

# Best Practices

## in the Special Education Assessment of Culturally and Linguistically Diverse (CLD) Students

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This document is directed to professionals involved in the special education evaluation of culturally and linguistically diverse (CLD) students in the state of Texas. Please note that the term, CLD students, includes students who are English language learners (ELLs), as well as students who are fluent in English, but have had significant exposure to another language. This document is a work in progress. Updated information may be obtained by contacting Dr. Alvarado at [cris.alvarado@juno.com](mailto:cris.alvarado@juno.com).

### IDEA 2004

Overidentification and disproportionality—The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.

## Definitions

**Dominant Language**—the language spoken by the student most effectively and productively relative to his/her other language(s).

**Oral Language Proficiency**—level of the student's ability to comprehend and speak a language.

### IDEA 2004

**Native Language**—The term "native language", when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

### IDEA 2004

**Limited English Proficient**—The term "limited English proficient" has the meaning given the term in section 9101 of the Elementary And Secondary Education Act of 1965.

### ESEA 1965

(8) Limited English proficiency and limited English proficient.--The terms 'limited English proficiency' and 'limited English proficient', when used with reference to an individual, mean an individual--

(A) who—

(i) was not born in the United States or whose native language is a language other than English and comes from an environment where a language other than English is dominant; or

(ii) is a Native American or Alaska Native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or

(iii) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and

(B) who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

## Early Intervention Support Teams

Using early intervention support teams for school-based problem-solving can provide academic and behavior support to non-special education students in K-12 and a support system for classroom teachers. Early intervention support teams problem-solve student's difficulties prior to consideration for special education referral. This early-intervention process also assists in distinguishing a true learning impairment from characteristics of second language acquisition, culture, and other environmental differences. The intervention model helps rule out linguistic, cultural, socioeconomic and/or other environmental differences as the primary source of a student's academic failure.

The early intervention support teams should include members who are knowledgeable about second language learners and cultural differences so that recommendations specific to the needs of English Language Learners (ELLs) can be made.

### Manolo G. vs. Alief Independent School District, NO. 210-SE-296

Preventing over representation of limited English proficient students in special education has been recognized by TEA and Alief ISD as an important goal. The balance between identifying students with a disability in need of special education and prematurely labeling limited English proficient students as needing special education, has been struck through the use of the pre-referral screening process. Not only is Alief's pre-referral process considered a "best practice" by Region IV, support can also be found for such a program in 19 TEX. ADMIN. CODE §89.1011. Prior to referral for possible special education, all support services such as tutorial, remedial, compensatory, and other services, should be considered. Alief's pre-referral process is consistent with this rule. Therefore, Alief's determination to initiate the pre-referral process before referring Manolo to special education was appropriate.

## Referral Model

If a student is an English language learner (ELL), the Language Proficiency Assessment Committee (LPAC) should be notified before a referral for special education evaluation is considered. The LPAC may find it appropriate to re-convene and re-examine the alternative language placement. The results of the LPAC meeting should be forwarded back to the referral committee.

The LPAC should also be notified if the student was exited from a bilingual education or English as a second language (ESL) program within the last two years. The LPAC will reclassify as limited English proficient (LEP), students who are not academically successful due to limited English proficiency and will recommend participation in a bilingual education or English as a second language program. The results of the LPAC meeting should be forwarded back to the referral committee.

### *Chapter 89. Adaptations for Special Populations*

#### *Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students*

#### *89.1220. Language Proficiency Assessment Committee.*

- (g) *Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all limited English proficient students identified in accordance with 89.1225(f) of this title (relating to Testing and Classification of Students), and shall:*
- (1) *designate the language proficiency level of each limited English proficient student in accordance with the guidelines issued pursuant to 89.1210(b) and (d) of this title (relating to Program Content and Design):*
  - (2) *designate the level of academic achievement of each limited English proficient student:*
  - (3) *designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program:*
  - (4) *facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the district with either state or federal funds; and*
  - (5) *classify students as English proficient in accordance with the criteria described in 89.1225(h) of this title (relating to Testing and Classification of Students), and recommend their exit from the bilingual education or English as a second language program.*

*Chapter 89. Adaptations for Special Populations*

*Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students*  
 89.1220. Language Proficiency Assessment Committee.

(l) *The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program within the past two years to determine whether the student is academically successful as defined in 89.1225(j) of this title (relating to Testing and Classification of Students). Those students who are not academically successful due to limited English proficiency shall be reclassified as limited English proficient (LEP), and shall be recommended for participation in a bilingual education or English as a second language program. Students who are not reclassified as LEP may be placed in compensatory and accelerated instruction, or other special language program which addresses their needs.*

*OCR v. Denver Public Schools*

*The September 1991 memorandum states that, once exited from the alternative language program, former LEP students should be able to participate meaningfully in the mainstream educational environment. That is, they should be able to keep up with their non-LEP peers academically and participate meaningfully in essentially all aspects of the curriculum without the use of simplified English materials. In order to implement this requirement, districts should monitor the academic progress of former LEP students on an individual basis.*

A school district's referral screening system should include an LPAC representative for English language learners.

