



# Chapter 1

## INTRODUCTION

### Key Points

- ◆ How the changing demographics of students in today's classrooms create challenges with the identification and placement of CLDE students
  - ◆ What laws and policies shape the educational programs available to English language learners, students with special needs, and CLDE students
  - ◆ Why it is important for all teachers to be prepared to work with CLDE students
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**CASE STUDY 1.1****Impact of Cultural and Linguistic Diversity on Academics**

I was born in the United States. Both my parents are from Sri Lanka. They are Tamil and speak Tamil. I also lived with my grandmother who spoke to me in Tamil and English.

In second grade, I was said to have slow processing skills with reading comprehension. In order to address this issue, the teacher encouraged my parents to use only English in the house. From that moment on, I did not hear Tamil. At the time, I really did not mind whether I interacted with my language or not. But now, looking back, I wish my parents hadn't stopped speaking to me in Tamil, because I feel that I lost a part of my heritage. However, my parents did what the teacher told them to do. My parents' culture dictated that they not get involved in school and that they leave the schooling to the teacher, the student, and no one else. Therefore, my parents followed the teacher's advice because in Sri Lanka we believe that the teacher knows best for the student.

In middle school, I was still placed in lower-division classes. I was mainstreamed for math and science but was not mainstreamed for English classes. In the basic English classes, we learned how to make sentences and learned basic grammar. This placement made me feel incompetent. In the eighth grade, I transferred to a different school. I was put in all general education classes for the first time. At this school, they realized that I did not have a reading disability and I became more confident in my academic abilities.

It is nice to have parents like mine who just say "yes" to teachers, who trust even if they don't understand what the school is actually doing. In this case, the parents may not be able to communicate the proper information for the benefit of their child. In Sri Lankan culture, families do not talk back out of respect to the teacher. I was always told by my parents that the teacher is never wrong and she or he is always correct. This puts a strain on the relationship between student and parent because if there is a conflict, who is going to side with who? Teachers should recognize that they have more power than they think, and some of their decisions can put students on the wrong path for a long time. Teachers must attempt to know the culture and language of the student first.

—Bilingual, bicultural student

Consider the case study above:

- How does this student reflect the demographics of today's schools?
- What program or placement options would have been an effective learning environment for this student?
- What recent changes in legislation would have served this student?
- What training could teachers have benefited from in order to better meet the needs of this student?

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SOURCE: Used by permission.

Case Study 1.1 illustrates the complexity of learning in U.S. schools as a bilingual, bicultural person and the mislabeling that can occur when teachers do not understand the culture or language acquisition process. When the student was first labeled as having reading comprehension issues, he was still working in two languages and two cultures. His reading issues may have been part of the normal language acquisition process or cultural mismatch, not necessarily a learning disability. School literacy activities can sometimes presuppose cultural knowledge and language that children and their families may not have acquired (Klinger, Artiles, & Barletta, 2006; Trueba, 1988).

Identification of English language learners with special needs continues to be a significant issue in education. It is often unclear whether the English language and culture acquisition process is interfering with learning or is masking a learning disability (Wagner, Francis, & Morris, 2005). Because the number of **culturally and linguistically diverse exceptional (CLDE) students** is increasing, educational practitioners must understand the cultural complexities, the linguistic complexities, the learning process complexities, and the laws and placement options pertaining to both English as a second language and bilingual education, and special education.

This chapter will begin with a review of the demographics of the students in today's schools. We will examine the numbers of students who are learning English as a second language (ESL), the percentages of students who have special needs, and the growing numbers of CLDE students. We will discuss the laws concerning the education of English language learners and students with special needs and examine program options for CLDE students. We also consider the least restrictive environment for CLDE students, and discuss the philosophical underpinnings of these placement options.

## ESTABLISHING THE RATIONALE: DEMOGRAPHICS OF STUDENTS IN OUR CLASSROOMS

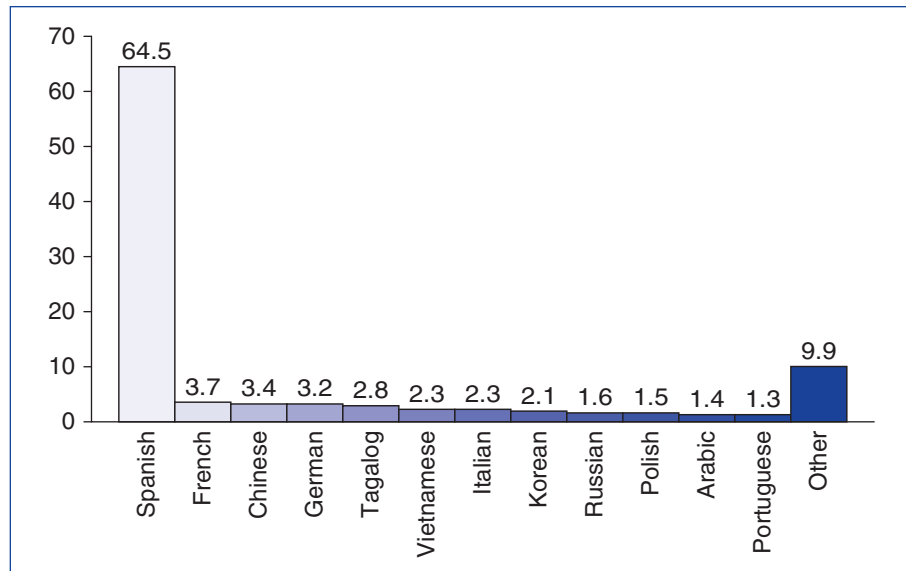
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### Demographics of English Language Learners

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Today, approximately 19.5% of the U.S. population speaks languages other than English. The majority language spoken among immigrants today is Spanish, followed by French, Chinese, and German (Modern Language Association [MLA], 2006) (see Figure 1.1). Nearly 65% of bilingual people living in the United States speak Spanish as a first language, and Hispanics, who may be of any race, showed a 57.9% growth rate from 1990–2000, making Hispanics the fastest-growing population in the United States today (U.S. Census Bureau, 2000).

