



## Significant Disproportionality in Special Education: Trends Among English Learners (ELs)

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*Years of research point to inequities in education for students of color, students from low-income backgrounds, and students with disabilities. These inequities are particularly apparent when it comes to rates of discipline and special education enrollment. The term “significant disproportionality” is used to describe the widespread trend of students of certain racial and ethnic groups being identified for special education, placed in more restrictive educational settings, and disciplined at markedly higher rates than their peers. Due to bias within the education system (including within assessments and academic and other policies), students of color can be misidentified as needing special education, and are then placed in more restrictive settings and experience harsher discipline because of the intersectionality of race and special education. Being misidentified as needing special education, placed in a restrictive setting, or disciplined more harshly can negatively affect student outcomes. It is imperative that education professionals and policymakers understand the magnitude of significant disproportionality for students of different races, ethnicities, and incomes and take actions to correct it.*

*This brief summarizes the trends in significant disproportionality for students who are English learners (ELs). For a full discussion of the research on disproportionality in special education and a set of policies and practices that can reduce significant disproportionality in schools, visit [nclld.org/sigdispro](https://nclld.org/sigdispro).*

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# Introduction

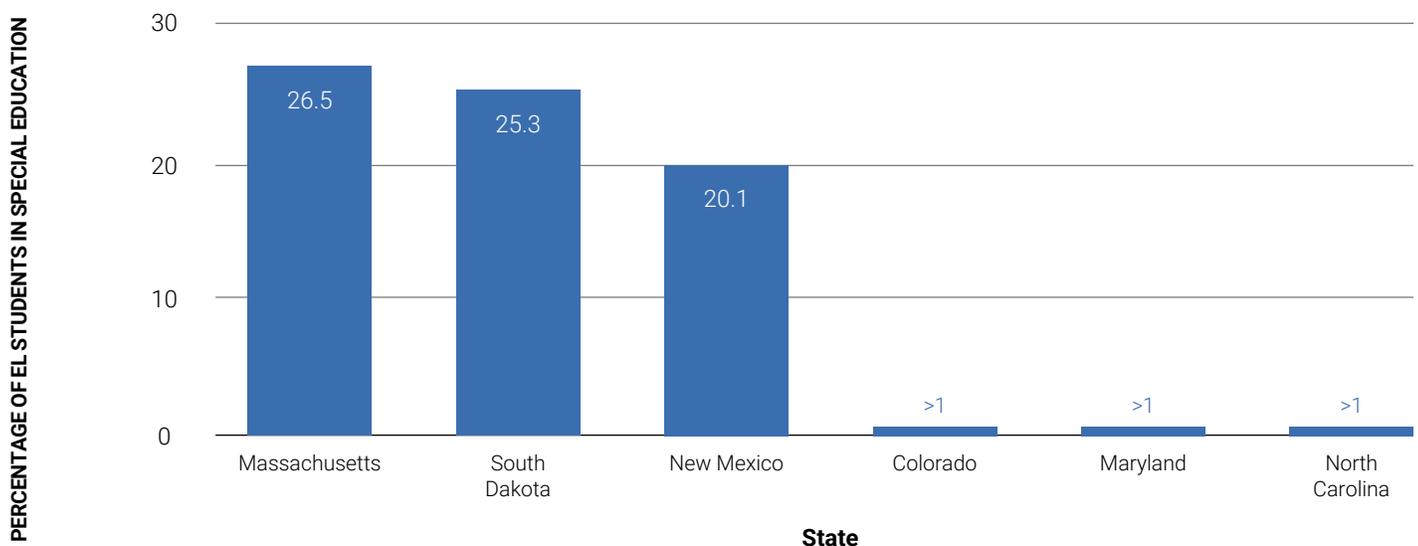
English learners (ELs)<sup>1</sup> are subject to disparities in special education identification but have a unique experience compared to other historically marginalized students. In general, significant disproportionality can lead to poor academic outcomes for students. However, there are unique considerations for ELs, particularly related to the special education evaluation process. In addition, because Hispanic students make up 76.5 percent of ELs in U.S. public schools,<sup>2</sup> this brief should be read in conjunction with NCLD’s brief “Significant Disproportionality in Special Education: Trends Among Latinx Students.”

