

State Policy and Guidance for Identifying Learning Disabilities in Culturally and Linguistically Diverse Students

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Abstract

This study investigates how state Departments of Education address the needs of culturally and linguistically diverse (CLD) students as they relate to the identification of students with a specific learning disability (SLD). A qualitative research design of directed content analysis was used to examine each state's regulatory criteria for SLD, as well as state guidance documents on SLD, response to intervention, referral processes, and English Language Learners. States varied regarding the degree to which they provided legislation and/or guidance for practices of identifying SLD in CLD students. Findings were organized around four promising practices: (1) assessment, (2) personnel, (3) instruction and intervention, and (4) systemic integration of general education, special education, and English as a Second Language. Implications for policy, practice, and future research are discussed.

Keywords

diversity, learning disabilities, policy evaluation, assessment, qualitative methods

Policy makers supported the use of a response to intervention (RTI) approach to identifying a Specific Learning Disability (SLD) before researchers had asked or answered key questions about such practices, especially as the process relates to culturally and linguistically diverse (CLD) students (Individuals With Disabilities Improvement Act [IDEA], 2004). Research has continued to indicate that CLD students are frequently misidentified as having an SLD (Haager, 2007; Rinaldi & Samson, 2008; Samson & Lesaux, 2009). Although the federal special education legislation specifically addresses CLD students and their families in regulations regarding assessment practices, parent communication, and consideration of underlying causes of learning difficulty (e.g., Federal Register Sections 300.306, 300.309, 300.311, 300.322, 300.148, 300.324, IDEA, 2004; Federal Register, 2006), much of the specific practices are left for the states to define or regulate as they see necessary. In this article, we examine how the needs of CLD students are being addressed in the states by reviewing their policy and guidance documents as they relate to the special education process, specifically the identification of SLD, including any referral or RTI processes or procedures.

CLD Students

Although multiple terms have been used in the professional literature to identify students who are CLD, such as English

language learner (ELL), student with limited English proficiency (LEP), native language speaker, dialect speaker, and student who is learning English as a second language (ESL), we chose to use the term *culturally and linguistically diverse* because it is a broader term and better captures the range of diverse learners across the 50 states. This definition did not include broad racial or ethnic identifiers (e.g., African American, Asian American). The number of CLD students attending school is increasing. For example, the number of school-aged children who speak a language other than English in the home rose from 4.7 million in 1980 to 11.2 million in 2009 (U.S. Department of Education, National Center for Education Statistics, 2012). Although many have written about best practices for culturally responsive instruction (Cartledge & Kourea, 2008; Klingner & Edwards, 2006; Utley, Obiakor, & Bakken, 2011), a disproportionate number of CLD students are placed in special education (U.S. Department of Education, National Center for Education Statistics, Schools and Staffing Survey, 2009). RTI is a

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recent education initiative hypothesized to reduce these disproportionate numbers in special education, specifically in the SLD category (Klingner & Edwards, 2006; Linan-Thompson, 2010).

SLD and CLD Students

The most notable changes from prior versions of IDEA were that an IQ–achievement discrepancy method could not be *required* by the state; a method based on a student’s response to scientific, research-based intervention could be allowed in state regulation; and other alternative, research-based procedures for determining whether a child has a SLD were allowed. After the IDEA 2004 regulations were published in 2006, each of the 50 states either adopted federal regulations as written and/or provided more detail in the form of state-specific regulations or guidance (see Boynton Hauerwas, Brown, & Scott, 2013; Zirkel & Thomas, 2010a, 2010b).

At the time RTI was included in federal education regulations, little research about how it would affect SLD identification and assessment was available. There is some evidence that RTI can result in improved outcomes for CLD students and reductions in the numbers of CLD students in special education (e.g., Cirino et al., 2009; VanDerHeyden, Witt, & Gilbertson, 2007; Wanzek & Vaughn, 2011). VanDerHeyden et al. (2007) found that when RTI was systematically implemented in one school district in Arizona, the number of students in special education decreased and student outcomes increased. VanDerHeyden and colleagues implemented universal screening and focused on getting at least 80% of all students meeting specific learning benchmarks. Wanzek and Vaughn (2011) found similar results for a district in Texas with a high Hispanic population. In this study, the teachers were provided with highly specific professional development that included effective use of the core reading program, how to differentiate instruction, progress monitoring, and small-group intervention practices. Together, these studies suggest that an accurately implemented RTI program that begins with and maintains a focus on effective Tier 1 core instruction as the foundation can result in fewer students needing special education.

Factors Influencing RTI Implementation

There are also factors related to RTI implementation that affect SLD identification as it relates to CLD students, including assessment, personnel, instruction and intervention, and systemic integration.

Assessment

Few researchers have examined the assessment practices related to SLD identification for CLD students. Barrera and

Liu (2010) discussed the option of using Curriculum-Based Dynamic Assessment. However, this is a proposed model of assessment and has limited research support for CLD students. The research on screening and progress-monitoring assessments with diverse populations is limited (Linan-Thompson, 2010) and national data that are disaggregated for CLD students is difficult to obtain. Research suggests that the relationship between language proficiency and reading performance on curriculum-based measures varies; language proficiency does not necessarily impact early literacy curriculum-based measurements (CBMs) or oral reading fluency CBMs (Leafstedt, Richards, & Gerber, 2004), but does impact performance on Maze CBMs (Kung, 2009). While using CBM data over time increases the reliability and validity of the measures, like other assessments, using CBM norms without establishing a normative sample of CLD peers to interpret the data may lead to biased interpretation (A. A. Ortiz & Artiles, 2010). These factors affect the ecological validity of the assessment process used to determine SLD in CLD students.