The U.S. public school population reflects this general population growth and an estimated 19% of school-aged children (ages 5–17) speak a language other



**Figure 1.1** Percentages of Those Speaking Languages Other Than English in the United States

SOURCE: MLA, 2006.

than English (National Center for Education Statistics [NCES], 2006). By 2030, the number of school-aged children who speak a language other than English is expected to grow to 40% (U.S. Department of Education [USDOE] & National Institute of Child Health and Human Development [NICHD], 2003). It is estimated that 12.8% of the school-aged population speaks Spanish as a first language, and although students designated as **English language learners (ELLs)** speak a variety of languages, Spanish-speaking students represent over 79.2% of ELL students, followed by Vietnamese (2%), Hmong (1.6%), Cantonese (1%), and Korean (1%) (Kindler, 2002; MLA, 2006; Zehler, Fleischman, Hopstock, Stephenson, Pendzick, & Sapru, 2003).

The majority of ELL students preK–12 are concentrated in the western part of the United States. All states in the nation, however, have preK–12 ELL students enrolled in their schools and some states in particular have seen tremendous growth in the ELL student population over the last 10 years. Nevada, Nebraska, Arkansas, Indiana, Kentucky, Tennessee, Alabama, Georgia, South Carolina, North Carolina, and Colorado have all experienced over 200% growth in ELL student population since 1994 (National Clearinghouse for English Language Acquisition and Language Instruction Education Programs, 2006).

While demographic data indicate that Hispanic students make up the majority of ELL students in U.S. schools, Hispanic students continue to be more at risk than any other student population. The educational attainment rate of the Hispanic population is significantly behind the educational attainment rate of other foreign-born and native-born individuals. In 2006, only 59.3% of the Hispanic population 25 and over had completed high school as compared to 86.1% for whites, 80.7% of blacks, and 87.2% of Asian Pacific Islanders (U.S. Census Bureau, 2008). Data indicate that Mexican students have the lowest educational attainment rate of all Hispanic populations.

### Demographics of CLDE Students

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There are few studies that have begun to approximate the numbers of CLDE students in our schools. Presently, data indicate that 13.7% of the general school-age population is identified as having special needs (Office of Special Education and Rehabilitation Services [OSERS], 2003). National survey studies estimate that 9% of ELL students are also designated as having special education eligibility, and it is estimated that CLDE students account for 8.2% of all special education students (Zehler, Fleischman, Hopstock, Pendzick, & Stephenson, 2003). Spanish-speaking students make up the great majority of CLDE students and approximately 80.4% of students identified as CLDE speak Spanish as a first language (Zehler, Fleischman, Hopstock, Pendzick, et al., 2003).

While we are able to approximate the numbers of CLDE students in U.S. schools, accurate identification of CLDE students remains a concern. There is currently no uniform method for identifying CLDE students across the nation's school districts and large discrepancies across districts have been reported in the manner of their classification (Abedi, 2004, 2005; McCardle, Mele-McCarthy, Cutting, Leos, & D'Emilio, 2005; USDOE & NICHD, 2003). A 2003 survey distributed to a national sample of districts noted concern with the challenge of distinguishing between difficulties due to the second language acquisition process and ones due to learning disabilities. Most school districts do not identify CLDE students as a separate category and therefore must consult with both the ESL-bilingual coordinator and the special education coordinator to receive an approximate count of CLDE students (Zehler, Fleischman, Hopstock, Stephenson et al., 2003). Of greatest concern are ELL students with lower proficiency levels of English. Studies have found that these students are most often misidentified or mislabeled (Artiles, Rueda, Salazar, & Higareda, 2005). Labels impact how students are served in schools and therefore it is important that an accurate system for identification of CLDE students be in place.

## Looking at Labels: Overrepresentation and Underrepresentation

Many districts are trying to address identification of students by bringing in the expertise of both the ESL–bilingual specialist and the special education specialist. Unfortunately, this system is not infallible and students are still mislabeled—especially students who fall within specific ethnic or racial categories. Table 1.1 delineates the over- and underrepresentation of specific racial or ethnic categories receiving special education services.

The overrepresentation and underrepresentation are especially seen in particular groups of students. OSERS (2003) found that the percentages of American Indian or Alaska Native (56%) and Hispanics (58.9%) with specific learning disabilities are overrepresented when compared to the percentage of all students with disabilities (49.2%). Asian or Pacific Islanders, who represent 4.4% of the

**Table 1.1** Students Labeled as Disabled by Race or Ethnicity as a Proportion of the General Student Population

	General Student Population	All Students With Disabilities	Students Labeled as Specific Learning Disability	Students Labeled as Emotionally Disturbed	Students Labeled as Speech–Language Disability	Students Labeled as Mentally Retarded
American Indian or Alaska Native	1.2%	1.31%	1.47%	1.24%	1.19%	1.06%
Asian or Pacific Islander	4.4%	1.87%	1.56%	1.17%	2.58%	1.73%
Black	17.2%	20.28%	18.72%	28.23%	15.92%	34.08%
Hispanic	18.5%	15.42%	18.48%	9.50%	14.63%	12.08%
White	58.7%	61.13%	59.77%	59.86%	65.67%	51.05%

SOURCES: Office of Special Education Programs (OSEP), 2003; U.S. Census Bureau, 2006.

NOTE: Percentages are for students ages 6–21 served under the Individuals with Disabilities Education Act (IDEA).

general student population, are underrepresented in almost all disability categories. Black students, who make up 17.2% of the general student population, are overrepresented in almost all disability categories (18.72% of black students are labeled as specific learning disabled, 28.23% as emotionally disturbed, and 34.08% as mentally retarded). A black student is 2.21 times more likely to be labeled as emotionally disturbed than any other ethnic group (OSERS, 2003).

For charts of disability categories and race or ethnicity distributions see the following Web site: [www.sagepub.com/grassi](http://www.sagepub.com/grassi).



Overrepresentation of ELL students in specific disability categories occurs as well. When ELL students are identified as having a learning disability, they are most likely to be labeled as specific learning disabilities (5.16%) and speech or language impairments (2.17%), and data indicate that most CLDE students carry these labels (Macswan & Rolstad, 2006; McCardle, Mele-Mccarthy, Cutting, et al., 2005; Zehler, Fleischman, Hopstock, Stephenson et al., 2003).

