What a Specific Learning Disability Is *Not*:
Examining Exclusionary Factors

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The definition of the term "specific learning disabilities" (SLD) under the Individuals with Disabilities Education Act (IDEA) includes a set of exclusionary factors. These factors must be ruled out as the primary cause of a learning challenge before a child may be determined eligible for special education under the SLD category. Among others, these factors include "environmental, cultural, or economic disadvantage." A major reason for including such terms in the list of exclusionary factors is the disproportionate identification, placement, and discipline rates of students of color in special education. Indeed, disproportionality is and must remain a top concern for parents, educators, school professionals, policymakers, and advocates. It is imperative that the evaluation process is free from bias and discrimination.

There is no shortage of trends and data pointing to a great need for including these exclusionary factors in the definition of SLD. For example, children living in poverty are more likely to have adverse childhood experiences (ACEs).[1] Students who experience four or more ACEs are 32 times more likely to be diagnosed with learning or behavior challenges.[2] Additionally, in 2013–2014, African American students made up nearly 16 percent of public school students nationwide but 20 percent of students identified with SLD.[3] Similarly, English language learners (ELLs) made up 9 percent of all public school students but 12 percent of students identified with SLD. Studies show that children in low-income families are more likely than children in higher-income families to be diagnosed with ADHD.[4]

Concerning trends in disproportionality are also seen for* all *students with disabilities—not just for students with learning disabilities—particularly in the area of discipline. Students with disabilities are more than twice as likely to be suspended as students without disabilities, and 1 in 4 black males with Individualized Education Programs (IEPs) receive out-of-school suspensions

1 Child Trends (2013, July). A*dverse experiences: Indicators on children and youth.* Retrieved from http://www.childtrends.org/indicators/adverse-experiences/

2 Burke, N. J., Hellman, J. L., Scott, B. G., Weems, C. F., & Carrion, V. G. (2011). The impact of adverse childhood experiences on an urban pediatric population. *Child Abuse & Neglect, 35*(6), 408–413.

3 U.S. Department of Education (2017, January 6). IDEA Section 618 Data Products: Static Tables; National Center for Education Statistics. Common Core of Data.

4 Horowitz, S. H., Rawe, J., & Whittaker, M. C. (2017). *The state of learning disabilities: Understanding the 1 in 5*. New York, NY: National Center for Learning Disabilities.

(compared to 1 in 10 white males with IEPs).[5] Students of color are identified with disabilities and placed outside the general education classroom more often than their white peers with disabilities.[6] This means students of color with disabilities have fewer opportunities to access the general curriculum. Many of them spend more time out of school than their peers, hindering their academic success.[7]

It is clear that disproportionality in identification, placement, and discipline of students with SLD (and other disabilities) continues to be a crisis facing our schools. Efforts to bring equity to IDEA must continue. The exclusionary factors in the definition of SLD are an attempt to curb disproportionality in the identification process. However, the application of the exclusionary factors is riddled with challenges. This paper aims to explain the critical intended function of the exclusionary factors, highlight the implementation challenges currently facing the field, and provide some clarification regarding how exclusionary factors may be evaluated and considered in the decision-making process.

Introduction

The term "learning disability" was first used and defined by Samuel Kirk in 1962.[8] "Specific learning disability" (SLD) was later codified in 1975 in the Education of Handicapped Children Act, currently known as the Individuals with Disabilities Education Act (IDEA), and further clarified in the Code of Federal Regulations in 1977. Both Kirk's[9] and IDEA's definitions included exclusionary factors, or factors related to the student's background and/or experience that might explain or influence the student's performance. The factors help clarify what a learning disability is, primarily by exclusion—that is, by explaining what it is *not*.

