New York State Education Department
Office of Special Education
Educational Partnership

Distinguishing Language Acquisition from Disability

Part 1: Background and Core Concepts

Developed by the Technical Assistance Partnership (TAP) for Equity at New York University

Last updated: December 8, 2025

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Disclaimer

The resources shown are designed to provide helpful information. Resources are provided for instructional use purposes only and do not constitute NYSED endorsement of any vendor, author, or other sources. To the best of our knowledge, the resources provided are true and complete.

Our Team

Today's Facilitators

Meeting Norms

- Take care of your needs (water, food, restroom, etc.)
- Speak your truth – Use "I" statements
- Ask what you need to understand and contribute
- Listen with respect
- Push your growing edge
- Participate and struggle together
- Expect a lack of closure
- Respect each other's needs and learning styles

Blueprint for Improved Results for Students with Disabilities

Self-Advocacy

Students engage in self-advocacy and are involved in determining their own educational goals and plan.

Family Partnership

Parents, and other family members, are engaged as meaningful partners in the special education process and the education of their child.

Specially-Designed Instruction

Teachers design, provide, and assess the effectiveness of specially-designed instruction to provide students with disabilities with access to participate and progress in the general education curriculum.

Research-Based Instruction

Teachers provide research-based instructional teaching and learning strategies and supports for students with disabilities.

Multi-tiered Support

Schools provide multi-tiered systems of behavioral and academic support.

Inclusive Activities

Schools provide high-quality inclusive programs and activities.

Transition Support

Schools provide appropriate instruction for students with disabilities in career development and opportunities to participate in work-based learning.

Blueprint for English Language Learner (ELL) Success

Planning and Collaboration

All teachers are teachers of ELLs and need to plan accordingly

Meeting the Needs of ELLs

All school boards and district/school leaders are responsible for ensuring that the academic, linguistic, social, and emotional needs of ELLs are addressed

Engaging Instruction

Districts and schools engage all ELLs in instruction that is grade-appropriate, academically rigorous, and aligned with Learning Standards

Recognizing Assets

Districts and schools recognize that bilingualism and biliteracy are assets and provide opportunities for all students to earn a Seal of Biliteracy

Involving Families

Districts and schools value all parents and families of ELLs as partners in education and effectively involve them in the education of their children

Leveraging Educator Expertise

District and school communities leverage the expertise of Bilingual, English as a New Language (ENL), and Languages Other Than English (LOTE) teachers and support personnel while increasing their professional capacities

Valuing Home Cultures

Districts and school communities leverage ELL home languages, cultural assets, and prior knowledge

Using Appropriate Assessments

Districts and schools use diagnostic tools and formative assessment practices in order to measure ELLs' content knowledge as well as new and home language development to inform instruction

Why is this work important?

"The mission of the NYSED OSE, supported by all offices within NYSED, is to ensure that students with disabilities have opportunities to benefit from high-quality instruction, to reach the same standards as all students, and to leave school prepared to successfully transition to post school learning, living and working."

"The mission of the NYSED OBEWL, is to ensure that all New York State ELLs attain the highest level of academic success and that all Multilingual Learners (MLs) – which include ELLs, Former/Ever ELLs, World Languages students, and heritage speakers of World Languages – achieve the highest level of language proficiency in English and in one or more other languages."

Culturally Responsive-Sustaining Education (CRSE)

Welcoming and Affirming Environments

Inclusive Curriculum and Assessment

High Expectations and Rigorous Instruction

Ongoing Professional Learning

Training Objectives

Participants will be able to:

- Understand core concepts for teaching ELLs, including relevant laws, subgroups, and the process of second language acquisition.

- Identify core concepts of special education, including relevant laws, classification types, and the continuum of services.

- Recognize core concepts of MTSS, including specific considerations for ELLs.

- Analyze State guidance documents related to special education and ELLs.

Agenda

- Welcome
  - Introduction, Community Invitations, Blueprints
  - Training Objectives, Agenda, Materials
- Core Concepts: English Language Learners (ELL)
- Core Concepts: Students with Disabilities
- Core Concepts: Multi-Tiered System of Supports (MTSS)
- Activity: Review of State Guidance
- Wrap-up, Questions, and Survey

Materials

- Part 1 Core Concepts - Slides
  - This PDF copy of the training slides provides a reference and resource for participants.

- Handout: Key Terms
  - Key terms to know from Parts 1 and 2 of this training series.

- NYSED Special Education Field Advisory *Use of Standardized Scores in Individual Evaluations of Culturally and Linguistically Diverse English Language Learners Ages 3 through 21*
  - Full text of the December 2014 memo.

- Handout: Field Memo 2014 Key Points
  - This summary of key points from the 2014 field memo will be provided after the final activity as a reference.

- NYSED OSE and OBEWL Joint Memo *Bilingual and English as a New Language (ENL) Services for English Language Learners (ELLs) who are Students with Disabilities*
  - Full text of the January 2024 memo.

- Handout: Joint Memo 2024 Key Points
  - This summary of key points from the 2024 joint memo will be provided after the final activity as a reference.

Slide Marker Icons

Activity

Handout

Poll

Discussion

Reflection

Action Plan

Core Concepts: ELLs

- Open-source photo by Allison Shelley for EDUimages

A Note about Language

- NYSED uses the term **ELL** to refer to students with home or primary languages other than English who need support in reaching English language proficiency

- NYSED uses the term **ML** (or MLL prior to 2001) to refer to:

  - students who are or ever have been ELLs

  - World Languages students

  - heritage speakers of World Languages

- ELLs are a subset of MLs

- Garcia, 2021

ELL Education Law
Lau v. Nichols & NYS CR Part 154

- **Lau v Nichols (1974)**
  - Supreme Court case resulting in federal education guidelines:
    - Equal Education Opportunity Act of 1974
  - Schools receiving federal funds must provide non-English-speaking students with supplemental instruction in the English language to ensure that they receive an equal education
- **New York State (NYS) Commissioner's Regulations (CR) Part 154 (2014-present)**
  - Refer to students who:
    - Have limited English proficiency (LEP), referred to in NYS as ELLs
    - Have LEP due to foreign birth or ancestry–speak a language other than English
    - Understand and speak little or no English; OR
    - Score below the state designated level of proficiency on the state assessments for English language proficiency
  - ELLs must be given opportunities to achieve the same educational goals and standards established for all students

- Crawford, 1996; New York State Education Department, 2018 & 2019a

ELL Education Law *(2)*

IDEA & ESSA

- **Individuals with Disabilities Education Act (IDEA), 2004** - Part B: Culturally and Linguistically Diverse (CLD) populations:
  - Assessment and evaluation materials should not be racially or culturally discriminatory
  - Assessment and other evaluation materials are to be provided in the child's native language or other mode of communication unless it is clearly not feasible to do so
  - A child must not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading or math or limited English proficiency
  - Parents are entitled to an interpreter for Individualized Education Program (IEP) meetings if needed

- **Every Student Succeeds Act (ESSA), 2015** - regulations relating to ELLs:
  - States must set requirements for ELL screening procedures, including identification, monitoring, and reclassification
  - Establishment of accountability subgroups for ELLs
  - First-year newcomer ELLs are either exempt from testing or their results are not reported
  - Educator professional development and training requirements

ELL Education Law *(3)*

NYC specific laws

- Aspira v. NYC Board of Education
  - Lawsuit filed in 1972 by members of the Puerto Rican community in response to lack of equal opportunity for education for bilingual children
  - Aspira Consent Decree (1974) - required creation of Transitional Bilingual Education (TBE) program
  - Set the stage for further reforms and ELL supports across the state and beyond

- Jose P. v. Mills
  - Lawsuit filed in 1979 by parents of students with disabilities
  - 1982 order requires compliance with federal laws for evaluation, placement, and services for students with IEPs
  - Numerous amendments and sub-orders have been filed since

- Reyes, 2006; Advocates for Children of New York, n.d.

ELL Subgroups
Defined in NYSED CR Part 154

Subgroup	Definition
Newcomer	0-3 years in US schools as an ELL
Developing	4-6 years in US schools as an ELL
Long-Term	7+ years in US schools as an ELL
Former	Exited ELL status per CR Part 154 criteria
Students with Interrupted/Inconsistent Formal Education (SIFE)	less than 1 year in US school **&** 2+ years below grade level due to inconsistent schooling
ELL with Disabilities	Identified as ELL **&** has an IEP

ELL Subgroups *(2)*

SIFE

- SIFE students may:
  - Have low or no literacy and/or math skills in the home language
  - Lack familiarity with school culture and procedures
  - Have trauma-related social-emotional needs
  - Be at high risk for dropping out

- CR 154 SIFE Identification:
  - SIFE Interview Questionnaire
  - Multilingual Literacy SIFE Screener
  - Writing Screener

ELL Program Types in New York State

Bilingual Education (BE)

- Transitional Bilingual Education (TBE)
  - Students with the same home language are grouped
  - Receive content instruction in their language & separate English instruction
  - Content is transitioned to English over time until students join general education classrooms
- Dual Language Education (DL)
  - Students become bilingual, with some content taught in the home language and some in the target language
  - One-Way (students are from the same home language) or Two-Way (native English speakers and ELLs mixed)

English as a New Language (ENL)

- Content areas are taught in English with an English language development component
- Teacher certification requirements vary between integrated and stand-alone models as well as by grade band
- Students may be taught in general education classes with English-speaking peers and receive accommodations and language support within the content class (**integrated** ENL) or be taught in a separate class (**stand-alone** ENL)

Stages of Second Language Acquisition (SLA)

Stages	Characteristics
Pre-Production	Called the "silent period" when the student takes in the new language but does not speak it. This often lasts 6 weeks or longer, depending on the person.
Early Production	The individual begins to speak using short words and sentences, but the emphasis is still on absorbing the new language. There will be many errors at this stage.
Speech Emergent	Speech becomes more frequent, words and sentences are longer, but the individual relies heavily on context clues. Vocabulary continues to increase and errors begin to decrease.
Beginning Fluency	Speech is fairly fluent in social situations with minimal errors. New contexts and academic language are challenging. Struggles in expressing self, due to gaps in vocabulary and appropriate phrases.
Intermediate Fluency	Individual communicates fluently and is able to speak fluently in new situations or academic situations but there will be gaps in vocabulary and unknown expressions.
Advanced Fluency	Individual communicates fluently in all contexts and can maneuver when exposed to new contexts and academic information—might use idiomatic expressions incorrectly.

Robertson & Ford, 2009

Social vs Academic Language

A comparison

Basic Interpersonal Conversation Skills (BICS)	Cognitive Academic Language Proficiency (CALP)
Social language	Academic language
Cognitively undemanding	Cognitively demanding
Casual	Formal
Non-instructional	Instructional
Develop native speaker fluency within 2 years of immersion	Typically takes 5-7 years of immersion to develop native speaker fluency
Sometimes referred to as survival language	Language needed to succeed in an academic setting and used to persuade and analyze
High frequency words	Content-specific words

Receptive vs Expressive Language

Receptive Language	Expressive Language
Reading and listening	Speaking and writing
Also known as language input	Also known as language output or production
The ability to understand and comprehend what is read/heard	Being able to put thoughts into sentences, orally or in writing
Comprehensible input	Takes longer to learn

Language Interference

Second language learners interpret and produce sounds in a manner that conforms with sounds that already exist in their word vocabulary. They use prior knowledge in their home language (L1) to acquire a second language (L2).