The behaviors of students who are acquiring English as a second language may look similar to the behaviors of students who are learning disabled or have speech or language impairments—but the core issues that determine this behavior are different. For example, a student with a learning disability may be slower to respond during whole class discussions because this child requires longer processing time. Likewise, a child who is learning English may be slower to respond in whole class discussion because this child requires time to process between two or more languages, not because the child has a learning disability. A student who is learning disabled may read below grade level. A child who is learning English may also read below grade level, not because of a learning disability, but because the student has not fully acquired the English language. This child may have full knowledge of the reading process in the first language, but is not yet able to express this knowledge in the second language.<sup>1</sup>

Even though children with learning disabilities and children who are acquiring English may exhibit behaviors that appear similar in a classroom setting, the causes are very different, and it is important for teachers to distinguish between the two. With such rapidly growing numbers of ELL students, it

#### REFER TO CASE STUDY 1.1

How does this student represent the demographics discussed in this chapter? Was the student misdiagnosed? Why? How could mislabeling of this student have been prevented? How could the teachers have acquired a more thorough picture of the student?

is imperative that educational professionals begin to receive the proper training in both ESL–bilingual education and special education to avoid mislabeling, overrepresentation, and underrepresentation.

## **SETTING THE CONTEXT: LAWS THAT IMPACT PROGRAM OPTIONS FOR CLDE STUDENTS**

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CLDE students do not have specific laws or program options delineated for them. These students are often labeled as either ELL students who need special education support or as students with special needs who need ESL or bilingual support. To best meet the needs of CLDE students, educational practitioners must understand bilingual law and program options as well as special education law and placement options. When a student who is learning English is diagnosed as having special needs, we advocate that the multidisciplinary team carefully consider the current laws, service delivery, and placement that will most support the student’s primary educational needs.

### **Bilingual Education Laws**

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ESL or bilingual education in the United States is based on the Civil Rights Act of 1964, which “prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving federal financial assistance” (Wiese & Garcia, 1998, p. 3). Equal access to the educational curriculum for ELL students (including education in the student’s stronger language) is often considered a civil rights issue. Funding of bilingual education at the federal level began in the 1960s as it became clear to policymakers that students living in poverty, especially Mexican American students in the Southwest, were failing to make academic progress.

The first federal Bilingual Education Act (BEA) was passed in 1968 (Title VII of the Elementary and Secondary Education Act [ESEA]). The focus of the BEA was to create equal educational opportunities for low-income ELL students (Wiese & Garcia, 1998). Although not mandated through the act, the BEA provided opportunity to use the student’s native language in instruction to increase academic achievement. However, the BEA did not require any specific methodology or instructional programs, and it was not until the reauthorization of 1974 that “native language instruction” was included in the definition of bilingual education (Wiese & Garcia, 1998). Grants under the BEA were typically awarded to plan, develop, and maintain programs that met the educational



needs of language minority students and provided preservice training to teachers and paraprofessionals (Wiese & Garcia, 1998).

From 1975 on, the Bilingual Education Act was reauthorized several times and helped to identify different types of bilingual programs available to students, but it still did not consistently mandate native language instruction for language minority students. The amount of instruction in native languages under this act was encouraged (or discouraged) through the distribution of federal funds.

The reauthorization of the Bilingual Education Act in 1994 (BEA) finally addressed the importance of bilingual and bicultural competencies. For the first time, the BEA funded dual-language programs that encouraged bilingualism, biculturalism, and biliteracy for ELL students and English-only students as well.

It was not until the 1970s that the plight of ELL students enrolled in general education classrooms without bilingual services was addressed. A class action suit filed by a San Francisco student of Chinese origin forced the issue. The complaint argued that ELL students did not have equal educational opportunities because instruction in content areas was not specifically suited to the needs of students who were learning English. In 1974, in the landmark *Lau v. Nichols* case, the court ruled that equivalent instructional materials and strategies did not constitute equal educational opportunity, and that teachers must make **modifications** for students who did not speak English as a first language. Although *Lau v. Nichols* established the right of students to receive specialized instruction, *Lau v. Nichols* did not require a specific instructional methodology (Wiese & Garcia, 1998). In 1975, the Office of Civil Rights issued the “Lau remedies,” which required more specific specialized instruction for English language learners, specified manners of identifying ELL students, specified manners of determining students’ levels of English language proficiency, and created standards for bilingual education teachers (Ovando, 2003, p. 10). The Lau remedies also required bilingual education (home language instruction as well as ESL instruction) at all schools that had at least 20 ELL students of the same language (Ovando, 2003). In 1981, the *Casteneda v. Pickard* case established further guidelines for appropriate educational programs. This case established three criteria for developing effective educational programs for language minority students: (1) The educational program must be grounded in sound educational theory; (2) adequate personnel and services must be provided; and (3) the program must provide sound practices and results in all content areas (Ovando, 2003, p. 10).

In the 1990s, a recurring pattern in the political climate promoting English-only instruction gained the popular vote in some states (the English-only movement was launched in 1983 and continued from there on out). In 1998, California voters passed Proposition 227, which limited second language

learners to only one year of specialized English language instruction before their placement in the general education classroom. Similar propositions passed in Arizona (Proposition 203) and Massachusetts in 2002. The English-only movement was ultimately enshrined in federal policy in 2001, when the **No Child Left Behind (NCLB) Act** completely removed all language encouraging bilingual education and eliminated the Bilingual Education Act (Crawford, 2002). At this point, federal policy placed full emphasis on English language acquisition as the academic goal for immigrant children. While NCLB does not prohibit bilingual education, all children, including those learning English, are required to show growth in English literacy and language skills. The same requirement for native language literacy and language skills is not delineated under NCLB.

NCLB and policy supporting English-only language instruction continue to encourage removal of all first language supports and transition to the general education, English-speaking classroom as soon as possible—many times before the second language is fully acquired. While we want all ELL students to learn English, research does not support early transition and swift removal of first

language supports. As will be discussed in the section on bilingual or bicultural program options, bilingual education still remains a positive factor for academic achievement. Table 1.2 presents a summary of laws relating to the education of English language learners.

#### REFER TO CASE STUDY 1.1

Which ESL–bilingual laws would have benefited the student, had they been in place when he was attending school?

