



Unfair Sanctions: Does W-2 Punish People of Color?

Kathleen Mulligan-Hansel, Ph.D.
Institute for Wisconsin's Future

Pamela S. Fendt
UW-Milwaukee
Center for Economic Development

Five years after Wisconsin instituted Wisconsin Works (W-2) – one of the strictest welfare replacement programs in the U.S. – W-2 remains one of the primary models for welfare policy reform across the nation. However, in various assessments of W-2, the substantial change in the racial and ethnic demographics of the caseload has been largely overlooked. Wisconsin's AFDC programs historically served a significant proportion of white participants, but the under W-2, majority of the state caseload now is made up of people of color. This suggests that there may be a disparity in the impact of the program that is linked to participants' racial or ethnic identity. Discrepancies in the level of support for families could alter the level of success clients have in achieving self-sufficiency.

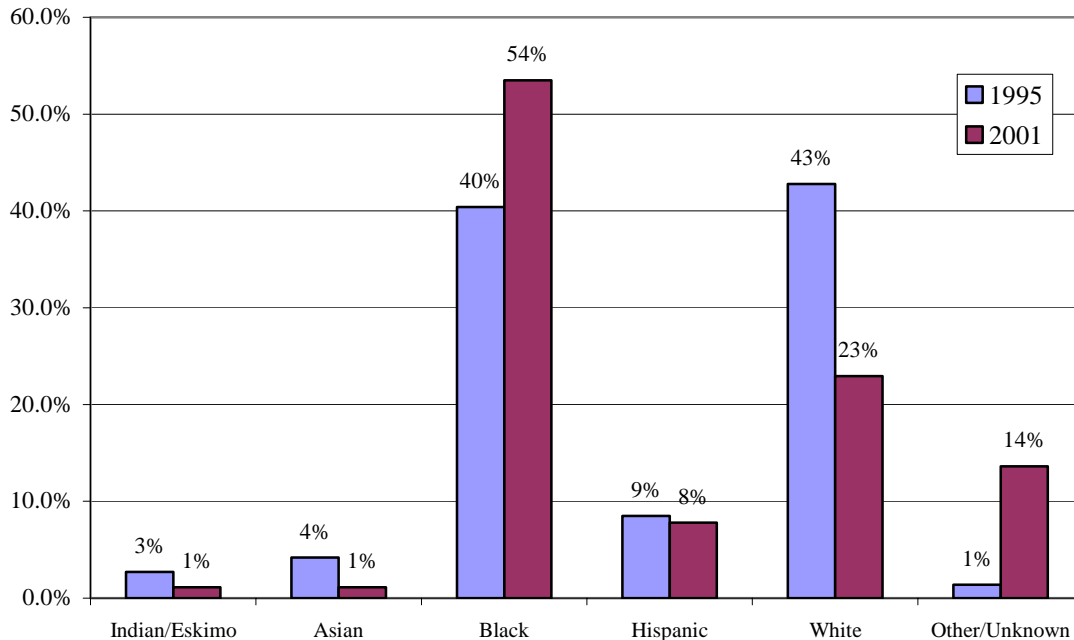
One feature of the W-2 program is a significant shift to provider and caseworker discretion in the provision of support services. Case-managers make numerous decisions that determine what supports and services families will receive and what they must do in return. These decisions include whether to allow a family to enroll in W-2, what placement the family will receive, what kinds of education and supervised work activity to assign, and whether a family loses benefits because of absences from assigned work activity. In order to determine if service levels are affected by ethnicity or race, this report examines data from the Department of Workforce Development on the use of sanctions against W-2 participants to see if there is a differential in the rate of sanctions against Hispanic, African-American and white clients. If disparities do, in fact, exist, it would suggest that similar discrepancies in other services are occurring which would negatively impact participants ability to secure skills and support needed to leave the program and function independently.

