



Discipline of Students With Disabilities

**Resources and Information on Effective Practices and
Requirements Under the Individuals with Disabilities
Education Act (IDEA)**

A Guide For Administrators, Educators, Parents and Community Members



Discipline of Students with Disabilities

Resources and Information on Effective Practices and Requirements Under the Individuals with Disabilities Education Act (IDEA)

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, disability, or sexual orientation in matters affecting employment or in providing access to programs. For inquiries related to Department policy, contact the Equity Assurance and Compliance Branch, Office of the Deputy State Superintendent for Administration, Maryland State Department of Education, 200 West Baltimore Street, 6th Floor, Baltimore, MD 21201-2595, 410-767-0433, Fax 410-767-0431, TTY/TDD 410-333-6442, www.MarylandPublicSchools.org.

This document was developed and produced by the Division of Special Education/Early Intervention Services, IDEA Part B Grant #HO27A090035 funded by the U.S. Department of Education, Office of Special Education and Rehabilitative Services. The views expressed herein do not necessarily reflect the views of the U.S. Department of Education or any other Federal agency and should not be regarded as such. The Division of Special Education/Early Intervention Services receives funding from the Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education.

This publication is copyright free. Readers are encouraged to copy and share, but please credit the Division of Special Education/Early Intervention Services, Maryland State Department of Education.

Nancy S. Grasmick
State Superintendent of Schools

Carol Ann Heath
Assistant State Superintendent
Division of Special Education/Early Intervention Services

James H. DeGraffenreidt, Jr., President
State Board of Education

Martin O'Malley, Governor

Table of Contents

INTRODUCTION	1
Purpose.....	1
Frequently Used Terminology.....	2
PART I: POSITIVE BEHAVIORAL SUPPORTS & INTERVENTION STRATEGIES.....	3
Overview	3
Systemic Positive Intervention Strategies and Supports.....	4
Steps in School-Wide Positive Behavioral Interventions	5
PART II: FUNCTIONAL BEHAVIOR ASSESSMENT	9
Overview	9
Functions of Behavior.....	9
Conducting a Functional Behavioral Assessment.....	11
PART III: BEHAVIOR INTERVENTION PLANS (BIP).....	15
Overview	15
Developing a BIP	15
Elements of a BIP	16
Monitoring & Modifying the BIP	16
PART IV: PROCEDURES RELATED TO DISCIPLINARY REMOVAL OF STUDENTS WITH DISABILITIES	18
Overview	18
Removal Process.....	19
Removals for Not More Than 10 Days	19
Removals for More Than 10 Days.....	21
Change in Placement.....	21
Behavioral Assessment	22
Manifestation Determination	22
Interim Alternative Educational Setting	24
Home and Hospital Teaching	25
Parental Right to Appeal	26
Data Collected Related to Discipline.....	26
Students Not Yet Eligible for Special Education	27
Referral to Law Enforcement	28
PART V: EXCLUSION, RESTRAINT AND SECLUSION	29
Overview	29
Frequently Asked Questions.....	29
Exclusion	33
Restraint.....	34
Seclusion	35
Administrative Procedures	37
REFERENCES.....	40

INTERNET REFERENCEES..... 43

APPENDICES..... 45

- Appendix A: Data Collection Instruments..... 46
- Appendix B: Functional Behavioral Assessment 59
- Appendix C: Behavior Intervention Plan 71
- Appendix D: Additional Discipline Information 79
- Appendix E: MSDE Technical Assistance Bulletin: FBA and BIP 98
- Appendix F: OSEP Resources..... 103

Introduction

Behavior is purposeful and cannot be understood outside of the context within which it occurs. A student's behaviors may interfere with his/her learning and/or that of his/her classmates. When these behaviors are repetitive and resistant to behavioral interventions, a functional assessment of behavior should be conducted to understand the function of the student's behavior and to plan effective individual, class, and/or school-wide interventions, as appropriate. Assessing and intervening early in inappropriate behaviors has the potential to reduce the incidences of school failure and facilitate positive social development.

School staff should examine its data to identify standards for behavior assessment and intervention for all students. The data unique to a school that specifically identifies the behaviors, frequency, location, and contributing factors will enable a school team to develop a comprehensive system of proactive, school-wide, positive supports designed specifically to meet the needs of the school. In order to implement positive interventions and supports, the school team should assess the function of a student's behavior whenever a student exhibits a behavior that significantly interferes with the student's learning or the learning of others. Proactive, positive intervention should be used for all students and in all areas of the school community.