Personnel

Research has suggested that professional development for teachers and other school personnel is important when implementing an RTI process, especially for CLD students. Orosco and Klingner (2010) found that teachers often misinterpret an RTI approach as another prereferral process if they are not provided appropriate professional development and support in the form of resources and evidence-based interventions that can be used with CLD students. They found that when the RTI model in place does not meet the students’ needs and teachers become frustrated, a negative climate can develop at the school. Research has also suggested that the process for determining whether students’ difficulties are due to English acquisition is not well understood or applied by school personnel (Figueroa & Newsome, 2006; Orosco & Klingner, 2010), as students acquiring English often display similar characteristics to students with a SLD (Collier, 2011).

Instruction and Intervention

Studies of specific instructional methods and interventions tailored to CLD students’ needs show that finding the right intervention is essential (Gilbertson, Maxfield, & Hughes, 2007). Explicit instruction in phonological awareness and/or vocabulary that build on the students’ literacy skills in L1 and L2 have been demonstrated to be effective (Leafstedt et al., 2004; Pollard-Durodola, Mathes, Vaughn, Cardenas-Hagan, & Linan-Thompson, 2006). However, culturally responsive intervention practices must be validated for the specific populations of students and, frequently, evidence-based research does not provide enough information about language proficiency of participants, ethnicity, or environmental variables of the school (Klingner et al., 2005).

Systematic Integration

Another factor in accurate identification of CLD students' learning needs is the extent to which a problem in learning a first language affects English acquisition (Barrera & Liu, 2010; Wilkinson, Ortiz, Robertson, & Kushner, 2006). Typically, identification of an SLD requires a comprehensive evaluation. Assessments of students' academic progress and RTI, as well as multiple measures documenting students' specific strengths and weaknesses in achievement and processing skills have been recommended (Hale, Kaufman, Naglieri, & Kavale, 2006; S. O. Ortiz, Flanagan, & Dyma, 2008). Questions have been raised regarding the use of assessments in languages in which students are not proficient, and interpretation of achievement and progress results without knowledge of the impact of culture, language, educational, and family history. To address these assessment issues, the following best practices have been recommended in the professional literature: assessment in both languages, valid and reliable instruments and procedures, giving credit for correct responses in either language, alternative measures, measuring language proficiency and acculturation; adaptation of measures, describing patterns of strengths and needs, and determination of eligibility by a team that includes an expert in educating CLD students (Collier, 2011; A. A. Ortiz & Artiles, 2010; Wagner, Francis, & Morris, 2005). To successfully address the needs of CLD students, staff must work well together and understand each other's roles in the process.

Legislation and Policy Frameworks

Because RTI was included in legislation before it was clear how to bring such a policy to scale, it has influenced both practice and research. Each of the 50 states had to decide if and how it would adopt the RTI option. Several researchers have closely followed the states' adoptions of these regulations and guidance. Zirkel and Thomas (2010a; 2010b) and Boynton Hauerwas et al. (2013) summarized all available states' laws, regulations, and guidance related to implementing RTI for SLD identification. These studies provided snapshots of ongoing progress regarding RTI implementation and were consistent with Berkeley, Bender, Peaster, and Saunders' (2009) conclusions that states had begun RTI implementation, but approaches to implementation and specific practices varied widely. Still, none of these reviews examined the RTI implementation procedures for CLD students as they relate to instructing, intervening, or assessing for SLD.

Research Questions

Therefore, our research builds on prior reviews by examining each state's policies and guidance for CLD students as they relate to special education identification, specifically

SLD identification. The research questions guiding this review were (a) how are the needs of CLD students addressed in relation to SLD special education eligibility in state special education regulations, SLD criteria, and guidance documents that address SLD, RTI, and/or CLD, and (b) what specific practices are states recommending for CLD students who are experiencing school difficulties and might be eligible for special education?

Method

A qualitative research design of directed content analysis was used to address the research questions (Hsieh & Shannon, 2005). A qualitative content analysis enabled us to pay attention to the unique themes in state policies and guidance documents and to identify the range of what data and procedures states are using to support CLD students (Berg, 2001). A process of textual pattern matching was used to identify specific practices in various state documents that focus on the needs of CLD students. Similar to methods used by Phelps, Durham, and Wills (2011), our goal was to identify states that have promising policies and practices that support CLD students.

Sample

All 50 states' departments of education websites were searched for documents that pertained to SLD, RTI, and/or CLD students. States' documents accessed included special education regulations, SLD criteria, guidance for special education procedures, guidance for SLD identification, guidance for RTI, and guidance for supporting CLD students, including those who are eligible for special education. Professional development slides were not included in the documents sampled, nor were documents that spoke only to state-level RTI implementation procedures. In addition, previous articles (e.g., Boynton Hauerwas et al., 2013; Zirkel & Thomas, 2010a, 2010b) and the National Center for RTI website (e.g., www.rti4success.org) were referenced to identify additional sources. Other documents were accessed if they were referenced within another state regulation or guidance document. Last, ELL/Title III directors and special education directors of each state were contacted to confirm that we had identified the relevant documents from their respective departments of education. For a list of all documents included in the final analysis, please contact the first author (Amy N. Scott at ascott2@pacific.edu).

