Overidentification of English Learners for Special Education Services

Focus on Speech & Language Impairment and Specific Learning Disability

Multilingual/Language Development Department
Illinois State Board of Education
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Agenda

- Statutory Requirements
- Overidentification in Illinois
- MTSS for ELs at a Glance
- ELs and Speech and Language Impairment
- ELs and Specific Learning Disability
- Evaluations of ELs at a Glance

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Dually Identified Students: ELs with an IEP

An LEA must provide English learner (EL) students with an Individualized Education Program (IEP) with both the language assistance and the special education services.

School districts must provide EL students with disabilities with both the language assistance and disability-related services to which they are entitled under federal law. Districts must also inform a parent of an EL student with an IEP how the language instruction education program meets the objectives of the child's IEP. The departments are aware that some school districts have a formal or informal policy of "no dual services," (i.e., a policy of allowing students to receive either EL services or special education services, but not both). Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under IDEA and federal civil rights laws, and the departments expect SEAs to address these policies in monitoring districts' compliance with federal law. Further, even if a parent of an EL student with a disability declines disability-related services under IDEA or Section 504, that student with a disability remains entitled to all EL rights and services as described in this guidance.

Dear Colleague Letter, U.S. Department of Justice, Civil Rights Division and
U.S. Department of Education, Office of Civil Rights, January 7, 2015 (Section F)

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Statutory Requirements

- Not speaking English is not a disability. An EL student's limited proficiency in the English language must not be used as the only reason for a referral for special education evaluation. (23 IL Admin Code, Section 226.140)
- A bilingual specialist must participate in the IEP meetings for students with EL status. (23 IL Admin Code, Section 226.210)
- An LEA is required to provide an interpreter to participate in all IEP meetings to assist parents whose home/native language is other than English, unless the parents have clearly indicated that English is the language spoken at home and the language to be used in school correspondence. (34 CFR 300.322)
- Procedural safeguards, conference notices, and consent forms must be provided in the parents' home/native language. (34 CFR 300.503; 34 CFR 300.504; 23 IL Admin Code, Section 226.500; 23 IL Admin Code, Section 226.510)

Bilingual Specialist

"Qualified bilingual specialist" is a legal term and not an endorsement. (23 IL Admin Code 226.800e) Multiple people can serve in this role:

- A bilingual teacher.
- An ESL-endorsed teacher.
- Any other teacher with PEL and bilingual or ESL endorsement.
- Transitional bilingual teacher.
- School service personnel (guidance, social work, psychology, etc.) who has successfully completed examination in the non-English language and coursework in assessment of the bilingual student or psychological/educational assessment of the student with disabilities who has limited English proficiency.

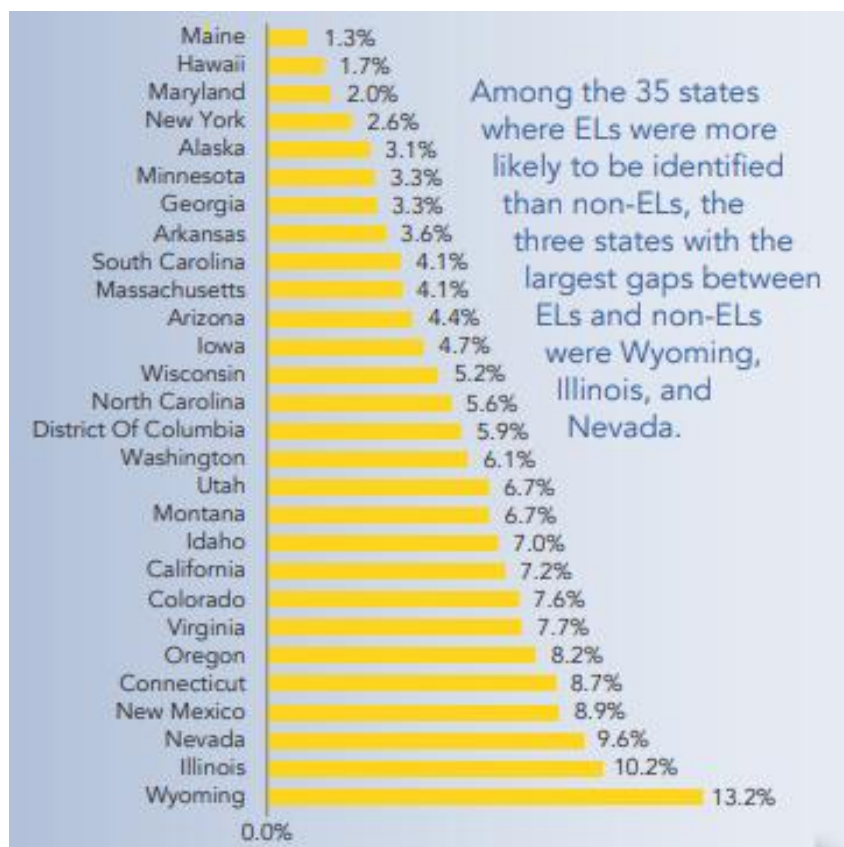# Over- and Underidentification of ELs in Special Education