Purpose of this Document

A better
understanding
of behavioral
assessment &
intervention

The purpose of this document is to provide administrators, educators, parents, and community members with a better understanding of the behavioral assessment and intervention process. The disciplinary requirements of the Individuals with Disabilities Education Act (IDEA) have provided school systems with guidance for examining their practices of assessing behaviors and implementing appropriate interventions. The concept of addressing inappropriate behaviors with the use of positive supports and strategies is incorporated within the behavioral assessment process.

Whenever a student demonstrates a behavior that interferes with his/her learning or the learning of others, the student's Individualized Education Program (IEP) team should convene to plan for a functional assessment of the student's behavior. The purpose of a functional behavioral assessment (FBA) is to increase understanding of the student's behavior and its function for the student, and is used to develop a behavioral intervention plan (BIP).

Frequently Used Terminology

A-B-C Analysis	A problem-solving process in which the antecedents and consequences currently operating for both the problem and the desired behavior are identified
Accuracy	Describes whether or not a student uses a behavior or similar behavior the same way in response to the same antecedent
Antecedent	A person, place, thing, or event occurring before a behavior that triggers the behavior.
BIP	Behavioral Intervention Plan
Consequence	An action in response to a behavior that maintains the behavior
Duration	Describes how long the behavior lasts within a set period of time
FBA	Functional Behavioral Assessment
Frequency	Describes how often the behavior occurs within a set period of time
Intensity	Describes the force, impact, power, and magnitude of the behavior to determine whether a behavior is becoming more pronounced
Latency	Describes the amount of time that elapses between two events
Setting Event	Environmental, social or physical events or actions that occur at some time prior to the antecedent or behavior, which influences the behavior
Topography	The physical appearance or movement involved with the behavior (e.g. screams, yells, bites, strikes others)

Part I: Positive Behavioral Supports and Intervention Strategies

Overview

Positive behavioral supports and intervention strategies represent a comprehensive system of behavior management that uses multiple approaches, including establishing school-wide systems, implementing classroom management techniques, altering environments, and overtly recognizing appropriate behavior positively, rather than simply using one intervention in an attempt to eliminate a behavior. The purpose of positive behavioral supports and strategies is to actively teach and model appropriate skills and competencies to enable students to achieve better control over their behavior.

Too often the term “discipline” has been used to describe punitive actions taken in response to inappropriate behaviors. Positive behavioral supports and interventions represent a paradigm shift from traditional behavior management.

Traditional Behavior Management	Positive Behavioral Support
Views the individual as “the problem”	Views systems, settings, and skill deficiencies as “the problem”
Attempts to “fix” the individual	Attempts to “fix” systems, settings, and skills
Extinguishes behavior	Creates new contacts, experiences, relationships, and skills
Aversive sanctions	Sanctions positive approaches
Takes days or weeks to “fix” a single behavior	Takes years to create responsive systems, personalized settings, and appropriate empowering skills
Implemented by behavioral specialist in atypical settings	Implemented by dynamic and collaborative team using person-centered planning in typical settings
Often resorted to when systems are flexible	Flourishes when systems are inflexible

Behavioral supports and interventions should begin with early interventions in an effort to proactively alter current inappropriate behaviors before the behaviors become habitual and intransigent. Using proactive, positive behavior supports leads to a positive school climate. Effective school-wide practices include setting specific procedures.

Systemic Positive Intervention Strategies and Supports

It is important that existing school structures and processes include universal interventions where positive reinforcement is dominant and all students are provided explicit instruction regarding behavioral standards so students and staff understand limits and expectations. Positive interventions need to occur as early as possible after the undesired behavior occurs. Universal interventions are those strategies or supports that are:

- Applied to all students;
- Proactive;
- Based on clear and predictable limits and expectations;
- Positive-reinforcement dominant; and
- Linked to the school's organizational goals.

School personnel must continually monitor interventions to ensure that the consequences of behavior increase the frequency of desired behaviors and decrease the frequency of undesired behaviors. To be most effective, there is a need for informal, frequent, positive acknowledgement of desired behaviors to support those behaviors that lead to desired goals. Individuals respond to many different types of rewards, tangible and intangible. Consequently, school personnel need to carefully review the behavioral systems being employed at all levels within the school.

Positive support strategies are effective. The emphasis of these strategies is for adults within schools to direct attention, time, and resources on the positive, rather than negative aspects of behavior management. Since all behaviors are learned and occur for a reason, it is important that adults who interact with students understand how a challenging behavior functions for a student.

