Handbook for Educators of English Learners with Suspected Disabilities

April 2019

Preface

The purpose of the **Handbook for Educators of English Learners with Suspected Disabilities** is to provide school divisions with guidance on a multi-step process to appropriately identify and evaluate ELs who may have a disability for possible eligibility for special education and related services. A further intention is to assist divisions with ensuring compliance with state and federal regulations in serving ELs with disabilities. This Handbook is intended to be used in conjunction with existing state and federal regulations and does not replace existing regulation or policy**.**

HANDBOOK FOR EDUCATORS OF ENGLISH LEARNERS WITH SUSPECTED DISABILITIES

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Introduction

The *Individuals with Disabilities Education Act* (IDEA) suggests that "greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities" (IDEA, 2004, P.L. 108-446, 20 U.S.C. § 1400(c)(8)(A)).

According to Artiles & Ortiz (2002), there are three categories of English learners (ELs) who may experience academic challenges:

Category 1
ELs without a disability with deficiencies in the teaching environment and/or who have experienced a lack of effective English language development instruction and support.

Category 2
ELs without a disability who have challenges such as interrupted schooling, limited formal education, medical issues, low attendance rate, trauma, family issues, or high transiency.

Category 3
ELs with identified disabilities in need of special education services.

The purpose of the **Handbook for Educators of English Learners with Suspected Disabilities** is to provide school divisions with guidance on a multi-step process to appropriately identify and evaluate ELs who may have a disability for possible eligibility for special education and related services (Category 3 above).

Legal Requirements

IDEA Law and Regulations

Under the *Individuals with Disabilities Education Act* (IDEA), states and school divisions are required to have policies and procedures to ensure that all children with disabilities residing in the state, and who are in need of special education and related services, are identified, located, and evaluated (34 CFR §§300.111 and 300.201). This obligation, known as "child find," is fully applicable regardless of a child's English proficiency level, and includes highly mobile children and migrant children suspected of having a disability (34 *CFR §300*.111(c)(2)). The school division proposing to conduct an initial evaluation to determine whether a child qualifies as a child with a disability under 34 CFR §300.8 must, after providing notice, obtain informed consent from the child's parent before conducting the evaluation (34 CFR §300.300(a)(4). Once parental consent is obtained, the evaluation must occur in a timely manner. Specifically, Virginia requires the initial evaluation be conducted within 65 days of the receipt of the referral for a suspicion of a disability.

Federal Civil Rights Law and Guidance

Consistent with obligations under *Title VI of the Civil Rights Act of 1964* and other federal laws and guidance (see *Laws and Guidance Regarding the Education of English Learners*, Appendix B), school divisions must take affirmative steps to ensure that ELs can meaningfully participate in the division's educational programs and services and acquire English proficiency. In addition, the English Learner Students and Limited English Proficient Parents Dear Colleague Letter, jointly released by the U.S. Department of Education and the U.S. Department of Justice in January 2015, affirms that school divisions must accurately identify and evaluate ELs with a suspected disability for special education and related services in a timely manner. Furthermore, ELs must receive appropriate special education and related services regardless of English language proficiency or EL status. The *Every Student Succeeds Act of 2015* (ESSA) requires that school divisions disaggregate data for ELs with a disability so that the academic outcomes of this population may be viewed separately from the EL population as a whole.

Code of Virginia

Sections 22.1-213 and 22.1-254 of the *Code of Virginia* and 8 VAC 20-80-10 of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* require school divisions to provide a free and appropriate public education for students with disabilities who are age two by September 30 of the current school year through 21.

Per Section 22.1-5 of the *Code of Virginia*, school boards may accept and provide programs for students for whom English is a second language who entered school in Virginia for the first time after reaching their twelfth birthday, and who have not reached 22 years of age on or before August 1 of the school year.

Pre-Referral Procedures for Suspected Disability, Evaluation, and Eligibility: the Process for English Learners

Educators face an ongoing challenge in distinguishing a learning disability from the challenges of learning a second language. When an EL does not learn English at the expected pace, falls behind academically, or exhibits inappropriate behavior, educators must decide whether the issue is caused by a learning disability or by difficulty in developing second language skills and/or cultural adjustment. Challenges related to the identification of disabilities among ELs can lead to a disproportionate number of these students inappropriately assigned to special education services. While some ELs are misidentified as having a disability, others are not properly identified as having a disability and thus do not receive the special education services to which they are entitled.

If there is a suspicion that an EL may have a disability, a referral for appropriate special education and related services must be made in a timely manner. The IDEA and federal civil rights guidance prohibit a policy of delaying evaluations of ELs to determine the need for special education and related services over a specified period of time based on the student's English language proficiency or EL status.

Chapter 6 of the English Learner Toolkit identifies four potential factors that may contribute to the misidentification of special education needs and learning disabilities among students who are ELs:

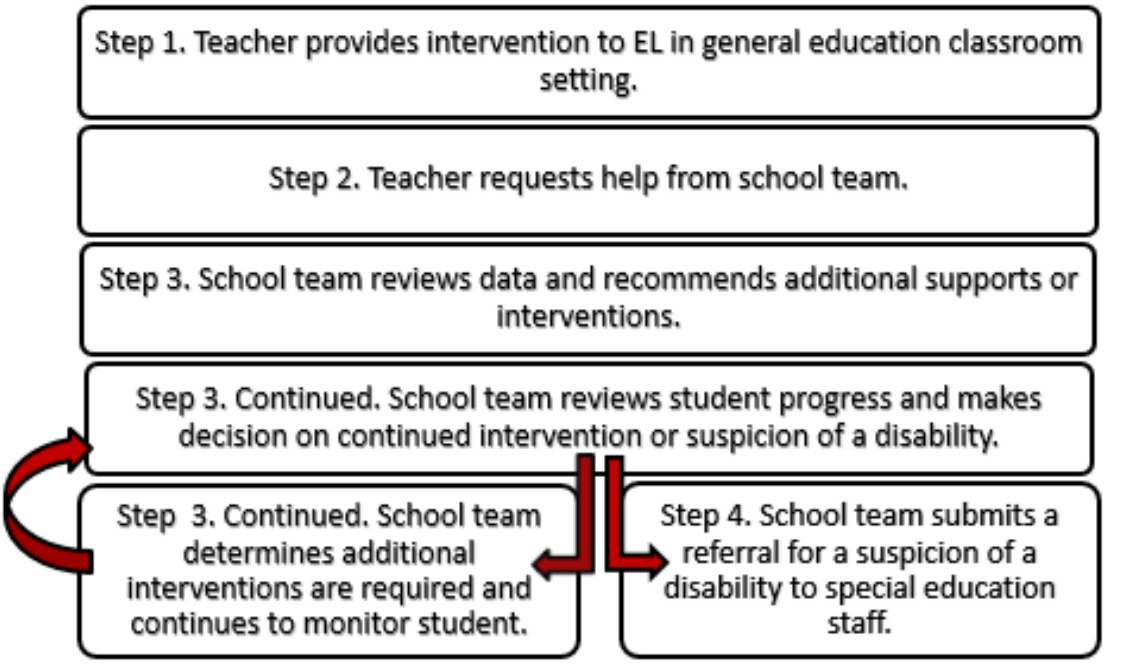
1. poor instructional practices;
2. the evaluating professional's lack of a knowledge base regarding second language development and disabilities;
3. weak intervention strategies; and
4. inappropriate assessment tools.

Each of these factors is addressed in the Pre-Referral Procedures section of this Handbook.

Pre-Referral Procedures

Students who are experiencing difficulties in the general education setting may require additional supports or interventions. Response to Intervention (RtI) is the practice of using data to guide high-quality instruction and behavioral interventions matched to student need, monitoring progress frequently to make decisions about changes in instruction or goals, and applying child response data to make critical educational decisions. The Virginia Tiered Systems of Supports (VTSS) is a data-driven, decision-making framework for establishing the academic, behavioral and social-emotional supports needed for a school to be an effective learning environment for all students. The flowchart below outlines steps along the pre-referral continuum intended to reduce inappropriate referrals of ELs for special education and related services. A detailed description of each step is provided in this section.