There is growing concern about overidentifying and underidentifying English learners with disabilities.

Overidentification is a chronic issue that requires our attention. It likely occurs on many levels due to educators' lack of training, familiarity, and preparedness to teach diverse populations. Students who are "different" from their teachers are all too often regarded as having disabilities.
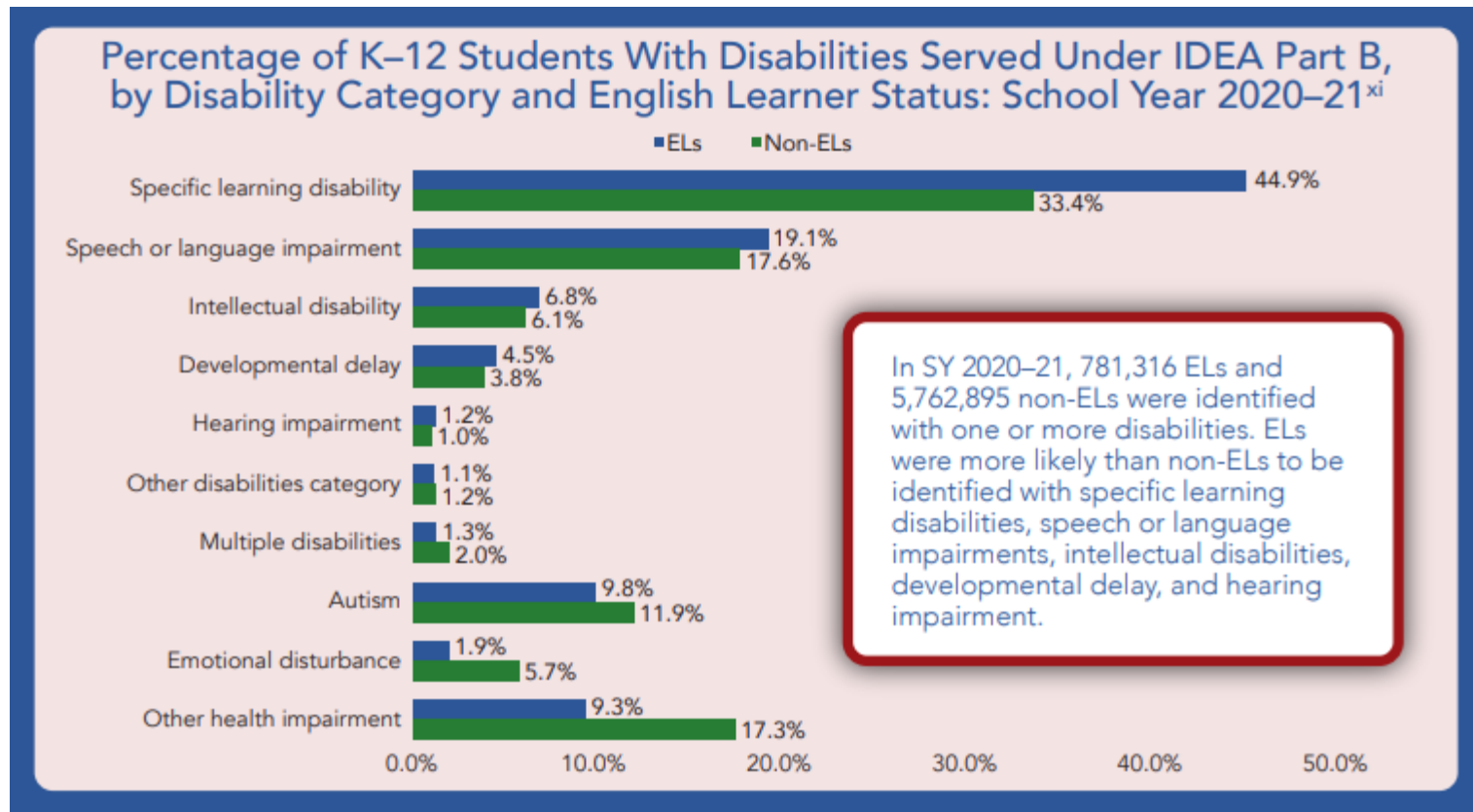
Simultaneously, some schools fear that they might be referring ELs too quickly and that time is needed for a student to learn English before a special education referral is made and completed. Sometimes, they stall the process for such a long period that when the referral and identification finally occur, it is too late to provide the types of interventions that would have helped the student the most effectively, if at all.

