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AUTHOR Jackson, John H.
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ABSTRACT

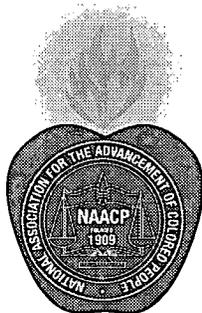
This paper seeks to guarantee that all preK-college students are provided an equal opportunity for a world-class education, noting that ultimately, success must be measured by student achievement and recommending that all educational agencies partner with community agents to develop and implement strategies to remove racial disparities and improve the quality of education. The paper outlines areas in which the NAACP has identified consistent racial disparities, requesting that each agency create a Five-Year Educational Equity Partnership Plan for closing racial disparities in achievement by at least 50 percent. For K-12 education, the paper examines increasing resource equity, improving teacher quality, increasing access to early childhood programs, increasing access to a college-bound curriculum, creating smaller class sizes, closing the digital divide, high stakes testing, reducing the dropout rate, increasing parental involvement, special education and the overrepresentation and underservicing of minority children, eliminating racial disparities in suspension and expulsion, and resegregation trends. For higher education, it examines college preparation, college recruitment and admissions, college affordability and financial aid, faculty diversity, and retention and graduation. Recommendations are presented in each area. (SM)

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ED 474 666

NAACP

Call For Action In Education



NAACP EDUCATION DEPARTMENT
Rekindling the Fire for Excellence in Education

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
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J. Jackson
NAACP

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Introduction

In the 1954 landmark *Brown v. Board of Education* decision,¹ the NAACP, through its attorneys—including Thurgood Marshall, played a pivotal role in persuading the U.S. Supreme Court to affirm the goal of equality of educational opportunity for all children. Nearly fifty years after the *Brown* decision, the Association recognizes that severe racial inequities still persist in many of our nation’s schools. As “Figure 1” indicates, there are clear and consistent racial disparities in the annual number of minority students suspended from school, overrepresented among students with mental retardation in special education.² These and other data show that where the educational benefits of a resource are clear — such as high-quality teachers, smaller class sizes, high-quality curriculum materials, effective early childhood programs, access to advanced courses, and entrance into the best college — minority students, especially black and Latino students, are consistently resource-deprived in comparison to white students.

The *Brown* decision embodied in our law the fundamental insight that separate is never equal. The fact that the educational achievement gap is growing in an age of pronounced school resegregation highlights the unfulfilled promise of *Brown*. Although this *Call for Action* includes a demand for resource equity for minority students, the NAACP remains a dependable ally in the fight for diversity and the desegregation of our nation’s schools.

Educational agencies across the nation have proclaimed that their goal is to “Leave No Child Behind,” but many of these agencies lack the strategic plans and community support to reach their goal. The facts are clear: the persistent failure of schools to provide equality of opportunity for all students is having a devastating impact on communities of color and the future of our nation. The adverse impact of these inequities is long-term and is reflected in racial disparities not only in education but in future employment, poverty,³ and incarceration rates.⁴

These gross disparities in educational quality and achievement demonstrate the need for federal, state, and local educational agencies to partner with community agents. Together, these partners must develop and implement strategies to remove racial disparities and improve the quality of education in the district, state, and country.



Conclusion

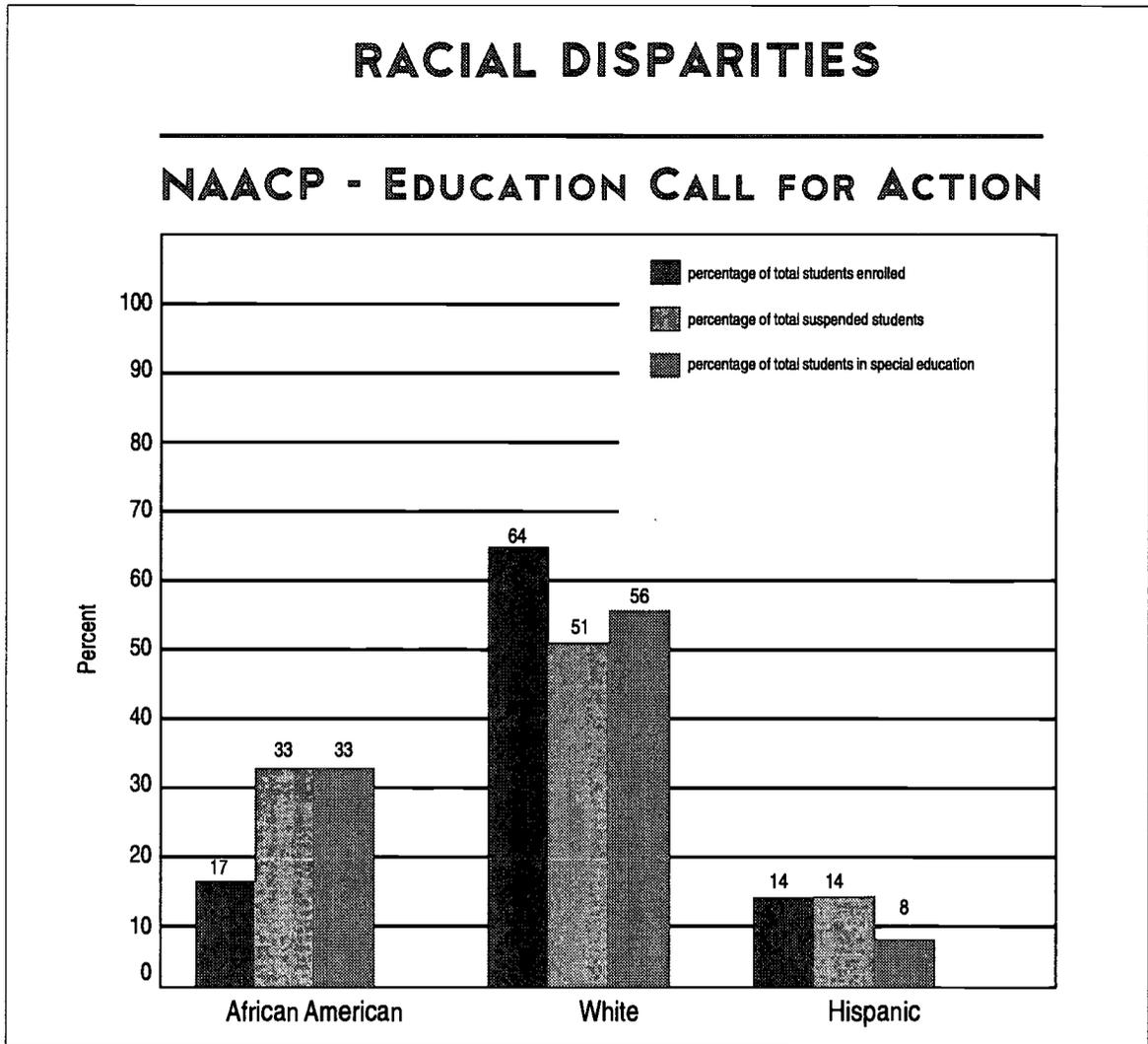
This *Call for Action* seeks to guarantee that all students are provided an equal opportunity for a world-class education. Ultimately, however, we must measure success not by the inputs and efforts, but by the achievement of our students. Parents, taxpayers, educators, and elected officials must judge all of the efforts described in this document—and in the many policy pronouncements of legislatures and regulation writers, by whether we succeed in closing the gaps in achievement, which separate the races and, inevitably, our society.

The NAACP recognizes that there are easy explanations for the circumstances of minority children, some say, found in their poverty, their families, their community, their culture or even their genes. These accounts stretch from mere intuitions, to rigorous social science, to rank racism. To confront this crisis successfully, we must insist on actions that lead towards progress and equity.

In several areas, we have called upon education agencies to formulate detailed Five-Year Plans that will include a strategy for accomplishing a set of goals and measurable benchmarks so that they and the community will know whether the plan is being implemented. All of this is a means to an end. These various plans and strategies must be integrated into an ambitious vision. That vision goes beyond ensuring the formal equality of opportunity that demands, for example, textbooks, able teachers and early childhood enrichment. Our vision is for *excellence in education*, so all children will *in fact* develop their God-given potential.



FIGURE 1



Source: OCR 1997 Elementary and Secondary School Compliance Report: Projected Values for the Nation (1999).

Consequently, this document outlines the areas in which the NAACP has identified consistent racial disparities. The NAACP is submitting this document as a Call for Action and requests that by May 10, 2002 your agency take the following steps:

- In consultation with the community, develop and submit to the NAACP a Five-Year Educational Equity Partnership Plan for closing the racial disparities in achievement by at least 50% over the next five years.
- The Five-Year Plan should include an agreed upon method for measuring achievement. That method should build on the state's assessment system required under federal law, but should include additional measures along dimensions reflected in this Call for Action. For example, the plan should include measures related to graduation rates, retention rates, etc.



- The Five-Year Plan should include both a comprehensive system for measuring progress in closing the gap, and specific forms of corrective action that the Department, state, or district will undertake in a timely way to get back on track to achieve the plan's goals.
- The requested Five-Year Plan should also identify the resources that your educational agency plans to dedicate to the initiative and outline the community support and initiatives that would assist you in implementing your plan.

The NAACP recognizes that putting an end to egregious racial disparities will require a concerted effort among school policymakers, administrators, parents, and community groups. We strongly urge you to take action now and collaborate with the NAACP as we engage educational agencies throughout America in a local, state and national campaign to eliminate substantial racial disparities and to close the achievement gap.⁹ Again, please submit all plans and steps to the NAACP by May 10, 2002. Thank you in advance for your cooperation.



NAACP

Call For Action In

Elementary and Secondary Education

(Pre-K – 12)

SECTION I: INCREASING RESOURCE EQUITY

Adequate resources are an essential element in the educational process. Consequently, the failure to provide adequate resources is a denial of the opportunity to learn.⁵ These inequalities, however, are found at the district, state, and federal level.⁶ Resource inequalities often follow race and class divisions between districts, and often follow patterns of neighborhood segregation within diverse school districts.

Inequalities include gross disparities in:

- Staffing, including the numbers of certified and experienced teachers;
- The quality of school facilities;
- Instructional supports such as the quantity and quality of textbooks, curriculum materials, science equipment, and
- Programs, including access to the most challenging courses.⁷

Many of the resource inequities above are severe and have resulted from persistent patterns of unequal resource distribution over many years, in ways that would have violated federal or state law had there been effective enforcement available. Furthermore, resource inequities often follow race and class divisions between districts, and often follow patterns of neighborhood segregation within diverse school districts. Naturally, inequities in school finance, including those that are apparent after adjusting for demographic cost differentials, are of grave concern as well.⁸

Title I of the Elementary and Secondary Education Act (ESEA) provides an important supplemental resource for addressing the problems of socio-economically disadvantaged children.⁹ Compared to most state and local education aid, these federal funds are more targeted to supporting impoverished children.¹⁰ Federal, state, and local educational agencies must address the persistent resource inequities in our nation's schools.

Recommendations

- In an effort to ensure state, interdistrict, and intradistrict resource equity, federal, state, and local educational agencies should develop mechanisms to track and publicly report the distribution of resources, at a minimum, in the areas summarized above.¹¹ Sound educational policy warrants that schools with relatively higher populations of poor and minority students provide those students with sufficient educational opportunities to perform on par with white students and students in wealthier majority districts.



- Current state resource distribution mechanisms should be adjusted to account for the higher relative costs that city schools must incur to maintain adequate facilities, retain effective teachers, and educate a higher percentage of “at risk” youth. These cost differentials should be reported publicly and should accompany state and local school budget reports.
- Preceding decades of unequal and unjust expenditures must be reflected in current state and local resource allocations. States and local districts should publicly acknowledge where patterns of unequal resource distribution within a state or school district have existed for many years and will need to be changed. Interdistrict and intradistrict funding formulas must be designed to remedy the unfair funding disparities of the past.¹²
- Where resource inequities exist, a Five-Year Plan should identify the size of each gap and set yearly goals for closing each gap incrementally for a total reduction of at least 50% over the life of the plan. The plan should detail how current patterns of distribution will be changed to achieve the goals set out by the educational agency.
- Where states have been approved for greater flexibility from the federal government’s Title I (ESEA) requirements, there must be mechanisms put into place at the state and local level to target the highest-poverty schools, as the neediest schools must continue to receive their fair share of Title I funds.¹³
- The work toward greater resource equity should be measured by academic outcomes for minority children. State and local educational agencies should come into full compliance with the existing public reporting laws and regulations, and, where there are new reporting and adequate yearly progress provisions, should strive for compliance within six months of enactment.¹⁴



SECTION II: IMPROVING TEACHER QUALITY

The consensus among education researchers is that teacher quality is the single most important determinant of academic success.¹⁵ The evidence shows, for example, that students whose teachers have been trained in their subjects perform better than students whose teachers lack subject-matter preparation.¹⁶ “[S]tudents who experience poor teaching year after year probably never recover from the learning deficit this imposes on them.”¹⁷

High-poverty schools, often found in high-minority school districts,¹⁸ have the least experienced teachers, the highest percentage of “out of field teachers,” the highest teacher mobility rates, and the greatest incidence of teachers who leave the profession.¹⁹ Evidence also suggests that low-income students are least likely to have teachers who use classroom methods found by research to be effective.²⁰ Equally important, a teacher’s capabilities and motivation can be undermined by a variety of conditions common to high poverty schools, including inadequate facilities and learning resources and excessive student-to-teacher ratios.²¹

Moreover, America’s schools are suffering from a critical shortage of minority teachers. According to the U.S. Department of Commerce, about one-third of public school students are members of racial or ethnic minority groups, but minority teachers make up only 13.5% of the workforce.²² In fact, 42% of the nation’s public schools report having no minority teachers at all.²³ Furthermore, the National Education Association predicts that the number of minority teachers will shrink to 5% in the early part of this century, even as minority enrollment grows to over 50% of the student population.²⁴ The problem is particularly acute in low-income and urban areas, where minority students are making up an increasing proportion of the most high-risk students.²⁵ Minorities make up 69% of total enrollment in urban school districts, but only 36% of the teaching force.²⁶ Improving teacher quality is an essential element of closing the achievement gap.