Pre-Referral Procedures Flowchart



STEP 1. The teacher attempts a progression of instructional strategies to resolve the EL's academic challenges. The teacher documents student progress and behavior and contacts the parents using a qualified interpreter if needed.

The purpose for all programs and services for ELs is attainment of the same academic content standards as all students and the development of English proficiency (English Learner Toolkit, Chapter 2). School divisions are required to provide ELs with programs and services that provide **meaningful access** to all aspects of the instructional program including elective classes and special programs (ESEA Sec. 3302(f); *Title VI of the Civil Rights Act of 1964*; OCR Guidelines). High quality general education instruction for ELs reflects consistent grade-level content instruction adjusted for the student's proficiency level integrated with appropriate language development instruction by language proficiency level. School divisions must ensure that the development of English proficiency is a key instructional goal for ELs beginning in kindergarten (English Learner Toolkit, Chapter 2). Therefore, school divisions must provide programs and services, as well as curricular materials and other instructional resources, to support the goal of English language development for ELs. In addition, educators of ELs should be provided with high-quality, sustainable, relevant training and professional development to support EL learning (English Learner Toolkit, Chapter 3).

Through teacher collaboration on designing and effectively implementing appropriate instructional strategies, the academic and language needs of ELs, otherwise suspected of having a disability and referred for special education services, may be addressed within general education and language instruction educational program (LIEP) classrooms. It is important to emphasize that consultation with the EL's LIEP teacher is a crucial component of this step in the pre-referral process. The LIEP teacher's expertise is critical in accurately assessing a student's language proficiency in English, recommending resources to help increase language development, and designing linguistically appropriate instructional supports.

Students with academic challenges, including ELs, cannot be identified as eligible for special education services if the sole reason is lack of appropriate instruction. The IDEA requires that the eligibility team determine that a child's limited English proficiency is not be the determinant factor when making a disability determination (34 CFR §300.306(b)(1)(iii) and (2)). ELs cannot be identified for special education services based on limited English proficiency level or EL status (Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited English Proficiency, 2; Dear Colleague Letter).

A series of key questions can help guide the process of determining if poor instructional practices or other school or family environment issues are causes for an EL's academic challenges:

- Is the school environment welcoming for ELs and students with disabilities?
- Did the EL previously receive standards-based LIEP services in other school divisions or schools?
- Is the EL currently receiving consistent, effective standards-based LIEP services?

- Does the EL receive standards-based content instruction delivered in a linguistically appropriate manner based on the student's English language proficiency?

- Is the EL placed in classrooms with qualified teachers who effectively and consistently implement instructional strategies that support EL learning?

- Have realistic instructional goals and expectations been established for the EL based on evidence from recognized, legitimate assessment tools?

- Do EL instructional goals and expectations take into account the following factors?
    - language proficiency level
    - level of acculturation
    - academic history
    - family history
    - socioeconomic status
    - sociocultural and sociolinguistic environment

- Have appropriate accommodations and/or modifications to classroom assessments based upon the student's English language proficiency been implemented and documented?

- Has the EL's school attendance been regular?

- Is the EL's family able to assist with school-related, academic activities?

- Has the EL's academic progress been compared to siblings and other children of similar age, grade level, and life experiences?

If the instructional strategies employed by the teacher have not produced sufficient student progress after a reasonable timeframe during which the strategies were consistently implemented, the teacher should move to Step 2 in the pre-referral process. Consistent with IDEA and federal civil rights guidance, there can be no unnecessary delay in proceeding with an evaluation to determine the need for special education and related services based on the student's English language proficiency or EL status.

STEP 2. The teacher requests assistance from a school team.

The role of the school team is to track and analyze student progress, as well as to make student referrals for higher level interventions or for special education services if deemed appropriate after interventions have proven unsuccessful. Some school divisions use a division wide approach such as VTSS or RtI, while others use a building-level student assistance team approach. In some cases, data obtained from formal records may indicate a need for LIEP services, medical treatment, or alternative instructional placement not previously noted by the school.

Monitoring the academic performance of ELs requires the involvement of educators across multiple disciplines. It is important to ensure an appropriate knowledge base for the school team. Each member of the school team brings specific areas of expertise to the table. For example:

- **Administrators** possess the knowledge of federal, state, and local policies but may lack expertise regarding special education or second language acquisition pedagogy.

- **LIEP teachers** possess expertise in second language acquisition and can address a student's linguistic needs, but often have limited preparation in working with students with disabilities.

- **General education teachers** are skilled in delivering standards-based instruction but often have limited knowledge on how to work effectively with special student populations.

School divisions should implement procedures to institutionalize collaboration between administrators as well as educators across multiple disciplines to conduct pre-referral monitoring of an EL's academic performance. In addition, resource and student support staff may possess invaluable expertise and knowledge of psychological, familial, sociocultural, and socioeconomic factors that may affect the academic performance of an EL with a suspected disability. These staff should also be included on the school team. The inclusion of key, knowledgeable staff and timely and effective collaboration is crucial for accuracy and equity in the pre-referral process.

Individuals for Inclusion on the school team:

- Administrators;
- LIEP teachers;
- General education teachers;
- Intervention or instructional specialists;
- Service providers, such as speech language pathologists, with expertise in language development;
- School psychologists;
- School counselors;
- Qualified interpreters; and/or
- Liaisons who work with parents and families of ELs.

STEP 3: The school team develops an intervention plan, monitors the student's response to the interventions, and schedules follow-up meetings for evaluation of student progress.

The school team should develop an intervention plan for the EL that collects and analyzes multiple sources of data such as teacher observations, interviews, curriculum-based measures, curriculum-based assessments, and other assessments (i.e., portfolio, performance). Additionally, intervention models based on a multi-tiered systems of support framework such as VTSS or RtI, should be incorporated into the process for identifying ELs with a disability. By using a multi-tiered systems of support framework, the school team is likely to be more informed to make an objective determination of the impact of a disability, language acquisition, and environmental factors upon the student's academic progress. Tool #2 in Chapter 6 of the English Learner Toolkit provides a table illustrating learning behaviors that a student might exhibit in class, followed by corresponding indicators of whether that behavior could represent a language difficulty or a potential learning disability.

It is important to emphasize that in accordance with federal civil rights guidance, English language development instruction is not an intervention, but part of the general education curriculum required to be provided to all identified ELs in order to build English proficiency so these students can access the content (English Learner Toolkit, Chapter 2). However, if an EL is suspected of having a disability, more intensive English language development instruction may be appropriate to help differentiate the stages of language acquisition from a disability-related learning issue.

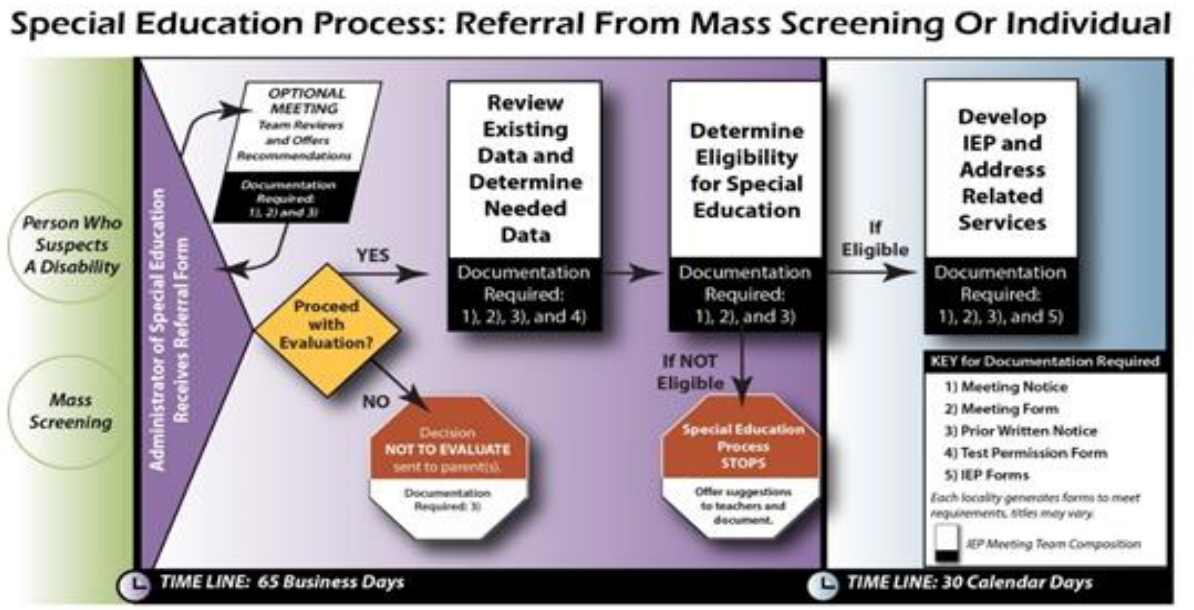
There is no predetermined length of time for interventions to show significant improvement. However, interventions must be provided to the student on a consistent schedule for a reasonable length of time with appropriate data collection to determine if the student is responsive to the intervention.

