The Identification and Evaluation of Exceptionalities in Students with Limited English Proficiency

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Foreword

As West Virginians endeavor to meet the demands of the 21st century, our school systems must ensure that linguistically and culturally diverse students are prepared to live and succeed in a global economy. It is imperative that all students have the opportunity to engage in instruction relevant to rigorous content standards and objectives with particular attention being given to their unique learning requirements.

West Virginia educators are committed to providing a quality education for *all* students. Speech-language pathologists, school psychologists, counselors, social workers, English as a Second Language (ESL) teachers, student assistance teams, special education teachers, and other members of the educational community are experiencing the challenge of providing culturally competent services to increasingly diverse populations of students. Frequently, both ESL teachers and special education teachers are challenged to define the most effective way to appropriately identify and serve students who have both Limited English Proficiency (LEP) and special needs. Moreover, all teachers must determine how they can best function as a collaborative team with delineated roles for special educators, ESL teachers and the classroom teacher. Collaboration among special educators, ESL teachers and classroom teachers is key in identifying LEP students with disabilities and in determining the provision of special education services to be prescribed by the Individualized Education Program (IEP). This guidance document will provide a thorough overview of specific processes that should be followed in identifying, evaluating, determining eligibility and interventions for students with both LEP and special needs.

West Virginia's opportunity for continued success is directly linked to the educational development of its children. Therefore, as we continue to strive to enhance the education of all students in West Virginia and to press forward toward a thriving economic future, we appreciate your ongoing efforts on behalf of English Language Learners. Together, we can meet the challenges of the 21st century.

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INTRODUCTION

The traditional American school system has been structured to serve students who speak English and are an inherent part of mainstream society. However, as recent United States societal trends indicate, more and more of our population is becoming diverse in relation to language and culture. According to the U.S. Census Bureau, 2003c, 18.4% of the population ages 5-17 years spoke a non-English language at home. Nationwide, in the 2000-2001 school year, it was estimated that more than 4.5 million English Language Learner (ELL) or limited English proficient (LEP) students were enrolled in public schools. In a survey conducted for this period, more than 400 languages spoken by English Language learners nationwide were identified (Prifitera, Saklofske, and Weiss 2005).

West Virginia schools have also experienced a dramatic increase in the number of students with limited English proficiency (LEP) during the last ten years. Overall demographic trends indicate the largest growth is occurring in the state's eastern panhandle and districts bordering neighboring states. Although the LEP population averages less than 1% statewide, the total number of West Virginia school systems that are serving low-incidence LEP populations has also increased. In addition, many districts experience a relatively high percentage of "immigrant students" (students who have been in the United States for less than three years). Therefore, West Virginia schools, even those that serve a low-incidence LEP population, most commonly enroll and serve LEP students with the least language proficiency.

West Virginia educators are committed to providing a quality education for all students. Speech-language pathologists (SLPs), school psychologists, counselors, social workers, ESL instructors, student assistance teams, special education teachers, and other members of the educational community are experiencing the challenge of providing culturally competent services to increasingly diverse populations of students. Frequently, both ESL teachers and special education teachers have difficulty defining their individual roles when serving students who have both LEP and special needs. Moreover, both types of teachers must determine how they can best function as a collaborative team with delineated roles for special educators, ESL teachers and the classroom teacher. Collaboration among special educators, ESL teachers and classroom teachers is key in identifying LEP students with disabilities and in determining the provision of special education services to be prescribed by the Individualized Education Program (IEP).

The central challenge facing special educators working with culturally and linguistically diverse students is distinguishing learning/communication differences related to linguistic or cultural factors from learning/ communication disorders. School districts may not assign students to special education programs based on criteria that essentially measure and evaluate English language skills. At the same time, school districts may not refuse to provide ESL and special education services to students who need both. As a result, it is incumbent upon school districts to adopt culturally sensitive psycho-educational practices to evaluate, identify, and provide tailored instruction for these students in order to preclude deficit assumptions about their capabilities and performance potential. This document was developed to provide identification, evaluation and eligibility guidance for culturally and linguistically diverse populations.

GLOSSARY OF TERMS

Academic English - The National Center for Research on Cultural Diversity and Second Language Learning defines academic language broadly to include:

1. "semantic and syntactic features such as vocabulary items, sentence structure, transition markers, and cohesive ties; and
2. language functions and tasks that are part of the social studies classroom routine, such as defining terms, explaining historical significance, reading expository text, and preparing research reports" (Short, 1994, p.1).

Academic English is also defined as "the ability to read, write, and engage in substantive conversations about math, science, history, and other school subjects" (Research Points, AERA, 2004).

Affective filter - Associated with Krashen's Monitor Model of second language learning, the affective filter is a metaphor that describes a learner's attitudes that affect the relative success of second language acquisition. Negative feelings such as lack of motivation, lack of self-confidence and learning anxiety act as filters that hinder and obstruct language learning (Baker, 2000).

