

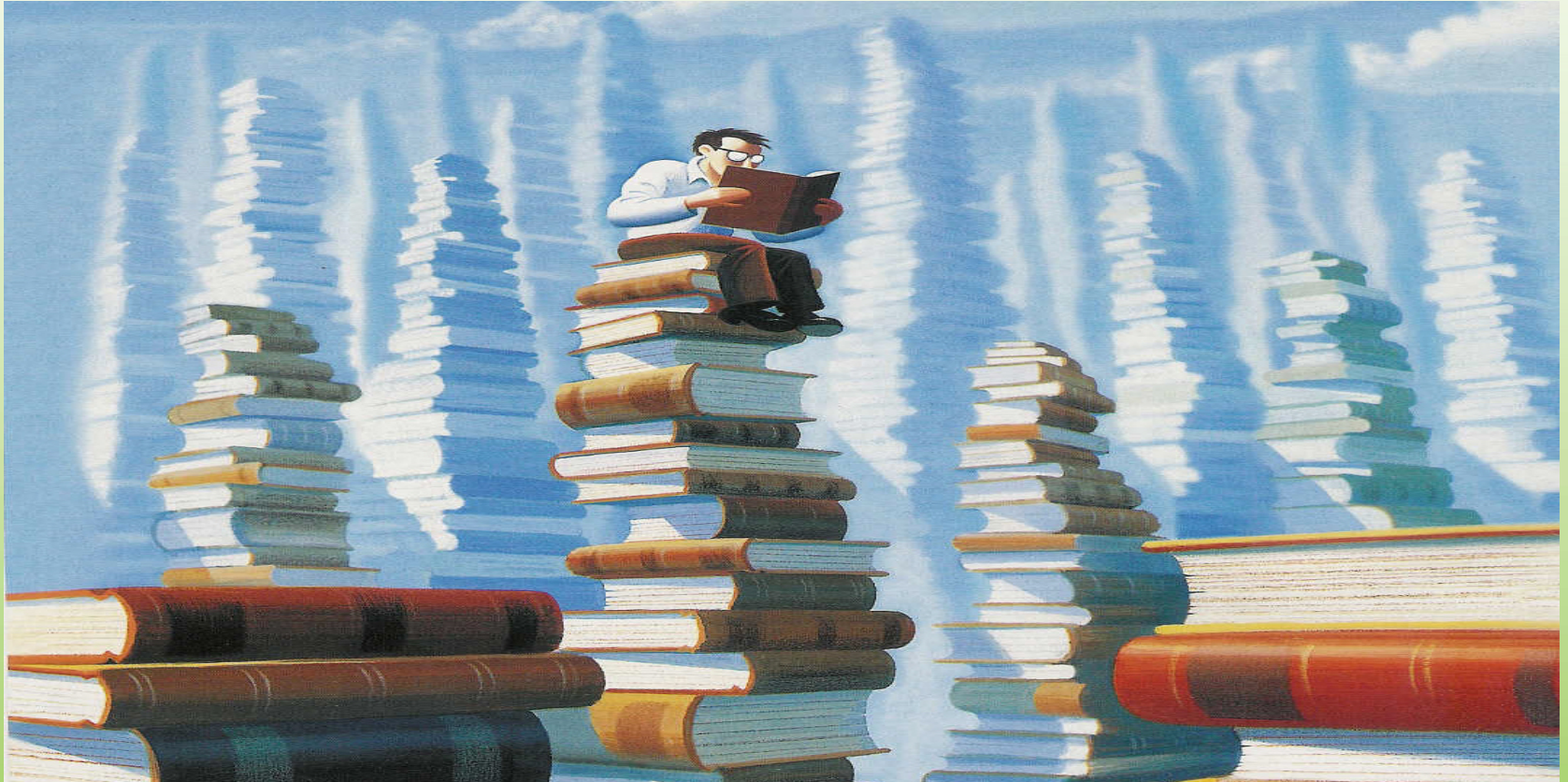


# **Soup 2 Nuts of Special Education Law and Practice**

**Los Angeles Unified School District  
Charter Schools**

**By:  
Jonathan Read  
and Angela Gordon**

# Review





# Rules of Thumb

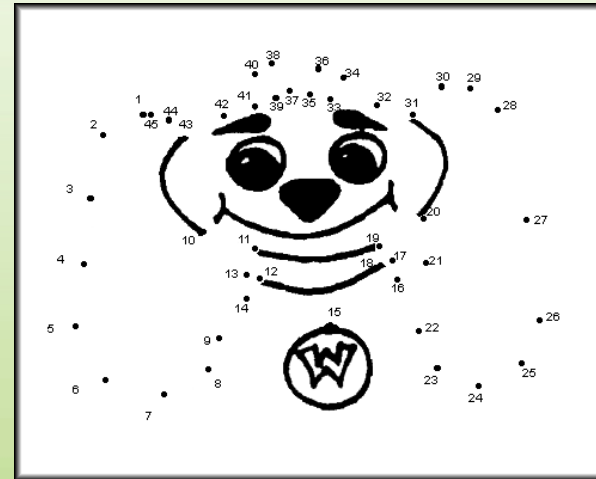


# Rules of Thumb

- All communication (verbal and written) must be child-centered.
- Personalize the IEP process; de-personalize the characters.