5 U.S. Department of Education, Office for Civil Rights. (2016). Civil Rights Data Collection for the 2013–2014 School Year. Retrieved from https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html

6 U.S. Department of Education, Office of Special Education and Rehabilitative Services. *Racial and ethnic disparities in special education: A multi-year analysis by state, analysis category, and race/ethnicity*. Retrieved from https://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/disproportionality-analysis-by-state-analysis-category.pdf

7 Losen, D. J. (2108). *Disabling punishment: The need for remedies to the disparate loss of instruction experienced by black students with disabilities.* Retrieved from The Center for Civil Rights Remedies at the Civil Rights Project, Harvard University: https://today.law.harvard.edu/wp-content/uploads/2018/04/disabling-punishment-report-.pdf

8 Kirk, S. A., Gallagher, J. J., & Coleman, M. R. (2015). *Educating exceptional children.* Stamford, CT: Cengage Learning.

9 Zumeta, R. O., Zirkel, P. A., & Danielson, L. (2014). Identifying specific learning disabilities: Legislation, regulation, and court decisions. *Topics in Language Disorders*, *34*(1), 8–24. doi:10.1097/TLD.0000000000000006

The definition of SLD within the 1975 IDEA regulations was an attempt to operationalize the construct of SLD as unexpected underachievement. The rationale was not only to define who should be eligible for special education services due to SLD but also to differentiate them from students who should be served by other federal programs, such as Title I of the Elementary and Secondary Education Act—now called the Every Student Succeeds Act.

The federal definition includes a list of exclusionary factors. This has evolved over time[11] and plays an important role in determining whether or not students meet criteria for SLD under federal law. Application of the exclusionary factors is required by law. In effect, to determine that a child is eligible for special education services due to SLD, local education agencies (LEAs) must first identify the primary cause(s) of a student's low achievement and confirm that one or more of the exclusionary factors are not the primary cause of the student's learning challenges.

> The authors use the term "learning disability" to describe heterogeneous disorders, such as dyslexia, dysgraphia, and dyscalculia, that impact skill acquisition and performance in reading, writing, and mathematics. The U.S. government uses "specific learning disability" to name one of the eligible disability categories under IDEA.[10]

The exclusionary factors serve an important purpose, particularly for historically underserved groups of students. These factors were intended to prevent schools and LEAs from disproportionately identifying students of color and low-income students. For instance, while the field agrees that no race or ethnicity is more likely to have a learning disability, certain subgroups of students, specifically African American and Hispanic students, are overrepresented among students receiving special education services within the SLD category.[12] The exclusionary factors require that education professionals consider whether, in comparison with their peers, a student's lack of success can be primarily attributed to cultural or environmental factors. For instance, did the child lack prior appropriate instruction in reading and math? Is the child new to the United States, with a lack of language proficiency and/or cultural factors preventing him or her from being able to fully access the curriculum?

This paper describes the exclusionary factors contained in federal law and regulation and highlights the specific challenges associated with applying these factors during the evaluation process.

10 Individuals with Disabilities Education Act, 20 U.S.C. § 602 (2004)

11 Individuals with Disabilities Education Act, 20 U.S.C. § 602 (2004)

12 Horowitz, S. H., Rawe, J., & Whittaker, M. C. (2017). *The state of learning disabilities: Understanding the 1 in 5.* New York, NY: National Center for Learning Disabilities. Retrieved from https://www.ncld.org/identifying-struggling-students

I. An Overview of Federal Law

A comprehensive evaluation for special education must consider any areas of suspected disability. For all disability categories in federal law, LEAs must ensure that (1) lack of appropriate instruction in reading and math, and (2) limited English proficiency are not the "determinant factor for the determination" of special education under any disability category.[13] This is an important issue, as it makes it clear that IDEA is intended to serve the needs of students with disabilities, not students for whom the provided educational program has not resulted in expected grade-level performance due to other situational factors.

