



December 2014

SPECIAL EDUCATION FIELD ADVISORY

From: James P. DeLorenzo *James P. DeLorenzo*
Assistant Commissioner, Office of Special Education

Angelica Infante Green *A. Infante*
Associate Commissioner, Office of Bilingual Education and Foreign
Language Studies

Subject: **Use of Standardized Scores in Individual Evaluations of Culturally
and Linguistically Diverse English Language Learners Ages 3
through 21**

The purpose of this memorandum is to provide information on the appropriate use of standardized scores in the individual evaluation of culturally and linguistically diverse preschoolers and school-age students identified as English language learners¹ (ELLs) in order to identify them as having disabilities and determine their need for special education programs and services.

Appropriate identification of ELLs with Disabilities

Data shows that in New York State (NYS), ELLs are disproportionately identified as students with disabilities. While the overall classification rate of all students with disabilities in NYS is just under 14 percent, the classification rate for ELLs is close to 19 percent. In particular, ELLs are significantly over identified as students with speech and language impairments, learning disabilities and emotional disabilities as compared to students who are not ELLs.

The accurate identification of ELLs with disabilities can be challenging given the lack of valid and reliable individualized assessments with representative norm samples of ELL populations. Federal and State regulations require that assessments and other

¹ “English language learner” means the same as “limited English proficient”, as such term is used in the Individuals with Disabilities Education Act and is defined in section 9101(25) of the Elementary and Secondary Education Act.

evaluation materials used to assess a student must be provided and administered in the student's home² language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally, unless it is clearly not feasible to do so. Assessments and other evaluation materials must be used for purposes for which the assessments or measures are valid and reliable and must be selected and administered so as not to be discriminatory on a racial or cultural basis. Assessment materials and procedures used to assess an ELL must be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

Interpreting Evaluation Results and Use of Standardized Scores

Assessment scores of culturally and linguistically diverse students should only be reported if the tests are valid for the purposes for which they are intended and are determined not to be culturally, linguistically or racially discriminatory. It is inappropriate to use standard scores from tests that fail to assess an ELL student based upon norms reflective of the student's culture and linguistic background.

For translated tests and other tests that do not meet appropriate validity, discrimination and standardization criteria, personnel must analyze the information gathered during the assessment process and use clinical judgment to provide a qualitative analysis of the student's abilities, strengths, and needs. This qualitative analysis should be supported by examples and qualitative descriptions of the student's performance on the various skill sets assessed so that the reader of the evaluation can understand the basis for the quantitative and qualitative statements contained in the evaluation.

School districts and, in the case of preschool students, multidisciplinary evaluation programs approved pursuant to section 4410 of the Education Law must assure that the persons conducting evaluations understand how to review the documentation provided on assessments in order to determine their validity for children who are ELLs. When interpreting evaluation results, care must be taken that issues of language differences are not confused with language disorders and that patterns of performance related to the student's socio-cultural background or interrupted schooling are not mistaken for signs of a disability.

Committee on Special Education Meetings

² "Home language" means the same as "native language", as such term is defined in section 300.29 of Title 34 of the Code of Federal Regulations.

The Committee on Preschool Special Education (CPSE) or Committee on Special Education (CSE) meeting where the results of the evaluation will be discussed, eligibility determined and individualized education programs developed, must include an individual who can interpret the instructional implications of the evaluation. For ELL students, the CPSE/CSE must include persons with expertise in second language acquisition and other professionals, such as speech-language pathologists, who understand how to differentiate between English language acquisition and a disability. Part 154 of the Regulations of the Commissioner of Education now requires that the CSE for such students include at least one individual, certified pursuant to Part 80 of the Regulations of the Commissioner, to provide bilingual services or instruction or teach English to Speakers of Other Languages, who is knowledgeable about the student's English and home language development needs.

Eligibility Determinations

In determining eligibility for special education, the CPSE/CSE must ensure that the student is not identified as having a disability if the determinant factor is only English language proficiency. In addition to the individual evaluation results, the appropriate identification of ELLs as students with disabilities should include use of tiered systems of support and data from a response to intervention (RtI) process. The Department has provided specific guidance on considerations for the use of RtI for ELLs as well as information to assist evaluators and CPSEs/CSEs to differentiate between language differences and disabilities. For additional information, please refer to the guidance posted at <http://www.p12.nysed.gov/specialed/RTI/guidance/LEPELL.htm>. Additional information on this topic is posted at <http://www.nysrti.org/page/lep-ell/>.

To determine whether a preschool child should be classified as a preschool student with a disability, his or her performance should be compared with the accepted milestones for child development within his or her cultural and linguistic group. Families from diverse cultures may expect certain skills to emerge at different ages and may provide different experiences and materials for their preschool children than other groups of preschoolers might encounter. Typical parent-child interactions and the interactions of children with peers and adults other than their parents may also differ significantly between cultural groups as well as within a given cultural group. It is extremely important that the personnel involved in all aspects of the multidisciplinary assessment be familiar with the student's cultural and linguistic background and relevant research regarding such background. It is also important that these individuals have experience with culturally and linguistically diverse preschool-age students who are exhibiting age-appropriate behaviors.

Special Considerations in IEP Development

If it is determined that the student does have a disability, second language expertise is needed to ensure that the CPSE/CSE fully considers the second language needs of the student as those needs relate to the student's individualized education

program. Such considerations include, but are not limited to, the student's need for special education programs and services to support the student's participation and progress in English language arts instruction, content area instruction in English and English as a New Language instruction; and whether the student needs bilingual special education and/or related services.

Resources for Further Information

Questions regarding this memorandum may be directed to Alexia Thompson in the Office of Special Education at (585) 344-2002, or to the Office of Bilingual Education and Foreign Language Studies at (518) 474-8775 or (718) 722-2445.

For technical assistance relating to ELLs and ELLs with disabilities, you may also contact:

- Bilingual Specialists at the Regional Special Education Technical Assistance Support Centers
<http://www.p12.nysed.gov/specialed/techassist/rsetasc/locations.htm>
- Regional Bilingual Education Network
<http://www.p12.nysed.gov/biling/bilinged/betac.html>