



CENTER FOR CHILDREN, LAW & POLICY
AT THE
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The Disproportionate Representation of Limited English Proficiency (LEP) Students In Special
Education Programs

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The fastest growing subgroup of students in the United States, researchers predict that Limited English Proficient (“LEP”) students will comprise approximately 25% of the nation’s student population in 2025.¹ LEP students represent a student population that speaks a language other than English at home and whose English speaking, reading, writing, and comprehension skills may be insufficient to provide benefits from instruction provided entirely in English.²

Currently, the No Child Left Behind Act of 2001 (“NCLB”) and the Individuals with Disabilities Education Act of 2004 (“IDEA”) address both the general and special education needs of LEP students. On one hand, NCLB promotes the general education of LEP students through high quality language instruction and educational programs while holding state education agencies, local educational agencies, and schools accountable for increases in English proficiency and increases in core academic content knowledge.³ Additionally, NCLB calls for the improvement of language instruction and educational programs through the development of accountability systems

¹ Mexican Am. Legal Def. and Educ. Fund, *Statement of Peter Zamora*, MALDEF.ORG (Dec. 3, 2007), http://www.maldef.org/education/public_policy/6.2.1_Zamora_minorities_SpEd_1.3.08.pdf (last visited Aug. 5, 2013).

² ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION 19-20 (Alfredo J. Artiles & Alba A. Ortiz eds., 2002).

³ 20 U.S.C.A. § 6301 (West 2002).

that monitor the progress of LEP students, the implementation of family education programs and parent outreach and training activities, and the advancement of effective curricula that address the educational and instructional needs of LEP students.⁴

On the other hand, IDEA provides for the special education of LEP students. IDEA deems an LEP student ineligible for special education services if limited English proficiency forms the basis of the disability.⁵ It goes on to further limit services if environmental, cultural, or economic disadvantage foster the determinate factor of the disability.⁶ IDEA also requires nondiscriminatory disability assessments conducted in the child's native language.⁷ After assessing a child for a disability, individuals knowledgeable about the child, the assessment, and placement alternatives must consider the assessment results.⁸

While NCLB and IDEA address the educational needs of LEP students, many LEP students face the significant challenge of either being improperly placed in special education programs, thereby denying them access to the general academic curriculum, or not receiving the special education services that they so desperately need.⁹ Estimates figure that as many as 75% of LEP students enrolled in special education programs are improperly placed.¹⁰

Researchers define the issue of disproportionality in terms of overrepresentation and underrepresentation. Mark Guiberson, author of "Hispanic Representation in Special Education: Patterns and Implications," explains that "overrepresentation occurs when the percentage of minority students in special education programs is greater than that in the school population as a

⁴ *Id.*

⁵ 20 U.S.C.A. § 1414 (West 2005).

⁶ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 13.

⁷ *Id.*

⁸ *Id.* at 14.

⁹ *E.g.*, Mexican Am. Legal Def. and Educ. Fund, *supra* note 1.

¹⁰ Mexican Am. Legal Def. and Educ. Fund, *supra* note 1.

whole.”¹¹ Underrepresentation, on the other hand, occurs when schools fail to place students with disabilities in the appropriate programs.¹² The dual overrepresentation and underrepresentation of minorities in special education programs creates a national issue, rooted in state-to-state disparities, of disproportionate numbers of LEP students in special education programs.

Because the issues so closely intertwine, this Policy Statement explores the disproportionate representation of LEP students in special education programs by first briefly examining the threshold issue of minority disproportionality in special education programs in Section I. In Section II, this Statement climaxes in a discussion of the prevalence of the disproportionate representation of LEP students in special education programs and a state-to-state statistical comparison of the disproportionality issue. Finally, in Section III, this Policy Statement culminates with proposed educational reforms that may aid in the resolution of the issue of disproportionate representation of LEP students in special education programs.

I. THE DISPROPORTIONATE REPRESENTATION OF MINORITIES IN SPECIAL EDUCATION PROGRAMS

The disproportionate representation of minority students in special education programs first came to the forefront of the educational battlefield with the publication of Lloyd M. Dunn’s seminal study on the justifiability of student placement in special education programs. Dunn’s study found that minorities and children from lower socio-economic backgrounds comprised 60% to 80% of the student population in special education programs.¹³ While published in 1968, researchers still replicate the findings of Dunn’s study over forty years later. Section I discusses the prevalence of minority disproportionality in special education programs.

¹¹ Mark Guiberson, *Hispanic Representation in Special Education: Patterns and Implications*, PREVENTING SCHOOL FAILURE: ALTERNATIVE EDUCATION FOR CHILDREN AND YOUTH, Spring 2009, at 167.

¹² *Id.*

¹³ Guiberson, *supra* note 11, at 167.

