Scores

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statistically significant.

Suppose, for example, that a school has 2,000 White students and nine Hispanics. In nearly every state, the Hispanic scores wouldn't be counted because there aren't enough to provide meaningful information and because officials want to protect students' privacy.

State educators decide when a group is too small to count. And they've been asking the government for exemptions to exclude larger numbers of students in racial categories.

Nearly two dozen states have successfully petitioned the government for such changes in the past two years. As a result, schools can now ignore racial breakdowns even when they have 30, 40 or even 50 students of a given race in the testing population.

Students must be tested annually in grades 3 through 8 and at least once in high school, usually in 10th grade. This is the first school year that students in all those grades must be tested, though schools have been reporting scores by race for the tests they have been administering since the law was approved.

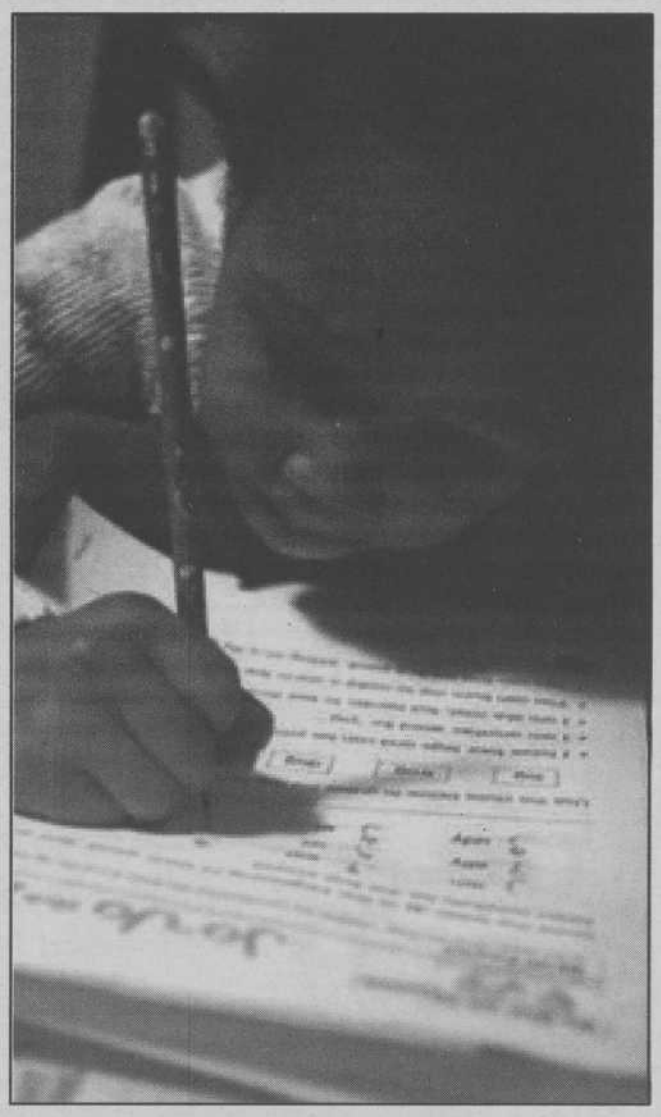
To calculate a nationwide estimate, the AP analyzed the 2003-04 enrollment figures the government collected — the latest on record — and applied the current racial category exemptions the states use.

Overall, the AP found that about 1.9 million students — or about 1 in every 14 test scores — aren't being counted under the law's racial categories. Minorities are seven times as likely to have their scores excluded as Whites, the analysis showed.

Less than 2 percent of White children's scores aren't being counted as a separate category. In contrast, Hispanics and Blacks have roughly 10 percent of their scores excluded. More than one-third of Asian scores and nearly half of American Indian scores aren't broken out, AP found.

Bush's home state of Texas — once cited as a model for the federal law — excludes scores for two entire groups. No test scores from Texas' 65,000 Asian students or from several thousand American Indian students are broken out by race. The same is true in Arkansas.

Students whose tests aren't being counted in required categories also include Hispanics in California who don't speak English wellBlacks in the Chicago suburbs, American Indians in the Northwest and special education students in Virginia.



Aisha Jones, 6, concentrates on her reading homework at her home in Bolingbrook, Ill.

State educators defend the exemptions, saying minority students' performance is still being included in their schools' overall statistics even when they aren't being counted in racial categories. Excluded minority students' scores may be counted at the district or state level.