# Connect-the-Dots

- Present Levels
- Areas of Educational Need
- Goals
- Placement
- Related Services



# Section I

## Managing Difficult IEPs



# Rules of Professional Conduct

“The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law.”

Canon 7 of the ABA Model Code of Professional Responsibility

# Attorneys as IEP Team Meeting Participants

- Parents and school districts have the discretion to bring to IEP meetings—as team members—other individuals who have knowledge or special expertise regarding the child.
- Attorneys and advocates can be individuals who have knowledge or special expertise regarding the child.



# District's Interests

- Provide appropriate placement for child
- Legal compliance
- Complete the meeting
- Document formal offer
- Protect staff

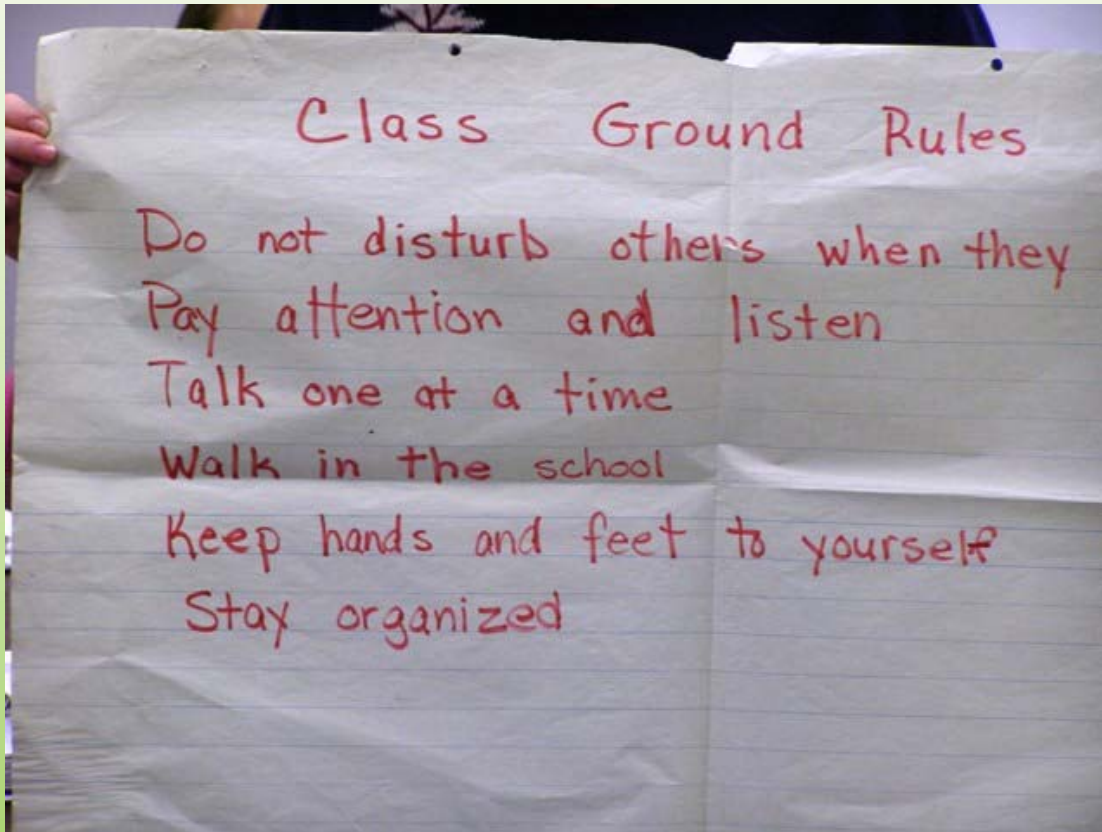
# Parent's Interests

- Protect child
- FAPE offer – and sometimes something different
- Legal compliance

# Pre-IEP Meetings

- Prepare staff
- Identify potential issues
- Prepare strategy for contingencies
- Assign roles

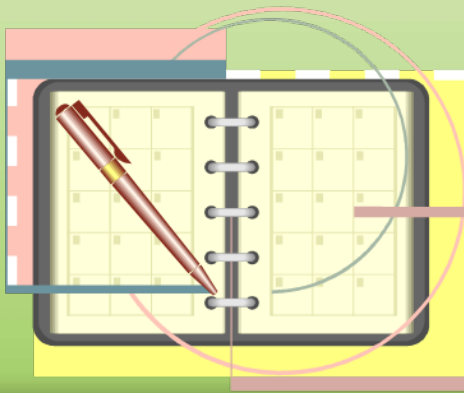
# Develop Ground Rules



- Post them
- Agree to them
- Enforce them

# Prepare An Agenda

- Time limits?
- Allow for additions
- Follow it
- Assign a note-taker



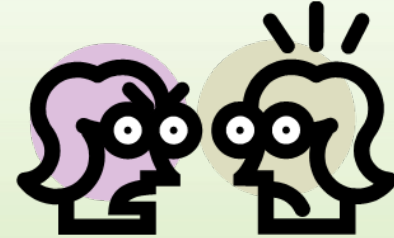


# Take Breaks

- When tensions are escalating
- When a district person says something inappropriate
- When you need to confer in private about a request
- When you need to call your administrator
- When you need to call your lawyer

# Agree to Disagree

- Don't get stuck on a point of disagreement.
- Move on!