- Natural part of language acquisition process

- Should not be considered abnormal in any manner

- Represents the brain's attempt to make sense and meaning by connecting it to what it already knows

- Ortiz, 2011

Language Interference *(2)*

- Transfer of rules from L1 into L2

- Also known as negative transference

- E.g. "False friends" or cognates, which are words that look similar but have different meaning in the two language

Vowel Sounds Across Languages		
Language	**Features**	**Possible confusion**
Arabic	8 vowels and diphthongs	Short vowels
Cantonese	6 vowel sounds and 12 diphthongs	Chinese is a tonal language. The tone of each syllable conveys different meaning.
English	20(ish) vowels and diphthongs	
Hmong	6 pure vowels and 7 diphthongs	Hmong is a tonal language. The tone of each syllable conveys a different meaning.
Russian	5 vowels, no diphthongs	Difficulty with /ur/ after /w/ (as in work); Difficulty with short vowels /a/ and /e/
Spanish	5 pure vowel sounds and 13 diphthongs	Sounds of long e and short I, oo as in pool, short u as in pull
Vietnamese	Complex vowel system with 11 pure vowels and many more diphthongs and triphthongs	Vietnamese is a tonal language. Length of vowel sounds carry different meanings.

Adapted from Garcia, Goldenberg, & Short. (2005). *Making content Comprehensible for English Learners: The SIOP Model.*

Translanguaging

Translanguaging is when a bilingual or multilingual person uses their full range of linguistic repertoire – that is, components of both or multiple languages.

In teaching, translanguaging is allowing students to use both the native and new language in the classroom, recognizing that the native language is an **asset to their learning**.

Advanced Literacies

21st Century Reading and Writing

"Reading and writing—language-based competencies—have become prerequisites for participation in nearly every aspect of day-to-day, 21st century life. There was a time when basic literacy skills provided a clear path forward, when extended reading and writing were the business of education and only necessary for participation in white-collar professions. But today, **students need to develop an increasingly complex set of advanced literacy skills and competencies in order to access social and economic opportunities**." (Topic Brief 1)

Communicate	Understand	Access
Communicate (orally and in writing) in increasingly diverse ways and with increasingly diverse audiences.	Understand and use print for a variety of purposes.	Access and participate in academic, civic, and professional communities, where knowledge is shared and generated.

Advanced Literacies *(2)*

Hallmarks of Instruction for Linguistically Diverse Students

"Meeting today's demands for what counts as 'literate' requires a new approach to instructional leadership [and] a need to focus attention on strengthening the instructional core."

21st-Century instruction for all students to access advanced literacies should be grounded in these hallmark practices.

Hallmark 1: Work with engaging texts that feature big ideas and rich content

Hallmark 2: Talk/discuss to build both conversational and academic language and knowledge

Supported by school-wide protocols

Hallmark 3: Write to build language and knowledge

Hallmark 4: Study a small set of high-utility vocabulary words and academic language structures to build breadth and depth of knowledge
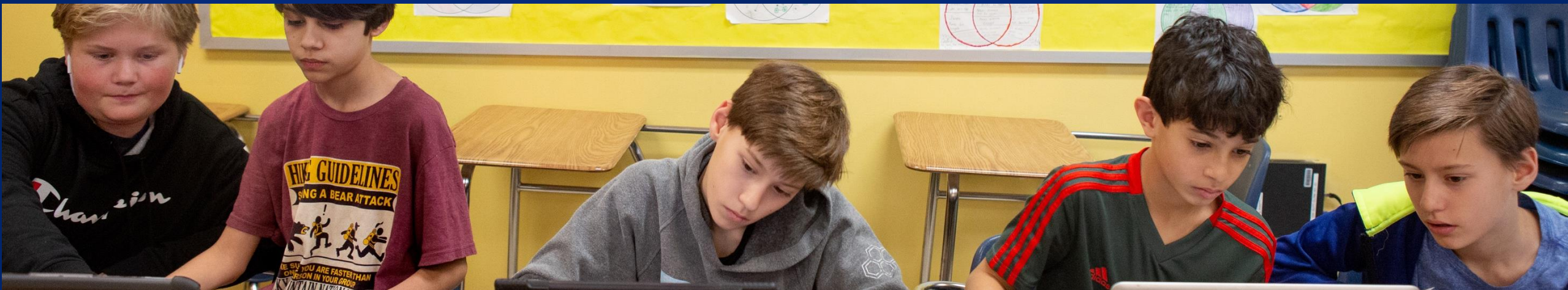
Review:
Core Concepts-English Language Learners

Reflection

- What did I learn?
- What questions do I have?

Core Concepts: Students with Disabilities

Students with Disabilities Education Law

IDEA

- IDEA is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children
  - Law guarantees ALL children with disabilities in the U.S. access to a **Free and Appropriate Public Education (FAPE)** in the **Least Restrictive Environment (LRE)**

- FAPE - Special education and related services that have been provided at public expense, and without charge and are provided in conformity with an IEP

  - Students with disabilities have the right to education regardless of disability —schools are legally bound to provide services as needed

- LRE - To the maximum extent appropriate, children with disabilities are educated with children who are not disabled

  - Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily

Students with Disabilities Education Law *(2)*

Part 200 of the Regulations of the Commissioner of Education - Students with Disabilities

A student with a disability means a student with a disability as defined in section 4401(1) of the Education Law who;

- has not attained the age of 21 prior to September 1st; and
- is entitled to attend public schools pursuant to section 3202 of the Education Law;
- because of mental, physical or emotional reasons, has been identified as having a disability; and
- requires special services and programs approved by the NYSED.

Eligibility and Classification

Eligibility is based on the determination that the student because of mental, physical or emotional reasons, requires special services or programs, including as appropriate related services, to meet his or her unique needs and to participate and progress in the general curriculum AND meets one of the **thirteen disability classifications**

- Eligibility is determined by the **Committee on Special Education** (CSE) or **Committee on Preschool Special Education** (CPSE), which includes the student's parent/guardian(s), and is based on the results of an individual evaluation
- The CSE/CPSE <u>may not</u> determine that a student needs special education services if the determinant factor is limited English proficiency
- For all ELL students with disabilities, the CSE/CPSE must consider how the student's language needs relate to the IEP

The IEP

- An IEP is a written statement for a student with a disability that is developed, reviewed and revised by a CSE to meet a student's unique needs.

    - Includes special education programs, related services (speech therapy, counseling, etc.), and other components required by regulations, such as CR-Part 154 for ELLs
    - Indicates the educational setting where the student's IEP can be implemented (placement) based on the least restrictive environment
    - Tracks child's current abilities and needs (academic, social development, physical development, and management needs), goals, and means of measuring progress throughout the year
    - Is reviewed annually to track progress and, if appropriate, revised by the CSE

Disability Classifications

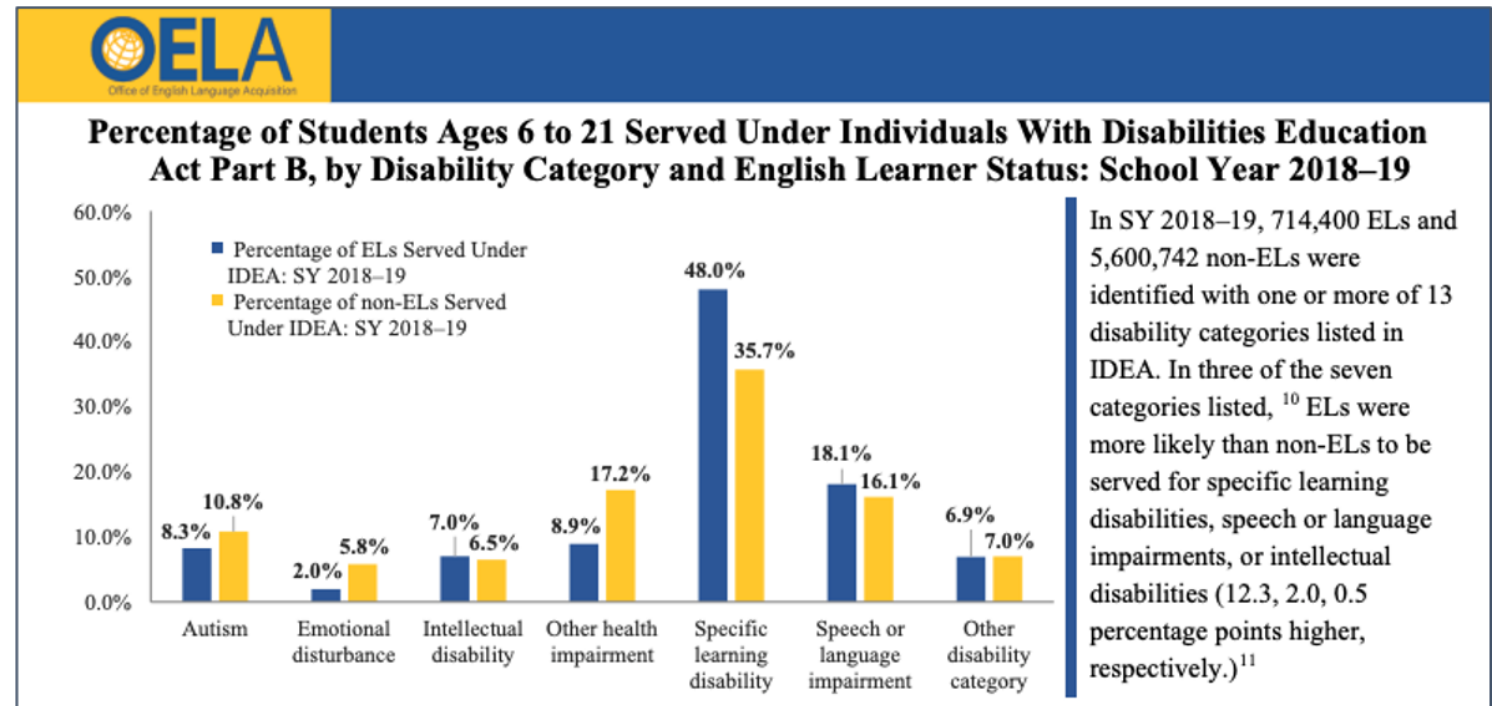The 13 Disability Classifications defined in section 200.1(zz) of the Regulations of the Commissioner of Education are:

- Autism
- Deafness
- Deaf-Blindness
- Emotional Disability
- Hearing Impairment
- Learning Disability
- Intellectual Disability

- Multiple Disabilities
- Orthopedic impairment
- Other health-impairment
- Speech or language impairment
- Traumatic brain injury
- Visual impairment including blindness

Classification of Students with Disabilities

Percentage of Students Ages 6-21 Served Under IDEA Part B, by Disability Category and ELL Status: School Year 2018-2019

- Over 40% of all students categorized as having a disability are categorized under Learning Disability

- ELLs are more likely than non-ELLs to be categorized under Learning Disabilities, Speech or Language Impairment, or Intellectual Disability

OELA — Office of English Language Acquisition

Percentage of Students Ages 6 to 21 Served Under Individuals With Disabilities Education Act Part B, by Disability Category and English Learner Status: School Year 2018–19

Legend:
- Percentage of ELs Served Under IDEA: SY 2018–19
- Percentage of non-ELs Served Under IDEA: SY 2018–19

Category	ELs	non-ELs
Autism	8.3%	10.8%
Emotional disturbance	2.0%	5.8%
Intellectual disability	7.0%	6.5%
Other health impairment	8.9%	17.2%
Specific learning disability	48.0%	35.7%
Speech or language impairment	18.1%	16.1%
Other disability category	6.9%	7.0%

In SY 2018–19, 714,400 ELs and 5,600,742 non-ELs were identified with one or more of 13 disability categories listed in IDEA. In three of the seven categories listed, [10] ELs were more likely than non-ELs to be served for specific learning disabilities, speech or language impairments, or intellectual disabilities (12.3, 2.0, 0.5 percentage points higher, respectively.) [11]

Learning Disability

A disorder in one or more basic psychological processes involved in understanding or using language, spoken or written, which manifests itself in an imperfect ability to:

- Listen
- Think
- Speak
- Read
- Write
- Spell
- Do mathematical calculations

Speech or Language Impairment

A communication disorder that adversely affects a student's educational performance.

