

Race, Language and Special Education in New York City

© 2000 by the Metropolitan Parent Center of Sinergia, Inc.

Written by Donald A. Lash
Counsel/Director, Metropolitan Parent Center of Sinergia, Inc.
with Jennifer Weiser
2000 Law Graduate, New York University Law School

Executive Summary	.....	1
I. Introduction		
A. The MPC Over-Representation Project	.....	4
B. Organization of this Study	.....	5
C. Terms and Concepts	.....	6
D. Scope and Limits of Study	.....	11
E. Review and Comment Process	.....	11
II. Historical and Current National Context		
A. Historical Background	.....	14
B. National Context	.....	18
III. Over-Representation and the Law		
A. Education and the US Constitution	.....	21
B. Civil Rights Law and Education	.....	21
C. Special Education and Race	.....	22
IV. Race and Language in the NYC Special Education System		
A. The Data	.....	36
B. Demographics of NYC School Enrollment	.....	39
C. Demographics of Special Education	.....	42
V. Policy Implications		
A. Strengthening General Education	.....	66
B. Changes in the Service Delivery System	.....	70
C. Promoting Cultural Competence	.....	73
D. Supporting More Effective Communication	.....	76
VI Recommendations	.....	77
Notes	.....	80

Charts, Tables and Maps

Figure II-1: Percentage of student enrollment by disability and race, 1992	.....	19
Figure IV-1A, B: Change in general and school-age population from 1960-1996	.....	39
Table IV-1: NYC 1996-1999	.....	44
Table IV-2: Selected Service Category Recommendations – 1998-99	.....	58
Figure IV-2: “Odds Ratios” in Referral – Black Students – All Districts	.....	48
Figure IV-3: “Odds Ratios” in Referral – ELL Students – All Districts	.....	49
Figure IV-4: “Odds Ratios” - Restrictive Placement for Black Students – All Districts	.....	50
Figure IV-5: “Odds Ratios” - Restrictive Placement for Hispanic Students – All Districts	.....	51
Figure IV-6: “Odds Ratios” - Restrictive Placement for ELL Students – All Districts	.....	52
Table IV-1: Referral Trends – New York City 1996-1999	.....	58
Table IV-2: Selected Service Category Recommendations – 1998-99	.....	60
Table IV-3: District Plans to Reduce Disproportionality	.....	61
Table IV-4: Report of Parent Focus Group, July, 2000	.....	65

Appendix A: City-wide and Borough Data

Map 1: Neighborhoods and School Districts

Map 2: Percentage of Students Who are English Language Learners – 1998-99

Map 3: Percentage of Students Eligible for Free or Reduced Price Lunch – 1996-97

Map 4: Teacher Certification Status – 1996-97

Map 5: Schools Under Registration Review – January, 2000

Figure A-1: ELL Enrollment by Language – Percentages – 1998-99

Figure A-2: ELL Enrollment by Language & Borough - Number Enrolled – 1998-99

Figure A-3: ELL Enrollment by Language & Borough – Percentages – 1998-99

Appendix B: Data Profiles – All Community School Districts

'97-'98 General Education Enrollment

'97-'98 ELL General Education Enrollment

Referral Rates by Race and ELL Status 1996-99

Initial Placements by Race – Numbers of Placement Recommendations – 1996-99

Initial Placements by Race – Percentages of Placement Recommendations – 1996-99

Initial Placements by ELL Status – Numbers of Placement Recommendations – 1996-99

Initial Placements by ELL Status – Percentages of Placement Recommendations – 1996-99

Appendix C: Data Tables

Table C-1: Referral Rates 1996-1999

Table C-2: Initial Placement by Race – 1996-99

Table C-3: Initial Placement by ELL Status – 1996-99

Race, Language and Special Education in New York City

Acknowledgments

The following persons, listed in alphabetical order, contributed to the activities of the “Over-Representation Project,” from which this report was derived:

Jill Chaifetz, Esq., Advocates for Children of New York, Inc.
Jennifer Jiménez, Metropolitan Parent Center, Youth Opportunities Program
Melih Karakullkcu, Columbia Law School
Dave Kovel, Columbia Law School
Richard M. Lash and Myrta Cuadra-Lash, (Founders) Metropolitan Parent Center
Roger Maldonado, Esq.
Maggie Moroff, Esq., Least Restrictive Environment Coalition
Lucy Ely Pagán, Northeast Regional Resource Center, Institute for Program Development, Trinity College of Vermont
Lourdes Rivera-Putz, United We Stand of New York, Inc.
Jonathan R. Werner, Columbia Law School
Nivia Zavala, Ph.D., Hunter College
Dean Zias, Pratt Institute Center for Community Economic Development

A number of other individuals provided technical assistance or advice, and many people agreed to review this report in draft form. Because of the positions some of these persons hold within the Board of Education or interacting with the Board, we chose not to ask them whether they would like their participation to be a matter of record, especially since their assistance was solicited before they had seen the report. Nevertheless, I must express my gratitude for their contributions, which have immeasurably enriched the final product. Participation in the project or review process does not necessarily imply agreement with the analysis or conclusions in the report.

Finally, we would like to express our gratitude to the busy parents and others who have taken the time to attend our forums and share their thoughts, and to the parents who put their trust in us every day in matters affecting the future of their children.

DAL

Note:

This report was supported by the New York City Region of the “Lifelong Services Network,” (LSN) an informal coordinating body made up of agencies providing services through the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) of the New York State Education Department. With the LSN’s endorsement, support was obtained from VESID. Approval of the work-scope and project design came from LSN, and not from VESID itself. The opinions expressed are not necessarily those of any other member of the LSN.

Executive Summary

Findings

A review of three years of information concerning 1) referral for evaluation of eligibility for special education services and 2) decisions made about special education services after referral in all 32 community school districts, reveals that, despite efforts in some districts to reduce disproportionality in referral and service recommendations according to race/ethnicity and language status, over-representation of black and Latino students, particularly English Language Learners, persists. Progress in some districts has been offset by growth in disproportionality in others. Progress in certain types of decisions affecting certain groups of students has been accompanied in some districts by growth of disproportionality in other types of decisions and/or decisions affecting other types of students.

- Referral rates declined for every group, but they declined most dramatically (38%) for Asian students. They declined the least (27%) for black students. Thus, while referral rates fell across the board, the disparity in the extent of decline meant that disproportionality in some categories increased. Citywide, a black student had a 30% greater likelihood than a white student of being referred for evaluation of eligibility for special education in 1996-97. In 1998-99, a black student had a 40% greater likelihood.
- In 1996-97, there were 6 districts in which black students were more than twice as likely as a white student to be referred for evaluation. (In other words, the “odds ratio” for referral of black students relative to white students exceeded 2.) In 1998-99, there were 5.

- In 1996-97, there were 24 districts in which a student with a first language other than English was more than twice as likely as a student whose first language was English to be referred. In 1998-99, there were 23.
- In 1996-97, there were 13 districts in which, after referral, a black student was more than twice as likely as a white student to be recommended to attend a special education class rather than receive special education services in a general education class. In 1998-99, there were 7.
- In 1996-97, there were 8 districts in which a Hispanic student was more than twice as likely to be recommended for a special education class as a white student. In 1998-99, there were 7.
- In 1996-97, there were 4 districts in which a student with a first language other than English was more than twice as likely as a student whose first language was English to be recommended for a special education class. In 1998-99, there were 3.

In each indicator category described above, districts that had odds ratios higher than 2 in 1996-97 were below that point two years later, while districts that were initially not above that point had seen their odds ratios rise above 2 during the three years of data collection. Thus, while there has been progress in reducing disproportionality, it has been inconsistent across the system.

There is a tremendous variety of patterns of disproportionality among the various school districts. Corrective action seems flawed in several respects.

- District personnel involved with making decisions about individual children appear not to be aware of the disproportionality pattern within their district, or of any strategy identified for correction.

- District plans to correct disproportionality appear not to be carefully crafted to deal with the unique patterns to which they relate.

Thus, where there has been improvement, it is difficult to identify with precision which corrective strategies may have contributed. Where there has been growth in disproportionality, it is difficult to form hypotheses about the causes of such growth.

Recommendations:

- Data relating to disproportionality in special education should continue to be collected. It should be more broadly disseminated and analyzed. Guidelines should be articulated for the development, evaluation and revision of corrective plans, including the identification of effective strategies.
- Disproportional referral and placement in special education should be seen as symptoms of the problems of general education, rather than as a discreet problem to be remedied by “fixing the numbers.” Existing and projected initiatives to improve the capacity of the system to meet the needs of students experiencing difficulty in general education should be coordinated with efforts to reduce disproportionality. Such coordination is essential to ensure that as it occurs, school improvement benefits *all* students.
- A commitment should be made by the Board of Education to support districts with patterns of disproportionality with staff development and technical assistance, particularly in the areas of cultural competence, positive behavior intervention, reading instruction and bilingual education.
- Additional quality research should be undertaken to measure the impact of health, socio-economic and demographic factors on disproportionality.

I. Introduction

A. The MPC Over-Representation Project

This report is the culmination of a project undertaken by the Metropolitan Parent Center (MPC) of Sinergia, Inc. in the fall of 1998. The purpose of the project was to contribute to the understanding of the issue of disproportionate representation of black and Latino students in New York City in special education generally, and in restrictive placements within the special education system. Toward that end, the following activities were planned and carried out:

1. Analysis of available data and presentation in more readily comprehensible formats.

The format included narrative explaining the relevant concepts and terminology, tables, pie and bar charts and maps. The narrative and legends and labels on the tables and graphics were translated into Spanish.

2. Convening of borough-wide forums in Manhattan, Brooklyn and the Bronx¹. The forums were attended primarily by parents of students receiving special education services, although some were attended by professionals and interested members of the community. Equipment was used at all sessions to allow simultaneous translation into and from Spanish. Each attendee was given data (described in detail hereinafter) relating to New York City as a whole and to the community school district in which

¹ The choice of these three boroughs was based on the concentration of persons seeking service from the MPC and available time and resources. The omission of Queens and Staten Island was not based on any criteria or determination based on the data. Queens and Staten Island parents were represented in the review process undertaken with regard to drafts of this report.

they live². Smaller presentations were made to professionals in two school districts, and to students at classes at a graduate program for special education teachers and educational evaluators.

3. Solicitation of responses and comments from parents attending the forums. A formal survey was used, and attendees were encouraged to discuss the data being presented in light of their own experiences with the special education system.
4. Review of professional literature and national data.
5. Synthesis of data, parents' responses and comments and research reviewed.

B. Organization of this Study

The balance of the introductory section will define relevant terms and concepts as they will be used in this report and will define the scope and limitations of our work, as well as the review process to which this document was subjected in draft form. Section II will present the issue of minority over-representation in special education in historical and current national context.

Section III is an overview of the law, describing relevant statutes and leading cases. Section IV summarizes conclusions from the data presented in the appendices and incorporates the comments and responses of parents and professionals who have participated in the over-representation project. Section V contains a discussion of various policy issues that have an impact on over-representation, and Section VI contains recommendations.

² New York City is divided into thirty-two geographically defined Community School Districts. As will be explained hereinafter, available data contains significant exclusions, and therefore the figures for a particular district does not reflect all of the children receiving special education and living within that district.

The lengthy appendices contain maps and charts depicting three years of data about each of the thirty-two community school districts. Few if any readers will have an interest in absorbing this information sequentially along with the text. We believe, however, that the appendices are valuable reference tools for parents, educators, advocates, policy-makers, elected officials and persons involved with community-based organizations.

Both footnotes and endnotes have been used in this report. Footnotes (indicated by Arabic numbers) clarify or supplement text, while endnotes (indicated by lower-case Roman numerals) contain citations to source materials.

C. Terms and Concepts

The Individuals with Disabilities Education Act³ (IDEA) was enacted in the mid-1970's to remedy the fact that many school systems failed to provide educational services to students with physical and mental disabilities. The statute provides that a student with a disability is entitled to a *free, appropriate public education*. Because the question of what is *appropriate* for a particular student must be based on the needs and abilities of that student, Congress gave meaning to the entitlement by defining a process to be followed in determining whether a student has a disability and what, if any, services and modifications the student requires. Essentially, the process consists of the following steps:

- *Referral* (the request by a parent, educator or other authorized person that a child be evaluated for eligibility for special education services);

³ The IDEA is codified at Title 20, United States Code §1400 et seq. It is often referred to by its original publication citation, Public Law 94-142 and its earlier titles, the Education for All Handicapped Children Act or the Education of the Handicapped Act (EHA). The US Department of Education has promulgated regulations under the IDEA at Title 34, Code of Federal Regulations, Part 300. The IDEA's safeguards were incorporated and given greater definition in Article 89 of the New York State Education Law and Title 8, New York Code of Rules and Regulations, Part 200.

- *Evaluation* (formal testing with documentation of results, impressions, conclusions and recommendations by professionals from a variety of disciplines, which in New York includes a psychologist, educational evaluator, social worker and such other evaluators as may be appropriate in a particular case).
- *Deliberation by a multi-disciplinary team* to consider *classification* (the assignment of one of the disabilities listed in IDEA⁴) and to develop an *Individualized Education Program (IEP)* (a description of the child's functioning and needs and a detailed statement of the services to be provided and the manner in which they are to be delivered).
- *Selection of a particular program or environment in which the student will receive services.*

Academics have described the process as being based on a *medical model*⁴. The medical model assumes that data from clinically validated testing instruments yields objective information relating to the different areas of a child's development that can be considered by professionals to determine what, if any, disabling condition a child may have. The parent's role is to provide input as appropriate and essentially give informed consent to the recommended educational program. The assumption on which the model is based is that disabilities resulting in a need for special education can be objectively identified through evaluation and review by a multi-disciplinary team.

One of the guiding principles of IDEA is that students with disabilities should not be segregated from their non-disabled peers. The multi-disciplinary team is under an obligation to ensure that the location in which the IEP is to be implemented is the *least restrictive environment* in which the student's educational goal can be achieved – the so-called “LRE mandate.” The “restrictiveness” of a particular program can be thought of

⁴ The disability classifications used in New York are *Learning Disability, Speech Impairment, Emotional Disturbance, Mental Retardation, Autism, Traumatic Brain Injury, Cerebral Palsy, Multiple Disabilities, Orthopedic Impairment, Hearing Impairment, Vision Impairment* and *Other Health Impairment*. A pre-school student is not assigned one of these classifications, but is simply classified as a *Preschooler with a Disability*. 8 NYCRR Part 200.

as the extent to which a student will be removed from participating in general education. A “part-time” special education program, where a student attends a general education class but may leave for short periods to receive special instruction or services, is less restrictive than a “full-time” special education program in a small class comprised of students with disabilities, perhaps with staff assigned in addition to the teacher. A full-time special education program that provides a student with opportunities to participate in activities with non-disabled peers is considered less restrictive than one which does not, and which is perhaps in a separate building with no general education classes.

Both state and federal law provide that professionals involved in the process must be vigilant in ensuring the integrity of the process. Variables such as race, ethnicity, reliance on a language other than English, cultural differences and poor quality of early educational opportunities are not supposed to be factors in the determination as to whether or not a student is disabled, or in the selection type of environments for the implementation of IEPs.ⁱⁱ

If these variables were not factors, one could expect the proportion of students from a defined racial or language-status group, or *cohort*, classified as disabled and deemed eligible for special education to be *roughly* the same as that cohort’s proportion of general education enrollment. Similarly, if the identification of an appropriate educational program were related solely to a student’s disability-related learning needs and not to his or her background, one would expect to see the proportion of students from all defined racial or language-status cohorts recommended for a program type to be *roughly* the same. As we will use the term in this report, *over-representation* occurs:

- When students from a particular cohort are referred for initial evaluation of eligibility for special education at a higher rate than the cohort as a percentage of general education enrollment. (For example, if African-American students in a certain district comprise 35% of the general education enrollment, but 40% of the students referred for initial evaluation are African-American, one might say there is over-representation of African-American students in initial referrals from that district.)
- When students from a particular cohort are more likely to be recommended to attend restrictive special education classes than students from other cohorts. (For example, if 60% of students with a first language other than English evaluated in a particular district are recommended for a full-time special education classes, but only 40% of students whose first language is English are recommended for such classes, one might say there is over-representation of English Language Learners in restrictive settings.)

- When students from a particular cohort are more likely to be classified with one of the disabling conditions (listed above at footnote 4) than students from other cohorts. (For example, if one found that a higher percentage of African-American students than white students are classified as Emotionally Disturbed, and that a higher percentage of English Language Learner students than students whose first language is English are classified as Speech-Impaired, one might say that there is over-representation of those cohorts in those classifications.)

The term *Limited English Proficient*, or *LEP*, is defined by a federal statute, the Bilingual Education Act.ⁱⁱⁱ Currently in New York, a student is considered Limited English Proficient if the student has another first language *or* a language other than English is spoken in his or her home *and* the student scores at or below the 40th percentile on the English Language Assessment Battery (LAB). If the other relevant language is Spanish, a Spanish Language Assessment Battery should be administered. New York City does not currently have validated LAB tests to measure proficiency in languages other than English and Spanish. The term *English Language Learner*, or *ELL*, is increasingly being used in preference to “LEP student.” The compelling rationale for this is that the former term describes a positive process, while the latter suggests that bilingualism is a limitation. Although the Board of Education used the term LEP in collecting the data we cite, both the State Education Department and the Board have begun using ELL. In response to comments on an early draft of this document, we made the decision to use ELL as a synonym for the statutorily defined LEP. Having done so, of course, we found ourselves using the completely absurd term “non-English Language Learner,” a label we hope cannot be applied in its *literal* meaning to any child living in the United States. By this term, we mean students who are not learning English *in addition to another first language*.

D. Scope and Limits of Study

The purpose of this report is to discuss issues arising from data collected by the New York City Board of Education, and to consider these issues in light of educational research, legal standards and the comments of parents. To the extent that original data was collected from parents, no pretense is made that this data collection constitutes statistically valid sampling or that the data itself can be relied upon to support generalizations about families and students in New York City. To the extent that the participants in the project have brought to bear their experiences working with families and students, no pretense is made that the project benefited from original clinical research. We believe, however, that the project has generated useful suggestions for further research. We also believe that conclusions can be drawn about the need to strengthen general education, including bilingual instruction, promote cultural competence, support more effective communication and collaboration between parents and educators and integrate considerations of equity with the movement for inclusion of students with disabilities in community schooling. The last section of this report contains these suggestions for policy and research, and we hope they will contribute to the

continuing dialogue on providing quality education to *all* students in New York City.

E. Review and Comment Process

Organizationally, the MPC is focused on advocacy and parent training. It is not an academic program or “think tank” for policy analysts. None of the members of its seven-person staff has a background as a policy analyst, although all are keenly interested in education policy and politics. Day-to-day, we are immersed in the problems of individual children whose parents have requested advocacy, and small groups of very involved parents who seek training. In preparing this report, we felt it was essential to “validate” our conclusions and analysis by creating a broad pool of commenters representing various “stakeholder” groups. We identified the following stakeholders:

- Parents of students receiving special education services;
- Parents of students who had not been classified under IDEA but who were failing academically, were at risk of failing academically, or had been identified as having a behavior problem;
- Persons employed by the Board of Education in a policy-making capacity, including people whose responsibilities related to special education, general education, and/or bilingual education;
- Persons employed by the Board of Education at the level of instruction and decision-making for individual children;
- Persons employed by other advocacy/legal service organizations actively engaged in educational advocacy
- Persons employed by the New York State Education Department, including persons in policy-making and monitoring capacities;
- Persons employed by the United States Department of Education, including persons in policy-making and monitoring capacities; and
- Persons who had worked on the issue of disproportional representation or education reform in an academic context.

We convened a focus group of parents, who were given small honoraria for their participation. We chose not to recruit parents who were receiving services from the MPC, as we thought the ongoing relationship with MPC staff members might inhibit critical comment. We relied on Advocates for Children of New York to put together the focus group. In addition, comments were solicited from a number of other parents, some of whom were involved with parent advocacy and training organizations.

Draft copies were sent or given to 36 individuals representing the remaining stakeholder groups. Some had previously agreed to furnish comments. Others, particularly those in policy-making and monitoring positions, were sent unsolicited copies. Comments were not received from all of those to whom drafts were distributed, but we received feedback from representatives of each stakeholder group.

Finally, all members of the Lifelong Services Network were invited to participate in a review session, and some chose to do so. These individuals fit into several of the stakeholder groups listed above.

II. Historical and Current National Context

A. Historical Background

The passage in 1975 of Public Law 94-142, the Education for All Handicapped Children – currently known as the IDEA, is a dividing line in the history of educational services for students with disabilities in America. Prior to this event, states often made little or no effort to educate students with apparent or severe disabilities. Many were relegated to large institutions or “hospitals” which were primarily custodial in nature. Parents of children with autism and mental retardation were advised or pressured to place their children in such facilities as the infamous Willowbrook on Staten Island, and no services were available to support them if they wished to keep their children at home. Children with average or above-average cognitive ability who had sensory impairments or physical disabilities such as cerebral palsy were frequently labeled “retarded” or “feeble-minded” because they experienced difficulty with speech or because they had not received the same educational experiences as their peers. In any event, the public school system generally took no responsibility for educating these children, for a variety of reasons. There was an assumption that many people with mental retardation were not “educable”, and the public schools lacked the knowledge, experience or motivation to develop appropriate educational programs. Local school districts also did not want to assume the cost of adapting to meet the needs of students who were deaf and blind, and preferred for such costs to be borne by counties, states and private charities. Students with physical disabilities often could not attend school simply because schools were not accessible and because necessary non-instructional services were not available. Finally, some school officials were fearful of assuming responsibility for students with special needs.

Students with other disabilities might be permitted to attend school, but would not be likely to receive an effective education. Students with learning disabilities or emotional disturbance might be considered lazy or oppositional, and presumably would be at risk of failing, being expelled or voluntarily dropping out.

Thus, the themes of segregation and lack of efficacy of educational programs with respect to students with disabilities were present long before the passage of P.L. 94-142. Similarly, the use of supposedly objective criteria in such a way that non-white Americans were likely to be classified as less intelligent than white Americans has a very long history. In the 19th century, racist ideology began to acquire a pseudo-scientific veneer, as arguments based on heredity were used to justify discrimination against blacks and immigrants from southern and Eastern Europe. The first I.Q. test was developed in 1905, and its widespread use in the U.S. began with servicemen during World War I. White servicemen averaged higher scores than blacks, and these results were used by some to advance “scientific” explanations about genetic differences in cognitive ability. The fact that blacks from the industrialized north scored higher than whites from the rural south should have raised suspicions about the validity of these arguments, but

their proponents explained this fact away by describing the northern blacks as the elite of an inferior race.^{iv}

The “eugenics” movement of the 1920’s carried some of the faulty premises of racist genetics to a chilling extreme, as legislation was passed in some places to justify institutionalization and, in some cases, sterilization, of “imbeciles” and “mental defectives”. As embraced by Buck v. Bell, the 1927 case in which the Supreme Court legitimized involuntary sterilization, such measures were likely to be carried out only against the poor and uneducated, and the criteria used to identify persons alleged to be mentally disabled were highly suspect.^v (Ironically, however, African Americans were largely spared from this horrific policy, as they tended to be excluded from the institutions in which involuntary sterilizations were carried out.^{vi})

Reliance on “scientific” principles to sort children by “natural mental endowments” was one of the methods of “progressive administration” for which the New York City schools were hailed during the 1920’s. Test results were used to identify “slow learners,” who were separated from children deemed brighter, and performance could result in a student being labeled “educationally retarded.” There was a strong correlation between ethnic background and academic status. As many as 40% of the children of first-generation European immigrants were considered “educationally retarded.”^{vii} As immigration from Europe subsided in the 1920’s and was followed by massive migration of blacks and, later, Puerto Ricans, similar disparities were seen.^{viii}

Finally, the long tradition of racial segregation in American education should be noted. Segregated schools were enshrined in law in southern states from the end of Reconstruction in 1877 until the Supreme Court’s decision in *Brown v. Board of Education* in 1954. Segregation was maintained in other areas by discriminatory housing practices, exclusionary zoning, policies favoring suburbanization and racially motivated districting and school siting decisions.^{ix}

These practices have continued long after segregation as a matter of law ended, and, combined with reliance on local property taxation to finance public education, have resulted in what Jonathan Kozol called “savage inequality” in the quality of educational services delivered to non-white students compared to those delivered to white students.^x

It is useful to reflect on this background, because of its relevance to themes that have to be part of any discussion of minority over-representation in special education:

- The tendency to segregate students with disabilities on the assumption that they cannot benefit from participation in community schooling.
- The subjective nature of determinations of cognitive ability, and the racial bias of testing instruments.
- The perception of differences of background, socioeconomic status, culture and educational experience as manifestations of disabilities.
- The tradition of racial segregation of American schools and the inequality of educational opportunities offered to white and non-white students.

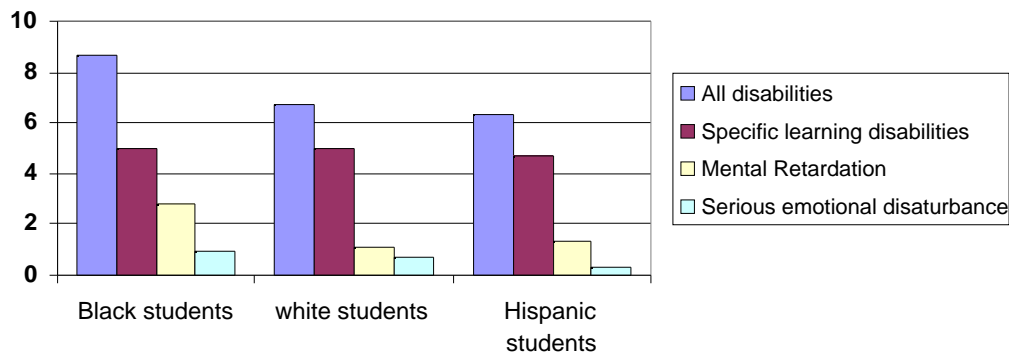
Dating back to long before P.L. 94-142, there was concern in New York that the programs that were the predecessors for the modern special education system

were inferior schools segregated by race. In 1934, the Board of Education proudly described its system of special schools, ungraded classes and homebound instruction. The special programs for physically, mentally and “morally” handicapped children included “schools of opportunity for behavior problem boys who are unable to make a suitable adjustment in the traditional school.”^{xi} In 1965, so-called special “600 schools” for “delinquent and retarded children” became the target of a grassroots boycott by parents and community activists favoring racial desegregation of the city’s schools.^{xii}

B. National Context

Minority over-representation in special education is not unique to New York City. It has been described by the US Department of Education as an “ongoing national problem.”^{xiii} The issue pre-dates PL 94-142. It appears that the first educational research on the issue was conducted in 1968, when disproportionate numbers of African-American, Mexican-American, Puerto Rican and American Indian students were documented in classes for the mildly retarded in California.^{xiv} Thereafter, litigation in California, discussed at greater length in Section III, challenged the testing procedures in use to identify disability. The degree to which representation is disproportionate varies by disability classification. In 1992, for example, black students comprised 16% of the national student enrollment, but 32% of students classified with mild mental retardation, 29% of students classified with moderate mental retardation and 24% of students classified with serious emotional disturbance.^{xv} The chart below (Figure II-1) depicts the differences between the percentages of students by disability classification by race in 1992.

Figure II-1 Percentage of student enrollment by disability and race, 1992
 Source: Center for Educational Statistics, *The Condition of Education, 1998*,
 Supplementary Table 45-3.



As is clear from Figure II-1, the national data shows greater representation of black students than white students, specifically in the categories of mental retardation and emotional disturbance, but not of Hispanic students. Although the data does not suggest overrepresentation of Hispanic students generally, there is data suggesting some disproportionate representation of English Language Learners in special education in urban school districts.^{xvi}

Interestingly, there appears to be a stronger correlation between poverty and disability status than between race and disability status, especially in inner-city school districts.^{xvii} Since non-whites comprise higher percentages of the inner-city poor than of the population in general, it is reasonable to conclude that there may be localized overrepresentation patterns in many large urban school districts. On the other hand, overrepresentation patterns have been found in suburban school districts in specific disability classification categories, such as speech impairment.^{xviii}

School district practices vary widely across the nation. In some places with large Hispanic enrollment, such as parts of California, there are local complaints that Hispanic students, some of them ELLs, are under-represented, and that Hispanic students with disabilities are not getting needed services.^{xix} In districts that tend to be homogenous with regard to household income levels and levels of educational attainment of parents, differences in racial categories narrow and disappear.^{xx} Thus, aggregate national statistics may mask a range of very different patterns from place to place.

One trend that distinguishes inner-city students from students outside the inner city is the greater likelihood of being educated in a full-time special education program removed from general education. In 1992, considering all disability categories, 41% of inner-city students in special education received services in full-time programs, as opposed to 23% of students in other districts. In the category of specific learning disabilities, the disparity is even wider, with 36% of inner-city students with that classification in full-time programs, as opposed to 19% in other districts.^{xxi}

Thus, from a national perspective, there is a significant disparity in the rate of classification for black students. Over-representation does not appear in the national data with regard to Hispanic students. There is significant evidence that poverty, residence in

inner-city districts, parents' level of educational attainment and language status can contribute to differences in the rates of participation in special education, and in the characteristics of services received. National data, from which these differences cannot easily emerge, is of limited usefulness. To examine disparate treatment, whether it manifests itself as over-representation or under-representation, it is essential to have reliable local data that includes classification and service categories.

III. Over-Representation and the Law⁵

A. Education and the US Constitution

The U.S. Constitution does not include a right to education. Publicly financed and operated educational services did not exist in many places when the Constitution was ratified, and no federal role in basic education was contemplated.^{xxii} Because it was not given to the federal government, the right to regulate education was – and is – widely considered to be reserved to the states by the tenth amendment.^{xxiii} In 1868, the fourteenth amendment was ratified. It includes the “equal protection clause,” which prohibits states from denying “the equal protection of the laws.” While it was dormant for many years, the equal protection clause eventually became the basis for rulings against discrimination in a variety of government activities, including education. In 1954, the equal protection clause was finally applied to the racial segregation of schools by the Supreme Court in *Brown v. Board of Education*.^{xxiv}

B. Civil Rights Laws and Education

The prohibition on discrimination in public education based on race, religion and ethnicity was also written into Title VI of the Civil Rights Act of 1964.^{xxv} Title IX was added in 1972,^{xxvi} and prohibits discrimination based on gender.

The road to P.L. 94-142 began with lawsuits based on the equal protection clause.^{xxvii} The early case law included rulings that school systems had violated the rights of students with disabilities. Remedies were developed, which formed a model for federal legislation. The previous Congress had enacted Section 504 of the Rehabilitation Act of 1973,^{xxviii} which prohibited discrimination against people with disabilities in any activity receiving federal funds. One such activity is public education, since all fifty states now receive federal funds for education.

C. Special Education and Race

1. Statutes and Regulations

The IDEA requires that evaluation materials not be racially or culturally discriminatory, and that they may not be administered in a discriminatory manner.^{xxix} Evaluation materials must be evaluated for the specific purpose for which they are intended to be used^{xxx} and must be tailored to assess specific educational needs.^{xxxi} The data is to be interpreted by a multi-disciplinary team so that individual prejudice or unqualified interpretation will not influence the outcome.^{xxxii}

The regulations implementing Section 504 parallel many of the provisions of the IDEA. Tests must be validated, they must provide more than one general intelligence quotient, and a group of people must interpret the evaluation data.^{xxxiii} The regulations do not, however, mention racial or cultural bias in the evaluation process.

⁵ With the exception of the final section dealing with due process hearings, this chapter is based on a draft by Jennifer Weiser, a law student at New York University Law School.

Title VI of the Civil Rights Act of 1964 prohibits schools from using “criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race.”^{xxxiv} Thus, policies and assessment methods that result in different outcomes for students with suspected or identified disabilities based on race could violate Title VI.

