

Key Issues in Bilingual Special Education Work Paper #6 Disproportionate Representation of Language Minorities in Special Education (Chapter 405)

***Office of Vocational and Educational Services for Children with Disabilities
New York State Education Department***

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New York State legislation (Chapter 405 of the Laws of 1999) requires that the New York State Education Department (SED) collect and report data on the representation of minorities in special education. SED identifies school districts in which minorities are disproportionate and works with them to address the disparity. (see www.vesid.nysed.gov/specialed/chapter405/home.html)

Linguistic minorities are a subgroup within the overall 'minority' population that is often disproportionately represented. This Work Paper provides an overview of the identification process and instructional services for language minority students that may be helpful in avoiding inappropriate referral to and placement in special education.

Population Incidence

There are no research findings that would suggest that the incidence of the language minority population should be greater than that of other groups in the special education population. One of the potential reasons for a higher incident rate may be the lack of familiarity with language minority issues and potential general education program alternatives. Special education services may be necessary for some language minority students but only after other educational alternatives have proven unsuccessful and when appropriate evaluation has demonstrated the presence of a disability.

'Home' Language

The language that a child brings from home is called his/her 'native' or 'primary' language because it is the first language the child learns. This language is also referred to as the 'home' language, identifying it as the language that the child uses to communicate at home. It is important to note that language is used in a variety of settings and that a child may demonstrate a variability of language use and selection depending on the social context.

Good educational practice requires school districts to use a home language survey or questionnaire when enrolling a child. This survey (a sample is available from The Office of Vocational and Educational Services for Individuals with Disabilities (VESID) in the *New York State Guidelines for Culturally and Linguistically Diverse Preschool Students with Disabilities Ages 3-5*) questions parents or guardians concerning the language history of the child and may in some cases result in a determination that bilingual or second language instruction is unnecessary because the child doesn't use a language other-than-English. A school district cannot address a child's language needs if they have not identified the child's home language.

Language Screening in English

Home language survey results tell the district that the child uses a language other-than-English at home but do not tell the district how well the child speaks English. The district must still determine the child's level of proficiency in English. The school district should use a simple, appropriate English language screening instrument(s) that will alert the receiving school on the child's communication level in speaking, listening, reading and writing in English.

General Education Options – Bilingual Education/English as a Second Language

New York State provides funding for school districts interested in developing bilingual education or English as a Second Language programs for limited English proficient students in general education.

A **bilingual education approach** means that the student is being taught subject areas in his/her native language while being taught a second language – in our case, English (using English as Second Language methods). The advantage of this approach is that the student does not lose valuable time in acquiring content information

while s/he is learning English. The bilingual approach is used when there are numbers of children from the same language group in the same grade levels. A bilingual teacher can only provide bilingual instruction in the language(s) in which s/he has demonstrated competency on the New York State Teacher Certification Examinations.

An **English as a Second Language-only approach** is used when a school district has students from a variety of language backgrounds. The teacher need not be proficient in a language other-than-English but may have a second language. He or she has received training and is certified as an English as a Second Language (ESL) teacher.

Language minority students who are limited English proficient may be provided instruction using either of the above approaches and may simultaneously receive instruction with their English-speaking peers. A bilingual education or English as a Second Language program is not a special education program and is meant to provide instruction to children who have a language difference and no disabilities.

Prereferral Strategies

A language minority student who demonstrates signs of a possible disability should be referred for evaluation to determine if her or she requires special education. However, a student should be given the opportunity to perform academically in a program suitable to his/her needs prior to referral to special education. As is true for any student who is failing to achieve success, the district should assure that teachers are using research validated effective practices in the general education environment. A general education bilingual education or English as a second language program also are options that should be considered for such students. In all cases, the district must document the educational alternatives used with the child prior to referral.

Bilingual Special Education

A referral to special education should only be made for a student after other instructional alternatives have been used and have been unsuccessful or have been met with very limited success.

An important goal of special education is the development of conceptual, linguistic and social abilities commensurate with the potential of the student. This goal is accomplished in bilingual special education through (a) instruction in the primary language of the student, (b) consideration of the role of culture in learning, and (c) the provision of appropriate second language acquisition methodologies necessary to learn English language skills.