**Table 1.2** Timeline of Legislation and Litigation Pertaining to the Education of English Language Learners

Year	Legislation and Litigation	Description
1954	<i>Brown v. Board of Education</i>	Determined that separate is not equal and the segregation of schools becomes unconstitutional.
1964	<i>Civil Rights Act</i>	Prohibited race, sex, and national origin discrimination in public places.
1965	<i>Elementary and Secondary Education Act (ESEA)</i>	Government funds became available to meet the educational needs of children from low social economic status and “educationally deprived children.”

Year	Legislation and Litigation	Description
1968	<i>Elementary and Secondary Education Act Amendment: The Bilingual Education Act Title VII</i>	Provided school districts with federal funds to establish educational programs for students who do not speak English as a first language and who are from low socioeconomic status. Under this act, schools could, but were not required to, provide bilingual programs.
1974	<i>Lau v. Nichols</i>	Established that specialized language programs for ELL students were necessary to provide equal educational opportunities.
1974	<i>Equal Education Opportunity Act (EEOA)</i>	Organized the <i>Lau v. Nichols</i> decision and required school districts to take appropriate steps to help ELL students overcome language barriers that impeded equal participation in instructional programs.
1974	<i>Reauthorization of Bilingual Education Act Title VII</i>	Native language instruction required as a condition for receiving bilingual education grants. Bilingual education was defined as transitional bilingual education, where students are transitioned to monolingual English classes as soon as possible (usually by the third or sixth grade).
1975	<i>Lau remedies</i>	Provided informal guidelines for schools to effectively work with ELL students. Required districts to provide bilingual education in situations where the civil rights of bilingual students had been violated.
1978	<i>Reauthorization of the Bilingual Education Act Title VII</i>	Funding was provided for native language instruction only to the extent necessary to allow a child to achieve competence in English. Bilingual maintenance programs became ineligible for funding. The focus became transitional bilingual education programs and transitioning the child to monolingual English classes as soon as possible.
1980	<i>Lau regulations</i>	An attempt to make the <i>Lau</i> remedies official and to require bilingual instruction for students who are limited English proficient. The Reagan administration withdrew this proposal, leaving uncertainty about a school's obligation to meet the needs of ELL students.

*(Continued)*

**Table 1.2** (Continued)

<b>Year</b>	<b>Legislation and Litigation</b>	<b>Description</b>
1981	<i>Castaneda v. Pickard</i>	An appeals court decision that established three criteria for programs serving ELL students: (1) based on sound educational theory, (2) implemented effectively with adequate resources, and (3) evaluated and proven effective.
1983	<i>U.S. English-only movement launched</i>	Debates concerning English as the dominant language to be used in law, society, and education.
1984	<i>Reauthorization of the Bilingual Education Act Title VII</i>	Most funding reserved for transitional bilingual education programs, with some funding reserved for bilingual maintenance programs, and English-only special alternative programs.
1988	<i>Reauthorization of the Bilingual Education Act Title VII</i>	The same provisions as 1984 existed, but 25% of the funding was reserved for English-only special alternative programs.
1994	<i>Reauthorization of the Bilingual Education Act Title VII</i>	Funding for dual language programs available for the first time. The quota for funding English-only programs was lifted.
1998	<i>Proposition 227 passed in California</i>	ELL students are limited to only one year of specialized English instruction before their placement in the mainstream, general education classroom.
2001	<i>No Child Left Behind (NCLB) Repeal of the Bilingual Education Act</i>	<p>Emphasis on English-only instruction and removal of all language encouraging native language instruction.</p> <p><b>Accountability</b></p> <ol style="list-style-type: none"> <li>1. Requires all teachers of ELL students to be proficient in the English language.</li> <li>2. Established annual achievement objectives for ELL students.</li> <li>3. Set English language proficiency as an objective.</li> <li>4. Annual achievement objectives were required to relate to gains in English proficiency.</li> </ol>

Year	Legislation and Litigation	Description
		<ol style="list-style-type: none"> <li>5. Required reading and language arts assessment in English of any ELL student who had attended school in the United States for three consecutive years.</li> <li>6. Schools responsible for making adequate yearly progress as described in Title 1.</li> <li>7. Notification to parents about program placement and explanation concerning why their child needs a specialized language instruction program was required.</li> </ol> <p><b>Options for Student Success</b></p> <ol style="list-style-type: none"> <li>1. Parents had the right to choose among instructional programs if more than one type was available.</li> <li>2. Parents had the right to remove their child from a program designed for English language learners.</li> </ol> <p><b>Research-Based Teaching Methods</b></p> <ol style="list-style-type: none"> <li>1. Required that all curricula used to teach ELL students be tied to scientifically based research and demonstrated to be effective.</li> </ol>

**SOURCES:** Baker, 2001, pp. 190–191; Crawford, 2004, pp. 124–125; data retrieved September 15, 2008, from the Lau Web site: <http://www.stanford.edu/~kenro/LAU/index.htm>; data retrieved September 15, 2008, from the No Child Left Behind Web site: <http://www.ed.gov/nclb/landing.jhtml?src=pb>.

## Program Placement of ELL Students

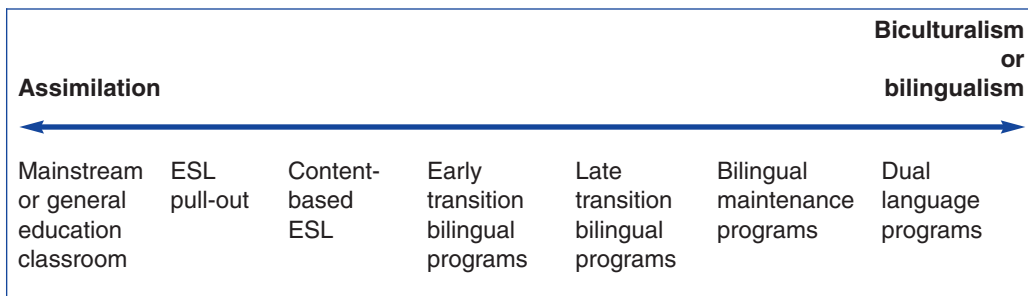
When a student enrolls in a school, the school is required to find out if the student needs to learn English. By asking the parents what language is spoken at home, the school begins the process of determining the educational placement for a bilingual child.

Bilingual children are placed in programs depending on

1. a home language survey,
2. language proficiency tests to determine if the student needs language services,

3. program availability, and
4. parent choice under NCLB.