Racial and Ethnic Demographics of W-2

From 1995- 2001, the racial and ethnic composition of the welfare caseload in Wisconsin shifted dramatically. Popular stereotypes had long suggested that the typical welfare recipient was a black woman, but historically in Wisconsin this has not been the case. In 1995, the year before Congress authorized welfare reform, white families comprised the largest single racial category in Wisconsin's welfare caseload. The implementation of W-2 radically changed the nature of welfare provision in Wisconsin, resulting in thousands of families getting off the caseload. But the evidence suggests that white participants left the caseload much more quickly than did people

of color. While white participants made up 43% of the caseload in 1995 (when AFDC was in effect) they were only 23% of the caseload in 2001, five years after welfare reform began. In 2001, African-Americans constituted the majority of welfare recipients, accounting for 54% of all W-2 participants. In total, people of color comprised 64% of the caseload. The change suggests that welfare reform affected white families differently than families from other ethnic and racial groups (see Figure 1).

Figure 1: Changes in Racial/Ethnic Composition of Wisconsin’s Welfare Caseload



Welfare Reform and Discrimination

Welfare reforms introduced after the passage of the 1996 federal law known as the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) have generated significant concern about the potential for discrimination in the implementation of public assistance programs. Before 1996, federal law required state welfare programs to follow largely uniform rules. The staff that implemented welfare (then known as Aid to Families with Dependent Children) used impartial criteria primarily focused on financial need to determine which families were eligible for public assistance and what kinds of assistance they could receive.

PRWORA eliminated the clear and objective standards for welfare eligibility, allowing states to develop their own criteria for eligibility and to impose new requirements on families that receive public assistance. In Wisconsin, policymakers created a system that emphasizes moving families into the workforce immediately, in part by giving case-managers tremendous power to decide whether to provide public assistance to families in need, or to deny them assistance in the hopes of pushing them into jobs. This philosophy, known as “work first,” extends to every dimension of welfare implementation. In addition to *objective* eligibility criteria (like income and custody of children), there are at least two dozen *subjective* non-financial eligibility criteria. Case-managers make numerous decisions that determine what supports and services families will receive and what they must do in return. These decisions include whether to allow a family to enroll in W-2, what placement the family will receive, what kinds of education and supervised work activity to

assign, and whether a family loses benefits because of absences from assigned work activity, to name a few.

The W-2 program gives case-managers more power to make these decisions, while also eliminating one of the most important procedures for ensuring that case-managers and agencies do not abuse this power. When AFDC was in effect, any discrimination complaints could be pursued through an independent appeal process known as “fair hearing.” Under W-2, all welfare recipients’ complaints are filed with a staff member at the same welfare agency where alleged abuses of power occurred. Wisconsin is the only state that changed the dispute resolution process since PRWORA, and advocates across the state have strongly protested this change as unfair and inequitable.¹ In a report on W-2, the state’s Legislative Audit Bureau found that almost 70% of fact-finding appeals were overturned on appeal, suggesting that the new process is biased against W-2 participants. As a result of these changes, there is greater potential for individual attitudes and behavior to result in discrimination against W-2 participants.

Even the federal government has expressed concern over the possibility that racial and ethnic discrimination has emerged in state programs. A study issued by the Department of Health and Human Services, the federal agency that oversees all state welfare programs, notes that increased flexibility and localized decision-making in welfare programs “increases the possibility for differential treatment based on race or ethnicity.”²

Sanctions and Services

High sanction rates can be an indication that W-2 agencies are failing to provide appropriate services. W-2 participants incur sanctions because they do not attend all of the activities required by their “employability plan.” When case-managers decide to enroll families in W-2, they develop an employability plan that is intended to address any issues that make it difficult for welfare recipients to find and maintain full employment. This plan functions something like a contract: if participants perform every activity required by the plan, they receive a monthly welfare check in return. Employability plans may include up to 30 hours of work activity (e.g., resume writing, job search, soft skills training, direct supervised work experience) and additional education and training assignments (e.g., GED, adult basic education, literacy training, English as a Second Language, or more rarely, technical education or hard job skills training). Families are penalized when parents do not attend every hour of every activity they are assigned. Program officials sanction participants for failing to attend each assigned activity by deducting money from welfare benefits for each hour missed.

