

# **Humboldt - We Have a Problem, But More Special Education Is Not the Answer**

*There is only one child in the world and that child's name is ALL children.*

—Carl Sandburg

## **SUMMARY**

According to the California Department of Education, Humboldt County leads the State of California in the percentage of students enrolled in special education programs, with 17% of its K-12 students diagnosed as having one or more disabilities. This percentage jumps to 22% when preschoolers are included. The Humboldt County Civil Grand Jury (HCCGJ) investigated the reasons for this high percentage of students and validated not only the high percentages, but discovered some unsettling additional information.

During the course of this investigation, the HCCGJ learned many things about our special education system; first and foremost is we **do** have a problem in Humboldt County.

- Too many children of Native American and Hispanic heritage, who may not have disabilities, are being placed into special education programs.
- Foster youth are overrepresented in high numbers within special education.
- There are intervention strategies to keep children in the general education programs but there is a mindset to bypass this part of the process.
- Ruling out cultural, linguistic, and environmental factors when making decisions about children's educational needs is imperative.
- Only limited understanding exists about second language development and culturally appropriate educational strategies.
- Insufficient understanding exists about the long-term ramifications of placing children into special education who do not need to be there.
- More emphasis is placed on removing children from general education classrooms and not enough on keeping them there.

Humboldt County employs many learned, talented, and caring professionals focused on helping children. From the administration on down through the ranks, the educational progress of children is of the utmost importance. Dedicated staff work long hours for less pay than many of their counterparts in the rest of California. Many believe they are doing the right thing by referring academically and behaviorally low-performing children to special education.

The HCCGJ offers recommendations with the hopes of reducing the trend within Humboldt County to disproportionately place Native American, Hispanic, and foster youth into special education.

## BACKGROUND

### Do We Have a Problem?

In the fall of 2017 the State of California released its annual educational data report. This report includes the percentage of special education students enrolled in each county from highest to lowest. **Humboldt County tops the list with the highest percentage of all California counties.**

The HCCGJ was alarmed to learn 17% of our students were reported as receiving special education services. The Humboldt County Civil Grand Jury (HCCGJ) questioned how this situation might have come about and if it was as much of a problem as it seemed. In order to determine the answers to our questions, the HCCGJ conducted comprehensive research into special education law, concepts, definitions, processes, and practices. We interviewed scores of educational personnel, reviewed Individualized Educational Plans (IEPs), and talked with parents, foster parents, advocates, and social workers.

### History of Modern Special Education

Modern Special Education eligibility, programs, and documentation are the result of a federal law enacted in 1975, titled Public Law (P.L.) 94 -142. This law created sweeping changes in the education of children with disabilities. The law was designed:

- *to assure that all children with disabilities have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs,*
- *to assure that the rights of children with disabilities and their parents ... are protected,*
- *to assist States and localities to provide for the education of all children with disabilities,*
- *to assess and assure the effectiveness of efforts to educate all children with disabilities.*

P.L. 94 -142 was revised in 1990 and again in 1997. During the 1997 revision, it was renamed the [Individuals with Disabilities Education Act](#) (IDEA). The IDEA sought improvement in [special education](#) overall and established a framework for [inclusive education](#). It guarantees students with a disability are provided a Free Appropriate Public Education (FAPE) tailored to their individual needs. In practice, the IDEA is composed of six main elements:

- Individualized Education Program (IEP)
- Free and Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Appropriate Evaluation
- Parent and Teacher Participation
- Procedural Safeguards

The revised IDEA, which became final in 2006, preserved the basic structure and civil rights guarantees, but also made significant changes in the law: (1) a revision in the definition of a child with a disability; (2) new handicapping conditions under which children qualified for special education services; (3) early intervention for students; and (4) **provisions regarding disproportionate representation in special education, by cultural, linguistic, or environmental factors.**

### Disproportionate Representation

Disproportionality is the over-representation of minority students identified with any type of disability under the IDEA. When Local Education Agencies (LEAs) have higher numbers of students enrolled in special education from minority groups, primary languages other than English, or low socio-economic backgrounds than they should according to statistical standards, it signals the possibility some of the students may not be truly disabled and may have been incorrectly identified. The State of California uses a very complicated mathematical formula to determine disproportionality over time and attendance rates. When disproportionality is found via the mathematical formula, a series of responses are required by LEAs. There are several state accepted formulas. One such formula for disproportionality, called the E Formula, is defined as:

$$E = A + ((A (100-A)) / N)$$

*E = Maximum percentage of the total special education enrollment in the county*

*A = Percentage of the same racial/ethnic group in general education in the county*

*N = The total special education enrollment in the county*

Disproportionality may be caused by:

- Failure to recognize and accommodate cultural differences among minority groups
- Use of inappropriate [assessment strategies](#) for English Language Learners and racial and ethnic minorities
- Failure to [accommodate parents of students with Limited English Proficiency](#) or language minorities
- Lack of responsiveness to cultural and socioeconomic differences among children and their families

According to the IDEA, LEAs must shift 15% of their special education funds toward general education when a disproportionate number of students are placed in special education for reasons other than disability. The disproportionality of culturally and linguistically diverse students remains among the most significant and intransigent problems in the field of special education.