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Overidentification of ELs in the US

Identification of a Disability/ies among ELs and Non-ELs: School Year 2020–21[viii,ix]

Maine 1.3%
Hawaii 1.7%
Maryland 2.0%
New York 2.6%
Alaska 3.1%
Minnesota 3.3%
Georgia 3.3%
Arkansas 3.6%
South Carolina 4.1%
Massachusetts 4.1%
Arizona 4.4%
Iowa 4.7%
Wisconsin 5.2%
North Carolina 5.6%
District Of Columbia 5.9%
Washington 6.1%
Utah 6.7%
Montana 6.7%
Idaho 7.0%
California 7.2%
Colorado 7.6%
Virginia 7.7%
Oregon 8.2%
Connecticut 8.7%
New Mexico 8.9%
Nevada 9.6%
Illinois 10.2%
Wyoming 13.2%
0.0%

Among the 35 states where ELs were more likely to be identified than non-ELs, the three states with the largest gaps between ELs and non-ELs were Wyoming, Illinois, and Nevada.

Overidentification by Disability

Percentage of K–12 Students With Disabilities Served Under IDEA Part B, by Disability Category and English Learner Status: School Year 2020–21[xi]

■ELs ■Non-ELs

Disability Category	ELs	Non-ELs
Specific learning disability	44.9%	33.4%
Speech or language impairment	19.1%	17.6%
Intellectual disability	6.8%	6.1%
Developmental delay	4.5%	3.8%
Hearing impairment	1.2%	1.0%
Other disabilities category	1.1%	1.2%
Multiple disabilities	1.3%	2.0%
Autism	9.8%	11.9%
Emotional disturbance	1.9%	5.7%
Other health impairment	9.3%	17.3%

In SY 2020–21, 781,316 ELs and 5,762,895 non-ELs were identified with one or more disabilities. ELs were more likely than non-ELs to be identified with specific learning disabilities, speech or language impairments, intellectual disabilities, developmental delay, and hearing impairment.

