Chapter 8: Planning the Special Education Evaluation and Eligibility Determination

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Chapter Overview

This chapter assumes that an English learner (EL) has already been through an intervention process and a decision has been made to refer the student for a special education evaluation. The next key decision is to develop an evaluation plan, which includes determining whether traditional standardized evaluation procedures can be used, or whether there is a need to employ adapted procedures because of the student's background. If it is determined that adapted procedures are needed, then a determination should be made about how to adapt the procedures. This chapter addresses steps to take in planning the evaluation of ELs for special education services, procedures for adapting evaluation procedures, and making the eligibility determination.

Steps in Planning the Evaluation of the English Learner

There are several steps to take to plan an evaluation of an EL for special education services:

1. Review intervention records, including the effectiveness of each intervention, to determine what information has been collected and whether additional is information is needed.[i]
2. Identify linguistic, cultural, and experiential factors that may affect the evaluation results.

3. Select relevant assessments.
4. Document planned modifications to standardized instruments or procedures, including the use of an interpreter.[ii]
5. Identify the interpreter or cultural liaison who will assist with the evaluation and with special education due process.[iii]
6. Obtain parent/guardian consent
7. Conduct assessments within 30 school days.

Each of these steps is discussed in brief here.

Step 1: Review background information[iv]

The special education evaluation team will need to review background information gathered during the intervention process and determine areas where additional information should be collected to fill in gaps (See Chapter 6). Tool 6.1, *Student Background and Intervention Checklist for ELs,* outlines the main areas of background information that are needed and may be used to document significant findings for each of these factors. Significant findings for any factor may suggest the need to adapt evaluation procedures for the student during an evaluation for special education services. Information on interventions and their results is particularly important in this step. It is essential that the interventions and their results for the EL be explicitly documented.

Other forms used to gather information during interventions should also be reviewed. These include the *EL Educational History* (see Tool 6.3), the *EL Student and Family Background* (see Tool 6.4). These forms, in combination with formal assessment data and information from informal measures administered during pre-referral, will provide guidance about additional information to gather during a special education evaluation. Obtaining current information about ELs' native language proficiency and the language in which they are strongest is a top priority for determining the language in which to administer assessments.[v]

Step 2: Identify factors that may affect the evaluation results

As noted in Chapter 3, there are numerous factors that may affect the academic outcomes for ELs. These include cultural background, migration status, acculturation, and socioeconomic status. The *EL Sociocultural Checklist* (Tool 6.2) will assist in identifying other factors that may impact the evaluation for special education services. Similarly, there are important linguistic factors (see Chapter 4) that may affect academic outcomes for ELs.

Step 3: Select relevant assessments[vi]

Review recommendations for specific areas of assessment: achievement, communication, intellectual functioning, and social/emotional functioning. The evaluation may need information in any of these specific areas of assessment (see Chapters 9-11). The information collected should be relevant to the areas of difficulty identified for the student during the pre-referral process. If possible, use a variety of instruments and procedures that have been normed on ELs.[vii]

The instruments selected should be related to a hypothesis developed for the evaluation. This hypothesis about the possible source of the student's difficulties (which will be explored through the assessments administered) should drive the decision about the areas to assess (e.g., communication, socio/emotional functioning). The *Test Selection Checklist* (Tool 8.1) may be useful in determining whether a specific assessment instrument is likely to produce valid results given the student's language and cultural background.

When assessments are selected, consideration also should be given to the universal design and accessibility features of the assessment. Was the instrument under consideration developed with all students as the targeted population, including ELs? Is the assessment technology-based, and if so is it accessible to a student who may not have used technology before? In addition to considering whether the assessment can be administered in the student's native language, consideration should be given to whether accommodations (e.g., extra time, use of glossary) are allowed should the student need them. Further, there may be a need to modify standardized instruments that have been selected (see Step 4).

