



MALDEF

Mexican American Legal Defense and Educational Fund

Statement of Peter Zamora
Washington, D.C. Regional Counsel

United States Commission on Civil Rights
“Minorities in Special Education”
December 3, 2007

On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I commend the Commission for investigating the misclassification of minorities in special education programs. Founded in 1968, MALDEF is the nation’s leading Latino civil rights legal organization. MALDEF employs litigation, policy advocacy, and community education to improve educational opportunities for Latino students and families.

My testimony today will focus upon the misclassification of English language learners (ELLs) in special education. MALDEF is particularly concerned with the academic outcomes of the nation’s 5.5 million ELL students because nearly 80% of K-12 ELLs are Spanish-speaking Latinos.¹ ELLs constitute the fastest-growing subgroup of students in U.S. public schools, with an annual increase of about 10% and a 72% overall increase between 1992 and 2002.² Experts predict that one-quarter of the nation’s K-12 student population will be made up of ELLs by 2025.³

Despite common assumptions to the contrary, native-born U.S. citizens predominate in the ELL student population: 76% of elementary school and 56% of secondary school ELLs are U.S. citizens, and over one-half of the ELLs in public secondary schools are second- or third-generation citizens.⁴ The stereotype of ELLs as foreign-born immigrants is, therefore, inaccurate: the substantial majority are, in fact, long-term ELLs whose academic and linguistic needs are not being met by our public education system.

ELLs typically underperform on nearly every measure of academic performance. On the 2005 National Assessment of Educational Progress, for example, only 29% of ELLs

¹ See <http://www.ncele.gwu.edu/expert/fastfaq/4.html> (Source: U.S. Department of Education).

² See Keller-Allen, C., “English Language Learners with Disabilities: Identification and Other State Policies and Issues,” Alexandria, VA: National Association of State Directors of Special Education, (August 2006).

³ See <http://www.ed.gov/nclb/methods/english/lepfactsheet.html> (Source: U.S. Department of Education).

⁴ See Capps, R., Fix, M., Murray, J., Ost, J., Passel, J., & Herwanto, S., “The New Demography of America’s Schools: Immigration and the No Child Left Behind Act,” Washington, D.C.: The Urban Institute (2005), p18.

scored at or above the basic level in reading, compared with 75% of non-ELLs.⁵ ELLs also drop out of schools at disproportionately high rates: Latino ELLs aged 16-19, for example, have a 59% school dropout rate.⁶

ELL Misclassification in Special Education

The misclassification of ELLs in special education is a significant problem that impedes the academic development of this large and growing student population. Many ELLs who require special education services are not receiving them, while other ELLs without cognitive disabilities are improperly placed in special education programs that deny them full access to the standard academic curriculum.

In 2001-02, there were an estimated 357,325 ELL students receiving special education services in U.S. public schools.⁷ Researchers have estimated that as many as three-fourths of ELLs enrolled in special education programs are improperly placed.⁸ Nationally, the percentage of ELL students in special education programs (9%) was smaller in 2001-02 than the percentage of all students in special education, both overall and within individual disability categories.⁹

Research demonstrates patterns of both overrepresentation and underrepresentation of ELLs in special education programs, with significant variance between states and districts.¹⁰ In 2001-02, special education ELL students were enrolled in an estimated 4,744 public school districts in the U.S.¹¹ The majority of the special education ELL student population was enrolled in a relatively small number of districts, however.¹² Districts with 99 or fewer ELL students reported significantly higher percentages of special education ELLs (15.8% of all ELLs) than did districts with 100 or more ELL students (9.1% of all ELLs). Generally, the fewer ELLs that a district serves, the more likely the district is to classify ELLs as learning disabled. This may be because districts with smaller numbers of ELLs have less capacity to distinguish between low academic performance caused by linguistic barriers and poor performance caused by learning disabilities.

Teachers and school officials attribute the widespread misclassification of ELLs to the challenges faced in distinguishing between second language acquisition and disability as the source of a student's academic deficiencies.¹³ ELLs who struggle academically

⁵ National Center for Education Statistics, National Assessment of Educational Progress (NAEP): Reading and Mathematics, Washington, DC.

⁶ See Fry, R., "Hispanic Youths Dropping Out of Schools: Measuring the Problem," Washington, D.C.: Pew Hispanic Center (2003), p8.

⁷ Zehler, A., et al., "Descriptive Study of Services to LEP Students and LEP Students with Disabilities" Washington, DC: Center for Equity and Excellence in Education (2003), p. vii.

⁸ See Sparks, S. "Educators struggle with ELL classification." *Education Daily*, V.40, 204. November 6, 2007, p 1.

⁹ Zehler, *supra* note 7 at 23.

¹⁰ Keller-Allen, *supra* note 2 at p.1.

¹¹ Zehler, *supra* note 7 at 24.