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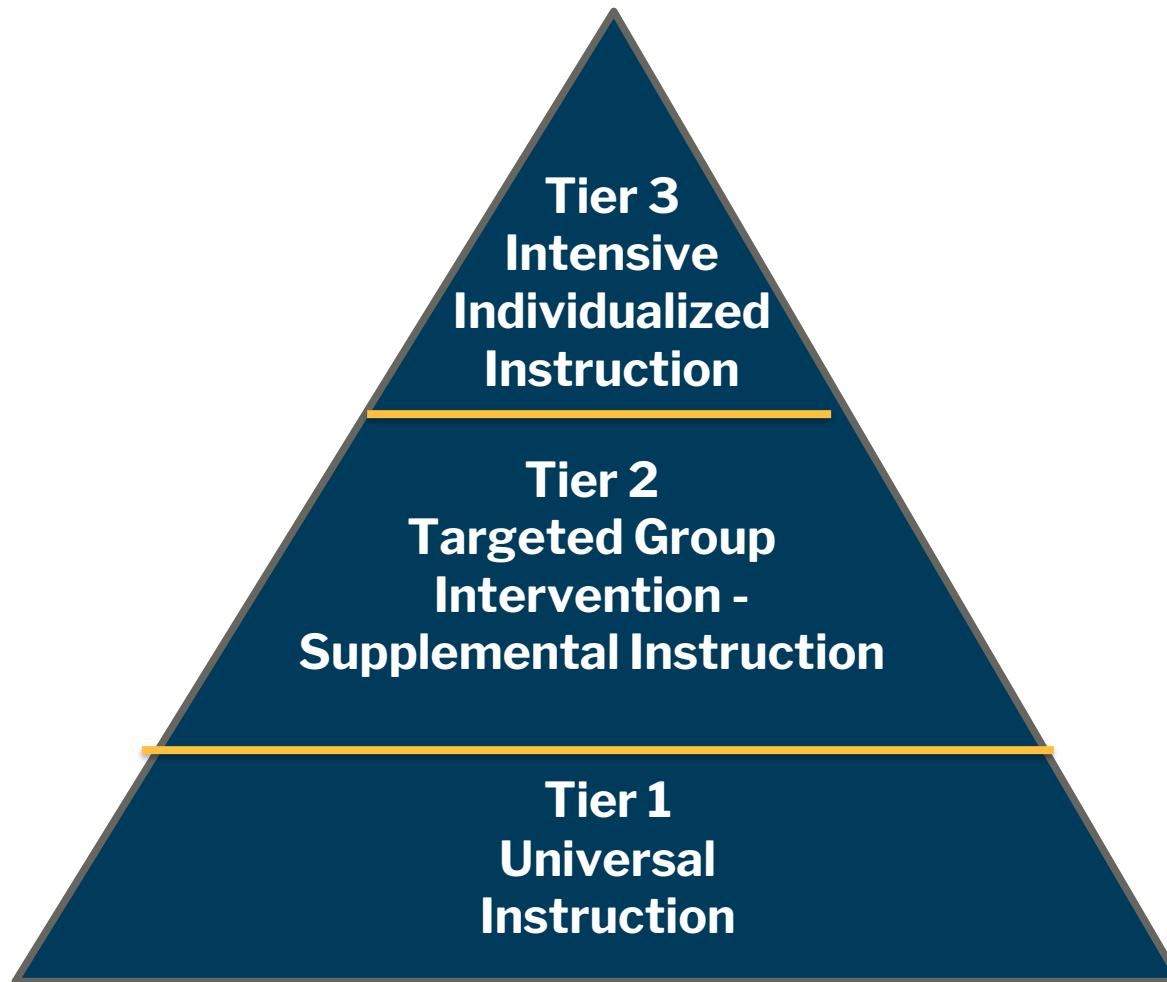