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EXPLORING EQUITY ISSUES:

Language Difference or Language Disorder? ELs and Special Education

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Language Difference or Language Disorder? ELs and Special Education

There is a growing concern in US schools about the over-identification and under-identification of English Learners (ELs) with disabilities (Hoover & Klingner, 2011; Hamayan, Marler, Sanchez Lopez, & Amico, 2007; Artiles & Ortiz, 2002). The National Center for Education Statistics data (NCES 2017) shows that the percentage of ELs that attend public schools has increased from 3.8 million (8.1%) in the fall of 2000 to 4.8 million (9.5%) in the fall of 2015. NCES 2018 data indicates that in the fall of 2015, some 713,000 ELs were identified as students with disabilities, representing 14.7 percent of the total EL population enrolled in public schools. There are several issues that contribute to the over-identification or under-identification of these students. This brief explores some of the factors contributing to this problem. Recommendations for appropriate identification are also discussed.

PART I: THE COMPLEXITY OF THE PROBLEM



When an EL student is suspected of having a learning challenge, educators must determine whether the student is going through the regular process of acquiring and learning English, or whether the student has a learning disability interfering with his/her progress. Usually, the referring teacher (or teachers) suspects that there might be other issues present that have not been observed in other ELs as they acquire and learn English.

According to the U.S. Department of Education's website, more than 6.5

million young people with disabilities receive services. They range from infants and toddlers (birth to age 2) to children and youth (ages 3-21). The [Individuals with Disabilities Education Act \(IDEA\)](#) is the federal law that ensures free appropriate public education to these children and that they receive special education and related services. IDEA also governs how states and public agencies provide these services, such as early intervention, special education, and related services. Each state has in place criteria for determining whether a child is learning disabled. Part of that criteria includes:

- The child does not achieve adequately
- The child does not make sufficient progress
- The areas of concern are (in general) Mathematics, Reading, Oral & Written Expression, Listening Comprehension.

IDEA regulations also include “Exclusionary Factors,” aspects of the student’s background and/or experience which might influence the student’s performance. These include visual, hearing, or motor disabilities, cognitive or emotional disabilities, cultural factors, environmental or

economic disadvantages, and limited English proficiency. Each school has an interdisciplinary team that makes determinations regarding student assessment. The team must rule out these factors as the primary reason for a student’s difficulty before that student can be found to have a specific learning disability.

Although ELs might exhibit similar behaviors as LD students, the causal factors are not the same. For example, an EL who has had interrupted schooling, and who is now in an English-dominant classroom that offers little in terms of differentiated or sheltered instruction, will encounter difficulties in understanding and in applying information, making English acquisition and learning an arduous process. The EL’s behaviors might mirror those of an LD student; however, the causal factors are quite different. IDEA recognizes this and requires educators to consider and address exclusionary factors to determine what placement and services will best meet the student’s needs, in the least restrictive environment. Some ELs are inappropriately identified as LD not because they have learning disabilities, but rather because they have not received an adequate opportunity to learn. (Echevarria, Vogt, Richards-Tutor, 2014.) Federal and state special education laws specify that

a lack of opportunity to learn must be ruled out before a disability determination can be made (IDEA 2006).

Recently, an influx of Students with Limited or Interrupted Formal Education has renewed schools' challenges and piqued their interest in determining the best path of least struggle but greater outcomes for these students. These students' needs are multiple and diverse. Schools have had to draw and design service models that synergistically include the Response to Instruction & Intervention (RTI2) Tier process, (Orosco & Klingner, 2010) the inclusivity of Multi-Tiered System of Support (MTSS), and the "It takes a Village" vision to forge ahead, relying more on an evidence-based model befitting the needs of their specific population. Solid research is not yet available, prompting the reliance on evidence-based practices.

Short and Fitzsimmons (2007) assert that ELs must perform double the work of their native English-speaking peers—learning English while studying core content areas in English. By extension, ELs who have learning disabilities perform triple the work, because their disability-related needs must be met as well. With this burden in mind, we suggest that English Learners who have

disabilities often perform triple the work, since their disability-related needs must be met as well. Hence, there is a need for cross-training and Professional Development that is inclusive of expertise in the areas of English as a Second Language and Special Education.

PART II: WHAT CAN WE DO?



How do we ensure that our EL students are receiving the appropriate supports?

FORM MULTI-DISCIPLINARY TEAMS.

Schools should form a synergistic multi-disciplinary team to address these students' needs from several angles and at different levels. Based on a problem-solving model, the Multi-Tiered System of Supports (MTSS) approach considers environmental factors as they might apply to an individual student's difficulty and provides services and interventions as soon as the student demonstrates a need. It does not follow the "wait-to-fail" trail. Additional support systems

show systemic alignment and support in providing opportunities for all students to succeed and excel.

PROVIDE CROSS-TRAINING.

Many school districts already have MTSS teams in place (rti4success.org); however, the cross-training expertise to be able to meet the multifaceted needs of ELs, particularly those with gaps in their education, is not so readily available. Quite often, the fact that the student is an English Learner will bring a cold stop to the process of determining if there is a need for referral, interventions, and perhaps on to Special Education services. “Erring on the side of caution,” as some districts tend to do, does not make for equal access, and will most likely impede a student’s progress. Proceeding with the MTSS proactive mindset of early intervention and prevention provided by a multi-tiered system of support, facilitates equity of services as well as equal access to a free, appropriate public education for ELs (IDEA 2004).

The need for cross-training and professional development between English as a Second Language (ESL) and Special Education is critical, and the expansion of that training and professional development across the multi-tiered systems of support (MTSS)

team is crucial.

The U.S. Departments of Education and Justice issued joint guidance to assist SEAs, school districts, and all public schools in meeting their legal obligations “to ensure that EL students can participate *meaningfully* and *equally* in educational programs and services.” The guidance provides an outline of the legal obligations of SEAs and school districts to EL students under the civil rights laws ([USDOE/DOJ 2015](https://www.ed.gov/sites/default/files/2015/07/USDOE-DOJ-2015-07-20-EL-SE-504-Guidance.pdf)). It specifically addresses evaluating EL students for Special Education services. They recommend that “members of the IEP team to include professionals with training, and preferably expertise, in second language acquisition and an understanding of how to differentiate between the student’s limited English proficiency and the student’s disability.” In addition, the guidance states that, “When administering written or oral evaluations to determine whether an EL student has a disability under Section 504, school districts must administer those evaluations in an appropriate language to avoid misclassification.... Prior to evaluating an EL student, school districts should, to the extent practicable, gather appropriate information about a student’s previous educational background, including any previous language-based interventions.”

USDOE/DOJ 2015, pp. 27-28).

INVOLVE FAMILIES.

Families are children's first teachers. Make sure families know about the district's policies and their parental rights. Translate the policies into multiple languages. Ensure that the parents of ELs are not only involved, but also engaged in their children's education. Interview parents to gather information about the student and his/her growth and development, schooling, family life, socio-emotional progress, etc. This will help address current needs and develop the next steps in supporting the student's progress.

ASK THESE IF/THEN QUESTIONS.

The decision whether to refer and ultimately place an EL student in Special Education should be driven by a well-developed, cross-trained Multi-tiered Systems of Support (MTSS) team. The team can be guided by these "If...Then" questions:

1. **If** English learners have received high-quality instruction in general education that is research-validated for ELs;

2. **If** their language proficiency and sociocultural context have been considered;
3. And **if** appropriate intervention has been tried and well documented, yet they are not making progress with appropriate intervention (and other factors have been excluded as influences on their learning)

Then identification of a learning disability should be considered. (Echevarria 2014)

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