

FOCUS

a publication of the

National Association for the Education of African American Children with Learning Disabilities

A Quarterly Newsletter

December 2008

U.S. Department of Education Seeks to Impose Double Standard

Restrictions are Added on Reporting of Racial Disparities

Front Page

Motivating Against All Odds

Football coach in Cleveland, Ohio now has his own school.

Page 2



Special Education Pre-Referral Process: Is it Required Under Law?

California advocate provides information.

Page 3



About the NAEACL D

Become a member of the organization . . . Join the Parent Network, Parent Leadership Institute, and/or Stand Up! Campaign for the Children Left Behind.

Page 4

Contact Information

Visit our updated website with ongoing improvements. Order a copy of the parent handbook or print a free copy online!

Back Page

Like the metamorphosis of a butterfly . . . change begins with a new way of learning.



U.S. Department of Education Seeks to Impose Double Standard

Restrictions are Added on Reporting of Racial Disparities

On November 12, 2008, the following alert was issued by The Civil Rights Project at UCLA:

The U.S. Department of Education has just proposed new guidance for State Performance Plans (SPP) and Annual Performance Reports (APR) regarding significant disparities in long-term suspensions of students with disabilities. The DOE states that the changes were in response to the numerous objections, raised over a year ago, when the DOE sought to eliminate the indicator on discipline altogether. DOE plans to reinstate indicators 4a and 4b and require that states report discrepancies in long-term suspensions or expulsions among

students with disabilities at the district level. (According to the IDEA states may either report on significant disciplinary discrepancies in a given district as compared to all students with disabilities in other districts, or compared to all non-disabled students in the same district. 20 U.S.C. 1412(a)(22).)

However, in the proposed guidance that reinstates indicator 4, DOE also seeks to restrict both reporting and goal setting pursuant to indicator 4b which concerns the same discipline disparities as in 4a, broken down further by race and ethnicity.

The Original Indicators:

Indicator 4: Rates of suspension and expulsion:

- A. Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year; and
- B. Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year of children with disabilities by race and ethnicity. Authority: (20 U.S.C. 1416(a)(3)(A); 1412(a)(22))

The New Proposed Indicators:

Indicator 4: Rates of suspension and expulsion:

- A. Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with IEPs for greater than 10 days in a school year; and
- B. Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with IEPs of greater than 10 days in a school year by race and ethnicity and that have policies, procedures or practices that contribute to the significant discrepancy and that do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. (20 U.S.C. 1416(a)(3)(A); 1412(a)(22))[emphasis added].

The new DOE guidance adds preconditions to both the reporting of significant racial discrepancies and the seeking of their reduction. Before the public is made aware of these racial discrepancies, the cause of the racial or ethnic discrepancy must first be identified, and then also found to be out of compliance with the IDEA. Where racial

(continued on back page)

MOTIVATING AGAINST ALL ODDS



Ted Ginn, Sr. has been known as the football coach in Cleveland, Ohio that changed the lives of his players. Now he runs a public school named after him.

The NAEAAACL interviewed Ginn in 2004 after his son, Ted Ginn, Jr. became a freshman at The Ohio State University and began delivering one impressive performance after another on the football field. The younger Ginn was also regarded as one of the best track athletes to come out of Cleveland since legendary Jesse Owens. But the interview rested on the fact that Ginn, Jr. had graduated from high school with a 3.5 grade point average—a long way from the child who was laughed at because he failed the first grade or the fifth grade student who was told by a teacher that he was destined to be a “burger flipper” or the junior high student who was never academically eligible to play sports.

Led by his father, Ted Ginn, Jr. turned humiliation into motivation. Ted Ginn, Sr. demanded educational testing and forced school officials to provide for his son the services that he needed for academic success. He also sent his son for extra instruction with a popular youth track team where Ginn, Jr. soaked up information about techniques and rhythms that ultimately would help him to earn numerous championship titles. Just as Ginn, Jr. discovered his strength in athletics, his academic ability was unleashed. Ginn, Sr. recalls that there were things his son thought he didn't know, but he did. It just took the right educational experience for him to succeed. “Parents have got to advocate for their kids. I had to push the schools my son attended . . . we can't take anything for granted,” Ginn said at the time.

Taking nothing for granted indeed, Ginn is now not only helping to develop the best in young men through his continued coaching at Glenville but as the executive director of another Cleveland high school—one that is named after him—Ginn Academy. This Cleveland public boys only school was launched in 2004 targeting inner city “at risk” youth. On its first state report card, Ginn Academy scored “continuous improvement” in a city where most other buildings failed or were on the brink. It is one of Cleveland's most successful schools—an irony given the fact that Ted Ginn, Sr. never went to college and doesn't have any teaching or administrative credentials. Ginn hopes to some day have students live on the grounds Monday through Friday so that they can receive guidance and shelter around the clock.