Current federal definition of SLD

The federal definition of SLD includes a general description of the term, a list of certain disorders that are included in the definition, and additional exclusionary criteria that LEAs must rule out to determine if a child is eligible for special education under the SLD category.[14]

Specifically, the definition of SLD in reauthorization of IDEA in 2004 states that "Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage."[15]

Subsequent clarification by the U.S. Department of Education in regulation now includes "limited English proficiency" as an additional consideration[16] and clarifies that cultural differences are not a disadvantage but an important consideration. These changes in regulation are significant.[17]

13 Individuals with Disabilities Education Act, 20 U.S.C. § 614 (2004)

14 Individuals with Disabilities Education Act, 20 U.S.C. § 602 (2004); Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 34 CFR § 300.311(a)(6) (2006)

15 Individuals with Disabilities Education Act, 20 U.S.C. § 602 (2004)

16 Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 34 CFR § 300.311(a)(6) (2006)

17 Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 34 CFR § 300.311(a)(6) (2006)

2006 Federal Regulations for IDEA, Part B: Sec. 300.8 (c) (10)

(10) Specific learning disability—

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

II. The Process to Rule Out Exclusionary Factors in an Evaluation for Special Education

To properly meet the definition and its exclusionary criteria, LEAs would first have to identify the primary cause(s) of a student's low achievement. For instance, if a child has limited English language proficiency, and it influences behavior and learning, it could appear as though the child has SLD. During an evaluation, it would be incumbent upon the school to determine whether the behavior or learning issues are *primarily* caused by one or more of these exclusionary factors. In the example above, the process of ruling out exclusionary factors would likely result in the determination of the child needing linguistic interventions and/or instructional support based on their limited English proficiency. Thus, the appropriateness of considering SLD will have been "ruled out" for this child and disability identification would not be appropriate.

Importantly, however, SLD can coexist with other disabilities, including limited English proficiency, sensory impairments, motor difficulties, emotional problems, etc. Any such factors may well be seen as *contributory* to the observed learning problems in the classroom and do not rule out a learning disability as long as they are not the *primary* reason for such difficulties.

There are specific assessments that provide a definitive answer for certain exclusionary factors, including an intellectual disability and a visual disability. For instance, education professionals can

request that an evaluator administer a cognitive battery to determine if a child has an intellectual disability. Education professionals can also request that a health professional administer visual or hearing screening.

However, it can be more difficult to decipher if a student's low achievement is primarily the result of one of the other factors, such as lack of access to appropriate instruction, lack of English proficiency, or cultural, environmental, or economic differences. Currently, the ability to definitively rule out these factors relative to learning problems, particularly with tests, is exceptionally limited and requires consideration and integration of a wide range of research and pedagogical knowledge.

State policies and guidance on exclusionary criteria

Policies and procedures to help school teams rule out exclusionary factors vary across states and LEAs. Many states have a checklist or worksheet that education professionals must use to rule out exclusionary factors. The document helps education professionals determine when an exclusionary factor is the determinant factor resulting in low achievement. While this method provides a good deal of efficiency in making determinations, it lacks guidance on the nature and types of data that might be considered in deciding between "yes" or "no."

Here is an example of the checklist created by the Idaho Department of Education.[18]

18 Idaho State Department of Education. (2017). Chapter 4: Evaluation and Eligibility. In *Special Education Manual* (p. 9). Retrieved from https://www.sde.idaho.gov/sped/sped-manual/files/chapters/chapter-4-evaluation-and-eligibility/Exclusionary-Factors-Worksheet.pdf

Questions to Consider	Y/N	Describe the Degree of Impact
• Do attendance patterns show that the student has changed schools so often, or has attended school so sporadically, that normal achievement gains were not possible?	Y/N	
• Have there been any significant or traumatic events in the student's life that contribute to the current learning problems?	Y/N	
• Are there any factors in the student's school history that may be related to the current difficulty?	Y/N	
• Are there any variables related to family history that may have affected school performance (lifestyle, length of residence in the U.S., stress, poverty, lack of emotional support, the student is under the guardianship of another person or agency)?	Y/N	

Credit: Idaho Department of Education

Some states, like Tennessee, also provide a list of sources that education professionals should consider when evaluating for exclusionary factors to help complete the worksheet.[19]

