

Draft

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Kentucky ELL Evaluation Handbook

Background Information and Best Practice Recommendations for the Referral and Evaluation of Underachieving English Language Learners in Kentucky

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Preface and Summary

This handbook is offered as guidance and support to decision-makers, administrators, school psychologists, speech-language pathologists, teachers and other school personnel, who directly or indirectly work with underachieving English Language Learners (ELLs). In addition to limited English proficiency, some children may face additional challenges, such as learning disabilities, that contribute to lack of academic success. Given that ELLs present varying levels of fluency in English, it can be particularly challenging to validly assess the extent to which a student's learning or behavioral problems indicate a disability and eligibility for special education services.

Throughout this handbook, the terms assessment and evaluation are used interchangeably. Both terms refer to the comprehensive collection of information about an individual student through formal and informal means (e.g., standardized and non-standardized tests, questionnaires, observations, interviews, student work samples). The purpose of such evaluation is to assist in determining the level of educational functioning, programming/instructional needs, and potential eligibility for special education services of ELL students.

While the body of this handbook includes specific information such as definitions of key terms, specification of legal requirements, and data collection strategies, the following section will focus on key principles and issues that provide the foundation for the specific information and recommendations contained throughout the handbook:

1. The evaluation of ELL students must be framed in a very different way from the evaluation of monolingual, native English speaking students who were born in the United States.
2. Evaluations of underachieving ELL students should not be based on a single criterion or methodology. The 2004 revision of the Individuals with Disabilities Education Improvement Act (IDEA) states that districts are no longer required to consider intelligence-achievement discrepancy as an eligibility criterion for learning disabilities and that students' responses to "scientific, research-based interventions" may be considered as part of the evaluation process. Hence, evaluation data would describe how a student interacts with the instructional environment and how the student's interactions change when instruction is modified (i.e., "response to intervention"). The ELL Students with Special Needs Advisory Committee advocates using multiple methods, as supported by research and experts in the field of English language learners with disabilities (Rhodes, Ochoa & Ortiz, 2005, Artilles & Otriz, 2002).
3. The interventions and modifications used in the assessment and instructional processes must be "scientific, research-based" interventions (Federal Register, Vol. 71, No. 156, August 14, 2006, Section 300.307(a)(2)).

Acculturation and Valid Assessment Practice

It is important to understand that the evaluation of ELL students for placement in special education differs from the evaluation of such students for school accountability purposes. When assessing for accountability purposes, it is important that the administration of the assessment is standardized and that the validity of the assessment is not compromised. Accountability assessment is an assessment *of* learning, i.e., what students have learned relative to a set of standards. This type of testing occurs on a yearly basis for students in Kentucky. When assessing students to determine the most appropriate and potentially beneficial services, the most appropriate assessment approach is what Black and William (Black and William, 1998a, 1998b) refer to as assessment *for* learning.

A useful strategy in assessing for learning is the three-tier process described by Artiles & Ortiz (2002). Tier I addresses the educational functioning of the student within the context of the classroom instructional environment. When ELL students demonstrate difficulties at this level, the focus should be on the type and quality of instruction. For example, it is important that culturally sensitive/appropriate instructional materials and strategies are being used that reflect the language acquisition skills of the student.

Tier II concerns the identification and implementation of an appropriate instructional intervention, once the nature of the student's learning difficulties has been documented. The focus in Tier II is on the student's response to instructional intervention tailored to the student's identified difficulties and needs. The intervention must be a "scientific, research based intervention" (Federal Register, Volume 71, No. 156, Section 300.307(a)(2)). A smaller percentage of students would require Tier II interventions than occur at Tier I.

Tier III refers to the actual referral for special education services based on information gleaned in Tiers I and II. Such referral is appropriate if (1) the classroom teacher has used instructional strategies shown by research to be effective for ELLs, (2) neither clinical teaching nor the Tier I interventions have resolved the student's learning difficulties, and (3) other general education alternatives have proven ineffective (Ortiz, 2002).

The eligibility decision-making process recommended by the Kentucky ELL Assessment Advisory Committee is based to a large extent on professional and clinical judgment that integrates information obtained from standardized and non-standardized assessments, curriculum-based measurement, classroom observations, teacher, parent and student interviews and other sources of data, such as language proficiency and acculturation factors. Given a lack of valid standardized instruments for identifying ELL students with disabilities, this approach is recommended based on "best practices" in the field. (Artiles & Ortiz, 2002; Rhodes, Ochoa & Ortiz, 2005).

Implications

The implications of acculturation factors apply not only to the diagnostic assessment for learning process but also to classroom instruction. Professional development support for general education teachers in the identification of acculturation factors that may impact students'

responses to instruction as well as access to information about effective, research-based interventions with ELL students is an important area. Additionally, teachers need guidance in the effective use of clinical teaching strategies for Culturally and Linguistically Diverse (CLD) students in a regular classroom setting. While it may be apparent that these needs are held by teachers of ELL students and students with disabilities, all general and special education teachers also need support in these areas, especially since most referrals originate from mainstream classrooms.

Information to Include in Referrals

An important task in evaluating how ELL students learn is the identification of the aspects of the student's cultural or linguistic background to help understand the nature of their learning challenges. Information about the educational experience and literacy of the parents of students who are ELL is important. This information can indicate the extent to which the parents have the skills to support their child's learning in English. Literacy in the first language is the best predictor of an English language learners success in the school setting. Information that may prove useful to the diagnostic evaluation and referral of ELL students includes the following:

- The length of time and type of exposure that a student has to English
- The level of cognitive-academic language proficiency and its relationship to academic skills
- The student's history of formal education
- The student's language proficiency and academic skills in the primary language
- Educational and literacy level of parents and their knowledge of the goals of the school?
- Level of acculturation and reasons for immigration

Challenge of Multiple Disabilities

The evaluation of ELL students is challenging, primarily because it is difficult to ascertain which learning difficulties are due to lack of proficiency in English and/or other additional disabilities such as intellectual disabilities, developmental delays, speech-language disorders, social-emotional or physical disabilities. The presence of one or more disabilities, in combination with cultural and linguistic diversity, increases the level of challenge to accurately identify the educational needs of a student. Assessing a student's response to research-based interventions will provide valuable data about the nature of the student's learning difficulties. For children with more severe or multiple disabilities, English language acquisition may not be the primary factor that impacts learning. However, consideration of a student's cultural and language skills in the first language as well as English, may provide information that is relevant to appropriate instruction for the student.

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Chapter One

Introduction

In May 2006, the Kentucky Department of Education (KDE) formed a partnership with educators and specialists around the state to form the English Language Learner (ELL)* Students with Special Needs Advisory Committee. This committee was created to consult with and provide guidance to school districts regarding educational issues surrounding ELL students with chronic and significant achievement/behavioral difficulties. The ELL Students with Special Needs Advisory Committee is comprised of educational professionals from across the state, including KDE staff from Title III and IDEA divisions, assessment and research specialists, consultants and teachers with specialized experience and knowledge of ELL issues, as well as representation from the Appalachia Regional Comprehensive Center of Edvantia, Inc. (Formerly Appalachia Educational Laboratory, Inc.) One of the primary purposes of this committee was to develop a protocol, based on research and best practice in the professional literature, that outlines a systematic, valid process for a comprehensive, individual evaluation of ELL students to assist in determination of whether long-term and significant underachievement is due to cultural and linguistic differences or an educational disability, such as a learning disability. This document, which will be referred to as the Kentucky ELL Evaluation Resource Handbook, is the product of that work. The handbook is available to all Kentucky districts to serve as a reference and guide for “best practices” in assessing ELL students who may have disabilities from the prevention (early intervention phase) through formal identification of a disability.

The terms “assessment” and “evaluation” will be used interchangeably throughout the Kentucky ELL Evaluation Handbook, and both are intended to refer to the comprehensive collection of information about an individual through formal and informal means, such as standardized and non-standardized tests, questionnaires, observations, student work samples, and anecdotal reports for the purposes of determining educational functioning, programming needs, and potential eligibility for special education services. Likewise, “assessment” and “evaluation” refer to individual evaluations, rather than group testing such as state and district mandated tests (e.g., Commonwealth Accountability Testing System; CATS).

This handbook is not intended to be an exhaustive description of all ELL evaluation issues, but rather to serve as a resource for information that will provide support and guidance to administrators, psychologists and staff who encounter with these issues as well as to assist in the development of ELL specific evaluation procedures for school districts. The field of identification of disabilities in students who are culturally and linguistically diverse and appropriate instructional strategies is continually changing. Significant changes in research will be reflected in the manual continually. References and suggestions for additional reading in addition to possible assessment tools are included in the Appendix (which have been made available by their developers to be copied and used when needed).

*The term English Language Learner (ELL) is used to describe individuals who demonstrate various levels of proficiency in speaking, listening, reading and writing English, and for whom English is not the first language. The term ELL is similar to the term “Limited English Proficient” (LEP), which is the term most often used in the language of federal and state law. However, several writings indicate that acquisition of English is a lifelong process and does not end when a student exits an English as a Second Language program (ESL). Likewise, the term “culturally and linguistically diverse” (CLD) will be used at times in the handbook to describe a population of students with varying degrees of language proficiency that require cultural and linguistic considerations when designing interventions, making a referral, and conducting full, individual evaluations. See the glossary in Chapter Three for more discussion on these terms and other terms and acronyms used in the context of education for individuals who are culturally and linguistically diverse.

The information in the ELL Assessment Handbook is important for many kinds of educational professionals. Administrators will want to focus on sections that address legal and procedural mandates and staff responsibilities. School psychologists and other evaluation personnel will be most interested in the data collection and assessment techniques and procedures. These are recommended specifically for the evaluation of ELL students in order to help Admissions and Release Committees (ARC) determine whether or not chronic underachievement (i.e., despite the implementation research-based, culturally responsive academic interventions) is due to issues of linguistic and cultural differences or a disability. We believe that educators in the areas of regular education, special education and English as a Second Language (ESL) will find this handbook beneficial because it describes strategies and interventions that are not only culturally responsive, but are also sound teaching and intervention techniques which are appropriate for all students who are experiencing difficulty.

A Note on Current Socio-Political Issues

Immigration and language are very sensitive issues in the United States. Educationally, bilingual education, in particular, has sparked debate for many years. With regard to the education of ELL students, however, research in second language acquisition has consistently found that students who have more educational experience in their native language, and whose native language proficiency (i.e., speaking, listening, reading, and writing) continues to be supported through instruction, are more likely to develop proficiency in English (Krashen, 1982, 1991; Thomas & Collier, 1997, 2002; Cummins, 1984). Likewise, content instruction can be made more comprehensible for students who are ELL with little or no English proficiency through the use of their native language when “scaffolding” or supporting instruction (Snow, Burns & Griffin, 1998; Gibbons, 2002). Based on these findings, the members of the ELL Students with Special Needs Advisory Committee acknowledge that using the ELL student’s native language in instruction can be a very powerful and effective strategy to make content more comprehensible, to utilize and to build upon prior learning. This view does not advocate that CLD students should not become proficient and literate in English, which is the objective for all students, but rather that based on research that bilingual instruction facilitates that process.

In conclusion, the purpose of this document is to provide a guide for school districts and professionals to utilize in the assessment of English language learners in a manner that is way that is reliable, valid and culturally responsive.

Chapter Two

Current State of ELLs in Kentucky: A Case for a New Approach to ELL Evaluations

The population of English Language Learners (ELLs) in America's schools is growing faster than any other subgroup. Administrators and educators in every state are becoming increasingly aware of the educational challenges presented by these students. In the decade from 1989 to 1999, the numbers of students identified as English Language Learners (ELL) in the U.S. increased 104% (Rhodes, Ochoa, & Ortiz, 2005). It was estimated that, during the 2003-2004 academic year, there were 5 million ELL students enrolled in U.S. public schools, representing approximately 10.3% of the total enrollment (Lazarin, 2006). Over 400 languages are represented across the country, with Spanish being the most prevalent.

Kentucky has not been excluded from this national trend, and our population of ELL students has grown significantly in the past decade. While large and more urban schools probably deal with more cultural and linguistic diverse (CLD) students, many smaller districts in very rural parts of Kentucky are now facing the complexities of integrating CLD students into their school populations. Based on information collected at the conclusion of the 2005-2006 academic year, 89 school districts in the State of Kentucky were receiving funding through Title III, Language Instruction for Limited English Proficient and Immigrant Students, and 10,415 students qualified for this funding. Of that number, 4,751 were classified as Immigrants. Over 95 languages are represented in Kentucky's schools. Sixty-two percent of the students classified as ELL/LEP speak Spanish; five percent speak Japanese; four percent speak Bosnian, three percent speak Vietnamese, and two percent speak Native American languages.

The rapidly changing demography of America's schools in general, and Kentucky's schools in particular, are only one part of the context for this assessment handbook. National data suggests that 76% of ELL third graders are performing below grade level in English reading, and 53% are performing below grade level in math (Wilkinson, Ortiz, Robertson and Kushner, 2006). The achievement gap between ELL students and their monolingual, English speaking peers has been and continues to be a significant problem for educators and policy makers. When issues of language proficiency and underachievement intersect, educational and assessment personnel must determine whether the underachievement is due to cultural and linguistic differences or an educational disability, such as a learning disability.

With monolingual, native English speaking students, the most typical way to identify a disability is through standardized testing. However, the difficulties with using traditional standardized tests with ethnic, cultural, language minorities have been documented in the literature for decades. Traditional intellectual and achievement tests are often developed for use with students based in the mainstream U.S. culture, and the norms may not adequately reflect the population of immigrant, migrants and refugees in Kentucky's schools at present. Likewise, pre-referral and referral mechanisms in place currently do not address issues of acculturation or the status of English language proficiency, factors that can contribute to or even cause significant achievement problems.

A New Way of Conceptualizing Individual Evaluations

While many disabilities (e.g., sensory impairments, physical impairments, and moderate to severe cognitive impairments) can be very evident and straightforward to identify, the identification of mild disabilities and learning disabilities is a more complex process. Many factors must be taken into account when considering whether to evaluate an ELL student for possible special education classification and placement. Klingner, Artiles, and Barletta, (2006) suggest that teachers often delay referrals for evaluation for ELL students because they do not adequately understand the interplay between language acquisition and disability. Likewise, when traditional referral and assessment models are used for ELL students, there is a strong possibility that ELL students will be incorrectly viewed as having a disability and placed in special education. The disproportionate placement of ELL students in special education is a national problem (Garcia & Ortiz, 2006) and there may be both under-representation and over-representation in the various eligibility categories. Students with limited language proficiency are often mistakenly identified as having a disability, while those who **do** have an educational disability are often overlooked because they are English language learners. In both cases, students are not having their educational needs met (Ortiz, 2002).

The assessment paradigm for ELL students recommended in this document is based on an extensive review of the relevant literature. Further, it is based on the assumption that evaluations of ELLs should incorporate data describing the interaction between the underachieving student and the instructional environment. This includes a focus on the skill/behavior changes that occur when instruction is presented in a manner that includes strategies and research-based interventions for students who are English language learners. This process naturally identifies ELL students who are most in need of support and accommodations. Knowledge of a student's response or lack of response to an appropriate intervention is important in the decision-making process to refer a student for an evaluation for special education eligibility.

An important component of this model for evaluation is data collection or monitoring that provides information about a student's changes in learning specifically related to an intervention. Information pertaining to a student's level of acculturation, English and native language proficiency, and other factors that can impact school achievement and behavior of students from culturally and linguistically diverse backgrounds should also be gathered.

