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An Imperative for Change: Bridging Special and Language Learning Education to Ensure a Free and Appropriate Education in the Least Restrictive Environment for ELLs with Disabilities in Massachusetts

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An Imperative for Change

Bridging Special and Language Learning Education to Ensure a Free and Appropriate Education in the Least Restrictive Environment for ELLs with Disabilities in Massachusetts

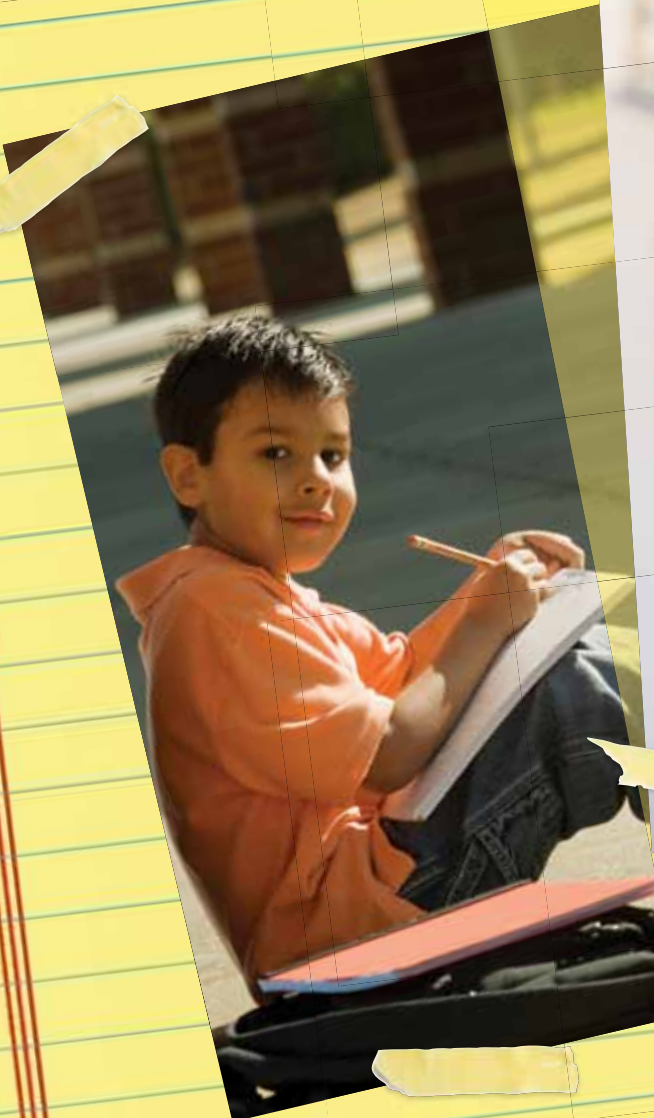
by Dr. Maria de Lourdes B. Serpa | Professor of Bilingual Special Education, Lesley University



The Mauricio Gastón Institute for
Latino Community Development
and Public Policy

When students don't learn
the way we teach,
let's teach the way they learn.

Ignacio "Nacho" Estrada



An Imperative for Change

Bridging Special and Language Learning Education to Ensure a Free and Appropriate Education in the Least Restrictive Environment for ELLs with Disabilities in Massachusetts

by Dr. Maria de Lourdes B. Serpa | Professor of Bilingual Special Education, Lesley University

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Executive Summary



English Language Learners (ELLs) are the fastest-growing group of school-age students in public schools across the nation, and in Massachusetts. Even as the total student enrollment in Massachusetts declines slightly, the number of ELLs grows steeply. They number 68,820 in the 2010–2011 school year, an increase of 9,662 from the year before.¹

In Massachusetts, the number of ELLs also identified as having a disability (ELL–SWDs) more than doubled – a striking increase of 115.4% – from 2001–2002 to 2010–2011. During the same time, the proportion of ELLs placed in Special Education also increased, from 9.8% to 14.8%. These changes roughly correspond to the time period since the 2002 referendum that changed the state’s primary Language Learning Education policy from Transitional Bilingual Education to Sheltered English Immersion, a language-restrictive policy similar to policies in California and Arizona.

Myths such as “Special Education trumps English language learning,” “Assessments do not need to be done in the native language,” and “English language learning has nothing to do with Special Education” are commonly heard in a variety of educational settings. This report aims to address these myths and to provide a critical overview of the state’s current policies and practices related to the education of English Language Learners who are suspected of having disabilities.

Legal Rights

Three major types of laws interact to protect the rights of English Language Learners with disabilities: Civil Rights, Special Education, and Language Learning laws. In combination these laws guarantee a free and appropriate public education (FAPE) in the least restrictive environment (LRE):

- **Civil Rights laws** created protections for the Civil Rights of *all* students, including ELL–SWDs, by ensuring that schools do not discriminate against students on the basis of their national origin or exclude them from meaningful participation in education because they cannot understand English. According to the Equal Educational Opportunities Act of 1974, schools are also required to take action to overcome students’ language barriers that impede equal participation in educational programs.
- **Language Learning Education laws** require that *ELLs* be provided with instruction to help them learn English and achieve the same grade-level standards as students whose first language is English. In Massachusetts, even under the 2002 revisions in state policy, two-way bilingual education remains a viable program placement option for ELL students (including ELL–SWDs).
- **Special Education laws** afford protection for *students with disabilities*, ensuring that these students have access to a free and appropriate education (FAPE) in the least restrictive environment (LRE). These laws also protect the rights of the parents of ELLs.

The rights of ELL students with disabilities (ELL–SWDs) are protected by all three sets of laws. This means that all educators who are responsible for educating ELL–SWDs must

implement practices that are governed by the simultaneous use of Civil Rights, English Language Learning, and Special Education laws in order to provide this population of the state's K-12 students with a free and appropriate education in the least restrictive environment.

Determination of Eligibility

Struggles in learning due to language barriers are not a Special Education need per se. Not knowing English requires Language Learning Education, not Special Education. This is made clear in federal and state policies. However, it is striking that the percentage of ELLs who have been placed in Special Education programs grew noticeably during the 2000s, from 9.8% in 2001-2002 to 14.8% in 2010-2011.

The increase of ELLs in Special Education since the implementation of the state's new language-restrictive policy raises a number of questions about the consequences of language-restrictive policies. This phenomenon has been studied (Artiles, Rueda, Salazar, & Higareda, 2005) in Arizona and California, which have similar restrictive language policies. The authors found that Special Education placement increased as language support was reduced. ELLs in English Immersion were almost three times as likely to be placed in Special Education as ELLs who were in bilingual education programs.

In addition to the impact of language-restrictive policies in Massachusetts, the evaluation procedure for ELLs suspected of having disabilities has distinct flaws. According to the Individuals with Disabilities Act (IDEA), the school district is required to directly address ELLs' needs in the evaluation process. Major procedures consistent with the IDEA (with notes on the practice in many Massachusetts districts) include the following:

- **“Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child” (IDEA, 2004).**

NOTE: The law does not say tests only. This is very important for Special Education administrators and others, because valid and reliable tests in multiple languages are almost non-existent. However, there are valid alternative assessment tools and strategies that can be used appropriately.

- **“Assessments are selected and administered so as not to be discriminatory on a racial or cultural basis” (IDEA 2004).**

NOTE: Most of the tests currently used in the Special Education evaluation of native English speakers **are not** culturally or linguistically appropriate for ELLs and thus are biased. However, these tests are often used with ELLs regardless of level of English proficiency. Sometimes these tests are administered with the support of an interpreter who translates orally on the spot and who has not been trained for collecting assessment data appropriately. Language and reading tests constructed in English are not directly translatable to other languages. When administered in a language other than English, these instruments need to be recreated and validated in that language (Serpa, 2005; Serpa & Lira, 2009).

- **“Assessments are provided and administered in the child's native language or other mode of communication” (IDEA, 2004).**

NOTE: Assessment in the native language, in the areas of suspected disability, is usually carried out with the use of American English norm-referenced tests, which are translated into the native language on the spot and without validation. This procedure is not acceptable. The evaluation of ELLs suspected of a disability should include English proficiency measures and academic skills measures

- **Assessments must be administered by “trained and knowledgeable personnel” (IDEA 2004).**

NOTE: This is a major problem in Massachusetts due to the critical shortage of assessors who are appropriately qualified to evaluate ELLs suspected of having a disability. There are no licensure requirements for professionals in this area and consequently no programs in Massachusetts colleges and universities.

Placement

Federal and state laws assure a free and appropriate education in the least restrictive environment for English Language Learners with disabilities (ELL-SWDs). Because of a disability or disabilities ELL-SWDs have a greater need for meaningful access to grade-level academic content through the language they best understand with appropriate supports and related services. *The least restrictive language education program* for ELL-SWDs is the general education environment along with ELLs with no disabilities. This is the reason why Language Learning Education placement and policy are so important to the educational success of English Language Learners with disabilities. It is important to note that most students with disabilities are educated in general education with supports.

Availability of Professionals Trained to Serve ELLs with Disabilities

ELL-SWDs are required by law (No Child Left Behind and IDEA 2004) to be educated by general and Special Education professionals who are highly qualified to teach them. However, an examination of the current situation in Massachusetts shows that the state's practice falls far short of these laws' requirements. The state's 10,197 ELL-SWDs do not benefit from the kind of highly professional instruction that the laws require. In fact, as will be shown, the Commonwealth has a critical shortage of teachers who are appropriately qualified to teach any of the state's nearly 60,000 ELLs.

- **Licensure.** Although the state has **Special Education licensure** (Teacher of Students with Moderate Disabilities and Teacher of Students with Severe Special Needs), obtained by completing an accredited program, there is **no special licensure** for teachers of English Language Learners with disabilities. There is also **no licensure** for Teachers of Reading who teach ELLs or ELL-SWDs. In 2003, **Bilingual licensure** was demoted to an endorsement; the sole requirement for obtaining this bilingual endorsement is to pass a native language proficiency test (ESL Sub-Committee, 2009). No course work is required, and there are no teacher education standards that integrate Special Education and reading with teaching ELLs.
- **Teacher Education Programs.** Colleges and universities in Massachusetts offer a number of accredited teacher education ESL programs and Special Education programs. However, **no** Bilingual or Bilingual Special Education or ESL-Special Education degree programs are known to be offered in the Commonwealth, since there is no licensure. Nationally only seven colleges or universities offer Bilingual Special Education or Multicultural Special Education programs or specializations.²
- **Professional Development Courses/Institutes.** There is also a critical shortage of professional development opportunities for special educators to acquire additional knowledge and skills necessary to adequately address the needs of ELL-SWDs.
- **Collaborative Structures between Special Education and Language Learning Education.** ELLs are the recipients of “silo” administrative structures with no required

and systemic collaboration at the district level between Special Education and ELL directors. The absence of systematic collaboration leads to (1) inappropriate understanding of the needs of ELL-SWDs, who are entitled to an education that integrates new language learning with Special Education, and (2) a misunderstanding of the laws that both special educators and language learning educators need to know and need to apply in their practice.

Recommendations

The identification and education of English Language Learners with disabilities needs a positive and urgent change to ensure that these students receive a free and appropriate education (FAPE) in the least restrictive environment (LRE). This report concludes with highly detailed recommendations for needed change at the state and district levels as well as recommendations for further research. A capsule listing of these recommendations includes the following.

At the state level:

- Create an emergency strategic plan for teacher education, with benchmarks, to address the critical shortage of highly qualified teachers for meeting the needs of English Language Learners with and without disabilities.
- Establish teacher preparation standards and charge and accredit colleges and universities with the responsibility for appropriately preparing teachers of ELL-SWDs, just as they are responsible for preparing highly qualified teachers for other fields of education.
- Provide guidance on screening, referral, non-discriminatory assessment, and evaluation in all areas of disability determination used in school districts for ELL-SWDs.
- Upgrade the current Special Education documents, such as *Is Special Education the Right Service?*, *The IEP Process*, and *The IEP Guide*, with necessary information related to providing ELLSPED as a merger between Special Education and Language Learning Education.
- Evaluate the state's current restrictive Language Learning Education policy in light of the lack of achievement results for ELLs, which is documented in previous reports such as *Halting the Race to the Bottom* (ELL Sub-Committee, 2009).
- Ensure appropriate pre-service training and in-service professional development by creating, implementing, and evaluating short- and long-term plans for teacher education and re-licensure.
- Use a collaborative model of professional development starting in Fall 2011. Such a model can provide integrated opportunities for educators to understand the impact of language on learning and the impact of disabilities on language learning (as well as the interaction of both).
- Encourage major professional organizations to include programs and resources for English Language Learners on their Internet sites.
- Make it a priority for the Commonwealth (including use of Race to the Top funds) to build capacity in teacher preparation in ESL, Bilingual, ESL-SPED, and Bilingual-Special Education and for teachers of reading to ELLs.

At the district level:

- Require systemic interdepartmental collaboration between Special Education and Language Learning Education administrators and other educators.
- Create a long- and short-term action plan to resolve the critical issues of referral, with benchmarks that document the progress that school districts are making toward providing full and appropriate services to ELL-SWDs.
- Require all schools to collect essential background data about schooling and achievement in native language for each ELL student at the time of registration or in the Home Language Survey.
- Ensure appropriate pre-referral interventions and give priority to the use of RTI (Response to Intervention) models appropriate for ELLs.
- When a student who is referred for Special Education is an ELL, the IEP (Individualized Education Program) team must include professionals with the appropriate knowledge of second-language and cultural factors in learning as well as the legal rights of ELLs.
- Develop a three-year school-district or multi-school-district action plan with timelines and benchmarks to resolve the shortage of personnel who are appropriately qualified to assess and provide appropriate Special Education and related services to ELL-SWDs.
- Provide multidisciplinary professional development to all teachers and administrators, instead of “siloed” professional development. Ensure that issues of Language Learning Education are integrated into the given area.
- Ensure appropriately highly qualified educators of ELL-SWDs: teachers, Special Education evaluators, interpreters, principals.

Further Research

1. Birth to Six and Early Intervention policy and practice for English Language Learners. (This is a pressing need, as this report only focuses on K-12 ELL-SWDs.)
2. Transition planning and implementation for ELL-SWDs. (This is an important area for ELL-SWDs in middle and high school.)
3. Parents’ role with ELL-SWDs in the Special Education process. (Parents of ELL-SWDs must play a major role in the eligibility and IEP process of their children. How this is addressed in school districts across different language/cultural groups is an issue that needs to be researched.)

1

Introduction

Children are the world's most valuable resource and its best hope for the future.

John Fitzgerald Kennedy

English Language Learners (ELLs) are the fastest-growing group of school-age students in public schools across the nation, and in Massachusetts. In this state, even as the total student enrollment declines slightly, the number of ELLs grows steeply. They number 68,820 in the 2010-2011 school year, an increase of 9,662 from the year before.³

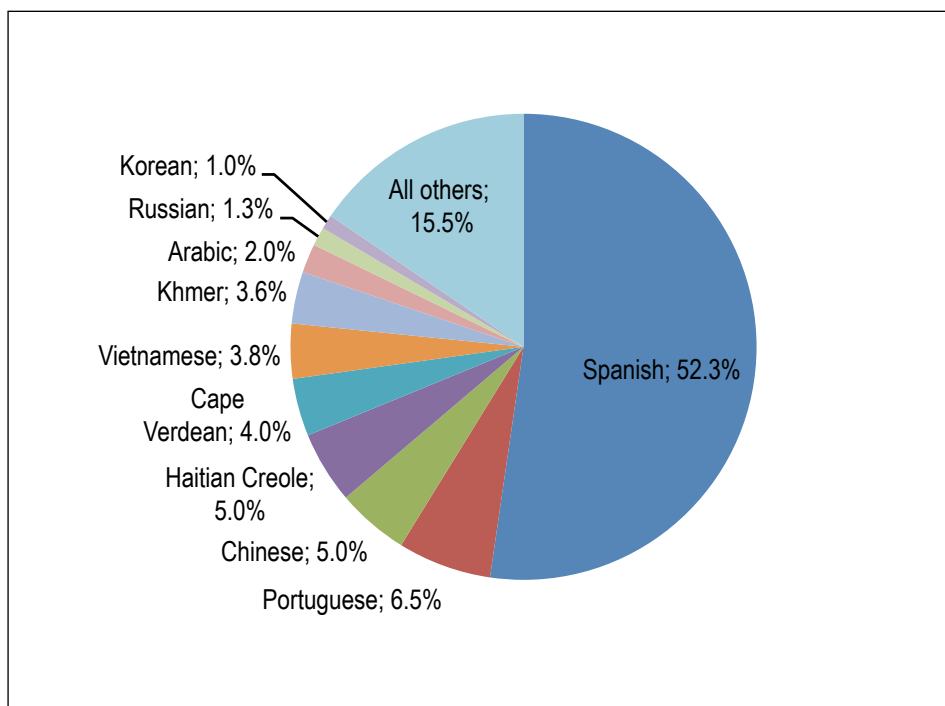
Some of the characteristics of ELLs include the following. English Language Learners:

- Are a very diverse group of our students in Pre-K to 12.
- Are bilingual learners.
- Are at different levels of English Language Learning Proficiency (MEPA 1-5).
- May be immigrants or may have been born in the United States.
- May arrive any week of the year.
- May arrive with no schooling, interrupted schooling, or age-appropriate schooling in their primary language.
- Come from a diversity of languages and cultures.
- May have parents with levels of education ranging from university-educated to pre-literate.
- Are mostly “school-dependent learners.”
- Live with families who are speakers of languages other than English. (For the most common languages see Figure 1-1.)

- Are resources to the Commonwealth for 21st-century skills (because many arrive at school with the knowledge of a world language and culture, a precious resource in a 21st-century world).
- May also have one or multiple disabilities.

Source: Adapted from Massachusetts 2RTI Working Group (2010).

Figure 1-1: Ten Most Frequent Native Languages of ELLs in Massachusetts



Source: Based on Chester, 2010

Incidence of ELLs with Disabilities

The number of ELLs identified as also having a disability doubled in Massachusetts (a striking increase of 115.4%) from 2001–2002 to 2010–2011. The proportion of ELLs placed in Special Education has increased by 5 percentage points, from 9.8% to 14.8%. This time period coincides almost exactly with the implementation of Question 2 (a public referendum approved by voters in 2002), which changed the state's primary Language Learning Education policy from Transitional Bilingual Education to Sheltered English immersion, a language-restrictive policy similar to those in California and Arizona.

Who Are English Language Learners with Disabilities (ELL-SWDs)?

An English Language Learner with a disability is a school-age ELL who, in addition to learning English as a new or additional language, has been identified as having a disability.⁴

What Is Different about ELLs Who Also Have a Disability?

Disabilities are not due to the fact that the student is not yet proficient in English (IDEA 2004). Rather, the presence of a disability is observed in the student's native language as well as in English. An ELL student with sensory impairment (deaf or blind), a "communication disorder,"⁵ or autism, for example, has this disability in both languages. Special Education and related services for ELLs with disabilities are similar and different from Special Education for English Proficient (EP) students with disabilities. By law, both groups of students have the right to a free and appropriate public education (FAPE) in the least restrictive environment (LRE). However, due to additional linguistic and cultural factors the Special Education needs of ELL-SWDs differ substantially from the needs of fully EP students. Different needs require different types of assessment and educational services. They also require additional knowledge and skills on the part of educators and innovative leadership on the part of policy makers.

Misrepresentation of language minorities in Special Education has been a major problem in education for many years in the United States (Artiles, Rueda, Salazar, & Higareda, 2005; Harry & Klingner, 2006) including Massachusetts (ELL Sub-Committee, 2009). The increase of referrals and placements since 2003 has meant that Massachusetts is increasingly challenged by issues related to this misrepresentation. Furthermore today, myths such as "Special Education trumps ELL," "Assessments do not need to be done in the native language," and "ELL has nothing to do with Special Education" are commonly heard in a variety of educational settings. This report aims to dispel these myths and to provide a critical overview of the state's current policies and practices related to the education of ELLs who are suspected of having disabilities.

Structure of This Report

The body of this report has five sections in addition to this Introduction:

- Section 2 provides crucial background on provisions in federal and state laws that bear on legal rights of ELLs with possible disabilities.
- Section 3 examines current practices in finding ELLs eligible (or not eligible) for Special Education, with a special focus on the extent to which language difficulty may be misinterpreted as a disability.
- Section 4 examines program placement practices for those ELLs who are found eligible for Special Education, in particular looking at whether the placements provide a free and appropriate public education (FAPE) in the least restrictive environment (LRE).
- Section 5 probes the state's shortage of trained professionals capable of working in the intersection of language learning and Special Education.
- Section 6 offers numerous recommendations for change.

2

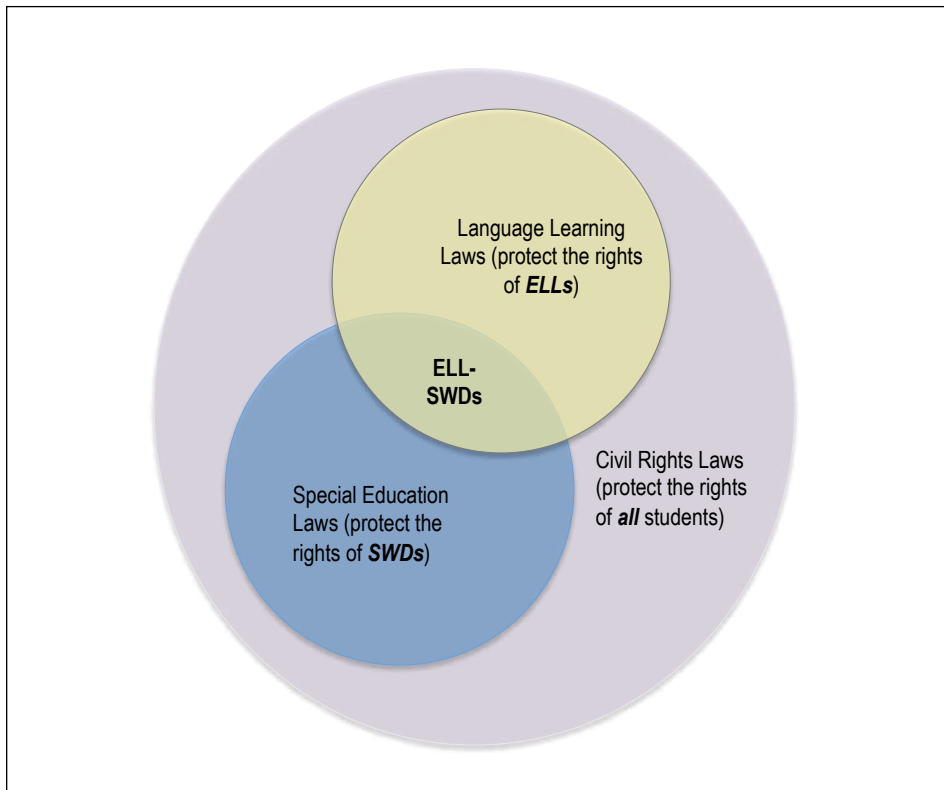
Laws That Work Together to Protect the Rights of ELL Students with Disabilities (ELL-SWDs)⁶

Over the last 30 years, how we address the needs of students has evolved – we have changed our thinking on how we teach and how children learn. These discoveries have resulted in changes in educational laws and practices.

IDEA Partnership (2007)

This section outlines the relevant laws and court cases that have specific implications for ELL students with disabilities, moving from the most encompassing (those protecting the civil rights of all students) to the laws that are specialized to protect specific groups of students (the Language Learning Education laws and the Special Education laws). As members of all three groups, the rights of ELL students with disabilities (ELL-SWDs) are protected by all three sets of laws. Together, these laws ensure that ELLs who are also students with disabilities will receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE) from birth to age 21.

Figure 2-1. Three Interacting Kinds of Laws That Together Ensure the Rights of ELL-SWDs: Civil Rights, Special Education, and Language Learning Education



Source: Adapted from <http://www.ldldproject.net/legal.html>

Civil Rights Laws

Civil rights laws provide the foundation for the enactment of Special Education and “Language Learning Education” laws. This section briefly describes the Civil Rights Act of 1964, as clarified by the Office of Civil Rights in 1970 and 1991; Section 504 of the Vocational Rehabilitation Act of 1974; the Equal Educational Opportunities Act (EEOA) of 1974; and the Americans with Disabilities Act (ADA) of 1990.

The **Civil Rights Act of 1964** prohibits discrimination on the basis of race, color, religion, sex, or national origin in public facilities, including any elementary or secondary school, college, or institution beyond secondary level (including vocational or technical colleges) that receive public (governmental) funding.⁸ As clarified by Office of Civil Rights memorandums in 1970 and 1991,⁹ the law creates protections for the civil rights of all students, including ELL-SWDs, by ensuring that schools are

1. Prevented from discriminating against students on the basis of national origin;
2. Prevented from excluding children from effective participation in education simply because they do not understand, speak, or read English;
3. Required to communicate with parents in a language they understand;
4. Prohibited from placing children in Special Education because of language differences;
5. Required to avoid any language-based placement that permanently puts students in an ability group or “track”;

6. Required to teach English to language minority children; and
7. Required to provide alternative language programs that are necessary to ensure that ELLs have meaningful access to the school's programs.

Other Federal Civil Rights Laws. In addition to the 1964 Civil Rights Act, several other federal civil rights laws have implications for ELLs with disabilities. They include:

- **Section 504 of the Vocational Rehabilitation Act of 1973**, which prohibits the denial of programs and services, including educational services, to individuals with disabilities who would otherwise be eligible for such services. More specifically, “Section 504 regulations require a school district to provide a free appropriate public education (FAPE) to each student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability.” Section 504 also ensures a free and appropriate education (FAPE) in the least restrictive environment (LRE).
- The **Equal Educational Opportunities Act (EEOA) of 1974**, which prohibits specific discriminatory conduct, including segregating students on the basis of race, color, or national origin, and discrimination against faculty and staff. Furthermore, “the EEOA requires school districts to take action to overcome students’ language barriers that impede equal participation in educational programs.”¹⁰ (Emphasis added)
- The **Americans with Disabilities Act (ADA) of 1990**, which provides civil rights protection in employment, access to public services, accommodations, transportation, and telecommunications to people with disabilities.¹¹ Regulations under Title II of the ADA require that students with disabilities receive benefits and services comparable to those given their nondisabled peers.

Together, these federal laws aim to protect every person, including ELL-SWDs, from discrimination. Specific implications for ELL-SWDs include the laws’ requirement that school districts provide these students with free and appropriate education (FAPE) regardless of disability and to “take action to overcome students’ language barriers that impede equal participation in educational programs.”¹²

Language Learning Education Laws

Language Learning Education (LLE) laws are an outcome of the civil rights laws. These laws specifically address the language learning needs of students who speak a language other than English and are not yet proficient in English. State policies determine the education for English Language Learners, which varies greatly from state to state as well as among districts (Gándara & Hopkins, 2010). However, federal policy has created benchmarks for the states. Two significant federal laws, thirty years apart, had strong implications for language instruction for ELLs prior to the enactment of No Child Left Behind in 2001:

- The purpose of the **Bilingual Education Act of 1964**, also known as Title VII of the Elementary and Secondary Education Act (ESEA), was to assist local school districts and institutes of higher education in building capacity to “establish, implement, and sustain programs of instruction” for ELLs that would ensure the same “rigorous academic standards and performance expected of all children.”¹³

- The **Improving America's Schools Act** (1994) was the fifth reauthorization of ESEA and the Bilingual Education Act. This law promotes the goal of bilingualism for ELLs, rather than simply promoting the transition to English. The law supports professional development programs at both undergraduate and graduate levels, increases attention to language maintenance, and provides support for research and evaluation.¹⁴

No Child Left Behind Act

Title III of the **No Child Left Behind Act** (2001) specifically addresses the needs of ELLs: “The Language Instruction for Limited English Proficient and Immigrant Students program assists school districts in teaching English to limited English proficient students and in helping these students meet the same challenging state standards required of all students” (U.S. Department of Education, 2002). Title III also requires that:

- “All teachers are fluent in English and *any other language* used by the program including oral and written communication skills”; “language instruction curricula used to teach limited English proficient children are to be tied to *scientifically based research* and demonstrated to be effective” (emphasis added);
- “Local entities have the flexibility to choose the method of instruction to teach limited-English proficient children”;
- “95% of funds must be used for grants at the local level to teach limited-English proficient children”;
- States establish standards and benchmarks for raising English proficiency levels and meeting challenging state academic standards;
- Schools administer annual assessments in reading and language arts in English (including assessment of limited-English-proficient students) for any student “who has attended school in the United States (excluding Puerto Rico) for three or more consecutive years”;
- Schools notify parents of their child’s placement in a specialized language program;
- Schools provide parents with a choice of program (if more than one program is available within the district); and
- Schools allow parents to opt-out or remove their child from a program of specialized language instruction.¹⁵

These federal laws together aim to ensure that ELL students are provided with instruction to help them achieve the same high standards as students whose first language is English. In addition, the NCLB law holds schools accountable for helping ELLs develop proficiency in English and protects the rights of parents of ELLs regarding the placement of their children in Language Learning Education.

Massachusetts Language Learning Laws

In 1971, Massachusetts became the first state to pass a Transitional Bilingual Education (TBE) law (MGL Chapter 71A). The goals were to support the academic learning of students who are not proficient in English by providing access to learning academic content in the students' native languages while students were learning English and to address the disproportionately high drop-out rate for this group of students. MGL Chapter 71A required any school district with 20 or more ELL students in the same language group to provide them with Transitional Bilingual Education for a period of three years. However, as a result of a statewide referendum in 2002, Chapter 71A was significantly rewritten.

The new law emphasizes Language Learning Education with a focus on English-only instruction. However, the act also includes the option for schools to provide two-way bilingual education without a waiver. Contrary to public perception, MGL 71A did not eliminate bilingual education. Section 4 of the new law states:

Children who are English learners shall be educated through Sheltered English Immersion (SEI) during a temporary transition period not normally intended to exceed one school year. Local schools shall be permitted, but not required, to place in the same classroom, English learners of different ages but whose degree of English proficiency is similar. Local schools shall be encouraged to mix together in the same classroom English learners from different native-language groups but with the same degree of English fluency. Once English learners acquire a good working knowledge of English and are able to do regular school work in English, they shall no longer be classified as English learners and shall be transferred to English language mainstream classrooms. *Foreign language classes for children who already know English, 2-way bilingual programs for students in Kindergarten through grade 12 and Special Education programs for physically or mentally impaired students shall be unaffected* (emphasis added).¹⁶

Thus, the new MGL 71A law, as worded, provides flexibility for directly addressing the least restrictive language learning environment for ELL-SWDs, because it has a provision that allows school districts to provide two-way bilingual education instead of or in addition to Sheltered English Immersion. (For a comparison between the two types of LLE see Appendix B.) This is a very important dimension of this law, because it provides the possibility for school districts to change from the most restrictive (and least effective) policies (SEI) to the least restrictive language learning environments (two-way), thereby offering ELLs with disabilities an appropriate education as required by IDEA.

Special Education Laws

Special Education laws at the federal and state levels are also based on civil rights laws. This section highlights federal and Massachusetts Special Education laws that impact all students with disabilities.¹⁷

Federal Laws

- The **Education for All Handicapped Children Act** (1975) was a landmark piece of legislation known as PL 94-142, later renamed the Individuals with Disabilities Education Act (IDEA). For the first time in the history of the United States, this law mandated free and appropriate public education (FAPE) in the least restrictive environment (LRE) for all school-age children with disabilities.¹⁸

- The **Individuals with Disabilities Education Act (IDEA)** of 1990 was a reauthorization of PL 94-142. In 1997, IDEA was restructured (under PL 105-17) to increase emphasis on parent participation and also to mandate the inclusion of Special Education students in state- and district-wide assessment programs.¹⁹
- **IDEA (2004)** is a reauthorization of IDEA (1990) and the original PL 94-142 federal law. IDEA 2004 is aligned with the Elementary and Secondary Act (ESEA), reauthorized in 2002 as the No Child Left Behind (NCLB) Act. This reauthorization mandates that highly qualified education professionals deliver educational services and research-based instruction to students.²⁰ In the identification of children with “specific learning disabilities,” IDEA states that a school “may use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures” (Section 1414(b)(6), cited in Wright & Wright, 2007). IDEA continues to emphasize free and appropriate education (FAPE) in the least restrictive environment (LRE), along with non-discriminatory evaluation, and clearly indicates that the need to learn English is not a Special Education need.²¹

IMPLICATIONS OF FEDERAL SPECIAL EDUCATION LAW. Federal Special Education law affords protection for students with disabilities, ensuring that they have access to a free and appropriate education (FAPE) in the least restrictive environment (LRE). Among other things, these laws require:

- That student evaluations be conducted in the child’s native language or mode of communication.
- That parents be informed of the evaluations and their rights in a language that they can understand.
- That Individualized Education Programs (IEPs) include the present levels of performance, measurable annual goals, and an explanation of the extent the student will not participate in the general education with students without disabilities. It must also specify accommodations, modifications, and supports needed to access the general education curriculum. For ELL-SWDs this provision should be consistent with research and it should be selected and implemented to help students access their learning strengths to overcome their learning challenges due to the disability and it must include both native language and English as a second language.
- That students with print disabilities (including ELLs with print disabilities) be provided with access to core instructional materials in a timely manner. The implication for ELL-SWDs with print disabilities is that these materials must be provided to them in the appropriate language(s) of instruction described in their IEP.

State Laws

Massachusetts General Law Chapter 71B (MGLc.71B) – Children with Special Needs (2002). In Massachusetts, the Special Education system is based on the federal Individuals with Disabilities Education Act (IDEA) in combination with the state’s own Special Education law (MGLc. 71B). These laws protect students with disabilities who are eligible for Special Education and guarantee them an Individualized Education Program (IEP). Among other tenets of Chapter 71B, the rights of parents and students to participate in all aspects of the process – including referral, evaluation, IEP development, and placement decisions – are procedurally safeguarded.²²

The Supreme Court

The rights of ELL-SWDs are also bolstered by several court decisions. In the case of *Lau v. Nichols* (1974), the U.S. Supreme Court ruled that the San Francisco Unified School District violated Title VI of the Civil Rights Act when it failed to provide services to help Chinese-speaking students to learn English and have a meaningful education. The *Lau v. Nichols* ruling held that students must be provided with access to a meaningful education by removing language barriers:

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

The Court thus pointed out that when the language of instruction is different from the language that ELLs understand, it creates a barrier to any meaningful learning. ELLs with disabilities are already having difficulties with learning; therefore they need to use the language they understand best to facilitate and accelerate their learning. A well-established principle in Special Education is focused on using the student's strengths to support overcoming the difficulties.

In a 1981 case, *Castañeda v. Pickard*, a federal appeals court followed the *Lau* decision and took it further. The ruling in this case requires schools to use a three-pronged approach to assure their compliance with the Equal Educational Opportunity Act of 1974, which requires districts to provide alternative language programs as necessary to ensure that national-origin minority students with limited English proficiency (i.e., ELL students) have meaningful access to the schools' programs. This court case includes three very important provisions:

- a. A practice grounded in sound educational theory;
- b. Effective implementation of an appropriate program; and
- c. Assurance that the program is working through an evaluation and subsequent program modification to meet this requirement.²³

Subsequently (1991), the federal Office of Civil Rights issued a "Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited English Proficiency." This policy update adopted the three prongs of *Castañeda v. Pickard* (1981) above and required that all language minority students be assessed for fluency, that parents be provided school information in a language they understand, and that schools assure that instruction for limited English proficient students is carried out by qualified staff.²⁴

In Summary...

Three major types of laws interact to protect the rights of English Language Learners with disabilities: Civil Rights, Special Education, and Language Learning laws. In combination these laws guarantee a free and appropriate public education (FAPE) in the least restrictive environment (LRE):

- **Civil Rights laws** created protections for the Civil Rights of *all* students including ELL-SWDs by ensuring that schools are not discriminating against students on the basis of their national origin or excluding them from meaningful participation in education because they cannot understand English. According to the Equal Educational Opportunities Act, schools are also required to take action to overcome students' language barriers that impede equal participation in educational programs.
- **Language Learning Education laws** ensure that *ELLs* are provided with instruction to help them learn English and achieve the same grade-level standards as students whose first language is English. In Massachusetts, even under the 2002 revisions, MGL 71A provides for two-way bilingual education in addition to SEI as program placement options for ELL students (including ELL-SWDs).
- **Special Education laws** afford protection for *students with disabilities*, ensuring that they have access to a free and appropriate education (FAPE) in the least restrictive environment (LRE). These laws also protect the rights of parents of ELL-SWDs.

The rights of ELL students with disabilities (ELL-SWDs) are protected by all three sets of interacting laws. This means that all educators who are responsible for educating ELL-SWDs must implement practices that are governed by the simultaneous use of the three kinds of laws in concert in order to provide this segment of the state's K-12 students with a free and appropriate education in the least restrictive environment.

3

Eligibility for Special Education of ELL-SWDs

Alarm bells went off just about everywhere when Congress passed the act, Public Law 94-142, in 1975. Many school officials said the legislation asked too much too soon.

Boyer (1979, p. 298)

In this section we first outline the procedures for deciding that a particular student who is experiencing difficulties in school is eligible for Special Education (SPED). We then examine what is additional or different for students with disabilities who are also English Language Learners (ELLs), and for their families. We also examine the extent to which the actual practice in Massachusetts does or does not meet the needs of ELLs who are being considered for SPED eligibility and related services.

Steps to Eligibility

When a student exhibits difficulty in learning in his/her general education classroom and is suspected of having a disability, the eligibility process required by Special Education laws (IDEA 2004 and MGL Chapter 71B) involves the following steps: pre-referral/intervention, referral, parental consent, evaluation, independent evaluation (if requested by a parent), Evaluation Team meeting, and Individualized Education Program (IEP). These are briefly described below.

Pre-Referral/Intervention. Before a referral can take place, all efforts must be made to support effective learning in the general education classroom (i.e., to rule out poor teaching as a factor). According to the Individuals with Disabilities Education Act (IDEA 2004), and IDEA Regulations (2006), evaluation of a student for “specific learning disabilities” must

take into account research-based interventions and adjustments in learning or behavior prior to the referral. (See discussion of “Interventions vs. Referrals” on p. 25.)

Referral. A referral is a request for evaluation to determine if the child has a disability and may be eligible for Special Education and related services. Anyone who is involved with the child may make a referral when there is a suspected disability. Usually a referral is made by the parent, a teacher (e.g., a reading, bilingual, ESL, math, or science teacher), the school psychologist, a counselor, or a doctor. Additionally a referral might occur through Child Find, a component of the IDEA.²⁵

Parental Consent. Once the referral is received it is the responsibility of the school, within 5 days, to request parental consent for an evaluation. For an evaluation (or any subsequent reevaluation) to take place, a parent must give permission in writing. It is also the school’s responsibility to provide parents with a Procedural Safeguard Notice.²⁶ **For parents of ELLs, these documents must be provided in the native language or mode of communication.** (See Appendix A for the availability of translated procedural safeguards and other related documents.)

Evaluation.²⁷ Upon consent of the parent, the school must arrange for an initial comprehensive evaluation of the student by a multidisciplinary team, using a variety of assessment tools. This evaluation must take place within 30 days. The parent must be provided a copy of the assessment report if he/she requests it. **For parents of ELLs, the report must be provided in the native language or mode of communication.**

Independent Evaluation. A parent has the right to seek an independent evaluation if s/he disagrees with the school district’s findings.

Evaluation Team Meeting. After the initial evaluation report has been shared with the parent, a meeting is held to determine whether the student has a disability and is eligible for SPED services and, if so, what is the least restrictive environment/placement (LRE) and is a free and appropriate education (FAPE). The Evaluation Team includes:

- the parents or guardian of a child with a disability;
- at least one general education teacher of such child (if the child is, or may be, participating in the regular education environment);
- at least one Special Education teacher, or where appropriate, at least one Special Education provider of such child;
- a representative of the local educational agency who is qualified to provide (or supervise the provision of) specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the local educational agency;
- an individual who can interpret the instructional implications of evaluation results;
- other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (e.g., a cultural broker, translator, or parent advocate); and
- whenever appropriate, and if age 14 or older, the student him- or herself.

Where the child involved is an ELL, the Team should also include:

- a qualified and appropriate interpreter²⁸ and/or cultural broker if the parent does not yet understand English;
- an ESL and/or bilingual education professional who is familiar with Special Education; and
- at least one Special Education teacher (preferably licensed in Bilingual or ESL in addition to Special Education)

IEP teams currently do not yet have guidance requiring the participation of Language Learning Education educators. An example of the lack of representation is highlighted by Dr. Bardetti, an experienced ESL teacher, when she explains that “IEP team meetings often ignore the input of the Language Learning educators especially in low incidence districts” (personal communication, January 6, 2011).

Individualized Education Program (IEP). If the Evaluation Team finds/determines that the student has a disability and is eligible for SPED services, it must write an Individualized Education Program (IEP) within 15 days. A parent has the right to accept the IEP in full, in part, or reject it totally. Parent response must be made within 30 days for changes to be included in the IEP.

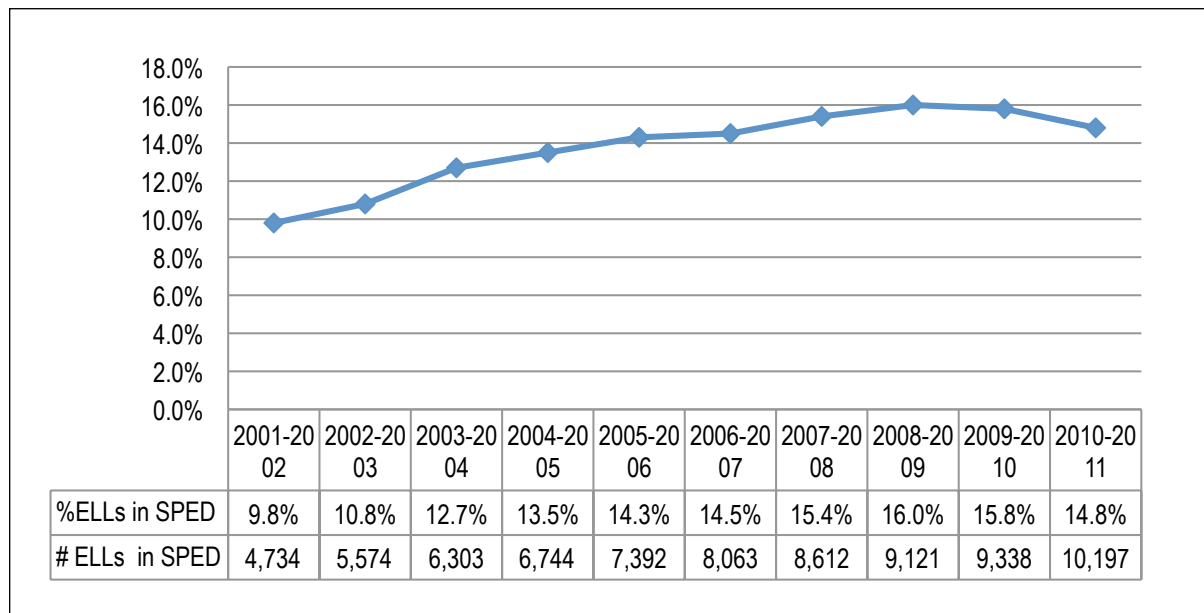
Due Process. Special education law warrants “due process” rights to parents at any point in the Special Education process. Parents of ELLs have the same rights and in addition they have the right to receive the *Procedural Safeguards*, as well as other documents, in their native language.

Eligibility of ELL-SWDs in Practice

Placement of ELL students who have been declared eligible for SPED services will be discussed in Section 3. In the remainder of this section, we examine evidence as to how well the system for determining eligibility is working in Massachusetts. Some problems are evident.

The first point to keep in mind is that limited English proficiency is not to be considered in determining whether a student has a disability. This is made clear in federal and state policies. However, it is striking that the percentage of ELLs who have been placed in SPED programs grew noticeably during the 2000s, as shown by the following chart:

Figure 3-1: Overview of ELL-SWDs from 2002 to 2011



Source: Faye Karp's calculations using data from Massachusetts 2RTI Working Group (2010) and publicly available ESE (Massachusetts Department of Elementary and Secondary Education) data.

The time period covered in the chart corresponds to the implementation of a major change in the state's policy regarding language instruction for ELLs. Question 2, approved by voters in the November 2002 election, and the subsequent change to MGL Chapter 71A replaced Transitional Bilingual Education with Sheltered English Immersion (SEI) as the primary type of instruction for ELLs. Under the new policy, ELLs are expected to enter "mainstream" classrooms after one year of intense English instruction. However, this is not happening. Data from *Halting the Race to the Bottom* (ELL Sub-Committee, 2009) show that a great majority of ELLs in Massachusetts take five years or longer to reach English proficiency. State regulations provide parents with the right to opt out of their children's participation in SEI, and to obtain a form of bilingual instruction, but at least in some districts, this provision is little known and rarely made available in addition to being very difficult for parents. In addition to SEI, ELLs can be assigned to two-way bilingual programs without any waiver; 2% of ELLs are being educated in these programs. A waiver is required for placement in Transitional Bilingual Education, and another 2% are placed in this type of bilingual education for a total of 4% of ELLs. (See Appendix C for Language Learning Education program options currently available to ELLs in Massachusetts.)

The increase in Special Education placement of ELLs since the implementation of the new Chapter 71A raises a number of questions about the consequences of language-restrictive policies in Language Learning Education (LLE) placement. This phenomenon has been studied (Artiles, Rueda, Salazar, & Higuera, 2005) in California and Arizona, which have similarly restrictive LLE policies. The authors found that SPED placements increased as language support was reduced. ELLs in English Immersion were almost three times as likely to be placed in Special Education as ELLs who were in bilingual education programs.

The following chart compares ELLs and EPs in regard to the particular learning disabilities they were diagnosed with.

Table 3-1: Representation of ELLs in Special Education by Disability Category, 2007-2009

	2007	2008	2009			
	EP	ELL	EP	ELL	EP	ELL
Total ELLs in SPED Programs	145,960	7,940	149,963	8,054	149,696	9,056
Autism	4.0%	1.4%	4.7%	1.6%	5.2%	1.8%
Communication	17.4%	23.4%	17.7%	22.9%	18.4%	23.2%
Developmental Delay	10.1%	11.6%	10.4%	12.2%	10.6%	11.5%
Emotional	6.7%	4.4%	6.7%	4.3%	6.8%	4.5%
Health	6.1%	2.8%	6.8%	3.4%	7.3%	3.9%
Intellectual	6.5%	16.4%	6.1%	15.6%	5.8%	15.7%
Multiple Disabilities	2.4%	2.0%	2.3%	1.8%	2.2%	1.5%
Neurological	3.5%	1.0%	3.8%	1.0%	4.0%	1.1%
Physical	0.9%	0.8%	1.0%	0.8%	1.0%	0.8%
Sensory/Deaf-Blindness	0.1%	0.2%	0.1%	0.2%	0.1%	0.2%
Sensory/Hearing	0.5%	0.7%	0.6%	0.6%	0.5%	0.5%
Sensory/Vision	0.3%	0.3%	0.3%	0.2%	0.3%	0.2%
Specific Learning Disabilities	41.3%	35.1%	39.6%	35.5%	37.7%	35.1%

Source: ELL Sub-Committee (2009, p. 11)

In looking at this chart, there are two particular categories in which the percentage is significantly higher for ELLs than for EPs. These categories are defined as follows:

Communication Impairment - The capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language. The term may include a student with impaired articulation, stuttering, language impairment, or voice impairment if such impairment adversely affects the student's educational performance

Intellectual Impairment - The permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with mental retardation.

Source: <http://www.doe.mass.edu/sped/definitions.html>. Retrieved on 12/15/2010.

“Communication” and “Intellectual” disabilities seem especially vulnerable to misdiagnosis in the case of ELLs. In other words, the distribution of diagnoses makes it appear likely that some students whose limited English skills make it hard to keep up with classroom work are being labeled as having disabilities and are being inappropriately assigned to Special Education programs, when the school itself is failing to meet the student's educational needs. However, in some disability categories, such as Autism, Health, and Neurological, the incidence is significantly lower for ELLs than for the EP population. The reason why this may be occurring is an issue that needs to be addressed.

Flaws in the Evaluation Procedure

According to the IDEA, the school district is required to use specific procedures that directly address ELLs' needs in the evaluation process. The main procedures (with notes on the practice in many Massachusetts districts) include the following:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child (IDEA 2004).

NOTE: The law does not say tests only. This is very important for Special Education administrators and others, because valid and reliable tests in multiple languages are almost non-existent. For example, when English norm-referenced tests are administered to ELLs (MEPA scores 1-4), they render the test results invalid on language difference/barrier grounds. However, there are valid alternative assessment tools and strategies that can be used appropriately, such as the use of general outcome measures (e.g., Curriculum Based Measurement CBM) and dynamic assessment (e.g., Feuerstein's LPAD).

- "Assessments are selected and administered so as not to be discriminatory on a racial or cultural basis" (IDEA 2004).

NOTE: Most of the tests currently used in the Special Education evaluation of native English speakers are **not** culturally or linguistically appropriate for ELLs and thus are biased. These tests are often used with ELLs regardless of level of English proficiency. Sometimes these tests are administered with the support of an interpreter who translates orally on the spot and who has not been trained for collecting assessment data appropriately. Language and reading tests constructed in English are not directly translatable to other languages. When administered in a language other than English, these instruments need to be recreated and validated in that language (Serpa, 2005; Serpa & Lira, 2009). Further, there should be an explicit cultural broker process that parents and students can access for the assessment process to be as un-biased as possible

- Assessments are provided and administered in the child's native language or other mode of communication (IDEA 2004).

NOTE: Assessment in the native language, in the areas of suspected disability, is usually carried out with the use of American English norm-referenced tests, which are translated into the native language on the spot and without validation. This procedure is not acceptable. The evaluation of ELLs suspected of a disability should include English proficiency measures and academic skills measures.

- Assessments must be administered by "trained and knowledgeable personnel" (IDEA 2004).

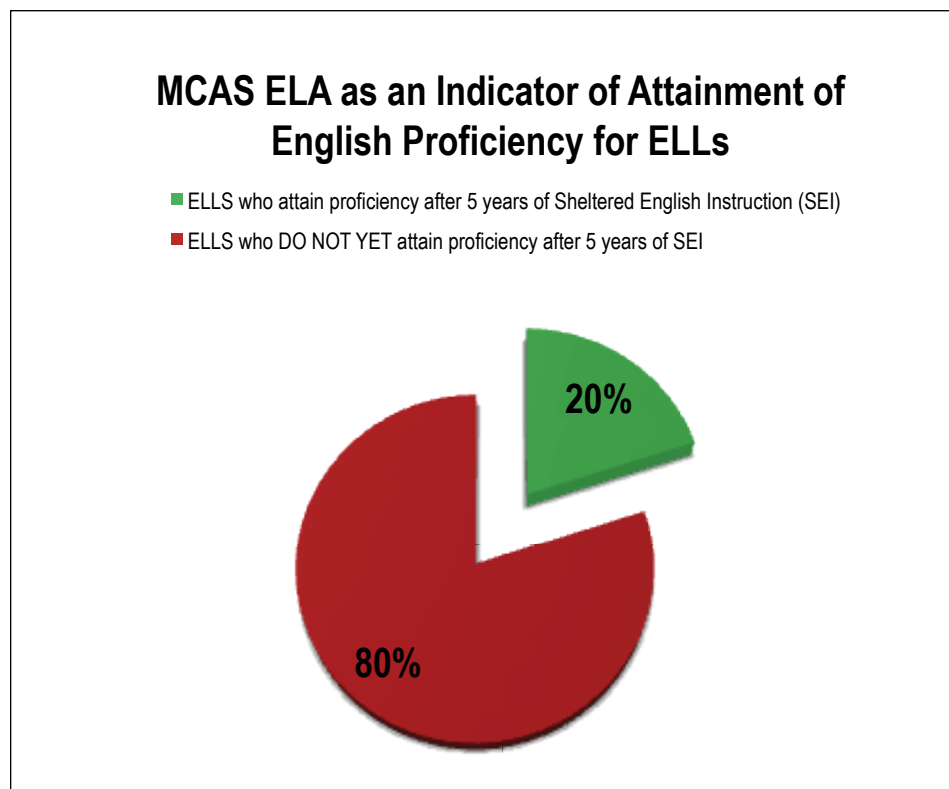
NOTE: This is a major problem in Massachusetts due to the critical shortage of assessors who are appropriately qualified to evaluate ELLs who are suspected of having a disability. There are no licensure requirements for professionals in this area and consequently no programs in Massachusetts colleges and universities.

Background: The Shortcomings of Sheltered English Immersion

The current restrictive Language Learning Education (LLE) policy in Massachusetts, with a primary emphasis on implementing SEI, is a failed policy experiment when judged on the basis of achievement results. Given the NCLB accountability requirements, ELLs are now included and their performance on the Massachusetts Comprehensive Assessment System (MCAS) indicates their access or lack of it to grade-level curriculum because it "is the duty of individual school districts to teach their students what they need to know in order to pass the MCAS tests and graduate from high school" (Gaudet, 2003, p. 1).

The majority of school-age ELLs are not achieving the same grade-level standards in English Language Arts, Math, and Science as their English speaking peers. According to the evidence reported by the data-driven *Halting the Race to the Bottom* report (ELL Sub-Committee, 2009), chaired by Dr. Miren Uriarte and commissioned by the Massachusetts Board of Elementary and Secondary Education, only about 20% of ELLs achieve academic proficiency after five years of instruction in Massachusetts's schools (see Figure 3-2). The other 80% of the ELLs take longer to achieve both academic and English proficiency and in many cases will drop out.²⁹

Figure 3-2: Achievement Results of ELLs in MCAS ELA under the Current Restrictive Policy for Language Learning Education



Source: Based on ELL Sub-Committee (2009), p. 17.

General education of ELLs in SEI placements is not producing grade-level academic results and is a contributing factor to widening the achievement gap and a pipeline to Special Education. ELL-SWDs in these learning environments face “access challenges” due to language barriers in addition to other factors. More than other students, ELL-SWDs need to use their strengths to overcome the effect of the disability in their learning because they have a triple challenge: **(1) the effect of a disability, (2) a need to learn a new language and culture (American English), and (3) a need to access and achieve grade-level academic content** (Serpa, 2005).

The findings of the *Halting the Race to the Bottom* report (ELL Sub-Committee, 2009) also include the following:

- As noted earlier, learning English as an additional language takes time (at least five years). (See Figure 3-2 for MEPA results over time.)

- Academic proficiency outcomes in ELA, Math, and Science are very low. MCAS ELA results indicate that 20% of ELLs are reaching the proficient level. In Math the results show ELLs in the proficient level “are below 20% for 4th and 8th graders and rise to 32% among 10th graders.” In Science, results “are below 15% for both 8th and 10th graders” (p. 17).
- However, when ELLs reached the Level 5 score in the MEPA, their pass rates in MCAS ELA actually surpassed those of English-proficient students in the 4th and 10th grades, as did strong pass rates in Grades 8 and 10 (p. 17). Among 10th graders at MEPA Level 5, 58% scored proficient in MCAS Math and 29% scored proficient in MCAS Science.

Reasons for Misrepresentation of ELLs in Special Education: A Summary. Three main reasons contribute to the inappropriate referral and placement of English Language Learners in Special Education in Massachusetts: (1) educators do not yet have the professional knowledge and skills to understand what is “normal” development in second language acquisition, or to understand cultural differences and the process of acculturation in learning; (2) restrictive Language Learning Education environments do not properly address the academic needs of most ELLs and thus contribute to their being behind academically (i.e., long-term English Language Learners (LTEs)); (3) many multidisciplinary IEP teams are not yet appropriately qualified to assess or interpret assessment results for ELLs (e.g., they confuse language and cultural differences with disabilities).

Interventions vs. Referrals

Massachusetts has been slow to adopt a Response to Intervention model (RTI), known in Massachusetts as Multi-Tier Intervention, to avert the need for waiting until students fail before referring them for a Special Education evaluation. RTI has been described as “a tiered process of research-based intervention that allows schools to identify struggling students early and provide appropriate instructional interventions.”³⁰ (A different pre-referral strategy that has been most commonly used in Massachusetts employs a Student Support Team, also called a Teacher Assistance Team. However, members of these teams are often lacking in knowledge of the needs of English Language Learners.) Response to Intervention (RTI) is the focus of a pilot project currently being conducted at dual-language schools in the Boston Public Schools by the Education Development Center (see Rinaldi, 2010).

When ELLs are suspected of having a disability, they require additional procedures beyond those required for their English Proficient peers. The issue of inappropriate pre-referral interventions, referrals, evaluations, and placements, as well as the misrepresentation of language minorities (ELLs) in Special Education, has been amply discussed in the literature, yet this problem continues without resolution. Schools need to consider additional factors (i.e., linguistic and cultural factors as well as type of Language Learning Education program), in relation to what ELLs already know and do in order to make informed decisions about interventions or referrals (Artiles & Kozleski (2010); Harry & Klingner, 2006; Ortiz 2001; Rinaldi, 2010; Serpa, 2010). Roger Rice explains that in several school districts the pre-referral process is sometimes used as an excuse not to have ELL kids get referred:

We have seen this in several districts where ELLs sit for years without referral because the district doesn't want to spend the money on them or because there is a lack of knowledge about, e.g., where to find a Spanish speaking psychologist. My point is that while pre-referral was meant to address over placement in sped, it can also be a holding pattern that denies sped services to some ELLs who are entitled to them. (personal communication, February 27, 2011)

Table 3-3 shows differences between the Special Education evaluation process for ELLs and for students who are proficient in English.

Table 3-3: Eligibility for Special Education and What is Different or Additional for ELLs

Special Education for EP Students	WHAT IS ADDITIONAL OR DIFFERENT FOR ELLS
1. Pre-Referral /Interventions – Before a referral can take place all efforts must be made to support effective learning in general education. Two main approaches are currently being used: Teacher Assistance Team (TAT) and System of Tiered Instruction (STI) a.k.a Response to intervention (RTI). Additionally some schools also use Universal Design for Learning (UDL) as an intervention strategy.	ELLs have additional needs when compared with their native English speakers peers: they need to learn English as an additional language, adapt to a new culture, and learn grade-level content in ELA, Math and Science. The different needs of ELLs suspected of having a disability are protected by Language Learning Education and Civil Rights laws in addition to Special Education laws. TATs have been the most prevalent pre-referral intervention in MA. Because of their composition these teams frequently are inappropriately qualified for ELLs. RTI is now being used in some school districts (Rinaldi, 2010). See also Massachusetts 2RTI Working Group (2010) on the appropriate use of RTI with ELLs.
2. Initial Referral – the school has 5 days to notify the family and request permission for an evaluation after receiving the referral.	Permission for evaluation is required to be provided to the parent in the native language or mode of communication consistent with federal law.
3. Upon parent consent, the evaluations must be completed in 30 days.	The evaluation must be nondiscriminatory and must be conducted in the native language, by appropriately qualified personnel using assessments validated for the purpose they are being used (IDEA 2004). In MA evaluations are primarily done only in English with tests that have not been validated for ELLs (Serpa, 2005, 2010).
4. Summaries of the Evaluations must be available to parents 2 days prior to the IEP Team meeting.	Summary of evaluations must be provided in the native language of the parent/family if requested by the parent.
5. IEP Team must convene, determine eligibility, write the IEP, and determine placement within 45 days of the parent consent for evaluation.	Determination of eligibility must ensure that the apparent disability determination is not due to cultural differences or second language learning characteristics.
6. Independent Evaluations – a parent has the right to disagree with the school district evaluation findings and has the right to seek an independent evaluation. A team meeting must be convened within 10 days to consider whether an amendment to the IEP is appropriate	An independent evaluation is also a right for parents of ELLs, and the independent evaluation must be nondiscriminatory and in the native language.
7. IEP is developed in the IEP Team meeting; a summary of the key services or the complete IEP must be delivered at the end of the meeting. If a summary of the key services is delivered, the school has 2 calendar weeks to deliver an IEP for signature, or 3–5 days upon parent request.	IEP development must address Least Restrictive Environment (LRE) and Free and Appropriate Education (FAPE) for ELL-SWDs in accordance with the application of the three kinds of laws mentioned previously in this report: Civil Rights, Special Education, and Language Learning Education.
8. Parent Response to IEP must occur within 30 days for changes to be included in the IEP. A Parent has the right to accept the IEP in full, in part or reject it totally.	
9. Due Process – the law warrants “due process” rights to parents at any point in the Special Education process.	Parents of ELL-SWDs have the right to receive the procedural safeguards as well as other documents in their native language.

4

Program Placement: FAPE and LRE

There is no equity of treatment merely by providing students with the same facilities, textbooks, teacher and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Lau v. Nichols Supreme Court decision (1974)

If the Evaluation Team determines that a student is eligible for Special Education services, it must create an Individualized Education Program (IEP) for the student, which includes placement. The IEP must include the goals, the accommodations, the modifications of instruction, and supports needed to meet the unique needs of the student to ensure a free and appropriate public education (FAPE) in the least restrictive environment (LRE) (IDEA 2004).

What is different in determining “appropriate education” for ELLs with disabilities?

This is a complex question with a multiplicity of factors that are related to the challenges posed by the given disability or disabilities and the Language Learning Education placement. The placement must integrate research-based practice with the legal provisions of the three kinds of laws and court cases. As a general feature, one should keep in mind that, as noted earlier, ELL-SWDs have a much steeper challenge when compared to their native English-speaking peers with the same disability. As Justice William O. Douglas noted in the U.S. Supreme Court ruling of in *Lau v. Nichols* (1974), “those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.”³¹

FAPE for ELL-SWDs is defined in this report as an educational program that is individualized to a specific ELL student, is designed to meet that student's unique new language learning, cultural, academic, and other needs, and from which the ELL student receives educational benefit.

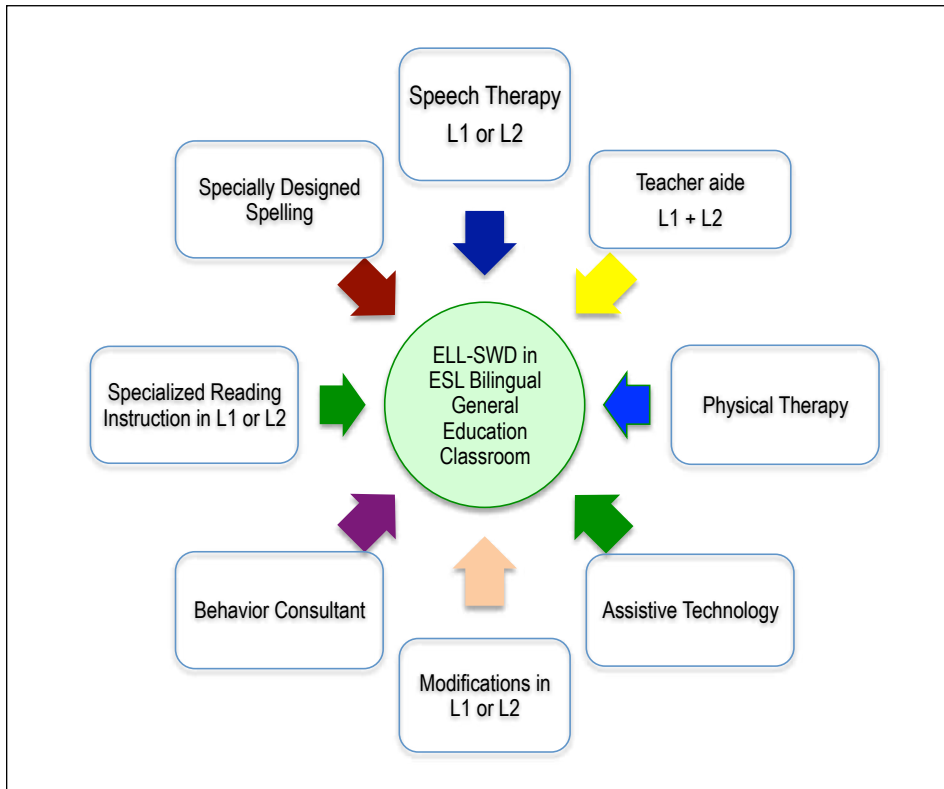
The court ruling in *Castañeda v. Pickard* (1981) gives clarity to the definition of "appropriate" for ELL-SWDs by requiring schools to provide alternative language programs necessary to ensure that national-origin minority students with limited English proficiency have meaningful access to the schools' programs by making the following three provisions:

- a. a practice grounded in *sound educational theory*;
- b. effective implementation of an *appropriate* program; and
- c. assurance that the program is working through an evaluation and subsequent program modification to meet this requirement.

Based on these provisions, "appropriate" also means that **ELL-SWDs receive validated, specially designed, research-based, culturally responsive instruction in learning the new language, reading, writing, spelling, math, etc. from appropriately highly qualified teachers and related services professionals in the least restrictive language environment.**

In Special Education the students with disabilities are at the center of the process. Appropriate" education is directly related to type of program placement and the level of restriction in Language Learning Education. This is of paramount importance for ELL-SWDs, who need to use what they already know as a foundation to access effective learning. As an example, ELL-SWDs in reading need the support of their native language to maximize the opportunity to learn to read considering all other variables are equal effectively.³² See Figure 4-1 for an example of the kinds of services that may be provided to ELL-SWDs placed in the general Language Learning Education classroom.

Figure 4-1: Examples of Support Services That Can Be Provided to ELL-SWDs in Least Restrictive Environments



“Least Restrictive Environment”

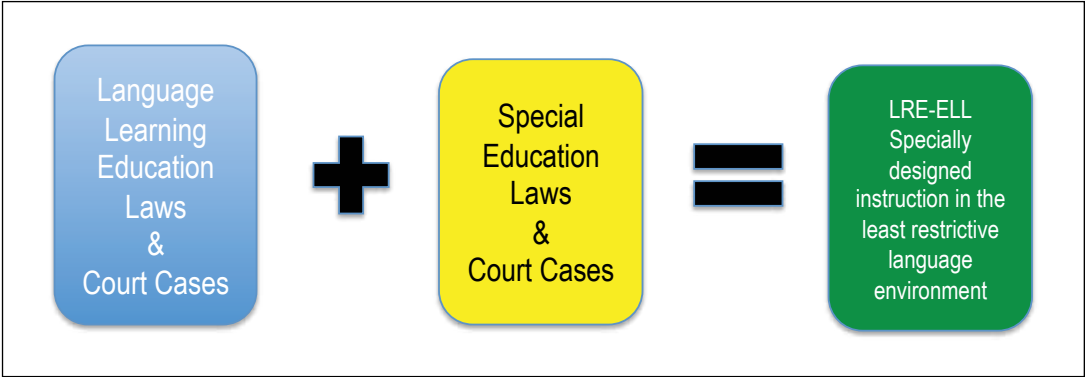
As mentioned previously, the least restrictive environment (LRE) has been a well-established part of Section 504 and IDEA law since 1975; however, the way that these legal provisions are applied to educating ELL-SWDs warrants a deeper study in light of these students’ civil rights as well as Language Learning Education policies, research, and practice. Special Education services that are focused on the unique needs of the ELL-SWDs must ensure that these needs are met in the least restrictive *Language Learning Education* environment (LLE) as opposed to the most restrictive LLE. For example, having ELL-SWDs receiving Special Education services in English when they are not ready to linguistically learn in that language is not providing an LRE to this student. See Gándara & Hopkins (2010) and Artiles & Kozleski (2010) for more information about restrictive language policies.

If placed in SEI or other restrictive Language Learning Education environments, ELL-SWDs are faced with an additional barrier that affects how fast can they learn the academic content and the total amount of learning (how many skills and the number of understandings) they can achieve within the school year (Serpa & Lira, 2009). Consequently, ELL-SWDs have the right to be placed in a language learning environment with their peers that allows them to access appropriate research-based instruction designed to meet their specific special needs and enable them to learn grade-level academic content equivalent to their EP peers of the same age.

The definition of LRE from IDEA is inadequate when applied to the education of ELL-SWDs who, in addition to their rights under IDEA, are also entitled to their rights under language learning laws. Therefore, the definition of LRE needs to be reexamined within a more contemporary context to include the LRE from a Language Learning Education perspective, or the LRE-ELL.

The LRE-ELL is defined in this report as **the educational setting where a child who has disabilities and who is learning English is provided with a free and appropriate public education (FAPE) specially designed to meet his or her educational and language learning needs while being educated with his ELL peers without disabilities to the maximum extent possible.** The least restrictive environment for ELL-SWDs is shown in Figure 4-2, whose colors illustrate the idea of merging two kinds of laws that give birth to a third dimension, LRE-ELL (i.e., blue with yellow makes green).

Figure 4-2: LRE-ELL: The Least Restrictive Environment for ELL-SWDs



LRE-ELL is legally based on the interaction of Civil Rights laws, Language Learning Education laws, Special Education laws, and court cases described in Section 2. In addition, it is based on the research as outlined above. LRE-ELL is the least restrictive environment that preserves the rights of ELL-SWDs under the law. It involves both culturally and linguistically responsive environments³³ as a context for a free and appropriate public education (FAPE). Like English-proficient SWDs who have the right to be educated with their non-disabled peers, ELL-SWDs have the right to be educated with their own non-disabled peers (ELLs with no disabilities). Unlike the LRE that is appropriate for EP- SWD peers, the LRE for ELLs must attend to the student’s placement in a type of Language Learning Education program that ensures benefit (IDEA 2004). With all other variables being equal, language of instruction makes a difference in facilitating ELL-SWDs’ access to required learning. Research on the outcomes of LLE program types (Genesee, Lindholm-Leary, Saunders, & Christian, 2006; Thomas & Collier, 1997, 2002) shows that dual language programs (i.e., two-way), when possible, hold the best opportunity for ELL-SWDs to reach grade-level achievement. (See Appendix D for a ranking of the program types by achievement results.)

In most cases, the LRE for EP-SWDs is the general education classroom. Chester (2009) reports that students with disabilities ages 6–21 spend most of their learning time in the general classroom. (See Table 4-1.) However, that report does not specifically discuss ELL-SWDs.

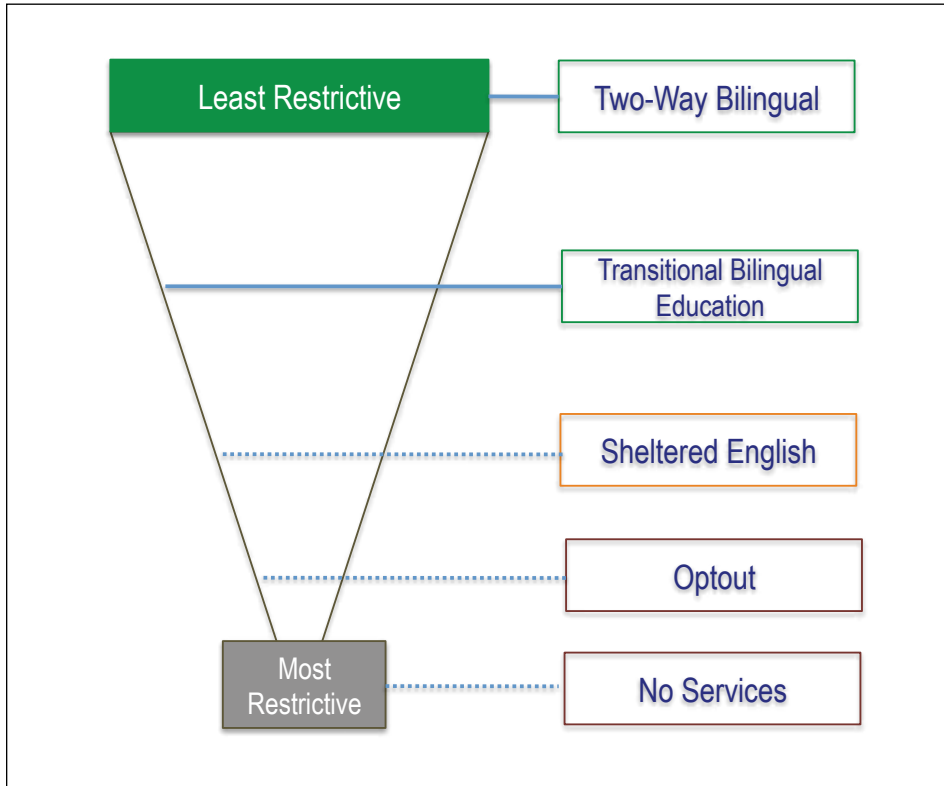
Table 4-1: Breakdown of SWDs, Ages 6-21, by Educational Environment (2008-2009)

TYPE OF EDUCATIONAL ENVIRONMENT	% OF SWDs
Full Inclusion – spends at least 80 percent of the time in general education classroom	56.8%
Partial Inclusion – spends 40 percent to 79 percent of the time in general education classroom	21.1%
Substantially Separate – spends less than 40 percent in general education classroom	15.4%

Source: Based on Chester (2009, p. 6)

A general education classroom for ELLs is the Language Learning Education environment where ELL-SWDs learn with ELLs with no disabilities to the extent possible. Figure 4-3 shows the Language Learning Education program options in Massachusetts, in order from least to most restrictive, as a basis for determining the LRE-ELL for ELL-SWDs that will be presented below.

Figure 4-3: Language Learning Education from Least Restrictive to Most Restrictive



Source: Based on Massachusetts 2RTI Working Group (2010)

NOTE: Research shows that most ELLs in Massachusetts's schools are placed in SEI, a restrictive Language Learning Education environment. See ELL Sub-Committee (2009) for more details. In addition, IDEA 2004 requires SWDs to be educated with their peers without disabilities; given the Language Learning Education needs and rights of ELL-SWDs, their peers are ELLs without disabilities.

Placement of ELL-SPEDs in Massachusetts

How many of the 59,158 ELLs (2010-2011) are achieving academic success in Massachusetts schools when over 80% are placed in Sheltered English Immersion (with sheltered academic content instruction in English and with materials in English)? SEI is considered one of the most restrictive language learning environments when compared with other alternatives. When considering placement of ELL-SWDs in the LRE, the intersection of the kind of disability with language learning needs to be considered.

MEET FELIPE

Felipe is a 12 year old ELL native Spanish speaker. When he was registered for school, his parents provided the school with verbal information regarding his identified disability: autism. He was placed in a two-way bilingual program with a week in Spanish with the Spanish teacher and the next week in English with the English teacher. (Each one of the teachers has an average of 20 students). Felipe received Special Education services for reading and writing in Spanish and specialized ESL with language objectives from the English Language Proficiency Benchmarks and Outcomes (ELPBO).

MEET JULIETTE

Juliette is a 13 year old Haitian-speaking student born in Florida and the oldest of three children. Her parents love her very much and report that they only speak Haitian Creole and some French. The families moved to Massachusetts when she was two-years old to live near the grandparents on the mother's side, and she started school in SEI Kindergarten. In the sixth month of fourth grade she was referred for a Special Education evaluation because of her learning difficulties with reading comprehension, writing, and math. (MEPA results were not available.) The IEP team determined on the basis of their assessments (only in English) that she had an intellectual disability; she was placed in a full-time Special Education class.

Felipe and Juliette³⁴ are two examples of ELL-SWDs who have been placed in LLE-Special Education programs in Massachusetts. Table 4-2 shows how their placements fit in the range of possible learning environments, from most to least restrictive.

Table 4-2: LRE-ELL – Special Education Interface with Language Learning Education Program Types in Massachusetts

From Least Restrictive to Most Restrictive (Salend, 2011)	Hospital or Institution					
	Homebound Instruction					
	Residential School					
	Special Day School					
	Full-Time Special Education				JULIETTE	
	General Education Placement with RR Support					
	General Education with Itinerant Specialist Assistance					
	General Education with Collaborative SPED Teacher Assistance	FELIPE				
	General Education Classroom Placement with Few or No Support Services					
LRE-ELL		Two-way	TBE	SEI	Opt out	Not enrolled In LLE
		<div>Least Restrictive</div> <div>Most Restrictive</div> <div>Language Learning Education Program Types</div>				

Sources: This matrix was constructed with information from ESE cited in Serpa & Zimbrich (2010) and Salend (2011).

Data on the placement of ELLs in Special Education programs in Massachusetts seem to show that ELL-SWDs are placed primarily in monolingual Special Education with monolingual English Special Education teachers. There are a few exceptions in communities with two-way programs. However, in an interview conducted for this report, a Special Education teacher in a two-way school stated that she had been directed to provide SPED services only in English, even though she has been bilingual and Special Ed certified for over 15 years and teaches in a bilingual two-way program (personal communication, January 17, 2011).

In the background of the issue of placements for ELL-SWDs in Massachusetts is the experience of how the state's language learning policy, adopted as a result of the 2002 "Question 2" referendum, has been applied. Although the law formally offers other options, as noted in Section 2 of this report, the emphasis in practice has been overwhelmingly on Sheltered English Immersion (SEI). The achievement results for ELA MCAS are depicted visually in Figure 3-2 on page 24.

The *Castañeda v. Pickard* court case (1986) requires program evaluation for Language Learning Education (and subsequent program modifications if necessary) to ensure that the program is working. In Massachusetts, the testing results included in the *Halting the Race to the Bottom* report (ELL Sub-Committee, 2009) provide a data-driven objective evaluation of the achievement results of ELLs placed in restrictive Language Learning Education environments.

There is a perception of a one-year limit in the Massachusetts LLE law. However, "there is no one year limit in the law; the one year was an 'expectation' more akin to a public relations goal to ensure passage but there has never been a one year limit" (Roger Rice, personal

communication, February 27, 2011). The reality in school districts shows that new language learning takes time.³⁵ The same concept can be applied to reforming the current language-restrictive policy because, based on the accountability evidence from ESE, most ELLs are not achieving either English proficiency or grade-level achievement in five years. Artiles, Rueda, Salazar, and HigaReda (2005) found that the likelihood of SPED placement increased as language support was reduced. They also found that ELLs placed in English Immersion were almost three times as likely to be placed in Special Education as ELLs in Bilingual Education. The same results are revealed for Massachusetts, with over a 100% increase in Special Education placement from 2001-2002 to 2010-2011.

In Summary

By law, ELL-SWDs are entitled to a free and appropriate education in the least restrictive environment. Because of a disability or disabilities ELL-SWDs have a greater need for meaningful access to grade-level academic content through the language they understand best with needed supports and related services. Concurrently they have the right to receive appropriate and least restrictive Language Learning Education services in addition to Special Education services under the law, until they have learned enough English to really benefit from instruction in English or continue to learn in both languages. As a result the definition of LRE was reexamined in this report to include the LRE from a language learning perspective (LRE-ELL). LRE-ELL involves both culturally and linguistically responsive environments as a context for a free and appropriate public education. The *least restrictive language education program* for ELL-SWDs is a regular education environment with ELLs without disabilities, and this is why Language Learning Education placement and policy are so important to English Language Learners with disabilities.

5

Availability of Professionals Prepared to Serve ELL-SWDs

Parents, practitioners, and policymakers agree that the key to improving public education in America is placing highly skilled and effective teachers in all classrooms.

Darling-Hammond (2010, p. 1)

ELL-SWDs are required by law (NCLB and IDEA 2004) to be educated by regular and Special Education professionals who are highly qualified to teach them. However, an examination of the current situation in Massachusetts shows that the state's practice falls far short of these laws' requirements. The state's 10,197 ELL-SWDs (as of 2010-2011) do not benefit from the kind of highly professional instruction that the laws envision. In fact, as will be shown, the Commonwealth has a critical shortage of teachers who are appropriately qualified to teach *any* of the state's nearly 70,000 ELLs.

Gaps in the Availability of Licensed Teachers to Serve ELL-SWDs

Licensure:

- Although the state has **Special Education licensure** (Teacher of Students with Moderate Disabilities and Teacher of Students with Severe Disabilities), obtained by completing an accredited program, there is **no special licensure** for teachers of English Language Learners with moderate or severe disabilities.

- There is **no licensure** for Teachers of Reading who teach ELLs or ELL-SWDs, even though most ELLs with disabilities need to have linguistically responsive research-based reading and writing instruction.)
- **Bilingual licensure** was demoted to an endorsement status (after Question 2) even though two-way bilingual education is still legal and implemented with 2% of all ELLs and transitional bilingual is used with an additional 2% of the ELL population for a total of 4% in bilingual education. The sole requirement for obtaining a bilingual endorsement is to pass a native language proficiency test (ELL Sub-Committee, 2009). No course work is required, and there are no bilingual teacher education standards.

School Leadership. School administrators/principals usually chair IEP team meetings that make decisions about referral and eligibility of ELLs for Special Education and related services. However, only in the 2009-2010 academic year did ESE finally pilot the first ELL professional development for these educational leaders.³⁶ Despite a focus on “preparing, developing, and supporting effective leaders as top priority in Massachusetts for nearly a decade” (Haselkorn, 2010), the state has been very slow to include directly the issues related to the education of the fastest-growing population in this state, namely, ELLs (including ELL-SWDs).

Teacher Education Programs. There are number of accredited teacher education ESL programs and Special Education programs offered by colleges and universities in Massachusetts. However, no Bilingual or Bilingual-Special Education or ESL-Special Education programs are known to be offered in the Commonwealth. Nationally only seven colleges-or universities offer Bilingual Special Education or Multicultural Special Education programs or specializations.³⁷ The field of Bilingual/ESL-Special Education is a relatively new field (thirty years old) that merges two fields of education: Special Education and Language Learning Education. The literature defines Bilingual Special Education as the use of students’ home language and culture, along with English, in an individually designed program of instruction for students who have been found eligible for Special Education and related services (Baca & Cervantes, 2004).

It should be noted that in the early 1980s Massachusetts had Title VII funding for capacity-building general LLE and Special Bilingual ESL Education teacher preparation. In addition, there were Office of Special Education-funded professional development grants including the first dean’s grant in the nation: it went to the Multicultural Institute for Change, directed by Dr. Medeiros-Landurand at Regis College, to prepare college faculty to address the needs of ELL-SWDs in teacher education. In the late 1980s ESE Special Education Director Pam Kaufman applied for, and was awarded, a major federal grant to prepare bilingual special educators in Massachusetts. This CSPD grant provided 15 college credit hours of professional development to approximately 200 bilingual and/or special educators throughout Massachusetts in the content area of bilingual-ESL Special Education.

The author has met several Special Education teachers, speech and language therapists, and school psychologists who speak a second language but who had not had any preparation in the field of Language Learning Education. They are only licensed to work with monolingual English students. This is very problematic, because just knowing the student’s language is not enough to understand second language acquisition, interlingual influences from native language into English, or acculturation processes and stages – among other important factors in understanding and sorting between language differences and disabilities.

Professional Development Courses/Institutes. There is also a critical shortage of professional development opportunities for special educators to acquire additional knowledge and skills necessary to adequately address the needs of teachers of ELL-SWDs. The only

known initiatives related to **ongoing professional development** available to educators of ELL-SWDs in Massachusetts since passage of Question 2 in 2002 have been (a) one summer institute a year since 2006 at Lesley University, sponsored by the ESE on *Assessing ELLS with Disabilities*; (b) as of Summer 2010, a second ESE-funded summer institute at the EDCO Collaborative; (c) a summer course offered by Salem State College entitled *The Bilingual Child with Disabilities*; (d) yearly seminars offered by the Center for Special Education at Lesley University, including an institute on *Preparing Faculty for Culturally and Linguistically Diverse (CLD) Schools*; (e) technical assistance to school districts in several states (including Massachusetts) from the Educational Alliance at Brown University (currently employing only one bilingual-ESL special educator); and (f) a limited number of sessions at statewide conferences or special events.

Collaborative Structures between Special Education and Language Learning Education. ELLs have been the recipients of “silo” administrative structures with no required and systemic collaboration at the district level between Special Education and ELL directors. This has already been documented by a BISPED state report by Patricia Landurand and David Noriega in 1978, when Landurand held the first Massachusetts Bilingual Special Education Director position (Landurand, 2011). Interviews with Special Education and Language Learning Education directors during the fall of 2010 in selected high-incidence school districts revealed that interdepartmental collaboration, when it exists, is due to personal initiative; it is not systematic or required (Serpa & Chita, 2010).

The absence of systematic collaboration results in

- inappropriate understanding of the needs of ELL-SWDs, who are entitled to receive an appropriate education in the least restrictive environment that integrates new language learning with Special Education; and
- a misunderstanding of the different kinds of laws that both special educators and language learning educators need to know and apply in their practice.

As a result, students who are ELLs and also have disabilities are being doubly “marginalized” by a persistent misinterpretation of the laws by teachers and administrators who inappropriately assert that Special Education law takes precedence over Language Learning Education law. In other words, if an ELL has an IEP, the team wrongly overrides the language learning laws.

An Overall Short-Changing of ELLs’ Education

The change from Transitional Bilingual Education (TBE) to Sheltered English Immersion (SEI) has had a substantial impact on the skills and knowledge needed by elementary and secondary content teachers of English Language Learners. Under TBE, most English Language Learners had the opportunity to learn content (e.g., mathematics and science) through instruction in their first language while they took classes to develop proficiency in English. With the Commonwealth’s SEI policy, the great majority of English Language Learners must now learn content through instruction delivered in English, with all printed materials in English. Content teachers are expected to modify, or “shelter,” their instruction to make it comprehensible to students not yet proficient in English. Few teachers in Massachusetts knew how to do this when the new law took effect. And this situation persists.

Massachusetts Education Commissioner Mitchell D. Chester reported in 2010 that “Most classroom teachers in Massachusetts did not acquire the skills and knowledge required to effectively teach English language learners and shelter content instruction during their teacher preparation programs” (Chester, 2010, p. 7). According to the Commissioner, each

elementary and secondary educator who teaches English language learners must complete all four categories of professional development (known as Category Training) in order to develop the knowledge and skills required to effectively support English language development and deliver sheltered content instruction. These categories are as follows, together with the required hours of professional development:

Category 1: Second Language Learning and Teaching (10–15 hours)

Category 2: Sheltering Content Instruction (30–40 hours)

Category 3: Assessing Speaking and Listening (10 hours)

Category 4: Reading and Writing in the Sheltered Content Classroom (15–20 hours)

Commissioner Chester reported that, of 70,395 educators in Massachusetts, only approximately 20,000 would have received training in one or more of the categories by the end of the 2009–2010 school year.

Note that the four categories, in effect since 2004, are recommended but not required for licensure or re-licensure for regular education content teachers with English language learners. Moreover, responsibility for these trainings is housed in the Office of English Language Acquisition at ESE instead of being housed in the Teacher Licensure Office as is required in other fields of education. In addition, the ESE Office of English Language Acquisition has been responsible for approving, one-by-one, the professional developers/trainers who provide the category courses – including the approval of individual faculty in higher education. This is a duplication of services and a waste of resources.

Limited Presence of ELLs on the Web Sites of Major Massachusetts Professional Organizations. Participants in Summer Institute 2010 reported that the myths and misunderstandings about ELLs and ELL-SWDs are very prevalent. An example worth mentioning is that, in one school, the principal gave a warning to a teacher who used her knowledge of Spanish to explain a math concept to a Spanish-background ELL. A number of relevant Massachusetts Web sites were reviewed in January 2011 to explore to what extent ELLs or ELL-SWDs and their issues are visible, with the following results.

- The **Massachusetts Elementary School Principals Association (MESPA)** Web site had no content related to the education of ELLs. In the professional links section,³⁸ there is not one single resource or link directly related to ELLs and Language Learning Education.
- The **Massachusetts Secondary School Administrators' Association (MSSAA)** included Categories 1 and 2 in the group's professional development activities, as well as a link to Cultural Proficiency Resources offered through the Massachusetts Educational Leadership Alliance. However, there were no books or resources related to the education of ELLs in the MSSAA Teaching and Learning Committee Recommended Books and Resources.³⁹ Furthermore, the links section had no resources directly linked to the education of ELLs.⁴⁰
- The **Massachusetts Reading Association (MRA)** lists an ELL English Language Learners subcommittee on its Web site.⁴¹ In addition, MRA included in its strategic plan for 2010–2011 a goal for strengthening partnerships with various constituencies within the state of Massachusetts, including the Massachusetts Association of Teachers of Speakers of Other Languages.

- The **Massachusetts Teachers Association (MTA)** Web site indicates the offering of an online course entitled Strategies for Instructing English Language Learners. In the links section of the Web site there is a link for special needs; however, there is no link related to ELLs.⁴²
- The **Massachusetts Association for Supervision and Curriculum Development (MASCD)** does not list any resources for ELLs in the resources section of its Web site.
- The **Massachusetts Association for Bilingual Education (MABE)** includes a Special Education section dedicated to ELL-SWDs which includes an outstanding list of current ELLSPED resources.⁴³ In addition, MABE has a Bilingual Special Education special interest group.
- The **Massachusetts Association of Teachers of Speakers of Other Languages (MATSO)** Web site, dedicated to the regular teaching of English as an additional language, does not currently list any links directly related to ELL-SWDs.
- The **Massachusetts Administrators for Special Education (ASE)** Web site lists many professional associations under “helpful links,” but does not include MABE or MATSO the leading organizations related to ELLS and Language Learning Education.⁴⁴

A Final Note

Given the changes in demographics and the critical shortage of teachers in ESL, and especially ESL-Bilingual Special Education, the increasing need for all special educators to comprehend the interrelated nature of culture, language, and disability is well established in the literature (Artiles 2010; Baca, 2006; Hoover, Klingner, Baca & Patton, 2008; Obiakor 2007), but not yet in practice. There is no licensure or standards for ELL-Bilingual-Special Education or ELL-Reading, and as a result higher education institutions do not offer pre-service or in-service programs. Category courses are not adequate for this area of personnel preparation. Educator programs in higher education must increase the number of individuals whose professional expertise and educational practice reflect intercultural competence, knowledge of first and second language acquisition, literacy development from a dual-language perspective, and culturally and linguistically responsive RTI.

6

Recommendations

Many of the things we need can wait.
The child cannot....
To him [or her] we cannot answer "Tomorrow."
His [or her] name is "Today."

Gabriela Mistral, Nobel Prize winner

The identification and education of English Language Learners with disabilities are in need of a positive and urgent change to ensure these students a free and appropriate education (FAPE) in the least restrictive environment (LRE).

This report concludes with recommendations for needed change at the state and district levels as well as recommendations for further research. In brief, the changes are as follows:

1. Provide guidance on understanding the implications of the legal framework and rights of ELLS with disabilities (ELL-SWDs);
2. Improve the identification and eligibility process for ELL-SWDs;
3. Evaluate program placement of ELLs and ELL-SWDs; and
4. Increase the availability of professionals prepared to serve ELL-SWDs and their families

1. Provide guidance on understanding the implications of the legal framework and rights of ELLs with disabilities (ELL-SWDs)

At the state level...

Create an ELLSPED Task Force or equivalent composed of both special educators and language learning educators in order to support the ESE in the development of state guidance to school districts regarding the rights of English Language Learners with disabilities to an appropriate education in the least restrictive environment.

A. Upgrade the current Special Education documents, such as *Is Special Education the Right Service?*, *The IEP Process*, and *The IEP Guide*, with necessary information related to providing ELLSPED, as a merger between Special Education and Language Learning Education.

1. Provide a section which demystifies common myths among educators in this state regarding the Language Learning Education rights of ELL-SWDs.
2. Require an explanation of services, accommodations, and modifications when needed for both languages and cultures of the ELL-SWD to “provide benefit” in IEP guidance.
3. Include ELLs identified with print disabilities in IEP guidance and explain that they must also be provided with access to core instructional materials in a timely manner in the appropriate language of instruction.

B. Encourage major professional organizations to acknowledge ELLs and ELL-SWDs on their Web sites, thus expanding the visibility of the fastest-growing group of school-age children and youth in the Commonwealth and their urgent educational needs.

At the district level...

- **Ensure that all key policy makers and administrators, including principals**, understand that the right of ELL-SWDs to a free and appropriate public education in the least restrictive environment is guaranteed by federal and state laws.
- **Require systemic interdepartmental structures that promote collaboration** between Special Education and Language Learning Education administrators and related educational services

2. Improve the identification and eligibility process of ELL-SWDs

At the state level...

A. Provide additional guidance on interventions, referral, non-discriminatory assessment, and evaluation in all areas of disability determination used in school districts with ELLs, with explicit identification of what is additional or different from what assessors already know and do with native English speakers. Include the use of curriculum-based measurements and tiered instructional models.

1. Provide specific guidance for distinguishing between culturally responsive normal second language learning and disabilities.

2. Revise all the Specific Learning Disability determination forms to add the first-second language learning and acculturation factors.
3. Provide specific guidance about valid alternative assessment options that can be developed and used cross-linguistically.
4. Provide guidance in the use of interpreters.

B. Provide guidance on IEP development specific to ELL-SWDs. LRE & FAPE for ELLS identified with disabilities adds a new dimension related to Language Learning Education that needs to be integrated in the writing of IEPs across disabilities.

C. Encourage school districts to support district-wide structures of implementation of RTI models that come from the “executive committee” and not individual departments.

D. Require that the Student Information Management System (SIMS) collect ELL native language background data. It is essential to know the number of years of schooling and grade-level achievement in the first language when an ELL starts school in Massachusetts.

At the district level...

A. Create long- and short-term action plans to resolve the critical issues of interventions, referral, evaluation, eligibility determination, and placement, with benchmarks to document progress toward providing full and appropriate services to ELL-SWDs

B. Require all schools to collect essential background data about schooling and achievement in native language for each ELL student at the time of registration or in the Home Language Survey that is currently absent in data collecting including SIMS. Given the student’s linguistic interdependence (Cummins, 1979, 1984, 1986), this information is essential to better understand the student’s school performance and possible learning difficulties. (If there are no school records, an interview with the parent is a valid source of data gathering.) Questions recommended include: How many years of schooling has the student had in the first language? What grade level has been achieved? Did the student repeat any grade? Was there any interrupted schooling? Did the student learn to read fluently in the native language?

C. Ensure appropriate pre-referral interventions:

1. Give priority to the implementation of culturally and linguistically responsive System of Tiered Instruction (STI, also known as RTI) as the primary pre-referral intervention process for ELLs suspected of having a disability. See Massachusetts 2RTI Working Group (2010), Rinaldi (2010), and Kozleski & Huber (2010).
2. Follow closely outcomes of schools implementing RTI in the services, interventions, and outcomes for ELLs with and without disabilities.
3. Develop new departments that have cross-representation rather than unique fields.
4. Require collaboration between special and general educators (including ESL and bilingual teachers), to ensure that every student receives the appropriate services with accommodations, modifications, and behavior supports needed to access learning effectively. Effective and appropriate implementation requires educators to rethink their practices, roles, and policies.

D. IEP-ELL Team Composition. When the student is an ELL, the IEP team must include professionals with the appropriate knowledge of the learning rights of ELLs ensured by the three kinds of interacting laws.

1. The team must include Language Learning Education professionals (e.g., ESL teacher, Bilingual and/or SEI teacher).
2. The team must also include qualified educational interpreters for the specific language and culture of the parent/family of the ELL student with suspected disability.

3. Evaluate program placement of ELLs and ELL-SWDs

Free and appropriate education (FAPE) in the least restrictive environment (LRE) is the cornerstone of the Individualized Education Program, and the IEP team decides both. However, according to the research IEP teams are not yet adequately prepared to make this determination in a way that upholds the rights of ELL-SWDs. They currently lack adequate professional knowledge about first/second language issues and about culturally specific influences in academics and behavior.

At the state level...

A. Evaluate the state's current restrictive Language Learning Education policy in light of the poor achievement results for most ELLs documented in previous reports such as *Halting the Race to the Bottom* (ELL Sub-Committee, 2009). To the extent possible, ELL-SWDs must be educated with their ELL peers with no disabilities in general Language Learning Education environments (IDEA, 2004).

B. Improve FAPE in LRE that is unique to English Language Learners with disabilities:

1. Provide guiding principles to support IEP teams in their responsibility to decide about what is appropriate for bridging language learning with Special Education services for ELL-SWDs. An **appropriate education** must be anchored in the interaction of the Civil Rights, Special Education, and Language Learning Education laws. Guiding principles should be operationalized to address the interaction of Special Education with Language Learning Education.
2. Develop a guidance rubric that specifically integrates Language Learning Education with Special Education as equal partners with a common mission in the Massachusetts System of Tiered Instruction /Response to Intervention models to ensure ELLs the right to receive a high-quality core educational experience, with targeted interventions for students who experience academic and/or behavioral difficulties.

At the district level...

Evaluate the current program types being used for Language Learning Education on the basis of current research (ELL Sub-Committee, 2009; Genesee, Lindholm-Leary, Saunders, & Christian, 2006; Thomas, & Collier, 2002). If they are lacking, develop and implement research-based Language Learning Education program types that ensure grade-level achievement and use the students' funds of knowledge as a source of enrichment to the school and district community.

4. Increase the availability of professionals prepared to serve ELL-SWDs and their families

At the state level...

- A. Create an emergency strategic plan for teacher education to address the critical shortage of teachers who are qualified to address the needs of ELLs and ELL-SWDs.** The plan needs to include specific long- and short-term targets and timelines. Teacher quality is an essential variable to ensure the closing of the achievement gap.
- B. Ensure appropriate pre-service training and in-service professional development** by creating, implementing, and evaluating short- and long-term plans for teacher education and re-licensure. Preparation of highly qualified teachers needs to include the following:
1. Reinstate bilingual licensure with explicit and appropriate standards.
 2. Update ESL licensure by aligning to TESOL (Teachers of English to Speakers of Other Languages) standards.
 3. Add Bilingual-Special Education and ESL-Special Education licensure to the licensure fields.
 4. Add an ESL and Bilingual Teacher of Reading Specialist licensure.
 5. Formulate and require a PD process for English-speaking teachers who become licensed by passing the ESL MTELL state test to learn to practice the needed ESL teaching skills. The Readiness Centers can be given the responsibility to support teachers in their acquisition of additional teaching skills.
 6. Upgrade teacher education standards to reflect appropriate teacher preparation and development of teaching competencies related to linguistic and cultural diversity and include the following standards:
 - Demonstrate understanding of the three major types of interacting laws that protect the rights of ELL-SWDs and ensure their legal rights under all three sets of laws.
 - Apply integrated knowledge of LRE and FAPE to ELL-SWDS (in specially designed Language Learning Education program types and Special Education).
 - Use knowledge of ELL characteristics, first-and-second language learning, and cultural factors, and their interaction with disabilities.
 - Demonstrate knowledge and skill in non-discriminatory assessment and in reading in a first (native) language and/or second language including knowledge of what is different or additional about ELL-SWDs.
 - Demonstrate culturally responsive teaching knowledge, skills, and dispositions.
 - Demonstrate understanding of and ongoing assessment skills appropriate for culturally and linguistically responsive RTI.
 - Know and apply UDL (Universal Design for Learning) principles.
 - Demonstrate cultural competence when working with diverse families and their communities.
 7. Establish integrated multidisciplinary pre-service teacher training programs/licensure for those wishing to teach ELLs and ELL-SWDs in all licensures.
- C. Revise and upgrade** the standards for the “four-categories courses” (ESE, 2004) for content, evidence-based outcomes, and standards required for both new licensure and re-licensure. The revised standards for accreditation should be delegated to higher education as a key component of teacher preparation

- D. Higher Education.** Establish the standards and charge and accredit institutions of higher education with the responsibility for appropriately preparing teachers of ELL-SWDs, just as they are responsible for preparing highly qualified teachers for other fields of education. Free the Office of English Language Acquisition from this added responsibility and duplication of agency services and responsibilities.
- E. Multidisciplinary Professional Development.** Use a collaborative model of professional development starting in Fall 2011. Such a model can provide integrated opportunities for educators to understand the impact of language on learning and the impact of disabilities on language learning (as well as the interaction of both). For example, math teachers as well as special educators should understand how to teach math not only for English speakers but also for ELLs (with or with no disabilities).
1. Base professional development for working with ELLs or ELL-SWDs on the most current research and strategies (such as Professional Learning Communities composed of educators from both fields) and make it outcomes-based.
 2. Enrich the professional development of educational leaders at the school, district, and state levels with Language Learning Education knowledge and skills.
- F. Financial Support and Race to the Top (RTTT) Funds.** Make this area of education a priority for the Commonwealth and use RTTT funds to build capacity in teacher preparation in ESL, Bilingual, ESL-Special Education, Bilingual-Special Education, and Bilingual-ESL Reading.

At the district level...

- A. Develop a three-year school-district or multi-school-district action plan** with timelines and benchmarks to resolve the shortage of personnel who are appropriately qualified to assess and provide appropriate Special Education and related services to ELL-SWDs.
- B. Provide multidisciplinary professional development:**
1. Create professional development opportunities on the disabilities that are over-represented and their interaction with students' cultural and second language characteristics.
 2. Provide multidisciplinary professional development to all teachers and administrators, instead of "siloed" professional development. Ensure that issues of Language Learning Education are integrated into the given area. For example, require that math, reading, science, and STEM be provided in a team teaching mode with general and ESL-SPED and general and bilingual SPED.
- C. Ensure appropriately highly qualified educators:**
1. Develop district-based alternatives to support professional preparation of teachers who are already providing services to ELLs and ELL-SWDs but are not yet highly qualified to serve these students.
 2. Ensure that evaluators are appropriately qualified to provide culturally and linguistically responsive assessment and data-driven instruction that is appropriate for ELLs suspected of having a disability.

Interpreters:

- Ensure that interpreters who provide services in Special Education are appropriately qualified and have had appropriate training for this field.
- Collaborate with colleges or community organizations to develop capacity in this

area. An example of an innovative approach at the high school level is a course offered at Cambridge Rindge and Latin High School to ELLs to make use of their native language skills and prepare them to become qualified interpreters (Dr. Mary Cazabon, personal communication, December 10, 2010).

Principals

- Ensure that principals appropriately understand and apply the three kinds of laws that interact to protect the learning rights of ELL-SWDs.
- Ensure that principals understand that using a language other than English to make content comprehensible to a student is not only commendable but also a necessity to allow ELLs to access content and make progress at the same rate of learning as their English-speaking peers.
- Ensure that principals are familiar with research-based practices that have been validated for ELLs and ELL-SWDs.

Further Research

This report was long overdue and its focus has been only on ELL-SWDs ages 6–22. To better understand the magnitude of needs, the following areas need further study.

1. Birth to Six and Early Intervention policy and practice. This is a pressing need, as this report only focuses on K–12 ELL-SWDs.
2. Transition planning and implementation for ELL-SWDs. This is an important area for ELL-SWDs in middle and high school.
3. Parents' role with ELL-SWDs in the Special Education process. Parents of ELL-SWDs must also play a major role in the eligibility and IEP process. How this is addressed in school districts across different language/cultural groups is an issue that warrants study.

ONE CHILD IS ONE TOO MANY TO LEAVE BEHIND.

“When children don’t learn the way we teach, we need to learn to teach the way they learn” so that we can do our best to ensure they achieve academically and socio-emotionally in school and in life with their families.

Notes

- ¹ Source: http://profiles.doe.mass.edu/state_report/enrollmentbygrade.aspx and http://profiles.doe.mass.edu/state_report/selectedpopulations.aspx.
- ² Interview with Dr. Pat Doran, Project Director of the Bilingual Special Education Program, George Washington University and chair of the Bilingual Special Education special interest group (SIG) of the National Association for Bilingual Education (NABE) on February 2, 2011.
- ³ Source: http://profiles.doe.mass.edu/state_report/enrollmentbygrade.aspx and http://profiles.doe.mass.edu/state_report/selectedpopulations.aspx.
- ⁴ The Commonwealth's official list of disabilities, with definitions, is found at <http://www.doe.mass.edu/sped/definitions.html>.
- ⁵ A communication disorder is not due to speaking a different language. It should not also be confused with a "language loss" which is a phenomenon associated with students who have lost the language of communication at home.
- ⁶ This section on the laws and court cases is based on the www.ldldproject.net, Serpa & Colombo (2009).
- ⁷ Language Learning Education is the general education environment for English Language Learners (with and without disabilities) to ensure learning English as a new/additional language, learning grade-level academic content, and developing socio-emotionally. Examples of LLE program placements include Two-Way, Sheltered English Immersion (SEI), Transitional Bilingual Education (TBE), and ESL.
- ⁸ Sources: <http://www.justice.gov/crt/cor/coord/titlevi.php> and <http://usinfo.state.gov/usa/infousa/laws/majorlaw/civilr19.htm>.
- ⁹ Source: <http://www2.ed.gov/about/offices/list/ocr/ellresources.html>.
- ¹⁰ Source: <http://www.justice.gov/crt/edo/faq.php>.
- ¹¹ Source: <http://www.ada.gov/pubs/ada.htm>.
- ¹² Source: <http://www.justice.gov/crt/edo/faq.php>.
- ¹³ Source: <http://www2.ed.gov/legislation/ESEA/toc.html>.
- ¹⁴ Source: http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED399649&ERICExtSearch_SearchType_0=no&accno=ED399649.
- ¹⁵ Source: http://www.ed.gov/admins/lead/account/nclbreference/page_pg30.html.
- ¹⁶ Source: <http://www.mass.gov/legis/laws/mgl/gl-71a-toc.htm>.
- ¹⁷ Currently, federal law recognizes the following disabilities: autism, deaf-blindness, deafness, developmental delay, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness.
- ¹⁸ Source: <http://www.ldldproject.net/legal.html#5>.
- ¹⁹ Source: <http://www.help4adhd.org/education/rights/idea>.
- ²⁰ In addition, in this reauthorization of IDEA, the U.S. Congress changed the law in relation to the identification of children and youth with "specific learning disabilities" (SLDs). Schools are "not [to] be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability...." (Wright & Wright, 2007, p. 97).
- ²¹ Source: <http://www2.ed.gov/policy/spced/reg/edpicks.jhtml?src=ln> and <http://idea.ed.gov/explore/view/p/,root,dynamic,Presentation,16>.
- ²² Source: <http://www.mass.gov/legis/laws/mgl/gl-71b-toc.htm> and <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C4%2C>.
- ²³ Source: <http://www.ldldproject.net/legal.html#16>.
- ²⁴ Source: <http://www.ed.gov/about/offices/list/ocr/docs/lau1991.html>.
- ²⁵ Child Find requires states to identify, locate, and evaluate all children with disabilities, aged birth to 21, who are in need of early intervention or Special Education services. For more information see <http://www.childfindidea.org>.
- ²⁶ The "Procedural Safeguards Notice" is a complete explanation of parents' rights and protections for children under Special Education requirements. This notice must be provided to the parent as follows: (a) Initial referral for evaluation, (b) each notification of an Individualized Education Program (IEP) meeting, (c) reevaluation of the child, and (d) registration of a due process complaint. Procedural safeguards must be provided in the native language for parents of ELLs.
- ²⁷ The same process applies to reevaluation every three years.

- ²⁸ Interpreters are professionals who are appropriately qualified for Special Education in the language and culture of the student. Massachusetts already has interpreter standards for the courts and health related services.
- ²⁹ These students may also become Long Term ELLs (LTEs)
- ³⁰ Bruce, S. (2009). A Parent's Guide to Response to Intervention. Retrieved from Wrights Law <http://www.wrightslaw.com/info/rti.parent.guide.htm>.
- ³¹ Source: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0414_0563_ZO.html.
- ³² Reading instruction for ELL-SWDs, which is the foundation for all academic learning, must be based on the National Literacy Panel (August & Shanahan, 2006).
- ³³ Richards, Artiles, Klingner, and Brown developed a framework of self assessment tools to support school leaders in implementing culturally responsive learning environments, available at <http://spp-apr-calendar.rrfcnnetwork.org/explorer/view/id/99>.
- ³⁴ Composite examples based on field experience
- ³⁵ Research has shown for a long time that it takes five to seven years or longer to achieve English proficiency (Cummins, 1984; Thomas & Collier, 2004). This means that students' full access to achieving required academic standards can only be fully done through English when students achieve MEPA Level 4 or Level 5. See also ELL Sub-Committee (2009).
- ³⁶ The content of PD for principals was based on the skills and knowledge and incorporated data review on English language learners' MEPA and MCAS performance. "Principals learned about the factors that influence second language acquisition, research-based strategies specifically designed for ELLs, and lessons based on content and language objectives. This training also facilitated communication between ELL directors and principals regarding equitable education for ELLs" (Chester, 2010).
- ³⁷ Interview with Dr. Pat Doran, Project Director of the Bilingual Special Education Program, George Washington University, and chair of the Bilingual Special Education special interest group (SIG) of the National Association for Bilingual Education (NABE) on February 2, 2011.
- ³⁸ Source: <http://www.mespa.org/links.html>.
- ³⁹ Source: <http://www.mssaa.org/TL-Recommended-Books.pdf>.
- ⁴⁰ Source: http://www.massupt.org/Links/Links_Result.cfm.
- ⁴¹ Source: <http://www.massreading.org/about/committees/index.html>.
- ⁴² Source: <http://www.massteacher.org/teaching/links.aspx>.
- ⁴³ Source: <http://www.massmabe.org/SpecialEducation/tabid/64/Default.aspx>.
- ⁴⁴ Source: <http://www.asepage.org/about.html>.
- ⁴⁵ NOTE: Response to Intervention for English Language Learners must take into account additional linguistic and cultural factors (see Massachusetts 2RTI Working Group, 2010).

Glossary

Accommodations. The changes in how a SWD accesses information and demonstrates learning. The term refers only to changes that do not substantially change the instructional level, content, or performance criteria.

Bilingual Education. This is an educational program with instruction in two languages (i.e., native language + English as an additional/second language). In most states bilingual teacher licensure or endorsement is required.

Bilingual Education Goals: Additive and Subtractive

Additive Bilingual Education (6 years or longer). Students from minority and majority languages learn together to become highly proficient in two languages (e.g., English + Spanish). The following are examples of additive programs: Two-Way Bilingual, Bilingual Immersion, Developmental Bilingual, and Trilingual Education (Spanish, Portuguese, English).

Subtractive Bilingual Education (3 years). The goal is to make minority-language students proficient in English, only using the native language as a way to access the academic learning while learning English. Examples of subtractive programs: Transitional Bilingual Education (TBE) and ESL Instruction (English as a second or new language).

Category Courses. The professional development guidance recommended for teachers of ELLs by Commissioner Driscoll in 2005. It consists of the following four categories: Second Language Learning and Teaching; Sheltering Content Instruction; Assessing Speaking and Listening; and Reading and Writing in the Sheltered Content Classroom.

Category Training. See Category Courses.

Dual Language Education. See Two-way Bilingual Program.

ELL. See English Language Learner.

English Language Learner – a student who does not yet speak English or whose native language is not English and who is currently not able to perform ordinary class work in English (MA GL Chapter 71A). English Language Learners are also known as LEPs.

English as a Second Language (ESL). This is a field of specialized study in teaching English to speakers of other languages. It is always a component of Bilingual Education in the U.S. ESL instruction can be implemented as a stand-alone program (part-time or full-time) and teacher licensure is a required teacher credential.

English Language Proficiency Benchmarks and Outcomes (ELPBO). Curriculum Frameworks designed by the Massachusetts Department of Education to guide the teaching of English as a second/additional language to ELLs.

ELPBO. See English Language Proficiency Benchmarks and Outcomes.

Fluency. Spoken English fluency refers to the ease of speech. It is not to be confused with English language proficiency or oral reading fluency. One can become fluent in spoken English with fewer than 2,000 words. See Language Proficiency.

Home Language Survey: The primary purpose of a Home Language Survey is to find out if a student speaks a language other than English at home and thereby needs to be assessed for English language proficiency. The Home Language Survey also presents an opportunity to collect other useful information about the student that will help district personnel understand the student's personal and educational history in order to plan an appropriate educational program for the student.

Language Proficiency: language performance in understanding, speaking, reading, and writing at the level of a native speaker of the same age. See also Fluency.

Language Learning Education is a form of general education for English Language Learners to ensure they learn English, learn academic and develop socio-emotionally. Examples of LLE include Two-Way, TBE, ESL, and SEI.

Language Proficiency TYPES (in English as a new language)

BICS – Basic interpersonal communication skills. It is face-to-face contextualized communication (social language). It takes up to two years for K-12 students to achieve this level.

CALP – Cognitive academic language proficiency (academic language). It takes five to seven years or longer for K-12 students to achieve this level.

Levels of English Proficiency. According to the English Language Proficiency Benchmarks & Outcomes (See ELPBO) the levels of English proficiency are three: Beginning to early intermediate, early intermediate to intermediate, and intermediate to transition. However, the MEPA test has a five-level classification and the two are not yet aligned.

Limited English speaking student (LEP). See ELL.

Long Term ELL (LTEL): Although there is no consensus on a definition a LTEL may be considered a student in middle or secondary school who has been enrolled in a U.S. school for more than six years, is making inadequate progress in English acquisition, and is struggling academically (Olsen, 2011, Slide 22). These students have distinct language issues: they combine high functioning social language with very weak academic language and significant deficits in reading and writing skills. The majority of Long Term English Learners are “stuck” at intermediate levels of English proficiency or below; others reach higher levels of English proficiency without attaining the academic language to be reclassified (Olsen, 2010).

Modifications. Changes in what is being taught to, or expected from, the student with disabilities.

MEPA. The Massachusetts English Proficiency Assessment is the test used in Massachusetts to measure Language Learning Education outcomes. MEPA identifies five levels of English Language proficiency (1–5). The levels are defined in detail at <http://www.doe.mass.edu/mcas/mepa/pld.html>.

Question 2. Massachusetts voters approved a referendum mandating all-English instruction for immigrant students in 2003. However, when the Massachusetts legislature amended Chapter 71A, two-way bilingual was included as an option along with Sheltered English Immersion (SEI).

Response to Intervention (RTI): a multi-tier model of intervention for addressing the individual needs of students experiencing academic or behavioral difficulties by providing universal screening, research-based intervention, and close progress monitoring with highly qualified teachers. RTI was included in the Individuals with Disabilities Education Act (IDEA) 2004 and IDEA Regulations (2006), which encourage its use to prevent school failure and ensure appropriate instruction and continual monitoring.⁴⁵ In Massachusetts, RTI is referred to as the Massachusetts System of Tiered Instruction.

Sheltered English Immersion (SEI) is the Language Learning Education program mostly used in Massachusetts after Question 2 was implemented in 2003. It includes two components: ESL and sheltering of content in English for instruction.

System of Tiered Instruction. See Response to Intervention (RTI).

Special Education: specially designed instruction to meet the unique needs of a student with one or more disabilities. Special Education, with its related services, is one aspect of a continuum of supportive services, accommodations, and modifications provided to ensure that the general education environment is conducive to learning. This is commonly referred to as “inclusion”; although the law does not use that particular word, it does require that SWDs be educated with their peers with no disabilities.

Bilingual-ESL Special Education. Specially designed instruction to meet the ELL-SWDs unique needs in appropriate quality programs that are educationally, linguistically, and culturally responsive to their needs in the least restrictive environment.

Two-Way (or Two-Way Immersion or Two-Way Bilingual) program. Also known as Dual Language Education, Two-Way is the most successful Language Learning Education (LLE) program model to develop the student’s language proficiency in both languages as well as facilitating grade-level achievement. An example of a Two-Way program is The Amigos Program in Cambridge: one week the Spanish teacher teaches in Spanish to one class of students and the English teacher teaches in English to another class. The next week, they exchange their classes, and so on.

Appendix A. Availability of Translated Special Education Procedural Safeguards and Other Documents

	Languages	MDESE							FEDERATION MASS PIRG		
		MCAS RESULTS	MEPA RESULTS	SPECIAL EDUC PARENT'S GUIDE	IEP FORMS	SPED GLOSSARIES	SPED PROCEDURAL SAFEGUARDS	HOME LANGUAGE SURVEY	MASS PIRG PUBLICATIONS ELL & STATE ASSES	MASS PIRG PUBLICATIONS	RIGHTS OF ELLS
1.	English										
2.	Albanian										
3.	Arabic										
4.	Cape Verdean										
5.	Chinese										
6.	French										
7.	Haitian Creole										
8.	Hmong										
9.	Japanese										
10.	Khmer										
11.	Korean										
12.	Laotian										
13.	Portuguese										
14.	Russian										
15.	Somali										
16.	Spanish										
17.	Vietnamese										

Source: Based on manual search of Massachusetts Department of Elementary and Secondary Education Web site (green) (<http://www.doe.mass.edu>) and Federation for Children with Special Needs Web site (purple), <http://fcsn.org/index.php> (retrieved in November 2010).

Appendix B. Comparison between SEI and Two-Way Major Characteristics

	SEI	TWO-WAY
Goals	Academic proficiency in English only	High academic language proficiency in two languages: English and the native language
Teacher	Does not usually speak or understand the language of the student (i.e., the teacher does not understand the student's language and thus the student is placed in an emotionally challenging position).	Speaks and understands the student's language. (i.e. the teacher understands the student)
Components	SEI has two components: English as a Second Language (ESL) instruction and sheltered content instruction taught in English.	Two-way has two components: English and native language (e.g., English + Spanish)
Language of instruction	English Sometimes with an explanation for academic concepts in the student's native language	Native language + English
Zone of proximal development (ZPD)	ZPD is restricted, particularly if ELLs have not already achieved the academic concepts or skills being taught. Learning rate (how fast) and amount (how many concepts, skills) of learning are affected negatively.	The ZPD is adequate because (all factors being equal) the students have meaningful language access to achieving grade-level content and their learning rate and amount are not affected.
Academic achievement	Only 20% achieve at grade level in MCAS ELA after five years; 80% take longer (ELL Subcommittee, 2009).	Most students achieve at grade level or above (Genesee, et al., 2008; Thomas & Collier, 1992, 2002).
Students	Only ELLs of the same language or mixed-language backgrounds	English-speaking students + ELLs (i.e., minority and majority language students learning together two languages)
Number of teachers per student	2 (i.e. one for SEI and one for ESL)	1 (i.e., each of the two teachers has an average of 20 or so students)
Percentage of ELLs in each of the two program types in MA	Over 80%	2%
Least to most restrictive	Most restrictive	Least restrictive
Cost	Less cost effective	More cost effective

Appendix C. Language Learning Education Program Types in Massachusetts

SIMS Code	Description of Language Learning Education Program Type Placement
02	Two-way bilingual: A bilingual program in which students develop language proficiency in two languages by receiving instruction in English and another language.
03	Other bilingual education: An instructional program, including Transitional Bilingual Education, in which the native language of the LEP student is used to deliver some subject matter instruction. These programs must also provide for English language instruction (for students with waivers only).
01	Sheltered English Immersion: A full day of grade-level subject matter and English language instruction modified to be comprehensible to and permit participation by the LEP students in the classroom at their level of English language proficiency. All instruction and materials are in English. SEI Includes two components: ESL instruction and academic content (reading, math, science).
04	Optout: LEP student whose parent/guardian has consented to opt out of all ELL programs offered in the district.
00	Not enrolled in an English Language Learner education program

Source: Based on SIMS, 2008.

NOTE: There is wide variation on how these programs are implemented in school districts. For example, some SEI classes are organized by language group and have a teacher who speaks/understands their language; others have students from many language backgrounds with a teacher who does not speak or understand them.

Appendix D. Research-Based Ranking of the LLE Program Types by Achievement Results

RANK	LLE Program Type
First	Two-Way Bilingual (two-way immersion, dual language)
Second	Late-Exit Bilingual and Content ESL
Third	Early-Exit Bilingual and Content ESL
Fourth	Early-Exit Bilingual and Traditional ESL
Fifth	ESL Pull-Out
Sixth	No services (Sink or Swim)

Source: Massachusetts 2RTI Working Group (2010)

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Biography

Dr. Maria de Lourdes Serpa is a Full Professor at Lesley University School of Education, where (among her other roles) she has served as the Director of the Graduate Teacher Education Programs in Moderate Disabilities for fifteen years. Professor Serpa has served on several committees of the Massachusetts Department of Elementary and Secondary Education (ESE), including the Massachusetts ELL Bilingual Education Advisory Council (co-chair), the Proficiency Gap Committee, and the Knowledge and Skills in Professional Teaching Committee (current member). She is a native speaker of Portuguese and is committed to equity in education for every student in our schools.

The Mauricio Gastón Institute for Latino Community Development and Public Policy was established in 1989 at the University of Massachusetts-Boston by the Massachusetts State Legislature at the behest of Latino community leaders and scholars in response to a need for improved understanding of the Latino experience in the Commonwealth. The mission of the Institute is to inform policy makers about issues vital to the state's growing Latino community and to provide this community with information and analysis necessary for effective participation in public policy development.

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