Participants are sanctioned because of “failure to comply,” which assumes that they refuse to complete the required activities. In many cases, though participants miss work hours – and incur sanctions – because their employability plan is unrealistic or because unforeseen circumstances

¹ Lynn, Suzanne. “Complaint Resolution in the Context of Welfare Reform: How W-2 Settles Disputes” Manpower Demonstration Research Corporation, November 2001.

² Lower-Basch, Elizabeth, “Leavers and Diversion Studies: Preliminary Analysis of Racial Differences in Caseload Trends and Leaver Outcomes.” Office of the Assistant Secretary for Planning and Evaluation, US Department of Health and Human Services, December 2000.

make it difficult to attend. PRWORA policy specifically prohibits sanctioning when the participant cannot meet program requirements because of a lack of safe and reliable child care.

Sanctions can have a significant impact on the well-being of participants, because they reduce the amount of cash available to a family for an entire month. Data released by the Legislative Audit Bureau in 2001 show that on average 21% of the caseload were sanctioned statewide, but sanction rates vary greatly by agency and tend to be higher in Milwaukee County. In Milwaukee County, sanction rates varied from 48% by YW-Works (Region 1) to 17.8% by UMOs (Region 2). The average amount deducted from participants' benefits due to sanctions varied from 32% to 57%, depending on the placement and the agency.

Wisconsin is one of 27 states that impose "full family sanctions." Some states designate that a portion of welfare benefits is intended for children in the family, who do not have any responsibility to complete work activities. While those states protect part of the monthly benefit and allow sanctions only on the portion of the benefit designated for parents, Wisconsin's welfare agencies can sanction the entire benefit amount. The 2001 W-2 audit noted that from March- December 2000, an average of 255 families per month lost their entire cash benefit as a result of sanctions.

Individual case-managers have considerable power over whether or not to sanction families when a parent has difficulty completing work activities. This power to sanction plays out in three different ways. First, case-managers have the power to determine what assignments each participant must complete. State law directs case-managers to work with their clients to create an employability plan that adjusts the combination of required activities to each person's specific needs and abilities. Instead, the evidence suggests that case-managers tend to assign "cookie cutter" employability plans. Because many W-2 participants are placed in unrealistic or inappropriate work activities, they have difficulty fulfilling the demands of their employability plans. Lack of full participation results in sanctions and further hardship for families that rely on W-2 payments.

Second, case-managers can refer participants for further assessment or counseling instead of sanctioning them. Even when participants fail to complete all the activities in their employability plan, the W-2 policy manual dictates that case-managers should try to assess underlying problems and work to eliminate barriers to success *before* sanctioning. The extent to which case-managers engage W-2 participants in this effort before levying sanctions varies greatly.

Finally, case-managers can grant "excused absences" to participants who miss assigned activities for good reasons. Good reasons for absence could include participant's illness, sick children, lack of childcare, lack of transportation or other unforeseen circumstances. In each of these areas, the discretion given to case-managers and the agencies they work for provides an opportunity for racial and ethnic discrimination to affect what kinds of services and supports different families receive from the welfare system.