The 2004 revision of The Individuals with Disabilities Education Improvement Act (IDEA) states that districts are not required to consider intelligence-achievement discrepancy as an eligibility criterion for learning disabilities. Rather, ARCs may consider the student's response to "scientific, research-based interventions as part of the evaluation process" (IDEA; Section 614(b)(6)). Neither method in isolation is recommended, nor is it believed that the evaluation of cognitive abilities as they relate to the development of academic and language development and functioning will someday cease to be important. Rather, it is the position of the Advisory Committee that ARCs will be faced with the realization that standardized tests appropriate for ELL evaluations are rare and their utility and validity may not provide accurate

representations of the student' abilities and skills. Eligibility decisions will generally be made based on a composite of information put together from many sources through informal and formal measures. Eligibility decisions in these cases will be made on the basis of professional judgment derived from the information from the various components of the evaluation, rather than an analysis of scores or score patterns.

Ed. Note: There is some redundancy in the 1st 12 pages about IDEA, what is a comprehensive assessment, and the statements about RTI, research based interventions, and issues with the discrepancy—also some redundancy is later sections.

Chapter Three

Important Terms and Acronyms

In order to complete an accurate assessment of the learning characteristics of students who are English language learners, a professional must have knowledge of terminology, language acquisition factors, developmental sequences etc. in order to complete an unbiased and fair evaluation of a student's performance. When trying to conceptualize who ELL students are, they may be any of the following:

1. students who do not speak English
2. students whose first language is not English
3. students who have been in the United States for less than 5-7 years
4. students who are bilingual or multilingual, or
5. students who have one or both parents/caretakers who speak another language, even if they were born in the U.S.

There are several terms that relate to ELL students that are important to know. Some of the most common follow:

ESL- English as a Second Language. Refers to individuals for whom English is not their first language; it may not even be their second language. ESL also refers to programming in the schools in which English is taught. ESL is not used to describe any particular level of proficiency. In fact, an ESL student may be very fluent in all aspects of English.

LEP- Limited English Proficient. This term describes an individual who is not yet fluent in one or more of the following areas of English: listening, speaking, reading, and writing. LEP is synonymous with ELL (English Language Learner), and it is the term used in federal laws, such as Title III and IDEA.

ELL- English Language Learner. This term also describes an individual who is still in the process of acquiring English and is not yet proficient in listening, speaking, reading, and/or writing English.

L1, L2- These terms generally differentiate a student's native language (L1) from their second language (L2), which is assumed to be English in most cases.

Acculturation- This term is of critical importance in the evaluation of ELL students for possible special education. It refers to the process of become acquainted with and assimilating the culture of the community in which the family lives. For the purposes of this document, it refers to the degree to which a family from another culture has adapted to the mainstream culture of the town/community in which they live.

BICS- Basic Interpersonal Communication Skills. The type of language used in everyday social situations. This type of language is very concrete and generally relates to personal information, greetings, etc. BICS can develop through natural exposure to a language in about 2-3 years. See Chapter 5 for a thorough discussion.

CALP- Cognitive-Academic Language Proficiency. This type of proficiency involves the academic vocabulary and linguistic reasoning ability that is requisite for success in the classroom. CALP requires the ability to use language in abstract problem solving situations. The development of CALP requires direct, purposeful English language instruction, and it generally takes 5-7 years to develop (Cummins, 1985, 1986, 1989). See Chapter 5 for more information.

Simultaneous ESL- This term refers to situations in which individuals are learning English at the same time they are developing proficiency in their native language. Learning two languages simultaneously can adversely impact the development of both languages, thus, this is important information when evaluating an ELL student for special education services.

Sequential ESL- This term refers to situations in which individuals develop proficiency in their native language before starting to learn English. Their proficiency in their native language may be in regard to BICS only, and they may not be literate.

Circumstantial Bilingual- This term describes individuals who have moved to a place in which the dominant language is not their own, and they must learn the dominant language in order to learn, work, and thrive in their new home. Valdes and Figueroa (1996) state that these individuals “find themselves in a context in which their native language is not the majority...” Most ELLs in our schools can be considered “circumstantial bilinguals.”

Language Proficiency- The level of skill (e.g., vocabulary, syntactic and semantic control, etc.) an individual shows in any language.

Dominant Language- The language in which the student shows the greatest amount of skill. It is important to note that the student may still have proficiency problems in their “dominant language.”

At the present time, information about ELL students in Kentucky are tracked in the state’s student information tracking database developed by Software Technology, Inc (STI). Upon enrollment, the parents complete an information packet, including a Home Language Survey, which provides information regarding language(s) spoken in the home, country of birth, length of time in the U.S., previous schools, etc. There are some descriptors that must be indicated in the STI student information database for monitoring purposes. These descriptors are based on definitions from federal law, particularly Title III. An explanation of these descriptors follows:

1. **Limited English Proficient (LEP)** - Federal legislation, which includes the No Child Left Behind Act of 2001 (NCLB), defines these students with limited English proficiency*as children who:

- are aged 3 through 21;
- are enrolled or preparing to enroll in an elementary school or secondary school;
- were not born in the United States or whose native language is a language other than English;
- are a Native American or Alaska Native, or a native resident of the outlying areas, and come from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- are migratory, whose native language is a language other than English, and who come from an environment where a language other than English is dominant; and
- have difficulties in speaking, reading, writing, or understanding the English language that may be sufficient to deny the individual-
 - the ability to meet the state's proficient level of achievement on state assessments;
 - the ability to successfully achieve in classrooms where the language of instruction is English; or
 - the opportunity to participate fully in society.

(* The term 'limited English proficient' has been defined in Title IX of the No Child Left Behind Act under the General Provisions Part A, Section 9101. Definition)

2. **Immigrant** – Immigrant student is defined as an individual who-
 - is aged 3 - 21
 - was not born in any state (of the United States of America); and
 - has **not** been attending one or more schools in any one or more states for more than 3 full academic years.

3. **Migrant** - Migrant student is defined as an individual who is, or whose parent or spouse is, a migratory agricultural worker, including migratory dairy worker or migratory fisher, and who, in the preceding 36 months, in order to obtain employment, or accompanying their parent or spouse in order to obtain employment-
 - has moved from one district to another
 - in cases where there is only one school district in the state, has moved from area to another within that district; or
 - resides in a district that is 15,000 or more square miles, and migrates a distance of 20 or more miles to a temporary residence to engage in a fishing activity.

Key features: Nature of parents' work and mobility across districts.

4. **Refugee** – Refugee is defined as a person outside of his or her country of nationality who is unable or unwilling to return because of-
 - Persecution or a well founded fear of persecution on account of race, religion, or nationality
 - membership in a particular social group or political opinion.

Refugee families have also fled from war or natural disaster. (The key is understanding why the family moved to the U.S.)

** Refugee families may or may not hold Immigrant status and may or may not be Migrants. STI will require that districts indicate all descriptors that apply to a particular student.

5. **Interrupted Schooling:** Refers to situation in which the student has not been a school a period of two years (???? Help Title III people!)
6. **Limited or No Formal Schooling:** Refers to situations in which the student has been out of school for two years or more.

Chapter Four

Federal Law, Ethics and ELL Assessment

One of the most important and long standing laws impacting the education of ELL students in America is Title VI of the Civil Rights Act of 1964, which stated that "...no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance." Title VI authorized the Department of Health, Education and Welfare to evaluate program compliance and withhold federal funds.

The Department of Health, Education and Welfare issued a memorandum on May 25, 1970 which clarified the application of Title VI to language minority students and directed the Office of Civil Rights (OCR) to implement, review, and enforce compliance procedures. The 1970 memorandum directed that school districts must take clear steps to teach English to language minority students in order to open its programs to them (Ortiz, 2002, Rhodes, Ochoa & Ortiz, 2004).

The Supreme Court has been the source for some important rulings impacting ELL students. In the case *Lau v. Nichols* of 1974, the justices ruled that the San Francisco Unified School District violated Title VI of the Civil Rights Act of 1964 by not providing English instruction to Chinese-speaking students. In the "Lau remedies," the Supreme Court affirmed the authority of the Department of Health, Education and Welfare to ensure that districts provide bilingual, multilingual, or transitional bilingual services to ELL students. A very poignant quote comes from Justice Douglas:

"Basic English skills are at the very core of what the public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must have already acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experience incomprehensible and in no way meaningful."

In *Plyer v. Doe* (457, U.S. 202(1982)), the court ruled that undocumented children and adolescents have the same right to attend public schools as do U.S. citizens. In the ruling, the court stated that public schools may not:

- deny admission to a student on the basis of undocumented status
- treat a student differently to determine residency
- engage in any practice which alters to right to attend school
- require students or parents to disclose or document their immigration status
- make enquiries of students or parents that may disclose their undocumented status
- require social security numbers of all students, as this would expose their undocumented status

Another piece of legislation pertaining to ELL students is The Bilingual Act of 1968,

which provided federal assistance to public schools to implement programs to teach English. Initially, most programs used native language instruction to support content instruction, though they were not required to. The Bilingual Act was a catalyst for the national debate on issues of bilingual education. The Bilingual Act was revised in 1988, and a three year limit on bilingual instruction was implemented. The Bilingual Act's most recent revision was seen in the Improving America's Schools Act of 1994. In this revision, provisions were made for increased training and attention on native language maintenance, as well as financial support for research initiatives (Artiles & Ortiz, 2002).

Title III of the No Child Left Behind Act () addresses the education of students identified as Limited English Proficient (LEP; synonymous with ELL). This legislation provides federal funding and assistance to school districts to implement English language instruction. The Kentucky Department of Education (KDE) has established procedural guidelines for districts that should be implemented by school districts when a student moves into a school system who, based on the parent's response to questions regarding language use in the home, may have limited proficiency in English.

1. **All** new enrollees to the district are administered a **Home Language Survey** to screen for a language background other than English. Home Language Survey forms, as well many other kinds of NCLB and IDEA forms are available to you for free in English and multiple languages via www.transact.com
2. Non-English language background (NELB) students (meaning the answer was YES to any of the four or more questions on the Home Language Survey) are administered an **English language proficiency screening** using the World Class Instructional Design WIDA ACCESS Placement Test (WAPT Screener) within the first 30 days of schools. After that, NELB students who enroll in your district must be tested within two weeks of enrollment.
3. The initial identification (i.e., formally identifying that they are LEP/ELL) and annual progress tests being used in Kentucky are the WIDA ACCESS Placement Test (WAPT Screener) and the ACCESS for ELLs Assessment Battery.
4. A district or school **Program Services Plan (PSP)** committee consisting, for example, of ESL and mainstream teachers/specialists, an instructional leader, counselor, and other advocates, will design a Program Services Plan for each individual student identified as LEP. The PSP will include the results of the English language proficiency assessment, previous academic background and experience, cultural and language history, service delivery model/s for English language instruction (including intensity, duration, and use of native language), and appropriate instructional and assessment accommodations and/or modifications.
5. The results of the assessment and the instructional plan will be shared with the parents within the first 30 days of school, or within two weeks of enrollment during the school year. A one-on-one meeting with parents and small or large group meetings are only two of many ways to share this information. Having written documentation and/or oral

interpretation in the language the parents can best understand is very important. A parent's signature on the Program Services Plan is one form of evidence for this parental notification requirement.

6. The Program Services Plan will also be shared with all educators involved in the English language learner's academic and language schooling to guide placement and instructional services design. Administrators will ensure teachers are being prepared to implement appropriate accommodations and modifications. Educators' professional growth plans and the school's and district's improvement plans will reflect teacher development needs and expected student outcomes for language and academic learning of ELLs.
7. Implementation of the Program Services Plan (PSP) is consistently and regularly monitored for relevance and effectiveness throughout the year. Individualized accommodations are evaluated for appropriateness, and revised at least once a year based on the results of the annual progress assessment.

Special Education & ELL Students

The Education for All Handicapped Act (P.L.94-142, 1973) and the 1990 revision, which was renamed Individuals with Disabilities Education Act (PL 105-15, amended in 1997 & 2004) contains many regulations and procedures that govern the referral, evaluation and special education placement of ELL students. With particular regard to ELL students, IDEA mandates that:

- When obtaining parental consent for any part of the referral, evaluation or placement process, the parent is informed of the action and reasons for the action in their native language. Parental Safeguards and Rights are also given in the native language of the parent either verbally through a translator or in writing
- All notices given to the parents of the referred ELL student shall be given in their native language.
- The ELL student will receive an evaluation that is “nondiscriminatory.” Tests are selected so as not to discriminate on a racial or cultural basis. Tests are provided in the ELL student’s native language (unless it is clearly not feasible to do so, then “the public agency must obtain accurate and reliable information” to guide the committee to make “an informed decision” regarding the ELL student’s eligibility.)
- Regarding eligibility decisions, a “group of qualified professionals” must determine, based on the results of the nondiscriminatory evaluation whether or not the ELL student is as “child with a disability.” A child is not eligible if the “primary” reason for the underachievement is due to a lack of instruction in reading and math or **limited English proficiency**. The child is also determined not eligible if the primary cause of the achievement problems are due to “economic, **cultural**, or environmental disadvantage.” In cases where a learning disability is considered, the above “exclusion” factors apply to the achievement-ability discrepancy. Specifically, if the discrepancy is determined by the group of professionals to be due **primarily** to a lack of instruction, a lack of English language proficiency, or economic, cultural or environmental disadvantage, the ELL student is ineligible for special education

services.

- It is important to note that if an ELL student is found to be disabled, they cannot be denied services due to cultural differences or a lack of English language proficiency.

The Kentucky Administrative Regulations also address referral (including Notices, Informed Consent), evaluation and placement of culturally and linguistically diverse students. The section on evaluation follows. (The reader is referred to KDE website for a link to the complete administrative regulations pertaining to special education referral, evaluation and placement.)

707 KAR 1:300 Section 3. Evaluation and Reevaluation Procedures. (1) An LEA shall ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services. The results of the evaluation shall be used by the ARC in meeting the requirements on developing an IEP as provided in 707 KAR 1:320.

(2) Tests and other evaluation materials used to assess a child shall be:

(a) Selected and administered so as not to be discriminatory on a racial or cultural basis; and

(b) Provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

(3) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has a disability and needs specially designed instruction and related services, rather than measuring the child's English language skills.

Ed note: The above appears to be a direct quote---would suggest italicizing the larger direct quotes---makes reading a bit easier and highlights the materials that are from other sources.

Litigation relating to ELL Students and Special Education Evaluation

The individual evaluation of culturally and linguistically diverse (CLD) students for purposes of special education eligibility has long been questioned. Several court cases dating from the early 1970s have examined the validity of standardized tests, particularly IQ tests with this group. A full discussion of relevant case law is beyond the scope of this document; however, Figueroa and Newsome (2006) point out that the most famous cases essentially address the following questions: 1) Are standardized tests biased due to reasons of cultural difference (Larry P. v. Riles, 1972; P.A.C.E. v. Hannon, 1980), or 2) Are they (tests??) biased due to difference in language (Diana v, California Board of Education, 1970; Jose P. v. Ambach, 1979). These cases all resulted in findings that IQ and standardized test have significant potential to be biased and to lead to decisions that are biased against students who are culturally and linguistically diverse. These cases have resulted in consent decrees that have helped to shape federal law, particularly the Education for All Handicapped Act (PL 94-142, 1975) and the 1990 amendment of the law, The Individuals with Disabilities Education Act (IDEA).