Through effective collaboration, a systematic intervention plan and implementation schedule should be designed by the school team to offer the struggling EL alternative instructional assistance and support. The team should reconvene periodically during the intervention process to review data, recent samples of the student's work, teacher anecdotal records, and other relevant documentation in order to assess the progress achieved and evaluate the effectiveness of the intervention plan to determine the next course of action. If team members decide that steps taken are producing satisfactory results, they may recommend further implementation, modification, or expansion of the intervention plan and establish another review date, or they may conclude that the EL is achieving academically and that further interventions and monitoring are no longer necessary.

If it is determined that an EL is making insufficient progress despite the implementation of a variety of intensified interventions, the school team considers if additional interventions are needed or if there is a suspicion of a disability. If the school team determines there is a suspicion of a disability, they make a referral for evaluation for special education services and include a comprehensive review of all the evidence gathered to date.

Questions for Consideration Regarding the Intervention Process:

1) Have the interventions been chosen based on relevant student data and appropriate prioritization of present concerns?
2) Have the interventions been designed and/or validated for ELs?
3) Are the interventions appropriate for the EL's linguistic and cultural proficiency?
4) Have the progress monitoring data been collected and graphed?
5) Have interventions been implemented with fidelity along with continued comprehensible academic instruction?
6) Have the interventions been intensified based on student progress monitoring and other available data?



STEP 4: The school team suspects a disability

Beginning the Special Education Process

The IDEA and its federal implementing regulations, the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia,* and local school division special education policies and procedures regulate the special education process. Parents and educators may access additional guidance on the special education process in Virginia including A Parent's Guide to Special Education and the Evaluation and Eligibility for Special Education and Related Services: Guidance Document.

School divisions must ensure that appropriate steps are followed and adhere to special education timelines. A system to resolve disputes between parents and school staff and ensure compliance with special education regulations is maintained by the Virginia Department of Education. Interpreters must be used, as needed, throughout the special education process. They may help notify parents of meetings, confirm dates and times, and explain the special education process and parent/student rights and how they may affect the child. Interpreters should also be included in any special education meetings and Individualized Education Program (IEP) meetings. Every effort should be made to enlist the services of the same interpreter throughout the process to establish a consistent and ongoing rapport with the family.

Referral Request for a Child Suspected of Having a Disability

Parents, teachers, staff members, or others who suspect that a student may have a disability and is in need of special education and related services may make a referral for evaluation for a suspicion of a disability. Referrals should be addressed to the school division's special education administrator or designee.

Receipt of Referral by Special Education Administrator or Designee

The special education administrator or designee will use the school division procedures to review the referral which may involve the school's child study committee or other mechanism. If it is determined that an evaluation is warranted, the decision about eligibility must be made within 65 business days from the date of the special education administrator or designee receives the referral for evaluation (8 VAC 20-80-54 H.).

Once a student is referred to the administrator of special education, strict timelines must be followed. If the decision is to evaluate, the school division has 65 business days from the receipt of the referral for evaluation by the special education administrator or designee to complete the eligibility process. Parents must be notified and invited to participate in the process (informed parental consent must be provided for evaluations) and interpreters should be made available, as needed.

Review of Existing Data and Determination of Needed Evaluation Data

As part of an initial evaluation, a group that is comprised of the same individuals as an IEP Team and other qualified professionals, as appropriate, shall review existing evaluation data on the child. Existing data may include evaluations and information provided by the parent or parents of the child, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related services providers (34 CFR § 300.305(a)(1)). On the basis of that review and input from the child's parent or parents, the group will identify what additional data, if any, are needed to determine whether the child has a particular disability or disabilities. This process shall be considered the evaluation, if no additional data are needed. The data will also be used to determine the present levels of performance and educational needs of the child, whether the child needs special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum. The group completing the review may conduct its review without a meeting. The school division shall provide notice to ensure that the parent or parents have the opportunity to participate in the review.

Comprehensive Evaluation of ELs

Depending on the recommendations for a native language assessment, the evaluation of the student may be administered in one of three ways:

1. Entirely in the EL's home language, ideally with a bilingual staff member or with the assistance of a trained interpreter;
2. In both the home language and English (If specified in the native language assessment report, bilingual testing may require the concurrent presentation of test items and directions in both languages.); or
3. In English only.

The IDEA mandates that evaluations for possible special education services should be provided and administered in the native language or 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 do so (34 CFR § 300.304(c)(1)(ii)). The Dear Colleague Letter also mandates native language assessments for evaluation for special education services when feasible (p. 26). Some possible examples of when it may not "be feasible" to assess in the student's primary language are: 1) the student is severely disabled and lacks communication skills; or 2) primary language assessments are unavailable.

Assessing in the student's native language provides comparative data about how the student performs in the native language versus English. In addition, the assessor (psychologist, speech and language specialist, or special education teacher) can determine if similar error patterns are seen in both the native language and in English (listening, speaking, reading, or writing) in order to discern if the student is having academic difficulty due to a language difference or a disability. The results of the native language assessment may also help to guide future assessment decisions for special education referrals, for example, speech and language assessments.

Steps 1 through 3 of the pre-referral process should be completed before the school team requests a native language assessment. It should be noted that while native-language assessments are feasible for certain languages, such as Spanish, dozens of different languages may be represented in a school division. For many of these languages, no formal assessments are available.

A native language assessment cannot be used to establish the English proficiency level of a student to determine the EL status. School divisions are required to select from the following screening tools in order to establish English proficiency levels:

- WIDA Screener (Grades 1-12)
- WIDA Model (Grades 1-12)
- K-WAPT (Kindergarten)

For further information about Virginia's entrance criteria for EL identification, refer to Superintendent's Memo 194-17. For further information about the WIDA screening instruments, refer to Superintendent's Memo 136-18.

Evaluations of ELs for possible disabilities must consider many variables, including native language and literacy skills, English language and literacy skills, cultural factors that may influence test and school performance, family history, educational history, and the nature of previous reading instruction. Information from parents about the prior history of the child and family should supplement any formal assessment data. For instance, a discussion with parents about whether the child had difficulties or delays learning to talk in the native language or the educational history of both the child and the family, such as opportunities to learn literacy in the native language and consistency of school attendance should take place. Finally, any medical conditions, such as hearing or visual impairment, that may affect both language and literacy development should be discussed with the family. It may be necessary to arrange for an interpreter for parents with limited English language proficiency in order to have meaningful communication.

Assessment protocols and tests used in schools are typically designed for native English speakers. To reduce the possibility of identifying an EL as a child with a disability or determining a student does not have a disability when in reality they do, all correct responses in one or both languages should be accepted. This practice may also reduce the language and cultural bias inherent in many tests. In addition, all assessment results should be used as qualitative measures and interpreted with extreme caution. Virginia regulations governing special education require that any nonstandard administration of tests be documented in the professional's report. Because of the cultural and linguistic differences between the EL's native language and English, standardized test scores may not be used and must be only one part of a multifaceted evaluation. Strengths and weaknesses may be summarized from student performance on assessment measures, but scores obtained are not valid due to differences in the norming sample, cultural and linguistic bias, and nonstandard administration. In all cases, evaluators should cautiously interpret test data.

