

# The Right To Education: Due Process and the Inner City Child

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## Introduction

While the disciplines of clinical medicine, psychology and education have in the past successively provided the dominating skills for the study and treatment of the retarded, Adams<sup>1</sup> has commented that not until recent decades has a fourth "diagnostic tool," that of sociology, been introduced into the field. It is now clear that the law must be considered a fifth profession to become involved in the area of retardation.<sup>2</sup>

While during the civil rights movement of the 60's, minority groups were championed in light of their civil liberties and rights under the Constitution, the early 70's have shown increased attention to the rights of that segment of the population known as the handicapped. "The opinion and order in the case (*PARC v. Pennsylvania*) which came down on October 7, 1971" have been cited as "the first important legal breakthrough in the vindication of the right of the mentally retarded."<sup>3</sup> Following this case the "rights" of a minority population have begun to be explicated in all areas of living.

With these thoughts in mind, we will summarily look at the sociological frame of reference within which legalistic procedures and issues of law have begun to be articulated. After that we will deal with the various court cases emanating from this arena, particularly as they revolve around the educational rights of the mentally handicapped. Last we will turn to the controversial issues, those of testing, labeling and stigma, which have resulted from court decisions directly tied to the field of education and again reflective of the sociological climate of the times.

## Sociological Framework and Definitions

Within the framework of sociology, which sets itself the task of enunciating societal trends and on which the laws of society and legislative decisions reflect, the last several years have seen a movement concerned with the social impact of those issues once religiously regarded as the domain of medicine and psychology. This has meant that in the area of the mentally handicapped, definitions have often involved multidimensional criteria. Mercer<sup>4</sup> has distinguished a clinical from a social system perspective, which in contrast to the clinical, i.e., statistical and/or pathological model, stems mainly from the tradition of sociology and the study of deviant behavior. The concepts of status, role expectations, norms, labels, sanctions and stigma set the theoretical stage for the rethinking about a population group whose history ranges from extermination to segregation.

The sociologist defines mental retardation as an acquired social status to which individuals are assigned by social systems such as the public schools, diagnostic clinics and

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welfare agencies. Because their standards and procedures vary, the meaning of mental retardation in one system will differ somewhat from that in another. While the sociological perspective agrees that a disadvantaged social position may result in medical, nutritional and hygienic conditions which could lead to biological damage and clinical symptoms of mental retardation, such factors alone are not believed sufficient to explain such differential rates. To understand the nature of mental retardation in the community, according to the sociologist, one must also comprehend the social processes which select certain persons for labeling while passing over others who may be equally eligible.<sup>5</sup>

A review of epidemiological studies of mental retardation is demonstrative of differences which occur in the labeling process. Rowitz has outlined results of these studies for us.

- 1) Minority children are overrepresented among those labeled with minimal retardation.
- 2) Children who are behavior problems in school are more likely to be labeled retarded than children who are better behaved.
- 3) Most children labeled with minimal retardation come from low socioeconomic homes.
- 4) There is a high proportion of social disruption among families with high level retarded children.
- 5) The incidence of diagnosed subnormality is highest in the school-age years and much lower in the preschool and adult periods.
- 6) There is a preponderance of labeled retarded males in comparison to retarded females.
- 7) For the mildly retarded person, the school is the primary labeling agency.<sup>6</sup>

The most generally accepted estimate of the numbers of mentally retarded persons in the country, 3 percent of the total population, means that there are well over 6 million mentally retarded persons in the United States today. Even though this estimated incidence of mental retardation is not yet confirmed by epidemiological research—some studies have suggested a lower rate, others have suggested a higher one—it is certain that mental retardation is an enormous problem. It is explicitly recognized, however, that mental retardation is a relative concept, the limits of which have meaning only in terms of social conditions. The essential point is that despite the recognized imperfections of IQ tests, virtually all diagnoses of mental retardation rely upon these tests. Indeed, legal statutes usually require such testing. IQ is the operational tool; and both legal and medical terminologies and classifications of mental retardation are based upon discriminations in IQ.