Step 4: Document planned modifications to standardized instruments

Assessments for special education services must be conducted in the language or languages that best shows what the student can do academically, developmentally, and functionally.[viii] The *EL Language Matrix for Special Education Evaluation* (Tool 8.2) is designed to help teams plan for the use of native language and English in the assessment process. The team can refer to this tool for recommendations on how to best gather assessment data given the student's language background. Many instruments that may be used in an evaluation for special education services are not available in other languages. If native language versions are not available, educators need to decide whether to adapt or modify the English evaluation procedures. Consider the following factors when deciding whether to adapt procedures for an individual EL:

- Educational history.
- Native language development and current skills.
- English language development and current skills.
- Current educational environment (see Chapter 6 for an explanation).

If the *Test Selection Checklist* (Tool 8.1) indicates that an assessment instrument would likely not produce valid results for the student, given the student's language and cultural background, making modifications to the instrument should be considered. Among the planned modifications to note is when an interpreter will be used during the implementation of each instrument.

Be cautious making the decision to adapt an evaluation procedure or instrument. The following considerations are among those included in the Minnesota Part B Evaluation Standards:[ix]

- When an assessment is administered in another language or mode of communication, that information may be documented under "other factors" on the evaluation plan or prior written notice.
- The extent to which an assessment varied from standard conditions must be included in the evaluation report. Variation from standard conditions includes changing the language or other

mode of communication used in assessing the child. For example, when assessment materials are not available in the child's native language or other mode of communication, procedures may need to be altered. Results must be interpreted cautiously and all modifications described thoroughly in the Evaluation Report, along with implications for test results.[x]

- Assessments and other evaluation materials used to assess a child are used for the purposes for which the assessments or measures are valid and reliable.

Question 3 of the Prior Written Notice Model Form (http://education.state.mn.us/MDE/dse/sped/due/), which is available in many languages, requires documentation of the assessments given as part of the special education evaluation process.

Step 5: Identify the interpreter or cultural liaison who will assist with the evaluation

As noted in Chapter 5, bilingual staff are essential to the special education evaluation and eligibility process. The person who assists with evaluations ideally should have training in the administration of assessments and in special education due process. He or she should be made familiar with the specific instruments that will be used during the evaluation process, including procedures and any terminology that should or should not be used. It is recommended that Chapter 5 be reviewed carefully before having an interpreter or cultural liaison participate in the evaluation and in special education due process.

Step 6: Obtain parent/guardian consent

Parents/guardians of ELs are likely to be non-English speakers themselves. Therefore, educators must ensure that they understand what is proposed for their child before they give consent for a formal special education evaluation.[xi] This may require the use of spoken language interpreters, written translations or both. See Chapter 5 for additional information regarding the roles of interpreters and cultural liaisons in parent communication and due process.

Step 7: Conduct assessments within 30 school days

Federal special education law requires that the assessment process be completed within a specific time period after parent/guardian consent has been received. It is important to keep this time period in mind as Steps 2-6 are undertaken because they will have to be completed with time left to conduct the assessments, analyze their results, and determine eligibility for special education services.

Eligibility Determination and Documentation

Determining that an EL is eligible for special education requires careful consideration of all the information that has been gathered. The student's English as a second language (ESL) or bilingual education teacher should attend the meeting at which the referral is discussed if he or she is not the person making the referral.

Tool 8.3, *Best Practice Checklist for Referral, Evaluation, and Parent Due Process of English Learners,* outlines the four key decision points where documentation of nondiscriminatory evaluation and

eligibility procedures may be found. It is important to create a record to establish eligibility, if that is the decision that is reached. The record establishes, for example, that special education teams have ruled out limited English proficiency and lack of instruction in reading and math as the primary causes of the EL's difficulties. Other exclusionary factors that should be considered (e.g., environmental, cultural, or economic disadvantage) should be documented as well.

Thorough information on the student's educational history and language skills gathered during pre-referral may provide all or part of the information needed to meet the federal requirement. Data gathered during pre-referral may be used as part of eligibility determination under Minnesota's state criteria.