Once a student is identified as needing to learn English, program placement options become available. There are several different program models designed to meet the educational needs of ELL students. These models vary from state to state and are influenced by federal policy, which, depending on the current political climate, either encourages the use of native language instruction or the use of English-only. Figure 1.2 shows the trajectory of programs available to ELL students.



**Figure 1.2** Trajectory of Programs Available to ELL Students

## Bilingual or Bicultural Program Options

**Two-way immersion or dual language programs** work to develop bilingualism, biliteracy, and biculturalism in both ELL students and native-English-speaking children. In an effective dual language program, the curriculum is presented in two languages and is culturally relevant to the cultures represented in the classroom.

There are a variety of dual language program models. Some programs switch days, where some days of the week the content is presented in English and other days of the week the content is presented in the other language. Some programs switch languages throughout the day, where half of the day is in English while the other half is in the other language. And some programs switch languages according to the content, where, for example, science is conducted in English, while history and math are conducted in another language.

**Bilingual maintenance programs** are another form of program designed to maintain the student's first language and culture while simultaneously developing

English language and literacy skills. These programs are usually (but not always) designed in a 90:10 model where 90% of the instruction is in the child's native language and 10% in English in the first year. Slowly, the classroom transitions to 50:50, where (usually by the sixth grade) 50% of instruction is in the home language and 50% of the instruction is in English. The manner in which these programs are implemented and the actual strategies used in these programs can vary significantly from classroom to classroom and school to school.

The effectiveness of both dual language and bilingual maintenance programs are well supported by research. Rolstad, Mahoney, and Glass (2005) conducted a meta-analysis of bilingual education studies after 1985. This analysis found that the use of students' native language for content instruction increases measures of students' academic achievement. They also found that students in long-term bilingual education programs (such as maintenance programs) performed better academically than students in short-term bilingual education programs. Thomas and Collier (2002) found that the strongest indicator of academic achievement in the second language is the amount of formal instruction in the first language. ELL students immersed in general education, English-only classes, showed significant decreases in math and reading achievement by the fifth grade. This group also showed the largest rate of drop-out. Students in dual language programs and bilingual maintenance programs were able to fully reach at least the 50th percentile in both first and second languages in all subjects and showed the fewest dropouts (Thomas & Collier, 2002).

## **Programs Designed to Develop English-Only Skills and Assimilation**

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**Transitional bilingual educational programs** are designed with English acquisition and assimilation into the majority culture as the main goal. These programs aim to develop English language and literacy skills as soon as possible so that children can be placed in general education English-speaking classrooms (usually within two to three years). Content is often taught through the home language until the students are thought to be proficient enough in the target language to be transferred to the mainstream classroom. Transitional programs usually take two forms—late transition and early transition. Late transition programs are geared to move students to all English instruction by the sixth grade. Early transition programs are geared to move students to all English instruction by the third grade.

**English as a second language (ESL) programs** are designed to develop English language and literacy skills as soon as possible. These programs are considered a subtractive approach to bilingual education because their goal is to replace the

native language with the majority language (Baker, 2001). There are many different forms of ESL programs. These include sheltered English (also called SDAIE [Specially Designed Academic Instruction in English], or content-based ESL), where the academic content is provided in a modified manner to make it more comprehensible to ELL students, and ESL pull-out, where students are pulled out of the general education classroom for specialized English instruction. ESL programs are a common option for schools where many different languages and cultures are involved, and bilingual teachers who represent the variety of languages are not available.

**English submersion** is where the child receives no special services but is expected to either “sink or swim” in the general education, English-only, content-area classroom. The goal of this program is assimilation into the majority culture and replacement of the native language with the majority language. This is the least effective program for English language acquisition. For example, Artiles et al. (2005) found that ELL students placed in English immersion classes (submersion)

#### REFER TO CASE STUDY 1.1

What program placement would have benefited the student and perhaps avoided mislabeling?

were more likely to be referred for special education services than were ELL students placed in bilingual education programs or specialized English language programs (ESL).

### Special Education Laws

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Special education’s history grew out of the civil rights movement. Like other minority groups, people with disabilities were prone to discrimination and had no laws to protect them. It was not until 1973 when **Section 504** of the Rehabilitation Act granted basic civil rights to people with disabilities. Then, in 1975, the Education for All Handicapped Children Act, **Public Law 94-142** passed, which granted a free and appropriate public education (FAPE) for all students, and provided the groundwork for the services that all students with special education needs are guaranteed today (see Table 1.3).

The **Individuals with Disabilities Education Act (IDEA)** is the follow-up law to Public Law 94-142. IDEA was passed first in 1990, revised in 1997, reauthorized again in 2004, and continues the movement to provide access to an equal and individualized education for students with disabilities. Each reauthorization takes into account the growing needs of particular disabilities, and, through different reauthorizations, has included autism, TBI (traumatic brain injury), behavior issues, and transitions for students with disabilities.



**Table 1.3** Central Principles and Provisions Included in Special Education Law

FAPE	Every student has the right to an education in a public school, or if the public school cannot provide needed services then the school district must provide funding for the services.
Categories of disability	There are currently 13 categories of disability specified in IDEA. Only students with the disabilities defined in the law are eligible for special education services.
Least restrictive environment (LRE)	Every student must be educated in an environment that (1) provides the most access to the general education setting while (2) providing needed educational support and services. Current law states that the general education classroom should be considered first as the LRE for all students.
Individualized education	Every student who is eligible to receive special education services, must have an Individualized Education Plan (IEP) that designates specific learning goals, objectives, and how those will be met.
Nondiscriminatory evaluations and reevaluations	Schools must provide tests in the child's native language, tests that are appropriate for the age and characteristics of the child, and more than one test must be used. Assessments should be given and interpreted by a knowledgeable professional, and assessments must occur in all areas of the suspected disability (Yell, 1998).
Due process	Parents and students have the right to object if any educational service or practice designated in the IEP is not being followed. At this point, the school district must provide mediation services to remedy the situation.
Zero reject or child find	Every child, despite the nature or severity of his or her disability, must receive FAPE (even those enrolled in private schools). Each state has a <i>child find</i> system in place to let the public know about services available for students with disabilities. This concept also ensures that students who have communicable diseases are educated and guides school policies related to long-term suspension or expulsion.
Parent participation	Parents must be informed (in their home language) of all processes involved in special education testing, the IEP, and services, and must be informed of their rights and roles in this process.