### Why Disproportionate Representation is Problematic

Some will argue Special Education placement provides needed academic support for struggling students, but fail to realize the short and long-term implications. Placing a child who is not disabled into a program specifically designed for children who need modified access to the

curriculum has negative repercussions. The fallout from mis-placement of children of color, alternative linguistic backgrounds, and adverse environmental experiences can:

- Prevent children from reaching their academic potential
- Fuel negative stereotypes regarding minority groups
- Result in a type of racial profiling that places minority students at a disadvantage throughout their school years
- Result in lowered expectations among teachers, parents, and the students themselves
- Prevent schools from recognizing the need to adjust curriculum and teaching methods to reach a broad range of instructional needs for a diverse student body
- Create a permanent underclass of students which conveys a strong message to those students that they do not measure up, fit in, or belong
- Destroy the self-esteem and self-worth of students who do not fit the mold
- Instill in children a belief they are a problem

### Eligibility Categories

Currently there are 13 eligibility categories by which a child may qualify for special education in California. These categories, in alphabetical order, are:

- Autism
- Deaf/Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech and Language Impairment
- Traumatic Brain Injury
- Visual Impairment

Specific criteria were established by the IDEA to determine eligibility under each disability category. **A disability cannot just be claimed, it must be proven by medical diagnosis or psycho-educational assessment.**

Of the thirteen eligibility categories, three are the most likely to result in disproportionate representation. They are Specific Learning Disability, Other Health Impairment, and Emotional Disturbance. Additionally, English Language Learners (ELL) routinely are misidentified as having a Speech and Language Impairment. Children with many Adverse Childhood Experiences (ACEs) or from an impoverished background may be incorrectly identified as having an Emotional Disturbance or Specific Learning Disability. Children raised with other cultural influences often may be labeled with a Learning Disability or Other Health Impairment.

Attention Deficit Disorder (ADD) and/or Attention Deficit Hyperactivity Disorder (ADHD) are typically considered to fall into the category of Other Health Impairment. Many children of color, and adverse childhood backgrounds, are labeled ADD/ADHD simply because they have difficulty adapting to the mainstream educational system. They may show symptoms of restlessness, lack of attention to academic instructions, and acting out. Misidentification rarely happens with medically identified physical disabilities such as mobility, vision, and hearing impairments.

English Language Learners often show academic delays, but such delays are not due to a disability. Rather, such delays are normal in the process of acquiring English as a second language - the language of instruction in our public schools. Children from poverty backgrounds may not have been exposed to the same mainstream early childhood experiences as other students. This places them at a disadvantage when accessing curriculum which has no relevance to their daily lives. Diverse cultural experiences may also affect how students respond within the mainstream school system.

The differences mentioned above are not disabilities warranting special education services. The IDEA recognized this fact and built into the IEP a section whereby the IEP team must declare the disability is not the result of cultural, linguistic, or environmental factors. It is a very significant and serious distinction which must be considered when making eligibility decisions.

There does exist the possibility a child can have a disability as well as cultural, linguistic, or environmental factors. A comprehensive assessment, not limited to a single test, is warranted at all times to address such complexity.

In addition to demonstrating a handicapping condition, further criteria for placement into special education exists. Children must demonstrate: (1) their disability has resulted in a significant delay in academic achievement; and (2) they have not made significant academic progress even with targeted general education intervention.

### The Referral Process

The referral process begins when a teacher, parent, or other concerned person makes a referral to the school's child study team. A team meeting is usually the starting point of the formal referral process. All possible causes of the child's learning struggles are to be considered. Often overlooked, but extremely important, is the health evaluation. Vision and hearing, school attendance, nutrition, sleep patterns, etc. must be considered. Many students have been referred for a complete psycho-educational assessment only to find they needed glasses or were not getting enough sleep.

Another important part of the referral process is a thorough examination of the child's educational history. Has the child moved a lot, missed a lot of instruction due to absences, or not had prescriptive intervention for areas of weakness? Many times, general education interventions such as tutoring, working in small groups, using culturally appropriate teaching strategies, or sitting closer to the teacher will improve the child's performance. Children who are learning English as their second language must be given adequate time and appropriate instruction to acquire enough English to keep up with the English language instruction.

If appropriate interventions do not result in improvement, only then should a psycho-educational evaluation be considered.

### The Assessment Process

A complete psycho-educational assessment is required for all students being considered for identification as a student with disabilities. The process can be lengthy, but there are strict timelines in which the evaluation must be completed (60 days). Extensions may be granted for compelling reasons. Several important court cases have influenced the assessment process. Two of the most notable are *Diana v. Board of Education (CA) 1970* and *Larry P. v. Riles (CA) 1979*. The first was a state class-action suit which addressed overrepresentation of children from non-English speaking backgrounds who had been placed in special education classrooms. This case resulted in a requirement for children in the state of California to be tested in their primary language when being assessed for special education services. The second was a suit alleging African-American children were overrepresented in special education classes and changed the way IQ tests were used to determine eligibility for special education. These court cases tried to address the hidden biases in the special education assessment process.

The assessment is conducted by teams of special education professionals in each LEA. The assessment team typically consists of a school psychologist, special education teacher, school nurse, administrator, and general education teacher. Depending on suspected areas of disability, the team may also include a speech-language pathologist, occupational therapist, physical therapist, etc. Members of the team each assess the student in their own area of expertise. If the child speaks a language other than English, a translator trained in the administration of the test instruments may be used during the assessment, under the direction of the special education professional.

To minimize or eliminate bias, the assessment instruments used must be valid and reliable for the student being evaluated. Codes of ethics from various professional associations strongly discourage limiting assessments to a single test and advocate for comprehensive assessment practices. Analysis of the results must also be done cautiously, so as not to allow any inherent bias to influence interpretation of the results. An adequate number of assessments must be used to assure a broad picture of the child's abilities are captured.

The team members review the results of their individual assessments as a group and collaborate to determine if eligibility standards have been met. A psycho-educational report is generated and reviewed in a meeting, commonly called an Individualized Education Program (I.E.P.) meeting. This meeting includes the parent, guardian, or designated educational surrogate, as well as all professionals involved in the assessment. It may also include relatives, friends, social workers, special education advocates, court appointed special advocates, and any others invited.

## Eligibility Criteria - Specific Learning Disability

The Education Code defines Specific Learning Disability as:

*A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, read, write, spell, or to do mathematical calculations, including such disorders as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.*

Each state must adopt criteria for determining if a specific learning disability exists. A 2014 revision in federal law states, “that in determining whether a child has a Specific Learning Disability, the public agency ‘may consider’ if he or she has a severe discrepancy between ability and achievement if his or her achievement is inadequate pursuant to a ‘response to intervention’ or ‘pattern of strengths and weaknesses analysis.’” The California Department of Education has declared, the change “provides that California *must not* require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability; *must* permit the use of a process based on the child’s response to scientific, research-based intervention, and *may* permit the use of other alternatives.”