Participation in Commonwealth Accountability Testing System (CATS) Assessment

There have been many questions and issues raised over the inclusion of ELL students in state mandated testing. All LEP (synonymous with ELL) students are included to some degree

in the CATS Assessment. Participation is documented in the Program Services Plan. The accommodations and/or modifications which will be provided to the ELL student during daily instructional and assessment situations are determined by the school, and LEP students may use the instructional modifications as specified on their Program Service Plan in the CATS assessments. This is done with the understanding that the instructional modifications are made on a regular, daily basis in the child's instructional program. LEP students will be counted among the LEP subgroup when scores are disaggregated. Students are exited from ESL services and are no longer counted as LEP when they receive a Composite Language Proficiency scores at Level 5 on the ACCESS for ELLs Language Proficiency Test. From this point on, these students will receive no modifications or accommodations in assessments, and a Program Services Plan is not maintained on them. For specific information regarding the participation of ELL (LEP) students in the CATS assessment, please see the document in Appendix A.

Chapter Five

Stages of Language Acquisition

Just as “typical” children acquire speech and language skills in a particular sequence and with consistent types of errors, students who acquire a second language follow a similar pattern. However, the length of time that it takes a child to acquire a “second “ language is dependent on variables such as previous education and literacy in L1, family educational and economic level, circumstances under which the student has arrived in the United States, amount of formal education etc. The stages of second language acquisition should be utilized as guidelines and to assist with instruction for students. It is critical for all assessment personnel to have a grasp of the stages of second language acquisition. Knowing whether or not an ELL student is not following the stages at the same rate as their ELL peers with similar backgrounds is very useful information to have.

There should be a distinction made between the two aspects of language proficiency before progressing to the stages. **Theoretical Language Proficiency** refers to the underlying capacity to learn and process language structures in any language. **Practical Language Proficiency** refers to an individual’s command of a language, including listening, speaking, reading, and writing. These skills can operate together and separately- i.e. a student may be able to read and write a language but not speak it or vice versa. A student’s ability to speak a language has a positive impact on learning to read and write the language. Practical mastery of a language involves the ability to produce the sounds in the language, as well as knowledge of the vocabulary, grammar, and social knowledge of language.

The Five Stages of Language Acquisition

(Adapted from Hurley, S. R. & Tinajero, J.A. 2001; Lopez & Gopaul-McNicol, 1997; Collier, C., 2004; Hearn, 2000; Roseberry-McKibbin, 2002; Rhodes, Ochoa, and Ortiz, 2005)

1. Preproduction (First 3 months of L2 Exposure)

Characteristics

- Comprehension stage- student is developing skills even though expressive skills are minimal. Listening is critical skill at this stage- student learns to associate sounds and meaning.
- Student is able to understand basic directions when paired with demonstrations and visual cues; may understand key words of concepts.
- Very few oral skills are demonstrated at this point. The ELL student may respond nonverbally by pointing, gesturing, nodding and drawing. A “silent period’ in which little or no verbalization is observed often occurs during this stage. The silent period can last up to about 3 months.

Suggestions for Teaching Strategies

Frequent opportunities for active listening using visuals and common objects from home or classroom)

2. Early Production (3 – 6 Months)

Characteristics

- Word usage and comprehension are continuing to develop.
- Student listens with increased understanding.
- Student uses one or two word utterances, some short phrases/sentences particularly related to social/every day events (i.e., BICS).

Suggestions for Teaching Strategies

Questions to ELLs at this stage should be limited to “yes/no” type questions. It is also appropriate to incorporate “either/or” type questions or questions which require a very simple, factual response. ELLs should be encouraged to imitate correct responses by teacher/peers.

3. Speech Emergence (6 Months to 2 Years)

Characteristics

- Student uses longer and more complex phrases/sentences.
- Student is able to generate independent sentences and retell a short story in second language.
- Student may show problems with grammatical errors related to transferring information from L1 to L2.
- Student understands concrete written English that is accompanied by concrete contexts, such as pictures, objects, actions, and sounds.
- Student understands ideas that are within his/her range of experiences.

Suggestions for Teaching Strategies

Provide opportunities for student to retell stories, using picture and word cues
Have student explain actions in a picture or picture sequences.

4. Intermediate Fluency (2-3 Years)

Characteristics

- Student engages in conversations and interacts more with others whose primary language is English.
- Student’s expressive language skills are significantly improved, fewer expressive errors.
- Student’s “information processing” is slower in L2 – won’t respond as quickly as a native speaker.
- Student is able to express thoughts and feelings.

Suggestions for Teaching Strategies

Provide opportunities for student to create oral and written narratives.

5. Advanced Fluency

Characteristics

Student continues to demonstrate more proficient receptive and expressive skills in L2, but processing information may continue to be at a slower rate in the areas of memory, retrieval, and encoding. A slower rate of processing can persist for several years after learning a second language because:

- a. significant amounts of time and practice are needed to decode a new language.
- b. student may first need to translate information from L1 to L2 (ex. to recite the alphabet in English, student must first say it in Spanish).

At this stage, the ELL student generally produces grammatical structures and vocabulary comparable to native English speakers of the same age.

Suggestions for Teaching Strategies

Teachers continue ongoing language development through integrated language arts and content area activities with an emphasis on vocabulary and content information.

Types of Language Proficiency

There is a generally accepted distinction between the qualitative differences of language proficiency presented by an ELL student after only a two to three years of language exposure and that which developed after several years of language exposure and instruction. Language skills become increasingly complex and capable of expressing abstract reasoning. Cummins (1979, 1981, 1984) was the first to identify and study these qualitative language differences, naming them Basic Interpersonal Communication Skills and Cognitive-Academic Language Proficiency.

Basic Interpersonal Communication Skills (BICS): “Conversational language” BICS involves “surface fluency” of a language and is the easier of the two types of language proficiency to develop. BICS develops naturally from first exposure to a language. In individuals being exposed to a second language, BICS develops through interaction with others, in and out of school settings. In approximately two years of exposure to a second language, most ELLs will become fairly adept with BICS, or, in other words, interpersonal conversation about a variety of everyday topics.

Cognitive Academic Language Proficiency (CALP): Abstract academic language. Used for conceptual thinking and communicating academic subjects. Develops through schooling and education in either the native language or the second language. If the student does not have CALP in their first language, they will not have CALP in their second language. It takes far longer to develop CALP; estimates suggest that it takes approximately 4-10 years to develop in the second language. The variation is due to factors such as prior educational experience (i.e., in the first language) and the type of ESL instruction being provided, and many other student-centered factors, family-centered factors, and degree of acculturation. The bulk of the research seems to point to the finding that continued development of first language proficiency, particularly fluency and literacy, supports the development of CALP in the second language. It

is a common mistake to infer that a child with highly developed interpersonal communication skills (i.e., BICS) should be able to handle the academic workloads in the classroom, when, in fact, this is actually very much a function of the student's development in CALP.

Implications for Classroom Instruction

Cummins (1985, 1986, 1989) discusses two dimensions that help to illustrate the difference between BICS from CALP, and these dimensions have relevance in a discussion of instructional planning and implementation. They are 1) Level of Contextual Support, and 2) Degree of Cognitive Demand. Contextual Support would refer to gestures and other nonverbal cues (e.g., pointing, facial expressions, etc.) that serve to convey meaning in language or concepts. Cognitive Demand refers to the difficulty level presented by a concept or topic. When a student has little experience or prior learning related to the topic, the level of Cognitive Demand would be high.

A discussion of the weather is an example of a topic which would present opportunities for a high degree of contextual support. One can point to the sky, point out the window, or point to the TV as one discusses the weather. And, as we have all had a significant amount of experience with weather, the cognitive demand would be fairly low as well. In this kind of discussion, an individual with proficiency in BICS would be able to participate without much difficulty. A discussion of calculating a square root would probably, due to its inherent abstractness, not have much contextual support. Likewise, many students have not dealt with this topic, thus the Cognitive Demand would be high as well. In a classroom discussion regarding the calculation of a square root, an ELL student would probably need proficiency in CALP in order to benefit from the discussion.

Cummins (1994) suggests that combinations of these dimensions can be viewed as a continuum, and would have relevance for introducing new, complex topics to ELLs. Listing them from easiest to hardest, they would be:

1. Concepts/Tasks with High Contextual Support/Low Cognitive Demand
2. Concepts/Tasks with Low Contextual Support/Low Cognitive Demand
3. Concepts/Tasks with High Contextual Support/High Cognitive Demand
4. Concepts/Tasks with Low Contextual Support/High Cognitive Demand

Language Characteristics Observed in ELL Students (Roseberry-McKibbin, 2002)

- **Negative transfer or interference**

English errors are directly related to the structure of the first language

Ex. "esta casa es mas grande" A literal translation would be "this house is more bigger."

- **Code-switching**

Inserting words, phrases, or longer stretches of one language into another.

Most bilingual individuals code-switch.

- **Overgeneralization**

The incorrect application (negative transfer) of previously learned second language material to a present second language context

Ex. overgeneralizing the concept of “dog” by calling a horse a dog)

- **Interlanguage**

Language used by second language learners who are not yet proficient in the use of English. Errors and mistakes are part of the natural learning process when acquiring English.

Ex. an ELL student might say “no go” for “I don’t want to go” when first learning negation.

- **Silent Period**

A time when language learners don’t verbalize. The silent period might be a time of active listening, a time of reflection, or a time of incomprehension. This commonly occurs with persons learning a new language and may last longer for preschool children

- **Formulas**

Memorized chunks of language.

Ex. “Whaduyu” instead of “What do you?”

- **Unpacking**

Analyzing chunks of language and breaking them down into grammar that can be used.

Ex. Unpacking “Whaduyu..into “What do you...”

- **Simplification**

Using only words that are really needed to communicate.

Ex. “me go store”

- **Language Loss or Subtractive Bilingualism**

Losing skills and fluency in the first language while acquiring the second language. First language skills and fluency need to be reinforced. First language skills and fluency need to be reinforced.

As mentioned in previous sections, there are several factors that can impact a student’s acquisition of English that the evaluator must be aware of. When evaluating an ELL student, data should be gathered to investigate the following factors:

- Language proficiency in the first language
- Literacy level in the first language
- Individual learner characteristics
- Motivation/Attitude
- Literacy level of parents
- Acculturation

Chapter Six

Chapter 6 Acculturation and Impact on English Proficiency and Academic Skill Acquisition

The most easily identifiable and obvious area of difference for students from other non-English speaking countries is their lack of English language proficiency. However, a student's acculturation, or the *process of becoming acculturated/acclimated to the mainstream English speaking culture*, according to Rhodes, Ochoa & Ortiz (2005) is a factor that is as important as language proficiency in the assessment of students who may have special education needs. While lack of English language proficiency is readily observable, the impact of acculturation is not and is also an area that is not intuitively identified as an evaluation concern by educational professionals. The interrelationship between culture, language and education is critical in accurate psychoeducational assessment of students who are English language learners (ELL). Issues that of acculturation that may impact school academic and test performance and learning are

- Recognition of the developmental nature of acculturation
- Cultural loading on standardized tests that influence the test validity for ELL's
- Social-Emotional impact of acculturation on learning and social adjustment
- Impact of acculturation factors on the validity of test results, both individual student and that obtained from parent information
- Observable behaviors in the school/classroom settings that may be the result acculturation and/or language acquisition
- Accurate evaluation of acculturation levels for students (Rhodes, Ochoa & Ortiz, 2005, Artiles & Ortiz, 2002, Collier, 2004)

A common belief in the United States is that of the "melting pot" on which the country was founded and the outcome of several different countries and languages blending together is one "cultural" blend, of which everyone is a part. Historically, this is not true, in that prejudice towards new ethnic/cultural groups often occurs, at least when initial immigration numbers begin to increase. There are culturally and linguistically diverse (CLD) communities in the United States where little or no acculturation has occurred over decades and persons continue to speak their native language and follow the customs of the birth country. Most definitions of culture involve shared beliefs, values and sense of identity and identifiable boundaries often exist between members and non-members. (Collier, 2004). It is important for professionals (school psychologists, classroom teachers, ESL teachers, special education teachers, guidance counselors, administrators) etc.) in school settings to be aware of

- The amount of time that acculturation takes (years in most cases)
- Differences in cultural values from a student's native culture and that of the United States
- The impact on learning when cultural differences occur in the school setting between CLD students, classmates, and teachers

For example, eye contact is a common cultural difference. While it is highly valued in the dominant culture of the schools and indicates attentiveness to instruction, interest, and "good" interpersonal skills, in many cultures, such as some Asian cultures, this is seen as a sign of

disrespect towards adults. The value of promptness is integral in large parts of the United States, while in other cultures, “being on time” is not seen as important, but as an approximate time for a meeting etc. to occur. Variations in the ways in which cultures view speculation/predictions about outcomes may also significantly affect the way a student performs on academic tasks that involve inferential thought. For example, a study of two Native American cultures found significant differences in student responses to descriptions of pictures. Children from one group only provided descriptions of what was evident, while students from the other group, provided much more elaboration (use of descriptive words, explanations of causation and predictions), (Collier, 2004). This cultural information, if not known by teachers, may indicate that children from the first group lack curiosity or average cognitive abilities and written language weaknesses, when in reality none of these may be accurate, and the behavior is representative of their cultural background and expectations for behavior.

For students and families from culturally and linguistically diverse backgrounds, knowledge of expectations of the dominant culture and being taught the skills to attain those that are needed for academic, social and financial success, are critical. Accurate and optimal instruction requires educators to understand the cultural values and beliefs of students and families, without stereotyping all students from a particular culture as homogeneous. For example, there are varying cultural values and behaviors in different Spanish speaking and Muslim cultures. With the different regions of the United States, and from urban to rural areas, behavioral expectations and values also vary. An acculturation goal for students who are CLD is that they will become assimilated within the dominant culture of the United States in order to be “successful”, but retain important aspects, such as language, values and customs, of the native culture. Padilla (1980) indicated that there are three aspects of acculturation:

- *Contact* occurs when persons enter a new culture. This often involves excitement, anticipation, optimism, apprehension, and anxiety
- *Conflict* occurs when a student/family begins to adjust to a new culture and the expectation conflict with those of the native culture
- *Adaptation* occurs over a period of time when a student begins to assimilate and incorporate more and more aspects of the culture of the United States into his/her values, behavioral expectations and beliefs, while hopefully maintaining aspects of the native culture.

Common areas of cultural differences between the native culture of a student and that found in the United States that may impact school success are found in socialization and child-rearing patterns, importance of education, patterns of dress, different expectations for boys and girls and men and women, views of mental health problems and disabilities, family interactions, and impact of religion. Parent education and economic levels are also important factors to consider.

Acculturation effects and difficulties, which as mentioned above, typically follow developmental sequences (Valdes and Figueroa, 1996) from first generation to fourth generations in a family and are most evident in first generation foreign born families. Generally, acculturation is expected to be minimal for these persons and becomes progressively less problematic. Most fourth generation persons are considered highly acculturated, if not comparable to those raised in the mainstream United States. However, even

with high levels of acculturation in third and fourth generation persons from culturally and linguistically diverse backgrounds, the individuals have ideally maintained the identity of the native culture. Second generation students are reported to struggle between cultural loyalty and feelings of lack of identification with either their native culture or the dominant culture, which can result in school problems.

