

## RESPONSE TO CIVIL GRAND JURY REPORT

Titled *Humboldt – We Have a Problem, But More Special Education Is Not the Answer*

From

HUMBOLDT-DEL NORTE SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)

Response by Mindy Fattig, Executive Director, Humboldt-Del Norte SELPA

Reviewed by HDN Superintendent's Special Education Policy Council, September 2018

### ***Introduction:***

The Humboldt-Del Norte SELPA is thankful for the Humboldt County Civil Grand Jury's (HCCGJ) focus and attention on this important issue. However, the SELPA is hesitant to arrive at the same conclusions as the HCCGJ. Although Humboldt County does have a higher percentage of students who are eligible for special education than state and national averages, the SELPA believes that, by and large, its member school districts are appropriately qualifying students for special education. Regardless of whether the SELPA agrees with the HCCGJ's factual findings, it does agree that more effective coordination of services needs to exist between school districts and the Humboldt County Department of Health and Human Services, as well as the Humboldt County Juvenile Probation Services and the Redwood Coast Regional Center (RCRC). The SELPA has been working to improve the coordination of services for children throughout the County for several years, and will continue to do so.

### ***Response to Grand Jury Findings:***

*F1. The percentage of students placed into special education in Humboldt County far exceeds both the state and national norms.*

It is recognized that Humboldt County's 16.5 percent special education enrollment rate is higher than the state and national average. However, there is little comparison in the report to "norms" in California special education. The HCCGJ states only that Humboldt County has the "highest percentage" of enrolled special education students of any other California county, but does not state how that compares to similar counties across the state. Comparisons to national rates are unclear, as the raw data is not included and does not appear to be cited in the Bibliography. The graphs are not labeled with exact numbers, and it is unclear from where the data comes or from what year/s. It appears that the graphs in the report rely on data published by the U.S. Department of Education, Office of Special Education Programs (OSEP) in its Individuals with Disabilities Education Act (IDEA) database for the 2015-2016 school year. Additionally, it is noted by the SELPA that, on page 13, the statement that "[t]he 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” is unsupported by a data citation and this would need further investigation.

*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.*

The SELPA cannot agree with any of findings 2 through 4, as it does not believe that being eligible for special education and/or receiving special education services puts any student at “a lifelong disadvantage” or “compound[s] the disadvantages they already experience.” Special education provides each eligible student with a free appropriate public education (FAPE).

These findings also rely on a misunderstanding of relevant legal standards with regard to special education eligibility. First, regarding disproportionality, all of the districts in the SELPA are small districts, which use an alternate risk ratio to calculate disproportionality, and a district is only in significant disproportionality if it is disproportionate in the same category two out of three of the previous years. Moreover, because of the small size of the majority of the school districts in Humboldt County, a very small number of children—sometimes even a single child—can place a school district in disproportionality in one or more categories. Humboldt County currently has no districts that are identified as significant disproportionality status for special education.

The HCCGJ’s findings misstate the law on eligibility for specific learning disability (page 8) and other health impairment (page 9), and incorrectly indicate that a medical diagnosis is sufficient to determine IDEA eligibility (page 5). The findings also state that “[o]ften overlooked, but extremely important, is the health evaluation. . . . Many students have been referred for a complete psycho-educational assessment only to find they needed glasses or were not getting enough sleep.” A health assessment is never overlooked, as it is required for all initial and triennial assessments. A school nurse conducts these assessments. Moreover, it is unclear where the “[m]any students” referred to in this section are attending school, as this simply is not a problem in the school districts in Humboldt County. That said, the lack of access to medical services in the County does contribute to a higher incidence of students eligible for special education.

Finally, the HCCGJ expressed concern of the percentage of Hispanic youth found to be eligible under the educational category of autism. The criteria to be eligible under the IDEA as a student with autism are different from the criteria to be diagnosed with autism. In some cases, children diagnosed with autism are not eligible for special education and related services under the IDEA eligibility category of autism. However, it is rare that a student who is eligible under the IDEA category of autism has not been diagnosed with autism. Accordingly, students who qualify for special education typically have a medical diagnosis of Autism Spectrum Disorder, and often are clients of RCRC.

*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.*

As stated previously, the SELPA does not believe that any significant number of children are inappropriately made eligible for special education by school district IEP teams. IEP teams must follow the eligibility standards established in Education Code section 56026 and 5 C.C.R. section 3030, and each assessment must be based on multiple measures, including observations. Each student's IEP is reviewed by the IEP team at least once a year, and students are reassessed for eligibility at least every three years, often by an entirely different team of assessors. This regular review ensures that a student is exited from special education when he or she no longer meets the legal criteria to receive special education and related services.