A child may be determined to exhibit a specific learning disability if the child does not achieve adequate yearly progress (AYP) on grade-level standards in one or more of the following areas, when the child has been provided with appropriate learning experiences and instruction:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading fluency skills
- Reading comprehension
- Mathematics calculation
- Mathematics problem solving

The assessment team must determine if lack of academic progress is not the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; or cultural, linguistic, or environmental factors. It must be demonstrated the child has been provided appropriate intervention with data-driven documentation as to progress. The child's performance in the classroom must have been observed.

## Eligibility Criteria - Other Health Impairment

The Education Code defines Other Health Impairment as:

*A condition which includes having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the education environment, that:*

*A) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette Syndrome, and*

*B) Adversely affects a child's educational performance.*

The assessment standards require written medical verification of a health impairment by the student's health care provider, if available. An educational assessment must be conducted by a multidisciplinary team and includes the type of chronic illness, possible medical side effects and complications which could affect school functioning. In addition, the educational and social implications of the health impairment and the likelihood of fatigue, absences, physical changes, amputations, or problems with motor control must be considered.

## The IEP Meeting

The IEP meeting can be daunting for parents with little experience of educational review meetings. The language is often technical; the number of people present can be intimidating; and the information presented can be overwhelming. The educational team is often composed of an imposing number of educational professionals. At this meeting:

- The team of evaluators present their findings.
- Procedural safeguards are reviewed.
- The child's intellectual strengths and weaknesses are discussed.
- Learning styles and potential areas of disability are presented.
- Social and emotional development are considered.
- Eligibility according to state and federal laws is determined.
- Academic progress and needs are revealed with appropriate goals developed to achieve academic growth.

When the assessment results are presented in terms of special education being a vehicle to improve student success, few parents refuse the services offered. However, parents are often unaware of the long-term psycho-social effects their child may experience. Those unfamiliar with the educational system may not understand other less restrictive options might be available in lieu of special education. The parent must agree wholly with the plan, partially with the plan, or refuse to sign the plan. If the parent, or other educational rights holder, is not in agreement, more meetings ensue until placement is determined or an administrative fair hearing is held to decide disputes.

## Least Restrictive Environment

In order to ensure that children have access to the general education curriculum while receiving special education services, placement in the least restrictive environment is a key factor. Services provided range from consultation to full time placement in a non-public school. Placement within the least restrictive environment is an important consideration at the IEP meeting. The more a child can remain within the general education classroom, the better. The long term goal of special education placement is to return the student to general education as soon as possible.

## Possible Pitfalls to the Process

Current legislation allows for referrals to be made by others than educational personnel. Parents, guardians, social workers, neighbors, or anyone with an interest in the education of a child may initiate the process. One pitfall exists when well-meaning people wish to bypass the referral process and move straight to assessment without considering other possible causes for a child to be struggling in school. It is possible for such well-meaning people to actually do more harm than good by circumventing the process.

Another pitfall lies in the interpretation of intervention. Some LEAs do not move forward to assessment despite lack of progress, failure to vary interventions, or prolonging interventions that are not working. This is equally detrimental and may result in academic difficulties eventually leading to behavior problems as well.

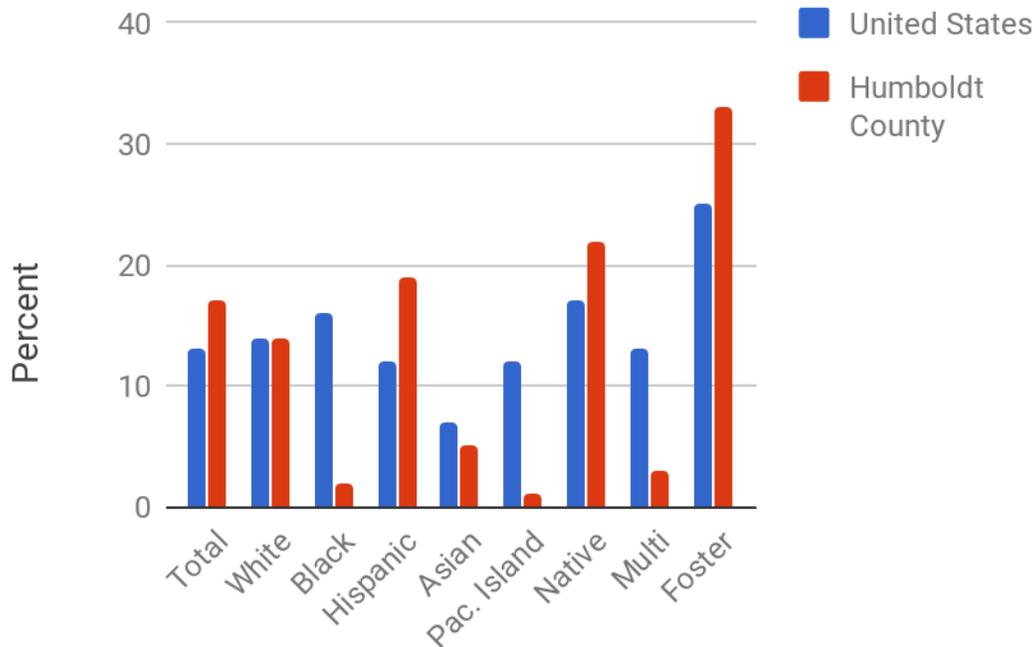
## LEA Self-Examination

Each LEA must evaluate how it places children in Special Education. Does over-representation or under-representation exist within a specific LEA? The first indicator of possible over- or under-representation within an LEA may be an artificially high number of students served under the Special Education umbrella. Another clue may be highly skewed numbers under a single eligibility category, such as Specific Learning Disability or Other Health Impaired. The third clue is the relative overall proportion of students within one ethnic group far outstripping other ethnic groups in comparison. It is the responsibility of the educational system to minimize bias and promote educational equity across all subsets of student backgrounds.