Exclusionary Factor	Source of Evidence
Visual, Motor, or Hearing Disability	Sensory screening, medical records, observation
Intellectual Disability	Classroom performance, academic skills, language development, adaptive functioning (if necessary), IQ (if necessary)
Emotional Disturbance	Classroom observation, student records,family history, medical information,emotional/behavioral screenings (if necessary)
Cultural Factors	Level of performance and rate of progress compared to students from same ethnicity with similar backgrounds
Environmental or Economic Factors	Level of performance and rate of progress compared to students from similar economic backgrounds, situational factors that are student specific
Limited English Proficiency	Measures of language acquisition an proficiency (i.e., BICs and CALPs), level of performance and rate of progress compared to other EL students with similar exposure to language and instruction
Excessive Absenteeism	Attendance records, number of schools attended within a 3 year period, tardies, absent for 23% of instruction and/or intervention

Credit: Tennessee Department of Education

This resource helps clarify what type of data or information may be used to examine a particular exclusionary factor, but it does not define or clarify what constitutes such factors or how to evaluate their impact. Regardless of available guidance from the state education agency or the district, education professionals may lack sufficient knowledge and skill to operationalize the rule-out decision-making process. As a result, important factors are minimized or overlooked, and eligibility decisions are made with insufficient data to reliably determine the extent to which these factors contribute to or account for a student's lack of progress.

19 Tennessee Department of Education. (2013). *Response to intervention and instruction framework*. Retrieved from https://www.tn.gov/content/dam/tn/education/special-education/rti/rti2_manual.pdf

III. Exclusionary Factors That Are Difficult to Address

Professionals responsible for determining eligibility for special education under an SLD category have long struggled to rule out exclusionary factors for different reasons, and the field has debated their relevance, validity, and impact. It is particularly difficult to evaluate the impact of environmental circumstances, poverty, and English language proficiency due to the existence of mixed research and the unavailability of sufficient valid assessments.

Environmental and economic disadvantage

There is general agreement that specific learning disabilities are brain-based and result from a range of disparate neurological factors.[20,21] Both "differences" in development (often with familial and genetic components) and external factors can have a dramatic influence on brain structure and function, each contributing to increased risk for children to be identified as having SLD.

For instance, exposure to lead can have a profound influence on health and well-being, including brain function and its impact on learning. A National Bureau of Economic Research study found that even low levels of lead in blood may have a lasting impact on student achievement.[22] Other research demonstrates that exposure to lead can increase likelihood for an SLD diagnosis, with students specifically demonstrating difficulties in skill acquisition in math, reading, and writing.[23] The literature on the impact of low levels of lead is controversial. These studies cannot control for other environmental factors.[24]

More controversially, brain imaging studies have demonstrated that poverty can impact brain development, including neurological processes that contribute to learning.[25] Studies have demonstrated that cortisol and other stress markers are elevated among children in poverty, resulting in problems with

20 Learning Disabilities Association of America. (2018). *Core principles: What are learning disabilities?* Retrieved from https://ldaamerica.org/core-principles-what-are-learning-disabilities/

21 National Joint Committee on Learning Disabilities. (2018). *What are learning disabilities?* Retrieved from https://njcld.org/ld-topics/

22 Aizer, A., Currie, J., Simon, P., & Vivier, P. (2016). Do low levels of blood lead reduce children's future test scores? *American Economic Journal: Applied Economics, 10*(1), 307–341. doi:10.3386/w22558

23 Geier, D. A., Kern, J. K., & Geier, M. R. (2017). Blood lead levels and learning disabilities: A cross-sectional study of the 2003–2004 National Health and Nutrition Examination Survey (NHANES). *International Journal of Environmental Research and Public Health, 14*(10), 1202. doi:10.3390/ijerph14101202

24 Personal correspondence with Jack Fletcher, June 2019

25 Horowitz, S. H., Rawe, J., & Whittaker, M. C. (2017). *The state of learning disabilities: Understanding the 1 in 5*. New York, NY: National Center for Learning Disabilities.