BICS - Acronym for Basic Interpersonal Communication Skills, part of a theory of language proficiency developed by Jim Cummins (1984), which distinguishes BICS from CALP (Cognitive Academic Language Proficiency). BICS is often referred to as "playground English" or "survival English." It is the basic language ability required for face-to-face communication when linguistic interactions are embedded in a situational context (see context-embedded language). This language, which is highly contextualized and often accompanied by gestures, is relatively undemanding cognitively and relies on the context to aid understanding. BICS is much more easily and quickly acquired than CALP but is

not sufficient to meet the cognitive and linguistic demands of an academic classroom. (Cummins, 1984; Baker & Jones, 1998).

CALP - Developed by Jim Cummins (1984), Cognitive/Academic Language Proficiency (CALP) is the language ability required for academic achievement in a context-reduced environment. Examples of context-reduced environments include classroom lectures and textbook reading assignments. CALP is distinguished from Basic Interpersonal Communication Skills (BICS) not only in its linguistic complexity but also in the length of time required for developing CALP language ability (Baker, 2000).

Code-mixing - Sometimes used to describe the mixing of two languages at the word level (i.e. one word in the sentence is in a different language) (Baker & Jones, 1998).

Code-switching - The term used to describe any switch among languages in the course of a conversation, whether at the level of words, sentences or blocks of speech. Code-switching most often occurs when bilinguals are in the presence of other bilinguals who speak the same languages (Baker & Jones, 1998).

Comprehensible input - An explanation of language learning, proposed by Krashen, that language acquisition is a result of learners being exposed to language constructs and vocabulary that are slightly beyond their current level. This "input" is made comprehensible to students by creating a context that supports its meaning (Krashen, 1981).

Communication difference - A variation of a symbol system used by a group of individuals that reflects and is determined by shared regional, social or cultural/ethnic factors. Examples of communication differences are children who speak with an accent or speak a dialect.

Communication disorder - An impairment in the ability to receive, send, process and comprehend concepts or verbal, nonverbal and graphic symbol systems. Examples of communication disorders can be children who have difficulty following directions, children who stutter, children who have a lisp, and children who have difficulty with word retrieval.

Content-based English as a Second Language Program (ESL) - In West Virginia, LEP students should receive ESL services through a content-based ESL method. Often, this is a pull-out method, meaning that LEP students participate in a regular English-speaking classroom and also receive individualized assistance in their language development on a regular basis. This approach makes use of instructional materials, learning tasks, and classroom techniques from academic

content areas as the vehicle for developing language, content, cognitive and study skills.

Context-embedded language - Communication occurring in a context that offers help in comprehension (e.g., visual clues, gestures, expressions, specific location). Language that includes plenty of shared understandings and where meaning is relatively obvious due to help from the physical or social nature of the conversation (Baker, 2000).

Context-reduced language - Language that includes few clues as to the meaning of the communication apart from the words themselves. The language is likely to be abstract (Baker, 2000). Examples: textbook reading, classroom lecture.

Cultural norms - Behaviors that may vary across cultures and influence aspects of living.

English Language Learner (ELL) - A student whose first language is not English and who is in the process of learning English. Also see LEP.

ESL - English as a Second Language (ESL) is an educational approach in which English language learners are instructed in the use of the English language. Their instruction is based on a special curriculum that typically involves little or no use of the native language, focuses on language and is usually taught during specific school periods. For the rest of the school day, students may be placed in mainstream classrooms, an immersion program, or a bilingual education program.

Interference - The influence of the first language (L1) on the second language (L2).

Language loss - Skills and fluency may be lost in the first language if it is not reinforced and maintained. This is also known as **subtractive bilingualism.**

LEP - Limited English Proficient (LEP) is the term used by the federal government, most states and local school districts to identify those students who have insufficient English to succeed in English-only classrooms (Lessow-Hurley, 1991).

Sheltered English Instruction - In West Virginia, in addition to receiving content-based ESL services, the LEP student's classroom teacher should use a sheltered instructional approach to make academic instruction in English understandable to LEP students. In the sheltered classroom, teachers use visual aids, cooperative learning, and other modifications to teach language

development and content concepts in mathematics, science, social studies, and other subjects.

Silent period - The quiet period when a child is first exposed to a second language and is hesitant to speak English.

Subtractive bilingualism - See language loss.

LEGAL BACKGROUND

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) specifically addresses students who speak languages other than English. The "determination of eligibility" section of the law stipulates that "a child may not be determined to be eligible under this part if the determinant factor for that eligibility determination is limited English proficiency". The unique linguistic features that many LEP students exhibit are not considered a disability under IDEA.

- o IDEA further stipulates the "materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skill" and,
- o "Are provided and administered in the child's native language and in the form most likely to yield accurate information on what the student knows and can do…".
- o IDEA also requires that information provided to parents must be presented in their native language.
- o IDEA 2004 provides the authority for SEAs to use an eligibility determination process for specific learning disabilities based on the student's response to scientific, research-based intervention (i.e., Response to Intervention).

West Virginia Board of Education Policy 2419: *Regulations for the Education of Students with Exceptionalities* is the West Virginia Board of Education policy that addresses special education and reflects the regulations in IDEA with regard to students with disabilities.

The No Child Left Behind Act of 2001: P.L. 107-110 (NCLB)
Title III of NCLB requires that "children who are limited English proficient, including immigrant children and youth, **attain English proficiency**, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet" and that schools "assist all limited English

proficient children, including immigrant children and youth, to **achieve at high levels in the core academic subjects** so that those children can meet the same challenging State academic content and student academic achievement standards as all children are expected to meet."

