMS alternative test, with the grade level set by the special education program.

Distraught, Maria decided that it would be best to remove her daughter from the special education program. In the beginning of the process, she had naturally trusted school district officials to do what was right for her daughter, but experience damaged that trust. When her daughter moved into middle school and her Individualized Education Plan came up for review, Maria resisted giving her consent for her daughter to remain in the special education program.

School district officials, however, placed enormous pressure on Maria to keep her daughter in the special education program. They argued that Magdalena, now in seventh grade, would not graduate unless she stayed in the program. Maria attended two meetings with district officials; in both meetings district officials pressured her to sign the consent form keeping Magdalena in special education. This time she refused to sign—or even to

consider signing, unless the forms were given to her in Spanish. She then began receiving calls at home from district officials, who told her she could simply give her consent over the phone. She was told that the district would sign the form for her and attach a note stating she had given her consent. She was also told that Magdalena would be placed in detention until she signed the forms. She called the district's bluff, telling them to go ahead and put her daughter in detention, much to Magdalena's distress. Ultimately, district officials provided the forms in Spanish, and Maria signed them, keeping Magdalena in special education, despite serious misgivings.

Interviewed for this report, Maria described her experience of trying to remove her daughter from special education as “like running around in a circle, with no way out.” Maria had felt intimidated by school district officials in the past, but then learned she had the option of sending Magdalena to a nearby charter school, which reduced her apprehension. Maria had been concerned that if she did not acquiesce to district pressure, that Magdalena might be thrown out of school. The presence of a charter school, however, reassured her that she did not need to be concerned about a lack of schooling for her daughter.

When Magdalena reached the ninth grade, her status in special education came up for review again. Again Maria resisted reinstating her daughter in the special education program. Ultimately, Maria refused to sign the papers, and

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Magdalena left the special education program that year. Working diligently, Magdalena has made satisfactory grades in the regular education program, despite jumping straight from third-grade to ninth-grade level work.

Maria believes that Magdalena never had a neurological disorder that would prevent her from learning, but school district officials have not given up. They have told Maria that they want Magdalena back in the special education program, and they are not alone in sending that message. Recently, when she told a teacher that she did not understand a particular part of a class assignment, the teacher told Magdalena—in front of the class—“That is why I want you back in special education.”<sup>1</sup>

### **Special Education Bias: Evidence From the Office of Civil Rights**

Researchers have known for some time that minority students in public schools are over-represented in a number of special education categories. For example, while African-American students account for only 16 percent of the U.S. student population, they represent nearly one-third (32 percent) of all students in programs for mild mental retardation.<sup>2</sup> Equally alarming are recent findings of a growing body of research that indicate that affluent districts label minority students as

mentally retarded at higher rates than they do white students. A 2002 Harvard Civil Rights Project study, for instance, found that not only are there startlingly large racial disparities in special education overall, but also that African-American students are three times more likely to be labeled as mentally retarded than white students.<sup>3</sup>

In 2001, the Progressive Policy Institute and the Fordham Foundation issued a joint collection of studies on special education policy titled *Rethinking Special Education for a New Century*. A study in this volume, “Special but Equal: Race and Special Education,” statistically examined racial special education rates across districts and counties from several states. This study tested for the independent effects of a number of separate variables, including student poverty, school spending, average class size, and racial makeup of the district.<sup>4</sup> The paper examined county-level data from California, Colorado, Florida, Georgia, Maryland, New York, Oregon, Texas, and Wisconsin, and district-level data from Texas, Florida, and Maryland. After controlling for school spending, student poverty, community poverty, and other factors, the research revealed a common pattern of predominantly white public school districts placing minority students into special education at significantly higher rates than districts with higher percentages of minorities in their student bodies.

In 2003, the Goldwater Institute released a study on race and special

education in Arizona using data from the Arizona Department of Education and the United States Department of Education Common Core of Data. The Goldwater study demonstrated that minority special education rates are significantly higher in predominantly white Arizona public school districts, despite the fact that disability labels for white students are substantially lower.<sup>5</sup> In October 2003, the Goldwater Institute released a policy brief identifying 40 Arizona school districts and charter schools with Hispanic disability rates that were 40 percent or more above the average statewide placement rate for Hispanic students. The study also noted that predominantly white Arizona charter schools did not display the same tendency to over-enroll Hispanic children.<sup>6</sup>

These findings turn conventional wisdom about the contributing causes of learning disabilities on its head. Presumably, poverty and the attendants of poverty—such as poor prenatal care and poor nutrition—are the primary causes of many disabilities. Why then should minority special education rates be substantially higher in predominantly white districts, where average family incomes for minority students are likely to be higher than in inner-city school districts?

The study considered three broad possible causes. The first was the possible existence of financial incentives that encourage placing children in special education programs. District

officials who manipulate standardized accountability test scores represent the second possibility. The third probable cause was far more direct, even if impossible to definitively evaluate: simple racism. This possibility—that special education programs are used to segregate minority children—is entirely consistent with findings from previous research.<sup>7</sup>

Regarding financial motives, a growing body of research now indicates that financial incentives play a pernicious role in special education rates. For example, in their most recent study on the subject, Manhattan Institute scholars Jay P. Greene and Greg Forster interviewed state officials who referred to the special education funding system used in most states as “the bounty system.”<sup>8</sup> Under the bounty system, state governments compensate school districts for each additional student classified as disabled. The economics of special education are complex, and school districts claim that many disability types are net drains on the finances of school districts, even after receiving compensation. Nevertheless, as Greene demonstrates elsewhere, only the percentage of students classified as learning disabled has significantly increased since 1976. The rates for disabilities that typically warrant heavy district spending have remained relatively flat.<sup>9</sup> Obviously, such starkly contrasting trends raise serious concerns.

Congress ended “bounty system” funding in 1997, and now distributes federal funds to the states in a lump sum

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based on a demographic profile instead of the number of children identified as disabled. In so doing, Congress attempted to remove the financial incentive for districts to label children as disabled in order to qualify for increased funding. Sixteen states have followed suit and switched their own funding mechanisms for districts to a similar formulaic “lump sum” method to remove perverse financial motivation.

