

**Input to “Is Special Education the Right Service?”  
Dual Language Special Education Network  
Massachusetts Association for Bilingual Education  
Submitted March 31, 2016**

Document can be downloaded from MSPA website:

[http://mspa.wildapricot.org/resources/Documents/DESE%20Special%20Education%20Document%20-%20January%202016%20draft%20\(1\).pdf](http://mspa.wildapricot.org/resources/Documents/DESE%20Special%20Education%20Document%20-%20January%202016%20draft%20(1).pdf)

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General Remarks & Observations

Members of the Dual Language Special Education Network who provided input strongly agreed that the issues of culturally linguistically diverse students should have been embedded/infused/integrated in the main document, not only at the end of the document. We are willing and available to meet with you to discuss our feedback for how to embed information on ELLs throughout the document.

We do agree that a special section for ELLs is helpful as a way of highlighting specific concepts, characteristics, issues, and additional procedures in the eligibility process that is unique and different for culturally linguistically diverse students. We suggest this section should be moved up and placed under Section III General Guidance on Evaluation and Eligibility Determination and not be an item under the list of sections for all the disabilities. The current Section XIV title should then change to “Issues that Challenge the Evaluation and Eligibility Determination for English Language Learners”. Placing this section under the heading of disabilities is misleading and may reinforce the myth that some have that ELLs automatically have disabilities when they encounter difficulties in their school experience. Difficulties in school do not automatically mean disabilities.

In 2006, a survey was conducted by Project Forum, National Association of State Directors of Special Education to identify states with comprehensive guidance on ELLs in Special Education.

- [http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/31\\_37349382-317f-47d9-aefc-7a2c0636eb11.pdf](http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/31_37349382-317f-47d9-aefc-7a2c0636eb11.pdf)

This survey identified the need for dedicated state guidance documents, not just a description of issues. There are distinct differences in the assessment and evaluation process for ELLs that this document does not provide guidance for practitioners in schools and districts. Other states have dedicated guidance specifically for ELLs in a more comprehensive and effective manner than this document. For an example of a recent guidance document from Oregon, see

- [http://5c2cabd466efc6790a0a-6728e7c952118b70f16620a9fc754159.r37.cf1.rackcdn.com/cms/Special\\_Education\\_Assessment\\_Process\\_for\\_Culturally\\_and\\_Linguistically\\_Diverse\\_%28CLD%29\\_Students\\_with\\_logos\\_and\\_links\\_1489.pdf](http://5c2cabd466efc6790a0a-6728e7c952118b70f16620a9fc754159.r37.cf1.rackcdn.com/cms/Special_Education_Assessment_Process_for_Culturally_and_Linguistically_Diverse_%28CLD%29_Students_with_logos_and_links_1489.pdf)

We are not in agreement with several things that have been written in Section XIV English Language Learners. These are complex issues and the simplification is misleading and causes more harm than good. The detailed feedback we are providing emphasizes the information that we feel is missing or should be in this document.

## Section XIV English Language Learners

### Overview of Legislation Pertaining to ELLs

<b>What concepts are missing or should be in this section?</b>
<ul style="list-style-type: none"><li>• Civil Rights Act 1964, suggest 3-4 lines to begin legislation section</li><li>• Needs to be updated for new ESEA, not sure why all acts here for his document</li><li>• Q12. Does G.L. c. 71A apply to students receiving special education services or accommodations for disabilities? In MA DESE Chapter 71A: ENGLISH LANGUAGE EDUCATION IN PUBLIC SCHOOLS, August 2003</li><li>• OCR Toolkit, Dear Colleague Letter; these integrate laws and suggest starting here</li><li>• Diana vs Board of Education 1970 mandates the implementation of nondiscriminatory procedures and utilization of CL relevant assessment instruments for ELLs</li><li>• The listing and integration of the three kinds of laws that protect the rights of ELL-SWDs: Civil Rights, Special Education and Language Learning Education (See Chapter 2, Imperative of Change...p10-17)</li></ul>
<b>What language do you disagree with and why? What change in language should we recommend?</b>
<ul style="list-style-type: none"><li>• Lau vs Nichols missing “by removing language barriers”</li><li>• Castaneda v Pickard - requires districts to select “alternative language learning program” and then go to three bullets</li></ul>






