THE UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

THE UNDERREPRESENTATION OF MINORITY GROUP CHILDREN AMONG THOSE STUDENTS IDENTIFIED FOR GIFTED AND TALENTED PROGRAMS AS AN ISSUE UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements

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by

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Norman, Oklahoma

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APPROVED FOR THE DEPARTMENT OF EDUCATIONAL LEADERSHIP

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS iii

TABLE OF CONTENTS iv

LIST OF TABLES vii

ABSTRACT x

CHAPTER I

INTRODUCTION 1

Purpose of the Study 6
Definition of Terms 7
Limitations of the Study 9
Summary 10

CHAPTER II

REVIEW OF RELEVANT EDUCATIONAL LITERATURE 12
Historical View of the Identification of Intellectual Giftedness in Individuals 12
The Call for Alternate Identification Procedures 16
Synopsis of Selected Educational Procedures 23

REVIEW OF RELATED LEGAL ISSUES 23
The Supreme Court and Racial Equality in Education 23
The Supreme Court and Racial Segregation in the Schools 24
Brown v. Board of Education of Topeka, Kansas 27
State Responsibility 29
The Concept of Equality under the Fourteenth Amendment 35
Reasonable Classification 36
Three Standards of Review 38
Properly Drawn Classifications 41
The Equal Protection Clause Applied to Public Education 42
The Identification of Gifted Students as a Legal Issue 45
Gifted Education and School Desegregation 46
Federal Definition and Priorities 52
State Definitions 54
Synopsis of Related Legal Issues 56

IDENTIFICATION OF GIFTED STUDENTS IN PULASKI COUNTY SPECIAL SCHOOL DISTRICT, LITTLE ROCK SCHOOL DISTRICT AND NORTH LITTLE ROCK SCHOOL DISTRICT 57
State of Arkansas 58
Identification Regulations 58
State Data 60
Pulaski County Special School District 60
Little Rock School District 65
North Little Rock School District 68
Synopsis of Preliminary Study 70

Summary 71

CHAPTER III

METHODOLOGY 73
Research Questions 73
Conceptual Framework 73
Legal Framework 74
Format of the Study 74

CHAPTER IV

PRESENTATION AND ANALYSIS OF DATA 77

Data from Office for Civil Rights 77
United States 78
Null Hypothesis 79
Trend Analysis 83
State Survey Responses 86
Five Selected States 87
Arkansas 87
Massachusetts 89
Nebraska 91
New York 93
Ohio 95
Summary 98

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS 100
Purpose of Gifted Education 100

Relationship Between the Classification and the Purpose 101
Possible Arguments 103
State LanguageRequiring Use of Test Scores 106
Recommended State Language 108
Summary 111
Recommendation for Future Study 111

BIBLIOGRAPHY 113
Books, Periodicals and Reports 113
Table of Cases 118
Statutes, Constitutions, Regulations and Other Sources 120
Survey Responses, Interviews and Letters 122

APPENDIX A 125
Profile Form from Pulaski County Public School District 126
Profile Form from Little Rock Public School District 127
Profile Form from North Little Rock Public School District 128

APPENDIX B 129
Office for Civil Rights Data 130

APPENDIX C 148
Survey of State Directors 149
State Survey Responses 150

LIST OF TABLES

Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Students as Percentages of Identified Gifted Student Population

Table 1	Oklahoma, 1986 - 1994	3
Table 2	Pulaski County Special School District, 1986 - 1994	64
Table 3	Little Rock School District, 1986 - 1994	67
Table 4	North Little Rock School District, 1986 - 1994	69
Table 5	United States, 1980 and 1992	79
Table 6	Arkansas, 1980 and 1992	88
Table 7	Massachusetts, 1980 and 1992	90
Table 8	Nebraska, 1980 and 1992	92
Table 9	New York, 1980 and 1992	94
Table 10	Ohio, 1980 and 1992	96

ABSTRACT

State and national statistics relative to the proportionality of ethnic minority group students who are identified for gifted educational programming are dismal. This lack of proportionality is an ethical issue for educators and may well be an issue in constitutional law. This study involved the analysis of information from three sources: case law, data from the Office for Civil Rights, and information from the United States state departments of education.

Under the fourteenth amendment, the government classification of persons must be reasonably related to a permissible state purpose. The state must treat all persons similarly who are similarly situated in relation to the purpose of the classification. The federal definitions of gifted children suggest that the purpose is to allow identified students to develop their abilities. The language of some states is specific to test scores which many believe to be discriminatory because it does not allow the identification of all students who are similarly situated relative to the purpose.

A possible legal argument relates to the continued use of state language which results in a disparate impact on minority children. Although circumstantial, the Office for Civil Rights data is evidence that states have known of the disparate impact and have not changed their official language relative to the identification of children for gifted educational programming. The argument suggests that the state does not really intend to find all students who are similarly situated with respect to the state's purpose.

State language is suggested which broadens the definition of giftedness and would encourage or even require that local educators reconsider their identification

procedures with an understanding that giftedness is not demonstrated the same way by all persons. The elimination of barriers in the state language used in statutes, policies, guidelines, and other documents is the minimum that states must do to comply with the equal protection clause of the fourteenth amendment.

CHAPTER I

INTRODUCTION

Access to a free public education is considered by many a right in the United States. Access to an *appropriate* education based upon demonstrated capacities assumes more the mantle of privilege.[1] State and national statistics relative to gifted programs and the numbers of students served by them are distressing. Minority groups such as African Americans, Hispanic Americans and Native Americans were underrepresented by 30 to 70 percent in figures published by the U. S. Department of Education's Office for Civil Rights in 1980.[2] This disparity is corroborated for the state of Oklahoma by information collected yearly through the Oklahoma State Department of Education Gifted and Talented Child Count. Although this demonstration of discriminatory impact is not sufficient to earn a judicial finding of unconstitutionality, it is prima facie evidence and does set a background for the current study.

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[1] Jocklyn Smith, Barbara LeRose, and Robert E. Clasen, "Underrepresentation of Minority Students in Gifted Programs: Yes! It Matters!" *Gifted Child Quarterly* 35 (Spring 1991): 81-83.

[2] E. Susanne Richert, "Identification of Gifted Students: An Update," *Roeper Review* 8, (November 1985): 69.

American Indian, Hispanic American and African American students constituted 28.3 percent of the total Oklahoma public school student population in 1994, but represented only 18.8 percent of the reported identified gifted student population. This was very little improvement over the 1986 data (the earliest year for which complete information is available). In 1986, the same ethnic minority subpopulations represented 22.1 percent of the total Oklahoma public school student population and 9.4 percent of the reported identified gifted student population.

The following chart indicates the portion of the total student population in Oklahoma represented by each major ethnic group as well as the portion of the identified gifted student population represented by students of the major ethnic groups. The percent of the identified gifted students of each of the four major minority groups increased from 1986 to 1994 as did their proportion of the total student population. However, Native Americans, African Americans and Hispanic Americans continue to be underrepresented among those students identified for gifted educational programming.

Population	1986	1987	1988	1989	1990	1991	1992	1993	1994
Total Native American	10.6	10.2	10.6	11.1	11.4	12.0	12.4	13.0	14.3
Identified Gifted Native American	5.0	4.8	5.7	6.1	6.0	7.0	7.8	8.2	10.7
Total African American	9.4	9.6	9.8	9.9	9.9	9.9	9.9	10.2	10.4
Identified Gifted African American	3.6	4.5	3.0	3.0	3.2	4.1	4.6	4.7	6.1
Total Hispanic American	2.1	2.2	2.3	2.4	2.6	2.7	2.9	3.1	3.6
Identified Gifted Hispanic American	0.8	0.8	0.8	0.8	1.1	1.0	1.4	1.5	2.0
Total Asian American	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2
Identified Gifted Asian American	1.6	1.8	1.6	1.8	1.8	1.8	1.8	1.8	2.1
Total Caucasian & Other	76.8	76.9	76.2	75.0	75.0	74.0	73.5	72.6	70.4
Identified Gifted Caucasian & Other	89.0	88.2	76.2	88.2	88.0	86.0	84.3	83.7	79.1

Table 1. Ethnic Groups as Percentages of Total Oklahoma Student Population and Ethnic Groups as Percentages of Oklahoma Identified Gifted Student Population[3]

As shown in the 1994 column of the chart, Native American students were 14.3 percent of the total student population. In the same year, only 10.7 percent of the identified gifted student population were Native American. Similarly, African American students were 10.4 percent of the total student population in 1994 but only 6.1 of the students identified for gifted educational programming were African

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[3] Oklahoma State Department of Education, Gifted and Talented Education Section, data collected from file information.

American. In contrast, 70.4 percent of the total student population was reported to be Caucasian, but Caucasian students made up 79.1 percent of the identified gifted student population.

Equitable identification procedures were one of the priority issues studied by a group of twenty persons from a broad range of backgrounds commissioned by the U. S. Department of Education in the early 1980s to study gifted and talented identification procedures in the nation. Their research resulted in the *National Report on Identification, Assessment and Recommendations for Comprehensive Identification of Gifted and Talented Youth,*[4] edited by Richert, Alvino, and McDonnel. The 1982 report states the belief that the rationales of equity and utility apply more precisely to disadvantaged groups or other subpopulations because they are more difficult to identify. The editors reason that programs are based on need and exceptionality, and because these subpopulations begin as minority groups, they are further educationally and/or socially disadvantaged precisely because of their differentness. Therefore if any gifted students need programs, these groups need them the most. "Excluding them from programming just because different procedures are sometimes necessary to find them violates educational equity and is totally [indefensible]."[5]

In a 1990 article, Eby and Smutny decry the waste of human potential. They believe the prevalent statistics indicate that conventional methods of identifying

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[4] E. Susanne Richert, James J. Alvino and Rebecca C. McDonnel, *National Report on Identification, Assessment and Recommendations for Comprehensive Identification of Gifted and Talented Youth,* (Sewel, NJ: Educational Improvement Center-South, 1982).

[5] Id. at 10.

giftedness have failed.[6] Underlying Eby and Smutny's assertion is an assumption of proportionality: assuming that giftedness is randomly distributed across race, gender, and ethnic groups; a proper identification system will identify students representative of their subgroup in proportion to their numbers in the total population. Lack of proportionality in the identification process is a failure of the process and should be corrected.

The equity philosophy is similar: If public resources are utilized, they should be expended equitably.[7] A systematic pattern of inequity in a public enterprise should trigger efforts to bring the situation into balance. Expenditure of public resources for gifted programming should be equitable across race, gender, and ethnic groups.[8]

In two separate studies, it was shown that access to programs for able learners does make a difference in the dropout rate as well as the number of minority students going on to college. One study was conducted in a city where the drop-out rate for minorities is significantly higher than for nonminorities. Minority students who graduated from the gifted programs were as likely to go on to college as nonminority students in the same programs.

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[6] J. W. Eby and J. F. Smutny, *A Thoughtful Overview of Gifted Education*, (New York: Longman, 1990): 119, quoted in Jocklyn Smith, Barbara LeRose, and Robert E. Clasen, "Underrepresentation of Minority Students in Gifted Programs: Yes! It Matters!" *Gifted Child Quarterly* 35 (Spring 1991): 81-83.

[7] Equity refers to the unequal distribution of services to unequals; in other words, more services to those who need more. Equality denotes the same amount of services to all, regardless of need.

[8] Jocklyn Smith, Barbara LeRose, and Robert E. Clasen, "Underrepresentation of Minority Students in Gifted Programs: Yes! It Matters!" *Gifted Child Quarterly* 35 (Spring 1991): 81-83.

The second study reported a 13-year follow-up of two groups of equally able minority students. One group was assigned to a gifted program while the other group remained in the regular classroom. Not one of the 24 minority students included in the gifted program dropped out while 30 (45%) of the equally able minority students who were not included in the program dropped out. These researchers believe that because this programming appeared to make a significant difference in the lives of these able minority students, the equity issue is raised to the status of critical.[9]

Purpose of the Study

This study examines the legal issue of equal protection as it applies to the identification of students for gifted educational programming. It is suggested that the way in which students are identified produces disparities between the various ethnic groups. These disparities may represent a violation of the Constitutional rights guaranteed under the Fourteenth Amendment. A large body of literature decries the problem of underidentification of minority students; the current study examines a selection of that body of literature as background information. However, the major emphasis of the study is the examination of the legal issues related to the underrepresentation of minority students in gifted educational programming. A discussion of related law review articles and case law informs the study. It is hoped that this research provides an understanding of how the Fourteenth Amendment to the United States Constitution relates to underrepresentation of minority students among those identified for gifted educational programming. Legislative and regulatory

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[9] Id.

language which could encourage more appropriate identification practices is suggested.

Definition Of Terms

Culturally different

persons whose heritage originates in another country or whose ethnicity differs from that of the dominant ethnic group

Culture and subculture

a social group which shares characteristics that distinguish it in some way from the larger cultural group of society in which it is embedded; a culture also refers to a system of acquired knowledge and beliefs that people use to interpret experience and generate social behavior[10]

Ethnic group

a group of people identified by racial, national, or cultural characteristics such as religion, language or tradition

Equal protection

the guarantee that similar people will be dealt with in a similar manner and that people of different circumstances will not be treated as if they were the same[11]

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[10] Kenneth Cushner, *Human Diversity in Education*. (1992): 21.

[11] John E. Nowak and Ronald D. Rotunda. *Constitutional Law*, Hornbook Series, Fourth edition. (St. Paul, Minnesota: West Publishing Co. 1991): 571.

Equity

the unequal distribution of services to unequals; in other words, more services to those who need more

Fundamental right

rights explicitly or implicitly guaranteed in the U. S. Constitution and state constitutions

Gifted educational programming

special instructional arrangements designed to meet the unique needs of students who are identified as gifted; these arrangements will vary from state to state and from school district to school district based on state and local policy

Gifted identification and identification of gifted students

the process of identifying students for gifted educational programming according to the definition, policy or regulation applicable in the school district and/or state

Minority

for the purposes of this paper, as found in the relevant body of literature and is assumed to mean those persons who are part of identifiable racial groups which make up less than the majority part of the population; In the context of the equal protection of the U. S. Constitution, minority refers to an identifiable and specially disadvantaged group.[12]

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[12] Henry Campbell Black, *Black's Law Dictionary*. St. Paul, Minnesota: West Publishing Co. 1991): 689.

Racial group

large groups of people who share hereditary physical characteristics are commonly referred to as racial groups

Suspect classification

classifications of people by the government which seems to contravene established constitutional principles so that any purposeful use of the classification may be deemed "suspect"; examples include race, sex, national origin and alienage.[13]

Test bias

test bias is a recognized psychometric term and refers to a systematic over- or under-representation of a population group in a sample drawn from the population;[14] Subkoviak, Mack, Ironson, and Craig note that an item is biased if equally able members of different groups have unequal chances of success on the item[15]

Limitations of the Study

1. Although the study does not predict a clearcut judicial decision, it does deal with the legal issues related to the underrepresentation of minority students in gifted educational programming. The basic method is legal reasoning through

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[13] Id. at 1009.

[14] William G. Masten, "Identification of Gifted Minority Students: Past Research, Future Direction," *Roeper Review* 8 (1985): 83-85.

[15] M. J. Subkoviak, J.S. Mack, G. H. Ironson, and R. D. Craig, "Empirical Comparison of Selected Item Bias Detection Procedures with Bias Manipulation," *Journal of Educational Measurement*, 21 (1984): 49.

an examination and synthesis of a body of caselaw dealing with the Fourteenth Amendment to the United States Constitution.

2. The study does not evaluate the reliability of the use of intelligence tests but rather examines a selection of literature, from both the positive and negative perspective, related to that issue. This literature provides background information for the study.

3. The quantitative data for the fifty states was obtained from the United States Office for Civil Rights. The data does not include all districts but rather represents a broad sampling of school districts in each state. Many state departments of education do not collect data by ethnic group and many do not collect gifted child count data; so although the Office for Civil Rights data is predicted from a sample rather than being comprehensive, it will include information from all states. Although quantitative data showing discriminatory impact does not, in itself, guarantee unconstitutionality, it is used as prima facie evidence as well as indicating states which may have more proportionate representation of minority group children among those students identified for gifted educational programming.

Summary

Achievement in our culture requires originality, risk taking and intrinsic motivation. These behaviors are not measured or positively considered by most school districts in the process for identification of students who are in need of gifted educational experiences. Measures of academic achievement most often used by schools, including teacher recommendations, grades and most specifically standardized

tests, have been demonstrated to have cultural biases.[16] Disproportionate representation of poor and/or minority group children among those students identified for gifted educational programming is seen by many as an important ethics issue for educators.[17] Others have suggested that it may well be an equal protection issue.[18] This study will examine the historical and current case law and literature in an effort to establish legislative and regulatory language which would encourage more appropriate identification practices relative to the identification of students for gifted educational programming.

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[16] E. Susanne Richert, *Equitable Identification of Students with Gifted Potential.* Kansas State Board of Education (1992): 4.

[17] Elaine P. Witty, "Equal Educational Opportunity for Gifted Minority Group Children: Promise or Possibility?" *Gifted Child Quarterly* 22 (Fall 1978): 344-351; Donna Y. Ford and J. John Harris III, "On Discovering the Hidden Treasure of Gifted and Talented Black Children," *Roeper Review* 13 (September-October 1990): 27-32; Joyce E. Gay, "A Proposed Plan for Identifying Black Gifted Children," *Gifted Child Quarterly* 22 (Fall 1978): 353-360; Marcia S. Scott, Ruth Perou, Richard Urbano, Anne Hogan and Susan Gold, "The Identification of Giftedness: A Comparison of White, Hispanic and Black Families," *Gifted Child Quarterly* 36 (Summer 1992): 131-139; Mary M. Frasier, "Poor and Minority Students Can Be Gifted, Too!" *Educational Leadership* (March 1989): 16-18; Joanne Whitmore, "Conceptualizing the Issue of Underserved Populations of Gifted Students," *Journal for the Education of the Gifted* 10 (Fall 1986): 141-153; Diana Ortegon Olague, "Gifted and Denied," *Gifted Child Today* (May/June 1993): 47-48; Alexinia Y. Baldwin, "I'm Black But Look at Me, I Am Also Gifted," *Gifted Child Quarterly* 31(Fall 1987): 180-184; Bruce M. Mitchell, "A Strategy for the Identification of the Culturally Different Gifted/Talented Child," *Roeper Review* 10 (March 1988): 163-164; Cheryl B. Sawyer and Judith A. Marquez, "Discrimination Against LEP Students in Gifted and Talented Classes," *Journal of Educational Issues of Language Minority Students* 12 (Special Issue, Summer 1993): 143-149.

[18] Frances A. Karnes and Ronald G. Marquardt, *Gifted Children and the Law: Mediation, Due Process and Court Cases*, (Dayton, OH: Ohio Psychology Press, 1991): 37; Perry A. Zirkel and Paul L. Stevens, "The Law Concerning Public Education of Gifted Students," *West's Ed. Law Rep.* 4 (October 39, 1986): 353-367.

CHAPTER II

REVIEW OF RELEVANT EDUCATIONAL LITERATURE

Historical View of the Identification of Intellectual Giftedness in Individuals

In his landmark work in 1925, Terman defined exceptional ability in terms of high intellectual capacity, setting the stage for measuring giftedness by means of tests of intelligence such as his *Stanford Binet Intelligence Scale.* His two major assumptions, that giftedness is equivalent to intellectual ability, and that a standardized intelligence test is the preferred assessment tool, have dominated the field of education for the gifted for over fifty years.[1]

Terman, Garrett, Jensen, Gould, Herrnstein, Murray and many others have debated the merits and validity of intelligence testing for almost fifty years.[2] In a 1967

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[1]Lewis M. Terman, *Genetic Studies of Genius*, 5 vols. (Palo Alto: Stanford University Press, 1925-52).

[2]Lewis M. Terman, "Psychological Approaches to the Biography of Genius," In P. E. Vernon (Ed.), *Creativity*, (Baltimore: Penguin Books, 1970): 39; Lewis M. Terman, "The Discovery and Encouragement of Exceptional Talent," In W. B. Barbe & J. S. Renzulli (Eds.), *Psychology and Education of the Gifted*, (NYC: Halsted Press, 1975): 19; H. E. Garrett, "Negro-White Differences in Mental Ability in the United States," *Scientific Monthly* 65 (1947): 329-33; H. E. Garrett, *Great Experiments in Psychology*, 3rd edition (New York: Appleton-Century-Crofts, 1951): 286; Arthur R. Jensen, *Bias in Mental Testing*, (New York: The Free Press, 1980); Martin D. Jenkins, "The Upper Limit of Ability Among American Negroes," *Scientific Monthly* 66 (1948): 309-401; Stephen J. Gould, *The Mismeasure of Man,* (New York:

paper on some of the major studies of giftedness, Manfred Adler deduced that little evidence had been produced that one ethnic group is "superior to another with respect to superior intellectual potential."[3] For this reason, he said that other factors related to the uneven distribution of identified giftedness would have to be found. Adler went on to suggest that some of the related factors could be the "nature of our current intelligence tests, language facility, differences in cultural value systems and background, socioeconomic class, physical and psychological environment, schooling, and perhaps others still not identified."[4]

In contrast, Jensen attacked critics of intelligence testing as well as advocates of affirmative action policies. He believed that tests actually promoted social justice in selection processes within education and employment. He further said that when tests are used, educational selection is "more nearly equalized than by any other conventional methods of selection, such as school grades, teacher recommendations, and interview assessments."[5]

In their controversial book, *Bell Curve*,[6] Herrnstein and Murray argue that African Americans are as a group intellectually inferior to Caucasians. They say the

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W. W. Norton & Co., 1981); Richard J. Herrnstein & Charles Murray, *Bell Curve*, (New York: Simon & Schuster Inc., 1994); Audrey M. Shuey, *The Testing of Negro Intelligence*, (Lynchburg, Virginia: J. P. Bell Co., Inc., 1958): 1.

[3]Manfred Adler, "Reported Incidence of Giftedness Among Ethnic Groups," *Exceptional Children*, (1967): 105.

[4]Id. at 105.

[5]Arthur R. Jensen, *Bias in Mental Testing*.(New York: The Free Press, 1980): 57.

[6] Richard J. Herrnstein and Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life*. (New York: The Free Press, 1994).

evidence of a black-white gap in intelligence is overwhelming and insist that whites and blacks must understand the reality of black intellectual disadvantage. "Cognitive elite" is a label that Herrnstein and Murray use for a group who, they believe, will lead a new kind of class structure. This group is a result of self-selection within social groups possessing higher cognitive abilities.

At about the same time that *Bell Curve* was published, *The History and Geography of Human Genes* provided an opposite conclusion based on more than fifty years of research in population genetics. Cavalli-Sforze, Menozzi and Piazza report that once the genes for surface traits are discounted, the human "races" are remarkably alike under the skin. The differences among individuals is much greater than the variations among groups. The authors argue that there is no scientific basis for theories which claim that one population is genetically superior to another population.[7]

Sternberg[8] and Gardner[9] have developed modern theories of intelligence that are more sensitive than traditional theories to the different kinds of giftedness. Both theorists believe that giftedness cannot be fully described by cognition alone. The theories argue that intelligence should be discussed in terms of the external world, the internal world and the interrelationships between them.

Sternberg's Triarchic Theory of Intelligence suggests three kinds of intelligence: componential, experiential and contextual. Componential intelligence is

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[7] Luca Cavalli-Sforze, Paolo Menozzi and Alberto Piazza, *The History and Geography of Human Genes*, (Princeton University Press, 1994).

[8] Robert J. Sternberg, *Beyond IQ: A Triarchic Theory of Human Intelligence*, (Cambridge, England: Cambridge University Press, 1985).

[9] Howard Gardner, *Frames of Mind*, (New York: Basic Books, 1983).

typified by the good test taker or analytical thinker. Experiential intelligence is found among individuals who do not get great test scores but who are creative thinkers. Persons with contextual intelligence are often said to be "street smart." They have learned how to manipulate their environment but may not make high test scores. Common sense and practical intelligence are also attributes of persons with contextual intelligence.[10]

Gardner's Theory of Multiple Intelligences describes intelligence as seven discrete intelligences: linguistic, logical-mathematical, spatial, bodily kinesthetic, musical, interpersonal, and intrapersonal. Gardner believes that a person can have high ability in one or more intelligence and average or below-average in others. According to this theory, noncognitive domains may be just as valuable and praiseworthy as those competencies measured by traditional intelligence tests.[11]

As demonstrated by the citations above, many writers have decried the overreliance on tests in the selection of students for gifted educational programming. Others, most recently Herrnstein and Murray, have claimed that tests of intelligence are not biased but rather are more reliable than other, more subjective measures. Obviously, this debate is not settled. While she does not support the use of one test as an appropriate identifier, Piirto believes that the "sanctity of the IQ has to do with its ease of explanation."[12] Many selection procedures for gifted educational programs use tests of intellectual ability as a prime if not sole criterion. As will be discussed later,

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[10] Sternberg, *Beyond IQ*.

[11] Gardner, *Frames of Mind*.

[12] Jane Piirto, *Talented Children and Adults: Their Development and Education,* (New York: Macmillan College Publishing Company, 1994): 121.

many writers, including the National Office for Gifted and Talented Education as well as the courts involved in various school desegregation cases, believe that a multicriteria approach is more appropriate for this task.

The Call for Alternate Identification Procedures

Many writers have discussed the probability that test bias has concealed the talents of African American students. Torrance said that intelligence tests are strongly biased against culturally disadvantaged students because they emphasize rapid response, verbal comprehension, and answers that are acquired in the dominant, middle class culture.[13] Sullivan maintained that objective test items are biased against African Americans because they are based on differences in values, urban ghetto experience compared to suburban and other life patterns, differences in racial and cultural experiences, and differences in language usage common to the cultural group.[14]

Gowan suggested that an individual test such as the *Stanford-Binet* will often not assess the full potential of disadvantaged children. Teachers' judgment often must be substituted. These judgments must not be biased in "favor of neatness, good spelling, good appearance, and the absence of bad behavior." Teachers should instead

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[13]E. Paul Torrance, *Discovery and Nurturance of Giftedness in the Culturally Different*, (Reston, VA: The Council for Exceptional Children, 1977).

[14]A. R. Sullivan, "The Identification of Academically Talented Black Students: A Hidden Exceptionality," *Exceptional Children Conference Papers: Creativity and the Gifted* (1972): 79-93. Papers presented at the 50th annual Intervention Council for Exceptional Children Convention. Washington, DC. (ERIC Document Reproduction Service No. ED 052737).

look for "self-confidence, general energy, wild ideas, articulateness in speech, independence, unusual questions, burning curiosity."[15]

In his 1972 report to Congress, Marland reported that the main criterion for placement in most gifted programs remained an intelligence test score of 130 or above. He found this reliance on IQ scores in spite of his other findings that measures of creativity, achievement motivation, leadership potential, and/or talent in the creative arts were a standard part of the guidelines of the states as well as local identification procedures. His examination of the professional literature produced evidence that teacher, parent, peer and self-rating scales, behavior and/or product samples, and anecdotal data were strongly recommended.[16]

Harris and Ford suggest that the difficulty of identifying gifted African American students lies mainly in the over-reliance on standardized tests, "the reification of intelligence and IQ, and the use of unidimensional instruments to assess the multidimensional construct called intelligence." In examining these barriers to effective recognition of gifted African American children, they have outlined six main reasons for this difficulty:

1. The process is negatively influenced by the attitudes and expectations of educators who do not believe giftedness exists in culturally different (non-White) populations.
2. Sterile IQ-based definitions hinder the process.
3. Identification instruments are misused.

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[15]John Curtis Gowan, "Issues in the Education of Disadvantaged Gifted Students," *Gifted Child Quarterly* 12 (1968): 115.

[16]S. P. Marland, *Education of the Gifted and Talented: Report to the Congress of the United States by the U. S. Commission of Education and Background Papers Submitted to the U. S. Office of Education*, (Washington, DC: U. S. Government Printing Office, 1972).

4. A gap exists between research and practice.
5. Inadequate theories are used to account for giftedness among racial minorities.
6. There is a lack of agreement on a universal or even acceptable definition of giftedness.[17]

Gay, writing in 1978, believed that African American children often manifest giftedness differently from the mainstream culture. She suggested that special identification procedures should be used in order to guarantee inclusion of these children in programs for the gifted. In the following chart, Gay demonstrates the extent to which giftedness may be demonstrated differently by African American children compared to the dominant culture.[18]

Comparative Characteristics of Giftedness

Concepts from the Literature	Manifestation of Gifted Characteristics in Gifted Black Children
1. Keen observation	Picks up more quickly on racist attitudes and practices; may feel alienated by school at an early age;
2. Interest and ability in perceiving relationships	Seeks structure and organization in required tasks; may be slow to motivate in some abstract activities;
3. Verbal proficiency, large vocabulary, facility of expression	Many Black children have large vocabularies inappropriate for school setting; thinking in Black English may hinder the facility of expression in standard English;
4. Breadth of information	Difficult to determine many areas of experiential knowledge for Black children;

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[17] J. John Harris III and Donna Y. Ford, "Identifying and Nurturing the Promise of Gifted Black American Children," *Journal of Negro Education* 60 (1991): 4-5.

[18] Joyce E. Gay, "A Proposed Plan for Identifying Black Gifted Children," *Gifted Child Quarterly* 22 (Fall 1978): 354-355.

