



September 11, 2017

IT'S TIME TO BURY LARRY¹

USE NONTRADITIONAL OPTIONS TO ASSESS OUR AFRICAN-AMERICAN STUDENTS

The U.S. District Court opined nearly 40 years ago that standardized IQ tests used to classify African American students into Intellectually Disabled² programs were culturally biased. The Court banned the use of IQ tests for the placement of African-American children. Since that decision, the ban was expanded to prohibit the administration of IQ tests to African-American students in California public schools for any special education purpose.

With excellent research, our understanding of the brain's functioning has developed significantly since 1979. Dr. Jack Naglieri has developed a new methodology of testing and created the Cognitive Assessment System 2, a nontraditional cognitive assessment focused on measuring a student's executive functioning. Dr. Naglieri explained the difference between an IQ test and a nontraditional cognitive assessment: an IQ test measures knowledge; a cognitive assessment measures ability.

This very difference – that the CAS2³ is not reliant on knowledge and the IQ – is the reason these nontraditional tests are acceptable for assessing any student. The CAS2 correlates stronger to a student's cognitive ability than the IQ test, although it omits the achievement component. Moreover, the CAS2 identifies cognitive processing weaknesses with greater clarity than almost any other assessment tool.

¹ *Larry P. v. Riles (Larry P.)* (1979) 495 F.Supp. 926.

² At the time, Intellectually Disabled was known as Mentally Retarded.

³ Although this Update focuses on the CAS2, there are other options for nontraditional cognitive assessments District may consider. (A list is available following the link in footnote 4.)

Many of you may already be familiar with the CAS1. Use of the CAS1 with an African-American student was successfully defended by our office before the Office of Administration (“OAH”)⁴. Further in 2006, the Special Education Department of the California Department of Education presented a list of acceptable tests for African-American children and the CAS1 was included⁵. While the CAS2 is similar to the CAS1, the CAS2 provides an even more accurate picture with minorities.

Since *Larry P.* was decided we can more accurately assess cognitive ability. When educators are developing educational programming for students, a more comprehensive and accurate picture of the student will lead to more successful Individualized Education Programs. In lieu of indirect assessment through interviews and surveys about the student, we recommend using the CAS2 or other similar options. If you would like a list of similar options, one is available in footnote 4 or you may contact our office.

If you need any further assistance or advice, please feel free to contact our office.

- STEPHANIE VIRREY GUTCHER

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances

⁴ *Kern High v. Student*, OAH Case Number 2014031002. In this particular instance, OAH approved the use of certain pieces of the CAS1. However, piece-mealing is not legally defensible without a justified basis, and is no longer necessary.

⁵ *Holly Evans-Pongratz and Bernard Yaklin of the California Department of Education, Revisiting Larry P. v. Riles—A CASP Convention 2006 Report.* (PDF; Outside Source), February 2006.
http://www.caspsurveys.org/ct/56_15.asp