regulation of emotion and attention.[26] Martha Farah, the founding director of the Center for Cognitive Neuroscience at the University of Pennsylvania, found that certain cognitive functions, specifically those needed for language development, working memory, and executive function, were slightly depressed in individuals of low socioeconomic status. The findings are limited, but clearly suggest that poverty may influence the brain in ways that explain or contribute to poor learning and behavior outcomes and could contribute to SLD determination.[27]

Certainly, neither poverty nor low-level lead poisoning is a reliable predictor of SLD for any child. However, exposure to adverse childhood experiences and other risk factors can impact the likelihood of a child having SLD. Thus, it can be argued that the existence of these factors should not disqualify a child from receiving special education services.

Perhaps the simplest way to view these factors is to understand that, by itself, being poor is not a disability. But even poor children can have a learning disability. Thus, whichever is the primary cause of the observed learning difficulties should drive the determination.

English proficiency and cultural difference

According to both educators and researchers, it can be difficult to isolate the influence of English proficiency (or English language development, see more below) and cultural differences when determining eligibility for special education.

The intersection of language, culture, and specific learning disability

Currently, data show that English learners are first underidentified in early grades (i.e., grades K–3) and subsequently overidentified in later grades (i.e., grades 6–12).[28] This is likely because educators are cautious in their recognition that limited English proficiency may well be affecting academic achievement in early elementary school where basic literacy skills and math are being taught. However, as the curriculum shifts toward conceptual development and starts to rely heavily on solid foundational skills, despite acquisition of sufficient English proficiency to pass state-mandated tests, English learners begin to fall further behind their grade school peers. Bilingual students may appear

26 Blair, C., & Raver, C. C. (2016). Poverty, stress, and brain Development: New directions for prevention and intervention. *Academic Pediatrics, 16*(3 Suppl), S30–S36. doi:10.1016/j.acap.2016.01.010; Cantor, P., Osher, D., Berg, J., Steyer, L., & Rose, T. (2018). Malleability, plasticity, and individuality: How children learn and develop in context. *Applied Developmental Science.* doi:10.1080/10888691.2017.1398649.

27 Ryan, J. E. (2013). Poverty as disability and the future of special education law. *Georgetown Law Journal, 101*(6), 1455. Retrieved from https://georgetownlawjournal.org/articles/116/poverty-as-disability-future/pdf

28 Hanna, T. (2017, June 9). Contours of the field: Equitable representation of English learners in special education. [Blog post]. Retrieved from https://www.newamerica.org/education-policy/edcentral/el-special-ed/

to have strong conversational English skills, lessening the extent to which educators consider the impact of their English language development on overall achievement. It is important to consider that removal of the limited English proficiency (LEP) designation for ELs who pass state requirements is not sufficient evidence with which to automatically exclude language as a factor affecting current and future academic achievement.

English proficiency generally refers to a child's ability to use English for conversational purposes—what Jim Cummins, a professor at the University of Toronto who studies language development, defined as "Basic Interpersonal Communication Skills" (BICS). A child who has a native language other than English may pass an English proficiency exam but still have less familiarity and struggle more with the English language compared to peers who speak English as their native language. As a result, when considering exclusionary criteria, it is more accurate to think of a child's English language development as a continuum and as different from that of a monolingual speaker, rather than as an all-or-nothing conceptual construct. Even after a child no longer is found to be "limited English proficient" by law, English language development is still relevant, as it remains a strong factor in educational performance.

"Cultural difference," the term used in connection with the exclusionary factors in federal law, is inherently nebulous. When defined in its broadest sense, educators struggle to understand how differences in attitudes, beliefs, and customs directly affect learning in the classroom. Likewise, acculturation in the sense of personal identity is also difficult to connect directly to traditional markers of learning difficulty as reflected, for example, in grades, work samples, progress monitoring, and other traditional measures of achievement.