Editor's Note: Ted Ginn, Jr. graduated from The Ohio State University and is now in his second season as a wide receiver for the Miami Dolphins.

An Interview with Ted Ginn, Sr.

The following interview was conducted at Ginn Academy in Cleveland, Ohio on October 23, 2008:

Interviewer: I have read about the application process and that parent commitment is required. What about the kids that don't have a parent or a child in foster care?

Ginn: We talk about the need for parent involvement and hope for it but we also know that in many cases, there is no parent. We become the parent and that's the structure of this school—and it should be the structure of education in all schools. Times have changed. This is a much different environment than that of the last generation. And right now, we are in a recession—parents are struggling to make it. We have to ban together to help our children.

Interviewer: Is there a GPA requirement?

Ginn: The school has tried to establish a 2.0 or better standard but there are exceptions to every rule. Yet, we do get the 3.5 and 4.0 students. Maybe we need to talk about the whole concept of the school. The school is here because I feel that every kid in the world no matter where they are or who they are is at risk of reaching their full potential in life. Therefore, we have to know each kid here and we have to know his whole world. That's the reason we have youth support staff that make home visits, show up at ball games and baptisms, and provide a ride to school when it is necessary.

Sometimes God puts people on this earth just because they are good people. They might not be the best student or the best athlete. We can't make every child a doctor, a lawyer or a scientist. But we do have to know who we are educating. Teachers need to know how to meet each child's individual needs. Otherwise, we might have a child with a 4.0 that will never become anything because of a home life that we didn't know anything about or a child with a lower than 2.0 grade point average who might soar under the right circumstances.

Interviewer: So, “at risk” at Ginn Academy can mean many things and includes all kids?

Ginn: Yes, we have kids facing many different issues . . . a teen who has been in the court system or a child who is having difficulty accepting the loss of a parent, for example. Although we have turned down applicants, there have been very few that we felt we just couldn't accommodate. It is tough to deny anyone admission because I worry if anyone will take the time to understand that child at the next situation in which he finds himself.

Interviewer: So what is it you tell these kids that makes them respond in such a positive way?

Ginn: I tell kids that they are in debt for the sacrifices that were made for them—regardless of their situation—and that you have to be successful to pay off that debt. You can't be mad at the cards you are dealt. Unfortunate circumstances should be a motivator to change things for others. And, they have to think forward for the family they will some day have but is not yet here. But we have to be able to not only tell our children these things—we have to show them and motivate them as well. These kids need to know that regardless of their circumstance, they have to know themselves and that other people do not define them.

Interviewer: What makes this school so successful?

Ginn: All of this is just what I did with my own kid. He lived with me. I taught him good values. I was at school with him everyday. I gave him a life plan . . . something I think every kid should have. I told a parent yesterday that it is not the school you put them in, it is the people you put around them. That's all it is. It's like church . . . you can go look in a building and find that some people *have* a church and others are *having* church. There must be love and compassion and understanding for kids. You have to be willing to step outside of the box. You have to get rid of that conventional way of thinking that doesn't work. Parents don't treat three children with different needs in the same family the same way . . . so how could we treat 200 kids with different needs in one school the same way?

We have a job to do. This is the business of life—a business we shouldn't be in if we are not committed. We have the opportunity to make a difference in the lives of so many children. I haven't done well at the end of a football season or at the more than 30 graduations I've attended because it is then that you have to let these kids go and I am not always sure that we have done enough. That's just how it is. It's tough.

*Ginn's assistant Hazel Parker, who has known him since 1969, says that he gets more demands for speaking than he can handle. A television documentary, *Winning Lives: The Story of Ted Ginn, Sr.*, was aired earlier this year. In November, Ginn was featured on the CBS morning show as part of the network's reflection on individuals who are making their communities better against the odds. And, Ginn Academy has recently captured the attention of celebrities such as scholar Cornel West and actor Wil Smith. Perhaps even more significant is the fact that Ginn recently touched the life of a 15 year old severely at risk male student in another school district that had already heard about “the man who helps kids” like him.*

Ted Ginn, Sr. is also a member of the NAEAAACL Board of Trustees.

Special Education Pre-referral Process: Is it Required Under the IDEA?



This article is written by Kim L. Foster, a non-attorney, educational advocate in the State of California and a member of the NAEAAACLD's Parent Leadership Institute. Kim also works with the Family Focus Resource & Empowerment Center, a state-funded nonprofit organization

affiliated with the College of Education at California State University, Northridge. The contents of this article are intended to be for information use only and not deemed or intended to be legal advice.