5. Questioning, curious, skeptical	Though some ask too many "wrong" questions, some may have been conditioned to suppress questioning behavior;
6. Critical, evaluative possessing good judgment	Explores (in perception of relationships) better or wiser choices; reads behavioral implications;
7. Creative, inventive, original	Makes up games and activities; expresses original ideas in other ways;
8. Power of concentration, long attention span	May find some have extremely strong concentration due to persistent noise in environment; may also express displeasure at having to stop an activity;
9. Independence	Need for less supervision especially pronounced in Black gifted;
10. Diversity of interests and abilities	Frequently has artistic, musical, creative writing, psychomotor or leadership talent in addition to global intellectual ability, may neglect school work due to other interests;
11. Academic facility and strength	Good at basic school tasks, may not have expected achievement due to inferior schooling.

Kirschenbaum agreed with Gay's views to the extent that young children learn because they are rewarded by their community and peers, whose values uniquely reflect a particular ethnic subculture.[19] Kirschenbaum believed that most identification procedures are not sensitive to the values of those subcultures.

Scott, et al, suggested that the consistent underrepresentation of minority groups in gifted programs is related to a breakdown in the referral process, the assessment process, or both. In a study examining the role of African American, Hispanic American, and Caucasian parents in the referral process these authors investigated the gifted attributes parents assigned to their children. The study found

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[19]Robert J. Kirschenbaum, "Let's Cut Out the Cut-Off Score in the Identification of the Gifted," *Roeper Review* (1983): 6-10.

that (a) fewer minority parents than Caucasian parents refer their children for gifted programs, and (b) there are extensive commonalities in the characteristics reported by parents from all three groups as reflecting giftedness in their children.[20] The implications of the Scott, et al, findings corroborate the beliefs of Gay, Kirschenbaum, Gowan and others discussed earlier who have suggested that expectations of the mainstream culture have biased the process of identification of gifted children.

These same beliefs were reiterated by Frasier, "[the] traditional identification paradigm, which relies on teacher nominations and required performance scores on tests of intelligence and achievement, has been a serious barrier to the participation of more ethnic/minority children in programs for the gifted."[21] Frasier also debunked the common view that gifted young people are a homogeneous group. This view is encouraged and facilitated by narrow definitions and identification procedures. She believed that many of the common terms used to describe ethnic/minority populations, such as "culturally deprived, underprivileged, and culturally handicapped, tend to imply some kind of deficit."[22]

In other writings, Frasier reported that explanations for low representation in gifted programs include performance on an IQ test below the cutoff score set by state department, school district, or school system; the limitations of a low socioeconomic environment to stimulate and support the development of higher intellectual capacities;

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[20]Marcia S. Scott, Ruth Perou, Richard Urbano, Anne Hogan, and Susan Gold, "The Identification of Giftedness: A Comparison of White, Hispanic and Black Families," *Gifted Child Quarterly* 36 (Summer 1992): 131-39.

[21]Mary M. Frasier, "Ethnic/Minority Children: Reflections and Directions," *ERIC Bulletin*, (The Council for Exceptional Children, Reston, VA: October 1992): 5.

[22]Id. at 5.

and the persistent attitude that giftedness simply cannot be found in some groups.[23] Such negative attitudes are reinforced by narrow nomination and screening methods that limit the access of underinvolved populations to these programs.[24] Frasier viewed the continuing but outmoded emphasis on the intelligence test as the assessment tool of giftedness as a very real barrier to equity in gifted programs. When acceptance to a program is based solely on this limited criterion, minority and poor students do not fare well. She believes that a more complete definition of intelligence is part of the solution to eliminating these barriers.

A task force investigating the reasons for underrepresentation of ethnic/minority group students in the gifted program of Greensboro, North Carolina identified four probable causes. These causes are almost perfect mirrors for many of the concepts discussed above:

1. The definition of giftedness adopted by NC [North Carolina] is too narrow and, therefore, limits the range of characteristics considered for eligibility.
2. Teachers' lack of information about the behavioral characteristics of giftedness in racial/ethnic group students prevents some students from being referred for consideration.
3. Evaluation instruments which may be biased against racial/ethnic group students prevent appropriate identification of these students.
4. Racial/ethnic group parents, as a group, do not have enough specific information about AG [academically gifted] evaluation procedures to advocate

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[23]Mary M. Frasier, "Poor and Minority Students Can Be Gifted, Too!" *Educational Leadership* 46 (March 1989):16-18; Mary M. Frasier, "The Identification of Gifted Black Students: Developing New Perspectives" *Journal for the Education of the Gifted* 10 (Spring 1987): 155-180.

[24]Frasier, "Ethnic/Minority Children".

> for their children's continuation through all available phases of the evaluation process.[25]

As shown in the sampling of literature cited in this section, the issue of underrepresentation of minority children, particularly African American children, among those identified for gifted programming has been discussed in the literature for almost fifty years. With this wealth of information, the reader might expect the situation would have been corrected. To the contrary, a recently published national report, *National Excellence: A Case for Developing America's Talent*, reports that the culturally diverse, females, students with disabilities, underachievers and artistically talented students are most likely to be neglected in programs for top students. The report indicates that states using IQ score cutoffs are more likely to have larger disparities among racial and ethnic groups.[26]

Coleman, Gallagher and Foster found that state policies "do not appear to be preventing full services to special populations."[27] They agree with the instant research, however, that the demographics do not indicate that states have reached a goal of identifying gifted students from all backgrounds. They believe that there may be four barriers to reaching this goal:

> lack of local understanding of state policies, fear of overwhelming numbers if identification is "opened", lack of resources to meet increasing and diverse needs,

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[25]Sadie Bryant Woods and Virginia H. Achey, "Successful Identification of Gifted Racial/Ethnic Group Students Without Changing Classification Requirements," *Roeper Review* 13 (September-October 1990): 21.

[26]Pat O'Connell Ross, *National Excellence: A Case for Developing America's Talent,* U.S. Department of Education, (1993).

[27] Mary Ruth Coleman, James Gallagher and Andrew Foster, *Updated Report on State Policies Related to the Identification of Gifted Students*, (University of North Carolina at Chapel Hill: Gifted Education Policy Studies Program, April 1994): iii.

and lack of ownership on the part of individuals from special populations towards programs for gifted students.[28]

Synopsis of Selected Educational Literature

The review of the educational literature dates from 1925 to 1994. The references from the field of education represent a small portion of this body of literature. Writers have disagreed and continue to disagree about the usefulness of intelligence testing. Numerous contemporary writers in the field of gifted education are calling for less reliance on testing measures in the identification of children for gifted educational programming. Given the continued disparity in the proportionate representation of minority group children and the number of journal articles, reports and books being published on the topic, many educators are either not familiar with this body of literature, disagree with it or ignore it.

REVIEW OF RELATED LEGAL ISSUES

The Supreme Court and Racial Equality in Education

The consideration of the significant United States Supreme Court opinions related to education in the context of equality of educational opportunity has three purposes. The first purpose is the tracing of the evolution of the Court's interpretation of equal protection with respect to education and race. The analysis illustrates the changing opinion of the Court toward one kind of discrimination in education. The second purpose is the examination of the Court's declarations relative to equality in education. The third purpose is the analysis of the Court's interpretation of the concept of "state action" in education. The analysis illustrates how the Court has applied the equal protection clause relative to state and local school systems.

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[28] Id.

The Supreme Court and Racial Segregation in the Schools

The history of the Supreme Court and racial segregation in the schools began with a case not related to education, *Plessy v. Ferguson.*[29] This case concerned a Louisiana law which required separate railway cars for Caucasian and African American passengers. The Court's decision included an interesting explanation of political and social equality with a reference to a case decided by the Supreme Court of Massachusetts. *Roberts v. Boston* allowed the city of Boston to provide separate schools for African Americans and to prevent them from attending other schools.[30]

The Court held that the equal protection clause granted equal civil and political rights for all people but did not require the promotion of social equality which might be inhibited by racial segregation.

> If the civil and political rights of both races are equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.[31]

Thus, the practice of providing "separate-but-equal" facilities received the sanction of a majority of the Court. The equal protection guarantee would be met if the government has provided each of its citizens equal rights before the law and equal opportunities even if separate and segregated facilities were used.

A reexamination of the separate but equal provisions of *Plessy* (1896) as it applied to education began in 1938 with *Missouri ex rel. Gaines v. Canada.*[32] An

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[29] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[30] *Roberts v. Boston*, 5 Cush. 198, 59 Mass. 198 (1849).

[31] *Plessy v. Ferguson*, 163 U.S. 537, 551-552 (1896).

[32] *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

African American was refused admission into the University of Missouri Law School. The state asserted that it could accommodate the separate but equal doctrine by paying tuition for Lloyd Gaines in a law school in another state. The Court ruled that failure to provide a separate but equal law school within the state, while such a facility was provided for Caucasian students, constituted a denial of equal protection. It held that when a state chose to provide an opportunity such as legal education, members of each racial group should be provided substantially the same opportunity. Separation laws continued to be viewed as constitutional as long as they provided privileges of equal quality.

Ten years later, the United States Supreme Court reversed the Oklahoma Supreme Court in holding that the equal protection clause required that the state must provide a legal education "as soon as it did for applicants of any other group" in *Sipuel v. University of Oklahoma*.[33] When this case returned to the United States Supreme Court as *Fisher v. Hurst*, the interpretation of the District Court, either legal education for African American students "as soon as" for whites or no legal education for any students, was upheld.

Sweatt v. Painter[34] also involved denial of admission of an African American into a law school. This case was different from *Gaines* (1938) and *Sipuel* (1948) in that a separate law school was available within the state. The Court required that Sweatt be admitted to the University of Texas Law School because the Court found it unlikely that a separate law school would be equal. The Court discussed two different concepts of equality. A tangible or concrete concept of equality included "number of

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[33] *Sipuel v. University of Oklahoma*, 332 U.S. 631 (1948).

[34] *Sweatt v. Painter*, 339 U.S. 629 (1950).

faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities."[35] The abstract or intangible qualities that the Court discussed were even more interesting:

> What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close.[36]

Going even further, the Court discussed a concept which would make it nearly impossible for a separate school to be equal.

> The law school to which Texas is willing to admit petitioner excludes from its study body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.[37]

In another case involving higher education during 1950, *McLaurin v. Oklahoma Regents*,[38] the Court concerned itself with "whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race."[39] McLaurin was admitted to

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[35] Id. at 633-34.

[36] Id. at 634.

[37] Id.

[38] *McLaurin v. Oklahoma Regents*, 339 U.S. 637 (1950).

[39] Id. at 638.

the University of Oklahoma Graduate School but was segregated in the classrooms, the library and the cafeteria. The Court ruled that since the state had set McLaurin apart from the other students, he was denied an equal opportunity to pursue his graduate study, and therefore was deprived of the equal protection of the law. Again, the Court found that the separate treatment was not equal. The restrictions on McLaurin were said to "impair and inhibit ability to study . . ."[40]

Brown v. Board of Education of Topeka, Kansas

Brown v. Board of Education of Topeka, Kansas, (Brown I)[41] was a combination of four similar cases in which African American children were denied admission to state public schools attended by Caucasian children under state laws requiring or permitting segregation according to race. In an opinion by Chief Justice Warren, the Supreme Court unanimously held that the plaintiffs were deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. The "Separate-but-Equal" doctrine set out in *Plessy v. Ferguson*[42] was found to have no place in public education. In finding that segregation of public school children on the basis of race deprives minority group children of equal educational opportunity, the Supreme Court set the new standard that such separation is inherently unequal. In a landmark statement, the Court gave its view of the role of public education:

> In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be

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[40] Id. at 642.

[41] *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954).

[42] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

> determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.
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> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[43]

In examining the psychological and sociological effects of segregation on public school students, the Court quoted a lower court who ruled against the African American plaintiffs:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of the law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.[44]

Brown v. Board of Education of Topeka, Kansas, (Brown II)[45] was a supplemental opinion by Chief Justice Warren which set out the relief required for the cases in Brown I. The Court incorporated, by reference, "the fundamental principle

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[43] *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954) at 492-493.

[44] Id. at 494.

[45] *Brown v. Board of Education of Topeka, Kansas*, 349 U.S. 294 (1955).

that racial discrimination in public education is unconstitutional."[46] The Court went further in stating, "All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle."[47] Including the phrase "or permitting" became a positive mandate on state governments to eliminate discriminatory practices in state and local school systems. As demonstrated by the language from the decision summary, the Court was very direct after hearing further argument related to relief:

> The most important principle is that the defendants should make a prompt and reasonable start toward full compliance with the decision requiring desegregation and that the burden rests upon them to establish that additional time is necessary in the public interest and is consistent with good-faith compliance at the earliest practicable date. The trial courts are directed to retain jurisdiction of the cases during the period of transition.[48]

State Responsibility

Two years after the *Brown v. Board of Education* decision, the Arkansas General Assembly enacted Amendment XLIV to the Arkansas Constitution.[49] This amendment codified the state's opposition and resistance to the *Brown I* ruling. In support of this amendment, the Legislature enacted and Governor Orval Faubus signed a pupil assignment law in 1957. This statute relieved students from compulsory attendance at racially mixed schools.[50] The constitutional amendment and statute were

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[46] Id.

[47] Id. at 295.

[48] Id. at 294.

[49] Ark. Const. Amend. XLIV, repealed by Ark. Const Amend. LXIX (1990).

[50] Ark. Pupil Assignment Law of 1956, 7 Ark. Stat. Ann. sec. 80-1519 to 80-1547. (1960 Repl.).

invoked against Little Rock School District in September, 1957, as it began implementation of a desegregation order based on the Brown decision by admitting nine African American students to Central High School. Governor Faubus ordered the National Guardsman to block the entrance of Central High School to these nine students.[51]

The actions of Governor Faubus and his guardsmen were enjoined by U. S. District Judge Ronald Davies.[52] Judge Davies was unanimously affirmed by the Court of Appeals.[53] On Monday, September 23, 1957, the nine African American students entered Central High School amidst a large and hostile crowd. On the advice of the officers on duty, the superintendent removed the African American students. President Eisenhower dispatched federal troops to ensure the safety of the students and the enforcement of the court order. Federalized National Guardsmen later replaced the federal troops and remained through that school year.[54]

A group of African American residents pled for a declaration of their rights to admittance on a nonsegregated basis and an injunction enjoining Little Rock School District from maintaining segregated schools in a series of cases known as *Aaron v. Cooper*.[55] The Supreme Court's opinion is significant for the present study because of

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[51] *Aaron v. Cooper*, 156 F. Supp. 220, 225 (E.D.Ark., 1957).

[52] Id. at 226

[53] *Faubus v. United States*, 254 F.2d 797 (8th Cir. 1958).

[54] *Little Rock School District v. Pulaski County Special School District*, 584 F. Supp. 328, 331 (E. D. Ark. W. D. 1984).

[55] *Aaron v. Cooper*, 143 F. Supp. 885 (E.D.Arkansas, 1956), 243 F.2d 361 (8th Cir. 1957), 261 F.2d 97, 108 (8th Cir. 1958).

its definitive statement about the responsibilities of federal, state and local governments relative to education.

The Little Rock Board of Education requested a two-and-one-half year moratorium on desegregation at the end of the 1957-58 school year.[56] The district court granted their request.[57] The Eighth Circuit reversed on appeal.[58] Acknowledging the board's good faith in the face of state governmental opposition, the Court could not accept the hostility as an excuse for delaying desegregation:

> Had Central High School been under the direct management of the State itself, it could hardly be suggested that those immediately in charge of the school should be heard to assert their own good faith as a legal excuse for delay in implementing the constitutional rights of these respondents, when vindication of those rights was rendered difficult or impossible by the actions of other state officials. The situation here is in no different posture because the members of the School Board and the Superintendent of Schools are local officials; from the point of view of the Fourteenth Amendment, they stand in this litigation as the agents of the State.[59]

The Court clearly affirmed that local officials are state officials from the perspective of the Fourteenth Amendment. Further, the Court noted that "the controlling legal principles are plain . . .The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws."[60]

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[56] *Cooper v. Aaron*, 358 U.S. 1, 15 (1958).

[57] *Cooper v. Aaron*, 163 F. Supp. 13 (E.D Ark. W.D. 1958).

[58] *Cooper v. Aaron*, 157 F.2d 33 (8th Cir. 1958).

[59] *Cooper v. Aaron*, 358 U.S. 1, 15-16 (1958).

[60] Id. at 16.

Actions of state officials are state actions as seen through the Court's citation of *Ex parte Virginia*:

> A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.[61]

The Supreme Court affirmed the Court of Appeals and condemned the actions of the Governor:

> . . . [T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, . . . or whatever the guise in which it is taken. In short, the constitutional right not to be discriminated against in schools maintained by or with the aid of a state cannot be nullified openly and directly by state legislators or state executive or judicial officers nor indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously; and that the ruling of the Brown Case was the supreme law of the land and of binding effect on all state legislators and officials.[62]

State officials, both legislators, state agencies or local school officials, cannot deny constitutional rights by actions that are either intentional or nonintentional. In response to the evasive actions of the governor and legislature, the Supreme Court reminded states that they are, without question, bound by the holdings of the Supreme Court of the United States.

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[61] *Ex parte Virginia,* 100 U.S. 339, 347 (1880).

[62] *Cooper v. Aaron,* 358 U.S. 1, 7 (1958).

> Article 6 of the Constitution makes the Constitution the "supreme Law of the Land." In 1803 Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of Marbury v. Madison that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown Case is the supreme law of the land, and Article 6 of the Constitution makes it of binding effect on the States "anything in the Constitution or Laws of any State to the contrary notwithstanding."[63]

The Court went on to explain that although public education is a responsibility of the states, it must be administered consistent with the federal Constitution as interpreted by the federal judiciary:

> It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law. Bolling v. Sharpe.[64]

In sum, state support and state regulation of public schools must conform to the demands of the United States Constitution, more specifically the equal protection and

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[63] Id. at 16-17.

[64] Id. at 17.

due process clauses. This responsibility was reiterated in two Louisiana cases, *Bush v. Orleans Parish School Board*[65] and *Hall v. St. Helena Parish School Board.*[66]

In *Hall v. St.* Helena, the district court quoted another Louisiana case in which the state supreme court held that the state is responsible for maintenance of equality. Although binding only in Louisiana, the state court's opinion is instructive.

> Under article 12 of the Constitution, section I, free public schools are part of the educational system of the state. In section 10 of that article it is provided that "The Legislature shall provide for the creation and election of parish school boards which shall elect parish superintendents for their respective parishes." Pursuant to this mandate, the Legislature of 1922, by Art. No. 100, #17, created a parish school board for each of the parishes of the state and constituted them bodies corporate in law with full power and authority to make rules and regulations for their own government not inconsistent with the rules and regulations of the state board of education. These boards are public corporations and are created for the purpose of administering *for the state* the public school affairs of their respective parishes. Their functions are purely of a public character. In matters relating to the free public schools of their parishes, they are the governing authorities not only for the parish as a whole, but for each and all such school districts as may be created. *They are state agencies, a part of the state government.*[67] [Emphasis added.]

The *Hall* court went even further to stress the responsibility of equality: "It is true that the Legislature has *imposed* no inequality, but its instrument encourages it, expressly permits it. And that is equally condemned."[Emphasis in original.][68] To be sure its point was clear, the court cited *Burton v. Wilmington Parking Authority*: "No State may effectively abdicate its responsibilities by either ignoring them or by merely

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[65] *Bush v. Orleans Parish School Board,* 364 U.S. 500 (1960).

[66] *St. Helena Parish School Board v. Hall*, 368 U.S. 515 (1962).

[67] *Hill v. Desoto Parish School Board*, 177 La. 329, 148 So. 248, 250 (1933).

[68] *Hall v. St. Helena Parish School Board*, 197 F. Supp. 649, 658 (1961).

failing to discharge them whatever the motive may be."[69] The *Hall v. St. Helena Parish School Board* case provides a good summary of two major points: education is a state burden and the state cannot abdicate its responsibilities by failing to discharge them.

The Concept of Equality under the Fourteenth Amendment

The equal protection clause of the Fourteenth Amendment was added to the United States Constitution in 1868 as a means of protecting the civil rights of African Americans. The 127-year history of the Fourteenth Amendment is marked by much judicial interpretation. Court decisions have guided the evolution of meaning, scope and importance of the equal protection clause. The outcome of new cases involving equal protection are difficult to accurately predict because the interpretation of the clause continues to change.

In one of the classic articles on the equal protection clause, Tussman and tenBroek say that the clause goes beyond the simple demand for administrative fairness. They add that the equal protection clause was interpreted early in its history to be:

> . . . more than a demand for fair or equal enforcement of laws; it was to express the demand that the law itself be "equal." In *Yick Wo v. Hopkins*, Mr. Justice Matthews said that "The equal protection of the laws is a pledge of the protection of equal laws." This has been frequently cited with approval and has never been challenged by the Court. It is a statement that makes abundantly clear that the quality of legislation as well as the quality of administration comes within the purview of the clause.[70]

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[69] *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 725 (1961).

[70]Joseph Tussman and Jacobus tenBroek, "The Equal Protection of the Laws," 37 *California Law Review* 342 (1949).

The equal protection clause continues to serve as a standard for the criticism of legislation along the three lines discussed by Tussman and tenBroek:

> First, it has operated as a limitation upon permissible legislative classification. This is its most familiar role. Second, it is used to oppose "discriminatory" legislation. And third, it shares with due process the task of imposing "substantive" limits upon the exercise of the police power.[71]

The second of these roles forms the basis for the present issue: the reasonableness or discriminatory nature of the legislative classification.

Although the Constitution does not require that persons who are different be treated the same, it does require that similar treatment be afforded those who are similarly situated. The reasonableness of the legislative classification is the "degree of its success in treating similarly those similarly situated."[72]

Reasonable Classification

A basic purpose of statutory law is to classify people into groups for the purpose of providing certain benefits or requirements to people based on their group. Welfare laws classify people based on income level and provide benefits to persons with certain low incomes. Other laws provide benefits to veterans and to the elderly. Federal income tax laws classify people by income level and require different rates of taxation for each group. Adults can vote but children cannot. These legislated classifications have been upheld under the reasonable classification test.

Courts have used the doctrine of reasonable classification to analyze and resolve the conflict between the need for legislative classifications and the

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[71] Id. at 342, 343.

[72] Id. at 344.

constitutional requirement that the laws apply equally to all people. The reasonable classification doctrine requires that the state must have a rational basis for classifying people into groups and treating them differently because of the classification. There must be a legitimate and constitutionally permissible state purpose furthered through the classification.

The reasonable classification test requires that there be a reasonable relationship between the classifications created by the statute and the purpose of the statute.

> . . .But the classifications must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.[73]

Two questions form the basis for the inquiry: Is there a rational basis for the classification and unequal treatment established by the state? Does placing a person in a given class or excluding a person from that class seem fair and reasonable with respect to the purpose of the law? Once a court has found the purpose for the classification which does not in itself violate the Constitution, it can consider the way in which the government has classified persons relative to that purpose.[74]

In most cases, the courts give wide latitude to legislatures in upholding the rationality of the classifications. The judiciary will usually assume that the legislative body has a valid purpose and a rational basis for making the classifications. The burden of proof is on the complainant.

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[73] *F. S. Royster Guano Co. v. Virginia*, 353 U.S. 412 , 415 (1920).

[74] J. Nowak and R. Rotunda, *Constitutional Law* Hornbook Series, (4th ed. 1991): 571.

Three Standards of Review

Three standards of review have been used in equal protection decisions.[75] The first standard, known as the "rational relationship test," includes the tests of reasonable classification and rational basis. When a court examines at this level, the requirement of equal protection is met if the classification includes all people similarly situated with respect to the purpose of the law and the classification is reasonably related to a constitutionally permissible state purpose. In these cases, the court assumes that a state has acted in a constitutional manner and it is up to the complaining party to prove otherwise.

The court moves to a heightened level of review if the case involves a suspect classification or a fundamental interest.[76] This more rigid standard is known as the "strict scrutiny test". At this level, the state must demonstrate a compelling state interest to justify the classification. In these cases, the court will require the state to show that it is "pursuing a 'compelling' or 'overriding' end."[77] Even with this demonstration, the classification will be upheld only if the justices have independently concluded that the classification is necessary to promote the compelling and

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[75]Id. at 574-577.

[76] A suspect classification of people by the government is a classification which seems to contravene established constitutional principles so that any purposeful use of the classification may be deemed "suspect"; i.e. race, sex, national origin and alienage· Henry Campbell Black, *Black's Law Dictionary*. St. Paul, Minnesota: West Publishing Co. 1991): 1009.

Fundamental interests are those rights which are guaranteed, either explicitly or implicitly, in the federal Constitution and state constitutions. Henry Campbell Black, *Black's Law Dictionary*. St. Paul, Minnesota: West Publishing Co. 1991): 465.

[77] Nowak and Rotunda at 575.

permissible interest. The state must show a close relationship between the classification and the promotion of a compelling interest if absolute necessity is not required.

The standard of review known as strict scrutiny was summarized by the court in *Serrano v. Priest*:

> . . . [I]n cases involving "suspect classifications" or touching on "fundamental interests," the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. Under the strict standard applied to such cases, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose.[78]

Although the equal protection clause was later extended to include races other than African Americans,[79] national ancestry,[80] alienage,[81] corporations,[82] and non-racial issues,[83] a district court affirmed in 1971 that ". . . of all the evils the equal protection clause was designed to eliminate, racial discrimination is the one we are most certain the drafters contemplated."[84] The courts have held that classifications based on race alone are suspect and reviewed with strict scrutiny.

> . . . [A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are

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[78] *Serrano v. Priest*, 487 P. 2d 1241, 1249 (1971).

[79] *Yick Wo v. Hopkins,* 118 U.S. 356 (1886).

[80] *Korematsu v. United States*, 323 U.S. 214 (1944).

[81] *Sei Fuju v. State*, 242 P.2d 617 (1952).

[82] *Santa Clara County v. So. Pacific R.R. Co.,* 118 U.S. 394 (1886).

[83] *Frontiero v. Richardson,* 411 U.S. 677 (1973).

[84] *Larry P. v. Riles*, 343 F. Supp. 1306, 1309 (N.D.Cal. 1972).

> unconstitutional. It is to say that the court must subject them to the most rigid scrutiny.[85]

The concept of a suspect classification is based on the idea that the privileges and burdens placed on an individual by a state should not depend on a factor, such as race, over which an individual has no control. The Supreme Court has stated that the traditional indicators of a suspect classification are found when a group has been

> . . . saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.[86]

Since the early 1970's, the Supreme Court has, in some cases, given very little deference to legislative classifications and has not employed either the traditional rational basis or compelling interest tests. The Court has adopted a form of independent review which is not a true "strict scrutiny." Rather it is referred to as substantial relationship or important relationship. It is an intermediate test. Using this standard, the Court will not uphold a classification unless they find that the classification has a "substantial relationship" to an "important" government interest. Although this standard involves less deference to legislative classification, it is easier to meet the compelling interest test.[87]

The intermediate standard was used to determine the constitutionality of a federal racial affirmative action program[88] and to invalidate a state law denying state

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[85] *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

[86] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973).

[87] Nowak and Rotunda at 576.

[88] *Metro Broadcasting Inc. v. Federal Communications Commission*, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990).

funded education to undocumented children.[89] This middle tier test bridges the gap between the "hands-off" approach of the rational relationship test and the harsh requirements of the strict scrutiny test.

Properly Drawn Classifications

The equal protection guarantee does not deal with whether or not an individual is properly placed within a classification. "Equal protection tests whether the classification is properly drawn."[90] The classification will be judged on how closely the classifying trait fits the purpose of law and how precisely all similar persons are dealt with in a similar manner. Once a court has determined a permissible governmental purpose, it can analyze the way in which the government has classified persons in terms of the purpose.

There are five ways in which classifications relate to governmental purposes: First, the classification may be perfect because it treats all similarly situated persons in a similar manner. Second, the classification may be totally imperfect because it selects exactly the wrong group for a treatment while excluding the group of persons who do relate to the permissible legislative purpose. Third, the classification may be under-inclusive because it includes a small number of persons who fit the purpose of the statute but excludes persons who are similarly situated. Fourth, the classification can be over-inclusive because it selects not only those persons who fit the purpose of the

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[89] *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

[90] Nowak and Rotunda at 570.

law but also some other persons who do not share the distinguishing characteristic. Fifth, there can be a mixed relation of over- and under-inclusions.[91]

Although the finding of over-inclusiveness or under-inclusiveness will not establish unconstitutionality, this analysis will provide the basis for establishing whether there is a sufficient relationship to a proper legislative purpose. This relationship is important in the court's analysis of a statute under the equal protection guarantee. Given the discussion of the literature from the field of education, a reasonable classification analysis of statutes, regulation and local board of education policies relative to the identification of students for gifted education programming could provide the basis for litigation on this issue.

The Equal Protection Clause Applied to Public Education

Some degree of judicial concern has focused on the rights of students in the public schools since 1954. The courts have emphasized the fundamental importance of an education for children. Education has achieved the status of a "right" in the minds of the public. A child's "right to an education" was clarified by the Supreme Court.

> . . . In these days, it is doubtful that a child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[92]

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[91] Id. at 571-572.

[92] *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 485, 493 (1954).