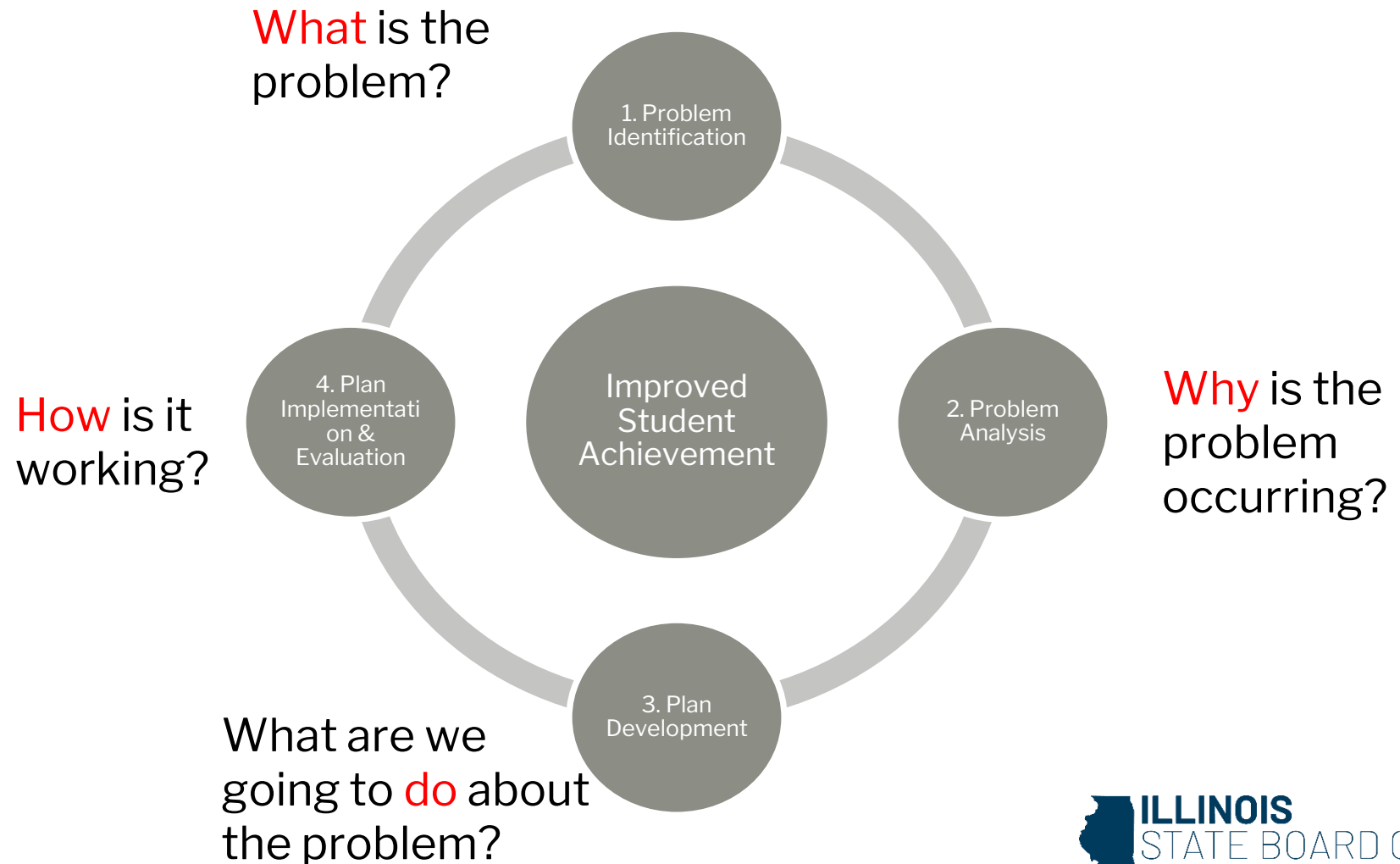
MTSS for ELs