These provisions of law have not been sufficient to prevent the disproportional representation of minority students. When it enacted the reauthorization of the IDEA in 1997, Congress made a finding that, “[m]ore minority children continue to be served in special education than would be expected given the percentage of minority students in the general school population.”^{xxxv} Congress also found that poor African-American students were 2.3 times more likely to be identified as mentally retarded than white students, and that overall there was a substantial over-representation of African-American students in special education enrollment.^{xxxvi} In response, Congress directed the Department of Education to collect from states data on the special education census, including enrollment, environment, exiting and discipline data, broken down by race and ethnicity.^{xxxvii}

The regulations also provide that, “[i]n the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children...the State⁶...shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures and practices comply with...[the IDEA].”^{xxxviii} During the public comment period for the proposed regulation, commenters suggested that the Office of Special Education and Rehabilitation Services (OSERS) within the Department of Education, which drafted the regulations, define “significant disproportionality.” OSERS replied that the regulation imposes the burden of determining whether significant disproportionality exists on the states, and:

In order for States and the Department of the Interior to determine if disproportionality exists they must establish criteria for determining what constitutes significant disproportionality. It is expected that the determination of disproportionality will involve consideration of a wide range of variables peculiar to each state including income, education, health, cultural and other demographic characteristics in addition to race. Prescribing how the States should determine disproportionality and take corrective action would not reflect the varied circumstances existing in each State and is not consistent with discretion afforded to States under the statute.^{xxxix}

OSERS also noted that the Department of Education’s Office of Civil Rights (OCR) monitors disproportionality and that its Office of Special Education Programs (OSEP) would monitor compliance with the data collection and reporting requirement.^{x1}

2. Case Law

In the first decade after the landmark decision in *Brown v. Board of Education*, the courts held that disproportionate classification and placement outcomes did not warrant judicial action so long as the same decision-making procedures were

⁶ In the case of children attending schools operated by the Bureau of Indian Affairs, the responsibility falls on the Secretary of the Interior.

applied regardless of race.^{xli} In other words, if children in different racial groups were given the same tracking assignment based on having the same test score, the judiciary would defer to the decisions of educators and would not find discrimination, even if minority students were more likely to end up in lower tracks. That attitude of deference changed significantly in 1967 with the decision in *Hobson v. Hanson*.^{xlii} The court in *Hobson* struck down an ability grouping scheme in the Washington D.C. public schools because African-American students were disproportionately represented in the lower tracks. The system included a “special academic track” for the “educable mentally retarded.” African-American students were disproportionately represented in this track.^{xliii} The judge determined that the disproportionate representation of African-American students in this special education track constituted a denial of equal educational opportunity because the ability test used was inappropriate. The test failed to assess innate ability, and resulted in placement determinations being made based on criteria other than those professed.^{xliv} *Hobson* established the precedent of scrutinizing standardized tests when reliance on those tests results in disproportionate placement.

Hobson was decided prior to the passage of 94-142, so there were no federal standards for assessment to determine eligibility for special education. School administrators, therefore, could not defend themselves by claiming that they complied with federal standards. Later cases included claims and defenses under the IDEA, and several complaints filed during the interval between *Hobson* and P.L. 94-142 were amended to include IDEA claims.

Diana v. State Board of Education was a class-action suit filed in federal court, alleging discrimination based on disproportionate representation of Mexican-American students in classes for students with mild mental retardation (MMR). Although only 18.5% of the enrollment in Monterey County, California was Hispanic, Hispanic students accounted for roughly one-third of the enrollment in MMR classes.^{xlv}

Guadalupe Org. v. Tempe Elementary District involved a claim that over-representation of Hispanic and Native-American students in special education programs violated the rights of those students to equal protection.^{xlvi} Both *Diana* and *Guadalupe* were settled by court-approved agreements. The agreements focused on the intelligence tests used with English Language Learners and the language in which they were administered. The plaintiffs in those cases did not attack generally the use of intelligence testing to determine special education placement.

Between 1977 and 1986, there were four major trials in federal courts addressing allegations of discrimination due to minority over-representation in special education programs. Although the facts of the cases were remarkably similar, the opinions were contradictory. Defendant school districts and state departments of education prevailed in three of the cases, while one, *Larry P.*, was decided for the plaintiffs.

Larry P. v. Riles^{xlvii} was filed by the parents of six African-American elementary school students in California, who alleged discrimination based on the use of IQ tests to place black students in classes for the “educable mentally

retarded” (EMR).⁷ Although black students comprised 28.5% of the district’s enrollment, roughly two-thirds of the students in EMR classes were African-American. The district court found that IQ tests were the primary determinant in placement, and that the tests had a disparate impact on African-American students. Rejecting the defense argument that genetic and socio-economic factors beyond the school’s control were responsible for the over-representation, the court found that the tests were not validated for the purpose of placing black students. The use of non-validated testing for crucial placement decisions was found to violate the plaintiff’s rights under Title VII, Section 504, the IDEA, and the equal protection clauses of the state and federal constitutions.^{xlviii} To remedy these violations, the court issued a permanent injunction against the use of IQ tests to identify or place African-American children into EMR classes without prior judicial approval. The court also ordered the defendants to monitor and eliminate disproportionate placement of African-American students in the EMR classes.^{xlix} In 1984, the Court of Appeals for the Ninth Circuit affirmed the injunction and all of the lower court’s findings of discrimination, except with regard to the equal protection clause.¹

In 1986, the plaintiffs in *Larry P.* sought to expand the injunction to include disability classifications other than EMR, because they believed schools were subverting the court’s opinion by continuing to use the tests with African-American students. An agreement was reached that included a complete prohibition on using IQ tests to place African-American students in special education without parental consent. Interestingly, by approving this portion of the agreement, the judge was authorizing *disparate treatment* in order to prevent the harm of *disparate impact*.

The *Larry P.* ban on intelligence testing for special education placement was challenged by parents of African-American students in *Crawford v. Honig*. These parents wanted their children tested for suspected learning disabilities, and felt that the *Larry P.* injunction had become an impediment.ⁱⁱ The judge in *Crawford* distinguished between the remedial programs sought by the plaintiffs before him with the “dead-end programs” that were the subject of the *Larry P.* litigation. In 1992, he invalidated the 1986 revision to the *Larry P.* injunction. Negotiations continue to date with the plaintiffs’ lawyers in *Larry P.* over an appropriate resolution.

Parents in Action on Special Education (PASE) v. Hannon was a class action suit filed in 1980 on behalf of black students in Illinois alleging that biases in IQ tests resulted in misclassification of students as mentally retarded.ⁱⁱⁱ The plaintiffs sought to eliminate the use of IQ tests to place African-American students in EMR classes. Although the case raised many of the same issues as *Larry P.*, the judge reached very different conclusions. He found that the tests were not culturally or racially biased, and that the procedural safeguards under the IDEA were sufficient safeguards against inappropriate placement of minority students in

⁷ The term “educable mentally retarded” is used in some states for educational purposes, and roughly corresponds to the mild range of mental retardation as defined in the Diagnostic and Statistical Manual on Mental Disorders, 4th ed., (DSM IV) although older usage in some places, including New York, referred to students who would now be classified as “learning disabled.”

special education. Furthermore, he rejected the plaintiffs' argument that racial disparities in test scores were circumstantial evidence of bias, arguing that such disparities were the result of higher levels of poverty among African-American children.^{liii}

In *Marshall v. Georgia*, the plaintiffs, representing a class of African-American students in the Georgia public schools, did not challenge the state's requirements for evaluating students, including the use of intelligence tests. Instead, they argued that the over-representation of black students in programs for students with mild mental retardation (MMR) was caused by numerous violations of procedural rules and improper interpretation and application of federal requirements governing the classification and placement in MMR programs. The case was the first to focus on matters other than testing, and the critical issues to be determined were whether procedural violations occurred more frequently with black students than with white students, whether the violations caused massive misclassification of black students, and whether the violations were a manifestation of intent to discriminate against black students. The plaintiffs entered into evidence statistical analyses of the composition of Georgia's MMR programs, and a detailed review of selected student records in these programs. Based on the data, the plaintiffs were able to make a *prima facie* case, meaning they could demonstrate disparate impact, and were able to shift the burden to the defendants to prove there was a non-discriminatory justification for their procedures. In order to do so, the state and school districts had to show that the procedures were rationally related to a legitimate state interest. The judge ultimately found that the defendants had met their burden by 1) demonstrating that their regulations were professionally sound, 2) met or exceeded federal standards, and 3) had been substantially adhered to by the local defendants. At that point, the plaintiffs had a final opportunity to obtain relief by demonstrating the existence of equally sound alternatives that were likely to have less disparate impact. The court concluded, however, that the plaintiffs had not identified alternative procedures. The *Marshall* decision was appealed, and in 1985 the 11th Circuit Court of Appeals upheld all of the lower court's determinations. The appellate court went further, however, in questioning whether the plaintiffs had even made out a *prima facie* case of discrimination.^{liv}

Marshall is an important case because it demonstrates the high standards of evidence plaintiffs will be expected to meet to substantiate allegations of discrimination. Statistical over-representation is not enough; it is necessary to show unequal treatment in decision-making by comparing groups of students from different cohorts who are placed in the same programs. In order to obtain relief, plaintiffs should be prepared either to present sufficient evidence to overcome a racially neutral justification, or to map out alternative policies and procedures with sufficient persuasiveness to overcome judges' deference to school districts and education departments. Plaintiffs can only avoid this high burden if the school district has previously been found to have maintained racial segregation.^{lv}

Cases in Florida and Arkansas were dismissed by federal district judges who found that the plaintiffs could not prove discrimination. It appears that school

districts that aspire to adherence to federal standards and do not manifest discriminatory intent can successfully defend themselves in litigation based on over-representation.

One case was filed in New York City some years ago, but it has limited value as a precedent, because the Board of Education had long-since overhauled the procedures and programs at issue when the decision was rendered. The plaintiffs in *Lora v. Board of Education* alleged that black and Puerto Rican students were disproportionately placed in segregated special day schools for students with emotional disturbance. The court found that New York City's initial referral, reevaluation and decertification procedures were inadequate and discriminatory.^{lvi} In a subsequent ruling, the judge approved a consent decree whereby the Board agreed to abide by specific "Nondiscriminatory Standards and Procedures" on referral, assessment, classification and placement of culturally and linguistically diverse students.^{lvii}

3. OCR Rulings

There have been several administrative rulings by the Office of Civil Rights (OCR) of the U.S. Department of Education on the over-representation of minority students in special education. The results of its "Letters of Findings" in response to individual complaints and class reviews have been mixed.

In a 1978 compliance review of a school district in Missouri, OCR ruled that the disproportionate enrollment of minority students in the district's EMR classes violated Title VI and Section 504 because the criteria used did not evaluate minority students in comparison with students of similar cultural, social and ethnic backgrounds.^{lviii} Similarly, the Civil Rights Reviewing Authority upheld an administrative law judge's finding that the school system in Bakersfield, California employed discriminatory criteria to evaluate students for placement in EMR classes, which resulted in the disproportionate representation of black and Hispanic students.^{lix}

In a review of Cumberland County, North Carolina, on the other hand, OCR found that despite the over-representation of black students in classes for the educable mentally handicapped (EMH), the county had not violated the regulations implementing Title VI because its policies and procedures were being implemented in a nondiscriminatory manner. Data showed that all students, regardless of race, who were placed in the EMH program met the criteria for placement.^{lx}

4. Due Process Hearings

In the course of its work with the data presented herein, the Metropolitan Parent Center (MPC) introduced information about specific community school districts in a select few among the many cases in which it provided legal representation to parents and students at due process hearings under the IDEA, which in New York are called Impartial Hearings. The purpose for doing so was not to advance an argument that statistical over-representation alone was a basis for relief under the IDEA. Rather, the argument we used for the relevance of this information is set forth below.

The Board of Education bears the burden of establishing that its recommendations are appropriate. The IDEA imposes an affirmative obligation to take action to

minimize the impact that race, language and culture play in eligibility and placement determinations. In certain cases, it will be appropriate to look at a school district's performance relative to different groups of students it serves in order to assess whether it has met its burden in an individual case. There was a concern that this evidence not be "stretched" to fit every case in which the MPC provided legal representation to a minority student at an Impartial Hearing. Doing so would undermine the credibility of the MPC and might detract from the persuasiveness of other arguments advanced at Impartial Hearings. Informal criteria were developed to determine whether such information was relevant and useful in the representation of individual children. The following analysis was used:

1. Was the determination at issue made by a district with a high rate of over-representation in that type of determination (i.e., referral, eligibility, placement in self-contained programs)?
2. Based on the pattern of the district, was the student part of an over-represented group? In other words, was the determination at issue rendered statistically more likely by virtue of the student's membership in an over-represented group?
3. Did the facts of the case present compelling arguments that the determination at issue was inappropriate for the particular child?

Based on these criteria, four cases were selected during the first six months after the MPC began working with the data in August, 1998. Based on the empirical observation of involved MPC staff, these students typify those at risk for inappropriate determinations, to which race and/or language may be contributing factors. In a very personal sense, for the involved staff, these children and others like them became the faces of over-representation. These first four cases are briefly described below:

- A 9 year old African-American boy living in District 5 (an overwhelmingly minority district with problematic performance and relatively low referral rates) used school choice policies to transfer to District 2 (a far more diverse district with a sizable number of middle class students, which was identified as having a high rate of disproportionality in referral of African-American students). Very shortly after beginning in District 2, he was referred for evaluation. The initial recommendation was for Resource Room, which was not provided due to a shortage of personnel. A request for a re-determination was made, and a self-contained class was recommended. (See District 2 data at Appendix B, p. B-4.)
- An 11 year old Spanish-speaking ELL in District 8 (in which 78% of ELLs receiving special education services in 1996-97 were in self-contained classes, compared with 52% of non-ELL students) was referred for evaluation shortly after returning from several years of attending school in the Dominican Republic. She was recommended for a full-time special education class based on severe delays in reading. (See District 8 data at Appendix B, p. B-22.)
- A 7 year old African-American girl, who had recently been homeless and the subject of Family Court neglect proceedings, was referred for

evaluation based on behavior in District 3 (in which black students were 50% of non-ELL general education enrollment, but accounted for 61% of non-ELL referrals, and of the black non-ELL students evaluated in 1996-97, 38% were recommended for self-contained classes, compared with 9% of white non-ELL students). The student was classified as emotionally disturbed and recommended for a self-contained class outside the district, a so-called “city-wide placement.” (See District 3 data at Appendix B, p. B-7) The district had not conducted a functional behavior assessment, or prepared a behavior intervention plan, as required under the IDEA and state regulations and policies.

- A 6 year old Afro-Caribbean student was recommended for a city-wide placement for emotionally disturbed children by District 22 (in which black students accounted for 46% of the general education enrollment in 1996-97 but 59% of the initial referrals, and of these initial referrals, 28% of blacks were recommended for self-contained classes, compared with 12% of white students.) Although the referral was based on behavior, the district had not conducted a structured observation or functional behavior assessment, or prepared a behavior intervention plan, as required under the IDEA, state regulations and policies, and local directives. (See District 22 data at Appendix B, p. B-64)

Demonstrative graphs and tables were prepared, and data was incorporated into pre-hearing memoranda of law. The memoranda also included legal arguments as to the admissibility of the data. In three of the cases, the school districts did not object to its admissibility, and one district introduced testimony as to steps taken to minimize over-representation in referrals. (Interestingly, however, the evidence introduced by the MPC in that case related to restrictive outcomes only. It has been the experience of MPC staff that many school district personnel, while concerned about the issue of over-representation, have an incomplete understanding of its dimensions, and tend to associate the issue exclusively with referral.)

One case was settled without conducting a hearing. In the other three cases, decisions were rendered for the parent. Two of the decisions made no reference whatsoever to the over-representation data. In the third, *Matter of Gary P.*,^{lxi} the hearing officer recited the data at length in her decision, but specifically stated that she was not finding against the district solely as a result of the data.

While data alone should never drive determinations for an individual child, it is sometimes appropriate to use data to alert due process hearing officers that a particular determination, with which the parent takes issue, is consistent with an over-representation pattern in the child’s school district. It is then incumbent upon the hearing officers to subject the determinations and the facts of the cases to an appropriate level of scrutiny.

IV. Race and Language in the NYC Special Education System

A. The Data

The data that follows are summaries of information collected by the Office of Student Systems Information of the New York City Board of Education (BOE) and submitted to the Office of Civil Rights (OCR) of the United States Department of Education. These submissions were made pursuant to a Memorandum of Understanding between BOE and OCR entered into in the spring of 1997. The goals of the MOU are as follows:

- To reduce referrals of black, Hispanic and English Language Learner (ELL) students for evaluation of eligibility for special education, when such referrals are disproportionate and inappropriate.
- To reduce placement of black, Hispanic and ELL students in self-contained and other restrictive special education settings, when such placement is disproportionate and inappropriate.
- To improve the quality and outcomes in special education programs for all students who receive such services.^{lxii}

Toward these ends, the BOE agreed:

- To monitor referral rates of community school districts and schools by race and ELL status.
- To identify districts and/or schools with disproportionate rates.
- To require districts with disproportionate rates so identified to analyze the causes of the disproportion and describe appropriate remedial action.
- To encourage districts to share practices and strategies that are effective in reducing disproportionality.
- To provide technical assistance to districts to improve pre-referral intervention efforts and to develop the capacity of general education teachers to meet the needs of students experiencing difficulty.
- To work with the State Education Department (SED) in developing a proposed change in the existing funding formula to remove the incentive for placement in self-contained classes.
- To ensure that students with disabilities are not inappropriately excluded from standardized testing and to improve efforts at evaluating outcomes, particularly for students classified as emotionally disturbed.
- To improve understanding by parents of their rights and ensure that school personnel make efforts to increase parent involvement.

To fulfill the first of these two commitments, the BOE began to collect data describing the race/ethnicity and language status of students initially referred for evaluation. In the first collection of data produced under the MOU, two data reports were included. In the first, student categories were Black, White, Hispanic and Asian/Other.⁸ Each category, in turn, was broken down according to whether or not the students met the definition of English Language Learner

⁸ As used in the report, “Black” means “Black, non-Hispanic,” and “White” means “White, non-Hispanic.”

(ELL).⁹ This information was available for all community school districts and for the city as a whole. The second report showed the general and special education registers for October, 1996 by ELL and non-ELL status, and showed referrals and outcomes for both categories during the 1996-97 school year. This information was also available for all districts and for the city as a whole. Both reports looked at initial referrals and recommendations. For program recommendations, a distinction was made between placements in a Less Restrictive Environment (LRE) and a More Restrictive Environment (MRE). The former consisted of general education with Resource Room or Consultant Teacher and/or related services. The latter consisted of assignment to a self-contained special education class.

The data for the 1996-97 school year excluded students attending “city-wide” or “District 75” programs, which are operated centrally by the Board of Education. These programs served almost 16,000 students, roughly 10% of the special education enrollment, during that school year, and are generally associated with more “severe” disabilities. They are also generally considered to be more restrictive than the special education classes operated by the districts. Also excluded were students served in non-public programs and home and hospital-based instruction. Thus, at least 15% of the students in special education were not counted in the initial data.^{lxiii}

Data for the 1997-98 and 1998-99 school years was similar in design, but enrollment data and summary sheets for the city as a whole were not included. BOE included students served in District 75 programs but continued to omit data related to students in non-public schools and home and hospital instruction.

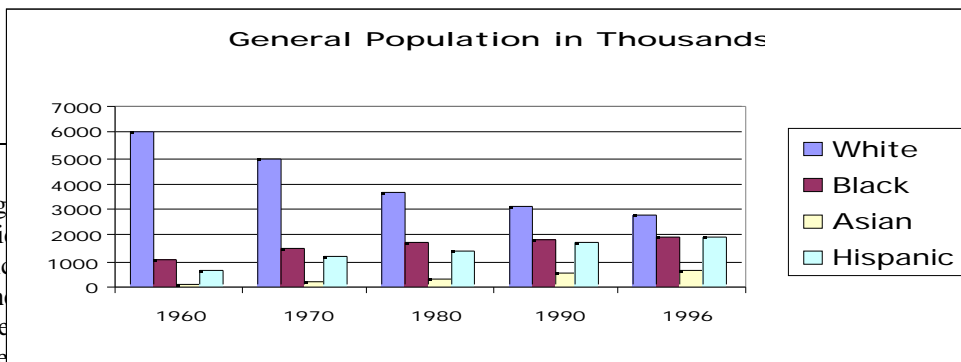
B. Demographics of New York City School Enrollment

At the outset, the following historical trends should be identified:

- The overall population in New York City has become increasingly diverse and non-white, and during the 1980’s whites became a minority in the city’s population.
- Change in the school-age population was even more dramatic. White students became a minority in the school system during the 1960’s, and during that decade the demographics of the school-aged population began to differ markedly from that of the general population.^{lxiv}

Figure IV-1A & B: Change in total and school-age population from 1960-1996.

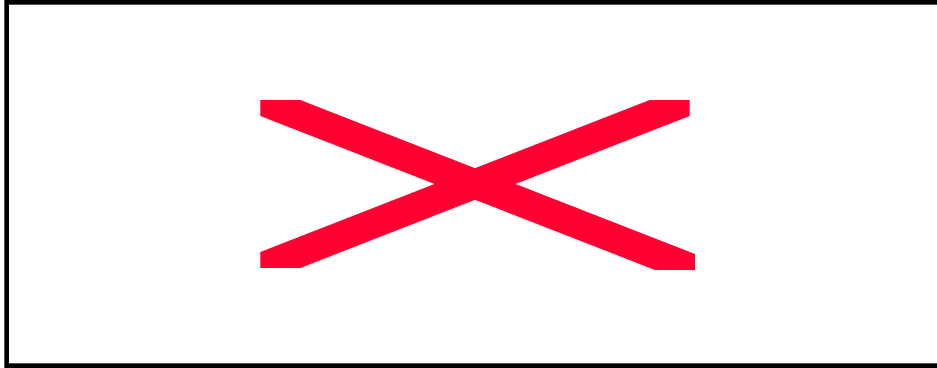
Source: US Census Bureau; adapted from tables in Tobier, supra.



9
“Eng
outsi
suffi
his/h
Unde
Batte

substituted
was born
“has
fere with
ISC §6301.
ssessment
ELL

students are then given a Spanish LAB to determine whether they would benefit from placement in a bilingual program.



Economic data also shows differences between the total population and the school-age (5-17) cohort. Massive losses of manufacturing jobs in the 1960's and 1970's were partially off-set by later growth in service sector jobs, but the most significant growth was in jobs requiring a much higher level of education than was required in the industrial economy.^{lxv} One feature of economic growth in the city has been widening inequality of income between those in the top sectors and those in the bottom. Parents of school-age children tend to be among those who have benefited the least from economic growth.

There seems to be a profound disconnect at the present time and possibly for the foreseeable future between the kinds and amounts of private sector jobs that can reasonably be expected to locate within New York City and the skills and inclinations possessed by a great many of the parents who have children in the public schools.^{lxvi}

The school-age population therefore tends to be poorer than the population of the city as a whole. In 1997, 24% of the city's population lived in poverty, but the figure rose to 40% if only people under 18 years of age were considered. During the 1989-90 school year, 42% of students lived in households receiving public assistance, while in 1997-98 the comparable figure had risen to 46%, despite several years of solid economic growth. Taking race and ethnicity in account, the picture becomes more uneven. In 1990, among children in the public schools whose parents were born in the U.S., 54% of Puerto Rican and 40% of black students lived in poverty, while the comparable figure for whites was 13%. Among children of foreign-born parents, the poverty rates ranged from 42% of non-Puerto Rican Latinos to 18% of Asians.^{lxvii}

Approximately 40% of the city's school-children lived in households headed by single mothers, but there were tremendous differences among the various cohorts. For example, 32% of black children with U.S.-born parents lived in two-parent households, while the comparable figure for the children of Asian immigrants was 87%. Other cohorts ranged in between, with the children of foreign-born parents being more likely to be living with two parents.^{lxviii}

As a result of massive immigration during the 1980's and early 1990's, New York City's schools are far more diverse than they were in previous years. English Language Learner (ELL) enrollment increased by 52% between the 1988-90 and 1995-96 school years.^{lxix} Although Spanish-speakers are still by far the largest

group of ELLs., there are significant numbers of students speaking Haitian Creole, Russian, Mandarin, Cantonese, Korean and other languages.¹⁰ ELL students in New York City speak some 140 languages, and bilingual services are provided in 12 languages.^{lxx} In one elementary school in Queens, for example, some 38 languages are represented.^{lxxi} As has been noted, there are significant differences in the socio-economic characteristics of the different language groups. There are also differences in the educational experiences of ELLs with different first languages. Even the phrase “bilingual education” often describes very different programming for speakers of different languages.^{lxxii} The growth of ELL enrollment ended in 1995-96, and it had declined 11% by 1998-99.^{lxxiii} The decline appears to be attributable in part to the introduction in 1996 of the Home Language Assessment Survey (HLIS), a series of 8 questions designed to identify with greater precision students who may have greater proficiency in a language other than English.

¹⁰

See Appendix A for breakdowns of ELL enrollment by language and borough.

C. Demographics of Special Education

1. Referrals and Enrollment

In 1996-97, for which city-wide totals were given, there was some statistical over-representation of black students in initial referral. While black students were 35% of the general education enrollment, they were 39% of initial referrals, with an overall referral rate of 5.13%. Hispanic students were 37% of general education enrollment, but 41% of initial referrals, with a referral rate of 5.07%. The statistical over-representation of Hispanic students becomes a slight *under*-representation if only non-ELL students are considered. Hispanic students comprised 31% of the non-ELL population, but only 27% of non-ELL referrals, with a referral rate of 3.38%. The referral rate for Hispanic ELL students, however, was 8.75%, more than double that for non-ELL Hispanic students. Black ELL students, comprising about 5% of the total ELL enrollment, had a referral rate of 14.8%, the highest of any cohort. The largest segment of this group were students whose first language was Haitian Creole, but the city also includes students born in Africa, or born to African-born parents, whose first language is French or an indigenous African language. City-wide, there was a statistical under-representation of whites, who comprised 17% of the general education enrollment but 14% of initial referrals, with a referral rate of 3.82%. Under-representation of Asian students was even more significant. "Asian/Other" students were 11% of general education enrollment but only 6% of initial referrals, with a referral rate of 2.36%. The referral rate for non-ELL Asian/Other students was 1.79%, the lowest for any cohort.

Overall, ELL students were over-represented in special education enrollment. ELL students were 17% of the general education registers, but 23% of special education. The total referral rate for all non-ELL categories was 3.85%, while the total ELL referral rate was 8.17%.

2. Placements

There were significant differences in the outcomes for initial referrals. While self-contained classes were recommended for 12% of white students, such recommendations were made for 35% of black students. Another way of expressing the likelihood of an occurrence for a student from one cohort in comparison to for a student from another cohort is as an "odds ratio." Statistically, a black student was nearly three times as likely as a white student to be recommended for a restrictive placement, so the odds ratio for this outcome, in comparison to white students, was a little less than three. Of Hispanic students referred, 29% were recommended for self-contained classes, meaning the odds ratio in comparison to white students was 2.4.

Of Asian/Other students referred, 25% were recommended for self-contained classes, meaning that the odds ratio relative to white students was 2.1. Thus, Asian students were far less likely to be referred than white students, but once referred, were twice as likely to be recommended for a self-contained class.

The special education registers for all of the districts programs showed a sharp over-representation of ELL students. Of ELL students in special education,

69% were in self-contained classes, while the comparable figure for non-ELL students was 45%.

3. NYC Totals – Trends Over Time

Although totals for the city were not given for the second and third years, we totaled much of the district data for 1998-99 to track progress in reducing disproportionality over the three years of data collection. Table IV-1 includes information about general education enrollment, initial referrals and disproportionality over the three years of data.

		Hispanic	Black	White	Asian/ Other	Avg.	Non- ELL	ELL
General education enrollment	'96-'97	37	35	17	11	*	83	17
	'98'99	38	34	16	12	*	85	15
Initial referrals	'96-'97	41	39	14	6	*	70	30
	'98'99	40	40	14	6	*	72	28
Referral rates	'96-'97	5.1	5.1	3.8	2.4	4.6	3.9	8.2
	'98'99	3.5	3.7	2.7	1.5	3.2	3.8	6.2
% change in initial referral rates		-31	-27	-29	-38	-30	-3	-24
Odds ratio in referral (White=1; Non-ELL=1)	'96-'97	1.3	1.3		*	*		2.1
	'98-'99	1.3	1.4		*	*		1.6

As can be seen from the table, the proportions represented by the Hispanic and Asian/Other cohorts grew slightly over the two years, while those of the Black and White cohorts became slightly smaller. The proportion of ELL students also became somewhat smaller.

Referral rates fell for every cohort. They declined the most for Asian students and the least for black students. The referral rate for all non-ELL students taken together declined only slightly, while that for ELL students declined much more substantially.

Disproportionality in referral, measured by odds ratios, increased slightly for black students, and remained more or less constant for Hispanic students. The odds ratio for ELL students declined substantially, but ELL students still had a 60% greater likelihood of being referred.

4. Guide to Individual District Data

With thirty-two school districts containing nearly 1.1 million students, of whom over 15,000 receive special education services, New York is far too complex to be summarized by totals for the city as a whole. A wide variety of patterns exist at the district and school level, and these patterns are distorted if only totals for the city are considered. While it would not be feasible to present information for the nearly 1,100 schools, we have given the reader a wealth of data for the school districts. Most of this data is included in Appendix B. To avoid inappropriately skewing the data, we have not included any figures for a group including less than 25 students. Thus, if, for example, fewer than 25 Asian

students were referred in a given district, we did not include outcome data for the group. For each district, there is a profile, with charts representing:

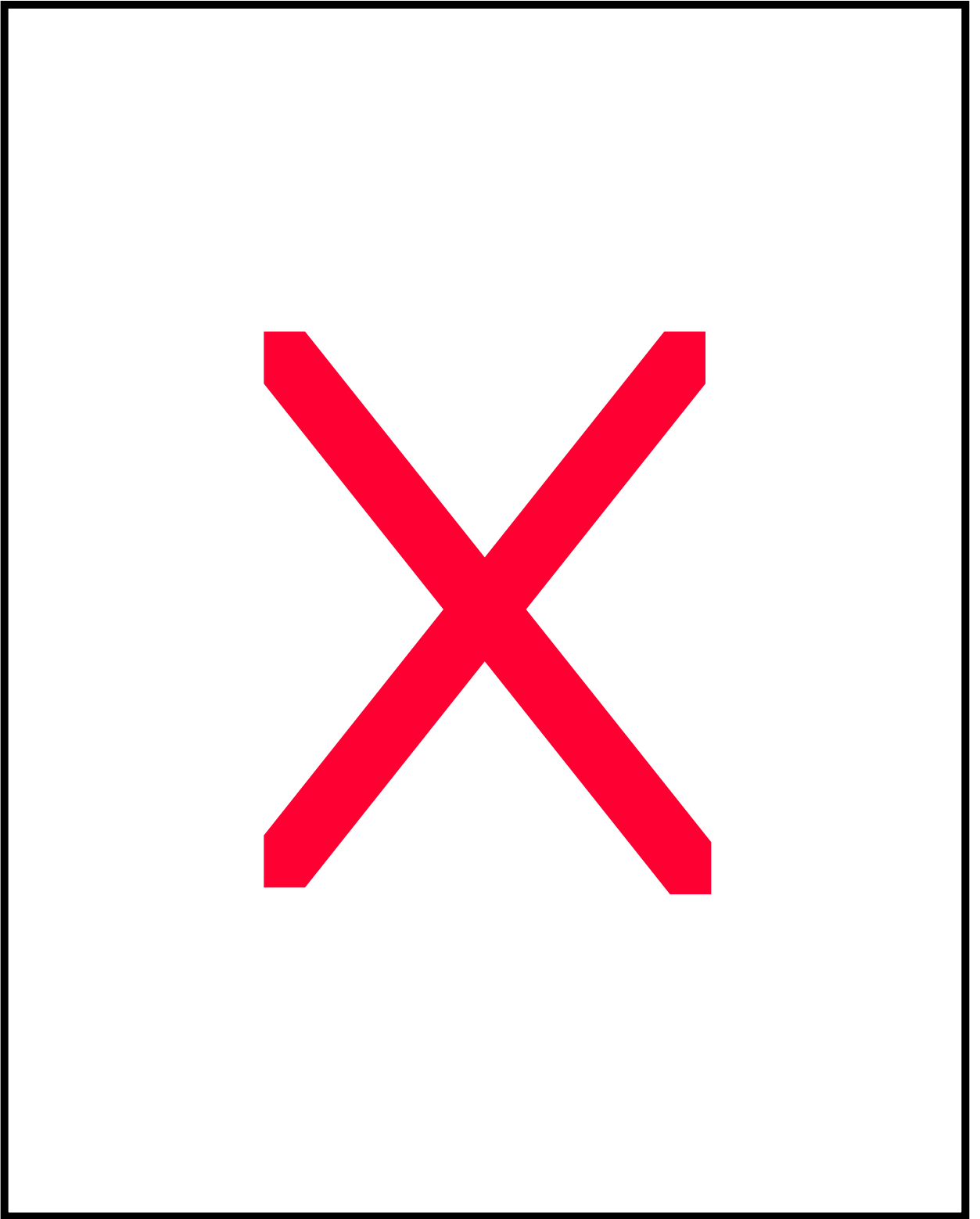
- Total general education enrollment by race/ethnicity in 1997-98.
- ELL general education enrollment for the same school year.
- Referral rates for the three years for which data was collected, broken down by ELL status and race/ethnicity.
- Initial placement by race/ethnicity for all three years, broken down by placement type recommended. One chart depicts absolute numbers, while another depicts percentages.
- Initial placement by ELL status, broken down by placement type recommended. One chart depicts absolute numbers, while another depicts percentages.

