



*in*Forum

In Depth Policy Analysis

**English Language Learners
with Disabilities:
Identification and Other State Policies
and Issues**

by
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English Language Learners with Disabilities: Identification and Other State Policies and Issues

Introduction

States and localities face a range of issues related to English language learners (ELLs) or limited English proficient (LEP) students with disabilities,¹ including referral and identification, service delivery, staffing, data collection and parent outreach. Much of the research has focused on the identification process and has shown that there are patterns of both overrepresentation and underrepresentation of ELLs in certain disability categories of special education. This document presents current policy issues pertaining to LEP students with disabilities. In the No Child Left Behind Act of 2001 (NCLB):

“the term ‘limited English proficient’...means an individual...aged 3 through 21 who is enrolled or preparing to enroll in an elementary school or secondary school, who was not born in the United States or whose native language is a language other than English...who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency...and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State’s proficient level of achievement...the ability to successfully achieve in classrooms where the language of instruction is English, or the opportunity to participate fully in society” [P.L. 107-110 §9101(25)].

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) adopts the NCLB definition of LEP [P.L. 108-446 §602(18)].

This analysis includes background information and data from interviews with representatives identified by each state director of special education in seven states regarding current state staffing, initiatives and policies that focus on identifying ELLs as students with disabilities. A resource list based on the interviews and a search of all 51 state department of education websites is included in the appendix. Project Forum at the National Association of State Directors of Special Education (NASDSE) conducted this analysis as part of its cooperative agreement with the U.S. Department of Education’s Office of Special Education Programs (OSEP).

¹ The term English language learner (ELL) is generally preferred in the research literature over the term limited English proficient (LEP). The two terms are used interchangeably throughout this document depending on the source and context.

Background

Prevalence Data and Disproportionality Research

Language minority students are the fastest growing subgroup of children in the public school population with an annual increase of about 10% (McCardle et al., 2005) and a 72% increase overall between 1992 and 2002 (Zehler et al., 2003a). LEP students represent about 8.4% of all public school students and they are enrolled in about half of public schools nationwide (Zehler et al., 2003a). Local education agencies (LEAs) reported that 77% of all LEP students have Spanish as their native language (Zehler et al., 2003a). The next two largest native language groups among LEP students are Vietnamese (2.4%) and Hmong (1.8%).

The literature on this topic reveals that, despite growth in the LEP population, most LEAs do not have policies, procedures or mechanisms in place for linking LEP and special education data or for collaboration across LEP and special education programs (Zehler et al., 2003a). LEAs cited significant challenges in distinguishing language acquisition difficulties and disabilities in LEP students. They also reported a lack of staff members who have expertise and knowledge in both special education and second language acquisition (Zehler et al., 2003b). According to 2002 Office of Civil Rights national data projected from a sample of LEAs,² there are 238,965 LEP students in high incidence disability categories nationwide, which include mental retardation (MR), emotional disturbance (ED) and learning disabilities (LD). In a survey of LEAs, which included all disability categories, findings indicated that 9% of all LEP students were eligible for special education services (Zehler et al, 2003b) compared to 13.5% of all students. Nationally, LEP students are underrepresented in special education; but there is great variability by jurisdiction and the national average masks pockets of both overrepresentation and underrepresentation (Zehler et al., 2003b). For example, “districts with smaller LEP student populations (99 or fewer LEP students) identify on average 15.8% of their LEP students for special education services, while districts with 100 or more LEP students identify on average 9.1% of their LEP students for special education” (Zehler et al, 2003b, p. 6).

Despite the limitations of currently available assessment tools and lack of classification research, there are resources on best practices for identifying and serving ELLs with disabilities (e.g., Artiles & Ortiz, 2002; Baca & Cervantes, 2003; Gersten & Baker, 2000; Müller & Markowitz, 2004). However, little is known about how to reliably identify ELLs with high incidence disabilities (McCardle, Mele-McCarthy, & Leos, 2005). Further, the research base on the disproportionality of ELLs in special education is slim.

What little research there has been on the disproportionality of ELLs in special education has suggested there is significant variability. The element of subjectivity inherent in classification of students in high incidence disability categories (Harry et al., 2002) and the variability of state practices (Reschly & Hosp, 2004) can affect the disproportionality of racial, ethnic and language minorities. ELLs are a heterogeneous group of students that differ in native language, language

² <http://vistademo.beyond2020.com/ocr2002r/wdsdata.html>

proficiency (both native and English languages), socio-economic status, time in the United States and type of language support provided (Artiles, Rueda, Salazar, & Higareda, 2002, 2005; Zehler et al., 2003b). Based on a sample of 11 urban school districts in California, Artiles et al. (2002, 2005) found that ELLs were overrepresented in mental retardation, learning disabilities and speech/language impairment categories in the upper elementary and secondary grades. ELLs with limited language proficiency in both their native language and English were overrepresented in special education across all grades. Also, ELLs with less native language support in their educational programs were overrepresented. The limited research that exists suggests wide variability in the identification of ELLs as students with disabilities.