### English Language Learners and Special Education (OELAA)

<b>What concepts are missing or should be in this section?</b>
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- Research for underrepresentation should be included in last paragraph of p. 63
- OELA section should begin referencing OCR Toolkit Ch. 6, newest guidance; in conjunction with Dear Colleague Letter
- NCLD - Toolkit Considerations for ELLs; 2 webinars with additional guidance on disproportionality and risk ratios (see resources)
- No mention of considerations for ELLs in Two-Way Immersion program models or Transitional Bilingual Education language learning programs
- Only looking at LD yet references other disabilities

**What language do you disagree with and why? What change in language should we recommend?**

- 3rd bullet; what about distinguishing if student is not proficient in the language skills from if a student is working towards proficiency that also would be in violation of civil rights
- There is no references that students can and should be assessed in home language, nor the importance of the need to assess language skills as the first step in the assessment process
- See OCR Toolkit Ch. 6 for information not in this document

**Table 7 Typical Learning Issues of ELL Students**

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**What concepts are missing or should be in this section?**

Academic Difficulty

- Under academic learning difficulty, could state ELLs may not have been taught the curriculum to be tested; need to pay attention as to what curriculum they have been taught; have they been exposed to curriculum provided ELA, what is the quality of instruction
- ELLs can be learning in L2 but can only express what they know in L1
- ELLs are bilingual students and bring two languages and cultures
- Statement says they need time, but not what difficulties they may be facing that may be more important than the 3-5 years reference
- General Ed teachers may only see stronger social language skills and not understand the need for support with academic language skills; possibly causing teachers to think they are underachievers

Language Disorder

- Language disorder, negative connotation; feels deficit feel of ELLs in document
- May be adhering to other tactical and linguistic features in their home language; they may be using syntax and grammar from L1 and not a disability
- Caution for who will be the readers of this document; simplicity of table items can be detrimental and suggest it be expanded to include more than one example for each topic
- See Hamayan et al text for list of examples in appendix (in resource list)

Attention & Memory Problem

- Attention may differ culturally; language in this section very broad
- Gap between English language proficiency and language demands of instructional level
- Many ELLs born in US, so have same schooling experiences
- Need to differentiate the type of ELL in this section; no reference to SLIFE students
- Attention and memory are affected by being tested in English (a language under development) with 'culturally distant' materials that ELL students do not relate to, thus being evaluated as a false positive. How

does a student pay attention for a sustained period of time in a language the student does not yet understand proficiently?

#### Withdrawn Behavior

- Silent period not a term used in early childhood settings; some using term “quiet” period
- Limited language proficiency may be reason for withdrawn behavior

#### Acting Out Behavior

- Behavior may be appropriate for some cultures
- Behaviors need to be taught before evaluate for concerns, MTSS
- Limited language proficiency may be reason for acting out behavior
- Behavior issues need to be addressed in context of Cultural Adaptation Stages indicators and knowledge of the cultural characteristics of the student so that cultural differences can be anticipated and addressed as such and not as an acting out behavior. This does not mean that some ELLs do not have acting out behavior within their own culture.

#### **What language do you disagree with and why? What change in language should we recommend?**

- Disagree with title of table, these are not learning issues, but behaviors
- Stating reason for difficulty makes it sound there is only one reason; suggest considerations with more examples included or readers may not consider other considerations.
- What is a TYPICAL ELL? There is a great range of learners within ELL
- Table 7 Column 1: change title to “Presenting Issues” rather than “learning issues”
- Table 7 Change title of table to “Common presentations for students who are ELLs”

#### **Possible reasons for initiating referral**

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##### **What concepts are missing or should be in this section?**

- Lack of responsiveness to MTSS
- Not just academic difficulties, there are other difficulties i.e., social emotional behavior
- Would like to suggest when to worry and when to wait:
  - Guidelines in determining when ELLs may require diagnostic assessment
    - Slower rate of learning
    - Requires greater intensity of support
    - Frequency of occurrence of difficulties
    - Pervasiveness of difficulty in multiple contexts in both (or all) languages
    - Understanding of differences in cultural expectations and behaviors
    - Source: adapted from Patty Marquies
- Bullet 2 - need more than one peer, any peer will not do, Julie E-B has a definition of “true peer”, also definition in MA SLIFE Definition and Guidance document (2015) for typical peer - “A peer of similar age, socio-economic status, linguistic and cultural background.” In glossary
- Bullet #3 - no reference to receiving ELD or SLD services or support
- Bullet #3 -Have the difficulties and interventions been validated (same as P 1-10) across all learning and

other contexts, including home environment?