West Virginia Board of Education Policy 2417: Programs of Study for Students with Limited English Proficiency West Virginia Board of Education Policy 2417 defines the requirements for identifying, serving and exiting LEP students. It also identifies five levels of English Language Proficiency standards for each of the different domains of English: Oral (Listening/Speaking), Reading and Writing. Students may be at different levels for different domains (e.g., Level 2 in Oral, Level 1 in Reading) and may progress at differing paces from level to level.

STAGES OF LANGUAGE ACQUISITION

As noted in the introduction, students with limited English proficiency may learn differently than native-English speakers in an environment where English is the language of instruction. This does not necessarily mean the LEP student has a learning disorder. *Understanding the language acquisition process and its various stages can assist educators in differentiating between differences and delays.*

To complete the language acquisition process, the average native-English speakers may require from 10 to 11 years. Similarly, LEP students do not simply "pick up" the English language. There are typically five stages of Language Acquisition (Fletcher, Garman, 1986). Each LEP student may progress through the stages of learning language at different rates of speed depending on motivation, amount of exposure to the language, cognitive ability, first language development and a variety of other factors. The Five Stages are:

Stage One - Preproduction (typically 0-3 months)
The student is developing skills even though language production (speech) skills are minimal. Listening is crucial at this stage when students are beginning to associate sounds and meaning. The student may begin to understand basic directions when they are accompanied with demonstrations and visual cues. The student may respond nonverbally by pointing, gesturing, nodding and drawing. Some students may be hesitant to speak English at first and experience a "silent period." This is a normal part of language acquisition during which time they are building their receptive language competence by listening. Modification Strategies for Stage One include providing frequent opportunities for active listening using visuals and "realia."

Stage Two - Early Production (typically 3-6 months)
The student experiences some word usage and comprehension skills continue to develop. The student may use one or two word utterances, some short phrases and/or sentences particularly in social settings. Teachers should continue modifications strategies focused on frequent listening activities as for Stage Two. Questions should be limited to "yes/no" responses. It may be appropriate to incorporate "either/or" questions if the student can respond non-verbally by pointing. Teachers should demonstrate appropriate reading ability in English supported by illustrations and other visual supports.

Stage Three - Speech Emergence (typically 6 months to 2 years)
The student may use longer and more complex phrases/sentences and generate independent sentences or retell a short story. Frequent grammatical errors will occur. The student will begin to understand written English text that is supported by concrete contexts and visual supports. Modification Strategies for Stage Three include providing opportunities for the student to retell stories, using picture and word cues. Support developing literacy skills through direct reading instruction, frequent exposure to age-appropriate but modified reading material and direct writing instruction.

Stage Four - Intermediate Fluency
The student in Stage Four engages in conversations and interacts comfortably with others in English. Listening skills are significantly improved and oral skills show fewer errors. Although the student may often be able to express his/her thoughts and feelings, the "information processing" won't respond as quickly as a native speaker. Providing opportunities for the student to create oral and written narratives is an important Modification Strategy for Stage Four.

Stage Five - Advanced Fluency
The student continues to demonstrate more proficient receptive and expressive skills in English, but processing information may continue at a slower rate in the areas of memory, retrieval, and encoding. At this stage, the student consistently produces grammatical structures and vocabulary comparable to native-English speakers of the same age. As teachers implement ongoing Modification Strategies for Stage Five, they should continue ongoing language development through integrated language arts and content area activities.

IDENTIFICATION

IDEA and Policy 2419 require school districts to implement child-find activities to identify and evaluate students who may have a disability. Provisions in West Virginia State Code §18-5-17 stipulate that "all children entering public school for the first time in this State shall be given prior to their enrollments screening tests to determine if they might have vision or hearing impairments or speech and language disabilities…" LEP students must participate in the standard screening procedures. However, the following cautions should be observed:

- Preventing over-identification – if an LEP student has a suspected speech or language disorder that is not observable in the first language, the Student Assistance Team (SAT) should convene with the ESL teacher, classroom teacher and principal to discuss possible interventions prior to referral.
- Preventing under-identification - if an LEP student has a suspected speech or language disorder that is observable in the first language, the student should not be denied access to the referral process based solely on his/her limited English proficiency.
- Parental Notification - the law requires that parents be notified, in a language they understand, that their child will be evaluated for special education.
- Referral timelines outlined in Policy 2419 should be followed.

In order to prevent the over-identification or the under-identification of LEP students for special education programs and to promote culturally competent problem solving, the referral process should consider the following:

- Providing professional development opportunities and/or training to help staff promote culturally sensitive and competent practices for these students. Particularly, training that focuses on differentiating among learning difficulties that may be manifestations of second language acquisition, mental impairment, mental disorders, pervasive developmental disorders, learning disabilities, and/or other special education eligibility categories.
- Providing professional development to promote understanding of the language acquisition process, including age-related differences in language acquisition rates.
- Identifying school personnel in the school district, particularly personnel who have the same cultural/linguistic backgrounds. This may be of help to Intervention Teams and Student Assistance Teams in addressing academic and behavior problems that may be present in order to develop appropriate interventions and strategies.
- Identifying community resources that may be needed and accessed to implement policies and procedures.
- In addition to teachers and administrators, the SAT process should involve ESL instructors, interpreters, school psychologists, speech/language pathologists, and other school personnel with specialized knowledge and skills (particularly in regard to culturally sensitive practices) to collaborate with

teachers and administrators to promote culturally competent practices, interventions, and evaluation referrals (Klotz & Canter, 2006).