Outcome Data

Achievement data from the National Assessment of Educational Progress (NAEP) indicates that LEP students tend to fare worse in reading and mathematics than their non-LEP peers. In 2005, 7% of LEP students and 32% of non-LEP students in fourth grade scored “at or above proficient” in reading. Fourth grade LEP students did better in math than in reading; however they still lagged behind their non-LEP peers. Eleven percent of fourth grade LEP students and 38% of non-LEP students scored “at or above proficient” in math.³ The achievement gap between LEP and non-LEP students persists in eighth and twelfth grade NAEP achievement data. NAEP does not report assessment data on the subpopulation of LEP students with disabilities.

Assessments at the state and district level revealed similar information. Elementary school LEP coordinators in 76% of schools reported that third grade LEP students scored below grade level or well below grade level in reading and more than half of middle school LEP coordinators reported below or well below grade level performance of eighth grade LEP students in math (Zehler et al., 2003b). However, many respondents for that study were unable to provide information on the achievement, dropout rates and graduation rates of former LEP students. In addition, school and district staff respondents were unable to answer questions about outcomes for LEP students in special education. Most districts reported combining counts of LEP students with disabilities with either the LEP or special education category, rather than counting them as a separate subgroup (Zehler et al., 2003b).

Federal Policy and Court Rulings

Both federal policy and case law have shaped procedures and practices for the referral, assessment and identification of ELLs as students with disabilities. In the late 1960s and early 1970s, members of the special education research community began publicly noting the overrepresentation of minorities and disadvantaged students in special education (Deno, 1970; Dunn, 1968; Mercer, 1973). The growing awareness in part gave rise to significant litigation surrounding the practice of using linguistically- or culturally-biased assessment procedures to

³ <http://nces.ed.gov/nationsreportcard/nde/criteria.asp>

make placement determinations.⁴ A consent decree in the 1970 lawsuit, *Diana v. State Board of Education*, in California later influenced special education policy. Specifically:

- If a student’s native language is not English, the districts involved in the consent decree had to assess the student in both English and his or her primary language;
- Culturally-biased items had to be eliminated from tests used in the assessment process; and
- Any IQ tests used in the assessment process needed to be developed in such a way that they reflected the Mexican-American culture.

IDEA 2004 contains provisions pertaining to the referral, assessment and identification of LEP students with disabilities. The law acknowledges that “studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education” [P.L. 108-446 §601(c)(11)(B)] and requires states to “provide data each year...on the following: The number and percentage of children with disabilities by...limited English proficiency status...” [P.L. 108-446 §618(a)(1)(A)]. This data collection requirement was not included in IDEA 1997. However, the new statute does not require states to include data on LEP students in special education as a part of their efforts to monitor and address disproportionality [P.L. 108-446 § 618(d)(1)].⁵

Federal policy also provides requirements pertaining to the special education eligibility assessment of LEP students. The exclusionary rule in IDEA 2004 states that, “In making a determination of eligibility...a child shall not be determined to be a child with a disability if the determinant factor for such determination is...limited English proficiency.” [P.L. 108-446 §614(b)(5)(C)]. Additionally, the statute requires that:

- LEAs ensure that “assessments and other evaluation materials...are provided and administered in the language and form most likely to yield accurate information...unless it is not feasible to so provide or administer” [P.L. 108-446 §614(b)(3)(A)(ii)];
- assessments must be “used for purposes for which the assessments or measures are valid and reliable” [P.L. 108-446 §614(b)(3)(A)(iii)]; and
- assessments “are administered by trained and knowledgeable personnel” [P.L. 108-446 §614(b)(3)(A)(iv)].

Meeting the provisions of this requirement can be challenging for LEAs when psychological, cognitive and behavioral assessment instruments are not available in most native languages; translated tools are not validated on the ELL population; or there is a shortage of special

⁴ For example, *Guadalupe Organization v. Tempe Elementary School District*, 1972; *Larry P. v. Riles*, 1986; *PASE v. Hannon*, 1980; *Marshall et al. v. Georgia*, 1984, 1985; *S-I v. Turlington*, 1986. See also Coutinho & Oswald, 2000 for an overview of cases.