The student's cumulative folder should be reviewed in the referral committee meeting. Information to be discussed at this time should include, but not be limited to 1) previous school information (see section 2d above) 2) attendance records 3) participation in educational programs (see section 2d above), 4) previous test results and 5) the Home Language Survey and LPAC testing and recommendations.

The requirement to conduct a home language survey and language proficiency testing, if applicable, when a student first enters school should not be ignored even if the student obviously appears to have special education needs.

Various instructional alternatives should be discussed at the time of the referral meeting. Recommendations should not be limited to referral for special education evaluation.

For a special education referral, observed educational difficulties can not primarily be a result of an environmental, cultural, or economic factors.

If the referral committee determines that referral for special education evaluation is appropriate, parents/adult students must be informed in their native language of their procedural safeguards and any evaluation procedures the school district proposes to conduct. There should be written evidence that this requirement has been met.

*IDEA 2004*

*Consent for Initial Evaluation.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.*

*IDEA 2004*

*Procedural Safeguards.*

*(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.*

## IDEA 2004

## Procedural Safeguards Notice

Contents.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to (A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) the opportunity to present and resolve complaints, including—(i) the time period in which to make a complaint; (ii) the opportunity for the agency to resolve the complaint; and (iii) the availability of mediation; (F) the child's placement during pendency of due process proceedings; (G) procedures for students who are subject to placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) due process hearing, including requirements for disclosure of evaluation results and recommendations; (J) State-level appeals (if applicable in that State); (K) civil actions, including the time period in which to file such actions; and (L) attorneys' fees.

At this time, sociological information pertaining to the referral, such as:

- student's home language,
- previous education,
- previous school attendance,
- parental concerns, and
- other pertinent data

need to be addressed.

The referral should include all the usual referral information and the following:

- Current LPAC reports (within one year)
- Copy of the Home Language Survey and current information on home language use (within one year)
- History of language exposure and use
- Language proficiency screening (Woodcock-Munoz Language Survey—Revised, IDEA Individual Proficiency Test, Language Assessment Scales-Oral, etc.)
- Cultural/lifestyle information
- Complete school history including information on educational placement, both foreign and local (i.e., Special Education, bilingual education, ESL, etc.), previous and current educational interventions (i.e., supplemental other language programs, peer tutoring, modifications, therapy, etc.) and previous and current language of instruction.

## Chapter 89. Adaptations for Special Populations

## Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students

## 89.1205. Required Bilingual Education and English as a Second Language Programs.

- (a) Each school district which has an enrollment of 20 or more limited English proficient students in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the limited English proficient students in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.
- (b) A district shall provide a bilingual education program by offering a dual language program in prekindergarten through the elementary grades, as described in 89.1210 of this title (relating to Program Content and Design).
- (c) Districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section.
- (d) All limited English proficient students for whom a district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.
- (e) A district shall provide an English as a second language program by offering an English as a second language program as described in 89.1210 of this title (relating to Program Content and Design).

## Hierarchy of Evaluation Models

“Best practice” dictates that the evaluation professional is fluent and literate in the two or more languages of the student being tested. The evaluation professional should also be knowledgeable of cultural and linguistic issues that can impact test results and have training on evaluation materials and practices appropriate for the CLD student. The evaluation materials should be in the language of the student and format most likely to yield accurate information.

School districts should actively strive to achieve “best practice”. In testing situations when “best practice” cannot be achieved, school districts must still ensure that evaluation professionals involved in the special education evaluation of CLD students are knowledgeable of cultural and linguistic issues and have training on evaluation materials and practices appropriate for CLD students.

### IDEA 2004

#### Personnel Qualifications.—

(A) In general.—The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

### IDEA 2004

(3) Additional Requirements.—Each local educational agency shall ensure that—(A) assessments and other evaluation materials used to assess a child under this section—(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessment or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments; . . .

Level 1            Trained bilingual evaluation professional(s)<sup>1</sup> fluent in the student’s native language using evaluation materials in the student’s two or more languages.

**If this is clearly not feasible, the following options are provided:**

Level 2            Bilingual evaluation professional(s)<sup>1</sup> fluent in the student’s native language, but using modified evaluation materials, translated tests, or tests with norming populations not representative of the student’s background, etc.

Level 3            English speaking evaluation professional(s) assisted by a trained bilingual ancillary examiner<sup>1</sup> using standardized evaluation materials.

Level 4            English speaking evaluation professional(s) assisted by a trained interpreter<sup>1</sup> and using modified evaluation materials, translated tests, or tests with norming populations not representative of the student’s background, etc.

Level 5            Evaluation professional(s) using only nonverbal or performance intelligence evaluation materials for languages other than English or Spanish

<sup>1</sup> Bilingual evaluation professionals and ancillary examiners are assumed to be fluent and literate in English and the student’s native language.

*APA Standard 9.11*

*When an interpreter is used in testing, the interpreter should be fluent in both the language of the test and the examinee's native language, should have expertise in translating, and should have a basic understanding of the assessment process.*

*Comment: Although individuals with limited proficiency in the language of the test should ideally be tested by professionally trained bilingual examiners, the use of an interpreter may be necessary in some situations. If an interpreter is required, the professional examiner is responsible for ensuring that the interpreter has the appropriate qualifications, experience, and preparation to assist appropriately in the administration of the test. It is necessary for the interpreter to understand the importance of following standardized procedures, how testing is conducted typically, the importance of accurately conveying to the examiner an examinee's actual responses, and the role and responsibilities of the interpreter in testing.*

*p. 100*

*"A poorly trained interpreter with an English-speaking psychologist is a travesty. In many ways, rolling dice would be preferable to using scores derived from this practice. Standardization, validity, scoring, and interpretation may all be compromised."*

Richard A. Figueroa  
University of California, Davis (1990)

Fernando P. v. Pasadena ISD, 2003

in the present case, the Hearing Officer reviewed nine audiotapes that together contained the oral translations from two of Fernando's ARDs. The accuracy of the translations, which were performed by PISD employees, was excellent.

Standardized tests should be administered in accordance to the instructions of the publisher. Accommodations and/or modifications made for the CLD student should be clearly documented on the test record form and report.

IDEA 2004

Procedural Safeguards.—

(B) Additional Procedural Safeguards.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

## Oral Language Proficiency and Dominance Testing

Individually administered oral language proficiency tests in both English and the student's other language(s) should be the **initial** step of the evaluation process to help determine language proficiency and language dominance. Oral language proficiency and dominance testing often serves two purposes. First, the dominant or stronger language is determined and proficiency levels for each of the student's languages are investigated. The language(s) of the other tests to be administered is dictated by these test results, as well as other information such as the student's language exposure and background of language of academic instruction. Second, two areas of the seven areas of learning disability, oral expression and listening comprehension, are assessed when conducting oral language proficiency and dominance testing.

Because oral language proficiency tests vary widely, evaluation professionals must judge the appropriateness of the instruments selected on the basis of linguistic, psychometric, and cultural criteria. Decisions on the student's proficiency and dominance should not be based solely on tests that are screening instruments. (Refer to Appendix A for more information on available Spanish tests.)

Oral language proficiency and dominance testing is best accomplished by using parallel oral language tests because determining dominance by comparing tests that are not parallel can easily result in comparing tests that measure different aspects of oral language. "Unparallel" oral language

tests may be acceptable for assessing proficiency levels, but can be a significant obstacle in determining language dominance.

For students with a very definite stronger language, parallelism may not be a critical issue and the evaluation professional may deem it appropriate to use different oral language tests or to do informal oral language testing in the non-dominant language.

If tests are unavailable in the student's native language, informal assessment measures (i.e. language sample, oral story retelling, story telling, evaluation of receptive vocabulary, etc.) will be necessary to aid in the determination of language dominance and proficiency.

The results of the oral language testing in each language must be interpreted in light of the student's years of exposure to that language, as well as to the type, quality, and appropriateness of the educational programming, especially language programming. Additionally, socio-economic and cultural issues and their impact need to be factored into the interpretation of the test results.

*OCR v. Denver Public Schools  
LEP Students With Disabilities*

*In order to account for the effect of language on test results, staff persons at some school districts consider students' "dominant language" or "primary language," often using the terms interchangeably. However, determining that a student is dominant in English is not equivalent to determining that the student is proficient in the language skills required to produce valid, reliable results on a special education evaluation instrument.*

*OCR v. Denver Public Schools  
LEP Students With Disabilities: Evaluation*

*OCR received several forms used in the pre-referral, referral, and placement process, some of which are specifically for use with language-minority students. One example, the Pre-Referral Background Information and Language Survey for Limited English Proficient Children form, is used to determine "language dominance." Like the other forms furnished to OCR, the instructions on this form limit its use to students who have already been identified as LEP, and includes no space to record objective assessment of proficiency in English or any other language. The determination of "language dominance" is not based on a comparison of objective assessment of proficiency in two or more languages. Rather, staff persons are invited to draw a judgment of language dominance based on subjective information regarding the student's language use and background. The person completing the form, who is not necessarily qualified to administer special education testing instruments, may suggest the language to be used for testing.*

Formal oral language testing should never be the only information used to determine oral language proficiency and dominance. Other information that may help assess proficiency and dominance include:

- Home Language Survey
- teacher checklists on student's receptive and expressive language skills
- previous and current language proficiency testing
- parent information on student's language skills
- LPAC recommendations
- student interview on language use and/or exposure

Once a determination and interpretation of oral language proficiency and dominance has been made, other aspects of the evaluation can be addressed, including 1) the selection of appropriate tests and other assessment strategies to use in the evaluation process; 2) language or languages to use with the student; 3) and qualified personnel to conduct the procedures.

