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Legal Issues Impacting Racially and Culturally Different Gifted Learners

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An ongoing controversy among educators and policy makers concerns whether educational leaders are doing all that they can to meet the educational rights of students who are gifted, particularly if they are Black and Hispanic. The United States has made relatively great strides in providing equal educational opportunities for minority students following *Brown v. Board of Education* (1954) and its progeny; students from economically deprived backgrounds under the Elementary and Secondary Education Act of 1965 (ESEA), reauthorized as the No Child Left Behind Act (NCLB); females under Title IX of the Education Amendments of 1972; and students with disabilities under the 1975 enactment of the Education for All Handicapped Children's Act, now the Individuals with Disabilities Education Act (IDEA). Yet, surprisingly little has been done to ensure the rights of America's children who are gifted.

A Nation at Risk: The Imperative for Educational Reform (National Commission on Excellence in Education, 1983) bemoaned that "over half of the population of gifted students do not match their tested ability with comparable achievement in school" (p. 8). The Commission asserted that most gifted students require a curriculum enriched and accelerated beyond the needs of other students of high ability. More than 30 years after *A Nation at Risk* was released, it is questionable whether educational leaders and policy makers have taken necessary and equitable steps to meet the needs of gifted children—too many of whom become bored, drop out, and/or fail to reach their full potential because they are not identified and/or are not sufficiently challenged by existing programming (Ford, 2010, 2013; National Association for Gifted Children, 2013a, 2013b).

Lack of challenge and eventual underachievement among gifted students is a serious problem of equity based on ability. Another related yet different equity issue pertains to the widespread and persistent underrepresentation of Black and Hispanic students in gifted education, as reflected in Table 1. The underrepresentation of Black and Hispanic students has been persistent throughout the history of gifted education. The percentage of underrepresentation hovers around 30%–45% each year for both groups of students (see Ford, 2013). More specifically, using the Civil Rights Data Collection for 2009, Black students comprised 16.7% of the total U.S. school population, but only 9.6% of gifted programs nationwide. Hispanic students comprised 22.3% of the nation's school population, but only 15.4% of gifted programs. Thus, they were underrepresented by 43% and 31% , respectively. No national progress is evident. Specifically, underrepresentation increased in 2011 for both groups. Black students comprised 19% of schools, but only 10% of gifted programs (almost 50% underrepresentation) and Hispanic students represented 25% of schools, but only 16% of gifted programs nationally (36% underrepresentation). Combined, these percentages mean that at least a half million Black and Hispanic students have not been identified as gifted (Ford, 2013).

In light of legal issues surrounding programming for students who are gifted and the underrepresentation prevalence for Black and Hispanic students, we divide this article into four major topic areas. We begin with an examination of the legislative history and status of programs for the gifted at the federal and state levels. Next, we review litigation on the rights of gifted students, with additional attention to those who are Black and Hispanic. Third, we reflect on providing appropriate and equitable programming for gifted racially and culturally different students. Fourth, we offer recommendations for practice by challenging educators and decision makers to recognize

Table 1
Demographics of Gifted Education for White, Hispanic, and Black Students in 2009

	Total	White	Hispanic	Black
Public School Enrollment	48,273,920 (54.9%)	28,522,956 (22.3%)	10,744,640 (16.7%)	8,061,521
Gifted Enrollment	3,209,670	2,088,233 (65.0%)	495,628 (15.4%)	318,522 (9.9%)
Underrepresentation		N/A	(-31%)	(-43%)

Note. Adapted from Office for Civil Rights, Civil Rights Data Collection (2009).

[1]Underrepresentation is calculated using the Relative Group Composition Formula where U is underrepresentation. U = 1 – [Composition (%) of Hispanic/Black students in gifted education) / Composition (%) of Hispanic/Black students in general education] * 100.

that children who are gifted and culturally different have unique needs that are not being met in most school systems.

STATUES ON GIFTED EDUCATION

Federal Legislation

The earliest federal program for the gifted appeared in 1931 when the United States Department of Education instituted a Section on Exceptional Children and Youth. However, like later federal and state initiatives, this program lacked specific legislative or fiscal authority even though it laid a foundation for later federal actions regarding the gifted. Following World War II, federal interest in the gifted reemerged when Congress enacted the National Science Foundation Act (1950), its first statute focusing attention on gifted students. The law's goal was to improve curricula while encouraging gifted students to seek careers in mathematics and the physical sciences.