⁵ P.L. 108-446 §618(d)(1) states, “Each State that receives assistance under this part...shall provide for the collection and examination of data to determine if significant disproportionality based on *race and ethnicity* is occurring in the State and the local educational agencies.”

education teachers and school psychologists trained in bilingual assessment (McCardle et al., 2005). At this time we do not reliably know for any child the degree to which limited language proficiency in English may be preventing learning or may be masking a learning disability for particular students, or if limited language proficiency contributes to poor performance on assessments used for eligibility identification that are not culturally and linguistically appropriate for that purpose (Wagner et al., 2005).

Data Collection

To provide information on current state practices related to ELL students with disabilities, Project Forum staff interviewed state education agency (SEA) staff members in seven states: *Alaska, Arkansas, California, Florida, Kansas, New Mexico* and *Texas*. Project Forum staff selected states with large K-12 ELL populations or those that have had a recent growth in their K-12 ELL populations, and developed an interview protocol, with input from OSEP and experts in the field, to guide the interviews. Interview questions covered staffing at the state level dedicated to the sub-population of ELLs with disabilities, state-level activities or initiatives, policies pertaining to the special education identification process for ELLs, personnel preparation and policy recommendations. Individual interviewees included state directors of special education, state-level special education and English language learner staff. In most cases, more than one person was interviewed from each state (e.g., a special education unit representative and a Title III or ELL unit representative).

Findings

State Staffing

A couple of state special education offices have an employee designated as the point person to field questions about ELLs. A *New Mexico* interviewee said that they have a person with expertise in both ELLs and special education who is currently pursuing a doctorate with a joint focus on bilingual and special education. In *Texas*, the staff person assigned to work on issues pertaining to deaf students is also tasked to work on issues for ELLs with disabilities. No interviewees reported having a state level special education staff member specifically designated to work on issues pertaining to ELLs with disabilities.

The interviewees indicated that several or all of the staff members work with issues of ELLs with disabilities on an ad hoc basis as questions or concerns arise and that a small amount of work time is dedicated exclusively to this population. Many mentioned that ELLs are included in the work that they do in general for students with disabilities. When asked what staff members worked on issues pertaining to ELLs with disabilities, interviewees frequently mentioned the person responsible for testing accommodations or the alternate assessment program in the state. The lack of a specific staff member within the state level special education offices complicates maintaining

communication and collaboration with the state level office that focuses on ELLs within the state, often the Title III or English as a Second Language (ESL) office.⁶

Communication and Collaboration between Special Education and ELL Staff

Communication and collaboration between the state special education and ELL units occurs in several ways, both formal and informal. In *California* and *Arkansas*, special education and ELL unit staff members serve on each other's committees. For example, the special education unit interviewee from *California* is a member of the state's English Learner Council. Similarly, the head of the state ELL unit in *Arkansas* is a regular member of the special education professional development task force. State interviewees also reported that serving on intra-division committees on various topics fostered communication and understanding of the issues between special education and ELL unit staff. For example, in *Florida*, staff members from the ELL and exceptional student education units both serve on an NCLB policy group and a reading policy group, where issues pertaining to both populations arise. Another example is an interdepartmental assessment team that special education and ELL staff members in *New Mexico* both served on in the past, which, an interviewee stated, "was great because I got to collaborate with ELL [and assessment and accountability] folks...and I need that discussion or I'm out of the loop." Communication and collaboration between state-level special education and ELL staff members has also occurred in ad hoc work groups formed in *California*, *Florida*, *Texas* and *Arkansas* to develop a technical assistance document or manual on pre-referral, identification, eligibility and service delivery for ELLs with disabilities.

Other modes of communication and collaboration between state special education and ELL staff include cross or joint training, sharing data or monitoring reports, working together to respond to questions from LEAs and communicating informally via email or telephone. *California*, *Arkansas* and *New Mexico* interviewees talked about various cross- or joint-training activities conducted with special education and ELL staff. Special education and ELL units in *Florida* and *Arkansas* talked about sharing data and/or monitoring reports with each other. To some extent, all states mentioned working informally with their counterparts in the ELL or special education unit to respond to LEA concerns and develop personal relationships across offices.

State Activities

Data Collection and Analysis

States reported a range of access to data on ELLs with disabilities. *Arkansas* and *New Mexico* collect data on how many ELLs are in special education, but did not have access to more nuanced data, such as by disability category. The *California* interviewee reported being able to retrieve data on ELLs by disability category, but not by language proficiency level. *Florida* and *Texas* collect and review student-level data on ELLs in specific disability categories. Only one

⁶ Each state interviewed has a different name for the unit that handles issues pertaining to ELLs, ESL, and/or Title III. Throughout the rest of the paper, this office is referred to generically as the state ELL unit or office.

state interviewed, *Florida*, currently analyzes and uses data on the disproportionality of ELLs in special education systematically for monitoring and guidance purposes. *Texas* and *New Mexico* analyze and use the data to some extent. Representatives from *Alaska* communicated that they are not currently collecting or analyzing data on ELLs in special education because there is no federal mandate to do so and the state itself does not see the identification of ELLs with disabilities as a problem area.

Work Groups and Task Forces

Interviewees from four states spoke about work groups or task forces that were created for a specific short-term purpose pertaining to ELLs with disabilities, typically to jointly create technical assistance or guidance documents.

- *California* convened a state-level team that included staff members from state offices of special education, English learners, teacher credentialing and representatives from universities to create a document that, once approved and finalized, will provide guidance for districts on the referral and identification of ELLs with disabilities and IEP development.
- *Florida* interviewees mentioned working together to develop joint technical assistance policy papers to elaborate on new state statutes or state board of education rules pertaining to exceptional student education and ELLs.
- *Texas* held statewide meetings of ELL and special education stakeholders for approximately three years to develop guidance for districts in identifying, placing and serving ELLs with disabilities. Additionally, one of the regional educational service centers in *Texas* has a special education-bilingual task force formed in 2000 to address the overrepresentation of bilingual students in special education.
- *Arkansas* special education and ELL staff worked with the Southeast Regional Resource Center (SERRC) and an outside consultant to develop training for paraprofessionals working with ELLs with disabilities and a pre-referral manual to guide the special education assessment process for multicultural and multilingual students.⁷

Technical Assistance and Guidance

The interviewees from states included in this study discussed various forms of technical assistance and guidance they provide to LEAs on the topic of ELLs with disabilities including manuals or handbooks and policy memos or publications. Interviewees also mentioned responding directly to LEA questions or concerns on an ad hoc basis and the use of state

⁷ Links to all available technical assistance documents mentioned are listed in the Resources section.

technical assistance centers to provide support to LEAs. The type of assistance most directly related to issues for ELLs with disabilities are the state-created manuals or handbooks.

Representatives from five states reported that they currently have, or are developing, a special education handbook, either specifically for ELLs or with a chapter dedicated to the special education identification process for linguistic minority students.

- In 2003, *Arkansas* developed a stand-alone document in conjunction with SERRC outlining the state guidelines for nondiscriminatory assessment. This handbook provides a thorough and research-based rationale for the state's focus on this subpopulation. Contents include a description of the pre-referral intervention process, team membership, background information on second language acquisition and detailed guidelines for the formal special education evaluation process for ELLs. The appendices include sample tools and forms to assist the team throughout the process.
- *New Mexico* has a Technical Evaluation and Assessment Manual that was updated in 2005. It describes the state's evaluation and assessment requirements for Part B of IDEA. The document includes a section specifically dedicated to multilingual assessment issues. It details guidelines based on research on types of information to be collected for an evaluation of an ELL, strategies to reduce bias in assessment and components needed in a multilingual diagnostic evaluation report. In addition, in 2001 *New Mexico's* Department of Education, with the collaboration of various statewide stakeholders and scholars published two detailed, stand-alone technical assistance documents on nondiscriminatory assessment practices for culturally and linguistically diverse preschool and school-age students. These documents include background information on second language acquisition; pre-referral strategies and best practices for the formal evaluation process; as well as sample interviews, questions and checklists. Furthermore, *New Mexico* has incorporated guidance on accurate identification of ELLs as students with disabilities in their response to intervention and student assistance team manuals.
- *Kansas* included a chapter specific to assessment and intervention considerations for culturally and linguistically diverse students in its speech-language guidelines issued in 2005. With the premise that the main goal of evaluation by speech-language pathologists is to distinguish a language difference from a language disorder, the chapter includes second language acquisition information, appropriate use of translators or interpreters and a thorough description of effective data collection techniques and strategies. The chapter also includes an extensive list of resources and references. *Kansas's* state ELL unit also has a web-based guide for school psychologists on best practices in interventions and evaluations for ELLs prepared in 1999 by the state's Bilingual Assessment Committee.
- *California* and *Texas* currently have drafts of technical assistance manuals or guides specific to the special education evaluation process for ELLs. The draft document in *California* includes information on pre-referral strategies and issues to consider when

evaluating ELLs for special education eligibility. *Texas* has developed what was described by the interviewees as a chart that maps the special education referral and identification process for ELLs. This chart is intended to guide LEAs on how to address the needs of ELLs being considered for special education and help clarify state rules on the subject. The state department of education released a draft of the chart to the state's regional service centers for comment.