1.2

For a list and description of these 13 disability categories, see the following Web link: [www.sagepub.com/grassi](http://www.sagepub.com/grassi).

(Continued)

**Table 1.3** (Continued)

Transition services or early intervention	At age 14 and beyond, schools must help students transition to life after public school. This includes life skills training, educational plans, living independently, and community integration. A transition plan must be included in all IEPs. School districts are required to provide services to families who have students between the ages of 3 and 5 with special education needs.
Discipline	The student's exceptionalities must be taken into account when administering disciplinary action. If a child's disability will interfere with following the school's regular discipline policy, then a discipline plan must be written into the IEP.
Related services	Services that support educational success, such as occupational therapy, physical therapy, speech therapy, counseling, and transportation.

SOURCES: PL 94-142; IDEA.

The 2004 reauthorization of IDEA included several major changes of significance to give schools more freedom in how funds are used to support students. It stipulates that before referring students for special education services, schools may use up to 15% of their special education budgets to provide professional development in scientifically based interventions and educational support for students. As Response to Intervention is being implemented, special education funds can be used to support the training of teachers in intervention strategies. These are strategies that will support all students, including ELL students, who are struggling in the classroom. IDEA (2004) also acknowledges that **limited English proficiency (LEP)** could be a factor that impacts academic and behavioral achievement. The law requires that the **process** of acquiring a second language must be ruled out as the primary reason for lower academic achievement before the child can be labeled as needing special services. While this addition to the law is important when working with ELL students, there are still no specific provisions for placement or teaching strategies when addressing the needs of CLDE students.

Another important aspect of the 2004 IDEA was its provision of an alternative to the **discrepancy model** for determining specific learning disability eligibility. Previously, specific learning disabilities were determined by examining the “discrepancy” between IQ and achievement levels. Today, IDEA allows an IEP (Individualized Education Plan) team to determine eligibility for specific learning disability if the team has determined that the child is not making academic progress in an appropriate educational setting. At that point, the

**Response to Intervention (RTI)**<sup>2</sup> process is utilized to determine specific learning disability eligibility. Under the most recent IDEA, research-based strategies mirror the language utilized in NCLB, which delineates “research” as “scientifically research-based strategies.” That means schools must rely on data to make all decisions regarding the education of students with disabilities.

RTI could greatly benefit CLDE students if the consulting child study team were diversified to include members who are familiar with the first language and culture of the child; familiar with the second language and culture acquisition process; and who will advocate for ESL or bilingual and culturally relevant teaching practices as research-based strategies that could benefit CLDE students. That said, the new IDEA regulations (as well as NCLB) still do not stipulate “research-based strategies” for CLDE students and there is still no specific delineation for meeting the placement needs of CLDE students. Table 1.4 presents a summary of special education laws and litigation.

**Table 1.4** Special Education Legislation and Litigation

Year	Legislation or Litigation	Description
1954	<i>Brown v. Board of Education</i>	Basis for future rulings that children with disabilities cannot be excluded from school.
1972	<i>Pennsylvania Association for Retarded Children v. The Commonwealth of Pennsylvania</i>	Determined that no child with mental retardation can be denied a public education in Pennsylvania.
1972	<i>Mills v. Board of Education of the District of Columbia</i>	Determined that all students with disabilities have a right to free public education.
1973	<i>Section 504 of the Rehabilitation Act</i>	Guaranteed basic civil rights to people with disabilities. Required accommodations in schools and in society.
1975	<i>Education for All Handicapped Children Act (PL 94-142)</i>	Guaranteed a FAPE in the least restrictive environment for all children with disabilities.
1986	<i>Reauthorization of the Education for All Handicapped Children Act (PL 99-457)</i>	Added infants and toddlers to the act—birth to 3; provided for an individualized family service plan.
1990	<i>Reauthorization of the Individuals with Disabilities Education Act (IDEA) (PL 94-142)</i>	Added transition plans; added autism; added traumatic brain injury to the act.

(Continued)

**Table 1.4** (Continued)

Year	Legislation or Litigation	Description
1990	<i>Americans With Disabilities Act (ADA)</i>	Barred discrimination in employment, transportation, public accommodations, and telecommunications. Implemented the concept of "normalization" across American life. Required phased in accessibility in schools.
1997	<i>Reauthorization of the Individuals with Disabilities Education Act (IDEA)</i>	Added ADHD to other health impairments; added functional behavior assessments and behavior intervention plans; made transition plans a component of the IEP.
2001	<i>No Child Left Behind Act (NCLB)</i>	Requires all children to participate in state and district testing. Requires 100% proficiency of all students in reading and math by 2012.
2004	<i>Reauthorization of the Individuals with Disabilities Education Act (IDEA)</i>	Includes the following additions (see text for complete descriptions): <ul style="list-style-type: none"> <li>• Limited English proficient</li> <li>• Specific learning disability eligibility</li> <li>• Early intervening services (EIS)</li> <li>• Data-based decision making</li> <li>• Research-based strategies</li> </ul>

SOURCES: Friend & Bursuck, 2009; Wright & Wright, 2007.



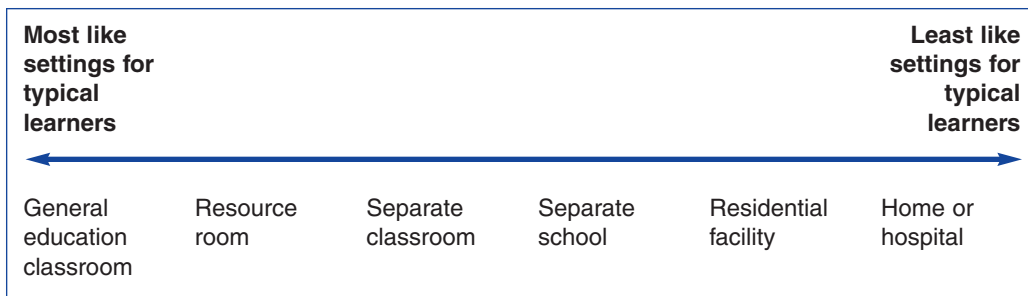
**Photo 1.2** Students' language, culture, and special education needs should be addressed when making placement decisions.

