

Senator Tom Harkin
United States Senate
731 Hart Building
Washington, DC 20510

September 28, 2001

Dear Senator Harkin:

On behalf of The Civil Rights Project at Harvard University (CRP), we are writing to counter misleading assertions and misrepresentations regarding independent research we commissioned depicting minority issues in special education. The studies we commissioned lend no support whatsoever to an argument that either guaranteeing or fully funding the Individuals With Disabilities Education Act would exacerbate the problems highlighted by our research, or that minority students would reap any benefit by limiting increases to federal special education expenditures. Use of our research to oppose federal special education funding guarantees or increases is a clear distortion of our intent and findings.

Our research points out serious civil rights problems in a limited number of special education programs. Specifically, we document both egregious overrepresentation of African-Americans alongside widespread underrepresentation of Asian/Pacific Islanders. Further, our research suggests that certain minority groups are at greater risk for receiving overly restrictive, inappropriate, or inadequate services. These civil rights problems need focused attention through serious civil rights enforcement, including, if necessary, temporary cutoffs of funding to individual districts treating children unfairly. But we believe appropriate treatment will require increased support for earlier treatment, better training, more careful screening, and alternative solutions to classroom problems.

In fact, one can logically infer from the independent research we commissioned that a substantial infusion of funds is needed to bolster federal enforcement to ensure proper IDEA implementation and protection of civil rights. The IDEA, as amended in 1997, requires state and federal oversight to redress significant racial disproportionality in identification and placement. But the available evidence suggests that these requirements have not been effectively or fully implemented. By increasing federal oversight and by encouraging states to intervene where appropriate, the federal government could help improve the quality of instruction, supports, and services received by minority students in both regular and special education.

The only CRP study that discusses restricting federal funds does so in the context of analyzing the viability of the Department of Education's Office for Special Education

Programs (OSEP) enforcement mechanisms for redressing racial disproportionality. In that study, Dr. Thomas Hehir, who directed OSEP for six years during the Clinton administration, argues forcefully for more frequent exercise of partial withholding by enforcement agents, narrowly targeted to leverage compliance by specific states or districts in certain areas. One of Dr. Hehir's major recommendations is that OSEP ratchet up its enforcement efforts without denying support to thousands of students through the wholesale withdrawal of federal funds. Likewise, federal policymakers should improve IDEA implementation and civil rights enforcement specifically for minority children without imposing limitations on federal special education increases that would negatively impact children with disabilities nationwide.

Furthermore, one study by Osher, Woodruff and Sims suggests that the failure to provide less intrusive early intervention and high quality services for African-American children exhibiting signs of emotional disturbance and trauma leads to overidentification in highly restrictive programs and involvement in our juvenile justice system as these students progress without effective supports and services. Another study depicts a national trend whereby minority students are more likely to be placed in highly restrictive placements compared to white students. There is widespread agreement among researchers that a major contributing factor to minority overidentification and placement in unnecessarily restrictive special education settings is the failure of teachers and administrators in regular education to provide effective instruction in reading and math and to effectively manage their regular classrooms. As a general matter, our research strongly suggests that both general and special education teachers and administrators need better training to deliver effective instruction in the least restrictive, most inclusive, environment appropriate.

Therefore, many minority students would be better served if schools improved the quality and effectiveness of training and intervention in the general education setting. Logically, meeting this need, along with the need for better data collection and reporting on racial and ethnic disparities, and enhanced civil rights enforcement, would require an infusion of special education funds in the short term, which could be expected to result in a net saving of education and juvenile justice expenditures in the long term.

We submit this letter to clarify any confusion about our research findings. If you have further questions, please feel free to contact Christopher Edley, Jr., Gary Orfield, or Daniel Losen, the CRP associate who served as our principal investigator for this research compilation.

Respectfully submitted,

Gary Orfield
Co-Director

Daniel J. Losen
Legal Research &
Advocacy Assoc.

Christopher Edley, Jr.
Co-Director