# Assign a Facilitator

Someone to:

- Run the meeting
- Introduce the agenda and keep things moving
- Address parent concerns
- Enforce the ground rules calmly
- Focus the discussion on the student's needs
- NOT the person filling out the forms!

# Running an Effective IEP Meeting

- Early in the meeting, actively solicit the parent concerns for the educational program for his/her child.
- Assist the parent in formulating the issue and/or their interest, not necessarily the solution.
- At the end of the meeting, check to make sure parent issues have been addressed.

# During the Meeting

- Enforce privacy/no interruptions rule
- Ensure you have the necessary forms and technology (computers or phones)
- Offer refreshments
- Identify and respect time constraints
- Identify next steps and then follow through



# What Works?

- Aggressiveness
- Persuasiveness
- Control
- Cost
- Division
- Leverage

# Aggressiveness



# Aggressiveness

- Preempt
- Acknowledge
- De-escalate
- Respond
- Follow-through

# Persuasion



# Persuasion

- Simplify
- Child's needs
- LRE
- A note on predetermination



# Control



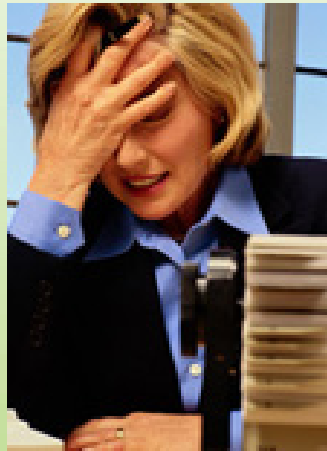
# Control

- Your FAPE
- Your notes
- Your presumption
- Your knowledge



# Cost

- Tax payers
- Stress
- Negative news can compromise confidence and trust



# Division



+



# Division

- What is the District?
- Getting on the same page
- Predetermination



# Leverage



# Leverage

- Connect the dots
- Close loose ends
- Fix the past



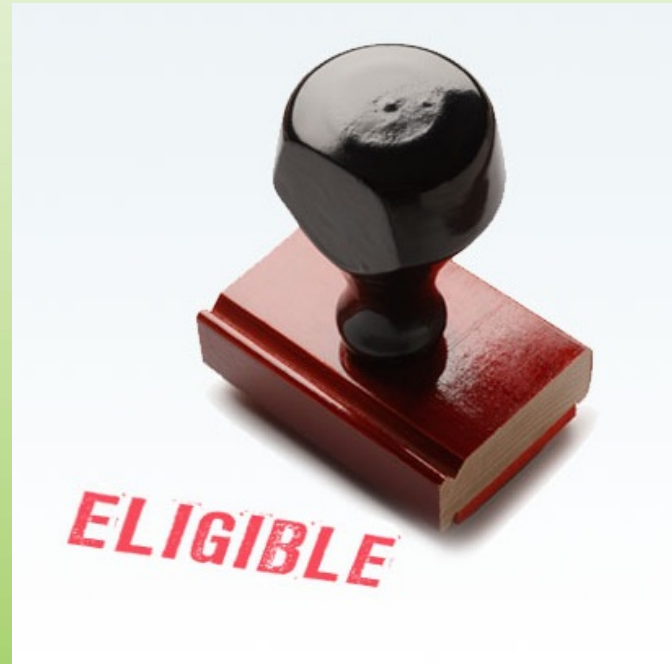
# Play to Your Strength:

**Stay calm**



# Section II

## Eligibility in the Age of RTI



# “Individuals with Exception Needs”

- (a) Identified by an individualized education program team as a child with a disability;  
and
- (b) \_\_\_\_\_

Ed. Code § 56026.

- Draw upon information from a variety of sources
  - Aptitude and achievement tests
  - Parent input
  - Teacher recommendations
  - Information about the child's physical condition, social or cultural background, and adaptive behavior
- Ensure that information is
  - Documented
  - Carefully considered

34 CFR § 300.306(c).

# “Child With a Disability”

- Mental retardation
- Hearing impairment
- Speech or language impairment
- Visual impairment
- Serious emotional disturbance
- Orthopedic impairment
- Autism
- Traumatic brain injury
- Other health impairment
- Specific learning disability
- Deaf-blindness
- Multiple disabilities

34 C.F.R. § 300.8.

# “Child With a Disability”

- “who, by reason thereof, needs special education and related services”
- “If it is determined that a child has one of the disabilities ... but only needs a related service and not special education, the child is not a child with a disability”

# “Individuals with Exceptional Needs”

- (a) \_\_\_\_\_
- (b) Their impairment requires instruction and services which cannot be provided with modification of the regular school program.