Research indicates that some racial and ethnic groups have disabilities in greater numbers than would be expected, given the groups' prevalence in the general student population, while other groups remain significantly underrepresented.¹⁴ Nationally, students identifying as Asian appear to be overrepresented in special education classes during the ages of 3 to 5, while students identifying as Hispanic and Black or African American appear to be slightly underrepresented in the same age group (see Tables 1.1 and 1.2). This trend persists throughout the ages of 6 to 21 (see Tables 1.1 and 1.3).

In a state level analysis, Texas A&M University's Public Policy Research Institute found that approximately 14.7% of Oregon's minority student population classifies as having disabilities while minority children represent 18% of its population, representing a difference of 3.3%.¹⁵ This 3.3% difference between Oregon's percentage of minority children in the general student population and its percentage of minority children in special education programs represents an underrepresentation of minority students in special education.

In contrast, the Public Policy Research Institute found that the minority student population in New York comprises approximately 61.6% of the student population in special education programs, while only an approximate 42.5% of the general student population identifies as minorities.¹⁶ The startling 19% difference between the general population and the population of minority students classified as having disabilities represents an overrepresentation of minority students in special education programs. While underrepresentation appears to be the national trend, national

¹⁴ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 3.

¹⁵ Charles D. Johnson et. al., *Disproportionate Representation of Minority Children in Special Education: National Data Report*, PUBLIC POLICY RESEARCH INSTITUTE, <http://ritter.tea.state.tx.us/special.ed/pubs/pdf/disprop.pdf> (last visited Aug. 5, 2013).

¹⁶ *Id.*

overrepresentative disproportionality comes to the forefront when analyzing specific disability types (see Tables 1.1, 1.2, and 1.3).

Students identifying as Hispanic, Asian, and Black or African American are disproportionately overrepresented in the category of Speech/Language Impairments during the ages of 3 to 5. This trend persists for students identifying as Asian during the ages of 6 to 21. During the ages of 6 to 21, students identifying as Hispanic, Asian, and Black or African American are disproportionately overrepresented in the category of Specific Learning Disabilities.

Table 1.1: National Population Representation, by Ethnicity, in the 2011 General Student Population (Aged 3-21)¹⁷							
Total Students Enrolled in the General Student Population				81,068,972			
Aged 3-5				Aged 6-21			
Hispanic/Latino	Asian	Black or African American	White	Hispanic/Latino	Asian	Black or African American	White
25.33%	4.52%	13.74%	51.00%	22.06%	4.45%	14.35%	54.92%

Table 1.2: 2011 National Population Representation, by Ethnicity, in Special Education Programs (Aged 3-5)¹⁸				
Disability	Hispanic/Latino	Asian	Black or African American	White
Intellectual Disabilities	2.64%	2.12%	1.78%	1.17%
Speech-Language Impairments	51.73%	37.61%	36.84%	46.99%
Emotional Disturbance	0.24%	0.19%	0.58%	0.46%
Specific Learning Disabilities	1.21%	0.86%	0.86%	1.35%
All Disabilities *	23.24%	3.09%	13.83%	54.88%

Table 1.3: National Population Representation, by Ethnicity, in Special Education Programs (Aged 6-21)¹⁹				
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¹⁷ See Data Accountability Ctr., *Population & Enrollment Data (2011)*, IDEADATA.ORG (Sept. 10, 2012), <https://www.ideadata.org/PopulationData.asp#2011>.

¹⁸ See Data Accountability Ctr., *Individuals with Disabilities Education Act (IDEA) Data: Part B Child Count (2011)*, IDEADATA.ORG (Sept. 10, 2012), <https://www.ideadata.org/PartBChildCount.asp>.

¹⁹ *Id.*

Disability	Hispanic/Latino	Asian	Black or African American	White
Intellectual Disabilities	6.81%	7.64%	10.85%	6.56%
Speech-Language Impairments	19.73%	27.60%	13.90%	19.36%
Emotional Disturbance	4.03%	2.55%	9.13%	6.54%
Specific Learning Disabilities	49.71%	27.28%	42.38%	36.77%
All Disabilities *	22.61%	2.16%	18.90%	52.33%

* Includes the Disability categories of intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, emotional disturbance, orthopedic impairments, other health impairments, specific learning disabilities, deaf-blindness, multiple disabilities, autism, traumatic brain injury, and developmental delay.

This overrepresentation indicates that many students may be categorically pushed into special education programs, even though these students may not necessarily need these services. While alarming, the respective overrepresentation and underrepresentation of minority students in special education leads to an equally surprising corollary: the overrepresentation and underrepresentation of LEP students in special education programs.

II. THE DISPROPORTIONATE REPRESENTATION OF LEP STUDENTS IN SPECIAL EDUCATION PROGRAMS

LEP students speak more than 450 languages, with Spanish, Vietnamese, Hmong, Chinese/Cantonese, and Korean representing the respective top-five languages spoken by LEP students.²⁰ According to the Mexican American Legal Defense and Educational Fund, in a statement by Peter Zamora, “nearly 80% of K-12 [LEP students] are Spanish-speaking Latinos.”²¹ While Spanish dominates as the language most frequently spoken by LEP students, other languages, such

²⁰ Rose M. Payan & Michael T. Nettles, *Current State of English-Language Learners in the U.S. K-12 Student Population*, ETS.ORG, http://www.ets.org/Media/Conferences_and_Events/pdf/ELLSymposium/ELL_factsheet.pdf (last visited Aug. 5, 2013).