In spite of the certainty that education is a right, there has been a great deal of uncertainty as to what the "right to an education" actually means.[93]

The issue of education as a fundamental interest protected by the equal protection clause was addressed by a California court in *Serrano v. Priest,* "We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'"[94] This view was not shared by the Supreme Court when it decided another school finance case, *San Antonio Independent School District v. Rodriguez.*

> Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation. [95]

The Court seemed to have moved to an intermediate level of scrutiny when it required the state to demonstrate that the legislative classifications "rationally furthers some legitimate, articulated state purpose."[96] The decision, however, held that the finance system satisfied the equal protection standard imposed by the rational basis test. In rejecting education as a fundamental interest, the Rodriguez court indicated that an absolute rather than a relative denial of educational opportunities and the

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[93] H. H. Wingerd, Jr., *The Application of the Equal Protection Clause of the Fourteenth Amendment to the Use of Academic Achievement, Exceptionality, Sex, School Fees, Marriage, and Pregnancy as Criteria for the Classification of Students Within a School,* An Unpublished Dissertation, Temple University, (1980), 54.

[94] *Serrano v. Priest*, 487 P.2d 1241, 1258 (1971).

[95] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1973).

[96] Id. at 17.

presence of an easily identifiable group of children would trigger the strict scrutiny level of review.

As mentioned earlier, the Supreme Court in *Rodriguez*[97] identified the characteristics of a suspect classification to be met when the group is characterized by disabilities or a history of discrimination so as to render the group powerless in the political process. It has been suggested that children with disabilities, female students and children in low academic track classes with little chance of moving out of the low track could meet these criteria for a suspect classification.[98]

This hypothesis is suspect based on the Ninth Circuit's decision in *Larry P. v. Riles*. The lower court had enjoined the use of intelligence tests which had not been validated for the placement of students in classes for the educably mentally handicapped. The state was ordered to develop plans to eliminate the disproportionate enrollment of black children in these classes.[99] Although the Court of Appeals agreed that the evidence supported findings that the tests had not been validated for the specific purpose, the use of the test violated Education for All Handicapped Children Act, had a discriminatory effect on black children and violated Title VI, they reversed:

> We cannot sustain, however, the finding of a violation by Superintendent Riles of the equal protection clause of the fourteenth amendment on the theory that the

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[97] Id. at 28.

[98] Merle McClung, "School Classifications: Some Legal Approaches to Labels," *Inequality in Education*, 14 (July, 1973): 28 cited in H. H. Wingerd, Jr., *The Application of the Equal Protection Clause of the Fourteenth Amendment to the Use of academic Achievement, Exceptionality, Sex, School Fees, Marriage, and Pregnancy as Criteria for the Classification of Students Within a School*. An Unpublished Dissertation, (Temple University, 1980).

[99] *Larry P. v. Riles*, 495 F.Supp. 926 (1979).

pervasiveness of discriminatory effect can, without more, be equated with the discriminatory intent required by Washington v. Davis.[100]

The Ninth Circuit, clearly, did not elevate this group of African American students to the suspect classification. The Supreme Court has consistently held that where a neutral classification has a disproportionate effect upon a racial minority, it is unconstitutional under the equal protection clause only if that impact can be traced to a discriminatory purpose.[101]

As noted above, the exact measure of equal protection afforded educational issues is still evolving. The next few years could be extremely interesting as new education related cases come before the courts. As public attention is focused on the learning needs of special students, more litigation will be brought which focuses on the process used to identify exceptional students, both those children covered by the Education for All Handicapped Children Act as well as those determined to qualify for gifted educational opportunities.

The Identification of Gifted Students as a Legal Issue

The current research revealed little case law focused directly on the issue of gifted child identification. Legal endeavors related to gifted education generally fall into the following categories: eligibility, admission, placement, appropriate programming, and other services.[102] Because there is no federal mandate for gifted education, most of these cases are heard in state courts. Even at the state level, the

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[100] *Larry P. v. Riles*, 793 F.2d 969, 984 (1984).

[101] Id.at 989.

[102]Frances A. Karnes and Ronald G. Marquardt, *Gifted Children and the Law: Mediation, Due Process and Court Cases*, (Dayton, OH: Ohio Psychology Press, 1991): 37.

comparatively few cases in this area is probably due to the lack of state mandates for substantive and procedural guarantees similar to those granted to handicapped students.[103]

None of the cases generally discussed in the gifted education literature have been brought by persons falling into the suspect class category. In a case brought by a student not selected for gifted education, the United States District Court reiterated the standard discussed above: if no suspect classification is involved and no fundamental right is affected, then the classification may be related only by rational or reasonable basis rather than the more stringent test of strict scrutiny.[104] The court accepted the rational basis of the classification.

The focus of this research relates directly to those children who are a part of a suspect class. Although Karnes and Marquardt predict that the future will bring many cases concerning race and admission to gifted programs,[105] the current research revealed only cases involved in broadly based desegregation cases. In other words, the identification of minority students to a gifted program is one of many issues involved in these desegregation cases.

Gifted Education and School Desegregation

In the 1984 memorandum opinion in which he ordered the consolidation of the Little Rock, North Little Rock and Pulaski County public school systems, District

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[103]Perry A. Zirkel and Paul L. Stevens, "The Law Concerning Public Education of Gifted Students," *West's Ed. Law Rep.* 34 (October 30, 1986): 353-367.

[104]*Student Doe v. Commonwealth of Pennsylvania, et al*, 593 F. Supp. 54 (E. D. Pa. 1984).

[105]Karnes and Marquardt, *Gifted Children and the Law,* 51.

Judge Henry Woods found that Pulaski County Special School District was found to have "no mechanism to monitor the percentage of blacks and whites in the school's Talented and Gifted (TAG) program."[106] The North Little Rock School District was found to have assigned students to special education and gifted programs on a discriminatory basis to the extent that the African Americans represented only 9.4% of the students in the program. The opinion reported that this was an "underrepresentation of blacks in the program of 6.8 standard deviations, which would occur 7 times in a billion by chance.[107] In the same opinion, a review was made of inter district effects. The court found that African American students in Little Rock and North Little Rock were denied access to the predominantly white gifted and talented programs in the Pulaski County Special School District.

In a 1987 interim order to enforce the mandate of the Court of Appeals, in the same series of cases, Judge Woods said that Pulaski County Special School District was found to have, among other things, "assigned students to special education classifications and gifted programs on a discriminatory basis." North Little Rock was said to have improved the participation of African American students in their gifted program. Their supplemental plan was said to include several safeguards to "insure identification of black children who are gifted/talented but culturally disadvantaged." Their identification process involved a screening test which is purported to recognize cultural differences (i.e., System of Multicultural Pluralistic Assessment) as well as

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[106]*Little Rock School District v. Pulaski County Special School District*, 584 F. Supp. 328 (E. D. Ark. W. D. 1984) at 348..

[107]Id. at 349.

nominations and recommendations from several people with the final placement decision made by a group.

Tasby v. Wright is a desegregation case involving the Dallas Independent School District.[108] A February 1982, District Court memorandum opinion referred to *Swann v. Charlotte-Mecklenburg Board of Education* in reminding the reader that the "overriding responsibility" of the court in school desegregation cases is "to eliminate from the public schools all vestiges of state imposed segregation."[109] District Judge Sanders in the *Tasby* case mandated the use of magnet schools as a part of the desegregation plan. A Talented and Gifted (TAG) program was to be housed in one of the magnet schools and directed by the specialists from the existing TAG program.

Among other requirements related to the operation of the magnet school programs was a directive that the racial and ethnic percentages governing enrollment in these programs were the same as the districtwide percentages for each group. This was to be carefully monitored with slots reserved for each racial and ethnic group according to the percentages derived the previous spring. Students of other race or ethnicity could fill vacant slots only after the start of classes and after efforts to recruit and publicize the program had failed. These efforts and percentages were to be included in an annual report to the Court.

The opinion also required that the Dallas Independent School District continue the effort ". . . to ensure that Talented and Gifted, honors, advanced placement, high academic courses, ability grouping, and other academic programs do

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[108]*Tasby v. Wright*, 542 F. Supp. 134 (N. D. Tex. 1982).

[109]*Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (S. Ct. 1971), cited in *Tasby v. Wright*, 542 F. Supp. 134 (N. D. Tex. 1982) at 136.

not become a means by which students become resegregated in classrooms . . ." The court was clear when it said, "DISD shall use racially neutral selection criteria for such programs; shall carefully monitor the objective and subjective selection process for such programs to insure that no student or racial group is unfairly excluded; and shall modify or eliminate any element of the selection process found to be racially discriminatory."[110]

The annual report to the court was to include programmatic details as well as the number and percentage of students by race and ethnicity and the selection criteria. The court was clear as to the intent of its order. If these programs were found to be resegregating students "for either a significant number of students or a significant proportion of school hours, the DISD will be required to meet a heavy burden to justify its continued operation of such programs."[111]

The *U. S. v. Yonkers Board of Education* court ordered the implementation of magnet programs including a program for gifted and talented students. The selection process included a weighted matrix, the Baldwin Matrix, which includes standardized test scores, report card information, teacher and parent input. A cut-off point was to be set and students admitted on a racial/ethnic balanced basis. Selection of the top five percent of the district was anticipated and was to be conducted by a committee of at least three administrators including at least one minority.[112]

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[110] *Tasby v. Wright*, 542 F. Supp. 134, 145 (N. D. Tex. 1982).

[111]Id. at 145.

[112]*U. S. v. Yonkers Board of Education*, 635 F. Supp. 1538 (S.D.N.Y. 1986).

In *Vaughns v. Board of Education of Prince George's County*, the Fourth Circuit Court of Appeals held that the district court was in error when it failed "to give effect to presumption that current placement disparities in special education and talented and gifted education programs were causally related to prior segregation and that burden of proving otherwise rested on defendants."[113] The district court had explored the selection process and found that the disproportionately low African American student enrollment had improved over the previous five years and that the school system "had not intentionally discriminated and did not presently intentionally discriminate against black students in placement in that program, and in fact had taken and was taking affirmative steps to remedy the problem of underrepresentation."[114]

In an interesting case in Texas, *Arvizu v. Waco Independent School District*, the court held that the school district had achieved unitary status even though there were fewer minorities than whites in honors and gifted programs. The plaintiffs complained that this disparity along with differences in expulsion, dropout rates and the achievement gap were evidences that there continued to be vestiges of a dual system. The court used a congratulatory tone in its explanation that students were allowed to enroll in an honors course on a probationary basis regardless of their meeting any criteria. The district was complying with the Texas Education Agency and "goes much further" in its gifted and talented program.[115] This comment by the

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[113]*Vaughns v. Board of Education of Prince George's County*, 758 F.2d 983 (4th Cir. 1985).

[114]*Vaughns v. Board of Education of Prince George's County*, 574 F. Supp. 1280 (D. Md. 1983): headnote 16.

[115]*Arvizu v. Waco Independent School District*, 732 F. Supp. 721, 724 (W.D. Tex. 1989).

court places a heavy burden on state education agencies and state legislatures to carefully examine their regulations and statutes so that they are not the source of "mandated discrimination."

Another example of a school desegregation case in which the identification of gifted youngsters became an issue for the court is *Montgomery v. Starkville Municipal Separate School District*.[116] In this case, the court required the school district to reformulate entrance requirements for the gifted program while at the same time finding that, although statistically abnormal, their use of achievement grouping was acceptable. The statistics for the program for "students of above-average intelligence" were abysmal; four African American students and 338 white students over a five-year period. The total student population was reported to be 53 percent white students and 47 percent African American.

In ordering the district to reformulate the entrance requirements, the court noted, "It has generally been known since at least the 1920s that black children score lower than white children on standardized intelligence tests of the kind developed earlier in the century. . . . Black children score, on the average, one standard deviation lower than white children, which amounts to approximately fifteen points."[117]

A related issue is that of magnet schools established for the purpose of desegregation. Gifted identification has come into play in some of these cases. *Parents for Quality Education with Integration, Inc. v. Fort Wayne Community Schools Corp.* is an example. The court decreed that no admission requirements were

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[116]*Montgomery v. Starkville Municipal Separate School District*, 665 F. Supp. 487 (N. D. Miss. 1987).

[117]Id. at 503.

to be imposed for the magnet programs other than interest and racial balance except for the talented and gifted magnet, "provided that admission is by non-discriminatory criteria and that steps are taken to insure the attainment of racial balance goals within the standards outlined in the Decree."[118]

Davis v. East Baton Rouge Parish School Board is another case in which the magnet school concept touches gifted education. In a lengthy (over 27 years) battle, the magnet school concept with admission quotas became part of the desegregation effort. The Board of Education was refused permission to admit other identified gifted students to Baton Rouge Magnet High School when seats remained unfilled. The District Court denied the request, noting that "almost all students who are certified as 'gifted and talented' are white" and that "the number of 'gifted and talented' certifications had inexplicably doubled for the 1981-1982 school year."[119]

The desegregation cases discussed above which include references to gifted education do not establish any great legal principles concerning discrimination and the identification of children for gifted educational programs but they may be signposts of the future. As will be seen in the discussion of current federal priorities relative to gifted education, more emphasis is being focused on the issue of underrepresentation of underserved populations among those students identified for gifted educational programming.

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[118]*Parents for Quality Education with Integration, Inc. v. Fort Wayne Community Schools Corp*, 728 F. Supp. 1373, 1380 (N.D. Ind. 1990).

[119]*Davis v. East Baton Rouge Parish School Board*, 721 F.2d. 1425, 1440 (5th Cir. 1983).

Federal Definition and Priorities

In 1971, then U. S. Commissioner of Education, Sidney Marland, sought to broaden the limited stereotype of gifted children who score at the upper limits on tests of intellectual ability by suggesting that the category "gifted and talented" include children from those capable of high performance in six areas of achievement; (1) general intellectual ability; (2) specific academic aptitude; (3) creative and productive thinking; (4) leadership ability; (5) visual and performing arts; and (6) psychomotor ability.[120] With the exception of the deletion of psychomotor ability, that definition was retained at the federal level until 1988. Many states and local school districts patterned their statutory definition after the "Marland definition."

The Jacob K. Javits Gifted and Talented Students Education Act of 1988 changed the federal definition of gifted and talented students:

> The term "gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.[121]

The Act emphasizes the importance of the current topic in declaring that:

> [G]ifted and talented students from economically disadvantaged families and areas, and students of limited English proficiency are at greatest risk of being

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[120]Sidney P. Marland, Jr. *Education of the Gifted and Talented*, Report to the Congress of the United States by the U. S. Commissioner of Education (Washington, D. C.: U. S. Government Printing Office, 1972): 48-49.

[121] Jacob K. Javits Gifted and Talented Students Education Act of 1988 (codified at 20 USC 3061-3068).

> unrecognized and of not being provided adequate or appropriate educational services.[122]

In reestablishing a federal presence in the field of gifted education, this legislation specifically identified as its highest priority:

> . . . the identification of gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and to education programs designed to include gifted and talented students from such groups.[123]

State Definitions

In a 1992 study of state policies related to identification for gifted education, Coleman and Gallagher found "over half of the states (66%) have some type of mandate regarding attention to gifted students which is supported, to some degree, with state funding."[124] Fourteen states have no state level mandates for the education of gifted students, but have some language urging services. Two states have no policies relating to the education of gifted students. Coleman and Gallagher looked for the "inclusion of potential for giftedness as one indicator of concern for students from special populations."[125][emphasis in original] The concept of "potential for giftedness" dates back to the Marland report[126] and supports the understanding that children may

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[122] Id.

[123]Jacob K. Javits Act.

[124]Mary Ruth Coleman and James J. Gallagher, *Report on State Policies Related to the Identification of Gifted Students.* (Chapel Hill, NC: Gifted Education Policy studies Program, University of North Carolina at Chapel Hill, 1992): 7

[125]Id. at 11.

[126]Marland, *Education of the Gifted and Talented.*

be gifted even if they are not performing at a high level in the educational setting. Potential for giftedness was included in 40 state definitions.

Coleman and Gallagher found specific references to students from special populations; culturally diverse populations, economically disadvantaged students and disabled students in 38 state policies.[127] The types of giftedness included in the states' policies were: "intelligence (IQ), achievement, creativity, artistic talent, leadership, critical thinking, psychomotor skills, psychosocial, and understanding one's cultural heritage." Forty-nine (49) states included intelligence and achievement, "creativity is included by 40 states, artistic abilities by 34, and leadership by 28 states. Fifteen states include critical thinking, ten include psychomotor, nine states include psychosocial and four states include an understanding of one's cultural heritage."[128] The mention of potential for giftedness, special populations and types of giftedness served is important because it gives an indication of the awareness of culturally diverse gifted students who are often overlooked because of narrow identification criteria and heavy reliance on IQ scores and performance measures.

Coleman and Gallagher found that most states provide, in written policy, a desired flexibility and intent to be inclusive in their state definitions. They believe that states have taken steps to address the need for greater inclusion of gifted students from culturally diverse populations by removing state level barriers to access. The *Report on State Policies Related to the Identification of Gifted Students* does not delineate between the wording of state statutory definitions and state regulatory definitions.

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[127]Coleman and Gallagher, *Report on State Policies Related to the Identification of Gifted Students:* 11.

[128]Id. at 13.

This can be an important point in the consideration of those wishing to bring about change because state regulations may be easier to change than are state statutes. State regulations can further clarify or define but cannot contradict statutes.

Synopsis of Related Legal Issues

In an attempt to guarantee the civil rights of African Americans, the Fourteenth Amendment was ratified in 1868. The phrase from that Amendment, "equal protection of the laws," is vague and continues to be redefined through court decisions. Post-Civil War tendencies to narrowly define the clause gave rise to the "separate but equal" doctrine in *Plessy v. Ferguson.*[129] The separate but equal standard was slowly eliminated by Supreme Court decisions until it was overturned in 1954.

Brown v. Board of Education of Topeka, Kansas[130] is one of the most significant rulings in the history of the United States Supreme Court. It declared that segregation deprived African American children of equal educational opportunity. This denial violated their right to equal protection as guaranteed under the Fourteenth Amendment to the United States Constitution.

Three standards of equal protection have evolved. The first standard, the rational basis test, requires that there must be a rational basis for a legislative classification. The legislative classification should include only those people similarly situated with respect to the purpose of the law. The test also requires that there be a reasonable relationship between the classification and the purposes for the

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[129] *Plessy v. Ferguson*, (1896).

[130] 347 U.S.483 (1954).

classification. When this test is invoked, courts assume that a state's action is constitutional; the burden is on the complainant to demonstrate otherwise.

The second, the strict scrutiny test, is a more stringent standard of equal protection. This test was used in cases involving issues identified by courts as suspect classifications and fundamental interests. When this standard is used in a case, the burden shifts to the state to demonstrate that the classification serves a compelling interest which could be met by no other means.

A third standard, substantial interest, has evolved in the last 25 years. This newer test might be described as a stricter version of the rational basis test. The state is required to demonstrate a substantial basis for the classification which must serve an important government purpose.

The law related to gifted education is limited but is growing. Federal statutes have not mandated identification or programming but have been mainly symbolic in their recognition and encouragement through competitive grant funds. With the setting of underserved populations as a priority the intent of the Congress appears clear. For many reasons cited above, the major impetus for gifted education is at the state level.

IDENTIFICATION OF GIFTED STUDENTS IN PULASKI COUNTY SPECIAL SCHOOL DISTRICT, LITTLE ROCK SCHOOL DISTRICT AND NORTH LITTLE ROCK SCHOOL DISTRICT

This researcher conducted a preliminary study which examined the identification policies and data for the State of Arkansas, Pulaski County Special School District, Little Rock School District, and North Little Rock School District. Interviews with Ms. Tommie Sue Anthony, Ms. Mabel Donaldson and Ms. Ann Kincl,

gifted program administrators for the three school districts in Pulaski County were conducted June 20-22, 1994. A conversation with Mr. Bill Bowles, Assistant Superintendent for Desegregation for Pulaski County Special School District was an unexpected opportunity. Data for the State of Arkansas and the three districts, supplied by the state director of gifted programs was analyzed using the chi-square test.[131] Progress or lack of progress in the proportional representation of the ethnic groups involved in the comparison was observed by considering the levels of significance over the eight years for which data was provided.

State of Arkansas

Ms. Martha Bass, Administrator of Programs for the Gifted/Talented for the Arkansas Department of Education reports that gifted education as a K-12 mandate was adopted in 1984 as a part of the Standards for Accreditation. Although the Standards were adopted in 1984 they became effective the 1987-88 school year. These standards require "each district to identify, program for, and evaluate the programming for gifted students."[132]

Identification Regulations

The Arkansas *Gifted and Talented Program Approval Standards* were adopted in May, 1986, and have not been modified since that time.[133] These Standards

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[131] Donald Ary, Lucy Jacobs and Asghar Raxavieh, *Introduction to Research in Education*, 209 (4th ed. 1990).

[132] Letter from Martha Bass, Administrator, Programs for the Gifted/Talented, Arkansas Department of Education, to Cynthia Brown, Oklahoma City, July 20, 1994, Personal Files of Cynthia Brown, Oklahoma City, Oklahoma.

[133] Id.

provide the framework for each local school district policy on gifted education.

Section 4.0 speaks to identification:

4.0 Identification

4.1 The process for identifying students has several stages.

4.1.1 Nominations are sought from a wide variety of sources to ensure that all potentially gifted and talented students have an opportunity to be considered.

4.1.2 Data are collected (on the nominated students) to aid in making decisions for selection of students who are in need of special educational services.

4.1.3 Placement is made in an appropriate program option.

4.2 Identification procedures are clearly stated, uniformly implemented, and communicated to the entire school staff.

4.3 A committee chaired by a trained specialist in gifted education and including administrators, teachers, and/or counselors collects and analyzes data, maintains appropriate records, and makes professional decisions on placement of students.

4.4 The identification process yields information obtained through a variety of procedures and from many independent sources.

4.4.1 Procedures for obtaining information about students include at least two objective assessment methods such as group and individual tests of ability, achievement, and creativity.

4.4.2 Procedures for obtaining information about students include at least two subjective assessment methods such as checklists, rating scales, biographical data, product evaluations, auditions, interviews, and grades.

4.4.3 Information about students is obtained from multiple sources which may include teachers, counselors, parents, community members, peers, and students themselves.

4.5 Student placement decisions are based on multiple criteria. No single criterion or cut-off score is used to exclude a student from placement.

4.6 Instruments and procedures used in the identification process are non-discriminatory with respect to race, cultural or economic background, religion, national origin, sex, or handicapping condition.[134]

State Data

Historical data was not available for the state of Arkansas.[135] The most recent report released by the Council of State Directors of Programs for the Gifted[136] shows that in the state of Arkansas, African American students make up 24% of the total state student population and 13% of the identified gifted student population. Caucasian students are represented at 75% of the total student population and 86% of the identified gifted population. This difference in proportion is significant at the .01 level of confidence using the chi-square test.

Pulaski County Special School District

Ms. Tommie Sue Anthony, Director of Gifted Programs for Pulaski County Special School District since 1982, described the identification model used in the County as a "profile".[137] Ms. Anthony reported that she worked closely with Dr. Mary Frasier in developing the process and the form. (Appendix A) As required by

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[134] Arkansas Department of Education, *Gifted and Talented Program Approval Standards* (1986).

[135] Letter from Martha Bass, Administrator, Programs for the Gifted/Talented, Arkansas Department of Education, to Cynthia Brown, Oklahoma City, July 20, 1994, Personal Files of Cynthia Brown, Oklahoma City, Oklahoma.

[136] *The 1994 State of the States Gifted and Talented Education Report.* Council of State Directors of Programs for the Gifted (1994).

[137] Interview with Ms. Tommie Sue Anthony, Director of Gifted Programs of Pulaski County Special School District. (June 21, 1994). Appendix A.

Arkansas Department of Education's *Program Approval Standards*,[138] the identification process includes collecting multiple kinds of information on each nominated child. The identification profile is divided into three areas: mental ability, motivation, and creativity.

Pulaski County Special School District has tried to follow the advice of Dr. Frasier as described by Ms. Anthony in her testimony to the court on July 7, 1988, when questioned relative to student identification:

> Q. You've started off with a racially discriminatory standard, haven't you?
>
> A. I don't think so. We're not saying on all tests. That's why we have a series of different items that measure abilities so it would be possible to score below the fiftieth percentile on one measure and above on another. So we're very, very careful there.
>
> Q. Tell me. Give me the two tests that you are applying in this response, at least two tests that you are applying; one, a person being in the fifty-first and the other person in the forty-ninth and have an average of fifty, I guess.
>
> A. No, sir, we don't average them.
>
> Q. You would not average them?
>
> A. No, sir, we would not. We administer more than two tests.
>
> Q. Now, this above average ability concept then is more than a test concept, isn't it?
>
> A. Yes, sir, it's an indicator of potential.
>
> Q. So when you define above average ability, you're not just talking about tests. You're talking about some judgments from parents and teachers, aren't you, that may have no relationship to ability at all? Isn't that correct?

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[138] Arkansas Department of Education, *Gifted and Talented Program Approval Standards* (1986).

> A. Yes, sir, on the profile that's why we have the category "other", so anything that we could document as far as evidence is placed there. That was one of the recommendations of Dr. Mary Frasier, that you have multiple criteria and you spread a wide net and you allow many, many opportunities to assess ability.[139]

As shown by the data below, Pulaski County Special School District has made progress toward a much more proportionally representative outcome for the process of identification of students for gifted educational programming. A possible important piece may be the K-2 program which involves teacher/facilitators trained in gifted education going into the kindergarten classrooms for a period of four weeks to conduct lessons with all students. During this time teachers and facilitators observe and nominate students for the pull-out Discovery classes. Fifteen percent of the students in grades K-2 are served in this program with the racial composition at five percent or greater than the minority enrollment in the school. The goal of this portion of the program is the provision of an environment where giftedness can flourish. The hope is that because of this environment, more minority students will be identified for the Alpha program when they enter third grade.[140]

The percentage of African American students identified for gifted educational programming in Pulaski County Special School District increased from 14% in school year 1986-87 to 25% in 1993-94 while the percentage of African American students in the total student population grew from 25% to 30% during that time period. These changes were offset by the decrease in the percentage of Caucasian children identified for gifted educational programming from 85% in 1986-87 to 74% in 1993-94 as well

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[139] Transcript of Testimony by Ms. Tommie Sue Anthony on July 7, 1988 provided by Wright, Lindsey & Jennings, Little Rock, Ark.

[140] *Desegregation Plan: Pulaski County Special School District*, Little Rock, Ark. (1992) at 60.

as the decrease in Caucasian students among the total student population from 75% to 69% during that time. Pulaski County Special School District progressed from the 1987-88 year in which their disproportional representation shows a significance at the .01 level to the 1993-94 school year with no statistically significant difference.

Pulaski County Special School District

	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Level of Significance
1986-87	25	14	75	85	0.02
1987-88	26	14	74	85	0.01
1988-89	25	19	75	79	0.20
1989-90		21		76	
1990-91	26	24	73	74	0.20
1991-92		27	73	75	0.50
1992-93	28	23	71	75	0.30
1993-94	30	25	69	74	0.30

Table 2

Total African American students are shown as a percent of the total student population,

Gifted African American students are shown as a percent of the total gifted student population,

Total Caucasian students are shown as a percent of the total student population, and

Gifted Caucasian students are shown as a percent of the total gifted student population.

Level of Significance was determined by applying the chi-square formula using Total Black and Total White as expected frequencies; Gifted Black and Gifted White as observed frequencies.

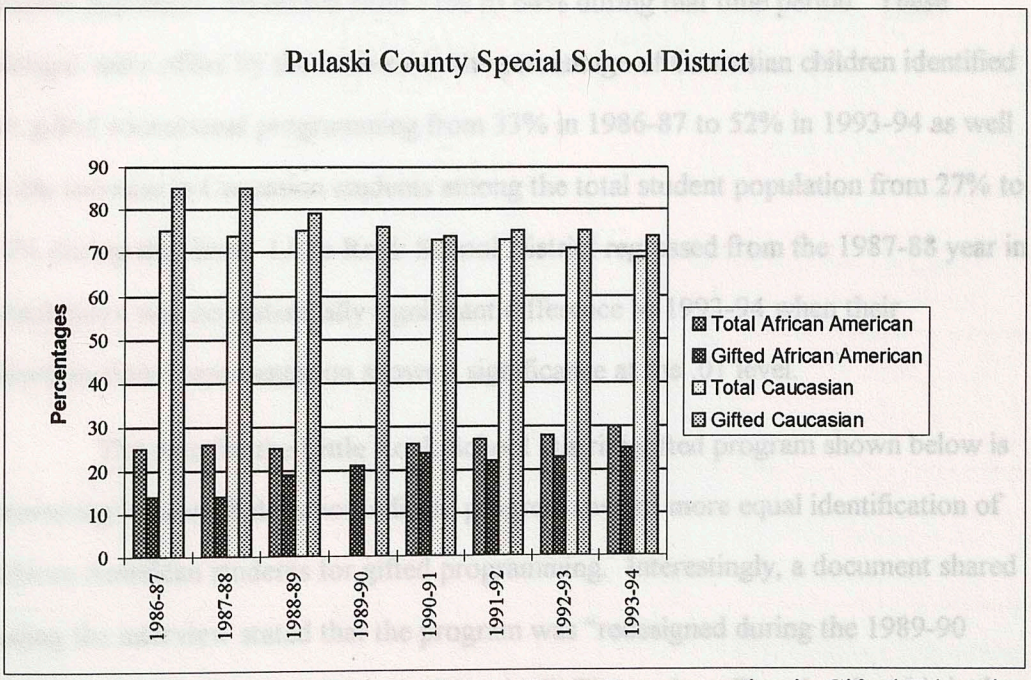


Figure 1. Graphic Representation of Ethnic Group Representation in Gifted Education for Pulaski County Special School District

Little Rock School District

Ms. Mabel Donaldson, Supervisor of Gifted Programs for the Little Rock School District, indicated that the Little Rock model for identification is very similar to that found in Pulaski County Special School District. Although Ms. Donaldson had been involved with the gifted program in Little Rock for a relatively short time, she indicated that they had also worked closely with Dr. Mary Frasier in the development of their identification process (Appendix B). Ms. Donaldson believes that the problems related to identifying minority students for gifted programming is really a problem with identifying low socio-economic children.