- Stuttering

- Impaired Articulation

- Language Impairment

- Voice Impairment

Special Education Continuum of Services in New York

- **Consultant Teacher (CT)** - direct and/or indirect services provided to a school-age student with a disability in the student's general education classes, including career and technical education classes, and/or to such student's general education teachers
  - **Direct CT Services**: specially designed individualized or group instruction provided by a certified special education teacher to a student with a disability to aid such student to benefit from the student's general education classes
  - **Indirect CT Services**: consultation provided by a certified special education teacher to general education teachers to assist them in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a student with a disability

Continuum of Services *(2)*

- **Resource Room** - specialized <u>supplementary</u> instruction in an individual or small group setting for a portion of the school day. It can be provided in a separate room or in the general education classroom

- **Integrated Co-Teaching (ICT)** - two teachers co-teach a class of students with and without disabilities
  - At minimum, one teacher is a certified content area/general education teacher and the other is a special education teacher
  - Number of students with IEPs must be less than 12 within the class

- **Special Class** - students receive their primary content instruction in a separate, smaller class of only students with disabilities

Review:
Core Concepts-Students with Disabilities

Reflection

- What did I learn?
- What questions do I have?

Core Concepts: MTSS

MTSS: Key Terms

- **Accommodation** - adjustment to the environment, instruction or materials that allow a student with a disability to access the content or complete assigned tasks.
  - Accommodations <u>do not alter what is being taught</u>.
  - e.g. sign language interpreter
- **Modification** - a change in the curriculum or measurement of learning.
  - e.g. reduced number of questions, alternate grading system
- **Intervention -** additional instruction which supplements the instruction provided in the general curriculum.
  - for students who struggle with specific skills and/or Standards based on data
  - shall be made available to students with disabilities on the same basis as nondisabled students

Accommodations versus Modifications

The difference between accommodations and modifications may differ based on the context of what is being measured.

For example:

- Translating content words for a newcomer ELL in a science class would be considered an <u>accommodation</u>, since it is an adjustment that does not alter content.

- Translating during an English class would be a <u>modification</u> because it is a change in the content - in this case, the English words are the content

MTSS

- **MTSS** is an umbrella of services within a school or district
  - includes many programs and services, including but not limited to:
    - Parent/family and community involvement
    - Positive Behavioral Interventions and Supports (PBIS)
    - Social-Emotional Learning (SEL)
    - Academic Interventions
- Designed to support ALL students in the school
- All interventions at each level are data-based
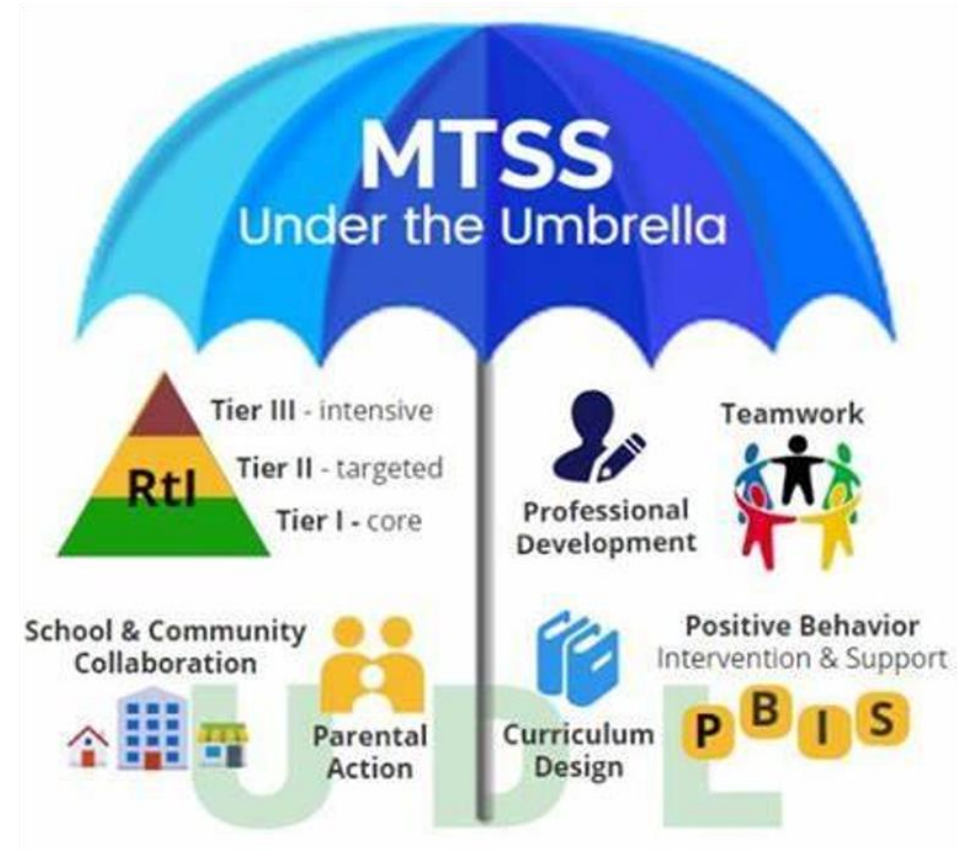
MTSS Tiers

Within **MTSS**, and other tiered intervention systems, there are three tiers of support:

- Tier 1: Core Instruction
  - Available to the whole school via classroom instruction
  - Successful for 80-90% of students
- Tier 2: Targeted Support
  - Available to some students, based on data from tier 1 and/or universal screening assessments
  - Needed for 5-15% of the school population
- Tier 3: Intensive Intervention
  - Needed for approximately 5% of students
  - Determined by data-based needs after tier 2 intervention and progress monitoring
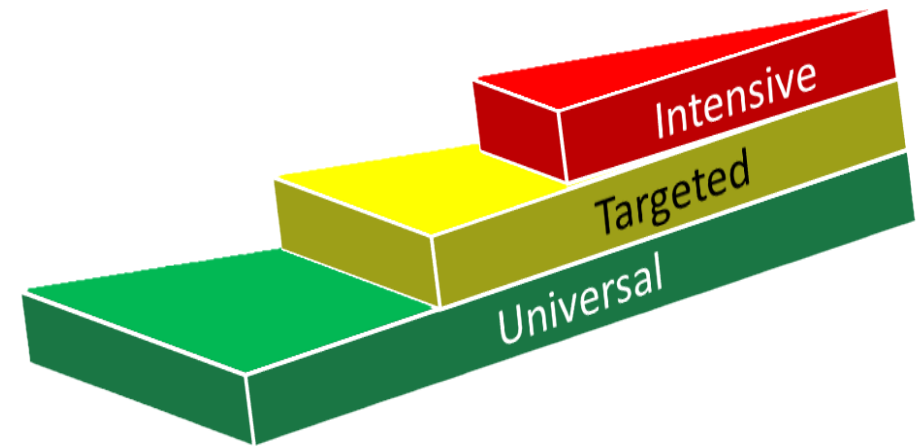
Assessments: MTSS Data Sources

MTSS is a data-driven process, so there are numerous assessments embedded in the MTSS process:

Screen	Respond	Monitor	Improve
Screen all students using validated processes.	Adjust core instruction and/or provide interventions.	Evaluate instruction and interventions with data.	Reflect on process and adjust for the next screening period.

- Image: Center on Multi-Tiered System of Supports, 2025
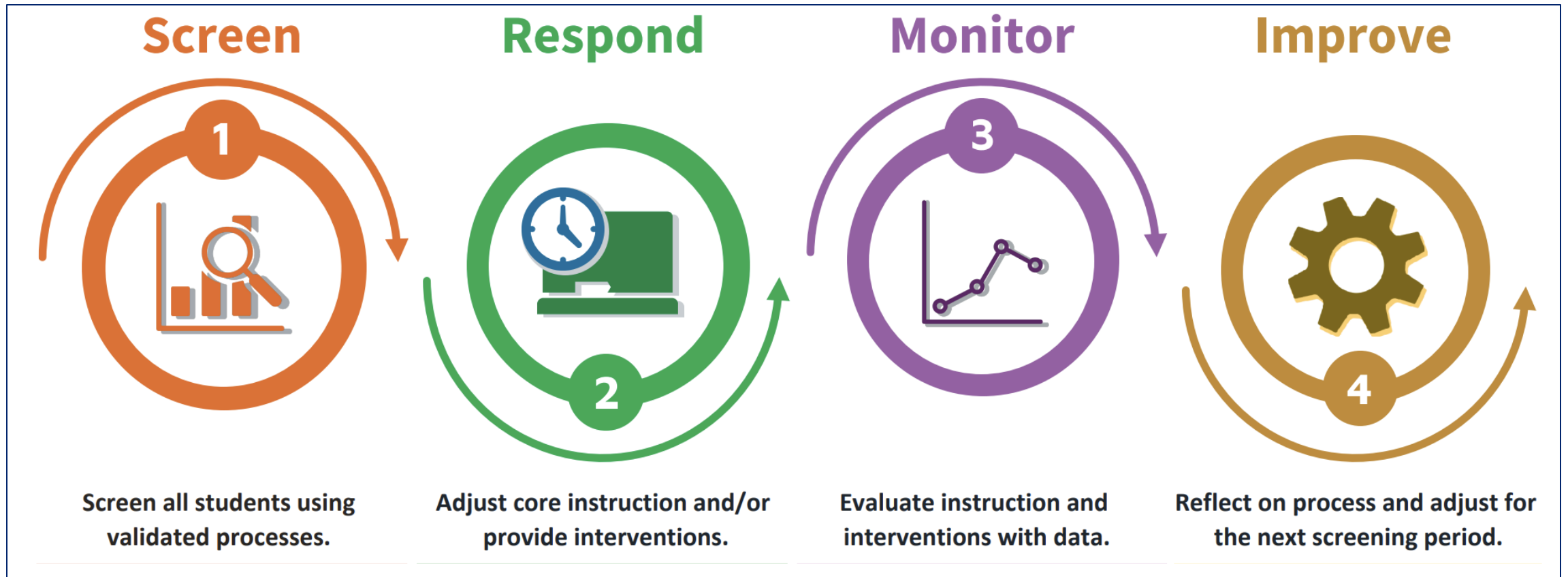
MTSS Supports All Students

The ultimate purpose of MTSS is **not** to determine whether a student qualifies for special education, but rather to enhance the success of students with a variety of academic and/or behavioral needs.