The graph below shows the 2017-2018 distribution of special education enrolled students by subgroup in Humboldt County compared to the national percentages.

**Percentage of K-12 Students in Special Education by Race/Ethnicity and Foster Youth Status**

Special Education by Ethnicity and Foster



Special Education is not meant to be the default answer to all school problems. The referral process is the first step toward making sure all possible causes other than a disability have been considered. Once a psycho-educational assessment has been determined to be an appropriate course of action, the assessment must then be conducted in a manner to remove inherent biases within the process. If the above does not happen, children may be misidentified and misplaced into Special Education programs which are inappropriate for their learning needs.

**METHODOLOGY**

The Humboldt County Civil Grand Jury:

- Reviewed professional journals, research studies, and federal publications (see Bibliography)
- Reviewed federal and state special education laws (see Bibliography)
- Interviewed county, district, and school level educational personnel
- Interviewed social workers, court appointed special advocates, foster parents, and parents
- Conducted statistical analyses of enrollment data from both general and special education
- Reviewed assessment reports and IEPs

## DISCUSSION

### Humboldt County Educational System

The Humboldt County Civil Grand Jury (HCCGJ) spent nine months investigating the special education system from the federal level down to the local school level. We interviewed over 20 professionals involved in the education of children. We also interviewed parents, foster parents, social workers, and advocates. During this process, the HCCGJ learned the Humboldt County educational system is overseen by the Humboldt County Office of Education (HCOE). There are 31 school districts. The Special Education Local Plan Area (SELPA) supports special education services delivery.

In 1974, the California State Board of Education adopted the California Master Plan for Special Education. This statewide plan to equalize educational opportunities outlined the process to develop a quality educational program for disabled students in California. The Master Plan required all school districts and County Offices of Education (referred to as Local Education Areas or LEAs) to join together in geographical regions to develop a regional special education services delivery system. Our SELPA serves both Humboldt and Del Norte counties.

Humboldt County employs many learned, talented, and caring educational personnel. From the administration on down through the ranks, the educational progress of children is of the utmost importance. Staff work long hours for less pay than many of their counterparts in the rest of California. They are dedicated and hardworking. All public education is overseen by the Humboldt County Office of Education (HCOE) and carried out by the school districts and charter schools.

### Cultural Factors

Based upon a review of multiple studies, the HCCGJ learned a kind of cultural imperialism nationwide has led to the over-identification of Native American students in special education because of the use of standardized approaches that are biased against Native students. Federal law and best practices require assessment by other measures or in a variety of non-standardized ways such as dynamic assessment. According to the American-Speech-Language-Hearing-Association (ASHA) a dynamic assessment is a method of conducting an assessment which seeks to identify the skills that an individual child possesses as well as their learning potential. The dynamic assessment procedure emphasizes the learning process. It is highly interactive and process-oriented. Dynamic assessment can cross all assessment areas, but is more time-consuming than administering a single test, which is likely why it is used only minimally.

Nevertheless, the HCCGJ did find some schools within the county using this type of assessment process, and seeing a reduction in the numbers of Native American students entering special education programs. Most schools were not using this process.

There are youth from eight federally recognized Tribes in Humboldt County. The number of students from Hispanic homes is increasing and now is the largest minority group in the county. Through our research, the HCCGJ discovered cultural factors play a large role in the early childhood development and schooling expectations from these two groups. The educational system in the United States is geared for middle class mainstream culture students. From our interviews, the HCCGJ learned developmental milestones, behavioral expectations, parental expectations, values, and belief systems of Native and Hispanic cultures may not match the environment of the school system. Often behaviors which are culturally acceptable in a

child's specific culture may not be understood or appreciated in the mainstream educational environment.

The problem lies in educational staff recognizing cultural influences and adapting the learning environment to offer equal access to the curriculum in the child's learning style. When the teaching staff fails to recognize and adapt to children's learning styles, children may not progress at the same rate as their mainstream peers; may not behave in the same manner; and teachers may feel there is a learning disability because of this. The HCCGJ found educational staff are well-meaning, and some see special education as a pathway to improve the child's access to education, but fail to realize special education may not be the right solution. This can result in over-identification.

### Linguistic Factors

Some Native American students speak their tribal language or have relatives who speak the tribal language. Research shows many Hispanic students speak Spanish at home or have relatives who speak Spanish. A child entering kindergarten who knows no English or has limited English starts school at a disadvantage. The average kindergarten student from a mainstream middle class English Only (EO) speaking background starts out with an approximately 5,000 word advantage in vocabulary alone. Meanwhile the English Language Learner (ELL) is struggling to learn a language in which their peers are already adept. As the EO speakers move forward in their curricular development, the ELLs progress but fall behind.

According to second language acquisition experts, Basic Interpersonal Communication Skills (BICS) are typically achieved within six months to three years of exposure to a new language. These are the social language skills people use daily for general interaction with family, friends, and businesses. Cognitive Academic Language Proficiency (CALP) takes seven to ten years to develop. These are the skills needed to connect to academic curriculum. The dichotomy between perceived English Language abilities based on BICS and the expectations that children have acquired a level of English (CALP) commensurate with their English Only peers, can underlie a perception that a learning disability may be present. ELL students fall behind without solid support in their native language, and with academic demands beyond their linguistic development. Caring teachers become concerned. A referral to special education is frequently the perceived solution.