The percentage of African American students identified for gifted educational programming in Little Rock School District decreased from 66% in school year 1986-87 to 46% in 1993-94 while the percentage of African American students in the total student population decreased from 71% to 64% during that time period. These changes were offset by the increase in the percentage of Caucasian children identified for gifted educational programming from 33% in 1986-87 to 52% in 1993-94 as well as the increase in Caucasian students among the total student population from 27% to 34% during that time. Little Rock School District regressed from the 1987-88 year in which there was no statistically significant difference to 1993-94 when their disproportional representation shows a significance at the .01 level.

The data for the Little Rock School District gifted program shown below is interesting because it does not indicate progress toward more equal identification of African American students for gifted programming. Interestingly, a document shared during the interview stated that the program was "redesigned during the 1989-90 school year with the help of Dr. Mary Frasier." The reader will notice that this is the

year in which the difference between the representation of African Americans and Caucasians in the total population and the gifted population increased to a .01 level of significance. Obviously, conclusions cannot necessarily be drawn from this information alone because of the many human variables involved.

Little Rock School District

	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Level of Significance
1986-87	71	66	27	33	0.50
1987-88	61	47	38	51	0.02
1988-89	61	54	38	44	0.20
1989-90	64	34	34	64	0.01
1990-91	64	40	34	58	0.01
1991-92	64	42	34	55	0.01
1992-93	64	46	34	52	0.01
1993-94	64	46	34	52	0.01

Table 3

Total African American students are shown as a percent of the total student population,

Gifted African American students are shown as a percent of the total gifted student population,

Total Caucasian students are shown as a percent of the total student population, and

Gifted Caucasian students are shown as a percent of the total gifted student population.

Level of Significance was determined by applying the chi-square formula using Total Black and Total White as expected frequencies; Gifted Black and Gifted White as observed frequencies.

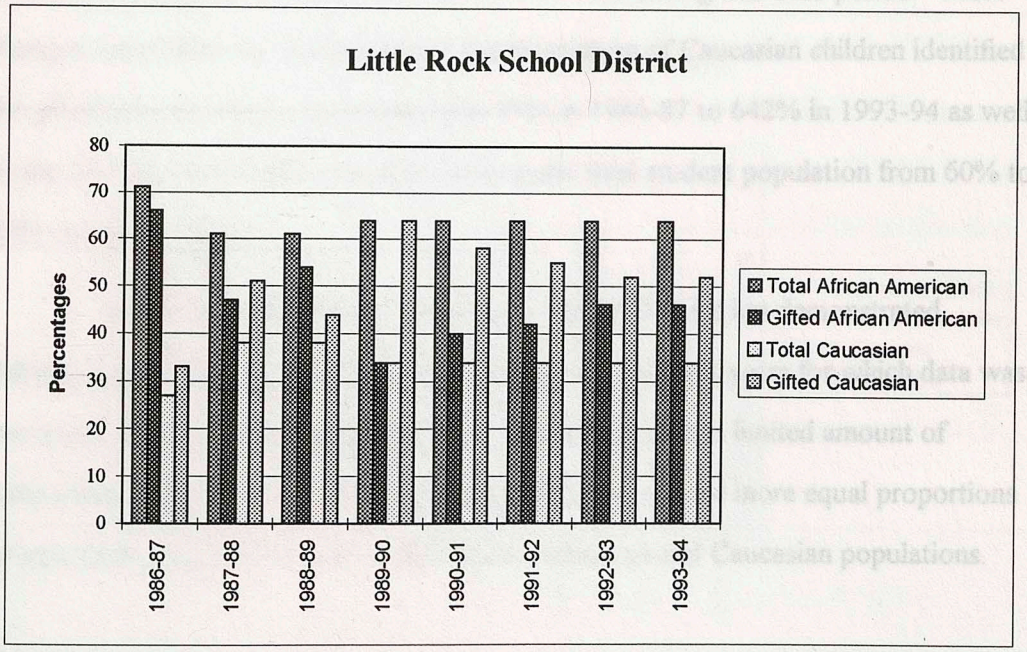


Figure 2. Graphic Representation of Ethnic Group Representation in Gifted Education for Little Rock School District

North Little Rock School District

The North Little Rock School District model for identifying students for gifted educational programming differs from both Pulaski County Special School District and Little Rock School District. Ms. Ann Kincl, the coordinator for gifted education for North Little Rock School District, worked closely with Dr. Donald Treffinger and Dr. Carolyn Callahan in developing the model.[141] She calls the process, developed in 1985, "a case study" (Appendix B). Information included in the case study includes achievement tests, creativity tests, rating scales, parent information and other observation as well as information relative to learning styles.

The percentage of African American students identified for gifted educational programming in North Little Rock School District increased from 15% in school year 1986-87 to 35% in 1993-94 while the percentage of African American students in the total student population increased from 39% to 50% during that time period. These changes were offset by the decrease in the percentage of Caucasian children identified for gifted educational programming from 84% in 1986-87 to 642% in 1993-94 as well as the decrease in Caucasian students among the total student population from 60% to 49% during that time.

As shown below, North Little Rock School District has demonstrated differences at a .01 level of significance throughout the eight years for which data was provided. Again, it is impossible to draw conclusions on this limited amount of information as to the reasons for their lack of success toward more equal proportions of identified gifted students from the African American and Caucasian populations.

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[141] Interview with Ms. Ann Kincl, Coordinator of Gifted Programs, North Little Rock School District, (June 22, 1994). Appendix A.

North Little Rock School District

	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Level of Significance
1986-87	39	15	60	84	0.01
1987-88	40	13	59	86	0.01
1988-89	42	13	57	86	0.01
1989-90	43	21	56	78	0.01
1990-91	46	28	52	71	0.01
1991-92	46	31	52	71	0.01
1992-93	48	33	51	66	0.01
1993-94	50	35	49	64	0.01

Table 4

Total African American students are shown as a percent of the total student population,

Gifted African American students are shown as a percent of the total gifted student population,

Total Caucasian students are shown as a percent of the total student population, and

Gifted Caucasian students are shown as a percent of the total gifted student population.

Level of Significance was determined by applying the chi-square formula using Total Black and Total White as expected frequencies; Gifted Black and Gifted White as observed frequencies.

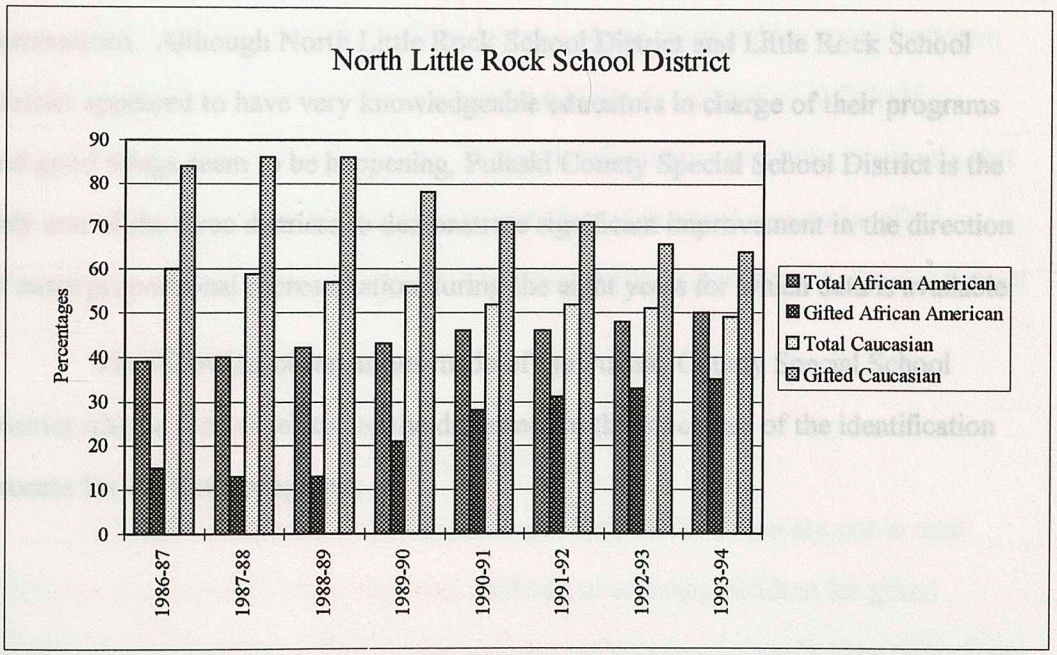


Figure 3. Graphic Representation of Ethnic Group Representation in Gifted Education for North Little Rock School District

Synopsis of Preliminary Study

Dr. Mary Frasier, who worked with both the Pulaski County Special School District and the Little Rock School District in designing their current identification models, believes that educators must move beyond test scores in their efforts to provide an identification process for potentially gifted students which yields more proportional representation of minority group children:

> [the] traditional identification paradigm, which relies on teacher nominations and required performance scores on tests of intelligence and achievement, has been a serious barrier to the participation of more ethnic/minority children in programs for the gifted.[142]

If one accepts Dr. Frasier's premise, then one would expect to see great results in terms of proportional representation of African American and Caucasian students in the three school districts examined in this study. All three districts have identification models which go beyond mere use of test scores and teacher nominations. Although North Little Rock School District and Little Rock School District appeared to have very knowledgeable educators in charge of their programs and good things seem to be happening, Pulaski County Special School District is the only one of the three districts to demonstrate significant improvement in the direction of more proportional representation during the eight years for which data is available.

The following observations made of the Pulaski County Special School District may be factors related to the difference in the outcomes of the identification process for the three programs.

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[142] M. Frasier, "Ethnic/Minority Children: Reflections and Directions," *ERIC Bulletin*, (October 1992) at 4.

- A very supportive administration was evidenced in the conversation this writer had with Mr. Bill Bowles, the Assistant Superintendent for Desegregation for Pulaski County Special School District on June 20, 1994.
- Ms. Anthony seems to have been very active and persistent in her efforts to inform all teachers and the community relative to the gifted education program and giftedness.
- The K-2 Discovery Program, described above, may be an important piece in providing an environment for the development of gifted behaviors.
- The Gifted Education piece of the Pulaski County Special School District Desegregation Plan is quite detailed covering some eleven pages. This seems to be an example of both the administrative support and the attention to detail by Ms. Anthony.

More research would be needed before causal relationships could be drawn between the above mentioned factors and the success demonstrated in Pulaski County's gifted identification process. From the information available, it appears that educators interested in proportional representation of all ethnic groups in gifted identification should make a more in-depth study of the Pulaski County Special School District gifted program.

SUMMARY

Educators, researchers and writers in the field of education are not in total agreement on the issues of test bias and methods of selecting children for gifted educational programming. The question of reasonableness of classification of students identified for gifted educational programming has not been challenged in the federal

courts as of this writing. If the many writers cited above are correct, that many students are not being identified for gifted educational programming because of inadequate procedures, statutes or regulations, a possible argument is that of underinclusiveness of the state classification. If appropriate members of the judicial system were to agree with this argument, the courts could dictate that different methods be adopted in order that children from minority groups are afforded an equal opportunity to be included in these programs.

CHAPTER III

METHODOLOGY

Research Questions

The following questions guided the examination of the literature and case law as well as the information gathering:

Does the underrepresentation of African American children among those students identified for gifted and talented programs violate the equal protection clause of the Fourteenth Amendment of the United States Constitution?

What is being done or has been done in the states, through legislation or regulation to correct any perceived or actual inequitable identification practices?

Information gathered relative to the above research questions provided insight for the following question:

What, if any, steps can be taken at the state level to positively influence any underrepresentation of culturally diverse children that may exist among those students identified for gifted and talented programming?

Conceptual Framework

The conceptual framework for this study is based on the literature concerning the underrepresentation of culturally diverse students among those identified for gifted educational programming. The emphasis is placed on the legal aspect of this issue.

There has been no case law found in which the litigation was initiated specifically on this issue although two separate writers have indicated this may well be an area of much legal activity in the future.[1]

Legal Framework

The issue of discrimination and gifted identification is one that should be of concern from an educational ethics perspective and from a legal perspective. The equal protection clause of the Fourteenth Amendment of the United States Constitution provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within the jurisdiction the equal protection of the laws." This Constitutional provision will be explored as it applies to the issue of the identification of students for gifted educational programming.

Format of the Study

The study involved gathering and analyzing information from three sources:

- Caselaw

The basic method here was legal reasoning, as described by Levi:

> The basic pattern of legal reasoning is reasoning by example. It is reasoning from case to case. It is a three-step process described by the doctrine of precedent in which a proposition descriptive of the first case is made into a rule of law and then applied to a next similar situation. The steps are these: similarity is seen between

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[1]Frances A. Karnes and Ronald G. Marquardt, *Gifted Children and the Law: Mediation, Due Process and Court Cases*, (Dayton, OH: Ohio Psychology Press, 1991); Perry A. Zirkel and Paul L. Stevens, "The Law Concerning Public Education of Gifted Students," *West's Ed. Law Rep.* 34 (October 30, 1986): 353-367.

cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case.[2]

- The United States Department of Education's Office for Civil Rights

The U.S. Office for Civil Rights does a statistical survey *Elementary and Secondary School Civil Rights Compliance Report* every other year. Many different kinds of information are requested from a sampling of school districts in the fifty states. From this sampling, the Office for Civil Rights sets projected values for the various data items. One of the items is gifted child count data. This report was obtained for the earliest year for which gifted child count data was collected, 1980, and for the most recent report year, 1992.

This data was analyzed for trends and assisted in finding states which have a greater degree of proportionality in their data. A statistical analysis, using the one-sample test for proportions[3], was done to determine if the representation of gifted students within each ethnic group was significantly different when compared to the overall proportion of gifted students in the total student population of each state.

- State departments of education

The survey of all United States state departments of education related to measures taken by state legislatures or state agencies to encourage or mandate correction of any discrimination that is perceived to exist in the state related to identification for gifted programs. The survey was addressed to the state consultant for gifted education. If a name was available, the survey was addressed to that person.

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[2] Edward H. Levi, *An Introduction to Legal Reasoning*, (Chicago: University of Chicago Press, 1948): 1-2.

[3] H. J. Loether, & D.G. McTavish, *Descriptive and Inferential Statistics: An Introduction*, (5th ed., Allyn, 1994): 573.

Information was received from 25 states. Two states sent information following telephone conversations between the researcher and the state consultant. A second mailing was done to the remaining 23 states with a return of 3. Twelve of the 21 states who did not respond do not have a person assigned full-time to gifted education. Nine of these states do not have mandates for the identification of children for gifted educational programming.[4]

The analysis of the data from the Office for Civil Rights resulted in five states being selected. These states were chosen for a more in-depth look because they had less disparity in their representation of minority group children or had made progress between 1980 and 1992 in the direction of equitable identification of all ethnic groups among those students identified for gifted educational programming.

Telephone interviews were conducted with state directors of gifted programs in the selected states in an attempt to triangulate[5] the information collected through the survey and Office for Civil Rights data. The directors were questioned relative to what measures seem to be working in the effort to encourage school districts to use identification practices which result in a more proportionate representation of minority group children. The information from the state departments of education, the related case law and the related literature from both the education and legal fields will be synthesized with the goal of writing recommended state language.

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[4] Council of State Directors of Programs for the Gifted, *The 1994 State of the States Gifted and Talented Education Report*, (Author, 1994): 8-9, 18-19.

[5] Corrine Glesne and Alan Peshkin, *Becoming Qualitative Researchers: An Introduction*, (White Plains, NY: Longman, 1992): 24.

CHAPTER IV

PRESENTATION AND ANALYSIS OF DATA

Three kinds of data are discussed here. The first is the gifted child count data collected by the Office for Civil Rights in 1980 and 1992. This data is a part of the *Elementary and Secondary School Civil Rights Compliance Report.* The second piece of information is that collected through a survey instrument mailed by this researcher to the 50 state departments of education. The third portion is a closer look at the five selected states. The information presented for these states includes data from the Office for Civil Rights data, their response to the survey instrument and information gathered during a telephone interview with the state consultant in each of the five states.

Data from Office for Civil Rights

The United States Department of Education's Office for Civil Rights collects data from a sample of local school districts in each state. The data is collected on a variety of education related factors at various intervals. The 1980 and 1992 surveys were the earliest and most recent surveys which included participation in gifted education. The information for the total United States and from five selected states is presented in this chapter. Complete data for all states is presented in Appendix B.

United States

In the national data, three ethnic groups are consistently underrepresented among those students identified for gifted educational programming. The underrepresented groups are Native Americans, African Americans and Hispanic Americans. Caucasians and Asian Americans are overrepresented in both years. These trends are seen in 34 of the 50 states.

Table 5 shows the percentage of the total student population and the percentage of the identified gifted student population among the five major ethnic groups for 1980 and 1992. Native Americans make up less than 1% of the total population and the identified gifted population for both years. Asian Americans comprise 2% and 3% of the total student population , respectively for 1980 and 1992, while their rate among those identified for gifted educational programming for those years is double the percentages of their group within the total student population. Hispanic American students constitute 8% of the total student population in 1980 and 5% of the identified gifted students. In 1992, Hispanic Americans made up 12% of the total and 7% of the identified gifted group. The African American populations remained constant in both years for both categories as African American students represented 16% of the total student populations and 9% of those identied for gifted educational programming for both 1980 and 1992. Caucasian students comprised 73% of the total student population and 82% of the identified gifted group in 1980 while in 1992, they were 67% of the total and 78% of those identified for gifted educational programming.

Year	Native American		Asian American		Hispanic American		African American		Caucasian American	
	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted
1980	<1%	<1%	2%	4%	8%	5%	16%	9%	73%	82%
1992	<1%	<1%	3%	6%	12%	7%	16%	9%	67%	78%

Table 5. Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Gifted Students as Percentages of Identified Gifted Student Population[1]

The Null Hypothesis

The null hypothesis for the statistical examination of the Office for Civil Rights data is: *gifted students represent the same proportion of each ethnic group as they do in the total student population.* The one-sample test for proportions was used to test this hypothesis on the five ethnic groups in the 50 states as well as the total for the United States. Because of the large number of calculations, the possibility for a Type I error is greatly increased. For this reason, the level of significance chosen was .0001.

Even at this extreme level of significance, the null hypothesis is rejected for 459 of the 500 comparisons. The one-sample test of proportions finds both over and underrepresentation. In some instances, overrepresentation of one group seems to balance underrepresentation in another ethnic group within the state. Appendix B includes complete data, including proportions and *z* scores for each comparison.

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[1] Compiled from United States Department of Education Office for Civil Rights. *1980 Elementary and Secondary Schools Civil Rights Survey: National Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the United States.*

The null hypothesis was rejected for both 1980 and 1992 for all five ethnic groups in the following states: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin.

Twenty-nine of the 41 instances below in which the null hypothesis was not rejected involve Caucasian students. Other ethnic groups within those states show significant differences in proportionality. The following states had mixed results for the different ethnic groups:

- Colorado - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, African Americans and Caucasians. The null hypothesis was accepted for Hispanic Americans in 1980 and rejected for Hispanic Americans for 1992.

- Hawaii - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Hispanic Americans, African Americans and Caucasians. The null hypothesis was accepted for Asian Americans for both years.

- Idaho - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- Iowa - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- Maine - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- Massachusetts - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, and Hispanic Americans. The null hypothesis was accepted for Caucasians and African Americans for both years.

- Minnesota - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians in 1980 and rejected for Caucasians for 1992.

- Missouri - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, and Hispanic Americans. The null hypothesis was accepted for Caucasians and African Americans for 1980 and rejected for these two groups in 1992.

- Montana - The null hypothesis was rejected for both 1980 and 1992 for Native Americans and African Americans. The null hypothesis was accepted for Caucasians in both years. It was rejected for Asian Americans in 1980 and accepted in 1992. For Hispanic Americans, the null hypothesis was accepted in 1980 and rejected in 1992.

- Nebraska - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was rejected in 1980 and accepted for Caucasians in 1992.

- New Hampshire - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- North Dakota - The null hypothesis was rejected for both 1980 and 1992 for Native Americans and African Americans. The null hypothesis was accepted for Caucasians for 1980 and rejected for 1992. It was rejected for Hispanic Americans for 1980 and accepted in 1992. The null hypothesis was accepted for Asian Americans in 1980 and rejected in 1992.

- Oregon - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians in 1980 and rejected in 1992.

- Rhode Island - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- South Dakota - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- Tennessee - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians in 1980 and rejected in 1992.

- Utah - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians in 1980 and rejected in 1992.

- Vermont - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Asian Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years.

- West Virginia - The null hypothesis was rejected for both 1980 and 1992 for Asian Americans, Hispanic Americans, and African Americans. It was rejected for Native Americans in 1980 and accepted in 1992. The null hypothesis was accepted for Caucasians for both years.

- Wyoming - The null hypothesis was rejected for both 1980 and 1992 for Native Americans, Hispanic Americans, and African Americans. The null hypothesis was accepted for Caucasians for both years. It was rejected for Asian Americans in 1980 and accepted in 1992.

Trend Analysis

One of the purposes of the present study is to find states who are making progress toward more equitable identification practices. For this reason, a simple trend analysis[2] was also done. Information worthy of notice among the states include:

- Arkansas had a large increase in the percentage of African American students identified for gifted educational programming from 8% in 1980 to 18% in 1992. African Americans constituted 22% and 24%, respectively, of the total student population.

- Colorado showed a decrease in the identification of Hispanic Americans and African Americans from 1980 to 1992. Hispanic Americans made up 15% of the

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[2] Donald Ary, Luch Caucasian. Jacobs, and Asghar Razavieh, *Introduction to Research in Education*, (Third edition, New York: Holt, Rinehart and Winston, 1985): 327.

total student population in 1980 as well as the identified gifted group. By 1992, Hispanic American students represented 17% of the total and only 12% of the students in gifted programs. African American students were 5% of the total and 9% of the gifted group in 1980. The percentage for the total had remained steady at 5% of the total but had dropped to 4% of the gifted group by 1992.

- Massachusetts seems to do a very good job of identifying African American students, however Hispanic American students are underrepresented. African Americans represented 6% of both the total and the gifted groups in 1980; and 8% of both groups in 1992. Hispanic Americans, on the other hand, represented 3% of the total in 1980 and 2% of the gifted group; and in 1992, they made up 7% of the total and 3% of those identified for gifted educational programming.

- Missouri seems to have a backward trend in terms of equitable representation of African American students identified for gifted programs. African Americans made up 14% of the total population in both years; their representation among the gifted group plummeted from 14% in 1980 to 7% in 1992.

- Montana seems to have a positive trend in the identification of Native American students for gifted educational programming. Native Americans made up 10% of the total and 4% of the gifted group in 1980 while in 1992, they represented 8% of the total and 6% of those in gifted programs.

- Nebraska has made great strides toward identifying African American students. The African Americans represented 6% of the total and 3% of the gifted group in 1980. This representation was reversed by 1992 when African American students made up 5% of the total and 9% of those students identified for gifted educational programming.

- New York seems to have done very well over the period covered by the Office for Civil Rights data in terms of equitable identification of Hispanic American students and African American students for gifted educational programming. Hispanic Americans made up 12% of the total and 11% of the gifted group in 1980; and 17% of the total and 15% of those identified for gifted programs in 1992. African American students represented 18% of the total and 19% of those in gifted programs in 1980. In 1992, African Americans were 20% of both the total and the gifted group.

- North Dakota's Native American population has more than quadrupled in the period covered by the Office for Civil Rights data. During this time, the Native American students are being identified at a very high rate. Native American students made up 2% of the total and 1% of the gifted population in 1980. In 1992, Native Americans were 6% of the total student population and 14% of those identified for gifted educational programming.

- Ohio is an interesting case because Caucasian students appear to be underrepresented in both 1980 and 1992. In 1980, Caucasians made up 85% of the total and 81% of the gifted group; while in 1992, they represented 83% of the total and only 74% of those in gifted programs. In contrast, African Americans were overrepresented in both years. In 1980, they represented 13% of the total student population and 17% of those in gifted programs. Students of African American descent made up 14% of the total student population in 1992 and 22% of those identified as being in need of gifted educational programming.

State Survey Responses

The survey was mailed to the 50 state consultants for gifted education in the state departments of education. Information was received from 28 states. Complete survey responses are included in Appendix C.

Four states did not respond to the survey questions but sent documents which contained statutory, regulatory or guideline information. Eight states indicated that nothing has been done to encourage equitable identification of minority group children for gifted educational programming. Sixteen state consultants believe that some state action has been taken that should positively influence the identification of Hispanic American, Native American, and African American students for gifted education. The reported state action includes such things as:

- specific language relative to unbiased assessment instruments,
- multiple criteria or multi-factored assessment,
- lower scores on some tests allowed for certain groups,
- publication of identification data relative to ethnicity,
- language encouraging special consideration of ethnically-diverse children,
- language allowing or encouraging alternative identification methods,
- pilot site studies aimed at improving identification of minority group children,
- replacing the term, "gifted education" with "talent development",
- requesting child count data by ethnic group, and
- equity index information required to be used in long-range planning.

Five Selected States

Five states were chosen for a closer examination. These states were chosen because they had comparatively less disparity or had made significant gains in their representation of minority group children among those identified for gifted educational programming. Telephone interviews were conducted with the state directors of these states in an attempt to triangulate[3] the information collected through the survey and Office for Civil Rights data. The Office for Civil Rights data, survey response and telephone interview information for these five states are presented below.

Arkansas

Arkansas's data shows an interesting trend from 1980 to 1992. Although, all minority groups increased during the time span, Arkansas continues to have very small populations of Native Americans, Hispanic Americans and Asian Americans. Native American students made up less than 1% of the total and gifted groups for both years as did the Asian American population. Hispanic American students also comprised less than 1% of both groups for both years. The African American population increased more than did any other ethnic group. In 1980, African Americans represented 22% of the total student population, while only 8% of the students identified for gifted educational programming were African American. The information for 1992 shows an increase in the identification of African American students to 18% of those identified as gifted and 24% of the total student population. The Caucasian students made up

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[3] Corrine Glesne and Alan Peshkin, *Becoming Qualitative Researchers: An Introduction*, (White Plains, NY: Longman, 1992): 24.

77% of the total student population and 91% of the identified gifted students in 1980. By 1992, the Caucasians had dropped to 74% of the total and 80% of the gifted group.

	Native American		Asian American		Hispanic American		African American		Caucasian American	
Year	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted
1980	.4%	0%	.3%	.5%	.3%	.1%	22.5%	8.0%	76.5%	91.5%
1992	.5%	.2%	.7%	1.0%	.7%	.3%	24.4%	17.9%	73.8%	80.4%

Table 6. Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Students as Percentages of Identified Gifted Student Population[4]

Survey Response[5]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

In Arkansas, we have made no changes. We use multicriteria in our identification procedures. Also our schools cannot have cutoffs. I am enclosing the portion of our standards that deal with identification for your review.

Program Approval Standards[6]

Require written identification procedures which include:

6. A policy for placement decisions based on multi-criteria, including both objective and subjective data, with the stipulation that no single criterion or cut-off score is used to exclude a student from placement.

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[4] United States Department of Education Office for Civil Rights. *1980 Elementary and Secondary Schools Civil Rights Survey: State Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the State of Arkansas.*

[5] Survey Response from Ann Biggers, Arkansas Department of Education, (May 1995).

[6] Arkansas Department of Education, Gifted & Talented Program Approval Standards, (1986), 13.

8. Assurance that instruments and procedures are non-discriminatory.

Telephone Interview[7]

Ms. Ann Biggers, Gifted Education Consultant, reports that data for 1980 would have been based on a very small sample because gifted education was not implemented statewide until 1986. She believes that the state's emphasis on multiple criteria identification measures has made a big difference in the way students are evaluated for gifted educational programming.

The state department monitors look at the rate of minority students identified for gifted educational programming in a local district and makes suggestions for improvement if that is needed. They often suggest awareness techniques for teachers as well as suggesting the use of the Raven's Progressive Matrices[8] as an assessment tool. School districts are encouraged to look for students of different backgrounds. Ms. Biggers stated, "We are just really aware of that in this state."

Massachusetts

The Massachusetts data are of interest in different areas. The Asian American and the Hispanic American population more than doubled in size within the total student population. The Asian American group is overrepresented among those students identified for gifted educational programming; Hispanic American children are underrepresented for both years of data.

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[7] Telephone interview with Ms. Ann Biggers, Gifted Education Consultant, Arkansas Department of Education, (July 1995).

[8] J.C. Raven. *Raven's Progressive Matrices and Vocabulary Scales.* (London: H.K.Lewis, 1983).

