



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

SEP 3 2003

Honorable Ben Nighthorse Campbell
United States Senate
Washington, DC 20510

Dear Senator Campbell:

This is in response to your letter dated July 21, 2003 to Gerald A. Reynolds, Assistant Secretary for Civil Rights, written on behalf of your constituent, [REDACTED] of All Children Matter in Education. You indicated that [REDACTED] wants "the IQ test removed from consideration when determining which students will be offered advanced placement courses and which will be placed in special education classes." Our response will be limited to this issue, in light of the Federal civil rights laws over which the Department's Office for Civil Rights (OCR) has jurisdiction.

OCR enforces Federal laws that prohibit recipients of Federal financial assistance from discriminating on the basis of race, color, and national origin (Title VI of the Civil Rights Act of 1964 (Title VI)); sex (Title IX of the Education Amendments of 1972 (Title IX)); age (the Age Discrimination Act of 1975); and disability (Section 504 of the Rehabilitation Act of 1973 (Section 504)). OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability by public entities, regardless of receipt of Federal funds. In addition, as of January 8, 2002, OCR enforces the Boy Scouts of America Equal Access Act, which prohibits certain public entities from discriminating against or denying equal access, or a fair opportunity to meet, to any group officially affiliated with the Boy Scouts of America or certain other patriotic groups.

Under the statutes and regulations enforced by OCR, students may not be denied access to special education, advanced placement, or gifted and talented programs based on race, color, national origin, sex, age, or disability, and these programs must have nondiscriminatory selection procedures that ensure all students equal access. Generally, the selection of particular testing methodologies for such programs, including the determination of when the use of IQ tests is appropriate, is a matter left to state and local educational authorities, so long as the use of the test is consistent with the civil rights laws.

With respect to the education of students with disabilities, the Section 504 regulation requires school districts to establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services. 34 C.F.R. § 104.35(b). The procedures must ensure, among other factors, that testing and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer. 34 C.F.R. § 104.35(b)(1). Placement decisions must be made by a group of knowledgeable persons. This group must draw upon

information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and the information derived from all of these sources must be documented and carefully considered. 34 C.F.R. § 104.35(c). There is nothing in the above regulations that dictates the testing instruments to be used to determine whether a student is eligible to receive special education or related aids and services under Section 504 and Title II.

We have also consulted with staff of the Office of Special Education Programs (OSEP), the office in the Department that administers the Individuals with Disabilities Education Act (IDEA), concerning the use of IQ tests in evaluations conducted under the IDEA. The regulations for Part B of IDEA, at 34 C.F.R. §§ 300.530-300.536, set forth specific requirements that public agencies must follow in evaluating and identifying children with disabilities. The regulations set forth additional procedures for evaluating children with specific learning disabilities at 34 C.F.R. §§300.540-300.543. Neither the Act nor the Part B regulations require the use of IQ tests as part of an initial evaluation or a reevaluation. For more information about Part B of IDEA, your constituent may wish to contact OSEP directly at the following address and telephone number:

Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202
Phone: (202) 205-5507.

If your constituent believes that there has been prohibited discrimination based on race, color, national origin, age, sex, or disability in connection with the placement of students in special education or advanced placement classes, she may file a complaint alleging unlawful discrimination with the OCR Denver Office. That Office will evaluate her concerns to determine whether the allegations she is raising constitute discrimination prohibited by Federal civil rights laws. If she wishes to contact the OCR Denver Office, the address and telephone numbers are:

Office for Civil Rights, Denver Office
U.S. Department of Education
Federal Building, Suite 310
1244 Speer Boulevard
Denver, Colorado 80204-3582
Phone: (303) 844-5695
Fax: (303) 844-4303
TDD: (303) 844-3417.

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We hope that you find this information helpful in responding to your constituent. If we can be of further assistance, please let us know.

Sincerely,

Eleanor D. Baker

Eleanor D. Baker
Customer Service Team
Office for Civil Rights

cc: Lillian Gutierrez
Director, Office for Civil Rights Denver Office