

Tips from the Special Education Division: Special Education & Multilingual Learners

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Question: Can special education referrals and evaluations be delayed for Multilingual Learners?

Answer:

No. Referrals and evaluations for special education eligibility may not be delayed because of a student's limited English language proficiency (ELP). Policies and practices of delaying referrals and or evaluations of Multilingual Learners (MLs) for special education and related services for a specified period based on their EL status are not permissible under the IDEA and federal civil rights laws.

Additional Considerations:

The cultural diversity within Washington state enhances our schools by providing students and teachers opportunities to explore languages, customs and perspectives that contribute to building an inclusive school community. As we identify Multilingual Learners (MLs) with disabilities, both their strengths and needs must be considered to ensure that they have the necessary access to academic content and the opportunity to progress and succeed in their educational goals. English language expertise should be reflected throughout the referral and evaluation processes to guide educators and families.

Students who arrive at school without sufficient English language abilities to successfully achieve in classroom where the language of instruction is English, are referred to as Multilingual Learners (MLs) and are supported through English Language Development (ELD) programming and services offered through a range of service models. Although typically developing MLs may struggle in school to some extent because their English language skills are still developing, with appropriate academic and sociocultural supports, these students can perform equally or better than their monolingual peers. Research suggests that it can take an ML at least five to seven years to develop the academic and language skills of their monolingual peers. As in the general population, within the ML population there will be some students who struggle more than other MLs, for a wide variety of reasons.

The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) address the rights of students with disabilities in school and other educational settings. If an ML is suspected of having one or more disabilities, the LEA must



evaluate the ML promptly to determine if the ML has a disability or disabilities and whether the ML needs disability related services (which are special education and related services under IDEA or regular or special education and related aids and services under Section 504). Evaluations for special education eligibility may not be delayed because of a student's limited English language proficiency (ELP).

A parent or a school district may initiate a request for an initial evaluation to determine if an ML is a child with a disability under the IDEA. A school district must ensure that assessments and other evaluation materials used to evaluate a child with a disability are "provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer." (WAC 392-172A-03020(3)(ii)). This is true even for those ML students whose parents have opted their children out of English language programs. A student cannot be determined to be a child with a disability if the "determinant factor" is limited English proficiency and if the student does not otherwise meet the definition of a "child with a disability" under the IDEA.

Disrupting Delayed Referral and Evaluation Policies and Practices

Policies and practices of delaying referrals and or evaluations of MLs for special education and related services for a specified period based on their EL status are not permissible under the IDEA and federal civil rights laws.

Example: A third grade teacher thinks a Multilingual Learner with beginner level English has a learning disability. She would like to refer the student to be evaluated for a disability but believes the student must complete two years in the EL program or achieve intermediate proficiency in English before being evaluated for a disability or receiving special education and related services. The teacher is incorrect. If she believes the student has a disability, the school district must refer the student for a special education evaluation and if an evaluation is determined necessary seek parental consent for an initial evaluation. Once consent is granted, the student must be evaluated in a timely manner.

Unacceptable policies and practices that result in delayed referrals and evaluations include but are not limited to waiting until the student: has achieved a native-like fluency in English, has spent a prescribed amount of time in in the United States (immigrant student), reaches a specified level of achievement on the WIDA English language proficiency assessment, has received a minimum number of years of English language services, or has "tested out" of English language services.

Formal or informal policies and practices of "no dual services," i.e., policies and practices of allowing MLs to receive either EL services or special education services, but not both are also not permissible.

Referrals

A timely and thorough review of an English learner's progress is imperative to making an informed decision regarding a referral to special education. Identifying factors in the instructional environment, ELD progress and its effect on academic progress, and the review of all pertinent school, intervention, behavioral and health data, as well as ruling out extrinsic factors, all help teams make an appropriate referral to special education. Consider the following factors:

- Family history
- Developmental and health history
- First language and literacy development
- Previous schooling
- Cultural attitudes toward education
- Learning styles
- Learners' current academic ability.

Evaluations

IDEA notes that assessments and other evaluation materials "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". (WAC 392-172A-03020(3)(ii)).

Assessments for MLs included in the comprehensive evaluation process should be selected with the aim of trying to limit cultural and linguistic bias or should be interpreted with bias in mind. This means that when selecting assessments, practitioners should consider a) whether the measures have been normed on the English learner's population (note that very few tools will likely fit this criterion for individual English learner students); b) the language load (i.e., the complexity of the vocabulary, syntax, and discourse) of the assessment; c) the cultural load (i.e., the amount of cultural knowledge required to comprehend and participate) of the assessment; and d) whether there is any cultural bias embedded in the administration or scoring of the instrument as well as the interpretation of scores.

Best practice suggests English learner expertise should be included in the choice of assessments. Accessibility supports that are appropriate for the individual student and for what the assessment is intended to measure should be made available. Comprehensive evaluations for MLs for special education eligibility involve multiple measures, which may include a combination or all of the following:

- Information regarding health, attendance, and cultural/economic/social background from student records or gathered through parent interview
- Data on students' access to and participation in research-based grade-aligned general education curriculum, including English language development instruction.
- Evidence of any interventions and student response to these interventions.

- Evidence of any accessibility resources and/or accommodations during instruction and/or assessments.
- Observation of the student in multiple contexts (classes, home, community, etc.).
- Student work samples (across contexts and in different modalities, for example, oral language, writing, reading, and behavior).
- Interviews and consultation with teachers, including general education, English learner, special education and bilingual teachers and other bilingual staff.
- Interviews and consultation with parents/caregivers/family members.
- State standardized assessments, including content and WIDA assessments.
- Local assessments, including district/local examinations, progress monitoring measures (e.g., MTSS/RTI data collection procedures), authentic assessments (e.g., portfolios, teacher-made, curriculum-based, rubrics), and dynamic assessments.
- Standardized tests of cognitive ability.
- Standardized tests of academic achievement.

Ensuring Meaningful Communication with Limited English Proficient Parents

The IDEA requires that the school district “take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.”

Schools must communicate information to limited English proficient parents in a language they can understand about any program, service, or activity that is called to the attention of parents who are proficient in English. This includes information related to special education and related services, and meetings to discuss special education. In addition, in obtaining consent for special education evaluations or the provision of special education services consent means “the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication,” and prior written notice must be provided in the native language of the parent, unless it is clearly not feasible to do so. (WAC 392-172A-01040 and 392-172A-05010).

Resources:

- DOE Office of English Language Acquisition: [English Learner Toolkit](#)
- [Dear Colleague Letter English Learner Students and Limited English Proficient Parents](#)
- [Five Myths about English Language Learners and Special Education](#)
- [A bilingual site for educators and families of English language learners](#)