According to the ASHA, many children speaking languages other than English are referred for language development assessments. Again, assessment typically includes a couple of standardized tests, often normed on mainstream EO children. Without a dynamic assessment, ELLs may be misidentified as having a delay in language development. During its review of IEPs, the HCCGJ found that there were frequent instances when only a single assessment had been administered to determine eligibility

## Environmental Factors

Humboldt County has a high poverty rate, a high number of children receiving some type of support from social services (including, but not limited to, foster care), and a high rate of drug usage. Many children born into poverty:

- have a low birth weight
- do not receive regular medical or dental care
- do not eat regularly
- are exposed to a variety of drugs within the home
- have absentee parents
- are raised in single parent homes

A higher rate of academic difficulties in children from impoverished backgrounds has been supported by educational research. Prenatal exposure to drugs, alcohol, and nicotine may contribute to an increased incidence of learning disabilities. The HCCGJ found the percentage of Humboldt County youth identified as having a specific learning disability to be much higher than other counties with similar demographics.

The educational achievement of children in foster care has been determined to be below average, according to numerous studies. Students living in out-of-home care are highly overrepresented in special education nationwide. Many studies have resulted in a theory foster youth have been victimized by gaps in instruction due to the transiency and frequent school changes inherent to their situations. The negative impact of school mobility on academic achievement has also been documented consistently and legislation has been adopted to address it. Placement into special education in these cases may reflect insufficient general education interventions designed to offset the outcomes associated with foster home placement rather than evidence of a disability. The HCCGJ determined Humboldt County foster youth were overrepresented in special education.

## Student Data

In order to determine the numbers of K-12 students enrolled within Humboldt County, enrolled within each LEA, and enrolled in special education, the HCCGJ requested point in time data from HCOE and the SELPA. We requested data from the annual December 1st special education enrollment count as entered into the California Special Education Management Information System (CASEMIS). This point in time data is significantly related to funding for special education services and every effort is made to ensure an accurate count. Special education providers are encouraged to finish any pending assessments by that date.

Several types of information were requested from the Humboldt-Del Norte SELPA. The HCCGJ requested and received total enrollment data. The HCCGJ made sure Del Norte data was separated from Humboldt data and excluded. The data was further broken down into enrollment numbers by district, school of attendance, disability category, ethnicity, and a foster youth count.

The HCCGJ requested data from HCOE for the same point in time date of December 1, 2017. Unfortunately HCOE stated it was unable to provide us with the same point in time data and

gave us the chronologically nearest data available. This provided the HCCGJ with only an estimate of county enrollment for comparison purposes. HCOE representatives informed us the statistical variation between the two dates was minute. Ethnic and socio-economic data were also collected from HCOE.

The data provided by HCOE and the SELPA showed that during the month of December 2017 there were approximately 18,400 students enrolled in public K-12 education programs in Humboldt County. Of the total enrollment, 17.6% were of Hispanic origin, 8% were of Native American origin and 1% were foster youth. Children of Caucasian descent formed the majority enrollment, with a small percentage of Asian, African-American, and children with multiple ethnicities.

### **Results of Data Analysis**

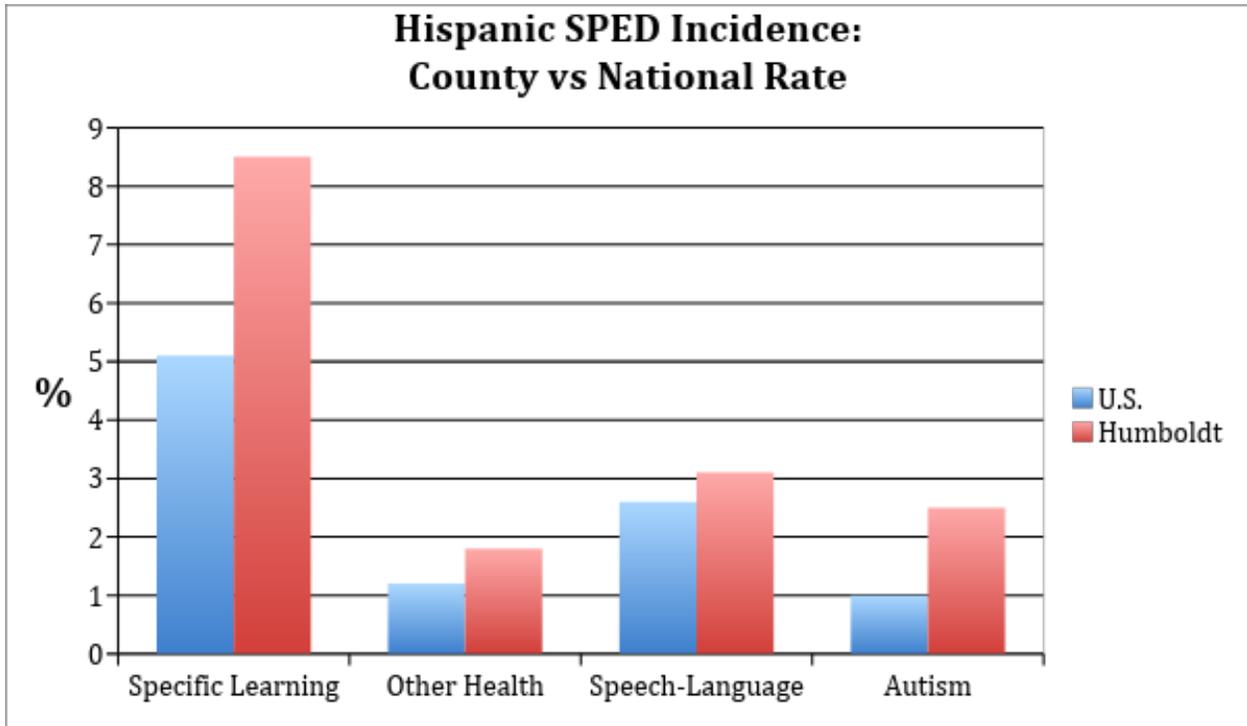
Of the approximately 18,400 K-12 students, 17% were enrolled in special education programs. The HCCGJ was expecting to see some disproportionality since 17% is high compared to both state and national norms. What we did not expect to find was the magnitude and types of the disproportionality as indicated by the data. Countywide, of this 17%:

- 38% were identified with a Specific Learning Disability
- 14% were identified as being Other Health Impaired
- 22% were identified as being Speech-Language Impaired
- 3% were identified with an Emotional Disturbance
- 15% were identified with Autism