While the term "cultural difference" is not defined specifically in IDEA, it generally refers to a child's familiarity with the predominant school culture and with that of the community.[29] Children who have recently moved from another country, even if they speak English, may struggle to progress academically at the same rate as their peers because they lack exposure to key information and cultural concepts referred to in school, much of which is acquired incidentally and outside of school. Monolingual English-speaking children who are raised in homes where the milieu is not based strictly on mainstream U.S. culture will necessarily have far less experience with and exposure to acculturative knowledge that schools expect them to have. Conceptualization of "cultural difference" as encompassing the degree to which a child has had the opportunity to acquire the age- or grade-level amount of cultural knowledge expected in the classroom highlights it as a developmental process, much like language difference, where the degree to which an individual has been exposed to English provides an indication of expected English proficiency.

29 Ortiz, S. O., & Seymour, K. L. (2017). The culturally competent school psychologist. In M. Thielking and M. T. Terjesen (Eds.), *Australian Handbook of School Psychology* (pp. 81–110). New York, NY: Springer Books.

Determining the impact of language and cultural differences on struggling students

Requiring educational professionals to rule out English proficiency and cultural difference prior to referring children to special education is an important step in ensuring fairness in evaluation—even though there is no easy way to determine if one of those factors is the primary cause of low achievement.[30] The manifestations of normal second-language acquisition, especially within the context of ESL-only programs, mimic characteristics and signs of learning disability, particularly in the areas of reading and writing.[31] Thus, careful attention to this exclusionary factor ensures that education professionals consider the child's development and experience and, potentially, examine any unintended cultural and methodological biases prior to referral for evaluation of a learning disability.

Just as with the other exclusionary factors, English learners or students who are less familiar with American culture may still require interventions for struggling learners or specialized special education instruction, but it can be difficult to decipher whether the child may also have an SLD.

Currently, regulations for IDEA allow practitioners to use two methods to determine if a child has an SLD: instructional response or patterns of strengths and weaknesses. [See NCLD White Paper: *Evaluation for Specific Learning Disabilities: Allowable Methods of Identification & Their Implications*] These frameworks both have inherent flaws in evaluating English learners.

Chief among the concerns with identifying students using these frameworks is the assumption regarding comparability in language development and cultural difference as a function of age or grade. Because each model relies on some type of measurement that derives meaning from comparison to a peer group, the failure to account for differences in language development in English, or in the native language, renders the comparison group inappropriate and not reflective of *true* peers. Bilingual students vary widely in terms of the current levels of English and native language proficiency and cannot be viewed as a monolithic group in which age controls for linguistic development and corresponding rates of progress, growth, and attainment. English learners will necessarily have a different expected learning curve than that of peers who have been in the U.S. and speaking English since birth. But they will also vary widely among themselves as a function of their experience with and exposure to English and their native language.[32] Therefore, any method that seeks to evaluate the development, acquisition, rate of progress, or growth of any ability or skill in whatever language should compare

30 Attributed to Dr. Samuel Ortiz, a psychologist and professor at St. John's University.

31 Ortiz, S. O. (2019). On the measurement of cognitive abilities in English learners. *Contemporary School Psychology, 23*(1), 68–86. doi:10.1007/s40688-018-0208-8

32 Ortiz, S. O. (2016). *The assessment of culturally and linguistically diverse populations: A fifty year dilemma: What progress has been made, what issues remain?* Lecture presented at WSASP Webinar Series. Retrieved from https://www.wsasp.org/resources/Documents/Spring%20Lecture%20Series/2016/History%20of%20Eval%20of%20ELLs%20-%20Ortiz.pdf

students with true peers who have similar levels of exposure to and experience with the language culture of the test.[33]

In addition, IDEA asserts that for children who are limited English proficient, "assessments and other evaluation materials used to assess a child under this part … are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer."[34] This specification is often interpreted to mean that English learners can only be evaluated fairly in their native language or that the evaluation should be conducted entirely in the native language. Neither conception is accurate, and the attention to ensuring reliable and valid information is more important than the manner or form in which it is gathered.

