

Inequities and Discrimination in Gifted Education:

Why Hispanic and Black Students are Under-Represented and the Case of District U-46

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Gifted programs have existed in the U.S. for several decades; they were developed to ensure that such advanced students were not just challenged, but also receiving an appropriate education. One rationale is that under-challenged and, thus, under-educated students may become underachievers and otherwise fail to contribute their gifts, talents, and creativity to society. Whether one is an advocate for gifted education or not, it cannot be denied that maximizing the intellectual, academic, and creative abilities of students is a worthy educational, social, and cultural goal.

Racial inequities are all too common in gifted education. One is hard pressed in fact to find a school district where Black students and Hispanic students are not under-represented. With approximately 15,000 school districts, finding equitable gifted programs is like looking for a needle in the haystack - not because of the number of school districts but due to the miniscule number (or percentage) of equitable gifted programs.

The magnitude of Black and Hispanic students' poor participation in gifted education is staggering, especially when one calculates the number of these students yearly whose gifts and talents have been denied. A look at just one year is quite telling. Hispanic students comprise 25% of public school districts but only 16% of gifted programs; they are

under-represented by 36%. Even worse, Black students are under-represented by 48% -- they comprise 19% of schools but only 10% of gifted programs (Civil Rights Data Collection, 2012). Combined, at least half a million Hispanic and Black students are being denied the short-term and long-term educational benefits of gifted services afforded White and Asian students. The probability of missing so many Hispanic and Black students not being enrolled in gifted programs is statistically impossible; is not by chance. It is my personal and professional conclusion that both intentional and unintentional discrimination are the backbone or cornerstone of segregation in gifted education. In terms of segregated placement, Black and Hispanic students rarely attend classes with gifted White students. Regarding segregation in numbers, too few of these students are given the opportunity to be identified as gifted.

The Role of Prejudice and Discrimination in Under-Representation

Prejudice and discrimination permeate all aspect of gifted education screening, labeling, and placement. The sheer magnitude and pervasiveness of under-representation indicates that prejudice and discrimination are at work. In the majority of school districts, access to gifted education begins with teacher referrals followed by testing. White teachers make up 85% of the teaching force nationally (Condition of Education, 2013). Deficit thinking (biases, stereotypes, low expectations) by this majority White teaching profession contributes to under-referrals of Black and Hispanic students for gifted education programs (Ford, 2013a; Ford, Grantham, & Whiting, 2008). Should Black and Hispanic students be referred, again, this is rare, and then testing becomes the second barrier. More often than not, school personnel select tests that favor White students and, thus, close doors to gifted education for Hispanic and Black students.

It is no wonder that gifted education has come to the attention of the Office for Civil Rights, Department of Justice, and the Courts for possible violation of civil rights laws. Several districts are under a consent decree to reduce and/or eliminate the underrepresentation of these two groups in gifted programs. In the next section, I describe the most recent court case where a school district (U-46 in Elgin, IL) was found to be guilty of *intentional* discrimination in their gifted programs for two reasons: (1) the District ran two segregated gifted programs in grades 4 to 6 – one for White students and one for former ELL Hispanic students and (2) the District's policies, procedures, and instruments were discriminatory against Hispanic and Black students.

Discrimination in Gifted Education: U-46 Found Guilty as Charged

To eliminate barriers to gifted education, litigation is often the last and/or best option. The United States District Court case regarding U-46's segregated services for gifted Hispanic students is the court case of the century regarding gifted education segregation -- just as *Brown v. Board of Education* (1954) is for all of education.

The Court findings offer gifted education an unprecedented opportunity to underscore and act upon programming, policy, and testing approaches that are fair, non-discriminatory, equitable, and hence support the success of all gifted students. The court consent is available at

http://www.maldef.org/news/releases/maldef_u46_discrimination_case/.

District U-46 is located in Elgin, Illinois and serves approximately 40,000 students. Hispanic and White students often represent the same percentage of students (40-46% each), depending on the school year. Black students comprise 7-8% of the district. Hispanic students in U-46 are not homogeneous in terms of language - some are English

only speakers, some have exited ELL (English Language Learner) services, and some are Spanish speakers only (20%). This focus on language proficiency is important. Hispanic students who were born in the U.S. and/or speak English only, and who exit ELL services (are bilingual and/or English proficient), their under-representation should not be an issue.

In July 2013, Judge Robert Gettleman issued a decision holding that District U-46 *intentionally* discriminated against Hispanic students in their gifted programs (placement), and found problems with policies and instruments for screening and identification for Hispanic and Black students. To understand the gravity of the ruling, the court case must be dissected in at least two parts: (1) programming/placement and (2) policies, procedures, and instruments.

Racially Segregated Gifted Programs: Hispanic and White Students.

The District operated two separate gifted programs in grades 4-6 SWAS (School Within A School) and was comprised almost exclusively of White students (97%); the rest were Hispanic (2%) and Black (1%). SET/SWAS (Spanish English Transition School Within A School) contained only Hispanic students who had *exited* ELL classes (they were bilingual and/or English proficient). Note that SET/SWAS was not designed for Hispanic students who were native English speaker; nor was it designed for Black students. White and Hispanic gifted students were housed in different school buildings and never attended classes or activities together. What was the District's rationale for SET/SWAS?

The District defended the SET/SWAS program by arguing that, although the English skills of students placed in that program (most all of whom had passed through the District's ELL program satisfactorily or were otherwise

sufficiently English proficient) were enough to participate in the regular classrooms taught in English, those students were not proficient enough in English to participate in English-only classrooms operating at the advanced academic levels of the mainstream SWAS program. Thus, according to the District, SET/SWAS, which is taught in both English and Spanish, allowed these students to acquire English skills while providing them with a curriculum designed for gifted students (Gettleman, pp. 28-29).

Judge Gettleman concluded otherwise – these Hispanic gifted students who had *exited* ELL services were capable of attending classes with White gifted students -- and the bilingual gifted teachers in SET/SWAS could and should have been assigned to SWAS in order to support the gifted Hispanic students. The Court's decision renewed the *Brown v. Board of Education* (1954) principle that 'separate is inherently unequal'.

... The court finds the District's method of identifying gifted Minority Students was flawed and resulted in an obvious disparate impact on those students by separating them from their gifted White peers.... By singling out most[ly] all Hispanic students for the segregated SET/SWAS program, the District deprived these children of that educational opportunity based on their ethnicity (p. 27).

SET/SWAS ends at grade 6, resulting in one gifted program at middle school (SWAS). Thus, the cycle of under-representation continued in middle school for these former ELL Hispanic students.

Discrimination and Segregation by the Numbers:

Policies, Procedures, and Instruments

In addition to physically segregated programs intentionally based on race (with language used as the excuse by District U-46, the Court found that policies, procedures and instruments adopted to screen and identify gifted students resulted in a “serious disparate impact” on minority students – Hispanic and Black students for SWAS. Discrimination was found regarding:

- (a) Tests selected and used for screening and for identification – traditional tests were used rather than including non-verbal test or subscale;
- (b) Designated cutoff scores for screening and identification – set at level to ensure Hispanic and Black students would be eliminated, not included;
- (c) Use of both verbal and math scores at arbitrary designated levels for screening and for identification – using one subscale would have increased access for Hispanic and Black students;
- (d) Use of weighted matrix, as well as content and criteria in weighted matrices that favored achievement and traditional measures – weights and content of matrix favored White students;
- (e) No reliance on a nonverbal test (Naglieri Nonverbal Ability Test) for admission to SWAS even though NNAT was effective for SET-SWAS.
- (f) Re-testing Hispanic students in SET-SWAS for middle school gifted program (SWAS) – White students were not re-tested.
- (g) Timing of testing – testing was too close to summer, which favored White students who are less affected by summer loss;
- (h) Use of parental referrals – parental referrals favor White families and disadvantage Hispanic and Black families who are less likely to be aware of gifted education opportunities,

who are not familiar with policies, procedures, and forms, and who have less social and cultural capital; and

(i) Use of teacher referrals – teachers seldom refer Hispanic students and rarely refer Black students for gifted education; teachers over-refer White students.

Learning From Gifted Education Discrimination in U-46

“... one can only wonder how many other highly talented and gifted Hispanic children were educated in an unnecessarily segregated setting rather than integrated with the full range of children in the District” (Gettleman, p. 30).

Discrimination and segregation have no place in school settings and gifted education is not exempt from ensuring that Black and Hispanic have equitable access to gifted education. The court case of *McFadden v. Board of Education for Illinois School District U-46* represents a clarion call to all educators to legally (and ethically) fulfill the promise and intent of *Brown v. Board of Education* (1954): Segregated programs are inherently unequal.

Discrimination has no place in the field of education. Our schools must live up to their promise and mission to advocate for all gifted students. A non-negotiable part of this goal consists of examining and eliminating all barriers that Hispanic and Black students' access to gifted education. Racially segregated gifted programs due to having separate programs and adhering to discriminatory policies, procedures, and instruments must be eliminated. If not, we have no choice but to seek legal support to force districts uphold civil rights laws.

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