Greene and Forster theorized that the bounty system provides a perverse financial incentive for schools to label students as disabled. By comparing the rates of growth in special education enrollment in states with and without the bounty funding system, they attribute 62 percent of the increase in special education during the 1990s in states with the bounty system to these financial incentives. Greene and Forster estimate that disability labels attributable to the bounty system translate into roughly 390,000 extra students placed in special education, resulting in additional total spending of over \$2.3 billion per year.<sup>10</sup> In Arizona, the total resulting additional spending is estimated to be \$50 million per year.<sup>11</sup> Predominantly white districts may identify additional minority children as disabled in response to financial incentives under two circumstances: first, if district officials consider minority children closer to the “borderline” of being disabled, and second, if they are motivated by racial prejudice, stereotypes, or a desire to remove minority children from the regular classroom setting.

Manipulation of standardized testing results by schools and districts represents another possible incentive for labeling children as disabled. The No Child Left Behind Act, following the model developed in Texas, requires high-stakes testing and disaggregates the results by race. Under such a system, schools and districts are judged not only by their overall scores, but also by the scores of student subsets, such as African-American, Hispanic, or economically disadvantaged students. The advantage of such a system is that school systems are not able to hide the poor performance of minority students. A possible disadvantage may be the creation of an incentive to label low-performing minority children as disabled, thus exempting them from normal testing while increasing the average performance of the student’s subset. The goal of such manipulation could be to exclude students deemed unlikely to pass from the “accountability subset” upon which schools and districts are evaluated.<sup>12</sup>

While the exact motivations of predominantly white school districts enrolling higher percentages of their students in special education are not entirely clear, evidence of the practice is apparent. Even after controlling for school spending, student poverty, community poverty, and other factors, research uncovers a pattern with these schools placing minority students into special education at significantly higher rates than more racially integrated districts. For example, districts with a 75 percent or more white student body

were found to have Hispanic special education rates 47 percent higher than those of school districts that were predominantly minority (with 75 percent or more minority student bodies).<sup>13</sup>

### **Minorities and Disabilities in Arizona Public Schools**

The previous Goldwater Institute studies on race and special education used school district-level data provided by the Arizona Department of Education and the United States Department of Education Common Core of Data. While informative, these data were limited to overall district averages for children with disabilities by racial group. A new source of data allows for a closer examination. The 2000 *Office for Civil Rights (OCR) Elementary and Secondary School Survey* gathered data on race and special education from all of the nation's public schools. The Office of Civil Rights distributes this non-suppressed data for the exclusive use of individuals conducting research who have signed an application for use of the data and who meet with the individual approval of the United States Office of Civil Rights.<sup>14</sup>

The advantage of this new data is twofold. First, it allows for the examination of individual school-level data rather than broad district averages. The previous research in Arizona and elsewhere found that districts with predominantly white student bodies

labeled significantly higher percentages of their minority students as disabled. If the relationship between race and disability labeling is robust, it should be possible to find the same pattern at the level of individual schools, as well as at the school district level. The OCR data therefore serves as an alternative test of the phenomenon in question.

Second, the OCR data permits the exploration of individual disability type by race and gender, something not possible with previous data. The previous data only allowed for the exploration of total disability rates by race, not individual disability categories. Not all disability categories, however, are equally suspected of being abused. Some types of disabilities—for example, blindness or hearing impairment—are based upon objective medical diagnosis. Disabilities such as Specific Learning Disability (SLD), however, are famously vague, defined by a perceived difference between ability and tested performance. Recent medical evidence points to the fact that public schools often mistakenly label children as having a specific learning disability, when in fact they have simply received poor early reading instruction. Research by Dr. Reid Lyon of the National Institutes for Health and his colleagues estimates that approximately 70 percent of children labeled with a specific learning disability could have avoided special education placement if they had had intensive early remedial reading intervention—preferably beginning in kindergarten or first grade. In the absence of such intervention, many children are placed

in special education, which has been shown to be highly ineffective at reducing educational deficits.<sup>15</sup>

The OCR data allows us to examine disability labeling by type and gender. The data focus on males because male students constitute 66 percent of disabled public-school children, and are most likely to be mislabeled. All data presented below are from Arizona traditional public schools, grades K-12. Figure 1 presents the disability rates for Hispanic male students, according to the racial balance of the student bodies of the individual schools. Arizona public schools (excluding charter schools) are divided into four separate categories: those with 25 percent or fewer white students, those with 26 to 50 percent white students, those with 51 to 75 percent white students, and those with more than 75 percent white students. The disability categories charted are the more subjective categories of disability: specific learning disabilities (SLD), emotionally disturbed (ED), and mental retardation (MR).<sup>16</sup> If the pattern demonstrated in previous studies holds, we expect to find that significantly higher percentages of Hispanic male students are labeled in these categories in the predominantly white districts than in the other districts.<sup>17</sup>

The OCR data follow the same general pattern found in previous research: Hispanic males in predominantly white school districts are labeled at higher rates with specific learning disabilities, emotional disturbances, and mental retardation.

Predominantly white school districts label more than twice as many Hispanic males as emotionally disturbed (2.2 to 5.4 percent) than do predominantly minority schools. Predominantly white districts classify 80 percent more Hispanic males as mentally retarded on a percentage basis, and the increase in the Specific Learning Disability Label category is more than 42 percent.

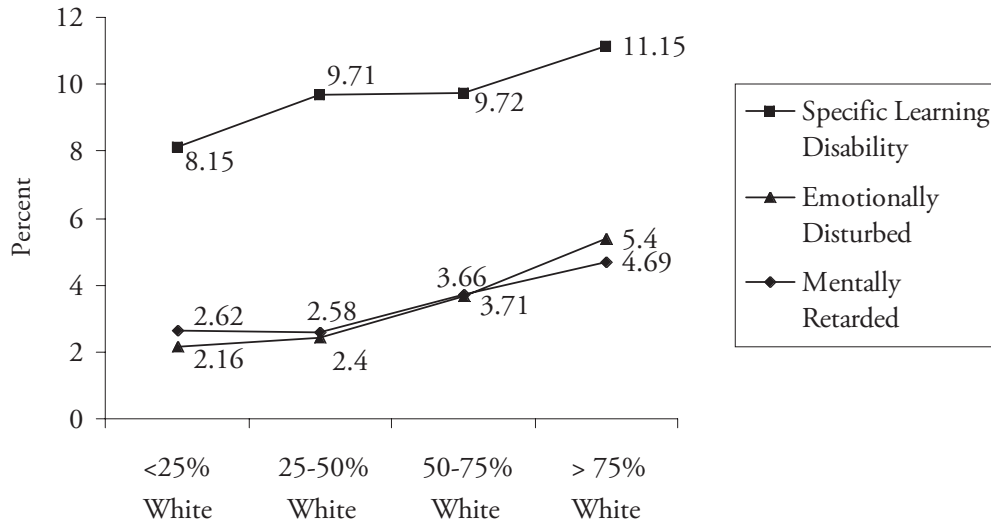
Figure 2 presents the equivalent figures for male American Indian students in Arizona public schools. Again, the same pattern appears: SLD, ED, and MR rates are substantially higher in predominantly white school districts. Figure 3 presents the OCR figures for African-American students.