Professional Development

Alaska, Florida and *Texas* interviewees mentioned giving presentations on special education issues at state ELL conferences and trainings or vice versa. The *Texas* ELL director stated that the state has at least two trainings specifically designed to address the needs of ELLs with disabilities at its annual Title III management institute. Additionally, the region one educational service center in *Texas* offers staff development to assessment personnel with an emphasis on appropriate materials and strategies for bilingual assessment.

Arkansas interviewees also discussed professional development activities on strategies for this subpopulation. Around the same time the handbook described above was developed, the special education and ELL units also worked with an outside scholar to develop an extensive training module on teaching strategies for ELLs with disabilities targeted at paraprofessionals. Additionally, the state's annual ESL academy for teachers, which satisfies requirements for state ESL endorsement, set aside spaces for special education teachers. Conference planners worked with the state special education office to recruit attendees. Dissemination of, and training on, the ELL handbook is ongoing.

Parent Outreach

All states reported making common special education documents targeted to parents available to LEAs in a minimum of English and Spanish but often in two to three other languages as well. For example, *Alaska* requires LEAs to provide parental notices, child find notices and procedural safeguards in any language for which they have a bilingual program. Interpreter services for parent-attended meetings are typically the responsibility of the LEAs. The *California* state Education Code requires that LEAs offer to translate completed Individualized Education Programs (IEPs) into parents' native languages to facilitate informed consent. *New Mexico* provides Spanish versions of a blank IEP template and procedural safeguards to LEAs.

All states reported fulfilling the requirements of including parents in mandated activities, such as state and local advisory committees, and including parents in state-level task forces and work groups formed around specific issues. Three states reported initiatives or activities specifically designed to increase understanding and participation of parents of ELLs in the special education process. Most states also reported resources and activities targeted at parents in general, such as Parent Training and Information Centers or educational service centers, which may benefit parents of ELLs.

- *California's* procedural safeguards and referral service unit instituted and advertised a toll-free number accessible to both English and Spanish-speaking parents to call with complaints or questions in 2000. The interviewee reported an increase in calls from parents of ELLs since this phone line, staffed with Spanish-speaking state level consultants, became available.
- *Florida's* exceptional student education bureau funds a Parents Educating Parents project targeted at the migrant parent population in four rural communities. Members of this project have also trained the statewide network of parent services personnel on better ways to reach parents and recognize the impact of cultural differences.
- *Kansas* conducted parent surveys as a part of the development of its state performance plan; the surveys were translated into Spanish and provided to LEAs.

The states interviewed discussed four primary challenges related to involving parents of ELLs in the special education process.

- SEAs and LEAs face challenges in adapting traditional information dissemination strategies to families whose native language is not English, including general information about the U.S. educational system and special education parent rights and responsibilities.
- Cultural issues pose significant challenges to LEAs, including a lack of trust of the educational system, fear of opening up or admitting a child has problems and being uncomfortable in the formal educational atmosphere on the part of parents and difficulty in adopting culturally responsive practices on the part of schools.
- Language barriers further complicate parent involvement in the special education process, particularly if parents' native language is less common or unwritten, as is the case for some Native American languages.
- Special challenges are presented by migrant families of ELLs with high mobility rates.

Monitoring Activities

When asked about other activities at the state level that targeted issues pertaining to ELLs with disabilities, three states discussed their formal special education monitoring process for LEAs.

- *California's* focused monitoring technical assistance teams always have at least one consultant with knowledge of, and responsibility for, monitoring the items specific to ELLs on a review team.
- The ELL and exceptional student education units in *Florida* both use risk factors to identify districts needing monitoring and assistance. One of the risk factors considered is the over-representation of ELLs in specific disability categories or the under-representation of ELLs in gifted education.

- The ELL and special education units in *New Mexico* both engage in focused monitoring practices. One of the items that the *New Mexico* special education staff specifically include in its LEA monitoring is that a language proficiency assessment, not simply a home language survey, has been administered prior to a full special education evaluation. Monitoring staff from the ELL office look at data and target visits to schools with high percentages of ELLs in special education. They share findings with the building principal and district ELL coordinator and often recommend that schools examine their referral and identification process for bias and that teaching staff be trained further on second language acquisition and language development needs.