¹² *Id.*

¹³ *Id.* at 3.

because of language barriers may share characteristics with students with disabilities. These shared features may include: making articulation and pronunciation errors; being distracted and having a short attention span, i.e. being frequently off task; reading below grade level, with low vocabulary and comprehension; and having low self esteem, shyness or anxiety.¹⁴

A significant shortage of teachers and school officials with sufficient training in both special education and English language acquisition is a primary cause of the misclassification of ELLs.¹⁵ Staff that is untrained in distinguishing between linguistic and cognitive barriers to achievement will likely disproportionately misclassify ELLs. Researchers have also found that inadequate assessments are a likely cause of the misclassification of ELLs.¹⁶ Assessments used to evaluate ELLs for disabilities often fail to identify the level of ability of the student in each language. Students with limited academic proficiency in both their first language (L1) and their second language (L2) are more likely to be misclassified as learning disabled.

Recommendations for Improvement

The majority of ELLs who struggle academically do so not because of a learning disability but because they are taught by underqualified teachers who employ curricula and instructional strategies that do not meet ELLs' academic needs.¹⁷ Significant improvements in the quality of academic services delivered to all ELLs will permit ELLs to develop academic skills at a rate comparable to their non-ELL peers and avoid the risk of misclassification and inappropriate placement in special education programs.

In addition, schools must increase their capacity to distinguish between linguistic and cognitive barriers to academic achievement. Despite the rapid growth of the ELL population nationwide, most school districts do not have policies, procedures, or mechanisms in place for linking ELL and special education data or for collaboration across ELL and special education programs.¹⁸ The federal government and states must also support programs to encourage teachers and prospective teachers to develop expertise in this area through the credentialing process and/or professional development. Improving evaluation processes for ELLs is also critical to limiting the misclassification of ELLs in special education.

The U.S. Department of Education must ensure that schools comply with federal laws requiring public education systems to take affirmative steps to help ELL students overcome language barriers and to prevent the misclassification of students in special education programs.

¹⁴ See Sparks, *supra* note 8 at 6.

¹⁵ See Zehler, *supra* note 7 at 36.

¹⁶ See, e.g., Macswan, J. and Rolstad, K., "How Language Proficiency Tests Mislead Us About Ability: Implications for English Language Learner Placement in Special Education," *Teachers College Record* V. 108, No. 11 (November 2006).

¹⁷ See Lesaux, N., "Building Consensus: Future Directions for Research on English Language Learners at Risk for Learning Difficulties," *Teachers College Record*, V.108, No. 11 (November 2006).

¹⁸ See Keller-Allen, *supra* note 2 at 2.

Federal and state governments and institutions of higher education must encourage increased research into ELLs and special education. The limited research available in this area impedes the implementation of effective student evaluation processes and academic interventions.

Available research suggests that schools should implement pre-referral processes for ELLs to limit the misclassification of ELLs. Under this model, schools create “teacher assistance teams” (TATs) that examine the quality of instruction received by underperforming students and the validity of referral and assessment processes.¹⁹ These teams are comprised of regular classroom teachers who meet to discuss problems in the special education evaluation process, brainstorm solutions, and develop action plans to correct problems that influence academic achievement. These teams would not involve special education personnel except when they are invited to serve as consultants to the committee. This structure emphasizes that the TAT is under the authority and is the responsibility of the regular education system and will address non-cognitive barriers to academic success for ELLs.

Another promising practice to prevent the misclassification of ELLs is the “Responsiveness to Intervention” (RTI) model, which promotes early identification of students who may be at risk for learning difficulties. RTI requires school staff to conduct early screenings of academics and related behaviors (e.g., class attendance, tardiness, truancy, suspensions, and disciplinary actions) for all students. The results of this monitoring determine which students need closer monitoring or an intervention. RTI imposes three tiers of interventions. During primary intervention (which accounts for 80% of all RTI interventions), students receive high-quality, research-based instruction by qualified staff in their general education setting. Secondary (15% of all RTI interventions) and tertiary intervention (5% of RTI interventions) requires school staff to continuously monitor individual student performance and implement interventions targeted to each student’s particular linguistic and/or cognitive needs. RTI is a valuable model for the schools because of it both successfully identifies students with learning disabilities and addresses the academic success of all students.

Conclusion

Under- and overrepresentation of ELLs in special education programs hinders the academic progress of many of the nation’s 5.5 million English language learners in K-12 public schools. Many ELLs with learning disabilities are not receiving the academic interventions necessary to allow them to succeed in school and life. Conversely, many ELLs without learning disabilities are being misidentified as learning disabled and are denied appropriate academic services and access to a rigorous standard curriculum.

The misclassification of ELLs is caused largely by the failure to distinguish between academic deficiencies attributable to language barriers and those caused by learning

¹⁹ See Garcia, S. and Ortiz, A., “Preventing Inappropriate Referrals of Language Minority Students to Special Education,” Silver Spring, MD: National Clearinghouse for Bilingual Education (June 1988).

disabilities. Significant improvements in the academic services delivered to all ELLs are necessary to permit these students to perform at the level of their peers and avoid inappropriate special education referrals. Research into the appropriate evaluation of ELLs for special education is also greatly needed. Further, increased capacity at the school and district levels to ensure the appropriate evaluation of ELLs is also necessary.