The OCR data show that American Indian males attending predominantly white Arizona public schools are profoundly more likely to receive disability labels when compared to their peers in more integrated schools. The rate of children labeled as Emotionally Disturbed more than triples (from 4.1 to 13.7 percent) when comparing predominantly minority and predominantly white schools. The percentage of American Indian males labeled as mentally retarded nearly doubles, while the percentage of such students labeled with Specific Learning Disabilities increases by 28 percent.

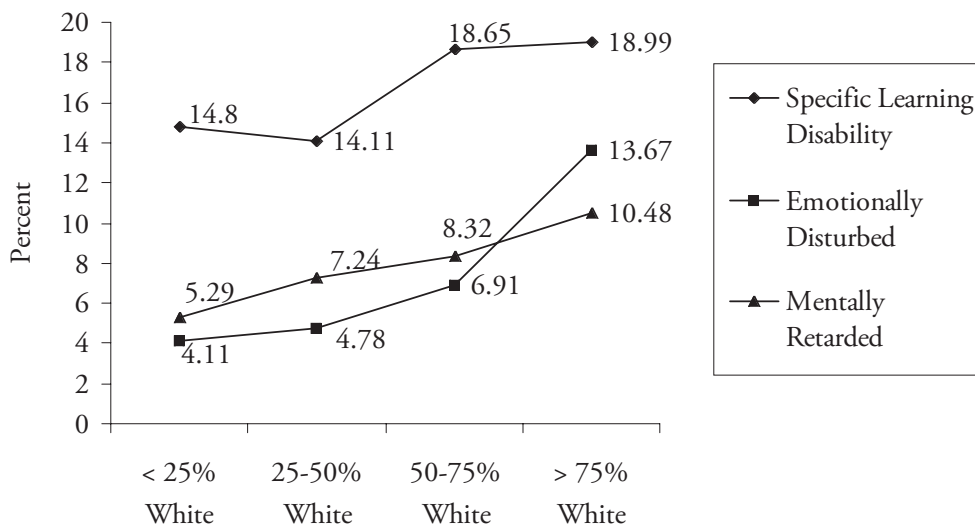
The trends for African-American males show that the percentage of students labeled as Mentally Retarded increases by nearly 55 percent when comparing predominantly minority and

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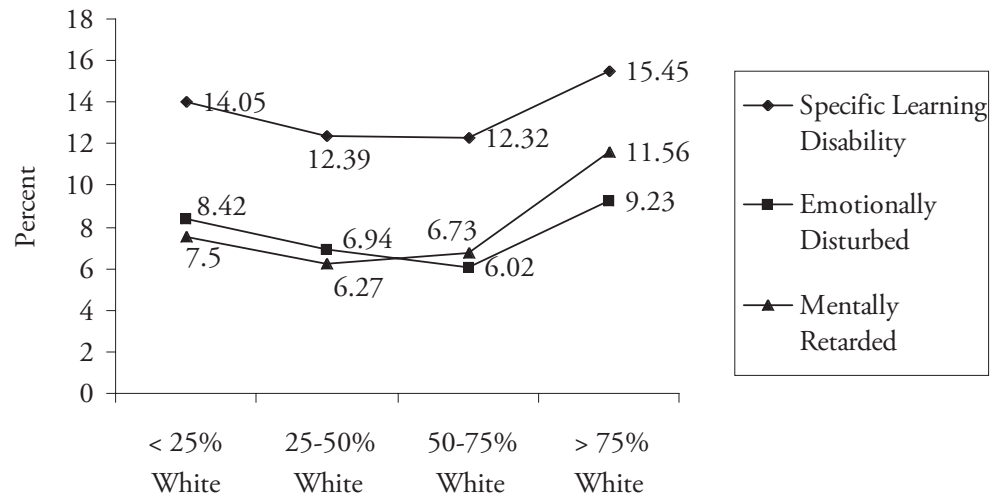
**Figure 1: Hispanic Male Disability Rates in Arizona Public Schools by Racial Composition of Student Body**



**Figure 2: American Indian Male Disability Rates in Arizona Public Schools by Racial Profile of Student Body**



**Figure 3: African-American Male Disability Rates in Arizona Public Schools by Racial Profile of Student Body**



predominantly white districts. Trends for African-American males labeled with a Specific Learning Disability or as Emotionally Disturbed are relatively flat.

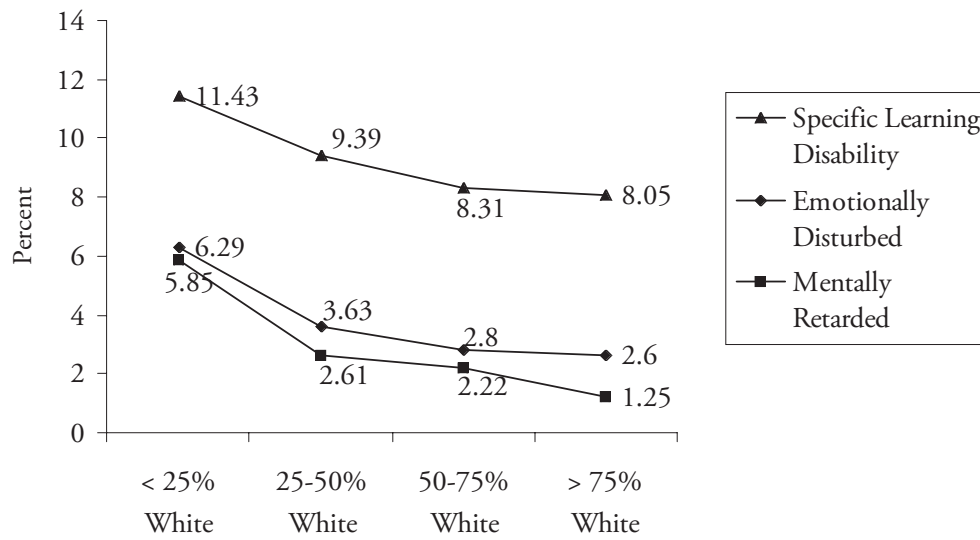
The same general trend is evident across ethnic groups and disability types. Predominantly white schools label higher percentages of their minority students. Previous research demonstrated a pattern where white disability rates were substantially lower in predominantly white school districts than in more racially mixed school districts. Figure 4 demonstrates that the same pattern holds true using the school-level OCR data as well.<sup>18</sup>