State Policies

Interviewees from *Alaska*, *Kansas*, *New Mexico* and *Arkansas* reported having no additional state policies or regulations that specifically address ELLs with disabilities. In other words, their state policies mirror the federal law and do not go beyond it. Representatives from *California*, *Texas* and *Florida* reported elements of their state laws or regulations that specifically address this subpopulation.

- *California* requires that the assessment plan include information on the primary language and the student's language proficiency in his or her primary language. Additionally, *California* regulations require districts to provide a copy of the completed IEP in the native language at the parent's request.
- *Texas* Administrative Code indicates that ELL students will not be denied placement in ESL or bilingual programs because of their status as a student with a disability. The code also requires that the school's language proficiency assessment committee (LPAC) and the admission, review and dismissal (ARD) committee work collaboratively when an ELL is being considered for or currently receiving special education services.
- *Florida* has a state board of education rule that requires the IEP committee to work with ESL staff to jointly determine the best assessment strategies for an ELL student with a disability. Districts in *Florida* are required to report annually the number of special education and gifted students by LEP and type of disability (or gifted) program to the state department of education. The state also requires districts to coordinate exceptional student programming with ESL services.

State Personnel Preparation and Certification

Arkansas, *Florida* and *Kansas* offer endorsements in ESL. *California*, *New Mexico* and *Texas* offer separate endorsements in both ESL and bilingual education. *Florida* teachers, including those licensed in special education, are mandated to have an ESL level endorsement and *California* teachers who have ELL students in their class must have a Cross-cultural Language

and Academic Development (CLAD) endorsement. Additionally, *California's* Commission on Teacher Credentialing has recently initiated a change to their special education credential that will embed an ELL authorization in the required coursework. *Alaska* offers no endorsements or licenses in either ESL or bilingual education. No state interviewees reported offering a teaching certification or license specifically for bilingual special education.

Two states were able to provide information when asked how many teachers are currently licensed in special education and hold ESL or bilingual endorsements:

- *Kansas* reported having 477 special education teachers with some type of ESL endorsement, which represents 8.8% of the state's special education teachers.
- *Arkansas* reported that 140 teachers licensed in special education currently hold an ESL endorsement, representing 2.2% of licensed special education teachers in the state. *Arkansas* is also the only state that reported any initiatives aimed at increasing the number of special education teachers endorsed in ESL or bilingual education; the state has been informally recruiting special education teachers to attend an annual summer academy provided by the state ELL unit, which results in their meeting requirements for a state endorsement.

No state representative reported having an endorsement for school psychologists or educational diagnosticians trained in multicultural or multilingual assessment or special designation or certificate for special education paraprofessionals trained specifically to work with ELLs with disabilities. *Florida's* Office of Multicultural Student Language Education provides a list of competencies as a model for district ESL training for school psychologists.⁸

Key Challenges

States reported several key challenges related to serving ELLs with disabilities.

- Despite several reported activities, there is a need for deeper and more sustainable communication and collaboration between the fields of special education and ELLs at the state and local levels leading to a cohesive effort to address the needs of this sub-population rather than independent projects or efforts.
- States with large numbers of ELLs face the challenge of addressing their needs on a greater scale.
- Cultural and environmental factors may pose challenges for schools attempting to involve parents in the special education process.
- There is a lack of adequate training in second language acquisition, cultural sensitivity, ESL instruction and bilingual education, and pre-referral interventions in both special and general education.

⁸ <http://www.firn.edu/doe/omsle/psycomp.htm>

- There is a lack of educational diagnosticians or school psychologists and speech pathologists who are bilingual and/or trained in multicultural and multilingual assessment strategies.
- There is a lack of resources and materials for assessment and interventions in second languages other than Spanish.
- Lack of appropriately normed and technically sound cognitive and academic assessments in languages other than English is a significant barrier to appropriate identification.

Best Practices States Recommend to LEAs

State interviewees highlighted several items when asked what best practices they routinely recommended to LEAs. *California* and *Arkansas* respondents both emphasized the importance of assessing language proficiency as a crucial first step in the pre-referral or eligibility process in order to rule out a language acquisition issue as a primary or even secondary cause of a student's difficulties. *Kansas* interviewees added that the analysis must go beyond social language and examine academic language proficiency as well. A representative from *New Mexico* stressed that ELLs' performance should be measured against peers with similar levels of language proficiency. *California* requires the inclusion of linguistically appropriate goals for ELLs and recommends use of the state's English language development standards in the writing of IEP goals for ELL students once they are identified as students with disabilities.