To avoid unwarranted and uninformed referrals for special education evaluation, make sure to implement a robust Multi-Tiered System of Support (MTSS) that includes accommodations and strategies for the English learners.

MTSS for ELs

Tier 3
Intensive Individualized Instruction

Tier 2
Targeted Group Intervention - Supplemental Instruction

Tier 1
Universal Instruction

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The Problem-Solving Process

What is the problem?

1. Problem Identification

How is it working?

4. Plan Implementation & Evaluation

Improved Student Achievement

2. Problem Analysis

Why is the problem occurring?

What are we going to do about the problem?

3. Plan Development

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EL Considerations for MTSS

- Include linguistic accommodations and daily ESL or bilingual/home language support.
- Provide high-quality, scientifically based instruction that is differentiated to meet the needs of ELs.

Some additional strategies that may benefit ELs include:
- Change dosage or time.
- Change the learning environment to increase attention and engagement.
- Combine cognitive processing strategies with academic learning.
- Modify delivery of instruction (explicit, systematic, differentiated).

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ELs and Speech and Language Impairment

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

IDEA Sec. 300.8 (c) (11)

Speech and Language Impairment Among ELs

There is no fail-safe method to avoid over- or underidentifying ELs with speech-language impairment. Traditional assessments fail to account for language variability among bilingual children and will likely not render a reliable result.

Speech and Language Impairment

How to avoid misidentification:

- Consider the nature of the referral (language differences vs. disorder).
- Compare with peers and siblings.
- Assess in home language and English.
- Consider non-standardized assessment procedures.
- Identify and remediate sources of assessment bias (such as social-cultural factors).
- Know federal and state regulations (no standard score required; use multiple and appropriate data sources).
- Understand second-language acquisition/incorporate assistance from experts.
- Use caution when working with an interpreter.

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Differences Among the Languages

The total number of students identified as English learners in public schools across Illinois has recently exceeded 300,000. The top five languages among the ELs in Illinois public schools are:

- Spanish (75.52%)
- Arabic (3.9%)
- Polish (2.68%)
- Urdu (1.6%)
- Russian (1.03%)

Focusing only on the top five languages, how different are they from English? What difficulties can these differences cause, especially in pronunciation and grammar?

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Spanish

- Spanish has five pure vowels. *Seat* and *sit*, *sheep* and *ship* are confused.
- In Spanish, /z/ does not exist, and Spanish speakers usually use /s/ for /z/. *Lacy* and *lazy* would sound the same.
- Some English phonemes do not exist in Spanish causing confusion between words such as *jeep*, *cheap*, and *sheep.*
- Spanish /r/ is rolled.
- Consonant clusters are less frequent in Spanish, which may cause simplification: '*espres'* for *express*; '*istan'* for *instant*, '*tes'* for *text*
- Spanish is a syllable-timed language. In general, syllables take about the same length of time to pronounce.
- Spanish uses different words order: *When Mary came? Yesterday played very well the children.*
- Spanish has grammatical gender: *The table is dirty. Clean **her**, please.*

Arabic

- Phonological system very different from English. (English: 22 vowels and 24 consonants. Arabic: 8 vowels and 32 consonants.)
- All English vowels may cause problems to Arabic speakers but most common examples are *bit* and *bet*; *caught* and *cot*; *hop* and *hope.*
- /b/ and /p/ are allophonic and tend to be used randomly: *I baid ten bence for a bicture of Pig Pen.*
- /g/ and /k/ are often confused and pairs like *goat/coat* and *bag/pack* cause difficulty.
- Arabic does not use Latin script; writes right to left.
- Arabic has no upper- and lower-case distinction.
- Word order in Arabic is different: *Decided the minister yesterday to visit the school.*
- Arabic has no verb *to be* in the present tense: *He teacher. The boy tall.*
- Arabic has two grammatical genders: *Where is the book? She is on the table.*

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Polish

- Polish is strictly phonetic with values to each letter and Polish speakers often despair of the apparent lack of consistency between spelling and pronunciation in English: *cook*.
- Polish has 8 vowels compared to 22 pronounced in English: *bad – bed, pat – pet.*
- Variation in length of long vowels is difficult to master: *pea, peas, peace.*
- Polish /r/ has a distinct rolled quality: *first, water.*
- Polish devoices most final voiced consonants: *bed - bet, dog – dock.*
- Polish has three tenses: past, present, and future. When is past perfect continuous?
- Polish has different word order: *I don't well speak English.*
- Polish nouns, verbs, and adjectives have three genders. *The table is dirty. Clean **him**, please*.
- Polish has different punctuation and capitalization: *I think i like You.*

Urdu

- Urdu has fewer vowels which causes confusion when pronouncing *lorry, law, laugh*.
- There is only one phoneme in the area of /v/ and /w/ causing difficulty with distinction between *vet* and *wet*.
- Urdu is a phonetic language with words generally pronounced as they are written.
- In Urdu, plural forms are irregular and many must be memorized.
- In Urdu, nouns are gendered, either masculine or feminine.
- Urdu has different word order: *He home goes*.
- Urdu script is a modified form of the Persian alphabet, which itself is derived from the Arabic script.