In addition, adherence to due process is essential. Special education due process provisions begin once the referral is made. See the resources section for the Minnesota Department of Education web page with Due Process information in English and additional languages.

Resources

- **Bateman, D. F., & Cline, J. L. (2016). A teacher's guide to special education. Alexandria, VA: Association for Supervision and Curriculum Development.**

  This book provides a guide to special education laws and processes for non-special education teachers. It includes a section on the special education evaluation process.

- **Minnesota Department of Education. (2017). English learner education in Minnesota, Fall 2017 Report. Roseville, MN: Minnesota Department of Education, Division of Student Support. Retrieved from https://education.mn.gov/mdeprod/idcplg?IdcService=GET_FILE&dDocName=MDE035523&RevisionSelectionMethod=latestReleased&Rendition=primary**

  This report provides information about laws relating to ELs and Minnesota Department of Education's (MDE) support of Local Education Agencies in implementing research-based language instruction programs to assure all students acquire English and reach their academic potential. The report contains information on ELs and special education.

- **Minnesota Department of Education. (2016). Part B evaluation standards, Compliance standards training, 2016-2017. Roseville, MN: Minnesota Department of Education, Division of Compliance and Assistance. Retrieved from: https://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=048339&RevisionSelectionMethod=latestReleased&Rendition=primary**

- **Minnesota Department of Education. (n.d.). Due Process. Retrieved from http://education.state.mn.us/MDE/dse/sped/due/**

Tools

- **Tool 8.1: Test Section Checklist**
- **Tool 8.2: EL Language Matrix for Special Education Evaluation**
- **Tool 8.3: Best Practice Checklist for Pre-referral, Referral, Evaluation and Parent Due Process of English Learners**

Tool 8.1. Test Selection Checklist

Name	Instrument
Date Position:	Publication Date
Agency/School:	Agency/School

Instructions for Use: The following checklist is used to gauge the appropriateness of standardized instruments for individual students. If there are questions regarding the appropriateness of items for diverse students, consult with a cultural representative. In districts with large numbers of diverse students, practitioners are recommended to utilize this checklist on a periodic basis to review all instruments in current use, thus generating a list of recommended instruments for American Indian and African American students in the district. Practitioners are also recommended to utilize this checklist when selecting new instruments for purchase.

	Indicate the status of this instrument based on the following items	**Yes**	**No**	**Need More Information**
1	The specific purposes of this instrument are clearly defined.	☐	☐	☐
2	The instrument has been validated for the purposes for which it was designed.	☐	☐	☐
3	The limitations of the instrument are described in the manual.	☐	☐	☐
4	This instrument is the most current edition and includes the most recent normative sample.	☐	☐	☐
5	The test manual describes differences in test performance across, racial, cultural, linguistic, or socioeconomic groups.	☐	☐	☐
6	An item-by-item analysis has been made of the instrument from the framework of cultural and communication characteristics of diverse cultural groups.	☐	☐	☐
7	The instrument does not rely on vocabulary or visual materials that are culturally-specific, regional, colloquial, or archaic.	☐	☐	☐
8	The instrument does not rely on receptive and expressive standard English to measure non-language abilities.	☐	☐	☐

	Indicate the status of this instrument based on the following items…	Yes	No	Need More Information
9	An equivalent form of this test is available in another language, using a dialect and normative sample that are similar to the local population..	☐	☐	☐
10	The instrument does not penalize students with physical or sensory disabilities.	☐	☐	☐
11	The norms for this instrument were developed within the last ten years.	☐	☐	☐
12	The normative sample characteristics reflect the general characteristics of students who will be administered this instrument, including ELs.	☐	☐	☐
13	The instrument takes differences in cultural values and adaptive behaviors into account.	☐	☐	☐
14	The instrument clearly describes expected demands of students (e.g., reading level, response type, test-taking behaviors).	☐	☐	☐
15	The instrument clearly describes the response type expected of students (e.g., oral, paper, and pencil).	☐	☐	☐

Tool 8.2. EL Language Matrix for Special Education Evaluation

This matrix is designed to help teams plan for the use of native language and English in the assessment process. After gathering information about the student's skills in the first language and in English, the team can refer to this matrix for recommendations on how to best gather assessment data given the student's language background.