Additionally, acculturation may be impacted by:

- The amount of similarity between the native culture and that of the United States. Students whose native cultures have many similarities with the United States, such as English as the primary language and heterogeneous populations, may experience fewer problems with acculturation, than a child who enters the United States from a country in which a small percentage of the population speak English and is very homogeneous ethnically and racially.
- The reason for immigration, such as to pursue undergraduate or post graduate studies at a university. Voluntary, legal immigration eliminates some of the issues associated with undocumented and/or refugee relocation to the United States.
- The amount of trauma associated with the relocation. Refugees may often experience significant trauma prior to immigration, such as war, persecution, separation from and loss of family members, residing in refugee camps, lack of basic needs, such as food and shelter, limited or no formal education etc. Generally, the amount of trauma in combination with acclimating to a new culture and language may, but not always be demonstrated by school and behavioral difficulties, such as aggressive behaviors, anxiety, or withdrawal. Additionally, acculturation for refugee families can be more difficult because they would not have left their native country, if not for the turbulence or persecution and may hope to someday return. This latter fact can impact acculturation rates. Immigration by undocumented persons, can also be traumatic, both in the journey to the United States and also with respect to fear of discovery that may lead to deportation. Undocumented persons can be those who originally entered the United States with visas, may become undocumented when the visas are not extended and expire, as well as persons who originally entered the country illegally. Refugees can be documented and undocumented. While schools cannot inquire about documentation, it is important that school personnel be aware of the impact on families, or family members who are undocumented.
- Relationships with persons from their native country who live here and speak their language who can assist with knowledge of customs, finding housing, employment, school enrollment etc.
- Separation from family members

Assessment of Acculturation

Acculturation of a student, in order to be conducted as fairly and accurately as possible, should be completed by educational professionals who are knowledgeable in this area. The more a student's acculturation differs from classmates and typical test performance, the less

acculturation is likely to present (Rhodes, Ochoa, & Ortiz, 2005). Information about a student's level of acculturation and its impact on learning and behavior, should not be obtained from one source or test.

Questionnaires, such as found on several different scales, are an efficient manner of obtaining information. However, when selecting a scale, the following factors should be considered:

- Selection of a scale that is appropriate for the student with respect to language and culture. Race and culture are not identical or equivalent, and a scale should be appropriate for the cultural group of the student. For example, Mexican, Cuban, and Central American cultures are not equivalent and it can't be assumed that questionnaire items reflect each culture or subculture.
- Acculturation isn't a single construct but composed of many aspects. Chun et al (2003) identified 10 domains of acculturation that scales assess. While no scale measures all areas, the acculturation domains identified by Chun as important to acculturation are:
 1. Language use and preference
 2. Social affiliation (interacting with persons within and outside cultural group)
 3. Daily living habits
 4. Cultural traditions
 5. Communication style
 6. Cultural identity
 7. Perceived prejudice/discrimination
 8. Generational status
 9. Family socialization
 10. Cultural values

Interviews with parents, teachers, and student, are useful, when appropriate. Rhodes, Ochoa & Ortiz (2005) recommend that a semi-structured interview with specific and focused questions be used. Information should be obtained that is needed in order to accurately measure a student's level of acculturation and its impact on school performance. Identification of the difference between a student's acculturation and that of the culture of the United States, or more specifically the school he/she attends, is important. The greater the difference between a student's performance from that of the mainstream classroom/students in acculturation areas, the greater the impact on classroom behavior and test performance. Conversely, a student who demonstrates little, if any difference in acculturation areas, the less impact this area has on school behavior and test performance. The object of the interview is to ascertain as accurately as possible how similar a CLD student is to classmates and peers in acculturation. Sensitivity and awareness of questioning impact in various cultures is critical in order to obtain accurate information. Examples of questions, based on those suggested by Rhodes, Ochoa & Ortiz (2005) are found in the appendix of this document. It should be noted that interviews with parents and teachers is suggested because differing behaviors may be noted across settings and that children's behavior in the home may likely reflect the acculturation level of the parents.

Observation across school settings is suggested, although it may not be the best indicator of acculturation, which is not always observable, when compared language and learning problems, which are more consistently observable. In the school setting, it is important to observe a student's interactions with peers, whether she/he interacts only with classmates who are native English speakers or with peers of a similar language and cultural background, style of dress, interactions with adults, behaviors in structured and unstructured, social settings, such as lunch and recess, use of language, cultural holidays observed etc.

Assessment of acculturation should include interviews, observations and scales. Information from all sources should be integrated together to obtain data about that allows identification of a student's level of acculturation compared to typical native English speaking classmates.

Impact of Cultural and Linguistic Diversity on Test and Academic Performance:

- As mentioned in previous chapters, there have been numerous legal and legislative documents that reflect the cultural bias on standardized tests, not only with respect to language, but also with culture.
- Kentucky Administrative Regulations (KAR) which guide referral, evaluation and provision of special education services in the state, states that tests and other evaluation materials used in the assessment of a child must not be unfair in areas related to English as a second language, race, ethnicity or cultural factors.
- Tests measure the culture from which they are derived (Rhodes, Ochoa & Ortiz, 2005). Measures of academic skills, adaptive behavior, social-emotional functioning, and speech-language skills are all based on "typical" performance at varying ages and grade levels according to the demographics in the United States. Test items include materials (skills, language, objects) that are representative of academic and behavioral expectations for persons who are born in the United States in English speaking homes. The tests do not generally reflect standardized expectations for students who are CLD, even if they are born in the United States. The standardization samples for most commonly used tests did not include students and families from culturally and linguistically diverse backgrounds. ***It is important to remember that these tests do not provide valid results for CLD students.***
- When assessing a student from a culturally and linguistically diverse background, tests administered in the child's native language must be used whenever possible. While the discriminatory impact of cognitive measures will be discussed in Chapter 10, a similar impact must be considered on standardized measures of academic, speech/language, adaptive behavior and social-emotional functioning. ***Before administering a standardized measure in the above mentioned areas, the standardization sample should be reviewed for inclusion of culturally and linguistically diverse populations, particularly that which is appropriate for the student's background. Administration directions should also be reviewed for validity related to use of translators and translating materials into another language.***

- Use of standardized tests for children who are culturally and linguistically diverse most often results in estimated results due to lack of validity and compliance with test administration procedures, and should be interpreted as *estimates of performance* for these reasons.
- The most accurate assessment of academic skills includes curriculum-based measures that identify a student's level of skills, how a student performs a skill, specific skills and weaknesses and the next level of skill to be taught. This is also true of readiness skill development in preschool aged children.
- Assessment of academic skills, such as reading, in a student's native language, should occur whenever the student has had formal instruction in that language. Additional assessment of a student's knowledge in skills presented in English are also important
- Acculturation and second language acquisition factors may significantly impact obtaining accurate estimates of cognitive and academic skills, particularly on standardized tests, due to the inherent bias of the tests to language, skills, strategies etc. of the dominant culture, which may be unfamiliar to a student for several years.

Assessment of Adaptive Behavior:

The areas of concern when assessing adaptive behavior skills in students from culturally and linguistically diverse backgrounds are similar to those mentioned above.

- Standardized tests are based on expectations for behavior for the dominant culture, which often differs from the culture of the student and family.
- Normative data generally does not include students from CLD backgrounds and results must be interpreted as estimates and with caution, particularly when comparing their skills with those of peers born in the United States who are native English speakers
- The use of a translator, while necessary, also results in non-standardized standard scores.
- A lack of English language proficiency can impact several areas of adaptive behavior, such as communication skills (including written expression) and socialization skills
- Daily living/self-help skills are often lower for students from CLD backgrounds due to later ages in many cultures for independence in dressing, feeding, bathing, etc., as well as some differences in expectations based on gender, with respect to independence, household responsibilities etc.
- Information obtained from the interpreter or cultural broker can provide information about adaptive behavior expectations in a specific culture
- It is important to obtain adaptive behavior information from both parents and school personnel, since the expectations are likely to differ. Again, CLD students in an English speaking classroom are likely to obtain lower adaptive behavior estimates from teachers, based on comparison with native English speaking classmates, while in the home setting, they perform according to their native cultural expectations.

Assessment of Social-Emotional and Behavioral Functioning:

While some disorders, such as autism, occur across cultures, other behaviors that are typically associated with social-emotional/behavioral problems, such as hyperactivity, inattention, verbal or physical aggression, extreme shyness etc. often occur in students from culturally and linguistically diverse backgrounds. However, the reasons may not be related to an emotional or behavioral disorder, but the result of the acculturation process. For example, a student who is initially exposed to English often goes through a “silent period”, when there is little if any social or verbal interactions. While this usually last less than six months, there is variability in the rate and frequency with which children begin to interact. Adjustment to a new language and culture generally results in some behavioral changes while the student is becoming acclimated, which again can vary in they types of behaviors presented and the length of time with which they persist. Factors to consider, in addition to the above mentioned problems with standardized tests for CLD students are as follows:

- The conditions and reasons under which a student and family arrive in the United States. The amount of trauma associated with the immigration is often directly related to the degree of adjustment.
- Refugees may exhibit higher degrees of behavioral difficulties that are the result of adjusting not only to a new culture and unfamiliar environment, but also related to the degree of trauma they suffered in their native country.
- Relocation to refugee camps, loss of family members, violence, nutritional deficiencies etc. often impact a student for years after arrival in the United States. Some signs of Post-Traumatic Stress Disorder (PTSD) may not be evident until later.
- Students who have not attended school or have had interrupted formal education may exhibit some difficulties that appear to be memory weaknesses, inattention, distractibility, disorganization etc. However, these behaviors are often related to lack of knowledge of English, particularly CALP skills and unfamiliarity with schools.
- Behaviors, such as impulsivity and aggression, while viewed in our culture as generally negative, may be valued and reinforced in other cultures
- The presence of an emotional/behavioral disability may be a sign of shame on the family in the native culture and therefore denied by parents
- When assessing a student for possible social-emotional/behavioral problems, it is important to obtain:
 1. an in-depth social developmental history, acculturation information, parent and student interview
 2. teacher interview
 3. classroom observations across school settings
 4. an assessment of behavior changes when instruction is at a student’s level of ability and instructional strategies for ELL students are implemented
 5. record of behavior changes over time
 6. interventions to facilitate behavior change
 7. information related to expectations for behavior in the student’s native culture and impact of a disability from the family’s perspective

In summary, when assessing students from culturally and linguistically diverse backgrounds for special education services, it is critical that the impact of acculturation, the time that it takes for a student to acclimate to a new language and culture and the inherent weaknesses in standardized assessment instruments should be considered.

Important Acculturation Information:

- Assessment of acculturation is of equal importance to assessment of language proficiency for CLD students
- Acculturation process takes years and may impact the parent/child relationship when a child becomes the translator for parents or becomes more acclimated to the culture of the United States than parents
- Standardized measures of adaptive behavior and social-emotional functioning generally only provide information based on expectations for native born English speakers and don't take into account other cultural and English language acquisition factors
- Knowledge of a student/family's experiences prior to and during their immigration to the United States is critical
- Behaviors seen as problematic in the school setting may be related to second language acquisition, cultural differences, and the acculturation process.
- Knowledge of the cultural background and values of a student is important in an assessment
- Acculturation to the school setting may be related a student's previous formal education

Chapter Seven

A Culturally Fair Evaluation Process

“Problems cannot be solved with the same consciousness that created them” (Albert Einstein)

In “Assessing Culturally and Linguistically Diverse Children” (2005), Rhodes, Ochoa, and Ortiz state that, “in its current form, the assessment of culturally and linguistically diverse children is, at best, a work in progress, and, at worst, a biased and damaging process” (p. 42). It has already been mentioned that the use of standardized, norm-referenced assessment instruments with ELLs is a possibly invalid and potentially misleading evaluation approach. IDEA requires that we select instruments which are not discriminatory based on race or culture; that we administer tests in the child’s native language, and that we select tests which will help measure the degree to which the child may be disabled rather than measuring their English language skills. Standardized tests should also be validated for the purpose for which they are used. These regulatory standards alone eliminate most commonly used instruments used to assess intelligence, achievement, adaptive behavior, for cases in which we are trying to distinguish disabilities from a lack of English language proficiency.

Standardized tests developed for use in the U.S. have been constructed based on mainstream American cultural knowledge and experiences. This factor renders the “verbal” portions of common intelligence tests biased and inappropriate for use with culturally and linguistically diverse students. Many assessors try to get around this by administering only the “nonverbal” portions of the test; however, the impact of second language learning has also been demonstrated on tests of nonverbal, discrete knowledge. Figueroa (2002) writes that many researchers have found that ELLs perform better on tests of recalling digits in reverse than on recalling digits forward. This surprising finding has been accounted for by the fact that ELLs process incoming information very slowly, a factor which helps them to recall digits in reverse, but has a negative impact on their ability to retain digits in short term memory for verbatim recollection. This is but one example of how expected test behavior can change when assessing students in the process of second language acquisition.

Other methods of adapting the assessment process for ELL students include informally translating test items to the referred student’s native language and selecting tests for which alternate languages are available. If items on a test have been informally translated, the content of the test has been altered and the standardization guidelines have not been adhered to, thus making any decisions based on scores from tests administered as such would be unreliable and invalid. Formal translations of tests such as the WISC-IV and the Woodcock-Johnson Tests of Achievement into Spanish would, on the surface, appear to have fixed the problem; however, there is still the supposition that all children given the test have had similar cultural, linguistic, educational experiences.

Another complaint with these instruments is the form of language used in the translation. With Spanish translations, for example, the level of Spanish used in the items and required in the answers is frequently very formal. Many of the Latino students being tested in the state with

these instruments may use a form of Spanish which incorporates jargon, slang, or vocabulary which is specific to the region from which they immigrated. Thus, the scores obtained with these instruments are confounded with issues Spanish language use.

Many formally translated tests also fail to meet the rigorous requirements stated in IDEA because of inadequate norming. Of the immigrants coming into Kentucky's schools at present, a significant number are from countries in Central America, East Africa, and eastern Europe. The norms do not include children from these regions or children with similar linguistic, cultural, or experiential backgrounds.

Finally, many assessors will use interpreters when testing ELL students. This practice can be extremely helpful; however, interpreters cannot overcome the limitations of the norming procedures or the cultural content inherent in the items. Additionally, the act of translating modifies the administration of the test to an extent that makes interpreting scores very difficult. Research cited by Figueroa (2002) indicates that translated items often do not convey the meaning originally intended in the item.

The intersection of limited language proficiency and achievement difficulties presents a very complex scenario. It is clear that the traditional means of searching for a child-centered disability is not tenable when the student is culturally and linguistically different and in the process of acquiring English. It is our position that a paradigm shift in terms of how we view educational disabilities, how we approach evaluation, and how we determine eligibility for special education services is needed.

A New Evaluation Paradigm

It is recommended that Kentucky adopt a new framework of assessment when called upon to evaluate ELL for possible special education services. This new framework is based on the assumption that traditional, standardized assessments are not tenable in evaluations of ELL underachievers. The proposed framework examines the struggling ELL student within the context of instruction of the regular classroom, as well the student's response to early intervention and prevention efforts. When academic difficulties continue despite the implementation of culturally appropriate classroom instructional practices and research-based interventions, there is probably reason to suspect a disability and a referral is made for an evaluation. Given the lack of valid standardized tests, adapted assessments, curriculum-based measurement, observations, and informal data collection techniques are employed to examine all relevant instructional, historical, cultural, and linguistic factors. The hallmark of a valid, nondiscriminatory evaluation of ELL students is the quest to determine what the ELL student **knows**, in his or her native language and in English. That information is then systematically used to make decisions regarding eligibility. The eligibility decision-making process is one of clinical judgment, rather than one predicated on scores or discrepancy formulas. This new framework will require all involved in the evaluation of struggling ELL students to become aware of the processes involved in second language acquisition, the impact of culture and acculturation on achievement, and the qualities of instruction that are culturally responsive.