Procedure

The analysis procedure involved three phases of constant comparison of each state's documents to develop categories and codes reflecting the nature and purpose of each state's regulatory and guidance language concerning identification of SLD among students who are CLD. The federal special

education (e.g., §300.306, 300.309, 300.311 of IDEA, 2004) and LEP (Title III) regulations were referenced to identify possible search terms. The following terms were selected based on the frequency of their occurrence within and across the states' documents: ELL, LEP, SLD, response, RTI, learning disability, special education, ESL, Native Language, disproportionality, migrant, dialect, diverse, culture, and early intervening services.

Coding. To conduct highly specific reviews of each state's documents, the researchers randomly divided the states into three groups and used the search terms to locate specific references, policies, and/or procedures related to supporting CLD students in their assigned states. The terms were entered into each state's Department of Education website search tool. The resulting search results were used to locate and save specific documents. The documents were saved to a common computer drive where all researchers could access them. As a result of this first phase of data extraction, the research team formulated a list by types of documents and the types of practices designed to support CLD students.

Categories. This review resulted in two major categories of information: (1) the type of document (i.e., regulation or guidance) and (2) the amount of detail provided within the document related to policies and practices to support CLD students. Four codes were developed to identify the extent of attention to CLD needs in the document: (1) CLD not addressed beyond federal requirements, (2) indicates that evidence-based practices should be used for CLD (does not detail practices or refers to outside sources for evidence-based practices), (3) detail about specific practice(s) provided, and (4) consideration of needs of CLD throughout document. Codes (1) through (4) are generally continuous and represent the increasing amount of attention to the needs of CLD students that a state might include in documents.

Once these categories and codes were developed, the second phase of the analysis began. Each researcher applied the categories and codes to the documents from her assigned states. The researchers used a peer debriefing process that included regular meetings to review the category definitions and refine the coding and analysis procedures. Disagreements in category use were resolved via discussion and consensus. A data matrix of excerpts from all state documents by code was developed. The third phase of analysis included examining the documents for those states with codes (3) and (4). The specific practices included in documents coded as (3) were listed and reviewed. Then, all researchers reviewed the identified practices and jointly agreed on the categories of practices addressed by the states. For state documents coded as a (4), all three researchers carefully reviewed all of the states' documents and added the practices into the table.

Results

Due to the qualitative nature of the study and our research questions, the results are presented as a categorical analysis of the content of the states' laws and guidance related to SLD for CLD students.

State Regulations

Our review of state special education policy regarding SLD found that the majority of states (36) did not specifically address CLD students beyond the language that is included in federal regulations. An additional five states note the importance of evidence-based practices for CLD students in discussing non-discriminatory assessment and/or disproportionality and/or RTI; however, these states do not elaborate or provide detailed specifics on such practices in their laws. Nine states include specific practices for CLD students in their law that extend the federal legislation (see Table 1).

The majority of these laws elaborate on assessment practices for CLD students; however, a few states also address professional preparation and instruction. When assessing a CLD student, Connecticut requires the use of direct observation and collection of family information. Arizona and New Mexico also regulate the need for family information as a part of CLD-sensitive assessment practices. Three states require the use of native language assessments (GA, IL, NM). Alabama requires a checklist to be completed to document the use of CLD-sensitive assessment practices and Montana requires CLD-sensitive assessments. In regard to measures specific to the SLD criteria for CLD students, New Mexico and Rhode Island require performance and progress data to be considered in relation to English language proficiency standards as well as grade-level expectations. New Mexico requires that the status of the child's language development be considered. New Mexico also requires that a variety of factors are examined including acculturation, sociolinguistic development, length of residency, time spent in American schools, birthplace, sustained involvement with society or family outside of the United States, and ethnic identity. In addition, cultural and linguistic information is to be present throughout the special education report. New Mexico also provides a definition of "cultural factors" and "environment or economic disadvantage" (New Mexico Public Education Department, Special Education Bureau, 2012, p. 25).

The regulations in California, Illinois, and New Mexico address personnel involved in the evaluation and identification process. California requires interpreters or bilingual assessors and personnel explicitly prepared to assess students with CLD needs. Illinois also mandates the use of interpreters, and New Mexico mandates the use of interpreters when a bilingual evaluator is not available. California indicates that pre-referral plans should include the English

Table 1. Law and Guidance Documents by Category for Each State.

Category	Law	RTI guidance	SLD/SPED guidance	ELL that address SPED	Joint ELL and SPED
1	AK, AR, DE, HI, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, MN, NE, NV, NH, NJ, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY	AL, AR, HI, IA (2), KS, KY, LA, ME, MN, MT, NE, NH, NC, ND, OH, OK, PA, VT	AR, KS, MI, MO, MT, NE	ND (3)	
2	CO, FL, ID, OK, WI	MA, MS, TX, SD, VA, WA, WI, WY	SD, TN, TX, UT, WA, WV	ME	OK
3	AL, AZ, CA, CT, GA, IL, MT, NM, RI	AK, FL, MD, TN, SC	CA, GA, IL, MD, ND	AL, NY, MO, MN, ND, TN, WA	VT, WV
4		CO, CT, ID, IN, GA, NM, NY, RI, WV	CO, CT, IN, OR, RI	CT, GA	OR, CT

Note. RTI = response to intervention; SLD = specific learning disability; SPED = special education; ELL = English language learner. () = number of state documents that addressed this category.

instruction procedures to be used and that the instruction provided to the students be examined. In addition to standards-based instruction/intervention, Rhode Island indicates that English learners should be provided with instruction appropriate for their current language proficiency. New Mexico indicates that multilingual instructional supports should be provided and they have a series of steps that should be followed that focus on the importance of implementing culturally and linguistically responsive instruction for CLD students.