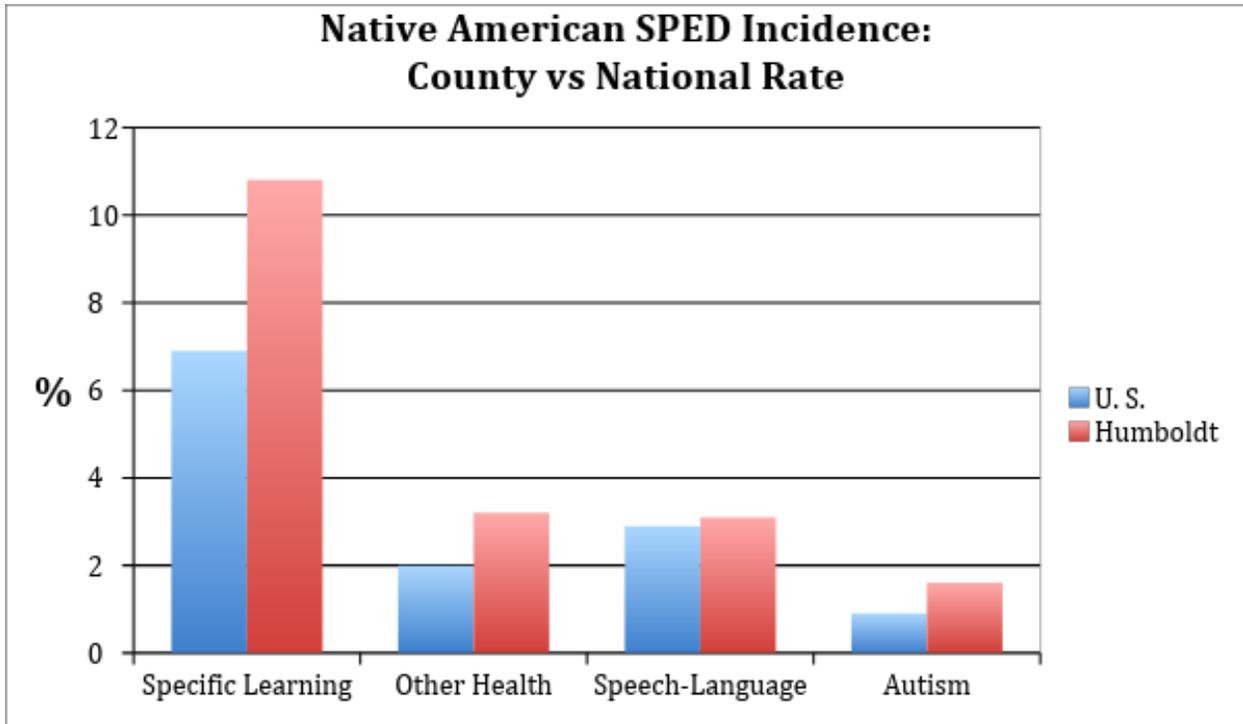
The numbers of students identified by the eight remaining qualifying handicapping conditions were statistically insignificant and held true to national incidence rates. However, the numbers of students as identified above were statistically at variance with national norms within several subsets.

### **Disability Category Enrollment by Ethnicity**

The number of Hispanic students attending K-12 in county schools totals 16.5% of the population. Hispanics are now the largest minority group in the county education system. Disproportionality was found within enrollment numbers of students of Hispanic origin. The HCCGJ found 18.6% of these students had been identified as eligible for special education, with 37% of those identified having a Specific Learning Disability. Perhaps more alarming, 13% were identified with Autism. These elevated special education percentages, for Specific Learning Disability and Autism, are disproportional within the county Hispanic student population. The following graph compares the percentage of county Hispanic K-12 students identified in four statistically significant special education categories against the national incidence rates.