Before we can directly address specific skill or performance deficits, students first need an increased opportunity for:

- Individual control and choice;
- Positive attention; and
- Adult and peer status.

In order to provide explicit instruction to individual students aligned with the student's strengths, teachers need to examine:

- Teaching strategies;
- Environmental arrangements;
- Instructional activities and materials;
- Expected responses; and
- Assessment methods.

Steps in School-wide Positive Behavioral Interventions

To institute a comprehensive, school-wide approach to positive behavioral interventions, the following actions must occur.

- **Define Parameters and Mechanisms**

Once the decision is made to approach school-wide discipline from the position of meaningful positive recognition of appropriate behavior, the specific parameters and mechanics for implementation must be defined. The rules must be clear, understood by all, and implemented uniformly across all settings. These features will make a positive behavioral support system powerful and make a clear connection between the level of behavioral performance and the appropriate consequences.

- **Obtain Commitment and Support**

Once the procedures and mechanics of a positive behavioral support system are defined, the purpose and objectives for the program must be clearly communicated to all members of the school community. All staff members and students must be provided the skills for effective implementation and planned opportunities for practice. For staff and parents this is most effectively accomplished through interactive professional development that addresses adult learning styles and provides the adults an opportunity to practice these skills in a comfortable and supportive environment. School administrators may consider eliciting the help of school staff, students, and parents in both planning and implementing the parent, student, and educator instructional activities.

- **Develop Positive Methods of Communication**

Everyone communicates in some manner. Behavior is one way in which individuals communicate. Everyone receives information and expresses themselves in some way. Communication is more than verbal expression. Receiving and expressing information also involves processing visual information such as gestures, facial expressions, and body language. People use their bodies, including hands, faces, and body movements to communicate in nonverbal ways. In some instances, the information an individual expresses nonverbally may be the same as the verbal information. In other instances, it may contradict the words, sending simultaneous conflicting data to the student.

IDEA requires each student's IEP team to describe the student's communication needs, if any [20 U.S.C. §1414(d)(3)(B) (iv); 34 C.F.R. §300.324(a)(2)(iv)]. Understanding each student's auditory and visual processing strengths and needs as well as assessing the manner in which adults communicate with the student and what the student is attempting to communicate to adults and peers are equally important. It is especially important when a student engages in a behavior that adults identify as inappropriate. Behaviors considered inappropriate may be the result of the student's response to a lack of information or inaccurate information based on communication the student received or perceived.

In the two-way process of receiving and expressing information, additional strategies may be needed to support the student's understanding of the information they receive as well as the student's ability to express his or her wants and needs. The student's IEP team should examine existing information and data in order to identify additional strategies, supports, and

supplementary services that may be needed. The relevance of particular strategies, supports, services, and accommodations must be based upon each individual student's identified developmental, functional, and behavioral performance, strengths, and needs.

**Communication
may be an
effective
universal
intervention.**

In order to effectively use communication strategies to improve student behavior, understanding what the student comprehends and how the student uses that information is an important consideration. Communication may be an effective universal intervention for addressing inappropriate behaviors as well as a contributing factor to the behavior of concern.

The student's IEP team should consider examining available data relative to the student's receptive and expressive communication skills in conjunction with the data gathered concerning the conditions surrounding the behavior event of concern. It is important for adults to understand the student's receptive and expressive communication styles and needs, regardless of the disability or its severity.

It may be necessary to provide specific professional development to staff and parents on why individuals communicate. *Linda Hodgdon*, a speech/language pathologist and national consultant believes, "Communication training should focus on three foundation skills. Competency in these areas will prepare students for more advanced learning by:

- establishing a social connection;
- understanding others; and
- communicating wants and needs."

- **Monitor Effectiveness**

Any program is only as good as its implementation. Positive interventions and supports, including universal supports, must be monitored to see if they are being used as intended and to measure whether the desired results are being obtained. Even the best system of universal, positive behavioral supports is apt to lose its effectiveness over time if one of the defining characteristics is not consistently implemented across school environments.

- **Linkage to Improved Student Results**

Administrators and teachers must ensure that a system of universal positive behavioral supports is aligned with the school's plan for improved student results. This outcome can most easily be achieved by making informal strategies, supports, and rewards a subset of a larger, more formal recognition/reward program. For example, a school or class award (a formal reward) could be given to the student who receives the greatest number of recognition points (an informal reward) for assisting peers in academic skill development, which results in improved academic performance during a specified timeframe.

- **Reinforcement**

Under conditions of positive reinforcement, the response produces a consequence that results in increased frequency of the response. By understanding what drives human behavior, conditions can be created to encourage desired behaviors.

When tailoring positive supports for the entire school community, a targeted group of students, or an individual student, the team should consider the students' strengths and use strategies and supports that have previously been used as reinforcements for the students and have proved effective.

Below are critical components of effective reinforcement strategies.

- **Personal** Those responsible for delivering supports and reinforcements must do so in a personal way. Calling the student by name is one important criterion.
 - **Sincere** Meaning what you say is important.
 - **Specific** The student must know exactly why he or she received a particular reinforcement. The student has to know why he or she is being praised. Behavior is a complex, ongoing chain of events. The contingency between a behavior and the consequence may not be clear. Pinpoint exactly the behavior you are approving.
 - **Immediate** Try to catch the student in the act of being good. Reinforce behavior while the student is doing what you want. Do not wait until the end of class, the activity, or the end of the day to give specific recognition to the student for his or her actions. The longer the time between the completion of a behavior and the delivery of a reinforcing consequence, the less effective the reinforcement will be.
 - **Frequent** A student's desired replacement behavior may need to be reinforced by numerous repeated approximations until the student is able to consistently demonstrate the expected results. The challenge is to create an environment and conditions that encourage the student and staff to collaborate because they want to, not because they have to.
- **Effective Support Systems are SMART:**

The following conditions should be addressed when developing positive behavioral interventions and supports.

- **Specific** Supports focus on the desired behaviors and provide the student with a clear "line of sight" between action and result.
- **Meaningful** The interventions and supports are personalized for the student, taking into consideration the student's strength and needs, as well as a

replacement behavior that serves the same function and is considered “worth the effort” to the student.

- **Achievable** The replacement behavior is viewed as achievable, but not easy.
- **Reliable** The rewards are provided “contingent” on taking an action or achieving a result.
- **Timely** Interventions and supports are provided consistently and as timely as necessary to reinforce the desired behaviors to achieve desired results.

Part II: Functional Behavioral Assessment

Overview

A Functional Behavioral Assessment (FBA) is a collaborative, student-centered process for gathering information that reliably predicts the conditions and/or circumstances concerning why a student is exhibiting an inappropriate behavior. A functional assessment is an appraisal of a student's behavior of concern to determine the function of that behavior for the student.

A functional behavior assessment is a comprehensive evaluation of what sustains a student's maladaptive behavior. The process is essentially open-ended, and does not solely utilize standardized questionnaires or skill tests. Student records and existing data must be reviewed, instructional team members and caregivers interviewed, and substantial evidence compiled in order to present a convincing explanation of the factors influencing the target behavior. The IEP team uses the information gathered from the FBA to help determine what supports the student may need.

The goal of an FBA is to identify variables that make the target behavior more or less likely to occur. In essence, a functional behavior assessment is an exercise in correlation, and involves multiple processes, including:

- Precisely defining the target behavior.
- Selecting and devising a defensible data collection method.
- Collecting sufficient data to determine probable causes and functions of the target behavior.
- Summarizing and analyzing data.
- Producing a report that describes those factors likely responsible for the target behavior, and suggests ways to influence the behavior.

A well-constructed FBA will identify physiological, cognitive, social, familial, affective, and environmental factors (often a combination of these) that initiate, prevent, sustain, or terminate the target behavior. Thus, a functional behavior assessment will:

- Help us understand and explain a student's problem behavior.
- Assist us in developing effective intervention strategies.
- Improve our capacity to teach and the student's ability to learn.

Functions of Behavior

Identifying the functions of a student's behavior provides direct explanations of how a particular behavior "works" for an individual student in a given context. Behaviors serve to:

- Gain something (positive reinforcement) such as social attention, sensory stimulation, peer status, peer attention, or tangible rewards;
- Escape or avoid (negative reinforcement) someone or something. This function typically results in a behavior that allows the student to terminate

- or postpone an event. Students may throw tantrums, or display physical or verbal aggression; and/or
- Control events such as instructional activities.

Synonyms for the term “functional” include useful & efficient

According to Webster’s dictionary “function,” as an adjective is defined as “practical, operational, or having no organic cause.” Synonyms for the term functional include useful, handy, purposeful, and efficient. Any behavior of an individual is typically characterized as being a practical and efficient act to accomplish a desired purpose.

To change the behavior of concern with an acceptable replacement behavior, it is necessary to determine:

- The purpose or function of the student’s behavior?
- What about the behavior makes the student consider it a practical and efficient way to achieve the desired result?
- What result the student expected to achieve as a result of his or her actions?

Answers to these questions will assist in determining the function of the student’s behavior. The responses to these questions should never be assumptions. Each question needs to be answered using clear objective descriptions of the actions that occurred and the circumstances surrounding the behavior of concern. The goal is to identify factors that can be changed or influenced so that undesired behavior is discouraged and desired behavior is encouraged or taught. Thus, the function can be satisfied, but met by behaviors that are more acceptable or appropriate.

For example, there are many different behaviors that will gain the attention of others. A student can raise his or her arm in class to get the attention of the teacher, or can throw a balled up piece of paper at the blackboard. While one behavior is judged to be socially appropriate and the other disruptive; both serve the same function of gaining attention.

The behavioral function may vary depending upon the context in which the behavior occurs.

In many instances, a single behavior can serve more than one function. Consider the aggressive behavior of a student with severely limited language capabilities. An instance of physical aggression may simultaneously function to exert control, end an undesired activity, and communicate displeasure with the activity or situation at hand. In such an instance, prioritization of the function is required and is an especially difficult process when working with functionally non-verbal students.

Similarly, a single behavior may be simultaneously influenced by multiple factors. The aggressive student may be uncomfortable or ill, may have had an argument with a family member or peer, may be confused by the classroom work requirements, may lack the prerequisite skills to complete an activity, and may lack the capacity to express needs in more acceptable ways.

The behavioral function may vary depending upon the context in which the behavior occurs. Also, multiple behaviors may accomplish similar functions or different functions in different contexts. Of course, positive interventions that are appropriate for one student may differ for another student depending upon the function of the specific behavior.

Behaviors are purposeful and serve to meet a need. Behaviors change from environment to environment and are maintained by consequences that reinforce the behavior. When a student is exhibiting a behavior that is considered challenging, troublesome, or inappropriate, the behavior may be inadvertently maintained because the interventions being implemented are not addressing the root cause or function of that particular behavior for the student.

In addition, individuals who work with a student may have different levels of behavioral tolerance. One person may perceive a behavior as troublesome, while another may not. The functional behavior assessment does not focus on changing the function of behavior, but rather the behavior itself.

Conducting a Functional Behavioral Assessment

When a student displays inappropriate behavior...

When a student displays behaviors that result in his/her inability to participate in or benefit from their educational experience, a functional behavior assessment should be considered. In the majority of cases, the behavior of interest has occurred as an isolated instance. When an infrequent behavior manifests for the first time, schools typically follow existing and typical classroom or school-wide intervention strategies. If these strategies are effective in resolving the target behavior, an FBA is typically not required, although can still be useful.

There are specific situations when a student's behavior immediately suggests the need for an FBA, such as when:

- Standard school or classroom management strategies have been ineffective;
- The behavior occurs with a high level of intensity and/or frequency;
- The student is at risk of harm to himself/herself or to others;
- The student is at risk of exclusion or suspension; and
- A more restrictive placement or a more intrusive intervention is being considered.

When a student displays inappropriate behavior, an assessment of that behavior should involve the collection of objective, observable data and information concerning that behavior across settings from a variety of individuals, including educators, parents, and the student. It is most critical that the behavior is described in objective terms. The data obtained should clearly and objectively describe the events leading to the behavior, the behavior itself, and the consequences in response to the behavior. In order to change the behavior, supports and intervention strategies used to teach the student an appropriate replacement behavior must satisfy the same function for the student.

Because all behaviors serve a function, such as the need to gain something, avoid something, or control events, the behaviors students engage in are typically attributable to:

- Skill deficits;
- Performance deficits;

- Environmental factors;
- Interpersonal factors;
- A failure to self-regulate; and
- An instructional “mismatch.”

Although, IDEA does not require an FBA until a student with a disability has been removed for 10 school days or its cumulative equivalent in a school year, it is recommended that school personnel engage in the FBA process whenever a troublesome behavior is of concern to school personnel in order to enable professionals to develop and implement appropriate supports and services in a BIP.

In the course of conducting the FBA, a wide range of information is gathered, and must be incorporated efficiently into a readable report. This may include:

- Information about the physical environment in which the behavior occurs.
- Meaningful reinforcements or consequences related to the behavior.
- Whether the deficit is a skill deficit or a performance deficit.
- When the student most likely to engage in the problem behavior.
- Specific events or factors that appear to be contribute to the target behavior.
- Under what circumstances the student is most successful and therefore less likely to engage in the target behavior.
- The cognitive capability of the student to understand the behavioral expectations.
- The executive capacity of the student to self-regulate their own emotions and behaviors.
- External supports that appear to help the student.
- Whether the student has or can acquire alternative behaviors that are more acceptable compared to the target behavior.
- Social, biological and developmental factors that may be difficult to observe but may have important or powerful influences over the target behavior.

The
comprehensive
nature of an
FBA requires
a substantial
investment
of time
by staff.

The FBA includes a description of the behavior and the context in which it is observed. This information is used to guide the development of a BIP. As such, an FBA should be conducted whenever a student’s behavior is difficult to understand and/or a student’s BIP needs to developed or revised.

The comprehensive nature of an FBA requires a substantial investment of time by staff. Furthermore, the exact amount of time required will vary, depending on the nature of the target behavior and the complexity of its function. Once the function has been identified and the conditions which support the occurrence of the behavior have been described, then the intervention plan can designed to help ameliorate the problem.

An FBA should include the following steps:

- A collection of data;
- An hypothesis for the behavior; and
- An assessment of whether or not the hypothesis is valid for the student.

Step 1: Collect Information

Data collection is needed to:

- Identify the behavior; and
- Define that behavior in specific and objective terms.

The IEP team must first generate a list of all of the student's challenging behaviors. In order to narrow the team's focus, the target behavior(s) must be identified. In doing so, each behavior must be defined in observable and measurable terms within the context in which the behavior occurs. The description of the context of the target behavior should specifically address when, where, with whom, and under what conditions. Often individuals attempt to simultaneously change all of a student's challenging behaviors.

In fact, the collection of objective data may uncover particular circumstances that, if eliminated, may result in immediate improvement and may not require further interventions.

The IEP team
should be
looking for
answers to
the following:

To identify the target behavior, the assessor(s) and the IEP team should be looking for answers to the following:

- When is the behavior most likely to occur?
- What specific events or factors contribute to the student's behavior?
- What function(s) does the behavior serve for the student?
- What is the student attempting to communicate through this behavior?
- Under what circumstances does the student NOT engage in the target behavior or engages in the target behavior with less frequency?
- Are other conditions or factors contributing to the target behavior?

This information may enable the assessor(s) and the IEP team to identify common linkages or patterns to setting events or overall behavioral topography that may respond positively to immediate interventions, such as a change in the student's environment or routine. These changes may decrease or eliminate the target behavior. The student's IEP team identifies specific changes needed to test or monitor the efficacy of the intervention. For consistency across all settings, school staff and family members should be informed of the changes.

Determining setting events or behavioral topography that may influence a target behavior is accomplished through indirect observations and direct observations. Indirect observations include informal conversations, questionnaires, checklists, and structured interviews with key persons who have contact with the student and can offer insights into the contexts or conditions under which the behavior occurs. Direct observation is the most reliable and valid procedure for collecting information because observers watch the behaviors as they are occurring and note the environmental events (environmental factors, antecedent and consequence events) associated with the behaviors. Data collection should include specific information regarding the environment, events, and activities immediately prior to and following the behavior.

Step 2: Propose a hypothesis of the student's behavior

The hypothesis should explain the relationship between an identified behavior and general conditions that appear to predict and maintain that behavior. The hypothesis should describe the relationship among an antecedent, behavior, and consequence and specifically describe the suspected function of that behavior for the student.

A complete hypothesis includes:

- An objective description of the behavior;
- Possible setting events and antecedents that trigger the behavior; and
- Possible consequences that maintain the behavior.

Step 3: Validate the hypothesis

Validation of a hypothesis involves collecting additional information about the conditions under which the behavior does and does not occur, and demonstrating that occurrences of the behavior and the presence of these conditions are related and predictable. Typically this entails systematic observations of a student to identify and confirm patterns of predictable behaviors in order to create an effective intervention plan for changing the behavior. If the hypothesis cannot be confirmed during the validation phase, the hypothesis must be reformulated and revalidated.

Part III: Behavioral Intervention Plans

Overview

Effective behavior interventions are data-driven, planned, and based on an assessment of the behavior. Undertaking an “intervention” without an assessment or a plan can lead to an increase in inappropriate behaviors. A Behavioral Intervention Plan (BIP) is individualized for the student, designed for the settings where the behavior occurs, and implemented consistently across those settings. Monitoring and revision of the BIP are essential. The result of the BIP is to replace the identified inappropriate behavior with an acceptable behavior.

Developing a BIP

After collecting and analyzing sufficient information to identify the likely function of the student's behavior, the IEP team must develop (or revise) the student's positive behavioral intervention plan. The behavior intervention plan process should be integrated, as appropriate, throughout the process of developing, reviewing, and, if necessary, revising a student's IEP.

The behavioral intervention plan will include, when appropriate:

1. Positive behavioral interventions, strategies, and supports;
2. Program modifications; and
3. Supplementary aids and services that may be required to address the problem behavior.

Depending upon the identified features of a behavior, such as its frequency, duration and topography, the intervention process may need to begin with a series of frequent behavioral approximations that will serve the same function for the student while more extensive modifications are developed. With behavioral approximations, a student receives reinforcement for successful small intermediate steps along a continuum.

This provides school personnel time to make any needed environmental or curricular modifications to support the desired replacement behavior.

It is important to select replacement behaviors that require less effort to display than the current behavior. A replacement behavior that takes more effort to display than the existing behavior is unlikely to occur. The goal is to carefully select and directly teach replacement responses that are easier to do than the current behavior and serve the same function. If a replacement behavior does not meet the student's need, the replacement behavior will not persist.

Even after appropriate replacement behaviors are identified and the BIP has facilitated the student's success in using an appropriate replacement behavior, events will occur that may hasten the return of the inappropriate behavior. To increase the likelihood of a student exhibiting the desired replacement behavior in settings formerly associated with the identified inappropriate behavior, modifications to these settings may be needed.

Elements of a BIP

When an IEP team has determined that a BIP is necessary, the team members generally consider the data gathered from the FBA in order to develop the BIP.

The BIP should include strategies to:

- (a) Teach the student more acceptable ways to gain what he or she wants;
- (b) Decrease future occurrences of the misbehavior; and
- (c) Address any repeated episodes of the misbehavior.

Teach the student
a more acceptable
behavior to replace
an inappropriate
behavior...

The resulting BIP should be designed to address the three elements listed above. The sample forms provided in Appendices A, B and C of this document can help guide IEP teams through the process of conducting an FBA and writing and implementing a positive BIP. Readers are encouraged to refer to these forms as they read through the following sections.

Most BIPs are designed to teach the student a more acceptable behavior to replace an inappropriate behavior that serves the same function (e.g., ways to gain peer approval through positive social interactions; ways to seek teacher attention through non-verbal signals).

Since most BIPs will require multiple intervention options rather than a single intervention, IEP teams may want to consider the following when designing strategies, and supports:

- How to teach the student an appropriate replacement behavior;
- How to alter or neutralize any known setting events;
- How to alter or manipulate the events that typically occur before the target behavior (antecedents);
- How to alter or manipulate the events that typically occur after the target behavior (consequences) to positively reinforce the appropriate replacement behavior; and
- How personnel are to respond consistently to occurrences of target and replacement behaviors across settings.

Monitoring & Modifying the BIP

To monitor the BIP, the IEP team should monitor the fidelity of implementation. That is, the team should determine how to monitor the consistency and accuracy with which the intervention plan is implemented. Monitoring implementation of the BIP will be facilitated if the IEP team precisely describes the various components of the intervention plan, and specifically identifies the individuals responsible for implementing each component. A "self-check" or checklist can then be created to correspond with each component.

Another option is to develop written scripts or lists that detail the responsibilities of each individual who is implementing the plan. The script might specify both verbal and non-verbal responses organized according to setting events, antecedent events, and consequent events. Monitoring should occur about every three to five days in order to assess the fidelity with which the plan is being implemented.

To be meaningful, the plan must be reviewed at least annually; however, the plan should be reevaluated whenever any member of the student's IEP team (parents or school staff) determines that a review is necessary. Circumstances that may warrant such a review include:

- The student has reached his or her behavioral goals and objectives and new goals and objectives need to be established;
- The "situation" has changed and the interventions no longer address the current needs of the student;
- There is a change in placement; or
- It is clear that the original behavioral intervention plan is not producing positive changes in the student's behavior.

Part IV: Procedures Related to Disciplinary Removal of Students with Disabilities

Overview

The reauthorization of the IDEA included changes in the discipline procedures for students with disabilities. This document will describe the discipline requirements included in IDEA and the Code of Maryland Regulations (COMAR).

In order for students to be successful in school, it is critical that they remain in school. Research indicates that students who are removed from school for disciplinary reasons are much less likely to be successful in school because they are denied access to instructional opportunities, and, as a result, fall behind their peers in achievement. The goal of disciplinary interventions is to use appropriate, positive supports and strategies to change the student's behavior. Removal of the student from the educational program rarely results in fulfillment of this goal. Given the impact on student achievement and behavior, removal of students should always be considered the action of last resort.