State Guidance

Whereas few states have regulated specific practices for the identification of SLD in CLD students, more states have provided guidance documents in one or more areas related to the SLD process, the RTI process, or English instruction and supports. In reviewing these guidance documents, there were four main findings: (1) practices related to assessment, (2) preparation or expertise of personnel, (3) instruction and intervention for CLD students, and (4) integration of support systems and documents (see Table 2).

Assessment. The area in which states provided the most specific practices for CLD students was in assessment. See Table 2 for the range of assessment practices. For example, Vermont's Joint ELL/SPED guidance indicates,

Assessing ELLs informally is essential because ELLs are not included in the normative samples of standardized assessments. Those assessments can be used for qualitative information. Some standardized evaluations can be used with certain groups, but dialect and geographic variety of the group need to be considered. (Vermont Department of Education, New England Equity Assistance Center, Education Alliance at Brown University, Northeast Regional Resource Center, Learning Innovations at WestEd, 2010, p. 37)

Georgia's ELL guidance indicates, "Under no circumstances should any academic decisions be made using an English-language test that was administered via translation or interpretation" (Georgia Department of Education, 2011a, p. 51). States addressed students' language needs in multiple ways: bilingual evaluation, native-language assessment, assessment of status of language development, and interpretation of data in relation to true CLD peers. Colorado's SLD guidance includes approved tests that can be used with ELL students, as well as an appendix with the stages of language development for easy reference. Checklists and flowcharts were tools that states included to help guide practitioners through the SLD evaluation process (Colorado Department of Education, 2008a).

Personnel. Another theme that emerged was the expertise or personnel that the team should consist of and how those professionals are prepared for their duties. This theme includes the use of interpreters, cultural liaisons, and/or bilingual personnel. Connecticut's ELL guidance highlights the importance of bilingual specialists noting, "At every point in the process, the ELL staff should be involved" (Connecticut State Department of Education, 2011, p. 40). New Mexico's RTI guidance also indicates that an individual with English instruction expertise should be included on the core student problem solving team (New Mexico Public Education Department, 2009, p. 73). West Virginia's Joint Special Education/ELL guidance notes the need for language acquisition expertise in the team process indicating, "Professionals with expertise in language acquisition must participate at the informal (grade level teams) and formal (Student Assistance Team, Multi-disciplinary Team, IEP Team) levels" (West Virginia Department of Education, 2007, p. 13). Colorado's RTI guidance notes the importance of a cultural liaison "to support parents and families throughout the problem-solving process" (Colorado Department of Education, 2008b, p. 39).

Table 2. Specific Practices That Were Elaborated or Provided Detailed Specifics to Address CLD Students in Guidance.

	RTI guidance	SLD/SPED guidance	ELL
Assessment			
CLD sensitive assessments	FL, MD, CO	CT, IN, OR, RI, CO	CT, GA, OR, VT
Alternative assessments	ID		
Bilingual evaluation	MD	IN	WA
Direct observation	CO		
Family info		CT, GA, OR, RI	GA, OR
Nonverbal assessment	MD, ID	IN	GA
Native language assessment	CT, MD	CT, GA, IN, OR, RI	CT, GA, OR
Checklist of factors related to CLD	FL	CO	WV
Data compared with CLD peers/ true peers	AK, CO, CT, NY, SC, WV	CA, IN, OR, RI, CO	CT, GA, OR, WA
Status/progress of language development	AK, CT, FL, MD, NM, NY, WV, CO	IL, IN, CT, OR, CO	CT, GA, OR, VT, WA
Acculturation	NM	OR, RI	OR
Language screening in native language and English	NY		
Test Accommodations	NM		
Flowchart of assessment for CLD	NM	CO	MO, OR, VT
Was RTI implemented with fidelity?	NM	CO	WA
Disability in both languages	GA	CT	CT
Personnel			
Bilingual evaluator		GA, CT	
Interpreters	MD		ND, OR
Cultural brokers	WV, CO	RI	WV, OR
ELL teacher on team	SC, WV, NM, NY	CA, ND, OR, RI	CT, ND, WA
English learner committee			AL
Professional development	CT, RI		WA, WV
Professionals prepared for CLD assessment		GA, CT, RI	OR
Instruction			
CLD-sensitive instruction	CT, IN, NM, NY, RI	CA, CT, GA, IN, OR, CO	CT, OR
Effectiveness of core curriculum for ELL students/ whole curriculum	CA, GA, NM, NY, RI	IL, CT, OR, RI	CT
Effectiveness of intervention for ELL	CA, IN, GA, NM, NY	CT, IN, OR, RI	CT, GA, OR
English instruction (included, and checked)	AK, GA, CT, IN, NM, SC, WV	IN, RI, CO	CT, GA, OR
Three-tiered model/RTI	IN, NM, RI, WV, CO	AK, CT, CO	OR
Interventions provided in native language and English	NM, NY (as appropriate)		
Differentiated instruction	NY		
IEP/Special Education services (address appropriate CLD instruction)	GA		CT, GA, ND, WA
RTI/(pre-referral) plan must include ELL procedures	AK, TN, CO, ID, NY	CO	WA

Note. CLD = culturally and linguistically diverse; RTI = response to intervention; SLD = specific learning disability; SPED = special education; ELL = English language learner.