No one seriously questions the proposition that experience, especially early experience, affects one's IQ. It is, for example, generally accepted that the longer individuals live in conditions of intellectual deprivation or isolation, the lower, on the whole, their IQ's will tend to be. Undeniably, then, the influence of social and cultural factors upon IQ is great. This point is crucial for an understanding of mental retardation. Many persons who are defined as mental retardates may not be profoundly, severely, or even moderately retarded. Indeed, Tarjan and Dingman, basing their estimates upon a population in the United States of 175 million, concluded that there were 2,276,755 persons in the United States with IQ's between 50 and 70.<sup>7</sup> Obviously many of these people function without attracting unfavorable social attention to themselves.

Even if we conclude that most, or even all, persons who have IQ's in the mildly retarded range suffer some degree of organic impairment of the brain or central nervous system—and this has never been demonstrated—it is nevertheless the case that their disorder is first and foremost an inadequacy in social conduct. Such persons do not become diagnosed as mental retardates because some specific organic cause has been located. Causal diagnoses of this kind are rare exceptions. Rather, diagnoses are typically made by recourse to IQ testing after some degree of social incompetence has been demonstrated. "In short, most mental retardation is mild mental retardation, and mild mental retardation is a social phenomenon through and through."<sup>8</sup>

Perry stresses the middle-class bias of both professionals and laymen who, albeit inadvertently, contribute to the labeling and resultant social stigma confronting the vast

majority of the retarded today. He condemns the "ignorance" of experts in mental retardation, an ignorance which is "plastered over" with satisfaction because they have verbally recognized the sociocultural derivations of the problem. But aside from "muttering something" about the need for stimulation, the expert in the field devotes his attention to a more fashionable subject matter than the socially deprived.<sup>9</sup> If this state of affairs is coupled with politically active and influential middle-class parents' organizations, we see a concentration of effort and money on problems within the realm of retardation that most clearly meets the needs and understanding of the white middle and upper classes of America.

## The Legal Mandates

### *The Right to Education and Fair Classification*

Following this trend, we can readily see the unity in the 70's of the goals of a militant parent advocacy group and those of the civil rights movement in general. This amalgamation came to life in Pennsylvania in the form of a class action suit filed on behalf of retarded children in the Commonwealth who had been denied an "appropriate education at public expense."

The suit, *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972), filed in January 1971, emerged a matter of consent rather than a matter of contest between the plaintiffs, PARC and the class they represented, and the state departments of education and welfare. The focus of the first court order was the provision of due process rights to children alleged to be mentally retarded. To ensure such due process, the court outlined a procedure: parents would be notified in writing if their child's educational status were to be changed; a formal hearing could occur at their request; they could secure legal counsel, examine their child's records, cross-examine witnesses, present their own evidence via independently secured diagnostic and evaluative material, receive a copy of the transcribed hearing, and, finally, receive notice of a decision. The second issue was access to a free public education program under the equal protection clause of the 14th Amendment. In essence the court established a zero-reject system. The final issue which is relevant to this present discussion was the establishment of court-appointed "Masters" to oversee a process of "identification, evaluation, notification and compliance" to result in the placement of all retarded children in suitable programs by September 1, 1972.<sup>10</sup>

A massive "childhunt" campaign then followed in an attempt to identify an estimated 50,000 children in Pennsylvania who, allegedly, had been previously denied access to a free public education. Local units of the welfare department such as community mental health centers were urged to identify to the public schools any child suspected of being mentally retarded.

In a memo from the Commissioner of Mental Retardation for the state of Pennsylvania to all county mental health/mental retardation administrators, the following mandate ensued:

The County MH and MR Administrators will:

- 1) Collect, collate and transmit to the Intermediate Unit Executive Director the names and information . . . concerning those persons from their respective MH and MR Administrative Area under the age of 21 who are mentally retarded or thought to be retarded and who are:
  - a) currently enrolled in the State Schools and Hospitals, etc. . . . or in any other such special programs for mentally retarded persons;
  - b) currently on an institutional waiting list and not enrolled in any type of program;
  - c) currently living in the community and not in any program and not on any waiting list.

The superintendents of State schools and hospitals and the directors of programs shall search their current and past records for all children with birthdates from 1950 forward and transmit to the appropriate County MH and MR Administrator the data.<sup>11</sup>

The question of confidentiality in the clinical sense was given importance in this large-scale attempt at identification. A letter from the Commissioner made this explicit:

Dear \_\_\_\_\_:

Some time ago you raised the question to me about the confidentiality of information as it pertains to the Right to Education Consent Agreement.