Respondents from *California*, *Florida*, *New Mexico* and *Texas* repeatedly raised the importance of ELL and special education staff working together at the local level to assess and make eligibility decisions for ELLs. This ranged from the eligibility team consulting an ESL teacher in the school on the assessment results to the team working consistently and collaboratively with a team of ESL professionals throughout the identification process. *Kansas* and *Texas* interviewees both mentioned that they recommend that LEAs not set timelines for special education referrals for ELLs; for example, the state would advise against an LEA setting a policy that no ELL can be referred for two years or until their language proficiency score is at a certain level. Interviewees stressed the importance of recognizing the individuality of students and that collaborative teams should decide when to refer on a case by case basis.

Arkansas staff members recommend to their LEAs that efforts be made to ensure all special education teachers are trained in ESL teaching strategies. A *Florida* representative mentioned the importance of communicating details of the special education process to parents in their native language and going further than what may be required by law to truly ensure that they understand.

Policy Recommendations

The states that participated in the interviews offered a number of suggestions when asked for policy recommendations pertaining to referral, identification, assessment and service delivery to ELLs with disabilities.

- **Local accountability** - Local planning areas that submit special education program plans to the state should be required to detail their process for the referral, identification, assessment and service delivery to ELLs with disabilities.
- **Clear policies and guidance** - States should create a comprehensive policy for ELLs with exceptionalities (including gifted education) based on current research followed by extensive guidance to localities.
- **Teacher training and licensure** - States should facilitate and/or require all teachers to be trained to some extent in ESL strategies and language acquisition. Further, policies should be in place that require any teacher who serves at least one ELL to be trained in the appropriate ESL or bilingual education strategies necessary in order to meet the language development as well as academic needs of the students.
- **Coordinated policies between special education and ELL professionals** - States should consider developing policies that require and set parameters for communication and collaboration between ELL and special education professionals at the point of entry to and exit from special education as well as during the monitoring process while ELLs are being served in special education.

In addition to these state policy recommendations, some states mentioned the need for additional guidance from OSEP, perhaps in the form of synthesized, user-friendly research that states can use to create policy and disseminate information and best practices to localities.

Summary

Several findings in the case studies described in this document mirror those reported by district and school level personnel in Zehler et al. (2003a). State level respondents in this analysis and district survey respondents in Zehler et al. (2003a) reported the challenges of a lack of special education personnel trained in ESL or bilingual education, the absence of appropriate assessment instruments in languages other than English, cultural barriers in communicating effectively and clearly with parents of ELLs and the challenges of sustained collaboration between ESL or bilingual education and special education professionals.

There is currently a federal statutory focus and dedication of resources toward addressing the problems presented by disproportionality in special education. For example, the OSEP-funded National Center for Culturally Responsive Educational Systems (NCCRESt) is dedicated to providing technical assistance and professional development to states and localities with the goal of closing the achievement gap and reducing inappropriate referrals to special education for culturally and linguistically diverse students. NCCRESt has held forums and published articles specifically on the issues surrounding ELLs in special education. To some extent, however, states and localities are focused primarily on analyzing and addressing issues of racial and ethnic disproportionality in special education due to statutory requirements for data collection and a significant research base on the extent and nature of racial and ethnic disproportionality in special education (e.g., Donovan & Cross, 2002; Losen & Orfield, 2002). While the literature on disproportionality of ELLs is growing, in large part due to the efforts of NCCRESt, there is a

great need for further understanding of the nature of disproportionate representation of ELLs and for baseline data specific to ELLs. State respondents expressed a need for information and clarity from OSEP and its networks on how to best address the challenges inherent in the area. Conversely, much can be learned from the work of a few states that have pioneered efforts in this area.

Challenges requiring further research and guidance continue to exist. There needs to be a greater understanding of the circumstances under which ELLs are overrepresented or underrepresented in special education in order for states to adequately address LEA needs. For example, one state respondent suggested that in her experience, smaller rural districts with limited bilingual or ESL resources tend to overidentify ELLs for special education. On the other hand, a few state respondents mentioned some larger LEAs with extensive ESL and bilingual resources want to set a policy requiring schools to wait a prescribed amount of time before considering a special education referral for an ELL. Both scenarios and the implications for inappropriate referrals need to be further explored.