The decision to provide bilingual special education for students with disabilities who are English language learners is made by the Committee on Special Education. When needed, bilingual services should be integrated into the appropriate level of the special education continuum. The language delivery strategies are based on the student's language proficiency in both English and the home language of the student. Placement of a limited English proficient or non-English speaking student with a disability in a monolingual English special education setting is inappropriate.

Implications for the School District

School districts should review their special education referral and placement data to determine if language minority students are disproportionately represented in their special education population.

The district should develop alternative educational programs such as English as a Second Language or bilingual education within its general education program to offer alternatives to special education for children who demonstrate instructional deficiencies due to lack of prior education or a difference in language.

The district should also undertake a personnel development program to acquaint personnel with the education of culturally and linguistically diverse students and to eliminate unnecessary referrals to special education.

Resources

New York State Education Department (1997). Guidelines for Services for Culturally and Linguistically Diverse Preschool Students with Disabilities Ages 3-5

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Referring Language Minority Students to Special Education. ERIC Digest.

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Specialists assume that approximately the same proportion of very bright individuals, cognitively limited individuals, language handicapped individuals, etc., will be found in any population. Statistically, about 12% of the language minority population in the United States may require special education. In some school districts, language minority students are overrepresented in special education, while in other districts, and in certain categories of special education, there is an underrepresentation of handicapped language minority students. While special education is not the only option available to language minority learners with special needs, it is imperative that these students be identified and given access to the full range of special education and related services to meet their needs.

THE PREREFERRAL PROCESS

Prereferral is a screening and intervention process that involves identifying problems experienced by students in the regular classroom, identifying the source of the problems (student, teacher, curriculum, environment, etc.), and taking steps to resolve the problems in the regular classroom. The prereferral process seeks to eliminate any unnecessary and inappropriate referrals to special education. Most inappropriate referrals can be avoided by implementing a prereferral intervention process through which teachers are helped to remediate the problems the child is experiencing in the context of the classroom. Often, this is done in conjunction with other colleagues and school support personnel. One prereferral method uses Teacher Assistance Teams (TATs)--groups of teachers selected by their peers to facilitate prereferral problem-solving. The TAT and the referring teacher meet to discuss problems the student is having, think of possible solutions, and develop a plan of action to be implemented by the referring teacher. Follow-up meetings are held to discuss the effectiveness of the proposed interventions, and to develop other strategies if necessary. Ultimately, the TAT decides whether the student should be referred to special education (Garcia, & Ortiz, 1988).

In addition to reducing unnecessary referrals to special education, the prereferral process leads teachers to design and implement educational interventions that are often effective in the least restrictive environment, the regular classroom (Benavides, 1987; Mazur et al., 1989).

ASSESSMENT AND REFERRAL

The referral of a student to special education should be an indication that all other avenues have been explored, and that a conclusion has been reached that the child's needs cannot be met by the regular education program. It may also indicate the presence of a handicapping condition (Garcia & Ortiz, 1988). Confirmation of a handicap and identification of its specific nature are provided by a comprehensive assessment of the student. All referrals of language minority students to special education should include the results of tests in the child's native language and in English, and all records and reports on which the referral is based. Verification should be provided of the appropriateness of the school's curriculum, the qualifications and experience of the teacher, and the appropriateness of instruction provided to the student (continuity, proper sequencing, the teaching of prerequisite skills). Documentation of the child's problems across settings should also be included, along with evidence that the child's difficulties are present in both languages, and that he or she has not made satisfactory progress despite having received competent instruction (Garcia & Ortiz, 1988). However, because many of these children are losing or have not fully developed first language skills, it may be difficult to ascertain that the learning difficulty exists across languages.

To ensure access to special programs, yet not use special education as a dumping ground for limited-English-proficient (LEP) students, it is imperative that LEP students be tested thoroughly. Every possible formal and informal assessment procedure should be used to determine the student's level of functioning and possible handicapping condition. Current research on language development and second language acquisition should be taken into account, including research on neurolinguistics, cognitive development, bilingualism, and psychological functioning, as well as research on resettlement and cultural and emotional adjustment. The English-as-a-second-language (ESL) teacher, bilingual education teacher, and classroom teachers who work regularly with the learner will have the most important school-based observations and input in the assessment process. This, coupled with input from parents or guardians, becomes the foundation for the assessment process.