We have pursued your concern with the Legal Counsel in the Department of Public Welfare, and it is their opinion that information resulting from the "childhunt" is not confidential information. . . . This information is often the result of direct knowledge or input from a third party. There is therefore no confidential relationship between the BSU and the family regarding this matter. It is basic to this order that there must be a free flow of information between the mental retardation system, including all its facilities, and the Department of Education. . . . Therefore, neither knowledge nor consent of the family is required before the passing of any information to the school system.<sup>12</sup>

While this statewide drive was under way, some community groups foresaw problems for minority-group children. This concern was expressed in a letter written by a representative of a local agency serving a black inner-city population and sent to the local mental health center:

Dear \_\_\_\_\_:

It has come to my attention that in order to foster the ideals of the Pennsylvania Right to Education Bill, your agency has solicited the names of potentially retarded children. . . . From what I understand, this list of "potentials" is then forwarded to the Pittsburgh Board of Education for possible testing. While I share your agency's concern for the educational needs of the mentally retarded child, it appears on the surface, that your current policy of reporting possible cases of retardation to the Board of Education may be perpetuating a gross injustice on many children and families. . . .

To my knowledge the person(s) from whom you received the list of potentially retarded children in the Hill area has not had the benefit of a clinical psychological background. This person(s) therefore must base decision on a layman's knowledge. In addition your agency does not test the children in question to ascertain whether or not this layman's knowledge has any real basis.

The injustices of this system are fairly obvious. Once this list of "potentials" is forwarded to the school system, each child is allegedly tested. A record of this testing is no doubt inserted into the child's academic record. Whether the child actually is retarded becomes rather a side issue once he has been stigmatized by the possibly unfounded suspicion of retardation. . . .<sup>13</sup>

As we pointed out earlier, however, the concern of a largely middle class organization was with schooling for retarded children who in their eyes were severely impaired. They were not prepared to deal with the problems of the large majority of the retarded, the so-called "mildly retarded" living in the lower socio-economic pockets of the community, nor have they done so.

The *PARC v. Pennsylvania* decision was, then, the catalyst to a series of not less than fifteen right-to-education suits throughout the country. The second suit to have greatest significance was that which occurred in the District of Columbia, *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), filed September 21, 1971. The suit expanded the concept put forth in *PARC v. Pennsylvania* to include not only mentally retarded children but all those other children "suffering or alleged to be suffering from mental, behavioral, emotional or physical handicaps or deficiencies."<sup>14</sup> While the Pennsylvania case rested upon a consent agreement, the *Mills* case rested purely on constitutional grounds and thereby has even stronger precedential value.

As to the Constitutional basis for the ruling, Judge Waddy found the plaintiffs' right to education within the due process clause of the Fifth Amendment, and cited precedents including *Brown v. Board of Education*, (Supreme Court) 347 U.S. 483 (1974), outlawing school segregation, and *Hobson v. Hansen*, 256 F. Supp. 18 (D.C.D.C. 1967), abolishing the so-called track system in the District.

Since *Hobson v. Hansen*, in which Judge Wright held that the "tracking" system of educational placement in Washington, D.C. schools was illegal because it was a violation of the equal protection clause of the U.S. Constitution, California has become another battleground over intelligence testing and educational placement. *Spangler v. Board of Education*, 427 F2d 1352 (1970), *Diana v. State Board of Education*, C-70 37 RFP (N.D. Cal. Feb. 5, 1970), *Covarrubias v. San Diego Unified School District*, No. 70-394-S (Filed San Diego, California Feb. 1971, settled by Consent Decree July 31, 1972), and *Arreola v. Board of Education*, N. 160-577 (Superior Ct., Orange County, Cal., 1968), all contain complaints regarding minority placements in special classes, intelligence testing in a native tongue, parental participation in class assignment and, lastly, money damages. In *Spangler v. Board of Education* it was found by the United States District Court for the Southern District of California that there was a "racial imbalance" in the student bodies and faculties of the Pasadena school district at all levels. The racial imbalance was attributed to "conscious policies and practices" on the part of the school district to maintain "disproportionate racial distributions." One such practice was discriminatory "interclass grouping" based upon intelligence tests and teachers' recommendations.