The inherent complexities of ELL evaluations can be managed through comprehensive data collection and utilizing a different mindset for framing the most pertinent questions. Rather than searching for “disability” within the student, based on traditional assessment models, the ELL evaluation focuses on the instructional environment in which the student is functioning. Instructional methodology is evaluated and the ELL student’s response to instruction is carefully observed and measured. Likewise, when struggling ELL students receive instructional modifications, accommodations, or interventions, their “response” is carefully observed and measured. Information is gathered regarding the ELL student and his or her family in order to gain further insight into characteristics of culture, family history, personality variables, etc. that may be impacting achievement in the classroom. It is critically important to recognize that many factors in ELL students’ native culture may make it very difficult for them to fully integrate and successfully function in the culture of our schools (Artiles & Ortiz, 2002). Given the scarcity of traditional assessment instruments that are appropriate for culturally and linguistically diverse students, the evaluation process depends very much on the collection of data from a variety of sources and settings. Formal and informal techniques are used for data collection. Standardized instruments are modified to an “acceptable” degree with the knowledge that the “standard scores” do not hold as much meaning as the information obtained when ELL students demonstrate what they know and can do.

Evaluation data are gathered in ELL students’ native language and English, and effort should be put forth to determine what students can do in their native language as compared to English. Likewise, we should seek to determine what skills ELL students possess in their native language as compared to other age peers from a similar cultural and linguistic background. Rhodes, Ochoa, and Ortiz (2005) state that if an ELL student is truly disabled, the disability exists in the native language as well as English.

When all of the information has been collected, it is very important for assessment personnel and ARCs to understand that there will not be a “a score” or score profile which justifies eligibility decisions. The decision making process will involve the compilation and analysis of many kinds of data and the use of clinical judgement to determine the existence of “a disability” which requires specially designed instruction.

Teacher Assistance Teams & Intervention Tiers

As a great deal of data collected from a variety of contexts are needed in order to distinguish limited language proficiency from an educational disability, it would be helpful for districts to utilize a system of organization. Likewise, it is very informative to gather data at several points along a continuum, from the point of regular classroom instruction to a point at which additional resources are being brought to bear upon the achievement problems. A useful means of collecting and organizing data is by involving a problem solving team. Many districts in the state have formed child study teams or problem solving teams, also called Teacher Assistance Teams (TATs; Chalfont, Pysh, and Moultrie, 1979). TATs and other forms of problem solving teams have become popular as a means of providing early support through intervention development and implementation assistance. These teams are comprised teachers, guidance counsleors, and other educational professionals within a school building. The team

accepts referrals from classroom teachers within the building and then consults with the referring teacher in an effort to intervene early with struggling learners.

The ELLs with Special Needs Advisory Committee recommends the use of TATs or problem solving teams 1) to assist in the process of intervening with struggling ELL students, and 2) collect and organize data to assess the academic impact of the interventions tried with student (Ortiz 2002, 2006). The team would stay involved throughout phases of intervention and data collection. Ortiz (2002) describes three phases or tiers. Tier I refers to the educational functioning of the student within the context of the classroom instructional environment. When an ELL student is demonstrating difficulties at this level, the focus is on the type and quality of instructional methodology (e.g., Are culturally sensitive and appropriate strategies being used?; Is the mode of instruction responsive to the needs of the struggling ELL students?). The ELL student's cultural and linguistic background and level of acculturation would also be of interest in Tier I. The TAT or problem solving team might be involved at this stage and should make efforts to gather information about these factors prior to making recommendations for academic and/or behavioral interventions. Additionally, the team would want to know more about the type of English language instruction being provided to the struggling ELL student.

Tier II refers to a level in which achievement difficulties have not responded to classroom based instructional modifications and other interventions. This is a point at which it would be highly recommended to involve the TAT or problem solving team. The team would be involved in collecting pertinent background information, designing interventions and would oversee the systematic measurement of the impact of these interventions.

Tier III in the framework described by Ortiz (2002) refers to the referral and evaluation process. At this point, problem solving teams are in a position to determine if a special education evaluation is warranted by considering if the following conditions have been met:

- the classroom teacher uses instructional strategies known to be effective for ELLs
- neither clinical teaching nor interventions designed by the problem solving teams have resolved the learning difficulties
- other general education alternatives have been ineffective (Ortiz, 2002)

If an ELL student continues to struggle when these conditions have been met, there is good reason to suspect there may be a disability (Ortiz, 2002). An overview of the Tiered system as we envision it being implemented is presented in Table 1.

This framework incorporates the principles of "dynamic assessment" (Feuerstein, 1979), which focuses on measuring students at different points in the process of learning and demonstrating a skill. The underlying assumption of dynamic assessment is a model of learning in which the teacher assists the student "construct" knowledge by mediating when new content or new skills are introduced. The content or skills are presented such that the student is able to make connections to prior experiences and knowledge. This mediation highlights the power of the teacher/student relationship, within which the highly skilled and knowledgeable educator can tailor instruction to the student's "Zone of Proximal Development" (ZPD; Vygotsky, 1978). The ZPD refers to the level at which new information can be readily incorporated into existing skills

and knowledge and growth and eventual independence in the new knowledge or skill can be attained.

Dynamic assessment describes a manner of evaluating students to determine how much growth occurs as a result of the mediation of the new information or skill, and how much mediation was required from the educator in order for growth and independence to develop. In the context of evaluating CLD students in order to determine if chronic underachievement is due to a lack of language proficiency or a disability, and given the lack of valid and reliable standardized, norm-referenced tests, this kind of assessment hold much promise.

Table 1.
**Overview of Tier Progressions Recommended in the Evaluation of
ELL Underachieving Students**

<p style="text-align: center;">Tier I</p> <p>Focus: Problems/concerns are identified in an ELL student by the classroom teacher. The classroom teacher begins to address the academic difficulties through clinical teaching strategies. The problem solving or teacher assistance team may be contacted for support and guidance.</p> <p>Data Needed: Formal & informal assessments documenting changes in academic performance</p> <p>Duration: 2-4 weeks generally</p>

<p style="text-align: center;">Tier II</p> <p>Focus: The classroom teacher determines, based on the results of assessments, that the instructional modifications and interventions are not yielding adequate academic growth. A referral to the problem solving team or teacher assistance team is recommended at this point, if they are not already involved. Intervention targeted at the academic weaknesses are developed and implemented. Assessment of intervention impact is conducted at intervals determined by the problem solving team.</p> <p>Data Needed: Formal and informal assessments documenting changes in academic performance</p> <p>Duration: 3-6 weeks</p>
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Tier III

Focus: The problem solving team determines that, based on the results of assessments, that the intervention are not yielding adequate academic growth. The team makes a referral for a special education evaluation to determine if there is a disability. The ARC takes over the case. The members of the problem solving team may or may not be members of the ARC.

Data Needed: The ARC develops an evaluation based plan based on the suspected disability and the information available to the ARC from documentation in Tiers I and II.

Duration: Stipulated by federal and state law.

Section II: Procedures and Techniques for Assessment and Data Gathering

Introduction

Students who are struggling academically are generally very quickly identified by classroom teachers. Many times, the student is able to overcome the problem, grasp the necessary new information and proceed in the learning process with relatively minor modifications and/or accommodations to the instructional approach. When struggling learners do not respond readily to these modifications, the classroom teacher most often seeks assistance in some way. Perhaps she or he will talk informally with a colleague, or perhaps there is a problem solving team or Teacher Assistance Team in the building that is comprised of other teachers in the building. These are great mechanisms for soliciting ideas and suggestions for more modification or accommodations that might alleviate the problem.

In the case of ELL students, the problem is that many regular classroom teachers will assume that the struggles the students are encountering are due entirely to their lack of English language proficiency. In many instances, this assumption is correct. The problem with this assumption, however, is that the classroom teacher may delay seeking assistance when there may in fact be some issues with curriculum, instructional delivery, or a possible disability which need to be addressed.

As mentioned in Chapter Seven, the process of evaluating ELL students to determine if their achievement difficulties are due to cultural and linguistic differences or a disability is one of systematically collecting data across a wide spectrum of family and school-related domains. Given the complexity of these kinds of evaluations, it cannot be overemphasized that the data collection and assessment process must be systematic, and therefore, replicable. The ELL Students with Special Needs Committee recommends that districts employ a “tiered” approach in which significantly underachieving ELL students are evaluated within progressively more intensive or specific contexts (e.g., regular classroom, small group interventions, individual interventions, individual evaluations, etc.).

At each tier, there is information to be gained, and the questions answered at each tier will generate questions and approaches for the next tier. Again, our Advisory Committee believes that setting up a problem solving team or Teacher Assistance Team (if there not already one in your building) is a very effective means of collecting and organizing information and data, generating questions, suggestions, interventions and bringing the case to the point of referral if necessary. If the case is referred for a full individual evaluation for possible special education services, the ARC will have a tremendous amount of information and data gathered to help with the eligibility determination.

The chapters in Section II will be organized according to issues that are considered by the Advisory Committee to be pertinent at each of the tiers described in Chapter Seven. Chapter Eight addresses the collection of student information that is pertinent to understanding the elements of the student’s background (i.e., cultural, linguistic, social, health, etc.) that is pertinent to the academic problems being experienced in the classroom. Additionally, data

gathering at this stage will focus on what has been tried in the regular classroom to help the student will address the collection of information about the students' social, cultural, health and developmental background. All of this information can guide educators in developing additional regular classroom-based modifications or interventions that may help the situation, or if the impact of regular classroom-based interventions is not satisfactory, then the information and data gathered at this stage can help guide the modifications and interventions developed and implemented at Tier II.

Chapter Nine addresses the implementation of interventions and modifications that may or may not take place in the regular classroom, but they go beyond the scope and intensity of interventions, modifications, and strategies used informally by the classroom teacher as she or he adapts instruction to the learning needs of her class. At Tier II, the ELL student has been identified as a learner "at risk" and in need of more formal interventions. Chapter Nine outlines the need for Tier Two interventions to be both "scientifically-based," in compliance with the language of IDEA 2004, and "culturally-responsive."

If the educational performance of the struggling ELL student is not satisfactorily improved at Tier II, a referral for further evaluation may be appropriate. This constitutes a move to Tier III, and it would be appropriate to incorporate more formalized data gathering techniques and to begin to focus on possible eligibility determination.

The use of standardized tests is discussed in Chapter Ten. All personnel who are frequently involved in the evaluation of struggling learners tend to lean heavily upon tests which are standardized and provide scores which are norm-referenced. As mentioned in previous sections of this handbook, the use of these instruments with ELL students without consideration of the impact of their cultural and linguistic background would produce results which are invalid, biased, and essentially useless for decision-making purposes. Having said that, the use of these instruments can yield useful information which can guide educators and administrators. These tests can be modified with the assumption that they are no longer "standardized" and the scores can no longer serve as "norm-referenced" indicators of student performance.

The last chapter in Section II will discuss the culmination of the intervention process, data collection, and individual evaluation. This chapter will address the components of the psychological report that must be included in order to accurately convey the alterations used in the evaluation process to make it more culturally and linguistically appropriate. The process of determining eligibility and the use of professional judgement will also be addressed.

Ed. Note: sort of same issue as on p. 8

Chapter Eight

Collecting Information at Tier I

As mentioned numerous times in this handbook, an ELL student who is experiencing difficulties in the classroom presents with a myriad of cultural and linguistic factors which may or may not be impacting the educational difficulties. Likewise, the structure and ecology of the classroom, instructional approach and curriculum may or may not be impacting the problem or interacting with the cultural and linguistic characteristics of the student, which then impacts the educational progress of the ELL student. The purpose of collecting information at Tier I is to identify all of the factors and variables which may be critical to gaining an understanding of why the ELL student is experiencing difficulties, what strategies might help the student, and whether or not the classroom teacher, ancillary staff and administrators should begin to suspect a disability.

This chapter will focus primarily on the areas which should be targeted for investigation. The techniques used to gather the information will be very familiar in general. Direct observation in the classroom and other areas of the school is very helpful, as are observations in other settings in the community if possible. Structured interviews (with an interpreter if needed) are also extremely important at this stage. Checklists and questionnaires can be useful; however, they should not be sent home for completion as many are with English speaking students. Respect and courtesy for the family's cultural and linguistic status are critical at all levels of the evaluation. It is best to always gather information from the parents with the aid of an interpreter, who preferably will be someone who is very familiar with the culture from which the family comes. The term "cultural broker" has been used to describe someone who is bilingual and very knowledgeable about particular cultures. When seeking information about the cultural background of an ELL student, it would be very appropriate to interview someone with this expertise to gain an understanding of various aspects of the culture that might be impacting the achievement difficulties. A cultural broker can also consult with school staff regarding how best to communicate with the parents. School personnel are encouraged to seek these individuals out in the surrounding community. Their assistance would be an invaluable contribution to understanding the student and family better.

Student/Family Variables

Obtaining a thorough background history is appropriate for any student who is experiencing significant academic difficulties, and this is particularly critical in cases of students who are culturally and linguistically different. The background information should include early health and developmental factors, socio-economic factors, country and region of birth, changes in residence, educational history, linguistic factors, cultural background, and acculturation factors (Rhodes, Ochoa, & Ortiz, 2004, Ortiz, 2002).

Prenatal history is important for any child experiencing significant educational difficulties. Questions regarding whether or not the mother saw a doctor regularly, whether or not she sought assistance from doctors or nurses during the pregnancy and delivery and what the

child's health condition was at birth are very important. These issues are both personal and sensitive, and school staff should use discretion and make every effort to be culturally sensitive when seeking this information. Again, cultural brokers would be an excellent source of background information in this area. They can provide information regarding culture and customs surrounding pregnancy and deliveries, as well as information about the health care system in the region of the child's birth. With regard to developmental milestones, such as crawling, speaking words, walking the evaluation personnel should remember that cultural customs in child rearing practices can make a big difference in terms of when these milestones are achieved. Again, seeking consultation from individuals who are very versed in the culture can help to provide context for this information.

A complete health history should be obtained. Again, the focus is on identifying any factors that may provide an understanding of the educational difficulties being experienced by the student. The health history should be supplemented with data from current medical screenings and evaluations (e.g., vision screenings, hearing screenings, general physicals, etc.)

The following areas in the student's/family's background relate to linguistic and cultural factors which may be impacting the educational difficulties. Samuel Ortiz (2004) states that "the more a child's or their parent's culture differs from the dominant culture in which they live, the greater the chances that learning will be affected" (p. 23). The following are some factors identified as being important factors to consider when trying to determine if learning difficulties are due to cultural and linguistic differences or some other factor:

- the primary language of the home;
- the student's first language;
- the student's proficiency in L1 and L2 (assuming L2 is English);
- the parent's proficiency in L1 and L2;
- the student's and parent's literacy in L1 and L2;
- the educational background of the parents;
- the degree to which the parents have become acculturated;
- the socio-economic status of the parents (both in their native country and the U.S.)