Considerations for MTSS Implementation

Considerations for Implementing MTSS for ELL Students

- Interventionist knowledgeable about second language acquisition

- Intervention that is evidence-based and culturally responsive

- Progress monitoring considers the different benchmarks for ELLs
  - Teachers need to consider the different phases of language acquisition – early production, speech emergent, etc. - when reviewing data of ELLs in comparison to English-speaking peers
  - Comparisons to true peers (i.e., students with the same home language and culture and similar educational histories) should be used
  - Teachers need to consider whether the student is SIFE

- Home language instruction/support where needed to rule out learning difficulties
  - Literacy and oral language in development in L1 impacts L2

Review:
Core Concepts-MTSS

- What did I learn?
- What questions do I have?

Activity: Review of State Guidance

State Guidance Memos

- **December 2014 - Special Education Field Advisory:** Use of Standardized Scores in Individual Evaluations of Culturally and Linguistically Diverse English Language Learners Ages 3 through 21
  - "provides information on the appropriate use of standardized scores in the individual evaluation of culturally and linguistically diverse ELLs in order to identify them as having disabilities and determine their need for special education programs and services"

- **January 2024 - Joint OSE & OBEWL Memo:** Bilingual and English as a New Language (ENL) Services for English Language Learners (ELLs) who are Students with Disabilities
  - "clarifies NYSED policy regarding the right of English Language Learners who are identified as eligible for special education to continue receiving language acquisition services"

Activity: State Guidance, Part A

Special Education Field Advisory December 2014
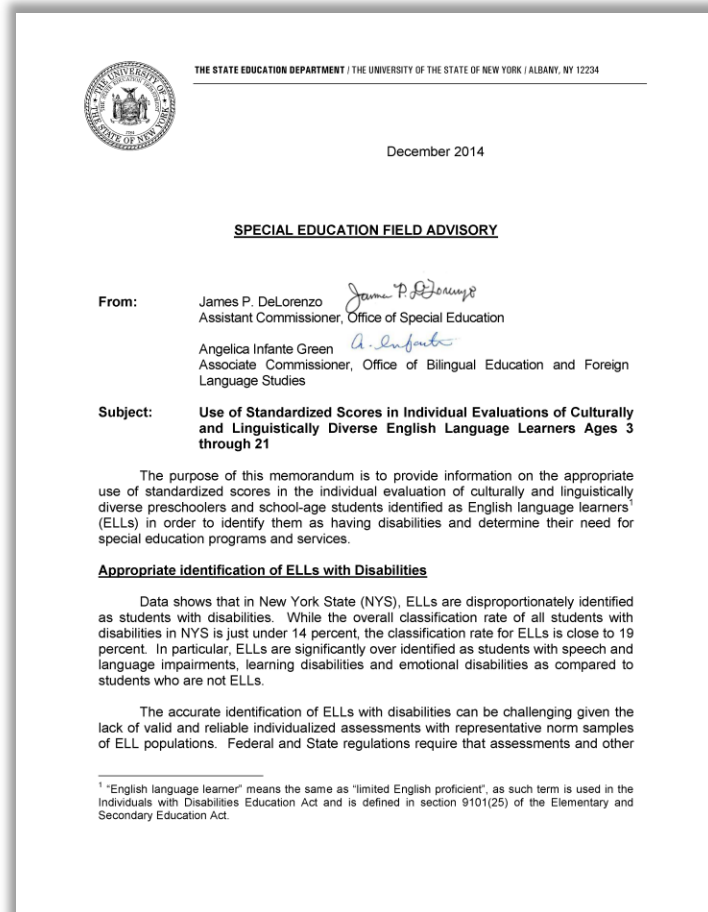
- Assign a note taker and a speaker for the group
- Read the memo (5 minutes)
- In a small group, discuss what resonates with you from each section, common themes, and implications for your school/district (10 minutes)
- When called on, your group speaker will share your group's responses (5 minutes for all groups)

12/2014 Key Points & Takeaways

Special Education Field Advisory

Assessment:

- ELLs are **disproportionately identified** as students with disabilities (particularly learning disability, speech impairment, and emotional disturbance)
- **Assessment** must be in the home language, free of bias or discrimination, and must measure the extent of the disability, not proficiency in English
- **Scores** may not be reported if the tests are not valid and reliable, including standard administration

Evaluation:

- A **qualitative** description and analysis of abilities, strengths, and needs is required
- Care must be taken when interpreting evaluation results that issues of **language differences** are not confused with disorders and performance related to **socio-cultural background** or **interrupted schooling** are not mistaken for a disability
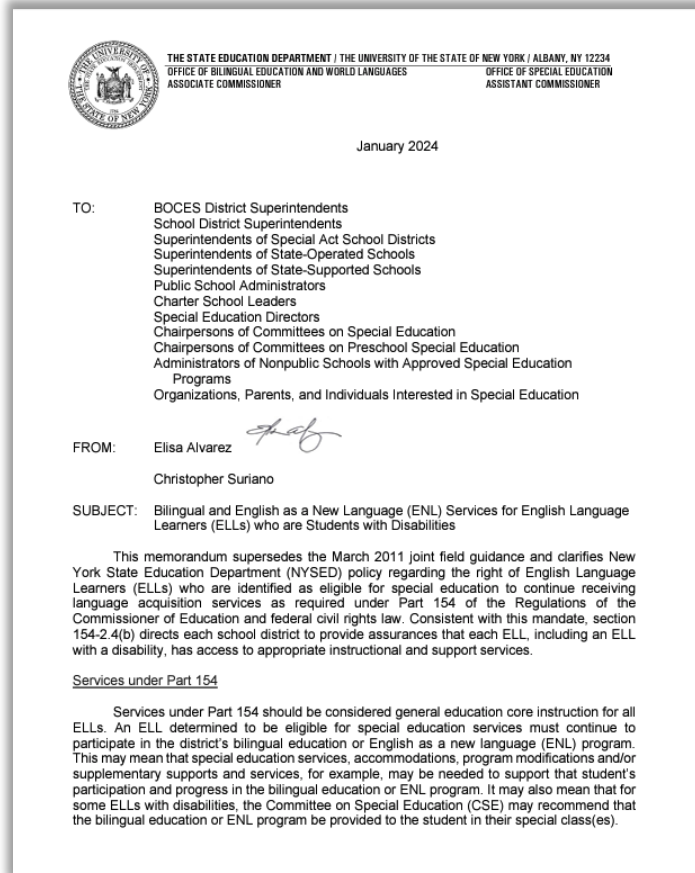
12/2014 Key Points & Takeaways *(2)*

Special Education Field Advisory

- Committee on Special Education:
  - An individual with **expertise** in second language acquisition who can interpret the instructional implications of the evaluations and is **knowledgeable** about the student's English and home language development needs must be included in the Committee on Special Education

- Eligibility:
  - **RTI data** should be included in determining eligibility for special education to ensure that the determinant factor is not English language proficiency

- Special Considerations:
  - The CSE must fully consider the **second language needs** of the student as they relate to the **IEP** if the student is determined to have a disability, including if and how the student will benefit from participation in English as a New Language (ENL), Bilingual, and Special Education program models

Activity: State Guidance, Part B

Activity

Joint Memo January 2024

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
OFFICE OF BILINGUAL EDUCATION AND WORLD LANGUAGES — ASSOCIATE COMMISSIONER
OFFICE OF SPECIAL EDUCATION — ASSISTANT COMMISSIONER

January 2024

TO: BOCES District Superintendents
School District Superintendents
Superintendents of Special Act School Districts
Superintendents of State-Operated Schools
Superintendents of State-Supported Schools
Public School Administrators
Charter School Leaders
Special Education Directors
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Administrators of Nonpublic Schools with Approved Special Education Programs
Organizations, Parents, and Individuals Interested in Special Education

FROM: Elisa Alvarez
Christopher Suriano

SUBJECT: Bilingual and English as a New Language (ENL) Services for English Language Learners (ELLs) who are Students with Disabilities

This memorandum supersedes the March 2011 joint field guidance and clarifies New York State Education Department (NYSED) policy regarding the right of English Language Learners (ELLs) who are identified as eligible for special education to continue receiving language acquisition services as required under Part 154 of the Regulations of the Commissioner of Education and federal civil rights law. Consistent with this mandate, section 154-2.4(b) directs each school district to provide assurances that each ELL, including an ELL with a disability, has access to appropriate instructional and support services.

Services under Part 154

Services under Part 154 should be considered general education core instruction for all ELLs. An ELL determined to be eligible for special education services must continue to participate in the district's bilingual education or English as a new language (ENL) program. This may mean that special education services, accommodations, program modifications and/or supplementary supports and services, for example, may be needed to support that student's participation and progress in the bilingual education or ENL program. It may also mean that for some ELLs with disabilities, the Committee on Special Education (CSE) may recommend that the bilingual education or ENL program be provided to the student in their special class(es).

- Assign a note taker and a speaker for the group

- Read the memo (5 minutes)

- In a small group, discuss what resonates with you from each section, common themes, and implications for your school/district (10 minutes)

- When called on, your group speaker will share your group's responses (5 minutes for all groups)

1/2024 Key Points & Takeaways

Special & Bilingual Education Joint Memo

- Services Under Part 154
  - Part 154 services are considered **general education core instruction** for all ELLs
  - Dually-identified students **must continue to participate** in the bilingual education or ENL program
  - **SDI must be considered** for dually-identified students but does <u>not</u> replace the BE/ENL program
    - Qualified SDI staff include those with certification in special education, reading with bilingual extension, and/or ESOL
  - No personnel, including the CSE, has authority to terminate placement in a BE/ENL program unless the student has met the **exit criteria**

- CPSE
  - CPSE determines if a bilingual evaluation is needed <u>prior</u> to meeting
  - Personnel with **knowledge of second language needs** should be invited to CPSE meetings
  - **IDEA applies to school age and preschool (ages 3-21)**, therefore bilingual special education and/or bilingual related services are legal entitlements and must be discussed by the CPSE

1/2024 Key Points & Takeaways *(2)*

Special & Bilingual Education Joint Memo

- CSE
  - There is **no minimum period** that must pass prior to evaluating a newly enrolled ELL for special education services
  - ELLs are entitled to certain testing accommodations, but the CSE must also identify in the IEP of an ELL with a disability any **individual testing accommodations** needed by the student as a result of their disability
  - The CSE for an ELL student with disability <u>must</u> include **at least one individual who is appropriately certified** in BE or ESOL
  - In developing an IEP for an ELL with a disability:
    - CSE must consider whether the required ELL services must be met, in part or in total, through **special education programs and services in which BE/ENL instruction are provided**
      - Such considerations include, but are not limited to:
        - Supports for English language arts instruction & content area instruction in English
        - ENL instruction or, for students in BE, home language content area and language arts instruction
        - Whether the student needs bilingual special education and/or bilingual related services

1/2024 Key Points & Takeaways *(3)*

Special & Bilingual Education Joint Memo

- Declassification from ELL Status
  - The **sole criterion** for exiting ELL status in NYS, including for students attending out-of-district programs, is:
    - Scoring at the Commanding level on the NYSESLAT, <u>or</u>
    - Scoring at an Expanding level on the NYSESLAT <u>AND</u> attaining a proficient score on the annual ELA exam
  - The school district does <u>not</u> have the authority to cease providing services to ELL students when, for example, the CSE believes that the student's disability is the sole determinant factor for the student's NYSESLAT score

Wrap Up

- Open-source photo by Allison Shelley for EDUimages

Questions

Exit Ticket

What is **one thing you learned today** that you can apply within your educational context and how will you apply it?

Contact Us

Meeting Evaluation Survey

New York State Education Department
Office of Special Education
Educational Partnership

Distinguishing Language Acquisition from Disability

Part 2: Theory into Practice

Developed by the Technical Assistance Partnership (TAP) for Equity at New York University (NYU)

Last Updated: December 8, 2025

New York State Education Department
Office of Special Education
Educational Partnership

Disclaimer

The resources shown are designed to provide helpful information. Resources are provided for instructional use purposes only and do not constitute NYSED endorsement of any vendor, author, or other sources. To the best of our knowledge, the resources provided are true and complete.

Our Team

Today's Facilitators

Meeting Norms

- Take care of your needs (water, food, restroom, etc.)
- Speak your truth – Use "I" statements
- Ask what you need to understand and contribute
- Listen with respect
- Push your growing edge
- Participate and struggle together
- Expect a lack of closure
- Respect each other's needs and learning styles

Blueprint for Improved Results for Students with Disabilities

Self-Advocacy

Students engage in self-advocacy and are involved in determining their own educational goals and plan.

Family Partnership

Parents, and other family members, are engaged as meaningful partners in the special education process and the education of their child.

Specially-Designed Instruction

Teachers design, provide, and assess the effectiveness of specially-designed instruction to provide students with disabilities with access to participate and progress in the general education curriculum.

Research-Based Instruction

Teachers provide research-based instructional teaching and learning strategies and supports for students with disabilities.

Multi-tiered Support

Schools provide multi-tiered systems of behavioral and academic support.

Inclusive Activities

Schools provide high-quality inclusive programs and activities.

Transition Support

Schools provide appropriate instruction for students with disabilities in career development and opportunities to participate in work-based learning.

Blueprint for English Language Learner (ELL) Success

Planning and Collaboration

All teachers are teachers of ELLs and need to plan accordingly

Meeting the Needs of ELLs

All school boards and district/school leaders are responsible for ensuring that the academic, linguistic, social, and emotional needs of ELLs are addressed

Engaging Instruction

Districts and schools engage all ELLs in instruction that is grade-appropriate, academically rigorous, and aligned with Learning Standards

Recognizing Assets

Districts and schools recognize that bilingualism and biliteracy are assets and provide opportunities for all students to earn a Seal of Biliteracy

Involving Families

Districts and schools value all parents and families of ELLs as partners in education and effectively involve them in the education of their children

Leveraging Educator Expertise

District and school communities leverage the expertise of Bilingual, English as a New Language (ENL), and Languages Other Than English (LOTE) teachers and support personnel while increasing their professional capacities

Valuing Home Cultures

Districts and school communities leverage ELL home languages, cultural assets, and prior knowledge

Using Appropriate Assessments

Districts and schools use diagnostic tools and formative assessment practices in order to measure ELLs' content knowledge as well as new and home language development to inform instruction

Why is this work important?

"The mission of the NYSED OSE, supported by all offices within NYSED, is to ensure that students with disabilities have opportunities to benefit from high-quality instruction, to reach the same standards as all students, and to leave school prepared to successfully transition to post school learning, living and working."

"The mission of the NYSED OBEWL, is to ensure that all New York State ELLs attain the highest level of academic success and that all Multilingual Learners (MLs) – which include ELLs, Former/Ever ELLs, World Languages students, and heritage speakers of World Languages – achieve the highest level of language proficiency in English and in one or more other languages."

Culturally Responsive-Sustaining Education (CRSE)

Welcoming and Affirming Environments

Inclusive Curriculum and Assessment

High Expectations and Rigorous Instruction

Ongoing Professional Learning

Training Objectives

Participants will be able to:

- Describe trends in over-identification and classification ELLs and causes of disproportionality.

- Analyze ways to separate signs of learning disabilities from phases of the language acquisition process.

- Apply their learning to scenarios and determine when referrals are necessary.

- Understand the steps of multiple identification pathways for dually-identified students.

Agenda

- Welcome
  - Introduction, Community Invitations, Blueprints
  - Training Objectives, Agenda, Materials
- Revisiting Part 1
- Understanding Disproportionality
- Distinguishing Difference from Disability
- Activity: Referral Scenarios
- Identification Processes
- Review, Questions, and Survey

Materials

- Part 2: Theory to Practice - Slides
  - This PDF copy of the training slides provides a reference and resource for participants.

- Handout: Key Terms
  - This handout lists key terms to know from Parts 1 and 2 of this training series.

- Handout: Activity – Referral Scenarios
  - This handout walks through the directions, theory, and scenarios in the activity.

Slide Marker Icons

Activity

Handout

Poll

Discussion

Reflection

Action Plan

Revisiting Part 1

Image via Microsoft Stock

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Review

Agenda from Part 1: Background and Core Concepts

- Introductions
- Core Concepts: ELLs
- Core Concepts: Students with Disabilities
- Core Concepts: Multi-Tiered System of Supports (MTSS)
- State Guidance

Part 1 - Background and Core Concepts

Reflection

- What did I learn?
- What questions do I have?

Understanding Disproportionality

United States ELL Demographics

The percentage of public school students in the U.S. who were ELLs:

- was higher in fall 2018 (10.2 percent, or 5.0 million students) than in fall 2010 (9.2 percent, or 4.5 million students).

- ranged from 0.8 percent in West Virginia to 19.4 percent in California in 2018.

Figure 1. Percentage of public school students who were English language learners, by state: Fall 2018
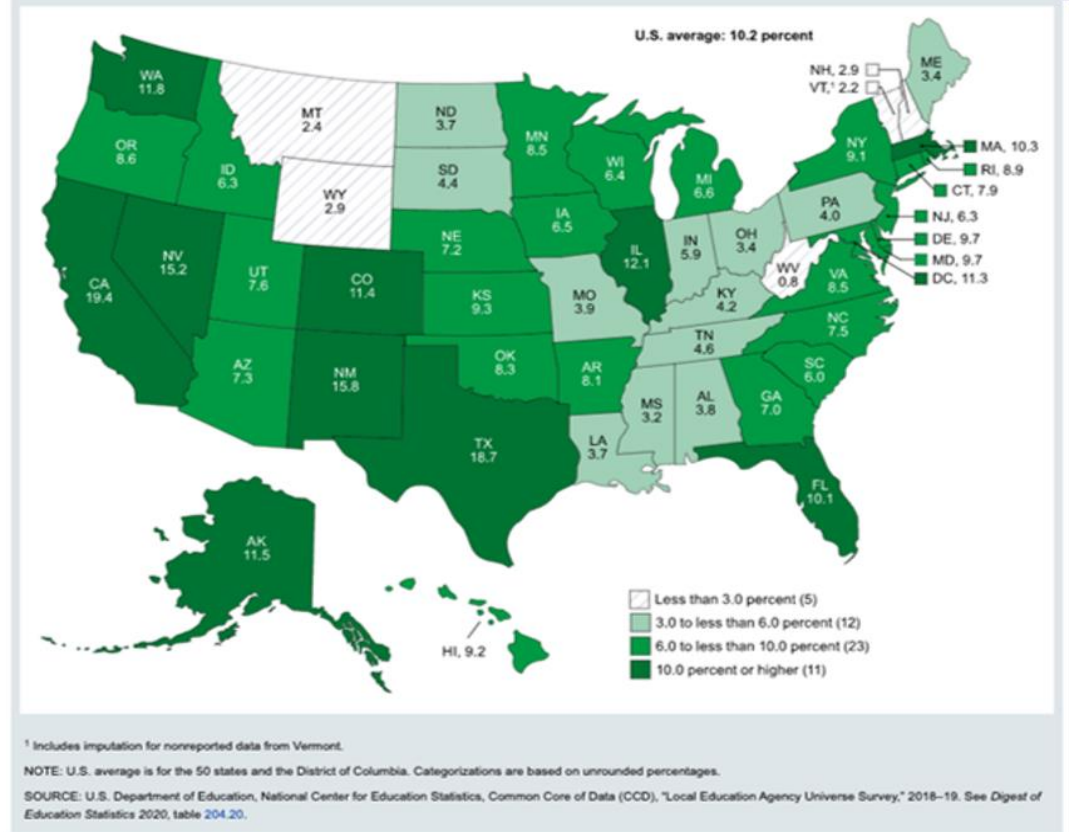
New York State (NYS) Public School Student Population

NYSED Data 2021-2022

Total K-12 Students :   2,448,537

Students	Number	Percentages
ELL Students	247,054	10%
Students with Disabilities	453,342	19%
Dually-Identified Students (ELL & Student with Disabilities)	58,158	24% of ELLs

ELL Demographic Data Reports

Students	Description	Percent
Newcomers	Students who have been in U.S. schools for three years or less and are ELLs	**63%**
Developing ELLs	Students who have received ELL services for 4 to 6 years.	**24.9%**
Long-Term ELLs	Students who have completed at least six years of ELL services in a NYS school and continue to require ELL services.	**11.7%**
ELLs with Disabilities	ELLs served by an Individualized Education Program (IEP)	**21.9%**
Students with Interrupted or Inconsistent Formal Education (SIFE)	ELLs who have attended schools in the U.S. for less than twelve months and who, upon enrollment, are 2+ years below grade level in literacy and or math due to inconsistent or interrupted schooling prior to arrival in the U.S.	**8.7%**
Former ELLs	A student who was identified as an ELL and has met the criteria for exiting ELL status	**8.4%**

Under-Identification of ELLs in Special Education

Why ELLs may not get the special education services they need

Over-Identification of ELLs in Special Education

Why ELLs may be referred to special education too soon

Over- and Under-representation

How ELLs Experience Both

Under-Representation

- Similar characteristics in second language acquisition (SLA) and disability
  - Educators attribute all struggles as part of SLA
  - Schools place informal policies about referrals to special education for newcomer ELLs
- Misconception that ELLs cannot be served within special education programs - have to "choose one"
- Myth that ELLs must wait 2 years for referral to services
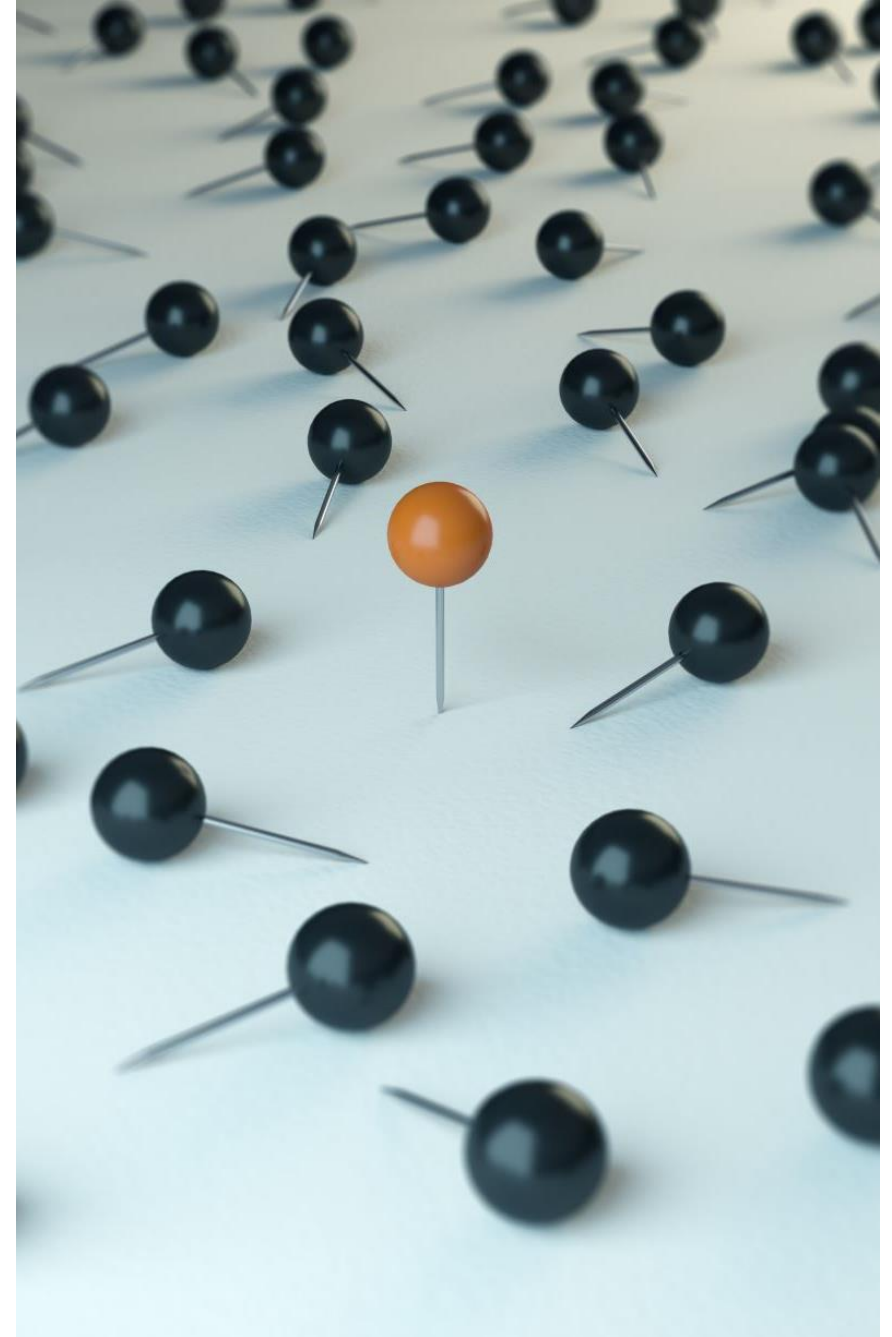
Over-Representation

- Educators unfamiliar with the Second Language Acquisition (SLA) process
- ELLs assessed with invalid assessments
  - Culturally and/or linguistically irrelevant
- Special education used as "dumping ground" for teachers who don't know how to use ELL supports and strategies
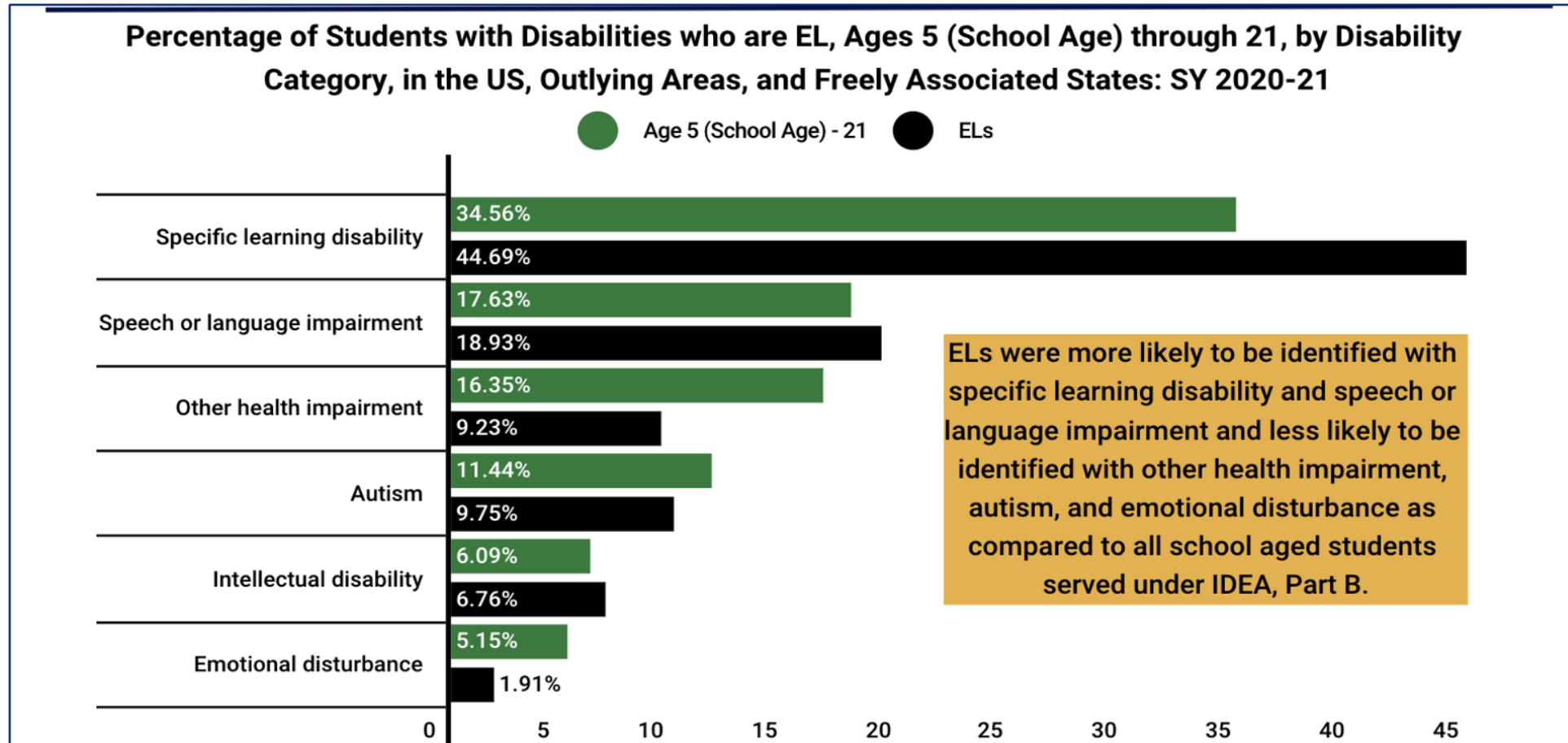
Disproportionality in Identifying SLA vs Disability

Root Causes

- Knowledge of second language development

- Instructional practices

- Intervention strategies

- Assessment tools

Disproportionality in Classification of ELLs with Disabilities

Percentage of Students with Disabilities who are EL, Ages 5 (School Age) through 21, by Disability Category, in the US, Outlying Areas, and Freely Associated States: SY 2020-21

Legend: ● Age 5 (School Age) - 21   ● ELs

Disability Category	Age 5 (School Age) - 21	ELs
Specific learning disability	34.56%	44.69%
Speech or language impairment	17.63%	18.93%
Other health impairment	16.35%	9.23%
Autism	11.44%	9.75%
Intellectual disability	6.09%	6.76%
Emotional disturbance	5.15%	1.91%

ELs were more likely to be identified with specific learning disability and speech or language impairment and less likely to be identified with other health impairment, autism, and emotional disturbance as compared to all school aged students served under IDEA, Part B.

Review: Data and Disproportionality

Reflection

- What did I learn?
- What questions do I have?

Distinguishing Difference from Disability

Open-source photo by Allison Shelley for EDUimages

Language Difference and Disability

"[C]are must be taken that issues of language differences are not confused with language disorders and that patterns of performance related to the student's socio-cultural background or interrupted schooling are not mistaken for signs of a disability"

Learning Disability

A disorder in one or more basic psychological processes involved in understanding or using language, spoken or written, which manifests itself in an imperfect ability to:

- Listen
- Think
- Speak
- Read
- Write
- Spell
- Do mathematical calculations

Stages of Second Language Acquisition

Stages	Characteristics
Pre-Production	Called the "silent period" when the student takes in the new language but does not speak it. This often lasts 6 weeks or longer, depending on the person.
Early Production	The individual begins to speak using short words and sentences, but the emphasis is still on absorbing the new language. There will be many errors at this stage.
Speech Emergent	Speech becomes more frequent, words and sentences are longer, but the individual relies heavily on context clues. Vocabulary continues to increase and errors begin to decrease.
Beginning Fluency	Speech is fairly fluent in social situations with minimal errors. New contexts and academic language are challenging. Struggles in expressing self, due to gaps in vocabulary and appropriate phrases.
Intermediate Fluency	Individual communicates fluently and is able to speak fluently in new situations or academic situations but there will be gaps in vocabulary and unknown expressions.
Advanced Fluency	Individual communicates fluently in all contexts and can maneuver when exposed to new contexts and academic information—might use idiomatic expressions incorrectly.