It is the SELPA's experience that unintentional bias leads to under identification, while a desire to support a child not receiving supports elsewhere leads to over identification. There are many potential causes for higher rates of special education eligibility in Humboldt County that are not a result of unintentional bias or a failure to follow basic assessment standards. Counties in California that have the lowest percentages of students in special education often have well-established early intervention services in schools, with support and coordination from other local agencies such as the Regional Center and/or the child welfare agency. These early intervention services do not "cure" a student's disability, but they can ameliorate the educational effects of any disability, which would make the student ineligible for special education. Accordingly, schools that have well-developed general education supports, such as Multi-Tiered System of Supports (MTSS) or Positive Behavioral Intervention and Supports (PBIS), typically have a smaller percentage of students who meet the special education eligibility criteria. Early intervention services are difficult to successfully implement in Humboldt County due to the chronic absenteeism among students in the county. Moreover, chronic absenteeism artificially increases overall special education numbers because a student who typically would be expected to be exited from special education after one to three years cannot make sufficient progress to do so with poor school attendance. Finally, as the HCCGJ notes, educational research has shown that children born into poverty have a higher rate of disabilities.

*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.*

This finding reflects a misunderstanding of the law regarding referral of students for special education evaluation. The law, commonly referred to as “child find,” requires a school district to identify, locate, and evaluate all children with disabilities, regardless of the severity of their disabilities. A student should be referred for a special education assessment when there is reason to believe the student may require special education and related services to benefit from their education because of a suspected disability. An individual referral is not dependent on whether or not the child is probably or likely eligible. Multiple events can trigger a school district’s obligation to refer a child for special education assessment, including performance below grade average in basic academic functions such as reading, failing grades, behavior and discipline problems, significant absences from school, concerns expressed by parents and/or teachers, signs of substance abuse, medical diagnosis of recognized disability, psychiatric hospitalizations, suicide attempts, and/or request for evaluation by parents.<sup>1</sup>

Thus, the statement that “many [staff] believe they are doing the right thing by referring academically and behaviorally low-performing children to special education,” is true. The law requires staff to refer for assessment academically and behaviorally low-performing children.

*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.*

The SELPA is not required to respond to this factual finding. However, the HCCGJ should be aware that general education teachers and school administrators are not the appropriate personnel to evaluate children with regard to special education services and qualification for said services. Special education teachers play a small role in the evaluation of children, typically limited to assessment in the areas of academics and transition needs. The school psychologists, who are qualified, typically advise IEP teams on whether or not a student meets the legal qualifications to be eligible for special education under the IDEA and related state law.

*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.*

The SELPA is unclear what is meant by “circumvent the referral process,” and, as stated above, believes that its member school districts are following the law with regard to eligibility of students. The SELPA is aware of school districts receiving what appear to be form letters from

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<sup>1</sup> This list was compiled by an administrative law judge for the Office of Administrative Hearings (OAH) in OAH Case Nos. 2010090212, 2010100932, Decision at 20 (July 2010). The OAH hears disputes of provision of a FAPE to students in California.

other state agencies and attorneys representing parents that make demands for specific assessments, eligibility, and/or placements. It is not uncommon that the parents for whom those letters were written refuse to participate in intervention services such as MTSS and/or Student Study Teams prior to assessment for special education eligibility.

*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.*

The SELPA disagrees with this finding. As stated above, it does not agree that children are misidentified as eligible for special education in any significant number. Moreover, the alleged negative repercussions cited by the HCCGJ are not based in fact. A school district's significant disproportionality can lead to a required shift in some federal funding to general education intervention programs; however, that is not necessarily related to alleged misidentification of children.

***Response to Grand Jury 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)*

This recommendation will not be implemented, as it is not warranted or reasonable. The SELPA does not have the staffing and capacity to conduct comprehensive independent reviews of every initial and triennial IEP and assessment plan. The SELPA currently analyzes initial and triennial assessments through data-identified noncompliance, performance indicator reports, and disproportionality reports. Additionally, all reviews mandated by the CDE are conducted.

*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)*

Because the SELPA is not implementing Recommendation 1, it cannot subsequently implement Recommendation 2. However, the SELPA does already review assessments, eligibility criteria, interventions, and IEPs generally on behalf of parents or school districts who make such a

request, or when required by the CDE as part of a compliance complaint resolution. The SELPA completes such reviews on a regular basis.

*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)*

This recommendation requires further analysis. By December 31, 2018, SELPA, in coordination with Humboldt County Office of Education, will assess current non-biased training opportunities with school personnel and outside agencies. Based on any identified gaps, SELPA will collaborate with HCOE, school districts and outside agencies, as appropriate, in providing professional development opportunities. Currently, SELPA is providing multiple training opportunities that will incorporate non-biased assessment practices. The current list of planned trainings by the SELPA is attached.

*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)*

This recommendation will not be implemented because the SELPA does not have control over the trainings of any of the identified parties. However, the SELPA Director is a member of the DHHS Taskforce and DHHS Educational Workgroup, both of which are planning various trainings. The SELPA Director trained social workers and probation officers last school year on special education matters relevant to their jobs. Finally, the SELPA Director is presenting to a local foster parent group called “New Directions” in October 2018. The SELPA Director will conduct further trainings at the request of any of the identified parties.