In response to the Soviet Union's launch of the first artificial satellite named Sputnik, Congress enacted the National Defense Education Act of 1958 (NDEA). Although the NDEA was not adopted specifically to address the needs of gifted students, its emphasis on mathematics, science, and foreign languages, typically referred to as STEM today, was a precursor to later developments. The NDEA, combined with state responses, implicitly made gifted children the prime targets of curricular reforms designed to redress underachievement among students capable of success (NDEA, 1958).

Programs for the gifted waned under President Johnson's Great Society initiatives, especially the Elementary and Secondary Education Act (ESEA). The ESEA overshadowed the needs of the gifted because federal resources earmarked for them were diverted to other programs. Still, lobbying efforts on behalf of the gifted were rewarded when a bill introduced as a result of the White House Task Force on the Gifted and Talented was enacted as The Gifted and Talented Children's Education Assistance Act, part of the ESEA Amendments of 1969. This law offered the first federal statutory definition of the term *gifted*, called for the development of model initiatives, and made programs eligible for federal financial assistance under the ESEA.

During the 1970s, the federal government became more active in meeting the needs of the gifted. On October 6, 1971, Commissioner of Education Sidney Marland submitted his national assessment of programs for the gifted to Congress. The Marland Report (Marland, 1972) urged Congress to provide ongoing support for the development and maintenance of programs for gifted students.

Following the impetus of the Marland Report (Marland, 1972), Congress enacted another law on the gifted as part of the 1974 Amendments to the ESEA. The law created the Office of Gifted and Talented in the United States Office of Education while calling for the creation of a National Clearinghouse for the Gifted and Talented. The Act also made funds available to state and local education agencies for training, research, and projects for the gifted and authorized limited annual federal appropriations for programs. However, this law was repealed in 1978.

Progress appeared to be on the horizon when the Gifted and Talented Children's Education Act of 1978 became law. Unlike the Education for All Handicapped Children's Act, also known as Public Law 94-142, which was enacted 3 years earlier and was designed to place children with disabilities in fully inclusive educational settings, this Act was intended to provide separate programs for the gifted and granted financial aid to states to plan, develop, operate, and improve programs for gifted students. However, this legislation was repealed by the Omnibus Budget Reconciliation Act in 1981. This Act also closed the Office of Gifted and Talented, eliminated categorical federal funding, and combined authorizations for gifted education and 21 other programs into a single block grant that reduced funding by more than 40%. As a result, the federal government completely suspended its direct involvement in programs for gifted students during much of the 1980s.

The passage of the Jacob K. Javits Gifted and Talented Students Act in 1989 marked the culmination of the efforts of supporters of gifted education. This Act, which incorporated many of the recommendations of the 1972 Marland Report, reinstated, expanded, and updated earlier programs while offering priority funding for programs to serve gifted students who are economically disadvantaged, speak limited English, or have disabilities. The Javits Act, the only federal statute on gifted education, is now incorporated in the NCLB based on its definition on the language of the Marland Report. According to this law,

> The term "gifted and talented," when used with respect to students, children, or youth, means students, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services or activities not ordinarily provided by the school in order to fully develop those capabilities. (29 U.S.C. § 7810 (22))

The law still fails to address the needs of the students it purports to serve for three reasons. First, it does not mandate the creation of programs for gifted students. Second, although the law provides some resources, it does not offer sufficient assistance to programs. Third, the law does not include due process safeguards similar to those available under IDEA. Consequently, this law has been largely ignored in states not treating gifted education as a priority.

State Laws

The 2012–2013 *State of the States in Gifted Education: National Policy and Practice Data* report (National Association for Gifted Children [NAGC] & Council of State Directors of Programs for the Gifted [CSDPG], 2013) was based on responses from 42 states, the District of Columbia, and Guam. It revealed that 40 states define gifted students in statutes or regulations under a variety of rubrics such as "gifted," "gifted and talented," "gifted or talented," "talented and gifted," "gifted and/ or academically talented" (NAGC & CSDPG, 2013, p. 3). Even so, program offerings vary markedly. The report revealed that of the 32 jurisdictions or states operating under mandates

related to identifying and/or serving these children, 28 require identification and 26 direct local school boards to offer programs (NAGC & CSDPG, 2013, p. 14). Five states mandate identification but not services, while three require services but not identification (NAGC & CSDPG, 2013, p. 15).