However, because of limited availability of tools and instruments, it may not always be feasible to evaluate English learners in their native language. A 2019 Government Accountability Report on Child Find and IDEA identification rates reported that in every state examined, challenges to administer tests in every English learner's native language were reported, in part due to the sheer number of native languages within their student populations. For instance, New York reported that there are 200 languages spoken by their students.[35]

While there are a relatively large number of tests in Spanish, there are far fewer available for other languages. And because of norm sample issues involving differential language development among bilingual students, it cannot be assumed that native-language tests will provide the most reliable, accurate, and valid information as specified in IDEA.[36]

The consensus among researchers in the field is that diagnosis of a learning disability requires evidence of impairment in *both* languages, not just one. However, evidence of learning difficulties in both languages is not sufficient, by itself, to constitute a learning disability determination—especially in cases in which the child was not afforded native-language instruction. Of course, evidence that an individual does not display learning difficulties in one language means they cannot have a learning disability. This would preclude the need for evaluation in the other language.

33 Ortiz, S. O. (2018). *Fairness and English learners: Toward true peer group measurement.* Buros Center for Testing. Retrieved from http://ulearn.unl.edu/a/8/89

34 Individuals with Disabilities Education Act, 20 U.S.C. § 300.304(c)(1)(ii) (2004)

35 U.S. Government Accountability Office (2019). *Varied state criteria may contribute to differences in percentage of children served*. Retrieved from https://www.gao.gov/assets/700/698430.pdf

36 Individuals with Disabilities Education Act, 20 U.S.C. § 300.304(c)(1)(ii) (2004)

More research is needed

Current advancements in research are beginning to lead to the advent of new tests and tools that respond to the developmental differences between and among English speakers and English learners. Such tools may show more promise than traditional native-language methodology in being able to evaluate how differences in language development and acculturative knowledge acquisition affect rates of learning, progress, growth, and achievement. Nevertheless, it remains the responsibility of educators to determine—as fairly as possible—the extent to which low achievement is the result of English language development or cultural difference.

IV. Exclusionary Factors and Disproportionality in Special Education

It is critical that education professionals conduct a targeted, comprehensive evaluation that considers the various intrinsic and extrinsic influences on a student's academic performance and behavior. Such evaluations must not only carefully examine exclusionary criteria, but must also be free from personal and institutional biases as well—as methodological and measurement flaws might confound or invalidate the assessment.

For example, while there is general agreement that no race or ethnicity is more likely than another to have an SLD, there still exist significant differences between participation rates in school by race and the percentage of those students who receive IDEA services. According to 2013–2014 data from the Civil Rights Data Collection, 15.5 percent of students in public schools identify as black or African American, but 18.5 percent of all students who are eligible for IDEA services are black or African American. Students who identify as Asian, on the other hand, are underrepresented in special education.[37]

While race and ethnicity alone do not make a learning disability diagnosis more likely—as explained in relation to the exclusionary factors of English language development and cultural difference—bias may play a role in racial disproportionality.[38] Specifically, cultural bias may account, in some part, for the increased incidence of African American and Hispanic students found eligible for special education services. Some studies have also suggested that students of color who are eligible for special education are held to lower expectations and placed in more restrictive environments than their peers.[39] It is especially important that education professionals consider bias and exclusionary criteria before making special education determinations.

37 U.S. Department of Education, Office for Civil Rights. (2016). Civil Rights Data Collection: 2013–2014 State and National Estimations. Retrieved from https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2013_14

38 Phippen, J. W. (2015, July 6). The racial imbalances of special education. *The Atlantic.*

39 De Valenzuela, J. S., Copeland, S. R., Qi, C. H., & Park, M. (2006). Examining educational equity: Revisiting the disproportionate representation of minority students in special education. *Exceptional Children, 72*(4), 425–441.