## Disproportionality Trends for ELs

### Special education identification

EL students face disproportionality issues in special education identification and have been, overall, overrepresented in special education since the problem was first identified in the 1960s.<sup>3</sup> They are overrepresented in school districts with small EL populations, where 16 percent of EL students receive special education services.<sup>4</sup> Only 13.7 percent of students in general receive special education services, as of 2017–2018.<sup>5</sup> Yet, they are underrepresented in school districts with larger EL populations, where only about 9 percent of EL students are placed in special education.<sup>6</sup> Identification rates vary greatly by state; one study found that 26.5 percent of ELs in Massachusetts, 25.3 percent in South Dakota, and 20.1 percent in New Mexico were placed in special education, compared to less than 1 percent of ELs in Colorado, Maryland, and North Carolina.<sup>7</sup> Once identified as having a disability, EL students are more likely to be taught in separate classrooms, compared to English-speaking students.<sup>8</sup>

**Figure 1.** Percentage of EL students in special education, by state.<sup>9</sup>



These disparities can be due in part to the current lack of sophisticated assessments and an inability of education professionals to effectively assess ELs for special education. Assessments are often used during the process of determining whether students have disabilities. According to the Standards for Educational and Psychological Testing, “For all test takers, any test that employs language is, in part, a measure of their language skills.”<sup>10</sup> Therefore, EL students may appear to have disabilities, based on assessment results, even if they do *not* have disabilities, due to the confounding effect of their English language abilities.<sup>11</sup>

Research indicates that language factors make EL students’ assessments less reliable and valid.<sup>12</sup> ELs generally perform lower on content-based assessments in math, science, and social science, when compared to non-ELs, indicating that language factors affect instruction and assessment.<sup>13</sup>

In particular, the evaluation process for students with specific learning disabilities (SLD) requires schools to determine that the learning problem is not “primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.”<sup>14</sup> Additional regulations from the U.S. Department of Education also require schools to consider “**limited English proficiency**” [emphasis added] as a factor.<sup>15</sup> Many schools struggle to effectively rule out these factors or understand the interaction between English proficiency, environment, or poverty and a student’s disability. It can be difficult to determine whether a student’s low achievement is primarily the result of one of these factors, and the ability to definitively rule out these factors relative to learning problems using tests is exceptionally limited.<sup>16</sup>

## Improving the Evaluation Process

For the EL population in particular, improving the special education evaluation process is crucial, specifically in the areas of assessment and stakeholder communication.

### Assessments

Simplifying the language on assessments can help address disparities for EL students. One study of an eighth-grade student population with high enrollment of Spanish speakers found that language modification improved student performance on 49 percent of the questions.<sup>17</sup> The students also generally scored higher on shorter problem statements.<sup>18</sup> Native Language Assessment (NLA) programs might offer a solution to students who have not yet achieved a high level of English proficiency by allowing them to take certain standardized tests in their native language instead of English.<sup>19</sup> This allows the opportunity to measure their content knowledge rather than their ability to master the English language. However, the availability of these assessments is limited and greater research and development is needed to create these assessments for valid and reliable use within the special education evaluation process.<sup>20</sup>

Additionally, researchers explain that a wide range of assessments are used to measure EL student achievement. When interviewed, parents, administrators, and teachers of EL students named inconsistent screening and evaluation methods as one of the issues complicating EL special education placement.<sup>21</sup> These interviewed stakeholders also said that special education identification for EL students needed to be improved through professional development for educators.

### Communication

When one study interviewed stakeholders, they named communication issues as being a major complicating factor for EL special education identification.<sup>22</sup> Insufficient access to interpreters and other barriers to communication were named as a significant cause of these issues.<sup>23</sup> In order to have a holistic disability identification process, open communication with students and their caregivers is crucial, and there must be adequate resources to facilitate these conversations, even when language barriers arise.

# Policy and Practice Considerations

When addressing significant disproportionality, it is vital to guard against overidentification of students for special education services. However, if state education agencies engage in this effort without also meeting their legal responsibility to ensure students' right to a free appropriate public education (FAPE), children with disabilities could be at risk of not receiving the critical services and supports that they need. The following important policy and practice changes can be made in the areas of evaluation, assessment, discipline, teacher preparation and training, and data:

- **States and districts can refine their special education eligibility process with a focus on:**
  - seeking outside expertise to implement training on disability identification that includes considerations for linguistic and cultural differences;
  - investing in and prioritizing hiring educational professionals with expertise in cultural and linguistic consideration in identification;
  - completing an audit of their discipline and special education policies and processes to uncover and address bias within the system itself and the actors within the system; and
  - investing in developing relationships with families and creating an open dialogue with parents and families to better understand a student's familial, social, and cultural background and to incorporate parents' observations into the special education evaluation.
- **Districts can:**
  - modify their discipline policies to restrict the usage of suspensions and expulsions, focusing instead on creating positive learning environments with sufficient social workers and school counselors; and
  - implement (and provide training to educators in) Multi-Tiered Systems of Supports (MTSS), Universal Design for Learning (UDL), Positive Behavioral Interventions and Supports (PBIS), culturally responsive teaching (CRT), and restorative practices.
- The federal government, states, and local school districts should take action to diversify the principal, teaching, and school staff workforce and incentivize the use of culturally responsive approaches.
- The federal government and states should continue with regular data collections such as the Civil Rights Data Collection (CRDC). It must continue to track and report on the number of ELs in EL programs by disability status. Additionally, it should disaggregate the data by student status under Section 504 of the Rehabilitation Act and by the race and ethnicity categories used in the American Community Survey and require that this data is able to be cross-tabulated (with a minimum n-size to protect identity).
- The U.S. Department of Education must continue to enforce the Equity in IDEA regulations and provide intensive technical assistance to states and districts with the highest levels of significant disproportionality.

For a full discussion of the research on disproportionality in special education and a set of policies and practices that can reduce significant disproportionality in schools, visit [nclد.org/sigdispro](https://nclد.org/sigdispro).

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<sup>1</sup> The term "English learner" (EL) is used in this brief as it is the preferred term for many communities and organizations representing students who are non-native English speakers. However, federal agencies collecting data on English learners often use the term "English Language Learner (ELL)," so that term may be used here for accuracy when the data set requires.

<sup>2</sup> National Center for Education Statistics. (2020). English language learners in public schools. *The Condition of Education*.

<sup>3</sup> Hardin, B. J., Mereoiu, M., Hung, H., Roach-Scott, M. (2009). Investigating parent and professional perspectives concerning special education services for preschool Latino children. *Early Childhood Education Journal*, 37(2), 93–102.

<sup>4</sup> National Education Association. (2007). Truth in labeling: Disproportionality in special education. Retrieved 2020.

<sup>5</sup> National Center for Education Statistics. (2019). Fast facts: Students with disabilities. Retrieved August 17, 2020, from <https://nces.ed.gov/fastfacts/display.asp?id=64>

- <sup>6</sup> National Education Association. (2007). Truth in labeling: Disproportionality in special education. Retrieved 2020.
- <sup>7</sup> Abedi, J. (2006). Psychometric issues in the EL assessment and special education eligibility. *Teachers College Record*, 108(11), 2282–2303.
- <sup>8</sup> National Education Association. (2008). Disproportionality: Inappropriate identification of culturally and linguistically diverse children.
- <sup>9</sup> Abedi, J. (2006). Psychometric issues in the EL assessment and special education eligibility. *Teachers College Record*, 108(11), 2282–2303.
- <sup>10</sup> Ibid.
- <sup>11</sup> Ibid.
- <sup>12</sup> Ibid.
- <sup>13</sup> Ibid.
- <sup>14</sup> Individuals with Disabilities Education Act, 20 U.S.C. § 602 (2004)
- <sup>15</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 34 CFR § 300.311(a)(6) (2006)
- <sup>16</sup> Whittaker, M. C., & Ortiz, S. (2019). What a specific learning disability is not: Examining exclusionary factors. National Center for Learning Disabilities. Available at: <https://www.nclld.org/wp-content/uploads/2019/11/What-a-Specific-Learning-Disability-Is-Not-Examining-Exclusionary-Factors.12192019.pdf>
- <sup>17</sup> Ibid.
- <sup>18</sup> Ibid.
- <sup>19</sup> For more information on NLAs, see this resource from UnidosUS: [http://publications.unidosus.org/bitstream/handle/123456789/1990/unidosus\\_nativelanguageassessments\\_whitepaper.pdf?sequence=4&isAllowed=y](http://publications.unidosus.org/bitstream/handle/123456789/1990/unidosus_nativelanguageassessments_whitepaper.pdf?sequence=4&isAllowed=y)
- <sup>20</sup> Whittaker, M. C., & Ortiz, S. (2019). What a specific learning disability is not: Examining exclusionary factors. National Center for Learning Disabilities. Available at: <https://www.nclld.org/wp-content/uploads/2019/11/What-a-Specific-Learning-Disability-Is-Not-Examining-Exclusionary-Factors.12192019.pdf>
- <sup>21</sup> Hardin, B. J., Mereoiu, M., Hung, H., Roach-Scott, M. (2009). Investigating parent and professional perspectives concerning special education services for preschool Latino children. *Early Childhood Education Journal*, 37(2), 93–102.
- <sup>22</sup> Ibid.
- <sup>23</sup> Ibid.



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