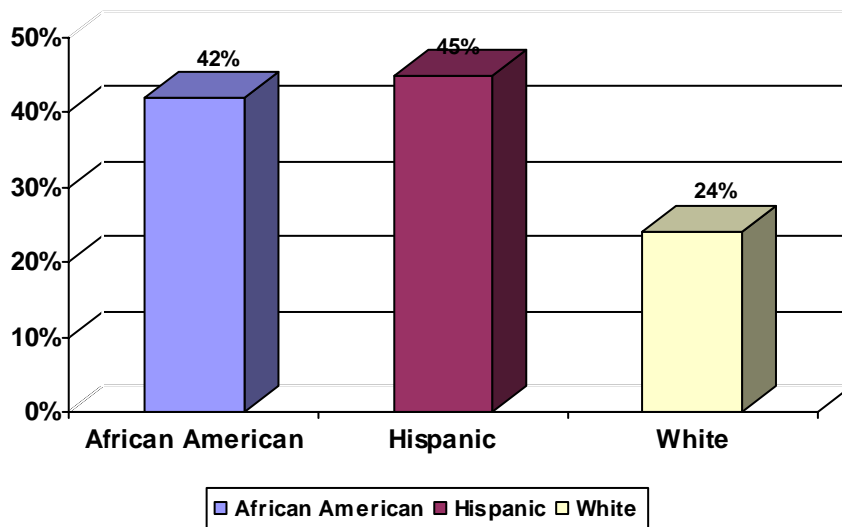
Sanctions are a critical tool used to enforce the W-2 philosophy that receiving welfare should not be easier than getting a job. Because missing hours of work results in a lower paycheck, W-2 is set up so that missing any required activities results in a smaller cash benefit check. But sanctions are important for other reasons as well. The state agency that oversees welfare programs, the Department of Workforce Development, calculates each agency's budget based on

pre-set targeted sanction rates. Until this year, the W-2 agencies in Milwaukee County were authorized to keep any money they deducted from participants' benefit checks.

Findings

Data from the Wisconsin Department of Workforce Development show that during the period from October 2001 through March 2002, a consistent pattern of racial and ethnic discrepancies in the use of sanctions against W-2 participants emerges. The pattern holds across geographic areas, including Milwaukee County and the Balance of State agencies. Statewide, 42% of all African-American participants and 45% of all Hispanic participants were sanctioned, while only 24% of white participants were sanctioned.