The educational implications of any of these factors are significant. It can generally be assumed that ELL students are faced with trying to achieve in a curriculum that is being delivered in a language in which they are not proficient. As pointed out in Chapter Five, language proficiency is a function of experience and instruction in a language. The problem solving team will want to determine if the student has been exposed to English and English language instruction long enough to be showing expected achievement in the classroom. Obtaining information about previous educational experiences and gaining information regarding how much a student has learned in their native language is key to developing expectations for classroom achievement. As mentioned in previous chapters, research in second language acquisition has demonstrated that previous native language instruction and literacy supports the development of literacy in English (Cummins, 1984; Krashen, 1982, 1991; Thomas & Collier, 1997; Rhodes, Ochoa, & Ortiz, 2005). Many students come to us with significant school experience in their native country and strong literacy skills in their native language. We also have students who come from countries in which schools are few and expensive to attend. These

students' families may not have been able to afford to send them to school, or transportation and geographic realities may have kept them from attending on a regular basis or at all. In some cases, the ELL student is a refugee from a country impacted by war, and schools may have been closed.

A critical piece of information to obtain at Tier I is the student's level of English language proficiency. As mentioned in Chapter Four, all students who are identified as being Limited in English Proficiency (LEP) are given the ACCESS for ELLs Language Proficiency Test on a yearly basis. It would be very important to know the levels at which the student is functioning in listening, speaking, reading and writing skills. There may also be other test data in the student's English as a Second Language (ESL) classroom file or the cumulative file which would shed light on the student's current level of language proficiency.

Likewise, the problem solving team should interview the ESL teachers to determine how the student is performing in the English language curriculum, relative to others with a similar cultural and linguistic background (if there is a similar student) and students who are similar with regard to the length of time they have been in an English speaking school and/or the length of time they have been exposed to English. This information is crucial because it adds a normative context which, because of the limitations of the norm-referenced tests available, will be rare throughout this evaluation process. This information also provides a somewhat normative context when considering what should be expected in terms of achievement in the regular classroom curriculum.

The language proficiency of the parents in L1 becomes important when we want to know if the parents have been able to provide language experiences for their children, such as guiding them in developing structures, semantics and syntax in their native language, reading to them their native language. Their degree of proficiency in English is important to know as we begin to consider whether or not the parents can help support the child's acquisition of English, communicate with teachers and staff, socialize with other parents, etc. The educational experience and literacy of ELL students' parents is also useful information because it sheds light on the degree to which parents have the skills to support the learning process of their child. Problem solving teams should be aware that the struggling ELL student may come from a culture in which education is not valued or stressed to the same degree as in American culture.

Knowing the degree to which a family and student have become acculturated in their new community was referred to above. As pointed out in Chapter Six, acculturation is critical and often overlooked variable in the formula for academic success. One of the goals of collecting information at Tier One is to determine if some aspect of the student's cultural background may shed light on their struggles. Acculturation is a natural process of acquiring the culture of the dominant community (Rhodes, Ochoa, & Ortiz, 2004). The rate of acculturation can vary dramatically depending on the desire and willingness to acculturate. Some predictions can be made, however, and it is generally agreed that some aspects of a culture (e.g., clothing, hair styles) can be acquired much more quickly than some language-based mores and customs (Rhodes, Ochoa, & Ortiz, 2004).

Some cultural values would be highly and directly relevant to the student's achievement in the classroom, including the culture-based attitudes toward school, learning English, learning academic content, attitudes toward teachers and principals, and generally whether or not the culture of the home supports the goals of the school.

A note on socio-economic status, refugee families, migrant families, and those with “Limited or No Formal Schooling:”

Of the many “pieces to the puzzle” at Tier I, these issues constitute areas which have the potential to be more educational debilitating than the rest. Certainly, one could not assume that a child could possibly come prepared to focus on instruction if their most basic survival needs (adequate food, shelter, and clothing) are not being met. Problem solving teams may want to look for signs that a student and their family are at-risk for problems related to socio-economic status.

Refugees, as indicated in Chapter Four, have fled a situation and are seeking asylum in the U.S. many of the refugees who are attending Kentucky's schools are from areas of Western Africa and Bosnia, which were ravaged by war. For students from these families, it would be beneficial to consider possible mental health care needs. The problem solving team may wish to invite a psychologist or counselor who has an expertise with refugee issues and post traumatic stress to be involved with the process of intervention and evaluation.

Migrant families should also be given particular attention because of the factors associated with frequent moves. There may be issues surrounding the conditions in which the student is living, the socio-economic status of the parents, transportation issues, and limited schooling because of poor attendance.

Finally, students with “limited or no formal schooling” at extreme risk for educational difficulties. These students would potentially include those whose parents are migratory workers, those who come from refugee camps and war-torn countries where schools are often closed or are too dangerous to attend, and students who come from very remote countries where schools are few or are long distances away from the the family.

There are obviously many student/family-related factors to consider when trying to determine what may be contributing to educational difficulties. Some forms that may help to guide interview sessions are included in the Appendices.

School Variables

Ortiz (2004) points out that there would be many reasons why an ELL student is experiencing difficulties, and the presence of a disability is only one of them. After investigating the role of culture and linguistic factors, including factors related to the acquisition of a second language, Ortiz and many others suggest looking at the match between “culture” of the school and the culture of the child (Rhodes, Ochoa, & Ortiz, 2004; Artiles Ortiz, 2002). More directly, how culturally and linguistically appropriate and responsive is the mode of instruction and assessment in the classroom? Data collection at Tier I presents an opportunity to scrutinize and

evaluate the fit between the culture of the student and the culture of the school. Again, acculturation is a process that takes time, and many students have had very little experience with the culture of a school. Likewise, many, if not most, of the teachers in Kentucky have had little preparation for the challenges of instructing culturally and linguistically diverse children. With regard to the ELL student's experience with English speaking schools, the team will want to determine the types of experiences the student has had. For instance, there are many English speaking schools abroad, but the "culture" of the school (e.g., rules, routines, modes of communication, discipline procedures, etc.) can be dramatically different from our schools in Kentucky. Many refugees have attended schools within refugee camps in which instruction is available in English; however, the length of the school day and the general culture of the refugee camp's "school" are completely different from what the ELL student is experiencing in Kentucky. An extremely important factor to consider at Tier I is the culture of the school and classroom in particular. There are characteristics of schools and classrooms that considered to be "culturally responsive" and within which, culturally and linguistically diverse students can benefit from instruction. Ortiz (2004) lists four such characteristics:

- the language of instruction must be comprehensible to the student;
- the instruction must draw upon the student's existing cultural and linguistic foundations;
- the student must be able to identify and relate to the content of the curriculum, and
- the child must be made to feel that their personal language and culture are assets, not liabilities (p.26)

The affirmation of the student's language and culture extends beyond the classroom to the entire building in culturally responsive schools. In evaluating the impact of the cultural differences of the student experiencing difficulties, it might be beneficial to examine the culture of the building and staff. Ortiz (2002) describes several characteristics of schools which have positive school climates that promote the success of ELL students. These characteristics include respect for cultural and linguistic diversity; providing professional development for staff regarding the instructional needs of ELL students and the stages of second language acquisition; the desire to build effective school-family relationships; setting high expectations for ELL students; making a range of regular education and special education services available for all students (Ortiz, 2002; Garcia & Ortiz, 2004). In light of these considerations. Some pertinent questions to consider at this stage include:

- Does the child seem to be unaware of or confused about the routines of the school and/or classroom?
- Is the classroom teacher attempting to incorporate themes and activities that draw upon and utilize the ELL student's prior knowledge and experiences?
- Does the classroom teacher provide native language supports, such as labeling areas of the classroom, desks, books, the restroom, etc.?
- Is the classroom teacher using supports (e.g., realia, visuals, gestures) and scaffolding strategies to providing guidance and assistance with difficult tasks?
- To what extent is the ELL student receiving English language instruction in the ESL classroom?

Tier I is a stage at which the classroom teacher is actively involved in attempts to provide the most culturally and linguistically appropriate and effective instruction possible. Being able to document this effort involves assessing the ELL students skills through classroom generated tests, curriculum-based measurement and other types of formal and informal assessments, and attempting to suit the content and instructional strategies to the student's strengths and weaknesses. One important factor to consider when beginning this stage is the level of language proficiency in both BICS and CALP. This knowledge will assist in setting reasonable expectations for academic performance in the classroom (Ortiz, 2002).

Again, the goal of Tier I is to evaluate the cultural and linguistic appropriateness and the impact of the intervention and modifications the classroom teacher has been implementing over a period of time to assist the ELL student who has been struggling to learn in her or his classroom. In evaluating the cultural and linguistic appropriateness of these interventions and modifications, many of the same questions posed above should be asked. Evaluating the impact of the things the classroom teacher has tried can be relatively simple to do, but it requires a careful and systematic approach. This is the reason we recommend that a TAT or problem solving team get involved early in the process. The team can help come up with suggestions for different approaches and may even have resources for various interventions for CLD students. The team can also provide guidance with measuring baseline skills in the ELL student and then help with follow-up assessments to determine the impact of the Tier I interventions.

How Long Is Long Enough?

When dealing with chronically underachieving students, time becomes an major issue. On one hand, there is a strong sense of getting the student extra help as soon as possible. On the other hand, it takes time for interventions to begin to yield success, thus it will take time to be able to accurately determine whether or not an intervention has had any success. Time becomes even more important at Tiers II and III because of growing concerns that a disability may be present. There are varying opinions regarding how long an intervention must be tried before one can make a reasonable, reliable and accurate determination about its impact. The ELL Students with Special Needs Advisory Committee recommends that an intervention be attempted for at least 4 weeks with a review at 2 weeks and adjustments made to the intervention plan if progress is not noted. Repeated measurements of progress should be obtained and designed based on the target behavior. The amount of time for an intervention may also vary depending on the target behavior (academic or behavior) and the number of behaviors that are targeted.

The TAT or problem solving team mechanism provides a way of formalizing the Tier I efforts so that school administrators, parents, psychologists and other stakeholders in the process can objectively see that culturally and linguistically appropriate interventions were thoughtfully developed, implemented and evaluated. Forming the right questions and finding the answers to these questions will help guide teachers, psychologists, or problem solving teams to determine whether or not the ELL student needs to move to Tier II, in which more individualized and formal interventions are implemented. In conclusion, the goal for data collection at Tier I is to gain a very good understanding of the factors which may be contributing to the educational difficulties being experienced by the ELL student. These factors may be related to the linguistic and cultural characteristics of the student and/or his or her family. There may also be student-

centered health or development issues which are coming into play. The cultural appropriateness and responsiveness of the curriculum and mode of instruction in the classroom should be examined in order to determine if conditions are present for there to be an expectation of academic success for the culturally and linguistically diverse student. This is a very critical stage in discriminating between a disability and cultural-linguistic difference. As discussed in Chapter Four, IDEA 2004 requires that ARCs document that the cultural and linguistic differences of the ELL student have been considered, addressed, and it has been determined that these differences are not the primary cause of the educational difficulties. Careful documentation of efforts at Tier I are extremely important.

Chapter Nine

Tier II Issues: Designing Culturally & Linguistically Appropriate Interventions and Measuring Their Impact

Once it has been determined that a student has not responded to modified curricula and instructional approaches and other interventions utilized at Tier I, a more formalized effort is made to address the academic and/or behavioral difficulties. This constitutes a move to Tier II in the structure being recommended by the ELL Students with Special Needs Advisory Committee. At this stage, it is highly recommended that a problem solving team or TAT be involved in collecting and organizing information needed to clearly define the problem, propose, design and implement interventions, and supervise the systematic and repeated assessment of the impact of the interventions.

Discussing the issues of setting up and training a problem solving team to deal with ELL students who are underachieving is beyond the scope of this handbook; however, the resources and bibliography sections of the Appendices contain references to articles on these topics. We have also included forms which could be used to help the team with documenting the problem definition stage, suggested interventions, staff assignments, follow-up assessment schedules and the results of the assessments.

The goal of Tier II is to successfully intervene and ameliorate the academic and or behavioral problem. Ortiz (2002) states that this stage should not be viewed as yet another step the classroom teacher must get through before the child can be referred for special education. Rather, this stage should be framed as an opportunity to prevent the referral from having to occur.

As with Tier I, time is an issue. Again, it should last long enough for the intervention to have a chance to make an impact. The problem solving team should be clear when setting up the intervention phase regarding when follow-up assessments should be conducted, how many should be conducted and when they will reconvene to determine the impact of their efforts. Specifically identifying skills or behaviors to be learned and “how” these will be taught, can assist with efficiency in teaching and data collection. For example, an objective to teach 5 sight words ending in “at” is more specific and easily monitored than an objective that looks at improving word recognition skills. An important element to keep in mind is that all eligibility considerations involve the ARC coming to the conclusion that the student’s lack of achievement is not due to a failure to provide “appropriate instruction.” In the case of a student who is CLD, “appropriate instruction” would include instruction which is culturally and linguistically appropriate. Thus, documenting that the problem solving team has taken time to develop culturally and linguistically appropriate interventions, has implemented them for adequate amount of time for them to make an impact, and has conducted follow-up evaluations to determine the impact of the interventions establishes more evidence for the ARC that “appropriate instruction” has been provided.

Culturally and Linguistically Appropriate Interventions

There is no shortage of resources for teachers, administrators, school psychologists, and other educational staff that provide suggestions for academic interventions. The 2004 revision of IDEA states that the interventions and modifications used in the assessment and instructional processes must be “scientific, research-based” interventions (Federal Register, Vol. 71, No. 156, August 14, 2006, Section 300.307(a)(2)). Again, there are ample resources for reading, writing and math interventions that meet these criteria. Most school districts in Kentucky are attempting to provide within their schools a range of literacy and math assistance programs. When dealing with underachieving ELL students, however, the interventions provided to them should be developed and implemented with these students’ cultural and linguistic differences in mind. As mentioned in other sections of this handbook, there are hallmarks of culturally and linguistically appropriate curricula and instruction. These elements should certainly be present in academic interventions.

When the underachieving ELL student is moved into some type of formal academic intervention group, the cultural and linguistic considerations will need to be incorporated into the program (e.g., native language supplemental materials, culturally relevant material supplements, etc.) The problem solving team may choose to design an intervention to meet the individual needs of the ELL student, and in this case, the cultural and linguistic considerations can be incorporated as the intervention is being designed. For example, Ortiz (2004) states new information and skills being taught to ELL students should be **comprehensible**. To help achieve this, the problem solving team might design a modification in which “realia” are used as part of the instruction to help the ELL make the link between the new content/skills and previously learned information or life experiences.

Tier II concludes with a determination regarding whether or not the intervention has made an impact on the ELL student’s educational functioning. This determination is based on data collected through assessments, observation, interviews, etc. If it is that significant progress is being made, the problem solving team may choose to make recommendations to the classroom teacher regarding instructional modifications that may need to stay in place. The team may also decide to re-evaluate the case after a period of time to check progress.

If it is clear that no significant progress is being made, the problem solving team may document that the ELL student’s “response” to the intervention has not been positive. At this point, it would be the recommendation of the ELL Students with Special Needs Advisory Committee that a referral for a full, individual evaluation be made. The problem solving team may become the ARC or another group of educators may serve as ARC members.

The referral process should proceed quickly given the amount of data that have already been gathered in Tiers I and II. The next chapter will address the referral process as well as evaluation considerations when using standardized tests.

Chapter Ten

Tier III: Referral and Standardized Assessment Considerations for ELL Students

By the time that a problem solving team decides to move an ELL student with chronic academic and/or behavioral difficulties to Tier III, a tremendous amount of relevant data have been collected. There is enough information to know the student's academic strengths and weaknesses, and, given the lack of response to two intervention phases, the members of the problem solving team would probably have good reason to suspect that the ELL student has a disability.

Referral Considerations

The regulations and procedures in Kentucky regarding the referral of student's suspected of having a disability are clearly laid out; however, as with the intervention and evaluation pieces, cultural and linguistic considerations must be taken into account in the referral process. Parent contacts should be made in their primary language. These contacts may take place in a meeting at the school, and in this instance, an interpreter should be present. The use of interpreters is an extremely useful, if not crucial practice; however, interpreters must be knowledgeable about the special education referral and evaluation processes. Training individuals who wish to serve as interpreters is very important. Issues surrounding the use of interpreters will be addressed later in this chapter.

The language of the family must be considered in all aspects of the referral process, meeting notices, phone contacts, notice of parent's due process rights, the ARC meeting, and gaining permission for evaluation. The parents must be clear as to the reasons for the academic concerns, the areas of concern, the proposed areas of evaluation, the duration of the evaluation process, what will be done with the results of the evaluation and what happens next. Chapter Four outlines the requirements under IDEA regarding parent notices.

School staff should also be mindful of the culture of the parents when planning the referral ARC meeting. It can be very intimidating for parents from the U.S. to walk into a conference room and discuss their child's weaknesses and educational needs with several people, some of whom they have never met. Efforts should be made to ensure that parents from other cultures feel welcome and valued as members of the school community. Cultural considerations should also shape the way and manner of describing the academic problems. Education is regarded in very different ways across cultures. Likewise, disabilities are viewed very differently across cultures. Cultural brokers can be an invaluable source of information as the ARC members begin to plan meeting and seek to avoid problem areas and misunderstandings.

The Use of Standardized Norm-Referenced Tests

The shortcomings of using norm-referenced, standardized tests in the evaluation process were outlined in the Chapter Seven. In short, it is not appropriate to use only standard scores from these instruments to make eligibility decisions; hence the recommendation to collect data

from a variety of formal and informal sources and use professional judgment for eligibility determination. Despite the critical shortcomings of standardized tests, they can play an important role in the evaluation process and yield useful information. The focus of testing is to determine what the student knows. Formal tests generally present very good samples of items, and item difficulty gradients have generally been carefully considered. The administration of formal tests must be adapted to suit the linguistic needs of the ELL student. Some of the adaptations that are very appropriate when testing ELL students include:

- using interpreters
- re-administering missed items in the native language of the student
- allowing additional time for responding – ignoring time limits set by certain subtests
- modifying response format for items
- giving only nonverbal subtests of cognitive tests

Use of Interpreters

Interpreters can be extremely useful in the evaluation process, but major concerns can arise if they are not properly trained to be part of the referral and evaluation process. Many districts in the state currently use interpreters; however, smaller and more rural districts may have difficulty finding individuals who can serve as interpreters. Rhodes, Ochoa and Ortiz (2004) point out that it is well worth the effort to exhaust all resources to locate persons who may become suitable interpreters. They cite some places to begin looking, including police departments, courts, local hotels, utility companies and phone companies, which employ individuals who deal with the public and may be bilingual.

Finding someone who is bilingual is not the only goal. Interpreters being utilized in special education evaluations should be equally proficient in English and the language of the referred student and his or her family. They should also be knowledgeable of the culture of the referred student's family and of any linguistic variations common to their culture (Rhodes, Ochoa and Ortiz, 2004). For example, district personnel should be aware that Spanish terms and phrases could vary dramatically depending on the country or region from which the family relocated. The interpreter should be able to adapt his or her vocabulary to make the lines of communication more clear.

There are many skills that should be targeted in training for interpreters who will participate in the interviews, ARC meetings, and evaluations of ELL students. First, interpreters should be instructed in the processes and vocabulary associated with special education. Special education processes are filled with confusing acronyms (ARC, IEP, etc.) The interpreter should know what these acronyms stand for and be able to explain clearly what they mean to the parents. They should understand titles, roles and responsibilities of all who are working with the student and those who will be involved in the evaluation.

Interpreters who assist with the evaluation directly, either in parent interviews or testing situations, have a different skill set to learn. They should be trained in various aspects of formal interview and test administration procedures. They should translate questions as directly as possible. They should not alter question to change the tone, and in formal testing situations, they

should not alter the question in any way that may lead the student inappropriately or give them hints. Interpreters should be given time to become acquainted with test materials, question and response formats, item types, responses considered correct vs. responses which need to be further queried. It is very important for interpreters to receive training in maintaining confidentiality throughout the evaluation process.

Many schools seek to use family members of the referred ELL student as interpreters. This is not appropriate for many reasons. First of all, it places the family member in the awkward position of having to remain an objective source of interpretation between the school staff and family. Secondly, family members will not have had training in any of the areas mentioned above. If the family member is not in the immediate family, it would breach the confidentiality of the evaluation information for them to be present during any part of the process.

There will probably be areas in the state in which it is not possible to find and train an interpreter to assist in various educational situations. In the area of formal cognitive testing, this possibility has been addressed, and it is recommended that evaluation personnel administer only nonverbal sections of tests. (This information is adapted from Rhodes, Ochoa, and Ortiz, 2004).

Formal Test Considerations

In the following sections, the various areas of formal assessment will be addressed and several points of consideration that are particular to each will be discussed. There are modifications that should be implemented to the maximum extent possible in all formal testing situations in order to accommodate cultural and linguistic differences. Many of these have been discussed in previous sections of this handbook. Other recommendations are contained in the resources cited at the end of handbook.

Cognitive Evaluations

Assessment of cognitive abilities in students with possible disabilities is considered by many an integral part of an evaluation. However, when evaluating the cognitive functioning of students from culturally and linguistically diverse backgrounds, it is important that several factors be considered. Factors such as language proficiency, language dominance, history of formal education, length of time in the country, etc. assist in decision making about the appropriate method of evaluation. While the inherent problems with standardized tests when used with CLD students have been previously discussed, in the area of cognitive assessment, it is important that a student's abilities not be underestimated through use of an incorrect instrument. For example, the use of a test with a verbal scale, such as the Stanford-Binet Intelligence Scale-5th Edition or the Wechsler scales, with a student who has limited receptive and expressive language skills, could result in scores that fall within the range of a cognitive disability. Similarly, tests with nonverbal scales, frequently involve oral directions as well as familiarity with items that are culturally based. A student with limited expressive language skills may also have difficulty on nonverbal items if he/she is not able to understand the English directions or is unfamiliar with the type of items. The Universal Test of Nonverbal Intelligence (UNIT) and the Leiter-R, are measures of nonverbal reasoning with English-language and acculturation –reduced

items. However, the items still require receptive comprehension and understanding of communication through gestures and understanding of what is expected and how it is to be completed. Knowledge of universal gestures, test-taking strategies etc. are impacted by level of acculturation. There is still a need for effective communication of the tasks required in order for an accurate estimate of the student's ability to be obtained. (Rhodes, Ochoa & Ortiz, 2005). Testing a student who is fluent in Spanish on a measure of cognition in Spanish (Woodcock-Johnson Tests of Cognitive Abilities) and the Wechsler scales, may be impacted by dialectical and cultural variations. Standardization samples also need to be evaluated when using an measure of cognition.

Rhodes, Ochoa and Ortiz (2005) recommend a multidimensional model of assessment that assists with decision-making about the appropriate modality of test to use (nonverbal, bilingual, English, native language) and interpretation of tests results as to the impact of student's cultural and linguistic difference or actual ability. Their multidimensional model of cognitive assessment includes knowledge of four variables:

1. current grade of student
2. mode of assessment (reduced culture/language, native language, English or both languages)
3. current and previous types of educational program
4. individual's current degree of language proficiency in both English and native language (p.169)

Language Proficiency

A student's language proficiency should be obtained from multiple sources, such as a standardized measure of CALP (Woodcock-Munoz Language Survey (WMLS) and the Bilingual Verbal Abilities Test (BVAT), language samples in L1 and L2 from a conversations or structured storytelling activity with a nonverbal storybook (Miller et al, 2006) as well as observations of verbal interactions across school settings, questionnaires and interviews. The use of only one measure of CALP is generally not indicative of a student's functioning. Assessments of BICS as well as CALP is suggested. Often teachers assume that language is not an issue with a child due to well developed BICS. Students language proficiency in both languages should be ascertained whenever possible. For low incidence languages in a school district, a language sample through a conversation with a translator may be the only way to obtain information. Then, through the use of a cultural broker, more specific information about a student's language proficiency can be estimated. Students who enter a school with no English skills, will generally have more proficient skills in their native language, although they may have achieved CALP in that language. Generally, CALP is acquired in a language after 4-5 years of instruction. A student who has acquired CALP in one language has the skills needed to acquire CALP in a second language. Some commonly occurring profiles of language proficiency identified by Rhodes, Ochoa & Ortiz, 2005) are as follows:

1. Minimal proficiency in both L1 & L2- (CALP score of 1 -2)- students falling within this range are often sequential language learners in English only school settings. They often enter school with no English skills before entering school in their native country or did not have formal education. The student may have also lost skills in L1 as they become more proficient in L2 due to education. It is important to remember that for a

student to have a disability it must occur in both languages.

2. Emergent Proficiency in L1 and Minimal Proficiency in L2
3. Fluent Proficiency in L1 and Minimal Proficiency in L2
4. Emergent Proficiency in L1 & L2
5. Fluent Proficiency in L1 and L2

Suggestions for the test modality based on the multidimensional model (Rhodes, Ochoa & Ortiz, 2005, Ortiz, 2006) indicate that students in English only classes, with or without ESL services, who are in grades K-7 and have minimal language proficiency in L1 and L2 or L1 emergent skills and L2 minimal skills be tested on a nonverbal test, while those with CALP levels of 4-5 in English can be tested on cognitive measures used by native English speakers. Students with CALP levels of fluent in L1 and minimal in L2 should be tested in L1 whenever possible. For students with emergent CALP levels in English after grade 2, inclusion of testing in English can be done, although results should be interpreted cautiously and in conjunction with nonverbal information.

Grade Placement- English only instruction (most prevalent in Kentucky)

- .K-4grade placement- students most often will demonstrate CALP levels of *L1minimal/L2minimal or L1emergent/L2minimal* and are likely to have received all or most of instruction in English with no opportunity to develop higher level skills in L1

L1minimal/L2emergent- students in third or fourth grades with no L2 opportunities

or L1emergent/L2 emergent is often seen in students in third or fourth grade with a language rich environment in L1 at home and English only instruction in school

- 5-7 grade placement- *L1minimal/L2 emergent* students who have had English only instruction for 5 or more years, test on nonverbal measure and secondarily with verbal measure. The latter may underestimate abilities.

Generally, a nonverbal format is suggested for students in ESL and English only programs with CALP levels below 4-5.

Interpretation of standardized cognitive measures on two factors (degree of cultural loading on subtests and extent of linguistic demands) may assist with another more representative and less discriminatory view of test performance (Rhodes, Ochoa, & Ortiz, 2005).

- Cultural loading is defined as the degree to which a task requires specific knowledge/experience with the mainstream culture of the United States.
- Linguistic demand is defined as the amount of linguistic facility that is required on a test,
 - such as verbal vs nonverbal language required of the examiner
 - receptive language required of the student (examinee)
 - expressive language required of the student

Generally, subtests that demonstrate low linguistic demands and low cultural loading on the UNIT are *cube design*, while spatial memory requires a moderate degree of linguistic ability and low cultural loading. *Symbolic memory* requires moderate cultural loading and low linguistic memory while *analogic reasoning* has a high degree of cultural loading and low degree of linguistic demands. Subtests on the WJ-III and UNIT that yielded high degrees of cultural loading were *verbal comprehension and analogic reasoning*, while *concept formation, sound blending, and verbal comprehension* yielded high linguistic demands. *Visual matching, numbers reversed, and visual-auditory learning (WJ-III) and spatial memory (UNIT)* yielded moderate linguistic demands with all low for cultural loading, *except for visual-auditory learning*, which demonstrates a moderate degree of loading. Spatial relations (WJ-III) and Cube Design (UNIT) both factored low on linguistic demands and cultural loading. For more specific information about this model for cognitive assessment see Rhodes, Ochoa & Ortiz, 2005).

In general, when assessing the cognitive abilities of a student who is CLD, information obtained during testing provides supplemental data to support the accuracy of testing. Behaviors such as attention, ability to follow directions (gestures or verbal), motivation, impulsivity, processing speed, etc. should be reported and integrated with information. Unless a standardized test has a normative group that closely matches the demographics of the examinee with respect to language proficiency, cultural and linguistic background, educational experiences etc. the results will usually be interpreted as estimates. Special care to integrate test data with other evaluation data when identifying a student with a mild mental disability, due to the frequently mentioned problems with standardized tests with ELLs

Academic Achievement Evaluations

As with all areas of assessment for CLD students, the assessment of academic achievement is very complex. There is an array of methods to conduct the assessment, including norm-referenced screening and comprehensive batteries, formal criterion-referenced tests, curriculum-based assessment, collecting work samples, conducting observations and asking for teacher input.

Norm-referenced academic achievement tests, both group administered and individually administered are certainly highly used assessment tools in Kentucky at present. Group reading and math tests are administered on a regular basis to measure progress in school-wide intervention programs. Individually administered achievement tests are central to most if not all special education evaluations investigating possible learning disabilities, mild and moderate mental disabilities, educationally relevant health impairments, etc. These tests have many distinct advantages for evaluating all students, including CLD students. The tests are generally developed with strict attention to item sampling in each academic domain, and care is taken to ensure that difficulty gradients are consistent. Likewise, efforts are made to ensure that the measure has a high degree of reliability and validity. Sattler (2001) points out that norm-referenced tests are more time efficient measures of academic ability than are curriculum-based assessments. Finally, formal norm-referenced academic achievement tests permit educators to easily compare the student's performance to those of his age and grade peers and to determine areas of statistically significant strengths and weaknesses (Sattler, 2001).

There are problems associated with these tests when they are used with CLD students. Throughout this handbook, we have put forth examples of cultural differences that must be investigated and considered if we are to truly understand the CLD students sitting in Kentucky's classrooms at the moment. While many may speak the same language, they can come with drastically different cultural experiences and values. Children who have limited or no formal schooling have limited to no exposure to experiences that most take for granted. They have not been exposed to classroom instruction, group work, textbooks, work centers, etc. Education is valued very differently in more agricultural regions. Refugees may not have had an opportunity to attend school due to conditions within their country of origin, but then may have attended school in a refugee camp for a period of time. Students from migrant families may have been in U.S. schools for a significant period of time, but the frequency of moves have significantly disrupted instruction in skills.

The point raised by all of these points is that the strengths of norm-referenced are predicated on the assumption that all of the students who are given the test have similar educational experiences, and that their educational experiences are similar to those of the students included in the norm sample. It simply cannot be taken for granted that this is the case. The ARC members will have information collected during Tier I that will provide insight regarding the referred ELL student's educational history and educationally relevant cultural background. If the information is not there, the ARC should collect that information through interviews with the parents.