The recommendations for assessment on this matrix are mainly applicable to domains such as intellectual ability and communication. Best practice indicates that achievement skills such as reading should be assessed in the language(s) in which a student has received instruction. Teams may need to use native language to explain procedures and give directions. Language use may depend on the person providing information (i.e., use father's native language for a parent interview in social/emotional domain).

The types listed are typical of how students will present at a specific moment in time. With the exception of "developing bilingual," these types are not progressive: a student who is **Fluent in Another Language** will not necessarily progress through the **Partial Bilingual** type or **Non-English receptive** type**.**

Types of Language Speakers	**Use of Language in Special Education Assessments**
1. Fluent in Another Language: only exposed to native language; uses native language only; age appropriate fluency* in native language; non- or extremely limited English speaker. *fluency may vary according to the student's cognitive ability. For example, a Hispanic student with cognitive impairments may be judged as a developing bilingual if general communication skills are good, even though Spanish skills are not equal to those of non-disabled peers.	Assess primarily nonverbally and in L1: Use appropriate L1 standardized test if available (may use monolingual norms); Emphasize use of nonverbal tests and tasks (intellectual); Consider purpose of subtests and make limited use of selected verbal tasks in L1 with interpreter (do not score); Use testing of limits procedures; Utilize tasks that allow student to show learning and problem solving (additional examples, test-retest, dynamic procedures); Use pragmatic protocols or tasks designed to demonstrate functional uses of language (communication domain).

Types of Language Speakers	Use of Language in Special Education Assessments
2. Partial bilingual: raised speaking two or more languages (simultaneous acquisition) but appears to have limited receptive/expressive skills in both. Doesn't appear to have a stronger or dominant language. Key question is whether limited language skills are the result of lack of opportunity or disability affecting communication. Student may code-mix or code switch.	Formulate hypothesis concerning apparent limited language acquisition; Assess in both languages: use standardized L^1 instrument if bilingual norms Consider use of Bilingual Verbal Ability Tests (B-VAT) Observe for preference in settings with speakers of both languages Gather detailed information about student's language use and language use in the home Rate opportunity to learn in L1 If stronger or preferred language can be established, begin with it and use testing of limits procedures in 2nd language; Allow student to respond in either language during session, noting language of response; Anticipate split between home and school vocabulary and skills; Utilize tasks that allow student to show learning, problem solving (test-retest, dynamic procedures); Look for growth in communication skills over time in both languages; Gather language samples in different settings and with different conversational partners Make sibling comparisons Analyze code-mixing and code-switching Compare errors in English vocabulary or usage to see if caused by interference with L^1 Compile assessment data to develop profile of knowledge and skills (may have skills in one language but not other) If SLD suspected, gather information on information processing from parents and ESL/bilingual staff

Types of Language Speakers	Use of Language in Special Education Assessments
3. Developing bilingual: Fluent in L1 and in process of acquiring English as a second language (sequential acquisition)*. May or may not have literacy skills in L1. This student seems to be making good process in learning English but has difficulties in some areas. *Note. Definition of fluency may vary according to the student's cognitive ability. For example, a Hispanic student with Multiple Impairments may be judged as a developing bilingual if general communication skills are good, even though Spanish skills are not equal to those of non-disabled peers.	Formulate hypothesis concerning nature of student's problems (different than partial bilingual Assess in both languages -- extent of English use will depend upon amount of exposure, amount of instruction and fluency Use L1 standardized instruments , determine whether monolingual or bilingual norms appropriate (depends on age and length of exposure to English) Utilize *Bilingual Verbal Abilities Test* (B-VAT) Emphasize use of nonverbal tasks (intellectual) Make limited use of verbal tasks in English and in L^1 Try to focus on one language at a time – if this is difficult, allow student to respond in either language noting language of response Compare errors in English vocabulary or usage to see if caused by interference with L^1 Use testing of limits procedures Analyze code-mixing and code-switching Anticipate split between home and school vocabulary and skills Consider language background when interpreting and presenting results If SLD suspected, gather information on information processing from parents and ESL/bilingual staff