Similar to the district-level trends, the percentage of white students in special education declines sharply in

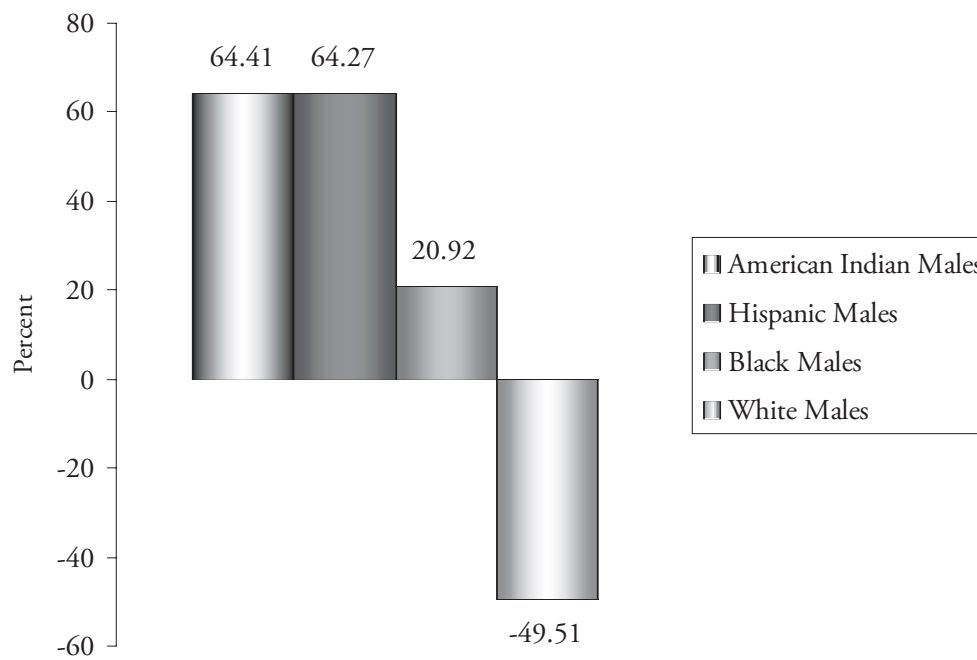
schools with higher percentages of whites. The percentage of white males labeled as ED declines by 58 percent between predominantly minority and predominantly white schools. Predominantly white schools label 28 percent fewer white male students as having a specific learning disability, and 77 percent fewer as mentally retarded when compared to schools where whites represent less than 25 percent of the student body.

As discussed in previous research, one would expect some decline in white disability rates in more predominantly white schools and/or districts due to the role of poverty in disability labels. Due to the relationship between housing segregation and wealth, fewer children in predominantly white schools and

**Figure 4: White Male Disability Rates in Arizona Public Schools by Racial Profile of Student Body**



**Figure 5: Percentage Increase/Decrease in Male Disability Rates (ED, MR, SLD) in Arizona Public Schools between Mostly Minority (25% or less white) and Mostly White Schools (75% or more white)**



districts will be growing up in poverty. However, the same should be true for minority students.<sup>19</sup> Alternatively, the trends in white rates could be interpreted to show a general pattern across ethnic and racial groups by which racially isolated student groups receive disability labels at higher rates. The OCR data demonstrates the same pattern: rather than declining like the white student rates, minority rates substantially increase in predominantly white schools.

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Figure 5 demonstrates the extent of this increase. It combines the Emotionally Disturbed, Mentally Retarded, and Specific Learning Disability rates and compares the predominantly minority districts (25 percent or less white) to the predominantly white districts (75 percent or more white).<sup>20</sup> The data show the total percentage increase for American Indian males, Hispanic males, African-American males, and the total decline for white males.

Overall, the OCR school-level data track the general trends found in district-level data strongly. Minority students in predominantly white district schools suffer a substantially higher incidence of being placed in special education programs as compared to their peers in racially mixed schools. The question therefore moves from the extent of the problem to what to do about it.

## **The Failure of the Regulatory Approach to Preventing Discrimination**

If the above school-level data represent evidence of widespread racial bias in public school special education programs, it must be noted that it is occurring in Arizona and in other states despite the long existence of large government agencies with the responsibility of combating discrimination in public education. Of course, these agencies begin with the public school districts themselves, whose officials are bound by multiple laws prohibiting discrimination based on race or color. In addition, both state and federal education regulatory bodies are legally bound to prevent racial discrimination in schools.

The nature or existence of disabilities in children is inherently subject to dispute. Either parents or school district officials can initiate the process of labeling a child as disabled. Districts must secure a parent's permission before evaluating a child for a disability, and parents have the legal right to an outside evaluation. A group of district officials and the parents then review the evaluation, and if they decide that the child has a disability, the process of drawing up an individualized education plan (known as an IEP) begins.

While parents are included in the identification process, they often defer to school district officials. When school officials assert that a child has a disability

and tell the child's parents that special education services will improve their child's education, many parents believe district officials are experts in their fields and have their children's best interests at heart. Wealthy and knowledgeable parents sometimes employ attorneys and outside evaluators with specialized knowledge of special education law, paperwork, and procedure. However, parents with fewer financial resources rarely benefit from such expertise.

The well-defined legal process requires a large amount of paperwork for each step. The emphasis of both state and federal oversight—and even litigation between parents and school districts—lies in the area of process compliance. The “compliance model” used by the special education system, emphasizing procedure and forms over educational achievement, largely explains the relatively ineffectual nature of the regulatory apparatus. Critics of the system have noted that the “compliance model” has in fact failed to ensure widespread compliance with special education laws, while generating a number of perverse outcomes.<sup>21</sup>

In 1975, Congress passed the Education for All Handicapped Children Act (EAHCA), later renamed the Individuals with Disabilities Education Act (IDEA). IDEA serves as the foundation of special education law, requiring public schools to provide a free appropriate public education for all children with disabilities. Subchapter II, Section 1418 of IDEA requires states and territories to collect data about the

racial makeup and placement of students in special education programs. In the case of a determination of significant disproportionality, the law says the state or territory “shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.”<sup>22</sup> While it seems obvious why Congress created this language, it does not seem clear that it has in fact had the intended effect. Racial “disproportionality” in special education has existed for decades. The problem still exists, and regulatory approaches have not prevented it.