²¹ Mexican Am. Legal Def. and Educ. Fund, *supra* note 1.

as Arabic, Armenian, French, Hindi, Japanese, Polish, and Russian, represent languages spoken by less than 1% of the LEP student population.²²

With such a diverse language base, LEP students account for over 10% of the student population in the United States.²³ Trends of LEP student disproportionate representation exist across the country, particularly in states with the largest number of LEP students. California, Texas, Florida, New York, and Illinois respectively represent the top-five states with the largest number of LEP students, while South Carolina, Kentucky, and Indiana represent the states with the fastest growing LEP student population.²⁴ Researchers predict that, by 2025, one-quarter of the nation's student population will identify as LEP.²⁵

Of the large population of LEP students, researchers have estimated that “as many as three-fourths of [LEP students] enrolled in special education programs are improperly placed” due to misidentification.²⁶ Misidentification “occurs when students with disabilities are identified as having a disability different from the one they actually have” or when schools classify students without disabilities as having disabilities.²⁷ Misidentification can easily lead to disproportionate numbers of LEP students in special education programs: more than 70% of LEP students enrolled in special education were either overidentified or misidentified.²⁸ Section II discusses the prevalence of disproportionate representation of LEP students in special education programs and the factors that contribute to disproportionate representation.

With estimates improperly placing as many as three-fourths of LEP students in special education, the argument of whether the number of LEP students in special education remains too

²² Payan & Nettles, *supra* note 20.

²³ *Id.*

²⁴ Payan & Nettles, *supra* note 20.

²⁵ Mexican Am. Legal Def. and Educ. Fund, *supra* note 1.

²⁶ *Id.*

²⁷ Guiberson, *supra* note 11, at 167.

²⁸ *Id.* at 168.

high or too low remains a lingering question on the horizon of educational reform. Nationally, approximately 10% of LEP students receive special education services while approximately 13% of all students receive special education services.²⁹ The 3% disparity between the percentage of LEP students enrolled in special education and the percentage of all students enrolled in special education represents a national underrepresentation of LEP students in special education programs. This trend remains consistent with the national underrepresentation of minorities enrolled in special education programs.

The disproportionate representation of LEP students in special education plagues United States' public schools at the state, district, and campus levels. While analyses suggest that nationwide representation of LEP students does not indicate overrepresentation, the same analyses indicate that the overrepresentation of LEP students remains a problem that varies across states and school districts.³⁰ For example, in Texas, the state with the second-highest number of LEP students enrolled in its public schools, LEP students “were up to five times as likely to be receiving special education support in one district as in another.”³¹

In a study conducted by Shepherd, Linn, and Brown, researchers studied school districts along the Texas-Mexico border for disproportionality.³² This study concentrated on the effects of the prereferral process of LEP students to special education programs and found many school districts along the Texas-Mexico border at-risk for having an overrepresentation of LEP students in

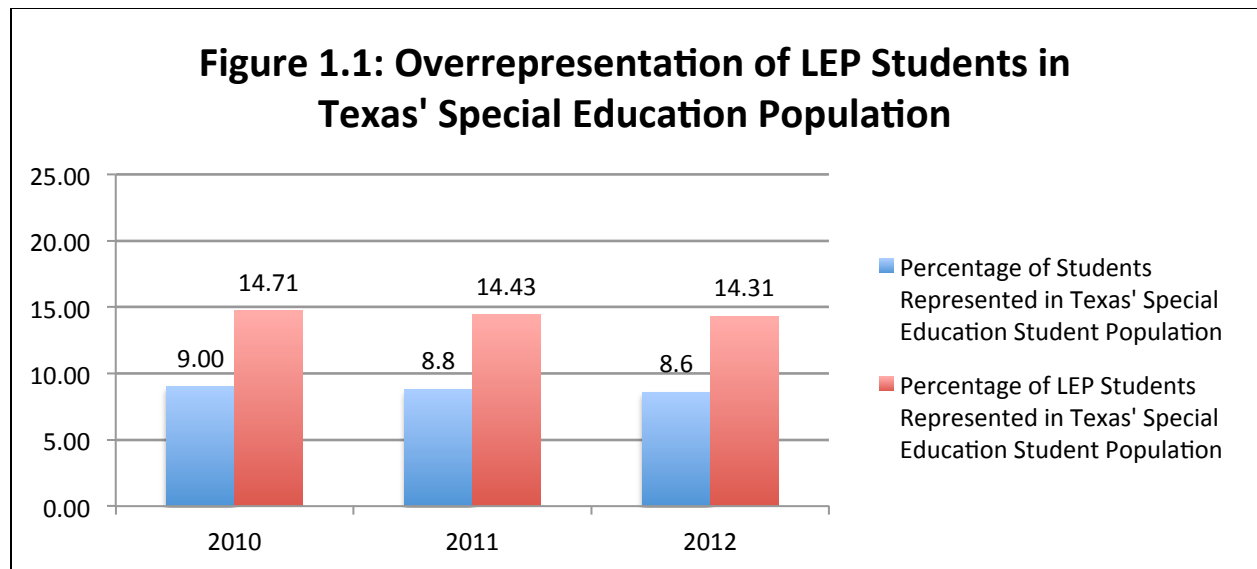
²⁹ Mary Ann Zehr, *Missouri Seeks to Aid ELLs Now Overlooked: Those with Disabilities*, EDUCATION WEEK, Apr. 2007, at 7.