Following *Spangler*, *Diana v. State Board of Education* was more specific in its citation that because of the use of standardized test results, Chicano public school children were improperly placed in classes for the retarded. At the time of the suit, the Soledad School District had one class for educable mentally retarded students with eleven students, ten of which were Chicanos. The original test scores ranged from 30 to 72 with a mean IQ score of 63. Upon retesting by a bilingual examiner, seven of the ten students scored between two and nineteen points over the educable mentally retarded cutoff point. The range of scores became 81 to 108, with a mean IQ score of 96. One student raised her score 49 points; the average gain was 15 points per child.<sup>15</sup>

*Diana* had a major impact in California and was settled in February, 1970, by a stipulated agreement including ". . . retesting, using only meaningful selection of tests, and testing in both the child's primary language and English."<sup>16</sup> State school psychologists were required to revise or renorm IQ tests, and school districts were held accountable for any disparity between special-class enrollments and minority population.

*Larry P. et al. v. Riles et al.*, Civil Action No. C-71-2270 (N.D. California, Nov. 18, 1971); 343 F. Supp. 1306 (N.D. Cal. 1972) was filed on November 18, 1971, in the state of California on behalf of named plaintiffs, all black children, placed and retained in classes for the mentally retarded. The complaint alleged that these children and the class they represent were placed in classes for the retarded on account of testing procedures which failed to recognize their unfamiliarity with the white middle-class culture and which ignored the learning experiences they brought with them from their own culture. "This improper placement is further alleged to result in stigma and a life sentence of illiteracy and public dependency."<sup>17</sup> In June, 1972, the court entered a preliminary injunction enjoining the state of California from using IQ tests for placing black children in classes for the educable mentally retarded. *Stewart v. Philips*, C.A. No. 70-1199-F (D. Mass. filed Sept. 14, 1970), in Massachusetts, and *Lebanks v. Spears*, 60 F.R.D. 135 (E.D. La. 1973), in Louisiana, follow similar lines, with the former asking \$20,000 per child in compensatory and punitive damages. The Massachusetts suit also requires that a "Commission on Individual Educational Needs" be established to oversee the administration of a battery of psychological tests, to devise educational programs to meet individual educational needs, to insure tests are administered by qualified psycholo-

gists, and to establish a procedure whereby parents might participate in the placement of their children.

Even though one would think that these major court actions would have come close to resolving many of the plaintiffs' issues, this does not seem to be the case. Twice, legislative action in California has been attempted to limit testing in the state, and twice it has been vetoed by the governor. The California State Board of Education has recently placed a moratorium on testing in the state, while using, instead, various levels of observation and consultation. It must be noted, however, that with all the litigation and subsequent planning (California Master Plan for Special Education, 1974),<sup>18</sup> the racial imbalance of educable mentally retarded classes has not been corrected.

The most recent study dealing with the impact of litigation and educational programming, a report to the President's Committee on Mental Retardation,<sup>19</sup> was based on a field study conducted in California and Arizona as an attempt to update the results of some of the more recent court decisions as to impact on education. Among the cases selected as relevant for study were those cases filed on behalf of minority children which focused on testing, labeling and placement, and those cases which were before the courts three or four years previously, allowing sufficient time passage between the filing for litigation and the resulting action. Four out of a possible eleven cases were selected; these include *Diana*, C-70 37 RFP (N.D. Cal. Feb. 5, 1970), *Guadalupe Organization v. Tempe Elementary School Dist. No. 3*, No. Civ. 71-435 PHX (D. Ariz. May 9, 1972), *Arreola*, N. 160-577 (Superior Ct., Orange County, Cal., 1968), and *Covarrubias*, No. 70-394-S (Filed San Diego, California Feb. 1971, settled by Consent Decree July 31, 1972). The report concludes that little real change has occurred in the aftermath of litigation; schools have not incorporated the changes that were demanded by the litigation and have not changed basic practices.

We will now turn to those specific controversial areas which were highlighted in legal suits with sociopolitical overtones, and to the interaction of education, law and sociology which has resulted.

## Implications for Education

### *Consequences of Testing*

The present educational classification system for exceptional children and the techniques by which individuals are so assigned have an extensive historical background ranging back to the nineteenth century.<sup>20</sup> Hobbs states several purposes for the classification and labeling of children: "to maintain the stability of the community and of its institutions, to control the allocation of resources and govern access to them, to reduce discord in school and in the neighborhood, to preserve majority values and expectations, and to allay anxiety generated by the presence of a deviant individual." This rationalization by the "normal majority" can be viewed in sociological terms as the fact that "... we often convince ourselves that what we are doing in the interest of social control is done solely to help a child."<sup>21</sup>

The problems of retardation in education have been recognized by psychologists as well. Blanton,<sup>22</sup> in a summary of the testing movement, reviews the work of Binet and Simon in France, Decroly and Degand (1907, 1910) with Belgian children, and Treves and Saffiotti (1910-1911) with children of diverse social classes in Milan. These investigators "found very substantial differences in the performance of children of the same chronological age but different social status."<sup>23</sup> Despite such early recognition of the existence of cultural and environmental factors, little consideration, if any, was given to these elements as the testing movement entered the American public school system.

The expansion of educational programs for the handicapped during the 1920's and 30's was neglected, due in part to the Depression but more to the public impression of retardation as a rigid, hopeless condition tied to criminal traits and "degeneracy" of

24,25,26,27 While the issue remained somewhat dormant until the 1960's and 1970's, there were some professionals (Davis and Eells *circa* 1940) who were attuned to the discriminatory function of mental testing. They appeared, however, at a time when racism was popular, especially as directed against immigrants. The racist fires were fed by journalistic biases and by an unwillingness of professionals to clarify and discuss appropriate issues.

It is important to note that while in retrospect the potential danger of mental testing can be seen, it was not nearly so obvious at the time. Proponents of testing saw intelligence as a constant, fixed trait which was useful in the prediction of educational programming and, unfortunately, in guiding the subsequent future life plans of individuals. The development of psychological and educational testing in schools was viewed as a response to social, educational and professional needs in making practical and judicious decisions about children. It was seen as desirable and logical to use test results for the identification of "less capable" students and thereby not to challenge these students with academic work beyond their means, but rather to channel them into more appropriate learning experiences which would prepare them for their (predetermined) lower class roles.

The "mere" act of testing, however, is of little significance if some major occurrence does not evolve subsequently. This inappropriate act gains its significance when, based on its own arbitrary criteria, some part of society, i.e., schools, labels these individuals as retarded and places them in special classes supposedly designed to "educate" such students. It is a fairly well documented fact that the primary labeler of retardation in the community is the school system.<sup>28,29,30</sup>

In order better to understand the consequences of labeling and classifications, it would be well to understand the procedure by which most public school systems process students for special class placement, in this case classes for the mildly retarded. Bruininks and Rynders present a graphic model of such a procedure: 1) children are referred initially for specialized services because of specific problems in learning and/or adjustment; 2) no assumption is made regarding the cause of the child's problem; 3) following the initial referral, an assessment of the child is conducted in the areas of intelligence and achievement; 4) if the child scores low enough on the intelligence test, he is generally referred for special education assignment; 5) by the end of the diagnostic sequence, however, mental retardation emerges as a causal explanation of the child's problem(s).<sup>31</sup> It has been the assumption (Bruininks and Rynders)<sup>32</sup> that grouping of students with IQ scores between 50 and 80 would reduce the range of intragroup differences, thus making it possible to provide instruction to children with similar academic needs. One need only peruse the achievement levels of students in special classes to see the fallacy of such an assumption.<sup>33</sup>

As if this were not enough, there is serious question as to what the overall academic and social returns are for students placed in special classes as compared to those who were not placed. The efficacy question can be traced back to two studies made prior to 1940 (Bennett, 1932; Pertsch, 1936). These two were followed by investigations of Blatt (1958), Cassidy and Stanton (1959) and others.<sup>34</sup> The issue again came to the fore when Johnson laid down his famous paradox:

It is indeed paradoxical that mentally handicapped children having teachers especially trained, having more money (per capita) spent on their education, and being enrolled in classes with fewer children and a program designed to provide for their unique needs should be accomplishing the objectives of their education at the same or at a lower level than similar mentally handicapped children who have not had these advantages and have been forced to remain in the regular grades.<sup>35</sup>