### Lessons from Pennsylvania

The policies, procedures, and practices in Arizona special education warrant both review and revision. But what action would remedy the problem? While the possible causes of minority over-enrollment are complex, the initial Goldwater Institute study made two broad recommendations: (1) end the “bounty” funding formula providing additional funds on a per-student basis, and (2) institute a voucher program for disabled students modeled after Florida's McKay Scholarship Program. The bounty system should be replaced with a placement-neutral funding formula to eliminate perverse financial incentives for enrolling students in special education. The logic behind this recommendation is simple: the sources

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of general over-enrollment are likely to also be at least partially responsible for the over-enrollment of minority students. In fact, Andrew J. Rotherham and Sara Mead of the Progressive Policy Institute argue against school choice programs for disabled children, in part because they believe that such a system could complicate efforts to move states to placement-neutral funding formulas.<sup>23</sup>

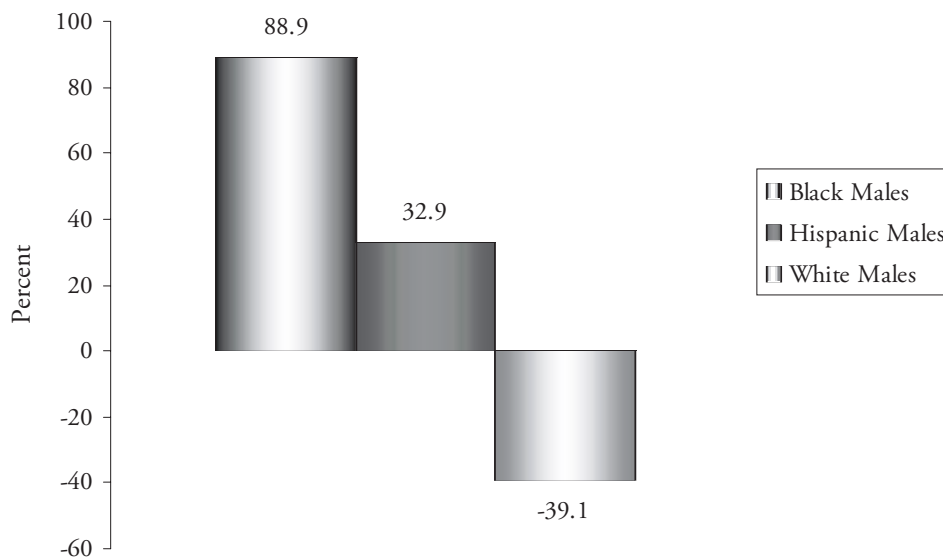
Recently, however, evidence has come to light that raises questions about the adequacy of a placement-neutral funding formula in terms of addressing the problem of minority student over-enrollment. In February 2004, the Commonwealth Foundation released *Racial Bias in Pennsylvania Special Education*, which examined minority special education rates in Pennsylvania.<sup>24</sup>

Pennsylvania represents an extremely interesting case for exploring the existence of racial imbalances in special education because it has neither a bounty funding system nor high-stakes testing. Pennsylvania was a pioneer in switching from the bounty system to a lump-sum formula in 1992. The state provides special education funding to school districts based upon a neutral formula, and it does not provide increased special education funding with each new special education label. In addition, the state's accountability system contains no sanctions for low-performance, but actually financially rewards low-performing school districts with additional state funds instead.

Despite the lack of financial or testing incentives to place students in Pennsylvania districts, substantial racial disparities were evident from the Pennsylvania data. Figure 6 shows disability rates by ethnic group for Pennsylvania public schools. The data, from the United States Department of Education's Office of Civil Rights 2000 *Elementary and Secondary School Survey*, presents school-level findings broken out by race and disability type for the broad categories of Emotionally Disturbed (ED), Mentally Retarded (MR), and Specific Learning Disability (SLD). The data represents school-level information and averages from schools with at least 10 members of the respective ethnic group. The white and minority student trends move in opposite directions. The numbers show that African-American males have higher disability rates in all three categories, which are 88 percent higher in predominantly white districts than in predominantly minority districts. White male disability rates are 39 percent lower in the predominantly white districts.

While placement-neutral funding represents a good practice and the racial imbalances in Pennsylvania might have been even worse without it, the results raise serious doubts as to whether placement-neutral funding alone can address the racial imbalances seen in Arizona. It is entirely possible that placement-neutral funding would put a brake on over-enrollment over time, without ultimately reversing racial imbalances.

**Figure 6: Increase/Decrease in Disability Rates in Primarily White Pennsylvania Schools to Primarily Minority Public Schools (ED, MR, SLD)**



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Other research points to the possibility that improved screening techniques may reduce the misidentified children. Amanda VanDerHeyden, Joseph Witt, and Gale Naquin (from the Louisiana State University Health Science Center, Louisiana State University, and the University of New Orleans, respectively), have conducted research indicating that the traditional practice of teachers identifying students for special education can be made significantly more accurate.<sup>25</sup> Their research shows that teacher referrals to special education are unreliable, both in misidentifying students as having disabilities and in failing to recognize children with disabilities. An alternative screening technique, known as universal screening, shows significant promise in

reducing misidentification by testing all students at an early age and then providing remedial sessions to all students below grade level.

The available evidence strongly suggests that simply changing the funding formula will not be enough to prevent school districts from using special education in a racially biased fashion. Although the funding formula should be changed, Arizona policymakers would not be pleased if they took the same action Pennsylvania lawmakers took more than a decade ago, and then found themselves with the sort of racial imbalances evident in Pennsylvania schools today. Further steps—such as diversifying and increasing the suppliers of special

education services, and introducing new screening techniques—should be vigorously explored.

### **Parental Satisfaction with the McKay Scholarship Program**

Florida has taken the lead in special education reform with the McKay Scholarship Program. Launched in 1999, the program allows parents who are dissatisfied with the quality of their children's educations to seek other public and private options without having to resort to court action. The program equalizes opportunities for students of varying economic backgrounds, including those whose parents cannot afford litigation.