³⁰ Guiberson, *supra* note 11, at 168; Mexican Am. Legal Def. and Educ. Fund, *supra* note 1.

³¹ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 8.

³² Terry L. Shepherd et. al., *The Disproportionate Representation of English Language Learners for Special Education Services Along the Border*, JOURNAL OF SOCIAL AND ECOLOGICAL BOUNDARIES, Spring 2005, at 104, 104.

special education.³³ The study further found that the lack of effective instruction in general education programs, the lack of prereferral interventions, and the use of inappropriate assessment materials lead to disproportionality.³⁴ The inconsistent provision of special education services on a district-wide level in Texas may lead to the overrepresentation of LEP students in special education programs at the statewide level (see Figure 1.1).



According to the Texas Education Agency, in the 2009-2010 school year, LEP students represented 14.7% of Texas' student population enrolled in special education programs. Compared to the 9% of the general population enrolled in special education programs, the state's 14.7% represents a disproportionate overrepresentation of LEP students enrolled in special education programs.³⁵

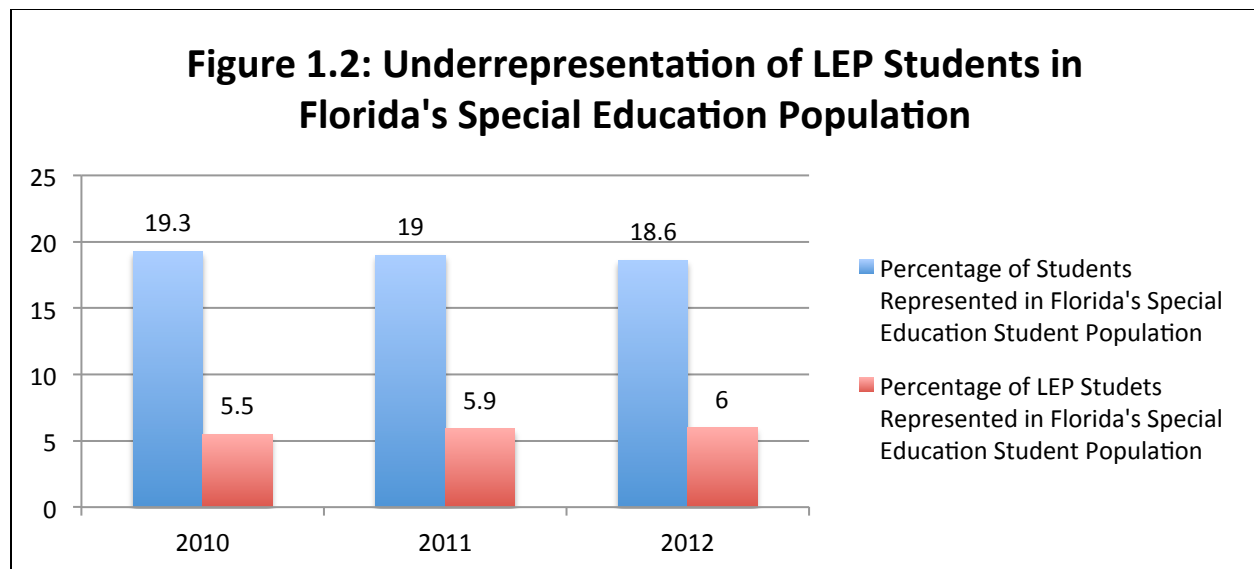
³³ *Id.*

³⁴ *Id.*

³⁵ Tex. Educ. Agency, *Demographic Data – Limited English Proficiency (LEP)*, TEA, <http://tuna.tea.state.tx.us/Tea.DataBook.Web/Forms/Default.aspx?package=speced%20enrollmen t%20cube&report=DemogLEP&speced=1> (last visited June 10, 2013); Tex. Educ. Agency Div. of Performance Reporting, *Academic Excellence Indicator System: 2011-2012 State Profile Report*, TEA, § 2, at 2, <http://ritter.tea.state.tx.us/perfreport/aeis/2012/state.pdf> (last visited June 10, 2013); Tex. Educ. Agency Div. of Performance Reporting, *Academic Excellence Indicator System: 2010-2011 State Profile*

The overrepresentation continued throughout the next school year with LEP students representing 14.4% of the student population enrolled in special education programs, while only 8.8% of the general population required special education services.³⁶ Furthermore, in the 2011-2012 school year, LEP students represented 14.3% of the student population enrolled in special education programs, while only 8.6% of the general student population participated in special education programs.³⁷

In contrast, Florida's population of LEP students faces a severe underrepresentation in special education programs (see Figure 1.2). Florida has the third-highest number of LEP students enrolled in its public schools.



