Native Language Evaluations for Multilingual Learners in Special Education: Legal Obligations, Challenges, and Recommendations

Purpose

This document clarifies each Administrative Unit's (AU's) affirmative obligation to conduct special education evaluations, including initial, annual, triennial, and other evaluations, in the child's native language. Conducting evaluations in a child's native language supports more accurate eligibility determinations and helps ensure a comprehensive understanding of each Multilingual learner's skills, knowledge, and abilities, thereby reducing the risk of discriminatory evaluation practices.

Legal Obligations

Under the Individuals with Disabilities Education Act (IDEA), a comprehensive special education evaluation is used to determine eligibility for special education and the child's educational needs. To produce reliable and accurate information on what a Multilingual Learner (ML) knows and can do academically, developmentally, and functionally, assessments and other evaluation materials must be provided and administered in the child's native language or other mode of communication, unless clearly not feasible (34 C.F.R. § 300.304(c)(1)(ii)). Administrative Units must also ensure that assessments and other evaluation materials are selected and administered so that they are not discriminatory on a racial or cultural basis. (34 C.F.R. § 300.304(c)(1)(i)). Evaluations that fail to account for a child's linguistic and cultural background risk producing evaluation data that are inaccurate and unreliable for determining eligibility and educational need. (34 C.F.R. §§ 300.304-300.305). **For Non-English Proficient (NEP) and Limited English Proficient (LEP) MLs, the multidisciplinary team should always engage in a data-based discussion regarding which areas of assessment should be conducted in the child's native language or bilingually.**

Why Native Language Evaluations and Linguistic Profiles Matter

Monolingual standardized norm-referenced tests often fail to reflect a child's true abilities if their linguistic, cultural, and experiential background is not considered, as such factors can compromise the construct validity of cognitive, academic, and communicative assessment tools (Ortiz & Artiles, 2010; Helms, 1992). Research underscores the importance of assessing an ML by including all of the languages they use, including their native languages (also referred to as home or preferred languages) and English, to avoid underestimating or misrepresenting abilities (García & Wei, 2014; Orosco & O'Connor, 2014). Cummins' (1984) distinction between social and academic language reminds us that MLs may appear proficient socially while still developing academic language. Prior or ongoing academic experience in the native language is a critical factor to consider when determining whether academic testing in the native language is appropriate and valid (Ochoa, Gándara, & Merino, 1990). Therefore, districts must ensure that evaluation practices are non-discriminatory and include assessment in the child's native language, with results interpreted by trained and knowledgeable personnel, as required under IDEA (34 C.F.R. § 300.304(c)(1)(ii), (c)(1)(iii)).

Recommendations for Administrative Units (AUs)

To meet legal and ethical obligations, AUs should establish clear policies and procedures:

- **Staffing:** Evaluate staffing capacity and ensure access to trained and knowledgeable multilingual evaluators if warranted by the linguistic needs of the population served.
- **Contracting:** Develop relationships and contracts with external evaluators who are proficient in the languages spoken by students in the AU or district.
- **Procurement of Measures:** Procure standardized assessment tools that are published and normed in the native languages of the children in the district whenever possible. These measures support more valid and reliable results than translated tools (Abedi, 2006).
- **Establish Guidelines and Professional Learning:** All Special Education staff should receive training on conducting non-discriminatory evaluations. Bilingual special education practitioners and special service providers should be provided with clear expectations for their roles and responsibilities. This should include guidance around how and when to conduct native language assessments and interpret results.
- **Training Aligned to Measures:** Ensure that appropriately qualified bilingual staff receive training aligned specifically to the standardized measures they administer, maintaining fidelity of administration and scoring.
- **Use of Interpreters:** Maintain a plan for requesting and making use of trained interpreters to support evaluations when no qualified bilingual evaluator is available. When interpreters are necessary, they should be specifically trained to appropriately support the evaluation, and school teams should also be trained to engage with interpreters ethically and effectively.
- **Team Training:** Ensure multidisciplinary teams (MDTs) are trained on the policies and processes for requesting multilingual evaluation support, including timelines, documentation, interpretation of assessment data, and appropriate use of interpretation services.
- **Documentation:** Create a process to document:
    - Efforts to provide a native language evaluation;
    - Rationale for providing or not providing native language evaluations (including consideration of prior academic experience in the native language and language proficiency data);
    - Any alternative testing measures taken;
    - Rationale for the selection of assessment tools, including a culturally responsive validity statement (referencing the norm sample and the student's representation or lack of representation in the sample);
    - How standardized scores were judged to be representative, or not, of the child's abilities.

Caution Regarding Translation of Assessments

- Unless explicitly allowed in the test's technical manual, translating or interpreting standardized test items typically invalidates standardized results and effectively impacts the reliability of the measure (Abedi, 2006). This is particularly critical for **cognitive, communicative, and academic assessments**, where construct validity and standardization are easily compromised. The department understands, however, that this approach may be necessary and worthwhile. Whenever doing so, it should be explicitly documented, and the score interpretation should be clearly explained.
- Cultural factors such as culturally unfamiliar tasks, culturally biased norms, the test-taking environment, and inappropriate constructs can also negatively influence the validity of cognitive and communication assessments, leading to over- or under-identification of disabilities (Helms, 1992; Ortiz & Artiles, 2010).
- Conversely, translation or interpretation for **physical, hearing, vision, or mobility assessments** generally does not pose the same risk, as these rely less on language-based constructs. Caution should still be exercised in the

accurate interpretation of culturally based constructs (e.g., self-care, age-level physical and adaptive expectations).