Alabama’s ELL guidance indicates a separate EL committee should address the learning needs of English learners, rather than the pre-referral team (Alabama Department of Education, 2012, p. 16). States also address if and how translators should be used in the assessment process. Georgia’s Special Education guidance indicates that for ELLs, “. . . you will need a bilingual examiner. This examiner will be able to test

the limits during the administration to get a more complete picture of what is happening” (Georgia Department of Education, 2011b, p. 72). Four states acknowledge the need for professional development. West Virginia’s Joint Special Education/ELL guidance includes all teachers in supporting CLD students by noting the need for “training to help staff promote culturally sensitive and competent practices for

these students” (West Virginia Department of Education, 2007, p. 10).

Instruction and intervention. States have also addressed instruction or intervention for CLD students. Nine states have indicated the importance of providing CLD-sensitive instruction. Ten states indicate that the effectiveness of the curriculum and/or intervention needs to be considered. Oregon’s guidance for SLD indicates, “This approach requires the ‘blurring’ of the lines between general and special education, as well as close cooperation or merging of compensatory education services and services for English language learners” (Oregon Department of Education, 2007, p. 71). New Mexico’s RTI guidance also recognizes multiple options for support (e.g., Title I, Indian Ed, Bilingual, multidisciplinary team evaluation, 504, community agencies). In regard to instruction and interventions for CLD students, states varied considerably in their consideration of where ESL instruction fits in a multi-tiered model. According to the Connecticut’s Joint RTI/ELL guidance, English language instruction is part of Tier 1. Similarly, as indicated in Rhode Island’s SLD guidance, ELL services are considered as part of the core instruction and should not be the only interventions considered (Rhode Island Department of Elementary and Secondary Education, 2010, p. 44). Colorado’s SLD guidance specifically says that ELL instruction is not an intervention (Colorado Department of Education, 2008a). In contrast, South Carolina’s RTI guidance considers English for speakers of other languages (ESOL) instruction as Tier 2 (Section VI) and Indiana’s RTI guidance describes English instruction as a Tier 3 intervention, especially for older (age 14 or above) English learners. New Mexico’s RTI guidance indicates that English language instruction is part of the core instruction as it is “not feasible” to serve all ESL students in Tier 2 (New Mexico Public Education Department, 2009, p. 73). West Virginia indicates that English instruction is part of the core instruction, but that ELL students may still receive Tier 3 services and not need special education services. Georgia offers a unique description of ELL instruction in a tiered system:

Eligibility for ESOL services and placement in an ESOL class automatically is considered a Tier 4 Intervention. The ESOL class and support within that class meet the definition of the specially designed learning focus of Tier 4 . . . As the student progresses in language and academic proficiency, the level of interventions needed to support him or her should decrease accordingly. For the purposes of ESOL services and support for the majority of ELs, the Pyramid functions as a regressive model rather than as a model of progressive interventions. (Georgia Department of Education, 2011a, p. 49)

Thus states recognize the needs of CLD students to receive language instruction and intervention, but there is

no agreement as to how to identify English language services in a tiered model.

Systemic integration. The last finding was the amount of integration at a systems level that each state expects within school practices for SLD identification for CLD students. Guidance documents labeled code (4) in Table 1 addressed CLD students throughout their recommended practices. Ten states evidenced some integration within and across documents. Connecticut was chosen as an exemplar state of promising practice because each of its documents met the criteria for code (4): highly integrated practices that consider the needs of CLD students at every stage of support.

In Connecticut’s state regulations for special education (Connecticut Regulations, State Board of Education, 2010, Sec 18. §10-76d-9) that pertain to evaluation and SLD identification, Connecticut has adopted RTI criteria for SLD, and specific evaluation procedures have been included that address the needs of ELLs.¹ For example, the regulations that address the comprehensive evaluation include information regarding identification of the student’s sociocultural background and the assessment of language dominance, where appropriate. In addition,

[i]n the case of a child dominant in a language other than English, the evaluation shall also include systematic teacher observation of the specific areas of concern. Detailed information about the child’s performance at home and in the community and any prescriptive or diagnostic teaching which has taken place shall be included. (p. 11)

Consistent with the federal regulations, all evaluation procedures must be non-discriminatory, validated for the purpose for which they are used, administered by appropriately certified professionals, and administered in the child’s dominant language.

