



GUIDELINES FOR NYSED PRESCHOOL EVALUATIONS

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INTRODUCTION:

In 2005 Dr. Thomas Hehir was asked to review and make recommendations on the state of special education in NYCDOE. One of Hehir's strongest criticisms focused on NYCDOE's use of standardized test scores to identify disability (Hehir, 2005, p. 54). Hehir recommended that NYCDOE move away from a score-based medical model to a social model that could account for sociocultural factors.

Further concerns in the disability evaluation process have been raised more recently. In a series of audits in the last several years by the NYS Office of the Comptroller, Thomas DiNapoli revealed that "[b]illing fraud appears to be common" (Halbfinger, 2013). Preschool disability evaluations contribute to the fraud. "Evaluating children by itself was not much of a moneymaker, yielding perhaps \$1,000 per child from the program. But providing the services that resulted from an evaluation could bring tens of thousands of dollars a year in tuition payments. . . . Teachers and therapists said Bilingual SEIT's evaluators sometimes exaggerated the disabilities of children with mild speech and other problems to justify expensive instruction. 'When students were quote-unquote not qualified to receive services, the psychologists made children sound more severe,' a former therapist, said on the condition of anonymity to preserve his ability to remain in the field." (Halbfinger, 2013).

The current clinical practice that identifies disability based primarily on a single standard score is flawed. Indeed, NYSED policy, regulations, and guidelines and federal law since IDEA 1997 prescribe quite a different approach to disability evaluations. More disturbingly, regular reports from quality evaluations in the field indicate that NYSED employees who evaluate the sufficiency of preschool disability evaluations require standardized test scores to identify disability. This appears to be most widespread in Suffolk and Nassau counties. NYSED owes it to the preschoolers and students in NYS to take action to ensure that its representatives in the field are well trained and understand the complexities of distinguishing a disability from a host of issues including second language learning, the impact of poverty, and/or cultural differences.

This memo sets forth the current standards for disability determinations which are consistent with a diagnostic process consistent with a social model. This is nothing new for New York State. In fact, a review of the in-depth guidance set forth in NYSED's 1990 guidelines shows that NYSED's policies over 20 years are consistent with Hehir's 2005 recommendation regarding appropriate evaluations. Yet, the current clinical practice in

NYSED is out of sync with the federal law and NYSED regulations in Part 200 and policies. The current over-reliance on standardized test scores to identify disability leads to bilingual, minority children and adolescents, and those from lower income families being over-identified as having a disability. It is time to shift the current clinical practice.

CURRENT FEDERAL and STATE STANDARDS:

The federal law sets the minimum standard that the state and city must meet. “Assessment and intervention for CLD children must be consistent with State and federal laws and regulations” (*NYSED Preschool Guidelines*, p. 2).

IDEA 2004 Congressional Findings Provide Framework for Interpretation:

The Congressional Findings that preface IDEA 2004 provide an important context for any discussion of evaluations and disability determinations for bilingual and minority children. Any evaluation standards, procedures, or guidelines must be read and interpreted in light of these findings, specifically:

- a) "Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education." 20 U.S.C. § 1400(c) (11) (B)
- b) "Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds." 20 U.S.C. § 1400(c) (11) (C)
- c) "Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities." [20 U.S.C § 1400(c)(12)(A)]
- d) "More minority children continue to be served in special education than would be expected from the percentage of minority students in the general population. [20 U.S.C § 1400(c)(12)(B)].
- e) "Studies have found that schools with predominantly White students and teachers have placed disproportionately high numbers of their minority students into special education." [20 U.S.C § 1400(c)(12)(E)]

Assessment materials must not be racially or culturally biased:

IDEA 2004 and NYS regulations specifically require that “Assessments and other evaluation materials used to assess a child . . . are selected and administered so as not to be *discriminatory on a racial or cultural basis.*” [20 U.S.C § 1414) (b) (3) (A)(emphasis added); NYS Part 200.4(b)(6)(i)]

Discrimination on a racial or cultural basis can occur in many ways when evaluating a child including:

- a) *Inadequate normative sample.* NYS guidelines provide that *standardized tests are valid only for those populations included in the standardization population of the test. Guidelines for Services to Students with Limited English Proficiency and Special Education Needs in NYS*, NYSED, 1991, page 9, No 6.
- b) *Differences in language socialization practices.* IDEA requires that differences in language socialization practices be considered when determining eligibility for special education and assessments and other evaluation materials. Sec 300.304(c), Fed. Register, 71(158)(August 14, 2006).
- c) *Disability determinations based upon Limited English proficiency.* IDEA 2004 and the NYS regulations forbid the determination of a child as a child with a disability if the determinant factor for that determination is “[L]imited English proficiency.” [20 U.S.C § 1414(b) (5) (C); NYS Part 200.4(b) (6) (i)]

Assessment materials must be valid and reliable:

Federal and state regulations and law require that assessment materials must be valid and reliable. The examiner’s manuals for the currently available standardized and criterion referenced tests contain sufficient data to show that the results of these tests will not be valid for children and adolescents from bilingual, multicultural, or low SES homes.

