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## Education Connection: The Effects of Race, Culture, and Special Education on Minority Disproportionality in the Juvenile Justice System

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*Education Connection:*  
**The Effects of Race, Culture, and Special Education on Minority  
Disproportionality in the Juvenile Justice System**

*By: Lisa Wiggin*

The juvenile justice system is inequitably composed. African American youth comprise a larger percentage of the juvenile justice system population than they do of the general population. Unfortunately, they are not the only group to be overrepresented. Youth receiving special education services also make up a greater percentage of the juvenile justice system than they do of the general population. Intensifying concerns about these two inequities is the fact that African American youth also make up a disproportionate percentage of students placed in special education. This article briefly examines the relationship of race, culture, socio-economic status, and disability on minority disproportionalities in the juvenile justice system and special education.

According to The Juvenile Justice Information Exchange's analysis of data from the Office of Juvenile Justice and Delinquency Prevention, African American youth aged 10 to 17 years comprise 31 percent of all juvenile arrests, 40 percent of detentions, 34 percent of adjudications, and 45 percent of cases transferred to adult criminal court. Despite these significant percentages, African American youth make up only 17 percent of all children in this age group. Such disproportionate representation occurs in nearly every state in the nation.

One possible reason for the disparate rates, especially for curfew violations and drug arrests, is geography. The Sentencing Project found that in 2011, African American youth were 269 percent more likely than white youth to be arrested for violating curfew laws. Curfew laws are more common in urban areas than suburbs, and minority populations are often concentrated in urban areas. Thus, African American youth live in the places where curfew arrests are more likely to occur, leading to disproportionate contact with the juvenile justice system.

Drug arrests, according to Human Rights Watch, are also more likely to occur in urban areas. One reason is that drug law enforcement tends to be concentrated in large urban areas. The other is that drug activity in low-income urban areas is more visible to police. Human Rights Watch states that, "In poor black neighborhoods, drug transactions are more likely to be conducted on the streets, in public, and between strangers, whereas in white neighborhoods – working class through upper class – drugs are more likely to be sold indoors, in bars, clubs, and private homes." Such differences in police involvement due to geography could explain why African American youth are arrested at far greater rates than white youth, despite similar rates of drug use. The Centers for Disease Control and Prevention's *2011 Youth Risk Behavior Survey* found that black and white students had been offered, sold, or given an illegal drug on school property at nearly identical rates of 22.8% and 22.7%, respectively. Yet, data compiled by The Sentencing Project shows that African American youth are arrested for drug crimes at almost twice the rate of white youth.

Although geography may offer insights into the reasons for racial disproportionality in the juvenile justice system, it does little to explain the overrepresentation of youth with special educational needs. The Office of Juvenile Justice and Delinquency Prevention ("OJJDP") cites "specific learning disability" and "emotional disturbance" as the two most common forms of disabilities found in the juvenile justice system. Specific learning disability is defined as difficulty

processing language, which results in an imperfect ability to listen, think, or speak, among other skills. Emotional disturbance can include inappropriate types of behavior under normal circumstances, as well as an inability to learn, which cannot be explained by intellectual, sensory, or health factors. According to Wrightslaw, 70 percent of children in the juvenile justice system have educational disabilities, with the vast majority having specific learning disabilities or emotional disturbance.

These children are particularly vulnerable to school disciplinary actions that feed the school-to-prison pipeline. According to the U.S. Department of Education's "Report to Congress on the Implementation of the Individual's with Disabilities Education Act," for every 10,000 students between the ages of 3 and 21 years who were served under the Individuals with Disabilities Education Act ("IDEA"), 407 who were categorized as being emotionally disturbed received out-of-school suspensions or expulsions for more than 10 cumulative days during the school year, compared to less than 161 for students reported under other disability categories. For every 10,000 students categorized as having an emotional disturbance, 41 were removed unilaterally to an interim alternative educational setting for offenses involving drugs, weapons, or serious bodily harm, compared to less than 23 for students served under each of the other disability categories.

One reason for these responses by school personnel may be inadequate training for educators related to student behavior. If a student is not properly diagnosed or treated, the teacher may misinterpret behavior related to the student's inability to process instructions or react appropriately as actions warranting discipline. Even when a child is properly diagnosed, zero-tolerance discipline policies can push special education students toward contact with the juvenile justice system. Such policies often criminalize students for inappropriate behaviors caused by their disabilities, rather than a desire to intentionally break school rules.