More than 9,000 students enrolled in the McKay program for the 2002 school year. Of 547 private schools that applied to accept McKay Scholarship children, 214 are nonreligious and 332 are religiously affiliated. The disability profiles of students exercising choice through this program closely matches the population of disabled students in the Florida public school system, meaning private schools are serving children with a full spectrum of disabilities.

A recent survey demonstrates extremely strong support for the McKay Scholarship program among parents of disabled children. Manhattan Institute scholars Jay P. Greene and Greg Forster recently released the first empirical study

of the McKay program. They conducted a parental satisfaction survey of both parents who had used the program to transfer out of public schools, and parents who had used it to transfer but had subsequently returned to a public school.<sup>26</sup>

The results of the survey demonstrate that parents strongly favor the program. For example, 92.7 percent of current McKay participants are satisfied or very satisfied with their McKay schools, while only 32.7 percent were similarly satisfied with their public schools. McKay parents found that their children's class sizes dropped dramatically, from an average of 25.1 students per class in public schools to 12.8 students per class in McKay schools. In public schools, 46.8 percent of disabled students were bothered often and 24.7 percent were physically assaulted, while in McKay schools only 5.3 percent were bothered often and 6.0 percent were assaulted. Perhaps most telling of all, more than 90 percent of parents who had withdrawn their children from the program believe it should continue to be available to those who wish to use it.

Andrew J. Rotherham and Sara Mead raise concerns about the McKay Scholarship route, including the concern that the creation of such a program could create a perverse incentive for parents to seek disability labels for their children in order to access private schools.<sup>27</sup> Anecdotal evidence points to instances of affluent parents seeking Specific Learning Disability labels for

*For example, 92.7 percent of current McKay participants are satisfied or very satisfied with their McKay schools, while only 32.7 percent were similarly satisfied with their public schools.*

their children so they can receive extra time on college entrance examinations, or other perceived advantages. While there can be no doubt that the vast majority of IEPs are initiated at the behest of school district officials—especially for low-income children—a counter-trend of parent-initiated labels could indeed exist simultaneously in the complex world of special education. If parents are willing to go to such lengths simply for extra time on the Scholastic Aptitude Test, what would they do for the chance to send their children to a private school setting?

The only parents likely to see their way through the complex process of having their children inaccurately labeled are those arming themselves with legal expertise and outside evaluations. It is crucial to note, however, that such parents are already accessing private schools by resorting to the legal system, often winning judgments far exceeding the cost of educating the child in the public system. The route to a private placement under current practice is to seek a label from the district (with little incentive for the district to resist under the current bounty funding system) and then to sue the district for failing to provide a Free and Appropriate Public Education (which can be proven by something as trivial as a paperwork error on the part of district officials).

Looming large in Rotherham and Mead's study is the fact that the current IEP process itself is so inherently open to error. Universal screening procedures to identify and remedy early learning

difficulties would greatly ameliorate concerns over false labeling, including the provision of scholarships to undeserving students. Implementation of universal screening would still require a parent willing to play the game to seek a label from the district, but every case of successful remediation would remove a student from the potential gray area and the potential pool of litigants. Anyone seeking to game the system would still be required to force a label onto their child over any objections from the district, with the district standing on much firmer ground with improved accuracy in identification. Finally, those choosing to exercise choice under a McKay Scholarship would be limited to the amount of funding already spent on their child in the public system, with no possibility of winning a "Cadillac placement" through the courts. In short, the reforms considered here would do little to increase the incentives for litigation, and would lower the potential payoff from lawsuits.

For example, Arizona already has a program for private school placements for special needs students. According to the Arizona Department of Education, 1,170 special education students were attending private schools at public expense as of December 1, 2001. These students were attending private schools either because their IEP committees had agreed to place them in private institutions, or as the result of a successful lawsuit against a school district for failure to provide free and appropriate public education under IDEA provisions. In either case, such

*A true "individualized education plan" for a disabled child should include input from the child's parents, not only about what the plan will be, but also about which service providers will execute the plan.*

placements are probably heavily skewed toward families who can afford legal counsel and outside evaluation expertise. The McKay Scholarship program equalizes opportunity by giving all dissatisfied parents the opportunity to choose a new provider for their children’s educational needs without complication.

Finally, any potential gaming activities of parents pale in comparison to those currently undertaken by school district officials. The vast majority of mislabeled children have been placed in special education not at the behest of parents, but rather at the initiative of school officials. Regardless of the myriad motivations (ethical or otherwise) for these placements, the system produces results best described as institutional racism. The current situation therefore represents a much greater injustice than anything that could result from the reforms discussed here.

A true “individualized education plan” for a disabled child should include input from the child’s parents, not only about what the plan will be, but also about which service providers will execute the plan. An individualized plan can be entirely meaningless if the school district does not provide the proper resources, staff, and effort called for in the plan. As a monopoly provider of services, public schools are often lacking in any or all of these things. The Manhattan Institute study demonstrates that when given choices, the parents of special needs students believe their children are much better served.

## **Conclusion: Strong Action Required to Fix Arizona Special Education**

Arizonans should vigorously pursue remedies to decrease the over-enrollment of students in special education. When the possible causes of misidentification—such as perverse financial incentives, the avoidance of standardized testing, the misuse of special education as remedial education, and segregationist impulses—are examined, it becomes clear that the problem is a deep-seated feature of public education in Arizona that has not been remedied through a regulatory approach. Instituting a program like the McKay Scholarship in Florida, which makes every disabled child in the state eligible to take the entirety of the funds spent on their education to a public or private school of their choice, would have two beneficial effects. First, Arizona’s disabled children would be much closer to enjoying the benefits of an “individualized education plan” by having the opportunity to choose the provider of their educational services. Second, public school administrators would have a powerful incentive to improve the accuracy of the disability assessment process, and to address the inadequacies of the regular education process that often lead to incorrect diagnoses. Public school officials commonly complain about not having enough money to educate special needs children, so it seems unlikely they could complain about parents taking their children and their (inadequate) funding elsewhere.