Russian

- Russian has no diphthongs and no short-long vowel differentiation: *field – filled, seat – sit.*
- Some English consonants are not found in Russian: *zen – then, useful – youthful.*
- In Russian, final voiced consonants are devoiced: *lab – lap, said – set, pig – pick.*
- Some consonant clusters*, months, clothes, sixth*, create a major challenge and tend to be substituted with /ts/ or /z/.
- Russians use the Cyrillic alphabet: **почему вы не понимаете?**
- Russian has past, present, or future time but no progressive tenses and does not observe the sequence of tenses*: I still didn't read the book. When she will call you, tell her I asked.*
- Russian word order offers more freedom than English: *Yesterday on table lied my book,* but also *My book lied on table yesterday*.
- Quantifiers in English usually cause considerable difficulty: *I have many money.*

Transfer Mistakes

- When a home language has no equivalent for a feature, ELs are likely to have particular problems in the relevant area.
- When a home language does have an equivalent feature, learning is generally facilitated. For instance, English articles for speakers of German.
- So-called "interference" or "transfer" mistakes are common when students assume correspondence and carry over home language patterns to English. For instance, '*The head is big*," for German speakers: **Der Kopf ist groß.** (A head is masculine in German, but feminine in Polish.)

Transfer mistakes are more common when the systems of two languages are similar but not identical — for instance, English and German, but not English and Arabic.

Other Considerations

- English terms and expressions have no equivalents in some languages. For instance, scientific vocabulary in Hmong.
- There are many variants of English. For instance, standard British English and American English have different pronunciation.
- If an EL student has speech/language impairment, it will often (although not always) manifest in English AND in the student's home language.

Advice from an Expert

- Learning two languages in childhood does not cause confusion or language delay.
- Research shows that speaking to children with Down Syndrome or Autism Spectrum Disorder in two or more languages does not result in additional language or social delays.
- Mixing two languages is not bad.
- Children learn language from hearing language. Repeat, repeat, repeat.
- Be a language model, not a language enforcer. Do not demand that the child says something – instead, show them what to say.
- Be patient. Every child is unique and learns language gradually.

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ELs and Specific Learning Disability

Next to speech and language impairment, specific learning disability is the second area of disability with a significant overidentification of English learners compared to the general population of the public school students.

What are SLDs?

As defined in the Individuals with Disabilities Act of 2004, specific learning disabilities (SLDs) refer to a psychological processing disorder in understanding or using spoken or written language. Three of the most common (and often overlapping) SLDs are in the areas of auditory processing, dyslexia, and dysgraphia.

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Main Reasons for Overidentification

- Lack of MTSS or inadequate MTSS.
- Poorly designed and/or implemented referral process.
- Lack of options for provision of assistance to struggling students.
- Lack of Transitional Program of Instruction/Transitional Bilingual Education program or inadequate bilingual support.
- Lack of understanding of the purpose and scope of special education services and bilingual supports.
- Lack of understanding of cultural norms and cultural differences among students born and raised outside of the United States.

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Cultural Aspect of Misidentification

Misidentification of students for SLDs impacts a broad range of students from historically marginalized groups because the cultural and linguistic resources they bring are framed as deficits rather than differences.

Consequences of Overidentification

English learners who are misidentified as having specific learning disability receive special education services that they do not require. When students end up in classrooms or programs mismatched to their needs, it hampers their educational opportunities and achievement.

Identifying students based on cultural differences may violate their civil rights.

Asking the Right Questions

Before educators refer an English learner with suspected learning disabilities for evaluation, they should ask the following questions:

- Is the student receiving sufficient quality instruction and language supports to make the accepted academic progress?
- How does the student progress in listening, speaking, reading, and writing English as a second language compared with the expected rate of progress for their age and level of English proficiency?
- To what extent are behaviors that might otherwise indicate a learning disability be considered typical for the child's cultural background or part of the process of adjusting to life in the United States?
- How might extrinsic factors — that is, factors beyond classroom instruction and learning, such as health, family circumstances, environmental factors, education history, and exposure to trauma — impact the student's academic progress?