The ARC should determine **what** information it sees as useful in the special education evaluation process. Perhaps the student's background is not significantly dissimilar from the students in the norm sample (e.g., some norm-referenced academic test norms include groups of students from Mexico). In this case, perhaps it is useful to know how a student's academic skills compare to age and grade peers. If that is not the case, the item sampling and format of the test may still justify giving the instrument and considering it as criterion-referenced indication of academic functioning.

Aside from the issues of comparability to the norm, there are issues with the format and sampling procedures of the test that may make the administration a biased and unfair measurement for CLD students. Some of these include:

- Subtests that employ time limits as part of the measurement are generally unfair to ELL students. Administrators are advised to allow ample time for the ELL student to process the item and respond.
- The response format may require skills with which the CLD student has little or no experience, and thus may be a source of bias. The administrator would be advised to alter the response format as necessary to ensure that, in the language of the 2004 revision of IDEA, the student's academic skills levels are being measured rather than their limited English language proficiency.
- Standardized directions for test do not generally allow paraphrasing or other alterations, and this may be a source of bias. It might be necessary to paraphrase the directions for each subtest or give them in the student's native language in order to ensure that they understand what is required of them.

- Assessing academic skills in English generally speaking has a high degree of probability of assessing the student’s English proficiency and should be treated with caution. There are instruments that measure academic skills in other languages, and these might be appropriate for comparative purposes. Again, evaluation staff should gather information about the student’s cultural and educational background. They might not have had an opportunity to receive instruction in reading or writing in their native language, thus measuring their native language literacy skills may lead to inaccurate assumptions. If, on the other hand, the ELL student has had educational experiences in their native language and they are struggling in particular skills, relative to students with similar cultural and educational backgrounds, it may be evidence for a disability.

Evaluation staff should be aware that, if they alter standardization procedures for a particular norm-referenced instrument, the standard scores derived from that instrument have questionable meaning and cannot be used as a basis for eligibility decisions.

Curriculum-based assessments (CBA) have gained popularity and used frequently in classrooms across the state. These and other informal measures allow for a direct measurement of skills being taught in the classroom. They can be readily adapted for use with CLD students; however, caution should still be exercised when interpreting the results. Are the skill levels observed due to a possible disability or the limited English proficiency of the referred ELL student? CBA can be useful as a means to assess other students in the building (many schools measure entire grades with reading and math CBA procedures), thus the evaluation staff could compare the referred ELL student’s CBA results with those of other children with similar cultural and linguistic backgrounds and with similar English language instructional experiences in the school. CBA can also be used several times during the school year to assess growth during intervention phases, making CBA a very useful potential tool within the assessment paradigm being proposed in this handbook.

Student work samples and interview with individuals who have worked directly with the referred ELL student are valuable sources of information throughout the intervention development and “response” measurement phases of the evaluation, and they are useful in the special education evaluation component as well. These kinds of assessments can provide important glimpses into classroom academic behaviors and current levels of functioning.

Speech-Language Evaluation

Classroom teachers often identify speech and language difficulties are frequently identified by teachers as concerns. Observation and understanding of speech and language patterns of a student who is in the process of learning a language can be very difficult if one is not aware of the stages of second language acquisition. Even when the speech/language skills are not the primary area of concern, most districts require a speech/language skills screening prior to the meeting to discuss the referral. In the case of ELL students, there are several factors to keep in mind when assessing the speech/language skills.

When evaluating articulation skills, the Speech/Language Pathologist may want to use someone who is very fluent in the student's native language in order to determine if sound production errors are occurring in their native language. If districts have access to individuals who are fluent in the referred student's native language, this can be done in the context of a face-to-face interview with the student. If these individuals are not readily accessible, then a language sample can be recorded and sent to someone who can evaluate the sample for sound production errors. The decision to identify a student with a speech-sound production disorder is based on

- Misarticulations of sounds in L1
- Problems with the oral mechanism that would interfere with normal speech production
- Lack of stimulability for sounds in English
- Difficulties with sounds in both languages that are developmentally delayed
- A child does not demonstrate a speech-sound production problem in English if the sound errors in English do not occur in L1 or are the result of different sounds for the same letter in L1 and L2 or due to speech sounds that do occur in L1.
- Speech samples may be the best indicator of articulation disorders. The Spanish Articulation Measure (SAM) may provide some information.

Formal tests of articulation and receptive and expressive language abilities can be great sources of information if used and interpreted correctly. These instruments have the same shortcomings as the other formal tests discussed in this chapter. One cannot assume that the norms are appropriate for the student being tested, and the language skills being measured on English forms of the test may in fact be reflected the student's lack of English proficiency. When formal speech/language tests are translated to other languages, it cannot be assumed that the language patterns and vocabulary used on the test reflect the language patterns and vocabulary used by individuals from the student's culture. Additionally, the sequence of items, pictorial representations etc. may be linguistically and culturally inaccurate and the results may measure cultural knowledge as well as language.

As with the other areas discussed in this chapter, an ELL student's speech/language skills will be best evaluated using multiple methods. Observations across settings that include both formal instruction (CALP skills) and less structured settings such as recess, lunch, and special area classes (measures of BICS), teacher and parent interviews, language development history, and language samples, both structured and observed during play for young children, are important aspects a child's overall language skills. Observation systems, such as the SOLOM, provide information related to a student's language proficiency in the classroom setting. Evaluation in both L1 and L2 are important when the child uses or hears both languages on a regular basis. If a child is referred as a preschooler due to delays in L1, information obtained in only that language is necessary, as long as there has been little or no exposure to English. A language impairment exists only when delays occur in both L1 and L2, not L2 only. Also, the evaluation team should discuss whether language delays in L1 are the result of an actual delay or language loss. Language delays are often reported by parents as evidenced by delays in speaking, combining words and speaking in sentences under the age of three years in the native language. The focus of these assessments should be to identify patterns of strengths and weakness that exist in the student's native language and in English. Evaluators should be targeting receptive language as well as expressive language. It would be recommended that these reports and

observations be compared with English and native language proficiency test evaluation results, and also with the patterns being demonstrated by other ELL students who have similar cultural and linguistic backgrounds.

Chapter Eleven

Eligibility Determination & Individual Education Program Considerations

Conducting a full individual evaluation with CLD students requires an evaluation paradigm that is not familiar to most school psychologists, teachers and administrators in Kentucky. It is the hope of the members of the ELL Students with Special Needs Advisory Committee that this handbook will provide the assistance needed to implement this process effectively. Implementing this evaluation paradigm also requires that members of ARCs approach the eligibility decision making process in a manner which may also be quite unfamiliar. Many of the special education disability categories stipulate that the results of standardized, norm-referenced tests fall within a particular region of the normal curve (e.g., a mild mental disability in Kentucky is based on intellectual functioning, academic functioning and adaptive behavior skills falling between -3 and -2 standard deviation below the mean). Placing this much weight and confidence in standardized test scores may be justified generally speaking for students who are monolingual and part of the cultural majority. The psychometric shortcomings of norm-referenced tests with CLD students, on the other hand, demands that the ARC consider information and test results from a variety of source, both formal and informal.

CLD Considerations for the Psychological Report

When the evaluation has been completed, the School Psychologist is generally responsible for compiling the data and writing the multidisciplinary report. When writing a evaluation report about CLD/ELL students, there are elements that must be included due to regulations under IDEA which set this kind of report apart from those pertaining to monolingual English, cultural majority children. Determining eligibility for special education services requires that ARC consider whether the underachievement is due to “environmental, cultural, or economic disadvantage.” Evidence for or against these exclusionary criteria should be addressed in the report. The report should also outline the modifications in the evaluation which were made to accommodate for the student’s cultural and linguistic diversity. Additionally, the nature of this kind of evaluation makes it inappropriate to use standard score cutoffs and discrepancy formula; therefore, the multi-disciplinary report should describe the background cultural and linguistic factors, intervention attempts, results of the interventions and the results of the full individual evaluation so that the members of the ARC have the information needed to make an informed professional decision regarding eligibility. A sample report is provided in the Appendices.

The following should be included in the multi-disciplinary report (adapted from Figueroa & Newsome, 2006):

- Description of the cultural and linguistic background of the student, including any pertinent history which describes educational opportunities for the student in their native country, length of time in English speaking schools, length of time in English language instruction, type of instruction provided (i.e., ESL pullout, bilingual);

- Description of all alternative procedures and test modifications (e.g., use of interpreters, modified time limits, paraphrasing directions, allowing response in native language, etc.) used in the evaluation;
- Statement about the impact of the test modifications and accommodations on the standardization guidelines and provide the appropriate cautionary statement regarding the use of the standard scores for eligibility purposes;
- Identification of the primary language used by the student and his/her family, and the languages used in the evaluation, the percentage of time English and L1 are spoken at home and by which family members, the primary language that the student uses to communicate with family members
- Number of years the student/family have resided in the United States, native country
- Reason for immigration to the United States
- The report should indicate if any formal translations of tests were used in the evaluation;
- The report should discuss whether or not academic, adaptive behavior and behavioral concerns are consistent across settings (i.e., home, school, community) and various situations (i.e., general classroom instruction, structured and unstructured classtime, completing homework at home or in after-school tutoring programs, small and large group activities, etc.)
- The report should include information regarding the student's level of proficiency in English and in their native language (BICS and CALP);
- The report should make comparative statements regarding the referred student's language proficiency and that of other students with similar cultural and linguistic backgrounds. There should also be some discussion regarding the degree to which the referred student's process of acquiring English has followed the patterns of normal second language acquisition.
- The report should discuss the degree to which the student's level of acculturation to the school environment and the community may be impacting his or her educational functioning;
- The report should indicate whether or not the referred student is a refugee, migrant or has limited or no formal schooling, and include discussion regarding the impact of these factors on his or her educational functioning.

Additionally, it is important to report the ways in which the student uses language in the classroom settings and communicates with others. A summary statement that provides information about the impact of second language and cultural factors on learning and behavior is important. This statement should include information about the extent to which other factors in addition to cultural and linguistic diversity impact learning/behavior. *For example: When second language acquisition and cultural factors are considered in conjunction with evaluation data, Manuel appears to be performing at a level consistent with his level of language proficiency and academic history or When second language acquisition and cultural factors are considered in conjunction with evaluation data, Manuel appears to demonstrate significantly more difficulty with written expression skills than would be expected given his level of language proficiency, cognition, and reading and math skills. While any impact from cultural and linguistic factors cannot be discounted, information obtained from parent and teacher reports, classroom*

observations, standardized and curriculum based assessment, indicate that he experiences more difficulties in written expression than would be expected given second language factors. W

The purpose of the report is to give the decision makers (i.e., the members of the ARC) the information they need to draw a conclusion as to the eligibility status of the ELL student.

Eligibility Considerations

As has been consistently pointed out in this handbook, conducting an evaluation with an ELL student who is suspected of having a disability is a very complex process. A great deal of complexity lies at the end of the process during the eligibility ARC, when the committee members, must interpret the information and data collected the evaluation to determine whether or not the academic and/or behavioral difficulties being evidenced are due to the cultural and/or linguistic factors or to a disability.

Of the possible disability categories, some areas such as severe to moderate cognitive disabilities, sensory disabilities (blindness, deafness), traumatic brain injuries, various health impairments and physical disabilities can be very straightforward to identify and declare the student eligible for special education services. The more difficult eligibility decisions come when the ARC is trying to determine if the ELL student does in fact have some forms of mild disability, such as a mild cognitive disabilities, a specific disabilities, speech/language disabilities, and emotional-behavioral disorders and other health impairment (ADHD). In each of these disability areas, the impact of the ELL students' cultural and linguistic background must be considered and weighed in the eligibility decision making process. Adding to this complexity is the fact that standardized, norm-referenced test results, in and of themselves, should be considered potentially invalid and misleading, thus the ARC will be bringing together data from many other sources to factor into the decision. It is the opinion of the ELL Students with Special Needs Advisory Committee that the using a tiered intervention process in order to systematically determine the ELL student's "response" to evidence-based, culturally/linguistically sensitive interventions will give the ARC members critical information to assist in making these decisions.

Another element that should be considered is the degree to which there appears to be some consistency across settings and situations. In other words, the academic concerns voiced and documented by the classroom teacher in Tier I will be corroborated by reports from the parents or by teachers from previous schools and possibly a developmental history of delays in the student's native language. Given evidence of consistent and significant educational struggles in which the response to research-based interventions is minimal or very slow, the ARC is provided additional documentation that is indicative of a disability.

The Response to Intervention (RTI) evaluation paradigm has gained a foothold nationally, and the latest revision to IDEA (2004) requires that districts are no longer required to find a clinically significant discrepancy between standard scores in the areas of cognitive ability and academic achievement. This model is of particular usefulness to ARC members when considering eligibility for ELL students who are suspected to have either a specific learning disability (SLD) or a mild cognitive impairment (Mild Mental Disability; MMD in Kentucky). The difference between the two would be that evidence from a variety of sources suggests that

the ELL student's cognitive ability is within the "normal range" of ability and that the achievement is unexpected in the case of SLD, and, in the case of MMD, the evidence from a variety of sources suggests that the student's cognitive functioning is consistent with his or her academic functioning overall.

Determining eligibility for speech/language disorders and emotional-behavioral disorders will also require that the ARC members to consider linguistic and cultural factors which may be impacting the ELL student's educational functioning and the validity of evaluation instruments that were used during the proces. Speech-language disorders in particular will require evidence that articulation, receptive language and/or expressive language deficits that exist in the native language and are not the result language loss in L1.

With regard to emotional-behavioral disabilities, the ARC will want to consider the impact of the student's acculturation process and to what extent this may be affecting his or her emotional/behavioral status. As previously mentioned, many of the refugees coming into Kentucky at the present time have been exposed to extreme conditions, and there may be psychological stress related factors which should be addressed.

In conclusion, the assessment process for students from culturally and linguistically diverse backgrounds, should initially begin with the focus on prevention of problems by early identification and referral for interventions to the student assistance team or problem solving team. Consideration of characteristics associated with second language acquisition and acculturation and nstruction that is appropriate for English language learners in regular classroom settings with progressively more intensive, monitored interventions for specfic areas of concern that are provided prior to formal referral for evaluation, should facilitate more accurate referrals and identification of English language learners with disabilities.

Appendix A

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(Still getting these references together)

Appendix B

Resources & Recommended Reading

Websites:

IRIS at Vanderbilt University: This is an excellent resource for information and short training scenarios about a variety of topic pertaining to diversity.

nccrest.com The National Center for Culturally Responsive Educational Systems (NCCREST) website provides many articles and position statements on topics relating to the education and evaluation of CLD students.

nasponline.org The National Association of School Psychologists (NASP) website contains a section devoted to culturally competent practice for School Psychologists.

Kentucky Department of Education (KDE): KDE's website outlines IDEA and OCR guidelines, as well as the Kentucky Administrative Regulations pertaining to the referral, evaluation, eligibility determination, and program design and implementation for students. The area of English As a Second Language is also discussed on the site.

Center for Applied Linguistics (CAL):

wida.us The World Wide Instructional Design (WIDA) website is the home to the consortium to which Kentucky belongs. WIDA, along with CAL, is the developer of the ACCESS for ELLs test. This is the test currently being used to assess the English language proficiency of students identified as LEP and receiving English language instruction through Title III funding in Kentucky.

Books/DVDs:

NCCREST has released a set of DVDs addressing many topics related to CLD students. Details are available under the Resources link on the home page.

Appendix C

Forms, Questionnaires, Rating Forms