Of the states included in this report, four reported that they provide full funding, 18 offer partial support, and eight fail to support programming for the gifted (NAGC & CSDPG, 2013, p. 7). Further, between 2010–2011 and 2012–2013, six states reduced funding for the gifted education and the 12 that increased it did so only slightly (NAGC & CSDPG, 2013, p. 7). Out of 36 responses received, officials in 27 jurisdictions reported that they provide funding for gifted services whether to local (25) or state-level (two) agencies. Respondents in four jurisdictions indicated that they spent more than $50 million, nine spent between $1 and $9 million, and three spent less than $1 million. Per-pupil expenditures in gifted programs ranged from a low of less than $5 to more than $2,200 for each student. Fourteen did not provide funding to local school boards (NAGC & CSDPG, 2013, p. 12).

Teachers of the gifted must have credentials in 17 states. Teachers of the gifted are obligated to receive annual professional development in only five jurisdictions (NAGC & CSDPG, 2013, p. 31). Thirty-two jurisdictions do not obligate local boards to have administrators for gifted programs, and of the 10 that do, only two require them to have specific preparation for working with this population of students (NAGC & CSDPG, 2013, p. 31).

Only Kentucky reported that it required teacher candidates to receive instruction on serving the gifted, albeit as part of a larger program for special education and diversity. Two jurisdictions require regular teachers to have "some" preparation for working with "special" populations—not necessarily gifted—and 24 provide varying levels of professional development. Moreover, only two states obligate administrators to have preparation on meeting the needs of the gifted students in their endorsement/certification and two have such a requirement for counselors (NAGC & CSDPG, 2013, p. 32).

Finally, as to accountability and effectiveness, 34 states do not publish annual data on gifted education, but of the 10 that do, eight were available online when this report went to press. Officials in 19 jurisdictions released indicators of giftedness, and 15 reported the numbers of children who were so identified in district report cards. Another eight jurisdictions made information available regarding the achievement and performance of these gifted students as a separate group on district report cards or as part of other reporting data whereas seven published this information separately. In addition, 26 states monitor and/or audit local programs for students who are gifted (NAGC & CSDPG, 2013, p. 17).

LITIGATION INVOLVING GIFTED STUDENTS

Absent express statutory language, the courts are reluctant to grant gifted children rights to programming exceeding what is available to general student populations. Pennsylvania has done more than any other jurisdiction with regard to the rights of gifted students.

In *Centennial School District v. Commonwealth, Department of Education* (1988), the Supreme Court of Pennsylvania affirmed that, pursuant to a commonwealth statute and regulations requiring Individualized Education Programs (IEP) for all gifted students, a child had a right to gifted education. The court held that "instruction to be offered need not 'maximize' the student's ability to benefit from an individualized education program" (*Centennial School District v. Commonwealth, Department of Education,* 1988, p. 791) but must be appropriate to a child's needs.

Later, an appellate court in Pennsylvania affirmed that a school board was required to provide an education sufficient to confer a benefit on a gifted student that was tailored to his or her unique needs pursuant to his or her IEP (*York Suburban School District v. S.P.*, 2005). More recently, another appellate panel clarified that the Pennsylvania statute did not obligate a school board to provide students with individual tutors or exclusive programs exceeding existing, regular, and special, curricular offerings (*Abington School District v. B.G.,* 2010). Earlier, appellate courts in Pennsylvania agreed that the commonwealth had to reimburse local school boards for costs associated with providing programming for the gifted (*Central York School District v. Commonwealth,* 1979) and provide transportation for students in nonpublic elementary schools who participated in a program for the gifted (*Woodland Hills High School District v. Commonwealth,* 1986).

Broadley v. Board of Education (1994) is more typical of the treatment afforded gifted children. The Supreme Court of Connecticut affirmed that the state constitution does not guarantee gifted students a right to specialized programming. The court added that the legislature's refusal to afford gifted students access to specialized programs did not violate their educational rights under the state constitution.