RESPONSE TO INTERVENTION (RTI)

It is clear that culturally and linguistically diverse students are disproportionately represented in special education, particularly in the category of specific learning disabilities. Research indicates, that most LEP students commonly acquire Basic Interpersonal Communication Skills (BICS) such as "playground" or "survival" English (Cummins, 1984). However, these same students require intensive support to successfully learn academic English and develop fluent literacy skills such as defining terms, reading expository text, and preparing research reports (Short, 1994, p.1). Response to Intervention (RTI) addresses the prevention of reading difficulties by establishing effective classroom practices that meet the needs of struggling readers in the early grades. Classrooms are characterized by differentiated reading instruction based on data from ongoing assessments. Assistance is provided to at-risk readers in a timely manner. RTI practices help to ensure that poor academic performance is not due to poor instruction.

The reauthorized *Individuals with Disabilities Education Improvement Act* (IDEA 2004) includes explicit support for the use of the Response to Intervention (RTI) approach for identifying students with specific learning disabilities (SLD). IDEA 2004 contains the provision to use scientific, research-based interventions as one component of the eligibility process and also allows school districts to use up to 15% of their Part B funds for early intervention services. West Virginia Policy 2419: Regulations for the Education of Students with Exceptionalities uses the following definition of RTI from the National Association of State Directors of Special Education.

RTI is the practice of (1) providing high-quality instruction and intervention matched to student needs and (2) using learning rate over time and level of performance to (3) make important educational decisions.

One of those important educational decisions is determining the presence of a specific learning disability. Only after scientific research-based reading instruction and interventions have been implemented with fidelity for a sufficient duration are districts permitted to use the student's response to intervention as a component of the eligibility decision-making process.

RTI and English Language Learners

RTI and the use of scientific research-based interventions are fundamental changes to IDEA 2004 that have potential impact on LEP students. However,

one of the lingering challenges in educating English language learners is how to distinguish between disability and normal second language learning.

Three specific areas for consideration in making this distinction are 1) influences of a second language on classroom performance, particularly as it relates to the acquisition of reading skills, 2) evaluation, and 3) validated interventions for the bilingual population. While the components of the RTI model can help educators with this critical decision-making process, it must be understood that a critical mass of research has not yet been established, and the following strategies must be used with caution.

First, when considering eligibility for special education, the possible influences of second language acquisition on classroom performance must be addressed. Evaluators in particular must be aware of the extent to which the native language is used at home. The number of years of English instruction is another critical factor that must be documented and considered before concluding that a child's difficulty is related to a disability rather than typical language learning issues.

Evaluation is another important consideration. Ortiz (1997) asserts that there is limited information on when LEPs are ready to be tested in English and suggests that appropriate measurement tools are still limited. He suggests that most instruments underestimate the potential of culturally and linguistically diverse students and notes that patterns include low verbal and high performance scores on tests of cognitive ability. Furthermore, even proficient LEP students may not be ready for *English only* assessments of higher cognitive skills on intellectual and achievement measures.

While RTI practices hold promise for the appropriate identification of LEP students with disabilities (Klingner & Artiles, 2003), it must be noted that research addressing the efficacy of interventions for LEP students is limited and generalizing from monolingual at-risk students to bilingual students is difficult (Vaughn, Mathes, Linan-Thompson & Francis, 2005). Many of the validated interventions used with monolingual students have not yet been implemented and validated with LEP populations. Moreover, the majority of research has been conducted with students for whom Spanish is the native language. Generalizations to other languages should be made cautiously.

One emerging theme in the literature on RTI and LEPs is that there is a core set of instructional behaviors that are effective with this population. Included are:
▪ Use of visuals, gestures and facial expressions in teaching vocabulary and clarifying meaning of content;
▪ Provision of explicit instruction in English language usage; and
▪ Opportunities to give elaborate responses.

Klingner & Artiles propose a three-prong approach for addressing special education for LEPs. These strategies complement and enhance the RTI decision-making process as outlined for monolingual students and are practical methods for distinguishing between disability and typical second language learning processes.

1) Professional development on the exclusionary clause of IDEA must be provided. General classroom teachers must understand the obligation to provide meaningful and adequate opportunities to learn before considering special education options. Interventions must be provided with fidelity and with sufficient duration and intensity.

2) Professionals with expertise in language acquisition must participate at both the informal (grade level teams) and formal (Student Assistance Team, Multi-disciplinary Team, IEP Team) levels.

3) SAT and IEP teams should consider classroom contexts when discussing behavior and learning for LEPs by conducting classroom observations that study the "ecology" of the setting for each child (Harry, Klingner, Sturges & Moore, 2002).