*See Hood v. Encinitas Union Sch. Dist.*, (9<sup>th</sup> Cir. 2007) 486F.3d. 1099)

# Special Education Defined

- Specially designed instruction
- At no cost to parents
- To meet the unique needs of a child with a disability



# Specially Designed Instruction

- Adapting, as appropriate
  - Content of instruction
  - Methodology of instruction
  - Delivery of instruction
- To address child's unique needs
- To ensure access to general curriculum

# Questions to Ask

- Does the student need adaptation in content, methodology, or delivery of instruction?
- Is it really necessary, not just helpful?

# Necessary vs. Helpful

- Student was diagnosed with ADD and Tourette syndrome
- Classroom performance was not affected
- Result: Student did not meet OHI eligibility criteria

*Livermore Valley Joint Unified Sch. Dist., 38 IDELR 118 (SEA CA 2002)*

## Necessary vs. Helpful

- Student experienced problems resulting from radiation and chemotherapy
- Treatment resulted in a loss of cognitive ability
- Student's teachers testified that she had poor impulse control, difficulty finishing assignments, and required 1:1 instruction in math
- Result: Student was eligible under OHI category

*Elida Local Sch. Dist. Bd. of Educ. v. Erickson*, 38 IDELR 237 (N.D. Ohio 2003)

# Necessary vs. Helpful

- Student was diagnosed with ADHD
- Although student was in the “at-risk” program, he earned passing grades and met standards on statewide achievement testing
- Student was socially successful in school
- Student’s behavior problems were not related to his ADHD
- Result: Student did not qualify under OHI

*Alvin Independent Sch. Dist. v. A.D.*, 48 IDELR 240 (5th Cir. 2007)

# Necessary vs. Helpful

- Student suffered from a condition “likely to develop into narcolepsy”
- Student was expelled “following an incident where a firecracker was thrown into a commode”
- Student was achieving at or above his IQ and medication was managing his condition
- The district also noted that the student’s behavior was typical (...exploding commodes aside...)
- IHO agreed that the student was not eligible as OHI

*Huntsville City Bd. Of Educ.*, 47 IDELR 277 (SEA AL 2005)

# In sum:

- First, determine if student is “child with a disability”
- Second, determine if student requires special education

# Response to Intervention

- Does RTI flip that order?





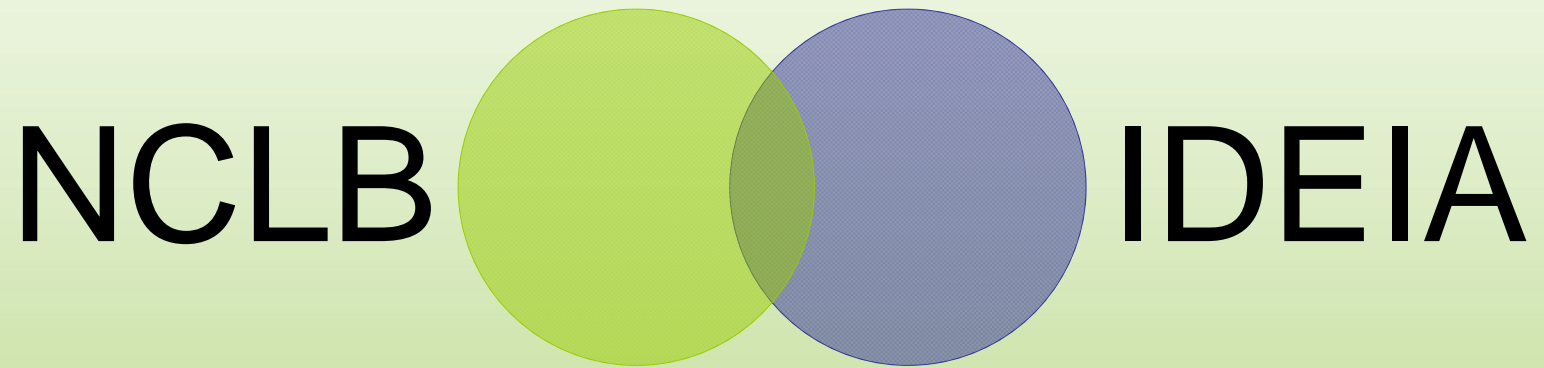
# California Students Enrolled in Public Schools

<b>1980</b>	<b>1990</b>	<b>2007</b>
4,046,156	4,944,484	6,286,943

# California Students Enrolled in Special Education

<b>1980</b>	<b>1990</b>	<b>2007</b>
361,000	474,000	679,648

- The number of students in special education has increased 88.3% in 27 years.
- Proportion to general education students has increased from 9% to 11%.





**General Education    Special Education**



# No Child Left Behind

- One of the primary purposes is “to close the achievement gap with accountability, flexibility, and choice, so that *no child is left behind.*”
- Requires that *all students* be proficient in reading/language arts and math by 2014.

# No Child Left Behind

- Includes four education principles:
  - (1) stronger accountability for *results*
  - (2) increased flexibility and local control
  - (3) expanded options for parents and guardians
  - (4) emphasis on scientifically based effective teaching methods

# No Child Left Behind

Bootstraps special education by requiring school districts to disaggregate data regarding special education students and demonstrate adequate yearly progress (“AYP”).