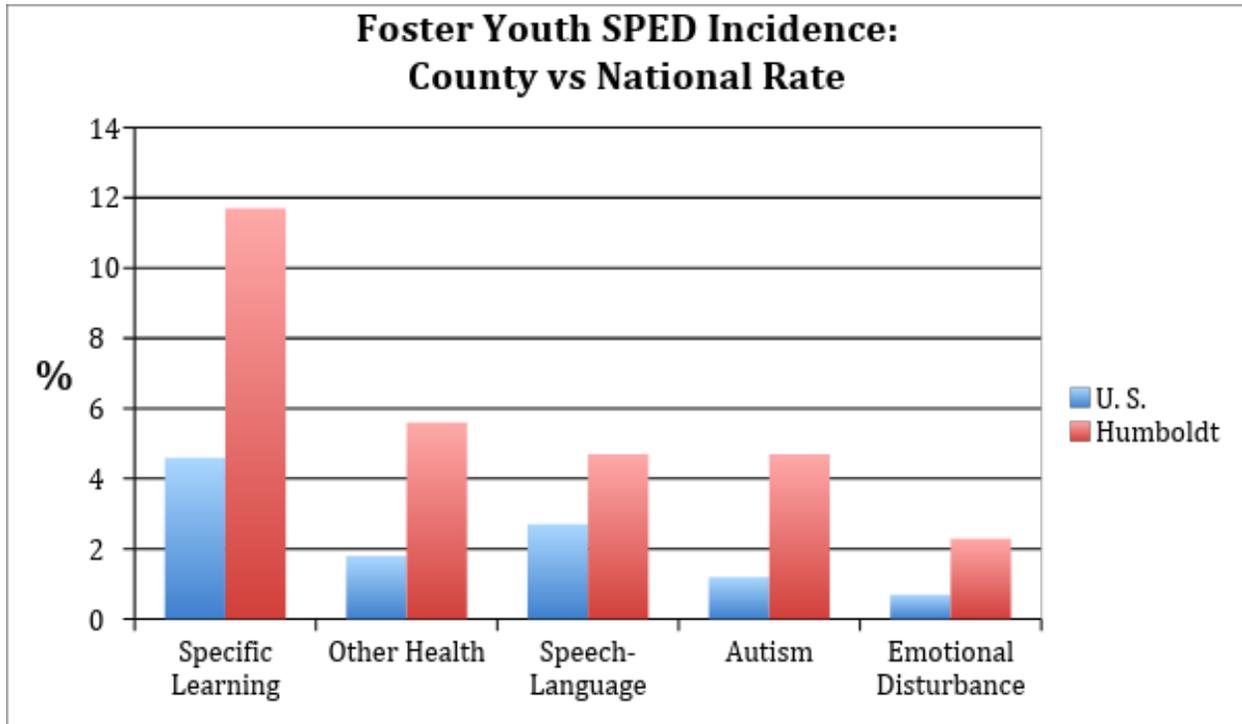


The number of Native American students attending K-12 in county schools now totals 7.7% of the population. This is the second largest minority group in the county education system. Disproportionality was found within enrollment numbers of students of Native American origin. The HCCGJ found 22% of these students had been identified as eligible for special education, with 52% of those identified having a Specific Learning Disability. Just as concerning, 8% were identified with Autism. These elevated special education percentages, for Specific Learning Disability and Autism, are disproportional within the county Native American student population. The following graph compares the percentage of county Native American K-12 students identified in four statistically significant special education categories against the national incidence rates.



Although foster youth are not a minority group, the HCCGJ did find disproportionality when comparing foster youth in special education to the national incidence rate of 25%. The HCCGJ found 33% of foster children in K-12 had been identified as eligible for special education. Even though they accounted for only 1% of the total K-12 school enrollment their numbers in special education are alarming.

When reviewing the thirteen disability categories, the HCCGJ found disproportionality present within four special education disability categories. These elevated special education percentages, for Specific Learning Disability, Other Health Impaired, Autism, and Emotional Disturbance, are disproportional within the county foster youth K-12 population. The following graph compares the percentage of county foster youth identified in five statistically significant special education categories against the national incidence rates.



### Review of IEPs Provided

The HCCGJ received copies of redacted IEPs provided from multiple sources, including parents. It was a random sample of IEPs from a variety of LEAs, not a comprehensive review of every IEP in Humboldt County. These IEPs were reviewed for adherence to California standards in the areas of:

- documented evidence of appropriate intervention
- assessment requirements
- satisfaction of eligibility requirements
- special factors consideration
- special education program placement
- ethnicity
- foster placement
- language acquisition consideration

During our review, the HCCGJ found some areas of concern, the most glaring of which was the limited number of assessments administered to determine eligibility. The majority of the IEPs reviewed showed only a single assessment in each area administered to determine ability, process deficits, and type of deficit. The second area of concern was the paucity of evidence that cultural, linguistic, or environmental factors were considered. There was a statement such factors had been considered, but no mention of what steps were taken to rule out those factors. In fact, no mention of test administration in a child's primary language, for English Language Learners, was found.

Attention and Attention Deficit Disorder were the most commonly used criteria for eligibility within Specific Learning Disability guidelines for the Native and foster youth populations. There was a significant number of Hispanic youth identified under Specific Learning Disability as well.

### **How Child Welfare Services Influences Referrals to Special Education**

According to many articles on the topic and interviews of social workers, court appointed special advocates, foster parents and educators, the number of foster youth referrals for special education is very high. Numerous sources told the HCCGJ that special education services are highly sought for foster youth. Some professionals associated with the child welfare system seek to expedite and bypass the intervention system by writing letters requesting an assessment. Some Humboldt County school administrators have successfully argued for intervention supports, including checking vision and hearing needs, but this is not consistently applied. Other local school administrators yield to the requests without seeking to arrange appropriate interventions.

The HCCGJ heard from several social workers and court appointed special advocates who felt they must make requests to bypass the referral process and move straight to assessment because, in their opinion, schools often ignore the needs of transient students such as foster youth. Some child welfare workers complained foster youth move too often to benefit from interventions. The HCCGJ heard from a number of interviewees that what Humboldt County needs is "more special education."

The court appointed special advocates (CASA) program provided the HCCGJ with a copy of its training manual, which contained a section about special education. The HCCGJ found this section outdated and missing substantive information. Those interviewed also expressed a need to bypass the intervention process demonstrating a limited understanding of cultural, linguistic, and environmental factors.

### **How County Schools Are Responding**

The HCCGJ found evidence of some schools referring 80% or more of their Native American and Hispanic students for special education, believing them to have learning disabilities. We also found evidence of some schools taking positive steps to develop support programs for students based upon their cultural learning styles. These include intensive intervention in language arts and math, all under the general education umbrella. Some schools have robust English Language Development programs and intensive instruction in reading. There are schools focusing on general education solutions to bolster children's learning without resorting to special education referrals. The HCCGJ found a couple of programs offering dual immersion, classrooms which offer instruction in two languages, enabling children to learn to read in their primary language while learning a second language at the same time.

Foster youth were referred to Special Education at an even higher rate, especially as the grade levels rise. According to our interviews and records obtained, 99% of Humboldt County foster youth without an IEP were referred for assessment upon reaching high school. The HCCGJ learned some schools offered rotational intervention services, allowing for intensive work with a reading specialist. We also heard from some child welfare workers and foster parents that if one knows the right people to ask, one can get services for their particular youth. Without such knowledge, it can take a long time for foster youth to be provided appropriate intervention. The HCCGJ believes it is this frustration which prompts some to bypass interventions to request assessment.

The SELPA and HCOE have offered and continue to offer training about interventions and the IEP process. The HCCGJ reviewed an outline of a comprehensive training offered to Child Welfare Services (CWS) in 2017. The outline indicated it had been a thorough and detailed presentation of the laws, processes and issues. When asked about this training, none of the social workers or court appointed special advocates interviewed had attended or were even knowledgeable it had been offered. They mentioned mentors available to contact for information about special education, but indicated there was minimal time for trainings due to high caseloads.