Dynamic assessment is a supplemental approach to traditional norm referenced and standardized assessments. ELs may perform poorly on standardized tests due to unfamiliarity with the testing situation, cultural or linguistic differences, or language issues. The use of dynamic assessment techniques can assist in determining strategies for intervention as well as providing information about the learning process. The types of dynamic assessment techniques are testing limits, graduated prompting, and test-teach-retest. Of these, test-teach-retest is best suited for differentiating language differences from disorders (Gutierrez, 2001).

The data used to determine eligibility decisions should also be derived from performance-based assessment in the classroom, observations, and information gathered from parents and other professionals. The student's performance must be compared to that of ELs of the same cultural group who speak the same dialect and who have had similar exposure to and opportunities to use English. Tests marketed for speakers of languages other than English must be interpreted with extreme caution because they may not be standardized on ELs living in the United States. Tests standardized on children living in other countries or on monolingual English-speaking students may be linguistically and culturally biased and yield invalid scores. Eligibility committees should rely on performance-based assessment, observations, careful interpretation of test scores, and the collaborative expertise of LIEP teachers, classroom teachers, and test administrators. Observations by appropriate specialists (psychologists, speech-language pathologists, special education teachers, etc.) are strongly recommended.

Since ELs cannot be denied access to special education and related services due to the lack of appropriate test instruments and procedures, a continued and expanded commitment to exploring interventions and dynamic evaluation strategies is essential. Only by pursuing multidimensional and dynamic forms of assessment and by seeking interdisciplinary input and informed dialogue between educators can the difficult task of intervention, evaluation, eligibility, and appropriate placement for ELs be improved. Assessments should be completed in the language(s) recommended in the dual language assessment report.

An evaluation for special education eligibility must ensure that tests, assessments, and other evaluation components are selected and administered so as to be neither culturally nor racially discriminatory. Tests, assessments, and other evaluation components are provided and administered in language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

Materials and procedures used during the assessment are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills. Reports must indicate if the assessment was administered in a language other than English or if an interpreter was used.

The evaluation process must gather comprehensive information, including functional, developmental, and academic information about the student and may not use any single measure or assessment as the sole criterion for determining whether the student is a child with a disability. Two days prior to the eligibility meeting, the evaluation components should be assembled and made available to the parents (34 CFR § 300.304(b)(1); 8 VAC 20-80-54 E. 16). The evaluation components may include the following:

- Psychological assessments;
- Sociocultural assessments;
- Parent involvement;
- Educational assessments;
- Hearing screening;
- Vision screening;
- Teacher narratives (general education and LIEP);
- Classroom observations (general education and LIEP);
- Anecdotal records, including entry language assessment results and student portfolio records;
- Adaptive behavior;
- Speech language assessments;
- Audiological assessments; and
- Other areas as identified by the committee, (e.g., occupational therapy, physical therapy, medical information).

When conducting a reevaluation for a student who is identified as an EL, the IEP Team must include a LIEP teacher or representative. If the committee determines assessments are needed, a referral for consideration of a native language assessment may be made prior to initiating the reevaluation.

Questions and Answers Regarding Evaluation

What are appropriate instruments and methods to use when assessing ELs?

Professionals who complete evaluations or reevaluations of ELs should first read the student's native language assessment report and follow specific recommendations relative to the need for interpreters or translations during evaluations for special education eligibility. The use of dynamic assessment techniques can assist in determining strategies for intervention as well as providing information about learning processes. It is essential that students be evaluated comprehensively in all areas related to the suspected disability. Evaluators must complete assessments in the areas of concern and be particularly careful with the use of instruments. Many of the assessment instruments currently on the market are standardized on English-speaking American children representative of the demographics of a previous United States census. Use of any standardized test would be a nonstandard administration. Scores derived from these standardized measures cannot be used as quantitative measures but may provide qualitative information on the student's areas of strength and weakness. Curriculum based assessments, informal measures, and observation are other methods that may be used in addition to standardized norm referenced tests.

Evaluators must consider the student's ability to communicate and student problem solving skills. Any variation from standardized procedures must be described in their formal reports. Although some tests have been translated into Spanish, the populations on which the tests are standardized may not match the student being evaluated. Therefore, the instrument only reflects a translation and the derived information may be no more reflective of the EL's background than any other measure. Current research indicates that the assessment team needs to gather information from a variety of sources in order to develop a picture of the child's current functioning and needs.

What steps can evaluators take to ensure that test results reflect a student's actual ability and performance and not just the student's English language proficiency?

There is no simple way to ensure that evaluators can develop a fair picture of the student's actual ability. The evaluators should assess comprehensively and use multiple measures to determine the student's functioning level. When possible, evaluators should share results and compare actual classroom and home functioning to assessment data. Information about the student's level of proficiency should be discussed. Due to linguistic and cultural bias, which may be present in standardized evaluation measures, the student's response to appropriate and sustained, targeted interventions must be considered along with the results of any assessments administered. When evaluating ELs considering the results of observations, dynamic assessment techniques, and authentic assessment practices including alternative and/or performance evaluations is considered "best practice." Dynamic assessment techniques provide data on learning potential and a student's modifiability or responsiveness to instruction rather than a static view of their previous exposure to content or skills.

How should evaluators report the test scores they obtain?

Strengths and weaknesses may be summarized from student performance on assessment measures, but scores obtained are not valid and should not be reported due to differences in the norming sample, cultural and linguistic bias, and nonstandard administration. In all cases, evaluators should cautiously interpret test data.

If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the report. Clarifying statements such as "Current test results may not reflect non-English speakers' backgrounds" or "Tests were administered under nonstandard conditions" must be used. Because ELs are not represented in the norming population of most standardized assessments, analysis and interpretation of the student's performance should include the results of alternative and other culturally competent assessment practices.

If an interpreter assisted during the evaluation, this must also be noted in the formal evaluation report. It is important to reiterate any deviation from the norming population, variance from established procedures, or extenuating circumstances for nonstandard interpretations of test results. Any reported data should be treated carefully when decisions or recommendations are made.

Determination of Eligibility for Special Education and Related Services

School divisions have specific procedures for determining whether a child has a disability and by reason, thereof, needs special education and related services. To determine whether a student who is an EL is eligible for special education, consideration of his or her English language development must be given through interdisciplinary collaboration. Federal regulations governing special education programs require that "students must not be determined eligible for special education and related services if the determinant factor is limited English proficiency or lack of instruction in reading or math" (34CFR Section 300.534). Input from the LIEP teacher or other personnel with expertise in the second language acquisition process at the eligibility meeting is necessary in order to place the student's progress along the second language acquisition continuum. This interdisciplinary collaboration will help determine the extent of need for both LIEP and special education services.

A written copy of the evaluation report must be made available to parents no later than two business days before the eligibility meeting. The eligibility committee must convene to determine whether or not a child is eligible for special education and related services within 65 business days after the receipt of the referral for evaluation by the special education administrator or designee, unless the timeline is properly extended. If needed, an interpreter should be included in the eligibility meeting.

Upon completing the administration of tests and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent or parents of the child must determine whether the child is, or continues to be, a child with a disability. The group must include, but not be limited to, local educational personnel representing the disciplines providing assessments, the special education administrator or designee, and the parent or parents. At least one educational agency representative in the group must have either assessed or observed the child. The group may be an IEP Team, as long as the above requirements and notice requirements are met.

If determining whether a child suspected of having a specific learning disability is eligible for special education and related services, the group shall include the child's regular teacher. If the child does not have a regular teacher, a classroom teacher qualified to teach a child of that grade or, for a child less than school age, an individual qualified to teach a child of that age should be included in the group. At least one person qualified to conduct diagnostic examinations of children, such as a school psychologist, speech-language pathologist, teacher of specific learning disabilities, or reading specialist must participate in the eligibility determination.

Eligible Decision

If the student is found eligible for special education and related services, the IEP is developed. The IEP Team will determine the student's present level of educational performance, goals, and services. The student must receive both LIEP and special education services based on student's academic and language needs. Provision of LIEP services should be noted in the present level of educational performance section of the IEP. The LIEP teacher or other personnel with expertise in the second language acquisition process must be included as part of the IEP Team for ELs.