Disability Across Languages

Among English learners who speak two languages, if a specific learning disability exists, it will not be seen in only one language – it will be seen in both. To avoid misidentification, educators must eliminate language as a possible determinant factor. For example, is the student struggling to understand vocabulary in both the home language and English, or is the issue primarily present in an English context? Does specific vocabulary exist in the student's home/primary language? Are cultural components, such as communication patterns, factored into evaluation?

Acculturative Stress

Acculturative stress describes a reaction to adapting to a host culture. It stems from cultural, language, and customs differences between the United States and the student's home country. It may lead to anxiety, depression, feelings of marginality, and identity confusion. These feelings can manifest in ways that look like a disability, for example, inattention or lack of focus.

Avoiding Misidentification

To avoid misidentification of an EL suspected of having a specific learning disability, the assessment process should:

- Include multiple data sources (especially MTSS).
- Involve a collaborative group of experts, including people familiar with the student's culture, home language, and second language acquisition process.
- Elicit true collaboration with student's parents.
- Compare student's performance to that of true peers.
- Offer critical evaluation of students' curriculum (e.g., when the content is culturally relevant, the learners are better able to access and engage with that content as they leverage and draw on their background knowledge to help understand and build meaning).
- Eliminate extrinsic factors.

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Providing Appropriate Supports

While it is advisable to use caution when referring ELs suspected of having a specific learning disability for special education evaluation, it is equally essential to provide appropriate services to students who need them. According to federal data, approximately one in seven English learners was also identified as having a disability.

Once identified, an EL with a specific learning disability must receive special education services and bilingual support. This process will require collaborative planning involving general, special, and bilingual education or ESL-endorsed teachers. While the student may have to spend part of the school day in a self-contained special education classroom, it is critical for them to be in general education classrooms and to spend time with their peers. Bilingual supports, including self-contained and dual-language instructional designs, are considered general education programs.

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If You Proceed with Evaluation

Federal and state regulations require that assessment and evaluation materials **be administered in the student's native/primary language or other mode of communication**. If an EL does not yet speak English, English should not be used in evaluation. Evaluations must also be non-discriminatory and conducted with respect to the student's culture.

Hypothesis-Driven Approach

The Council for Exceptional Children recommends the use of a hypothesis-driven approach to determine whether an English learner has a disability:

- Begin the referral and evaluation process by exploring the hypothesis that the causes of student's difficulties are primarily external factors.
- Conduct an assessment with the notion that there is nothing wrong with an individual and that systemic, ecological, or environmental factors are the primary reasons for learning difficulties.
- Maintain this hypothesis until data suggests otherwise and all plausible external factors have been ruled out.

Eligibility Determination

EL students bring unique cultural, linguistic, and other background assets to our schools. However, these differences can also impact their school performance. While making eligibility determination, experts must rule out student characteristics that are extrinsic factors to ensure that EL students' basic educational needs are being met. Extrinsic factors are outlined in IDEA. (34 C.F.R. § 300.306(b)

Resources to Consider When Evaluating ELs

- Bilingual evaluators (ISBE offers a registry of independent evaluators who can help with assessing students in languages other than English. See [Registry.)](#)
- Qualified interpreters
- Experts on multilingual education (e.g., a bilingual specialist)
- People familiar with student's culture

Best Practice in Evaluating ELs

Five best practices utilizing bilingual assessments:

- Acquire proper training, which will ensure that the evaluator becomes knowledgeable about the student's home culture.
- Use multiple data sources.
- Establish language dominance.
- Select appropriate tools and assessment procedures.
- Use extensive data to make a decision.

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Comparing with Like Peers

In addition to administering a range of assessments, evaluators are advised to compare data collected on peers who are similar in terms of "developmental, linguistic, cultural, and experiential dimensions." With ELs, comparison data must be approached with caution and take into consideration additional factors, especially the student's cultural background and transition to life in the United States. A Spanish-speaking third grader with a Mexican background who was born and raised in Chicago may not be comparable to a third grade Spanish speaker from Guatemala who has recently come to the United States as a refugee.

Options when Evaluating ELs

1. Evaluation in two languages
2. Evaluation in the home language
3. Evaluation in English

Questions or Comments?

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