Native American students made up less than 1% of the total and gifted groups for both years. The Asian American population was 1% of the total student population and over 2% of the identified gifted group in 1980. Asian Americans increased to 3.5% of the total student population and 7% of the identified gifted group by 1992. Hispanic American students comprised 3% and 2% of the total and gifted groups, respectively. The Hispanic group increased to 7% of the total student populations and 3% of the identified gifted population by 1992. The African American and Caucasian student groups in Massachusetts showed no significant difference between representation among the total student population and the students identified for gifted educational programming. In 1980, African Americans represented 6% of both groups and in 1992, they were at 8% of both groups. The Caucasian students made up 89% in 1980 and 81% in 1992.

	Native American		Asian American		Hispanic American		African American		Caucasian American	
Year	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted
1980	.1%	.1%	1.1%	2.3%	3.3%	1.9%	6.2%	6.3%	89.3%	89.4%
1992	.2%	.1%	3.5%	7.0%	6.7%	3.1%	8.0%	8.1%	81.2%	81.5%

Table 7. Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Students as Percentages of Identified Gifted Student Population[9]

Survey Response

No response was received for the written survey.

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[9] United States Department of Education Office for Civil Rights. *1980 Elementary and Secondary Schools Civil Rights Survey: State Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the State of Massachusetts.*

Telephone Interview[10]

Ms. Barbara Libby, Gifted Education Consultant for Massachusetts State Department of Education, believes that the state's "discretionary grant programs in the 1980's were forward thinking relative to identification of minority children for gifted education." She reports that the state is proactive relative to grants and publications. Massachusetts does not have either a mandate or program funding.

Nebraska

Nebraska's data shows that while all minority group populations have increased during the twelve years, the only population which seems to be better represented for gifted educational programming in 1992 than it was in 1980 is the African American students. The African American group seems to be overrepresented in the 1992 data while the Native American and Hispanic American groups continue to be underrepresented.

Native American students made up 2.2% of the total student population and only .2% of the identified gifted students in 1980. In 1992, they were 1.9% of the total and .5% of the gifted group. The Asian American population was less than 1% for both total and gifted groups in 1980 and increased to just over 1% of the total student population and 1.7% of the identified gifted group by 1992. Hispanic American students comprised 1.8% of the total group and .7% of those identified as gifted in 1980. In 1992, the Hispanic American students made up 3% of the total and 1.9% of the gifted group. In 1980, African Americans represented 5.6% of the total student population, while only 2.7% of the students identified for gifted educational

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[10] Telephone interview with Ms. Barbara Libby, Gifted Education Consultant, Massachusetts State Department of Education, (July 1995).

programming were African American. The information for 1992 shows an increase in the identification of African American students to 8.7% of those identified as gifted and 5.2% of the total student population. The Caucasian students made up 89.5% of the total student population and 95.5% of the identified gifted students in 1980. By 1992, the Caucasians had dropped to 88.7% of the total and 87.2% of the gifted group.

	Native American		Asian American		Hispanic American		African American		Caucasian American	
Year	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted
1980	2.2%	0.2%	.8%	.9%	1.9%	.7%	5.6%	2.7%	89.5%	95.5%
1992	1.9%	0.5%	1.0%	1.7%	3.0%	1.9%	5.2%	8.7%	88.7%	87.2%

Table 8. Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Students as Percentages of Identified Gifted Student Population[11]

Survey Response[12]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

None at this time - however we are revising state rules and regulations concerning gifted education. Hopefully, minorities will be addressed in revision.

[11] United States Department of Education Office for Civil Rights. *1980 Elementary and Secondary Schools Civil Rights Survey: State Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the State of Nebraska.*

[12] Survey Response from Dr. Sheri Nowak, Director, Programs for High Ability Learners, Nebraska Department of Education, (May 1995).

Telephone Interview[13]

Dr. Sheri Nowak, Director of Programs for High Ability Learners, Nebraska Department of Education, does not believe that the Office for Civil Rights data is related to state action. She thinks that several larger districts may be doing a "really good job" of identifying African American students.

New York

The Office for Civil Rights data for New York reflects increases in the actual numbers for every population group except Caucasian. The percentage of the total student population for Caucasian students declined from 68% in 1980 to 57% in 1992. The most interesting trends relative to this study were those for the Hispanic American and African American populations. These two groups seem to be well represented among those students identified for gifted educational programming. As is seen for many states, the Asian American population is overrepresented in the identified gifted group.

Native American students made up .2% of the total student population and .3% of the identified gifted students in 1980. In 1992, they were .3% of the total and .2% of the gifted group. The Asian American population was 1.9% for the total group and 5.8% of the gifted group in 1980 and increased to 4.7% of the total student population and 8% of the identified gifted group by 1992. Hispanic American students comprised 12% of the total group and 11% of those identified as gifted in 1980. In 1992, the Hispanic American students made up 16.3% of the total and 15.1% of the gifted group. In 1980, African Americans represented 17.9% of the total student population,

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[13] Telephone interview with Dr. Sheri Nowak, , Programs for High Ability Learners, Nebraska Department of Education, (July 1995).

while 19.5% of the students identified for gifted educational programming were African American. The information for 1992 shows an increase in the identification of African American students to 19.9% of those identified as gifted and 20.4% of the total student population. The Caucasian students made up 68% of the total student population and 63.4% of the identified gifted students in 1980. By 1992, the Caucasians had dropped to 57.5% of the total and 56.4% of the gifted group.

	Native American		Asian American		Hispanic American		African American		Caucasian American	
Year	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted
1980	.2%	.3%	1.9%	5.8%	12.0%	11.0%	17.9%	19.5%	68.0%	63.4%
1992	.3%	.2%	4.7%	8.0%	16.5%	15.1%	19.9%	20.4%	57.5%	56.4%

Table 9. Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Students as Percentages of Identified Gifted Student Population[14]

Survey Response

No response was received for the written survey; however, 1983 state guideline information was received after my telephone interview with Ms. Dailey. The information suggests that districts use multiple types of student information in order that different kinds of giftedness will not be overlooked. An identification team is

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[14] United States Department of Education Office for Civil Rights. *1980 Elementary and Secondary Schools Civil Rights Survey: State Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the State of New York.*

suggested. The team would include, "One or more members . . . a sensitivity to the needs of culturally diverse students."[15]

Telephone Interview[16]

Ms. Mary Dailey, Gifted Education Consultant, New York Department of Education, reports that there are no state guidelines in New York. Local districts have a great deal of discretion in the identification process. Ms. Dailey believes that the state's emphasis on equity in all kinds of programs, not just gifted education, makes a big difference in the actual practice of local school districts.

Ohio

Ohio's data is interesting in that it reflects an unusual overrepresentation of African American students among those students identified for gifted educational programming for both 1980 and 1992. This phenomenon is not found in the data of any other state. The data for Hispanic American students shows a more equitable representation of these children in 1992 than in 1980. The growing population of Asian American students is overrepresented in both years as is commonly seen in many other states.

Native American students represented .1% of the total student population as well as those identified for gifted educational programming for both 1980 and 1992. Asian Americans comprised .6% of the total and 1.9% of the gifted group in 1980. By

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[15] *Identifying Gifted Students: Guidelines for School Districts.* The University of the State of New York, State Education Department (Albany, NY: September 1983): 3.

[16] Telephone interview with Ms. Mary Dailey, Consultant, New York Department of Education, (July 1995).

1992, the numbers had changed only slight to .9% of the total and 1.7% of the identified gifted students. Hispanic American children made up 1% of Ohio's total student population and .4% of those identified for gifted educational programming in 1980. In 1992, Hispanic Americans constituted 1.2% of the total and 1.3% of the gifted group. While comprising 13.1% of the total student population in 1980, African Americans represented 16.6% of the students identified for gifted educational programming. By 1992, the overerepresentation had increased. African American students were 13.8% of the total and 22.4% of the gifted group. Meanwhile, Caucuasians were underrepresented in both years among those identified for gifted educational programming. In 1980, Caucasians comprised 85.3% of the total student population and 81% of the identified gifted group while in 1992, they made up 83.4% of the total and only 74.5% of the gifted group.

	Native American		Asian American		Hispanic American		African American		Caucasian American	
Year	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted	Total	Gifted
1980	.1%	.1%	.6%	1.9%	1.0%	.4%	13.1%	16.6%	85.3%	81.0%
1992	.1%	.1%	.9%	1.7%	1.2%	1.3%	13.8%	22.4%	83.4%	74.5%

Table 10. Ethnic Group Students as Percentages of Total Student Population and Ethnic Group Students as Percentages of Identified Gifted Student Population[16]

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[16] United States Department of Education Office for Civil Rights. *1980 Elementary and Secondary Schools Civil Rights Survey: State Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the State of Ohio.*

Survey Response[17]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

The Ohio Department of Education, Division of Special Education, received a U.S.D.E. Javits grant for a demonstration project at five sites, Akron City, Athens area, Cincinnati City, Toledo City, and Youngstown City for the development of non-traditional strategies to improve identification of underserved gifted students. The grant project is in its third year and will be completed September 30, 1995.

The Ohio Department of Education has funded grant awards to local districts to implement model projects for improvement of strategies for identification and for services in the regular classroom.

What year were these changes made?

The model projects are currently being conducted and have been funded to local districts for the 1993-94 and the 1994-95 school years.

In addition, Ohio opened for review all regulations governing education in the state in 1992. In the proposed "new" standards strong statements regarding the use of appropriate assessment measures for all students have been incorporated.

Proposed Standards

The school district shall design and implement an ongoing assessment system that . . . is free of bias based on national origin, language background, gender, and race . . .[18]

The assessment system will . . .use a multifactored assessment to identify children who are gifted . . .[19]

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[17] Survey Response from Nancy Hamant, Ohio Department of Education, (May 18, 1995).

[18] *Prekindergarten- through-Grade 12 Standards for Ohio Schools.* Final Recommendations of the Learner Outcomes Panel to the State Superintendent of Public Instruction for Submission to the State Board of Education. Columbus, Ohio (DRAFT February 1995): 32.

[19] Id at 50.

Telephone Interview[20]

Ms. Nancy Hamant, Services for the Gifted Consultant, Ohio Department of Education, believes that Ohio's record for identifying African American students is related to the large number of mid-sized cities scattered across the state. She thinks that many "folks are advocating for minorities in all of those cities." Ms. Hamant said, "The kids that are the most hidden in Ohio, are the poor."

Ohio educators can use national or local norms on standardized testing in the identification process. In the proposed new Standards, Ohio educators will be required to use multifactored assessment in all areas of giftedness.

Summary

The data from the United States Department of Education Office for Civil Rights, the state survey responses and the various state documents form an interesting but inconclusive view of the recent and current state action relative to the identification of students in need of gifted educational programming in the various states. There is a mixture of evidence among these five states as well as the other 23 responding states between local control versus state specific identification language. Arkansas and Ohio have very specific language relative to multiple criteria or multi-factored assessment. Massachusetts, Nebraska and New York have no mandate and no specific guidelines for identification. The allowable use of local norms in Ohio could be an important flexibility in the identification process.

Twelve of the 27 responding states are in the process of revising their state language, have revised their state language in the last five years or are currently

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[20] Telephone interview with Ms. Nancy Hamant, Services for the Gifted Consultant, Ohio Department of Education, (July 1995).

studying the issue of minority identification. The next five to ten years will be a very interesting time to observe the practices and resultant changes in the child count statistics for gifted education in the various states.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

Purpose of Gifted Education

As discussed in prevous chapters, the government classification of persons must be reasonably related to a permissible state purpose. The purpose of gifted education may be derived by looking at the various definitions. Each state adopts its own definition although most are based on one of the federal definitions. Some states have included such things as test score percentiles in their statutory definition. In a 1993 paper, Passow and Rudnitski stated that an important outcome of the Marland Report was its stimulation of state descriptions and definitions of gifted children as well as services to these identified students.[1]

The 1972 federal definition which emerged from the Marland Report is still being used by many states:

> Gifted and talented children are those identified by professionally qualified persons, who by virtue of outstanding abilities are capable of high performance. These are children who require differentiated educational programs and/or

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[1] A. Harry Passow and Rose A. Rudnitski, *State Policies Regarding Education of the gifted as Reflected in Legislation and Regulation*, (Storrs, CT: National Research Center on the Gifted and Talented, 1993):1.

services beyond those normally provided by the regular school program in order to realize their contribution to self and society.

Children capable of high performance include those with demonstrated achievement and/or potential ability in any of the following areas, singly or in combination:

1. General intellectual ability
2. Specific academic aptitude
3. Creative or productive thinking
4. Leadership ability
5. Visual and performing arts
6. Psychomotor ability[2]

The Jacob K. Javits Gifted and Talented Students Education Act of 1988 changed the federal definition of gifted and talented students:

> The term "gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.[3]

The earlier definition suggests that the purpose of gifted education is to allow these children to "realize their contribution to self and society". The latter one suggests that identified students need special attention to "fully develop such

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[2]Sidney P. Marland, Jr. *Education of the Gifted and Talented*, Report to the Congress of the United States by the U. S. Commissioner of Education (Washington, D. C.: U. S. Government Printing Office, 1972): 48-49.

[3] Jacob K. Javits Gifted and Talented Students Education Act of 1988 (codified at 20 USC 3061-3068).

capabilities". In other words, our society needs gifted education so that the identified students can be provided the opportunity to develop their abilities.

Relationship Between the Classification and the Purpose

For this study, the purpose of the classification is assumed to be providing high ability students an education which assists them in the development of their abilities. No record has been located in which the constitutionality or reasonableness of this purpose has been argued and it will not be argued here. The courts generally assume that the legislative body has a worthy purpose. For the present argument, that assumption will be made as well.

The next issue which must be examined is: does the state classification fit that purpose? As discussed above, the Constitution does not require that all persons be treated the same. The requirement is that persons who are similar be treated similarly. The measure for reasonableness of a legislative classification is the degree to which it treats similarly those who are similarly situated.[4] The question, then, is: does the process used to identify students for gifted educational programming find the students who are "similarly situated"?

The two federal definitions use qualifying terms such as: "demonstrated achievement and/or potential ability" and "give evidence of high performance." Neither of these definitions mention specific assessment procedures. But the language of some states is specific to test scores[5] which, as discussed in Chapter II, many believe

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[4] Joseph Tussman and Jacobus tenBroek, "The Equal Protection of the Laws," 37 *California Law Review* 344 (1949).

[5] *Regulations and Procedures.* Georgia Department of Education, (August 1988): 39; Missouri Laws. Section 162.675. RSMo. 1973; Oklahoma Law, 70 O.S. Section 1210.301.

to be discriminatory. It is possible, then, that those states have "*imposed* no inequality, but [their] instrument encourages it, expressly permits it."[6] (Emphasis added by the court.)

Possible Arguments

A possible legal argument for the problem of consistent underrepresentation of minority group students among those identified for gifted educational programming is an improperly drawn classification. An argument for strict scrutiny would probably be unsuccessful as education has not been found to be a fundamental interest and the questioned classification is not specifically based on race. The intermediate level scrutiny argument would likely be problematic as well. At this time, the intermediate review has been successful in gender and alienage cases.

The properly drawn classification examination looks at how government has classified persons in relation to the purpose of the classification. The five ways in which classifications are judged to relate to governmental purposes are: perfect, totally imperfect, under-inclusive, over-inclusive and a mixed relation of over- and under-inclusions.[7]

The finding of an improperly drawn classification will not establish unconstitutionality, but will provide the basis for examining the relationship between the classification and a proper legislative purpose. The federally stated purpose of gifted education is the provision of an education which allows children to reach their

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[6] *Hall v. St. Helena Parish School Board*, 197 F.Supp. 649, 658 (1961).

[7] J. Nowak and R. Rotunda, *Constitutional Law* Hornbook Series, (4th ed. 1991): 571-572.

potential. Many writers and researchers[8] have said that high ability or high potential cannot be measured or assessed by standardized tests. Frasier sums up that body of literature:

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[8] Jocklyn Smith, Barbara LeRose, and Robert E. Clasen, "Underrepresentation of Minority Students in Gifted Programs: Yes! It Matters!" *Gifted Child Quarterly* 35 (Spring 1991): 81-83; E. Susanne Richert, James J. Alvino and Rebecca C. McDonnel, *National Report on Identification, Assessment and Recommendations for Comprehensive Identification of Gifted and Talented Youth,* (Sewel, NJ: Educational Improvement Center-South, 1982); J. W. Eby and J. F. Smutny, *A Thoughtful Overview of Gifted Education*, (New York: Longman, 1990): 119; William G. Masten, "Identification of Gifted Minority Students: Past Research, Future Direction," *Roeper Review* 8 (1985): 83-85; E. Susanne Richert, *Equitable Identification of Students with Gifted Potential.* Kansas State Board of Education (1992): 4; Elaine P. Witty, "Equal Educational Opportunity for Gifted Minority Group Children: Promise or Possibility?" *Gifted Child Quarterly* 22 (Fall 1978): 344-351; Donna Y. Ford and J. John Harris III, "On Discovering the Hidden Treasure of Gifted and Talented Black Children," *Roeper Review* 13 (September-October 1990): 27-32; Joyce E. Gay, "A Proposed Plan for Identifying Black Gifted Children," *Gifted Child Quarterly* 22 (Fall 1978): 353-360; Marcia S. Scott, Ruth Perou, Richard Urbano, Anne Hogan and Susan Gold, "The Identification of Giftedness: A Comparison of White, Hispanic and Black Families," *Gifted Child Quarterly* 36 (Summer 1992): 131-139; Mary M. Frasier, "Poor and Minority Students Can Be Gifted, Too!" *Educational Leadership* (March 1989): 16-18; Joanne Whitmore, "Conceptualizing the Issue of Underserved Populations of Gifted Students," *Journal for the Education of the Gifted* 10 (Fall 1986): 141-153; Diana Ortegon Olague, "Gifted and Denied," *Gifted Child Today* (May/June 1993): 47-48; Alexinia Y. Baldwin, "I'm Black But Look at Me, I Am Also Gifted," *Gifted Child Quarterly* 31(Fall 1987): 180-184; Bruce M. Mitchell, "A Strategy for the Identification of the Culturally Different Gifted/Talented Child," *Roeper Review* 10 (March 1988): 163-164; Cheryl B. Sawyer and Judith A. Marquez, "Discrimination Against LEP Students in Gifted and Talented Classes," *Journal of Educational Issues of Language Minority Students* 12 (Special Issue, Summer 1993): 143-149; Jane Piirto, *Talented Children and Adults: Their Development and Education,* (New York: Macmillan College Publishing Company, 1994):121; E. Paul Torrance, *Discovery and Nurturance of Giftedness in the Culturally Different*, (Reston, VA: The Council for Exceptional Children, 1977); John Curtis Gowan, "Issues in the Education of Disadvantaged Gifted Students," *Gifted Child Quarterly* 12 (1968): 115; J. John Harris III and Donna Y. Ford, "Identifying and Nurturing the Promise of Gifted Black American Children," *Journal of Negro Education* 60 (1991):

> Any time only one method is used to determine eligibility for services or admission to programs, we increase our chances of missing qualified participants. We can only select those whose abilities are reflected in that one criteria. Children who are sure to be missed are among those whose experiences are different or limited because of (a) cultural or economic background; (b) physical or visual condition; and (c) talent area or response style. Some children don't test well. Some children's gifts are in areas other than intellectual. Some children have not been exposed to certain knowledge and experience because they live in isolated, rural areas; come from disadvantaged families and/or are members of language and cultural groups with limited political and economic power.[9]

The courts have established, as discussed in Chapter III, that education is a responsibility of the states and local district personnel are agents of the state.[10] The Supreme Court, in Brown II, reminded all levels of government that "racial discrimination in public education is unconstitutional,"[11] and "all laws requiring or permitting such discrimination must yield to this principle."[12]

The national data as well as the data from 34 states show that Caucasian and Asian American students have been identified at a much higher rate than they are found in the total population. Native Americans, Hispanic Americans and African Americans are consistently underrepresented. State language requiring reliance on test scores to identify students for gifted educational programming would be difficult to defend given

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4-5; Robert J. Kirschenbaum, "Let's Cut Out the Cut-Off Score in the Identification of the Gifted," *Roeper Review* (1983): 6-10; Pat O'Connell Ross, *National Excellence: A Case for Developing America's Talent,* U.S. Department of Education, (1993).

[9] Mary M. Frasier, "On Multiple Criteria: Further Thoughts for Consideration," *Georgia Supporters for the Gifted Newsletter*, (Fall 1994): 1.

[10] *Cooper v. Aaron,* 358 U.S. 1, 15-16 (1958).

[11] *Brown v. Board of Education of Topeka, Kansas*, 349 U.S. 294 (1955).

[12] Id. at 298.

the variety and historical nature of the literature from the field of education and the disparate impact demonstrated by the Office for Civil Rights data.

The continuing use of state language which results in a disparate impact on minority children would appear to suggest a discriminatory intent by the state. Although circumstantial, the evidence indicates that the state intends to continue to identify students from historically overrepresented ethnic groups and is less concerned about identifying children from the underrepresented minority groups. This argument, then, would suggest that the state does not really intend to find all students "similarly situated" in respect to the permissible state purpose. Further, states who require a certain test score or percentile are not only permitting discrimination, they are requiring it.

State Language Requiring Use of Test Scores

Oklahoma's statutory language requires local school districts to identify students for gifted educational programming using one criterion, a test score. Districts may also identify students in the four "capability areas". If they choose to identify students in these areas, they are required to use multicriteria evaluation.

> "Gifted and talented children" means those children identified at the preschool, elementary and secondary level as having demonstrated potential abilities of high performance capability and needing differentiated or accelerated education or services. For the purpose of this definition, "demonstrated abilities of high performance capability" means those identified students who score in the top three percent (3%) on any national standardized test of intellectual ability. Said definition may also include students who excel in one or more of the following areas:
>
> a. Creative thinking ability,
> b. Leadership ability
> c. Visual and performing arts ability, and
> d. Specific academic ability.
>
> A school district shall identify children in capability areas by means of a multicriteria evaluation. Provided, with first and second grade level children, a

local school district may utilize other evaluation mechanisms such as, but not limited to, teacher referrals in lieu of standardized testing measures.[13]

Missouri's statutory definition does not require the use of test scores but the guidelines written by the Department of Elementary and Secondary Education do require the use of two test scores as two of four critieria.

Missouri's statutory definition:

Those children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum.[14]

Missouri's guideline language:

From among the students who meet at least three of the four criteria, the district will select those most in need of the services provided in the state-assisted program.

1. General Mental Ability - Scores on an individual intelligence test at or above the 95th percentile.

2. Academic Ability - Scores on standardized achievement tests at or above the 95th percentile.

3. Creativity, Reasoning and Problem-Solving Ability - Results of valid tests or other assessments indicating outstanding ability.

4. Performance - Documented evidence of exceptional performance in a general academic area, a fine arts area, or another area related to the design of the gifted program.[15]

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[13] Okla. Sess. Law. 70 O.S. Section 1210.301.

[14] Mo. Laws. Section 162.675. RSMo. 1973.

[15] *Administrative Manual and Guidelines: State-Assisted Program for Gifted Students*. Missouri Department of Elementary and Secondary Education. (1995):7.

Georgia is currently holding hearings to revise their regulatory language.[16] The current identification regulations are very specific and strictly based on test scores. Students must score at or above the 96th percentile on a test of mental abilities and score at or above the 85th percentile on an achievement test or score at or above the 99th percentile on a mental ability test.

Recommended State Language

As indicated above, the purpose or philosophy of an educational program or statement is important in determining intent, either discriminatory or nondiscriminatory. A clear declaration of philosophy clarifies the reason for formulating the policy or statute. An example of a clear statement which declares nondiscriminatory intent is the following statement from Kentucky titled "Philosophy of Gifted Education,"

> All students shall be provided with an educational program which allows them to develop to their maximum potential. Gifted students possess superior abilities and/or capabilities and, therefore, are a unique segment of Kentucky's school population. In order to realize their potential, they need educational opportunities that differ from those available through the regular school program.
>
> Gifted students exist at all levels of society regardless of sex, race, socio-economic, or ethnic origin. They must be identified through their outstanding intellectual capabilities, academic aptitudes, and/or creative abilities. An articulate program shall be provided with educational experiences commensurate with their abilities. Such a program shall be conducted in an environment which will make it possible for these students to interact with others of high ability. The program

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[16] *Regulations and Procedures*. Georgia Department of Education, (August 1988): 39.

> shall afford students the opportunities to reach the highest level of learning and accomplishment of which they are capable at each stage of their development.[17]

Foster, Gallagher and Coleman offered model legislation as a result of their study of the policies of the states. Their definition and policy relative to non-discrimination is instructive for this study and may provide a template for states wishing to revise their current language.

> Definition. Gifted and talented students are defined as those students between preschool and twelfth grade who (when compared to others of their age, experience, or environment) excel consistently, or demonstrate the potential to excel consistently, in any one or more of the following areas: general intellectual ability and aptitude, specific subject matter aptitude, creativity, leadership, or the arts. In order to achieve their potential, these students require educational experiences beyond those normally provided by the general school program.
>
> Non-Discrimination Policy. Gifted and talented students may be found within any race, ethnicity, gender, economic class, or nationality. In addition, some students with physical disabilities, learning disabilities, or behavioral problems may be found to be gifted or talented. The state shall prohibit the discrimination against any gifted and talented student on the grounds of their membership in one of these groups.[18]

The model legislation goes further to define "traditionally underserved populations." It also goes beyond the traditional anti-discrimination language and prohibits school districts from using identification procedures that can be shown to discriminate against these students.

> Definition. Historically, students who are economically disadvantaged, culturally diverse, underachieving, preschoolers, physically or learning disabled, or who

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[17] A. Harry Passow and Rose A. Rudnitski, *Transforming Policy to Enhance Educational Services for the Gifted*, (A paper presented for the 1994 Annual Meeting of the American Educational Research Association in New Orleans):8.

[18] Andrew H. Foster, James J. Gallagher and Mary Ruth Coleman, *Model Legislation: Gifted and Talented*, (University of North Carolina at Chapel Hill: Gifted Education Policies Studies Program, February 1994): 4.

demonstrate behavior problems, have been underserved in gifted and talented programs.

Non-Discrimination Policy. The state shall prohibit the exclusion of any identified gifted and talented student from appropriate programming due to his or her membership in any one of the traditionally underserved populations. Additionally, the state shall prohibit the use of any identification practice that can be demonstrated to put students from traditionally undeserved populations at an inappropriate disadvantage with the district's majority population.[19]

At a minimum, states should include language relative to non-discrimination such as the following from the various states' language found in Appendix B:

Arkansas - Student placement decisions are based on multiple criteria. No single criterion or cut-off score is used to exclude a student from placement.

Instruments and procedures used in the identification process are non-discriminatory with respect to race, cultural or economic background, religion, national origin, sex, or handicapping condition.[20]

Colorado: [The identification procedure must] make concerted efforts to identify students from a wide range of backgrounds and conditions, including, but not limited to, students who have disabilities, are economically disadvantaged, lack English proficiency, are ethnically/culturally diverse, or are underachieving.[21]

Texas: Data and procedures used during the identification process shall be designed to assure that the population of the program for gifted students reflects the population of the total district."[22]

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[19] Id. at 8.

[20] Arkansas Department of Education, *Gifted and Talented Program Approval Standards* (1986).

[21] Colorado Department of Education and The State Advisory Committee for Gifted and Talented Student Education, *State Guidelines for Gifted and Talented Student Education*, (March, 1995): B.2.

[22] Texas State Board Regulations. 19 TAC, Chapter 898, Subchapter C.

Summary

Although much of the literature in the field of gifted education has, for many years, recommended broadening or reconceptualizing the definition of giftedness, the Office for Civil Rights data demonstrates that this recommendation has not been operationalized. State leadership is required and must be focused on the understanding that giftedness is not demonstrated the same way by all persons. State language must not, directly or indirectly, encourage a conception of giftedness which would mandate racial discrimination. State policies, guidelines, documents and presentations must encourage or even require local district educators to eliminate barriers to participation of economically disadvantaged and minority students in gifted educational programming.

Recommendation for Future Study

The period from 1995 to 2005 appears destined to be a time of much social change in the United States. Obviously, a part of that change will be the judicial interpretation of the equal protection clause of the Fourteenth Amendment of the Constitution. The makeup of the Supreme Court could become more conservative and therefore less likely to move further in the direction argued by this study. The Court could also become even more sympathetic to the plight of minority group children in their struggle for an approprite education. Public interest will continue to remain strong on both sides of the issue. As a result, the classification of students will continue to be an important area for education research. The following recommendations are made for further study.

- It is recommended that this study be replicated within the next ten years to determine if educators have operationalized the recommendations being made in the

educational literature relative to the identification of students for gifted educational programming.

- A study should also be done relative to the direction of judicial interpretation of the equal protection clause of the fourteenth amendment relative to the present question.

- It is recommended that a study be conducted to determine the extent to which the findings and recommendations of this study are understood by state officials and have been translated into state language.

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APPENDIX A

PCSSD

PULASKI COUNTY SPECIAL SCHOOL DISTRICT

TALENTED AND GIFTED PROGRAMS

SCHOOL

NAME

GRADE | YEAR

RACE | SEX

Placed in TALENTED AND GIFTED PROGRAM: ☐ YES ☐ NO

Fill in year below. Begin with most recent.