CHARACTERISTICS AND BEHAVIORS OF LANGUAGE MINORITY STUDENTS IN NEED OF SPECIAL EDUCATION

LEP students who have major disorders that interfere with the teaching and learning process should be referred to special education. These students may have a handicapping condition such as disturbance, physical and health impairments, multiple handicaps, or specific learning disabilities such as dyslexia. Even with intervention, these students experience significant difficulties in the regular classroom. It is important to distinguish, however, between the aforementioned handicapping conditions, and the difficulties experienced by non-handicapped language minority children as a result of their limited

proficiency in English. "Linguistic, cultural, socioeconomic and other background differences are not considered handicapping conditions" (Garcia, & Ortiz, 1988, p.2).

Difficulties may be evident in both languages or in one or all four of the language skill areas: listening, speaking, reading, and writing. Some students may have difficulty processing language, and may not comprehend oral input; they may look puzzled when questioned, or may respond with completely irrelevant responses or with garbled speech. An auditory memory or auditory processing deficit may be evident. Other students may have significant difficulties learning to read. Those students who may have visual deficits may display weaknesses in their written work: inadequate spacing between words and many misspellings. Little sound/symbol correspondence may exist between the word written and the word intended, or the student may have difficulty writing on the line and may not discriminate the size of letters.

The difficulties experienced by some language minority students may not be entirely language based. Referral to special education may also be necessary for behavioral, emotional, cognitive, neurological, or sensorial reasons.

ASSESSMENT: THE OVER-IDENTIFICATION VS. UNDER-IDENTIFICATION DILEMMA

Public Law 94-142 states that all handicapped children in the United States are guaranteed the right to a free public education, to an individualized education program and related services that meet their specific needs, to due process (assuring that handicapped students are properly assessed, classified, and placed in appropriate programs), to education in the least restrictive environment, to tests that are not culturally discriminatory, and to multi-dimensional assessment. "Public Law 94-142 requires that state and local educational agencies ensure that test and evaluation materials be provided and administered in the child's native language, and, among other things, that the child be assessed in all areas related to the suspected disability" (Benavides, 1987). The handicapped LEP child has a right to the same special educational services as other handicapped students.

The assessment and placement process is not a simple task. Legal requirements can cause difficulties for districts or schools seeking to implement procedures for assessing LEP children. These requirements can be complex or require a certain level of prior knowledge or expertise. The misdiagnosis of LEP students for special education has led to a number of lawsuits and court orders (*Diana v. California State Board of Education*). "Fear of litigation by school districts can lead to the under-identification of minority pupils in special education. Data collected by the California State Department of Education (CSDE) pupil count verifies the trend of shifting from over-identification of minorities in special education to under-identification" (Vasquez-Chairez, 1988). Bergin (1980) maintains that students from culturally and linguistically different backgrounds are subjected to various forms of bias. In the past, such bias led to referring LEP students to special education for reasons other than those making them eligible for special services. "In recent years, possibly as an overreaction to the identified problems of misdiagnosis, a different problem has surfaced. Limited English proficient youngsters

who typically (and, presumably, legitimately) would have been identified as needing special education services have not been receiving those services" (Bergin, 1980).

Direct attention to evaluation issues is essential in order to provide quality education to all students. "It is the objective of fair and appropriate assessment to document any potential difficulties and then to differentiate between those due to intrinsic disorders and those due to cultural and linguistic differences and other intrinsic factors. Only through this process can the appropriate assessment, identification, and programming of exceptional LEP students versus nonexceptional LEP students be accomplished" (Kretschmer, 1990). Hamayan and Damico (1990) suggest that the following questions need to be considered in bilingual special education testing:

- * How can the temporary difficulties LEP students face in learning to function in a nonproficient language be distinguished from more permanent perceptual and cognitive deficiencies that interfere with learning?
- * How can the abilities and disabilities of bilingual students be evaluated when students are not proficient in the language of testing?
- * How can the abilities and disabilities of students be accurately assessed when the students are unfamiliar with the social norms underlying tests?
- * What types of assessment not only satisfy the requirements of the law but also give service providers clear guidelines as to the components of instruction that a student needs?

CONCLUSION

Students who have disorders that interfere with the teaching and learning process should be referred to special education programs that will allow them to develop the skills necessary for full participation in society. However, it is vital to distinguish students who are experiencing difficulties in school because of limited English skills from students who are handicapped. Inappropriate referral to special education can be stigmatizing and costly, and can inhibit limited-English-proficient students from achieving their full academic potential.

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