The concept that special classes provide a forum in which special individualized programs are presented to students has also been posited as a reason for special class place-

ment. Simches and Bohn,<sup>36</sup> in a review of numerous curriculum guides for the mentally retarded, did not find this to be the case. In general they discovered a watered-down mainstream curriculum that lacked structure and sequence. Goldstein *et al.*<sup>37</sup> attempted to provide a more standardized special class curriculum as well as to avoid the selection bias and other methodological problems of earlier studies. Results after four years revealed no significant differences between the two groups assigned randomly at first grade, in either IQ gains or achievement.

The time was right when Dunn<sup>38</sup> issued his challenge to special educators and called for a moratorium on the placement of mildly retarded children in special classes. His indictment is based on the detrimental effects experienced by minority-group children as a result of the homogenous grouping. Efficacy studies are cited as further substantiation of the unsuitability of this discriminatory action of placement. He is even more critical of the assessment provided by a school psychologist who "generally administers—in an hour or so—a psychometric battery, at best consisting of individual tests of intelligence, achievement, and social and personal adjustment."<sup>39</sup> The emphasis again is on finding out what is wrong with the child in order to provide a label and thus make him/her (usually him) eligible for special class placement. Dunn strongly objects that such a labeling process has resulted in "digging the educational graves of many racially and/or economically disadvantaged children," thus becoming "a destructive, self-fulfilling prophecy."<sup>40</sup>

The testing movement has been reviewed along with its relationship to minority groups and educational systems, i.e., special classes. The process by which most mildly retarded students find their way to special classes has been summarized along with many of the general criticisms of labeling and special class placement. MacMillan *et al.*, citing studies reviewed by Gardner (1966), Kilstoe (1972), Schurr, Towne and Joiner (1972) and others, conclude that no evidence is to be found indicating a direct relationship between self-concept and labeling. In contrast, Guskin states: "The labeling controversy is in actuality a political argument between those who support the current system of special education and psychological diagnosis as a constructive and altruistic arrangement and those who wish to break up that system because they see it as oppressive and destructive."<sup>41</sup>

### *PARC v. Pennsylvania (Implementation and Due Process)*

Consideration will now be given to the technical aspects of special class placement providing due process, with special emphasis on the *PARC* case and its related effects on the "disadvantaged."

In order better to understand the effects of *PARC* on minority group children, the diagnostic and reporting procedures involved must be understood. The lack of sufficient planning time (3 months) precluded the development of a well-thought-out, comprehensive plan. Although a fourteen-page evaluation form was developed to assess the subjects' varied abilities and performance and to provide subsequent program design decisions, this assessment device was unstandardized and nonspecific. The document contains no indication as to the developmental age to which each item corresponds and no clear indication as to what constitutes success on most items. Little if any attention is given on the form to behavior patterns, e.g., reaction to frustration, tendencies to be either aggressive or withdrawn, hyperactivity, etc. Essentially the assessment is geared to be far more applicable to young trainable or severely retarded individuals than to educable mentally retarded students, and yet it is to be used for all.

The evaluation procedures mandated by COMPILE (*Commonwealth Plan for Identification, Location and Evaluation of Mentally Retarded Children*) include the evaluation form and broad in-depth assessment including general intellectual development,



social competence, personality and motivation, achievement and vocational potential as well as assessment of family and home situational factors. Included should be estimates of adaptive behavior at home, in the neighborhood and in local peer groups. The assessment is to involve all supportive school personnel and family as well as other community agencies and medical professionals or specialists. COMPILE mandates that ". . . a continuing diagnostic prescriptive and psychoeducational plan shall be implemented to meet the needs of the students."<sup>42</sup> A modest time estimate provided by certified psychologists is between four to five hours for the previous evaluation. In contrast, the original evaluations were a hurried checklist of deficits completed to meet a time deadline.

Once these "assessment data" are obtained, however, they are recorded on a state-approved form. The form calls for demographic data as well as referral sources. Program recommendations and design are *checked* only as they relate to the evaluation form previously described and to COMPET (*COM*monwealth *Plan for Education and Training of Mentally Retarded Children*), which is to provide necessary instructional guidance. According to the information received by these authors, these records are to be maintained on all students with IQ's of 80 or less.