Not Eligible Decision

If the student is found not eligible for special education and related services, the eligibility committee must provide information relevant to instruction for the child and any other recommendations to the child's teachers and any team convened to assist the student. School staff must determine additional appropriate support and/or alternative programs to assist the student. Results of the evaluation should be shared with the student's teachers following the procedures that protect confidentiality of the child.

If an EL is found not eligible for special education services, the school staff or team continue to serve as a resource and to provide support to both the student and his or her teachers as needed. Such ongoing cooperation will ensure that ineligibility for special education does not result in an end to appropriate interventions or monitoring. If concerns persist despite support interventions and/or participation in alternative programs implemented to help the student, the school may consider reevaluating the student at a later date.

Development of the IEP

If the student is found eligible for special education, the IEP Team with the appropriate composition (as per special education regulations) must meet within 30 calendar days of the eligibility determination. The LIEP teacher or representative with expertise in the second language acquisition process should be a member of the IEP Team for any EL. If an interpreter is needed, one must be made available.

The student may begin receiving special education and related services after the parent provides consent to implement the proposed IEP. Written consent must be obtained before any special education services can begin or before a change of placement occurs. To the extent possible, all parents of ELs should receive oral and written notification of IEP meetings in a language they can understand.

The student's IEP Team must meet at least annually to review and revise the IEP; however, the team may reconvene more frequently at the request of any team member, including the parent. Information regarding the student's LIEP should be included in the student's present level of academic achievement and functional performance and should be considered when determining goals, accommodations and modifications, and services that are included in the IEP.

Communicating with the Parents of ELs with a Disability or Suspected Disability

The special education process from pre-referral through eligibility has many steps. It is important that parents of ELs:

- are made aware of why their child is being referred for a suspicion of a disability;
- understand the steps in the pre-referral, referral, evaluation, and eligibility process;
- understand the terms used;
- become familiar with the various service delivery models; and
- understand their rights and procedural safeguards.

Federal guidance mandates notification and outreach to the parents of ELs including ELs with a disability (Dear Colleague Letter pp. 24-25; Chapter 6 and Chapter 10 of the English Learner Toolkit). Divisions must engage in meaningful communication with the parents of ELs in a language they can understand. It is the obligation of the school division to provide qualified interpreters and translators.

School divisions must inform parents of an EL with an IEP about how the LIEP meets the objectives of the child's IEP (Chapter 6 of the English Learner Toolkit). The school division must also ensure that the parents of an EL with a disability understand the proceedings of the IEP Team meeting. School divisions must arrange for a qualified interpreter for parents with limited English proficiency if needed (English Learner Students and Limited English Proficient Parents Dear Colleague Letter p. 24). Under *Title VI of the Civil Rights Act of 1964* and the *Equal Educational Opportunities Act*, for parents of ELs to have meaningful access to an IEP plan

meeting, it may be necessary to have the IEP or related documents translated into the parents' primary language.

It is important to emphasize that communication with the parents of ELs is a critical part of the pre-referral process for an EL with a suspected disability, as well as a required element of the process once a referral for special education services has been received. School divisions should build partnerships with families, recognizing that they possess invaluable knowledge about their child. The school team should encourage parents of ELs to share important information about their student's development including strengths, needs, exposure to and use of the native language and English, cultural norms, and school and social history. The team should also provide the supports needed to ensure that parents of ELs can actively participate in the process in meaningful ways such as flexible scheduling and providing qualified interpreters. The school team should seek input from parents of ELs to determine what structures works best for them. Finally, school divisions have a role in ensuring that the voices of parents of ELs are heard by providing a linguistically welcoming atmosphere that encourages opportunities for them to share their desires and concerns.

Numerous studies demonstrate that knowledge of more than one language boosts a student's creative thinking and problem-solving skills. When students have a strong understanding of their native language, it helps facilitate second language learning. The parents of ELs should be encouraged to speak their native language with their children as it provides a rich foundation of language and literacy that will accelerate academic growth in English. The parents of ELs should not feel compelled by school division personnel to use only English at home. Promoting an 'English-only" policy to parents of ELs does not recognize the critical role of these parents in helping their children to become fluently bilingual and develop an understanding and appreciation of their native cultures.

The teacher who is sensitive to the implications of diversity respects the cultural and family traditions of the parents with whom he or she is meeting. The literacy level of the parents in the home language should be considered when communicating through printed materials even though these have been translated. In the United States, students with disabilities are eligible to receive a variety of supports and alternative services. Parents from other cultural backgrounds may have a different perception of children with special needs. Thus, educators cannot assume the way disabilities are perceived in the United States is a universal viewpoint. School staff members should be sensitive to a parent's reaction to possible special education identification and associated perceived stigma.

Resolving Differences

In order to resolve differences with parents and families, the following strategies might help in reaching consensus:

- Focus on the child's needs;
- Realize that differing values should not cause conflict;
- Prioritize carefully. Only a few issues may be settled at a time, especially when parents are unfamiliar (and perhaps uncomfortable) with the process; and

- Be patient and supportive. For many parents and families of ELs, understanding the American perspective on special education may be challenging.

Parents and adult students (age 21) should be provided procedural safeguards upon referral for evaluation and at other designated times as outlined in the *Regulations Governing Special Education*. These procedural safeguards outline a parent's rights and offer guidance in the event of a dispute. Parents have the right to access services including mediation, complaints, and due process while their child is being evaluated for possible eligibility for special education and related services. Additional information about dispute resolution processes is available on the VDOE website.

Working with Interpreters

Interpreters function as a link between the school, the student, and the student's family. Their work requires two separate functions: to translate test questions and student responses accurately and impartially, and to help interpret school information and program recommendations to the family, as well as family history, family dynamics, and concerns to the school. It is the responsibility of the school division to provide a qualified interpreter if the parents of an EL requires language assistance and to inform the parent of the availability of this service prior to any meeting. The interpreter should be able to understand the intent and the desired outcome of the meeting. Family members, friends, or children cannot serve as interpreters. School division staff should guide and direct the activity in which the interpreter is involved. For more information on requirements regarding the use of interpreters, refer to the English Learner Toolkit Chapter 6 and the English Learner Toolkit Chapter 10.

Commonly Asked Questions and Answers

Below are questions frequently asked by administrators, classroom teachers, LIEP teachers, and special education teachers. This Handbook is intended to provide guidance to be used in conjunction with state and federal regulations only and does not supersede such regulations.

EL Identification

What is the process for determining the EL status?

Consistent with *Title VI of the Civil Rights Act of 1964* (42 U.S.C. §2000d) school divisions must take affirmative steps to ensure that ELs can meaningfully participate in the division's educational programs and services. This provision requires school divisions to establish a mechanism for initially identifying a student as an EL and determining a proficiency level in English for appropriate placement in programs and services. *The Every Student Succeeds Act of 2015* (ESSA) requires that states establish standardized entrance procedures for EL identification. Superintendent's Memo 194-17 provides information about Virginia's entrance criteria for ELs.

The USED Office for Civil Rights in conjunction with the U.S. Department of Justice has approved the following questions to demonstrate minimal compliance with the requirement to identify possible EL students in need of language assistance:

- What is the primary language used in the home, regardless of the language spoken by the student?
- What is the language most often spoken by the student?
- What is the language that the student first acquired?

These identifying questions must be included on registration documents or on a separate home language survey provided to **all** students enrolling in a Virginia public school. If a parent or guardian responds with any language other than English for one or more questions, then the student should be progressed to the language screening process. Superintendent's Memo 136-18 provides information on the screening instruments used in Virginia to determine the English language proficiency of a student.

What are the options for an EL with a disability to exit the EL status?

In Virginia, all ELs, including ELs with a disability, exit the EL status when they meet the state proficiency criteria of 4.4 or better on the annual ACCESS for ELLs 2.0 assessment (Superintendent's Memo 168-17).

Can the EL status be removed if an EL with a disability has no reasonable opportunity to meet the state proficiency criteria or if the parents' request removal?