Overview of Response to Intervention (RTI)

A school wide **system of intervention** is a fundamental component of successful RTI implementation. While RTI is supported in the reauthorization of the IDEA and has several implications for special education, intuitively it requires the establishment of a general education structure designed to meet the needs of all students. A tiered approach that includes increasingly more intense levels of student support and instruction can provide the mechanism for addressing the needs of all students, especially those who struggle.

To achieve this goal, it is essential that the core concepts of RTI are understood and operationalized within the context of the whole school. As suggested by its logo, "Building Better Readers," the West Virginia RTI model is a process of teaching students to read and perhaps concluding that a few have specific learning disabilities. Successful implementation is built upon focused and collaborative leadership and practice among general education, special education and Title 1.

Dual systems for ensuring that **all** children achieve are no longer sufficient in the context of No Child Left Behind Act of 2001 (NCLB) and accountability. All staff must work together to provide differentiated reading instruction tailored to meet the diverse needs of learners. It is within this collaborative framework that the RTI model can flourish. By combining resources, sharing knowledge and determining the most effective utilization of staff and other available resources,

schools can develop their practices for implementing the most effective schoolwide intervention model.

Three Tier Reading Model

The Three Tier Reading Model is the foundation of West Virginia's RTI process. The framework for teaching young children to read is based on research showing that the number of children who appear to be struggling is a result of the quality and intensity of instruction. Additionally, some children will require more intense instruction. A smaller number of children will not respond sufficiently even with additional intervention and will require even more time and more intensive intervention to acquire necessary reading skills (Vaughn, 2003).

Success of implementation relies on the strong instructional base provided in general education. The model is designed to prevent reading failure by providing students who are struggling with the supports they need to become proficient in reading. For many children, this support is provided by their classroom teachers and occurs in the general education setting. For some children, the additional support is provided by reading specialists or special education teachers and is provided outside the general classroom.

According to Snow, Burns & Griffith (1998), even for students with specific learning disabilities, it is the intensity of support (e.g., small groups, explicit instruction) rather than the type (e.g., specific program) that increases student achievement. As both research and practice in the area of response to intervention develop, many of the same principles explained here will be applied to other content areas and other grade levels.

The value and strength of the tiered reading model lies in the provision of more intense and explicit instruction as a student moves through the tiers. Differences between tiers are characterized by the amount of time for instruction, group size, frequency of progress monitoring and duration of instruction. Use of research-based reading instructional practices at each tier is critical. For more information on each of the three tiers, see http://wvde.state.wv.us/ose/RtI.html.

Directions for Future Practice
RTI holds promise for the appropriate identification of LEP students with disabilities. Research and practice must lead the way in replacing flawed, inappropriate testing practices with valid measures of achievement. Further research must be conducted to validate interventions that are effective with LEPs' acquisition of reading skills and discern disability from typical second language learning issues.

EVALUATION OF LEP STUDENTS

The formal principles that dictate the conduct of a school psychologist are known as ethics. Ethics dictate that school psychologists consider all information in the context of the student's socio-cultural background and setting in which the student is functioning when evaluating and identifying students for special education eligibility. This has particular relevance when evaluating LEP students for possible special education intervention. Indeed, multifaceted assessment batteries should be used. These assessments must include a focus on student strengths and maximize students' opportunities to be successful in the general culture, while still respecting their ethnic background. Ethical guidelines specify that communications are held and assessments are conducted in the client's dominant spoken language, and all student information is interpreted in the context of the student's sociocultural background and the setting in which the student is functioning (National Association of School Psychologists, 2000).

Performance data of students who are linguistically diverse indicate that the "traditional" way of teaching and learning create serious difficulties for LEP learners. Students who are linguistically diverse often experience academic difficulties and are referred for either bilingual, English as second language, or special education services (Jitendra & Rohena-Diaz 1996). In order to conduct an effective and culturally responsive evaluation of an LEP student for special education services, an evaluator must consider several important ethical issues related to diverse populations and the evaluation process.

Ethical Considerations
1. **Recognizing stereotypes and prejudices**: Brammer (2004) states that "Our Cultural worldview, as created by our values, belief systems, lifestyles, modes of problem solving, and decision-making process, affects how we see each other and the work. Regardless of an individual's ethnic background or identity, prejudices and stereotypes are buried deep within every person's mind. These unacknowledged prejudices often interfere with our work. Subconscious biases can hinder the flow of an evaluating session. All people are prejudiced and have discriminated against others. Realizing our potential for unfair and prejudicial actions allows us to actively explore new ways of thinking and acting". When evaluating a child from a linguistically and/or culturally diverse background, the evaluator should make every effort to separate his/her biases from the evaluation setting.

2. **Establishing a Professional Relationship**: Establishing a professional relationship that is characterized by trust and acceptance is a crucial element for working with a minority child (Satltler & Hogue, 2006). If such a relationship cannot be established, the child should be referred to another evaluator.