Training attendance for educators was likewise limited. Administrative staff were much more likely to have attended trainings than classroom teachers. A brief search of the HCOE training opportunities showed as of May 5, 2018, out of 50 slots, zero were filled for a May 7, 2018 training on interventions and supports for English Language Learners. A few educators mentioned limited time and cost constraints as reasons for lack of attendance at trainings.

### Conclusions

During the course of this investigation the HCCGJ learned many things about our special education system, the first and foremost is we **do** have a problem in Humboldt County. Too many children of Native and Hispanic heritage who may not have disabilities are being placed into special education programs. Foster youth are overrepresented in high numbers within special education programs.

There are intervention strategies to keep children in the general education programs but there is a mindset by educators and other professionals to bypass this part of the process. There seems to be a lack of understanding about the importance of ruling out cultural, linguistic, and environmental factors when making decisions about children's educational needs. Many educators the HCCGJ interviewed mentioned there was limited knowledge of second language development and culturally appropriate educational strategies.

A lack of understanding also exists regarding the long term ramifications of placing into special education children who do not need to be there. Too much emphasis is placed on removing children from general education classrooms and not enough on keeping them there, even though placement in the Least Restrictive Environment has been upheld by the courts. Special education laws are clear but not universally followed by all county schools.

There are knowledgeable educational professionals who offer training about special education, culturally appropriate teaching, English language development, and strategies for teaching children of poverty. Not enough staff working with youth in the public schools attend these trainings but they need to do so. All of these factors combine to indicate Humboldt County does not need "more special education," but rather, more intervention.

## FINDINGS

- F1. The percentage of students placed into special education in Humboldt County far exceeds both the state and national norms.
- F2. Hispanic students are identified at a disproportionate rate as having a Specific Learning Disability and Autism and placed into special education, putting them at a lifelong disadvantage.
- F3. Native American children are identified at a disproportionate rate as having a Specific Learning Disability and placed into special education, putting them at a lifelong disadvantage.
- F4. Foster youth are identified at a disproportionate rate as having a Specific Learning Disability and placed into special education, compounding the disadvantages they already experience.
- F5. The disproportionate representation of Hispanic and Native American children in special education in Humboldt County may be due to unintentional bias and/or failure to follow the basic assessment standards, leading to inappropriate placement into special education.
- F6. The disproportionate representation of foster youth in Special Education in Humboldt County may be the result of over-referral of students who have adverse environmental influences on their development, leading to inappropriate placement into special education.
- F7. Many general education teachers, special education teachers, and school administrators have limited knowledge of how to appropriately evaluate children with diverse linguistic, cultural, or environmental backgrounds, leading to overrepresentation in special education.
- F8. Social workers, foster parents, and court-appointed special advocates may advise parents to circumvent the referral process, leading to inappropriate placement of some children into special education.
- F9. Without a staff regularly trained in non-biased assessment practices, the misidentification of children within special education may continue to increase, leading to a shift of funds from special education to general education and possible intervention by the Office of Civil Rights.

## RECOMMENDATIONS

- R1. The Humboldt County Civil Grand Jury recommends the Humboldt - Del Norte Special Education Local Plan Area (SELPA) initiate a comprehensive independent review of the initial and triennial Individualized Educational Plans (IEPs). This review must include analyzing assessments administered to verify eligibility criteria has been met and assessment standards followed, for all Hispanic, Native American, and foster youth, for each initial or triennial IEP completed during the 2017-18 school year. This review should be completed by December 1, 2018. **(F1, F2, F3, F4, F5, F6, F9)**
- R2. The Humboldt County Civil Grand Jury recommends the Humboldt - Del Norte Special Education Local Plan Area (SELPA), upon completion of R1, establish a review process to verify future assessments follow state standards for appropriate assessment practices, eligibility criteria, and proof of appropriate intervention. This process should be in place by June 1, 2019. **(F5, F6, F9)**

- R3. The Humboldt County Civil Grand Jury recommends the Humboldt County Office of Education and the Humboldt-Del Norte Special Education Local Plan Area (SELPA) form a minimum of two assessment teams trained in non-biased assessment practices to offer team training to all county schools. These teams should each consist of an administrator, resource specialist, school psychologist, school nurse, and speech-language pathologist. These teams should be formed and trained by December 1, 2018. **(F9)**
- R4. The Humboldt County Civil Grand Jury recommends the Humboldt-Del Norte Special Education Local Plan Area (SELPA) present training to Child Welfare Services social workers, Court Appointed Special Advocates (CASA), and foster parents regarding special education law, ethics, purpose, and referral and assessment processes. This training should be scheduled by September 1, 2018 for the 2018-2019 school year and offered annually thereafter to all new hires. **(F8)**
- R5. The Humboldt County Civil Grand Jury recommends the Humboldt County Office of Education present training to all school district administrators and HCOE liaisons about special education law, ethics, purpose, and process. This training should be completed by September 1, 2018. The district administrators should then present the training to all teaching staff by December 1, 2018. **(F5, F7)**
- R6. The Humboldt County Civil Grand Jury recommends Humboldt County Department of Health and Human Services mandate biennial attendance by all staff with direct youth contact at the Special Education Local Plan Area (SELPA) trainings to be offered regarding special education law, ethics, purpose, and process. This initial training should be completed by December 1, 2018. **(F8)**
- R7.** The Humboldt County Civil Grand Jury recommends the Humboldt County Board of Directors of the Court Appointed Special Advocates (CASA), review and update their handbook and training materials to include the most current information regarding special education law, ethics, purpose, and process. The handbook and training materials should be revised by December 1, 2018. **(F8)**

## REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requires responses as follows:

- Humboldt - Del Norte SELPA **(R1, R2, R3, R4)**
- Humboldt County Office of Education **(R3, R5)**
- Humboldt County Department of Health and Human Services **(R6)**
- Humboldt County Board of Directors of the Court Appointed Special Advocates **(R7)**

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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