Three possible remedies have been suggested: changing the state's special education funding formula, instituting universal screening for the identification process, and creating a parental choice program for parents of children with disabilities. These options do not represent mutually exclusive courses. In fact, they should be implemented simultaneously.<sup>28</sup>

Consider the improvement such a system would represent. Today, the vast majority of special education students remain in public schools that are often unresponsive to their needs and desires. District budgets are strained by legal expenses of suits brought by dissatisfied parents who have the means to do so. A recent study described the current special education system as a complex maze in which districts spend more time filing paperwork to avoid lawsuits than providing services the children need.<sup>29</sup>

Today's system uses vague definitions for certain disabilities that are applied in a racially biased fashion. A system of universal screening would test all students at an early age and attempt to remediate reading deficiencies before they develop into conditions that can be easily mistaken for a disability.<sup>30</sup> Such a program of intervention could make a profound difference in the academic careers and lives of Arizona children. It could also save Arizona school districts millions of dollars in compliance costs, especially where children labeled as having a specific learning disability are concerned. Although a program of universal screening would require the

reallocation of district resources, the medical research strongly suggests that such reallocation would pay large dividends in the form of getting children off the special education track (which is inappropriate for many) and into general curriculum classrooms.

Finally, parents of children in public school special education programs deserve options when determining who will provide the educational services their children need. The current system focuses too much on the needs of service providers in a variety of ways. In the struggle to protect themselves from lawsuits, raise standardized test scores, and gain additional resources for the school system, school officials all too often lose sight of the interests of the children.

A program like Florida's McKay Scholarship Program would improve the bargaining position of parents with disabled children. Parents could ensure that their children are being properly served, or seek services elsewhere. School districts would undoubtedly become more responsive to the needs of special education children.

Regardless of what motivates school officials to inappropriately place students in special education—whether the mistaken attempt to use special education as a remedial program, standardized test gaming, financial incentives, segregationist impulses, or the bigotry of low expectations,—Arizona's public school students deserve much better. Something as profound as

*The current system focuses too much on the needs of service providers in a variety of ways. In the struggle to protect themselves from lawsuits, raise standardized test scores, and gain additional resources for the school system, school officials all too often lose sight of the interests of the children.*

*Something as profound as a disability label should only be made on the basis of solid scientific diagnosis. Parents should be clearly notified of their right to an outside evaluation, and parents with children receiving special education services should have as much choice as possible concerning who will provide the service.*

a disability label should only be made on the basis of solid scientific diagnosis. Parents should be clearly notified of their right to an outside evaluation, and parents with children receiving special education services should have as much choice as possible concerning who will provide the service. Such reforms would require profound changes in the operating procedures of many Arizona school districts, but Arizona's children—particularly Arizona's minority children—would benefit enormously.

At the time of this writing, Congress has yet to complete its ongoing reauthorization of the IDEA legislation. IDEA remains a landmark piece of civil rights legislation, effectively abolishing the formerly widespread practice by public schools of refusing to serve children with disabilities. In 1973, it was estimated that as many as one million students had been denied access to public schools due to disability.<sup>31</sup> Such discrimination offends basic notions of equality, and has deservedly been cast onto the ash-heap of history, where it must remain.

The problems surrounding the current body of special education practice—which include but are not limited to racially biased application, misdiagnosis of disabilities, enormous paperwork requirements and compliance costs, low levels of parental satisfaction, and huge costs for ambiguous educational gains—ultimately raise the serious question of whether states should draw up their own legislation. Should states govern the

education of children with disabilities in public schools, and withdraw from the federal IDEA program completely?

A recent study by the Cato Institute notes that state compliance costs greatly exceed the federal special education funds provided to states, and calls for states to withdraw from IDEA funding and mandates.<sup>32</sup> No state should consider withdrawing from IDEA without an extensive deliberative process to draw up alternative state legislation. These deliberations should be led by special education parents, special education advocacy groups, civil rights leaders, public and private school officials, legislators, nationally recognized special education policy experts, and others. No state should consider withdrawing from IDEA without the willingness to codify the anti-discrimination protections of IDEA into state law, and to back such provisions with more thorough enforcement than provided by the federal government. Public schools would continue to be subject to the federal government's Rehabilitation Act of 1973 regardless of IDEA participation, thus providing students with both federal and state law protection against discrimination.<sup>33</sup>

Under these conditions, it is possible to imagine state codes governing special education that would serve the interests of disabled students far better than current law and practice. A system emphasizing early detection and remediation of learning difficulties and parental options regarding service

provision could constitute a revolutionary improvement. It is hard to imagine, on the other hand, that an inclusive state-based effort—deserving of the politically crucial backing of special needs parents and groups—could create anything inferior to the current practice regarding the education of special needs children. Whether by piecemeal reforms, such as universal screening and choice, or a complete overhaul of the entire special education system, Arizona students deserve much better than what the system currently delivers.

## NOTES

1. Interview conducted by Matthew Ladner and Tom Jenny. Actual names not revealed in order to protect the confidentiality of the student and her mother.
2. See P. Robertson and M. Kushner, et al., "An update of Participation of Culturally and Linguistically Diverse Students in Special Education: The Need for a Research and Policy Agenda," *The Bilingual Special Education Perspective* 14 (1994): 3-9.
3. Dan Losen and Gary Orfield. *Racial Inequity in Special Education*. (Boston, Mass: Harvard University Press, 2002), <http://gseweb.harvard.edu/%7Ehepg/introduction.html>.
4. Matthew Ladner and Christopher Hammons, "Special But Unequal: Race and Special Education," in Chester Finn et al. (eds.) *Rethinking Special Education for a New Century* (Washington D.C.: Thomas B. Fordham Foundation, 2001): 85-111, [http://www.edexcellence.net/foundation/topic/topic.cfm?topic\\_id=15](http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15)
5. Matthew Ladner, "Race and Disability: Racial Bias in Arizona Special Education," *Goldwater Institute Policy Report* no. 178, March 31, 2003, <http://www.goldwaterinstitute.org/article.php/251.html>.
6. Matthew Ladner. "No Exit, No Voice: Hispanic Disability Rates in Arizona Schools." *Goldwater Institute Policy Brief*, October 23, 2003, <http://www.goldwaterinstitute.org/pdf/materials/363.pdf>.
7. Ladner, "Race and Disability," 2003.
8. Jay P. Greene and Greg Forster, "Effects of Funding Incentives on Special Education Enrollment," Manhattan Institute for Policy Research, December, 2002, [http://www.manhattaninstitute.org/html/cr\\_32.html](http://www.manhattaninstitute.org/html/cr_32.html).
9. Jay Greene, "The Myth of the Special Education Burden," *Education Week*, June 12, 2002.
10. Greene and Forster, "Effects of Funding Incentives," 2002.
11. Ladner, "Race and Disability," 2003.
12. The possibility of districts labeling minority students in reaction to state accountability exams remains speculative at this point and deserves further study.
13. Ladner, "Race and Disability," 2003.
14. Anyone wishing to examine these data for themselves can apply to the federal Office of Civil Rights in the United States Department of Education, as the author is prohibited from sharing the data by standard agreement with the Office of Civil Rights. The Office of Civil Rights can be contacted by email at [ocrdata@ed.gov](mailto:ocrdata@ed.gov).