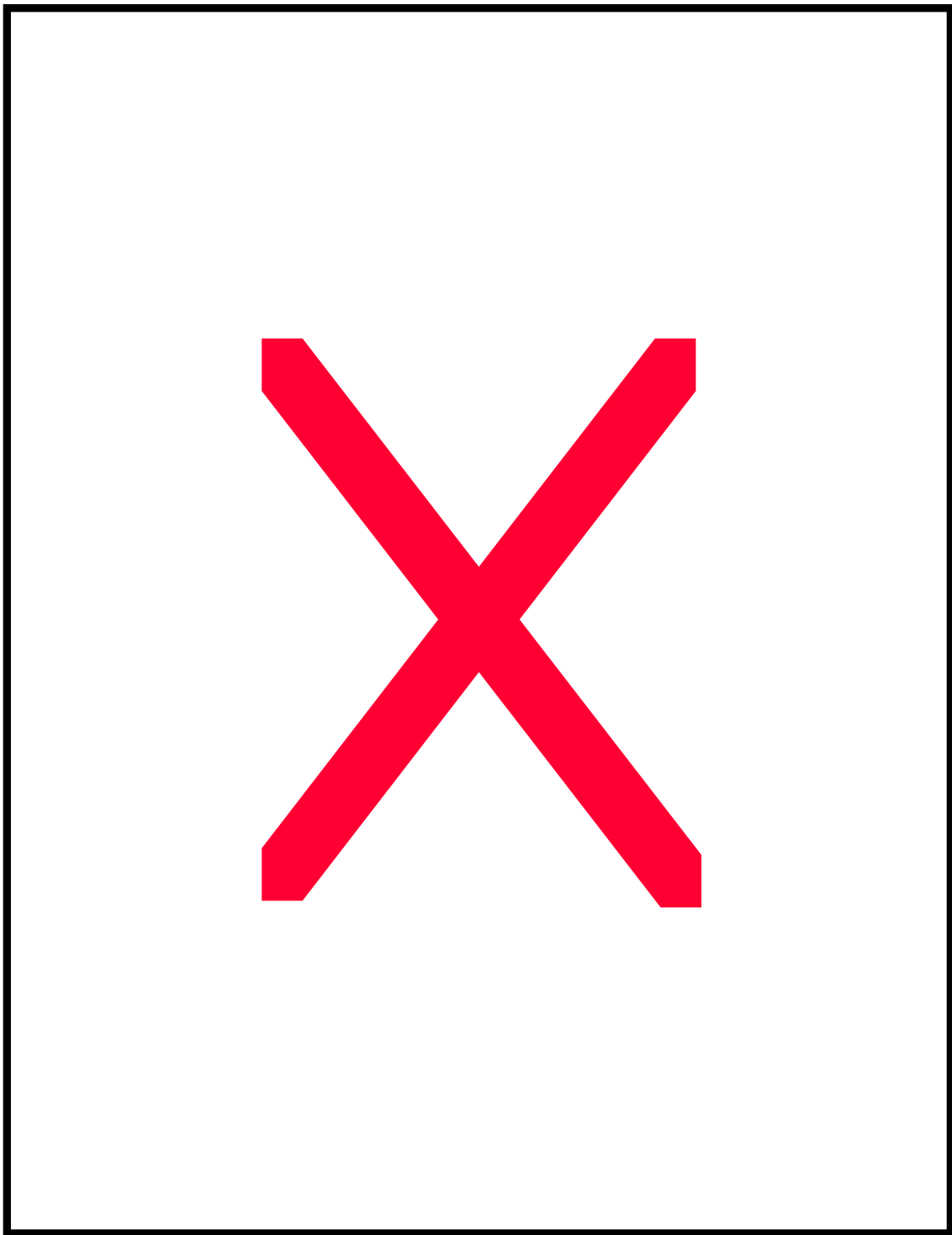
For context, Appendix A includes maps depicting certain features of community school districts. These include:

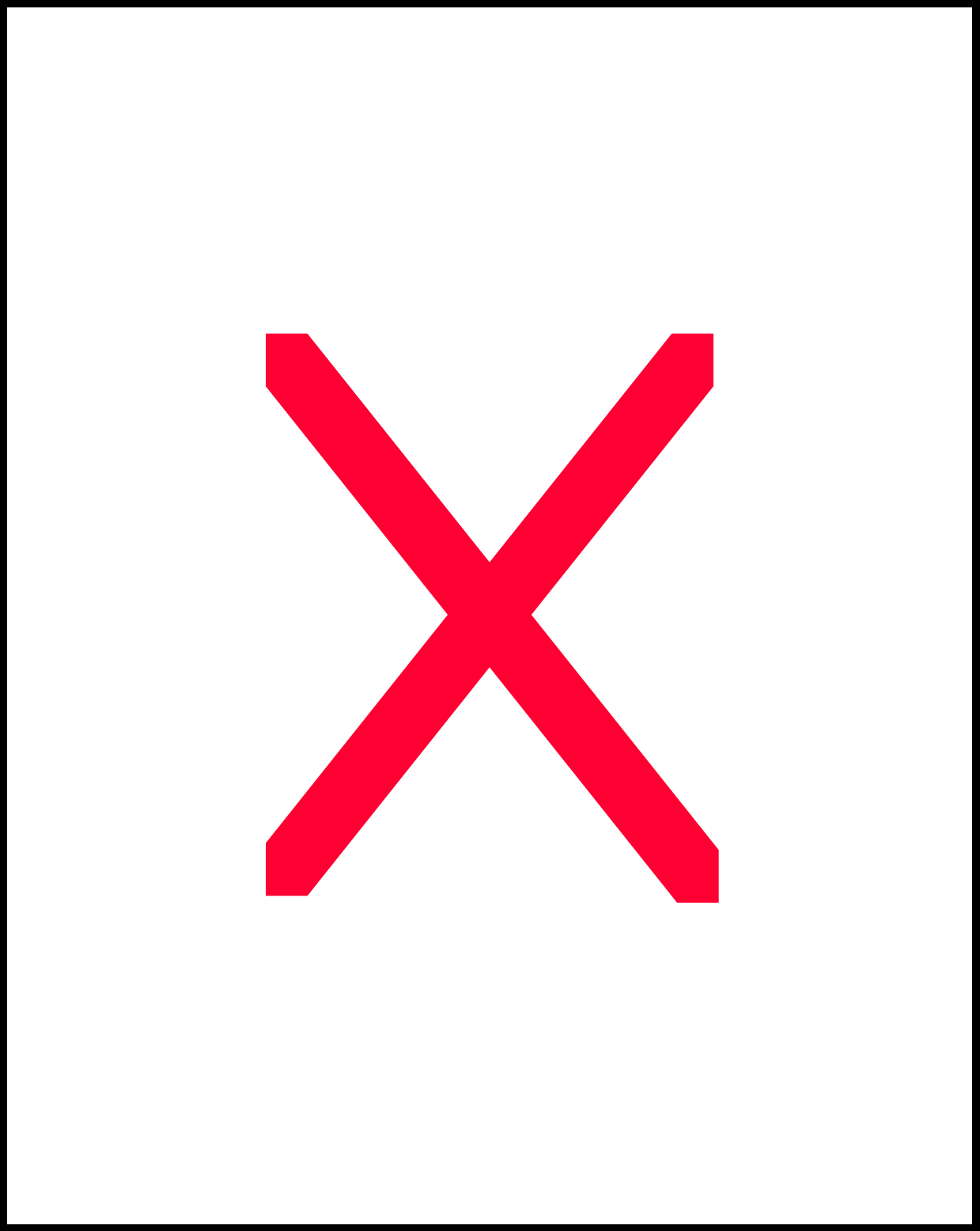
- A map depicting neighborhoods with community school districts.
- Maps depicting the percentage of students in 1997-98 who fit the definition of English Language Learner.
- Maps depicting the percentage of students in 1996-97 who were eligible for Free or Reduced Price Lunch (FRPL). This is often used as an indicator of school-age poverty.
- Maps depicting the percentage of teachers with permanent certification.

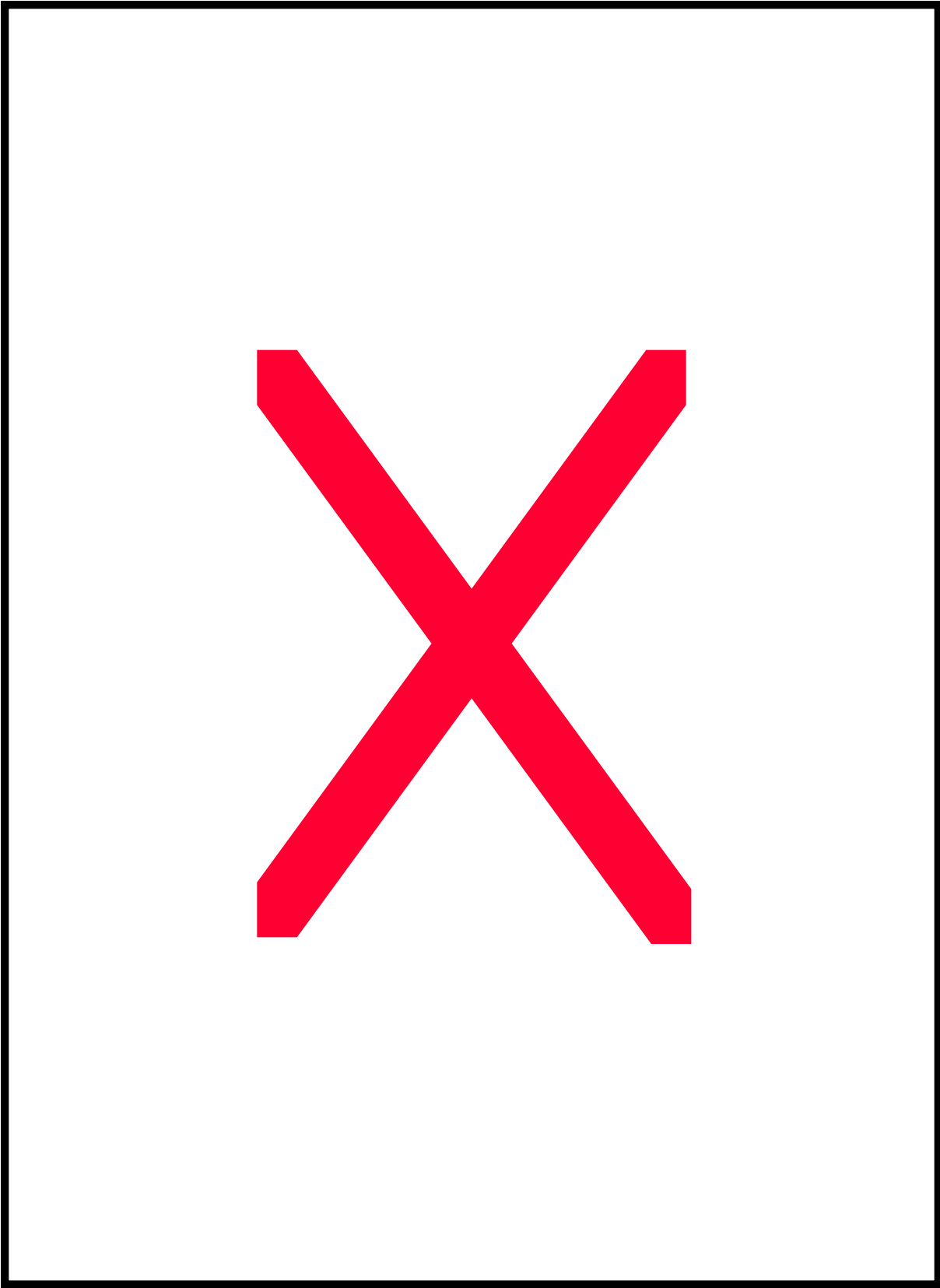
Set forth to follow in this section is a series of charts depicting “odds ratios.” As noted above, an odds ratio is a way of measuring the likelihood of an occurrence for a student from one group in comparison to the likelihood of the same occurrence for a student from another group. In Figures IV-2 – IV-6, to follow, a series of odds ratios are included for each district, during the 1996-97 and 1998-99 school years, which were the first and third years of data collection under the MOU. As with the district data profiles, we did not report data if there were fewer than 25 students in a particular group. We have calculated the following odds ratios:

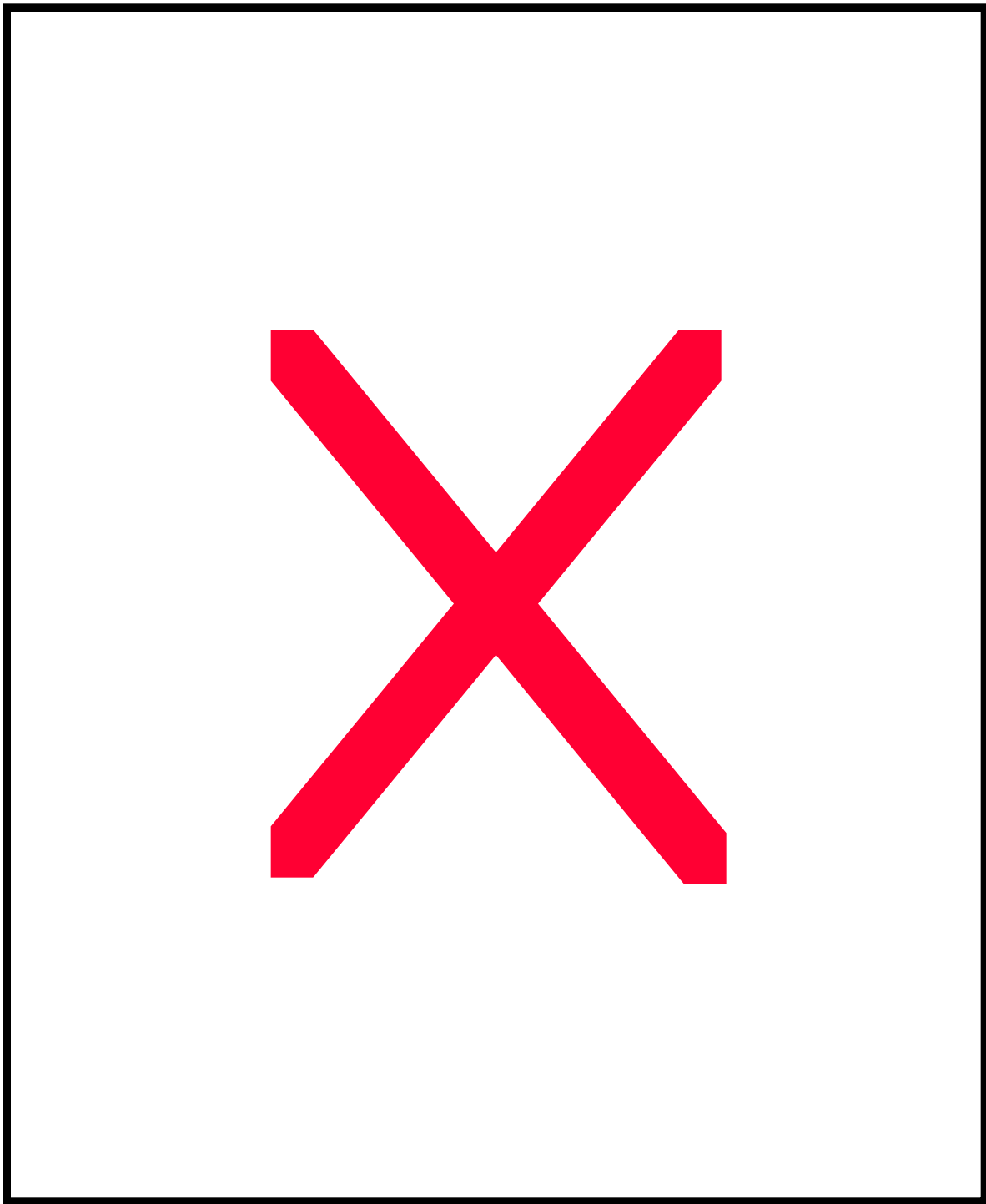
- The likelihood of a black student being referred for evaluation in comparison to a white student. An odds ratio of more than “1” means a black student is more likely than a white student to be referred, while an odds ratio of less than “1” means that a black student is less likely.
- The likelihood an ELL student being referred in comparison to a non-ELL student.
- The likelihood of a black student who has been referred being recommended for a self-contained class in comparison with the same type of recommendation for a white student who has been referred.
- The likelihood of a Hispanic student who has been referred being recommended for a self-contained class in comparison with the same type of recommendation for a white student who has been referred.
- The likelihood of an ELL student who has been referred being recommended for a self-contained class in comparison with the same type of recommendation for a non-ELL student who has been referred.











In formatting this data, we have attempted to balance occasionally conflicting considerations of clarity, comprehensiveness, compactness and consistency. We urge readers to review the information carefully however, and to consider the varying sizes of the groups for which data is reported, especially where there are “outliers,” dramatically high or low points in the data. As noted above, we reported data whenever there were

25 or more students in a particular group. This is a relatively low threshold. By contrast, in reaching conclusions in response to the first year's data submission, the Office of Civil Rights took the position that any group in which there were fewer than 1,000 students was "statistically insignificant." We believe that having three years of data to report allows the use of a lower threshold, but we nevertheless emphasize to the reader the importance of reviewing the data carefully.

4. District Trends Over Time

Looking at the odds ratios on pages 48-52, we can see a very mixed record in reducing disproportionality. In referral of black students in 1996-97, there were 6 districts (2, 3, 4, 14, 21 and 30) with an odds ratio higher than 2, meaning that a black student was more than twice as likely as a white student to be referred for evaluation. Of these 6 districts, 3 showed a decline in the odds ratio two years later. Two showed an increase. Two districts that had an odds ratio below 2 in 1996-97 had ratios above that point two years later. Five districts (1, 3, 6, 21 and 30) in 1998-99 had odds ratios exceeding 2.

In the referral of ELL students, 23 districts had an odds ratio greater than 2, while two years later that number had increased to 24. Of the 23 districts with a ratio higher than 2 in 1996-97, 13 had lower ratios in 1998-99. Seven had higher ratios, and 2 showed no change. Three districts with ratios below 2 in 1996-97 were above that point two years later. Seven districts had an odds ratio in the first year greater than 3, meaning that an ELL student in these districts was more than 3 times as likely as a non-ELL student to be referred. All 7 of these districts showed a decline by the third year, but 5 districts that started below 3 in the first year were above that point in the third year. Nine districts had odds ratios in referral of ELL students above 3 in 1998-99. Thus, reductions in disproportionality in some districts were off-set by increases in others.

In restrictive placement (self-contained special education class) for black students, 13 districts in 1996-97 had odds ratios higher than 2, meaning that a black student was more than twice as likely as a white student to be recommended for a self-contained class. Every one of these districts reduced its odds ratio by 1998-99. In the third year, there were 7 districts with odds ratios above 2, one of which was below that point two years earlier.

There were 9 districts with odds ratios in restrictive placement for Hispanic students above 2 in 1996-97. Of these 7 showed reductions two years later. Two showed increases, and 3 districts below that point in 1996-97 had odds ratios above 2 in 1998-99. In all, 7 districts had odds ratios higher than 2 in the placement of Hispanic districts in the third year.

Similarly, of the 4 districts (11, 20, 25 and 31) that had an odds ratio for ELL students above 2 in the first year, 3 showed a decline two years later. One district (31) showed an increase, and 2 districts (24 and 26) that had been below that point in 1996-97 were above it in 1998-99.

Thus, it appears that some districts have managed to reduce disproportionality in some areas, while others have seen it increase. The districts that showed increases are a very diverse group, but it appears that most made efforts over the three year period to reduce referral rates generally. Reductions were sharper, however, in some categories than in others. In District 6, for example, there were

reductions in the referral rate in all categories, but it fell most sharply for non-ELL students. Thus, while District 6 showed a decline in its ELL referral rate, the *odds ratio* in referral for ELL students increased. Similarly, District 28 had a cumulative referral rate for all students that was lower in the third year than in the first year. The referral rate for white students had dropped significantly, while that for black students had fallen only slightly.

This could mean that some districts have found it easier to achieve the system-wide objective of reducing referrals with respect to some groups of students than with others. This may mean that the evolving system of pre-referral intervention needs to be continually examined and adjusted to ensure that it is effective for *all* students.

With outcomes, there was clearly progress in reducing disproportionality with respect to the placement of black students in self-contained classes. There was also some progress for Hispanic and ELL students, although not as much. (These categories overlap to some extent, since Hispanic students are the largest cohort within the ELL category.) It appears that the system-wide trend of reducing reliance on self-contained classes has been more problematic when it comes to serving ELL students in general education. As districts adjust to the renewed commitment to meeting the requirement of educating students in the least restrictive environment in which their needs can be met, it will be important to ensure that this phrase does not have one meaning for English-dominant students and another for English Language Learners.

5. Variations Among Service Categories

As noted in Section II, there are differences nationally in the percentages of students in different groups classified with certain disabilities, including learning disability, mental retardation and emotional disturbance. The Board of Education's data does not include classification information, so it is not possible to see what differences exist in classification rates. We can, however, measure differences in the service categories recommended, and look at the entrance criteria for those service categories. Basically, the service category refers to the program from the continuum of educational services that is selected for a particular student. We were particularly interested in service categories associated with the following students:

- Students experiencing significant academic difficulties, but whose cognitive testing does not place them in the ranges of mental retardation.
- Students whose primary difficulty is behavioral.
- Students whose primary difficulty is with communication and language.
- Students whose cognitive testing places them in the ranges of mental retardation.

We looked at the following service category recommendations^{lxxiv} on initial evaluations for the 1998-99 school year:

- Modified Instructional Service (MIS) I: This is the "basic" special education program, with a maximum class size of 15 students. There is one teacher, so the student/staff ratio is expressed as 15:1. Most students in MIS I classes, which are operated by the individual districts, are classified as "Learning Disabled."

- Specialized Instructional Environment (SIE) VII: This is a “District 75 program,” meaning that it is operated by the central administration of the Board. It is intended for students with “intensive social and emotional needs,” and nearly all students are classified as emotionally disturbed. The entry criteria specify that a student must have demonstrated “severe, longstanding and pervasive difficulties...in social skill development,” evidenced by aggressive, dangerous or destructive behavior, and an ability to abide by rules and accept consequences of action. The maximum class size is 10 students, and there is a paraprofessional in addition to the teacher, meaning that the student/staff ratio is expressed as 10:1:1.
- Modified Instructional Service (MIS) III: This is a district-operated class designed for students who have a significant disorder, identified by a speech and language evaluation in their first language, that affects their ability to communicate in academic and social situations. The staff/student ratio is 12:1:1. Often, but by no means exclusively, students in MIS III are classified as speech-impaired.
- MIS V: This is a district-operated class designed for students testing in the mild to moderate ranges of mental retardation, with severe difficulties in all areas of academic and social functioning. The student/staff ratio is 10:1:1.

Table IV-2 includes information about MIS I, SIE VII, MIS III and MIS V service category recommendations for the 1998-99 school year.

		Hispanic	Black	White	Asian	Non-ELL	ELL
MIS I	% of MIS I referrals	44	44	7	5	61	39
	% of total referred recommended for MIS I	7.6	7.8	3.6	6.0	4.3	9.7
	Odds ratio in MIS I recs. (White=1; Non-ELL=1)	2.1	2.2		1.7		2.2
SIE VII	% of SIE VII referrals	30	60	7	3	88	12
	% of total referred recommended for SIE VII	1.6	3.4	1.1	1.1	.02	.01
	Odds ratio in SIE VII recs. (White=1; Non-ELL=1)	1.5	3.1		1.0		.5
MIS III	% of MIS III referrals	53	38	4	5	53	47
	% of total referred recommended for MIS III	1.4	1.0	0.3	0.9	0.6	1.8
	Odds ratio in MIS III recs. (White=1; Non-ELL=1)	4.7	3.3		3.0		3.1
MIS V	% of MIS V referrals	26	51	13	9	66	34
	% of total referred recommended for MIS V	0.2	0.3	0.2	0.4	0.2	0.3

Odds ratio in MIS V recs. (White=1; Non-ELL=1)	0.7	1.3		1.7		1.8
---	-----	-----	--	-----	--	-----

Disproportionality is most evident with Hispanic students in MIS III, the service category most closely associated with communications disorders, as Hispanic students who have been referred for initial evaluation are 4.7 times as likely as white students who have been referred to be recommended for a MIS III class. Black students are 3.3 times as likely, while ELLs are more than 3 times as likely as non-ELLs to be recommended for MIS III.

Black students have the highest likelihood of being recommended for SIE VII classes, recommendation for which is generally based on behavior. Interestingly, ELL students are only half as likely as non-ELL students to be recommended for SIE VII.

Black students, Hispanic students and ELL students are also much more likely than white students to be recommended for MIS I programs, the basic special education class for students with learning disability. Asian students had a 70% greater likelihood than white students of being recommended for MIS I.

There was one category for which Asian students were more likely to be recommended than Hispanic and black students. This was MIS V, which is most often associated with students with mental retardation.

6. Districts' Responses

As noted above, the MOU required the BOE to require districts with disproportionate rates to analyze the causes of the disproportion and describe appropriate remedial action. Accordingly, certain districts identified as having high rates of disproportionality prepared plans of corrective action, and these plans were submitted to OCR along with the data for the second year. The chart below summarizes actions taken by various districts. It also includes the odds ratios depicted on pages 48-52 for those particular districts for the first and third years. It is at least possible to see what elements were present in the plans of districts in which disproportionality increased or decreased in the various categories. Without additional information, however, it is difficult to attribute movement in either direction to particular measures. One commenter on a draft of this report suggested that it would have been helpful to include information about what practices may have been responsible for reductions in disproportionality. We agree, but note that, despite the fact that comments were solicited from the Board, including the Office of Monitoring and School Improvement, we did not obtain a response¹¹.

District	2	6	21	24	29	31	32
Intensified staff development specific to prereferral intervention	X	X	X		X	X	X
Increased identification of "at-risk" students	X		X	X	X		
Increased participation of bilingual and ESL teachers in staff	X	X			X	X	X

¹¹ In fact, we were not even to obtain copies of the district plans from the Board, despite Freedom of Information Law requests and follow-up correspondence. Ultimately, we obtained copies of the plans from OCR through a federal Freedom of Information Act request.

development							
Expansion of Educationally Related Support Services (ERSS)			X				X
Referrals to community-based organizations		X					
Memo to principals of schools with high referral rates			X				
Tutoring by college students	X						
Heterogeneous ability grouping	X						
Improvements to Pupil Personnel Committee			X	X			
Early Childhood pre-referral intervention				X			
Tutoring and translation by peers					X		
Parent training						X	X
Increase use of parent volunteers in school					X	X	
Use of school nurses for early identification of physical impairment					X		
Assorted literacy initiatives	X						
Administrators' meetings						X	

Table IV-3 Continued									
	District	2	6	21	24	29	31	32	
Increased use of bilingual paraprofessionals						X			
ESL services to families						X			
Extended day and Saturday programs						X	X		
Developing partnerships between classroom and ESL teachers							X		
Parent training initiatives							X	X	
Model to reduce inappropriate referrals/placement based on the work of Alba Ortiz ^{lxxv}								X	
Push-in model for ESL		X							
Utilization of teacher prep periods			X						
School-Based Instructional Support Plans							X		
		Districts	2	6	21	24	29	31	32
Odds ratio in referral of black students		96-97	2.4	2.0	2.7	1.5	1.0	2.0	1.0
		98-99	1.6	2.3	2.7	1.4	1.1	1.9	1.3
Odds ratio in referral of English Language Learners		96-97	2.1	3.0	1.7	2.8	4.1	4.5	2.7
		98-99	2.0	4.1	1.9	2.5	3.9	2.2	2.6
Odds ratio in restrictive placement of black students		96-97	7.3	*	2.5	1.1	*	2.7	*
		98-99	2.1	*	1.8	1.9	*	2.2	*
Odds ratio in restrictive placement of Hispanic students		96-97	4.8	*	1.8	1.9	*	2.2	*
		98-99	2.8	*	1.4	2.1	*	2.9	*
Odds ratio in restrictive placement of English Language Learners		96-97	1.2	1.4	1.5	2.0	1.1	2.2	1.4
		98-99	1.6	1.8	1.8	2.1	1.0	2.4	1.1

It appears that many of the items identified for inclusion in the remedial plans were programs that were already in the works, or that were generally considered desirable. It is unclear from the plans what the processes were in the various districts to identify the causes of disproportionality, analyze the types of disparate determinations to be targeted, or predict the expected impact of various measures on disproportionality. With a couple of exceptions, there was no evidence of a review of professional literature on disproportionality. An analogous dynamic has been identified in the selection of remedies in so-called “*Milliken plans*,” whereby school districts are asked to develop a menu of compensatory services to remedy past discrimination. Such plans have been criticized as being a laundry list of generic programs reflecting what administrators would like to do anyway, rather than a carefully selected group of initiatives calculated to address inequity.^{lxxvi} In the case of these plans, similarly, while many or all of the initiatives may have been well worth pursuing, it is unclear whether the plans were actually crafted to deal with disproportionality.

In interaction with several of the districts, it appeared to MPC staff that few were aware of the provisions of the plans, or even aware of their existence. This included members of School-Based Support Teams and CSE committees,

principals and special education supervisors. It is difficult to imagine a plan affecting the determinations made by these people every day succeeding without their active engagement in its implementation.

In formal and informal contacts with district personnel, we found that very few were aware of the MOU, or had seen much of the data for their school or district. As noted earlier, there was much greater awareness of the issue of disproportionality with regard to referral than to placement outcomes. There was some sensitivity, as a few educators hastened to deny an allegation of conscious discrimination that hadn't been made. Others expressed no interest in the data, saying that their focus was on getting appropriate services for individual children. Finally, many were understandably fearful of clumsy remedies that would address "the numbers," rather than the underlying needs of children.

6. Parents' Responses

The MPC began the project with the intention to gather surveys designed to capture parents' experiences with and perceptions of the special education system. The process was skewed by the tendency at forums to draw parents from certain neighborhoods only, and by the greater representation of parents of students with developmental disabilities (such as autism and mental retardation) receiving District 75 services. As noted in the beginning, therefore, no pretense is made that a valid sample was achieved. We did, however, hear a number of interesting comments. If nothing else, the process allowed us to develop a few hypotheses that could and should be tested in more formal, systematic research on parent attitudes and engagement. The following general conclusions were reached:

- The suspicion that they are being discriminated against is much more likely to be expressed by minority parents in diverse districts serving a substantial number of middle-class students.
- Parents in overwhelmingly minority districts tend not to be focused on discrimination within the district, but are likely to have a generally low opinion of the performance of the special education system.
- Many parents have great difficulty defining terms like "learning disability," "speech impairment," and "emotional disturbance." Many have difficulty connecting the evaluative material to their children.
- Few parents were surprised by what they learned about over-representation. Some were saddened, and one forum stopped briefly because one parent began to cry and others rushed to console her. Few expressed a belief that there was a sinister, purposeful motive on the part of school personnel, but many saw the issue as one more indication that the school system was not meeting their children's needs.
- Many parents were suspicious of anything their children received from a school system they did not trust. Some saw special and bilingual education as "second class" services to which their children were relegated. Ironically, the regulations and procedures designed to ensure that their children received services to which they were entitled were seen as discriminatory and stigmatizing.

We believe that these conclusions are consistent with much of what has been written after more formal research. Most notably, Beth Harry, cited elsewhere in

this report, has described in detail the cultural factors that make the special education system more mysterious and forbidding to parents outside the dominant, middle class culture. Initiatives to increase parent involvement should take into account the body of work on cultural competence, and recognize that “parent training” must be accompanied by activities to build the cultural competence of district personnel.

At the focus group during which a draft of this report was discussed, parents quickly connected the issue of over-representation to other problems they had seen with the general and special education systems. We asked the participants to focus on 1) factors that that might contribute to over-representation, 2) the effect on children and 3) corrective strategies. The results are summarized in Table IV-4.

Table IV-4 – Report of Parent Focus Group, July, 2000		
Factors	Results	Strategies
Inadequate behavior supports in general education	Poor instruction in special education classes – “students not prepared for life”	Better access to community resources and services that might better address student’s needs
Lack of communication between parents and schools	“Labels” affect students’ behavior and motivation	Inclusion should begin as early as possible
Educators promoting use of medication	Special education may not address the issues it was intended to address	General ed. class/school size reduction
Inadequate parent involvement		Remedies for over-crowding problems
Division of parents into special ed. and general ed. constituencies		Training on disability issues for foster care parents, workers, judges and lawyers
NYS funding formula is or was disincentive to retain students in general ed.		Flexibility with scheduling of services
Lack of response to problems of students in foster care		Early identification of students “at risk”
Specific problems such as dyslexia are not identified		Teacher training - Social skills development -Sensitivity training - Mastering curriculum
Misallocation of personnel		Find ways of distinguishing behavior based on frustration about language barriers for ELLs
System “dehumanizes” school staff		Data - Collect data (similar to Appendices) at high school level

		- Collect comparable decertification and dropout data
		Literacy programs for parents
		More “shopping around” by School Leadership Teams for training
		Training for parents on how BOE is organized and who is responsible for what
		Parent mentoring programs
		Develop strategies to challenge students

V.