Figure 2: Statewide Sanction Rates of W-2 Participants by Race/Ethnicity

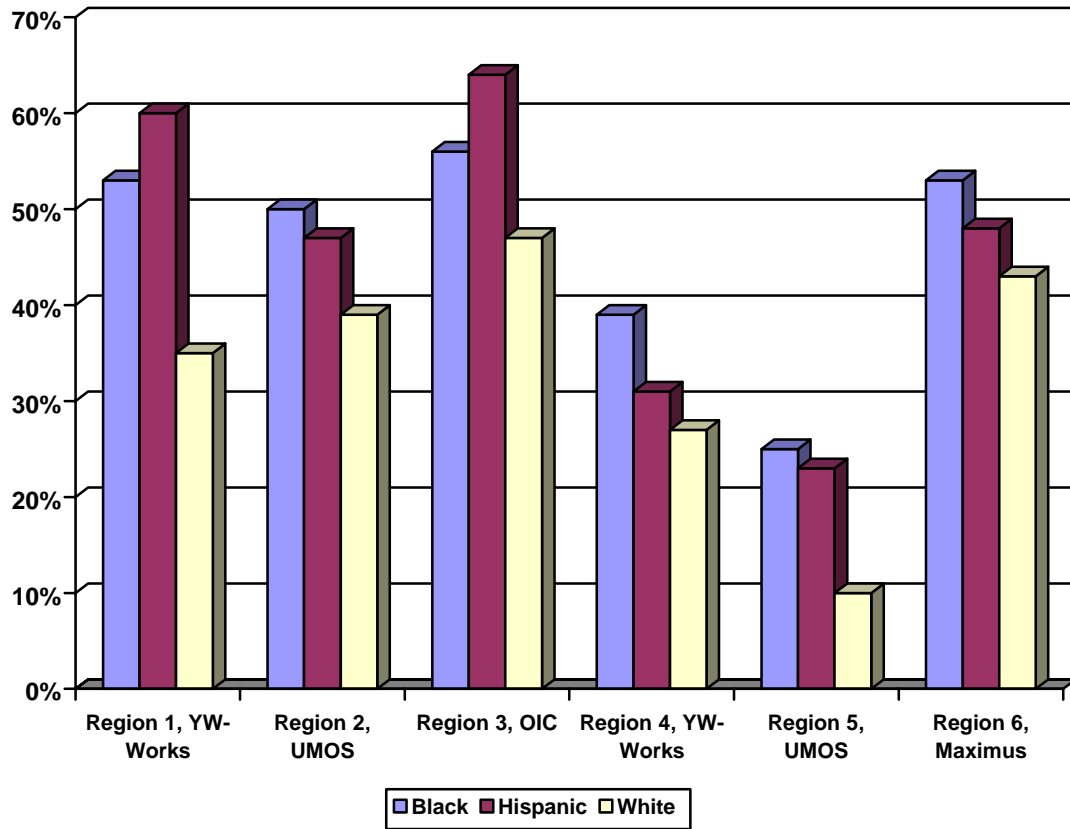


As shown in Figure 3, the pattern of racial/ethnic disparity also pertains to Milwaukee County, where each of the four W-2 agencies sanctioned higher percentages of participants of color than white participants.³ While sanction rates vary by agency, in every instance a greater percentage of participants of color are sanctioned than are white participants.⁴ In every region, sanctions for white participants are lower than for people of color. The difference in sanction rates between black and white participants varies from 9 percentage points in Region 3 (OIC) to 18 percentage points in Region 1 (YW). Differences in sanction rates between Hispanic and white participants vary from 4 percentage points in Region 4 (YW-Works) to 25 percentage points in Region 1 (YW-Works).

³ Administrative data from the CARES system codes participants according to the following racial categories: Black (non-hispanic), Hispanic, White, Southeast Asian, American Indian/Eskimo, Asian/Pacific Islander, Other and Unknown. Caseload numbers for the last five categories were too small to compare include in this analysis.

⁴ The data covers the period during which one W-2 agency – Employment Solutions, Inc. – ceased to manage two regions in Milwaukee County. In the figures, Regions 4 and 5, which were served by ESI through December 2001, are listed by the agency that now has jurisdiction (YW-Works and UMOS, respectively).

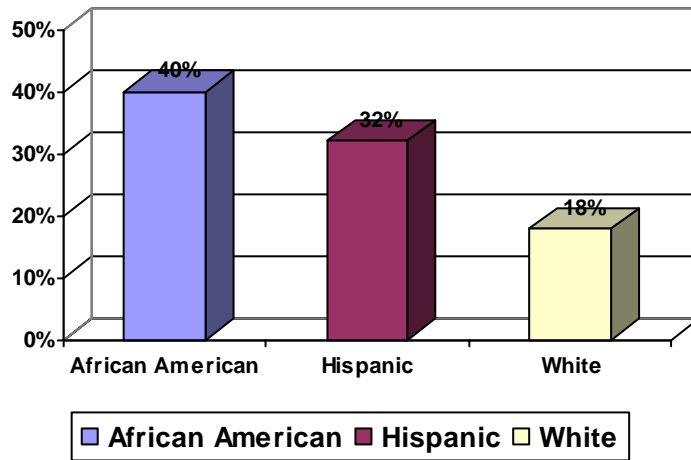
Figure 3: Milwaukee County Sanction Rates of W-2 Participants, by Race/Ethnicity



The data show that among all of the agencies in the rest of Wisconsin, commonly referred to as the Balance of State, the use of sanctions follows the same pattern of racial and ethnic disparity. People of color are routinely sanctioned at a higher rate than white participants (see Figure 4).

The difference in sanction rates for white and black participants is 22 percentage points, while sanction rates for white and Hispanic participants differ by 14 percentage points.