- Bullet #4 - Where does parent confirming academic difficulties come from?; See bullet #3

### English language learning Vs Language Impairment

#### English language learning Vs Language Impairment

##### What concepts are missing or should be in this section?

- This statement does not make sense the way it is written:
- "Further, Paradis, Schneider & Duncan (2013) also documented that interviews with these students' parents consistently revealed significant difficulties in their first language development. "
- Change term to "true peers - and have this term defined in the document.
- "It is important to compare their progress **to similar ELL** peers, rather than monolingual peers. "
- Or use definition in MA SLIFE Definition and Guidance document (2015) for typical peer - "A peer of similar age, socio-economic status, linguistic and cultural background." In glossary
- Need to consider and understand the relationship between L1 & L2. (Hamayan et al, p. 147). Understand what typical & predictable transfer errors in English are to be expected from a group of ELLs of the same language background. (Hamayan et al, p. 148)
- On page 65, where it says:
- "it is important to consider how long he or she has been exposed to the English language"-we need to say as well as the quality and intensity of the instruction. It is also important to consider the years of formal schooling the student has had in his other language.
- The last sentence in paragraph one on page 65:"This assumes, of course, that a solid bilingual/ESL program is providing adequate primary instruction." We need to add as well as quality instruction in ESL.
- Communications in report to parents in a language they can understand must be emphasized over and over

### Assessment of Culturally and Linguistically Diverse Students

#### What concepts are missing or should be in this section?

- This section is oversimplified and it is a key area that needs to be rewritten since assessment of CLD students is what often that leads to the over or under-representation of CLD students in Special Education. You have a very good resource in **Assessing Culturally and Linguistically Diverse Students: A Practical Guide (Practical Intervention in the Schools by Rhodes, Ochoa, & Ortiz (2005)** but have overlooked some key information or wording.
- There is a serious omission in this section: Qualifications of the assessor needs to be spelled out. Bilingual/bicultural assessor who understands the language(s) and culture(s) of the ELL student s/he is assessing.
- In the first paragraph under Assessment section: "However, ELLs should not be defined by their difference

in communication skills( I would clarify communication to include, listening, speaking, reading, and writing) so the reader does not assume it is just oral language. Also, before dealing with the sentence on acculturation, it is important that the assessment include an understanding of the ELL's cultural beliefs, customs and behaviors as well as the level of acculturation.

- It is problematic to recommend formal assessments to determine acculturation stages. This potentially biased and narrow approach can prove to be very harmful to the ELL. Interviews, self-ratings, observational forms and a multileveled and systematic approach may prove safer even though these also can be problematic.
- Second paragraph under Assessment section,
- "When students differ linguistically instead of saying "or" culturally say "and/or"
- In paragraph 4, instead of saying the sentence beginning with "One challenge..." why not say a sentence recommending when a student should be tested only in English"?
- Paragraph 5 needs to be updated as well as all the citations in every section.
- On page 66, continuing with the assessment section, the word home language is introduced. Is it primary language, home language, native language? We need to remember and say that the ELL may have more than two languages and all need to be assessed.
- Under the multifaceted approach section, I would remove "background of the family" as a possible reason for educational difficulties. This is a negative and potentially reinforcing idea for many school personnel who continually blame the families.
- Acculturation:
- The document acknowledges that there are other factors besides language (oral language and literacy development) that need to be considered but only go into acculturation. Should mention the other key factors: learning environment, personal and family factors, physical and psychological factors, previous schooling factors, academic achievement, cross-cultural factors (of which acculturation is one component) (see Hamayan et al)
- If want to specifically focus on acculturation in this section, then be more specific – why is the focus on acculturation important? During assessment you are looking at acculturation factors in psychoeducational assessment/the emergence of acculturation factors in assessment. (Rhodes, Ochoa, & Ortiz, 2005). Samuel Ortiz, (Chapter 8 in Rhodes, Ochoa, & Ortiz, 2005) – state that the “impact of psychological assessment and procedures- has a profound impact on student performance)
- This is different than focusing on acculturation as it affects “their state of mind”. Acculturation also needs to be considered during instruction & its impact on performance.
- In addition, when speaking of acculturation, they should speak about the acculturation process that involves language, beliefs values, and structural assimilation (involvement with social structures)
- (Acculturation. (2016, February 10). *New World Encyclopedia*, Retrieved 12:56, March 28, 2016 from <http://www.newworldencyclopedia.org/p/index.php?title=Acculturation&oldid=993879>.
- Acculturation is not a thing. As a process, you measure the levels of acculturation.
- Second paragraph: You talk about the process of interpreting data but not about that assessment process. In the book the cite: Rhodes, Ochoa, & Ortiz (2005) book: **Assessing Culturally and Linguistically Diverse Students: A Practical Guide (Practical Intervention in the Schools)**, there are two key chapters they should revisit: Chapter 11: Cognitive Assessment of CLD students: An Integrative Approach, and Chapter 12: Assessment of Academic Achievement: Practical Guidelines.
- The focus is on what might be wrong with the child/intrinsic factors “professionals must guard against possible bias in decision-making by considering the distinct situational, cultural or linguistic features that might be affecting the student’s current performance”