In addition to special education regulation, Connecticut has a variety of documents that address special education practices as they relate to SLD and ELLs. These documents offer specific information for practitioners regarding assessment and intervention practices for all students integrating information regarding special education and ELLs. Connecticut first published an RTI framework, Scientifically Based Reading Intervention (SBRI) guidance document in 2008 (Connecticut State Department of Education, 2008). This document includes some general references to best practices for instruction of ELLs and non-biased assessment practices. Connecticut then published additional guidance, and each subsequent document was aligned with the 2008 SBRI document and included more specific information about meeting the needs of ELLs. For example, the 2010 Connecticut Learning Disabilities Guidelines addresses the influence of language and culture on academic performance, as well as EL students’ access to

special education. Regarding Special Education referral and SLD determination, the Connecticut guidance highlights three concepts regarding ELLs: (1) professionals shall not assume that ELLs who are developing language are not disabled, (2) performance in the student's dominant language and in English shall be compared, and (3) Tier 2 and Tier 3 interventions should be implemented with fidelity and progress measured in comparison with "true peers." From the Connecticut SLD guidance,

The failure of a student from a cultural, racial, or linguistic minority group to progress sufficiently in interventions that are effective for most other students, including other students from similar backgrounds, could suggest a specific learning disability, assuming the student meets the criteria outlined in this document (Connecticut State Department of Education, 2009, pp. 40-41) . . . And ELLs with specific learning disabilities generally manifest similar problems in their dominant language as in English. (Connecticut State Department of Education, 2009, p. 56)

In addition, the Connecticut Bilingual Education policy (§10-17f of the Connecticut General Statutes, as amended by Public Act No. 99-21) and EL instructional models are included in appendices for easy reference.

Last, the Connecticut Administrators of Programs for ELLs recently developed two additional documents: (1) English Language Learners and Special Education: A Resource Handbook (Connecticut State Department of Education, 2011) and (2) Scientific Research-Based Interventions for English Language Learners: A Handbook to Accompany Connecticut's Framework for RTI (Connecticut State Department of Education, 2012). The first provides guidance regarding legislation that is related to ELL Education, and Special Education. The second document elaborates the Connecticut RTI model, SBRI, and includes features of core instruction and interventions for ELLs, use and analysis of assessments (screening, progress monitoring, diagnostic), as well as a flowchart of the process that integrates staff, assessments, and interventions for ELLs. Both current research references, and references to other Connecticut documents and resources, are integrated throughout all of these documents.

In summary, the review of state special education regulations, SLD criteria, and guidance documents found the majority of states have not provided specific regulation and/or guidance regarding CLD students beyond what is found in federal special education regulations. There are, however, some state RTI, Special Education and CLD/ELL documents that offer practitioners specifics regarding promising practices in (1) assessment, (2) personnel, (3) instruction and intervention, and (4) integration of support systems and documents.

Discussion

The purpose of this study was to extend previous reviews of state special education policy and guidance by focusing on the needs of CLD students when identifying SLD. IDEA 2004 and state regulations and criteria along with any guidance documents that the state departments of education have generated provide practitioners with additional direction concerning how to determine whether a child has an SLD and is eligible for special education. In other words, these regulations, criteria, and guidance documents are an integral part of establishing how practitioners are going to bring the policy as it relates to CLD students and SLD identification to scale. As noted by Blanchett, Klingner, and Harry (2009), it is important to place race, class, culture, and language at the forefront of educational decision making because by not doing so we assume that the American educational system, including special education, is race, class, culture, and language neutral. Thus, including these practices in policy or guidance is important for the states to do.

The type of guidance documents states have developed vary: SLD/special education guidance, RTI guidance, ELL guidance, and Joint ELL and special education documents. Nine states have included specific practices in their laws and 24 states have included specific practices in their guidance documents. Generally, state regulations and SLD criteria are concise and similar to federal regulation language, but in some states specific details regarding using RTI or evaluation practices were regulated. All of the 10 states that offered integrated practices for CLD students in their guidance documents did so within the context of RTI guidance and some of these states had additional guidance documents from special education and/or ELL as well. The majority of the other 14 states that have specifically addressed CLD students' needs in regard to SLD identification have not done so in the context of RTI, but rather the focus of their guidance seems to be best practices for special education evaluations. It is interesting that a number of states that have well-developed RTI frameworks and practices (e.g., IA, KS, PA) do not specifically address CLD students beyond federal special education regulations in any of their guidance documents.

In an effort to extend our inquiry about whether and how states were addressing the needs of CLD students in RTI practices, we gathered additional data concerning recent demographic shifts in the 10 states we identified as having more developed practices for CLD students. The percentages of CLD (based on ELL data) students as well as the percentages of students identified with SLD in these states are shown in Table 3. As these data show, there was no clear pattern in the percentages of students among these states. Two factors that may influence the lack of consistency are the rate of CLD student immigration into a given

Table 3. Demographic Data From States With Comprehensive Guidance on SLD and RTI.

State	Percent of ELL in U.S. schools, 2010-2011 ^a	Change in ELL student population 04-05 to 2009-2010 ^b	Percentage of children with disabilities that are CLD, 2010 ^c	Percentage of children with SLD that are CLD, 2010 ^c	Percent change in students with SLD from 2006 to 2011 ^d	Require RTI for SLD identification ^e
CO	13.1	+5.3	45	51	+10	Yes
CT	5.5	+7.7	41	43	-8	Yes
GA	5.3	+43.8	54	57	+2	Yes ^f
ID	5.9	-23.9	20	24	-33	Yes ^f
IN	4.7	-3.8	26	26	-15	Allow RTI
NM	16.1	-17.5	74	79	-11	Yes (K-3)
NY	8.7	NA	53	55	-9	Yes (K-4)
OR	10.9	-4.4	32	35	-7	Allow RTI
RI	5.1	-24.7	36	42	-27	Yes
WV	.6	-9.3	7	8	-21	Yes
National Average	8.8		47	52	-11	Allow RTI

Note. SLD = specific learning disability; RTI = response to intervention; ELL = English language learner; CLD = culturally and linguistically diverse; NA = not available.