Figure 4: Sanction Rates, by Race/Ethnicity, for All Balance of State (non-Milwaukee) W-2 Agencies



The Milwaukee County findings fit the overall state pattern, but only two of the regions within Milwaukee County have a large enough caseload in each of the three racial/ethnic categories to be conclusive. UMOS (Region 2) and Maximus (Region 6) have significant numbers of cases in each racial category. While racial and ethnic disparities also appear in the other four Milwaukee County regions, each of the other regions has a very small number of cases in at least one category.

Figure 5: Sanction Rates and Caseload Composition Among Milwaukee County Agencies

		African-American	Hispanic	White
UMOS Region 2	# Sanctioned/Total	119/240	289/618	155/399
	Percent Sanctioned	50%	47%	39%
Maximus Region 6	# Sanctioned/Total	548/1033	95/199	183/422
	Percent Sanctioned	53%	48%	43%
YW-Works Region 1	# Sanctioned/Total	429/804	40/67	22/63
	Percent Sanctioned	53%	60%	35%
OIC-GM Region 3	# Sanctioned/Total	825/1476	9/14	25/53
	Percent Sanctioned	56%	64%	47%

YW-Works Region 4	# Sanctioned/Total	531/1377	5/16	8/30
	Percent Sanctioned	39%	31%	27%
UMOS Region 5	# Sanctioned/Total	406/1642	5/22	11/111
	Percent Sanctioned	25%	23%	10%

The findings in the other four Milwaukee County regions should only be considered suggestive, but are still disturbing and warrant further investigation.

Discussion

This data used for this report are not adequate to determine the cause of existing patterns of racial and ethnic disparity. Participants of color may be victimized by clearly racist attitudes in some cases, or they may simply not be getting the support they need to succeed in the program. Other research on welfare reform demonstrates that some families come to the program with more complicated circumstances, including barriers that make it more difficult for them to fulfill all of their responsibilities within the program. Further analysis of individual level data is required to differentiate the race of the participant from a variety of other factors that may determine whether a participant gets sanctioned. Whatever the case, racial and ethnic disparities in the use of sanctions are unacceptable.

Racial and ethnic disparities in the implementation of welfare programs are problematic on two levels. First, racial disparities are contrary to principles and laws promoting equity and fairness. Federal law has established that programs cannot have a disparate impact on members of different racial and ethnic groups. The United States Department of Health and Human Services' Office for Civil Rights has already determined that discrimination within federally-funded welfare programs is improper, saying:

Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timeliness of program services, aids or benefits that they provide or the manner in which they provide them. This prohibition applies to intentional discrimination *as well as to procedures, criteria or methods of administration that appear neutral but have a discriminatory effect* on individuals because of their race, color, or national origin. Policies and practices that have such an effect must be eliminated unless a recipient can show that they were necessary to achieve a legitimate nondiscriminatory objective. Even if there is such a reason the practice cannot continue if there are alternatives that would achieve the same objectives but that would exclude fewer minorities.⁵ (emphasis added)

⁵ US DHHS Office for Civil Rights. "Civil Rights Laws and Welfare Reform - An Overview" August, 1999. <http://www.hhs.gov/ocr/overview1.htm>

The OCR policy guidance on welfare programs further explains that examples of illegal conduct include situations in which, “a predominantly minority community is provided lower benefits, fewer services or is subject to harsher rules than a predominantly non-minority community.”

Second, racial disparities in implementation of public assistance programs make it harder for some families to succeed. Getting off the welfare rolls and out of poverty requires tremendous support. Single mothers rely on their case managers to connect them to services that reduce barriers to employment, provide referrals for education or training programs, identify job opportunities and secure interviews, and enroll in the various work supports – like subsidized childcare and transportation – that enable families to move from public assistance to work. Women that are not offered the full menu of services and supports have difficulty making the transition successfully. If discriminatory attitudes and behavior results in fewer supports or benefits for people of color, they are victimized by the very system meant to help them escape poverty.