Types of Language Speakers	Use of Language in Special Education Assessments
4. Non-English receptive: English speaker who has been exposed to another language; has some receptive but few or no expressive skills in that language; English usage may be influenced by other language. (Note: this category may include foreign-born adopted children.)	Assess primarily in English Assess in L^1 only if done immediately upon arrival Consider language background in selecting procedures Check receptive knowledge in other language if appropriate (e.g., recently adopted) Compare errors in English vocabulary or usage to see if caused by interference with other language Recheck errors or gaps in other language if appropriate Consider language background when interpreting and presenting results.
5. English dialect: uses regional or social dialect; may have difficulty with standard, academic language.	Consider dialect or variety of English to be student's native language. Allow alternate responses to accommodate differences in vocabulary. Use supplemental nonverbal measures to more accurately establish range of intellectual ability. Collect language samples of student interacting with another student of similar background. Ask language/cultural expert to review and rate language samples. Focus on functional use of language. May classify student as a Fluent Speaker of Another Language, Partial Bilingual or Developing Bilingual and follow suggestions for type.
6. English monolingual: uses standard English. Limited exposure to another language.	No accommodation needed. May need to consider cultural influences on student knowledge and performance.

Types of Language Speakers	Use of Language in Special Education Assessments
7. Bilingual: fluent in two languages; may code-switch among other bilinguals. Able to codeswitch depending on social context and conversation partners. True bilingualism is evidence of highly developed communicative skills.	*Not often referred* Assess in both languages beginning with preferred Use appropriate L1 standardized test if available and normed on bilinguals Consider language background in selecting procedures Focus on one language at a time – if this is difficult, allow student to respond in either language noting language of response Use testing of limits procedures Recheck errors or gaps in other language Anticipate split between home and school vocabulary and skills If student code-switches, analyze when, with whom, and how Consider language background when interpreting and presenting results.
8. Limited communicator: ability to communicate in any language affected by cognitive or physical anomalies; may use alternate communication mode, communication devices or assistive technology.	Follow assessment recommendations and make appropriate accommodations for suspected disability area Assess receptive skills in all languages student is exposed to Assess expressive skills as appropriate given the student's situation.

Tool 8.3. Best Practice Checklist for Pre-referral, Referral, Evaluation, and Parent Due Process of English Learners

Part 1 – Evaluation and Eligibility

There are 4 key decision points where documentation of nondiscriminatory evaluation and eligibility procedures may be found:

1. Pre-referral

Types of Documentation:

☐ District pre-referral form with at least 2 documented interventions*

☐ Sociocultural checklist*

Best practice:*

☐ District has a pre-referral form with background information such as:

- Current use of native language/native language proficiency
- English language proficiency
- Educational history
- Health/developmental history
- Family composition
- Relevant information about student's experiences or living situation (environment, socioeconomic issues, etc.)

☐ Pre-referral documentation includes *EL Student and Family Background Form* or similar information

☐ File documents contact with parents

☐ File documents involvement of a cultural liaison and/or interpreter, as needed

2. Referral Determination

Types of Documentation:

☐ Evaluation Report

Best practice:*

☐ File includes information to support decision that the learner's difficulties are not due to cultural or language differences and that a special education evaluation is therefore warranted.