Recommendations

Teacher Quality Recommendations:

- Federal, state, and local educational agencies should set forth a Five-Year Plan to intensify their efforts to attract well qualified teachers to high poverty, underachieving schools with clear benchmarks for increasing the numbers of experienced teachers and decreasing the attrition of newer teachers. In particular, states and districts should provide effective incentives to retain experienced teachers who have demonstrated their talents and can mentor new inductees.
- Federal, state and local educational agencies should set forth annual benchmarks for teacher certifications held and those earned by assistants as a basis for evaluating the efficacy of strategies and supports to help uncertified teachers in the system become certified while increasing the number of new teachers holding certification.
- Federal, state and local educational agencies should make strategic use of stronger financial and professional incentives to attract and keep effective teachers, especially in schools that have large numbers of minority students. Federal and state educational agencies should establish loan forgiveness programs for college graduates with teaching degrees who agree to teach in high-poverty schools for a certain number of years.
- States and districts should provide financial incentives for experienced teachers who have demonstrated teaching excellence.



- Federal, state, and local educational agencies should take strategic steps to improve the preparation, training/professional development and administrative mechanisms that support effective teaching, including better preparation to teach in multicultural settings.²⁷ To ensure that teachers are well prepared, states should require that all high school teachers have at least 30 credits or a major in the subject area for which they are licensed. States should also encourage extensive student teaching experience as part of teacher training, especially in high-poverty and high-minority districts.
- Federal, state, and local educational agencies should take strategic steps to require that well-qualified certified teachers be in charge of student learning:²⁸ As part of their plan, state and local school authorities should report to the public the percentages of teachers who are certified in their field.

Workforce Diversity Recommendations:

- Federal, state, and local educational agencies should take strategic steps to ensure the validity of teacher tests, in keeping with standards of the assessment and psychometric professions. High-stakes decisions concerning a teacher's entry or longevity in the profession should not be made solely on the basis of test scores, but should reflect a judgment related to a full range of relevant assessments and aspects of performance. Agencies should create a plan with goals to assure training for an appropriate supply of minority teachers.
- Federal, state, and local educational agencies should provide incentives for public and private teaching colleges to attract a more diverse group of professors and teacher trainers.²⁹
- Institutions engaged in teacher and administrative training should provide greater ongoing supports for minority candidates early in their teaching careers, when the the highest rates of teacher attrition occur.³⁰



SECTION III: INCREASING ACCESS TO EARLY CHILDHOOD PROGRAMS

Effective early childhood programs are widely acknowledged as critical to improving learning outcomes. Research shows that high-quality early childhood education is a key predictor of a child's future educational achievement and emotional development.³¹ Many of our nation's children often start kindergarten achieving far below their potential. By the time these children reach upper elementary grades these deficiencies are quite extreme.³²

Research suggests that large learning gaps often exist among children when they come to school and that those gaps often persist through high school. Research also indicates that students who are poor and attend urban school districts in disproportionately high numbers either do not receive the care they need or receive a much lower quality of care than other students.³³ Moreover, the disparities in the qualifications of K-12 teachers in high poverty settings compared to wealthier settings also exist in the area of early childhood education reform.

The lack of quality early childhood care is more common in low-income urban areas.³⁴ A related problem is that children in urban areas do not have access to the limited amount of quality care that *does* exist. Full-day early childhood programs cost \$4,000 to \$10,000 per year — at least as much as college tuition at a public university.³⁵ The special impact on minorities is driven in part by poverty.³⁶ The majority of children living in poverty are minorities.³⁷ Even though some childhood care is available for these children, funding is severely limited. Currently, no state serves all families who meet the federal eligibility guidelines. Nationally, only 10% of eligible children who need help are getting any assistance.³⁸

Recommendations

- Federal and state educational agencies should substantially increase early childhood resources in poor and minority communities. As funding for early childhood programs is increased, great care must be taken to ensure that proven and effective programs are put into place and that infusions of support to existing programs focus on improving teacher and program quality.
- Federal, state, and local educational agencies should work with NAACP and other community organizations to systematically evaluate and expand both minority access to early childhood programs, and the efficacy of such programs as gauged by measurable outcomes for children.

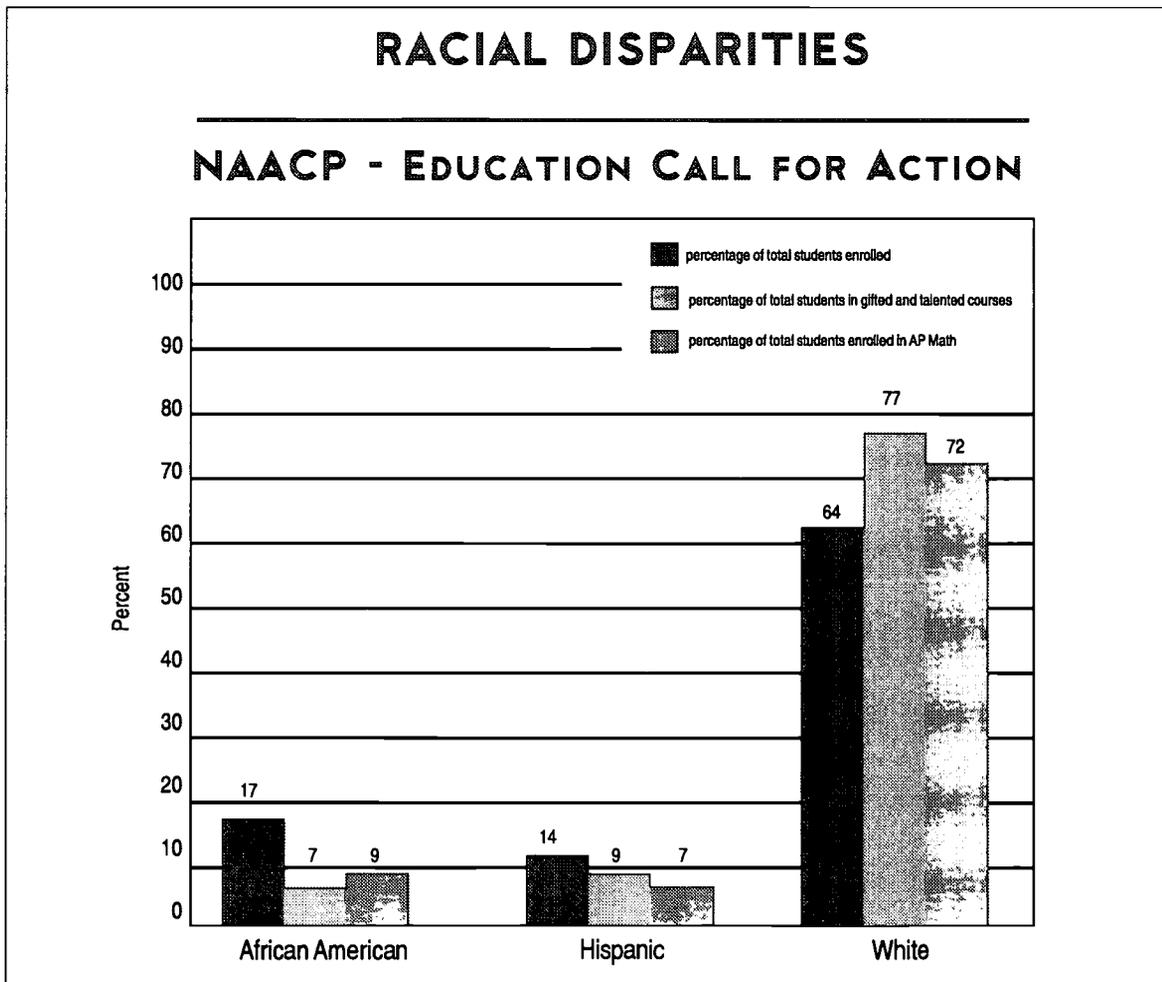


SECTION IV: INCREASING ACCESS TO A COLLEGE-BOUND CURRICULUM

A growing body of research reveals class and racial disparities in students' access to challenging curricula (e.g., algebra, laboratory sciences, and advanced placement courses). In many inner city schools, few or none of the Advanced Placement (AP) courses needed to compete for admission into the more competitive colleges are offered.³⁹ Many college admissions review boards compound this denial of opportunity in high schools by providing extra points to the applications of students who have taken AP courses. Yet, even when these courses are offered in high school, students of color are excluded, even when they meet the criteria.⁴⁰

Federal law requires that all students are held to the same standards and have equal educational opportunities to meet these standards.⁴¹ Moreover, a growing body of research demonstrates that students learn more, and learning is distributed more equitably, when the school curriculum consists of largely academic courses with few low-level courses.⁴² States and districts that receive Title I funds pursuant to the Elementary and Secondary Education Act violate their legal duty if teachers or school authorities communicate lowered expectations for college enrollment and academic achievement by limiting access to advanced coursework.⁴³ This is the most dramatic form of tracking and steering, in which an ineffective "general," "technical," or "vocational" curricula are substituted for academically rich coursework that prepares students for college or better-paying jobs.⁴⁴

FIGURE 2



Source: OCR 1997 Elementary and Secondary School Compliance Report: Projected Values for the Nation (1999).

Recommendations

- Federal, state, and local educational agencies' Five-Year Equity Plans should describe the existing racial disparity in participation in advanced and challenging coursework, including achievement gaps as measured by AP scores disaggregated by race. Where disparities are substantial, states and districts should set a five-year goal of reducing the disparity by at least one-half with measurable and realistic interim goals.
- Federal, state, and local educational agencies should address the serious shortfall of academic training in many high-minority schools. Counselors and teachers for students in grades 7-10 should encourage all students to take challenging courses and should identify critical academic programming decisions that hold the potential of foreclosing opportunities for high school and beyond.
- Prerequisites for advanced level courses should be kept to a minimum and eliminated in many instances. State and local educational agencies should initiate de-tracking and other measures that improve access for all students.⁴⁵ If prerequisites are necessary, schools should intensify efforts to inform all parents when a course selection will foreclose educational opportunities in subsequent years and should demonstrate that this message has been disseminated effectively to parents.
- Federal, state, and local educational agencies should provide financial and technical support to ensure that all students have equitable access to challenging AP and advanced-level curricula.
- Districts should collect and analyze race and ethnicity data on AP and Gifted and Talented enrollment, and report the data to teachers, administrators, parents, and the community at large. Where disparities exist, school authorities should redouble their efforts to encourage minority students to participate, and should provide needed supports so that the students can participate successfully.
- Where significant disparities exist within schools, district level authorities should examine school policies and practices, including tracking, rigid gate-keeping prerequisites and tests in middle school, and race- and class-based differential treatment reflected in teacher referrals and in academic counseling. Authorities must then intervene immediately and decisively.
- Federal, state, and local educational agencies should devote more resources to increasing the numbers of enrolled eighth graders who can make a successful transition to high school and eventually enter college. States should provide districts with technical support and financial incentives to end practices such as educating large numbers of poor and minority children in low academic (non-college bound) tracks.
- Federal and state civil rights agencies should review access to advanced courses and take measures to ensure equity in access to these programs.⁴⁶



SECTION V: CREATING SMALLER CLASS SIZES

Research indicates that reducing class size can reap educational gains for the most economically disadvantaged students.⁴⁷ Notably, resulting achievement gains are largest for black students and for those receiving free lunches.⁴⁸ Research also indicates that minority students' gains are greatest as a result of the reductions in kindergarten and first grade.⁴⁹

Tennessee's *Project STAR* (Student-Teacher Achievement Ratio) and two associated data collections have made important contributions to the quality of research evidence concerning the reduction of class size. *STAR* was a 4-year longitudinal study of kindergarten, first, second, and third-grade classrooms in Tennessee which began in 1985. The data collected from *STAR* revealed that the learning gains students make in classes of 13 to 17 students persist long after the students move back into average-size classes. What's more, the data indicate, poor and African-American students appeared to reap the greatest learning gains in smaller classes. After kindergarten, the gains black students made in smaller classes were typically twice as large as those for whites.

The evidence from student testing in *STAR* showed that the students in the smaller classes outperformed the students in the larger classes, whether or not the larger class teachers had an aide helping them. *Project STAR* found that: (1) Smaller class students substantially outperformed larger class students on both standardized (Stanford Achievement Tests) and curriculum-based tests (Basic Skills First). This was true for both white and minority students in smaller classes, and for smaller class students from inner city, urban, suburban, and rural schools; (2) The positive achievement effect of smaller classes on minority students was double that for majority students initially, and then was about the same; (3) A smaller proportion of students in the smaller classes was retained in-grade, and there was more early identification of students' special educational needs; (4) There were no significant differences in academic achievement for students in the larger classes with or without an additional instructional aide.

Subsequent research efforts provided important additional evidence on the positive effects of class size reduction. In 1989, the *Lasting Benefits Study* began a follow-up study to examine whether the effects of the smaller class size experience persisted when students were returned to normal size classes. The study is still ongoing. To date, the research findings include: (1) In fourth grade, students from the smaller classes still outperformed the students from the larger classes in all academic subjects. (2) In fourth grade, students from the smaller classes were better behaved than students from the larger classes (i.e., student classroom effort, initiative, and disruptiveness); (3) At least through eighth grade, a decreasing but still significant higher academic achievement level for the students from the smaller classes persists. Results from a 1999 Wisconsin experiment have shown similar gains for Title I students.⁵⁰ Class size reduction is a necessary component of the educational reform movement.