		LOW	AVERAGE	HIGH	SUPERIOR
		PERCENTILE 60	61 80	81 89	90 99
		RENZULLI I ..... 8 II ..... 9 III 10	9 ..... 16 10 ..... 18 11 20	17 ..... 24 19 ..... 27 21 30	25 ..... 32 28 ..... 36 31 40
		GRADES 0 ..... 1.9	2.0 ..... 2.9	3.0 ..... 3.4	3.5 ..... 4.0
		CREATIVITY Primary Thinking - 79 Thinking ..... 60 - 79 Feeling ..... 44 - 58	80 ..... 84 80 ..... 90 59 65	85 ..... 95 91 ..... 101 66 80	96 ..... 121+ 102 ..... 121+ 81 89
MENTAL ABILITY	Stan. 8 *Composite				
	Stan. 8 *Reading				
	Stan. 8 *Math				
	*Composite				
	*Reading				
	*Math				
	* OLSAT				
	* OLSAT				
	* RAVEN				
	* SAGES				
	* RENZULLI I Learning Scale				
	Other:				
	Other:				
MOTIVATION	*GRADES				
	*GRADES				
	* RENZULLI II Motivational Scale				
	Other:				
	Other:				
CREATIVITY	* WILLIAMS Divergent Thinking				
	* WILLIAMS Divergent Feeling				
	* RENZULLI III Creativity Scale				
	Other:				
	Other:				

* _____ Signature of Facilitator

* YEAR	* GRADE	* OLSAT	* READ	* MATH	* LANG	* SCI	* SOCIAL ST.	* COMP		* TEST SERIES

*Required data

COMMENTS:

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Developed in cooperation with Mary M. Frasier.

PCSSD/TG-34

Little Rock School District

GIFTED PROGRAMS IDENTIFICATION PROFILE

STUDENT NAME _____ I. D. NUMBER _____ RACE B W O | GENDER M F | S.E.S. A or D

SCHOOL _____ GRADE _____ DATE _____

	PERCENT OR PERCENTILE	LOW	AVERAGE/ ABOVE AVERAGE	HIGH	SUPERIOR
	5th. Gr.	0 49	50 ..... 80 84	85 93	94 99
ACADEMIC	MAT-6 NAT'L PERCENTILE				
	• Total Reading				
	• Total Math				
	• Social Studies				
	• Sciences				
	• Language				
	• Higher Order Thinking				
	Grades				
	Otis Lennon				
	Raven				
CREATIVITY	TTCT Figural (3-6)				
	What Makes Me Run (7-9)				
	Creative Motivation (10-12)				
	Williams Divergent Feeling				
MOTIVATION	Referral Form Composite Score				
	• Learning				
	• Motivation				
	• Creativity				
	• Leadership				
	• Adaptability				

SCHOOL-BASED COMMITTEE RECOMMENDATION:

Evaluation I:

___ Yes

___ No

___ Seek additional information

Evaluation II:

___ Yes

___ No

Comments _____

LRSD STANDARDS COMMITTEE RECOMMENDATION:

Recommendation Approval I:

___ Yes

___ No

___ Seek additional information

Comments _____

Recommendation Approval II:

___ Yes

___ No

Recommended For: _____

White Copy to Permanent Record Card - Yellow Copy to School Base Committee - Pink Copy to Standards Committee

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NORTH LITTLE ROCK SCHOOL DISTRICT

Academic Ability	Creativity	Task Commitment
SAT8		
Parent Information		
Observation		
Self/Peer		
Strengths		

Learning Styles I.S. Add LD

This is a replica of the chart drawn by Ms. Ann Kincl during the interview on June 22, 1994.

APPENDIX B

Office for Civil Rights Data

The data on the following pages was compiled from two reports from the United States Department of Education Office for Civil Rights: *1980 Elementary and Secondary Schools Civil Rights Survey: State Summary of Projected Data* and *1992 Elementary and Secondary School Civil Rights Compliance Report: Projected Values for the States.*

Ethnic groups are shown as percentages of total student population and gifted ethnic groups are shown as percentages of identified gifted student population. Total percentages for an ethnic group are found by dividing the total student population in an ethnic group by the total student population. Gifted percentages for an ethnic group are found by dividing the gifted population for an ethnic group by the total gifted group. The third row or decimal numbers is the 6 digit representation of the percentage.

The proportion of gifted students to the total in each ethnic group is found by dividing the gifted students in the ethnic group by the total in the ethnic group. This proportion is used to find the standard deviation and the *z* score. Significance is found by comparing the *z* score to a *z* score table[1]

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[1] Edward W. Minium, *Statistical Reasoning in Psychology and Education*, "Areas under the Normal Curve Corresponding to Given Values of *z*," (NY: John Wiley & Sons, 1978): 530-535.