## Placement Options for Students With Special Needs

Students who are labeled with exceptionalities receive an **Individualized Education Plan (IEP)**.<sup>3</sup> An integral part of an IEP is deciding where and how the students' needs should be met. Placement should not be decided by the types of programs available, but should be a decision based on the *needs* of the child (see Photo 1.2).

As part of the IEP, the **least restrictive environment (LRE)** must be determined. LRE is defined as the place where a student with special needs will be least restricted by his or her disability and will have the most access to the full general education curriculum. Before Public Law 94-142, students with disabilities

were segregated from the general education classroom—often in separate schools, facilities, and classrooms. The current special education law takes into consideration this history of segregation and promotes inclusion and access to the general education curriculum. Current law states that the general education classroom should be considered first as the LRE for all students with special needs, although any of the placement options in the **continuum of services** can be considered as the LRE if it best suits the needs of the particular student. The committee determining placement weighs each of the options on the continuum of services, looking at possible negative influences as well as benefits from each placement. Figure 1.3 shows a trajectory of placement options from those that are most like a classroom for typical learners to those that are least like a classroom for typical learners.



**Figure 1.3** Continuum of Services for Students With Special Needs

**General Education Classroom.** The student is placed in general education classes with modified curriculum or teaching strategies as described on the student’s IEP. The IEP goals might be reached with consultation with the general education teacher, with paraprofessional assistance in the general education classroom, or with some instruction (less than 20%) in another setting with a specialist.

**Resource Room.** Students receive 21% to 60% of their instruction in the general education classroom, but may be pulled out for instruction in particular subject areas or related services for the remaining portion of the school day. This placement option may be met by similar arrangements as described above, but the time spent out of the general education classroom is increased.

**Separate Classroom.** Less than 40% of the school day is spent in the general education classroom. Students receive the majority of instruction in a special education classroom. They may attend a “homeroom” for the beginning of the

day, lunch, or other subjects for social interaction and instruction with peers in the general education setting.

*Separate School.* Only a small number of students with disabilities (3%) require this type of placement. These students may have very complex physical or cognitive disabilities or severe emotional disabilities that require a specialized setting for transitions, for learning skills for independent living, for safety, for structure, or for specialized programs that support a variety of complex needs. For example, some states have schools for students with visual impairments and students with severe hearing loss. When a placement of this type is considered as the LRE, the multidisciplinary team must consider the lack of interaction with typical peers and lack of access to a rich general education curriculum.

*Residential Facility.* A placement option outside the public school setting. This type of placement includes treatment facilities, detention services, state-funded schools for the blind, or schools for those with behavior disabilities. Residential facilities treat similar types of disabilities as those treated in a separate school setting, but provide structure, safety, and supervision 24 hours a day. Less than 1% of students with disabilities receive their education in this type of placement.

*Home or Hospital.* For a very small number of students (less than 0.5%), their home or a hospital is deemed the LRE for learning. For example, a student who is unable to leave the home for health or safety reasons, is medically fragile, or may be hospitalized for some length of time may be tutored or visited by a teacher for a few hours each week, providing for the goals and services designated by the IEP.

### **The Least Restrictive Environment for CLDE Students**

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What is most interesting about the concept of LRE is the perception of “least restrictive” for CLDE students. Not only does the student require special education services, but also requires support for learning English, for maintaining his or her home language, and requires an environment that is culturally appropriate. Program options for CLDE students have not been clearly delineated in any law. NCLB and IDEA only consider the second language acquisition process as an element in the eligibility for services but do not specify placement options. Although individual students who are learning English could have goals and objectives on their IEP that focus on the language acquisition process, this is not delineated in

law as a required component of the IEP. As a result, special education teachers who are not trained in ESL or bilingual education may not even consider placements that support bilingualism and biculturalism.

Professionals must consider which environment will offer the most support for the student—a bilingual, bicultural classroom where the students’ home language and culture are valued and can be used as a medium for instruction, or a special education classroom where the teacher has a deeper understanding of the child’s special education needs. The philosophical underpinnings surrounding these two placements can be at odds. For example, the general education classroom can be considered both the most restrictive environment and the least restrictive environment for a CLDE student. If the general education placement has no language or cultural supports, it could be considered restrictive for CLDE students. On the other hand, if the general education placement gives the CLDE student access to the full and rich curriculum, then it can be considered the least restrictive. In Table 1.5, a comparison is made between the

**Table 1.5** Comparison Between the LRE for Special Education Placement Options and ESL or Bilingual Placement Options

<b>Special Education Placement Options</b>	<b>ESL or Bilingual Education Placement Options</b>
General education class	Mainstream or general education submersion
General education with paraprofessional support	Mainstream or general education submersion with paraprofessional support
Special education pull-out	ESL pull-out
Special education classroom in a regular school	ESL content-area classroom in regular school
Center program within regular school	Bilingual program within a regular school (transitional early exit and late exit bilingual programs)
Special school	Bilingual school or dual language school

Most Restrictive to Least Restrictive

Most Restrictive to Least Restrictive

LRE for students who are learning English and students who have special needs. Because the educational placement is a critical component of a child's education, it is important for both ESL or bilingual professionals and special education professionals to be a part of the team that makes placement decisions for the CLDE child.

### Recent Trends in Placement

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The present placement trend in special education determines that the LRE for most students with special needs is within the general education school and the general education classroom (Sands, Kozleski, & French, 2000). Comparison data from 1990–2000 illustrate this trend. The percentage of students who spend the majority of their school day in the general education classroom (less than 21% of the day outside the general education classroom) increased from 33% in 1990 to 46% in 2000. The percentage of students who spent 21%–60% of the school day outside the general education classroom decreased from 36% in 1990 to 30% in 2000 (OSEP, 2003). A greater proportion of students with special needs now receive instruction for most of the day within a general education classroom.

The trend in placement for CLDE students also indicates that a majority of these students are placed in the general education, monolingual English-speaking classroom. A 2003 national survey of districts specifies that, compared to ELL students who do not have special needs, CLDE students receive very little native language or ESL services and are more likely to receive instruction all in English (Zehler, Fleischman, Hopstock, Stephenson et al., 2003). For example, only 27.7% of CLDE students in all disability categories received extensive ESL services and only 13.1% of CLDE students in all disability categories received extensive native language services. In fact, a full 63% of CLDE students in all disability categories received no native language services whatsoever (Zehler, Fleischman, Hopstock, Stephenson et al., 2003).

