

Special Education Referral Procedure for Students with Limited English Proficiency (LEP)

At the current time, there is no state or federal guideline pertaining to the amount of time an LEP student must have been in an English speaking school before being tested for special education services. Although we do not have specific regulations relating to this issue we do consider these instances extreme legal liabilities. The Office for Civil Rights strongly warns against misidentifying students as having disabilities because of their lack of English language proficiency. In most cases it is very difficult to distinguish between a learning disability from a language learning issue. The language acquisition difficulties of English Learners are often misdiagnosed as learning disabilities or even reasons for retention. For these reasons the EL consultants at NKCES have adopted the following procedure:

1. If a student is referred for assessment (either for special education or for speech and language services) the EL Consultant for that district should be contacted immediately.
2. A meeting with the EL Consultant, EL teacher (if available), classroom teacher, and assessor will be made to discuss the problems the teacher has been seeing (in some cases this would also need to involve the parent).
3. The meeting will answer the following questions:
 - a. Does the student have a cognitive problem or are their issues language based? Does a professional need to work with the student in a variety of settings to determine whether the issues are language based or a possible cognitive problem?
 - b. If there are issues that are not language based, which assessments should be given that would provide the most valid and reliable results? Does the student need to be assessed in his/her native language?
 - c. If assessment results can not be considered valid and reliable what other documentation do we need to prove that this student does have a learning disability?
 - d. How can we help this child before, during, and after this process to ensure his/her learning?
4. After the meeting, if assessment is necessary, the EL Consultant is available to assist with ARC meetings, documentation, and placement. If assessment is not necessary the EL Consultant is available to work with districts and teachers to help determine which modifications are most effective for this student and what services the district should be encouraged to utilize.

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Situations of this nature are very dangerous for educators who are responsible for any misdiagnoses and misplacement of students. When the Office for Civil Rights examines the EL program (or a special education program) in a district and finds that an LEP student has been placed in a special education program there are many questions that will need to be answered and proven with documentation in order to guarantee that a student was not misdiagnosed. The EL Consultant can help you through this process and assist you with determining the root of the student's problems and properly documenting the process.

Special education directors, special education teachers, EL teachers, classroom teachers, guidance counselors, and principals should contact one of the EL Consultants with any questions or concerns about their LEP students. If you know of LEP students who are in the referral process now, or who have already been referred and tested, and you are concerned about whether the testing is/was appropriate, please contact your district's EL Consultant.