

SPECIAL EDUCATION POLICY AND PRACTICE

CATHY ESCHETE

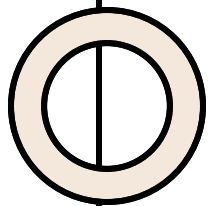
CARLY ELLIOTT

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Six Principles of IDEA

Principle of IDEA	Requirement
Zero Reject	Locate, identify, & provide services to all eligible students with disabilities
Protection in Evaluation	Conduct an assessment to determine if a student has an IDEA related disability and if he/she needs special education services
Free Appropriate Public Education	Develop and deliver an individualized education program of special education services that confers meaningful educational benefit.
Least Restrictive Environment	Educate students with disabilities with nondisabled students to the maximum extent appropriate.
Procedural Safeguards	Comply with the procedural requirements of the IDEA.
Parental Participation	Collaborate with parents in the development and delivery of their child's special education program.



Child Find Mandate

LEAs must identify, locate, and evaluate “[a]ll children with disabilities residing in the State . . . who are in need of special education and related services[.]” § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i)

Includes “[c]hildren who are *suspected* of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade[.]” 34 C.F.R. § 300.111(c)(1) (emphasis added)

Includes students who attend private schools or are homeschooled

○ Child Find Dispute Example:

Ja.B., et al. v. Wilson Cnty. Bd. of Educ. (6th Cir. 2023)

- To allege a violation of the child-find mandate, “the claimant must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” (citing *Bd. of Educ. of Fayette Cnty. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007)).
- School cannot use response-to-intervention to delay evaluation (citing OSEP)
- School does not violate its child-find responsibilities by attempting other interventions if disability is not suspected. (citing *L.M.*, 478 F.3d at 313–14)



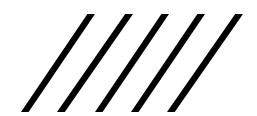


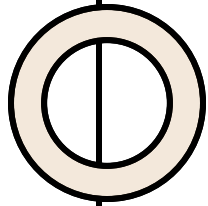
Eligibility Areas in Tennessee

Federal Eligibility Areas:

- Autism
- Deaf-Blindness
- Deafness
- Developmental Delay
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech/Language Impairment
- Traumatic Brain Injury
- Visual Impairment

State Eligibility Areas:

- Intellectually Gifted
 - Functional Delay
(Phasing Out)
- 



Hypothetical



Cam is a high school junior



He lives with his parents in Nashville, TN



He is very bright, is currently enrolled in honors classes and puts a lot of pressure on himself to succeed.



He was diagnosed with ADHD in second grade



He was diagnosed with anxiety and depression as a freshman after escalating disciplinary issues at school and dangerous behavior outside of school that resulted in short term inpatient treatment at Vanderbilt hospital



Individual Education Program (IEP)

From: 11/02/2023 To: 10/30/2024
☐ Annual ☒ Amendment

Student Information

Student Name: Cam v9.6 Testing Test	Gender: M	State ID: TEST5678
Student ID: TEST5678	Grade: 11	Hispanic Ethnicity: Yes
School: Sample School	DOB: 12/03/1996	Race: White
District: Metro Nashville Public Schools		

Primary Disability: Secondary Disability: Tertiary Disability:	Emotional Disturbance Other - Health Impairments	Re-evaluation of Eligibility Date:	11/01/2026
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Medical Information Summary Cam has ADHD and his mother reported that Cam has anxiety and depression.



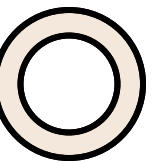
Free Appropriate Public Education



Endrew F. v. Douglas County School District RE-1



To meet its substantive obligation under IDEA, a school district must offer an IEP that is reasonably calculated to enable a child to make progress that is “appropriate” in light of the child’s circumstances.”



○ Important Notes from *Endrew*

"The instruction offered must be "specially designed" to meet a child's "unique needs" through an "individualized education program." (Roberts, 2017)

"When all is said and done, a student offered an educational program providing "merely more than de minimis" progress from year to year can hardly be said to have been offered an education at all." (Roberts, 2017)

" School must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (Roberts, 2017)





FAPE



THE DECISION RE-AFFIRMS THAT SIMPLY MEETING THE MINIMUM STANDARD EACH YEAR SHOULD NOT BE CONSIDERED AN APPROPRIATE EDUCATION (FAPE)



THE COURT ALSO STATES THAT THE IEP DOESN'T HAVE TO "OFFER AN IDEAL EDUCATION, AN EQUAL EDUCATIONAL OPPORTUNITY, OR GUARANTEE A SPECIFIC OUTCOME."



