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Identification problems: US special education eligibility for English language learners

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ABSTRACT

Public schools in the United States are federally mandated to identify and serve all students with disabilities. However, students whose native language is not English are at risk of being inappropriately identified or not identified for special education because issues related to language and culture complicate the identification process. This article presents findings from a qualitative multi-case study of state education agencies, school districts, and schools along the US-Mexico border. Document analysis and in-depth interviews revealed that state and district policies often lack meaningful guidance for educators in the field while bureaucrats working in state educational agencies and school districts are unprepared and lack time, knowledge, and resources to support schools and educators. The findings inform next generation policy initiatives and identify important lines of inquiry for further research.

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1. Introduction

Schools in many nations are now responsible for identifying and providing special education services to students with disabilities (Lehtomaki, Tuomi, & Matonya, 2014; Mitchell, 2010). In the United States, the *Individuals with Disabilities Education Improvement Act* (IDEA) is the federal education mandate that guarantees students with disabilities receive a free and appropriate education and provides guidelines for disability classifications and eligibility processes. Disproportionality and segregation have been pervasive for students of color and those living in poverty since the law's inception more than 35 years ago (US Department of Education: Office of Special Education and Programs, 2009). A gap exists between the expectations of federal policy and what happens at the school level because language embedded in IDEA is broad and at times vague. Between the classroom and the federal levels, there should be state, district, and school policies that help provide details on how IDEA should be implemented, though lore, myth, and misconceptions often shape how those working within schools determine the eligibility of a student for special education.

Though identifying students with disabilities can be difficult when evaluating native English speakers, this process is even more complex for limited English language learners (ELLs).¹ As a result, ELLs are at-risk of being both under- and

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¹ English language learner (ELL) is the main term used throughout this article to describe students whose first language is not English and are in the process of learning the English language. English as second language (ESL) and limited English proficient (LEP) are also commonly used terms to identify students. ESL is used in this paper to describe teachers explicitly trained and assigned to work with ELLs. ESL is also used to identify programs and offices at the district and state level related to the education of ELL students.

over-identified for special education. ELLs are generally underrepresented on special education rosters but tend to be overrepresented in specific special education disability categories, such as Emotional Disturbance and Intellectual Disability (formerly Mental Retardation) (US Department of Education: Office of Special Education and Programs, 2009). Context may also be important to appropriate identification—as the percentage of ELLs who are identified under IDEA in urban school districts exceeds the number of students who speak English as their second language, for example (Donovan & Cross, 2002).

A limited body of research has sought to examine the policies and practices of states, school districts, and schools for the appropriate identification of ELLs for special education. Unfortunately, the limited body of research is not just a problem within the US as researchers outside the US have ignored the topic as well. This exploratory study is a first step that attempts to address that gap by focusing on the US–Mexico border states, districts, and schools. This study focuses on the border region because the states and districts contained therein have historically served a large population of ELLs. The ELL population examined in this study is native Spanish speakers. Findings from this study draw attention to significant shortcomings with regard to state and district policy and practice directed at appropriately identifying ELLs with disabilities and ensuring ELLs are not overrepresented or underrepresented in special education. The contribution of this research stems not only from its critical investigation of the relevant national, state, district, and school policies but also from the way it characterizes and problematizes the knowledge, perspectives, and practices of key actors who operate at multiple levels to identify ELLs for special education services.

Going forward, this article contains five sections. We begin with an overview of issues related to special education and ELLs in the United States. Specifically, we discuss federal education policies and guidelines, national trends, and a range of factors that tend to complicate the appropriate identification of ELLs for special education. In the second section, we address issues related to data collection and analysis. In the third and most extensive section, we present our findings—addressing the state, district, and school levels in turn. A discussion section and a brief conclusion follow this section.

2. Special education and ELLs in the United States: Federal education policy, national identification trends, and complicating factors

US schools are mandated to provide a quality education to all students regardless of disability or language. All students have the right to special education and language acquisition programs free of cost if they are found eligible under the requirements put forth in federal mandates. As for the mandates themselves, there are two: the *Elementary and Secondary Education Act (ESEA)* of 1965 (more recently authorized as the *No Child Left Behind Act* of 2001) and the *Individuals with Disabilities Education Improvement Act, 2004*. Both mandates have significant implications for states, districts, schools, and students—and, despite some of the shortcomings presented in this manuscript, each law has made a significant positive impact on the lives of millions of children.

Each year US schools serve a growing population of ELLs and students with disabilities. Over 6 million students in US schools have been identified for special education and related services under IDEA, while more than 4.6 million students were identified as ELLs under ESEA (approximately 10 percent of the entire K-12 student population) (US Department of Education, 2013). Approximately 9 percent of ELLs are also identified as being a student with a disability (Zehler et al., 2003) although there is no student subgroup reported under ESEA. According to the US Department of Education, Office of Special Education Programs (2002), there has been a 14.2 percent increase in ELLs with disabilities between 1987 and 2001. More current national data is not available because districts are not required to collect data on ELL students with disabilities.

IDEA and subsequent court rulings are mostly broad, set minimum baselines for service types and quality, and leave room for states, districts, and schools to implement education policies and programs. Federal policies provide limited guidance for how ELLs with disabilities should be selected for services and do not identify specific indicators to track and measure the progress of ELLs with disabilities as a subgroup. IDEA does mandate that a child cannot be eligible for special education due only to a language proficiency deficit.

To ensure ELLs are not misidentified, assessment and evaluation tools cannot be discriminatory on a racial or cultural basis. When considering whether or not an ELL student has a disability, certain requirements must be met during the evaluation process. IDEA mandates that assessments must be conducted in the student's accustomed manner of communication or language and in a way that clearly identifies what a student knows and can do academically, developmentally, and functionally. Thus, assessment materials, protocols, and procedures should be in the language that best measures the student's potential disability rather than his or her English language skills (National Dissemination Center for Children with Disabilities (NICHCY), 2010).

After data is collected and analyzed from both formal and informal assessments, an eligibility meeting is conducted to determine whether or not the student requires special education and related services. The team that performs these tasks should consist of at least the following individuals: the parent, regular education teacher, special education teacher when appropriate, a representative of the school district, an individual qualified to interpret the instructional implications of evaluation results, and the child when appropriate. If the student is found eligible for special education services, an Individualized Educational Program (IEP) is crafted which includes the type of services and supports needed and the location of where services will be provided.

National data indicate disproportional identification and segregation for Hispanic students. For example, Hispanic students ages 6 through 21 were 1.19 times more likely to be served under IDEA for specific learning disabilities than White students (US Department of Education: Office of Special Education and Programs, 2009). In general, Hispanic students

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