Signs of Learning Disability vs. Language Acquisition

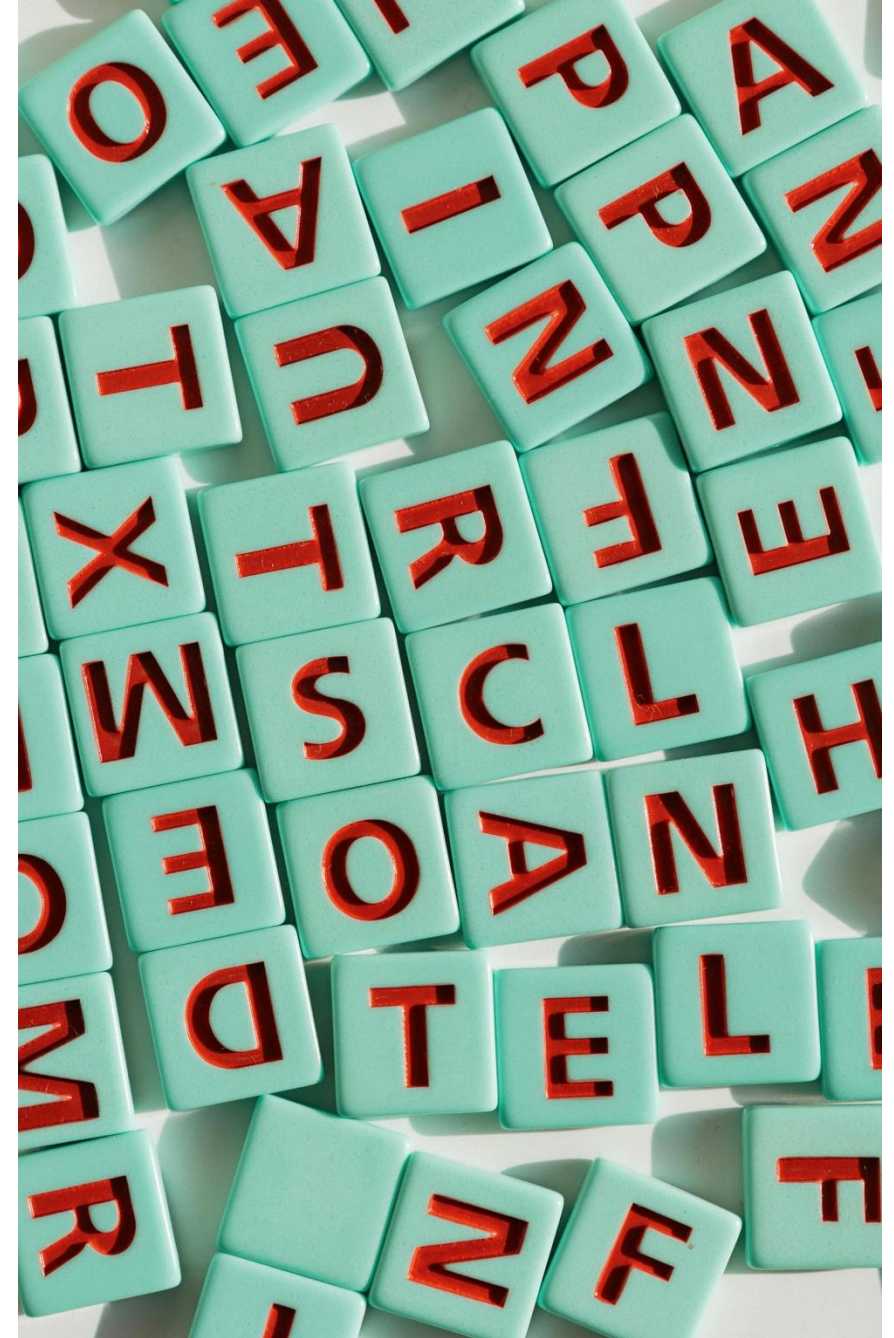| Student Behaviors Associated with Disability	Student Behaviors Associated with SLA
Difficulty following directions	Difficulty following directions in English **when meaning is not understood**
Difficulty with phonological awareness	Difficulty distinguishing between sounds that are **not present in the home language (L1)**
Confusion with sound-symbol correspondence	Confusion with sound-symbol correspondence **that differs from L1**
Difficulty remembering sight words	Difficulty remembering sight words **when meaning is not understood**
Poor auditory memory	Auditory memory **better in L1** than in English
Difficulty retelling a story in sequence	Difficulty **producing language** to capture what was understood
Difficulty concentrating	Easily tired from additional processing
Appears easily frustrated	Appears easily frustrated

Considerations for Assessments

- Although assessment in the L1 is ideal, the reality is that very few assessments are available in many languages

- NYSED assessments, including Regents exams, are translated into common languages
  - For low-incidence languages, an oral interpretation can be provided
    - Your Regional Bilingual Education Resource Network (RBERN) and the Statewide RBERN can provide support in locating qualified interpreters

- Formative and diagnostic assessments can be difficult to find translated
  - The Multilingual Literacy Screener (MLS) is available in 15 languages and is used by many schools/districts to provide data on L1 literacy
    - Designed by Bridges to Academic Success for NYSED for SIFE, but can provide valuable evaluation data for all ELLs

ELLs and Students with Disabilities Struggle with Expressive Language

Areas of difficulty include:

- Phonology

- Morphology

- Syntax

- Semantics

- Pragmatics

Language Difference or Disability

System	Differences	Possible Disability Concern
Pragmatics The rules governing social interactions	Social responses to language are based on cultural background	Social use of language or lack thereof is inappropriate
Syntax The rules of order, grammar, and form of sentences	Grammatical errors due to native language influences Word order in L1 may differ from English	Grammatical structures continue to be inappropriate in both languages even after extensive instruction
Semantics The underlying and surface meanings of words and phrases	A student may use words from the L1 to substitute unknown words in English; A student may have difficulty with grammar structures that don't exist in the L1	Student is demonstrating limited phrasing and vocabulary in both languages

Language Difference or Disability *(2)*

System	Differences	Possible Disability Concern
Morphology The rules of construction of words	Native speakers of Russian may not use articles as they do not exist in that language.	Student's productions in both languages demonstrate a lack of the possessive form indicating that he/she has not acquired this morphologic structure by the appropriate age.
Fluency Flowing speech without excessive interruptions or repetitions	Students learning English as the L2 may have interruptions or repetitions as they search for words while speaking	Major reliance on gestures rather than speech to communicate in both L1 and L2, even after lengthy exposure to English.
Phonology The rules for combinations of sounds	Student may omit specific sound combinations or struggle with sounds that do not exist in the L1	Student demonstrates a delay in development of age appropriate sounds in both languages

Characteristics of Typically Developing ELLs vs. ELLs Who May Have a Learning Difficulty

Typically Developing ELLs

- Can be expected to make steady progress
- Will likely lag behind peers in certain areas related to English language learning (e.g., vocabulary, reading comprehension, oral language)
- Should perform similarly to peers academically after a few years in school, if they begin school in English at a young age
- Can be expected to perform similarly to peers on cognitive processing tasks (e.g., memory, phonemic awareness, speed of processing)
- Usually develop word-level skills (i.e., decoding and spelling) and reading fluency with adequate instruction and development

ELLs Who may have Learning Difficulty

- Not making progress, or progress is uneven
- Difficulties are persistent and pervasive despite consistent and targeted instruction
- Has not made the same progress as other students with similar backgrounds (linguistic and academic)
- Possible deficits in cognitive processing skills
- Persistent problems in word reading (decoding), reading fluency, and spelling

Characteristics of Typically Developing ELLs vs. ELLs Who May Have a Learning Difficulty *(2)*

Typically Developing ELLs

- Can be expected to develop reading comprehension skills such as oral language, knowledge of grammar and sentence structure, and vocabulary, as general language knowledge develops, although they will likely always lag behind peers to some extent

- Writing skills develop with oral language abilities

- Gradually develop academic language, grammatical and morphological skills observed in spoken and written work

- Steady progress in all languages spoken when academic support is provided in each

- No history of academic difficulties in home country (if applicable)

ELLs Who may have Learning Difficulty

- Understanding of written text does not increase as general language knowledge develops. Difficulties are persistent

- Writing is very challenging and is not reflective of oral language skills

- Persistent grammatical and morphological difficulties, and limited vocabulary in spoken and written work

- Difficulties in all languages spoken

- Indications of academic difficulties prior to immigration (if applicable)

Considerations for SIFE

- Much like considerations for all ELLs, it is important to consider how the student's lack of schooling may be impacting any indicators of disability

- SIFE students may:
  - Have low or no literacy and/or math skills in the home language
  - Lack familiarity with school culture and procedures
  - Have trauma-related social and psychological needs

Review: Distinguishing between Language Difference and Disability

Reflection

- What did I learn?
- What questions do I have?

Activity: Referral Scenarios

Image via Microsoft Stock

Factors Impacting Struggling ELLs

Educators Must Determine if Difficulties Are Due to:
A learning disability
A learning difference resulting from cultural and linguistic factors
A learning difference that is a normal part of second language acquisition for a student from a particular language group
A learning difference that is a normal part of the language acquisition process for a student at a certain level of proficiency
A learning deficit that is a result of a lack of opportunity, access to quality instruction, and/or adequate time to learn (interrupted formal schooling)
A combination of these factors

Activity: Referral Scenarios

- Assign a note taker and a speaker for the group

- Review each scenario and discuss with your group:
    - What part(s) of the spectrum of factors are impacting this student?
    - Would you recommend a referral for evaluation? Why or why not?

- When called on, your group speaker will share your group's responses

Identification Processes

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Identification Processes for ELLs and Students with Disabilities

Pathway 1

Students entering the school/district with an existing IEP

Screening to see if the student qualifies as an ELL

Pathway 2

Students currently enrolled in school/district as ELLs suspected of having a disability

Referral for an evaluation for special education

Pathway 1: ELL Identification Process for Students with an IEP

STEP 1	STEP 2	STEP 3	STEP 4a	STEP 4b
Home Language Questionnaire (HLQ)	Student Interview	Language Proficiency Team (LPT)	Principal & Superintendent Review	NYS Identification Test for English Language Learners (NYSITELL) with Accommodations

HLQ

ELL Identification Process for Students with an IEP

For <u>ALL</u> students entering or reentering NYS, the HLQ must be given:

- The HLQ has questions about the students home/primary language and educational history.
    - Completed by the parent or guardian
    - Available in 44 languages on NYSED website
        - Additional language support available from RBERNs
- If any responses on the HLQ indicate languages other than English (LOTE), the next step for <u>all</u> students is the interview.
- If the HLQ does not indicate an LOTE, the process stops and the student is not an ELL.

STEP 2 # Student Interview

ELL Identification Process for Students with an IEP

- Given if HLQ indicates any language other than English (LOTE)

- Administered by a certified Bilingual Education (BE)/ESOL teacher and a qualified interpreter in the home language

- If the interview demonstrates that the student is proficient in English, the process stops and the student is not an ELL

- If the interview does not demonstrate English proficiency:
  - For students WITHOUT an existing IEP, the NYSITELL is given and the Part 154-2 process is followed
  - **Students with an IEP move to the LPT to determine if the test is appropriate**

ELL Identification Process for Students with an IEP

- The purpose of the LPT is to determine if the student's disability prevented them from demonstrating oral English proficiency in the Student Interview or if student should take the NYSITELL
  - The LPT can recommend a student to be administered the NYSITELL OR recommend a designation of English proficient
- The LPT must include a school administrator, a teacher with bilingual and/or ESOL certification, a director of special education or designee, the parent, and a qualified interpreter
- The LPT reviews the student's HLQ, interview, and records
  - Students should be referred to the testing unless there is "clear and compelling evidence" that the student has no language needs or that the language needs are the result of their disability
  - Lack of previous ENL/Bilingual instruction does NOT prohibit classification as ELL

Principal & Superintendent Review

ELL Identification Process for Students with an IEP

- If the LPT determines that the student does not need SLA support, the student file must go to **Principal Review**

  - The principal (disagree with the LPT) can choose to refer the student to take the NYSITELL or (agrees with the LPT) to pass the file to **Superintendent Review**

  - The superintendent (disagrees with the LPT and principal) can choose to refer the student to take the NYSITELL or (agrees with the LPT and principal) close the identification process

- If the principal and superintendent both agree with the LPT determination, the student is determined <u>not to be an ELL</u> and parents are notified

- If at ANY point in the process the student is referred to take the NYSITELL (by the LPT, the principal, or the superintendent), then the process reverts back to the Part 154 ELL identification process after the NYSITELL test is given with accommodations

NYSITELL with Accommodations & Follow-Up

ELL Identification Process for Students with an IEP

- If the LPT, the principal, or the superintendent recommend testing, the NYSITELL is given with the appropriate accommodations per the IEP
  - The student's status as ELL will be based on the score band on the NYSITELL

- Parents/guardians of ALL students identified as ELL (with or without an IEP) <u>must be notified within 5 days of identification and in their home language</u>.
  - Parents attend a parent orientation and receive an overview of Standards, assessments, and ELL program options
  - The student is then placed in an ENL or Bilingual Ed program as appropriate

- If the student is identified as an ELL, the Committee on Special Education (CSE) must meet to revise the IEP to include appropriate supports and placement based on NYSITELL level

Review: ELL Identification Process for Students with an IEP

Reflection

- What did I learn?
- What questions do I have?