McFadden v. Board of Education for Illinois School District U-46 (2013) is the latest round of litigation in an 8-year-old class action suit over the educational rights of minority students, including those who are gifted, and children who are of limited English proficiency. *McFadden* also is part of a series of cases from Illinois concerning the rights of gifted students of color. The district ran two separate gifted programs in grades 4–6: one for White students and one for Hispanic students who has exited English Language Learner (ELL) programs. In *McFadden*, a judgment was reached on the merits of two of the four claims following a 27-day trial that was supplemented by post-trial stipulations of fact. In its analysis, a federal trial court began its rationale by laying out the four issues:

(1) Do the named plaintiffs have standing?
(2) Did the 2004 student assignment plan by defendant School District U–46 (the "District") discriminate against Minority Students by concentrating inferior mobile classrooms ("mobiles") at Minority Schools?
(3) Does the English Language Learners ("ELL") program established by the District violate the Equal Education Opportunity Act, 20 U.S.C. § 1701 *et. seq.*?

(4) Does the District's gifted program unlawfully discriminate against Minority Students? (p. 1)

The court answered the first and fourth questions in the affirmative while rejecting the second and third claims. As such, since the primary focus of this article is on the educational rights of minority students who are gifted, this section devotes the lion's share of its attention to the final part of the court's order, which focused on the gifted program.

The Court's Analysis on Gifted Programs

In *McFadden* (2013), the court pointed out that insofar as racially or ethnically segregated public schools are inherently suspect, they are subject to strict scrutiny. Consequently, the court held that the school board had the duty to demonstrate that the reasons for any racial classification are clearly identified and unquestionably legitimate—a standard it failed to meet regarding gifted programs.

Reviewing the nature of the gifted program, the court noted that children are tested in the second and third grades for elementary school programs that operate from the fourth through sixth grades. Further, the court identified two different programs. In the first, the mainstream "school within a school" (SWAS) program was offered in three schools. The second program, "Spanish English Transition," referred to as SET/SWAS, was developed for Hispanic students who were former ELL students, with classes taught in Spanish by bilingual gifted teachers; SET/SWAS was present in two schools with predominately minority student bodies. The curricula in both programs were the same according to the district, with the exception that SET/SWAS students were to be taught in English and Spanish.

Based on data presented on behalf of the school board, virtually all participants in the SET/SWAS programs were Hispanic students who completed ELL programs and were proficient enough to participate in English-only classes. In the district, Hispanic students who exited ELL program, regardless of whether they were gifted, were considered English proficient or no longer in need of language supports in Spanish. Yet, the plaintiffs' expert witness testified that few of the SET/SWAS Hispanic students participated in the regular SWAS program, that they interacted with students who are not gifted in noncore classes (such as physical education) but not with participants in the regular SWAS program, and that Hispanic students almost never transitioned into the regular SWAS middle school gifted program.

The court reported that SET/SWAS ended in grade 6. Yet, on the middle school level, the district offered only the SWAS program. The court was troubled by the fact that White students from SWAS in grades 4–6 were automatically placed in the middle school gifted SWAS program, while Hispanic students from SET/SWAS had to be retested for admission for this same program.

The court next rejected the school board's claim that it created the segregated programs to better serve the children because insofar as many of the Hispanic students lacked adequate skills in English to succeed in a gifted program, they would have benefitted from the SET/SWAS approach. The court responded that the school board failed to prove that the SET/SWAS program was sufficiently narrowly tailored to achieve a compelling governmental interest, commenting that it was the only district in the country offering such a segregated program.

Turning to data, the court pointed out that during the 2006–2007 school year, Hispanic students represented 43.8% of the district's elementary school population and that African Americans accounted for 6.3% of the student body, but only 2% of students in the SWAS program were Hispanic and less than 1% were African American. The court added that similarly low disparate rates of participation were present for the 2007–2009 school years and in the district's middle schools. The court remarked that although the school board expressed its disagreement with some of the methodologies used in presenting these data, it was clear that minority students were underrepresented in the SWAS program.

Explicitly relying on evidence from the plaintiffs' expert witness, the court agreed that even allowing for variances based on cultural differences and voluntary exclusions, the disproportionately low rate of minority participation resulted in a disparate impact. With only 2% of Hispanic students represented in the SWAS program, this was proof that the school board discriminated. Moreover, the court declared that children for whom English is a second language would acquire greater vocal proficiency by interacting with native speakers. The court thus ruled that placing most of the gifted Hispanic students in segregated classrooms due to their ethnicity deprived them of equal educational opportunities.

The court conceded that some African Americans who attended segregated schools in the South before *Brown v. Board of Education* (1954) were successful. Even so, the court rejected the school board's approach that the gifted programs, despite anecdotal evidence of the success of Hispanic students in the district, resulted in a serious disparate impact on these children—cutting them off from diverse learning opportunities that could have served as the gateway to gifted programs in middle and high schools. As evidence of lost opportunities, the court highlighted a story that the school board presented about one successful Hispanic student, who wondered how many of her peers, and even she, may have missed out on opportunities because they were placed in segregated rather than integrated settings with other students from their school community.

We end this analysis by turning to what the court identified as "the hotly contested issue of intent" (*McFadden*, 2013, p. 15). The court asserted that Illinois law did not require proof of discrimination, that disparate impact can be established without proof of a motive. Conceding that it was unable to uncover racial or cultural animosity by school officials, the court observed that they placed students in the segregated SET/SWAS placements based only on their cultural identities, an act of intentional discrimination. The court agreed with the plaintiffs that although the disparate impact created by the SET/SWAS program alone was inadequate to establish discriminatory

intent, it was strong evidence to this effect because officials knew of its impact but allowed it to continue. The court reasoned that the plaintiffs proved that the school board violated the Equal Protection Clauses of the Federal and Illinois Constitutions as well as the state's Civil Rights Act of the students who wished to participate in the gifted program. In its conclusion, the court ordered the parties to appear before it for further discussions on possible remedies. Neither party has sought further judicial review.

DISCUSSION

Relative to national trends, there are at least four important initial propositions to consider regarding gifted education legal issues and underrepesentation. First, most of the efforts to redress the status of gifted students generally and the underrepresentation of Black and Hispanic students specifically have been inadequate, resulting in perhaps the most segregated and elitist programs in U.S. public schools (Ford, 2013). Second, gifted education must not be used as a form of de facto segregation. By not being identified as gifted, Hispanic and Black students are being denied educational opportunities to develop their gifts and reach their potential. Third, no racial group has a monopoly on giftedness, intelligence, and academic ability, which counters the presence and pervasivness of underrepresentation. The fourth proposition is that giftedness is a social, cultural, economic, and even political construct. Hence, descriptions of giftedness combined with subjectivity and these forms of capital guide definitions, assessments, and perceptions of giftedness. This subjectivity contributes to segregated gifted education programs, leading up to what transpired in litigation, as noted above.

Accordingly, educational and legal professionals must examine their beliefs about the purposes of gifted education and the reasons for underrepresentation that can only be remedied by comprehensive, proactive, aggressive, and systematic efforts to recruit and retain Black and Hispanic students in gifted education. A key issue in remedying underrepresentation of these students involves identification or recruitment for participation in gifted programs. The first step is to focus on recruitment, a process that refers to screening, identifying, and placing students. Perceptions about culturally different students, combined with a lack of cultural understanding and competence among educators making these choices, greatly undermine efforts to recruit underrepresented students (Ford, 2011).

To be identified as gifted, students typically are subjected to screenings whereby they are administered tests and evaluated using checklists with predetermined criteria, such as cutoff scores. If students meet the initial screening requirements, they may be given additional tests and/or instruments, which are used to make final placement decisions. In most schools, entering the screening pool is based on teacher referrals. Despite decades of data demonstrating the ineffectiveness of this practice, it continues (Ford, Grantham, & Whiting, 2008). This approach is hindering the equitable screening of Hispanic and Black students because they are seldom referred by teachers for screening, as summarized by Ford et al.'s (2008) review of the literature on teacher referrals by students' race. More specifically, Hispanic and Black students may meet the criteria for gifted education but may be overlooked because their teachers have not referred them for screening. When this occurs, deficit-minded teachers (i.e., teachers who hold negative stereotypes and low expectations) may not refer these "minority" students.

Intuitively, it makes sense to use teacher referrals as part of the screening and decision-making processes. However, if not used carefully, teacher referrals frequently negatively and disproportionately affect Black and Hispanic students. Unfortunately, this reality has been borne out in a comprehensive review of the literature that demonstrated that every study on teacher referral for gifted education screening and placement revealed that teachers underrefer African American students more than any other group (Ford et al., 2008).