No. After a student is identified as an EL, the school division may not remove the EL status before the EL scores proficient on the annual ELP assessment (to include ELs with a disability). A proficient score in Virginia is defined as scoring 4.4 or better on all four language domains of the annual ACCESS for ELLs test (Addendum to September 23, 2016 Non-Regulatory Guidance: English Learners and Title III).

Serving ELs with a Disability

Can students receive both LIEP services and special education services?

Yes. The English Learner Students and Limited English Proficient Parents Dear Colleague Letter (p.12) mandates that all ELs who have not yet reached proficiency on the state English language proficiency assessment must receive LIEP services. This mandate includes ELs with disabilities. Additionally, the Dear Colleague Letter (p .25) specifies that the establishment of "no dual services" policies (i.e., a policy of allowing students to receive either LIEP services or special education services, but not both) is prohibited under IDEA and federal civil rights guidance (Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited English Proficiency, 2).

What program options are open for ELs once they are found eligible for special education?

If an EL is found eligible for special education and related services, the IEP Team, including the LIEP teacher or staff member with second language acquisition expertise, should develop an IEP for the student. The IEP should include the appropriate instructional program or combination of programs to address the student's academic, functional, and language needs.

How long is the waiting period before referring a student who is an EL?

There is no time restriction on referring an EL. The IDEA and federal civil rights guidance (Dear Colleague Letter) prohibit a policy of delaying evaluations of ELs to determine the need for special education and related services over a specified period of time based on English language proficiency or the EL status.

Can primary grade students who are ELs or older English Proficiency Level 1 students be referred for special education?

Yes. ELs at any proficiency level may have disabilities. The IDEA and federal civil rights guidance (Dear Colleague Letter) mandate that all ELs must be provided special education and related services if determined to be eligible.

Can SLIFE students (Students with Limited or Interrupted Formal Education) be referred for special education?

Yes. However, the student's academic challenges in a United States school could be the result of a lack of formal education rather than a disability. Regardless of the service model, a variety of services can be provided to support instruction for SLIFE students many of whom are also ELP Level 1. Instructional strategies that support ELs may include the use of cooperative learning, differentiated instruction, and experiential hands-on methods. It is important to note that many countries do not offer special education alternatives, so students with special needs may have been excluded from school or retained in the same grade for a period of years. While a student's previous formal education history will likely affect the student's academic performance in U.S. schools, limited schooling in and of itself does not constitute a disability.

May the parent of an EL with an IEP waive the LIEP?

Yes. A parent may waive the EL's placement in a LIEP. However, the IEP must still include linguistically appropriate goals and objectives, and the student must continue to receive instruction that promotes English language development outside the parameters of the LIEP. Also, the student must still take the annual ACCESS for ELLs 2.0 assessment.

Is a student who uses American Sign Language an EL and does this student qualify for the LIEP?

It depends. A student who uses American Sign Language for communication due to deafness or hearing impairment, who meets the definition of an EL, and whose primary language is based on national origin may qualify for the LIEP. Refer to the U.S. Department of Education Letter on American Sign Language.

Assessing ELs with a Disability

Why do ELs with a disability take SOL assessments?

Section 1111(b)(3)(C)(i) of ESSA requires that all ELs participate in state content assessments including ELs with a disability.

Do ELs with a disability need an IEP or 504 plan to receive testing accommodations on SOL assessments?

No. All ELs at ELP levels 1 through 4.3 and former ELs in year 1 or 2 of monitoring status may receive linguistically necessary testing accommodations on SOL assessments as specified in their EL Assessment Participation Plan. A school-based EL committee determines the EL's participation in the SOL assessments as required by Section 8 VAC 20-131 G of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia*. The school-based EL Committee must complete an EL Assessment Participation Plan for each EL taking SOL assessments. Determination of an EL's participation in SOL assessments should be made according to the English Learners: Guidelines for Participation in the Virginia Assessment Program. These guidelines provide procedures for providing testing accommodations, procedures for exempting ELs from participation in certain SOL assessments, and documentation requirements. For ELs that also have a documented disability, additional accommodations needed due to the disability must be assigned in an IEP or 504 plan for the EL.

Special testing accommodations are also available to the dually identified student based on the student's disability and must be documented in the student's IEP or 504 plan. Additionally, a dually identified student may participate in alternate assessments if eligibility requirements are met. For detailed information on assessment participation of students with disabilities, refer to the Students with Disabilities: Guidelines for Assessment Participation.

Can an EL with a disability receive the audio or read-aloud accommodation for the reading SOL assessment?

An EL that has a documented disability in grades three through eight can receive the audio or read-aloud accommodation on the reading SOL assessment if it necessary due to the disability and documented in the IEP plan. The audio/read-aloud reading accommodation cannot be assigned for a dually identified EL on the EL Assessment Participation Plan for students in grades three through eight. For ELs taking the EOC Reading SOL assessment, the audio/read-aloud accommodation can be assigned and implemented if the following criteria are met:

- The EL receives the audio/read-aloud accommodation on another SOL assessment;
- The EL receives the accommodation on a regular basis in the classroom; and,
- The EL failed the first test attempt of the EOC Reading SOL Assessment.

How do I annually assess the English language proficiency of an EL with a significant cognitive disability?

For a student in Kindergarten with a documented significant cognitive disability, a teacher can administer the Virginia ELP Checklist for EL Students in Kindergarten with Significant Cognitive Disabilities. Training, documentation, and score reporting related to this assignment is shared one month prior to the start of the ELP testing window.

For a student in grades 1 through 12, if the student qualifies for alternate statewide assessments, (i.e., Virginia Alternate Assessment Program (VAAP)), the student is eligible to take the Alternate ACCESS test. To determine a student's eligibility for this assessment, see the Alternate ACCESS for ELLs Participation Criteria Decision Tree. For more information about these assessments, refer to the Virginia English Language Proficiency Assessments webpage.

How do I annually assess the English language proficiency of an EL with a visual or hearing impairment?

For a student in grades Kindergarten through 12 with a visual or hearing impairment, a teacher can administer the Virginia ELP Checklist for EL Students K-12 with Hearing and Visual Impairments. Training, documentation, and score reporting related to this assignment is shared one month prior to the start of the ELP testing window. For more information about this assessment, refer to the Virginia English Language Proficiency Assessments webpage.

Are EL test exemptions available to a dually identified student?

Yes. EL test exemptions are available to the dually identified student based on the student's EL status. EL test exemptions resulting from the student's EL status must be documented in the student's IEP or 504 plan and the EL Assessment Participation Plan. For more information about exemptions for ELs, see Section V: Students Dually Identified as English Learners with a Disability of the English Learners: Guidelines for Participation in the Virginia Assessment Program.

Instructional Considerations

Teachers of ELs with disabilities should understand key concepts related to student development of a new language. The resources listed below, adapted from *English Language Learners with Disabilities: A Call for Additional Research and Policy Guidance*, provide information about the language trajectories of students with language-related disabilities and the types of academic and social language demands ELs with disabilities may encounter. These resources also address how reading levels of texts and other materials; text complexities and structures; word and concept consciousness; and oral, written, verbal, and nonverbal expression, which are part of the language demands of school, may be difficult for ELs to understand. For more information on analyzing academic language demands of content, refer to Academic Language Function Toolkit. For more information on language trajectories, refer to the WIDA proficiency level descriptors:

WIDA Performance Definitions: Receptive Domains
WIDA Performance Definitions: Expressive Domains

Content-Based Language Instructional Strategies

Research shows that the integration of language development and content instruction provides the best context for acquiring the academic English necessary for student achievement. The Academic Language Function Toolkit and WIDA Focus Bulletin: Providing ELLs with Disabilities Access to Complex Language discuss how teachers can provide primary language support and embed English language development across the content areas.

It is important that lesson plans and units of study provide practice for ELs in all four language domains (listening, speaking, reading, and writing). Scaffolding and differentiating instruction to meet individual student needs and learning styles, as well as active, inquiry-based learning and structured instructional conversations, are effective means for engaging ELs and helping them access the content material. In addition, instructional conversations that feature small group discussions that are text-based and teacher-led, and asking students to provide linguistically

complex responses to open-ended questions have resulted in increased oral language development and reading comprehension among ELs with learning disabilities (Echevarria, 1995).

Another program with promising results is the Peer-Assisted Learning Strategies (PALS) program. This reciprocal class-wide tutoring program has been found to have significant effects on standardized reading comprehension items for ELs with disabilities as well as mainstream general education students (Sáenz, Fuchs, & Fuchs, 2005). In addition, the Olé Project is a holistic, balanced approach to literacy that creates opportunities for students to authentically and meaningfully use oral language and literacy skills. A single case study of this program revealed that ELs with disabilities receiving this type of instruction improved in reading and writing by several grade levels in one and a half years (Ruiz, Vargas, & Beltran, 2002). For more information on engagement strategies, refer to Go To Strategies: Scaffolding Options and Instructional Conversations.

Cultural Competencies

Cultural competencies, or acknowledging the value of cultural and linguistic diversity, have an important influence on EL academic achievement. It is important for educators of ELs to develop an understanding of how language, culture, family, and other background characteristics play a role in EL learning. It is important to identify and combat a deficit orientation toward ELs with disabilities and their families. Developing curricula in which academic content is relevant to students' culture, background, experiences, and funds of knowledge can serve to increase EL engagement in learning.

- For more information on building cultural competencies, refer to Diversity Toolkit.
- For more information on an asset-based philosophy toward ELs, refer to ELLs are an Asset in the Classroom
- For more information on connecting to EL backgrounds, refer to Connect Background Knowledge

Funding

Can Title III funds be used to identify a student with a disability, or a student suspected of having a disability, as an EL?

No. *Title VI of the Civil Rights Act of 1964* (42. U.S.C §2000d) requires school divisions to identify and screen potential ELs for an English proficiency level in order to appropriately place them in programs and services. School divisions cannot use Title III funds to meet local, state, or other federal requirements. Title III funds may be used to provide supplemental services that improve the English language proficiency and academic achievement of ELs and activities that increase the knowledge and skills of teachers of ELs.

Can IDEA funds be used to identify a student with a disability, or a student suspected of having a disability, as an EL?

Yes. It may be possible to use IDEA funds in connection with the EL screening process consistent with the requirements in Part B of IDEA. There are two possible funding sources:

- IDEA Part B funds reserved for other-state-level activities (34 CFR U.S.C §§ 300.704.B) (Grants to States) and 3000.814 (Preschool Grants); and
- Subgrants to eligible LEAs for the provision of special education and related services (34 CFR §§ 300.705 [Grants to States]) and 300.815.816 (Preschool Grants).

It may be permissible for school divisions to use a portion of these funds for appropriate accommodations for students with disabilities on the regular EL screener (Addendum to *Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives*, U.S. Department of Education, Office for Civil Rights, Issued July 18, 2014).

Can Title III funds be used to provide an interpreter for parents of an EL with a disability during an IEP Team meeting or other types of special education-related meetings?

No. Under IDEA regulations, school divisions must ensure that parents understand the proceedings of IEP Team meetings or other types of special education-related meetings by providing an interpreter if necessary. School divisions cannot use Title III funds to meet local, state, or other federal special education requirements.

Can IDEA funds be used to provide an interpreter for parents of an EL with a disability during meetings that are not special education-related meetings?

Special education funds are provided to support students with disabilities throughout the referral, evaluation, eligibility, and IEP process. IDEA funds should not be used for non-special education meetings and events.

Language Acquisition and Development

How are ELs and students with disabilities different?

On the surface, ELs and students with disabilities may appear to be similar; however, there are important distinctions. For more information, refer to the English Learner Toolkit (page 6), English Language Learners and Special Education: A Resource Handbook (page 11), and Policy and Alternative Assessment Guidelines (page 41).

What kind of language skills can a teacher expect of an EL at different stages of language learning?

An EL's skills will vary depending on the proficiency level. An EL in the early stages of language development may be able to follow simple verbal directions, make sound and symbol associations, and complete simple speaking, listening, reading, and writing activities. As the EL develops language skills, he or she may begin to participate in social conversations about various topics such as movies, holidays, and school activities. The EL may be able to follow spoken directions, but may require the assistance of props and concrete objects. When the EL begins to acquire academic language proficiency, he or she can work with others to complete more cognitively demanding tasks, engage in more involved discussions about school subjects, and begin to participate in more complex academic activities with other students. As the EL becomes even more proficient, he or she will follow written directions, take notes, read content material,

prepare written reports, and participate in more cognitively demanding activities within the school setting. Individual differences in prior knowledge, learning styles, skills, previous academic history, and abilities will determine how quickly an individual student will progress through the various stages of language acquisition. For more information on student proficiency levels for ELs, review the WIDA Performance Definitions: Receptive Domains and the WIDA Performance Definitions: Expressive Domains.

To summarize the language trajectory, a teacher can expect ELs to start with simple and short chunks of language (words and phrases), then start repeating longer phrases and sentences they hear more often or are given as models build their proficiency. As students become more proficient, they start adding more details and specific and technical vocabulary into longer and varied sentences. In this process of language development, it is important for teachers to focus on the content, message, or idea the EL is trying to share rather than the grammatical accuracy of student responses.

Do literacy skills transfer from the first into the second language?

If a student has learned academic skills such as reading, writing, and organization of information in a first language, then these skills are applied to academic learning as the second language develops.

Why doesn't this student speak? Is the student learning?

Most learners of another language go through a period of time when they develop receptive language skills before they are comfortable expressing themselves. They are listening but not yet speaking. This silent period parallels the stage in first language acquisition when a child is internalizing language before he or she typically begins speaking. This period is also referred to as a pre-production stage (for more information and teaching implications, see the Pre-production and Silent period article). ELs in the classroom may be silent as they internalize the vocabulary and rules of the new language until they are confident enough to speak. Although an EL may be comfortable speaking with other ELs within the LIEP setting, the same student may remain silent in the general education classroom while he or she builds this confidence. It is important to note that the duration of time where students prefer to receive information than to produce language depends on their feelings of safety, comfort, and support in the new environment, and their prior exposure to and experiences practicing English.

How do I accurately assess an EL's understanding of the material?

ELs want to be viewed the same as their English-speaking peers. They may hesitate to ask questions when they are unclear about what the teacher has said because it puts them in what they may perceive to be an embarrassing situation. Alternative, differentiated, and performance-based assessment options are strongly recommended for ELs to provide opportunities to show what they have learned while their language skills are still developing. Teachers may also increase the students' level of understanding by providing instructional materials that offers built-in supports and multiple context clues. This will allow ELs to make better connections with the content material. It is critical to differentiate the language of content, instructional processes, and expected outcomes to match the EL's language proficiency level. Refer to the following resources for more information: Using a Can Do Approach to Ensure Differentiated Instruction and Alternate English Language Learning Assessment Project.

If a student appears fluent in English, another commonly asked question is: "Why is he or she still in the LIEP program?"

Conversational proficiency and academic language proficiency are not the same linguistic skills. Conversational proficiency is the ability to use language in face-to-face communication; whereas, academic language proficiency is the ability to carry out academic tasks. ELs generally develop conversational proficiency in two to four years. However, academic language proficiency may take between five and seven years or longer to develop depending on factors such as age, previous schooling, and home environment.

Does language switching signify a problem?

Code switching (switching languages for portions of a sentence) and language mixing (inserting single items from one language into another) are normal aspects of second language acquisition. This does not mean that the child is confused or cannot separate the languages. The main reason that children mix the two languages in one communication is because they lack sufficient vocabulary in one or both languages to fully express themselves or prefer particular words/phrases to express their intents (modified from Garcia, 2003). Code switching or language mixing is a normal and natural part of second language acquisition that parents and teachers should not be concerned about. The goal must always be to enhance communication, rather than to enforce rigid rules about which language can be used at a given time or under certain circumstances.

Source: Espinosa, L. M. & López, M. L. (2007). Assessment considerations for young English language learners across different levels of accountability

APPENDIX A - DEFINITIONS

English learner

The term “English learner,” when used with respect to an individual, means an individual —

(A) who is aged 3 through 21;

(B) who is enrolled or preparing to enroll in an elementary school or secondary school:

(C)(i) who was not born in the United States or whose native language is a language other than English;

(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

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

(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —

(i) the ability to meet the challenging State academic standards;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(ESEA Section 8101(20))

Child with a Disability

“Child with a disability” means a child evaluated in accordance with the provisions of this chapter as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as “emotional disability”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M.3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability.

(§ 22.1-213 of the *Code of Virginia*; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii)).

Appendix B - Resources

Federal Law and Guidance

Laws and Guidance Regarding the Education of Students with Disabilities

Individuals with Disabilities Education Act (IDEA)
Enacted by the 94th United States Congress and signed into law by President Gerald Ford on November 29, 1975.
Supports special education and related service programming for children and youth with disabilities. Originally known as the *Education of Handicapped Children Act*. In 1990, amendments to the law were passed, changing the name to IDEA. In 1997 and again in 2004, additional amendments were passed to ensure equal access to education.

Laws and Guidance Regarding the Education of English Learners

Preventing Racial Discrimination in Special Education Dear Colleague Letter
December 12, 2016
U.S. Department of Education
Confirms the obligations of States, school divisions, and public schools, including charter schools, under *Title VI of the Civil Rights Act of 1964* not to discriminate on the basis of race, color, or national origin in the administration of special education or related aids and services.

English Learner Toolkit
Published by the U.S. Department of Education and the U.S. Department of Justice
2016
Joint guidance to assist State educational agencies, school divisions, and public schools in meeting their legal obligations to ensure that ELs can participate meaningfully and equally in educational programs and services.

Every Student Succeeds Act of 2015 (ESSA)
Enacted by the 114th United States Congress and signed into law by President Barack Obama on December 10, 2015.
Reauthorizes the *Elementary and Secondary Education Act of 1965* (ESEA). The previous version of the law, the *No Child Left Behind Act* (NCLB), was enacted in 2002.

English Learner Students and Limited English Proficient Parents Dear Colleague Letter:
January 7, 2015
U.S. Department of Education and U.S. Department of Justice
Joint guidance to assist State educational agencies, school divisions, and public schools in meeting their legal obligations to ensure that ELs can participate meaningfully and equally in educational programs and services.

Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited English Proficiency
September 27, 1991
U.S. Department of Education, Office for Civil Rights

Primarily designed for use in conducting compliance reviews designed to determine whether schools are complying with their obligation under the regulation implementing *Title VI of the Civil Rights Act of 1964* to provide any alternative language programs necessary to ensure that national origin minority students with limited-English proficiency have meaningful access to the schools' programs.

Policy Update on the Treatment of National Origin Minority Students Who Are Limited English Proficient
April 6, 1990
U.S. Department of Education
Affirms the legal standard for Title VI policy concerning discrimination on the basis of national origin as set forth in the May 25th Memorandum and the Lau v. Nichols Supreme Court decision.

Castañeda v. Pickard
U.S. Supreme Court decision, June 23, 1981
Establishes a three-part test to evaluate the adequacy of a school division's program for ELs.

Lau v. Nichols
U.S. Supreme Court decision, January 21, 1974
Establishes that school divisions must take affirmative steps to overcome educational barriers faced by non-English speaking students.

Equal Educational Opportunities Act of 1974
Enacted by the 93rd United States Congress and signed into law by President Richard Nixon on August 21, 1974.
Confirms that school divisions must act to overcome language barriers that impede equal participation by students in their instructional programs.

Memorandum
May 25, 1970
U.S. Department of Education
School divisions must take affirmative steps to rectify the language deficiency in order to open the instructional program to language minority students. Specifically prohibits assigning English Leaners to special education programs based on criteria that essentially measures and evaluates English language skills.

Title VI of the Civil Rights Act of 1964
Enacted by the 88th United States Congress and signed into law by President Lyndon Johnson on July 2, 1964.
Prohibits discrimination on the grounds of race, color, or national origin by recipients of federal financial assistance.

Virginia Law and Guidance

Laws and Guidance Regarding Students with Disabilities

Evaluation & Eligibility for Special Education & Related Services
Guidance and sample forms for the special education process in Virginia Schools.

Information for Parents of Children with Disabilities
Information and guidance for parents and families of children with disabilities.

Standards and Regulations for Public Schools in Virginia, Part IV. 8 VAC 20-131-70

Establishes standards for accrediting public schools in Virginia (8 VAC 20-131-70) require that each school shall provide a program of instruction that promotes individual student achievement and is in keeping with the abilities, interests, and educational needs of each student. Instruction shall be designed to accommodate all students, including those with disabilities, those identified as gifted and talented, and/or those who have limited English proficiency.

Regulations Governing Special Education Programs for Children with Disabilities
Virginia Department of Education
January 2010
Addresses identification, evaluation, eligibility, and service delivery for students with disabilities. Includes specific provisions from IDEA and its federal implementing regulations as well as some Virginia specific protections that exceed the federal law for residents in Virginia.

Evaluation and Eligibility for Special Education and Related Services: Guidance Document.
Virginia Department of Education
January 2018

Other Resources

Federal Technical Assistance

Webinar
Disabilities Among Children who are English Learners
U.S. Department of Education, 2018

Documents/Books

Council of Chief State School Officers
CCSSO Framework for Supporting Educators to Prepare and Successfully Exit English Learners with Disabilities from EL Status
2019

English Language Proficiency Standards for English Learners with Severe Cognitive Disabilities
2019

CCSSO English Learners with Disabilities Guide
2017

REL West
Identifying and Supporting English Learner Students with Learning Disabilities: Key Issues in the literature and state practice
Elizabeth Burr, Eric Haas, and Karen Ferriere
2015

RTI Action Network
RTI-Based SLD Identification Toolkit: Considerations for English Language Learners
Claudia Rinaldi, Samuel Ortiz, and Sue Gamm
2014

Colorín Colorado!
IDEA and English Learners (Chapter 7)
Debbie Zacarian
(from Transforming Schools for English Learners: A Comprehensive Framework for School Leaders)
2011

State SELPA Directors Association (California)
Meeting the Needs of English Learners with Disabilities
Jarice Butterfield
2010

Center for Applied Linguistics
English Language Learners with Special Needs
Alfredo J. Artiles and Alba A. Ortiz
2002

Resources for Instruction

Alternate Language Learning Assessment Project, for a variety of resources related to instruction and assessment

- Includes a Framework for Understanding English Learners with Disabilities, including Questions to Consider for Individual Students, Case studies with discussion questions
- Note: While some of these materials include information specific to students with *significant* cognitive needs, in many cases it applies and is helpful for any EL with disabilities

Interviews with ESL educators and school leaders working to meet the needs of ELs with disabilities. These interviews focused on educators in Massachusetts who used a tiered system for support. Includes resources for the classroom, school, and district level.

Colorin Colorado. This resource is a portal for articles and recommended resources specific to ELs, including multiple resources on dually identified students.

Resources for MTSS and RTI Frameworks

Virginia Tiered Systems of Supports (VTSS) The Virginia Tiered Systems of Supports aligns academics, behavior and social-emotional wellness into a single decision-making framework to establish the supports needed for schools to be effective learning environments for all students.

Responsive Instruction: Refining Our Work of Teaching All Children Virginia's "Response to Intervention" Initiative The Virginia Department of Education's Response to Intervention (RtI) guidance document is designed to assist school divisions in understanding what RtI is, its origins in educational practice and research, its usefulness and value, and several ways it can be implemented.

Response to Instruction and Intervention (RTI²) (WIDA log-in needed, free access)

CEP-EL Manual (p. 23-24 of pdf): English Learner Intervention Summary (San Diego, CA)

Scientific Research-Based Interventions for English Language Learners: A Handbook to Accompany Connecticut's Framework for RTI (Connecticut)

Effective Practices for English Learners: Brief 1, Meeting the needs of English learners through a multitiered instructional framework (U.S. Office of Special Education Programs)

Building Capacity for RTI (Texas)

Office of Special Education Programs 2011 Memorandum: A Response to Intervention (RTI) Process Cannot be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act

Family Guide: Multi-Tiered Systems of Support (Rhode Island)