# Response to Intervention

School districts are not required to take into account a severe discrepancy between ability (IQ) and achievement when determining whether a student has a specific learning disability.

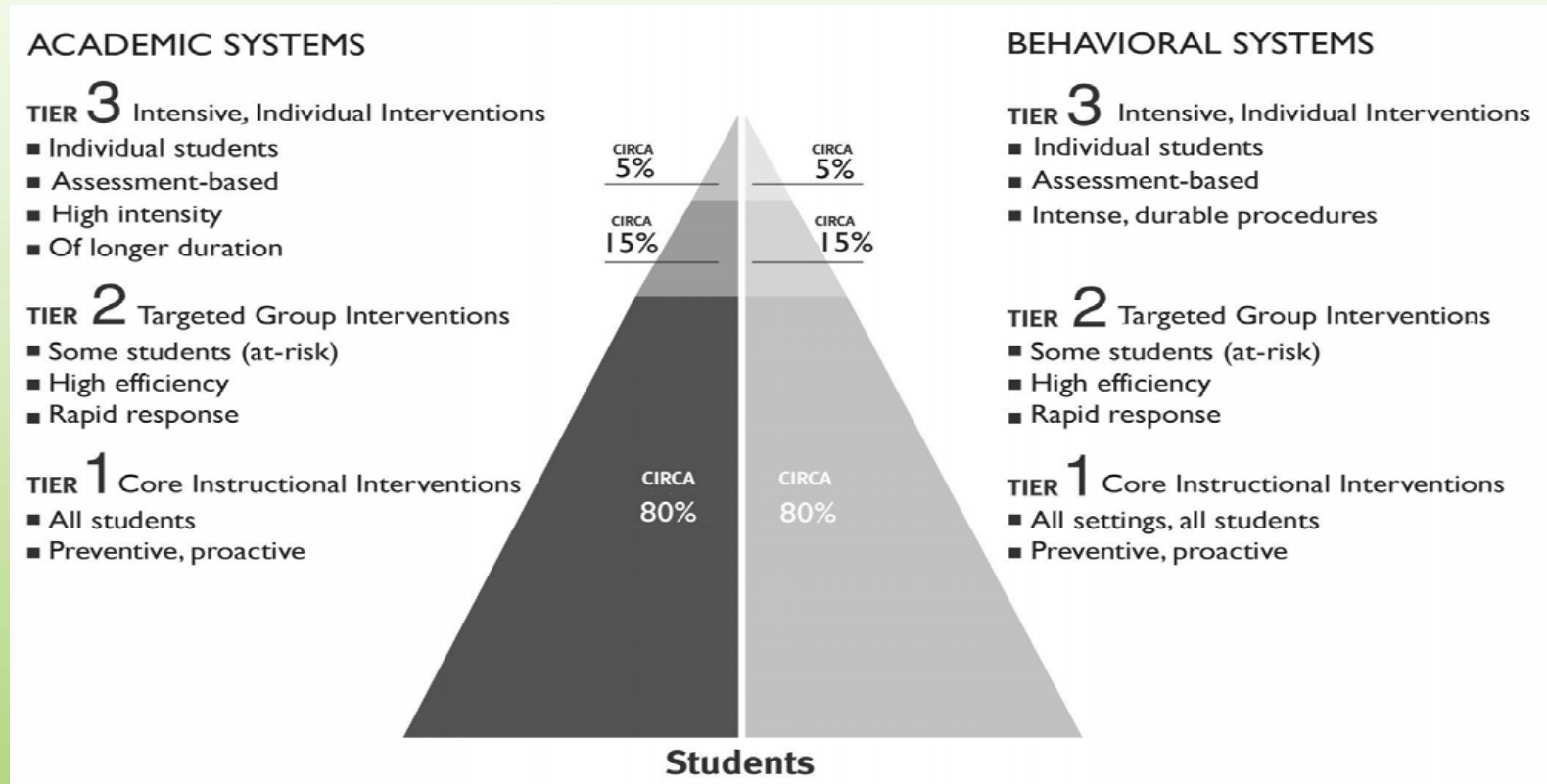
# Response to Intervention

- NCLB Definition:
  - Response to “scientific, research-based” intervention

# Response to Intervention

- Quality general education instruction
- Prevent over-identification for special education
- Continuous progress monitoring
- Objective interventions

# Multi-Tier Model



from Response To Intervention NASDSE 2006

# Response to Intervention

- Bootstraps general education by analyzing whether students respond to quality education, regardless of the existence of a disability.



# Linear Progression of Assessment to Intervention

- If students do not qualify, ensures quality instruction at the primary level; AYP scores go up.
- If students qualify, ensures needs are identified with respect to the standards to which we hold all children.
- IEP Goals and objectives linked to State standards; disaggregated SPED scores go up.

# Reconciling the Mandates of Each Statute



# Hot off the press:



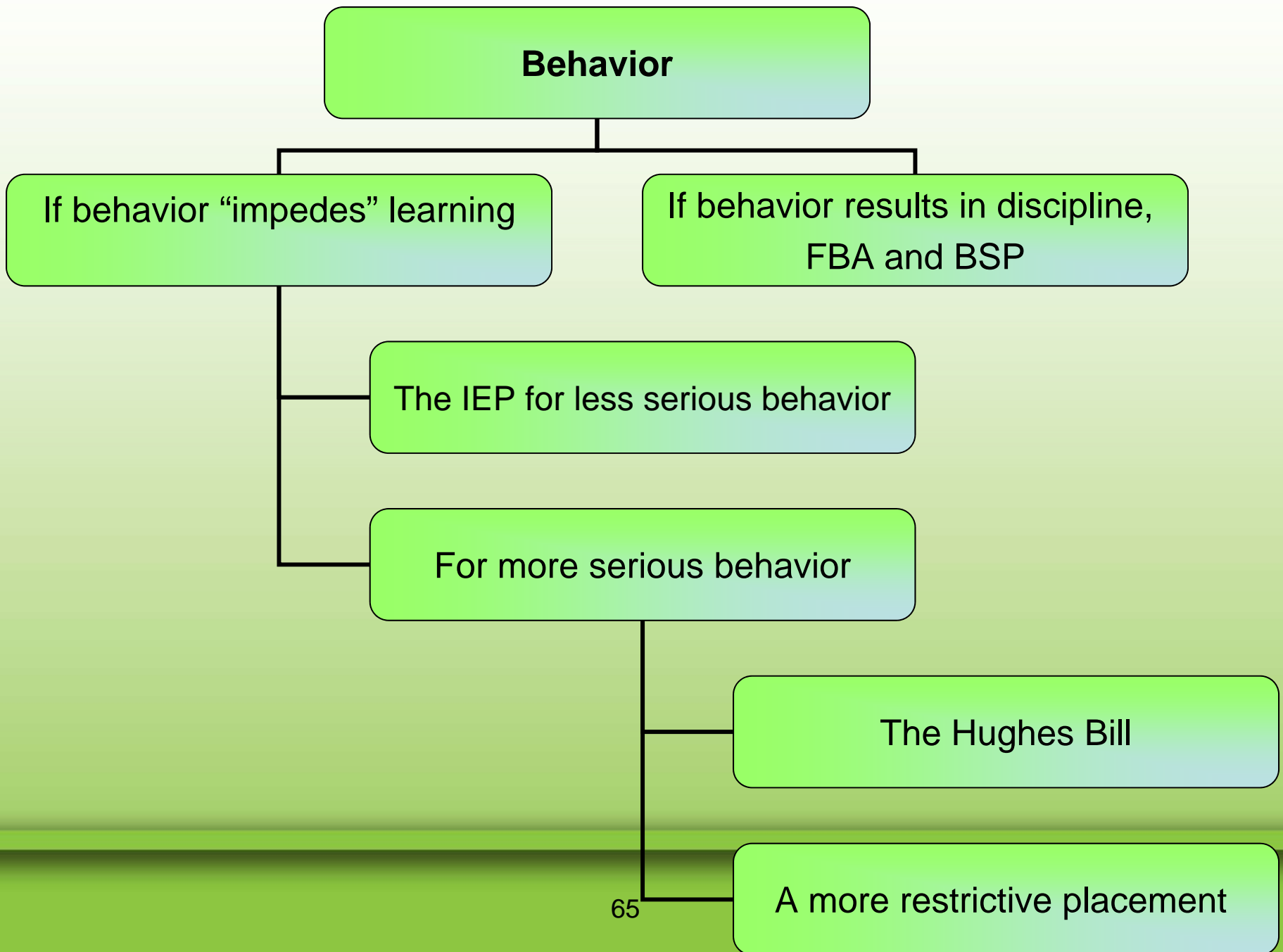
- Data Accountability Center: The number of children aged 6-21 receiving IDEA Part B services has dropped by 3.9%, including a 12.4% drop in SLD, since 2004.



# Section III

## Behavior and the LRE





# Legal Standard When Schools Must Address Behavior

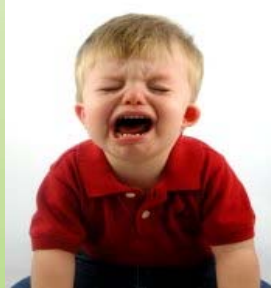
1. Behavior “impedes” learning—the student's or others
2. Disciplinary action for serious misconduct

# Definition of *When Behavior Impedes Learning?*



IEP Team Decides  
*[like obscenity, you know it when you see it.]*

# Examples



- Repeated disruption of teacher and/or students
- Refusal to participate and follow directions in class
- Outbursts and/or temper tantrums
- Selective mutism



**Remember:**

**No behavior is too mild to address!**

# Federal Law:

If behavior impedes learning, IEP Team shall consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