## Intelligence/Cognition Testing

*... for a non-native speaker and for a speaker of some dialects of English, every test given in English becomes, in part, a language or literacy test. Test results may not reflect accurately the abilities and competencies being measured if test performance depends on these test takers' knowledge of English.*

*Standards for Educational and Psychological Testing  
American Psychological Association  
American Educational Research Association  
National Council on Measurement in Education*

Intelligence/cognition testing must be conducted in the student's most proficient (dominant) language. If instruments in that language are currently not available or the student does not have adequate proficiency, consider the use of a nonverbal or performance test in conjunction with data from informal measures to support formal test results. It is considered unacceptable practice to translate a test and then use this translated test as the primary evaluation measure when tests are available in the target language.

If the student is not clearly proficient in either language, consider assessing in the native language or in the combination of the student's two languages.

Limiting evaluation to non-verbal or performance measures can fail to identify genuine learning problems in verbal areas that require special education intervention. The exclusive use of non-verbal measures to assess intelligence/cognition must be used with caution. The reason for omitting verbal measures should be documented in the report.

### Mental Retardation

When selecting evaluation instruments, the linguistic characteristics of the CLD students suspected of having mental retardation must be carefully considered.

#### *State Board of Education Rule*

*§ 89.1040 Mental Retardation: Mental Retardation. A student with mental retardation is one who has been determined to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits in adaptive behavior.*

#### *District Effectiveness and Compliance: Special Education, 2002-2003*

*Some measures of intellectual ability result in a composite or global score rather than individual verbal and performance scores. When an intelligence test is used which results in a single score, it is up to the evaluation professional to ensure that both verbal and performance skills have been measured and documented. If they have, the single score will suffice as a measure of both verbal and performance ability.*

If the child is very young and/or the student has a severe disability, a developmental scale in the dominant language may be administered instead of intelligence tests.

Adaptive behavior scales administered to students must be administered in the dominant language. Adaptive behavior scales requiring a parent interview must be administered in the preferred language of the parent. Adaptive behavior scales requiring a significant amount of teacher input should be completed only by a teacher who can address both languages and is knowledgeable of the student's cultural background, as well as is very familiar with the student's adaptive behavior.

## Academic Evaluation

For all students requiring an academic evaluation, an English evaluation should be attempted. An academic screening may serve for students who have received limited or no formal instruction in the English language. As a general rule of thumb, if English language instruction has been received for one year or more, a comprehensive English academic evaluation should be conducted for baseline information and documentation.

As a general rule of thumb, if the student has received instruction in the a language other than English for one year or more, a comprehensive academic evaluation in that language (if tests are available) should be conducted unless there is sufficient evidence that such an evaluation is not appropriate (i.e. a high school student who received one year of bilingual education back in first grade.). An academic screening may serve for students who have received limited or no formal instruction in the native language.

If evaluation instruments are not available in the student's native language, informal assessment (i.e. student relates an event or tells a story; student reads a passage in a grade level book in his/her native language; or student writes sentences, a paragraph, or a story in his/her native language, etc.) can provide an estimate of the student's academic ability.

A student's educational history, sociological/cultural/economic factors, and language background must be considered in the interpretation of test results and in the determination of eligibility. Document the student's cultural, experiential, and linguistic background in sufficient detail, in order to judge the appropriateness of the eligibility decision.

## Learning Disability

IDEA 2004

SPECIFIC LEARNING DISABILITY.—

(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

If an intelligence/achievement discrepancy model is used to help identify specific learning disabilities, a bilingual student must demonstrate (1) educational need and (2) a significant discrepancy in **both** languages in the **same** achievement area using standardized assessment instruments. In addition, the discrepancy must not primarily be the result of environmental issues, cultural factors (which includes linguistic diversity), or economic disadvantage.

IDEA 2004

Specific Learning Disabilities

(A) In General.—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional Authority.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

When an academic evaluation in the student's native language is not possible because of a lack of available assessment measures, the results of informal measures in the native language should also demonstrate a significant educational need.

Manolo G. v. Alief Independent School District, NO. 210-SE-296

*Although the results indicate discrepancies exist between Manolo's intellectual ability and his achievement, Manolo cannot be identified as learning disabled on that basis alone, because the analysis does not stop at this point. The regulations do not permit the multidisciplinary team to identify a child as having a learning disability if the severe discrepancy between intellectual ability and achievement is primarily the result of environmental, cultural, or economic disadvantage.*

## Speech and Language

Evaluation professionals conducting language and/or speech testing of bilingual students should be able to demonstrate understanding of the process of normal speech and language acquisition of bilingual individuals. Monolingual English evaluation professionals conducting language and/or speech testing of bilingual students should seek out qualified support to help them in the assessment and interpretation process.