In many states, school districts have adopted policies that precede a child's referral for special education and related services. Such "pre-referral" policies are, according to district professionals, intended to implement an array of interventions, accommodations, and modifications to support children, who may be "struggling" in the regular education setting or present with characteristics consistent with the state or federal special education eligibility categories. Other districts may adopt such policies in an attempt to prevent the overidentification of children from specific racial, ethnic and linguistic backgrounds as requiring special education as well as to prevent a disproportionate identification of children to a particular eligibility category.

Special education statistics have historically and continue to be riddled with racial, ethnic, and linguistic disparities. In its findings for the IDEA 2004, Congress acknowledged the continued problem of African American and limited-English proficient children being either mislabeled or inappropriately identified as needing special education services (P.L. 108-446 Sec. 601(c)(11)-(12)). Even after the final implementing regulations were published in 2006, many children of color still suffer from mislabeling and overidentification. This is often due, in part, to the inexperience and the lack of knowledge of school assessors about the cultural and environmental experiences of African American children. African American children with learning disabilities, for example, continue to be erroneously identified as having mental retardation or intellectual impairments. (*Jarron Draper v. Atlanta Independent School System* (11th Cir. 2008) **In spite of this, a school district cannot justify their inclination to forgo evaluating a child to determine his or her eligibility for special education and related services merely because they have concerns about their staff's ability to**

accurately evaluate children of color and those from diverse backgrounds.

So, the question becomes: Are such "pre-referral" processes required under the Individuals with Disabilities Education Improvement Act (IDEA 2004)? If not, what can parents do, if anything, to by-pass this process?

The answer to this question is not a simple one. While the IDEA does not utilize the term "pre-referral", the reauthorized federal statute and implementing regulations do provide for a school district to use up to 15 percent of special education funding for "early intervening services" to support children, academically and/or behaviorally, in the general education setting that have not been identified as requiring special education services. However, only school districts that have "significant disproportionately based on race and ethnicity" are required to delegate funds specifically for early intervening services. (See Question B-1 of *Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)*, idea.ed.gov). Moreover, the U.S. Department of Education has left it up to state and local educational agencies to define early intervening services. This can be extremely problematic given some school districts may choose to utilize these funds to only provide professional development opportunities to teachers and other personnel, not for direct intervention to students. Nevertheless, the IDEA affords parents the right to request that their child be evaluated to determine his or her eligibility for special education and related services.

The following are suggestions for parents who believe their child requires special education services to benefit from their education and/or access the general curriculum:

1. Obtain a copy of the Parents' Rights and Procedural Safeguards Notice published by your state department of education.
2. Obtain a copy of the district's board-approved policy dealing with referrals for special education. **If the district policy states something different than what is outlined in the state and federal special education laws and regulations, the laws and regulations supersede it.**
3. Find out if your state has formally adopted a RTI model and requires that this model be used in the special education eligibility determination process. **There is a difference in the implied meaning of certain words, such as "may" or "will". Often times, the use of the term "may" allows for options. "Will" or "shall" generally means something is required.**
4. If your state has adopted a research-based RTI model, ask questions to understand the process and develop expectations of progress. A great resource for parents on response to intervention is *A Parents Guide to Response To*

Intervention (RTI) published by the National Center for Learning Disabilities (www.nclcd.org/).

5. Understand that parents have a right to request an assessment at anytime, even after the RTI process has begun. If you do submit a **written** request for an assessment to determine your child's eligibility for special education and related services, the district, by law, is required to either develop an assessment plan or provide prior written notice regarding their refusal to assess the child. (See Question C-1 of *Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)*, idea.ed.gov.)
6. Understand that the data produced through the RTI process is only **one** strategy by which school districts can obtain the information required to make a special education eligibility determination. The law requires that "a variety of tools and strategies" be used. (34 C.F.R. 300.304(b)(1))
7. Understand that a medical diagnosis or "record of impairment" alone does not necessarily qualify your child for special education and related services (see *Letter to Brumbaugh*, OSEP 2008). Instead, the disability or impairment must meet the state or federal special education eligibility criteria **and** the disability must adversely impact the child in the educational setting. For children suspected of having a specific learning disability, the IDEA has added additional language to the determination requirements, which states that the child is either not achieving or making adequate progress "to meet age appropriate or state-approved grade level standards" (34 C.F.R. 300.311(a)(5)).
8. If the school district agrees to evaluate your child to determine his or her eligibility for special education, you have a right to participate in the assessment process. This includes asking questions about the school personnel who will be evaluating your child, such as their qualifications, knowledge and experience in working with children of color; the types of testing instruments the school staff intend to use and their experience in administering and interpreting the test results; as well as providing input about your child's development, areas of strength, and areas of concern.
9. Do not be afraid to ask questions! Remember, you are a member of the IEP team and the group that makes decisions about the identification, eligibility, evaluations, educational placement and the provision of a free appropriate public education. (See *Letter to Baglin*, OSEP 2003)
10. Be empowered by educating yourself about your child's disability, his or her strengths, weaknesses, and your rights under the state and federal special education laws and regulations.