This issue is particularly critical because PRWORA imposed limits on how long a family can receive welfare. The receipt of cash assistance is now limited to 60 months in a person’s lifetime, and there are financial penalties for failing to fulfill program requirements. Welfare programs include not only supports and services, but real penalties for participants who do not succeed in the allotted time. It is critical that opportunity and punishment be meted out systematically and fairly.

Research shows that racial and ethnic discrimination has affected welfare implementation in other states. A study of Virginia’s welfare reform program found that case-managers offered different kinds of support to black and white participants.⁶ For example, 41% of white participants reported that their case-manager encouraged them to earn an education credential, while no black participants reported case-manager support for educational activities. A survey of welfare participants in thirteen states found strong evidence of discrimination based on race and national origin. Welfare recipients in this study reported harassment and disrespect from case-managers and other program staff.⁷ Using nationwide data from the National Survey of American Families, Kenneth Finegold and Sarah Staveteig found that people of color left welfare for administrative reasons or time limits more often than white participants, and were less likely to get continuing support after leaving the program.⁸

Recommendations

The findings in this report suggest the State of Wisconsin has not established and enforced clear policies that ensure the civil rights of people of color within the W-2 program. At a minimum, the State has failed to produce regular, reliable reports that would clearly demonstrate equity in the administration of W-2. Recent national research on race and ethnicity in welfare reform points out the folly of this approach:

⁶ Susan T. Gooden. “All Things Not Being Equal: Differences in Caseworker Support Toward Black and White Welfare Clients.” Harvard Journal of African American Public Policy Volume IV: 1998.

⁷ Rebecca Gordon. Cruel and Unusual: How Welfare “Reform” Punishes Poor People Applied Research Center: February 2001.

⁸ Finegold, Kenneth and Sarah Staveteig. “Race, Ethnicity, and Welfare Reform.” In Finegold, Kenneth and Alan Weil, eds. Welfare Reform: The Next Act The Urban Institute, March 2002.

Not to collect reliable administrative data by race and ethnicity – or to collect it without standardizing it or making it available to the public – is to make a decision not to know. This precludes any efforts to address problems at the state, regional, or national levels. A decision not to know about possible disparities of welfare reform is also a decision not to learn from those states that excel in implementing TANF to benefit low-income families of all racial and ethnic backgrounds.⁹

This report examined data on sanctions within W-2 and found a clear pattern of disparity based on race and ethnicity. There are numerous other aspects of W-2 administration that could be affected by racial bias, such as: diversion, placement in cash grant or non-cash placements, enrollment in job skills training programs, type of work site placement, and extensions to the 24 or 60 month time limits. The Department of Workforce Development should collect and release data on all of these facets of W-2 so that they also can be examined for evidence of disparate outcomes.

To ensure that people of color are not at risk of discrimination within W-2, we recommend the following:

- **Restore the Fair Hearing process** so that W-2 participants have access to neutral decision-makers from outside the W-2 agencies when they feel their cases have been mishandled.
- **Require employability plans to be reviewed** for appropriateness when participants are chronically sanctioned.
- **Establish objective criteria** that determine when participants need further assessments, to ensure that barriers to full participation are addressed.
- **Require documentation of all efforts** to remedy problems before imposing sanctions.
- **Mandate that all case-managers and W-2 supervisory staff** be trained in diversity issues and civil rights requirements
- **Require the Department of Workforce Development** to issue public biannual reports that document placements, services and sanctions by race.
- **Eliminate all sanction-rate targets** for W-2 agencies, and modify the W-2 budget calculations so that agencies do not have to sanction participants to comply with their funding allocations. The Department of Workforce Development should cease and desist all efforts to pressure agencies to increase sanctions until a full investigation of the disparities in this report has been completed.

While most research on the connection between racial and ethnic discrimination and welfare reform is preliminary, these findings warrant further investigation of Wisconsin's welfare reform program. This report reviews recently released administrative data, which reveals significant racial and ethnic disparities in the uses of sanctions to punish W-2 participants for failing to complete their assigned activities.

⁹ Finegold and Staveteig, 2002.