15. See G. Reid Lyon, Jack M. Fletcher, Sally E. Shaywitz, Bennett A. Saywitz, Joseph K. Torgesen, Frank B. Wood, Anne Schulte, and Richard Olson, "Rethinking Learning Disabilities," in Chester Finn et al. (eds.) *Rethinking Special Education for a New Century for a New Century*. (Washington D.C.: Thomas B. Fordham Foundation, 2001): 259-288.
16. The Mental Retardation label is usually thought of as a relatively objective diagnosis. An IQ score of less than 70 qualifies someone as Mentally Retarded. The condition is diagnosed with a respected test and involves a clear cut-off point. Subjectivity, however, can be introduced into the process by test administration. For examples, students near the cut-off can be retested until they fall below the cutoff point. The diagnosis usually relies on a single score rather than an average.
17. The OCR data contains missing information for some schools, which were excluded from the analysis. Schools were included in this analysis for a given racial/ethnic group if there were 10 or more total students of the respective group, and if the school in question had students with the respective disability enrolled. The cases were chosen in this fashion to avoid including cases where an extremely small number of students in these respective ethnic groups where a single disability diagnosis would result in an extremely high percentage of students labeled as disabled. For example, a school with only two Hispanic children, one of whom has a disability label would register as having a Hispanic disability rate of 50 percent. Additionally, there are a number of schools which either have no students of particular ethnic racial groups at all, or else none enrolled in special education. Such schools were excluded from the analysis as well. The averages therefore represent statewide averages for those public schools enrolling students from the respective racial/ethnic groups in special education programs, with exclusions for missing data and small ethnic/racial sample sizes.
18. Ladner, "Race and Disability," 2003.
19. Minority family incomes are likely to be higher in Scottsdale than in Tucson, for example.
20. The formula for this calculation was as follows: (Predominantly white school average - Predominantly minority school average)/Predominantly minority school average = Average percentage higher or lower in predominantly white schools.
21. Patrick J. Wolf and Bryan Hassel, "Effectiveness and Accountability (Part 1): The Compliance Model," in Chester Finn et al. (eds.), *Rethinking Special Education for a New Century*, (Washington, D.C.: Thomas B. Fordham Foundation, 2001): 53-76.
22. The relevant sections of the Individuals with Disabilities Education Act are available at <http://www.edlaw.net/service/20us1418.html>.

23. Andrew J. Rotherham and Sara Mead, "Think Twice: Special Education Vouchers are not Alright," Progressive Policy Institute, June 25, 2003, [http://www.ppionline.org/ppi\\_ci.cfm?knlAreaID=110&subsecID=900030&contentID=251810](http://www.ppionline.org/ppi_ci.cfm?knlAreaID=110&subsecID=900030&contentID=251810).
24. Matthew Ladner, "Racial Bias in Pennsylvania Special Education." Commonwealth Foundation Policy Brief, February 2004, <http://www.commonwealthfoundation.org/education/nr20040211.shtml>.
25. Matthew Ladner, personal interview with Amanda M. VanDerHeyden. Supporting study, Amanda C. VanDerHeyden, Joseph C. Witt and Gale Naquin. "Development and Validation of a Process for Screening Referrals to Special Education" is available from the author at [avande@comcast.net](mailto:avande@comcast.net).
26. Jay P. Greene and Greg Forster, "Vouchers for Special Education Students: An Evaluation of Florida's McKay Scholarship Program," Manhattan Institute, June, 2003, [http://www.manhattaninstitute.org/cr\\_38.pdf](http://www.manhattaninstitute.org/cr_38.pdf).
27. Rotherham and Mead, "Think Twice," 2003.
28. Rotherham and Mead suggest that both moving to a neutral placement funding formula and establishing a per-student funding amount for a McKay Scholarship could be administratively cumbersome. For states already employing a per-pupil funding arraignment (including Arizona and 34 other states) however, it would be feasible to keep the current formulas for determining the value of individual McKay Scholarships while moving to a lump-sum approach for the funding of school districts. Children transferring under the McKay Program would have a value assigned to their voucher according to the severity of their disability, and state officials could deduct the appropriate amount from funds provided to of school district. See Rotherham and Mead, "Think Twice," 2003.
29. Marie Gryphon and David Salisbury. "Escaping IDEA: Freeing Parents, Teachers and Students through Deregulation and Choice," Cato Institute, July 2002, [www.cato.org/pubs/pas/pa444.pdf](http://www.cato.org/pubs/pas/pa444.pdf).
30. See G. Reid Lyon, Jack M. Fletcher, Sally E. Shaywitz, Bennett A. Saywitz, Joesph K. Torgesen, Frank B. Wood, Anne Schulte, and Richard Olson. "Rethinking Learning Disabilities," in Chester Finn et al. (eds.), *Rethinking Special Education for a New Century*, (Washington D.C.: Thomas B. Fordham Foundation, 2001): 259-288.
31. Hearings before the Select Subcommittee on Education of the Committee on Education and Labor, 93d Cong., 1st sess., 1973. Cited in Wade F. Horn and Douglas Tynan, "Time to Make Special Education 'Special' Again," in Chester E. Finn, Jr.,

Andrew J. Rotherham and Charles Hokanson (eds.) *Rethinking Special Education for a New Century*. Publication of the Thomas B. Fordham Foundation and the Progressive Policy Institute, [http://www.edexcellence.net/foundation/topic/topic.cfm?topic\\_id=15](http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15).

32. Gryphon and Salisbury, "Escaping IDEA" 2002.

33. Section 504 of the Rehabilitation Act of 1973 reads: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . 29 U.S.C. § 794(a)." John S. Allen of the University of Iowa College of Law reports that the intent of section 504 is to provide opportunities to disabled students equivalent to those enjoyed by the non-disabled, that the Rehabilitation Act of 1973 provides a broader protection for students with disabilities than IDEA, and that section 504 covers any child eligible for special education under IDEA. See John S. Allen "Section 504 of the Rehabilitation Act of 1973 in Preschool, Elementary, Secondary, and Post-Secondary Education," <http://www.uiowa.edu/info tech/Section504.htm>.

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