#### REFER TO CASE STUDY 1.1

How could the reauthorization of IDEA (2004) have benefited the student? How about RTI? What would have been the LRE for the student—taking into consideration his language and learning needs?

The increasing tendency to place CLDE students in monolingual English, general education classrooms illustrates a lack of understanding of the English language acquisition process and the supports needed to fully acquire a second language. If you place a child who is learning English in an environment where language acquisition is not emphasized or understood, and proper



adaptations are not implemented, then this child may continue to struggle in school. Teachers may interpret this struggle as a special education need when, in fact, the child simply lacks the proper access or support to acquire the language of instruction and perform at grade level.

## NEW DIRECTIONS IN TEACHER TRAINING

### CASE STUDY 1.2

### Teacher Training

Sadly, few teacher education programs include classes that help teachers focus deeply on “transforming curriculum.” New teachers report they have been taught the important progression of skills within each content area, but not how to modify their approaches for the wide range of student talents and abilities that arrive in their classrooms each year. Similarly, few programs offer courses designed to help teachers learn concrete ways to work more effectively with diverse family structures, cultures, languages, values, and more. Finally, few offer courses that address in detail how to establish a compassionate learning community, one that encourages, recognizes, and values the contributions of each of its members. These are the supports that teachers need to help them “increase accessibility” for all students and all families.

—Jeff and Traci Bushnell

Consider the view expressed above:

- How did your teacher education program prepare you to work with CLDE students?
- How do you increase accessibility for all students and families?
- What changes need to take place in teacher education to prepare teachers for the changing demographics of today’s classrooms?

SOURCE: Used by permission.

It remains a small minority of teachers who are knowledgeable in both ESL or bilingual education and special education and can truly differentiate between a learning disability and the second language acquisition process. While 43% of the nation’s general education teachers have at least one ELL student in their classrooms (USDOE & NICHD, 2003), only 12% of teachers nationwide have received introductory training (8 hours or more) in ESL

or bilingual education (NCES, 2002; USDOE, 2002). Most general education teachers report that they do not feel equipped to teach the second language learners in their classrooms (Tharp, 2004), and many general education teachers are hesitant to refer ELL students to special education because they are unable to distinguish if a student's reading or academic difficulty is due to the language acquisition process or a learning disability (USDOE & NICHD, 2003).

Teacher preparation programs typically provide only one class for general education teachers to learn about students with special needs. Fully 59% of beginning classroom teachers surveyed in a Public Agenda study reported feeling unprepared to work with students who were doing poorly in their classes (Farkas, Johnson, & Foleno, 2000). Only one in five general education teachers responding to a survey by the National Center for Educational Statistics report that they are well prepared to work with students with special needs (NCES, 2006).

Following a 2003 survey distributed to a national sample of districts, it was reported that materials and training for instructing CLDE students were lacking in comparison to other types of training (Zehler, Fleischman, Hopstock, Stephenson et al., 2003). Only 32.2% of districts reported providing training for instructing CLDE students, in comparison to 41.7% that reported training for instructing ELL students, and 82.7% that reported training for classroom instruction in general (Zehler, Fleischman, Hopstock, Stephenson et al., 2003). Seventy-five percent of districts sampled reported a deficit in the number of teachers qualified to work with CLDE students (Zehler, Fleischman, Hopstock, Stephenson et al., 2003).

Because there is a nationwide gap in experts with foundational understandings of second language acquisition and special education, a majority of schools cannot provide services specifically designed for CLDE students. Rather, schools tend to provide services for these students by combining the separate efforts of ESL or bilingual staff and special education staff (Zehler, Fleischman, Hopstock, Stephenson et al., 2003). New directions in teacher training must include a more

thorough and mandatory curriculum in both ESL or bilingual education and special education for all teachers. Until we have professionals who are trained to fully understand and work with the language and cultural acquisition process, as well as special education needs, then the effective education of CLDE students will remain at risk.

### REFER TO CASE STUDY 1.1

What training would have helped the student's teachers better understand his needs?  
What training did the student's teachers appear to be lacking?

## Summary

- With the number of ELL students expected to double in the next 20 years, schools must refine methods to distinguish between difficulties related to second language acquisition and those related to learning disabilities.
- The challenges of identifying and placing CLDE students are compounded by the lack of specific laws and programs designed to address their unique needs.
- Proper teacher preparation will be vital to the educational success of the increasing number of students from diverse backgrounds, including those with special needs.

## Key Terms

Bilingual maintenance program	Least restrictive environment (LRE)
Continuum of services	Limited English proficiency (LEP)
Culturally and linguistically diverse exceptional (CLDE) students	Modifications
Discrepancy model	No Child Left Behind (NCLB) Act
English as a second language (ESL) program	Process
English language learners (ELLs)	Public Law 94-142
English submersion	Response to Intervention (RTI)
Individualized Education Plan (IEP)	Section 504
Individuals with Disabilities Education Act (IDEA)	Transitional bilingual educational program
	Two-way immersion or dual language program

## Activities for Further Understanding

1. Review the laws that impact special education services and the laws that impact students who are learning English. What similarities do you notice? What differences do you notice?

2. Observe placements for CLDE students at your school or at another school. Where are the majority of these students placed? Does this placement meet student needs? Why or why not?
3. Interview teachers of CLDE students. Where does the majority of their training lie—with special education or with ESL or bilingual? What gaps in training does the teacher notice in regard to educating CLDE students? What further training would the teacher like to receive?
4. Examine the demographics of students in your school. What is the percentage of students in special education? What is the percentage of special education students who are also learning English? Is there overrepresentation or underrepresentation of one ethnic or racial group of students in special education? What special education labels have been applied to CLDE students?
5. Explore the relationships between special education and ESL or bilingual teachers at your school. Do the two fields collaborate on IEP meetings and program or placement decisions for students? How do they collaborate?

## Notes

1. A more detailed discussion of the process of second language acquisition will be presented in Chapters 3–4.
2. The concept of Response to Intervention will be discussed fully in Chapter 5. Scientific research-based interventions will be discussed in Chapters 9–15.
3. An IEP is instituted if a child qualifies for special education services as the result of the assessment eligibility process. See Chapter 5.



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