Nowhere on this "referral placement master" is there reported any specific IQ score or type of class. This means that the student could have any IQ from one to eighty and be in any type of class. COMPILE states that "where multihandicapping conditions present themselves in the evaluation, mental retardation shall be viewed as the primary handicapping condition."<sup>43</sup> Individuals with disabilities other than mental retardation, be they physical, e.g., vision, hearing, etc.; psychological, e.g., emotionally disturbed; or cultural, e.g., disadvantaged, will now be "labeled" mentally retarded.

A guarantee that each student would receive the full assessment as described would not remediate the reporting procedure but would improve the biased conditions under which many students are placed in special classes. Unfortunately, seldom do students get the advantage of a full assessment before placement occurs. More often than not the evaluation includes a cursory review of cumulative records, possibly a short discussion with a teacher, an individual intellectual assessment and brief achievement testing. Test reports usually include a description of test behavior, a few specific strategies for the teacher, and recommendation for special class placement. In light of the previous discussion on test bias and labeling, this latter process certainly does not lend itself to the benefit of minority group students. The maintenance of a rigid IQ cutoff with low socio-economic and minority group individuals is unfair and does not allow for environmental differences and inequities. Such reporting of individuals who score under a certain IQ to a single agency, i.e., the state, is politically tenuous.

Moreover, there are no guarantees that a roster of such names would not be made available to other parties. On the contrary, Selkowitz (personal communication 1975) indicates that agreement has occurred making it possible for certain "appropriate" agencies to obtain lists of names if a "Save-Harmless" agreement is signed. What was done in the name of civil rights can now with little difficulty violate one of the most precious of "rights," namely, the right to privacy.

An attempt has been made to focus attention on the importance of assessment reporting procedures and record maintenance. Conditions under which these occur are of obvious concern and relate to the civil rights of handicapped and nonhandicapped persons. Due process, on the other hand, is a means by which rights of all individuals should be protected.

In education, specifically in *PARC*, it means that no child may have his/her educational status changed without parents being notified and having the opportunity to view all records. If there is disagreement with such placement, parents have the opportunity of a hearing before an impartial "hearing officer" with the representation of legal counsel. Very few would argue against this process or the parents' prerogative to know

what is happening to their child. The process has, where implemented, stopped the indiscriminate moving of students in and out of programs. It has made school psychologists more aware of what they report, since at some time it may require defense. For the educated, informed middle and upper middle-class, the process has indeed provided a guarantee of certain civil rights. For the less well-educated, often crisis-oriented, culturally oppressed minorities, however, there is no guarantee.

For example, *PARC* mandated that the due process letter be sent by certified mail or be given directly at a conference. Many urban and minority group parents are reluctant to accept certified mail, since it often represents a means utilized by businesses or agencies to exert pressure to comply with life-styles differing from theirs. Thus many minority group parents waive their rights simply by not claiming their notices. Many oppressed parents did not themselves have successful experiences in educational institutions and therefore are suspicious of invitations to meet with school officials. Unless a crisis exists, many will not attend conferences. Often the assumption is that if "all is quiet" then "all is well." The benefits of education have not been experienced by them, but they are most aware of the fact that their children must go to school. Thus far due process has failed them.

When and if parents are willing to accept the letter, it is often difficult for them to read. It is written in "legalese" with quotes from school codes and references to school programs many of which are unknown to educationally uninformed parents. Then, in protection of their rights, we proceed to offend them by calling their children retarded or softening the blow by use of phrases such as "slow learner."

Although intellectual testing has fallen under exhaustive scrutiny, it is still the major criterion for educable mentally retarded placement. Adaptive behavior is satisfied by the student's inability to perform academic work, not at expected level, but rather at grade level. The concern of these authors is that due process now legitimizes the placement of minority group children in special programs without careful consideration given to test bias, labeling effects, utilization of other resources and effects of special class placement. Thus mainstream educators, who for years have been unable and often unwilling to deal effectively with cultural and individual differences in performance, now have a vehicle by which legally to process children into special programs for the handicapped without appropriate concern for cultural differences and testing protocol. This concern is not without precedent.