In 2010, when the special education population represented 19.3% of the general student population, LEP students represented only 5.5% of the special education population.³⁸ Similarly, in

Report, TEA, § 2, at 1, <http://ritter.tea.state.tx.us/perfreport/aeis/2011/state.pdf> (last visited June 11, 2013); Tex. Educ. Agency Div. of Performance Reporting, *Academic Excellence Indicator System: 2009-2010 State Profile Report*, TEA, § 2, at 1, <http://ritter.tea.state.tx.us/perfreport/aeis/2010/state.pdf> (last visited June 11, 2013).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Email from Marie LaCap, Program Specialist, Bureau of Exceptional Educ. & Student Servs., to author (June 10, 2013, 09:13 CST) (on file with author); Fla. Dep't of Educ., *Membership in Programs*

2011, while the general education population enrolled in special education programs dropped to 19%, the LEP student population enrolled in special education programs rose to 5.9%.³⁹ The underrepresentation persisted in 2012 when the general education population enrolled in special education programs leveled out at 18.6%, while the LEP population enrolled in special education programs rose to 6%.⁴⁰

The author of this Policy Statement attempted to contact the California Department of Education and the New York State Education Department on numerous occasions to conduct similar statistical analyses. Unfortunately, both departments failed to communicate with the author.

While California failed to respond to the author's attempts to gather statistical data, studies conducted in California, the state with the highest number of LEP students enrolled in its public schools, indicate that disproportionality exists at the district-level across the state.⁴¹ In a study conducted by Artiles, Rueda, Salazar, and Higareda, researchers attempted to assess the representation of LEP students in various disability categories and grade levels, examine whether distinct special education programs led to the likelihood of LEP student overrepresentation, and check whether LEP student representation in various disability categories varied by social class and grade level.⁴²

The study found that California schools place increasing proportions of LEP students in special education programs during the elementary grades, even though LEP students appear

for Exceptional Students, 2011-2012, EDUCATION INFORMATION AND ACCOUNTABILITY SERVICES, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 11, 2013); Fla. Dep't of Educ., *English Language Learners, 2011-2012*, EDUCATION INFORMATION AND ACCOUNTABILITY SERVICES, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 11, 2013).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Alfredo J. Artiles et. al., *Within-Group Diversity in Minority Disproportionate Representation: English Language Learners in Urban School Districts*, COUNCIL FOR EXCEPTIONAL CHILDREN, Spring 2005, at 283, 283.

⁴² *Id.* at 286.

underrepresented in Grades K-5.⁴³ In Grade 6, however, overrepresentation becomes the trend.⁴⁴ This trend persists throughout the secondary level when special education placement data for LEP students indicates a considerable overrepresentation in special education programs.⁴⁵

Statewide, 24% of LEP students in California have been identified as having disabilities, while only 11% of the general student population identifies as needing special education services.⁴⁶ The 13% difference between the LEP student population enrolled in special education services and the general student population enrolled in special education services represents a disproportionate overrepresentation of LEP students enrolled in California's special education programs.

The disproportionate representation of LEP students in the special education population can largely be credited to the lack of certified professionals in the areas of both special education and English language acquisition.⁴⁷ Nationwide, 31% of LEP high school students have teachers who do not have a major, minor, or certification in bilingual education.⁴⁸ The severe shortage of qualified teachers often causes LEP students to be taught by the least experienced and least qualified teachers.⁴⁹

For example, during the 2009-2010 school year, there was an average of 33.3 LEP students per English as a Second Language ("ESL") teacher in Texas, compared to an average of 14.5

⁴³ *Id.* at 290.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Zehr, *supra* note 29, at 7.

⁴⁷ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 16.

⁴⁸ Nat'l Educ. Ass'n, *Focus On: Hispanics: Special Education and English Language Learners*, NEA.ORG (Dec. 2007), http://www.nea.org/assets/docs/HE/mf_hispanicfocus07.pdf (last visited on Aug. 5, 2013).

⁴⁹ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 16.

students for each general education teacher (see Table 1.4).⁵⁰ The trend similarly persisted throughout the 2010-2011 and 2011-2012 school years, with the average LEP-students-per-ESL-teacher ratio representing 43.5 and 47 LEP students per ESL teacher, respectively.⁵¹

Table 1.4: A LEP Student's Educational Environment in Texas⁵²			
	2010	2011	2012
Total Number of Students	4,824,778	4,912,385	4,978,120
Total Number of LEP Students	778,806	796,755	809,704
Total Number of Teachers	333,007	334,876	324,213
Total Number of ESL Teachers	23,412	18,301	17,231
Number of Students Per Teacher	14.5	14.7	15.4
Number of LEP Students Per ESL Teacher	33.3	43.5	47

The disparity seems to intensify with the underrepresentation of LEP students in special education programs. In Florida, during the 2009-2010 school year, an average of 178.6 LEP students per bilingual teacher cannot compare to an average of 15.8 students for each general education teacher (see Table 1.5).⁵³ The trend similarly persisted throughout the 2010-2011 and 2011-2012

⁵⁰ Tex. Educ. Agency Div. of Performance Reporting, *Academic Excellence Indicator System: 2011-2012 State Profile Report*, TEA, § 2, at 2, <http://ritter.tea.state.tx.us/perfreport/aeis/2012/state.pdf> (last visited June 10, 2013); Tex. Educ. Agency Div. of Performance Reporting, *Academic Excellence Indicator System: 2010-2011 State Profile Report*, TEA, § 2, at 1, <http://ritter.tea.state.tx.us/perfreport/aeis/2011/state.pdf> (last visited June 11, 2013); Tex. Educ. Agency Div. of Performance Reporting, *Academic Excellence Indicator System: 2009-2010 State Profile Report*, TEA, § 2, at 1, <http://ritter.tea.state.tx.us/perfreport/aeis/2010/state.pdf> (last visited June 11, 2013).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Email from Teresa R. Sancho, Program Dir., Fla. Dep't of Educ., to author (June 11, 2013, 09:29 CST) (on file with author); Fla. Dep't of Educ., *English Language Learners, 2011-2012*, EDUCATION

school years, with the average LEP-students-per-bilingual-teacher ratio representing 219.4 and 241.7 LEP students per bilingual teacher, respectively.⁵⁴

Table 1.5: A LEP Student's Educational Environment in Florida⁵⁵			
	2010	2011	2012
Total Number of Students	2,634,382	2,643,396	2,667,830
Total Number of LEP Students	228,749	243,078	244,376
Total Number of Teachers	166,724	169,540	168,135
Total Number of ESL Teachers	1,281	1,108	1,011
Number of Students Per Teacher	15.8	15.6	15.9
Number of LEP Students Per ESL Teacher	178.6	219.4	241.7

The author of this Policy Statement attempted to contact the California Department of Education and the New York State Education Department on numerous occasions to conduct similar statistical analyses. Unfortunately, both departments failed to communicate with the author.

Researchers and educational theorists also claim that inadequate assessments and the failure to distinguish between struggles faced by LEP students and struggles caused by learning disabilities contribute to the misidentification and disproportionate representation of LEP students in the

INFORMATION AND ACCOUNTABILITY SERVICES, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 11, 2013); Fla. Dep't of Educ., *Staff in Florida's Public Schools, 2011-2012*, EDUCATION INFORMATION AND ACCOUNTABILITY SERVICES, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 11, 2013); Fla. Dep't of Educ., *Staff in Florida's Public Schools, 2010-2011*, EDUCATION INFORMATION AND ACCOUNTABILITY SERVICES, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 11, 2013); Fla. Dep't of Educ., *Staff in Florida's Public Schools, 2009-2010*, EDUCATION INFORMATION AND ACCOUNTABILITY SERVICES, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 11, 2013).

⁵⁴ *Id.*

⁵⁵ *Id.*

special education population.⁵⁶ Research indicates that an overlap exists in the types of errors exhibited by LEP students and the types of errors exhibited by students with learning disabilities (see Table 1.6).⁵⁷

Table 1.6: Difference vs. Disability⁵⁸	
LEP Common Errors in English	Language Disabilities in Native Language
<i>Words not structured correctly</i>	<i>Confused sequencing when relating an event</i>
<i>Words not verbalized correctly</i>	<i>Lack of interrelatedness of symbols or objects</i>
<i>Words with incorrect meaning</i>	<i>Poor organization or sentence structuring</i>
<i>Errors in the use of plurals</i>	<i>Delayed responses or reactions</i>
<i>Incorrect word order and misplaced verbs or articles</i>	<i>Poor topic maintenance</i>
<i>Poor subject-verb agreement</i>	<i>Difficulty maintaining attention</i>
<i>Incorrect verb tense</i>	<i>Limited use of age appropriate vocabulary</i>
<i>Errors in the use of "the, those, these, a" with nouns</i>	<i>Poor memory</i>
<i>Incorrect use or omission of prepositions</i>	<i>Confused placement of words or phrases</i>
<i>Omitting enunciation of "s" to indicate possession</i>	

To better distinguish between the educational struggles exhibited during English language acquisition and struggles exhibited in individuals with learning disabilities, educational theorists have suggested implementing a three-phase instructional and assessment reform.⁵⁹ This three-phase reform includes creating a school environment that encourages the success of LEP students through the use of specific instructional strategies and providing early intervention through supplementary instruction.⁶⁰ The final phase of the three-phase reform includes referring students, who have received the benefits of both a positive school environment and early intervention strategies but who still seem to significantly struggle with the educational material, to special education.⁶¹

III. POSSIBLE SOLUTIONS: THREE-PHASE REFORM AND OTHER POSSIBILITIES

⁵⁶ Nat'l Educ. Ass'n, *supra* note 48.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 33-48

⁶⁰ *Id.* at 33-46.