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Alabama												
1980	1,488	0	1,437	26	529	5	249,734	722	501,404	8,424	754,592	9,177
	0.20%	0.00%	0.19%	0.28%	0.07%	0.05%	33.10%	7.87%	66.45%	91.79%		
	0.001972	0.000000	0.001904	0.002833	0.000701	0.000545	0.330952	0.078675	0.664470	0.917947	1.000000	0.012162
proportion of gifted to total		0.000000		0.018093		0.009452		0.002891		0.016801		0.012162
z score	-96.384545		47.010930		-21.475683		-73.471733		36.767987			
1992	5,113	13	4,881	363	2,330	39	235,399	1,404	450,724	14,623	698,187	16,442
	0.73%	0.08%	0.70%	2.21%	0.33%	0.24%	33.72%	8.54%	64.56%	88.94%		
	0.007323	0.000791	0.006991	0.022078	0.003337	0.002372	0.337158	0.085391	0.645563	0.889369	1.000000	0.023550
proportion of gifted to total		0.002543		0.074370		0.016738		0.005964		0.032443		0.023550
z score	-115.753441		280.032068		-37.532167		-96.898538		49.006801			
Alaska												
1980	16,475	253	1,862	99	1,270	24	3,108	43	57,321	2,621	80,036	3,040
	20.58%	8.32%	2.33%	3.26%	1.59%	0.79%	3.88%	1.41%	71.62%	86.22%		
	0.205845	0.083224	0.023265	0.032566	0.015868	0.007895	0.038833	0.014145	0.716190	0.862171	1.000000	0.037983
proportion of gifted to total		0.015357		0.053169		0.018898		0.013835		0.045725		0.037983
z score	-33.486585		22.474644		-28.245905		-35.738140		11.458107			
1992	25,863	507	5,092	176	2,849	42	5,668	60	82,643	4,108	122,114	4,894
	21.18%	10.36%	4.17%	3.60%	2.33%	0.86%	4.64%	1.23%	67.68%	83.94%		
	0.211794	0.103596	0.041699	0.035962	0.023331	0.008582	0.046416	0.012260	0.676769	0.839395	1.000000	0.040077
proportion of gifted to total		0.019603		0.034564		0.014742		0.010586		0.049708		0.040077
z score	-36.476929		-9.822581		-45.137887		-52.542786		17.157856			
Arizona												
1980	19,952	84	5,369	244	116,647	1,005	20,348	207	319,623	10,976	481,939	12,516
	4.14%	0.67%	1.11%	1.95%	24.20%	8.03%	4.22%	1.65%	66.32%	87.70%		
	0.041399	0.006711	0.011140	0.019495	0.242037	0.080297	0.042221	0.016539	0.663202	0.876957	1.000000	0.025970
proportion of gifted to total		0.004210		0.045446		0.008616		0.010173		0.034340		0.025970
z score	-94.979918		85.010514		-75.749817		-68.952587		36.535713			
1992	57,707	1,555	11,710	1,629	162,885	4,704	25,561	971	427,897	37,474	682,532	46,200
	8.45%	3.37%	1.72%	3.53%	23.86%	10.18%	3.75%	2.10%	62.69%	81.11%		
	0.084548	0.033658	0.017157	0.035260	0.238648	0.101818	0.037450	0.021017	0.626926	0.811126	1.000000	0.067689
proportion of gifted to total		0.026946		0.139112		0.028879		0.037988		0.087577		0.067689
z score	-133.989593		234.886546		-127.633233		-97.678984		65.405328			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Arkansas												
1980	1,642	0	1,279	19	1,213	4	92,231	339	313,812	3,875	410,177	4,237
	0.40%	0.00%	0.31%	0.45%	0.30%	0.09%	22.49%	8.00%	76.51%	91.46%		
	0.004003	0.000000	0.003118	0.004484	0.002957	0.000944	0.224857	0.080009	0.765065	0.914562	1.000000	0.010330
proportion of gifted to total		0.000000		0.014855		0.003298		0.003676		0.012348		0.010330
z score	-65.431061		28.666823		-44.543102		-42.149098		12.785544			
1992	2,098	86	2,894	391	3,035	124	105,308	6,889	318,929	30,832	432,253	38,339
	0.49%	0.22%	0.67%	1.02%	0.70%	0.32%	24.36%	17.97%	73.78%	80.42%		
	0.004854	0.002243	0.006695	0.010198	0.007021	0.003234	0.243626	0.179686	0.737829	0.804194	1.000000	0.088696
proportion of gifted to total		0.040991		0.135107		0.040857		0.065418		0.096674		0.088696
z score	-110.317304		107.327344		-110.628912		-53.831145		18.448872			
California												
1980	32,640	643	260,609	16,005	1,002,207	14,941	400,691	8,907	2,258,499	119,624	3,954,646	160,120
	0.83%	0.40%	6.59%	10.00%	25.34%	9.33%	10.13%	5.56%	57.11%	74.71%		
	0.008254	0.004016	0.065899	0.099956	0.253425	0.093311	0.101322	0.055627	0.571100	0.747090	1.000000	0.040489
proportion of gifted to total		0.019700		0.061414		0.014908		0.022229		0.052966		0.040489
z score	-209.749227		211.115578		-258.093562		-184.229982		125.884521			
1992	42,389	1,557	547,885	55,258	1,870,838	44,804	450,378	12,423	2,289,764	157,779	5,205,651	271,793
	0.81%	0.57%	10.52%	20.33%	35.94%	16.48%	8.65%	4.57%	43.99%	58.05%		
	0.008143	0.005729	0.105248	0.203309	0.359386	0.164846	0.086517	0.045708	0.439861	0.580512	1.000000	0.052211
proportion of gifted to total		0.036731		0.100857		0.023949		0.027583		0.068906		0.052211
z score	-158.770117		498.936580		-289.875147		-252.594020		171.233483			
Colorado												
1980	2,930	63	9,162	490	84,282	2,563	25,205	1,458	428,884	12,546	550,463	17,120
	0.53%	0.37%	1.66%	2.86%	15.31%	14.97%	4.58%	8.52%	77.91%	73.28%		
	0.005323	0.003680	0.016644	0.028621	0.153111	0.149708	0.045789	0.085164	0.779133	0.732827	1.000000	0.031101
proportion of gifted to total		0.021502		0.053482		0.030410		0.057846		0.029253		0.031101
z score	-41.028007		95.655583		-2.954533		114.306969		-7.900219			
1992	5,437	234	14,046	1,430	103,898	5,019	31,172	1,823	449,490	33,271	604,042	41,777
	0.90%	0.56%	2.33%	3.42%	17.20%	12.01%	5.16%	4.36%	74.41%	79.64%		
	0.009001	0.005601	0.023253	0.034229	0.172005	0.120138	0.051606	0.043636	0.744137	0.796395	1.000000	0.069162
proportion of gifted to total		0.043038		0.101808		0.048307		0.058482		0.074019		0.069162
z score	-80.020399		99.997850		-63.882280		-32.715279		14.877597			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Connecticut												
1980	769	10	4,853	177	30,433	104	53,943	352	438,265	9,563	528,263	10,206
	0.15%	0.10%	0.92%	1.73%	5.76%	1.02%	10.21%	3.45%	82.96%	93.70%		
	0.001456	0.000980	0.009187	0.017343	0.057610	0.010190	0.102114	0.034490	0.829634	0.936998	1.000000	0.019320
proportion of gifted to total		0.013004		0.036472		0.003417		0.006525		0.021820		0.019320
z score	-33.350496		90.569652		-83.970415		-67.558902		13.201861			
1992	936	48	12,080	611	50,953	647	64,363	1,592	338,313	11,980	466,656	14,879
	0.20%	0.32%	2.59%	4.11%	10.92%	4.35%	13.79%	10.70%	72.50%	80.52%		
	0.002006	0.003226	0.025886	0.041065	0.109187	0.043484	0.137924	0.106996	0.724973	0.805162	1.000000	0.031884
proportion of gifted to total		0.051282		0.050579		0.012698		0.024735		0.035411		0.031884
z score	75.421946		72.690184		-74.599878		-27.798901		13.712424			
Delaware												
1980	128	0	911	82	1,730	13	24,900	180	68,365	2,393	96,034	2,668
	0.13%	0.00%	0.95%	3.07%	1.80%	0.49%	25.93%	6.75%	71.19%	89.69%		
	0.001333	0.000000	0.009486	0.030735	0.018014	0.004873	0.259283	0.067466	0.711883	0.896927	1.000000	0.027782
proportion of gifted to total		0.000000		0.090011		0.007514		0.007229		0.035003		0.027782
z score	-52.385494		117.339465		-38.216224		-38.754630		13.616813			
1992	170	4	1,760	282	3,123	94	27,449	441	65,895	4,484	98,397	5,305
	0.17%	0.08%	1.79%	5.32%	3.17%	1.77%	27.90%	8.31%	66.97%	84.52%		
	0.001728	0.000754	0.017887	0.053157	0.031739	0.017719	0.278962	0.083129	0.669685	0.845240	1.000000	0.053914
proportion of gifted to total		0.023529		0.160227		0.030099		0.016066		0.068048		0.053914
z score	-42.201780		147.659161		-33.076852		-52.567562		19.630021			
Florida												
1980	1,560	12	11,500	352	117,561	405	348,769	919	1,008,951	25,755	1,488,341	27,443
	0.10%	0.04%	0.77%	1.28%	7.90%	1.48%	23.43%	3.35%	67.79%	93.85%		
	0.001048	0.000437	0.007727	0.012827	0.078988	0.014758	0.234334	0.033488	0.677903	0.938491	1.000000	0.018439
proportion of gifted to total		0.007692		0.030609		0.003445		0.002635		0.025527		0.018439
z score	-97.451523		110.362138		-135.967384		-143.313087		64.275157			
1992	3,453	132	30,905	2,216	265,497	4,151	452,521	4,884	1,141,244	67,136	1,893,620	78,518
	0.18%	0.17%	1.63%	2.82%	14.02%	5.29%	23.90%	6.22%	60.27%	85.50%		
	0.001823	0.001681	0.016321	0.028223	0.140206	0.052867	0.238971	0.062202	0.602678	0.855040	1.000000	0.041464
proportion of gifted to total		0.038228		0.071704		0.015635		0.010793		0.058827		0.041464
z score	-22.342366		208.724360		-178.288341		-211.709786		119.844283			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Georgia												
1980	460	11	4,911	281	3,080	50	359,890	3,267	705,582	32,408	1,073,923	36,017
	0.04%	0.03%	0.46%	0.78%	0.29%	0.14%	33.51%	9.07%	65.70%	89.98%		
	0.000428	0.000305	0.004573	0.007802	0.002868	0.001388	0.335117	0.090707	0.657014	0.899797	1.000000	0.033538
proportion of gifted to total		0.023913		0.057218		0.016234		0.009078		0.045931		0.033538
z score	-55.400804		136.308056		-99.603350		-140.793826		71.335640			
1992	1,678	100	15,742	1,755	14,757	255	470,038	5,739	700,421	51,691	1,203,464	59,820
	0.14%	0.17%	1.31%	2.93%	1.23%	0.43%	39.06%	9.59%	58.20%	86.41%		
	0.001394	0.001672	0.013081	0.029338	0.012262	0.004263	0.390571	0.095938	0.582004	0.864109	1.000000	0.049707
proportion of gifted to total		0.059595		0.111485		0.017280		0.012210		0.073800		0.049707
z score	49.911440		311.831284		-163.674927		-189.267461		121.612683			
Hawaii												
1980	382	9	115,889	3,815	3,300	66	2,330	29	40,297	1,537	162,198	5,456
	0.24%	0.16%	71.45%	69.92%	2.03%	1.21%	1.44%	0.53%	24.84%	28.17%		
	0.002355	0.001650	0.714491	0.699230	0.020346	0.012097	0.014365	0.005315	0.248443	0.281708	1.000000	0.033638
proportion of gifted to total		0.023560		0.032919		0.020000		0.012446		0.038142		0.033638
z score	-22.511237		-1.604892		-30.463925		-47.337034		10.060670			
1992	547	24	114,995	7,156	3,907	154	4,292	124	35,414	2,804	159,155	10,262
	0.34%	0.23%	72.25%	69.73%	2.45%	1.50%	2.70%	1.21%	22.25%	27.32%		
	0.003437	0.002339	0.722535	0.697330	0.024548	0.015007	0.026967	0.012083	0.222513	0.273241	1.000000	0.064478
proportion of gifted to total		0.043876		0.062229		0.039416		0.028891		0.079178		0.064478
z score	-33.465230		-3.653520		-40.708580		-57.805539		23.877333			
Idaho												
1980	4,432	54	2,069	52	9,737	51	1,140	1	193,623	2,789	211,001	2,947
	2.10%	1.83%	0.98%	1.76%	4.61%	1.73%	0.54%	0.03%	91.76%	94.64%		
	0.021005	0.018324	0.009806	0.017645	0.046147	0.017306	0.005403	0.000339	0.917640	0.946386	1.000000	0.013967
proportion of gifted to total		0.012184		0.025133		0.005238		0.000877		0.014404		0.013967
z score	-6.977712		43.707137		-34.167518		-51.235844		1.712571			
1992	4,041	49	2,240	57	14,116	53	943	8	203,558	3,277	226,325	3,444
	1.79%	1.42%	0.99%	1.66%	6.24%	1.54%	0.42%	0.23%	89.94%	95.15%		
	0.017855	0.014228	0.009897	0.016551	0.062370	0.015389	0.004167	0.002323	0.899406	0.951510	1.000000	0.015217
proportion of gifted to total		0.012126		0.025446		0.003755		0.008484		0.016099		0.015217
z score	-12.013733		39.753899		-44.545944		-26.168031		3.425926			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Illinois												
1980	2,157	54	29,273	1,381	117,787	1,760	403,067	8,661	1,377,566	53,495	1,929,850	65,351
	0.11%	0.08%	1.52%	2.11%	6.10%	2.69%	20.89%	13.25%	71.38%	81.86%		
	0.001118	0.000826	0.015169	0.021132	0.061034	0.026931	0.208859	0.132530	0.713820	0.818580	1.000000	0.033863
proportion of gifted to total		0.025035		0.047177		0.014942		0.021488		0.038833		0.033863
z score	-67.805391		102.250322		-145.319150		-95.047626		38.169025			
1992	2,552	144	51,748	7,930	194,528	6,193	379,742	14,808	1,187,044	82,588	1,812,929	111,711
	0.14%	0.13%	2.85%	7.10%	10.73%	5.54%	20.95%	13.26%	65.48%	73.93%		
	0.001408	0.001289	0.028544	0.070987	0.107300	0.055438	0.209463	0.132556	0.654766	0.739301	1.000000	0.061619
proportion of gifted to total		0.056426		0.153243		0.031836		0.038995		0.069575		0.061619
z score	-29.076336		513.039064		-166.767806		-126.682310		44.545845			
Indiana												
1980	919	5	4,687	171	15,830	250	102,322	2,141	905,077	11,915	1,028,835	14,482
	0.09%	0.03%	0.46%	1.18%	1.54%	1.73%	9.95%	14.78%	87.97%	82.27%		
	0.000893	0.000345	0.004556	0.011808	0.015386	0.017263	0.099454	0.147839	0.879711	0.822745	1.000000	0.014076
proportion of gifted to total		0.005441		0.036484		0.015793		0.020924		0.013165		0.014076
z score	-74.352088		192.933893		14.780868		58.962404		-7.848044			
1992	1,332	24	7,536	989	14,800	368	94,216	2,571	846,540	49,395	964,424	53,347
	0.14%	0.04%	0.78%	1.85%	1.53%	0.69%	9.77%	4.82%	87.78%	92.59%		
	0.001381	0.000450	0.007814	0.018539	0.015346	0.006898	0.097691	0.048194	0.877767	0.925919	1.000000	0.055315
proportion of gifted to total		0.018018		0.131237		0.024865		0.027288		0.058349		0.055315
z score	-160.229247		326.164164		-130.814841		-120.403387		13.035931			
Iowa												
1980	1,010	8	4,503	103	4,054	33	11,445	141	495,295	5,057	516,307	5,342
	0.20%	0.15%	0.87%	1.93%	0.79%	0.62%	2.22%	2.64%	95.93%	94.66%		
	0.001956	0.001498	0.008722	0.019281	0.007852	0.006177	0.022167	0.026395	0.959303	0.946649	1.000000	0.010347
proportion of gifted to total		0.007921		0.022874		0.008140		0.012320		0.010210		0.010347
z score	-17.225161		88.953786		-15.667812		14.011765		-0.969137			
1992	1,590	38	6,623	656	6,471	273	14,065	493	456,085	27,352	485,087	28,927
	0.33%	0.13%	1.37%	2.27%	1.33%	0.94%	2.90%	1.70%	94.02%	94.56%		
	0.003278	0.001314	0.013653	0.022678	0.013340	0.009438	0.028995	0.017043	0.940213	0.945553	1.000000	0.059633
proportion of gifted to total		0.023899		0.099049		0.042188		0.035052		0.059971		0.059633
z score	-105.097272		115.929390		-51.306765		-72.296902		0.996099			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Kansas												
1980	2,156	19	4,501	157	11,238	72	29,160	145	324,818	6,731	371,873	7,124
	0.58%	0.27%	1.21%	2.20%	3.02%	1.01%	7.84%	2.04%	87.35%	94.48%		
	0.005798	0.002667	0.012104	0.022038	0.030220	0.010107	0.078414	0.020354	0.873465	0.944834	1.000000	0.019157
proportion of gifted to total		0.008813		0.034881		0.006407		0.004973		0.020722		0.019157
z score	-46.019391		69.951599		-56.721989		-63.102618		6.963529			
1992	4,250	51	7,887	301	22,963	199	36,555	346	378,165	11,984	449,821	12,882
	0.94%	0.40%	1.75%	2.34%	5.10%	1.54%	8.13%	2.69%	84.07%	93.03%		
	0.009448	0.003959	0.017534	0.023366	0.051049	0.015448	0.081266	0.026859	0.840701	0.930290	1.000000	0.028638
proportion of gifted to total		0.012000		0.038164		0.008666		0.009465		0.031690		0.028638
z score	-66.905247		38.306153		-80.311523		-77.098271		12.272001			
Kentucky												
1980	202	1	2,085	103	734	14	59,616	485	623,327	11,987	685,964	12,590
	0.03%	0.01%	0.30%	0.82%	0.11%	0.11%	8.69%	3.85%	90.87%	95.21%		
	0.000294	0.000079	0.003040	0.008181	0.001070	0.001112	0.086908	0.038523	0.908688	0.952105	1.000000	0.018354
proportion of gifted to total		0.004950		0.049400		0.019074		0.008135		0.019231		0.018354
z score	-82.702887		191.569801		4.441656		-63.050858		5.411065			
1992	297	34	2,932	358	1,341	74	51,765	1,408	566,406	24,908	621,659	26,710
	0.05%	0.13%	0.47%	1.34%	0.22%	0.28%	8.33%	5.27%	91.11%	93.25%		
	0.000478	0.001273	0.004716	0.013403	0.002157	0.002770	0.083269	0.052714	0.911120	0.932535	1.000000	0.042966
proportion of gifted to total		0.114478		0.122101		0.055183		0.027200		0.043976		0.042966
z score	278.056533		307.695862		47.502546		-61.301121		3.926508			
Louisiana												
1980	2,912	2	6,057	123	6,136	37	322,985	899	440,223	5,858	778,313	6,919
	0.37%	0.03%	0.78%	1.78%	0.79%	0.53%	41.50%	12.99%	56.56%	84.67%		
	0.003741	0.000289	0.007782	0.017777	0.007884	0.005348	0.414981	0.129932	0.565612	0.846654	1.000000	0.008890
proportion of gifted to total		0.000687		0.020307		0.006030		0.002783		0.013307		0.008890
z score	-77.097528		107.309132		-26.878196		-57.392060		41.515858			
1992	6,198	44	10,890	702	9,868	190	347,205	2,802	423,732	15,175	797,590	18,830
	0.78%	0.23%	1.37%	3.73%	1.24%	1.01%	43.53%	14.88%	53.13%	80.59%		
	0.007771	0.002337	0.013654	0.037281	0.012372	0.010090	0.435318	0.148805	0.531265	0.805895	1.000000	0.023609
proportion of gifted to total		0.007099		0.064463		0.019254		0.008070		0.035813		0.023609
z score	-97.113138		240.314051		-25.614005		-91.400920		71.787475			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Maine												
1980	325	1	642	5	294	0	579	0	202,233	1,048	204,073	1,054
	0.16%	0.09%	0.31%	0.47%	0.14%	0.00%	0.28%	0.00%	99.10%	99.43%		
	0.001593	0.000949	0.003146	0.004744	0.001441	0.000000	0.002837	0.000000	0.990984	0.994307	1.000000	0.005165
proportion of gifted to total		0.003077		0.007788		0.000000		0.000000		0.005182		0.005165
z score	-13.158258		16.532740		-32.549531		-32.549531		0.109172			
1992	1,479	14	1,729	113	607	16	1,212	41	208,915	9,931	212,605	10,185
	0.70%	0.14%	0.81%	1.11%	0.29%	0.16%	0.57%	0.40%	98.26%	97.51%		
	0.006957	0.001375	0.008132	0.011095	0.002855	0.001571	0.005701	0.004026	0.982644	0.975061	1.000000	0.047906
proportion of gifted to total		0.009466		0.065356		0.026359		0.033828		0.047536		0.047906
z score	-82.991778		37.674485		-46.519140		-30.393040		-0.798100			
Maryland												
1980	1,183	24	13,645	1,101	6,876	218	231,590	3,424	502,719	23,252	756,013	28,019
	0.16%	0.09%	1.80%	3.93%	0.91%	0.78%	30.63%	12.22%	66.50%	82.99%		
	0.001565	0.000857	0.018049	0.039295	0.009095	0.007780	0.306331	0.122203	0.664961	0.829865	1.000000	0.037062
proportion of gifted to total		0.020287		0.080689		0.031704		0.014785		0.046252		0.037062
z score	-77.204677		200.799517		-24.656396		-102.531227		42.302296			
1992	1,955	170	27,356	8,606	19,859	2,195	241,392	12,703	446,892	62,163	737,453	85,837
	0.27%	0.20%	3.71%	10.03%	2.69%	2.56%	32.73%	14.80%	60.60%	72.42%		
	0.002651	0.001980	0.037095	0.100260	0.026929	0.025572	0.327332	0.147990	0.605994	0.724198	1.000000	0.116397
proportion of gifted to total		0.086957		0.314593		0.110529		0.052624		0.139101		0.116397
z score	-78.832792		530.717884		-15.711208		-170.766494		60.795813			
Massachusetts												
1980	1,207	9	10,352	266	30,098	227	56,675	718	819,801	10,271	918,133	11,491
	0.13%	0.08%	1.13%	2.31%	3.28%	1.98%	6.17%	6.25%	89.29%	89.38%		
	0.001315	0.000783	0.011275	0.023149	0.032782	0.019755	0.061729	0.062484	0.892900	0.893830	1.000000	0.012516
proportion of gifted to total		0.007457		0.025696		0.007542		0.012669		0.012529		0.012516
z score	-43.604959		113.598800		-42.867805		1.319663		0.112344			
1992	1,521	14	25,564	691	49,816	306	59,456	793	599,277	7,935	737,732	9,741
	0.21%	0.14%	3.47%	7.09%	6.75%	3.14%	8.06%	8.14%	81.23%	81.46%		
	0.002062	0.001437	0.034652	0.070937	0.067526	0.031414	0.080593	0.081408	0.812323	0.814598	1.000000	0.013204
proportion of gifted to total		0.009204		0.027030		0.006143		0.013338		0.013241		0.013204
z score	-30.094704		104.036688		-53.134006		1.005378		0.278210			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Michigan												
1980	14,323	88	14,478	454	31,834	208	314,205	2,339	1,384,576	17,460	1,759,416	20,549
	0.81%	0.43%	0.82%	2.21%	1.81%	1.01%	17.86%	11.38%	78.70%	84.97%		
	0.008141	0.004282	0.008229	0.022094	0.018094	0.010122	0.178585	0.113825	0.786952	0.849676	1.000000	0.011679
proportion of gifted to total		0.006144		0.031358		0.006534		0.007444		0.012610		0.011679
z score	-68.340714		242.949382		-63.526657		-52.288269		11.493025			
1992	18,262	331	24,537	1,084	30,283	375	237,533	2,064	1,258,210	33,081	1,568,854	36,934
	1.16%	0.90%	1.56%	2.93%	1.93%	1.02%	15.14%	5.59%	80.20%	89.57%		
	0.011640	0.008962	0.015640	0.029350	0.019303	0.010153	0.151405	0.055883	0.801993	0.895679	1.000000	0.023542
proportion of gifted to total		0.018125		0.044178		0.012383		0.008689		0.026292		0.023542
z score	-44.750504		170.479184		-92.185288		-122.701017		22.719002			
Minnesota												
1980	12,564	133	11,872	271	5,955	90	16,760	354	749,703	15,197	796,854	16,045
	1.58%	0.83%	1.49%	1.69%	0.75%	0.56%	2.10%	2.21%	94.08%	94.71%		
	0.015767	0.008289	0.014899	0.016890	0.007473	0.005609	0.021033	0.022063	0.940829	0.947149	1.000000	0.020135
proportion of gifted to total		0.010586		0.022827		0.015113		0.021122		0.020271		0.020135
z score	-60.689352		17.104169		-31.916092		6.267995		0.859606			
1992	14,846	558	24,468	3,843	11,148	717	26,278	2,360	684,751	54,821	761,492	62,299
	1.95%	0.90%	3.21%	6.17%	1.46%	1.15%	3.45%	3.79%	89.92%	88.00%		
	0.019496	0.008957	0.032132	0.061686	0.014640	0.011509	0.034509	0.037882	0.899223	0.879966	1.000000	0.081812
proportion of gifted to total		0.037586		0.157062		0.064316		0.089809		0.080060		0.081812
z score	-140.810617		239.589889		-55.703192		25.462278		-5.578187			
Mississippi												
1980	607	0	1,567	65	602	7	228,252	1,347	216,523	9,099	447,551	10,518
	0.14%	0.00%	0.35%	0.62%	0.13%	0.07%	51.00%	12.81%	48.38%	86.51%		
	0.001356	0.000000	0.003501	0.006180	0.001345	0.000666	0.510002	0.128066	0.483795	0.865088	1.000000	0.023501
proportion of gifted to total		0.000000		0.041481		0.011628		0.005901		0.042023		0.023501
z score	-103.784078		79.398623		-52.433937		-77.722957		81.795305			
1992	1,037	23	2,192	154	941	29	236,496	2,896	249,646	16,148	490,311	19,243
	0.21%	0.12%	0.45%	0.80%	0.19%	0.15%	48.23%	15.05%	50.92%	83.92%		
	0.002115	0.001195	0.004471	0.008003	0.001919	0.001507	0.482339	0.150496	0.509158	0.839162	1.000000	0.039247
proportion of gifted to total		0.022179		0.070255		0.030818		0.012245		0.064684		0.039247
z score	-61.544665		111.819205		-30.392483		-97.366648		91.726833			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Missouri												
1980	951	14	4,489	96	4,107	42	113,356	1,247	709,879	7,798	832,782	9,197
	0.11%	0.15%	0.54%	1.04%	0.49%	0.46%	13.61%	13.56%	85.24%	84.79%		
	0.001142	0.001522	0.005390	0.010438	0.004932	0.004567	0.136117	0.135588	0.852419	0.847885	1.000000	0.011044
proportion of gifted to total		0.014721		0.021386		0.010226		0.011001		0.010985		0.011044
z score	32.113588		90.306734		-7.136446		-0.375180		-0.512888			
1992	1,503	15	8,761	463	6,757	107	120,890	1,649	706,896	20,335	844,802	22,568
	0.18%	0.07%	1.04%	2.05%	0.80%	0.47%	14.31%	7.31%	83.68%	90.11%		
	0.001779	0.000665	0.010370	0.020516	0.007998	0.004741	0.143099	0.073068	0.836759	0.901055	1.000000	0.026714
proportion of gifted to total		0.009980		0.052848		0.015835		0.013640		0.028767		0.026714
z score	-95.386218		148.967769		-62.009473		-74.520959		11.700497			
Montana												
1980	13,943	65	1,204	15	1,686	17	454	1	125,635	1,445	142,922	1,543
	9.76%	4.21%	0.84%	0.97%	1.18%	1.10%	0.32%	0.06%	87.90%	93.65%		
	0.097557	0.042126	0.008424	0.009721	0.011797	0.011017	0.003177	0.000648	0.879046	0.936487	1.000000	0.010796
proportion of gifted to total		0.004662		0.012458		0.010083		0.002203		0.011502		0.010796
z score	-22.440652		6.081374		-2.608557		-31.436996		2.580797			
1992	15935	351	1,272	39	2,446	27	791	14	174,156	5,454	194,601	5,885
	8.19%	5.96%	0.65%	0.66%	1.26%	0.46%	0.41%	0.24%	89.49%	92.68%		
	0.081885	0.059643	0.006536	0.006627	0.012569	0.004588	0.004065	0.002379	0.894939	0.926763	1.000000	0.030241
proportion of gifted to total		0.022027		0.030660		0.011038		0.017699		0.031317		0.030241
z score	-21.159960		1.079360		-49.466095		-32.308402		2.770154			
Nebraska												
1980	5,385	34	1,997	127	4,473	95	13,435	379	214,934	13,391	240,224	14,026
	2.24%	0.24%	0.83%	0.91%	1.86%	0.68%	5.59%	2.70%	89.47%	95.47%		
	0.022417	0.002424	0.008313	0.009055	0.018620	0.006773	0.055927	0.027021	0.894723	0.954727	1.000000	0.058387
proportion of gifted to total		0.006314		0.063595		0.021239		0.028210		0.062303		0.058387
z score	-108.850068		10.886862		-77.652616		-63.080231		8.185022			
1992	5,811	80	3,113	278	8,915	307	15,365	1,429	261,949	14,254	295,264	16,348
	1.97%	0.49%	1.05%	1.70%	3.02%	1.88%	5.20%	8.74%	88.72%	87.19%		
	0.019681	0.004894	0.010543	0.017005	0.030193	0.018779	0.052038	0.087411	0.887169	0.871911	1.000000	0.055367
proportion of gifted to total		0.013767		0.089303		0.034436		0.093004		0.054415		0.055367
z score	-98.842630		80.630856		-49.732223		89.423621		-2.262494			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Nevada												
1980	3,035	16	3,212	86	7,788	51	14,051	103	120,310	3,067	148,396	3,323
	2.05%	0.48%	2.16%	2.59%	5.25%	1.53%	9.47%	3.10%	81.07%	92.30%		
	0.020452	0.004815	0.021645	0.025880	0.052481	0.015348	0.094686	0.030996	0.810736	0.922961	1.000000	0.022393
proportion of gifted to total		0.005272		0.026775		0.006549		0.007330		0.025492		0.022393
z score	-44.576185		11.408491		-41.252144		-39.216379		8.070366			
1992	4,297	50	8,565	630	29,121	463	19,734	411	157,641	9,701	219,483	11,255
	1.96%	0.44%	3.90%	5.60%	13.27%	4.11%	8.99%	3.65%	71.82%	86.19%		
	0.019578	0.004442	0.039024	0.055975	0.132680	0.041137	0.089911	0.036517	0.718238	0.861928	1.000000	0.051280
proportion of gifted to total		0.011636		0.073555		0.015899		0.020827		0.061539		0.051280
z score	-84.203822		47.313798		-75.148789		-64.681991		21.790260			
New Hampshire												
1980	65	0	601	3	620	4	782	0	154,419	1,545	156,487	1,552
	0.04%	0.00%	0.38%	0.19%	0.40%	0.26%	0.50%	0.00%	98.68%	99.55%		
	0.000415	0.000000	0.003841	0.001933	0.003962	0.002577	0.004997	0.000000	0.986785	0.995490	1.000000	0.009918
proportion of gifted to total		0.000000		0.004992		0.006452		0.000000		0.010005		0.009918
z score	-39.592254		-19.665179		-13.837045		-39.592254		0.349260			
1992	357	4	1,794	53	1,761	9	1,396	24	162,128	3,735	167,927	3,837
	0.21%	0.10%	1.07%	1.38%	1.05%	0.23%	0.83%	0.63%	96.55%	97.34%		
	0.002126	0.001042	0.010683	0.013813	0.010487	0.002346	0.008313	0.006255	0.965467	0.973417	1.000000	0.022849
proportion of gifted to total		0.011204		0.029543		0.005111		0.017192		0.023037		0.022849
z score	-31.935473		18.357372		-48.647473		-15.514873		0.515968			
New Jersey												
1980	956	28	21,363	1,701	98,053	1,592	226,823	4,711	876,703	43,026	1,223,898	51,058
	0.08%	0.05%	1.75%	3.33%	8.01%	3.12%	18.53%	9.23%	71.63%	84.27%		
	0.000781	0.000548	0.017455	0.033315	0.080115	0.031180	0.185328	0.092268	0.716320	0.842689	1.000000	0.041718
proportion of gifted to total		0.029289		0.079624		0.016236		0.020769		0.049077		0.041718
z score	-68.769625		209.737401		-140.990560		-115.907021		40.720802			
1992	1,987	81	53,288	7,192	130,096	3,882	197,589	9,213	713,143	57,996	1,096,136	78,989
	0.18%	0.10%	4.86%	9.11%	11.87%	4.91%	18.03%	11.66%	65.06%	73.42%		
	0.001813	0.001025	0.048614	0.091051	0.118686	0.049146	0.180260	0.116636	0.650597	0.734229	1.000000	0.072061
proportion of gifted to total		0.040765		0.134965		0.029840		0.046627		0.081325		0.072061
z score	-126.711217		254.680479		-170.945764		-102.976941		37.504384			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
New Mexico												
1980	20,969	96	1,509	28	125,779	981	5,928	42	116,116	2,916	270,301	4,063
	7.76%	2.36%	0.56%	0.69%	46.53%	24.14%	2.19%	1.03%	42.96%	71.77%		
	0.077576	0.023628	0.005583	0.006891	0.465329	0.241447	0.021931	0.010337	0.429580	0.717696	1.000000	0.015031
proportion of gifted to total		0.004578		0.018555		0.007799		0.007085		0.025113		0.015031
z score	-44.664500		15.057123		-30.900910		-33.953290		43.075970			
1992	34,920	263	3,131	198	140,312	1,951	7,014	117	133,544	6,972	318,920	9,501
	10.95%	2.77%	0.98%	2.08%	44.00%	20.53%	2.20%	1.23%	41.87%	73.38%		
	0.109495	0.027681	0.009818	0.020840	0.439960	0.205347	0.021993	0.012314	0.418738	0.733817	1.000000	0.029791
proportion of gifted to total		0.007532		0.063239		0.013905		0.016681		0.052208		0.029791
z score	-73.940639		111.103311		-52.770495		-43.548714		74.461062			
New York												
1980	4,674	271	53,512	5,919	325,538	11,334	484,296	19,991	1,844,929	65,065	2,712,949	102,580
	0.17%	0.26%	1.97%	5.77%	12.00%	11.05%	17.85%	19.49%	68.00%	63.43%		
	0.001723	0.002642	0.019725	0.057701	0.119994	0.110489	0.178513	0.194882	0.680046	0.634285	1.000000	0.037811
proportion of gifted to total		0.057980		0.110611		0.034816		0.041278		0.035267		0.037811
z score	174.167008		628.649034		-25.863237		29.940687		-21.971042			
1992	6,701	229	127,735	12,142	449,934	22,986	543,467	30,883	1,566,887	85,667	2,726,695	151,783
	0.25%	0.15%	4.68%	8.00%	16.50%	15.14%	19.93%	20.35%	57.46%	56.44%		
	0.002458	0.001509	0.046846	0.079996	0.165011	0.151440	0.199313	0.203468	0.574647	0.564404	1.000000	0.055666
proportion of gifted to total		0.034174		0.095056		0.051087		0.056826		0.054673		0.055666
z score	-154.785371		283.697047		-32.971909		8.356934		-7.145855			
North Carolina												
1980	18,155	180	4,618	484	2,136	63	329,722	5,244	757,561	49,129	1,112,192	55,100
	1.63%	0.33%	0.42%	0.88%	0.19%	0.11%	29.65%	9.52%	68.11%	89.16%		
	0.016324	0.003267	0.004152	0.008784	0.001921	0.001143	0.296461	0.095172	0.681142	0.891633	1.000000	0.049542
proportion of gifted to total		0.009915		0.104807		0.029494		0.015904		0.064852		0.049542
z score	-192.588630		268.590920		-97.430746		-163.478690		74.405528			
1992	6,960	224	10,156	1,471	12,106	338	323,585	6,148	783,762	78,483	1,136,569	86,559
	0.61%	0.26%	0.89%	1.70%	1.07%	0.39%	28.47%	7.10%	68.96%	90.67%		
	0.006124	0.002588	0.008936	0.016994	0.010651	0.003905	0.284703	0.071027	0.689586	0.906699	1.000000	0.076158
proportion of gifted to total		0.032184		0.144840		0.027920		0.019000		0.100136		0.076158
z score	-176.741813		276.048828		-193.879202		-229.732158		96.373096			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
North Dakota												
1980	1,662	4	650	5	486	1	424	0	90,012	669	93,234	679
	1.78%	0.59%	0.70%	0.74%	0.52%	0.15%	0.45%	0.00%	96.54%	98.53%		
	0.017826	0.005891	0.006972	0.007364	0.005213	0.001473	0.004548	0.000000	0.965442	0.985272	1.000000	0.007283
proportion of gifted to total		0.002407		0.007692		0.002058		0.000000		0.007432		0.007283
z score	-17.510213		1.470756		-18.763955		-26.153035		0.537197			
1992	7,573	235	831	23	686	9	872	17	107,577	1,399	117,279	1,683
	6.46%	13.96%	0.71%	1.37%	0.58%	0.53%	0.74%	1.01%	91.73%	83.13%		
	0.064573	0.139632	0.007086	0.013666	0.005849	0.005348	0.007435	0.010101	0.917274	0.831254	1.000000	0.014350
proportion of gifted to total		0.031031		0.027677		0.013120		0.019495		0.013005		0.014350
z score	48.032634		38.375375		-3.544265		14.815073		-3.875105			
Ohio												
1980	2,148	27	11,095	520	18,452	116	249,484	4,673	1,626,107	22,784	1,907,286	28,120
	0.11%	0.10%	0.58%	1.85%	0.97%	0.41%	13.08%	16.62%	85.26%	81.02%		
	0.001126	0.000960	0.005817	0.018492	0.009674	0.004125	0.130806	0.166181	0.852576	0.810242	1.000000	0.014743
proportion of gifted to total		0.012570		0.046868		0.006287		0.018731		0.014011		0.014743
z score	-24.906871		368.103393		-96.904453		45.687904		-8.388702			
1992	1,931	64	17,064	1,257	21,565	952	251,714	16,927	1,516,043	56,320	1,818,887	75,616
	0.11%	0.08%	0.94%	1.66%	1.19%	1.26%	13.84%	22.39%	83.35%	74.48%		
	0.001062	0.000846	0.009382	0.016623	0.011856	0.012590	0.138389	0.223855	0.833500	0.744816	1.000000	0.041573
proportion of gifted to total		0.033143		0.073664		0.044146		0.067247		0.037149		0.041573
z score	-56.951744		216.822791		17.383903		173.467264		-29.886084			
Oklahoma												
1980	47,490	450	4,004	105	8,502	85	48,176	434	411,856	7,338	520,028	8,412
	9.13%	5.35%	0.77%	1.25%	1.63%	1.01%	9.26%	5.16%	79.20%	87.23%		
	0.091322	0.053495	0.007700	0.012482	0.016349	0.010105	0.092641	0.051593	0.791988	0.872325	1.000000	0.016176
proportion of gifted to total		0.009476		0.026224		0.009998		0.009009		0.017817		0.016176
z score	-38.301641		57.436254		-35.317889		-40.971426		9.379692			
1992	76,874	4,812	7,179	1,169	19,788	946	67,015	3,106	438,006	46,692	608,892	56,686
	12.63%	8.49%	1.18%	2.06%	3.25%	1.67%	11.01%	5.48%	71.93%	82.37%		
	0.126252	0.084889	0.011790	0.020622	0.032498	0.016688	0.110061	0.054793	0.719349	0.823695	1.000000	0.093097
proportion of gifted to total		0.062596		0.162836		0.047807		0.046348		0.106601		0.093097
z score	-81.909918		187.282910		-121.625978		-125.543876		36.265555			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Oregon												
1980	7,621	62	10,249	331	11,951	114	9,484	60	422,494	8,737	461,799	9,304
	1.65%	0.67%	2.22%	3.56%	2.59%	1.23%	2.05%	0.64%	91.49%	93.91%		
	0.016503	0.006664	0.022194	0.035576	0.025879	0.012253	0.020537	0.006449	0.914887	0.939058	1.000000	0.020147
proportion of gifted to total		0.008135		0.032296		0.009539		0.006326		0.020680		0.020147
z score	-58.096325		58.757301		-51.308023		-66.845544		2.574460			
1992	8,362	202	15,097	1,311	28,540	557	11,830	415	441,992	30,018	521,780	32,558
	1.60%	0.62%	2.89%	4.03%	5.47%	1.71%	2.27%	1.27%	84.71%	92.20%		
	0.016026	0.006204	0.028934	0.040267	0.054697	0.017108	0.022672	0.012746	0.847085	0.921985	1.000000	0.062398
proportion of gifted to total		0.024157		0.086838		0.019516		0.035080		0.067915		0.062398
z score	-114.203404		72.989328		-128.061632		-81.581651		16.476947			
Pennsylvania												
1980	3,570	55	13,651	941	28,862	164	231,326	2,949	1,590,782	69,175	1,868,191	73,284
	0.19%	0.08%	.0.73%	1.28%	1.54%	0.22%	12.38%	4.02%	85.15%	94.39%		
	0.001911	0.000751	0.007307	0.012840	0.015449	0.002238	0.123824	0.040241	0.851509	0.943930	1.000000	0.039227
proportion of gifted to total		0.015406		0.068933		0.005682		0.012748		0.043485		0.039227
z score	-167.713485		209.142428		-236.175409		-186.426692		29.976181			
1992	1,388	21	28,086	2,044	60,041	434	272,799	3,496	1,366,353	70,897	1,728,668	76,896
	0.08%	0.03%	1.62%	2.66%	3.47%	0.56%	15.78%	4.55%	79.04%	92.20%		
	0.000803	0.000273	0.016247	0.026581	0.034733	0.005644	0.157809	0.045464	0.790408	0.921986	1.000000	0.044483
proportion of gifted to total		0.015130		0.072776		0.007228		0.012815		0.051888		0.044483
z score	-187.195218		180.438713		-237.584529		-201.954880		47.224035			
Rhode Island												
1980	454	0	1,570	20	2,974	4	6,644	49	130,202	1,178	141,844	1,251
	0.32%	0.00%	1.11%	1.60%	2.10%	0.32%	4.68%	3.92%	91.79%	94.16%		
	0.003201	0.000000	0.011068	0.015987	0.020967	0.003197	0.046840	0.039169	0.917924	0.941647	1.000000	0.008820
proportion of gifted to total		0.000000		0.012739		0.001345		0.007375		0.009047		0.008820
z score	-35.526489		15.787561		-30.108664		-5.818558		0.918144			
1992	370	3	1,429	46	3,515	65	4,714	102	119,701	3,077	129,729	3,334
	0.29%	0.09%	1.10%	1.38%	2.71%	1.95%	3.63%	3.06%	92.27%	92.29%		
	0.002852	0.000900	0.011015	0.013797	0.027095	0.019496	0.036337	0.030594	0.922700	0.922915	1.000000	0.025700
proportion of gifted to total		0.008108		0.032190		0.018492		0.021638		0.025706		0.025700
z score	-40.041809		14.773851		-16.405732		-9.245990		0.013632			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
South Carolina												
1980	821	3	2,363	108	937	14	262,110	1,789	345,921	9,979	612,152	11,893
	0.13%	0.03%	0.39%	0.91%	0.15%	0.12%	42.82%	15.04%	56.51%	83.91%		
	0.001341	0.000252	0.003860	0.009081	0.001531	0.001177	0.428178	0.150425	0.565090	0.839065	1.000000	0.019428
proportion of gifted to total		0.003654		0.045705		0.014941		0.006825		0.028848		0.019428
z score	-89.416666		148.949910		-25.434209		-71.439925		53.394830			
1992	1,152	29	4,016	497	2,482	90	258,821	6,134	345,187	35,607	611,658	42,351
	0.19%	0.07%	0.66%	1.17%	0.41%	0.21%	42.31%	14.48%	56.43%	84.08%		
	0.001883	0.000685	0.006566	0.011735	0.004058	0.002125	0.423147	0.144837	0.564346	0.840759	1.000000	0.069240
proportion of gifted to total		0.025174		0.123755		0.036261		0.023700		0.103153		0.069240
z score	-135.756970		167.948587		-101.599138		-140.297499		104.478161			
South Dakota												
1980	8,430	25	392	9	283	2	186	0	107,751	677	117,042	713
	7.20%	3.51%	0.33%	1.26%	0.24%	0.28%	0.16%	0.00%	92.06%	94.95%		
	0.072025	0.035063	0.003349	0.012623	0.002418	0.002805	0.001589	0.000000	0.920618	0.949509	1.000000	0.006092
proportion of gifted to total		0.002966		0.022959		0.007067		0.000000		0.006283		0.006092
z score	-13.745006		74.160181		4.288105		-26.783766		0.840529			
1992	8,383	140	1,055	53	726	20	1,078	24	120,521	5,254	131,763	5,490
	6.36%	2.55%	0.80%	0.97%	0.55%	0.36%	0.82%	0.44%	91.47%	95.70%		
	0.063622	0.025501	0.008007	0.009654	0.005510	0.003643	0.008181	0.004372	0.914680	0.957013	1.000000	0.041666
proportion of gifted to total		0.016700		0.050237		0.027548		0.022263		0.043594		0.041666
z score	-45.350780		15.570153		-25.645245		-35.245305		3.502946			
Tennessee												
1980	311	0	3,230	83	978	5	204,019	1,362	640,896	5,278	849,434	6,728
	0.04%	0.00%	0.38%	1.23%	0.12%	0.07%	24.02%	20.24%	75.45%	78.45%		
	0.000366	0.000000	0.003803	0.012337	0.001151	0.000743	0.240182	0.202438	0.754498	0.784483	1.000000	0.007921
proportion of gifted to total		0.000000		0.025697		0.005112		0.006676		0.008235		0.007921
z score	-82.351169		184.819634		-29.196114		-12.941509		3.272779			
1992	940	26	8,506	602	4,861	106	218,724	3,436	698,725	28,116	931,756	32,286
	0.10%	0.08%	0.91%	1.86%	0.52%	0.33%	23.47%	10.64%	74.99%	87.08%		
	0.001009	0.000805	0.009129	0.018646	0.005217	0.003283	0.234744	0.106424	0.749901	0.870842	1.000000	0.034651
proportion of gifted to total		0.027660		0.070774		0.021806		0.015709		0.040239		0.034651
z score	-36.897768		190.649237		-67.790634		-99.968935		29.493946			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Texas												
1980	4,329	71	29,977	1,011	864,308	10,754	408,754	6,439	1,538,758	48,032	2,846,126	66,307
	0.15%	0.11%	1.05%	1.52%	30.37%	16.22%	14.36%	9.71%	54.06%	72.44%		
	0.001521	0.001071	0.010533	0.015247	0.303679	0.162185	0.143618	0.097109	0.540650	0.724388	1.000000	0.023297
proportion of gifted to total		0.016401		0.033726		0.012442		0.015753		0.031215		0.023297
z score	-77.127138		116.632124		-121.400756		-84.377272		88.548553			
1992	6,877	318	80,108	10,544	1,041,048	40,479	532,068	22,105	1,847,404	175,822	3,504,382	249,194
	0.20%	0.13%	2.29%	4.23%	29.71%	16.24%	15.18%	8.87%	52.72%	70.56%		
	0.001962	0.001276	0.022859	0.042312	0.297070	0.162440	0.151829	0.088706	0.527170	0.705563	1.000000	0.071109
proportion of gifted to total		0.046241		0.131622		0.038883		0.041545		0.095172		0.071109
z score	-181.135697		440.767330		-234.731350		-215.338069		175.272561			
Utah												
1980	6,124	162	5,241	205	12,014	302	1,708	49	318,892	10,175	343,979	10,893
	1.78%	1.49%	1.52%	1.88%	3.49%	2.77%	0.50%	0.45%	92.71%	93.41%		
	0.017803	0.014872	0.015236	0.018819	0.034927	0.027724	0.004965	0.004498	0.927068	0.934086	1.000000	0.031668
proportion of gifted to total		0.026453		0.039115		0.025137		0.028689		0.031907		0.031668
z score	-17.464038		24.941912		-21.871496		-9.977735		0.802890			
1992	8,302	59	1,077	466	23,641	410	3,575	61	429,673	14,250	475,968	15,246
	1.74%	0.39%	0.23%	3.06%	4.97%	2.69%	0.75%	0.40%	90.27%	93.47%		
	0.017442	0.003870	0.002263	0.030565	0.049669	0.026892	0.007511	0.004001	0.902735	0.934671	1.000000	0.032032
proportion of gifted to total		0.007107		0.432683		0.017343		0.017063		0.033165		0.032032
z score	-97.656611		1569.771045		-57.551402		-58.647729		4.439889			
Vermont												
1980	44	0	386	0	104	0	242	2	73,659	1,179	74,435	1,181
	0.06%	0.00%	0.52%	0.00%	0.14%	0.00%	0.33%	0.17%	98.96%	99.83%		
	0.000591	0.000000	0.005186	0.000000	0.001397	0.000000	0.003251	0.001693	0.989575	0.998307	1.000000	0.015866
proportion of gifted to total		0.000000		0.000000		0.000000		0.008264		0.016006		0.015866
z score	-34.641594		-34.641594		-34.641594		-16.597304		0.305667			
1992	699	2	677	18	309	0	589	3	97,917	1,225	100,146	1,253
	0.70%	0.16%	0.68%	1.44%	0.31%	0.00%	0.59%	0.24%	97.77%	97.77%		
	0.006980	0.001596	0.006760	0.014366	0.003085	0.000000	0.005881	0.002394	0.977742	0.977654	1.000000	0.012512
proportion of gifted to total		0.002861		0.026588		0.000000		0.005093		0.012511		0.012512
z score	-27.475274		40.075240		-35.621283		-21.120280		-0.003238			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Virginia												
1980	834	29	14,115	678	5,152	123	257,659	4,329	731,096	33,526	1,008,856	38,685
	0.08%	0.07%	1.40%	1.75%	0.51%	0.32%	25.54%	11.19%	72.47%	86.66%		
	0.000827	0.000750	0.013991	0.017526	0.005107	0.003180	0.255397	0.111904	0.724678	0.866641	1.000000	0.038345
proportion of gifted to total		0.034772		0.048034		0.023874		0.016801		0.045857		0.038345
z score	-18.690004		50.676785		-75.692449		-112.687937		39.290754			
1992	1,556	95	35,785	3,905	26,478	969	248,264	8,701	753,755	75,881	1,065,986	89,561
	0.15%	0.11%	3.36%	4.36%	2.48%	1.08%	23.29%	9.72%	70.71%	84.73%		
	0.001460	0.001061	0.033570	0.043602	0.024839	0.010819	0.232896	0.097152	0.707097	0.847255	1.000000	0.084017
proportion of gifted to total		0.061054		0.109124		0.036596		0.035047		0.100671		0.084017
z score	-85.463017		93.441790		-176.488198		-182.253393		61.980667			
Washington												
1980	23,255	153	27,868	724	30,428	182	25,991	420	655,195	11,892	762,737	13,371
	3.05%	1.14%	3.65%	5.41%	3.99%	1.36%	3.41%	3.14%	85.90%	88.94%		
	0.030489	0.011443	0.036537	0.054147	0.039893	0.013612	0.034076	0.031411	0.859005	0.889387	1.000000	0.017530
proportion of gifted to total		0.006579		0.025980		0.005981		0.016159		0.018150		0.017530
z score	-72.876816		56.228373		-76.855687		-9.122691		4.126177			
1992	19,946	253	48,738	2,540	62,066	832	30,232	642	710,559	26,945	903,714	31,213
	2.21%	0.81%	5.39%	8.14%	6.87%	2.67%	3.35%	2.06%	78.63%	86.33%		
	0.022071	0.008106	0.053931	0.081376	0.068679	0.026656	0.033453	0.020568	0.786265	0.863262	1.000000	0.034539
proportion of gifted to total		0.012684		0.052115		0.013405		0.021236		0.037921		0.034539
z score	-113.771472		91.503112		-110.018865		-69.253069		17.607739			
West Virginia												
1980	120	1	1,089	81	405	2	14,748	57	365,610	5,120	381,972	5,261
	0.03%	0.02%	0.29%	1.54%	0.11%	0.04%	3.86%	1.08%	95.72%	97.32%		
	0.000314	0.000190	0.002851	0.015396	0.001060	0.000380	0.038610	0.010834	0.957164	0.973199	1.000000	0.013773
proportion of gifted to total		0.008333		0.074380		0.004938		0.003865		0.014004		0.013773
z score	-28.847096		321.389063		-46.850585		-52.542345		1.223539			
1992	195	5	1,296	100	564	10	12,630	86	284,563	7,317	299,007	7,493
	0.07%	0.07%	0.43%	1.33%	0.19%	0.13%	4.22%	1.15%	95.17%	97.65%		
	0.000652	0.000667	0.004334	0.013346	0.001886	0.001335	0.042240	0.011477	0.951693	0.976511	1.000000	0.025060
proportion of gifted to total		0.025641		0.077160		0.017730		0.006809		0.025713		0.025060
z score	2.033987		182.267617		-25.639889		-63.846567		2.286168			

	Total Native American	Gifted Native American	Total Asian American	Gifted Asian American	Total Hispanic American	Gifted Hispanic American	Total African American	Gifted African American	Total Caucasian	Gifted Caucasian	Total Membership	Total Gifted
Wisconsin												
1980	6,955	95	5,583	157	12,532	107	50,741	454	737,796	12,660	813,607	13,473
	0.85%	0.71%	0.69%	1.17%	1.54%	0.79%	6.24%	3.37%	90.68%	93.97%		
	0.008548	0.007051	0.006862	0.011653	0.015403	0.007942	0.062365	0.033697	0.906821	0.939657	1.000000	0.016560
proportion of gifted to total		0.013659		0.028121		0.008538		0.008947		0.017159		0.016560
z score	-20.500267		81.718860		-56.697167		-53.804458		4.238250			
1992	10,552	473	14,582	1,319	24,164	916	72,176	3,573	719,320	76,630	840,794	82,911
	1.26%	0.57%	1.73%	1.59%	2.87%	1.10%	8.58%	4.31%	85.55%	92.42%		
	0.012550	0.005705	0.017343	0.015909	0.028740	0.011048	0.085843	0.043094	0.855525	0.924244	1.000000	0.098610
proportion of gifted to total		0.044826		0.090454		0.037908		0.049504		0.106531		0.098610
z score	-165.419341		-25.085602		-186.696196		-151.030648		24.361088			
Wyoming												
1980	977	26	433	14	5,322	21	744	2	92,636	619	100,112	682
	0.98%	3.81%	0.43%	2.05%	5.32%	3.08%	0.74%	0.29%	92.53%	90.76%		
	0.009759	0.038123	0.004325	0.020528	0.053160	0.030792	0.007432	0.002933	0.925324	0.907625	1.000000	0.006812
proportion of gifted to total		0.026612		0.032333		0.003946		0.002688		0.006682		0.006812
z score	76.161779		98.166263		-11.026254		-15.864187		-0.501224			
1992	2,535	7	740	15	6,894	56	973	12	88,468	2,029	99,610	2,120
	2.54%	0.33%	0.74%	0.71%	6.92%	2.64%	0.98%	0.57%	88.81%	95.71%		
	0.025449	0.003302	0.007429	0.007075	0.069210	0.026415	0.009768	0.005660	0.888144	0.957075	1.000000	0.021283
proportion of gifted to total		0.002761		0.020270		0.008123		0.012333		0.022935		0.021283
z score	-40.502927		-2.214632		-28.778110		-19.571770		3.612228			
United States												
1980	305,701	3,350	747,914	39,293	3,177,297	48,322	6,320,232	91,864	29,176,636	840,281	39,727,780	1,023,110
	0.77%	0.33%	1.88%	3.84%	8.00%	4.72%	15.91%	8.98%	73.44%	82.13%		
	0.007695	0.003274	0.018826	0.038405	0.079977	0.047231	0.159088	0.089789	0.734414	0.821301	1.000000	0.025753
proportion of gifted to total		0.010958		0.052537		0.015209		0.014535		0.028800		0.025753
z score	-588.710238		1065.786991		-419.588975		-446.393648		121.238189			
1992	440,857	13,795	1,441,773	145,126	4,969,629	147,942	6,816,912	198,371	28,555,825	1,755,016	42,322,769	2,260,935
	1.04%	0.61%	3.41%	6.42%	11.74%	6.54%	16.11%	8.77%	67.47%	77.62%		
	0.010417	0.006101	0.034066	0.064188	0.117422	0.065434	0.161070	0.087738	0.674715	0.776235	1.000000	0.053421
proportion of gifted to total		0.031291		0.100658		0.029769		0.029100		0.061459		0.053421
z score	-640.223310		1366.569747		-684.258035		-703.623670		232.537585			

APPENDIX C

Survey of State Directors

Date: May 8, 1995 and August 4, 1995

To: (State Director)

From: Cindy Brown
Director, Gifted Education
2500 N. Lincoln
Oklahoma City, OK 73105-4599

Re: Identification of Minority Students for Gifted Educational Programming

As you know, the topic of the under identification of minority group children has been a topic of much discussion in our field for many years. I am interested in learning what has been done in the various states to positively impact the identification of poor and minority group students.