GIVES PARENTS MORE AUTHORITY IN HELPING TO DETERMINE WHETHER THE EDUCATION THEIR CHILD IS RECEIVING MEETS FAPE AND IDEA STANDARDS.





**Least
Restrictive Environment (LRE)
34 C.F.R. Section 300.114**

Each public agency shall ensure :

- That to the maximum extent appropriate, children with disabilities, ... are educated with children who are nondisabled;
- and**
- A child with a disability is not removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

○ **Least Restrictive Environment Overview**

Special education instruction **MUST** be provided to students with disabilities in the least restrictive environment (LRE).

Students w/ disabilities are educated with nondisabled students to the maximum extent appropriate.

Unless the student's IEP requires other arrangements, students with disabilities **MUST** be educated in the school they would attend if they did not have a disability.





Continuum of Services

○ LRE Dispute Example

Knox County v. M.Q., 62 F.4th 978 (6th Cir 2023)

- School proposed placing student with autism in a self-contained classroom for all academic instruction in kindergarten over parents' objection.
- Student was nonverbal, socially withdrawn with prevocational delays but engaged in purposeful nonverbal communication, was not cognitively delayed & developed skills in parallel play
- ALJ found proposed placement violated LRE & 6th Cir. affirmed because:
 - Student made progress on IEP goals in general education classroom (as evidenced by teacher progress reports)
 - School's proposed supports & services could be delivered in gen ed class despite school's claim it was impossible
 - Student was able to interact with non-disabled peers in preschool class
 - Academic benefits of self-contained class did not far outweigh benefits of mainstream classroom in part due to nonacademic benefits of gen ed classroom
 - No error in finding student's expert more persuasive than school



○ IEP

LRE and General Education

1. Explain the extent, if any, in which the student will not participate with non-disabled peers in the regular class: Cam receive social/emotional support through a check-out three times a week for 15 minutes. All other courses will be in the general education setting with accommodation and support as necessary.
2. Explain the extent, if any, in which the student will not participate with non-disabled peers in extracurricular and nonacademic activities: Cam can participate peers as behavior warrants and with parent permission
3. and/or, his/her LEA Home School: Cam attends his school of zone. Special transportation is required to and from school.



○ Hypothetical

- After returning to school after his hospitalization, Cam continued to engage in disruptive behaviors at school, including refusing to follow directions or complete assignments, yelling at peers and teachers, getting up and walking out of class and being confrontational. After a recent incident, the school staff requested an IEP meeting and proposed to Parents that Cam be moved to a public day school in the district that is better equipped to meet his needs. Parents are continuing to work with Cam's doctors to adjust his medication and Cam's therapist believes a change in school would be detriment. Parents believe that with additional accommodations, an updated behavior plan and some additional time to adjust that Cam will be successful at his current school





Serious Procedural Errors

Improper IEP team membership

Failing to ensure a continuum of placement

Failing to include important components in an IEP

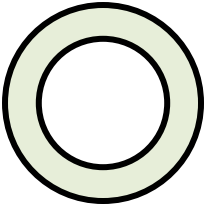
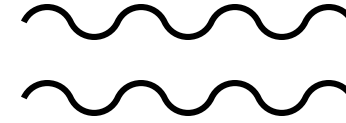
Predetermining services or placement

Placing a student prior to determining programming ("Shoehorning")

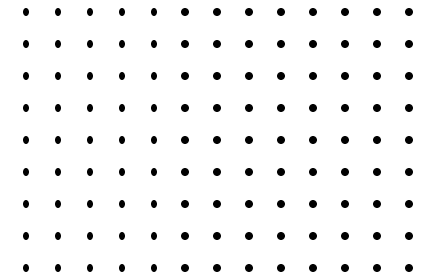
Failing to implement a material part of an IEP