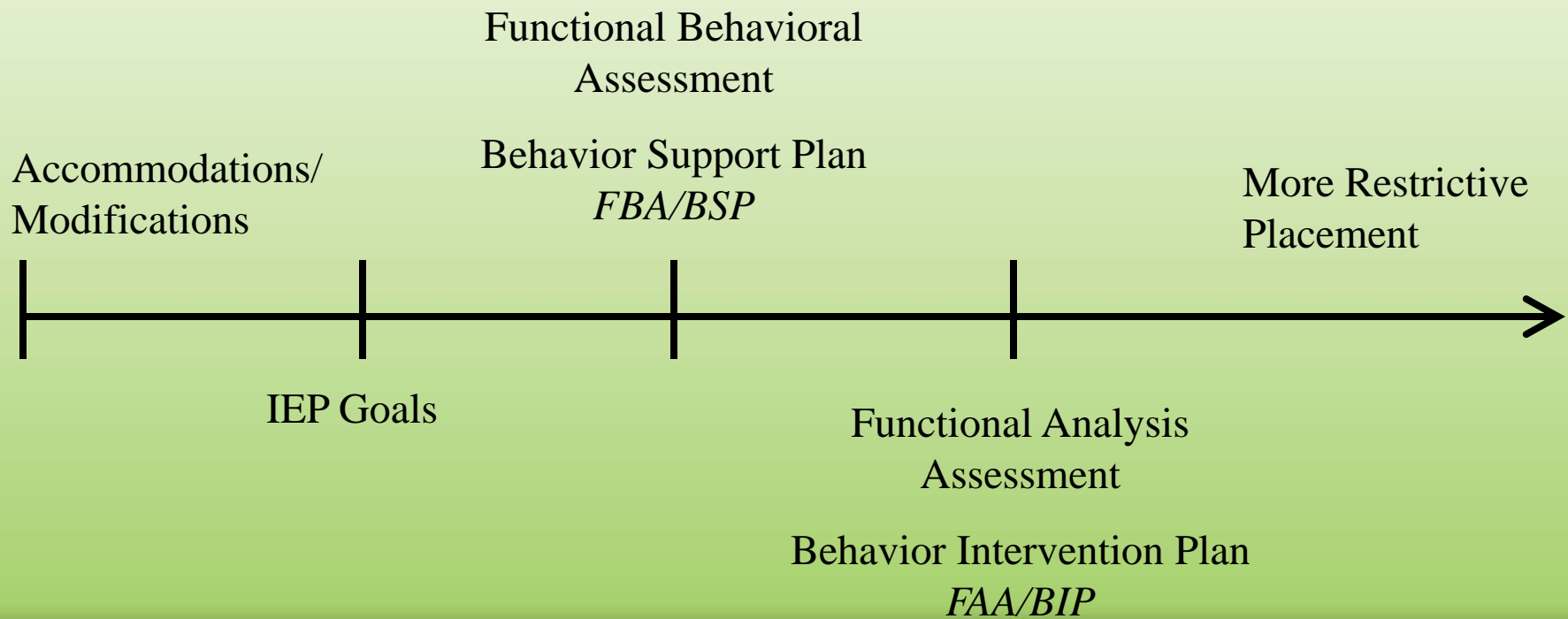


## Practice Pointer:

Show on IEP that you considered behavior,  
& what the outcome was



# Look at Interventions on a Continuum





# STEP 1:

Instructional supports = classroom  
modifications and accommodations



## STEP 2:

IEP goals that address the problem behavior



**Remember:** An offer of placement that addresses the student's problem behavior may be insufficient by itself to provide a FAPE! Include a goal or behavior plan on the IEP which the placement will implement.

Take Note!  
Focus is on ability  
to make *academic  
progress*



**Translation:** The IEP team is NOT responsible for implementing goals that address a student's behavioral and social-emotional needs *outside* of the school setting

**Case example:**  
***San Rafael Elementary School District***  
**(N.D. Cal 2007)**

- Student's behavior deteriorated over time, especially outside of school
- **Ruling:** Rowley standard has not changed
- District need not address Student's behavior in home/community
- District must address behavior that impacts Student's ability to academically progress in the school setting



## STEP 3:

If positive behavioral interventions  
are not effective

Develop the **Behavior Support Plan (BSP)**.

The IEP team may also develop a BSP before  
or simultaneously with other  
positive behavioral interventions.

# What is a Behavior Support Plan (BSP)?

- Not defined in federal or California law
- In California this is the commonly used term for a pre-Hughes Bill plan for positive behavioral intervention
- It is the same as the federal Behavioral Intervention Plan (BIP) required when a student is expelled or removed resulting in a change of placement



# Attach the BSP to the IEP Because...

- It must be attached if the student needs it to receive FAPE
- It should be developed by the IEP team
- This assures parental consent
- Everyone implementing the IEP needs to see it

# When is a BSP Required?

**Case example:**

***San Juan Unified School District (OAH 2007)***

- District saw no Self Injurious Behavior (SIB), despite parental report
- IEP goal addressed “behavioral excesses”
- Parent wanted BSP
- **Ruling**: District IEP goals adequately addressed behavior
- No BSP required

# When is a BSP required?

***Case example:***

***Yuba City Unified School District (OAH 2007)***

- Student ran away from campus on 5 occasions in 3 months.
- ALJ found original BSP met behavior intervention requirements
- But district failed to change the BSP to address escaping behavior
- **Ruling:** District did not provide FAPE

# Conduct a Functional Behavioral Assessment (FBA) Before Developing a BSP?

## Answer:

- No, if existing data is adequate for developing behavioral interventions
- Yes, if the IEP team needs additional data to develop behavioral interventions

# Functional Behavioral Assessment?

- Not defined in federal or California law
- Located in the discipline section of the IDEA

*See 20 U.S.C. § 1415(k)(1).*



# Purpose =

To provide the IEP team with more information regarding the problem behavior(s).