^aU.S. Department of Education (2013). ^bNational Clearinghouse for English Language Acquisition and Language (2011), State Title III Information System, State Title III Directors and 2009/10 State CSPR. ^cU.S. Department of Education, Office of Special Education Programs, Data Accountability Center. Child Count (2013a). ^dU.S. Department of Education, Office of Special Education Programs, Data Accountability Center. Environments (2013b). ^eBoynton Hauerwas, Brown, and Scott (2013). ^fThis state requires RTI data plus a measure of cognitive processing.

state and distinct differences in how RTI policies for such students are framed.

Implications for Special Education Practice

Although education professionals across the country educate CLD students daily, they are challenged to meet their needs. Our review of the documents finds that there is no national consensus on how to meet the needs of CLD students prior to or during the SLD identification process. Findings regarding promising practices identified in guidance documents were grouped around 4 major themes: assessment, personnel, instruction and intervention, and systemic integration and have implications for a variety of stakeholders.

First, states provided the most details in the area of assessment of CLD students. Use of culturally sensitive assessment approaches, assessment of language (native, status of English development, and proficiency), data comparison with CLD peers, and use of assessment to monitor response to instruction were frequently included. Most of these practices are aligned with what the literature has deemed as best practices when evaluating for SLD (A. A. Ortiz & Artiles, 2010); as noted in the literature review, it is the systematic integration of effective instruction and assessment that benefits CLD students the most (Collier, 2011; A. A. Ortiz & Artiles, 2010; Wagner et al., 2005). A

practice in some states' regulations that has not been empirically validated is use of "alternative" assessments for CLD students. Nonetheless, research on the consistent implementation of these assessment practices and their impact is still needed. That states are looking to the best practice literature for their guidance is an important step in the right direction. For teachers and assessors who do not work in states with detailed guidance in this area they may want to look at the guidance that is available in the best practice literature or in other states' guidance documents.

Second, it is important that RTI, referral, and identification teams have expertise related to CLD issues. Most commonly, states recommend that an ELL teacher be part of the team. States also recommend that team members have training in CLD issues. Again, these practices are also aligned with what the initial research has indicated is best practice (A. A. Ortiz, Wilkinson, Robertson-Courtney, & Kushner, 2006). Despite the increasing numbers of CLD students attending U.S. schools, the majority of teachers and evaluation professionals are English-speaking Caucasians. In states where a bilingual evaluator, for example, is required or recommended, there must be enough professionals trained to meet the needs of the students within a district. Parents, particularly CLD parents, need to advocate for their child. Even though there may be an expert related to CLD issues on the team, parents often know their child best and can educate the team about their family's cultural and linguistic practices.

Teams also need to recognize the complex relationship between developing language proficiency in L2 and literacy development in L1 and L2 (Genesee, Lindholm-Leary, Saunders, & Christian, 2005). ELLs without learning difficulties have been shown to demonstrate gains in phonemic awareness and phonics skills when provided systematic Tier 2 instruction in foundational literacy (Vaughn et al., 2006). However, English learners also need sufficient time to develop language proficiency and, generally, need support for years, not the weeks sometimes indicated in RTI models. This is why English instruction for CLD students is best understood as another component of Tier 1 rather than being part of Tier 2 or 3. Tiered instruction is designed to be temporary and get a student “back on track.” Students who are ELL require ongoing and sustained instruction in English as well as core areas. In addition, educational professionals often do not have knowledge of language acquisition, or when they do, best practices in language instruction do not align with state policy, such as English-only policies (Dixon, Zhao, & Shin, 2012). However, well-trained teams who have received appropriate professional development on the implementation of quality classroom instructional approaches are able to reduce the disproportionate referral and placement of CLD students in special education (Gravois & Rosenfield, 2006). Therefore, it is important that teachers and other school personnel receive training and continued professional development in language acquisition.

Third, although states recognize the importance of culturally responsive instruction or intervention and acknowledge progress has been made in identifying instructional and intervention approaches, especially in reading, it remains clear that additional research that identifies the best instructional and intervention practices for CLD students is needed (Klingner & Edwards, 2006; Shifrer, Muller, & Callahan, 2010). Few states are providing details related to academic instruction and intervention for CLD students and states reflected heterogeneity in how to define CLD instruction in a multi-tier system. State guidance ranged from acknowledging that ELL instruction was not an intervention (CO), to defining ESL as Tier 2 (SC), to indicating that ELL instruction should be in the highest tier (4th Tier in GA). Although students’ needs should drive any access to services in the schools, in practice, the reality is that the tier in which students are “placed” may dictate the services that they receive. Research on best practices in English instruction for CLD students indicates that it should be provided as part of the core for those students who need it. The findings from studies where RTI was used with CLD students support this conclusion. English learners will not be able to master the language adequately to use it as the primary language of instruction unless it is part of their core instruction. Parents and teachers should be

aware that RTI processes and ELL support are not incompatible with one another. Parents should be aware that RTI and SLD practices are not uniform across the states and that moving across state lines could change services that their CLD child receives. Parents need to be aware of the research and when research recommendations conflict with state laws or guidance. In doing so, they are better able to advocate for their children and the services their children receive.