Failure to conduct MDR before suspension of more than 10 days or expulsion



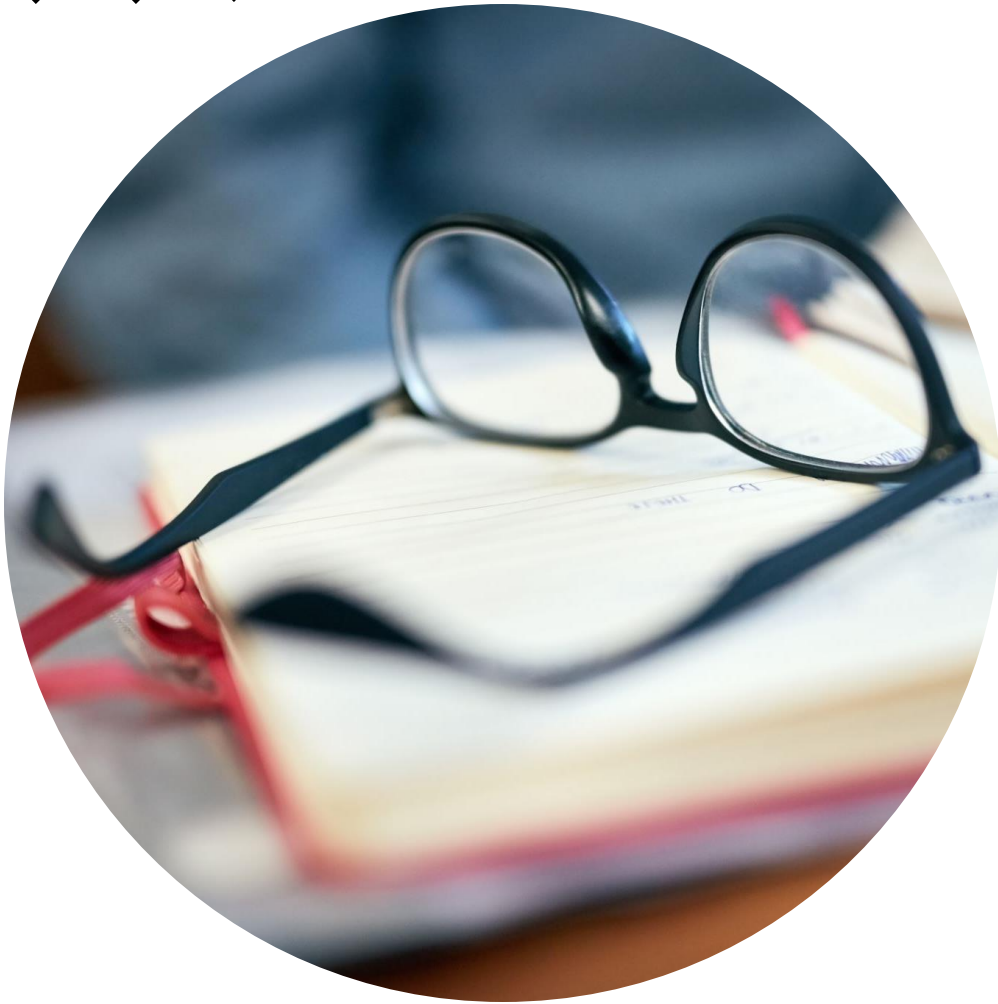


Because the IEP process develops and formalizes FAPE for a student with disabilities, the IEP is so important that the **failure to properly develop and implement** it may render a student's entire special education program **invalid in the eyes of the courts** (*Bateman*, 2017).





What is an IEP?



- A legally binding document to ensure students with disabilities receive FAPE (Access)
- Written statement that is developed, reviewed, and revised *at least* annually
- May be revised as determined necessary by the IEP Team
- Includes:
 - present levels of academic achievement and functional performance (PLEPS)
 - Measurable annual goals
 - Special education and related services and supplementary aids and services
 - Accommodations and/or Modifications

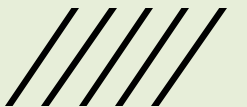




- Parents of the child
- Not less than one regular education teacher of the child
- Not less than one special education teacher of the child
- LEA representative
- Interpreter of results/assessment specialist
- Other individuals who have knowledge or special expertise regarding the child
- Whenever appropriate, the child with a disability (Child at age 14 years old)

IEP Team Members

We need everyone at the table!





Student Name: Cam v9.6 Testing Test
DOB: 12/03/1996

Metro Nashville Public Schools
IEP Meeting Date: 11/02/2023

The following individuals attend the IEP Team and participated in the development of this Individualized Education Program.

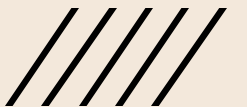
Position	Signature	In Agreement	Date
Parent/Guardian		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Local Education Agency Representative		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Regular Education Teacher		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Special Education Teacher/Provider		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Interpreter of Evaluation Results		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Student		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
EE Coach		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	





Parental Participation

We are looking for **meaningful participation** from parents via involvement in IEP meetings where their opinions are considered in establishing educational/behavioral goals.



○ IEP

Informed Parental Consent

Please select 'Yes' or 'No' for each statement below:

- ☒ Yes ☐ No I certify that I am the legal parent(s)/guardian(s)/surrogate(s) of this child.
- ☒ Yes ☐ No I have been informed of and understand my rights as a parent, and have received a copy of the notice of procedural safeguards.
- ☒ Yes ☐ No I have been involved in the IEP Team meeting and/or the development of this IEP, and give permission for the proposed program described in this IEP for my child.
- ☒ Yes ☐ No My child and I have been informed of his/her right to represent himself/herself upon his/her eighteenth birthday. (Note: This information must be provided beginning at least one year prior to the student's 18th birthday.)

Please select one of the following options:

- ☒ A draft IEP was developed and a copy was provided at least 48 hours prior to the IEP team meeting.
- ☐ A draft IEP was developed, but a copy was not provided at least 48 hours prior to the IEP team meeting.
- ☐ A draft IEP was developed, but a copy was declined.
- ☐ A draft IEP was not developed prior to the IEP team meeting.
- I agree that A draft IEP was developed and a copy was provided at least 48 hours prior to the IEP team meeting.
- ☒ Yes ☐ No

Date IEP was given to parent(s): 11/02/2023



PLEPS & Goals



- When developing, reviewing, or revising an IEP, the present levels of performance (PLEPS) and annual goals should be based upon evaluations and other relevant data that are current.
- **A great PLEP will combine data and qualitative teacher or provider input.**



T H E P R E S E N T
L E V E L S O F
P E R F O R M A N C E
S H O U L D D R I V E
T H E G O A L S
W H I C H D R I V E
T H E S E R V I C E S





Present Levels of Performance (PLEPS)

Describes
the unique
needs of the
student that
the IEP
will address.

Identifies the student's level of performance using current data

- What can they do?
- What are they unable to do yet?

Identifies the student's area(s) of **strength**

Identifies area(s) of **exceptionality** (deficit)

Should be written in positive terms!





Present Levels of Academic Achievement and Functional Performance (PLAAFP)

Levels of functioning should, when applicable, include norm referenced and/or criterion referenced data, as well as descriptive information of the student's deficit areas.

Assessment Area: Social and Emotional

EXCEPTIONAL? Yes

Present Level of Performance: A review of behavior data reveals that Cam has had three instances of using inappropriate language in the first 8 weeks of school. He walked out of class without permission twice. On one occasion, he threw water at another student and grabbed the student's hair. On another occasion he tried to fight another student.

Does the student's performance require specialized instruction? Yes

Impact of Mastery of Standards: Due to Cam's disability; social awareness, ability to control emotions, and verbal aggression negatively impact his ability to recognize the consequences of behavior, ability to follow directions, and ability to control emotions when faced with a demanding situation. He may show frustration when presented with a non-preferred task.

Source(s) of Information:

Observation - Social/Emotional/Behavior

SubTest: General

Date Administered: 09/28/2023

Other: Behavior referrals and MTSS B data

○ Goals

The essential function of the IEP is to set out a plan for pursuing academic and functional advancement. (*Endrew*)

The goals may differ, but EVERY Child should have the chance to meet challenging objectives. (*Endrew*)

Ensure that annual IEP goals are challenging, appropriately ambitious, and measurable.

Measurable Annual Goals should contain Who, Where, What, How **or** How Much, **and** When **statements.**



○ Measurable Annual Goals (MAGs)

- Pathway to address skills acquisition—not the curriculum standard—that will enable the student to be involved and make progress in the general curriculum.
- Based on the individual needs of a student that result from the associated deficits of the identified disability.
- Directly linked to the exceptional area(s) of the PLEP.
- Very specific and detailed, include criteria for mastery.
- Written using language that can be understood by parent(s)/legal guardian(s), educators, and/or related service providers (e.g., no acronyms).
- Descriptions of what the student can reasonably be expected to accomplish in each area during the life of the IEP as a result of the provision of special education intervention and related services.
- Guides for instruction and intervention.
- Guidance for monitoring student progress on specific skills to determine if the interventions and services are effective.



○ IEP

Measurable Annual Goals and Benchmarks/Short-term Instructional Objectives for IEP and Transition Activities

Area of Need: Social and Emotional

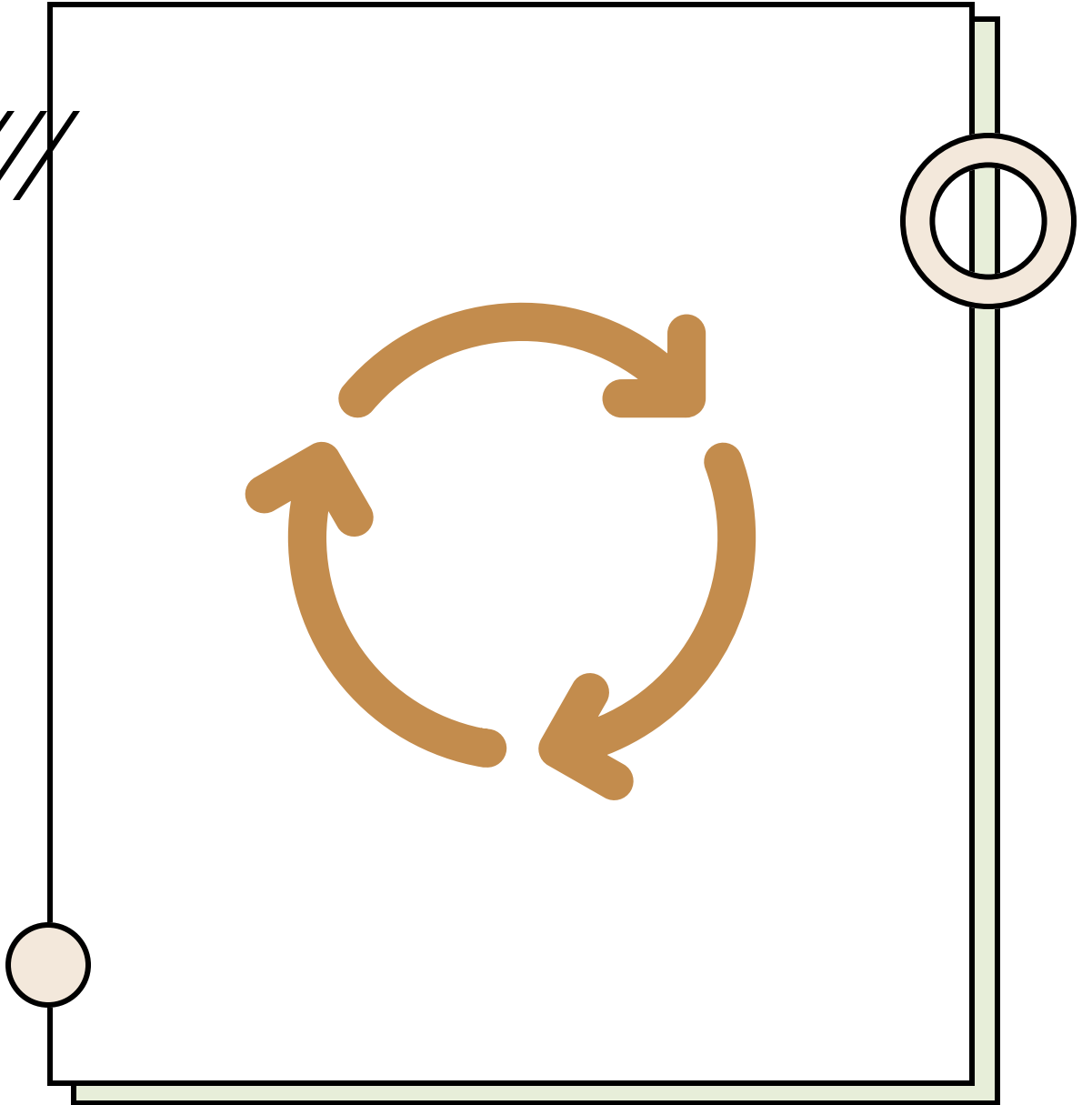
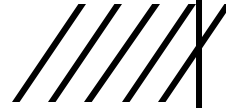
Goal 1 of 2

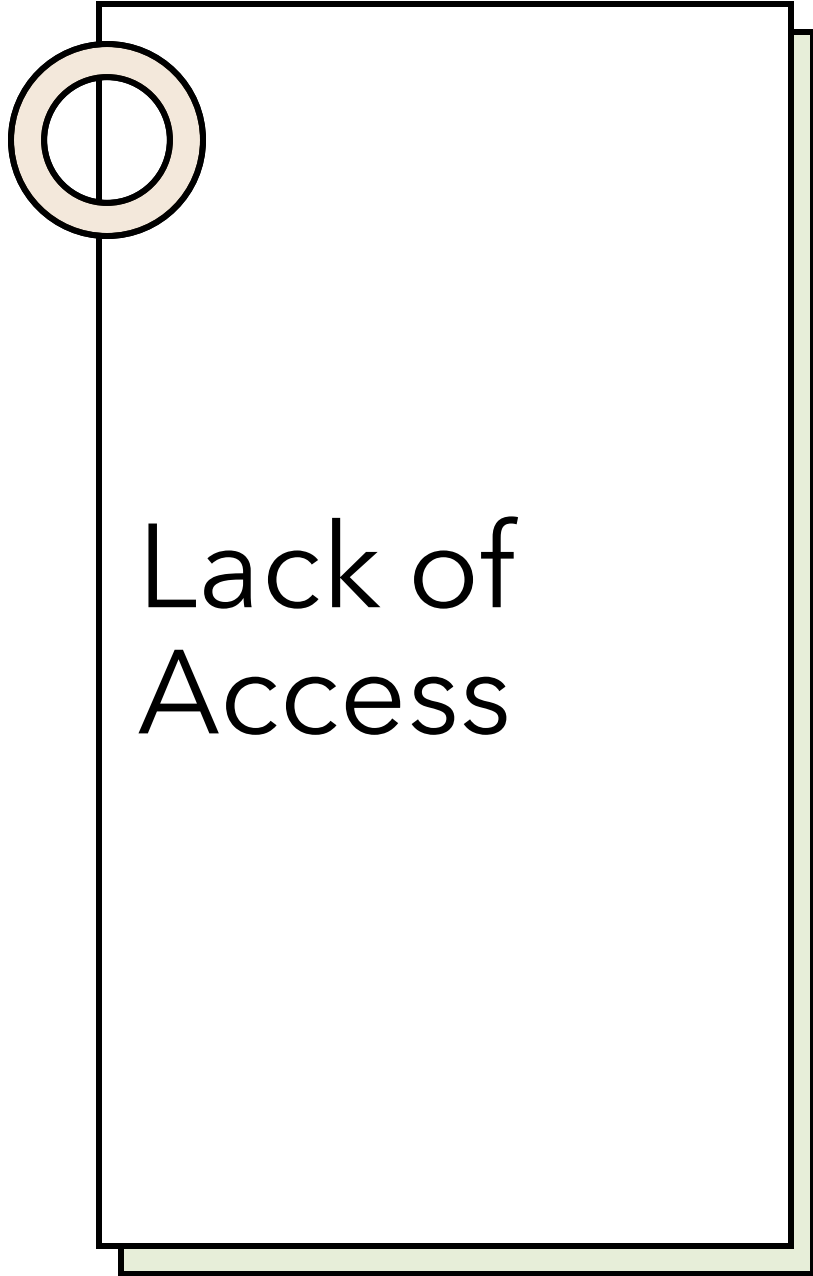
Annual Goal: Given a situation in which she is upset or angry, Cam will identify the emotion he is feeling and select an appropriate coping skill with 100% accuracy in 10 out of 10 observable opportunities as measured by daily sheets. by 10/03/2024 by 10/30/2024



I M P L E M E N T A T I O N

What else can go wrong?





Resources – money, staffing,
training

Progress Monitoring

Specialized instruction

Assistive technology

Services: Behavior, OT, PT, Speech

**A C C O M M O D A T I O N S
M O D I F I C A T I O N S
& S E R V I C E S**



Accommodations



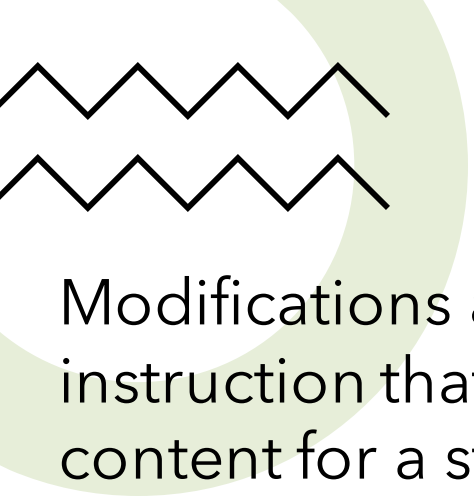
Changes to the way a student learns that allow them to access the same curriculum and instruction as their peers. They do not change the content or expectations of the curriculum, but rather provide the student with the tools they need to succeed.



Examples of accommodations include:

- Extended time to complete assignments or tests
- Use of audiobooks, video, or other multimedia resources instead of traditional reading materials
- Provision of a note-taker or recorder
- Permission to use a calculator or other assistive technology
- Preferential seating to minimize distractions
- Clear and concise instructions





Modifications are changes to the curriculum or instruction that reduce the expectations or content for a student. They are often necessary when a student is unable to access the general education curriculum at its full level.

Examples of modifications include:

- Providing simplified or adapted textbooks or other instructional materials
- Breaking down assignments into smaller, more manageable chunks
- Reducing the number of questions on a test
- Eliminating certain requirements or expectations
- Offering alternative assessment methods

Modifications



○ IEP – Accommodations and Modifications

Support(s) or training needed by school personnel in order to support the student in their goal(s):

iReady, verbal de-escalation training

Program Modifications and Accommodations

Accommodation/Modification	Duration	Area(s)	Acad.	Non-Acad.	Testing	Accommodation or Modification
Extended time	x1.5	All Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Accommodations
Flexible Setting		All Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Accommodations
Give directions in small, distinct steps		All Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Accommodations
Planned/preferential seating		All Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Accommodations
Repeat oral instructions verbatim		All Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Accommodations



Common Legal Mistakes

- Failing to provide accommodations or modifications to students who need them.
- Providing accommodations or modifications that are not appropriate for the student.
- Failing to keep records of accommodations and modifications provided.
- Not providing accommodations or modifications in a timely manner.
- Providing accommodations or modifications in a way that is not respectful of the student's dignity.
- Not following the student's individualized education program (IEP).
- Utilization of "as needed" or "at teacher discretion."



○ Hypothetical

Despite a proposed BIP including an accommodation allowing Cam a pass to leave the classroom to go to the counselor's office when he feels overwhelmed, he continues to struggle with anxiety and emotional regulation, and is missing significant class time going to the counselor's office. Parent's request for 1:1 support in the classroom was denied. Cam's IEP also includes other accommodations, such as "repeat oral directions verbatim." But his English teacher thinks this is a waste of time and not something he needs in her class because she includes all oral directions verbatim in writing on a smart board.

As a result, Cam often gets frustrated in this class because he is unsure what he is supposed to be doing. When he attempts to use his pass to go to his counselor his teacher often asks him to wait or requires him to complete his assignment before leaving, leading to Cam skip English class all together for which he has received several in-school detentions.



○ IEP – Services

Special Education and Related Services

Direct Special Education

Type of Service	Provider Title	Sessions Per	Time Per Session	Hours Per Week	Beginning - Ending Dates	Location of Services
Emotional and Social	Exceptional Educator	3 times/W	15 minutes	0.75	11/02/2023 - 10/30/2024	General Education
Behavior Social Emotional	Exceptional Educator	5 times/W	20 minutes	1.66666666666667	11/02/2023 - 10/30/2024	Special Ed Setting

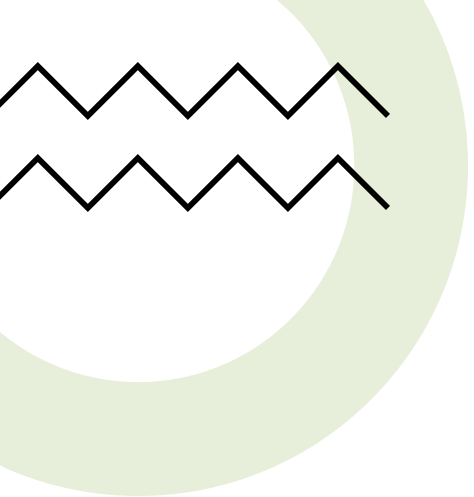
Total Special Ed Minutes by Date Range

Begin Date	End Date	Minutes per Week
11/02/2023	10/30/2024	145

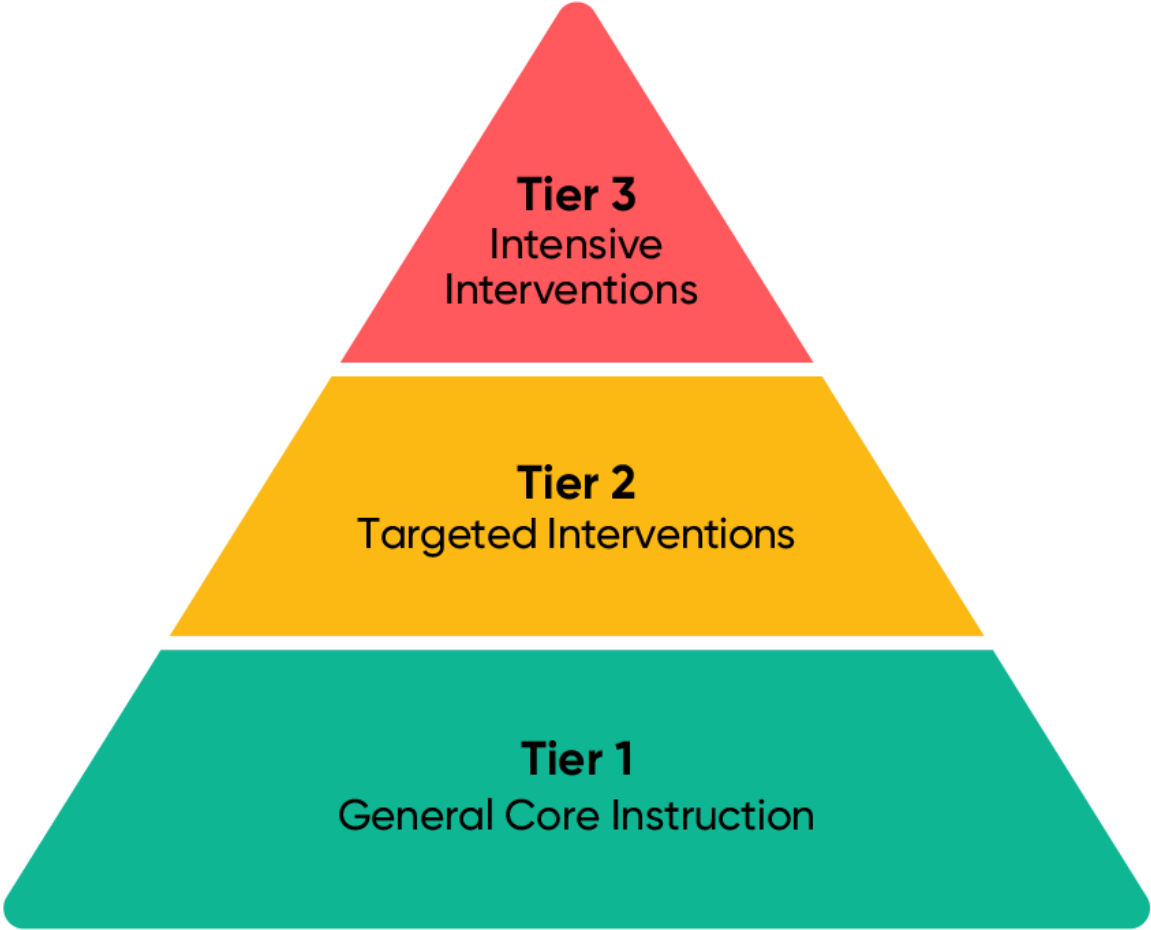
○ **Research-Based Practices in Special Education**

- Uses credible measures of student performance
- Involves large and representative samples
- Uses research designs that rule out alternative explanations for change in student performance
- Engages in the open and iterative nature of science





Positive Behavior Support



Response to Intervention Model





Applied Behavior Analysis

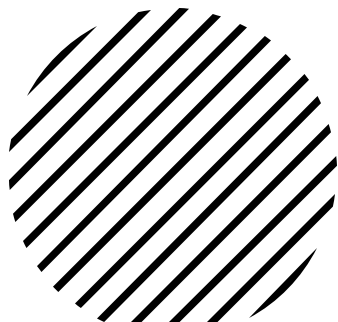
Key Principles:

- Behavior is learned
- Behavior is controlled by its consequences
- Behavior is a function of the environment
- Behavior can be changed
- Antecedents and Consequences
- Precision Teaching
- Functional Assessment
- Data Collection





Preventing Problem Behavior



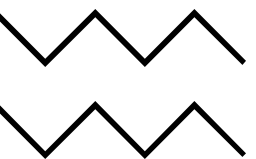
PRE-
CORRECTION



CHOICE MAKING



SELF
MANAGEMENT



Decreasing Aggressive, Coercive Behavior

First Step to
Success

Functional
Assessment
Based
Interventions




Social Behavior

- Social Skills Training
- Replacement Behavior Training
- Positive Peer Reporting





Progress Monitoring




Documentation should show that school staff continuously monitored and measured a child's progress on annual goals by maintaining specific data to demonstrate that progress was made.

Data-Based Decision Making

- Ongoing assessment of student learning provides:
- Continuous feedback on the effectiveness of instruction and intervention
- and
- Is essential in determining areas where a change in instruction and intervention was required.





What can progress monitoring data look like?

- A single data source structured observations of targeted behavior in class
- Student self-monitoring checklist should not determine progress
- Written assessments
- Behavior charting, work samples, summative assessments, and formative assessments
- Classroom assessments



○ Hypothetical

Tensions in English class continued to escalate until one day when Cam requested to leave, and his teacher told him he had to wait until she finished explaining the assignment. Cam attempted to walk out anyway, and the teacher attempted to block his path, so he shoved her out of his way causing her to fall and break her arm.

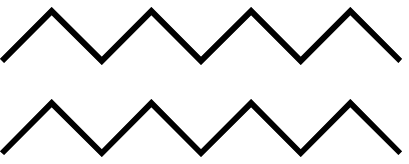
The school moves for expulsion. As a result, the school convened an MDR. The school team members did not believe this was a manifestation of his disability because he never physically hurt someone before.

The student's therapist attended the meeting and expressed her professional opinion that this conduct was the direct result of the teacher's failure to follow the IEP and the school's failure to implement Cam's BIP with fidelity. The school provided anecdotal notes about use of behavior techniques to deescalate Cam's emotional outbursts, but did not have data showing frequency of behavior, utilization of identified techniques or success rates.

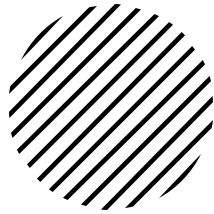


Q U E S T I O N S ?





Looking Ahead: Hot Topics



- Eligibility and services for students with Dyslexia
- Exclusionary discipline in light of TN Zero tolerance laws for school threats
- Requests for clinical vs. school-based therapies
- Compensatory services for gaps created by COVID disruption
- Impact of SCOTUS decision not requiring exhaustion