⁶¹ *Id.* at 47-48.

In order to curtail the rising number of misidentified LEP students in special education, new assessment and testing procedures, as well as new instructional techniques, need to be implemented on a district-by-district level, beginning with districts that have an established disproportionality issue. Section III discusses a three-phase reform movement advocated by educational theorists, instructional techniques that can help eliminate the misidentification of LEP students needing special education services, and additional assessment and testing reforms proven to equalize the representation of LEP students in special education programs.

“Reliance on traditional practices, even when adapted for [LEP students], results in the misdiagnosis of bilingualism as a disability.”⁶² Special education assessments for LEP students may be difficult for a number of reasons, including a shortage of bilingual teachers and professionals who are knowledgeable on English language acquisition (discussed in Section II), a lack of cultural competency in understanding the various factors that influence the learning process of LEP students, and the lack of appropriate and valid standardized assessment tools and practices.⁶³ Traditional assessment practices contain high levels of content and linguistic bias and lack the inclusion of diverse groups in normative samples, rendering many traditional assessment tools inappropriate and ineffective to use with the LEP student population.⁶⁴

Assessment and testing reform demands that assessments be conducted by qualified bilingual evaluators who:

- (a) Use instruments and procedures appropriate for [LEP students];
- (b) provide accurate data about native language and English language performance;
- (c) identify modifications of instruction, methods, and materials needed for both native language and [ESL] instruction;

⁶² *Id.* at 21.

⁶³ Guiberson, *supra* note 11, at 170.

⁶⁴ *See, e.g., id.*

and (d) provide data to rule out such factors as limited English proficiency, cultural differences, economic status, and opportunity to learn as the causes of learning problems.⁶⁵

In order to better understand the educational needs of LEP students, teachers and educators must first develop cultural competency to better conceptualize the environmental factors influencing the learning processes of LEP students.

Cultural competency includes “knowledge of (a) one’s own culture and worldview, (b) racism and biases, (c) students’ cultures and worldviews, and (d) the ability to understand the world through diverse cultural lenses.”⁶⁶ Cultural competency also includes the ability of a person to appreciate, value, and celebrate cultural similarities and differences.⁶⁷ Because teachers evaluate student competence on the basis of factors other than ability, factors such as race, sex, economic status, language, and culture, it remains imperative that educators develop cultural competency in order to avoid classifying LEP students as in need of special education services on the basis of some other factor besides ability.⁶⁸

Cultural competency also lends to an understanding of parental involvement in the education of LEP students. Research indicates that parents of Hispanic children with disabilities remain moderately satisfied with the special education services that their children receive.⁶⁹ But Hispanic mothers who report experiences of bias and discrimination become defensive, distrusting, and suspicious of school staff.⁷⁰

⁶⁵ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 14.

⁶⁶ Guiberson, *supra* note 11, at 170.

⁶⁷ *Id.*

⁶⁸ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 16.

⁶⁹ Guiberson, *supra* note 11, at 169.

⁷⁰ *Id.*

Other researchers have found that disability classifications confused Hispanic parents, Hispanic parents received limited contact or communication from the school, and Hispanic parents believed that school professionals “demonstrated low effort when providing services, negative attitudes toward the child, and poor treatment of parents.”⁷¹ Moreover, in a study conducted by Lian and Fontanez-Phelan, research indicates that more than half of Hispanic parents believe that they should not interfere with teachers’ decisions in the education of their children.⁷² By increasing cultural competency through professional development and involving parents as active participants in assessment and evaluations, schools can minimize the misidentification of LEP students in special education programs.⁷³

After achieving cultural competency, educators can then implement a three-phase reform in order to reduce the number of LEP students wrongfully referred to special education programs. In her article, “Prevention of School Failure and Early Intervention for English Language Learners,” Alba A. Ortiz advocates the use of a three-phase reform when addressing the special education needs of LEP students.

The first phase of Ortiz’s three-phase reform mandates the prevention of school failure among LEP students through the creation of educational environments conducive to academic success and the use of instructional strategies known to be effective with LEP students.⁷⁴ The creation of positive school climates involves cultural competency in that it requires teachers to share a cultural knowledge base with their students and to accept linguistic and cultural diversity.⁷⁵ The development of a shared knowledge base and the acceptance of linguistic and cultural diversity

⁷¹ *Id.*

⁷² *Id.*

⁷³ ENGLISH LANGUAGE LEARNERS WITH SPECIAL EDUCATION NEEDS: IDENTIFICATION, ASSESSMENT, AND INSTRUCTION, *supra* note 2, at 23.