(continued from front page)

discrepancies in discipline are found, but the cause is not determined, or not linked to non-compliance with one of the areas of the IDEA described in the guidance, the data would not be publicly reported and attempts at reducing racial disparities of indeterminate causes would be discouraged.

Unlike indicator 4b, indicator 4a that looks at the same discrepancies, but without regard to race, has no prerequisites for reporting data on districts in the SPP and APR, and no restrictions on setting reduction goals despite otherwise identical analysis for significant disciplinary discrepancies.

There are at least three serious problems with the draft of the guidance. One is that the public and the advocacy community will learn almost nothing about significant discrepancies in discipline if it is experienced by one racial subgroup of students with disabilities far more than others.

The second is that the prerequisite of establishing the cause allows just three discrete areas of the IDEA to count for this purpose. Few interventions

will result because causal relationships are difficult to establish as there are many contributing factors to significant racial discrepancies that are not limited to non-compliance with the specific requirements of the IDEA. By delineating just three areas of IDEA non-compliance the guidance ignores the possible contribution of policies and practices that violate other laws (such as Title VI) or that are inappropriate without being formally non-compliant. For example, racial bias is inappropriate and a common contributor as well, but this form of discrimination, especially when it is not purposeful, does not fit the categories delineated by the proposed changes. Besides the inappropriate influence of racial bias, the systemic failure of a district to provide adequate educational supports and the disproportionate exposure to under qualified and inexperienced teachers are contributing practices that research suggests could contribute, but that do not fall squarely under the specified IDEA provisions.

In addition, DOE is giving states until 2011 to meet the new requirements of indicator 4b. In other words, under the DOE's latest guidance, the reporting on the racial disparities in discipline, and

interventions to reduce or prevent further harm, will be delayed 7 years from the passage of the law that requires this information be provided.

UPDATE: The NAEAAACLD responded to the alert by submitting a letter opposing the guidance issued by the U.S. Department of Education stating "Any action that dilutes the original intent of IDEA and sets preconditions is pernicious. Racial disparities in discipline is a long-standing and historically significant issue that must be addressed without further delay. Public reporting to the fullest extent must occur and the appropriate interventions must take place."

In addition, the NAEAAACLD signed on to a joint more detailed letter signed by numerous leading scholars and advocacy groups that raised other legal and policy issues.

The general consensus is that it is unlikely the current U. S. Department of Education will make any changes to this guidance but responding now will help to ensure that the issue is addressed under the new administration.

About the NAEAAACLD

The NAEAAACLD is a nonprofit 501(c)(3) organization founded in 2000 by a mother and her two sons for the purpose of increasing awareness in minority communities about learning differences and promoting parent advocacy. For more than a decade the family had struggled with academic challenges that seemed almost insurmountable at times. The maze they traveled for academic success resulted in a strong desire to make the road easier for other families in similar situations. The NAEAAACLD has grown to serve thousands of African-American families throughout the United States.

Your Financial Support

Your financial support of the NAEAAACLD will help us to empower parents to become strong advocates for their children. It will also support our efforts to provide a collective voice for African American children on the national level and in the public policy arena. Please consider making a tax deductible contribution today. You can also become an active member of the organization by visiting our website at www.aacld.org and joining our Parent Network, Parent Leadership Institute, and/or Stand Up! Campaign for the Children Left Behind. If you need more information, please call us at (614) 237-6021 or email info@aacld.org.



Board of Trustees (2009)

Linda James Myers — Chair

Nancy R. Tidwell — President & Founder

Janice Boyd, Gwen Cartledge, Cynthia Gardner, Ralph Gardner, Ted Ginn, Sr., James Moore, Melissa Tidwell, Stan Trent.

Parent Leadership Institute Board Liaison: Cheryl Poe

Contact Information:

NAEAAACLD

P.O. Box 09521

Columbus, Ohio 43209

Telephone: (614) 237-6021

Fax: (614) 238-0929

Email: info@aacld.org

Website: www.aacld.org

Visit the NAEAAACLD updated website with ongoing improvements. Order a copy of the parent handbook or print a free copy online!

The NAEAAACLD gratefully acknowledges all of our previous year contributors and the major donors listed on our website.

If you are not a member of the NAEAAACLD, please join online today!