# Goal:

Develop a hypothesis about the behavior to develop replacement behaviors that are acceptable



**Case example:**  
*Modesto City Schools*

(OAH 2006)

- District developed and implemented a BSP for Student to address his problem behaviors.
- Suspended following a fight with another student
- Parent contended district failed by not conducting FBA prior to BSP
- **Ruling:** The District was not required to conduct an FBA prior to developing its BSP for Student



# The Hughes Bill

- Education Code sections 56520 -56524
- Title 5 section 3001 subdivisions (d),(f), & (aa); section 3052



# What is the Hughes Bill?

- The California Legislature enacted the Hughes Bill in 1990 to address serious behavior problems
- Prohibits the use of aversives
- Requires school districts to use positive behavioral interventions
- Title 5 regulations followed, providing for BIPs

# Purpose of Behavioral Interventions:

- Access to community settings, social contacts, and public events
- Placement in the LRE
- No pain or trauma
- Respect for human dignity and personal privacy
- Promotion of physical freedom, social interaction, and individual choice



# **The Behavioral Intervention Plan (BIP)**

# What is it?

- Written document
- Developed when a student manifests a serious behavior problem
- The behavior problem significantly interferes with the implementation of the student's goals and objectives



How *serious* is serious?

# Legal Standard: Three pronged

## # 1. Is the behavior -

- Self-injurious
- Assaultive
- Pervasive/maladaptive
- Causing serious property damage

*5 C.C.R. section 3001(aa).*

# If yes to any of the above,

**#2.** Does the behavior significantly interfere with the student's mastery of IEP goals?

**#3.** Have the existing behavioral and instructional approaches in the student's IEP been ineffective?



# If *Yes* to All Three—

The student may require a Hughes Bill  
Functional Analysis Assessment (FAA)  
and a Behavioral Intervention Plan (BIP)

# Examples #1

*San Francisco Unified School District (OAH 2007)*

- Student demonstrated self-injurious behavior and district developed BSP
- Parent wanted an FAA and a BIP

**Ruling:** No BIP required because student's self-injurious behavior adequately controlled by BSP;

- Behavior did not significantly interfere with attaining IEP goals and objectives

# Examples #2

*Colton Joint Unified School District*  
(OAH 2007)

No FAA/BIP required where student exhibited serious behaviors at home, but only mild behaviors at school.

# The Functional Analysis Assessment (FAA)

- Based on California law
- Conducted *prior to* the development of a BIP
- Administered when a student exhibits a serious behavior problem

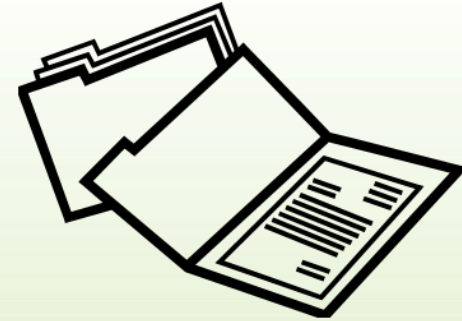
# Developing an Assessment Plan:

Behavioral Intervention Case Manager (*B/ICM*)

# Take note!

The school district must provide notice to the student's parent and obtain parental consent before conducting the FAA.

# FAA Report



- The results of the assessment must be addressed in a written report and presented at an IEP meeting.
- Make sure to provide the parent with a copy of the report.

# Is a BIP Necessary Based on the Results of the FAA?

**YES** If the results indicate that the student displays serious problem behavior

**NO** If the results indicate that the student's behavior does not meet the definition of a "serious" behavior under the Hughes Bill





## Practice Pointer: Attach BIP to IEP

Don't forget to attach the BIP to the IEP! Unlike federal law, California's Hughes Bill mandates that the BIP *shall* become a part of the student's IEP. But remember, the IEP team must agree to it first.

# Behavior and the Least Restrictive Environment



# Step 4:

## Removal to a More Restrictive Placement

**KEY:** Before removing a student from the LRE because of behavior, make sure to try a behavior plan first, probably a Hughes Bill approach, but at least a BSP.





# EXCEPTION

No BIP is required to remove student from the LRE if the student's behavior is extreme and dangerous.

# When removal to a more restrictive placement is necessary:

Case example: South Pasadena Unified School District (SEHO 2005)

- Student became out of control and destroyed classroom materials, left the campus
- District implemented a BSP to address behaviors and provided DIS counseling for anger management
- Behavior continued
- **Ruling:** The District's proposed alternative placement in a highly structured nonpublic Special Day Class (SDC) was appropriate

# Removal to a more restrictive placement is **NOT** appropriate when:

- adequate aids and services in the general education classroom can prevent or lessen the student's otherwise severe problem behavior.

*Oberti v. Board of Education of the Borough of Clementon School District* (3d Cir. 1993); *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994).





# THANK YOU FOR YOUR ATTENTION

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