⁷⁴ *Id.* at 33.

⁷⁵ *Id.* at 35-36.

require teachers to explore native language instruction.⁷⁶ Research has proven that native language instruction provides for the achievement of high levels of English proficiency.⁷⁷ The creation of positive school climates also involves collaborative school-community relationships, academically rich programs, and the elimination of ineffective responses to school failure.⁷⁸

Effective instruction involves a number of instructional techniques used to assess the knowledge already retained by LEP students. Effective teachers draw heavily upon students' prior knowledge, creating connections between what students already know to what students need to learn.⁷⁹ In addition, effective teachers provide multiple opportunities for students to review previously learned concepts, prompting students to apply these previously learned concepts to target tasks.⁸⁰ Finally, effective teachers organize content into themes that connect the curriculum across content areas.⁸¹

Phase two of Ortiz's three-phase reform implements early intervention strategies as soon as learning problems become apparent.⁸² Early intervention strategies include "supplementary instructional services" that "are provided early in students' schooling and . . . are intense enough to bring at-risk students quickly to a level at which they can profit from high-quality classroom instruction."⁸³ Other early intervention strategies include clinical teaching, general education peer and teacher support, and alternative general education services, such as tutorial or remedial instruction.⁸⁴

⁷⁶ *Id.*

⁷⁷ *Id.* at 36

⁷⁸ *Id.* at 37-40.

⁷⁹ *Id.* at 40.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 41.

⁸³ *Id.* at 41 (citing Nancy Madden et al., *Success for All*, PHI DELTA KAPPAN, Apr. 1991, at 593, 594).

⁸⁴ *Id.* at 41.

An important aspect of early intervention includes the utilization of Teacher Assistance Teams. A school's Teacher Assistance Team ("TAT"), usually comprised of four to six general education teachers and the teacher who requested assistance, designs intervention strategies to help struggling LEP students.⁸⁵ At the TAT's preliminary meeting, the team reaches consensus on the nature of the problem facing the LEP student, determines priorities for the intervention, helps the teacher select the instructional strategies to be used in solving the educational problem, assigns responsibility for carrying out the recommendations, and establishes a follow-up plan to monitor student progress.⁸⁶ The teacher then implements the plan, with the assistance of the TAT, if needed.⁸⁷

If the plan implemented by the teacher resolves the educational problem, then the TAT does not meet again.⁸⁸ If the problem persists, then the team meets again and repeats the problem-solving process.⁸⁹

The third phase of Ortiz's three-phase reform includes referral to special education.⁹⁰ When the strategies outlined in phase one and phase two fail to resolve learning difficulties, then the educational problem warrants referral to special education.⁹¹

In addition to the three-phase reform advocated by Ortiz, many researchers suggest the use of dynamic assessment in order to better assess the abilities of LEP students.⁹² Dynamic assessment

⁸⁵ *Id.* at 44.

⁸⁶ *Id.* at 45.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 47.

⁹¹ *Id.*

⁹² See Guiberson, *supra* note 11, at 172.

places education within rich social and language learning experiences by implementing mediated instruction that supports the development of target skills.⁹³

Dynamic assessment, performed by an interventionist, consists of a four-step process.⁹⁴ The first step occurs before any instruction takes place: An examiner obtains baseline data on an LEP student before beginning instruction.⁹⁵ From this baseline data, an educational interventionist then restructures or modifies an educational activity that will be given to the LEP student.⁹⁶ The interventionist will then provide graduated prompting to see how much support the LEP student requires to be successful on the activity.⁹⁷ After providing prompting, the interventionist teaches the target activity.⁹⁸ The interventionist then reteaches the target activity and evaluates whether the LEP student generalized the targeted skill.⁹⁹

Ultimately, through the use of dynamic assessment, it can be determined whether a LEP student is able to progress and learn a particular skill when provided with an appropriate amount of scaffolding.¹⁰⁰ If the LEP student succeeds through the use of dynamic assessment, referral to special education would be inappropriate. But if the LEP student struggles, even with the use of dynamic assessment, referral to special education might be necessary.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id. at 173.*

IV. CONCLUSION

Even though underrepresentation persists as the national trend when analyzing the representation of minorities in special education programs, overrepresentation becomes apparent when analyzing minority representation in terms of disability type. Similarly, LEP students remain nationally underrepresented in special education programs. While underrepresented nationally, further disproportionate representation trends emerge when analyzing statewide levels or examining district-level representation. While no national standards have been put into place to better serve the overrepresented and underrepresented LEP population in special education programs, the issue presents a societal problem that, if not curtailed, could cause severe and long-lasting intellectual and emotional scars.

To battle the disproportionate representation of LEP students in special education, educational theorists have suggested implementing a number of assessment reforms that, if followed, could drastically reduce the number of LEP students referred to special education programs.