Once arrested, youth with disabilities are detained more frequently than non-disabled youth, according to the OJJDP. Experts posit that one reason special education youth receive harsher treatment is that they lack the communication and social skills to make a good presentation to the arresting officers. Although the behaviors of disabled youth may be merely a reflection of their disabilities, officers are less likely to release youth whose responses are interpreted as hostile, impulsive, or unconcerned.

For varied reasons, both minority youth and special education youth experience increased rates of contact with the juvenile justice system. The heightened risks for these two groups raise particular concerns about the potential outcomes of youth who fit both categories: minority students with special education needs. According to the Office for Civil Rights ("OCR"), minority students constitute a majority of students in special education programs in the United States. The OCR suggests that three possible reasons for the disproportionality are racism, misplacement based on cultural incompetence, and poverty.

According to a 2012 position paper authorized by The Association of Black Psychologists, our nation's history of withholding from, limiting access to, or decreasing the quality of education for African Americans reflects America's racist tendencies, and is used as a tool of white supremacy against African Americans. The paper points out that the historical background of education in the United States has been one of separate and unequal educational opportunities

between races. It states that, "The attitudinal climate - in the popular culture and the scientific community - has been one that presumed intellectual inferiority of African people..." It concludes that "African Americans are disproportionately placed in special education because of culturally biased referral, testing, and placement processes, which perpetuate an ideology that Blacks are innately inferior."

Other educators also suggest that the high placement of minority students in special education is due to the relationship between race and ethnicity and other variables used in assessments. According to the Elementary and Middle Schools Technical Assistance Center, variables such as language, assessment practices, systemic inequities, and professional development opportunities for teachers may be factors underlying the disproportionate representation. For example, a special education assessment may not adequately consider language or cultural differences between the student and assessment author. Better cultural competency training for teachers and more culturally-sensitive special education assessment tests may decrease the disproportionality of minority children in special education.

Even when accurate assessments are used, educators may conclude that a lower score is a reflection of the child's abilities, rather than the result of inadequate early education. Matthew Ladner, in his report to the U.S. Commission on Civil Rights, suggests that public schools often mistake inferior academic skills for a specific learning disability, when the child has merely received poor early reading instruction. Intensive early remedial reading intervention may prevent some children from being inappropriately placed in special education.

In another report to the U.S. Commission on Civil Rights, Daniel J. Reschly alternatively proposes that low socioeconomic status, as opposed to mere cultural incompetency, is the main proponent behind special education disproportionality. Reschly claims that the likelihood of disability status during childhood and adult years is increased by risk factors related to poverty, such as poor prenatal health care, pregnancies and births at very young ages, premature birth, low birth weight, prenatal exposure to toxins such as tobacco, alcohol, and drugs, poor pre- and postnatal nutrition, environmental exposure to lead, preventable childhood diseases, physical abuse and neglect. In addition to such physical risk factors, poverty can also augment the risk for disabilities through social factors, such as the level of intellectual stimulation in the home, language models, intellectual and behavioral preparation for schooling, parenting resources, and quality of child care.

Thus, institutional racism, cultural incompetency, and poverty are all possible reasons for disproportionate minority representation in special education. The fact that the juvenile justice system is disproportionately composed of minority youth and youth with special education needs raises the question of whether these three disproportionalities are connected. Is there a relationship between minority disproportionality in special education and minority and special education disproportionalities in the juvenile justice system?

It is possible that the minority disproportionalities in the juvenile justice system and special education are independently created and unrelated to each other. Disproportionality in the juvenile justice system may be solely a product of geography, arising from a higher level of police attention to curfew and drug violations in urban areas where minority youth are more likely to live. Minority representation in special education may be separately grounded in institutional racism, cultural

bias in the assessment process, or a willingness to fault the student rather than an inadequate early education. The solutions to these independent inequities would be fairer law enforcement policies and more culturally sensitive educational assessments and evaluators.

However, another possibility is that some of the disproportionate representation of African American youth involved in juvenile justice and special education stem from a common root of developmental challenges associated with poverty. Minority youth of low socioeconomic status face a greater likelihood of developing disabilities that lead to special education placement, and those same disabilities also increase the risk for involvement in the juvenile justice system. One way to attain more proportional minority representation in the juvenile justice system may be to prevent children of low socio-economic status from developing special education needs in the first place. Doing so would require meaningful public commitments to providing better access to healthcare, childcare, and early childhood education.

Although the causal relationships are difficult to distinguish, it is clear that race, culture, socioeconomic status, and disability each play a part in creating minority disproportionality in the juvenile justice system and special education. To promote the best outcomes for young African Americans, educators, juvenile justice professionals, and policymakers must be sensitive to the dynamic interplay of these variables.

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