Pathway 2: Intervention and Special Education Referral Process for ELLs

STEP 1	STEP 2	STEP 3	STEP 4
Pre-Referral Supports	Review of Data and Interventions	Referral for Evaluation for Special Education	Initial Evaluation

Pre-Referral Supports

Intervention and Special Education Referral Process for ELLs

Teacher or Team:

- Identifies students who are not meeting academic standards or expectations

- Documents current instructional practices used with students and student's level of performance

- MTSS programs

- Reviews current ELL services

Review of Data and Interventions

Intervention and Special Education Referral Process for ELLs

- Team or group may be called a Child Study Team, Pupil Personnel Team, MTSS Team, etc.

- Teacher brings data about instruction and student academic history to consult with colleagues
  - Should include staff with expertise in bilingual/ELL instruction

- Team analyzes the data; identifies supports, interventions, and/or instructional methods that have been used and new methods that can be used
  - Plan for further assessment and data collection for progress monitoring
  - Repeating cycle of data analysis and interventions

Application: Your Schools and Districts

Discussion

- What kinds of universal screening does your school/district utilize?
- What data points would you collect if you had a concern about an ELL's achievement?
- What types of interventions are available for struggling learners in your school/district?
- How are interventions for ELLs modified or adjusted to meet progress or lack thereof?

Referral for Initial Evaluation

Intervention and Special Education Referral Process for ELLs

- Referral must be in writing to either the school administrator and/or the district CSE

- Referral can be made by:
  - Parents
  - District designee (i.e. Director of Special Education, CSE Chair, School Principal)

- Request for referral, submitted to the school/district, can be made by:
  - The student, if 18 or over (or if emancipated)
  - School staff member (teacher, administrator, etc.)
  - Licensed physician
  - Judicial officer

Initial Evaluation

Intervention and Special Education Referral Process for ELLs

- Requires a physical exam, a psychological exam, a social history, classroom observation data, & assessment data*
  - functional behavior assessment (if relevant)
  - a vocational assessment (if age 12+)

- Conducted by the multidisciplinary team called the CSE
  - For ELLs, the CSE <u>must</u> include at least one individual certified to provide bilingual instruction or ESOL, who is knowledgeable about the student's English and home language development needs

- No single measure or assessment can be used for determining eligibility - it must be based upon information from a variety of sources

Initial Evaluation – Follow Up

Intervention and Special Education Referral Process for ELLs

It is imperative that educators understand that a referral for evaluation does <u>not</u> mean that the ELL student will be identified as a student with a disability

- If the student **is** found to be an ELL with a disability:
  - Special considerations must be taken in writing the IEP to include how the student will be supported through special education and BE/ENL, as well as through specially-designed instruction (SDI), if appropriate

- If the student **is not** found to be an ELL with a disability:
  - The intervention team should review available opportunities to support the student in language acquisition, any gaps related to SIFE, or other needs

Review: Intervention and Special Education Referral Process for ELLs

Reflection

- What did I learn?
- What questions do I have?

Summary & Wrap Up

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Review: Special Education State Guidance

Given what we have learned about the identification process for ELLs with potential disabilities, how does what we learned reviewing the memos become more relevant?

Revisiting Field Advisory Memo 12/14

Assessment:
- ELLs are **disproportionately identified** as students with disabilities (particularly Learning Disability, Speech, and Emotional Disturbance)
- **Assessment** must be in the home language, free of bias or discrimination, and must measure the extent of the disability, not proficiency in English
- **Scores** may not be reported if the tests are not valid and reliable, including standard administration

Evaluation:
- A **qualitative** description and analysis of abilities, strengths, and needs is required
- Care must be taken when interpreting evaluation results that issues of **language differences** are not confused with disorders and performance related to **socio-cultural background** or **interrupted schooling** are not mistaken for a disability

CSE
- An individual with **expertise** in second language acquisition who can interpret the instructional implications of the evaluations and is **knowledgeable** about the student's English and home language development needs must be included in the CSE

Eligibility:
- **RTI data** should be included in determining eligibility for special education to ensure that the determinant factor is not English language proficiency

Special Considerations:
- The CSE must fully consider the **second language needs** of the student as they relate to the **IEP** if the student is determined to have a disability, including if and how the student will benefit from participation in ENL, BE, and Special Education program models

Revisiting Joint Memo 1/24

Services Under Part 154

- Part 154 services are considered **general education core instruction** for all ELLs
- Dually-identified students **must continue to participate** in the BE or ENL program
- **SDI must be considered** for dually-identified students but does <u>not</u> replace the BE/ENL program
  - Qualified SDI staff include those with certification in special education, reading with bilingual extension, and/or ESOL
- No personnel, including the CSE, has authority to terminate placement in a BE/ENL program unless the student has met the **exit criteria**

Declassification from ELL Status

- The **sole criterion** for exiting ELL status in NYS, including for students attending out-of-district programs, is:
  - Scoring at the Commanding level on the NYSESLAT, <u>or</u>
  - Scoring at an Expanding level on the NYSESLAT <u>AND</u> attaining a proficient score on the annual ELA exam
- The school district does <u>not</u> have the authority to cease providing services to ELL students when, for example, the CSE believes that the student's disability is the sole determinant factor for the student's NYSESLAT score

Revisiting Joint Memo 1/24 (2)

Committee on Preschool Special Education (CPSE)
- CPSE determines if a bilingual evaluation is needed <u>prior</u> to meeting
- Personnel with **knowledge of second language needs** should be invited to CPSE meetings
- **IDEA applies to school age and preschool (ages 3-21),** therefore bilingual special education and/or bilingual related services are legal entitlements and must be discussed by the CPSE

CSE
- There is **no minimum period** that must pass prior to evaluating a newly enrolled ELL for special education services
- ELLs are entitled to certain testing accommodations, but the CSE must also identify in the IEP of an ELL with a disability any **individual testing accommodations** needed by the student as a result of their disability
- The CSE for an ELL student with disability <u>must</u> include **at least one individual who is appropriately certified** in BE or ESOL

In developing an IEP for an ELL with a disability:
- CSE must consider whether the required ELL services must be met, in part or in total, through **special education programs and services in which BE/ENL instruction are provided**
  - Such considerations include, but are not limited to:
    - Supports for English language arts instruction & content area instruction in English
    - ENL instruction or, for students in BE, home language content area and language arts instruction
    - Whether the student needs bilingual special education and/or bilingual related services

Other Important NYSED Documents

Regarding ELLs and Special Education

- *Commissioner's Regulations Subparts 154-2 and 154-3: Guidance - Determining English Language Learner/Multilingual Learner (ELL/MLL) Status of and Services for Students with Disabilities,* February 2018

- *Change in Allowable Testing Accommodations on the New York State English as a Second Language Achievement Test (NYSESLAT),* February 2017

- *Resources for English Language Learners (ELLs) who are Students with Inconsistent/Interrupted Formal Education (SIFE),* September 2016

- *Changes in Allowable Testing Accommodations on the Grades 3-8 New York State English Language Arts Assessments,* November 2016

- *Bilingual and English as a Second Language (ESL) Services for Limited English Proficient (LEP)/English Language Learners (ELLs) who are Students with Disabilities,* March 2011

Summary: Part 1

Part 1: Background and Core Concepts

- Core Concepts: ELLs
  - ELL education law
  - Subgroups
  - Program types
  - Understanding SLA
- Core Concepts: Students with Disabilities
  - Students with disabilities law
  - Eligibility and the IEP
  - Classification
  - Continuum of Services

- Core Concepts: MTSS
  - MTSS for ELLs
- State Guidance
  - December 2014 Field Advisory
  - January 2024 Joint Memo

Summary: Part 2

Part 2: Theory into Practice: Identifying ELLs with Disabilities

- National and State Data
  - Over- and under-identification of ELLs to special education
  - Over-classification into certain disability categories
- Distinguishing Language Difference and Learning Disability
  - Stages of SLA vs. Indicators of LD
  - Spectrum of factors that influence ELL performance
- Identification Processes
  - Stream 1: Student with an IEP is screened for ELL eligibility
  - Stream 2: ELL is screened for IEP eligibility
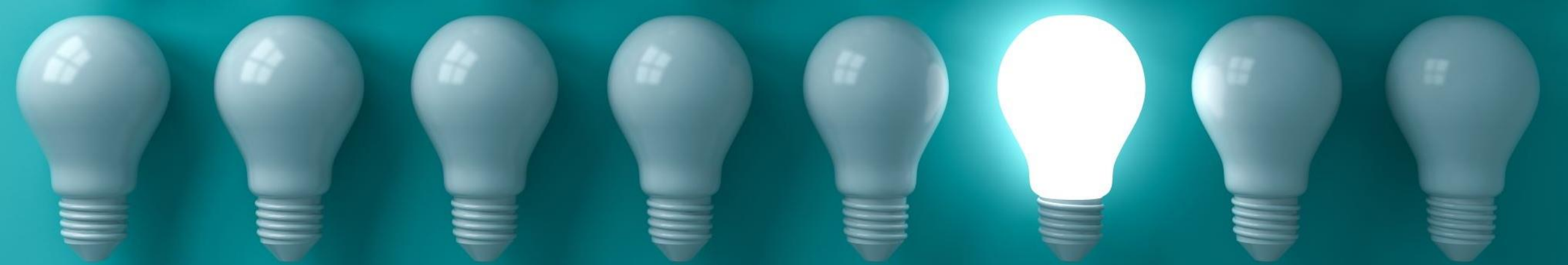
Reflection

- What gaps did you uncover in your knowledge about appropriately identifying ELLs for Special Education?

- What gaps did you uncover in your EO's policies, practices, and procedures around this topic?

- What can you do to address these gaps?

- What are the most compelling gaps for your district to address?

Questions

Exit Ticket

What is **one concrete step** you can take to address disproportionality of ELLs in Special Education within your educational context?

Contact Us

Meeting Evaluation Survey