- a) IDEA 2004 and NYS regulations require that assessments and evaluation materials only be used for purposes for which they are “valid and reliable” [20 U.S.C § 1414(b)(3)(A)(iii); NYS Part 200.4(b)(6)(i)].
- b) NYSED states in the *Guidelines for Services to Students with Limited English Proficiency and Special Education Needs in NYS*, 1990, page 9 No 6: “If a test used to assess an LEP student is not valid for the student, informal assessment tools may be the best alternative.”

NYSED SPECIFIC EVALUATION GUIDELINES:

General approach to evaluations of CLD students:

NYSED’s *Regulations of the Commissioner of Education Part 200.4* are explicit:

“School districts shall ensure that. . . assessments and other evaluation materials used to assess a student under this section are selected and administered so as not to be discriminatory on a racial or cultural basis (NYS Part 200.4(b)(6)(i)(d)).

NYSED policies (NYSED, 1990) further describe appropriate evaluations:

“Emphasis may need to be placed on other than standardized test data. Few instruments are available which have valid and reliable norms for culturally and linguistically diverse students. As a result, other avenues of data collection (i.e., task analysis, criterion referenced tests, etc.) should be used to gain a more accurate reflection of the student’s abilities” (NYSESED, 1990, p. 6).

“Assessment personnel shall collect information to rule out, to the extent possible, linguistic, cultural, or ethnic differences as the primary explanation for the stated referral problem” (NYSESED, 1990, p. 6).

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“The [child’s] repertoire of experiences may be different than the experiences necessary for successful completion of test items” (NYSESED, 1990, p.6).

“Tests should be culturally nonbiased and reflect other than mainstream societal values” (NYSESED, 1990, p. 5).

“When collecting data on students from culturally diverse backgrounds, all aspects of the student’s environment should be considered and different means of assessing the student should be used (NYSESED, 1990, p. 9).

“In assessing the student’s abilities in both language, the dialect and/or language used by the community should be used as the norm The age of the student when the second language was introduced, and the manner in which it was introduced, is also important” (NYSESED, 1990, p. 9).

“Language data is essential to distinguishing characteristics associated with the normal second language acquisition process and those associated with a specific language disorder” (NYSESED, 1990, p. 9).

Care in the selection of evaluation instruments is as important if not more important when evaluating second language learners because of the scarcity of psychometrically acceptable instruments. The concepts of validity and reliability for tests and procedures are essential in safeguarding the rights of the children. It is equally important to realize that if the instrument is not valid with the target population the scores may not be reported as if they were valid. The district must assure that the persons conducting the evaluation know how to review the documentation provided on assessments in order to determine their validity for children who are English language learners. (NYSESED. 2002. Key Issues in Bilingual Special Education Work Paper #4: Considerations in Assessment, p. 2).

Policies specific to identifying disability in preschoolers

Preschool development differs among cultures:

"Families from diverse cultures may expect certain skills to emerge at different ages and may provide different experiences and materials for their children. Typical parent-child interactions and the interactions of children with peers and adults other than their parents also differ significantly between cultural groups as well as within a given cultural group" (*NYSED Preschool Guidelines*, p. 7).

Invalid test scores:

"To determine whether a CLD preschooler should be classified as a preschool student with a disability, his or her performance should be compared with the accepted milestones for child development within his or her cultural and linguistic group. Because so few instruments have been normed on CLD populations, evaluators will need to rely on other methods of evaluation such as transdisciplinary play-based assessment (Linder, 1993), task analyses (Howell, Fox & Moorehead, 1993), criterion-referenced tests (Tindal & Marston, 1990) and/or observations of the child in a variety of settings." (*NYSED Preschool Guidelines*, p. 14).

"Children who have a history of poverty or trauma in the home or who have had limited exposure to language related activities, may be exhibiting learning or adjustment difficulties without having a specific disability" (*NYSED Preschool Guidelines*, p. 4).