3. **Understanding the biases related to the measurement tool:** Many times the diagnostic criteria may be susceptible to bias. Efforts to ensure that all groups for whom a measure is intended are fairly represented in the standardization sample does not necessarily ensure that a measure is free of bias, nor does the absence of relevant groups in a standardization sample necessarily indicate that the measure is invalid (Sattler & Hogue, 2006). Several court cases have considered the validity of IQ tests due to reasons of cultural and linguistic differences (Larry P. v. Riles, 1972; P.A.C.E. v. Hannon, 1980, Diana v. California Board of Education, 1970; Jose P. v. Ambach, 1979). The decisions from these cases support the conclusion that IQ and standardized tests have significant potential for both types of bias. From the evaluator perspective, it is important to realize that there may be biases related to the measurement tool when drawing implications for culturally and linguistically diverse students.

4. **Considering language background variables:** Several recent studies indicate that *students' assessment* results might be confounded by their language background variables. It is noted in many studies that LEP students generally perform lower than non-*LEP students* on reading, science, and math--a strong indication of the impact of English language proficiency on *assessment results*. Moreover, the level of impact of language proficiency on *assessment* of *LEP students* is greater in the content areas with higher language demand. The results of analyses of study conducted by Abedi (2002) also indicate that test item responses by *LEP students*, particularly *LEP students* at the lower end of the English proficiency spectrum, suffered from low reliability. That is, the language background of *students* may add another dimension to the *assessment* outcome that may be a source of measurement error in the *assessment* for English language learners. West Virginia Policy 2417 requires that all LEP students be assessed at least once a year using the Wet Virginia Test of English Language Learning (WESTELL). The results from this annual proficiency test can provide important information regarding individual students' English proficiency.

5. **Increasing skills in the area of evaluating a cultural diverse population:** Evaluators should seek training and/or continuing education that promote their knowledge and understanding of the student's cultural background as well as their own capacity in the use of culturally competent evaluation practices. Evaluation materials and procedures used to assess an LEP student should ensure that the extent to which the student has a disability and needs special education is measured, rather than measuring English language skills. In this endeavor, school districts are required to use culturally unbiased evaluation tools, and to rule out the presence of cultural and linguistic factors when evaluating students from diverse backgrounds for eligibility for special education services.

Practical consideration in the conduct of assessment:

1. **Involve an interdisciplinary team of professionals in the evaluation process.** It is imperative to consult with an ESL specialist or native language specialist. It helps breakdown barriers of communication and interpretation. Factors to consider when consulting might include:

- Review information gathered at the SAT level or through the pre-referral process (see information under Identification or pre-referral procedural considerations). Indeed, this information will be most important in determining an appropriate evaluation plan.

- Obtain information from classroom teacher(s) and others who have frequent contact with the student.

- Ascertain that language proficiency data are current and contain information about academic and social language functioning.

2. **Utilize culturally fair assessments and techniques, with an emphasis on nonverbal tests, informal assessment information, and non-standardized procedures.** Determining appropriate tools, instruments, and resources to complete the evaluation process is one of the most important considerations prior to administrating intelligence and cognitive tests.

- Conduct evaluations over a sustained period of time. Much of the data should consist of informal progress monitoring and intervention response information conducted prior to evaluation. Use dynamic assessments or other similar approaches to assess the student's ability to learn over time when provided with instruction. This is especially critical for LEP students who have recently entered school and may be experiencing culture shock or other social/academic adjustments.

- Use a variety of formal and informal assessments. Evaluation results should be interpreted in view of all information collected. It should include both quantitative and qualitative information that incorporates information about the student's education experiences, response to those experiences, and his/her linguistic and cultural background.

- The use of standardized, norm-referenced tests (and the application of test norms) with LEP students is extremely problematic and should be used with extreme caution. Indeed, only those that have been normed on the population, that have been developed specifically for the population, and are not language dependent or culturally biased (e. g. nonverbal intelligence tests) should be utilized.

- If a speech-language disorder is suspected, assessments should be administered in the child's native/primary language to determine if the speech-language disorder exists in the student's native language as well as English.

- Adaptive Behavior and Behavioral Assessment consideration is critical. In the area of adaptive behavior, parental input is essential. Teacher input alone is insufficient in understanding home and community functioning of a student from a different cultural, linguistic and/or economic background.

- The need and purpose of intelligence testing should be carefully considered prior to the administration of these measures with LEP students. Scores on intelligence or cognitive tests can be strongly influenced by cultural experiences and language functioning. The purpose of cognitive assessment may focus on identifying current strengths and weaknesses on a variety of verbal and nonverbal tasks rather than overall intelligence scores.

- Many intelligence tests have more rigid English language demands in directions and responses and have many timed sections. Translations of such intelligence test are also not valid unless so indicated in the test manual. Therefore, it is important to review the test's manual to determine standardization, item bias, use in specialized populations, any cross-cultural studies, and any recommendations for use with LEP students. Although there is currently no intelligence test that is completely culture free, some instruments are less culturally biased than others. This is especially true for nonverbal cognitive tests. A nonverbal intelligence test is likely to yield a better estimate of an LEP student's intellectual ability than a verbal intelligence test due to its lack of verbal directions and verbal content. Nonverbal intelligence tests that employ no verbal directions, no time bonus points and measure a broad spectrum of reasoning ability are more likely to provide a more accurate picture of an LEP student's cognitive ability. Nonverbal intelligence tests such as the Leiter International Performance Scale-Revised have shown to yield much smaller IQ differences when used with non-English speaking students than with other intellectual measures that have verbal directions, timed items and verbal content.

Intelligence Test	LEP Research Studies	Timed Bonus Items	Age Range	Administration Time	Publisher
Leiter International Performance	Yes	No	2 to 21 years	25 to 45 minutes	Stoelting Company

Scale – Revised					
Naglieri Nonverbal Ability - Individual Administration (Naglieri & Ronning, 2000)	Yes	No	5 to 17 years, 11 months	25 to 30 minutes	Harcourt Assessment
Universal Nonverbal Intelligence Test	Yes	Yes	5 to 17 years, 11 months	45 minutes	Riverside Publishing
Wechsler Nonverbal Scale of Ability	Yes	No	4 to 21 years, 11 months	45 minutes	Harcourt Assessment

- Assessments and evaluation sessions should be reviewed to discuss the effectiveness of the process and include any changes to improve the interpreting process in future meetings or assessment sessions.

3. **Utilize an interpreter/translator (I/T) who speaks the student's native/primary language** during all parts of the evaluation, including student testing, collecting communication samples, and communicating with the student's parents. When interpreters are used in the evaluation process, they should be fluent in English, fluent in student's native language, and also have knowledge or training in assessment administration.

- I/T must be adequately trained in specific assessment procedures and interpreting/translating best practices when assessing a student. Specific attention and guidance may be necessary in the area of maintaining student privacy rights.

- County must provide the I/T with appropriate and necessary resources prior to and throughout the entire process. These materials may include resources such as dictionaries or access to Internet to search specific references in a given language.

- Both the I/T and special education teacher should be present during assessment to allow for needed clarifications, modifications and observation of verbal and nonverbal communication.

- I/T and special education teacher review the assessment to discuss the effectiveness of the process and include any changes to improve the interpreting process in future meetings or assessment sessions.

4. **Establish an evaluation plan that addresses methods for assuring informed parental consent.** The parents of LEP students referred for special education evaluation should receive notices of procedural safeguards and other information in a language they understand. Many of these forms are available in translations of commonly spoken languages in West Virginia (see http://wvconnections.k12.wv.us/translations.html). However, not all parents have fluent literacy skills in their native language and therefore may/may not be comfortable reading documents in their native language. Some parents may in fact prefer receiving information in English. If interpreting services are declined by the parent, the school should provide additional time to review the necessary documents and encourage parents to ask questions throughout the entire process.

ELIGIBILITY DETERMINATION FOR LEP STUDENTS

Policy 2419, Chapter 4 (pages 23-33) discusses processes that must be followed for all students in determining eligibility for special education (regardless of a student's status as "LEP"). However, determining a specific learning disability (SLD) or Speech Language Communication disorder, may be particularly problematic for LEP students due to the language-based nature of the disabilities. For these reasons additional considerations have been highlighted in the following checklist.

The checklist is composed of "General Criteria" that must be addressed when determining any type of disability in LEP students. In addition, there are specific criteria (listed for both SLD and Speech Language Communication Disorders) that should be considered when determining a disability in one of those areas. The checklist should be used to guide the eligibility determination process.

ELIBILITY CONSIDERATIONS CHECKLIST
FOR LEP STUDENTS IN SPECIAL EDUCATION

General Criteria

❑ **Does the Eligibility Committee (EC) have the right type and amount of data to make its determination?** Are there *multiple* and *convergent* data sources? Which existing data can be used to determine if the student is a student with a disability? Do formal and informal measures of student achievement in reading yield similar findings? If not, what are the contributing factors?

❑ **What is the student's learning history?** Have historical data such as previous learning experiences (e.g., preschool experiences) and attendance patterns and their impact on learning levels and rates been considered? Has the child had excessive absences or medical issues that impact how and if the student is learning. Analysis of the student's cumulative folder, parent conference outcomes and assessment data are important factors within the student's learning history.

❑ **What cultural/linguistic factors, specific to LEP students, may be influencing the student's learning**? In addition to the usual referral practices, fact finding in the referral process should seek to ascertain (Scribner, 2002):

a. the extent of appropriate instructional activities and interventions utilized to promote the student's language acquisition, social acceptance, and ultimate learning;
b. student's length of stay in the country;
c. level of family involvement with the dominant culture;
d. primary language used in the home;
e. student's preferred language in the home, at school, and with peers;
f. student's past involvement with language instruction or intervention;
g. level of language proficiency (native language vs. English and surface BICs skills vs. CALP conceptual linguistic functioning);
h. level of acculturation; whether cultural/linguistic differences of the student may explain the presenting problem(s);
i. socioeconomic factors that might produce negative effects or possible benefits for the student;
j. student response to interventions implemented, particularly rate of acquisition when compared to other LEP students of similar age, cultural background, and instructional opportunities;
k. presence of affective factors often found in LEP populations that can help and/or hinder learning;
l. and/or careful review of any other language/cultural variables that might account for the student's academic problems.

Considerations for Determining a Specific Learning Disability (SLD)

❑ **Does the child have a specific learning disability?** Do evaluation results and multiple data sources indicate the student has a specific learning disability in one of the eight areas?