Spellings said she believes educators are making a good-faith effort. "Are there people out there who will find ways to game the system?" she asked. "Of course. But on the whole ... I fully believe in my heart, mind and soul that educators are people of good will who care about kids and want them to find opportunity in schools."

Bush has hailed the separate accounting of minority students as a vital feature of the law. "It's really essential we do that. It's really important," Bush said in a May 2004 speech. "If you don't do that, you're likely to leave people behind. And that's not right."

Nonetheless, Bush's Education Department continues to give widely varying exemptions to states:

• Oklahoma lets schools exclude the test scores from any racial category with 52 or fewer members in the testing population, one of the largest across-the-board exemptions. That means oone in five children in the state don't have scores broken out by race.

• Maryland, which tests about 150,000 students more than Oklahoma, has an exempt group size of just five. That means fewer than one in 100 don't have scores counted.

• Washington state has made 18 changes to its testing plan, according to a February report by the Harvard Civil Rights Project. Vermont has made none. On average, states have made eight changes at either the state or federal level to their plans in the past five years, usually changing the size or accountability of subgroups whose scores were supposed to be counted.

Toia Jones, a Black teacher whose daughters attend school in a mostly White Chicago suburb, said the loophole is enabling states and schools to avoid taking concrete measures to eliminate an "achievement gap" between White and minority students.

"With this loophole, it's almost like giving someone a trick bag to get out of a hole," she said. "Now people, instead of figuring out how do we really solve it, some districts, in order to save face or in order to not be faced with the sanctions, they're doing what they can to manipulate the data."

Some students feel left behind, too.

"It's terrible," said Michael Oshinaya, a senior at Eleanor Roosevelt High School in New York City who was among a group of black students whose scores weren't broken out as a racial category. "We're part of America. We make up America, too. We should be counted as part of America."

Spellings' department is caught between two forces. Schools and states are eager to avoid the stigma of failure under the law, especially as the 2014 deadline draws closer. But Congress has shown little political will to modify the law to address their concerns. That leaves the racial category exemptions as a stopgap solution.

"She's inherited a disaster," said David Shreve, an education policy analyst for the National Conference of State Legislatures. "The 'Let's Make a Deal' policy is to save the law from fundamental changes, with Margaret Spellings as Monty Hall."

The solution may be to set a single federal standard for when minority students' scores don't have to be counted separately, said Ross Wiener, policy director for the Washington-based Education Trust.

While the exemptions were created for good reasons, there's little doubt now that group sizes have become political, said Wiener, whose group supports the law.

"They're asking the question, not how do we generate statistically reliable results, but how do we generate politically palatable results," he said.

Asylum for White South Africans turned down by Supreme Court

WASHINGTON -The Supreme Court overturned on Monday a ruling that federal law for political asylum in the United States covered a White South African family who faced threats from blacks angry at the racism of one of their relatives.

The high court unanimously sided with the Justice Department and ruled that a federal appeals court was wrong to decide the issue on its own, instead of sending the case back to immigration authorities for additional review.

The appeals court should have required that immigration authorities determine the specific facts involving the family's "kinship ties" and whether they constituted a particular social group under the law for political asylum.

Federal law makes asylum available to those who face persecution or well-founded fears of persecution based on race, religion, nationality, political opinion or membership in a particular social group.

The California-based appeals court had concluded that the Thomas family from South Africa could qualify for refugee status and political asylum under the law.

The case involved a married couple, Michelle and David Thomas, and their two children.

The family came from Durban, South Africa, to California in 1997.

Michelle Thomas requested asylum on grounds that the family had experienced threats and acts of violence from Blacks who worked for her racist father-in-law, "Boss Ronnie," a construction foreman who abused his workers physically and verbally.

At an immigration hearing, Thomas testified about a series of incidents starting in 1996, including the poisoning of the family dog and the vandalizing of their car.

After the second incident, she testified that her father-in-law told her he had just had a confrontation with his workers and that the couple should buy a gun to defend themselves against possible retaliation.

Thomas also said a Black man who asked if she knew Boss Ronnie threatened to cut her throat and that four Black men, including one who wore overalls from the construction company, later tried to take her daughter from her.

Instead of deciding the case, the appeals court should have sent it back to the Board of Immigration Appeals, the Supreme Court ruled.

It said the agency has not yet considered whether Boss Ronnie's family presented the kind of "kinship ties" that constituted a particular social group.

The Supreme Court said it found no special circumstances to justify the appeals court's determination of the facts on its own.