A significant hindrance in placing students who are gifted in appropriate educational settings involves test scores because they play a dominant role in assessment and placement even as concerns remain over racial and cultural bias. In a manner similar to the provisions of IDEA, which requires testing and evaluation materials and procedures to be selected and administered in a manner that is not racially or culturally biased (20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(3)(A)(i)), whereas students whose language or other mode of communication is not English need to be evaluated in their native language or other mode of communication (20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(3)(A)(ii))), testing for students who are gifted must be free of cultural and linguistic bias. Yet, just about all schools use intelligence and achievement tests to identify and label children. These tests measure verbal skills, abstract thinking, skills in mathematics, and other areas considered indicative of giftedness, intelligence, or achievement by laypersons and educators. These tests ignore skills and abilities that may be also valued by other cultures and groups such as creativity, interpersonal and intrapersonal skills, group problem-solving skills, tactic intelligence and resourcefulness, and more (Ford, 2013).

Monolithic definitions of giftedness (NAGC, 2013a) resulting in the adoption of one-dimensional, ethnocentric tests contribute significantly to racially homogeneous or segregated classes in a manner consistent with what occurred in *McFadden* (2013). This raises a concern related to the extensive use of cutoff scores on tests. Data indicate that Black and Hispanic students have mean/average tested IQ scores lower than White children; the same holds true for children who live in poverty (Naglieri & Ford, 2003). Definitions and tests must be more culturally inclusive.

Assessments and decisions must be made with the best interests of all students in mind, allowing the principle of "do no harm" to prevail. In this regard, few equitable opportunities exist when tests and instruments are one-dimensional, unimodal, and biased against underrepresented students (Castellano & Frazier, 2010).

RECOMMENDATIONS

In considering how to respond to the needs of gifted students, educational leaders should consider the following recommendations. First, it is important to acknowledge, as the Supreme Court did in *San Antonio Independent School District v. Rodriguez* (1973), that "education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected" (p. 35). Concern needs to begin at the national level due to the lack of action by individual states and districts. As with IDEA, if gifted students are to receive special programming designed to meet their unique needs, then advocates should encourage Congress to strengthen and expand existing federal legislation. In other words, although states should retain the option of providing greater services than federal law might dictate, absent national standards, it is unlikely many states will act independently. At a minimum, federal legislation should, in a manner similar to IDEA, mandate the identification of gifted students while adopting substantive and procedural safeguards (NAGC, 2013b), including the use of testing that is free from cultural bias, programming, and adequate financial support to states and local school boards.

Second, state legislatures and departments of education must increase their efforts to meet the needs of gifted students by taking interrelated actions. States should strengthen certification and/or licensing standards for educators of gifted students. In light of the generally poor level of support provided for programs for students who are gifted, state and local officials also should provide sufficient funding so that their educational needs are served adequately. State-level officials should raise performance expectations for serving gifted students by developing accountability standards for local school boards. Given the woeful lack of preparation of most educators in this regard, college and university officials should expand existing coursework and field experiences so that educators can have better exposure to gifted students and their needs. A great deal of this preparation must focus on increasing access to gifted classes for underrepresented groups, as well as how to serve such students in equitable ways. Thus, both gifted education and multicultural education training are necessary. If local educational leaders offer programs for the gifted that exceed state requirements, they should involve representatives of key constituencies in crafting policies, both when they are initially developed and when they are revised, because ensuring cooperation can be of invaluable assistance. At a minimum, committees, which should be racially and culturally diverse, ought to include school board members, board lawyers, administrators, teachers, staff, and parents. It might also be wise to include a student or graduate of the school to ensure student points of view on the quality and value of programming, especially as it may have helped to prepare individuals for higher education and/or life outside of school.

Third, if referral processes and forms ignore and discount differences and how giftedness manifests itself differently in various cultures, then children who are culturally diverse may receive low ratings that do not accurately capture their strengths, abilities, and potential. Because educators should be aware of how the core attributes of giftedness vary by culture (Castellano & Frasier, 2010), they should create referral and assessment processes that define and evaluate giftedness with each group's cultural attributes in mind, as illustrated by Ford (2011).

Fourth, data collection on all students who are being evaluated for giftedness must be multidimensional. As under IDEA, which forbids a single procedure can be the sole criterion for determining student eligibility or placement (20 U.S.C. § 1414(b)(2)(B))), a variety of data should be collected from an array of sources (Ford, 2013; National Association for Gifted Children, 2008). In this era of high-stakes testing, educators should err on the side of having "too much" information rather than too little to make informed decisions.

Given the extent of underrepresentation among Black and Hispanic students nationally, and given little evidence of progress, educators and policy makers must become more proactive about advocating for these students. The threat of litigation should not be the driving force; instead, the incentive to be equitable ought to be based on being responsive to students under our charge. Segregated schools and programs are harmful to all students.

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