- In interpretation and report writing, teams must explicitly describe the limitations of the data, avoid overinterpreting standardized scores, and prioritize a comprehensive body of evidence and data convergence when drawing conclusions.

Recommended Solutions and Alternatives

As with all learners, teams should prioritize the gathering and synthesis of a comprehensive body of evidence across methods and across languages and contexts. For MLs, careful thought should be given to the influence of language acquisition and acculturation on their ability to demonstrate skills and knowledge using monolingual measures. English language proficiency and native language proficiency should always be carefully considered when planning for assessment, selecting assessment tools, and determining the responsibilities of evaluation team members. Whenever possible, evaluators should take a translanguaging stance to allow for students to demonstrate skills and abilities across language domains and in the language or combination of languages that best suits their unique Linguistic Profile.

- **Language Proficiency Data:** Incorporate English language proficiency data (e.g., WIDA ACCESS or other measures) and native language proficiency, when available, to inform interpretation of performance and distinguish language development from disability.
- **Non-formal and Semi-formal Measures:** Prioritize non-formal or semi-formal multilingual assessment data interpreted by trained and knowledgeable professionals who understand both languages and cultures involved (Ortiz & Artiles, 2010).
- **Authentic Observational Data:** Authentic observational data for an ML in a special education evaluation is systematic evidence of how the student learns, communicates, and engages across natural settings, languages, and instructional supports, interpreted in comparison to like-peers to distinguish language difference from disability. Collect and analyze authentic observational data across multiple contexts to assess how the child functions in real environments (Orosco & O'Connor, 2014).
- **Culturally Affirming Family Interviews:** Conduct culturally responsive, in-depth family interviews to access family funds of knowledge and context for the child's development (Moll, Amanti, Neff, & González, 1992). See the CDE's Culturally Responsive, School-based Family Interview Website for more information.
- **Conceptual Scoring:** Conceptual scoring credits a student's knowledge in both languages, focusing on their overall understanding of concepts rather than just what they know in each language separately. When appropriate, use conceptual scoring (crediting knowledge expressed in either language toward one total score), accompanied by a clear rationale for this approach (Bedore & Peña, 2008).
- **Progress Monitoring and Intervention Data:** Analyze progress over time, including response to instruction and intervention, across languages when possible.
- **Dynamic Assessment:** Employ dynamic assessment methods conducted multilingually by qualified and knowledgeable professionals to assess learning potential rather than static performance (Peña, Iglesias, & Lidz, 2001). This is especially useful for evaluating communicative potential and academic potential.
- **Data Convergence:** Meaningful input from the entire multidisciplinary team, including the family and ELD teacher. Language Proficiency data, academic data as it relates to Like-Peers, and progress monitoring data. Information about how the child's cultural and linguistic background may undermine standardized norm-referenced measures and a description of how the team considers these factors when drawing conclusions.

For questions or support, please contact the CDE office of Special Education and Hunter Smith at smith_h@cde.state.co.us

References

Abedi, J. (2006). *Language issues in item development.* In S. M. Downing & T. M. Haladyna (Eds.), *Handbook of test development* (pp. 377–398). Erlbaum.

Bedore, L. M., & Peña, E. D. (2008). Assessment of bilingual children for identification of language impairment: Current findings and implications for practice. *International Journal of Bilingual Education and Bilingualism, 11*(1), 1–29. https://doi.org/10.2167/beb392.0

Cummins, J. (1984). *Bilingualism and special education: Issues in assessment and pedagogy.* Multilingual Matters.

García, O., & Wei, L. (2014). *Translanguaging: Language, bilingualism and education.* Palgrave Macmillan.

Helms, J. E. (1992). Why is there no study of cultural equivalence in standardized cognitive ability testing? *American Psychologist, 47*(9), 1083–1101. https://doi.org/10.1037/0003-066X.47.9.1083

Moll, L. C., Amanti, C., Neff, D., & González, N. (1992). Funds of knowledge for teaching: Using a qualitative approach to connect homes and classrooms. *Theory Into Practice, 31*(2), 132–141. https://doi.org/10.1080/00405849209543534

Ochoa, S. H., Gándara, P., & Merino, B. J. (1990). Bilingualism and the adjustment of Hispanic children: A critique of the literature. *Journal of Educational Issues of Language Minority Students, 6*(Spring), 23–40.

Orosco, M. J., & O'Connor, R. E. (2014). Culturally responsive instruction for English language learners with learning disabilities. *Journal of Learning Disabilities, 47*(6), 515–531. https://doi.org/10.1177/0022219413476553

Ortiz, A. A., & Artiles, A. J. (2010). Meeting the needs of English language learners with disabilities: A linguistically and culturally responsive model. In R. T. Jiménez et al. (Eds.), *Handbook of literacy and diversity* (pp. 287–301). Guilford Press.

Peña, E. D., Iglesias, A., & Lidz, C. S. (2001). Reducing test bias through dynamic assessment of children's word learning ability. *American Journal of Speech-Language Pathology, 10*(2), 138–154. https://doi.org/10.1044/1058-0360(2001/014)

Sánchez, M. T., Parker, C. E., Akbayin, B., & McTigue, A. (2010). *Processes and challenges in identifying learning disabilities among English language learners in three New York State districts* (REL 2010–No. 085). U.S. Department of Education.

U.S. Department of Education, Office for Civil Rights. (2015). *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents.* https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf