

Reduced School Days: *Shortened Obligations or Shortened Path to a Lawsuit?*



JOSH DOUGLAS

jdouglass@mickesotoole.com

(816) 874-8000 (KC office)

Tim Lewis, Ph.D.

lewistj@Missouri.edu





Shortened School Days

Shortened School Day Basics

- Constitutes a **change of placement** decision that must be made by the IEP team
 - Even if parent agrees with shortened day, the District must convene the IEP team
- Team must determine that shortened school day is **necessary for FAPE**





Shortened School Days and FAPE

Is it Appropriate?

Christopher M. v. Corpus Christi Independent School District and Mary Grett Memorial School

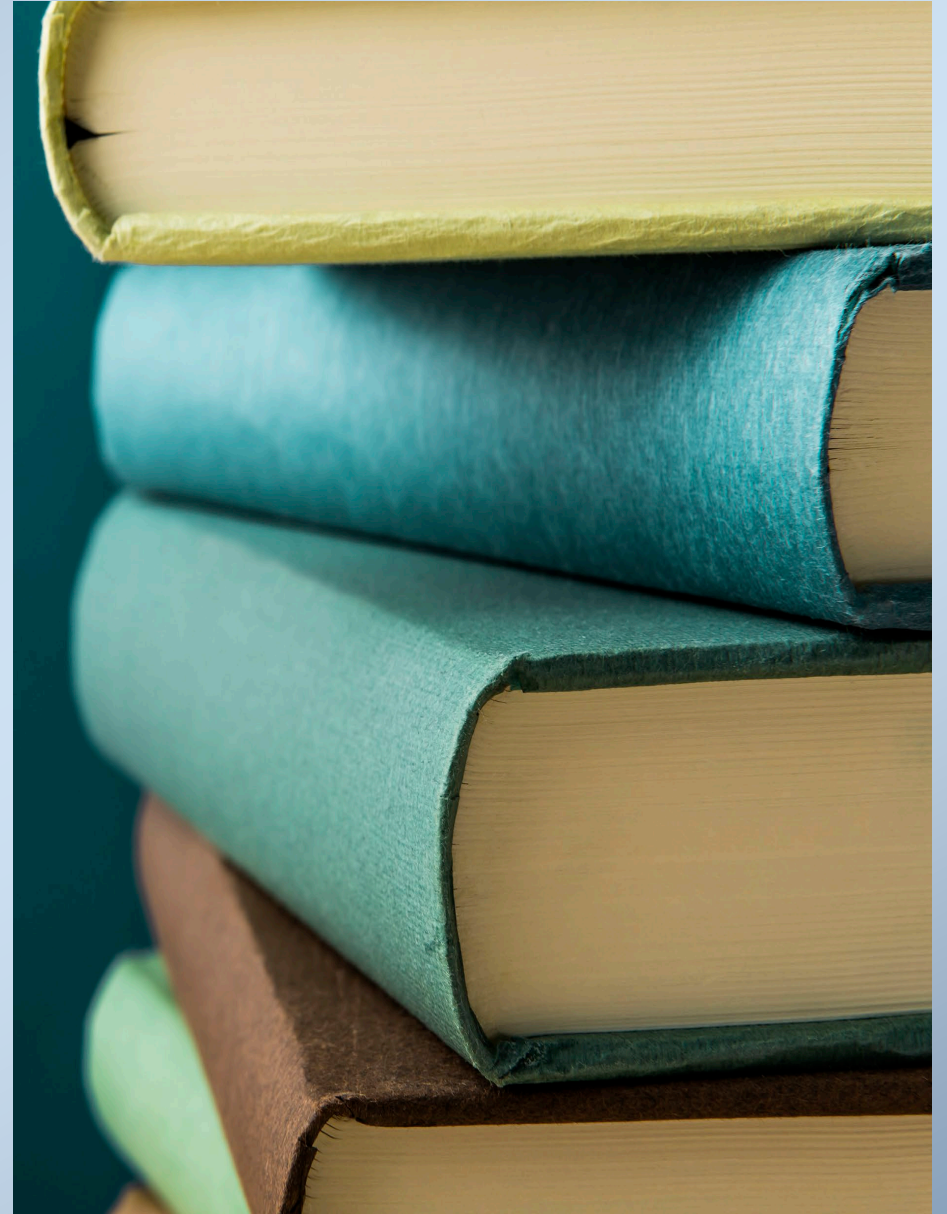
- 5th Circuit found that 4 hour school day **was** appropriate for student that had developmental age of 2-6 months old
- Court said child was not presumptively entitled to receive a full school day of programming
- Court gave weight to teacher testimony



Is it Appropriate?

Montgomery County Pub. Schs.

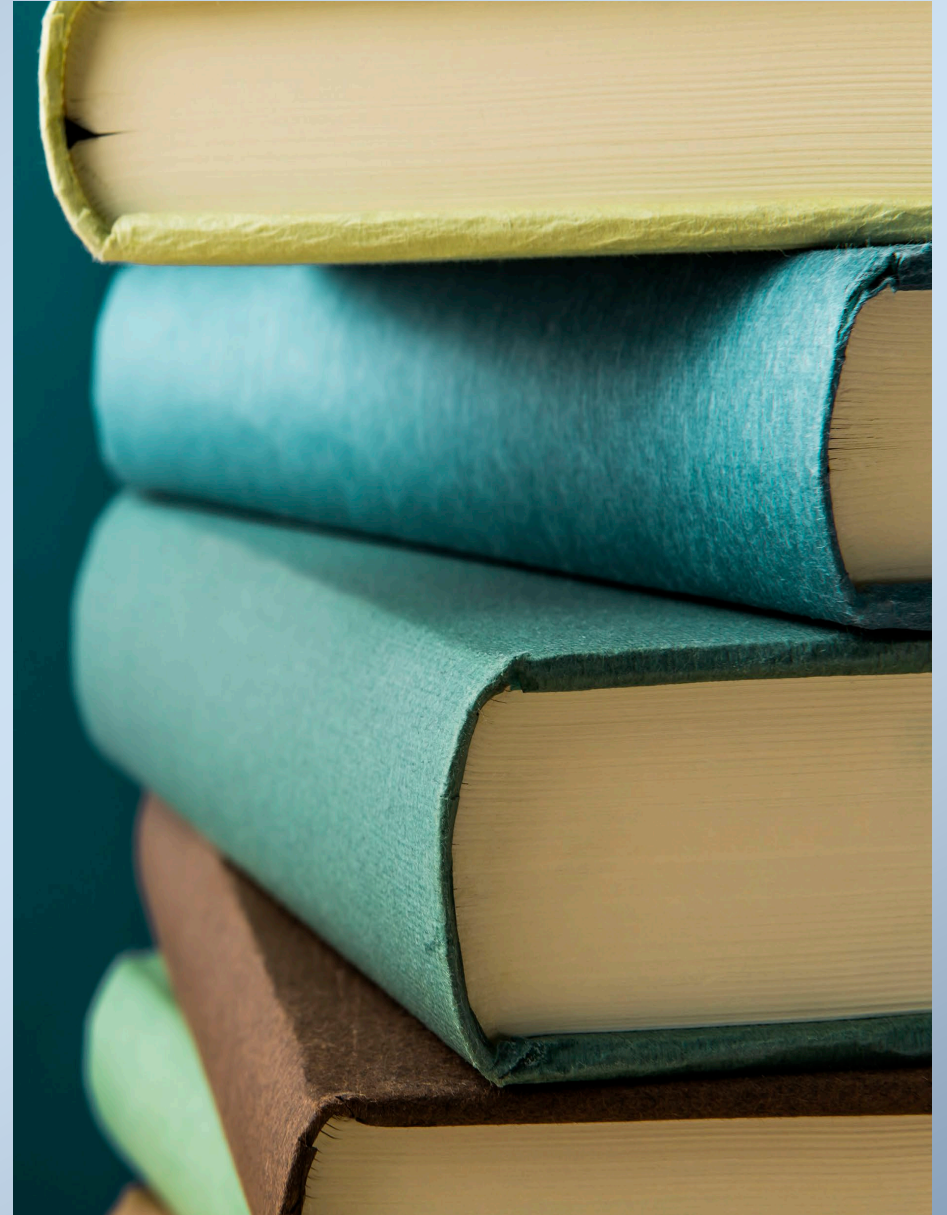
- Shortened school day was appropriate for a student with traumatic brain injury
- Evidence that IEP team discussed the doctor's recommendation for shortened school day



Is it Necessary?

Alleghany County (NC) Schools- Office for Civil Rights Ruling

- Mother believed student needed shortened school day due to violent behavior, Principal agreed
- Team should decide whether shortened school day was appropriate way to address behaviors
- Should have done evaluation first



Is it Necessary?

104.35(a) Preplacement evaluation.

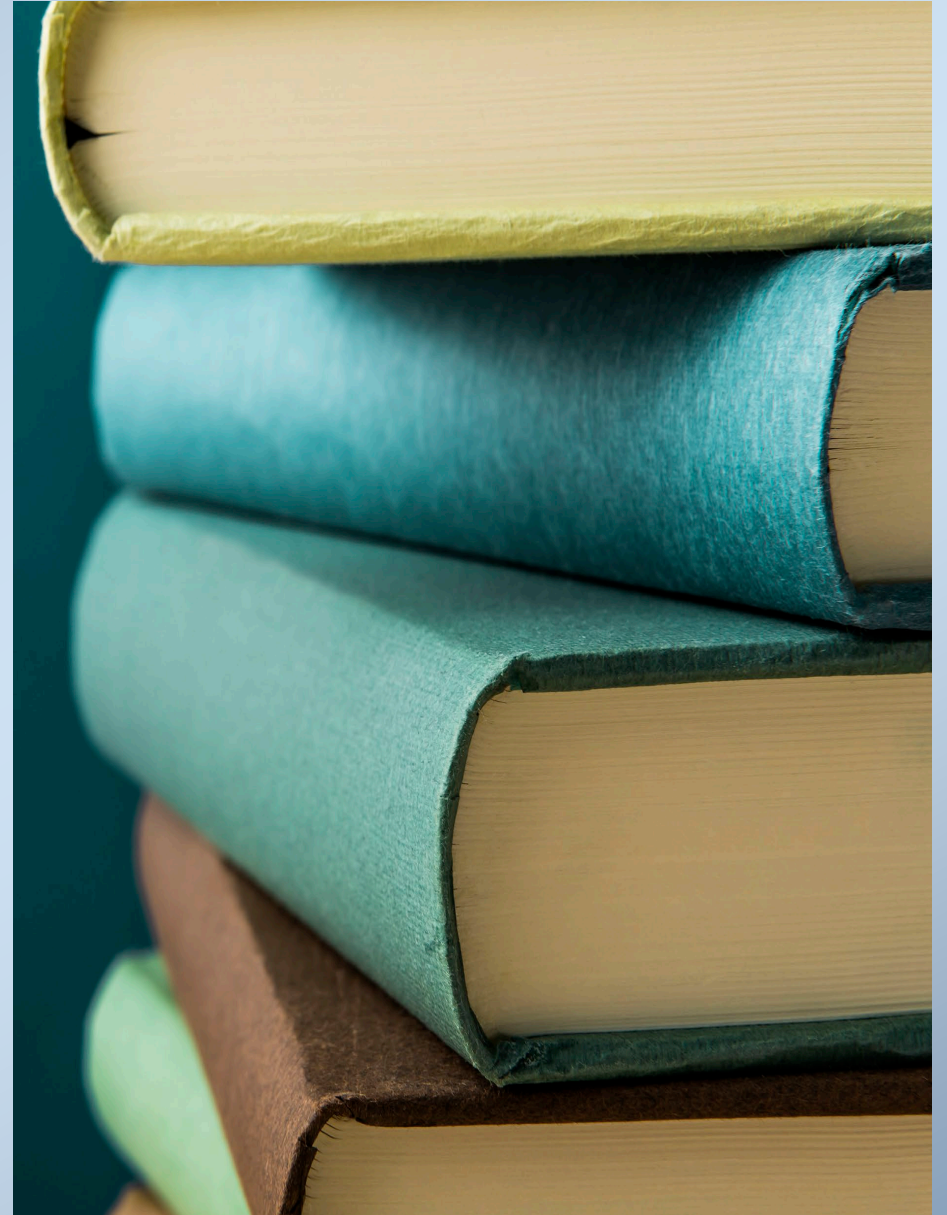
Must conduct an evaluation ...
before taking any action with
respect to the initial placement and
*any subsequent significant change
in placement.*



Is it Necessary?

Dixie Elem. Sch. Dist.

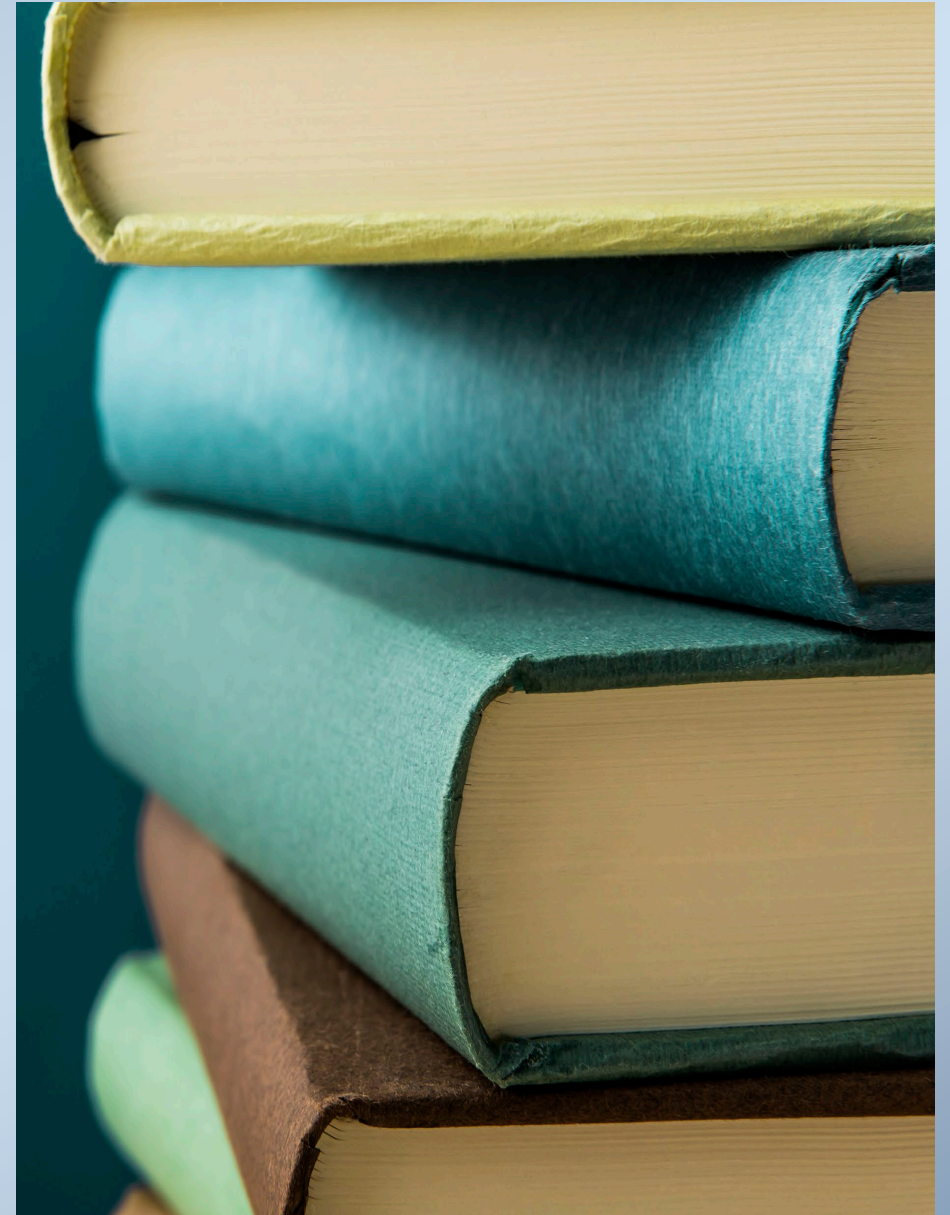
- IEP team **properly denied** parent's request for shortened school day
- IEP team properly considered **parent's request**
- IEP team considered classroom observations and teacher testimony that teen's attendance issues were due to his dislike of school, not his anxiety



Reasonably Significant Progress

M.B. by Berns v. Hamilton Southeastern Schools

- District's proposal to place Kindergarten student in half-day program would satisfy FAPE
- District didn't offer full-day program for any student
- Even if student with a disability would have benefited from full-day, District only obligated to offer searches to allow student to make "reasonably significant academic progress"

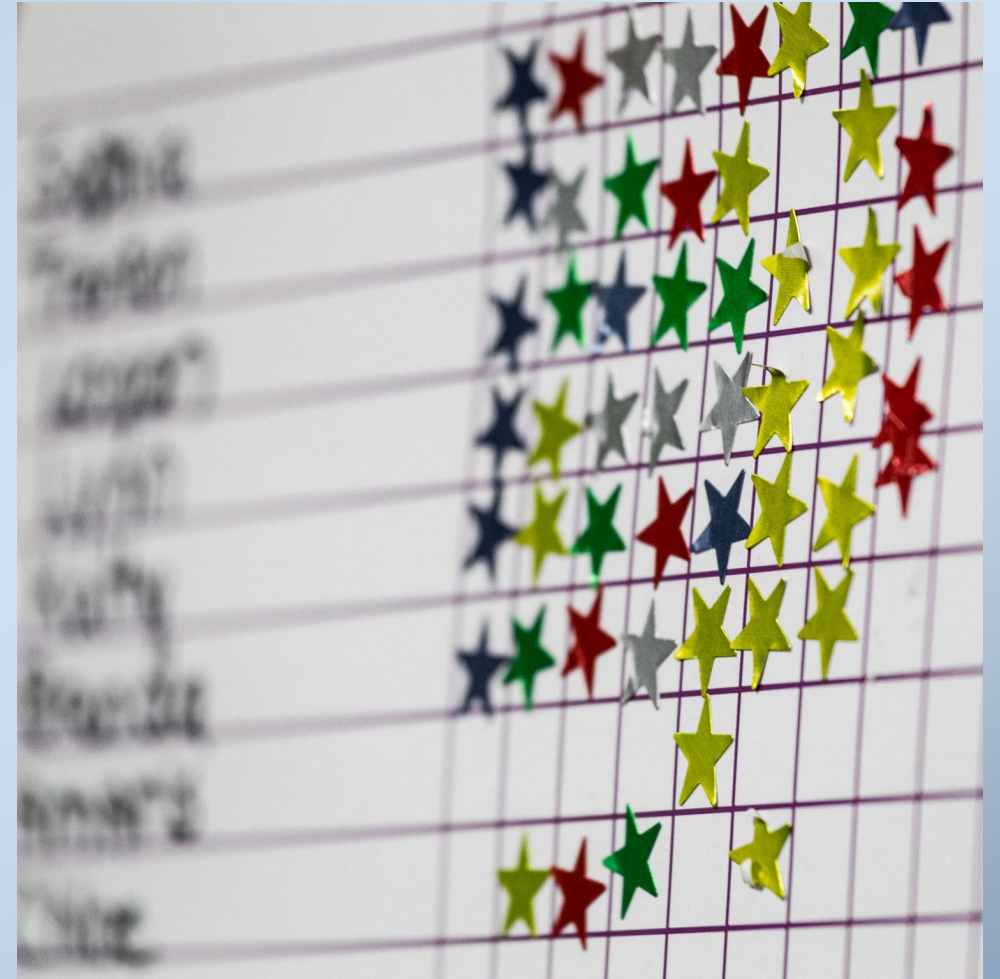




Shortened School Days and Behavior

Shortened School Days and Behavior

- Can be the result of unintentional decreased instruction time due to discipline
- Beware of administrators sending students with disabilities home from school in response to behavior
 - Repeated informal removals may constitute disciplinary chance of placement



Shortened School Days and Behavior

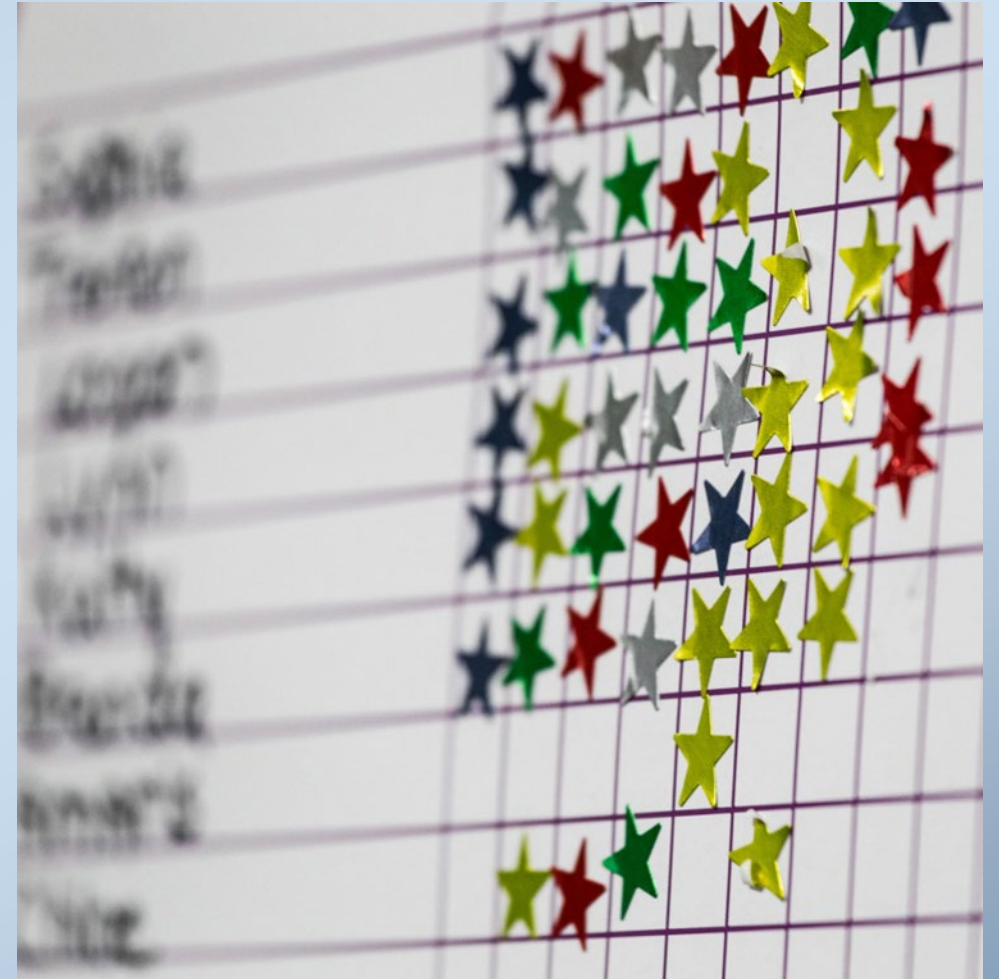
- Requiring shortened day as a form of discipline could deny FAPE if IEP team does not consider other supports that would allow student to stay full day
- Should try other accommodations first to allow student to stay in LRE



Shortened School Days and Behavior

Letter to Mason, 72 IDELR 192 (OSEP 2018)

- Shortened school days due to behavior may constitute a disciplinary removal from current placement if implemented repeatedly
- District should count early dismissals as partial day removals towards 10 days triggering an MDR, even if not documented as official suspensions



OSEP Letter to Mason (7/27/18)

In general, the Department does not consider the use of exclusionary disciplinary measures to be disciplinary removals from the current placement for purposes of 34 CFR §300.530, so long as children with disabilities are:

- Afforded the opportunity to **continue to be involved** in and make progress in the general education curriculum;
- Receive the instruction and services specified on their IEPs; and
- **Participate with nondisabled children** to the extent they would have in their current placement.

Smart Sheet: Shortened School Days

- Because a shortened school day may inappropriately limit a student's access to instructional time and IEP services, a district should not shorten a student's school day unless **the IEP team determines that a shortened school day is necessary for FAPE**
- To ensure FAPE, a district must assess a student's need for a shortened school day based on her individual needs and **not based on the availability of resources or blanket policies**

www.specialeducationconnection.com

Environment, environment, environment!

- Classroom High Leverage Practices
- Non-classroom settings clear routines, procedures, expectations and support for those who supervise
- Behavior Intervention Plans
 - Teach functionally equivalent replacement behavior
 - Student use of replacement behavior results in same or similar function
 - Clear “scripts” for adults and peers if problem behavior is displayed

Systems to support, progress monitoring, fidelity of implementation

System of Support for Staff

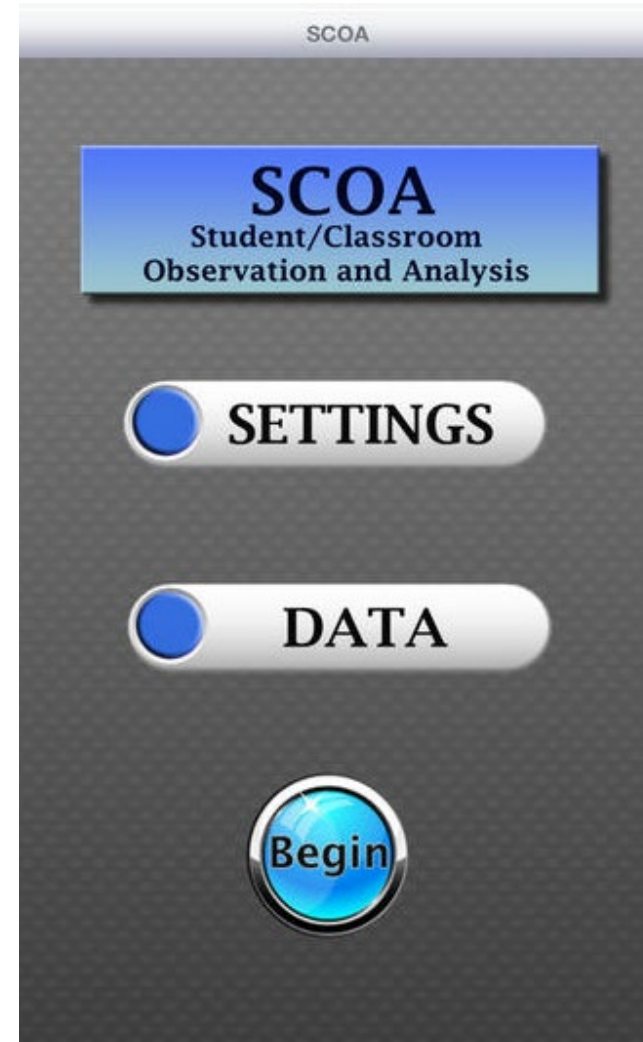
Clear
Expectations
for
Instruction &
Management

Brief
Professional
Learning
Sessions

Structured
Peer
Observations

Regular
Performance
Feedback

1. Single skill
2. Practice skills with performance feedback
 - Peer coaching
 - Principal “walk through”
 - Direct observation / data collection



Creating Safe & Supportive Environments



Inviting atmosphere / Friendly & Helpful

Greet students

Know something about them



Connections / relationships between:

Staff-staff

Staff-students

Students- adults



*Is your school a place where
you would want your own
child to attend?*



Transportation

Transportation

Burlingame School District

- Parents couldn't drive the student home from a half-day program, so they used a ride sharing app
- Court ordered District to reimburse parents for rides
- Student needed transportation from the school in order to benefit from the program, so the student required transportation as a related service



Transportation

Evergreen School District OCR Agreement

- District must have a policy that says students with disabilities who receive specialized transportation will not arrive to class later or leave class earlier unless need is documented in IEP/ 504 Plan



Transportation

Coeur d'Alene School District (OCR)

- Leaving class early is appropriate if student received all IEP services during school hours and the shortened academic time was to accommodate the parent's request of attending general education classes at a different location



Transportation

Coeur d'Alene School District (OCR)

“34 C.F.R. § 104.4(b)(iv) prohibits a recipient from providing different or separate aid, benefits, or services to individuals with disabilities **unless such action is necessary** to provide the individual with an aid, benefit or service that is as effective as those provided to others”



Section 504

Cincinnati Public Schools (OCR)

- Student ended school day at 12:15 due to OHI
- After class ended at 11:30, he sat in office to wait for the early pick-up bus
- From 11:30-12:15, students were at lunch and recess



Section 504

Cincinnati Public Schools (OCR)

- OCR determined that District failed to afford student an equal opportunity to participate in lunch and recess
- Lunch and recess were part of the District's educational program
- District should have provided these programs to the student while waiting for early pick up



JOSH DOUGLAS

jdouglass@mickesotoole.com

(816) 874-8000 (KC office)

Tim Lewis, Ph.D.

Lewistj@Missouri.edu

ABBEY WIDICK

awidick@mickesotoole.com

(816) 519-6871 (cell)