- The word "situational" need to be more specific (instruction, curriculum, supports, teacher's skills teaching CLDS, school climate, etc). These extrinsic values are too often overlooked.
- Fourth paragraph – on RTI. Need to mention that in order for RTI to be effective certain special considerations need to be taken into account. By not mentioning this, it leads readers to think that the same interventions and supports that work for monolingual students in RTI will work for ELLs.
- See Resource:RTI- Based SLD Identification Toolkit: Consideration for ELLs by Rinaldi, Ortiz, & Gamm on the RTI Action Network at <http://rtinetwork.org/getstarted/sld-identification-toolkit/ld-identification-toolkit-considerations-for-ell>
- You state: "RTI models will decrease the number of ELLs who are inappropriately referred to and given special education services by providing them with support and quality instruction within general education before a disability is determined. (Donovan & Cross, 2002, Vaughn & Fuchs, 2003)."
- Donovan & Cross, Vaughn and Fusch – write in more general terms about what is RTI rather than specific considerations for CLDS – See Klingner, Rinaldi, Ortiz , Esparza Brown for considerations for CDs students.
- Second bullet under "Reports of assessments completed on culturally and linguistically diverse students should include:"
- In this section, all the focus is on looking at the child and the family. Nothing is mentioned about the school: instruction, curriculum, supports, teacher's skills teaching CLDS, school climate, etc). An example of a deficit approach/look. Also, the last sentence in that paragraph should read "comparing referred students' to "true peers" vs. "similar".
- Third Bullet; under Reports of assessments completed on culturally and linguistically diverse students should include:
- "A description of the utilization of the interpreter/translator (if one was used), including the briefing/assessment/debriefing process."
- Need to also include: skills/knowledge the interpreter has, a statement indicating neutrality and confidentiality of the interpreter, familiarity with terms procedures, and rationale for the assessment process, cultural and linguistic expertise, knowledge of critical issues. (Rhodes, Ochoa, & Ortiz (2005).
- Efforts should be made for conducting assessments in the student's native language
- The kinds of assessments proposed in the document need to be updated with native language assessments for ELL suspected of having a disability (specially the subjective kind) and cross-referenced with level or stage of second language.

### **Team Meetings with Second Language Families**

#### **What concepts are missing or should be in this section?**

- The biggest problem in that section is that all the responsibility is placed on the parents and student and not on the school staff. For example, Parents should not have to request documents to be translated, the school staff should determine if parents need them and provide them.
- Ensuring a translator and providing recent progress reports are the responsibility of the school staff and not the parents.