Many of the challenges states and localities face stem from the lack of research demonstrating that either early identification of ELLs with disabilities or waiting for English language proficiency is linked to better student outcomes. Furthermore, research has not yet proven specific service delivery models effective, which has considerable implications for professional development (e.g., which teachers or service providers should be trained in what). Unfortunately, this lack of information raises more questions rather than answers for both policy makers and practitioners.

Finally, research and instrument development for assessments in languages other than English is a critical need for this population. School psychologists and educational diagnosticians are presented with few valid options when the choice is to assess a student in English and compare his or her scores against English-only speaking students or use a non-standard administration of an assessment (e.g., translating the assessment questions into the student's native language with an interpreter). Both of these options render the scores invalid. Given this limitation, current best practices call for gathering information from multiple sources, testing for language proficiency and using professional judgment. Due to the high cost of instrument development, validation and norming procedures, test developers need incentives in order to induce production of viable tools for the cognitive evaluation of ELLs. Developing partnerships and initiatives with test manufacturers is an area states may want to consider exploring in order to address this significant challenge.

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Appendix

*Resources Referenced in Text*⁹

Arkansas:

State Guidelines on Nondiscriminatory Assessment and Addressing Educational Needs of English Language Learners with Disabilities, 2003, Arkansas Department of Special Education. <http://arksped.k12.ar.us/documents/stateprogramdevelopment/ELLDocument.pdf>

New Mexico:

Technical Evaluation and Assessment Manual, August 2005, New Mexico Public Education Department. <http://www.ped.state.nm.us/seo/library/nmteam.htm>

Technical Assistance Document for Nondiscriminatory Assessment of Culturally and Linguistically Diverse School-Age Students, 2001, New Mexico Department of Education. <http://www.ped.state.nm.us/seo/assessment/ta.pdf>

Technical Assistance Document for Nondiscriminatory Assessment of Culturally and Linguistically Diverse Preschool Students, 2001, New Mexico Department of Education. http://www.ped.state.nm.us/seo/assessment/preschool_cld.pdf

Kansas:

School Psychologists Best Practices in General Education Interventions and Comprehensive Evaluations of English Language Learners, 1999, Kansas Bilingual Assessment Committee. <http://www.ksde.org/sfp/esol/bestpract.html>

Speech-Language Guidelines for Schools with a Focus on Research-Based Practices, 2005, Kansas State Department of Education. <http://www.kansped.org/ksde/resources/speechguide.pdf>

Other State Resources

Colorado: English Language Learners with Exceptional Needs Resource Page. <http://www.cde.state.co.us/cdesped/SD-ELL.asp>

Hawaii: Evaluation & Instructional Services for ESLL Program/Special Education Students. <http://doe.k12.hi.us/specialeducation/esllsped.htm>

Illinois: Serving English Language Learners with Disabilities: A Resource Manual for Illinois Educators, 2002. http://www.isbe.state.il.us/spec-ed/pdfs/ell_disabilities_manual.pdf

⁹ The *California* and *Texas* technical assistance documents referenced in the text are not finalized or available to the public at this point. Therefore, they are not listed here.

Iowa: Special Education Eligibility Standards, Appendix G - Culturally and Linguistically Diverse Students, January 2006. <http://www.state.ia.us/educate/ecese/cfcs/speced/doc/sees.pdf>

Louisiana: Louisiana Guidelines for Identification & Instruction of English Language Learners with Disabilities, December 2005. <http://www.doe.state.la.us/LDE/uploads/8577.pdf>

New Jersey: English Language Learners and Special Education Presentation. <http://www.state.nj.us/njded/bilingual/resources/el12.htm>

Pennsylvania: IDEA 2004 and the Special Education Process for Students with Limited English Proficiency. <http://www.pattan.net/files/IDEIA/IDEA2004Process.pdf>

Tennessee : Special Education Manual, Appendix D - Assessment Guidelines for English Language Learners, 2003. <http://www.state.tn.us/education/speced/doc/semanual.pdf>

Vermont: Initial Meeting of the ELL Special Education Project Initiative, May 2006. http://www.state.vt.us/educ/new/pdfdoc/pgm_esl/ell_sped_initiative.pdf

Washington : Evaluation and Assessment in Early Childhood Special Education: Children who are Culturally and Linguistically Diverse, July 1999. <http://www.k12.wa.us/SpecialEd/pubdocs/CLD.doc>

Wisconsin: Linguistically Culturally Diverse II -- Populations: American Indian & Spanish Speaking, 2003. http://www.dpi.state.wi.us/pubsales/spcled_9.html