3. Evaluation Plan

Documentation:

☐ Updated Sociocultural Checklist
☐ Notice of Educational Evaluation/Reevaluation Plan

Required elements:

☐ Parent information

☐ Special factors for assessment, including behavior, English proficiency, vision impairment, hearing impairment, assistive technology, culture, environment

☐ Types of staff that will carry out the evaluation (psychologist, speech clinician, etc.),

including interpreter/translator or cultural liaison

☐ Includes all procedures, including informal or supplemental procedures

☐ Describes any planned adaptations of standard test administration procedures (ex.,

testing of limits)

Best practice:*

☐ File includes student's cultural/ethnic background and native language

☐ Use of *Test Selection Checklist* to determine suitability of specific tests

☐ Team includes ESL/bilingual education teacher, bilingual home-school liaison or other person with knowledge of first and second language acquisition

☐ Plan includes evaluation of intellectual functioning and communication in native language and English

☐ Plan includes evaluation of academic achievement in language(s) in which the student has received instruction

☐ Plan includes more than one observation in several settings and with different groups of peers

4. Eligibility Determination

Documentation:

☐ Evaluation Report

Required elements:

☐ Parent information

☐ Information about student's cultural and language background

☐ A statement of professional judgment as to the validity of the standardized testing procedures, for each area assessed, given the student's cultural and language background

☐ Description of all sources of evaluation data, including informal and supplemental procedures

☐ Description of any adaptations made to standardized test procedures, including use of native language interpreter or testing of limits procedures

☐ Data to support the team's finding that limited English proficiency is not the determinant cause of the student's performance problems in school

☐ Data to support the team's finding that lack of instruction in reading or math is not the determinant cause

Part 2: Due Process and Parent Involvement

Documentation:

☐ Copies of notices provided to parents

- Parent Rights and Procedural Safeguards
- Phone logs or other documentation of parent contacts*
- Written documentation that materials were interpreted orally*
- Team logs that include the interpreter or cultural liaison
- District form documenting parent preference for language and mode of communication*
- District form documenting oral interpretation*

Required elements:

☐ Notices given in parents' native language and/or mode of communication

☐ Interpretation provided during Individualized Education Program (IEP) and other team meetings

☐ Evaluation Report and IEP provided to parents in their native language

Best Practice:*

☐ District asks parents their preference regarding language and mode of communication and documents preference

☐ District asks parents if they would like to have a cultural liaison and documents response

☐ District audio records oral interpretation of materials so that parents have a record of the information for future reference

☐ The interpreter is present in the room during interactions with the parents

☐ Interpretation and written translations are prepared by qualified personnel with training in special education

☐ ESL or bilingual teachers and/or cultural liaisons are team members and attend meetings routinely

Endnotes

[i] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80.

[ii] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80.

[iii] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80.

[iv] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80.

[v] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80.

[vi] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80.

[vii] Ortiz, A. A., & Yates, J. R. (2001). A framework for serving English language learners with disabilities. *Journal of Special Education Leadership*, *14*(2), 72-80

[viii] IDEA (Individuals with Disabilities Education Act Amendments of 1997). 20 U.S.C. § 1400 *et seq.* Retrieved from: http://idea.ed.gov/download/statute.html; Lhamon, C., & Gupta, V. (2015, January 7). Dear colleague letter. Washington, DC: U.S. Department of Education, Office for Civil Rights. Retrieved from http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

[ix] The Minnesota Department of Education Division of Compliance and Assistance identified several considerations for the evaluation materials and procedures used in the special education evaluation of an EL. The Compliance Standards Training document is available at http://education.state.mn.us/ MDE/dse/sped/mon/prog/Training/, scroll down to Part B – Evaluation/Re-evaluation and Eligibility Requirements for Special Education.

[x] See Minnesota Rules 3525.2710, Evaluations and Reevaluations (https://www.revisor.mn.gov/rules/?id=3525.2710).

[xi] 6 34 C.F.R. § 300.322(e); see also id. §§ 300.9, 300.503(c)(1)(ii), 300.612(a)(1). Under Title VI and the EEOA, for a limited English proficient (LEP) parent to have meaningful access to an IEP or Section 504 plan meeting, it also may be necessary to have the IEPs, Section 504 plans, or related documents translated into the parent's primary language. For information on the separate Title VI obligations of school districts to communicate with LEP parents, see infra Part II. J, "Ensuring Meaningful Communication with Limited English Proficient Parents."