Recommendations

- Federal, state, and local educational agencies' Five-Year Equity Plans should include incremental yearly benchmarks directed toward optimal end-of-plan goals that reduce class sizes, as defined by the community and supported in research.
- Federal, state, and local educational agencies should aggressively target class-size reductions for the highest minority and concentrated-poverty schools.
- Federal, state, and local educational agencies should ensure that decreasing class size does not erode the quality of teaching by finding ways to hire and retain certified and well-qualified teachers.⁵¹ In particular, officials should document the use of uncertified teachers and teacher aides, and whether these personnel are disproportionately assigned to high-minority, high-poverty schools.



SECTION VI: CLOSING THE DIGITAL DIVIDE

Technology is altering the way Americans order the world and has the potential to perpetuate disparities, class advantage, and racial caste. The “digital divide” describes the technology gap that falls along the lines of race and class. The disparities in computer ownership and use across the general population are also reflected in our public schools.⁵² While students attending the country’s poorest schools are not far from the national average for computer access, a closer look at the statistics on more sophisticated technology, such as Internet access and actual computer *usage*, reveals that the digital divide is deep and wide.⁵³ Only 64% of classrooms in schools with a 50% or higher minority enrollment are connected to the Internet.⁵⁴ Moreover, teachers in majority-minority schools were more likely to cite the following as barriers to the use of computers for instruction time: not enough computers (45%), outdated, incompatible or unreliable computers (32%), and Internet access not being readily available (36%).⁵⁵

Despite evidence of progress, the problems of the digital divide are far from solved. As federal, state, and local policy makers address this problem they need to better understand the ways in which schools can improve learning outcomes using the Internet and other computer resources.

Recommendations

- Each state and local educational agencies’ Five-Year Equity Plan should identify the size of the current gap, including differences in level of sophistication, real computing power, and resources for training and implementation. Based on the identified gaps, the plan should detail the expected incremental improvement for each year toward narrowing the gaps by at least 50% in five years.
- Educational agencies and schools should increase technological support and teacher-training expenditures until training gaps for teachers and staff in high-poverty and racially isolated schools are eliminated. Addressing serious gaps in technological support and teacher training is also critical to bridging the digital divide, since some schools may have the computer hardware but may lack the support and training necessary to take advantage of the new technology’s potential to enhance student learning.
- State and local educational agencies should report publicly on disparities in access to computers by race and socio-economic status, including qualitative disparities such as access to computers that can handle large amounts of data and employ sophisticated communication tools.



SECTION VII: HIGH-STAKES TESTING

High-stakes testing used to retain in grade or to deny diplomas based on a single test (including retakes), exacerbates the disparate impact of resource inequality for children of color. A growing body of research and expert analysis reveals that punitive sanctions attached to a student's performance on a single test are unfair, ineffective, and contrary to widely accepted standards of the assessment and psychometric professions,⁵⁶ and potentially in violation of civil rights laws and the federal constitution. Specifically, penalizing students by testing them on information that they have never been taught raises both pedagogical questions and constitutional questions of due process.⁵⁷ Research indicates that placing high-stakes test burdens on children under these circumstances is counterproductive because the burdens correlate with increases in grade retention and dropouts, and because the burdens affect minority students disproportionately.⁵⁸

Evidence also suggests that heightened pressure to "teach to the test" often impoverishes the curriculum and most likely contributes to the acute shortage of highly qualified teachers and administrators.⁵⁹ These policies continue to be adopted by state after state, district after district, in the name of "high standards" and accountability. Furthermore, test-driven sanctions imposed by many states against low performing schools create a perverse incentive for school officials to get rid of struggling students. Unless test accountability is balanced by graduation accountability (and by safe guards against inappropriate or discriminatory use of special education and alternative education), this phenomenon is almost certain to intensify.

Rigorous assessment, including the use of standardized tests, has a legitimate place in the learning process and in school reform. The NAACP believes, however, that it is unacceptable to implement the high-stakes components of tests until federal, state, and local educational agencies are held accountable for ensuring that teachers have the necessary resources to teach and students have the resources needed to learn.

Recommendations

- New federal education reforms are expected to ratchet-up requirements for districts and states to disaggregate test achievement by major racial and ethnic groups in order to meet both reporting and yearly accountability requirements. In order to implement these federal requirements in a manner that will maximize the achievement gains for minority students, each Five-Year Equity Plan should set forth yearly improvement benchmarks and five-year proficiency goals for poor and minority children that are, at a minimum, consistent with these new federal requirements.⁶⁰
- Before shifting accountability burdens onto the shoulders of children, state and local educational agencies must ensure that all students have an equal opportunity to learn the tested curriculum. Until such necessities are met, federal, state, and local educational agencies should place a moratorium on all high-stakes policies, such as retention, which are highly correlated with dropout rates. As an alternative, , when tests or other forms of assessment indicate that a child is behind, the school should respond with appropriate educational interventions. There should be strong presumptions *against* retention in grade and *in favor of* intensive intervention to remedy the student's problems.
- State and local school officials should be held accountable for improving the graduation rate for minority students rather than focusing solely on the aggregate improvement of test scores in a school or district. To accomplish this, official should make the percentage of entering eighth graders who complete the twelfth grade and graduate with a regular high school diploma (*not* GED or alternative certificates of completion) a core measure of accountability.



- Federal, state, and local educational agencies should work to ensure the use of valid tests for valid purposes. Schools should only hold students accountable for academic performance through the use of multiple assessment measures that take into consideration their learning styles, the quality of the instruction they have received, their English proficiency and educational background, and the resources delivered to them.
- Well-designed and appropriate tests should, however, be important diagnostic tools for assessing individual students and focusing appropriate intervention and remediation to help them. In addition, well-designed tests can be one component of a valuable accountability system directed toward teachers, schools and districts to ensure measurable progress in closing achievement disparities.



SECTION VIII: REDUCING THE DROPOUT RATE

Obtaining a high school diploma remains among the most prominent points of demarcation between the “haves” and “have-nots” in American society.⁶¹ Compared to diploma recipients, those who earn a GED have a much higher rate of unemployment and are much more likely to need welfare or other forms of government assistance.⁶² The economic implications of students’ failure to earn a high school diploma are staggering, and increasingly so as our economy becomes more dependent on the service and information industries.⁶³

The number of students that schools have lost track of is increasing across the nation. Unfortunately, data on dropout rates and graduation rates reported by most state and local school districts are usually inaccurate and often reported in a way that masks severe school failure.⁶⁴ For example, one recent study shows that in one-half of the schools located in the nation’s 35 largest urban districts, 50% or more of the students who enrolled in the ninth grade failed to go on and graduate with a diploma.⁶⁵ Estimates are that at least 25-30% of these students dropped out.

Furthermore, the racial and ethnic disparities in dropout and graduation rates are alarming.⁶⁶ The failure of high poverty schools to graduate black and Latino students is particularly acute. We know that poor and minority youth often hit a tremendous wall when they enter high-poverty high schools.⁶⁷ In numerous inner city schools with overwhelmingly minority student populations, less than 30% of ninth graders graduate four years later.⁶⁸ Federal, state, and local educational agencies must seriously address this issue.

Recommendations

- Federal, state, and local educational agencies should make increasing the percentage of entering eighth graders that graduate twelfth grade with a *regular high school diploma* a major focus of education reform. States, districts, and schools should publicly report the rate of diploma recipients by entering cohorts of students as part of school report cards and other information measuring school improvement.⁶⁹ Each Five-Year Plan should explain how graduation rates will be incorporated into determinations of adequate yearly progress for schools and districts.
- State and local educational agencies should report more accurate data about minority achievement, including dropout and test achievement data. Agencies should disaggregate the data by race and ethnicity, disability status, gender, socio-economic status, English-language-learner status, and other appropriate subgroups.
- State and local education agencies should work together and restructure accountability systems to provide incentives for schools to keep their most challenging students in school. The data on graduation rates should be used to evaluate the effectiveness of incentives and other interventions by establishing a system for monitoring, evaluating, and publicly reporting on progress.
- Federal, state, and local educational agencies should make a concerted effort to report accurate percentage gains or losses in diploma awards and use these rates as a basis for intervention. Intervention should include positive incentives, resources and technical support, and corrective action, as appropriate.
- Districts should build smaller high schools when new schools are built, and should explore interventions to make existing large schools smaller and more personal. Research demonstrates that these efforts have been particularly effective with black and low-income students.⁷⁰



- States and school districts should end policies that contribute to academic and social disengagement, both of which can lead to attrition and dropouts. Research indicates that such policies include unreasonable discipline policies, burdening students with high-stakes tests, and building large impersonal institutions.⁷¹
- Federal, state, and local educational agencies should work to increase funds and personnel dedicated to improving supports for older students attending high-poverty, often high-minority, schools.⁷² Research suggests that federal Title I funds should be increased, and in some cases redistributed, to maintain gains made by younger students; the same conclusion is relevant to state and local expenditures. More equitable resource distribution by age is essential to closing the race and class divide.



SECTION IX: INCREASING PARENTAL INVOLVEMENT

Most experts agree that parent involvement can be crucial to children's success in school. The reasons are many: students can be strongly encouraged in their academic pursuits by their parents' or guardians' support and interest; they often need help from their parents to do their homework well; they may need guidance in determining how to use their free time productively; and they benefit from seeing a consistency between the values and lessons taught at school and those practiced at home.

Recommendations from research strongly emphasize the link between student achievement and parent involvement. For example, one analysis of national tests results found that three factors over which parents have enormous control — student absenteeism, the variety of reading materials in the home, and the amount of television watched — accounted for nearly 90% of the differences in student test scores.⁷³ A review of 71 high-poverty elementary schools found that student achievement rose fastest in those schools where teachers reported that they had high-quality instruction in improving their craft and worked actively with parents on students' education.⁷⁴ One federal study suggests that standards-based initiatives will not work if teachers are not learning how to improve their instructional practices and parents are not involved in their children's education.⁷⁵

Even as educators and policymakers increasingly acknowledge the importance of parent involvement, however, they must recognize that they face significant challenges in fostering it. Families in today's modern society are increasingly fragmented and harried. Parents face ever-growing demands on their time, more competition for children's attention, and economic burdens that force more of them to work outside the home. Minority parents are even more often confronted with these conditions.

Recommendations

- Federal, state, and local educational agencies should work to improve recruitment, training, and schedules to involve families as volunteers in school activities.
- Federal, state, and local educational agencies should include parents as participants in important school decisions.
- Federal, state, and local educational agencies should coordinate with businesses and agencies to provide resources and services for families, students, and the community.
- Federal, state, and local educational agencies should increase resources to assist families with parenting and child-rearing skills.



SECTION X: ADDRESSING SPECIAL EDUCATION AND THE OVERREPRESENTATION AND UNDERSERVICING OF MINORITY CHILDREN

Special education can provide tremendous benefits to children who need specialized instruction and related support services. Ideally, eligible students receive valuable assistance and accommodations enabling them to meet high academic standards in the least restrictive environment appropriate. When the system is working, special education is individualized services for exceptional children, not a place to send children with special needs, or a rigid program for children perceived as the embodiment of one type of deficit or another.

For minority children, special education far too often results in inappropriate labels and placements. Black children are by far the most likely to be labeled emotionally disturbed or mentally retarded in gross disproportion to their overall enrollment in public school.⁷⁶ The pernicious trend of the overrepresentation of students of color and language minorities in special education classes has persisted since *Brown v. Board of Education* in 1954.⁷⁷

Despite claims to the contrary, research shows that the influence of poverty does not come close to explaining many of the large disparities in the identification of blacks for emotional disturbance or mental retardation.⁷⁸ Most striking, and contrary to expectations, is the finding that the risk for being labeled “mentally retarded” increases for blacks attending school in districts serving mostly middle-class or wealthy white students.⁷⁹

Despite the egregious disparities in identification for special education, many minority students who *do* have disabilities do not receive adequate services.⁸⁰ For these students, earlier intervention with substantially higher-quality services and counseling could prevent later identification for more serious disabilities. Where emotional and behavioral disabilities are concerned, research indicates that low-quality and inappropriate placements for minority students probably contribute to entry into the criminal justice system and higher rates of incarceration.⁸¹

Recommendations

- Each state and local educational agency should identify the current disparities by race along with disability category, in both identification and restrictiveness of placement. Each educational agency’s Five-Year Equity Plan should set benchmarks for reducing disparities and document the measures taken to decrease minority overidentification and levels of restrictiveness; these benchmarks should be broken down by race within each cognitive disability category, including mental retardation, emotionally disturbed, and specific learning disability. Further, each state and local educational agency should report publicly, by race with disability, the level of restrictiveness of minority student placements. Under federal law, states are already required to collect this information.⁸²
- State and local educational agencies should increase the frequency and quality of pre-referral interventions. For many minority children, these interventions will curtail the need for special education evaluation or restrictive placements.⁸³
- State and local educational agencies should provide teachers in both general and special education significantly more support, training, and time to collaborate on addressing the needs of children with disabilities and on enhancing instruction.
- Federal and state educational agencies should intensify monitoring and civil rights enforcement, pursuant to the federal requirement that states intervene where data suggest that there is racial overrepresentation in either identification rates or restrictive placements.



SECTION XI: ELIMINATING RACIAL DISPARITIES IN THE SUSPENSION AND EXPULSION OF STUDENTS

The proliferation of “zero tolerance” and other harsh disciplinary policies is having a profoundly negative impact on students of color. Recent surveys indicate that nearly 100% of public schools have adopted some form of a zero tolerance policy.⁸⁴ In some states, the number of expulsions has doubled since the enactment of zero tolerance policies.⁸⁵ If these policies were effective in teaching youth appropriate behavior, we would expect to see a combination of improved attendance and declines in discipline, as schools are made more effective, future infractions are deterred, and punished students return to school as better citizens. This has not been the case.⁸⁶

The liberal use of lengthy suspensions and expulsions denies an education to thousands of students who are neither dangerous nor violent, and alienates even more students from the educational process. Suspensions have increased annually from 1.7 million in 1974 to 3.2 million in 1998.⁸⁷ The rates for black children are particularly alarming: black students account for 17% of all students nationwide, but 33% of all suspensions.⁸⁸ Over the last 24 years, as the rate of suspensions has increased dramatically, the increases in suspension risk rates for minority students have outpaced the increases in risk rates for white students in many states.⁸⁹ Among the most disturbing research findings is that in 1998, 28 states suspended *at least* 12 percent of their black students and, as “Figure 3” reveals, 37 states suspended more than 9% of their black students.⁹⁰ In contrast, no state in 1998 suspended more than 9% of its white students. Latino suspension rates for 1998 exceeded 12% only once.⁹¹

Minority students are also more likely to be more harshly disciplined than their white counterparts for similar or less serious offenses.⁹² The overrepresentation of black students in particular is consistent with similar data collected on criminal punishment meted out to juvenile offenders.⁹³ Moreover, the increasing number of referrals to the police of incidents that were once handled by school principals is resulting in more and more minority children being funneled into an increasingly punitive criminal justice system.⁹⁴

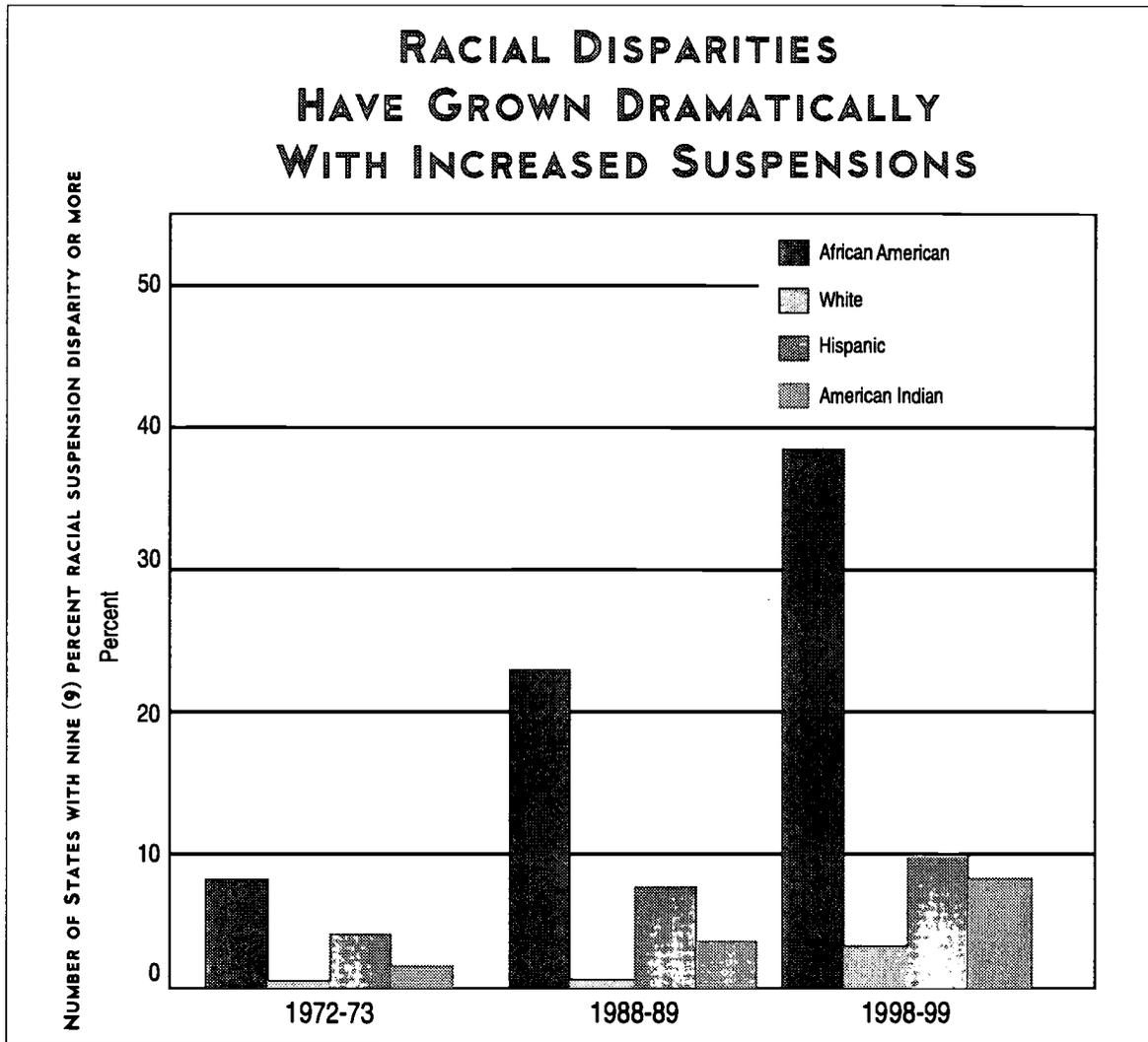
Education reformers and child advocates have expressed growing concerns about the unintended consequences of placing students in alternative programs. Alternative programs can provide vital benefits to needy children at critical times, but only if the programs are of decent quality. Among students who are disciplined or at risk academically, minority school children are overrepresented, often at rates exceeding twice their proportion of enrollment in the schools.⁹⁵

Recommendations

- Federal, state, and local educational agencies should report the existing disparities in school discipline. Using the current rate as a baseline, federal, state, and local educational agencies should include in their Five-Year Equity Plan a set of numeric goals for reducing the racial disparities each year with a goal of eliminating the gap. The Five-Year Equity Plan should also describe state interventions that would be considered against non-compliant districts.
- Federal, state, and local educational agencies should conduct hearings before school boards and state legislatures in which independent experts on effective school discipline policies have the opportunity to describe best practices and the procedures for implementing the best practices.



FIGURE 3



Source: OCR 1997 Elementary and Secondary School Compliance Report: Projected Values for the Nation (1999).

- States and local districts should develop model discipline codes with input from the entire school community (administrators, teachers, parents, and students). Such codes must be consistent with due process and must reflect an educational mission at their core. Any approach that allows for the suspension and expulsion of children with no guarantee of further adult supervision should be rejected.
- States and local districts should improve teacher training and professional development in order to improve classroom management, conflict resolution skills, and the ability of teachers to engage children in challenging academic content. Model schools throughout the country provide effective and inclusive instruction in safe and calm environments that do not rely on harsh discipline.⁹⁶ Federal and state educators need to identify these programs and provide the technical assistance to replicate them effectively in schools where existing policies are suspected of contributing to a racially disparate impact.



- Data on suspension and expulsion must be reported accurately and publicly at the district, state, and federal levels — by type of incident and starting from the point of referral by the classroom teacher. These data should be disaggregated by race and ethnicity. Substantial disparities should trigger investigation and possible intervention by state or federal civil rights authorities. These agencies can act as catalysts for broader partnerships with NAACP branches and other community and child advocacy organizations to prevent racial profiling in school discipline and to promote a greater sense of safety for all members of the school community.
- Federal, state, and local educational agencies should develop incentives for schools to demonstrate decreases in the number of incidents of discipline and the effective implementation of non-exclusionary school safety programs.
- Federal, state, and local educational agencies should evaluate and publicly report data on alternative programs, including enrollment by race, gender, English-language-learner status, socio-economic status, and disability status; reasons for referral disaggregated by race and other measures; the achievement of students using the same high standards and benchmarks as for regular education; and an analysis of the program proficiency in promoting a rapid and smooth transition back into the education mainstream.
- States and local educational agencies should ensure that no alternative program or school be allowed to contract for minimum numbers of enrollees or to set lengthy time periods for attendance, which could create perverse incentives to remove students from the mainstream and cause unwarranted levels of restriction and isolation.



SECTION XII: ADDRESSING RESEGREGATION TRENDS

The study *Resegregation in American Schools* by The Civil Rights Project at Harvard University has found that the percentage of black students in majority-white schools peaked in the early 1980s and by the 1996-97 school year had declined to the levels of the 1960s.⁹⁷ Latinos, who are becoming the largest minority group in the country, are the most severely segregated, most intensely in the Northeast.⁹⁸ Latinos and blacks are moving into the suburbs in large numbers, but are usually moving into segregated schools. Data from 1996-97 show that blacks and Latinos living in suburbs of large cities have an average non-white enrollment of between 60-64%. Research shows, however, that this is largely due to housing discrimination and unfair lending practices, not a preference on the part of minorities to live in racial isolation.⁹⁹ Metropolitan and urban segregation has been created, or at least exacerbated, by school policies. These policies include the drawing of attendance zones and the construction of schools where they will serve residentially segregated areas.

An especially troubling aspect of this resegregation of public schools is that students in racially-isolated schools are also likely to be segregated by class and income. *Racially-isolated schools for all groups except whites are usually schools with high concentrations of poverty.* Segregated black or Latino schools are 11 times more likely to experience concentrated poverty. Concentrated poverty levels are profoundly related to educational inequities and lower educational achievement. Schools with high poverty concentrations have lower average school test scores, fewer advanced courses, fewer teachers with credentials, inferior courses and levels of competition, and fewer graduates going on to college.

The consequences of attending unequal schools are alarming in this period when college admissions standards are rising, mandatory tests are being implemented, and affirmative action is being eliminated. Furthermore, new research clearly demonstrates the compelling value of diversity in the classroom to students preparing for employment in a diverse working world.¹⁰⁰ Still more broadly, the future greatness of our multiracial democracy depends on our ability to understand one another, and to celebrate our differences. The extreme levels of racial isolation commonplace for many children is a clear danger we should not ignore, even as we focus on the immediate agenda of boosting achievement levels. The legacy of *Brown* is, in part, the guarantee of equal educational opportunity. It is also in part a crucial reminder that “separate” can never be truly “equal,” because segregation and racial caste go hand in hand. And the legacy is in part a reminder that America’s greatness will be diminished so long as color divides us.

Recommendations

- Federal, state, and local educational agencies and those charged with monitoring desegregation orders, should examine the effects of segregated schools and push for specific definitions of educational equality and good faith compliance by school districts. Independent experts should evaluate these notions of equality, framed in terms of real opportunities provided to minority children and actual consequences for learning.
- Federal, state, and local educational agencies should give magnet schools priority over charter schools in implementing choice plans, since magnet schools often incorporate basic equity provisions, including desegregation goals, free transportation, public information, assignment by lottery rather than first-come, first-serve, and other provisions. Every effort should be made to include as many of these provisions as possible in charter school policies and regulations. In all circumstances, however, officials must ensure that a school which is racially diverse as a whole is not resegregated by classroom within its walls.
- Since “unitary status” rulings by federal courts eliminate the leverage of minority communities to remedy the entire history of discrimination in a locality, school boards should not seek unitary status when the minority community



objects. Additionally, states and districts should fight lawsuits filed by private parties that would undo the achievements of prior desegregation orders or settlements.

- Federal, state, and local educational agencies must recognize the critical link between housing segregation and school segregation, and include segregation in the housing market as part of the debate on education reform. To this end, fair housing groups should be involved in discussions around educational reform.



NAACP

Call For Action In Higher Education

(Colleges/Universities)

Introduction

Equal educational opportunity is as vitally important in higher education as it is in K-12 education. College education provides an important gateway to workplace opportunities, leadership positions, and increased earnings and wealth. Yet, racial disparities persist in the higher education system, and barriers to educational access are even more difficult to overcome as they are often built on inequities that have accumulated in the K-12 systems. Despite progress in the rates of college enrollment, college graduation, and professional degrees conferred, Black students continue to trail white students in the number of 25- to 29-year-olds who have completed four or more years of college: the rate for Black students of less than 16% in 1998 was about one-half the rate among white students.¹⁰¹

K-16 approaches to educational opportunity can often provide the best solutions for reducing achievement gaps and addressing unequal access to higher education. Programs that promote college preparation, that build bridges between high school and college, that recruit, admit, and provide financial aid for minority students, and that provide academic support for students after enrollment are all essential to guarantee equal educational opportunity.

At the same time, it is also critical that current programs which support equal access to education not be pared back or terminated. Race-conscious affirmative action plans designed both to remedy past discrimination and to diversify undergraduate and graduate student bodies have been attacked through the courts and through legislation. In several states, including the two most populous states of California and Texas, race-conscious affirmative action in higher education is now illegal. The resegregation of undergraduate student bodies, as well as graduate and professional schools, is becoming a reality at many public universities, and has sent a chilling effect through many communities. A return to the past is unacceptable. Guaranteeing equal educational opportunity must be among the highest priorities of our nation's institutions of higher learning.

SECTION I: COLLEGE PREPARATION

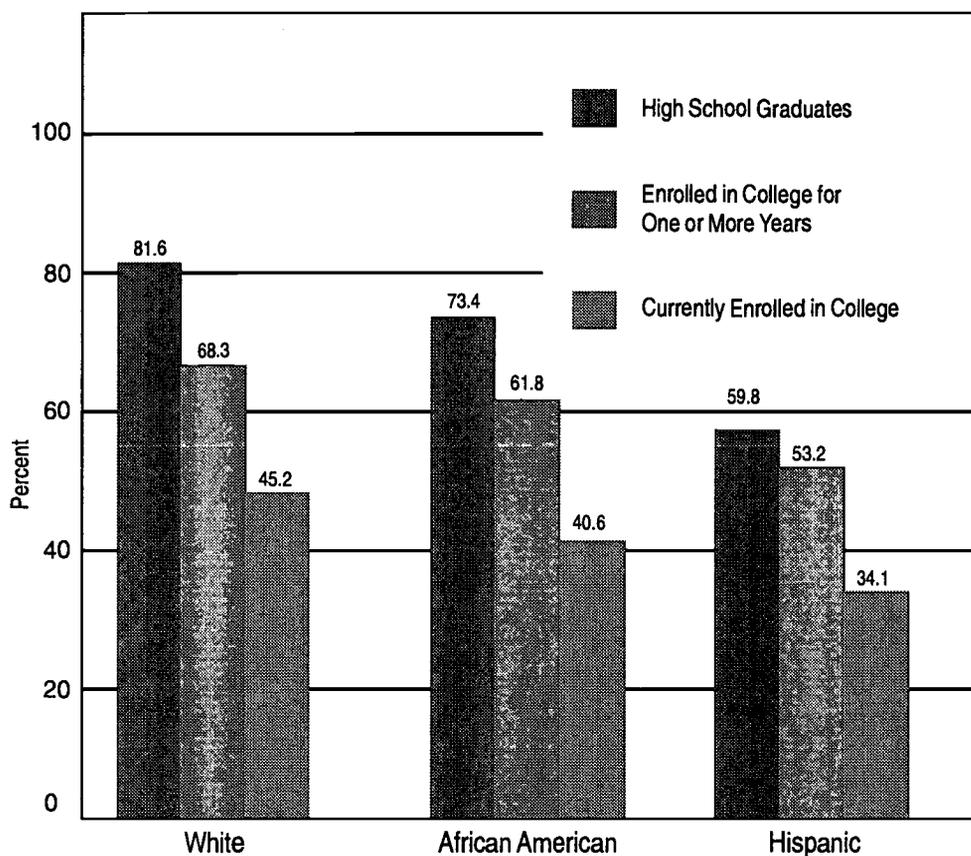
A serious impediment to equal educational opportunity is the reality that many high school graduates are not prepared to take on college-level work. According to a recent report by the U.S. Department of Education, nearly one-half of all college students are required to do remedial coursework.¹⁰² The apparent lack of preparation for college work contributes to high college dropout rates: more than one-quarter of freshman at four-year colleges and nearly half of those at two-year colleges do not make it to their sophomore year.¹⁰³ Even at selective four-year colleges, less than 40% of black and Latino undergraduates go on to earn a bachelor's degree within six years, compared to two-thirds of white students.¹⁰⁴ Figure 4, taken from a recent report by the American Council on Education, illustrates some of the disparities that persist from high school through college¹⁰⁵:



There has been models of success in the recruitment and graduation of minority students. One such model is our nation's Historically Black College and Universities (HBCUs). According to the White House Initiative for Historically Black Colleges and Universities', 1996 President's Board of Advisor's Report, while HBCUs only account for 3% of all colleges and universities, in 1994, they accounted for 28% of all baccalaureate degrees earned by blacks and more than a quarter of all master's degrees and doctorates earned by blacks in physical science, mathematics, computer and information sciences, life sciences, education and theology. Federal, state, and local institutions of higher education must begin to support and study those models that increase minority preparation and participation in higher education.

FIGURE 4

HIGH SCHOOL COMPLETION AND COLLEGE PARTICIPATION RATES FOR 18-24 YEAR OLDS, BY RACE AND ETHNICITY: 1998



Source: U.S. Department of Commerce, Bureau of the Census, *School Enrollment—Social and Economic Characteristics of Students: October 1998*. Current Population Reports, P-20 Series, 1999.



Recommendations

- Federal, state, and local educational agencies and institutions of higher education should include in their Five-Year Equity Plan steps that work to link high school students and colleges. Programs that link high school students and colleges —“bridge programs” —can provide important preparation for college work. Federal programs such as Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) increase awareness of college opportunities, and the federal TRIO programs¹⁰⁶, particularly the Upward Bound program, can identify talented students lacking pre-collegiate skills and bring them for several weeks to programs on college campuses while they are still in high school. Other programs provide counseling and other assistance to students on meeting the requirements for college enrollment.
- Federal, state, and local educational agencies and institutions of higher education should develop local and state K-16 programs that contain the key elements of early intervention, active counseling, key skills development, and assistance with college application and financial aid processes.
- Federal, state, and local educational agencies and institutions of higher education should form partnerships with community organizations and provide resources for these entities to assist students through mentoring, leadership development and cultural enrichment.
- Federal, state, and local educational agencies and institutions of higher education should encourage both public and private universities to undertake programs that develop close relationships with local K-12 systems and community colleges to encourage college preparation and formal linkages through recruitment, admissions, and financial aid. Efforts are underway in a number of states to align the academic standards that students must meet to finish high school with the skills they need to enter and succeed in higher education. College-school integration programs stretching back to the early grades, commonly known as K-16 initiatives, have also become increasingly necessary.
- Federal, state, and local educational agencies and institutions of higher education should continue to support, through Title III, and other local resources, institutions, such as HBCUs, Hispanic Serving Institutions, and Tribal Colleges, which have experienced clear and consistent success building bridges from minority communities to institutions of higher education.



SECTION II: COLLEGE RECRUITMENT

The racial and ethnic disparities that persist in gaining access to college are as troubling as the disparities at the K-12 levels. According to a recent study by the U.S. Department of Education, approximately three-quarters of high school graduates in 1994 started postsecondary education within two years of graduating from high school. The disparities in enrollment in four-year colleges or universities are even more striking. According to a U.S. Department of Education report, the percentage of highly and very highly qualified high school graduates who enroll in a four-year institution is only 28.6% for Black students, compared to 60.6% for white students.¹⁰⁷

Targeted recruitment of minority students has played a crucial role in the integration of predominantly white campuses and has become absolutely critical in states where affirmative action in admissions has been prohibited by court order or by legislation. Minority enrollments have declined significantly at flagship public universities where affirmative action in admissions has been ended. For instance, in Florida, which recently began prohibiting race-conscious admissions, the number of Black freshman admitted to the University of Florida declined over 50%, from 1,671 in the year 2000 to 1,046 in the year 2001.¹⁰⁸ Moreover, the percentage in the entering class of Black freshman that actually enrolled at the University of Florida dropped from 11.8% to 7.2%.¹⁰⁹

Because of the chilling effects that the abolition of affirmative action can have on minority applications, recruitment efforts can help counteract the declines in applications. For instance, leaders of the University of Texas at Austin were able to compensate for some of the loss of minority student enrollment through direct recruitment by the President of the University in predominantly minority high schools that received targeted scholarships reserved for each high school.¹¹⁰ Even in a state such as California, which has legal prohibitions on racial preferences in recruitment for public universities, the targeting of low-income high schools with large minority populations can provide greater visibility for the universities and encourage applications by minority students. Such recruitment often involves sending minority alumni to visit their home schools, special campus visits for minority students, hiring of minority staff for the admissions offices, and the dissemination of catalogs, brochures, and other informational materials.

Recommendations

- Federal, state, and local educational agencies should encourage both public and private colleges and universities to adopt recruitment policies that target racial and ethnic minority students and to allocate sufficient funding to support minority recruitment efforts.
- Federal, state, and local educational agencies should develop comprehensive strategies that link the recruitment of minority students to attend college campuses with admissions, financial aid, and on-campus academic support.
- Colleges and universities that have removed race-conscious admissions policies, should employ broader strategies for recruitment, including targeting high schools in urban and low-income communities.



SECTION III: COLLEGE ADMISSIONS

Discrimination against racial minorities in college admissions has been a longstanding problem. Particularly in the South, where segregated schools at the primary, secondary, and post-secondary levels locked blacks out of equal educational opportunities for decades. College admissions policies have only recently been designed to provide full opportunities to minority students. Nevertheless, the over-reliance on standardized testing and the paring back of affirmative action programs in recent years threaten to undermine many of the gains that have been made in minority enrollments.

Standardized Testing: Racial disparities in standardized testing become even more acute when test scores are heavily weighted among the criteria used to select students for admission to selective colleges and universities. Despite guidelines from test makers which suggest that test scores should not be used for any purposes for which they have not been validated, and that cutoff scores should not be used to make admissions decisions, colleges and universities often misuse the tests by overweighing them and employing them for non-admissions decisions, include eligibility for scholarships.

Racial minorities, including blacks, Latinos, and Asian immigrants, score, on average, significantly lower than white students on standardized tests such as the SAT or ACT. For instance, in 2001 the average test score on the SAT for college-bound seniors was 869 for blacks, compared to 1060 for whites.¹¹¹ Although the predictive validity for both the SAT and ACT is relatively low for all students, the predictive validity of test scores for the achievement of individual black students is highly disputed. Research has shown that because of a phenomenon known as “stereotype threat,” highly talented minority students often experience test anxiety that lowers their scores in ways that fail to reflect their ability.¹¹² Other research shows that minority students admitted to the nation’s most selective schools, despite having relatively lower test scores, are successful in college and even more successful in their careers.¹¹³

Placing too great an emphasis on test scores clearly hurts minority and low-income students who do not perform as well as white students from more affluent schools or backgrounds; in addition to any biases inherent in the test, more affluent students also have the resources to afford test preparation services that provide greater advantages. Consistent with these criticisms of standardized tests, many educators have been calling for a significantly reduced role for the SAT or ACT in college admissions; for example, Dr. Richard Atkinson, the President of the University of California, recently called for the abandonment of the SAT as a criterion for admissions to the University.¹¹⁴

Affirmative Action: Race-conscious admissions policies provide a tool to give minorities greater access to opportunities from which they have been historically excluded, offer a means to remedy past and present discrimination, and help improve educational quality by diversifying college student bodies. The U.S. Supreme Court’s decision in *Regents of the University of California v. Bakke* upholding the use of race in higher education admissions is still the law of the land, despite recent challenges in the courts.

In *Bakke*, Justice Powell found that promoting diversity in higher education was a compelling interest that justified the competitive use of race in an admissions program that is available to all students and considers race as one of a number of factors.¹¹⁵ Recent social science research supports the Supreme Court’s decision that there are significant benefits from having a racially diverse student body. Student body diversity leads to improved learning outcomes, enhanced civic engagement, and better preparation for a diverse society and workforce, which are goals that are fully consistent with the missions of institutions of higher learning.¹¹⁶ Research also shows that socializing across racial lines and engaging in racial discussions with diverse peers has positive effects on retention, overall college satisfaction, intellectual self-confidence, and social self-confidence.¹¹⁷ Studies show that interaction among diverse students leads to improved interpersonal skills and leadership.¹¹⁸



Recently, however, several challenges to race-conscious admissions programs have arisen through lawsuits, voter initiatives, and executive action. Voters in California and Washington passed initiatives that prohibit the consideration of race in admissions decisions. In Florida, Governor Jeb Bush's One Florida Plan eliminated affirmative action in admissions at the state universities.¹¹⁹ The U.S. Court of Appeals for the Fifth Circuit, which governs Texas, Louisiana, and Mississippi, ruled in *Hopwood v. Texas*¹²⁰ that promoting diversity is not a compelling interest and prohibited the use of race in admissions decisions, despite the *Bakke* ruling. Recently, the Eleventh Circuit found that the affirmative action policy used by the University of Georgia was illegal.¹²¹ However, the Ninth Circuit, which covers the West Coast, as well as Alaska and Hawaii, ruled that *Bakke* is still the law of the land.¹²² The use of affirmative action in admissions at the University of Michigan is currently under attack,¹²³ with appeals pending in the Sixth Circuit Court of Appeals and a later appeal to the U.S. Supreme Court being highly likely. The consequences of these challenges make it even more important to support affirmative action policies where they are still legally available.

Statistics show that the failure to consider race in the admissions process can have drastic effects on enrollment levels.¹²⁴ For example, the year after the passage of Proposition 209 in California, only one black student enrolled in a class of over three hundred at the law school at the University of California, Berkeley; in 1999, the UCLA School of Law enrolled only two black students in its entering class. After 1999, when UCLA made extensive efforts to increase the number of black students, enrollment levels were still far below the levels when race-conscious affirmative action policies were employed. Although it remains premature to determine whether alternatives to race-conscious policies such as class-based affirmative action or percentage plans are effective, statistical studies have suggested that these types of plans will not yield the same level of racial diversity that currently exist at competitive colleges and universities.¹²⁵

Recommendations

- Federal, state, and local educational agencies should encourage the use of university admissions policies that do not rely heavily on standardized tests, which exacerbate racial disparities.
- In an effort to hold test producers accountable, federal, state, and local educational agencies should require that all admissions test producers be required to publish, after every test administration and for each individual test question, the percentages of students, broken down by race and ethnicity, answering the question correctly.
- Federal, state, and local educational agencies should ensure that diversity is an important part of an educational institution's mission, and support race-conscious admissions policies that comply with the standards established in *Regents of the University of California v. Bakke*.
- Federal, state, and local educational agencies should support policies that integrate minority admissions decisions with efforts to recruit minority students, provide financial aid, and offer academic support.
- Federal, state, and local educational agencies should oppose alternatives to race-conscious admissions policies, such as percentage plans or class-based affirmative action, in states where race-conscious policies remain valid under the law.



SECTION IV: COLLEGE AFFORDABILITY AND FINANCIAL AID

Financial aid plays a central role in providing equal educational opportunity to minority college students. According to a 1999 Census Bureau report, 77% of full-time post-secondary black students were receiving financial aid of some form, compared to 59% of white students.¹²⁶ Disparities in race and income present serious problems for minority students, and must be addressed through the expansion of need-based financial aid at many levels, including four-year colleges and community colleges.

Low-income families are still 32% less likely to send their children to college than families with higher incomes, according to a February 2001 report from the U.S. Department of Education's Advisory Committee on Student Financial Assistance.¹²⁷ A major reason for this disparity is that the unmet need — the difference between the cost of one year of education and the amount of aid and family contributions paid toward that cost — is much higher for low-income families than for high-income families.¹²⁸ Among black students, over 53% are among those with the lowest expected family contributions and the highest unmet needs, compared to only 23% of white students.¹²⁹ For example, state college tuition increases in 2001 have been particularly sharp because of state budget cutbacks.¹³⁰ Generally, tuition levels increase faster than family income levels, raising serious civil rights issues, particularly because of inadequate need-based financial aid systems.

The basic need-based grant provided by the federal government, the Pell Grant, offers many students the opportunity to attend college. Pell Grants are a large source of financial aid for black students. Forty-five percent of minority families fall into the category with the highest unmet needs, for whom Pell Grants are the primary source of support.¹³¹ According to a 1995 GAO study, there is a direct relationship between increasing the resources available to students through the Pell Grant, and decreasing the drop-out rate, especially among minority students. The GAO study found that increasing Pell Grants by \$1000 in a given semester decreased drop-out rates among black students by 7% and among Latino students by 8%.¹³² Nevertheless, increases in Pell Grant funding at the federal level have not kept pace with increases in tuition at many colleges and universities. The effect can be tragic for students who must drop out of college or are precluded from attending college in the first place.

Moreover, many state universities, particularly in the South, are shifting from need-based aid to merit-based aid, awarding students with the highest test scores and grades.¹³³ Racial disparities in standardized test results can exacerbate both achievement gaps and economic gaps by favoring students at higher average income levels. This merit-based aid amounts to a transfer payment largely to relatively affluent families who have little need for aid, and away from poor students with lower scores who may not be able to attend college at all.

In addition, large numbers of minority students are attending college part-time in community colleges. Many financial aid programs offer little or no assistance for these students. It is very important that financial aid programs fit the actual lives of students struggling against great odds to improve their education.

Financial aid programs that target minority students have also been attacked in the courts and prohibited in some states by legislation. In 1994, a federal court of appeals struck down the Benjamin Banneker scholarship program at the University of Maryland,¹³⁴ which targeted black students, and race-based scholarships have been pared back in states such as California and Washington. Nevertheless, targeted financial aid is an important tool, particularly for encouraging enrollment in the first year of college and for increasing the number of black students receiving graduate and professional degrees.



Recommendations

- Federal, state, and local educational agencies should support substantial increases to funding of Pell Grants, particularly in light of the very rapid increase in college tuitions now occurring.
- Federal and state educational agencies should make funding need-based grants a priority of federal and state funding rather than loan subsidies for middle class children.
- Educational agencies should support financial aid policies that emphasize need-based aid rather than merit-based aid; the first priority for financial aid should be given to students who are eligible for college but cannot attend without financial assistance.
- Educational agencies should include students attending community colleges and those attending college part-time in financial aid programs.
- Educational agencies should support scholarships targeted to minority students or targeted at promoting diversity on campus.
- In states in which race-conscious policies are not available, educational agencies should direct additional financial aid, scholarships, and recruitment efforts to students at schools with high concentrations of poverty.



SECTION V: FACULTY DIVERSIFICATION IN HIGHER EDUCATION

While America's colleges and universities struggle to diversify their student bodies, they must also take the necessary and appropriate steps to diversify their teaching faculty. The percentage of black full-time faculty has remained virtually stagnant over the last 20 years, changing from 4.4% in 1975 to 4.9% in 1997. Furthermore, of the 4.9% black faculty nationwide, more than half of these professors teach at a Historically Black College or University. Although the percentages of Hispanic and Asian American full-time faculty members have doubled, they still only comprise a small proportion—about 2.6% Hispanic and 5.5% Asian American—of the total faculty nationwide.

In addition to the problems related to the absence of minority faculty, when present, data indicate minorities only accounted for 10% of the *Full Professors* and often earn 10-15% less than whites on average. Furthermore, recent reports indicate that faculty of color are rarely given the opportunity to participate in activities crucial to establishing institutional presence (e.g., serving on promotion and tenure or campus budget committees). Instead, they are more likely to be asked to advise large numbers of students and serve on multiple “non-academic” committees. Unsurprisingly, studies indicate that minority faculty are less satisfied in the academic workplace than their white peers. They often experience social isolation, hostility, and find fewer mentors and little help navigating the tenure system.

The academy has long attributed the slow progress in diversifying faculty to a “pipeline problem”—an undersupply of women and minorities enrolled in graduate programs. Yet women now earn 42% of conferred doctorates, and minorities earn 17%. Now is the time to address these challenges and afford all students the social and educational benefits derived from being taught by a diverse faculty.

Recommendations

- Federal, State, and local higher education agencies should increase, by at least 50%, the number of financial and research programs that help prepare and retain minority doctoral candidates.
- State and local higher education agencies should work to ensure that minorities are represented on all faculty search committees.
- State and local higher education agencies should actively recruit minority faculty at the senior level.
- State and local higher education agencies should work to further diversify their Boards of Trustees and senior-level administration.



SECTION VI: RETENTION AND GRADUATION

Racial disparities are clearly evident in the number of students who complete degrees: over 60% of blacks and Latinos who enroll in four-year colleges will not complete a bachelor's degree within six years, compared to only one-third of white students.¹³⁵ Lower rates of graduation from four-year colleges in turn limit the entry of blacks into key professions and positions of leadership, including teaching, law, and medicine. The gaps in college completion between white and minority students can be attributed to the often-inferior quality of K-12 education for minorities, insufficient financial aid for college expenses, and the failure by many colleges to provide academic and social support for minority students once they matriculate.

An additional area of serious concern has been the graduation rate for "student-athletes" at institutions across the nation. According to the most recent data from the National Collegiate Athletic Association (NCAA), the overall graduation rate for Division I student-athletes who entered in 1994-95 is 58%. While the graduation rate for black female student-athletes is above average at 61%, the graduation rate for Division I black male student-athletes is, however, 16 percentage points below the average at 42%. In football and basketball, the racial disparities in graduation rates are consistent with these averages. Division I white male basketball players who entered in 1994-95 had a 52% graduation rate, while the black basketball players had a graduation rate 17 percentage points lower at 35%. Division I white football players had a 60% graduation rate, while Division I black football players had a graduation rate of only 45%.

Furthermore, well-known programs such as the University of Arkansas, and UNLV have graduation rates for the black athletes of under 20%. Even at the University of Maryland, which is nationally ranked, the football team's graduation rate is 39%, significantly behind the campus's overall male graduation rate of 59%. The graduation rate for University of Maryland's basketball team is even more dismal, at 19%.

Academic support programs that provide mentoring and tutoring, as well as personal, educational, and career counseling are critical for minority students, including student-athletes. These programs are especially important during the first year of college, when minority students are at the greatest risk of dropping out because of more difficult academic challenges and because changes in their environment. Minority students at predominantly white colleges and universities are particularly at risk because of the great potential for racial isolation, alienation, and stereotyping.¹³⁶ Academic support programs can provide an essential haven for minority students.

Recommendations

- Federal, state, and local educational agencies should ensure that colleges and universities have sufficient funding and resources to provide academic support services, including counseling, mentoring, and tutoring to minority students.
- Federal, state, and local educational agencies and institutions should require that the student-athletes be on track to meet all graduation requirements within a five year time-span to maintain athletic eligibility. The appropriate educational agency shall annually review each athlete's eligibility.
- Each educational agency's Five-Year Equity Plan should outline the steps to increase the graduation rate by 100% for minority students and minority student-athletes over the next five years.



Endnotes

- 1 347 U.S. 483 (1954).
- 2 Figure 1 was derived from U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, ELEMENTARY AND SECONDARY SCHOOL CIVIL RIGHTS COMPLIANCE REPORT 1998 (2000) [hereinafter CIVIL RIGHTS COMPLIANCE REPORT].
- 3 Minorities in the United States are over-represented among the unemployed and the poor. For the year 2000, the unemployment rate among black Americans was 7.6%, compared to 3.5% for whites and 4.0% overall. Bureau of Labor Statistics, *Median weekly earnings of full-time wage and salary workers by selected characteristics, In HOUSEHOLD DATA—ANNUAL AVERAGES (2001)*, available at <http://www.bls.gov/cps/cpsaat37.pdf>. Full-time black workers earned an average of \$468 per week and full-time Hispanic workers earned \$396 per week, while their white counterparts earned an average of \$591 per week. *Id.* Blacks and Latinos are also more than twice as likely as whites to be among the “working poor,” defined as individuals who work 27 weeks or more during the year and still fall at or below the official poverty line. BUREAU OF LABOR STATISTICS, A PROFILE OF THE WORKING POOR, 1999 (2001), available at <http://www.bls.gov/cps/cpswp99.pdf>. In 1999, 4.3% of whites in the labor force were considered “working poor,” compared to 10.2% of blacks and 10.7% of Hispanics. *Id.* Examining poverty rates overall, the poverty rate for black Americans was 22.1% for the year 2000, representing 7.9 million individuals. JOSEPH DALAKER, U.S. CENSUS BUREAU, POVERTY IN THE U.S., 2000 (2001), available at <http://www.census.gov/prod/2001pubs/p60-214.pdf>. By comparison, the poverty rates in 2000 for other racial groups were 21.2% for Hispanics, 10.8% for Asians and Pacific Islanders, and 7.5% for whites. *Id.*
- 4 Minorities also are over-represented in the United States prison population. Looking at males ages 25 to 29 years, 9.7% of black males in this age category are in state or federal prison, compared to 2.9% of Hispanic and 1.1% of white males in this age group. ALLEN J. BECK & PAIGE M. HARRISON, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2000 (2001), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p00.pdf>. Overall, 572,900 black males and 37,400 black females were in state or federal prison at the end of the year 2000. *Id.*
- 5 According to Sue Bowers, Enforcement Director for the U.S. Department of Education's Office for Civil Rights' (OCR) Eastern and Southern Divisions, there are a number of resolution agreements between OCR and school districts regarding resource comparability concerns. Each of these is being monitored. The intra-district resource disparities investigated have included facilities, the number of certified teachers, library resources, AP course offerings, and textbooks and supplies. Telephone interview with Sue Bowers, Enforcement Director, East, OCR, U.S. Department of Education, (August 27-28, 2001). (on file with The Civil Rights Project at Harvard University).
- 6 *See, e.g.*, Campaign for Fiscal Equity v. State, 719 N.Y.S.2d 475 (App. Div. 2001).
- 7 In Campaign for Fiscal Equity, the court examined resource inequality in the New York City public schools in three key areas – teacher quality and curriculum, school facilities and classrooms, and instrumentalities of learning – to determine if students were being provided with the minimal “sound, basic education” guaranteed under the state constitution. 719 N.Y.S.2d at 491. The court made the following findings. First, compared to teachers in the rest of the state, teachers in the New York City public schools were less likely to be certified and more likely to have failed the state certification exams, had less experience teaching and experienced higher turnover rates, were less-qualified graduates of less-competitive colleges and universities, and were less likely to have a master's degree. *See id.* at 492-96. Part of the problem may be the fact that the New York City school system cannot compete in the labor market for new teachers. *See id.* at 498-500. While the adequate basic curricula were in place in the schools, implementation was hindered by inadequate teaching and other resource inequality. *See id.* at 500-01. In the second major category, the court found that a substantial number of New York City public schools were in need of major infrastructural repair; many had serious exterior damage and were in violation of building codes. *See id.* at 501-08. Approximately 59% of students in the district attended overcrowded schools. *See id.* at 508. Average class sizes vary by grade with a range of 23.8 to 28.72 students, consistently higher than the state average and far above maximum recommended levels. *See id.* at 511. In the final category, the court found that the New York City schools suffer from chronic shortages of textbooks, library books, and classroom supplies and equipment, ranging from science laboratory equipment to basic art supplies. *See id.* at 513. The court also found inadequate computer instructional technology. *See id.* at 514.
- 8 An accurate measure of resource inequality must take account of the fact that urban school districts face higher costs in procuring all types of educational resources, from making building repairs to paying competitive teacher salaries. As the New York State Education Department has acknowledged regarding its own formulas for distributing state education funds: “The failure to explicitly recognize geographic cost differences within the major operating aid formulas has led to formula allocations which are inequitable.” Campaign for Fiscal Equity, 719 N.Y.S.2d at 531. In the Campaign for Fiscal Equity decision, the court noted that the New York City area had the highest regional cost ratio of any area in the state, meaning “a dollar buys fewer educational resources in New York City than anywhere else in the State.” *See id.* This finding undercut the state's argument that it was providing adequate resources to New York City based on a comparison of total expenditures, which the court pointed out did not account for regional cost differences. *See id.*
- 9 *See e.g.*, Hard Work For Good Schools: Facts Not Fads In Title I Reform (Gary Orfield & Elizabeth H. DeBray eds., forthcoming 2002) (draft available from The Civil Rights Project – Harvard University) [hereinafter HARD WORK].
- 10 For instance, a 1998 study by the U.S. General Accounting Office found that federal funds provide an average of an additional \$4.73 per poor student for every \$1 in federal K-12 education funding, while state funds provided only an additional \$0.62. U.S. GENERAL ACCOUNTING OFFICE, STATE AND FEDERAL EFFORTS TO TARGET POOR STUDENTS 4 (1998).
- 11 The areas summarized – staff programs, instructional support, and facilities – are the overarching categories delineated for potential investigation by federal civil rights enforcement authorities. *See* UNITED STATES DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, INTRADISTRICT RESOURCE COMPARABILITY: INVESTIGATIVE RESOURCES 2 (2000) (available on request from OCR).
- 12 Even when present allocations of resources are adequate, this “cannot remedy the negative effects of past shortages.” Campaign for Fiscal Equity, 719 N.Y.S.2d at 513. For example, between 1997 and 1999 the New York City public schools received \$150 million to purchase new instructional technology in order to reduce the student to computer ratio in the district's schools. *See id.* at 514. However, most of the money had to be used to rewire old school buildings instead of purchasing new computers, the result of years of infrastructural neglect and underfunding. *See id.*
- 13 J. McPartland & W. Jordan, *Older Students Also Need Major Compensatory Education Resources*, in HARD WORK, *supra* note 9.
- 14 *See, e.g.*, 20 U.S.C. §§ 6311, 6312, 6317. In 1994 Congress passed the Improving America's Schools Act which overhauled what is now Title I of the Elementary and Secondary Schools Act. The primary reporting and adequate yearly progress accountability measures have been intensified in two bills S.1 and H.1. *See* Better Education for Students and Teachers Act, S. 1, 107th Cong. (2001); No Child Left Behind Act of 2001, H.R. 1, 107th Cong. (2001). The new law is expected to be a compromise between H.1. and S. 1., and by all accounts is expected to add requirements specifically targeting improvements in the academic outcomes