Policy Implications

The MPC is a small entity (7 full-time and 2 part-time employees) providing training and individual assistance to parents and students. It is not equipped to do academic or clinical research, case studies, or full-blown policy analysis. We believe, however, that we have valuable insights into the problems of public education, including disproportional representation, based on our contact with parents and students and our work “in the trenches” as advocates. As noted in the preceding section, moreover, we had the benefit of the of multiple sessions with parents from various school districts to discuss disproportional representation, which invariably broadened into a discussion of problems and sources of frustration in the system. This section contains a discussion of a number of policy issues, and the connection we see between these issues and disproportional representation.

A. Strengthening General Education

Disproportional referral and placement in special education should be seen as symptoms of the problems of general education, rather than as a discreet problem to be remedied by “fixing the numbers.” The vast majority of referrals by school personnel are motivated by a sincere desire to get a child the help he or she needs, although there may be a convenient readiness to believe that the best means of helping a student is to pass him or her along for someone else to deal with. Without dramatically improving the quantity and quality of individual assistance to students in general education, suppressing referrals will not benefit students. Similarly, the rationale for inclusion of students with disabilities in general education assumes reasonably effective general education services. Improving the quality of general education and improving its capacity for problem-solving and individual remediation will do more than anything else to reduce disproportionality.

1. Strengthening Reading Instruction

Some remedial plans have targeted improvement of basic reading instruction, and we believe this is promising. In the work of the MPC, we review IEPs and educational evaluations daily, and see countless students each year referred for suspected learning disability based on delays in reading. Almost invariably, in reviewing educational evaluations, we see deficiencies in phonemic awareness and decoding, the building blocks for reading comprehension and text-driven learning. We seldom see any kind of hypothesis as to why the child is experiencing difficulties. Instead, a gap between the child’s reading levels and the levels of the sample on which the test was normed suffices to establish a learning disability. It is our sense that often these deficiencies are more attributable to poor reading instruction than to the inherent characteristics of the child. We believe that improving basic phonics instruction in general education – as part of a balanced reading program - will prevent some students from falling far beyond grade level later on, and will eliminate many unnecessary referrals. We would like to emphasize that we are not discounting the importance of authentic literature or other comprehension-based strategies. We are simply pointing out that many, if not most, initial IEPs that we see include goals focusing

on phonics instruction. We believe that improving the phonics component of a balanced reading program in general education may help to reduce referrals based on reading difficulties. Similarly, effective reading remediation programs may meet students' needs better than special education.

2. Strengthening Bilingual Education

Improving the provision of bilingual instruction in general education is also essential. We do not mean to suggest lack of support for the provision of quality bilingual instruction. To the contrary, some researchers have found that disproportionate placement of Latino students in special education is less likely in districts with substantial bilingual programs.¹² The problems we see relate more to implementation than theory. Many parents believe that, in practice, bilingual education, *as received by their children*, has not developed or built on skills in either language used for instruction.¹² One reason may be that, as noted earlier in Section IV, the perceived need for bilingual services grew rapidly in the recent past. The trend has reversed in recent years, partly because of a slow-down in immigration, and partly because of the introduction of the Home Language Identification Survey (HLIS) in 1996. Nevertheless, resources have been stretched in many districts, and many children who are legally entitled to bilingual services have not received them. Many parents, on the other hand, have become disillusioned with bilingual instruction. Typical complaints (or perhaps misconceptions) include that no instruction occurs in English, even after years in the program, that expectations are low, and that the rationale for bilingual education has never been explained to them. Other parents complain that their children were assumed to have proficiency in Spanish, when in reality they have very little comprehension.

If these anecdotal complaints are valid, there are significant issues of oversight, support and staff development. Districts should be vigilant in ensuring that bilingual services are being provided *as designed*.¹³ It is noteworthy that, in one of the cases described in Section III, p. 33, the 11-year old "non-reader" in District 8, the parent had originally blamed her child's difficulties largely on the fact that she was "stuck" in bilingual education. The MPC was able to help her enroll in the Spanish Child Centered Lab at Hunter College's graduate program in bilingual special education, where she was mentored and tutored by a bilingual graduate student. Within a few months, her mother and teachers reported that she began to show remarkable progress in reading English. Seemingly, this was because the connection between her native language skills and the acquisition of a second language had not previously been properly established, despite the fact that she had been in bilingual classes throughout her time in New York. With the focused attention of the tutor and supervising professors, she was able to discover and build on her latent native language ability. The parent, moreover, acquired a

¹² It should be noted that these conclusions are based solely on experience with Spanish-speaking students.

¹³ Where a first and second language are both phonic-based, bilingual education is intended to develop a threshold of skills in the native language which will facilitate the development of a second language. This "facilitation theory" holds that a child cannot develop fluency in a second language if the process of acquiring a first language is abandoned as part of the learning process. See Jim Cummins, Bilingualism and Special Education: Issues in Assessment and Pedagogy, (1984).

better understanding of the purpose of bilingual education, and came to realize that it was designed to build on her child's strengths rather than cater to her "limitations."

In response to a prior draft of this section, we received a wealth of information from the Board's Office of Bilingual Education containing descriptions of effective programs and alternative models. It appears there is success within the system on which to build. We believe that disproportionality with regard to referral or placement of English Language Learners should trigger an examination of the quality of bilingual instruction in particular schools or districts. As appropriate, such schools and districts could be targeted to receive support from the system, in the form of staff development, technical assistance and mentoring. Effective strategies for developing parents' understanding of how bilingual services are designed to work should also be identified and replicated.

B. Changing the Service Delivery System

We support the change of emphasis embodied by the proposed revisions to the "continuum of educational services."¹⁴ The Board very recently adopted a policy document entitled "Special Education Services as Part of a Unified Service Delivery System." This document is a description of the continuum. It will eventually replace a much more lengthy document describing a system that includes some 19 categories of self-contained classes. We believe that the current system creates a "path of least resistance" for educational decision-makers. Program decisions become a matter of deciding what service category a child fits into, rather than what supports and services can be brought to the child. Bias, whether subconscious or conscious, can certainly play a role in these determinations, as can the preparedness of the parents to resist a removal from general education. Thus, we believe that the flaws in the existing continuum are a factor in disproportionality. The new document pointedly and repeatedly uses the word "flexibility" in describing the aspirations of the system. The principle of portability of services – in preference to children – is also prominent. The revised continuum will also blur the distinction between special and general education by making pre-referral intervention an important part of the continuum. A revitalized role for Pupil Personnel Committees as a support for general education teachers is intended to eliminate unnecessary referrals and enhance problem-solving in general education.

As a statement of principles, the document is promising, but we await the disclosure of a detailed implementation plan. The existing bureaucracy and patterns of behavior are so entrenched that it will take a great deal of effort and commitment to change them. Also, it is unfair to students and educators to expect them to adhere to a system requiring faith in the capacity of the system to meet the needs of students in general education *unless* there is an informed,

¹⁴ The idea of a continuum of services, ranging from relatively simple supports to very involved services and entire programs, has long been part of the special education lexicon. The continuum is supposed to make it possible to meet the individual needs of students with a wide range of disabilities, learning characteristics and related service needs. Unfortunately, it has been seen as a rigid continuum of placement options rather than a menu of supports that can be brought to the child.

unequivocal commitment from the top to ensure that resources and supports are available in general education. This will include a massive staff development effort and careful planning to ensure that resources go where the students are. We believe that the October, 1995 report *Focus on Learning: A Report on Reorganizing General and Special Education in New York City*, from the NYU Institute for Education and Social Policy, contains useful suggestions that should be considered as part of a new implementation. Specifically:

- The analysis in *Focus on Learning* of the proposed “Instructional Support Teams” could be a departure point for revamping the role of Pupil Personnel Committees.
- A version of the “enrichment allocation” proposed in *Focus on Learning* to give schools the incentive and resources to serve students with special needs should be considered.
- Use of the allocation should be thoughtfully linked to the goals of school-based plans to improve general education for students already classified and those at risk of being classified.
- *Focus on Learning* suggests redefining the role of District 75, and preserving its expertise as a resource and support for districts.

In implementing the new continuum, considerations of equity should be a priority. As the system develops and, hopefully, improves, the extent to which students currently over-represented in referrals and restrictive programs benefit from the reforms should be a key indicator of success or failure.

We are concerned, however, about the emphasis in the proposed continuum description on “home zone school placement.” The document states that the goal is “for students with disabilities to attend the schools they would normally attend if they did not require special education services.” We support the principle behind this goal, but we fear some of the likely results in practice. While we have presented data herein at the district level, there is tremendous variation in referral rates among schools. If, as we believe is the case, a referral rate that greatly exceeds the district average is a symptom of a school that cannot adapt and problem-solve, the home zone school preference will mean that the schools least able to meet the needs of students with special needs will be expected to serve more of them. In the short-term, steps should be taken to intensify support, including teacher training, to schools that have had high referral rates in recent years. Intra-district choice policies should also be simplified, and should reflect a goal of preventing schools from having a much greater concentration of students at risk of referral or classification than others in the district.

C. Promoting Cultural Competence

A survey of the various multi-culturalism initiatives underway in the various districts is well beyond the scope of this report. Our contacts with school districts and personnel, however, have given us the sense that multi-culturalism often amounts to little more than a superficial “celebration of diversity,” or an effort to help parents understand the system created by the dominant culture. We believe that staff development plans on the school level should reflect an understanding of the demographic and cultural characteristics of the neighborhoods in which the school is located – the constituency of that school. Teachers and administrators,

especially those responsible for special education services, should have some background in how different cultures, specifically those represented in the school, have different concepts of disability, and different responses to terms like “specific learning disability,” and “emotional disturbance.” For example, Beth Harry, cited earlier, has written about the cultural preference of Spanish-speaking parents from the Caribbean to view their children as whole beings, and the greater degree of difficulty they have in discussing specific characteristics, such as academic performance or social functioning, separately.^{lxxviii} The parent of one of the children described in Section III, who had lived until adulthood in the Dominican Republic, turned to her advocate in exasperation at a CSE meeting, and asked, “When are they going to talk about my daughter?” The district personnel had been painstakingly explaining the results of evaluations. They no doubt would say that they were talking about the child, albeit in the compartmentalized fashion encouraged by the IDEA. First they talked about her psychological characteristics, and then they talked about her educational performance. Her mother seemed to have difficulty discussing aspects of her child separately and in the abstract. It is not enough to provide translation, or first language instruction about how the system works. For there to be effective communication and parent participation, the educators need to understand the ways in which the medical model favored by the IDEA includes concepts and assumptions that come more readily to people who grow up with and of the dominant culture.

While cultural differences are typically associated with foreign-born children or the children of foreign-born parents, African-American students have identifiable cultural characteristics that some researchers find affect learning styles, communication and interaction with adults and peers.^{lxxix} Others have proposed substantially different approaches to educating African-American Students, especially males.^{lxxx} In addition, the shameful history of American public education with respect to children of color can be expected to affect the willingness of parents and students to trust the school system.

We know that there are many professionals within the system who are extremely knowledgeable about the impact of cultural differences, and effective at establishing communication with parents. Unfortunately, however, in some districts it seems that the best such professionals can do is establish a discreet back-channel of dialogue with a parent, often with the understanding that the parent will not repeat what she has been told. They are unable directly to influence the conduct or quality of planning meetings or other official encounters. Such individuals are a valuable resource for the system. The involvement of such persons in the formulation of district plans to remedy disproportionality would help to empower them, and could help others to learn from their approach. We therefore believe that the development of plans should be a more open process, involving broader representation from district staff. Experienced parent advocates, preferably persons not employed by the Board, should also participate in the process.

One well-taken criticism of our presentations on this topic was that we were unduly delicate about attributing over-representation at least in part to bias. We

agree that the issue should not be dismissed. Perhaps subconsciously, bias does play a role in perceptions of a student's needs and abilities. Studies have been conducted whereby random samples of teachers were presented with hypothetical cases with identical facts, except that the racial backgrounds of the students were varied. Teachers in these studies were significantly less likely to predict placement in a restrictive class if the student was white, even if all other factors were identical.^{lxxxix}

Cultural competence cannot be taken for granted; nor can vaguely defined aphorisms about multi-culturalism suffice. There is a body of work in the area, and we know that there is expertise within the system. Disproportionality within a school or district should trigger an examination of programs designed to foster and strengthen cultural competence among both general and special education professionals. The results of such examinations should be incorporated into remedial plans.

Diversity in the teaching staff is also vitally important. Having greater representation among teachers of the students' background should lessen the extent to which differences are seen as manifestations of disability. The Board should continue and expand its efforts to reflect the diversity of the city in its teaching staff. Recruitment and retention of teaching staff are massive challenges, especially when the equally massive retraining needs are considered. Among the ideas being discussed is a teacher training academy specifically for the New York City public school system, which would revive an approach used earlier in the system's history. (Several teacher training academies were operated by the Board for many years, but they were closed in 1933.^{lxxxix}) Recruitment of minority candidates, and training and retraining relating to cultural competence should be featured prominently in the design of such a system.

D. Supporting More Effective Communication

In the course of our work with children and families, we have heard parents and school personnel complain bitterly about one another using nearly identical language. A parent will say, "They have never wanted to work with me." The district will say, "We haven't been able to get Mom to work with us." We believe that teacher training should include more practical experience working with parents. Internships at parent training and advocacy centers would give prospective teachers and evaluators valuable experience "sitting on the other side of the table." One innovative suggestion came from the Spanish Child Centered Lab, described above. The proposal was that graduate students would attend a "train-the-trainer" series and learn to deliver training to parents on their rights, responsibilities, remedies and options under the IDEA. When parents brought their children to the Center to be tutored, the parents would receive training as well. Thus, the graduate students would themselves learn more about the law than is typical, they would then share this knowledge with the parents, and both would gain invaluable exposure to the other's perspectives. If the Board is forced to develop its own teacher training capacity to counter the shortage of applicants, it should include experiences like this.

VI Recommendations

- The Board of Education should continue to collect the information captured under its Memorandum of Understanding, regardless of whether it is legally obligated to do so. The BOE should make a greater effort to disseminate the data to the district personnel, and to ensure that they have an understanding of the patterns in their own district. School leadership teams, as they develop, should be encouraged to monitor their school's performance in this area.
- While the collection of statistics is important, the Board should go beyond that in looking at representative samples of students in districts with high rates of over-representation. Risk factors for referral and segregated placement should be identified. A recent study of African-American, Latino and Anglo students classified as learning disabled concluded 1) that factors predicting placement in programs for learning disabled students varied among the groups studied, and 2) that predictors for African-American and Latino students included *familial variables*, including family size and structure, and *student socio-emotional variables* (student perception of social status and academic standing).^{lxxxiii} The impact of such variables in New York City should be measured among different groups of children, and the results should be taken into account in designing early warning systems and pre-referral interventions.
- If a successor MOU is developed, New York State should accept OCR's invitation to be a signatory, and should monitor trends. (SED declined participation in the current MOU.) School districts are creatures of the state, and, as noted in Section III, federal law makes the state responsible for defining and correcting disproportionality.
- When districts identify action to be taken to remedy disproportionality, they should articulate the type of determinations they are targeting, and the manner in which they expect the corrective action to influence them. It should also be based on a review of current literature, and effective collaboration with researchers. District line staff, particularly people with backgrounds similar to the over-represented student populations, should participate in the formation of remedial plans. New York City, with the largest school system in the country, has an array of demographic and performance patterns in its 32 community school districts. There is the potential to develop a series of "laboratories" addressing the educational difficulties of different groups of students.
- Disproportionality in special education, and other types of disparate outcomes, should be considered in every initiative for education reform. To the extent that experiments are underway, they should be carefully monitored to determine whether they have an impact on disproportionality. If innovative programs or experimental schools are able to reduce disproportionality, they should be encouraged to identify the practices that might be responsible.
- Disproportionality in referral and/or placement of English Language Learners should trigger an examination of the quality of bilingual instructional services within particular schools and districts. As appropriate, such districts should be targeted for staff development and technical assistance from the Office of Bilingual Education, and possibly mentoring from districts with exemplary bilingual programs.

- Disproportionality in referral and/or placement should trigger an examination of policies, practices and programs designed to foster cultural competence in particular schools and districts. Such schools and districts should be required to develop strategies to improve the cultural competence of their professional staffs.
- Advocacy and legal service organizations should experiment with the use of over-representation data in appropriate Impartial Hearings to rebut the districts' assertions that factors of race, language and culture were not factors in the determination at issue. Advocates should, however, use criteria to ensure that the statistical evidence they are using is relevant to the determination being challenged.
- Collaborative research should be undertaken to determine whether and to what extent disproportionality may be caused by such health-related factors as higher rates of childhood lead poisoning, asthma, etc. Social factors such as higher incidence of Family Court involvement, foster care and homelessness should be considered.
- Analysis should be done at the school level to determine whether there is a correlation of disproportionality and factors such as school size, the dynamics of standardized testing, stability and qualifications of teaching personnel, etc. The different experiences of English Language Learners from different language minorities should be examined to determine the impact of their different educational experiences.
- Parent engagement efforts should be supplemented with academic and field research to identify better strategies to create better communication between parents and professionals with regard to the academic difficulties of students.

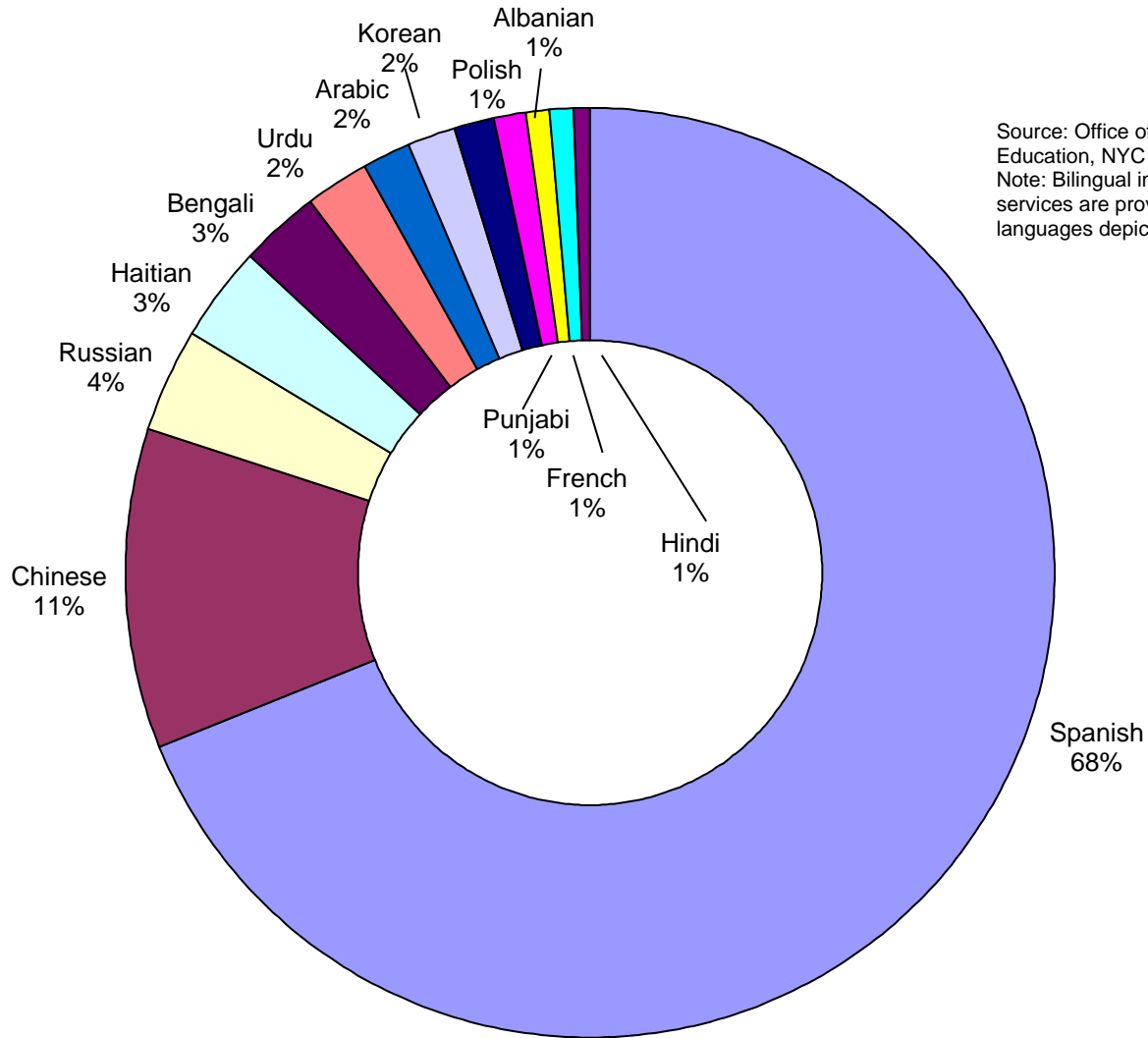
Endnotes

-
- i Beth Harry, Cultural Diversity, Families and the Special Education System: Communication and Empowerment, (1992), p. 99.
- ii Joy Markowitz et al., *Addressing the Disproportionate Representation of Students from Racial and Ethnic Minority Groups in Special Education: A Resource Document*, NASDSE/OSEP 1995).
- iii 20 USC §6301 et seq.
- iv Elof Axel Carlson, Human Genetics, (1984), p. 202.
- v 274 U.S. 200 (1947).
- vi Walter I. Trattner, From Poor Law to Welfare State: A History of Social Welfare in America – 6th edition (1999), p. 201.
- vii Diane Ravitch, The Great School Wars: New York City, 1805-1973, (1974), pp. 231, 310-11.
- viii *Id.*
- ix Gary Orfield and Susan Eaton, Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education, Harvard Project on School Desegregation, (1996), pp. 303-09.
- x Jonathan Kozol, Savage Inequality, (1991).
- xi *Lora v. Board of Education of New York City*, 456 F.Supp. 1211, 1219 (EDNY 1978).
- xii David Rogers, 110 Livingston Street: Politics and Bureaucracy in the New York City School System, (1968), p. 28.
- xiii Jane Burnette, *Reducing the Disproportionate Representation of Minority Students in Special Education*, ERIC/OSEP Digest #E566 (1998).
- xiv Dorothy W. Daugherty, “Disproportionality Issues in the Implementation of IDEA ’97,” *Communiqué*, Vol. 28, No. 4, p. 16 (National Ass’n of School Psychologists, 12/99)
- xv *Id.*
- xvi Office of Civil Rights of USDOE, *To Assure the Free Appropriate Public Education of All Children with Disabilities*, (1996), Ch. 4.
- xvii *Id.*
- xviii “A Question of Race,” Newsday, November 16, 1997, p. A4.
- xix Harry, *supra.*, pp. 64-65.
- xx OCR, *supra.*
- xxi OCR, *1992 Elementary and Secondary School Survey*
- xxii Samuel Eliot Morison, The Oxford History of the American People, (1965), pp. 530-35; Ravitch, *supra.*, pp. 7-8.
- xxiii Gerald Leinwald, Public Education, (1992), p. 24.
- xxiv 347 U.S. 483 (1954).
- xxv Public Law 88-342, codified at 42 USC §2000 *et seq.*
- xxvi Title IX of the Federal Educational Amendment of 1972, codified at 20 USC §1687.
- xxvii *See, e.g., Mills v. Board of Education of the District of Columbia*, 348 F.Supp. 866 (DDC 1972) and *Pennsylvania Ass’n for Retarded Children v. Pennsylvania*, 334 F.Supp. 1257 (ED Pa. 1971), *amended*, 343 F.Supp. 279 (ED Pa. 1972).
- xxviii 29 USC §794.
- xxix 20 USC §1412(5)(c) (1994); 34 CFR §300.530(b) (1994).
- xxx 34 CFR §300.532(a)(2) (1994).
- xxxi 20 USC §1412(5)(c) (1994); 34 CFR §300.5332(b) (1994).
- xxxii 34 CFR §300.533(a)(1) (1994).
- xxxiii 34 CFR §104.35(b), (c) (1994).
- xxxiv 42 USC §2000d (1994).
- xxxv Public Law 105-17, §601(c)(8)(B).
- xxxvi *Id.*, §601(c)(8)(C), (D).
- xxxvii 20 USC §1411(d)(2); 34 CFR §300.755.
- xxxviii 34 CFR §300.755(b).
- xxxix Federal Register, Vol. 64, No. 48, p. 12652 (3/12/99).
- xl *Id.*

-
- xli Daniel Rechsley, Disporportionate Minority Representation in General and Special Education: Patterns, Issues and Alternatives (Des Moines, IA; Mountain Plains Regional Resource Center, 1997), p. 18.
- xlvi 269 F.Supp. 401 (DDC 1967), cert dismissed, 393 U.S. 801, aff'd sub. nom.
xlvi Id. at 448.
xlvii Id. at 456-57, 474-80.
xlviii (ND Cal.) No. C-70-37 (RFP).
xlix 587 F.2d 1022 (9th Cir. 1978).
l 495 F.Supp. 926 (ND Cal. 1979), aff'd in part and rev'd in part, 793 F.2d 969 (9th Cir. 1984).
li Id. at 965-68, 980-86.
lii Id. at 989-90.
liii 793 F.2d at 984.
liv 37 F.3d 485 (9th Cir. 1994).
lv 506 F.Supp. 831 (ND Ill. 1980).
lvi Id. at 876-77.
lvii The appeal was reported under the name *Georgia State Conference of Branches of NAACP v. Georgia*, 778 F.2d 1403 (11th Cir. 1985).
lviii Id.
lix 456 F.Supp. 1211 (EDNY 1978).
l 587 F.Supp. 1572 (EDNY 1984).
li *Special School District of St. Louis County*, EHLR 311:05 (OCR March 27, 1978).
lii *In the Matter f Bakersfield City School District*, 1979 WL 63666 (EDCRRA).
liii
liiii
liv
lv
lvi
lvii
lviii
lix
lx
lxi
lxii
lxiii
lxiv
lxv
lxvi
lxvii
lxviii
lxix
lxx
lxxi
lxxii
lxxiii
lxxiv
lxxv
lxxvi
lxxvii
lxxviii
lxxix
lxxx
lxxxi
- Cumberland County School District*, 19 IDELR 505 (November 6, 1992).
New York City Impartial Hearing Office, Case No. 35164 (1999).
Memorandum of Understanding, p. 2.
See Mayor's Task Force on Special Education, *Reforming Special Education in New York City: An Action Plan*, (June, 1998), Appendix 1, Chart 8.
Emmanuel Tobier, "Schooling in New York City: The Socio-Economic Context," City Schools: Lessons from New York, ed. by Diane Ravitch and Joseph Viteritti, (2000), p. 23.
Susan B. Fainstein, The City Builders: Property, Politics and Planning in New York and London, (1994), p. 14; The City of New York Financial Plan: Fiscal Years 1992-1996, Vol. 1, p. 14.
Tobier, supra., p. 34.
Id., pp. 34,40.
Id., p. 41.
Office of Bilingual Education of NYC Bd. of Ed., "Facts & Figures – 1998-99," p. 11.
"Facts & Figures," supra., pp. 4, 7.
Clara Hemphill, "Public Schools That Work," City Schools, supra., p. 52.
See Christine Rossell, "Teaching Language Minorities: Theory and Reality," City Schools, supra., p. 187.
Id., p. 11.
NYC Board of Education, Educational Services for Students with Handicapping Conditions, (1991). A description of MIS I is found at p. 121, a description of SIE VII is at p. 207, and description of MIS III is at p. 133.
See Alba A. Ortiz and Shernaz Garcia, "A Prereferral Process for Preventing Inappropriate Referrals of Hispanic Students to Special Education," Schools and the Culturally Diverse Exceptional Student: Promising Practices and Future Directions, ed. by Alba Ortiz and Bruce Ramirez (1988).
Orfield and Eaton, supra., Ch. 6.
Theresa Glennon, "Race, Education and the Construction of a Disabled Class," 1995 Wis. L. Rev. 1237, 1257 n. 79.
Harry, supra., pp. 33-34.
Harry, supra., p. 75.
See, for example, Ronnie Hopkins, Educating Black Males: Critical Lessons, (1997).
Harry, supra. at 74.

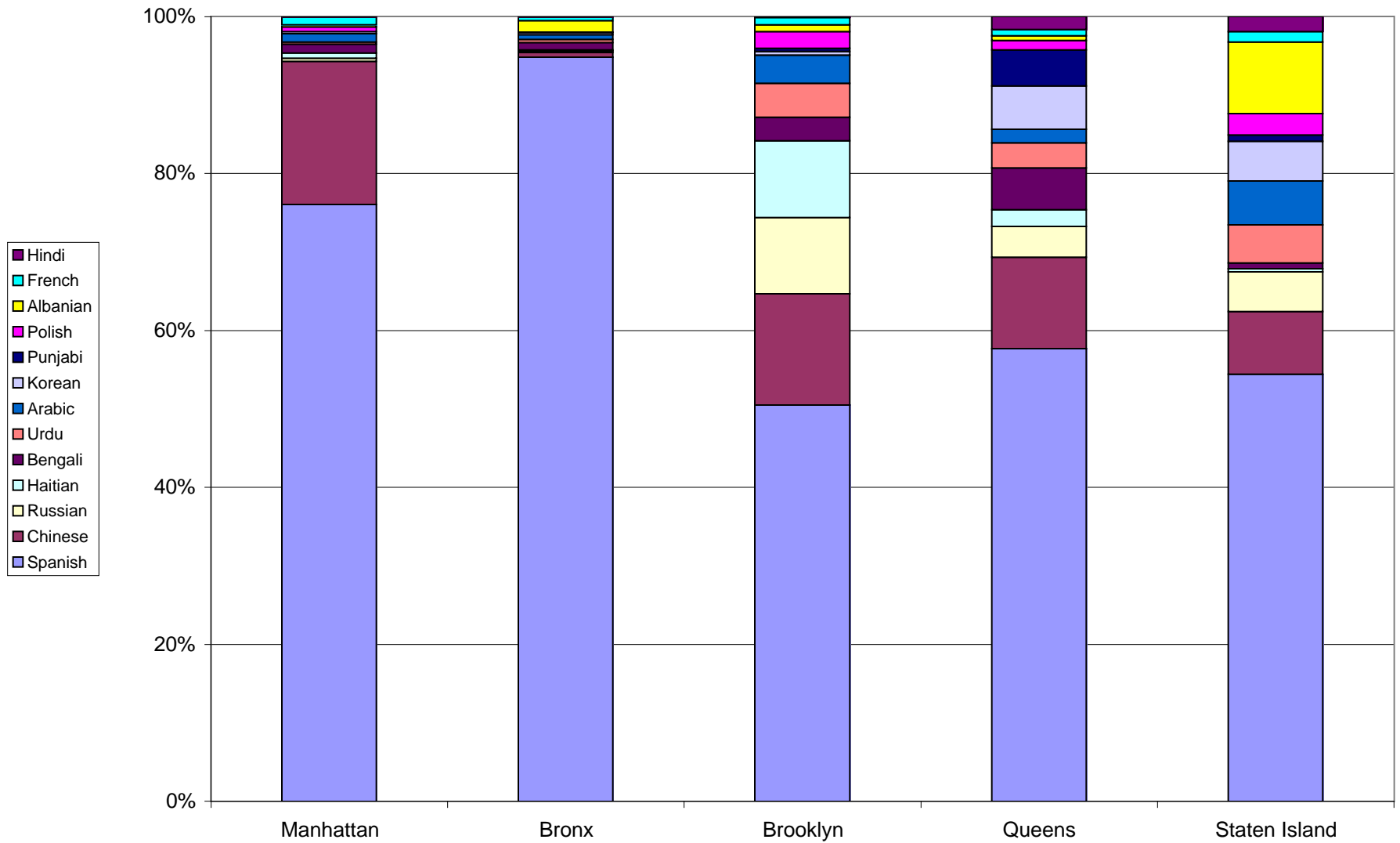
-
- lxxxii Stephan F. Brumberg, "The Teacher Crisis and Educational Standards," City Schools, supra, pp. 157-58.
- lxxxiii Alfredo Artiles, Zenaida Aguirre-Mu_oz and Jamal Abedi, "Predicting Placement in Learning Disabilities Programs: Do Predictors Vary by Ethnic Group?," Exceptional Children, Vol. 64, No. 4, p. 543.

ELL Enrollment by Language - 1998-99



Source: Office of Bilingual Education, NYC Board of Ed.
Note: Bilingual instructional services are provided in all languages depicted except Hindi.