I do have all of the *State of the States* reports as well as Coleman and Gallagher's work. However, I am looking specifically for change in language from the state level that may impact this issue.

Numerical data for each state for the past 20 years has been requested from the Office for Civil Rights. I will statistically analyze this data to determine significant differences among the states as well as progress toward proportionate representation.

I would very much appreciate your helping me and would be happy to share the results with you if you are interested. Please give a brief answer to the questions and attach any information that you think would be helpful to me in my effort.

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

What year were these changes made?

Please send statutory or regulatory language or guidelines information that might be relevant.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

State Survey Responses

Alabama[1]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

Specific tests are used for limited English proficient students. Lower scores on some tests are accepted for disadvantaged students.

What year were these changes made?

Original policy (1972)

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

None

State Regulations

Require one of the following:

(I) Wechsler Scales. A score of two standard deviations above the mean on the verbal, performance or full-scale score

(II) Stanford-Binet. A score of two standard deviations above the mean on the verbal comprehension or nonverbal reasoning/visualization if the subtest scores are grouped according to Assessment of Children, Jerome M Sattler, Third Edition, 1988. If not using Sattler, the composite score must be two standard deviations above the mean.

(III) Kaufman Assessment Battery for Children (KABC). A score of two standard deviations above the mean on simultaneous processing, sequential processing or mental processing composite.

(IV) For special populations such as the sensory impaired, limited English proficiency (LEP) or physically impaired, an adapted version of the Wechsler Scales, Stanford-Binet, Hiskey-Nebraska, Raven Progressive Matrices or Leiter

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[1] Survey Response from Linda Evans, Division of Special Education Services, Alabama Department of Education, (May 1995).

may be used. A score of two standard deviations above the mean must be attained.

(V) Environmental, Cultural and/or Economic Concerns. A score of one standard deviation above the mean of any of the tests in 290-080-090-.17(4)(c)1.(iii) [this section] or two standard deviations above the mean on the Cattell Culture Fair Test, and documentation of disadvantage by utilizing the Environmental, Cultural and/or Economic Concerns Checklist.[2]

Alaska

No response

Arizona

No response

Arkansas[3]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

In Arkansas we have made no changes. We use multicriteria in our identification procedures. Also our schools cannot have cutoffs. I am enclosing the portion of our standards that deal with identification for your review.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

None, so far as I know.

State Standards

Section 4.0 speaks to identification:

4.0 Identification
4.1 The process for identifying students has several stages.

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[2] Alabama Department of Education, *Regulations,* (1972), 557.

[3] Survey Response from Ann Biggers, Consultant, Arkansas Department of Education, (May 1995).

4.1.1 Nominations are sought from a wide variety of sources to ensure that all potentially gifted and talented students have an opportunity to be considered.

4.1.2 Data are collected (on the nominated students) to aid in making decisions for selection of students who are in need of special educational services.

4.1.3 Placement is made in an appropriate program option.

4.2 Identification procedures are clearly stated, uniformly implemented, and communicated to the entire school staff.

4.3 A committee chaired by a trained specialist in gifted education and including administrators, teachers, and/or counselors collects and analyzes data, maintains appropriate records, and makes professional decisions on placement of students.

4.4 The identification process yields information obtained through a variety of procedures and from many independent sources.

4.4.1 Procedures for obtaining information about students include at least two objective assessment methods such as group and individual tests of ability, achievement, and creativity.

4.4.2 Procedures for obtaining information about students include at least two subjective assessment methods such as checklists, rating scales, biographical data, product evaluations, auditions, interviews, and grades.

4.4.3 Information about students is obtained from multiple sources which may include teachers, counselors, parents, community members, peers, and students themselves.

4.5 Student placement decisions are based on multiple criteria. No single criterion or cut-off score is used to exclude a student from placement.

4.6 Instruments and procedures used in the identification process are non-discriminatory with respect to race, cultural or economic background, religion, national origin, sex, or handicapping condition.[4]

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[4] Arkansas Department of Education, *Gifted and Talented Program Approval Standards* (1986).

California[5]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

1. Review of all applications to compare ethnic figures in GATE with ethnic figures at large. 94-95
2. Individual letters to all districts with large discrepancies. 94-95
3. Packet of information/ articles on request 94-95
4. OCR symposium featuring promising practices - to be repeated, fall 1995.
5. Sessions at California Association for the Gifted by 2 psychologists reviewing various possible tests. March, 1995
6. Revisions in annual applications to ask specifically what is done to identify underrepresented minority groups. 1994
7. Publishing ethnic figures (now being entered into computer). July or August 95.

1995-97 Application for GATE Funding[6]

4. Describe the proposed identification process and procedures for the district, and its rationale, including your efforts to seek out, identify, and ensure full participation of pupils from disadvantaged and varying linguistic, economic, and cultural backgrounds (Title 5, Sections 3820 (f) and 3831 (c)).

Colorado[7]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

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[5] Survey Response from Cathy Barkett, Consultant, California Department of Education, (May, 1995).

[6] California Department of Education, *1995-97 Application for Gate Funding*, (1995): 11.

[7] Survey Response from Frank Rainey, Senior Consultant, School Effectiveness Unit, Gifted and Talented Education, Colorado Department of Education, (June 1995).

See highlighted portion of state guidelines attached.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

Office for Civil Rights complaint (not a court action); Durango School District, approximately 1992-93.

Guidelines

"Gifted children" means those persons between the ages of five and twenty-one whose abilities, talents, and potential for accomplishment are so outstanding that they require special provisions to meet their educational needs. Children under five who qualify may also be served. . . .Gifted students are capable of high performance in any or a combination of these areas:

1) General intellectual ability

2) Specific academic ability.

3) Creative, productive thinking.

4) Leadership and human relations skills.

5) Visual and performing arts.

6) Psychomotor abilities.[8]

Identification process should:

d) Assure that a student is not denied gifted and talented programming services solely on the basis of a single measure for identification purposes.

e) Make concerted efforts to identify students from a wide range of backgrounds and conditions, including, but not limited to, students who have disabilities, are economically disadvantaged, lack English proficiency, are ethnically/culturally diverse, or are underachieving;[9]

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[8] Colorado Department of Education and The State Advisory Committee for Gifted and Talented Student Education, *State Guidelines for Gifted and Talented Student Education*, (March, 1995): B.1.

[9] Id at B.2.

Encourages high-priority consideration for the identification of gifted children who are economically disadvantaged, and culturally and ethnically diverse, or have disabilities.[10]

Connecticut

No response

Delaware[11]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

"I'm sorry to say that nothing has been done.

Florida

No response to survey. Current regulations were received.

(2) Criteria for eligibility. A student is eligible for special instructional programs for the gifted if the student meets the criteria under Paragraph (2)(a) or (b) of this rule.

(B) The student is a member of an under-represented group and meets the criteria specified in an approved school district plan for increasing the participation of under-represented groups in programs for gifted students.[12]

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[10] Id at D.1.

[11] Survey Response from Dr. Margaret Dee, Consultant, Deleware Department of Education, (May 19, 1995).

[12] 6A-6.03019 (Formerly 6A-6.3019, Amended 10-10-91). Florida State Board of Education Rule.

Georgia

No response to survey. Current and proposed regulations were received.

Summary of Current Regulatory Language[13]

The current identification regulations are very specific and strictly based on test scores. Students must score at or above the 96th percentile on a test of mental abilities and score at or above the 85th percentile on an achievement test or score at or above the 99th percentile on a mental ability test.

Proposed Regulatory Language[14]

To be eligible for gifted education services, a student must meet criteria in any three of the following four areas: Mental ability (intelligence), achievement, creativity and motivation.

Mental Ability

Students shall score at or above 94th percentile on a mental ability test.

Achievement

Students shall score at or above 90 percentile on the total battery, math or reading section(s) of standardized achievement tests; or have a grade point average of 3.5 on a 4.0 scale; or have produced a superior student-generated product or performance, where the superior performance is one that can be translated into a numerical score at or above 90 on a scale of 1-100 as evaluated by a panel of three or more individuals.

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[13] *Regulations and Procedures.* Georgia Department of Education, (August 1988): 39.

[14] *Proposed Change of Rule 160-4-2-.08*, Georgia Department of Education, (June 1995).

Creativity

Students shall score at or above 90th percentile on a total battery score of a standardized creativity test, or receive a superior rating on a student-generated product or performance using standardized creativity characteristics rating scales, or receive from a panel of three or more individuals a score at or above 90 on a scale or 1-100 on a structured observation of a performance.

Motivation

Students shall either receive a superior rating on a student-generated product or performance or standardized motivational characteristics rating scales or score at or above 90 on a scale of 1-100 on a structured observation by a panel of three or more individuals.

Hawaii

No response

Idaho

No response

Illinois

No response

Indiana

No response

Iowa[15]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> We encourage schools to have alternative identification methods, which may be non-test-based, for finding language- and ethnically-diverse gifted students. A child study or child advocate approach is acceptable, as are more culture-fair testing procedures such as the SOMPA.

What year were these changes made?

> The regulations were adopted in 1968

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

> none

Accreditation Standards

> Valid and systematic procedures, employing multiple criteria, for identifying gifted and talented students including ethnic and language diverse students if such students are enrolled.[16]

Kansas[17]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> Things haven't changed much in Kansas as far as the gifted regulations and guidelines. There has been a time of about three to four years during which time districts were encouraged to request waivers from the regulations to attempt to find ways of identifying and serving underidentified groups of students. The

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[15] Survey Response from Dr. Leland Wolf, Iowa Department of Education, (May, 1990).

[16] Iowa Department of Education, *School Accreditation Standards*, (November 1989), 13.

[17] Survey Response from Joan R. Miller, Special Education Outcomes, Kansas State Board of Education, dated May 17, 1995.

problem with this is that we really haven't collected data about the various projects to know what the impact has been.

Since the recent change in management here, we have identified an ad hoc group within the special education section to begin a project that will hopefully result in many changes. The project will involve a complete look-see into gifted education and eventually changes in regulation and revised guidelines for gifted education.

Kentucky

No response to the survey questions. One document was received.

Regulatory Language

Each local school district shall provide a system for diagnostic screening and identification of strengths, gifted behaviors and talents which gives special consideration to racial and ethnic minority children, disadvantaged children, and children with disabilities.[18]

Louisiana[19]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

No official state changes. See grant pilot results - state implementation not funded by legislature.

Statutory Definition

Possession of demonstrated abilities that give evidence of high performance in academic and intellectual aptitudes.[20]

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[18] *Gifted and Talented Education Technical Assitance Guide: Based on Revised Administrative Regulation on Gifted Education: 704 KAR 3:285*, Kentucky Department of Education, (March 1994): 40.

[19] Survey Response from Pat Clay Dial, Supervisor of Gifted Programs, Louisiana Department of Education, May 1995.

[20] La. Acts. "The Exceptional Children's Act," State of Louisiana Act 754, (1977).

This language has been narrowly interpreted in the past. Very little attention to underserved until Javits grant which focused on the topic. Matrix was created to allow for the use of multiple criteria.[21]

Maine

No response

Maryland

No response

Massachusetts

No response

Michigan[22]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

Javits definition has been adopted by the Michigan State Board of Education. Now have Talent Development Week, rather than Gifted Child Week.

What year were these changes made?

1994-95

State Board Definition

Children and youth with outstanding talent perform or show the potential for performing at remarkably high levels of accomplishment when compared with others of their age, experience, or environment.

These children and youth exhibit high performance capability in intellectual, creative, and/or artistic areas, possess an unusual leadership capacity, or excel in

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[21] Marilyn A. Seibert, *Evaluation Report of Gifted and Talented 8(G) Grant*. Submitted to The Assistant Superintendent for the Office of Special Educational Services, Louisiana State Department of Education: 1.

[22] Survey Response from Mary Bailey-Hengesh, Consultant for Talent Development, Michigan Department of Education, (May 17, 1995).

specific academic fields. They require services or activities not ordinarily provided by the schools.

Outstanding talents are present in children and youth from all cultural groups, across all economic strata, and in all areas of human endeavor.[23]

Minnesota

No response

Mississippi[24]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

See bottom half of p. 2 of regulations. The identification process is showing greater success over the past three years. What has helped increase identification rates has been providing staff development training for regular ed teachers in local districts.

What year were these changes made?

1991 originally; two minor revisions

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

None in the six years I've been here. I can only find one case before I came, but files were incomplete. Starkville is that district.

State Guidelines

The identification process consists of subjective and objective measures to determine eligibility for the programs. No single evaluation method or instrument adequately identifies students who are gifted. Thus, a multi-factored identification process must be followed for protection in evaluation of students.

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[23] Michigan State Board of Education definition adopted August 10-11, 1994.

[24] Survey Response from Conrad Castle, Consultant, Mississippi Department of Education, (May 31, 1995).

> The identification process must allow for an equitable opportunity for the inclusion of the environmentally and/or economically disadvantaged, culturally different, underachieving and disabled students, . . . [25]

Missouri[26]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> There have been no changes to statutes, regulations or guidelines in gifted education that deal specifically with the identification of minority students. Our existing guidelines provide for an alternative identification and selection process to be developed by local districts. The St. Louis City and the Kansas City school districts have been using a lower cut-off percentage in their programs for the populations you are addressing. No other districts have developed an alternative process.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

> There have been no court action in regard to equitable identification of gifted students in Missouri.

Statutory Definition

> Those children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum.[27]

Summary of State Guidelines for Identification

Students must meet three of the four criteria:

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[25] *Regulations for Gifted Education Programs (GEP).* Mississippi Department of Education, (July 1994): 2.

[26] Survey Response from David Welch, Director, Gifted Education Programs, Department of Elementary and Secondary Education, Missouri, (May 23, 1995).

[27] Mo. Laws. Section 162.675. RSMo. 1973.

1. General Mental Ability - Scores on an individual intelligence test at or above the 95th percentile.

2. Academic Ability - Scores on standardized achievement tests at or above the 95th percentile.

3. Creativity, Reasoning and Problem-Solving Ability - Results of valid tests or other assessments indicating outstanding ability.

4. Performance - Documented evidence of exceptional performance in a general academic area, a fine arts area, or another area related to the design of the gifted program.[28]

Montana[29]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> We have no statutory, regulatory or other guidelines for minority identification. I did have one of the research sites for Mary Fraiser's FTAP research, that was on a reservation. I refer individuals to the site for any follow-up and implementation information needed.

Nebraska[30]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

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[28] *Administrative Manual and Guidelines: State-Assisted Program for Gifted Students*. Missouri Department of Elementary and Secondary Education. (1995):7.

[29] Survey Response from Michael Hall, Consultant, Gifted and Talented Programs, Office of Public Instruction, Montana.

[30] Survey Response from Dr. Sheri Nowak, Director, Programs for High Ability Learners, Nebraska Department of Education, (May, 1995).

None at this time - however we are revising state rules & regulations concerning gifted education. Hopefully, minorities will be addressed in revision.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

NA

Nevada

No response

New Hampshire

No response

New Jersey[31]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

Guidelines were done in 1987. The 1995 Revisions of Guidelines was "tabled".

New Mexico

No response to survey questions. Two state documents were received.

Statutory Language

Nothing in this section shall preclude a public agency from offering gifted services to students who fail to meet the criteria defined . . . this may include students from multicultural, multilinguistic or disadvantaged backgrounds . . . The following factors should be considered: (1) language background, (2) socioeconomic status, (3) disability and (4) environmental/cultural background.[32]

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[31] Survey Response from Roberta Carol, Consultant, Arts/Gifted, New Jersey Department of Education, (May, 1995).

[32] SENMS-CM-V-II-I-(B) - Children who are gifted, *Standards for Excellence for New Mexico Schools Compliance Manual Chapter 5 (SENMS-CM-V) for Special Education and Related Services as they apply to language and culture.*

Letter to LEA Superintendents and LEA Directors of Special Education

> The equity index shows whether or not students in a particular ethnic group are overrepresented or underrepresented in that disability category. Please review the enclosed data to see if there are instances of overrepresentation or underrepresentation of students with cultural, linguistic, or ethnic diversity. If there are, I would like to recommend that the district address this through a local long-range planning process. Since underrepresentation of these students has received considerable scrutiny in the area of "Gifted Education," please pay particular attention to that area in the data. For further information, please contact the Special Education Consultant assigned to your agency . . .[33]

New York

No response to the survey questions. A copy of 1983 state guideline information was received after my telephone interview with Ms. Dailey. The information suggests that districts use multiple types of student information in order that different kinds of giftedness will not be overlooked. An identification team is suggested. The team would include, "One or more members . . . a sensitivity to the needs of culturally diverse students."[34]

North Carolina[35]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

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[33] Form letter dated March 1, 1995, addressed to LEA Superintendents and LEA Director of Special Education from Diego D. Gallegos, State Director of Special Education, New Mexico Department of Education.

[34] *Identifying Gifted Students: Guidelines for School Districts.* The University of the State of New York, State Education Department (Albany, NY: September 1983): 3.

[35] Survey Response from Rebecca Garland, State Consultant, Academically Gifted Programs, North Carolina Department of Education, (May 1995).

Currently we are piloting nine demonstration sites to increase identification among underrepresented groups. We initiated this project as a result of a Task Force that recommended a change to the definition that reflects multiple intelligences. All state action is on hold until results are available from the pilots.

North Dakota

No response

Ohio[36]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

The Ohio Department of Education, Division of Special Education, received a U.S.D.E. Javits grant for a demonstration project at five sites, Akron City, Athens area, Cincinnati City, Toledo City, and Youngstown City for the development of non-traditional strategies to improve identification of underserved gifted students. The grant project is in its third year and will be completed September 30, 1995.

The Ohio Department of Education has funded grant awards to local districts to implement model projects for improvement of strategies for identification and for services in the regular classroom.

What year were these changes made?

The model projects are currently being conducted and have been funded to local districts for the 1993-94 and the 1994-95 school years.

In addition, Ohio opened for review all regulations governing education in the state in 1992. In the proposed "new" standards strong statements regarding the use of appropriate assessment measures for all students have been incorporated.

Proposed Standards

The school district shall design and implement an ongoing assessment system that . . . is free of bias based on national origin, language background, gender, and race . . .[37]

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[36] Survey Response from Nancy Hamant, Consultant, Services for Gifted Children, Ohio Department of Education, (May 18, 1995).

> The assessment system will . . .use a multifactored assessment to identify children who are gifted . . .[38]

Oklahoma[39]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> The statutes related to gifted education were amended by the 1994 legislature through House Bill 2041. A provision was included which provides for monitoring of districts which have ". . . identified students who as a group are not representative of racial and socioeconomic demographics of district student population . . ."[40]
>
> The original statutes which were passed in 1982, required multicriteria assessment for the "capability areas". These areas are creativity, leadership, visual and performing arts, and specific academic ability. This requirement has been more heavily emphasized by the state agency during the past five years.
>
> The State Board regulations have included, for four years, a statement requiring unbiased identification procedures. This philosophy was required to be included in local district policy as well.

What year were these changes made?

> The most recent changes were made by the legislature in the spring of 1994, followed by the State Board regulations in August, 1994.

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[37] *Prekindergarten- through-Grade 12 Standards for Ohio Schools.* Final Recommendations of the Learner Outcomes Panel to the State Superintendent of Public Instruction for Submission to the State Board of Education. Columbus, Ohio (DRAFT February 1995): 32.

[38] Id at 50.

[39] Survey Response from Cynthia Brown, State Director, Gifted and Talented Education (Author), (May 1995).

[40] Okla. Sess. Law. 70 O.S. Section 1210.303.A.8.

Statutory Definition

"Gifted and talented children" means those children identified at the preschool, elementary and secondary level as having demonstrated potential abilities of high performance capability and needing differentiated or accelerated education or services. For the purpose of this definition, "demonstrated abilities of high performance capability" means those identified students who score in the top three percent (3%) on any national standardized test of intellectual ability. Said definition may also include students who excel in one or more of the following areas:

a. Creative thinking ability,
b. Leadership ability
c. Visual and performing arts ability, and
d. Specific academic ability.

A school district shall identify children in capability areas by means of a multicriteria evaluation. Provided, with first and second grade level children, a local school district may utilize other evaluation mechanisms such as, but not limited to, teacher referrals in lieu of standardized testing measures.[41]

Oregon[42]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

In response to your query about what Oregon is/has done concerning minority representation in programs for talented and gifted students, you will find a copy of the Oregon statutes and administrative regulations for the program. (Author's note: These were not included in mailing or received after telephone request.)

You will note that the identification regulation states that school districts are to make special efforts to identify underrepresented students. In addition, also in the identification section, districts are required to develop and use identification procedures to identify students with the potential to score at the criterion levels.

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[41] Okla. Sess. Law. 70 O.S. Section 1210.301.

[42]Survey Response from Bob Siewert, Coordinator, TAG Program, Oregon Department of Education, (June 12, 1995).

Pennsylvania

No response to survey. A booklet, "Guidelines: Education of Mentally Gifted Students" (1995) was received. The following information was taken from that document.

> The free appropriate public education of the gifted is a special education mandate in Pennsylvania.[43]
>
> Mentally gifted is defined as outstanding intellectual and creative ability the development of which requires special services and programs not ordinarily provided in the regular education program. This term includes a person who has an IQ of 130 or higher and when multiple criteria as set forth in Department Guidelines indicate gifted ability. Determination of gifted ability is not equated with an IQ score alone. Intellectual ability is and should reflect a range of assessments including a student's performance as well as potential. Standard error of measurement also applies when reporting IQ potential. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of the mentally gifted shall include a full assessment and a comprehensive report by a public school psychologist specifying the nature and degree of the ability.
>
> The identification of potentially gifted students must recognize the needs and interests reflected by the diversity among such students and must view assessment in terms of multiple criteria as opposed to a single criterion, relating directly to the need for specially designed instruction. Comprehensive assessment must also take into consideration ethnicity, socio-economic status and disabilities.[44]

Rhode Island

No response

South Carolina

No response

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[43] Pennsylvania Department of Education, *Guidelines for the Education of Mentally Gifted Students*. (Harrisburg, PA: Pennsylvania Department of Education, 1995): v.

[44] Id at 11.

South Dakota[45]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

"none"

Tennessee

No response

Texas

No response

Utah

No response

Vermont

No response

Virginia

In response to the issue of specific changes that have occurred in our state relative to this matter, a revision of state regulations (that became effective in December of 1994) was enacted to address the underrepresentation of minority students and other 'special populations' groups being served by our local and statewide gifted education programs. The regulations went through a lengthy revision process between 1992 and 1993, providing for input from state and local education officials, public comments, representative of higher education and experts in the field of gifted education.

Specifically, in Article II, *Criteria for Screening and Identification* the revision states:

Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and

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[45] Survey Response from Shirlie Hoag, Programs for the Gifted, South Dakota Department of Education, May 1995.

*designed to **seek out high aptitude in all populations. Multiple criteria shall include four** or more of the following categories . . .*

The language in the above statement is highlighted to represent a change that should result in the ability of localities to increase the number of culturally diverse (minority) gifted learners identified and served by appropriate educational programs. Additionally, local plans submitted to the State Department of Education for review and approval must provide:

*Assurances that testing and evaluation materials selected and administered are **sensitive to cultural, racial and linguistic differences ...identification procedures are constructed so that they identify high potential/ability in all underserved** culturally diverse, low socio-economic and disabled populations . . .*

To further support the revisions to state regulations, our General Assembly passed and provided funding for a bill to study this issue. . . . A final report is due during the 1995-96 session of the General Assembly. Should you desire, you may contact me in the spring of 1996 for a status report of the study bill.

Washington

No response to survey questions. Statutes and regulations were received.

Statutory Language

In accordance with rules and regulations adopted by the superintendent of public instruction, school districts shall implement procedures for nomination, assessment and selection of their most highly capable students. Nominations shall be based upon data from teachers, other staff, parents, students, and members of the community. Assessment shall be based upon a review of each student's capability as shown by multiple criteria intended to reveal, from a wide variety of sources and data, each student's unique needs and capabilities. Selection shall be made by a broadly based committee of professionals, after consideration of the results of the multiple criteria assessment.[46]

Regulatory Language

Highly capable students. As used in this chapter, the term highly capable student shall mean a student who has been assessed to have superior intellectual ability as

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[46] Wash. Rev. Code, Title 28A RCW: Common School Provisions, Chapter 28A. 185: Highly Capable Students.

demonstrated by one or more of the multiple criteria specified in WAC 392-170-040.[47]

West Virginia[48]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

The purpose of this correspondence is to respond for information regarding identification of poor and minority groups of students. In West Virginia, gifted education is a service within special education, therefore, gifted students are afforded all procedural safeguards that are provided to students with disabilities.

In 1989 the State Code changed gifted education eligibility criteria for Grades 1-8 and gifted 9-12. the criteria for Gifted Grades 9-12 include the economically disadvantaged, however there are no guidelines to encourage the more equitable identification of African American, native American or Hispanic American children.

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[47] Chapter 392-170-035 WAC, Special Service Program-Highly Capable Students, Washington Department of Education (7/19/90).

[48] Survey Response from Ghaski Lee, Coordinator, Office of Special Education Programs and Assurances, West Virginia Department of Education, (May 17, 1995).

Wisconsin[49]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> We simply encourage this in the 'spirit' of the law. The one tangible method for encouraging this is in the nature of a request for the number of minority students identified as g/t in our annual report form.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

> None

Wyoming[50]

What has been done at the state level, either statutory, regulatory or guidelines, to encourage the more equitable identification of African American, Native American and Hispanic American children?

> Nothing - GT programming is not mandatory. All students are allowed due process under the law. Where local control is as extreme as it is here we will not have such statutes.

Please list school districts in your state which have been involved in court action in regard to equitable identification of gifted children.

> None

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[49] Survey Response from Welda Simousek, Gifted and Talented Programs, Wisconsin Department of Public Instruction, (May, 1995).

[50] Survey Response from Nancy Leinus, Gifted and Talented Programs, Wyoming Department of Education, (September, 1995).

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