Reynolds notes the findings of the 1968 President's Committee on Retardation: ". . . children from impoverished and minority group homes are 15 times more likely to be diagnosed as retarded than are children from higher income families, and that three-fourths of the nation's diagnosed mentally retarded children are to be found in the isolated and impoverished urban and rural slums."<sup>44</sup> Dunn quotes other statistics from the United States Office of Education indicating that there are ". . . approximately 32,000 teachers of the retarded employed by local school systems . . . about 60 to 80 percent of the pupils taught by these teachers are from low status backgrounds—including Afro-Americans, American Indians, Mexicans and Puerto Rican American. . ."<sup>45</sup> This is a most frightening state of affairs that smacks of underlying institutional racism.

### *Alternatives*

Are there alternatives to existing testing and placement procedures which will be less discriminatory and less destructive to minority group children?

Keeping in mind that the obvious purpose of obtaining test data is to provide information which is of use in planning learning experiences for the individual being tested, one alternative to the use of tests is criterion-referenced measurement. Eyman *et al.*<sup>46</sup> give a brief description of this specific technique. In traditional norm-referenced testing,

scores are converted to standard scores of some type and are interpreted in relation to those on whom the test has been standardized. Little attention is given to specific individual competence in relation to his/her own development or ability. In criterion-referenced measurement, criteria for success are not defined relatively. Rather, in test construction, behavior categories are clearly specified and items developed to test these behaviors. Individualized instructional plans can then accompany testing to facilitate desired outcomes by providing learning tasks to enable the learner to perform the behaviors that constitute the desired outcomes.<sup>47</sup> In essence, the learner is measured against himself and not against others.

Mercer<sup>48</sup> describes another approach in which a multicultural pluralistic assessment is advocated, taking into account the social milieu in which the child is reared, an evaluation of his general academic performance in relation to the general public school population as well as to his own sociocultural subgroup, an assessment of his adaptive behavior in nonacademic activities, an inventory of his health history, and a screening for physical impairments. The development of multiple normative frameworks recognizes the right of the child to be evaluated within an appropriate framework and rids the evaluative process of the single "normal" curve. The recognition that children come from varied cultural backgrounds helps guarantee that these children are not penalized by present assessment procedures and should lead to multicultural programming in school systems.

Alternatives to special class placement are evidenced by even a cursory review of special education research. Deno<sup>49</sup> describes a variety of instructional alternatives for exceptional children. Papers in this volume include suggestions for college-training programs in preparing noncategorical special educators who function as consultants and planners. Others focus on resource teacher models and attempts to restructure entire school systems. Birch defines mainstreaming briefly as ". . . based on the principle of educating most children in the same classrooms and providing special education on the basis of learning needs rather than categories of handicaps"<sup>50</sup> and describes such programs as they function in six major school districts across the country. Chaffin<sup>51</sup> reviews and comments on no less than thirty such programs presently in operation in public schools.

There is general agreement among special educators that elimination of all special classes is not desirable. Rather steps must be taken to encourage "mainstream" educators to modify school programs to accommodate students of varied individual and cultural differences. This means that special education may be called upon to aid appropriate students while they remain in regular classrooms. Certain students may still require instruction in special classes, but only after other alternatives have been exhausted. However, the wholesale referral, routine testing, labeling and placement of children, especially poor and minority group children, must be stopped.

All authors reviewed in three extensive volumes of investigations related to issues in the classification of children<sup>52,53,54</sup> agree that classification and labeling of children are useful only when they lead to appropriate planning and services for children while providing safeguards for harmful and deleterious effects to those incorrectly labeled; ". . . in the case of labeling, the burden of proof lies with those who advocate the use of labels to demonstrate that the categorization demonstrably benefits the individual who is labeled."<sup>55</sup>

In conclusion, steps must be taken to provide services to those students in our school systems who are in need. If classifications and categorizations are necessary, they should focus on those specific aspects of academic or behavioral development which are amenable to programming and remediation. General classification systems of children are no longer acceptable. Attempts must be made to stop viewing individual and cultural differences as deficits and rather to utilize such differences to create a match between a child's cognitive and life style and his academic learning experiences.

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