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- for minority children. See Julie Miller, *Key Lawmakers Close To ESEA Deal...But Will It Stick?*, Title I Report, Vol. 3 No. 9, at 10 (October 2001), available at www.titlei.com.
- 15 See generally Willis D. Hawley & Andrew J. Wayne, *Good Teaching, Good Schools*, in *HARD WORK*, *supra* note 9. Hawley and Wayne cite Rivkin, Hanushek and Kain, 1998; Ferguson 1998; Jordan, Mendro, & Weerasinghe, 1997; Wright, Horn & Sanders, 1997; and Sanders & Rivers 1996. Among the school-related influences on student achievement, teacher quality accounts for the greatest variance in school improvement. See *id.* (citing Rivkin, Hanushek & Kain, 1998; see also Linda Darling Hammond, forthcoming, Ferguson 1998, Greenwald, Hedges & Laine, 1996; Levin, 1988).
- 16 *Id.*
- 17 *Id.* at 2 (citing Sanders & Rivers 1996).
- 18 *Id.* at 7 (citing Lewis, et al., 1998).
- 19 *Id.*
- 20 *Id.* at 7 (citing Raudenbush, Fotiu & Cheong, *Inequality of Access to Educational Resources: A National Report Card for Eighth Grade Math*, 20 EDUC. EVALUATION & POL'Y. ANALYSIS 253-267 (1998).
- 21 *Id.* at 6.
- 22 NATIONAL EDUCATION ASSOCIATION, DIVERSITY IN THE TEACHING FORCE COLLABORATIVE NATIONAL SUMMIT REPORT 1 (2001). The National Center for Education Statistics also notes a figure of 33% minority students enrolled in the public schools. See NATIONAL CENTER FOR EDUCATIONAL STATISTICS, DIGEST OF EDUCATION STATISTICS (1998).
- 23 See NATIONAL CENTER FOR EDUCATIONAL STATISTICS, *supra* note 22.
- 24 See NATIONAL EDUCATION ASSOCIATION, *supra* note 22.
- 25 The figure is quoted at 84% of the highest-risk students are minorities. See Isabel Sawhill & Laura Chadwick, THE BROOKINGS INSTITUTION, CENTER ON URBAN & METROPOLITAN POLICY, CHILDREN IN CITIES: UNCERTAIN FUTURES 4 (1999).
- 26 Seventy-three percent of districts responding to a study conducted by Council of the Great City Schools reported an immediate need for teachers of color. COUNCIL OF THE GREAT CITY SCHOOLS, URBAN SCHOOLS FACE CRITICAL TEACHER SHORTAGE: DEMAND GREATEST FOR MATH, SCIENCE AND SPECIAL EDUCATION TEACHERS (2001).
- 27 See Hawley & Wayne, *supra* note 15, at 11 (citing L. Valli & P. L. Rennert-Ariev, THE NATIONAL PARTNERSHIP FOR EXCELLENCE AND ACCOUNTABILITY IN TEACHING, A FRAMEWORK FOR IDENTIFYING CONSENSUS: AGREEMENT AND DISAGREEMENT AMONG TEACHER EDUCATION REFORM PROPOSALS (1999)).
- 28 For example, in S1, the Better Education for Students and Teachers Act, *supra* note 14, federal education legislation passed by the Senate indicates in the amendment to Title II (20 U.S.C. 6601 et seq.) the term "highly qualified" teacher is defined in Section 2102 of the Bill, in part, as one who is certified or licensed by the State and at the secondary level, in part, by one who majored in the academic subject that the teacher teaches or a related field. The Bill passed the Senate. See 147 CONG. REC. S6305 (daily ed. June 14, 2001).
- 29 Minority teachers can serve as role models for students of color, serve as cultural mediators, employ culturally sensitive curriculum, reduce potential for discriminatory practices in the classroom, and help to close the often large gap between parents and the community, and the schools. Failure to address this problem could lead to a failure of all American students to learn the academic, personal, and social skills they need in the multicultural workplace of the future. NATIONAL EDUCATION ASSOCIATION, RECRUITMENT AND RETENTION OF MINORITY TEACHERS: AN OVERVIEW 3 (2001), available at <http://www.nea.org/recruit/minority>. The declining numbers of Black and Hispanic students majoring in education is steeper than the overall decline in education majors. *Id.*
- 30 See Hawley & Wayne, *supra* note 15, at 10.
- 31 NATIONAL EDUCATION ASSOCIATION, EARLY CHILDHOOD LEGISLATIVE ISSUE PAPER (2001).
- 32 For example, in 1994, 42 percent of the nation's 4th graders were unable to reach even the basic achievement level in reading. In 1992, most 4th graders—82 percent—were not proficient in math.
- 33 See, e.g., CARNEGIE CORPORATION OF NEW YORK, YEARS OF PROMISE: A COMPREHENSIVE LEARNING STRATEGY FOR AMERICA'S CHILDREN (1996) (report of the Carnegie Task Force on Learning in the Primary Grades) [hereinafter YEARS OF PROMISE]. The vast majority of student bodies in low-income urban areas are member of racial minority groups. In 1999, only 41% of children living in families earning less than \$20,000 were enrolled in public or private early childhood programs, compared to 58% of children in the same age group whose parents earned \$40,000 or more. AMIE JAMIESON, ANOREA CURRY & GLADYS MARTINEZ, U.S. CENSUS BUREAU CURRENT POPULATION REPORTS, SCHOOL ENROLLMENT—SOCIAL AND ECONOMIC CHARACTERISTICS OF STUDENTS, OCTOBER 1999, at 2 (2001), available at <http://www.census.gov/prod/2001pubs/p20-533.pdf>.
- 34 See YEARS OF PROMISE, *supra* note 33.
- 35 CHILDREN'S DEFENSE FUND, KEY FACTS: ESSENTIAL INFORMATION ON CHILD CARE, EARLY EDUCATION, AND SCHOOL-AGE CARE 3-14 (1999).
- 36 For example, according to the National Emergency TANF Data File, Table 10:24 *Percent Distribution of TANF Recipient Children by Race: October 1998-September 1999*, over 70% of the recipient children were minority.
- 37 According to the latest census, nearly half of the families in poverty were non-Hispanic whites. See JOSEPH DALAKER, U.S. CENSUS BUREAU CURRENT POPULATION REPORTS, POVERTY IN THE UNITED STATES: 2000, at 2 (2001), available at <http://www.census.gov/prod/2001pubs/p60-214.pdf>. One can safely infer that since whites statistically have far fewer children, that a large majority of poor children are minority - non-Hispanic whites. See E-Mail from Professor Gary Orfield, Harvard University, Nov. 4, 2001 (on file with NAACP).
- 38 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCESS TO CHILD CARE FOR LOW INCOME WORKING FAMILIES (1999).
- 39 ANNE WHEELOCK, CROSSING THE TRACKS: HOW UNTRACKING CAN SAVE AMERICA'S SCHOOLS 9 (1992).
- 40 See NATIONAL RESEARCH COUNCIL, HIGH STAKES: TESTING FOR TRACKING, PROMOTION, AND GRADUATION 95 (Jay P. Heubert & Robert M. Hauser eds., 1999).
- 41 20 U.S.C. §§ 6311, 6312, 6317 (1994)
- 42 See Valerie E. Lee & David T. Burkham, *Dropping Out of High School: The Role of School Organization and Structure* (Paper Presented at Conference on Dropouts in America, Harvard University, Jan. 13, 2001); NATIONAL RESEARCH COUNCIL, *supra* note 40, at 105 (citing extensive research showing that students would learn more if they received a demanding curriculum).
- 43 See 20 U.S.C. §§ 6314(b)(1), 6315(c)(1), 6320(a)(1) (1994); NATIONAL RESEARCH COUNCIL, *supra* note 40, at 105.
- 44 See Wheelock, *supra* note 39, at 9.
- 45 *Id.*
- 46 For a comprehensive analysis of the potential civil rights violations due to unequal access and tracking by race and ethnicity, see Daniel J. Losen, *Note, Silent Segregation in Our Nation's Schools*, 34 HARV. C.R.-C.L. L. REV. 517 (1999).

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47 Grissmer & Flanagan, *Making Title I More Effective: Lessons from Recent Research*, In *HARD WORK*, *supra* note 9. In the Tennessee statewide class-size reduction program, between kindergarten and third grade, participants' achievement scores were raised significantly. Finn & Achilles, *Answers and Questions About Class Size: A Statewide Experiment*, 27 *Am. Educ. Res. J.* 557-577 (1990).

48 Finn & Achilles, *supra* note 47; Mostellar, *The Tennessee Study of Class Size in the Early Grades*, 5 *THE FUTURE OF CHILDREN* 113-127 (1995); Word, et al., *TENNESSEE DEPARTMENT OF EDUCATION, STUDENT TEACHER ACHIEVEMENT RATIO (STAR): TENNESSEE'S K-3 CLASS SIZE STUDY: FINAL SUMMARY REPORT 1985-1990* (1990).

49 See sources cited *supra* note 48.

50 Molnar et al., *Evaluating the SAGE Program: A Pilot Program in Targeted Pupil-Teacher Reduction in Wisconsin*, 21 *EDUC. EVALUATION & POL'Y. ANALYSIS* 165-178 (1999).

51 See generally JEREMY FRIN, NATIONAL INSTITUTE ON THE EDUCATION OF AT-RISK STUDENTS, U.S. DEPARTMENT OF EDUCATION, *CLASS SIZE AND STUDENTS AT RISK: WHAT IS KNOWN? WHAT IS NEXT?* (1998).

52 The most recent national survey of computer ownership and use indicates that 32.6% of black households own computers and 23.5% have Internet access. U.S. DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, *FALLING THROUGH THE NET: TOWARD DIGITAL INCLUSION* (2000), available at <http://www.ntia.doc.gov/ntiahome/fttn00/contents00.html>. Among Hispanic households, 33.7% own computers and 23.6% have access to the Internet. *Id.* The numbers remain significantly higher for white and Asian American or Pacific Islander households—55.7% of white households own computers and 46.1% have Internet access, and 65.6% of Asian-American or Pacific Islander households have computers and 56.8% have Internet access. *Id.* Blacks and Hispanics also report less Internet use than whites and Asian Americans or Pacific Islanders. *Id.*

53 For example, while 82 % of classrooms in well-off schools are connected to the Internet, only 60 % of classrooms in the poorest communities have Internet access. U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, *INTERNET ACCESS IN U.S. PUBLIC SCHOOLS AND CLASSROOMS: 1994-2000* 4 (2001), available at <http://www.nces.ed.gov/pubs2001/2001071.pdf>

54 U.S. DEPARTMENT OF EDUCATION, *supra* note 53, at 4. Moreover, statistics on the total number of computers may be misleading if many of the computers available are outdated. For example, in *Campaign for Fiscal Equity*, the court found that computers in the New York City public schools tended to be older and less capable of handling sophisticated software, and the schools lacked adequate wiring for new computer technology. 719 N.Y.S.2d 475, 513-14. As far as total numbers, the school board's chief information officer testified that at least 20,000 of the 109,341 available computers in the district were obsolete, and even more machines lacked the power to run current operating systems. 719 N.Y.S.2d 475, 514-15. Perhaps as a result of these remaining inequality, teachers in poor and majority-minority schools are less likely to use computers for instruction in the classroom or to give students assignments requiring the use of computers. A recent survey found that 53% of teachers overall reported using computers for instruction time, compared to 45% of teachers in majority-minority schools and 50% of teachers in high-poverty schools. U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, *TEACHERS' TOOLS FOR THE 21ST CENTURY: A REPORT ON TEACHERS' USE OF TECHNOLOGY* 24 (2000), available at <http://nces.ed.gov/pubs2000/2000102A.pdf>.

55 *Id.* at 94.

56 National testing experts, the National Research Council, the American Educators Research Association, the American Psychological Association, the National Council on Measurement in Education, and the Department of Education all assert that no decision of serious consequence in a child's life should be made on the basis of a single test score. See generally AMER. EDUC. RES. ASSOC., AMER. PSYCH. ASSOC. & NAT'L COUNCIL ON MEASUREMENT IN EDUC., *STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING* (1999); *HIGH STAKES*, *supra* note 40.

57 See, e.g., Debra P. v. Burlington, 644 F.2d 397, 404-06 (11th Cir. 1981) (holding that requiring students to pass a functional literacy test in order to receive a high school diploma would violate the due process clause if the students had not been taught the material on the test).