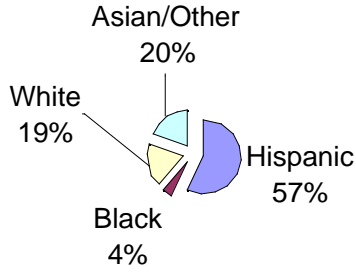
ELL Enrollment by Language and Borough - '98-'99



	Manhattan	Bronx	Brooklyn	Queens	Staten Island		TOTAL ELL
Spanish	22863	33587	18852	21056	845	Spanish	97203
Chinese	5479	209	5309	4274	124	Chinese	15395
Russian	134	85	3650	1418	78	Russian	5365
Haitian	199	24	3647	779	7	Haitian	4656
Bengali	335	347	1128	1947	11	Bengali	3768
Urdu	75	145	1615	1177	75	Urdu	3087
Arabic	317	202	1349	625	87	Arabic	2580
Korean	80	87	170	2031	79	Korean	2447
Punjabi	18	34	154	1677	12	Punjabi	1895
Polish	170	3	783	420	43	Polish	1419
Albanian	81	521	327	233	141	Albanian	1303
French	301	152	335	298	21	French	1107
Hindi	19	30	61	598	30	Hindi	738

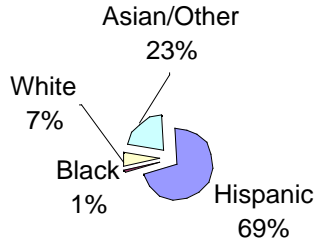
Queens: District 24

'97-'98 General Ed. Enrollment



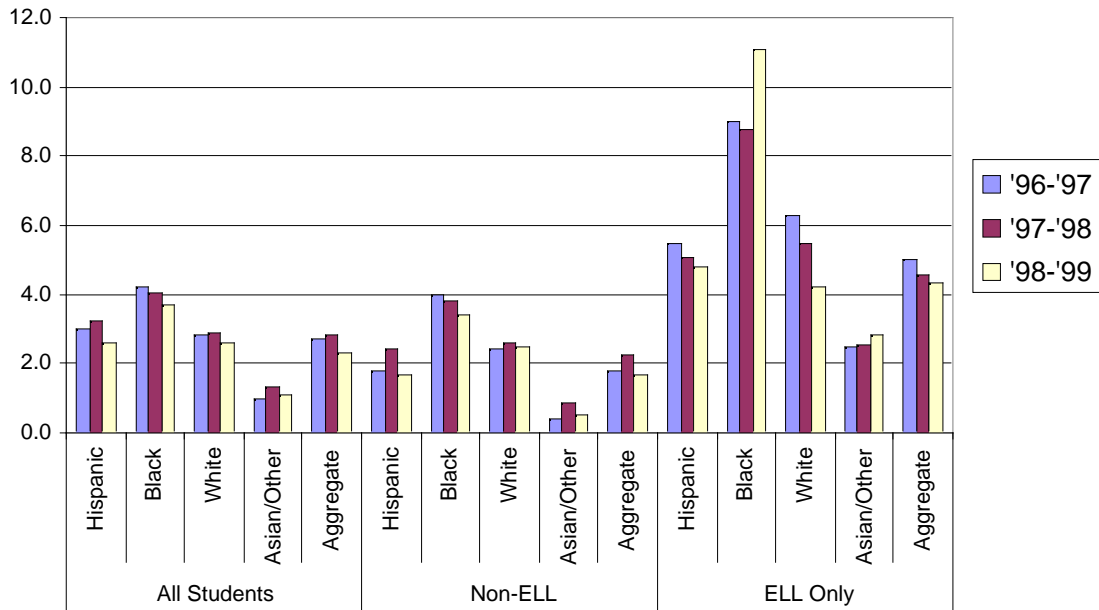
Total general education enrollment: 32,708

'97-'98 ELL General Ed. Enrollment

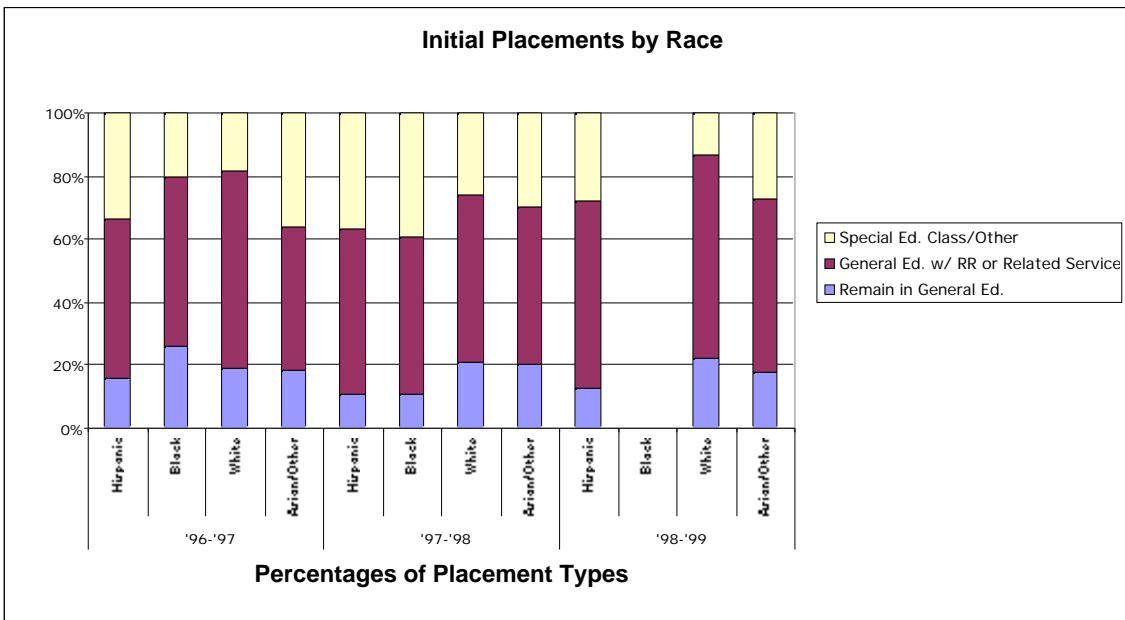
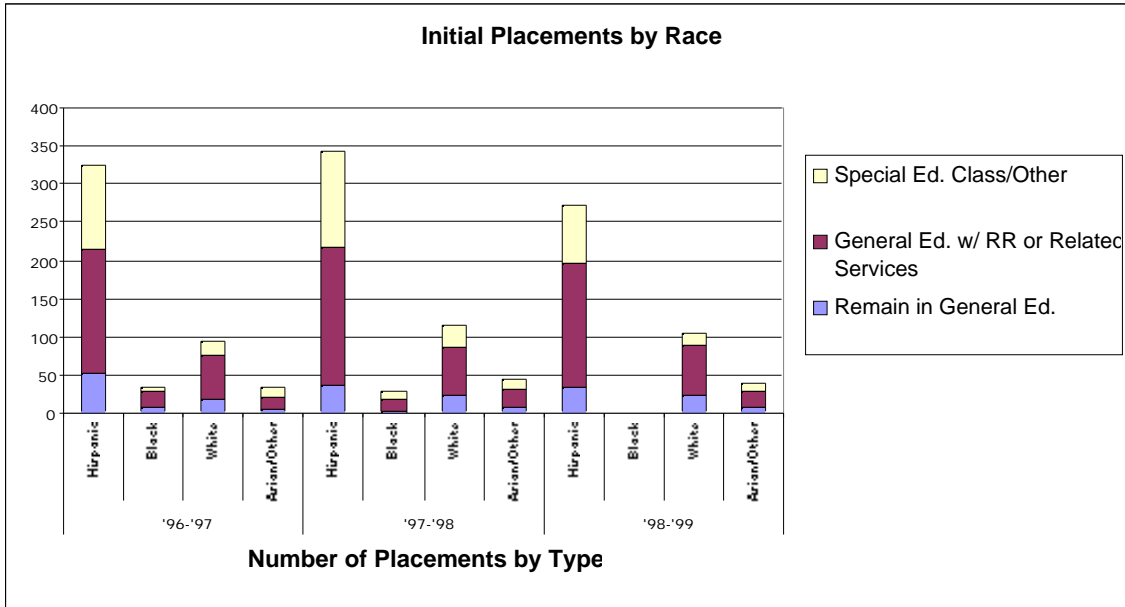


ELL general education enrollment: 8,415

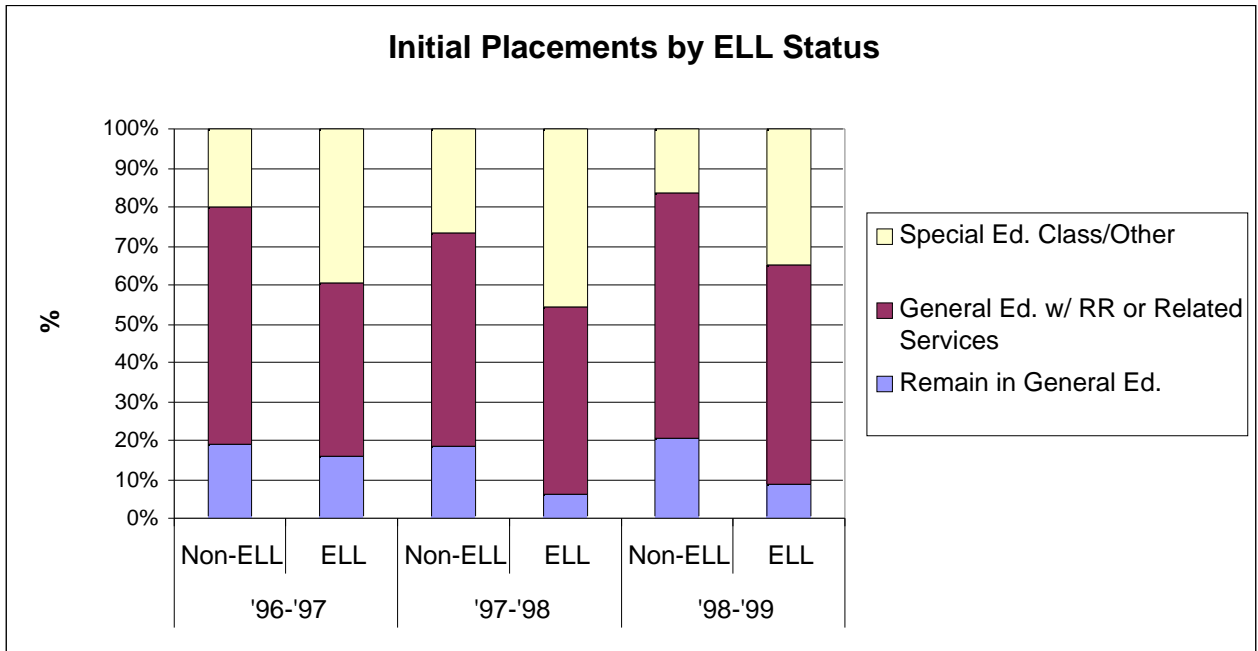
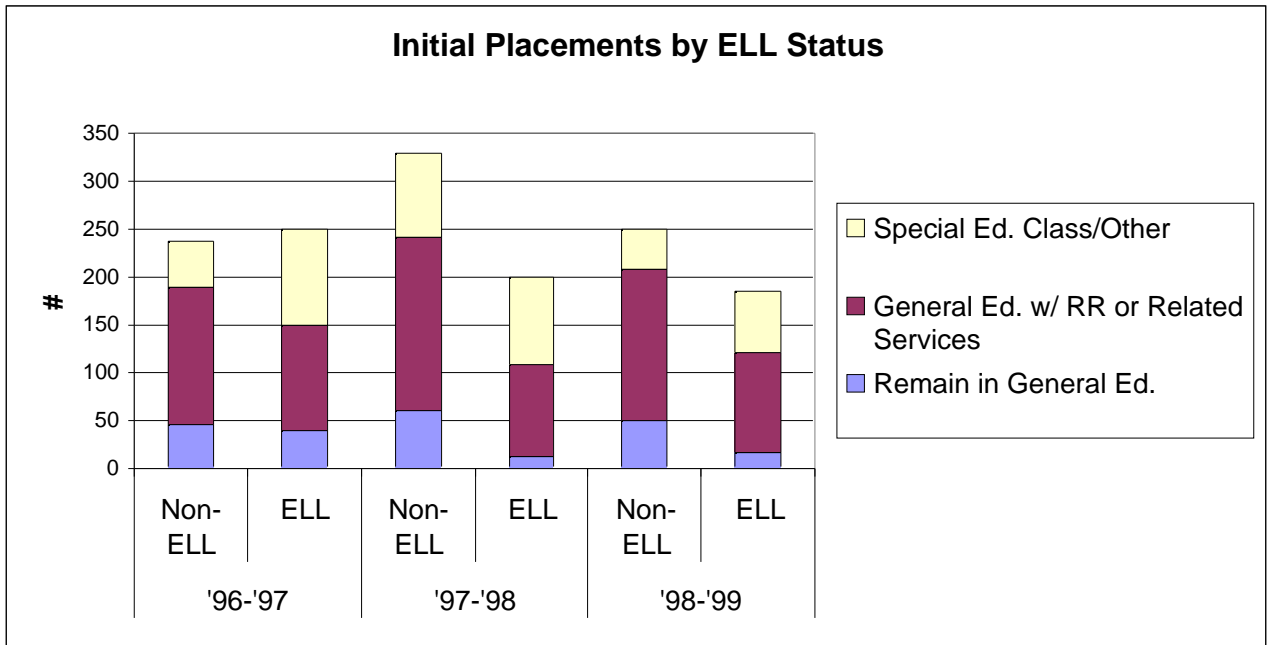
Referral Rates by Race



District 24

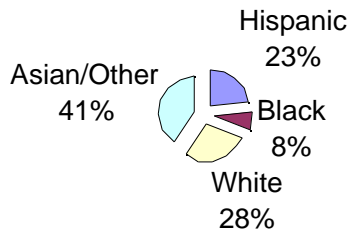


District 24



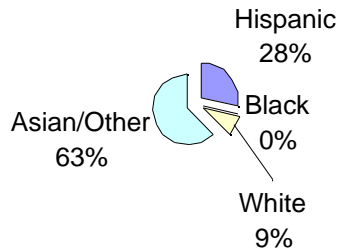
District 25

'97-'98 General Ed. Enrollment



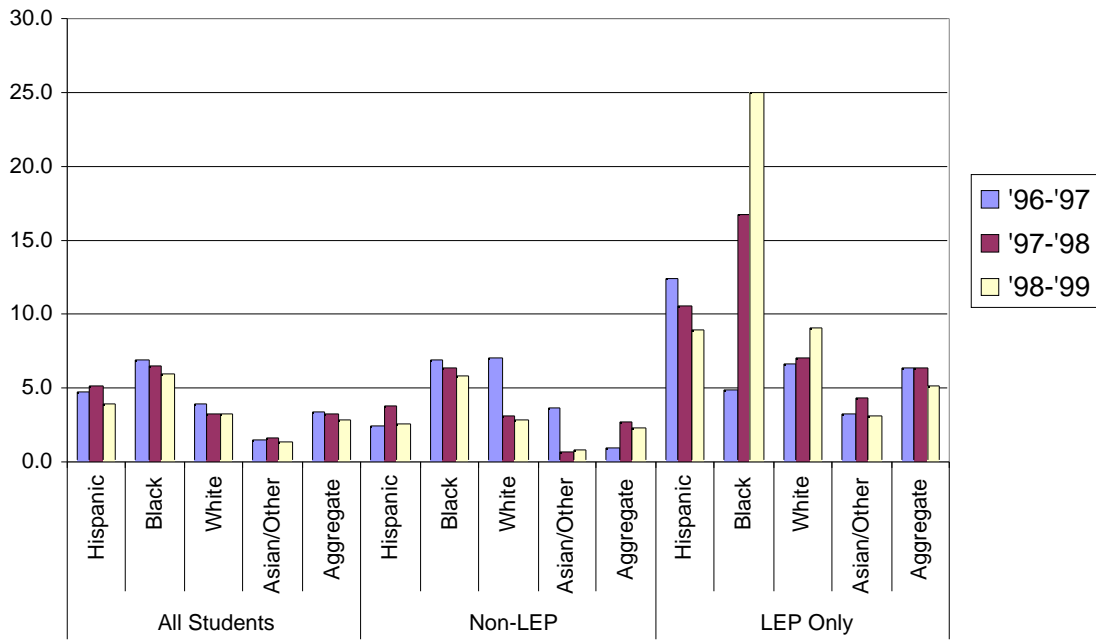
Total general education enrollment: 21,705

'97-'98 ELL General Ed. Enrollment

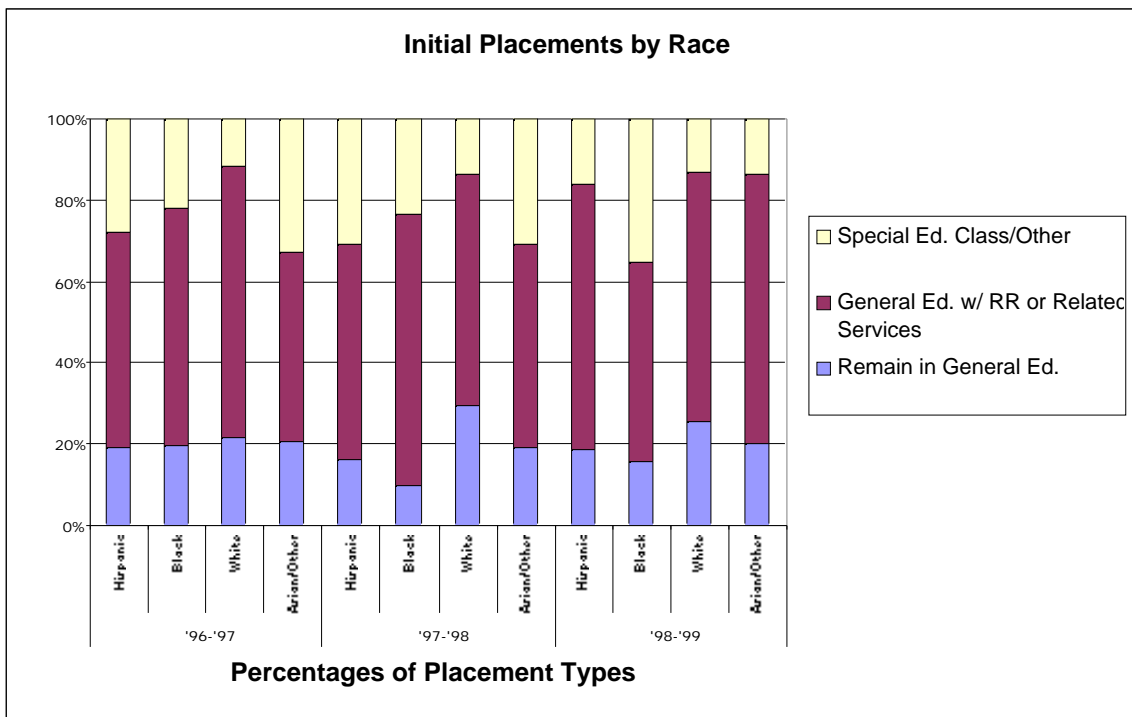
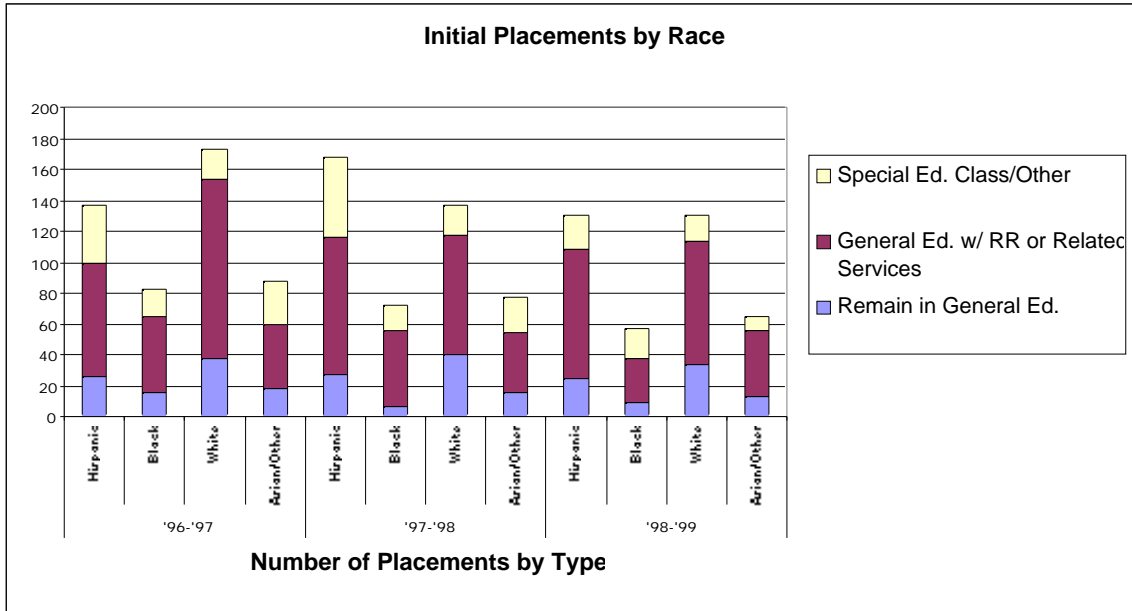


ELL general education enrollment: 3,850

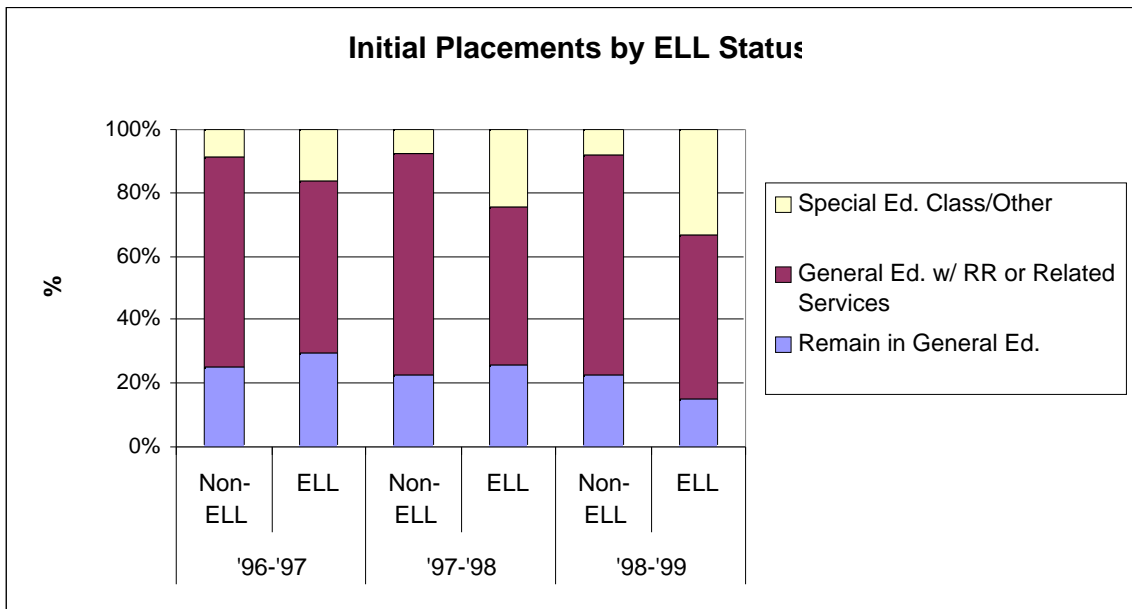
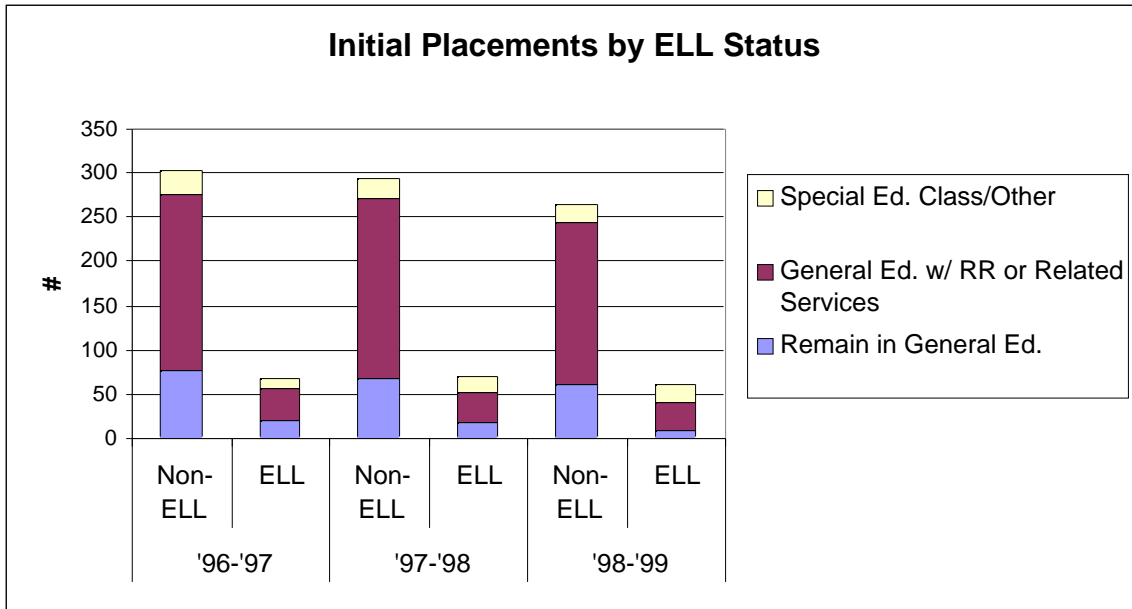
Referral Rates by Race



District 25

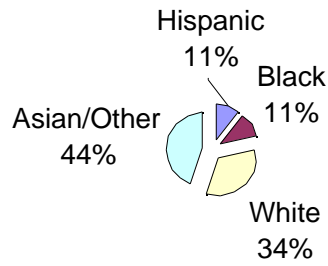


District 25



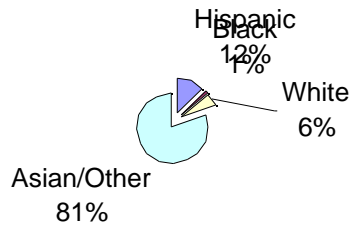
District 26

'98-'99 General Ed. Enrollment



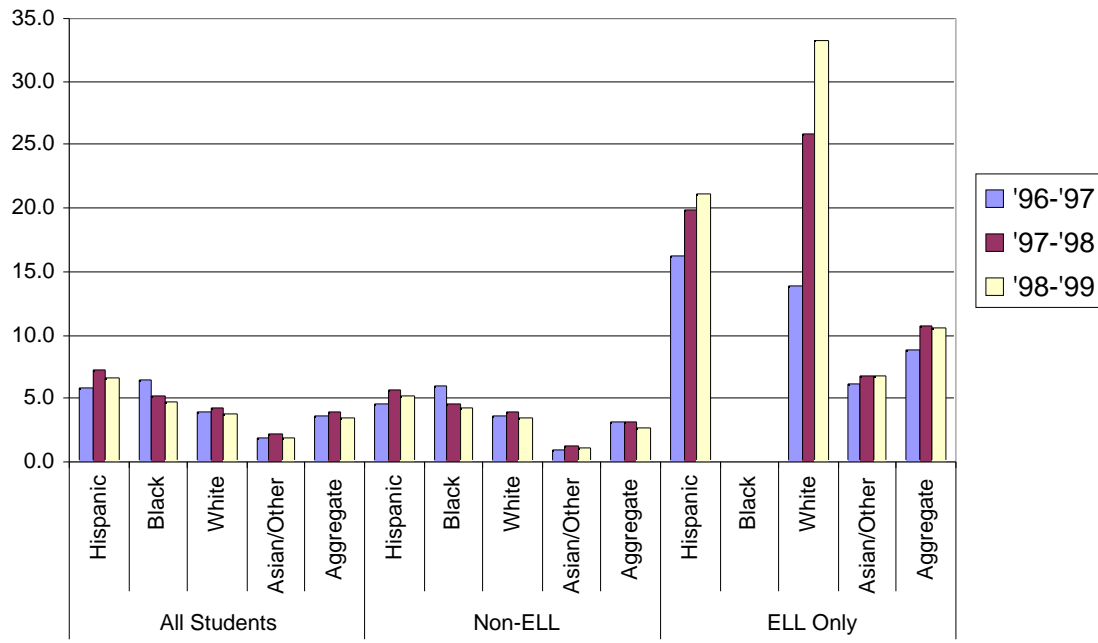
Total general education enrollment: 15,071

'98-'99 ELL General Ed. Enrollment

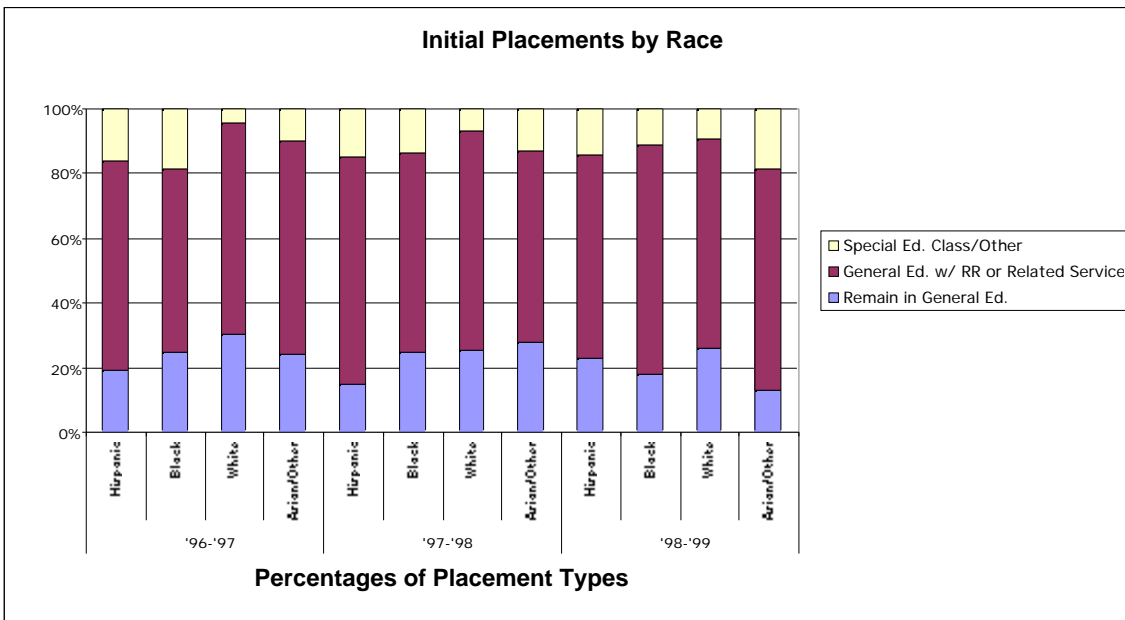
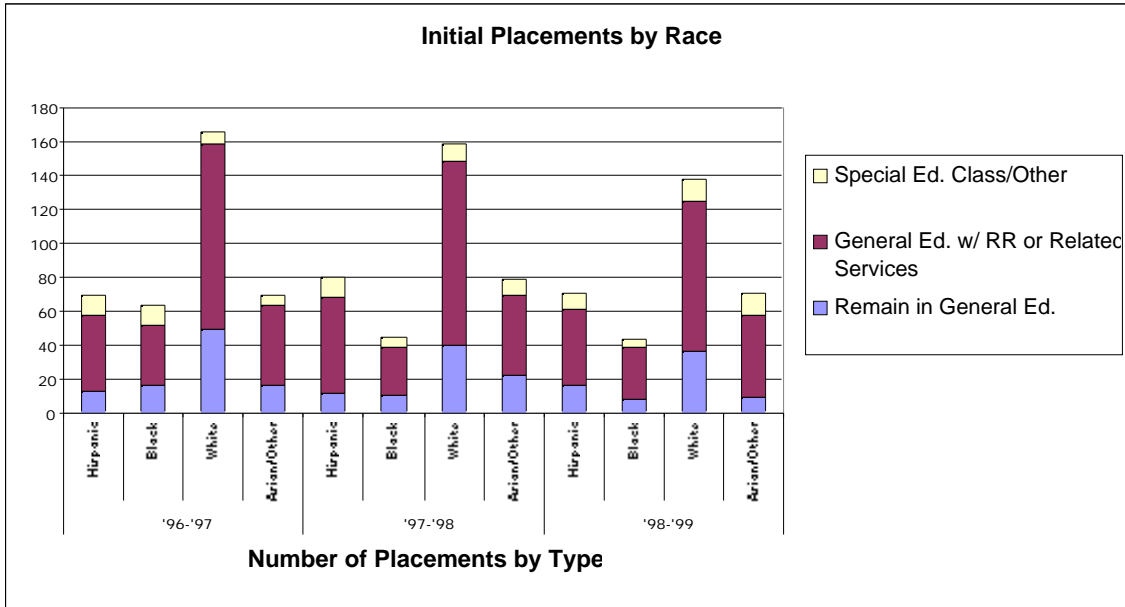


ELL general education enrollment: 1,191

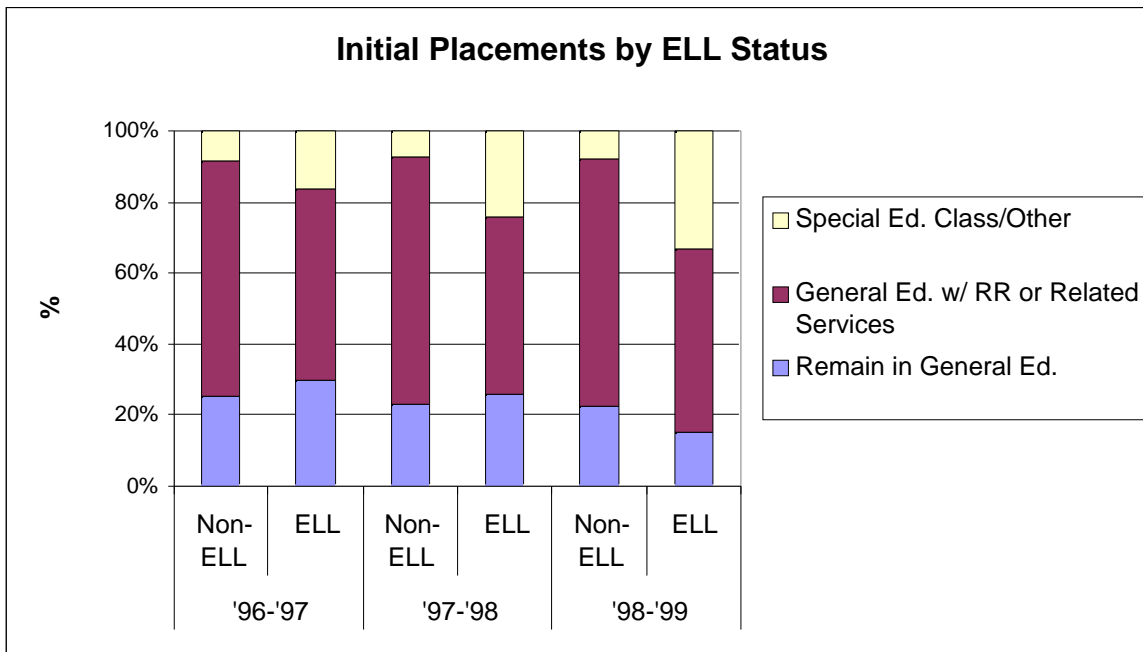
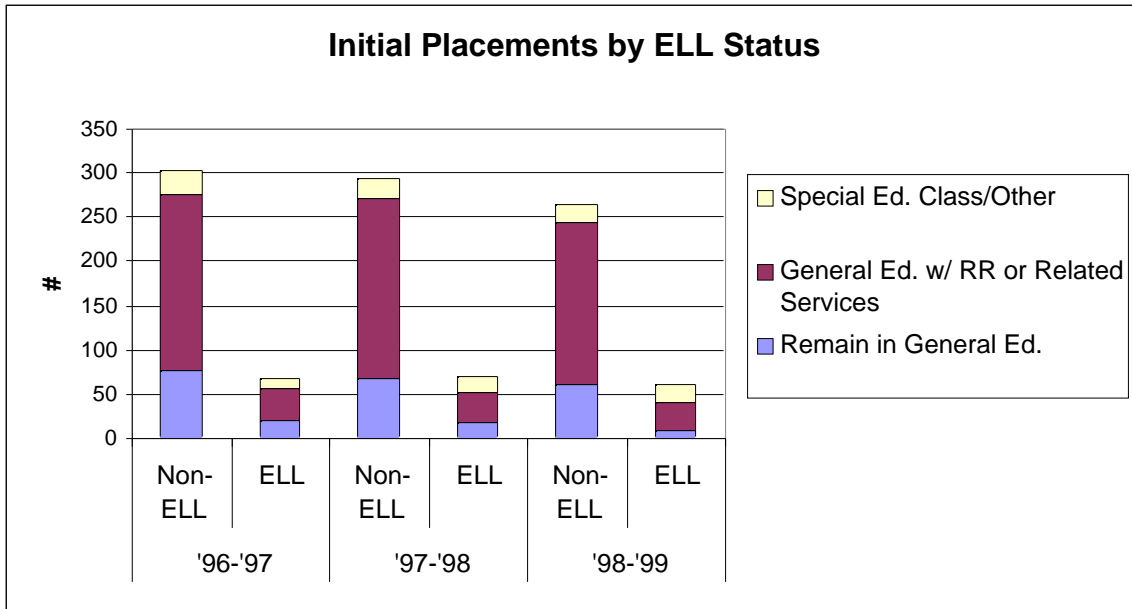
Referral Rates by Race



District 26

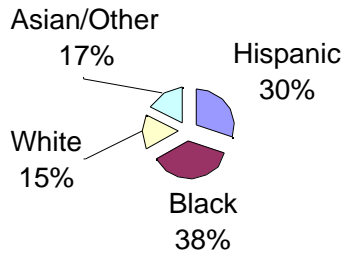


District 26



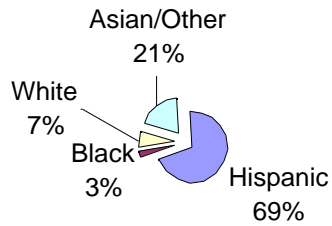
District 27

'97-'98 General Ed. Enrollment



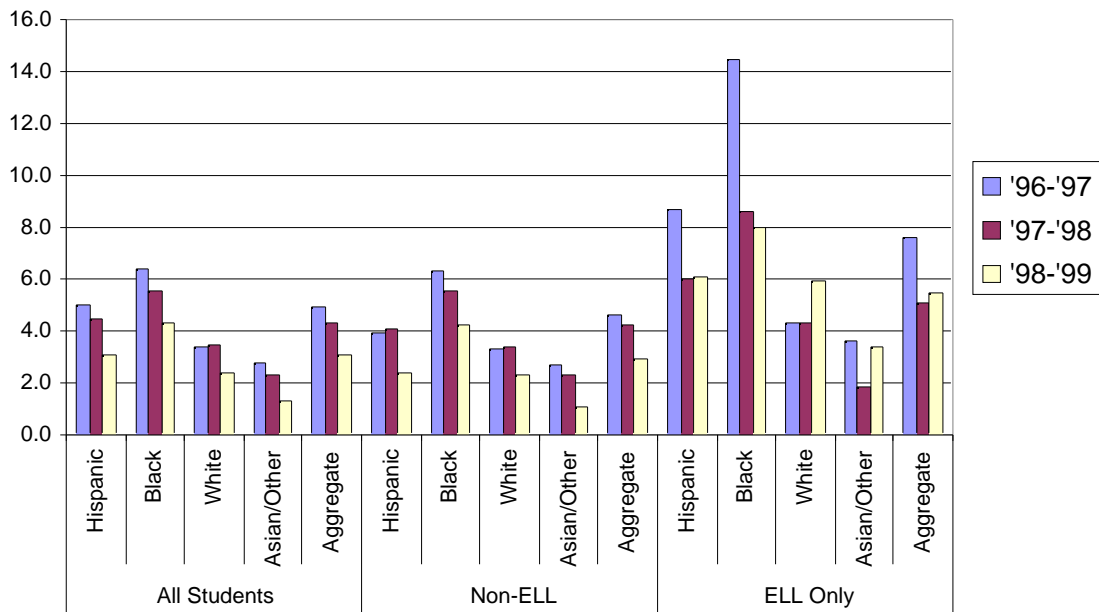
Total general education enrollment: 29,880

'97-'98 ELL General Ed. Enrollment

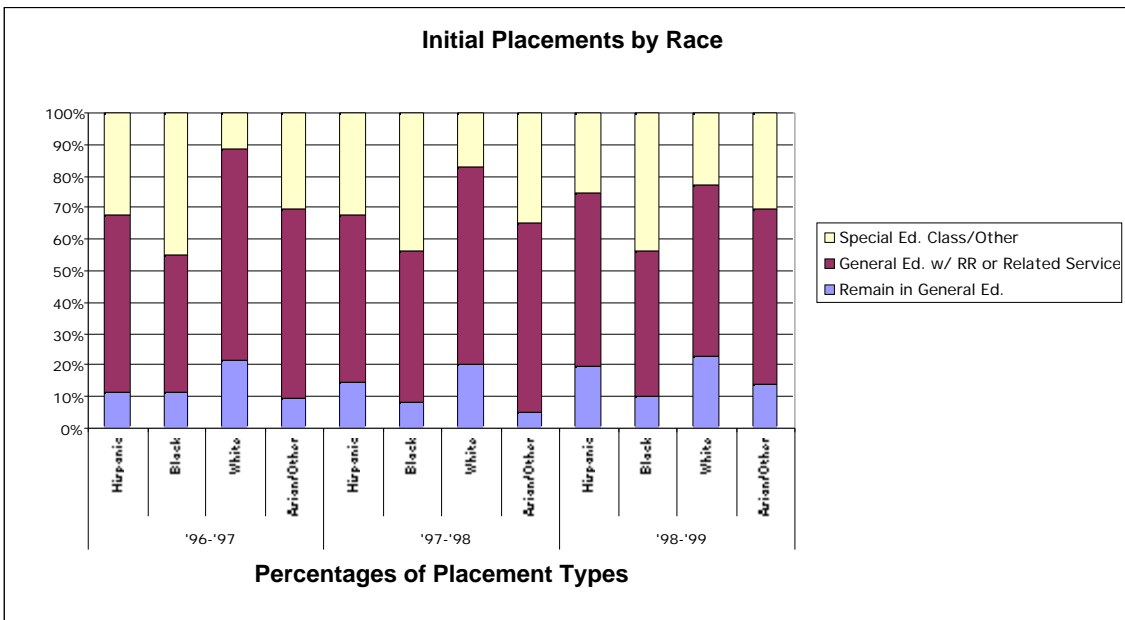
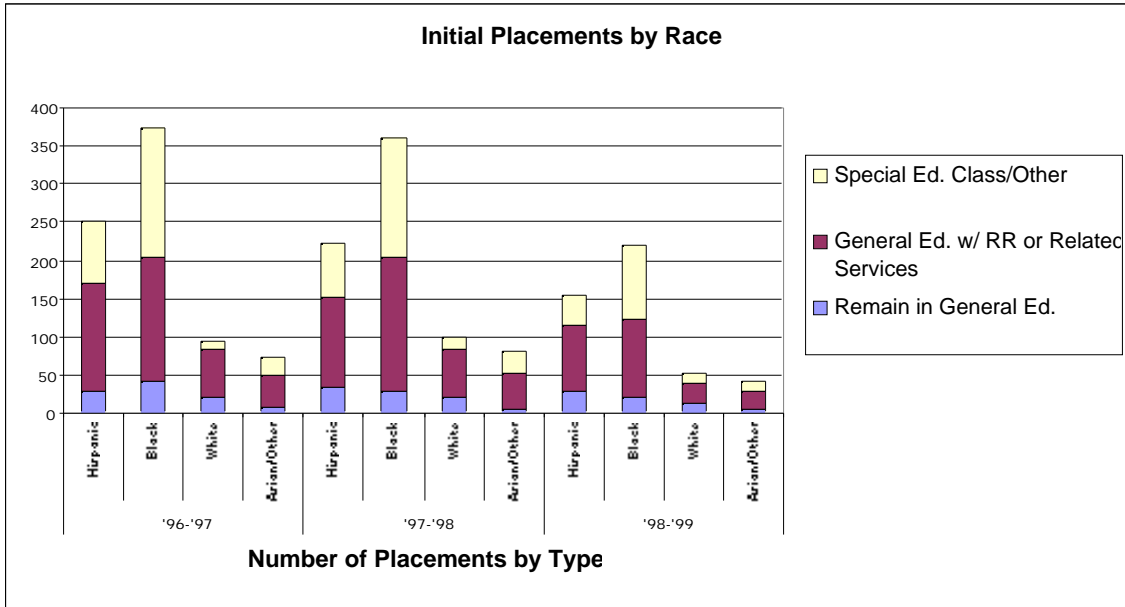


ELL general education enrollment: 2,806

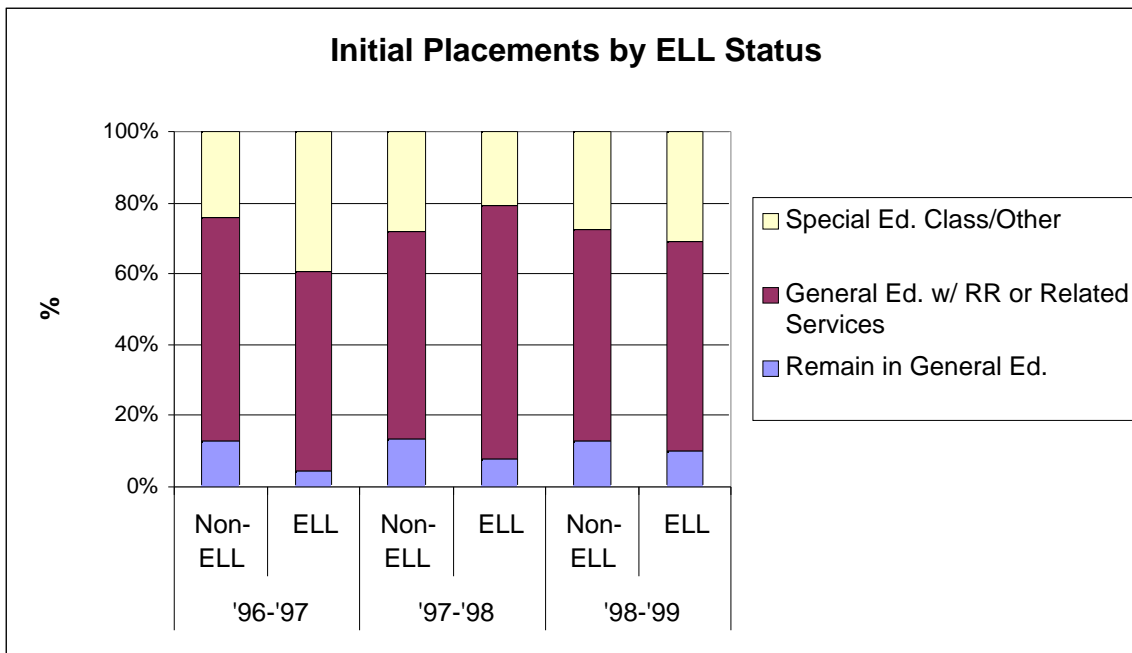
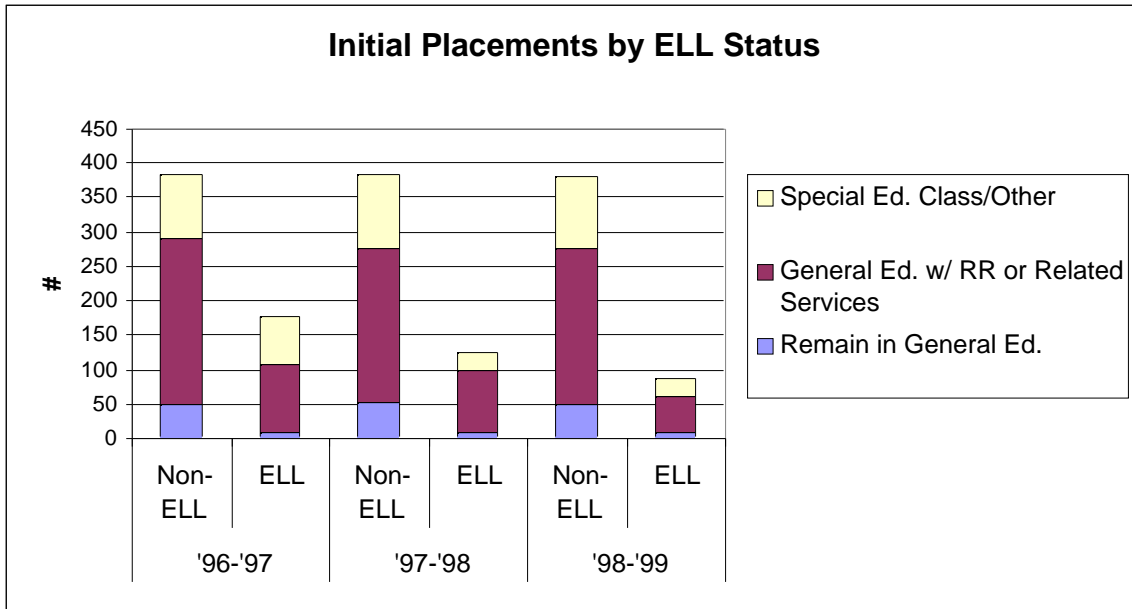
Referral Rates by Race



District 27

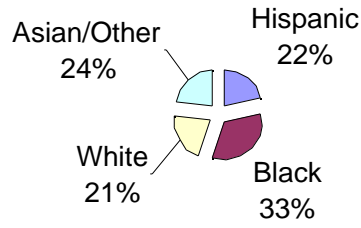


District 27



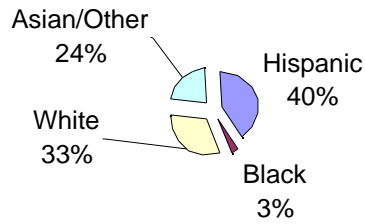
District 28

'97-'98 General Ed. Enrollment



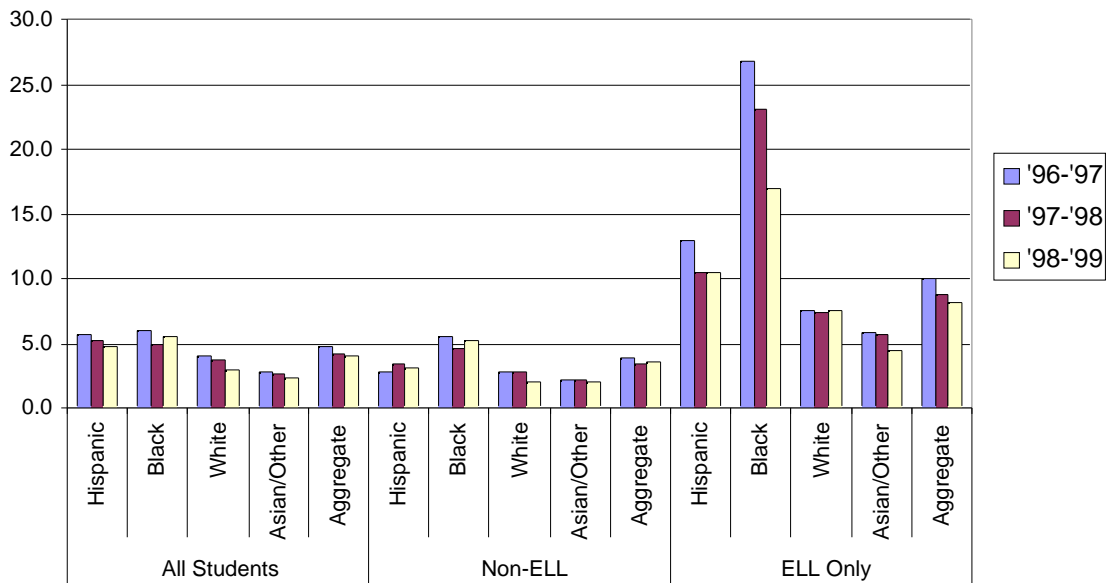
Total general education enrollment: 22,641

'97-'98 ELL General Ed. Enrollment

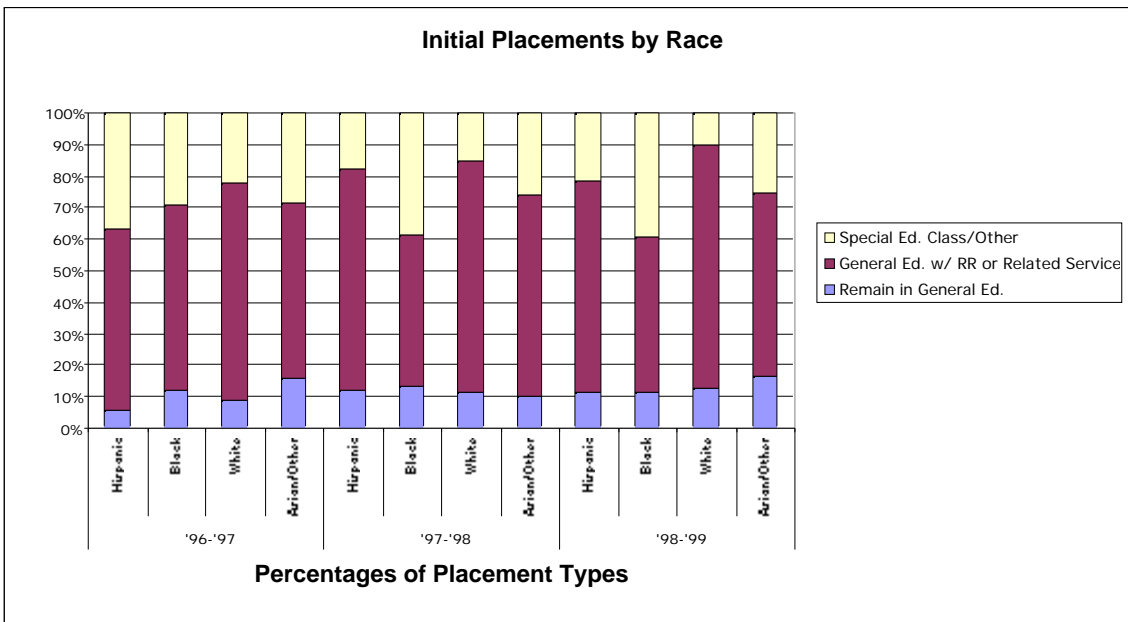
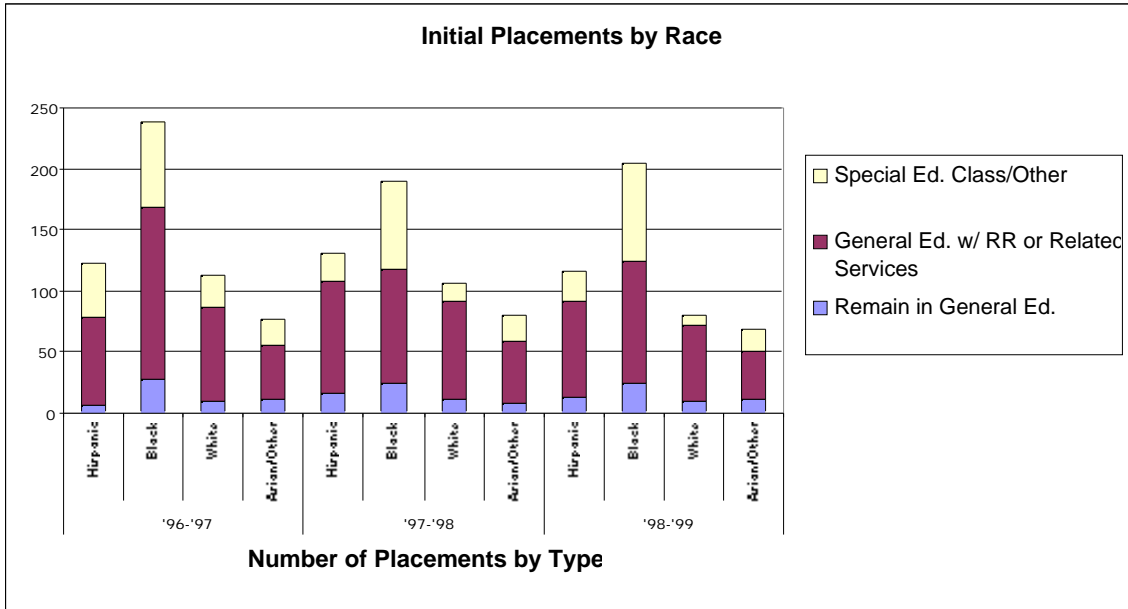


ELL general education enrollment: 3,089

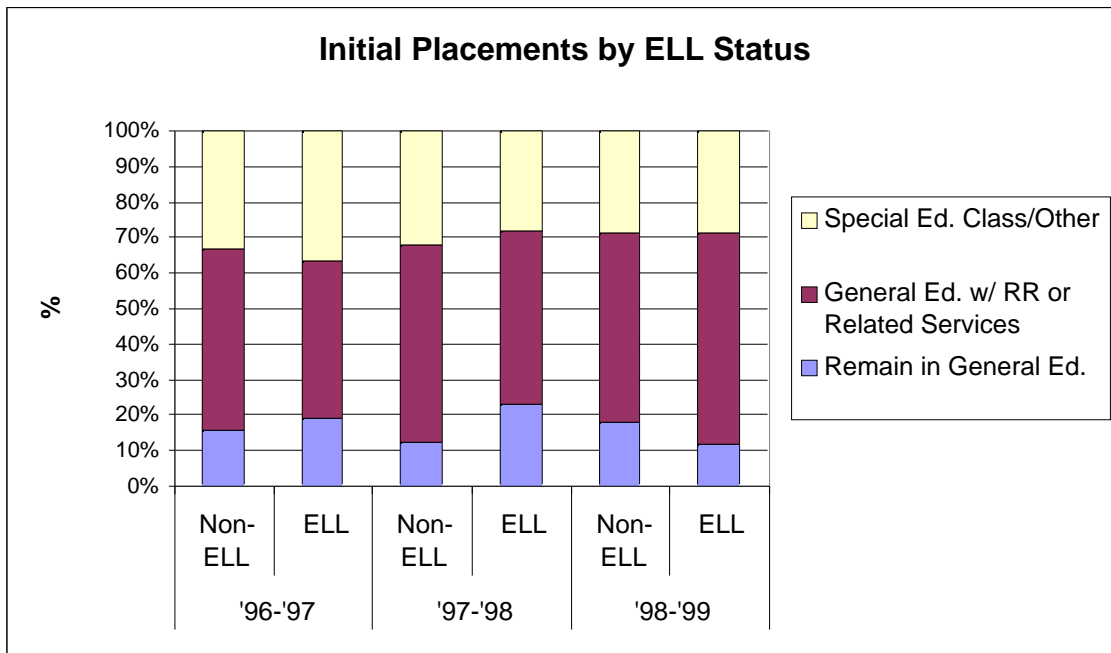
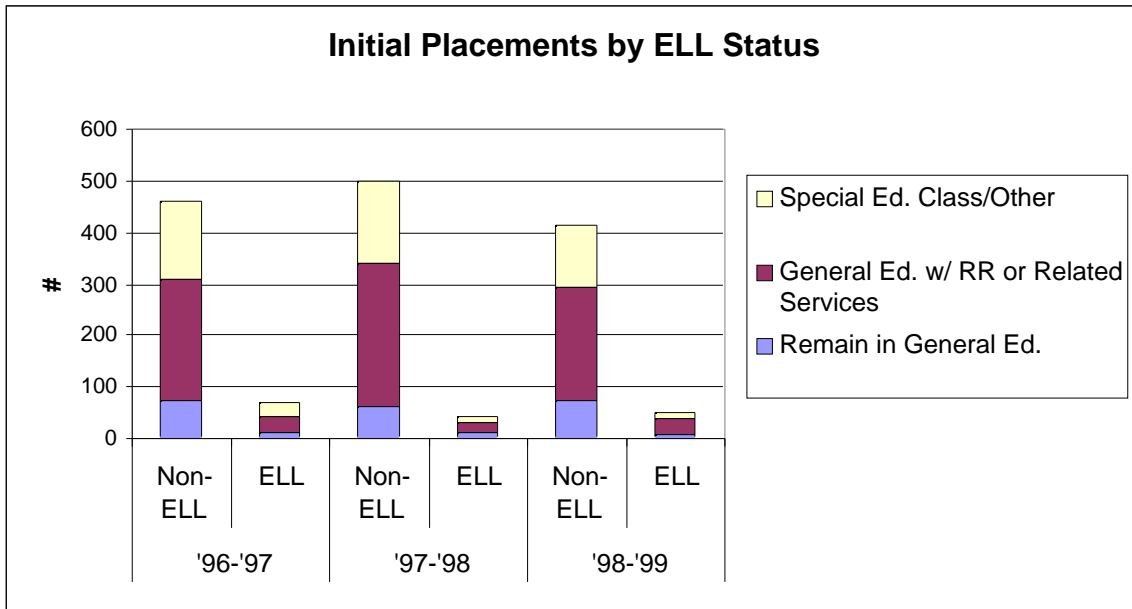
Referral Rates by Race



District 28

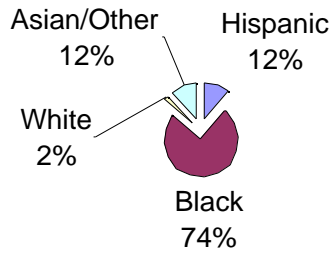


District 28



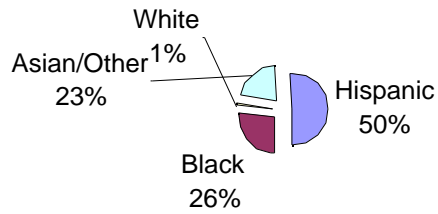
District 29

'97-'98 General Ed. Enrollment



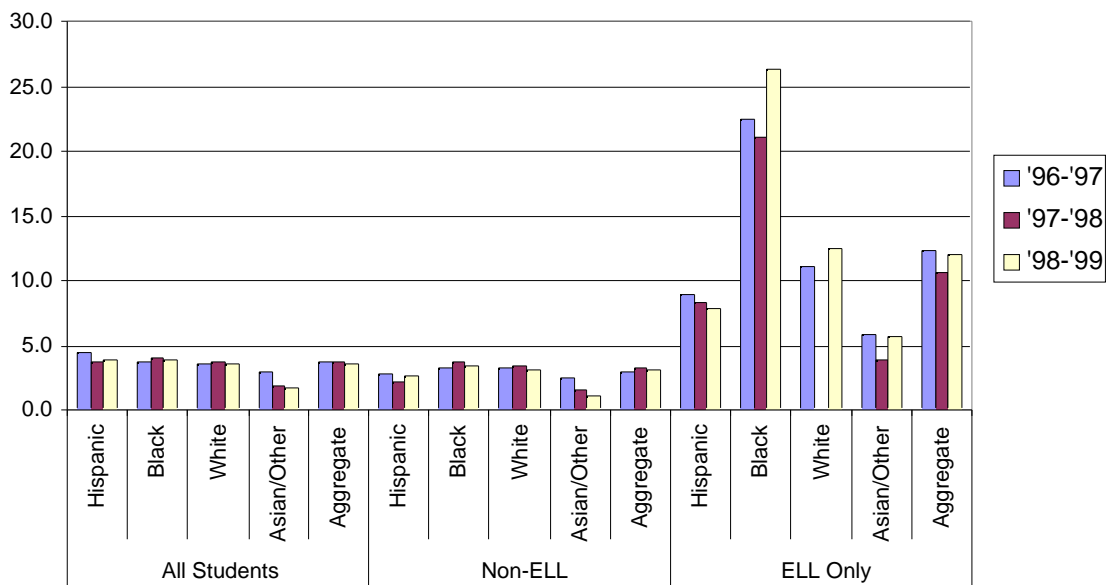
Total general education enrollment: 24,308

'97-'98 ELL General Ed. Enrollment

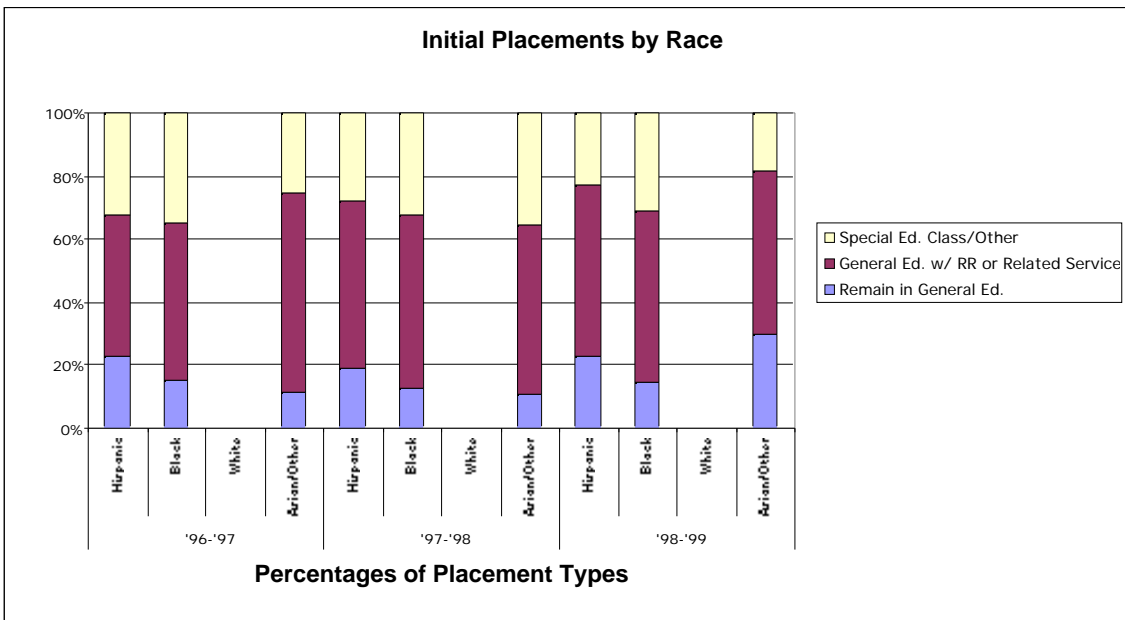
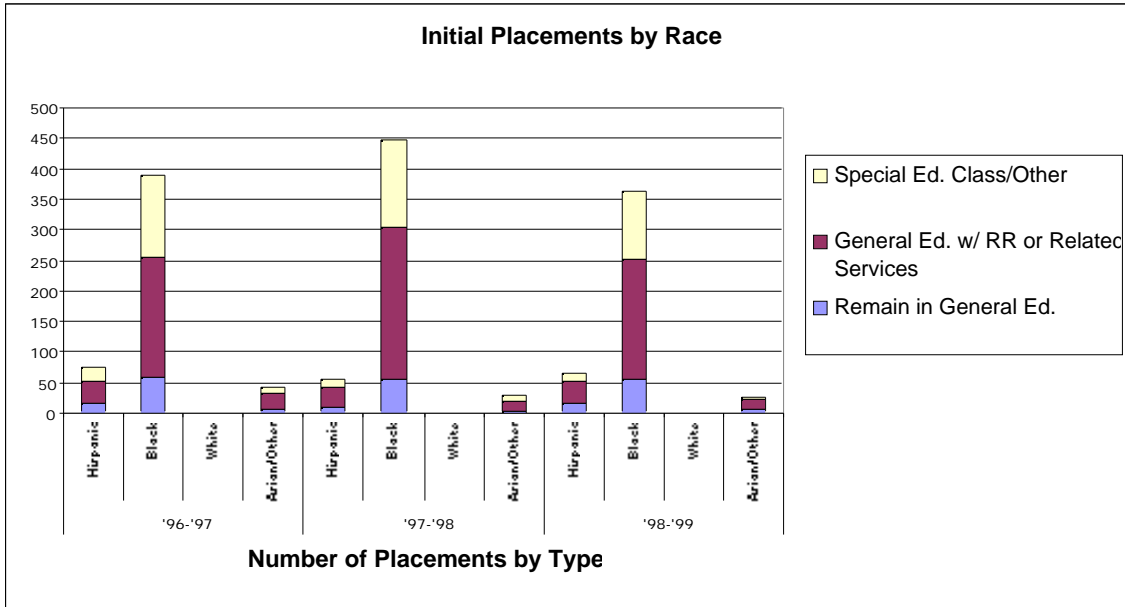


ELL general education enrollment: 1,476

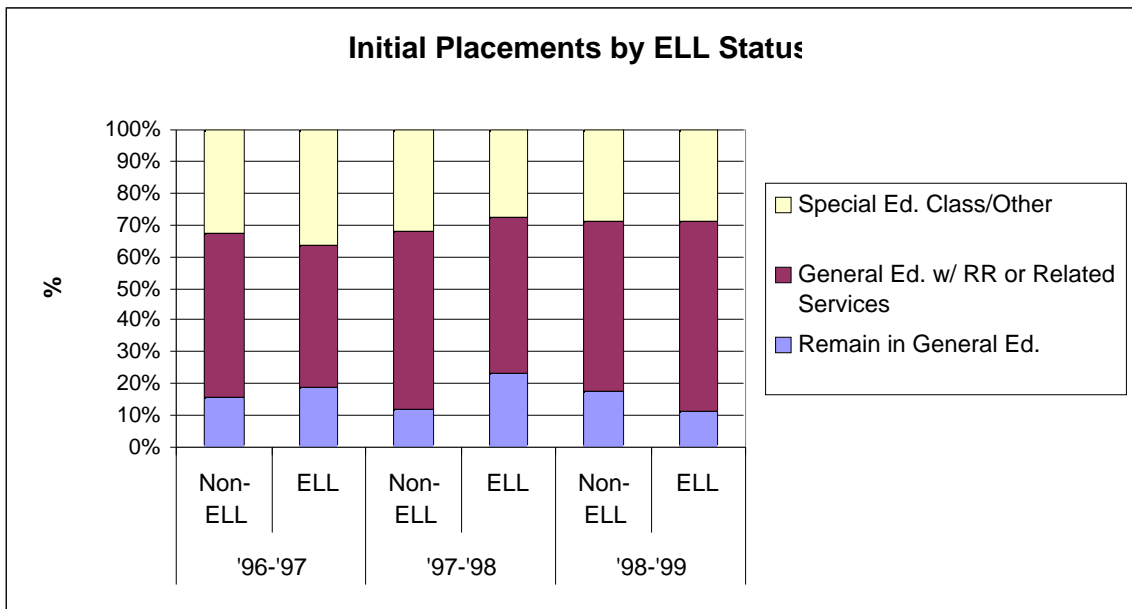
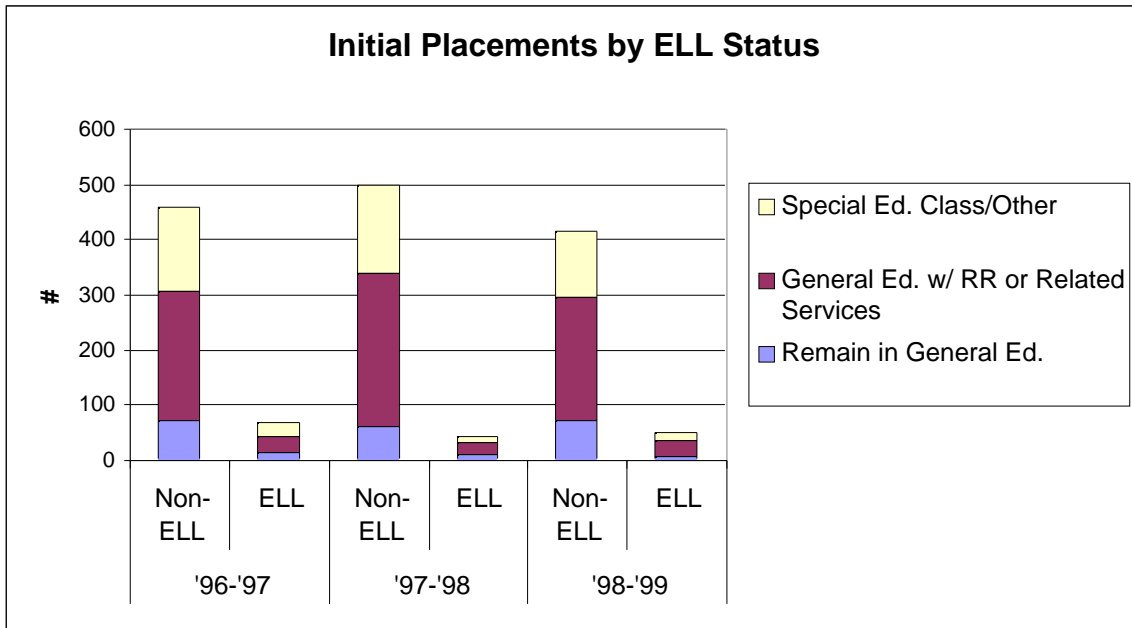
Referral Rates by Race



District 29

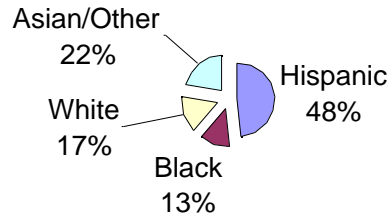


District 29



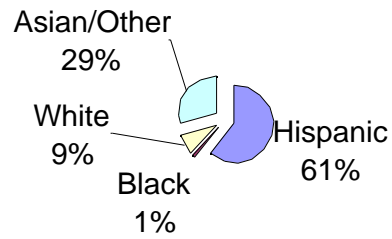
District 30

'97-'98 General Ed. Enrollment



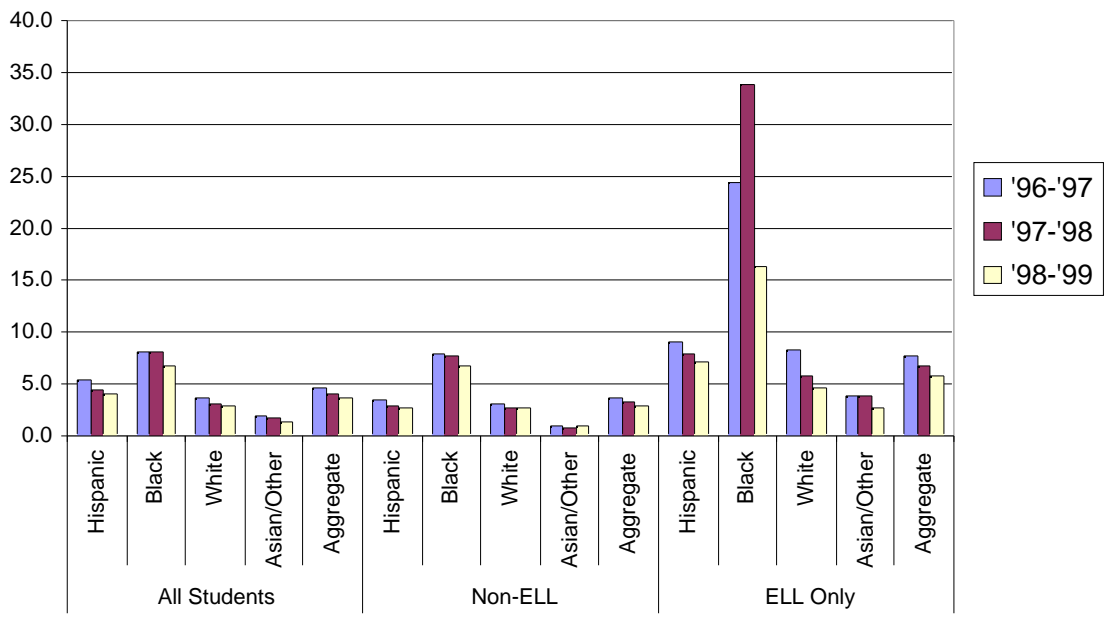
Total general education enrollment: 25,171

'97-'98 ELL General Ed. Enrollment

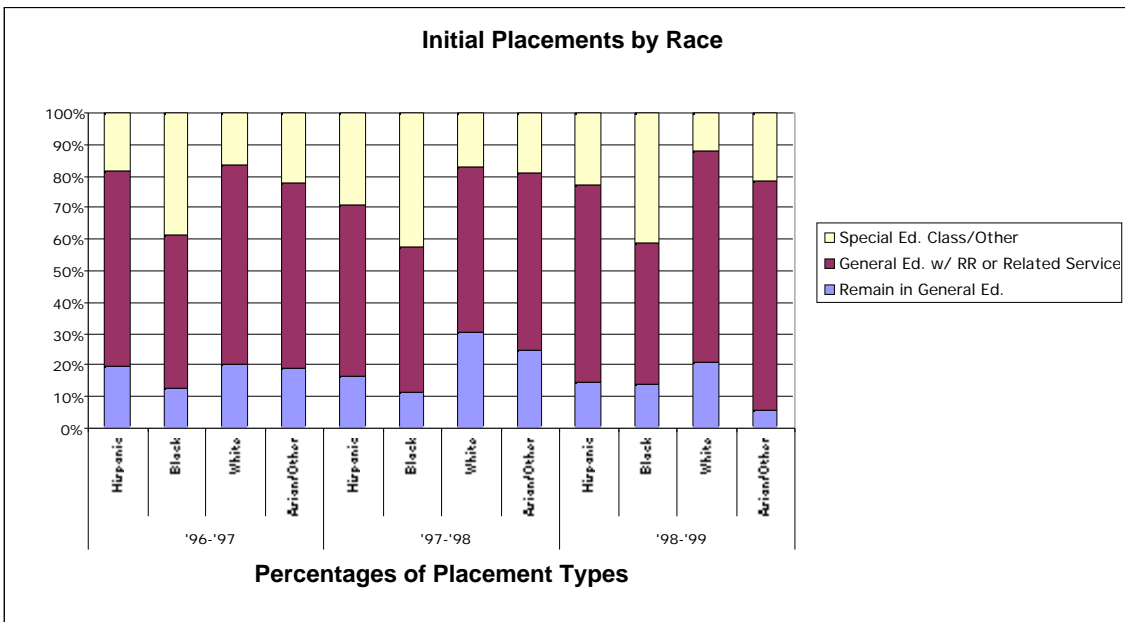
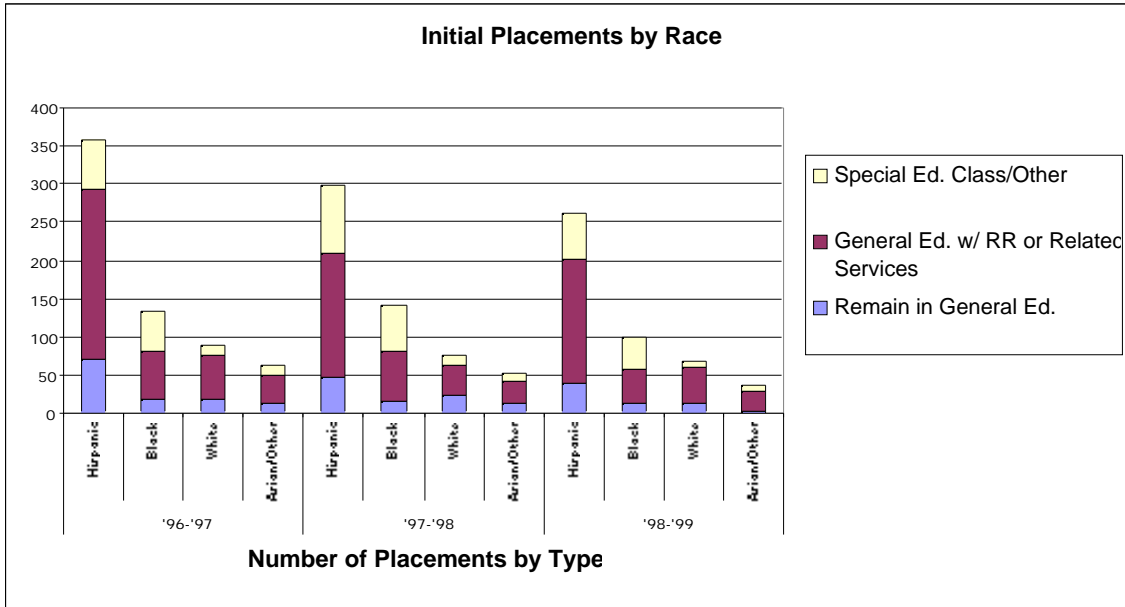


ELL general education enrollment: 6,134

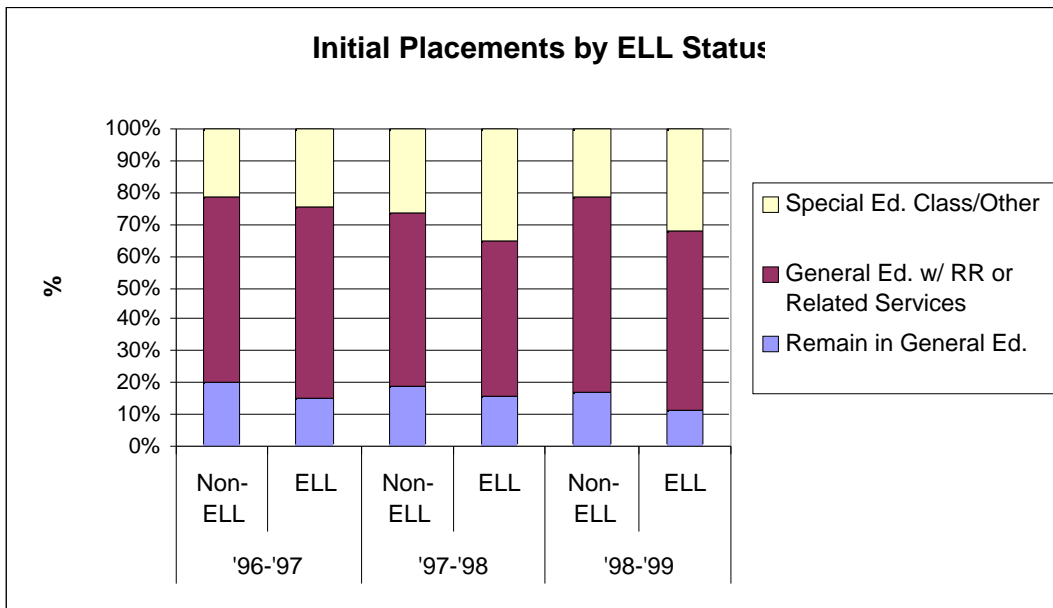
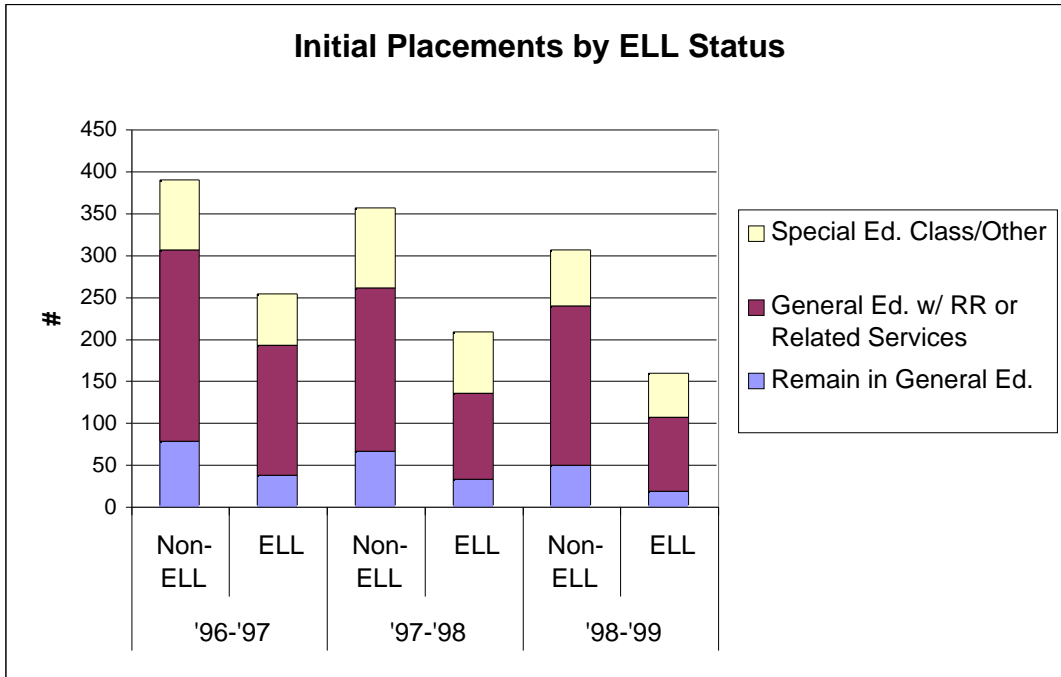
Referral Rates by Race



District 30

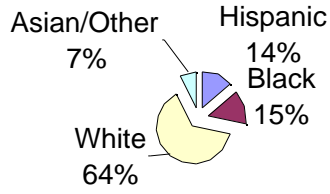


District 30



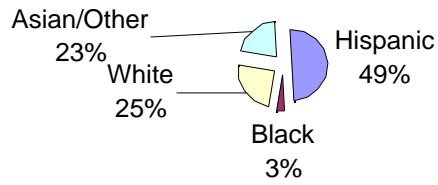
Staten Island: District 31

'97-'98 General Ed. Enrollment



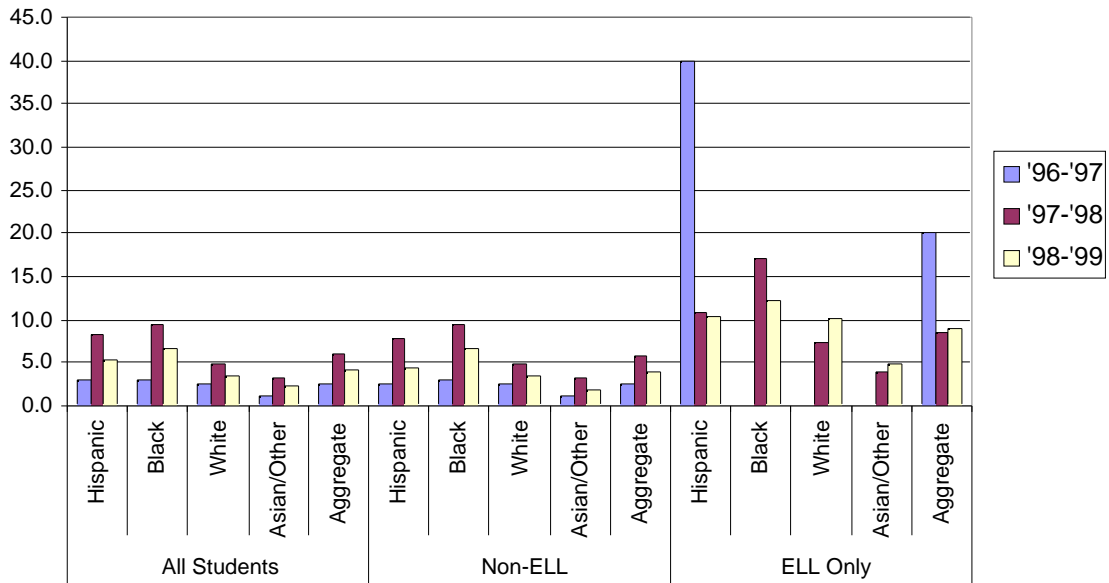
Total general education enrollment: 33,639

'97-'98 ELL General Ed. Enrollment

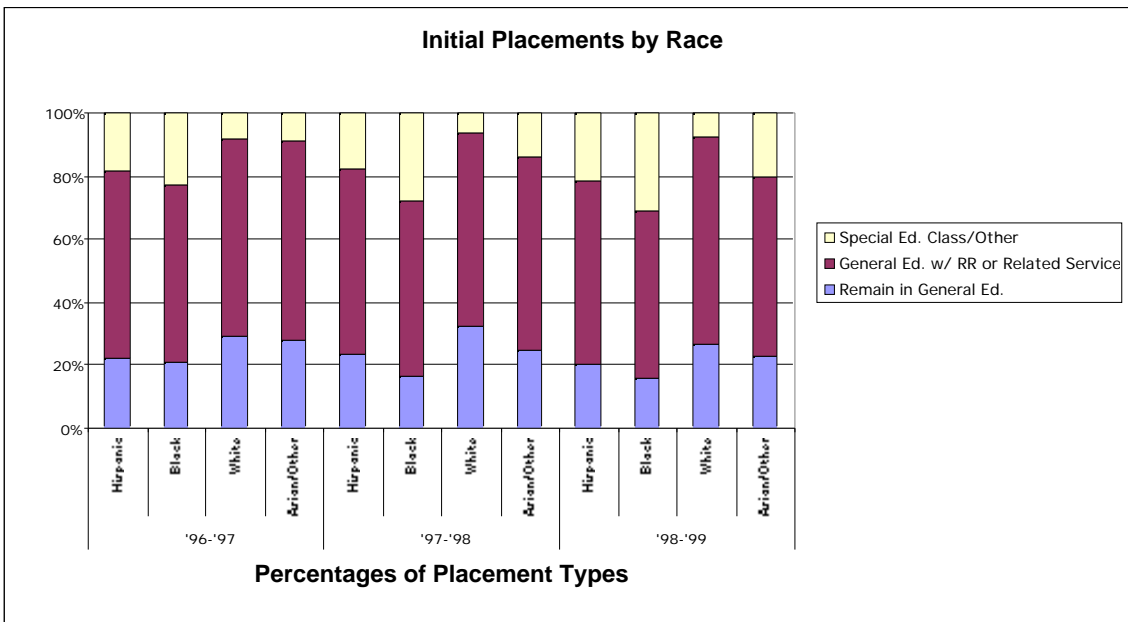
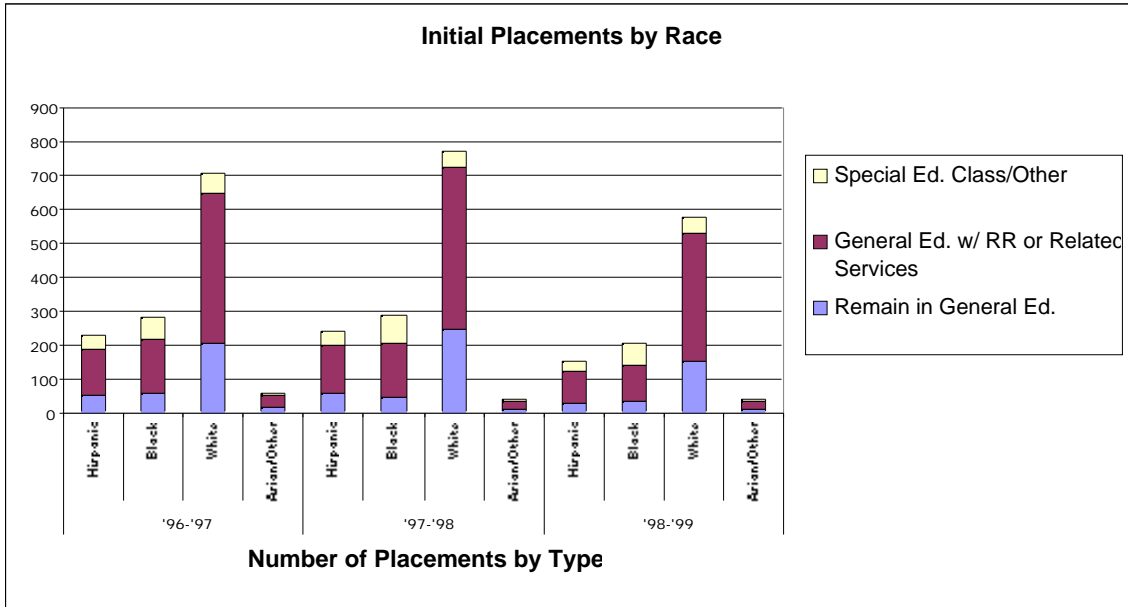


ELL general education enrollment: 1,192

Referral Rates by Race



District 31



District 31

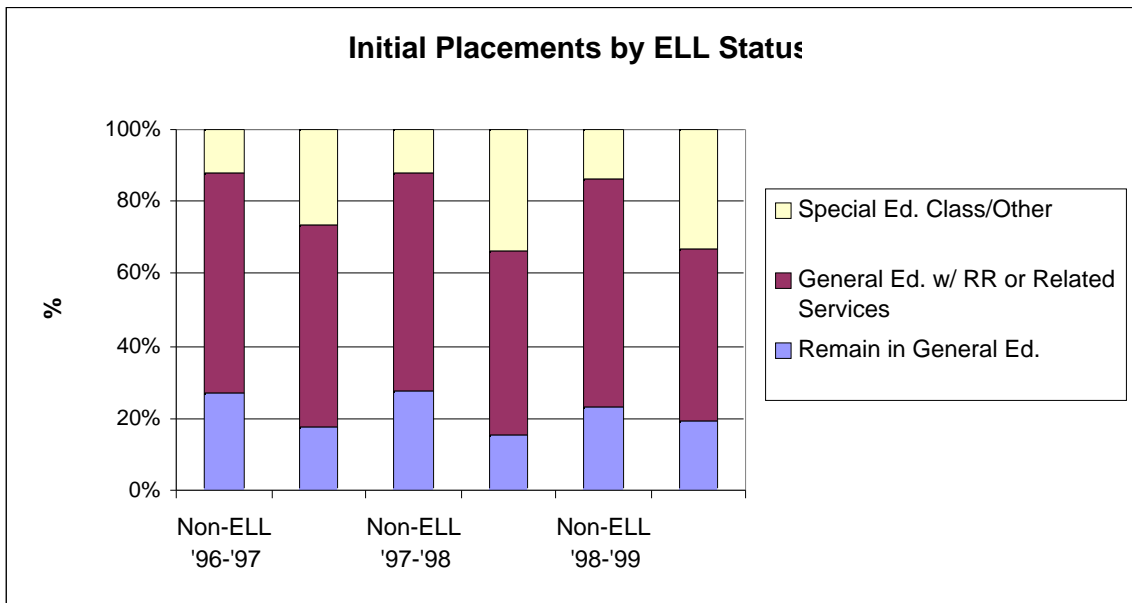
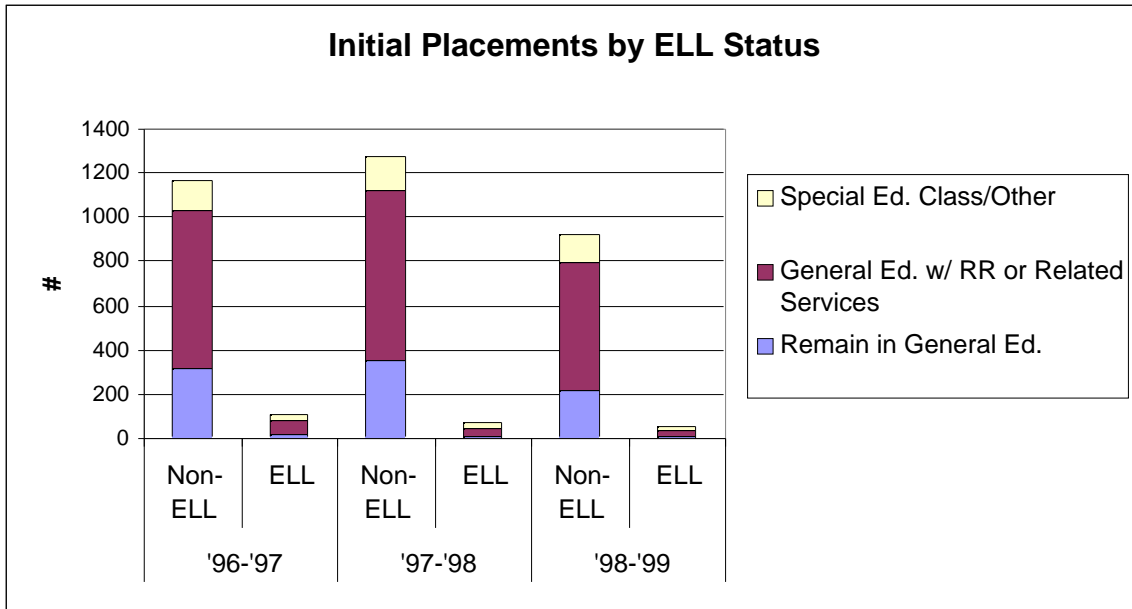


