



**NJSHA's Multicultural Issues Committee's Testimony
on Regulations Relative to the Revision of N.J.A.C. 6A:14**

April 1, 2020

The Multicultural Issues Committee of the *New Jersey Speech-Language-Hearing Association* (NJSHA) appreciates this opportunity to provide input concerning assessment of English Language Learners (ELLs) and bilingual students to determine potential language-learning disabilities. We would like to comment on what may be considered for future changes in the *New Jersey Administrative Code* 6A:14 (N.J.A.C. 6A:14). Specifically, the balance of our testimony focuses on the issues that arise when the scores of standardized assessments are used as the sole determinant for the classification of students who are bilingual/multicultural and English Language Learners (ELLs). Our recommendation is to amend N.J.A.C. 6A:14-3.4(c) and N.J.A.C. 6A-3.5(c)10i to include considerations for bilingual/multicultural students and English language learners when using standardized assessments.

We would like the following statement to be included at the end of each citation:

- When assessing students who are bilingual/multicultural or English Language Learners (ELLs), considerations need to be made when utilizing standardized assessments. Scores should not be used as the determinant of classification as tests are often invalid, unavailable and/or appropriate. Instead analysis of response or functional assessment should be completed.
- Testing in the area of language should include functional assessments such as: language samples, dynamic assessment measures, criterion referenced and developmental scales, and a comprehensive case history with language history and proficiency for children who are identified as dual language learners.

The criteria listed for *Communication Impaired* N.J.A.C. 6A:14-3.4(c) and *Preschool Child with a Disability* N.J.A.C. 6A-3.5(c)10i require standardized test scores and percent delay, respectively. Neither of these requirements provide accurate information on the potential disability of ELL/bilingual students. As N.J.A.C. eligibility requirements are currently written, the most common interpretation is that both classifications require the use of standardized scores to qualify for receiving speech-language services. N.J.A.C. 6A:14-3.5(c) 4. requires students to be tested using “*standardized tests, where such tests are appropriate.*” The clause, “where such tests are appropriate,” should explicitly cover bilingual and English Language Learner (ELL) populations. Administrators and child study teams in some school districts are assuming if a child is predominantly English speaking, that language differences which are actually the result of “limited English proficiency,” may be indicating a language impairment. Thus, districts are continuing to use English standardized speech-language assessments. Unfortunately, a number of administrators and child study teams feel that if a child can speak English, standardized tests are appropriate. Additionally, school districts and contracted agencies in NJ are expecting speech-language specialists (SLSs) to report scores for ELL and bilingual students tested in initial evaluations and re-evaluation reports. These scores are then used for eligibility purposes. Although NJSHA has advocated and shared evidence based resources indicating why scores are not appropriate for ELL and bilingual students in regard to eligibility, school administrators are interpreting the code as mandating that standardized test scores, as stipulated in code, are needed for eligibility. NJSHA has received some reports stating that when test scores are not submitted in an evaluation report, performed by an appropriately trained SLS, administrators return the report instructing that test scores must be added. NJSHA members have witnessed the result of using standardized scores, causing an over-identification of ELL and bilingual students who are not language learning

impaired but instead exhibiting a language difference. Such over-identification costs districts unnecessary dollars and violates the intent of *Individuals with Disabilities Act 2004* (IDEA 2004).

Standardized tests may not be culturally and/or linguistically appropriate as tests may not be normed on the sample of the specific bilingual or ELL student being tested and are not always available in all languages. Also, once translated, standardization is broken and scores are no longer valid. A child who is an ELL or is raised in a home where language or languages other than English are spoken, may have variances in their speech and language that do not indicate a disorder but rather a dialectical difference or influence in their communication (American Speech-Language-Hearing Association, 2004). When utilizing a standardized measure for a child not dominant in the language of the test given, their ability to understand English is what is being assessed, not the material targeted by the test. These tests would only show that there are mistakes in speech and communication without a rationale for the errors. Even assessments that are packaged as bilingual assessments and/or Spanish assessments do not have validity and reliability as stand-alone assessments and have been found to over-identify children (Leader's Project, 2013) or inappropriately classify children who are not disordered (Barragan, Castilla-Earls, Martinez-Nieto, Restrepo & Gray, 2018). For example, although there are several standardized assessments in Spanish, differences in dialect within the Spanish languages directly impact the validity of the norms.

Although there are comprehensive Spanish assessment tools available for Spanish speaking students (such as *The Clinical Evaluation of Language Fundamentals* (CELF) Fourth Edition Spanish, *CELF Preschool Spanish*, and *Preschool Language Scales-Fifth Edition Bilingual*, these tests should be used with extreme caution as tools to help obtain linguistic information about the student, and scores should not be used to determine eligibility independently. Use of these tests independently or interpreted incorrectly also may also have caused some language learning impaired students to be missed. Therefore, scores should not be calculated and used as the sole determinant of classification (Leader's Project, 2013). Goldstein 2000 (as cited in ASHA, 2017) notes that "standardized assessments that are not normed on bilingual populations are to only be used as informal probes with no accompanying scores."

Standardized assessments can be used with scores when appropriate after the content of the assessment has been evaluated from a cultural and linguistic perspective to validate content for that specific student based on demographic comparison to standardization. The test may also be translated in full or in portion and used as a functional measure. These tests can be helpful in attaining information on the child's level of ability and help the testing SLS organize the components that need to be assessed. Standardized test results can be utilized to provide qualitative (descriptive) information about the child's language skills. It is fair to describe in reports the language skills the child can (strengths) and cannot (weaknesses) accomplish, based on functional assessment. Protocol sheets are written similar to developmental milestones or age level. The protocol sheet enables the SLS to look at the errors to determine if there is a pattern of errors across an age level.

Recommended additional requirements for a complete assessment of a child with a potential disability follow and should be considered foremost: parent-completed tools that have evidence based and culturally and linguistically relevant questions, observations, criterion-referenced and developmental scales, comprehensive case history with developmental history and background information, and language history and proficiency for children who are identified as dual language learners. Cate Crowley, founder of the Bilingual Extension at Columbia University advises that the three most important methods for an SLS to assess an ELL/multicultural child are non-word repetition tasks, dynamic assessment and language samples, to determine the student's learning potential. NJSHA urges the NJDOE to find a better, evidenced-based manner to express how ELL/multicultural students should be assessed. The impact of a student's communication proficiency can be

determined based on interactions with family, friends, and community members, then comparing the student's language skills with peers in his/her speech community and completing a *Basic Interpersonal Communication Skills (BICS)/Cognitive Academic Language Proficiency (CALP)* analysis for multilingual individuals with teacher input.

In conclusion, the IDEA 2004, states that all students with disabilities are entitled to an "evaluation with evaluation materials that are: not discriminatory on a racial or cultural basis; valid and reliable; and able to distinguish a disability from: lack of adequate instruction in reading, lack of adequate instruction in math, and limited English proficiency" 20 U.S.C. § 1414(b)(3)(A); § 1414(b)(3)(A)(i); § 1414(b)(5). As such, when children are not assessed or assessed incorrectly, it may result in "inappropriate provision or denial of services" (Friberg, 2010, p.86).

NJSHA has developed two useful resources, which we hope you read when you are considering our suggestions: a brochure titled "Facts and Myths about Bilingual Speech and Language Development" at <https://www.njsha.org/wp-content/uploads/MIC-Brochure-19.pdf> and a technical manual: A guide for the appropriate assessment of culturally & linguistically diverse and internationally adopted individuals at <https://www.njsha.org/wp-content/uploads/CLDguide-1.pdf>.

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