58 See *HIGH STAKES*, *supra* note 40, at 122, 130-32, 149-62, 175-76. See generally *RAISING STANDARDS OR RAISING BARRIERS: INEQUALITY AND HIGH-STAKES TESTING IN PUBLIC EDUCATION* (Gary Orfield & Mindy L. Kornhaber eds., 2001). Gary Natriello of Columbia University's study examining the racial and ethnic disparities in performance on the Texas Academic Assessment System (TAAS) found that, by the spring of their senior year, almost twice as many black and Hispanic students had not completed the TAAS exit-level tests required to obtain a Texas high school diploma as white students. *Id.* The authors concluded that "these tests are, and will remain for some time, an impediment to the graduation prospects of African American and Hispanic youth." *Id.* Walter Haney found that only 50% of minority students in Texas have been progressing from grade 9 to high school graduation since the initiation of the TAAS testing program. Jay Heubert points out that students of color are almost always overrepresented among those who are denied diplomas on the basis of test scores. *Id.*

59 Linda McNeil and Anguela Valenzuela have found that "teaching to the test" has all but replaced the curriculum in poor schools in Houston. *Id.*

60 Proposals before Congress regarding Title I will likely require some level of state intervention if racial or ethnic subgroups consistently fail to make "adequate yearly progress" toward the state's proficiency goals measured by statewide assessments. See *Better Education for Students and Teachers Act*, S. 1, *supra* note 14. Current federal law mandates state "corrective action" where tests of student achievement repeatedly indicate that too few students are meeting a state's high standards. 20 U.S.C. §§ 6311, 6317 (d)(5), (6) (1994).

61 See *HIGH STAKES*, *supra* note 40, at 176-77.

62 Russell W. Rumberger, *Why Students Drop Out of School and What Can Be Done*, at 1-3 (Paper presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001).

63 *Id.*

64 Current practices of data collection on dropouts are woefully inaccurate, with major discrepancies in data reported by local, state, and federal education agencies. Researcher Phil Kaufman (MPR Associates) found that because of different methods of data collection and target populations, data from the Bureau of Census's Current Population Survey (CPS), National Center for Education Statistics's Longitudinal Studies Program (NELS), and National Center for Education Statistics's Common Core of Data (CCD) yield different estimates on the number of students who drop out and complete high school. Phillip Kaufman, *The National Dropout Data Collection System: Assessing Consistency* (Paper presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001). Researchers also found that the underrepresentation of minority students in data sampling leads to large-scale bias in NELS and CCD and underestimates minority dropout levels. *Id.*

65 See Robert Balfanz & Nettle Legters, *How Many Central City High Schools Have A Severe Drop-out Problem, Where are They Located and Who Attends Them* (Paper presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001). Longitudinal data from approximately 600 schools in 35 urban school districts shows that 50% or more of the ninth and tenth graders that enroll in over 300 urban schools in these districts do not finish twelfth grade. *Id.* Further, at least 100 more schools had rates approaching the 50% mark. *Id.* These are conservative numbers because they are based on sample survey data that tends to misrepresent drop-out numbers. See *Id.* at 3. In 78 of the 603 schools sampled, the enrolled senior class reflected a decrease of more than 70%

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of the original ninth grade cohort, with greater than 40% due to drop-outs. *Id.* at Table 2; *see also* Kaufman, *supra* note 64.

66 According to the 2000 National Center for Education Statistics, (Table 108) the dropout rate in 1998 was 7.7% for non-Hispanic whites, 13.8% for non-Hispanic blacks and 29.5% for Hispanics. Russell W. Rumberger, *Why Students Drop Out Of School and What Can Be Done*, (Paper presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001), available at www.law.harvard.edu/civilrights.

67 *See generally* MEREDITH MARAN, *CLASS DISMISSED: SENIOR YEAR IN AN AMERICAN HIGH SCHOOL* (2000); CHRISTINA RATHBONE, *ON THE OUTSIDE LOOKING IN: A YEAR IN AN INNER-CITY HIGH SCHOOL* (1998); ANGELA VALENZUELA, *SUBSTRUCTIVE SCHOOLING: U.S.-MEXICAN YOUTH AND THE POLITICS OF CARING* (1999); RICHARD BOYD, ET. AL., *ARE OHIO'S YOUTH AT RISK: URBAN AND SUBURBAN SCHOOLS IN THE BUCKEYE STATE* (1999).

68 According to a study conducted by Robert Balfanz and Nettie Legters of Johns Hopkins University, the nation's dropout problem is most serious in 200 to 300 schools in the 35 largest cities in the U.S. *See* McPartland & Jordan, *supra* note 13, at 104 (citing Balvanz and Legters, *Tabulations from the Common Core of Data, 1998* (unpublished John Hopkins University) (citing statistics from the National Center for Education Statistics, *Projected Dropout Rates From High Schools In the 25 Largest School Districts by School Characteristics, in COMMON CORE DATA 1992-1993*)). Researchers found that in half of the high schools sampled, 50% or fewer of the students who enrolled in ninth grade are graduated in twelfth grade. *Id.* Researchers also found that in schools with more than 900 students and in which 90% or more of the students are non-white, the school's rates of promoting students from ninth through the twelfth grades are the lowest. *Id.* In fact 71% of such schools had dropout rates in excess of 50%. *Id.*

69 This reporting should focus on outcomes for cohorts of students and therefore not require schools or districts to track every individual student.

70 McPartland & Jordan, *supra* note 13.

71 Research indicates that many school-controlled factors influence graduation rates significantly, so that changes in school structure, policies, and practices can increase the proportion of diplomas earned and reduce dropout rates substantially. *See, e.g.*, Rumberger, *supra* note 632; James McPartland & Will Jordan, *Essential Components of High School Dropout Prevention Reforms* (Paper Presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001); Valerie E. Lee & David T. Burkam, *Dropping Out of High School: The Role of School Organization and Structure* (Paper Presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001). For example, The Talent Development High School Model, and the Coalition Campus Schools Project have had substantial success in reducing dropout and increasing promotion rates. *See* Ruth Neild, Scott-Stoner-Eby, & Frank Furstenburg, *Connecting Entrance and Departure: The Transition to Ninth Grade and High School Dropout*, (Paper Presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001). at 27; Jacqueline Anness Suzanna Ort Wichterle, *Making School Completion Integral to School Purpose and Design* (Paper Presented at the Conference on Dropouts in America, Harvard University, Jan. 13, 2001); McPartland & Jordan, *supra* note X.

72 Far too little funding is allocated for students in the upper grades where drop out and achievement problems persist. Policy experts suggest that if states increased Title I funds for older students, and set a minimum percentage that reflected their continuing needs, impoverished older students would receive the ongoing support necessary to maintain achievement gains attained when they were younger. *See generally* Stanley Pogrow, *Overcoming The Cognitive Wall: Accelerating The Learning Of Title I Students After Third Grade*, *in HARD WORK*, *supra* note 13.

73 Available at <http://edweek.com/context/topics/issuespage.cfm?id=12>

74 *Id.*

75 *Id.*

76 According to CRP studies, compared to white children, black children (in data from 1997) were almost three times more likely to be labeled "mentally retarded." Other researchers found that many minority students—most significantly black boys—are overrepresented in segregated special education classrooms, especially those designed for students labeled as "mildly mentally retarded." This persistent pattern has lasted for well over twenty years. *See* Tom Parrish, *Disparities In the Identification, Funding, and Provision of Special Education, in MINORITY ISSUES IN SPECIAL EDUCATION* (Daniel J. Losen, Carolyn C. Peele & Gary Orfield eds., forthcoming Feb. 2002), available at <http://www.law.harvard.edu/civilrights/conferences/SpecEd/parrishpaper2.html>; Donald P. Oswald et al., *Community and School Predictors of Over Representation of Minority Children in Special Education 7, in MINORITY ISSUES IN SPECIAL EDUCATION, supra*; Edward Garcia Fierros, *An Examination of Restrictiveness in Special Education, in MINORITY ISSUES IN SPECIAL EDUCATION, supra*. In addition, minority students, across nearly all disability categories, are significantly more likely than similarly situated White students to be placed in restrictive special education environments, and segregated from their non-disabled peers. *See* Parrish, *supra*; Fierros, *supra*.

77 *See* Daniel J. Losen & Kevin Welner, *Disabling Discrimination in Our Public Schools: Comprehensive Legal Challenges to Inappropriate and Inadequate Special Education Services for Minority Children*, 36 HARV. CR-CL L. REV. 407 (2001).

78 *See* Parrish, *supra* note 76; Oswald, et al., *supra* note 76; Matthew Ladner & Christopher Hammons, *Special but Unequal: Race and Special Education, in RETHINKING SPECIAL EDUCATION FOR A NEW CENTURY 102-103* (Chester E. Finn, Jr., Andrew J. Rotherham & Charles R. Hokanson, Jr. eds., 2001), available at http://www.edexcellence.net/library/special_ed/special_ed_ch5.pdf.

79 *See* Oswald et. al., *supra* note 76.

80 *See* DAVID OSHER et. al., *EXPLORING RELATIONSHIPS BETWEEN INAPPROPRIATE AND INEFFECTIVE SPECIAL EDUCATION SERVICES FOR AFRICAN AMERICAN CHILDREN AND YOUTH AND THEIR OVERREPRESENTATION IN THE JUVENILE JUSTICE SYSTEM* (forthcoming 2002), available at www.law.harvard.edu/civilrights.

81 *Id.*

82 20 U.S.C. §1418; 34 C.F.R. § 300.755

83 *See* Beth Harry et al., *Of Rocks and Soft Places: Using Qualitative Methods to Investigate the Processes that Result in Disproportionality, in MINORITY ISSUES IN SPECIAL EDUCATION, supra* note 76.

84 The annual *Indicators of School Crime and Safety 2000* reported that 94% of surveyed public schools had zero tolerance policies for firearms infractions, 91% for other weapons, 88% for drugs, 87% for alcohol, 79% for tobacco, and 79% for violence. U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, *INDICATORS OF SCHOOL CRIME AND SAFETY 2000 135* (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iscs00.pdf>. The survey defined zero tolerance to include any school or district policy that mandates predetermined punishments for specified offenses. *See id.* at 133.

85 *See* PAUL M. KINGERY, *THE HAMILTON FISH INSTITUTE, ZERO TOLERANCE: THE ALTERNATIVE IS EDUCATION* (2000).

86 *See id.*

87 *See* Daniel J. Losen & Christopher Edley, Jr., *The Role of Law in Policing Abusive Disciplinary Practices: Why School Discipline Is a Civil Rights Issue, in ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS 231* (William Ayers, Bernardine Dohrn, & Rick Ayers eds., 2001).

88 CIVIL RIGHTS COMPLIANCE REPORT, *supra* note 2.

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- 89 This trend in the state data is quite apparent, yet is not immediately obvious when the suspension data are aggregated at the national level. For example, according to a Children's Defense Fund report in 1975 based on OCR data, 29 states suspended over 5 percent of their total black enrollment and only 4 suspended 5 percent or more of white students. See RUSS SKIBA, *THE COLOR OF DISCIPLINE: SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT*, (2000), available at www.indiana.edu/~iepc. Using the identical measure of 5% today would be misleading because overall suspension rates have risen considerably. Using 9 percent as the new line of demarcation, in 1998 we find that 37 states suspended 9 percent or more of the enrolled blacks, and 10 states suspended 9 percent or more of the enrolled Hispanics and 9 states suspended Native Americans at that rate, while only 3 states suspended 9 percent or more of the white students.
- 90 Figure 3 is derived from data contained in CIVIL RIGHTS COMPLIANCE REPORT, *supra* note 2.
- 91 See CIVIL RIGHTS COMPLIANCE REPORT, *supra* note 2.
- 92 See SKIBA, *supra* note 89.
- 93 BUILDING BLOCKS FOR YOUTH, AND JUSTICE FOR SOME (Jan. 2000) (research funded by the U.S Department of Justice).
- 94 Forty one states now require that students, including those of elementary school age, be referred to the police for certain actions. Data from South Carolina indicates that more than 3,000 students in 1998-99 were referred to law enforcement for the vague category of "Disturbing Schools." See The Civil Rights Project at Harvard University & the Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline*, (June 2000), available at www.law.harvard.edu/civilrights. In Maryland and Chicago, students are arrested for possession of pagers. Bernardine Dohrn, *Watch Out Kid: It's Something You Did*, in ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS at 89-113 (William Ayers, Bernardine Dohrn, & Rick Ayers eds., 2001). In New York City, summonses for loitering and trespassing increased by between 200% and 300% during the first year that the police assumed responsibility for school safety there. Adamma Ince, *Preppin for Prison*, VILLAGE VOICE, June 13, 2001.
- 95 See CIVIL RIGHTS COMPLIANCE REPORT, *supra* note 2.
- 96 KINGERY, *supra* note 85, at 18-31.
- 97 GARY ORFIELD & JOHN T. YUN, RESEGREGATION IN AMERICAN SCHOOLS (1999), available at <http://www.law.harvard.edu/civilrights/publications/resegregation99.html>.
- 98 In the West, where Latinos are a dominant minority group, 77% of Latino children are in predominantly minority schools. See *id.*
- 99 Gary Orfield, *Housing Segregation: Causes, Effects, Possible Cures*, Address Before the National Press Club (April 3, 2001), available at <http://www.law.harvard.edu/civilrights/publications/housingb.html>.
- 100 See generally MICHAL KURLAENDER & JOHN T. YUN, IS DIVERSITY A COMPELLING EDUCATIONAL INTEREST? EVIDENCE FROM METROPOLITAN LOUISVILLE (2000), available at <http://www.law.harvard.edu/civilrights/publications/louisville.html>.
- 101 See WILLIAM B. HARVEY, AMERICAN COUNCIL ON EDUCATION, MINORITIES IN HIGHER EDUCATION 2000-2001, EIGHTEENTH ANNUAL STATUS REPORT (2001). Moreover, blacks continue to represent only 5% of all full-time faculty in higher education — making little progress since 1993. *Id.* at 2-4.
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- 103 THE EDUCATION TRUST, YOUTH AT THE CROSSROADS: FACING HIGH SCHOOL AND BEYOND 8-9 (2001) available at http://www.edtrust.org/documents/k16_winter01.pdf.
- 104 *Id.*
- 105 Harvey, *supra* note 1.
- 106 Under Title IV of the Higher Education Act of 1965, Congress established a series of programs (initially three programs) to help low-income Americans enter and graduate from college.
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