- Do we want a translator or an interpreter? It is important to know the difference.
- Also, the word family instead of parent is more appropriate. Often, different family members may represent the student and not the biological parent for various reasons.
- Under the section, Parent and Student should be encouraged to share comments, consider annual goals and develop IEPs. Families are unfamiliar with these functions. The school staff need to provide assistance and help families become partners in their children's education.
- The suggestions offered here are not comprehensive enough. See example below:
  - Holding IEP meeting with ELL Families and Interpreters
  - <http://www.asec.net/tses/supportpages/IEP&ELL.pdf>

## FAQ

### What concepts are missing or should be in this section?

#### Q. "What is the difference between a bilingual evaluation and a monolingual evaluation?"

- The first sentence on p. 67 needs to be changed. It does not make sense. We need to say something like;" a bilingual social-emotional/educational evaluation ---
- Paragraph #2 needs rewording. Again decide primary vs. native and what about other languages the ELL may have.
- Words like "depressed performance" need to be removed.

#### Q. "How soon can you test a child once they come to the States?"

- We need to say something that admonishes districts to allow a child time to adjust to their new language and culture but at the same time consider the needs of the individual child when determining that a referral is needed.
- The following sentence is very problematic:
  - "Some school districts discourage ELL students being referred for special ed eval. within the first 3 years they have moved to the States. However, the school team should always consider the needs of each child rather than rigidly following a timeline."
- This policy of waiting three years or waiting until the students speaks enough English to be tested in English is totally wrong and the State fought this back in 1977 when districts were doing this. Saying that some districts wait 3 years and not addressing the wrongness of this policy is condoning it in some form. Efforts should be made to assess students in the language the students bring with them, not wait for them to learn English to assess them.
- Under the section about parents speaking their native language to their children, we need to include a last sentence saying that:
  - Families who are unable to read in any language to their child, should be encouraged to tell stories and create stories with their children.
- Recommend to go back to Rhodes, Ochoa, & Ortiz (2005) book: **Assessing Culturally and Linguistically Diverse Students: A Practical Guide (Practical Intervention in the Schools)** and add another heading: Legal and Ethical Requirements for the Assessment of Culturally and Linguistically Diverse Students. From here they should address some FAQ posed by the authors:
  - What does informed parental consent mean?
  - What non-discriminatory procedures should be followed during the evaluation process?



- What factors should be considered before making a determination of eligibility?
- What are exclusionary factors?
- What should be done to enhance parent participation during meetings?
- What special factors should be considered during the IEP process?

### What language do you disagree with and why? What change in language should we recommend?

These question need to be re-phrased:

- **What is the difference between a bilingual evaluation and a monolingual evaluation?**
- **What types of measures are used for a bilingual assessment?**

It is not about "bilingual Assessment" but culturally responsive assessments for CLD students.

### Resources

#### What is missing or should be in this section?

Office of Civil Rights English Learner Toolkit Chapter 6 Tools and Resources for Addressing English Learners with Disabilities <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>

Dear Colleague Letter, January 2015 <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

Hamayan, Elise, Marler, Barbara, Sanchez-Lopez, Cristina and Damico, Jack, (2007). Special Education Considerations for English Language Learners, Delivering a Continuum of Services, Caslon Publishing - has wonderful resources, charts, etc that should be in this document

RTI- Based SLD Identification Toolkit: Consideration for ELLs by Rinaldi, Ortiz, & Gamm on the RTI Action Network at <http://rtinetwork.org/getstarted/sld-identification-toolkit/ld-identification-toolkit-considerations-for-ell>

Response to Intervention in Reading for English Language Learners by S. Vaughn  
<http://www.rtinetwork.org/learn/diversity/englishlanguagelearners>

**IMPACT**, Feature Issue on Educating K-12 English Language Learners with Disabilities  
Published by the [Institute on Community Integration \(UCEDD\)](#) and the [Research and Training Center on Community Living](#), College of Education and Human Development, University of Minnesota, Volume 26, Number 1, Winter/Spring 2013 <http://ici.umn.edu/products/impact/261/default.html>

- Considerations for Including English Language Learners in a Response to Intervention System by Esparza Brown <https://ici.umn.edu/products/impact/261/9.html>

RTI Considerations for ELLs (poster/National Center on Response to Intervention)  
<http://www.rti4success.org/sites/default/files/0728%20RTI%20ELL%20Summary%20d4.pdf>

Differentiation and RTI for ELLs, www.ColorinColorado  
<http://www.colorincolorado.org/teaching-ells/ell-strategies-best-practices/differentiation-rti-english-language-learners>

Kalyanpur Maya, and Harry, Beth, (2012) Cultural Reciprocity in Special Education: Building Family-Professional Relationships, Brookes Publishing