Appropriate evaluation diagnostic procedures may include standardized tests as well as descriptive linguistic analysis and other informal procedures. Informal assessment, in and of itself, is not substandard assessment; often requiring more skill and time for accurate results.

The student's background and language experience must be vigilantly taken into account when selecting evaluation diagnostic procedures, as well as when interpreting results. To achieve this aim, the evaluation professional must learn about the student's history, both educational and family, and language environment, past and present. Additionally, the evaluation professional must know and be sensitive to the student's cultural environment and/or lifestyle and its impact on test results and educational programming.

Language difference factors must be considered before a language disorder is determined. Accuracy in determining whether language problems stem from a language difference or a language disorder will depend heavily on the speech and language pathologists' knowledge of second language learning issues, ability to consult and collaborate with informed sources, and skill in integrating the data collected.

The student's cultural and experiential background must be considered before a language disorder is determined. A language disorder cannot primarily be due to a different cultural background or lack of opportunity.

Although evaluation of articulation may be conducted only in the student's dominant language, interpretation of results must consider the dialectical influence of the student's other language upon the language tested. The Speech and Language Pathologist should be familiar with dialectal differences.

Speech therapy services should be reasonably calculated to enable the CLD student to receive an educational benefit. To determine the language of therapy for an individual student, all data and information must be carefully considered including the student's first language, dominant language, proficiency levels in each of the languages, years of exposure to each of the languages, type of exposure to each of the languages, academic skills in each of the languages, and age of the student. Generally, although exceptions may be possible, language of therapy for students from CLD backgrounds should be in the dominant language of the student.

The full and individual evaluation speech report should have sufficient information documented regarding the student's cultural, experiential, and linguistic background to enable the reader of the report to understand how the test results were interpreted in light of this information.

IDEA 2004

(B) Consideration of Special Factors.—The IEP Team shall—  
(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP.

Fernando P. v. Pasadena Independent School District, 1991

. . . Fernando has continued to exhibit a severe and profound impairment in expressive language with a level of proficiency that is significantly below average for his chronological age. This impairment is evident in both Spanish and English. . . Fernando requires special education services above and beyond standard speech therapy. Specifically, he needs direct language-based therapy provided in Spanish. Furthermore, Fernando needs to achieve communicative competence in his native language before learning English as his second language.

Fernando P. v. Pasadena Independent School District, 2003

. . . The Hearing Officer believes that appropriate speech therapy is provided in the student's primary language. In the present case, however, PISD presented expert testimony that the 'bilingual communication helper model' is an appropriate means of delivering speech therapy. Petitioner offered no expert testimony, and its remaining evidence fails to outweigh PISD's evidence.

## Interpretation of Test Results

Test results cannot be interpreted in isolation, particularly with students with CLD backgrounds. Test results must be interpreted in light of the quality and amount of exposure to the language of the results, as well as relevant cognitive, affective, environmental, and socio-cultural characteristics.

IDEA 2004

*Special Rule for Eligibility Determination.—In making a determination of eligibility under paragraph (4) (A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965); (B) lack of instruction in math; or (C) limited English proficiency.*

*OCR v. Denver Public School  
LEP Students With Disabilities*

*In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34. [34 C.F.R. § 104.35(c)]*

## Reevaluations

Some additional issues that need to be addressed when determining if conditions warrant comprehensive testing for reevaluation of CLD students are:

- Students who are in the second language acquisition process can experience dramatic changes between initial evaluation and reevaluation.
- Testing practices may have significantly changed from the initial evaluation.
- More appropriate and equitable standardized tests may now be available that were previously not available.

## Report Writing

Document evaluation conditions including:

- level of evaluation (Refer to Hierarchy of Evaluation Levels),
- language(s) of test, and
- any deviation from standardized administration.

Report oral language proficiency and dominance testing, including :

- results of the Home Language Survey,
- teacher checklists on student's receptive and expressive language skills
- previous and current language proficiency testing
- parent information on student's language skills
- parent information on language spoken at home
- LPAC recommendations
- student questionnaire on language use and/or exposure
- number of years of exposure to English and to the other language(s).

Report relevant sociological/cultural information:

Report educational opportunity information:

- previous schooling in another country,
- any interruptions in schooling,
- previous and current educational placements (i.e. ESL, bilingual education, Title I, etc.)

Any deviation of administrative procedure should be documented on both the protocol and the evaluation report (i.e. use of an interpreter or ancillary examiner, acceptance of responses in both languages, translation of instructions and/or test items, etc.).

The evaluation team must consider and document environmental, cultural, and economic factors that may be contributing to the student's behavior and learning patterns. **(It is important for the team to remember that language is part of a student's culture and should be considered as a cultural factor.)** If the team determines that the severe discrepancy or low intellectual functioning results are primarily the result of these factors, then special education eligibility shall not be established.