The reporting of scores for translated tests is prohibited:

NYSED guidelines state: "Scores obtained from tests translated, but not standardized, on the student's cultural group or translated by the examiner during the assessment processes *may not* be used as representative of the students' present performance. The information collected and reported should be of a descriptive nature" (NYSED 1990, pp. 8 and 9, emphasis added).

Yet, currently not a single preschool test to assess cognition that has been adapted for any language other than English. Based on NYSED guidelines, no psychological disability evaluations report produced in NYS should provide any test scores for bilingual preschool children. Two speech-language tests have been adapted into Spanish. But an analysis of the validity and bias issues present in these two tests reveals that they fail to meet federal or state standards.

Information about the child must be from a variety of sources and contexts:

"To determine whether a CLD preschooler should be classified as a preschool student with a disability, his or her performance should be compared with the accepted milestones for child development within his or her cultural and linguistic group."

"[I]t is extremely important that the personnel involved in all aspects of the multidisciplinary assessment be familiar with the student's cultural and linguistic

background and relevant research regarding such background. It is also important that these individuals have experience with culturally and linguistically diverse preschool-age student[s] who are exhibiting age-appropriate behaviors.”

NYSED Preschool Guidelines, p. 14).

Additional NYSED Support

NYSED provides policies and guidelines on what the psychologist and speech-language pathologist need to know to do competent preschool evaluations. If these professionals have these competencies, they would know that not a single standardized test can distinguish a disability from second language learning, culture, or low SE, and that current tests are based on mainstream American middle-class school-oriented cultures, leading to cultural and racial biases.

NYSED Standards for bilingual psychologist. NYSED policies state that bilingual psychologists have:

“Knowledge of the culture of the child/youth's language group and an understanding of the impact of culture on performance and behavior.

“Professional experience with culturally and linguistically diverse (CLD) children and youth.

“General knowledge of psycho-educational assessment and report writing for CLD children and youth in English and the primary language including the:

- Limitations of assessment for CLD children and youth;
- Selection of appropriate instruments for CLD children and youth;
- Adaptation of available instruments for CLD children and youth;
- Use of qualitative and alternative assessment techniques; and
- Ability to interpret assessment data through the integration of socio cultural background, experiential background and socio-linguistic developmental factors.

NYSED standards for speech-language pathologists:

In regard to the use of standardized test scores, NYSED practice guidelines for speech-language pathologists and audiologists (2009) specifically state that these professionals need the knowledge and ability in the following areas:

“Sociolinguistic and cultural influences including:

1. Impact of social and political power and prestige on language choice and use; and
2. Impact of topic, participant, setting, and function on language use/production; and

3. Language socialization patterns that affect language use, including narrative structures; importance of labeling; use of metaphors, attitudes toward appropriateness of child-adult and child-child communications, discourse norms, and ways of gathering information.

“Language and linguistics including:

1. Language development in simultaneous and sequential bilinguals;
2. Difference between an accent and a dialect, and a language and a dialect; and
3. Typical development in an individual's language(s)/dialect(s), including how to determine and identify typical development based upon the norms of the individual's speech community or communication environment.

“Assessment materials/tests/tools including:

1. Appropriate use of available assessment tools so that those that fail to meet standards be used as informal probes, with no accompanying scores;
2. Appropriate use of alternative approaches to assessment; and
3. Awareness of cultural and linguistic biases in testing materials.

“Making the differential diagnosis between a true communication disorder a cultural or linguistic difference that might appear as a disorder to the untrained clinician.”

(NYSED, 2009).

CONCLUSIONS:

Appropriate evaluation procedures, guidelines, and standards for preschoolers in NYS is set forth in law, regulations, policies, and guidelines. At a minimum, evaluations must meet the standard set by the federal law and state regulations on special education. Given the current state of standardized tests, the use of standardized test scores to determine disability, whether for a bilingual or minority child or one from a low socio-economic background, results in invalid and biased assessments. The practice is widespread and single standardized test scores continue to be required and used as the primary means of identifying a disability.

In light of findings of the recent investigations by the NYS Comptroller’s Office regarding fraud in preschools for children with disabilities and the investigative articles by the *New York Times* it is critical for NYSED to take action. NYSED must ensure that NYSED representatives throughout NYS end the requirement of standardized test scores to determine disability and move to a social model based on valid and reliable assessment materials without significant cultural or racial biases.

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