On the other hand, there is some research that contests reports of overidentification in this population, stating that while some racial groups may be identified at a higher rate, African American and Hispanic students are less likely to be identified for special education than white students performing at similar levels.[40] These findings argue that overrepresentation of some racial groups in certain special education categories may not necessarily be the result of bias but rather of need. This body of work suggests that schools may be placing too much weight on numerical targets and, as a result, are not appropriately identifying students in need of special education.[41]

Avoiding disproportionality is unlikely to serve as a single, reliable indicator of success in correctly identifying a learning disability in children who come from culturally, linguistically, and economically diverse backgrounds. Note that for English learners, the rate of placement increases as they get older and further behind academically, while their proportion in special education placement actually seems to decrease. This occurs because the "limited English proficiency" designation is either removed after the child passes the state exam prior to being evaluated for special education services, or because the IEP team decides to exclude the child from having to take the test altogether and summarily removes the designation. In such cases, the number of students with limited English proficiency receiving special education services appears to go down for the purposes of accountability and reporting to the federal government, when in fact, these students continue receiving special education services and should still be counted as English learners.

Considerations for the Field

It is important for the exclusionary factors in federal law to be applied in a way that protects students from bias in the identification process and accurately assess the primary cause of a student's academic challenges. However, there are many barriers currently facing the field and preventing effective implementation of these factors. To make meaningful progress in this area, the field should consider:

- *Types of data that can help evaluate exclusionary criteria.* Education professionals would benefit from more information and access to accurate, reliable, and valid ways to evaluate the influence of exclusionary factors.

40 Morgan, P. L., Farkas, G., Hillemeier, M. M., & Maczuga, S. (2017). Replicated evidence of racial and ethnic disparities in disability identification in U.S. schools. *Educational Researcher, 46*(6), 305–322. doi:10.3102/0013189X17726282

41 Barnum, M. (2017, August 27). *Many worry that students of color are too often identified as disabled. Is the real problem the opposite?* Retrieved from https://www.chalkbeat.org/posts/us/2017/08/27/many-worry-that-students-of-color-are-too-often-identified-as-disabled-is-the-real-problem-the-opposite/

- *Ways to help educators determine if an exclusionary factor plays a role in a child's performance and should preclude a child from qualifying for special education services.* Evidence-based approaches can be developed to help teachers use data to rule out exclusionary factors. Additionally, greater dissemination of existing, research-based information can help teachers understand how culture, language, environment, and economics affect rates of learning and academic progress.

- *Ways to support emerging research that can identify valid methods to rule out exclusionary factors, especially English language development.* Current federally allowable methods to identify the existence of a specific learning disability focus on low achievement as measured by standardized assessments and informed by input from parents and professionals. Reliable and valid approaches are emerging and have the potential to better demonstrate whether a child is making progress similar to that of their peers who share similar backgrounds, especially methods to help identify the influence of varying levels of English language development.

Conclusion

The exclusionary criteria in the federal definition of SLD serve an important purpose. Education professionals must rule out other factors as being the primary cause of educational difficulties before determining that a child is eligible for special education due to SLD. Identifying and addressing the primary and contributory factors that create obstacles to learning, affect rates of progress and growth, and cause low achievement help education professionals design targeted interventions, provide quality instruction, and develop appropriate expectations—all of which are necessary to reduce over- and underidentification of children for special education services. While more research and additional tools are needed to assist educators in determining how one or all of the factors are contributing to learning challenges, the intent of the exclusionary factors is to promote fairness and equity and must be maintained.

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Acknowledgments

The authors would like to thank the following individuals who reviewed and provided valuable feedback on their paper:

- Meg Benner, M.S., independent consultant
- Jack Fletcher, Ph.D., Department Chair, Hugh Roy and Lillie Cranz Cullen Distinguished University Chair, University of Houston
- Sheldon Horowitz, Ed.D., senior advisor of strategic innovation, research, and insights, National Center for Learning Disabilities
- Steve Kukic, Ph.D., former director of school transformation, National Center for Learning Disabilities

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