If the parent(s) is/are unable to read the full and individual evaluation report because of language difference, literacy, or visual issues; an evaluation professional should orally provide the information to the parent(s) prior to the ARD/IEP meeting. If the evaluation professional is unable to fully communicate with the parent(s), an interpreter should be used. The interpreter must have the skills necessary to accurately, fully, and impersonally interpret the proceeding of this meeting.

### IDEA 2004

Determination of Eligibility and Educational Need.

—Upon completion of the administration of assessments and other evaluation measures, (A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and (B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

Manolo G vs. Alief Independent School District, NO. 210-SE-296

*... for what is one's language if not a hallmark of one's culture?*

## ARD/IEP Meeting

For students who are classified as LEP, a LPAC representative should attend the ARD/IEP meeting.

*Refer to Chapter 89. Adaptations for Special Populations. Subchapter BB. 89.1220 (g) (4).*

For students who have been exited within the last two years from a bilingual education or ESL program and are no longer classified as LEP, but continue to be monitored; a LPAC representative should attend the ARD/IEP meeting.

*Refer to Chapter 89. Adaptations for Special Populations. Subchapter BB. 89.1220 (l).*

When the parent of the student speaks a language other than English or cannot fully participate as a meaningful member of the ARD/IEP committee because of language difference issues, an interpreter must be present at the meeting.

*Alejandro P. v. Edgewood Independent School District, 185-SE-195*

*Mrs. P. (petitioner's parent) speaks some English, but requires proficient translation into Spanish of all matters related to the education of Alex in order to satisfy the requirements of IDEA. (parenthetical information added)*

*...Mrs. P. could not meaningfully participate in creating this very important component of Alex's IEP if she was only aware of a part of the document.*

*Chapter 89. Adaptations for Special Populations*

*Subchapter AA. Commissioner's Rules Concerning Special Education Services*

*89.1050(h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. . . .*

The interpreter must have the skills necessary to accurately, fully, and impersonally interpret the proceeding of the ARD/IEP committee meeting.

The ARD/IEP committee must consider and document environmental, cultural, and economic factors that may be contributing to the student's behavior and learning patterns and determine their impact on the evaluation results and student's academic progress. Additionally the ARD/IEP committee must deliberate appropriate instructional placement and programming for the student, including the language of instruction in special education.

*Fernando P. v. Pasadena Independent School District, 2003*

*. . . The Hearing Officer believes that appropriate speech therapy is provided in the student's primary language.*

*OCR v. Denver Public Schools  
LEP Students With Disabilities: Evaluation*

OCR also observed in language-minority student files several examples of staff persons disregarding the advice of evaluators that unknown effects of language-related criteria affect the reliability of the results, and should be considered when looking at test scores.

The ARD/IEP does not have the authority to exit a student from alternative language programs such as bilingual education and ESL. The LPAC can not refuse alternative language programs solely because the student has now been identified as having a disability. The district can not refuse to proceed on a special education referral solely because the student is identified as an ELL.

Generally, a student who rightfully qualifies for both special education and alternative language programs is best served in both programs.

## Texas Education Code

## 29.056. Enrollment of Students in Program

- (f) The district may not refuse to provide instruction in a language other than English to a student solely because the student has disability.

## OCR v. Denver Public Schools

## LEP Students With Disabilities: Dual Services

The regulation implementing Title VI proscribes the denial of services and benefits based on national origin, and the regulation implementing Section 504 prohibits the denial of appropriate services and benefits on the basis of disability. Accordingly, the September 1991 memorandum requires districts to provide both alternative language services and special education services to students who need both.

## OCR v. Denver Public Schools

## LEP Students With Disabilities: Dual Services

OCR was told in interviews that District schools lack special education staff persons who are qualified to deliver recognized alternative language services. The District does not pay special education teachers to receive training in alternative language service delivery, as they do alternative language program teachers in the regular education setting. To meet their English-language needs, LEP students with disabilities receive "bilingual support," which is described as tutoring by bilingual paraprofessionals. Tutoring and instruction by staff persons who are not certified to teach are not recognized models for the instruction of LEP students.

If Spanish is the native language of the parent, the school district will provide a written or audio-taped copy of the entire proceedings and decisions of the ARD/IEP committee meeting.

## Chapter 89. Adaptations for Special Populations

## Subchapter AA. Commissioner's Rules Concerning Special Education Services

## 89.1050 The Admission, Review, and Dismissal (ARD) Committee.

- (e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, 300.344, 300.345, 300.348, and 300.347. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, 29.005(d)(1), applies, the district shall provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, 300.346 and 300.347. In the event TEC, 29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, 300.346 and 300.347.

## Texas Education Code

## 29.005. Individualized Education Program

- (d) If the child's parent is unable to speak English, the district shall:
- (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or
  - (2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

## Fernando P. v. Pasadena ISD

Nevertheless, the Hearing Officer found the audiotapes a grossly inadequate substitute for a written translation. Locating information on such audiotapes is, at best, cumbersome. In addition, the time required during an ARD meeting to orally translate each IEP roughly doubles the length of the meeting.