❑ **Was the student provided high-quality instruction in the general education classroom in mathematics and/or the five essential components of reading?** The EC must be confident that the documentation represents research-based instructional interventions implemented with fidelity. If the core reading program is implemented appropriately, most children (approximately 80%) in the class will meet or exceed benchmarks. This information is critical in determining if the problem is related to student factors or instructional factors that affect a number of children in the classroom.

❑ **Was intervention instruction of reasonable intensity and duration?** How long was the student provided Tier II interventions? How long were the intervention sessions? Were the interventions provided by qualified personnel? Were the interventions research-based? Were the interventions implemented with fidelity? Was the student's rate of progress insufficient to close the achievement gap with same-grade peers?

A description of the *specific interventions*, *frequency/duration of the interventions* and other variables such as group size will assist the EC in determining how or if interventions have managed to sustain the student at an adequate level without the provision of specially designed instruction.

This data should be organized to display a summary of the student's individual needs and direct instruction toward very specific planning components. Graphs and charts that depict the student's rate and level of reading achievement over time are necessary to determine the effects of intervention.

❑ **Based on progress monitoring data, does the student exhibit significant differences in his/her level of learning compared to same-grade level peers?** Did other students respond to Tier I and Tier II instruction and intervention while this student remained comparatively unaffected by the instructional adjustments? Is there a marked difference between this student's performance and that of his/her classmates?

❑ **Based on progress monitoring data, does the student exhibit significant deficiency in his/her rate of learning**? If the student proceeds at the current rate of learning, will progress be sufficient to meet State-approved

grade-level standards? Pertaining to reading, in which of the following areas are the deficiencies: basic reading skills, reading fluency skills, reading comprehension? How quickly is the student progressing? Is the student learning slowly but steadily or not at all? What patterns emerge in the data relevant to rate of learning?

❑ **Can exclusionary factors be ruled out?**   If the student's underachievement is due to one of the following, SLD cannot be determined.
o Sensory impairment (vision/hearing)
o Mental impairment
o Emotional-behavior disorder
o Cultural factors
o Environmental or economic disadvantage

Considerations For Determining A Speech/Language Communication Disorder

❑ **Does the child have a specific impairment?** Do evaluation results and multiple data sources indicate the student has a specific speech/language impairment?

❑ **Have the normal behaviors of dual-code learners and users been identified and differentiated from disabilities?**   Information must be obtained regarding the linguistic systems the student uses to compare them to student performance. In this way, an attempt is made to identify expected behaviors. The Speech Language Pathologist (SLP) can then identify the residual behaviors as resulting from a communication disorder. Contrastive analysis of both languages includes some of the following:
o Phonological system: the student may be pronouncing or deleting sounds using the rules and learned behaviors of another language.
o Grammar and syntax rules: the student's behaviors may only reflect the inappropriate transfer of previously learned rules. Also, inconsistent errors may appear as part of the normal learning process.
o Voice quality: harshness, breathiness, loudness, pitch and the production of clicks and glottal stops vary across languages.
o Semantic and vocabulary usage: the student might not be aware that in the second language there is only one word for a concept that uses two words in the first language.
o Dysfluent behaviors: hesitations, false starts, silent pauses, and other dysfluent behavior may be exhibited by a bilingual speaker due to lack of familiarity with English.

INTERVENTION

The Individualized Education Program (IEP) Team must carefully consider and document the effect of a student being a second-language learner on his or her achievement and ability to be involved and progress in the general education curriculum. The IEP Team must also consider what specially designed instruction, including language support, will be needed for the student to benefit from special education and select the service delivery model for that student. The primary purpose of this section is not to outline a comprehensive list of all possible interventions but rather to provide a framework for designing appropriate interventions for the LEP student.

After eligibility has been determined, the ESL and/or special educator working with the student should be utilized to monitor language demands that may be encountered by the LEP student in the general curriculum. They will also need to consult with general educators to promote their understanding and to recommend possible interventions that might promote success for LEP students in their classrooms. These interventions may include the use of various modalities in their instruction, the need to pre-teach concepts/vocabulary, use of cooperative/collaborative learning strategies to promote language acquisition and social integration/acceptance. Other best practices include:
1. Set high expectations and prepare the student to meet state and national standards and promotion, graduation, and post-graduation requirements.
2. Align curriculum, assessment, and intervention to meet student needs and use ongoing assessments to inform and customize instruction.
3. Provide native language instructional support while the student is learning English.
4. Use cooperative teaming groups, role playing, dialogue journals, and other forms of active and interactive learning.
5. Facilitate parent involvement.
6. Use interpreters or bilingual school staff to assist the student and his family during the transition to English.

IDEA emphasizes that students with disabilities will have access and progress in the general curriculum. Intervention for LEP students in the classroom may include:
- Adapting instruction to meet the child's specific needs such as modifying assignments, activities and tests.
- Consulting with the teacher regarding the student's individual needs and learning styles.
- Selecting appropriate materials and instructional strategies.
- Helping students learn pragmatic and social-cultural aspects of language that will enable them to participate in activities in classroom.

The provision of special education services for LEP students is a challenge for educators. It is essential that special educators and ESL teachers work together to determine appropriate services for LEP students.   Additional information regarding county policies and resources may be obtained from special education directors in each county.

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