Last, it is important that state-level policy and school-level practice be an integrated system. Only 10 states have documents that integrate and continually address the needs of CLD students. Implementing a fully integrated system is a challenge. Resource allocations need to be considered, yet Connecticut’s documents are a model of such integration. When ELL professionals read their respective guidance or policy that indicates that they should discuss student needs with the special education teacher, and vice versa, these professionals are more likely to do so in practice. As RTI has become more commonplace in schools, CLD students routinely participate in screenings, interventions, and progress-monitoring activities. However, the fact that English learner education and special education are different and have separate personnel, policies, and funding often result in different screening and service delivery procedures. Fully integrated programs will require all professionals to work together using their expertise to provide appropriate services to CLD students. School personnel and parents need to use their expertise, whether they are the assessor who is knowledgeable about assessment or the teacher who is knowledgeable about teaching and interventions or the parent who is knowledgeable about the child’s family and culture.

Implications for Special Education Policy

There are best practice examples of guidance as evidenced by the amount of detail provided in 10 states’ documents related to the needs of CLD students in the RTI and assessment process for SLD. These guidelines align well with researched best practice. For example, considering ELL instruction as part of Tier 1 core practices and monitoring student progress have been found to benefit CLD students (VanDerHeyden et al., 2007; Wanzek & Vaughn, 2011). These guidance documents can be used to inform other state’s policies and guidance, especially in the areas of assessment, personnel, instruction and intervention, and systemic integration. As states continue to develop their policies and procedures they may want to examine these 10 states’ documents (i.e., CO, CT, ID, IN, GA, NM, NY, OR, RI, WV).

Those in the field responsible for implementing these new policies and procedures have often noted the need for specific direction on implementation procedures (i.e., When

can a referral for special education assessment be made?; Rinaldi & Samson, 2008). Practical features noted in the documents included flowcharts and specific questions for teams to ask. Features such as these may be summaries that can help teams condense copious amounts of information in the guidance documents into easier-to-follow procedures. In addition, providing examples about analyzing data may help teams better translate policies and procedures into practice and provide teams with a clearer idea of what types of data need to be collected and analyzed as part of an SLD assessment for CLD students. Last, by having documents that encourage communication and collaboration across disciplines, and reference other documents, such as a special education document referencing a Title III document, teams are more likely to be aware of each other's areas of expertise.

Although 10 states are making progress toward recognizing the importance of including practices specific to CLD students and another 13 states have some specific policies and procedures (i.e., AL, AK, CA, FL, IL, MD, MN, MO, ND, SC, TN, WA, VT), there are still many states where policies and expectations for practices with CLD students are not explicit. As states implement these policies and practices, they need to continue to monitor the disproportionality of CLD students in special education, particularly in the SLD category. Continued refinement of procedures may be needed to insure appropriate practices are used with the CLD population. Although guidance documents are often not legally binding, it makes sense that policies for CLD students would be contained in these documents and not laws, as these documents are often developed to address disproportionality, encourage similarities in identification across districts, and easier to change and update in response to research. It is important that policy developers, school personnel, and researchers work together to develop and implement appropriate practices for the intervention and assessment of CLD students.

Limitations

The research performed was a thorough analysis of the available state documents that address RTI, special education, and SLD; however, there were limitations. First, states' documents about RTI and SLD identification practices are evolving and diverse. States are continuing to develop and revise guidance and regulations regarding RTI and SLD and some new documents were published during the time when our research was ongoing. The documents included in this research are those that were publicly accessible as of September 2012. In addition, the state departments of education have approached the development and publication of guidance documents and regulations in different ways, and accessing documents was not straightforward. While we reviewed state websites in three rounds, cross checked with previous research, and

contacted state departments of education to ask if we had accessed all the relevant documents, we may have missed some. Second, our review of the documents may have missed a relevant detail or section. Most regulations and guidance documents reach over a 100 pages and address many facets of instruction, assessment, and special education policy; as such our multi-step search of the documents may have overlooked pertinent sections. In addition, in reporting on the results we provide examples from different documents but these are not the only possible examples available; there were other examples of practices related to CLD students included in the documents and lack of inclusion in this analysis does not mean that these documents do not include best practices. Last, it is impossible to know how well teachers, administrators, and others working in schools know and implement the policies and procedures that a state has adopted.

Future Research

While recent research on SLD identification practices is included in many of the state department of education regulations and guidance documents, additional research is needed for practices specifically related to the identification of CLD students. Some states have added additional assessment practices to address the identification of CLD students as SLD. While conducting CLD-sensitive assessments is a common recommendation for SLD evaluations, exactly what constitutes a CLD-sensitive assessment is an important question. When additional assessments or procedures are added to the already existing procedures, the process becomes more complex and questions related to scalability arise, especially in the area of bilingual assessments, as many practitioners are not bilingual. As states have not come to consensus as to what tier English language instruction is in, more research is needed as to what the continuum of services is and should be for CLD students. Research needs to inform policy and policy needs to drive research so that we have reasonable, ethical, and equitable laws and practices for CLD students.

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Note

1. ELL is the term used by CT to refer to culturally and linguistically diverse students and thus was chosen to be used in this exemplar.

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