The Texas Legislature and the Texas Education Agency should reconsider whether oral, audiotaped translations interfere with parents' right to meaningfully participate in the development of their child's IEP.

## Special Education for CLD Students with Disabilities

To determine the language of instruction for an individual student, all data and information must be carefully considered including the student's first language, dominant language, proficiency levels in each of the languages, years of exposure to each of the languages, type of exposure to each of the languages, academic skills in each of the languages, and age of the student.

In determining the language of instruction for students with disabilities, the strength of the student's native language skills must be considered, as well as the extent to which the knowledge base and skill level can be further developed in the native language.

Avoid reactive decisions. For example, the language of instruction in special education should not necessarily always be the student's first language. Consider all data and information carefully.

For ELL, the maintenance and development of the individual's native language should be supported, whether or not special education services are provided in the native language. Research on the English academic achievement of ELLs in different alternative language programs overwhelming supports native language instruction. A well-developed first language positively stimulates second language learning.

*National Study of School Effectiveness for Language Minority Students  
by Wayne P. Thomas & Virginia P. Collier*

*... bilingual education ... programs ... are the only programs we have found to date that assist students to fully reach the 50<sup>th</sup> percentile in both L1 and L2 in all subjects and to main that level of high achievement, or reach even higher levels through the end of schooling. The fewest dropouts come from these programs.*

Parents who refuse bilingual/ESL services for their children should be informed that their children's long-term academic achievement will probably be much lower as a result . . .

When . . . ELL initially attend segregated, remedial programs, these students do not close the achievement gap after reclassification and placement in the English mainstream. Instead, they maintain or widen the gap in later years.

Students with no proficiency in English must NOT be placed in short-term programs of only 1-3 years. In this study and all other research studies following ELLs long term, the minimum length of time it takes to reach grade-level performance in second language is 4 years.

The highest quality ESL Content programs close about half of the total achievement gap.

## Some Special Education Instructional Strategies for ELLs with Impairments

- Be aware that for English language learners with impairments, there is a tendency to change the focus of instruction from remediation in the area of impairment to teaching the student English.
- Instructions should be clear, predictable, and understandable. The special education teacher needs to use clear communication skills. Meaning should be reinforced by gestures, concrete materials, and actual learning experiences. Verbal clarification of instructions should be given often. The teacher needs to anticipate and explain difficult vocabulary and concepts. The teacher is strongly encouraged to make frequent comprehension checks.
- Allow the student to express his/her own thoughts, feelings, and opinions in any language. This is beneficial for various affective and linguistic reasons.
- Pre-teach vocabulary and difficult concepts.
- Instruction through English should be cognitive challenging. The objectives of tasks should challenge the student's thinking, but the linguistic demands should be adapted to his/her stage of second language acquisition.
- The home culture and language of the student should be evident in the classroom. Bulletin boards and reading materials can help the student understand the importance of his/her background. Be careful that such demonstrations not be simply stereotypic representations of the student's culture and language.
- Sensitive and sensible correction of errors encourage effort and do not interfere with communication. The student's errors need to be accepted as a natural and developmental part of the second language acquisition process.
- Cooperative learning can be beneficial, but it involves much more than simply placing the students in small groups and asking them to work together. Students need to be made responsible for their own learning as well as that of their peers. Groups should be changed frequently. Teachers should model high expectations, mutual trust, and respect. Prepare the students prior to the lesson in such a way that significant participation is guaranteed (such as pre-teaching). This serves to both improve the students' involvement and expectations for him/herself and to reinforce perceptions for high expectations.
- For ELL, the maintenance and development of the student's native language should be supported, even if the ARD/IEP recommends that the language of instruction in special education is not the student's native language. A well-developed first language positively stimulates second language learning.
  - Therefore, even if the special education teacher is not providing native language instruction, encouragement, validation, and support of the native language can be given to both the student and parent. Additionally, the special education teacher can present creative alternative teaching strategies to promote cognitive development through the native language without actually doing hands-on teaching through the native language.
  - If the special education teacher is providing native language instruction, the method of service delivery is critical.
- The school library is encouraged to have a substantial section of children's literature at different literacy levels in the student's native language(s).