Table C-1

Referral Rates - 1996-99

Borough	School Year	District	All Students					Non-ELL Only					ELL Only				
			Hispanic	Black	White	Asian/Other	Aggregate	Hispanic	Black	White	Asian/Other	Aggregate	Hispanic	Black	White	Asian/Other	
Manhattan	'96-'97	1	7.6	8.7	6.2	1.9	6.8	4.8	8.4	5.3	1.0	5.2	18.5	18.5	---	---	2.6
	'97-'98		7.0	7.6	4.0	2.0	6.0	5.7	7.6	3.7	1.9	5.5	12.9	---	---	---	2.1
	'98-'99		5.4	7.1	2.9	2.3	4.9	4.0	6.5	2.3	2.0	4.1	13.2	38.1	17.7	---	2.6
	'96-'97	2	7.9	8.5	3.6	2.7	4.8	5.5	8.4	3.4	1.4	4.0	21.8	16.0	9.0	---	5.0
	'97-'98		8.1	8.5	4.1	2.6	4.9	6.3	8.3	3.9	1.7	4.4	21.3	9.3	9.0	---	4.4
	'98-'99		6.0	5.1	3.1	1.6	3.4	4.5	4.8	3.0	0.9	3.0	19.9	14.3	6.1	---	3.4
	'96-'97	3	5.9	6.5	3.0	6.4	5.8	3.6	6.4	2.9	5.9	4.9	11.4	13.4	6.3	---	11.1
	'97-'98		5.4	6.2	3.7	3.4	5.4	4.0	6.1	3.5	3.2	4.9	9.1	10.5	10.5	---	4.6
	'98-'99		5.4	6.2	2.6	4.0	5.2	3.4	5.4	2.3	3.2	4.1	11.9	46.0	15.6	---	6.9
	'96-'97	4	5.8	5.4	1.8	3.4	5.5	4.2	5.4	1.4	3.3	4.6	12.3	10.3	---	---	4.8
	'97-'98		4.6	5.3	2.6	6.7	4.8	3.9	5.1	2.7	7.9	4.5	7.1	25.0	---	---	2.2
	'98-'99		4.1	4.1	3.2	6.3	4.1	2.8	4.0	3.4	7.1	3.4	9.2	25.8	---	---	2.3
'96-'97	5	1.8	2.3	3.2	1.9	2.2	1.3	2.3	1.9	2.6	2.1	2.5	3.6	1.1	---	---	
'97-'98		1.7	2.1	0.0	0.0	2.0	1.1	2.1	---	---	1.9	2.5	2.5	---	---	---	
'98-'99		2.1	1.8	3.6	2.0	1.9	1.4	1.8	2.1	2.7	1.7	3.1	3.1	---	---	---	
'96-'97	6	4.1	6.6	3.4	1.8	4.3	1.5	6.3	1.7	1.0	2.2	6.6	13.4	11.6	---	4.0	
'97-'98		4.0	6.8	4.5	2.3	4.2	1.7	6.6	3.1	2.6	2.4	6.9	12.9	11.4	---	1.6	
'98-'99		2.5	4.1	1.8	1.6	2.6	0.8	4.0	0.8	2.1	1.2	4.9	9.1	6.4	---	0.0	
Bronx	'96-'97	7	5.5	6.4	4.0	9.5	5.8	3.3	5.6	4.4	9.2	4.4	10.2	41.3	---	---	10.5
	'97-'98		5.3	7.3	0.0	6.7	5.9	4.2	7.1	0.0	4.7	5.4	7.7	17.7	---	---	11.5
	'98-'99		4.3	5.1	6.9	5.4	4.6	2.8	4.9	7.1	2.9	3.6	8.2	21.3	---	---	---
	'96-'97	8	3.8	6.4	4.0	9.5	5.8	2.5	3.5	1.6	4.6	2.8	8.2	28.4	2.0	---	2.3
	'97-'98		3.6	4.1	2.2	2.8	3.6	2.8	3.7	2.1	2.7	3.1	6.8	32.2	10.8	---	3.4
	'98-'99		3.3	3.5	2.2	1.8	3.2	2.4	3.3	2.1	2.1	2.7	7.0	20.8	5.1	---	0.0
	'96-'97	9	4.0	4.1	6.7	3.0	4.0	2.2	4.0	7.5	3.1	3.1	6.4	8.4	3.0	---	---
	'97-'98		3.7	4.9	2.4	2.6	4.1	2.4	4.4	2.6	2.4	3.4	5.6	27.8	---	---	4.3
	'98-'99		2.8	3.7	4.7	2.1	3.1	1.8	3.2	4.4	1.9	2.4	4.8	26.6	7.1	---	4.4
	'96-'97	10	5.6	6.8	4.0	3.5	5.7	3.8	6.6	3.4	3.0	4.5	8.4	12.8	8.2	---	4.8
	'97-'98		5.8	6.9	4.7	2.6	5.8	4.2	6.7	4.4	2.5	4.8	8.6	15.2	6.0	---	3.0
	'98-'99		4.1	5.0	3.4	1.6	4.1	2.9	4.7	3.3	1.3	3.3	6.5	17.1	3.9	---	2.4
'96-'97	11	7.4	6.3	5.8	3.7	6.5	5.5	6.2	5.0	3.7	5.7	16.3	20.2	11.1	---	3.8	
'97-'98		6.7	6.5	5.6	2.3	6.2	5.4	5.8	5.3	1.7	5.4	13.0	81.1	7.6	---	5.0	
'98-'99		3.9	4.1	2.6	1.9	3.8	2.8	3.6	2.1	1.9	3.1	10.0	79.1	5.9	---	1.8	
'96-'97	12	6.2	7.4	7.5	4.4	6.6	4.2	7.0	7.0	4.4	5.3	10.6	35.1	10.0	---	4.0	
'97-'98		6.8	7.6	7.6	4.4	7.0	5.2	7.4	7.7	4.4	6.1	10.5	23.4	---	---	4.9	
'98-'99		4.5	4.6	6.9	1.5	4.5	2.9	4.5	8.1	1.4	3.5	8.6	15.0	---	---	3.3	

Table C-3

Initial Placement by ELL Status - 1996-99

Borough	District	'96-'97		'97-'98		'98-'99	
		Non-ELL	ELL	Non-ELL	ELL	Non-ELL	ELL
Manhattan	1	Remain in General Ed.	14	9	12	4	9
		General Ed. w/ RR or Related Services	98	71	122	35	83
		Special Ed. Class/Other	63	40	68	29	38
	2	Remain in General Ed.	81	20	77	22	68
		General Ed. w/ RR or Related Services	260	119	368	102	295
		Special Ed. Class/Other	78	42	71	29	34
	3	Remain in General Ed.	40	10	41	6	35
		General Ed. w/ RR or Related Services	169	56	176	39	163
		Special Ed. Class/Other	78	35	90	24	88
	4	Remain in General Ed.	50	9	35	6	25
		General Ed. w/ RR or Related Services	178	52	151	20	112
		Special Ed. Class/Other	74	45	92	37	75
	5	Remain in General Ed.	7	*	12	1	12
		General Ed. w/ RR or Related Services	64	*	55	8	52
		Special Ed. Class/Other	84	*	76	15	69
	6	Remain in General Ed.	48	81	54	60	18
		General Ed. w/ RR or Related Services	81	226	97	180	52
		Special Ed. Class/Other	49	184	53	146	18
Bronx	7	Remain in General Ed.	51	32	40	22	39
		General Ed. w/ RR or Related Services	149	69	153	54	113
		Special Ed. Class/Other	57	52	92	40	42
	8	Remain in General Ed.	65	16	63	14	42
		General Ed. w/ RR or Related Services	155	43	184	52	153
		Special Ed. Class/Other	120	70	140	37	91
	9	Remain in General Ed.	60	30	56	32	55
		General Ed. w/ RR or Related Services	178	127	264	85	143
		Special Ed. Class/Other	130	122	194	110	92
	10	Remain in General Ed.	140	112	123	86	117
		General Ed. w/ RR or Related Services	381	263	401	220	272
		Special Ed. Class/Other	162	126	164	159	132
	11	Remain in General Ed.	146	34	171	32	90
		General Ed. w/ RR or Related Services	407	6	414	46	225
		Special Ed. Class/Other	178	46	166	51	186
	12	Remain in General Ed.	86	30	120	26	76
		General Ed. w/ RR or Related Services	210	103	210	87	109
		Special Ed. Class/Other	92	63	100	58	56

Table C-2

Initial Recommendations by Race- 1996-99

Borough	District	'96-'97				'97-'98				'98-'99			
		Hispanic	Black	White	Asian/Other	Hispanic	Black	White	Asian/Other	Hispanic	Black	White	Asian/Other
Manhattan	1 Remain in General Ed.	16	3	*	*	14	1	*	*	8	4	*	*
	General Ed. w/ RR or Related Services	131	23	*	*	106	34	*	*	81	23	*	*
	Special Ed. Class/Other	68	26	*	*	73	20	*	*	36	17	*	*
2	Remain in General Ed.	22	11	44	24	26	11	30	32	23	7	40	9
	General Ed. w/ RR or Related Services	119	66	101	93	133	101	141	94	112	65	121	84
	Special Ed. Class/Other	47	48	8	17	43	29	12	16	26	10	10	4
3	Remain in General Ed.	17	18	13	*	15	18	13	*	17	11	9	*
	General Ed. w/ RR or Related Services	97	102	18	*	81	99	30	*	78	92	26	*
	Special Ed. Class/Other	46	60	1	*	32	72	5	*	28	76	3	*
4	Remain in General Ed.	36	23	*	*	24	15	*	*	20	12	*	*
	General Ed. w/ RR or Related Services	147	78	*	*	92	75	*	*	95	45	*	*
	Special Ed. Class/Other	72	45	*	*	79	46	*	*	50	45	*	*
5	Remain in General Ed.	0	7	*	*	2	11	*	*	5	8	*	*
	General Ed. w/ RR or Related Services	15	57	*	*	17	46	*	*	21	44	*	*
	Special Ed. Class/Other	23	74	*	*	20	71	*	*	21	59	*	*
6	Remain in General Ed.	115	14	*	*	98	9	*	*	57	4	*	*
	General Ed. w/ RR or Related Services	271	34	*	*	232	37	*	*	133	20	*	*
	Special Ed. Class/Other	195	33	*	*	174	24	*	*	94	9	*	*
Bronx	7 Remain in General Ed.	61	19	*	*	38	24	*	*	33	25	*	*
	General Ed. w/ RR or Related Services	137	80	*	*	27	76	*	*	109	52	*	*
	Special Ed. Class/Other	72	36	*	*	87	45	*	*	53	24	*	*
8	Remain in General Ed.	48	28	4	*	48	22	6	*	36	15	7	*
	General Ed. w/ RR or Related Services	124	52	15	*	145	60	25	*	112	52	14	*
	Special Ed. Class/Other	120	59	7	*	94	75	5	*	96	33	9	*
9	Remain in General Ed.	56	32	*	*	59	28	*	*	36	29	*	*
	General Ed. w/ RR or Related Services	198	102	*	*	184	159	*	*	128	86	*	*
	Special Ed. Class/Other	159	90	*	*	165	134	*	*	110	59	*	*
10	Remain in General Ed.	179	48	17	8	140	48	14	*	120	38	14	*
	General Ed. w/ RR or Related Services	428	160	40	16	422	146	39	*	288	103	25	*
	Special Ed. Class/Other	187	93	4	4	220	89	7	*	129	72	30	*
11	Remain in General Ed.	68	81	23	8	90	81	26	*	35	55	8	*
	General Ed. w/ RR or Related Services	193	215	54	13	168	222	56	*	99	126	22	*
	Special Ed. Class/Other	79	128	8	9	82	128	6	*	89	129	11	*
12	Remain in General Ed.	82	31	*	*	90	55	*	*	66	26	*	*
	General Ed. w/ RR or Related Services	208	100	*	*	191	101	*	*	95	51	*	*
	Special Ed. Class/Other	101	51	*	*	100	54	*	*	64	31	*	*

Table C-2

Initial Recommendations by Race- 1996-99

Borough	District	'96-'97				'97-'98				'98-'99			
		Hispanic	Black	White	Asian/Other	Hispanic	Black	White	Asian/Other	Hispanic	Black	White	Asian/Other
Brooklyn	13 Remain in General Ed.	3	20	*	*	3	29	*	*	2	26	*	*
	General Ed. w/ RR or Related Services	52	166	*	*	32	139	*	*	33	109	*	*
	Special Ed. Class/Other	19	104	*	*	29	99	*	*	26	75	*	*
14	Remain in General Ed.	64	19	5	*	71	14	*	*	26	9	*	*
	General Ed. w/ RR or Related Services	183	64	15	*	204	56	*	*	93	28	*	*
	Special Ed. Class/Other	102	51	4	*	101	44	*	*	72	31	*	*
15	Remain in General Ed.	49	19	24	*	46	17	22	*	34	17	18	*
	General Ed. w/ RR or Related Services	187	77	54	*	161	53	43	*	91	45	36	*
	Special Ed. Class/Other	59	38	9	*	51	31	7	*	35	17	7	*
16	Remain in General Ed.	*	24	*	*	*	43	*	*	*	35	*	*
	General Ed. w/ RR or Related Services	*	121	*	*	*	118	*	*	*	75	*	*
	Special Ed. Class/Other	*	52	*	*	*	42	*	*	*	26	*	*
17	Remain in General Ed.	1	23	*	*	4	13	*	*	1	12	*	*
	General Ed. w/ RR or Related Services	19	142	*	*	19	110	*	*	12	106	*	*
	Special Ed. Class/Other	23	167	*	*	8	157	*	*	10	96	*	*
18	Remain in General Ed.	0	28	5	*	12	35	*	*	4	23	*	*
	General Ed. w/ RR or Related Services	17	182	15	*	27	161	*	*	14	122	*	*
	Special Ed. Class/Other	13	109	8	*	9	101	*	*	14	91	*	*
19	Remain in General Ed.	25	41	*	*	44	53	*	*	29	45	*	*
	General Ed. w/ RR or Related Services	93	110	*	*	103	135	*	*	78	90	*	*
	Special Ed. Class/Other	74	128	*	*	77	124	*	*	65	99	*	*
20	Remain in General Ed.	21	6	39	10	23	3	32	9	10	6	24	7
	General Ed. w/ RR or Related Services	104	23	172	27	104	20	149	40	51	10	98	20
	Special Ed. Class/Other	53	17	35	13	48	12	46	11	48	13	28	11
21	Remain in General Ed.	30	21	49	15	41	32	48	15	12	5	14	6
	General Ed. w/ RR or Related Services	113	94	151	39	107	102	106	33	33	24	47	10
	Special Ed. Class/Other	38	47	26	15	42	58	37	13	20	25	17	6
22	Remain in General Ed.	11	49	49	4	12	46	36	10	7	16	14	*
	General Ed. w/ RR or Related Services	68	229	121	18	45	168	110	17	36	114	77	*
	Special Ed. Class/Other	16	109	24	7	17	112	20	7	9	66	7	*
23	Remain in General Ed.	13	34	*	*	12	44	*	*	6	25	*	*
	General Ed. w/ RR or Related Services	31	172	*	*	34	144	*	*	22	81	*	*
	Special Ed. Class/Other	28	99	*	*	21	85	*	*	16	75	*	*
32	Remain in General Ed.	33	18	*	*	25	7	*	*	26	8	*	*
	General Ed. w/ RR or Related Services	142	56	*	*	93	36	*	*	64	23	*	*
	Special Ed. Class/Other	132	49	*	*	97	48	*	*	62	32	*	*

Table C-2

Initial Recommendations by Race- 1996-99

Borough	District	'96-'97				'97-'98				'98-'99			
		Hispanic	Black	White	Asian/Other	Hispanic	Black	White	Asian/Other	Hispanic	Black	White	Asian/Other
Queens	24 Remain in General Ed.	51	9	18	6	37	3	24	9	35	*	23	7
	General Ed. w/ RR or Related Services	164	19	59	15	181	14	61	22	161	*	67	22
	Special Ed. Class/Other	109	7	17	12	125	11	30	13	76	*	14	11
	25 Remain in General Ed.	26	16	37	18	27	7	40	15	24	9	33	13
	General Ed. w/ RR or Related Services	73	48	116	41	89	48	78	39	85	28	80	43
	Special Ed. Class/Other	38	18	20	29	52	17	19	24	21	20	17	9
	26 Remain in General Ed.	13	16	50	17	12	11	40	22	16	8	36	9
	General Ed. w/ RR or Related Services	45	36	109	46	56	28	108	47	45	31	89	49
	Special Ed. Class/Other	11	12	7	7	12	6	11	10	10	5	13	13
27 Remain in General Ed.	28	42	20	7	33	29	20	4	30	22	12	6	
	General Ed. w/ RR or Related Services	141	163	63	43	118	174	63	49	85	102	28	24
	Special Ed. Class/Other	81	169	11	22	71	158	17	28	39	96	12	13
28 Remain in General Ed.	7	28	10	12	16	25	12	8	13	24	10	11	
	General Ed. w/ RR or Related Services	71	140	77	43	92	92	79	51	78	100	62	40
	Special Ed. Class/Other	45	70	25	22	23	73	16	21	25	81	8	17
29 Remain in General Ed.	17	59	*	5	11	56	*	3	15	54	*	8	
	General Ed. w/ RR or Related Services	34	195	*	28	30	248	*	15	36	198	*	14
	Special Ed. Class/Other	24	136	*	11	16	144	*	10	15	112	*	5
30 Remain in General Ed.	71	17	18	12	48	16	23	13	38	14	14	2	
	General Ed. w/ RR or Related Services	222	65	57	38	162	65	40	30	163	44	45	27
	Special Ed. Class/Other	65	52	15	14	87	59	13	10	60	41	8	8
Staten Island	31 Remain in General Ed.	51	60	207	16	57	47	248	11	31	33	152	10
	General Ed. w/ RR or Related Services	138	160	442	36	141	160	474	27	90	111	380	25
	Special Ed. Class/Other	42	64	58	5	43	80	51	6	33	64	43	9

Table C-3

Initial Placement by ELL Status - 1996-99

Borough	District	'96-'97		'97-'98		98-'99		
		Non-ELL	ELL	Non-ELL	ELL	Non-ELL	ELL	
Brooklyn	13	Remain in General Ed.	22	2	33	0	28	
		General Ed. w/ RR or Related Services	184	41	166	13	133	
		Special Ed. Class/Other	113	13	117	16	94	
	14	Remain in General Ed.	71	18	74	19	29	
		General Ed. w/ RR or Related Services	172	97	199	72	87	
		Special Ed. Class/Other	104	56	106	45	76	
	15	Remain in General Ed.	77	17	78	11	56	
		General Ed. w/ RR or Related Services	239	88	197	71	127	
		Special Ed. Class/Other	73	37	61	33	39	
	16	Remain in General Ed.	24	*	47	*	39	
		General Ed. w/ RR or Related Services	129	*	125	*	81	
		Special Ed. Class/Other	55	*	47	*	29	
	17	Remain in General Ed.	24	0	16	1	12	
		General Ed. w/ RR or Related Services	148	15	119	13	107	
		Special Ed. Class/Other	154	40	152	15	93	
	18	Remain in General Ed.	29	4	49	8	28	
		General Ed. w/ RR or Related Services	189	28	179	20	128	
		Special Ed. Class/Other	112	20	105	8	100	
	19	Remain in General Ed.	65	6	79	23	63	
		General Ed. w/ RR or Related Services	173	42	204	46	140	
		Special Ed. Class/Other	164	50	166	40	120	
	20	Remain in General Ed.	64	12	53	14	39	
		General Ed. w/ RR or Related Services	229	97	229	84	118	
		Special Ed. Class/Other	59	60	54	63	49	
	21	Remain in General Ed.	95	21	116	20	34	
		General Ed. w/ RR or Related Services	298	99	294	54	94	
		Special Ed. Class/Other	84	42	101	49	47	
	22	Remain in General Ed.	105	8	89	15	34	
		General Ed. w/ RR or Related Services	372	64	299	41	205	
		Special Ed. Class/Other	115	41	118	38	72	
23	Remain in General Ed.	41	6	49	9	30		
	General Ed. w/ RR or Related Services	192	21	173	10	97		
	Special Ed. Class/Other	104	31	97	12	78		
32	Remain in General Ed.	34	19	24	10	27		
	General Ed. w/ RR or Related Services	142	59	82	49	61		
	Special Ed. Class/Other	99	85	102	47	67		
Queens	24	Remain in General Ed.	45	39	61	12	51	
		General Ed. w/ RR or Related Services	145	112	181	97	158	
		Special Ed. Class/Other	48	98	88	91	41	
	25	Remain in General Ed.	80	17	73	16	60	
		General Ed. w/ RR or Related Services	215	63	204	50	177	
		Special Ed. Class/Other	48	57	45	67	41	
	26	Remain in General Ed.	76	20	67	18	60	
		General Ed. w/ RR or Related Services	200	36	204	35	183	
		Special Ed. Class/Other	26	11	22	17	21	
	27	Remain in General Ed.	85	12	77	9	6	
		General Ed. w/ RR or Related Services	345	66	348	56	200	
		Special Ed. Class/Other	236	48	250	24	141	
	28	Remain in General Ed.	49	8	51	10	49	
		General Ed. w/ RR or Related Services	242	99	226	89	228	
		Special Ed. Class/Other	93	70	107	26	104	
	29	Remain in General Ed.	72	13	61	10	74	
		General Ed. w/ RR or Related Services	236	30	279	21	221	
		Special Ed. Class/Other	151	25	160	12	120	
	30	Remain in General Ed.	79	39	67	33	51	
		General Ed. w/ RR or Related Services	228	154	195	102	189	
		Special Ed. Class/Other	84	62	95	74	66	
	Staten Island	31	Remain in General Ed.	314	20	352	11	215
			General Ed. w/ RR or Related Services	714	62	768	36	579
			Special Ed. Class/Other	139	30	156	24	130

Table C-3

Initial Placement by ELL Status - 1996-99

ELL		'96-'97	'97-'98	'98-'99
4				
36				
18	1	1.58	2.34	2.11
11	2	1.86	2.45	2.13
87	3	2.23	3.75	4.00
16	4	1.64	2.49	3.00
3	5	#VALUE!	5.07	4.93
35	6	0.27	0.36	0.20
22	7	1.10	2.30	1.14
8	8	1.71	3.78	1.94
33	9	1.07	1.76	1.18
25	10	1.29	1.03	1.65
2	11	3.87	3.25	3.72
13	12	1.46	1.72	1.44
14	13	8.69	7.31	6.27
43	14	1.86	2.36	2.17
105	15	1.97	1.85	1.70
88	16	#VALUE!	#VALUE!	#VALUE!
20	17	3.85	10.13	6.64
49	18	5.60	13.13	5.00
37	19	3.28	4.15	2.45
19	20	0.98	0.86	0.96
29	21	2.00	2.06	2.24
47	22	2.80	3.11	6.00
12	23	3.35	8.08	6.00
76	32	1.16	2.17	2.09
78	24	0.49	0.97	0.63
56	25	0.84	0.67	1.58
149	26	2.36	1.29	1.05
80	27	4.92	10.42	7.42
13	28	1.33	4.12	3.85
28	29	6.04	13.33	8.00
50	30	1.35	1.28	1.29
17	31	4.63	6.50	6.84
40				
39				

Table C-3

Initial Placement by ELL Status - 1996-99

ELL
1
18
15
14
52
35
17
55
23
*
*
*
2
13
14
4
19
20
14
38
49
8
61
51
3
20
21
3
34
12
3
11
13
9
26
32
16
105
65
19
60
26
9
31
20
10
39
19
9
52
27
6
31
15
18
90
51
11
27
19

Table C-1

Referral Rates - 1996-99

	All Students					Non-ELL Only					ELL Only					
	District	Hispanic	Black	White	Asian/Other	Aggregate	Hispanic	Black	White	Asian/Other	Aggregate	Hispanic	Black	White	Asian/Other	
Brooklyn	'96-'97	13	5.7	4.0	3.8	4.6	4.3	3.7	3.8	4.2	5.0	3.8	13.0	24.0	---	3.4
	'97-'98		5.4	3.8	4.7	4.4	4.0	4.1	3.7	4.6	4.7	3.8	10.4	10.8	---	3.7
	'98-'99		4.7	3.3	3.8	3.5	3.5	3.3	3.2	3.8	4.0	3.2	11.3	13.5	3.6	2.2
	'96-'97	14	5.1	7.9	2.6	4.2	5.4	3.6	7.6	2.6	2.9	4.5	8.4	38.5	2.8	8.4
	'97-'98		5.9	7.1	2.1	3.0	5.6	5.2	7.0	2.6	2.1	5.3	8.9	---	0.7	6.1
	'98-'99		2.7	3.5	2.4	1.5	2.8	1.7	3.4	2.0	1.0	2.1	7.3	21.7	3.7	2.9
	'96-'97	15	5.0	7.1	3.1	2.4	4.7	3.6	6.9	2.6	2.0	3.8	110.0	22.6	10.0	3.5
	'97-'98		4.7	6.7	3.1	1.7	4.3	3.4	6.1	2.3	1.7	3.5	9.0	50.0	12.2	2.7
	'98-'99		2.8	4.6	2.5	1.2	2.8	1.9	4.4	2.0	0.8	2.3	6.3	17.2	7.9	2.1
	'96-'97	16	5.1	4.0	4.0	9.7	4.1	3.2	3.9	4.5	1.4	4.0	12.2	17.9	---	---
	'97-'98		4.9	3.7	9.1	9.1	3.8	4.4	3.7	10.3	8.1	3.8	6.9	11.4	---	---
	'98-'99		3.3	3.1	0.0	10.3	3.2	2.1	3.0	0.0	10.7	3.0	9.4	14.3	---	---
	'96-'97	17	3.2	2.7	4.0	3.6	2.6	2.0	2.5	4.1	4.4	2.4	5.7	4.2	3.2	1.9
	'97-'98		2.6	2.3	1.1	1.3	2.3	2.2	2.2	1.3	1.3	2.3	3.3	3.0	0.0	1.2
	'98-'99		2.3	2.0	3.9	3.0	2.1	1.6	1.9	4.0	3.6	1.9	4.0	4.2	3.5	1.4
	'96-'97	18	4.3	4.4	3.2	2.2	4.2	3.1	3.8	3.0	1.9	3.6	12.0	21.1	7.8	4.0
	'97-'98		5.8	3.4	2.6	1.6	3.5	4.4	3.2	2.6	1.2	3.1	15.4	13.0	2.4	3.4
	'98-'99		4.2	3.1	3.9	2.5	3.2	3.0	2.8	2.7	2.3	2.8	11.5	13.2	27.5	3.9
	'96-'97	19	3.6	4.0	4.3	3.2	3.8	2.7	4.0	4.0	2.9	3.5	5.5	8.0	8.0	4.8
	'97-'98		4.3	4.6	2.5	3.0	4.4	3.8	4.5	2.1	3.1	4.2	5.5	14.7	---	2.0
	'98-'99		3.3	3.2	2.9	2.2	3.2	2.1	3.1	2.5	2.0	2.7	5.9	22.9	---	2.7
	'96-'97	20	4.9	3.6	3.7	1.4	3.4	3.1	3.2	3.2	0.1	2.7	9.9	8.8	5.8	2.4
	'97-'98		4.7	3.0	3.3	1.9	3.2	3.3	3.0	3.0	1.0	2.6	9.0	2.4	4.8	3.3
	'98-'99		2.8	2.7	2.3	0.8	2.0	1.8	2.6	1.7	0.3	1.5	6.7	3.6	5.5	1.6
	'96-'97	21	9.3	10.2	3.8	3.1	5.6	7.4	10.0	3.3	1.9	5.0	17.5	20.0	6.3	6.2
	'97-'98		8.8	10.1	3.3	2.4	5.1	7.7	9.9	2.9	1.8	4.8	14.6	21.7	5.8	4.2
	'98-'99		3.1	3.2	1.2	0.9	1.8	2.7	3.1	1.0	0.5	1.6	5.4	12.5	2.6	1.9
	'96-'97	22	5.6	6.4	3.7	2.4	5.0	4.8	5.9	3.4	1.5	4.6	9.2	14.3	6.0	5.1
	'97-'98		4.2	4.7	3.1	2.2	3.9	3.5	4.4	3.0	1.6	3.7	7.6	10.4	4.0	3.7
	'98-'99		2.3	2.6	1.5	0.9	2.1	2.0	2.5	1.5	0.5	2.0	4.0	5.1	2.2	1.8
	'96-'97	23	6.1	5.6	11.7	23.1	5.8	3.9	5.5	12.7	21.3	5.4	11.9	16.8	---	---
	'97-'98		6.5	5.3	6.4	8.8	5.5	6.0	5.2	6.8	8.6	5.4	7.9	10.3	---	---
	'98-'99		5.2	3.8	5.0	6.4	4.1	3.4	3.8	5.4	6.9	3.8	11.0	10.0	---	---
	'96-'97	32	6.2	4.9	5.0	3.1	5.7	4.0	4.8	5.0	2.8	4.3	11.3	21.2	---	5.6
	'97-'98		4.9	4.4	7.4	2.0	4.7	3.3	4.2	7.6	2.3	3.7	9.4	19.4	---	0.0
	'98-'99		3.8	3.3	2.5	4.1	3.6	2.6	3.2	2.7	3.9	2.9	7.4	16.7	---	4.9

Table C-1

Referral Rates - 1996-99

	All Students					Non-ELL Only					ELL Only					
	District	Hispanic	Black	White	Asian/Other	Aggregate	Hispanic	Black	White	Asian/Other	Aggregate	Hispanic	Black	White	Asian/Other	
Queens	24	'96-'97	3.0	4.2	2.8	1.0	2.7	1.8	4.0	2.4	0.4	1.8	5.5	9.0	6.3	2.5
		'97-'98	3.2	4.0	2.9	1.3	2.8	2.4	3.8	2.6	0.8	2.2	5.1	8.8	5.5	2.5
		'98-'99	2.6	3.7	2.6	1.1	2.3	1.7	3.4	2.5	0.5	1.7	4.8	11.1	4.2	2.8
	25	'96-'97	4.7	6.9	3.9	1.5	3.4	2.4	6.9	3.7	0.9	2.7	12.4	4.8	6.6	3.3
		'97-'98	5.2	6.5	3.3	1.6	3.3	3.8	6.4	3.1	0.7	2.7	10.5	16.7	7.0	4.3
		'98-'99	3.9	5.9	3.2	1.4	2.8	2.6	5.8	2.9	0.8	2.3	8.9	25.0	9.1	3.1
	26	'96-'97	5.9	6.4	3.9	1.9	3.6	4.5	6.0	3.7	1.0	3.1	16.3	---	13.9	6.2
		'97-'98	5.2	6.5	3.3	1.6	3.3	5.7	4.6	4.0	1.3	3.2	19.8	---	25.8	6.8
		'98-'99	6.6	4.7	3.8	1.9	3.4	5.2	4.3	3.4	1.1	2.7	21.1	---	33.3	6.8
27	'96-'97	5.0	6.4	3.4	2.8	4.9	3.9	6.3	3.3	2.7	4.6	8.7	14.5	4.3	3.6	
	'97-'98	4.5	5.6	3.4	2.3	4.3	4.1	5.5	3.4	2.3	4.3	6.0	8.6	4.3	1.9	
	'98-'99	3.1	4.3	2.4	1.3	3.1	2.4	4.2	2.3	1.1	2.9	6.1	8.0	5.9	3.4	
28	'96-'97	5.7	6.0	4.0	2.7	4.8	2.8	5.6	2.8	2.2	3.8	12.9	26.8	7.6	5.9	
	'97-'98	5.2	4.9	3.8	2.7	4.2	3.4	4.6	2.8	2.2	3.5	10.4	23.1	7.4	5.7	
	'98-'99	4.7	5.5	3.0	2.3	4.0	3.1	5.3	2.0	2.0	3.5	10.4	17.0	7.5	4.4	
29	'96-'97	4.4	3.7	3.6	2.9	3.7	2.7	3.2	3.3	2.4	3.0	8.9	22.5	11.1	5.8	
	'97-'98	3.7	4.0	3.7	1.8	3.7	2.2	3.7	3.4	1.5	3.3	8.2	21.1	---	3.8	
	'98-'99	3.9	3.9	3.6	1.7	3.6	2.6	3.4	3.1	1.1	3.1	7.8	26.3	12.5	5.7	
30	'96-'97	5.3	8.0	3.6	2.0	4.7	3.4	7.8	3.0	1.0	3.6	9.1	24.5	8.3	3.9	
	'97-'98	4.5	8.1	3.0	1.8	4.1	3.0	7.6	2.6	0.8	3.2	8.0	33.9	5.7	3.8	
	'98-'99	4.0	6.8	2.8	1.3	3.6	2.7	6.7	2.6	0.9	2.9	7.1	16.3	4.7	2.6	
Staten Island	31	'96-'97	3.0	3.0	2.6	1.1	2.6	2.5	3.0	2.6	1.1	2.5	40.0	---	---	---
		'97-'98	8.3	9.6	4.9	3.2	6.0	8.0	9.5	4.9	3.1	5.9	10.8	17.1	7.3	4.0
		'98-'99	5.2	6.8	3.5	2.3	4.2	4.5	6.8	3.4	1.9	4.0	10.4	12.2	10.1	4.9

Table C-1

Referral Rates - 1996-99

Aggregate
12.2
7.9
8.6
8.5
7.7
5.9
11.3
9.0
14.5
12.2
7.3
9.3
2.6
2.5
3.1
6.7
6.9
4.9
10.7
7.9
8.5
8.7
7.3
7.1
6.4
6.2
5.5
8.3
8.3
6.4
14.1
14.8
11.5
11.1
10.6
8.6

Table C-1

Referral Rates - 1996-99

Aggregate
13.4
9.4
9.7
9.9
7.4
6.6
9.0
8.7
5.7
13.3
8.5
10.0
4.6
3.0
4.0
16.4
11.7
12.5
5.6
5.7
6.3
5.7
5.1
3.9
8.7
7.2
3.0
8.7
6.1
3.0
13.0
8.2
10.6
11.4
9.4
7.4

Table C-1

Referral Rates - 1996-99

Aggregate
5.0
4.5
4.3
6.3
6.3
5.1
8.9
10.7
10.6
7.6
5.1
5.5
10.0
8.7
8.2
12.3
10.6
12.0
7.7
6.8
5.7
20.0
8.6
8.9