## Appendix A

### Tests Available in Languages Other than English

#### Available Spanish Tests

*This list is not exhaustive and does not constitute recommendation. List compiled by Criselda Guajardo Alvarado*

#### Language Proficiency Screening Tests

- Bilingual Syntax Measure \*\*\*
- Woodcock Language Proficiency Battery-Revised, Spanish Form (WLPB-R Spanish) \*\*\*
- Woodcock-Muñoz Language Survey—Normative Update, Spanish Form (WMLS-NU Spanish)
- Woodcock-Muñoz Language Survey—Revised, Spanish Form (WMLS-R, Spanish)
- Brigance Diagnostic Assessment of Basic Skills, Spanish Form #

#### Language Tests

- Batería III Woodcock-Muñoz Pruebas de aprovechamiento (Batería III APROV), Oral Language—Std and Oral Language—Ext Clusters
- Clinical Evaluation of Language Fundamentals—Fourth Edition, Spanish Form (CELF-4 Spanish)
- Developmental Indicators for the Assessment of Learning, Spanish Form (DIAL-3 Spanish), Language Component
- Early Screening Inventory—Revised (ESI-R)
- Preschool Language Scale -4, Spanish Edition (PLS-4 Spanish)
- Preschool Language Assessment Instrument (PLAI)
- Receptive and Expressive One-Word Picture Vocabulary Test—2000 Edition, Spanish Edition (ROWPVT—R & EOWPVT—R)
- Spanish Structured Photographic Expressive Language Test II (Spanish SPELT-II)
- Spanish Structured Photographic Expressive Language Test Preschool (Spanish SPELT-P)
- Test de vocabulario en imágenes Peabody (TVIP) \*\*\*
- Woodcock Language Proficiency Battery—Revised, Spanish Form (WLPB-R Spanish) Oral Language Cluster \*\*\*
- Woodcock-Muñoz Language Survey—Normative Update, Spanish Form (WMLS-NU Spanish), Oral Language Cluster

#### Cognitive/Intelligence Tests

- Batería III Woodcock Muñoz Pruebas de habilidad cognitiva (Batería III COG)
- Bilingual Verbal Ability Tests—Normative Update (BVAT-NU)
- Wechsler Intelligence Scale for Children—IV Spanish Form (WISC-IV Spanish)
- Escala de inteligencia Wechsler para niños-Revisada de Puerto Rico (EIWN-R PR) \*\*\*
- Kaufman Assessment Battery for Children II (KABC II) \*\* [Core language in English]

#### Developmental Tests

- Battelle Developmental Inventory, 2<sup>nd</sup> Edition Spanish Form (BDI-2 Spanish)

#### Speciality Tests

- Test of Phonological Awareness in Spanish (TPAS)

#### Nonverbal Intelligence Tests

- Naglieri Nonverbal Ability Test (NNAT)
- Comprehensive Test of Nonverbal Intelligence (CTONI)
- Leiter International Performance Scale -Revised (Leiter-R)
- Raven's Progressive Matrices

- Test of Nonverbal Intelligence-3 (TONI-3)
- Universal Nonverbal Intelligence Test (UNIT)

### **Individually Administered Academic Tests**

- Bateria III Woodcock Muñoz Pruebas de aprovechamiento (Bateria III APROV)
- Woodcock Language Proficiency Battery-Revised, Spanish Form (WLPB-R Spanish) \*\*\*

### **Articulation/Speech Tests**

- Assessment of Phonological Processes, Spanish Form
- Spanish Language Assessment Measures
- Examen de afasia multilingüe (MAE-S)
- Medida Española de articulación
- Spanish Preschool Articulation Test
- Spanish Articulation Measures

### **Behavioral Assessments**

- Adaptive Behavior Inventory for Children (ABIC) [Core language of test in English]
- Behavioral Assessment System for Children, Parent Rating Scale (BASC)
- Inventory for Client and Agency Planning (ICAP) [Core language of test in English]
- Evaluación neuropsicológica breve en español (NEUROPSI)
- Personality Assessment Inventory, Spanish Edition (PAI)
- Scales of Independent Behavior (SIB) [Core language of test in English]
- Tell Me a Story (TMS): majority and minority picture cards
- Vineland Adaptive Behavior Scales, Spanish Edition
- Beck Depression, Hopelessness, Anxiety, and Suicide Ideation Tests [Core language of test in English]

### **Vocational Assessment**

- Harrington-O'Shea Career Decision-Making System, Revised (CDM)

### **Criterion Referenced Tests**

- Boehm Test of Basic Concepts, Spanish form (Boehm-R)
- Brigance Diagnostic Assessment of Basic Skills, Spanish form
- Lindamood Auditory Conceptualization Test (LAC)
- Bracken Basic Concept Scale—Revised [Third edition scheduled for publication in 2006]
- Dynamic Indicators of Basic Early Literacy Skills (DIBELS)
- Qualls Early Learning Inventory (QELI) [Teacher Checklist, Core language of test in English]

\* *Research edition, original version*

\*\* *Instructions can be translated and responses in other languages can be accepted, but test items must be administered in English.*

\*\*\* *Norms are dated.*

# *Criterion-referenced*

### **Tests Available in Other Languages**

- Bilingual Verbal Ability Tests (BVAT)
 

Arabic	Hmong	Russian
Chinese	Italian	Spanish
English	Japanese	Turkish
French	Korean	Vietnamese
German	Navajo	
Haitian-Creole	Polish	
Hindi	Portuguese	