Removal
should occur
only after
a variety
of proactive
approaches
have been tried.

The regulatory requirements for discipline of students with disabilities are one element of a school's process for providing a safe environment for all students. Removal should occur only after a variety of proactive approaches have been tried and removal is the only way to provide a safe school environment.

A system of structured, positive supports may include a school-wide behavioral system for all students, specialized group interventions for at-risk students and specialized individual interventions for students with intense or chronic behavioral problems. Conducting an FBA and implementing a BIP provides an individualized framework for helping students remain in school. Interventions based information gathered from parents, educators, and students are most effective.

There are circumstances when removal or alternative educational placement is the only remaining option for school staff. This document will guide the reader through the steps that must be followed prior to removing a student with a disability or placing a student with a disability in an alternative educational setting.

Removal Process

Many of the procedures regarding discipline of students with disabilities are dependent on the length of a disciplinary removal. Schools have more flexibility when a student with a disability is removed for less than ten days. However, there are a number of requirements school staff must follow when a student is removed for more than ten consecutive or cumulative days.

An Important Note:

The regulatory requirements discussed in this document apply to students with disabilities. For the sake of efficiency, occasionally only the word “student” is used, which in the context of this part of the document means a “student with a disability.” Another important note: Throughout this part of the document, there are references to actions by the IEP team and to meetings that determine which actions will be taken by the team. The notice of an IEP meeting must be provided to parents [COMAR 13A.05.01.07D(2)(a)].

Due to the serious nature of disciplinary removals and the expedited manner in which meetings are held for these issues, schools do not have to wait ten days after the notice of the meeting is provided to parents to actually meet [COMAR 13A.05.01.07D(2)]. In fact, IEP teams are encouraged to meet as soon as possible, so that a proactive approach can be taken regarding the disciplinary issues and relevant supportive services can quickly be put in place.

When school personnel are considering whether to change the placement of a student with a disability to an alternative education setting, due to a violation of a code of conduct, school personnel may consider any unique circumstances on a case by case basis. What constitutes “unique circumstances” is best determined by local school personnel who know the individual student and all the facts and circumstances regarding a student’s behavior. Factors such as a student’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a student with a disability prior to the violation of a school code may be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a student with a disability. The consideration of unique circumstances does not authorize school personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with federal and State regulations. Considerations regarding a change in placement must be consistent with all other requirements within 34 C.F.R. §300.530 AND COMAR 13A.08.03.

[20 U.S.C. §1415(k)(1); 34 C.F.R. §300.530(a); Federal Register Vol. 71, No. 156, August 14, 2006, page 46714; COMAR 13A.05.08.03.03B(2)]

Removals for Not More Than 10 Days

A school principal may remove a student with a disability from his or her current placement for not more than ten (10) consecutive school days for any violation of school rules to the same extent he or she removes students without disabilities. [34 C.F.R. §300.530(b); COMAR 13A.08.03.03A(1)]. Services do not have to be provided to students with disabilities during the first 10 days of removal if services are not provided to students without disabilities [COMAR 13A.08.03.03A(3)]. Whenever a school principal determines that a student with a disability needs to be removed from his or her current

placement for a violation of a school rule, the principal must notify the student's parents of the disciplinary action on the date the decision is made to remove the student and provide the parents with a copy of the "Parental Rights – Procedural Safeguards Notice" [COMAR 13A.08.03.04].

In accordance with the rules and regulations of the local board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal. The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period. At or before the conference, the student shall receive oral or written notice of the charges against him or her.

If the principal
finds that
an extended
suspension
or expulsion
is warranted...

If the student denies the charges, the student has the right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story. A student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school, if the notice and conference required by this subsection is provided as soon as possible.

If the principal finds that an extended suspension or expulsion is warranted, the principal immediately shall report the matter in writing to the local superintendent [COMAR 13A.08.01.11C(2)].

In-school suspension

COMAR defines in-school suspension as "removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal" [COMAR 13A.08.01.11B(4)]. An in-school suspension is not considered a day of suspension as long as the student is afforded the opportunity to continue to:

- (i) Appropriately progress in the general curriculum;
- (ii) Receive the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;
- (iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and
- (iv) Participate with peers as they would in their current education program to the extent appropriate.

A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective. The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school. After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer. The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.

Local school systems shall develop policies pertaining to a student's participation in extracurricular activities if the student receives an in-school suspension. Local school systems shall develop and implement a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension.

Removals for More Than 10 Days

A student with a disability may be removed from the student's current placement for up to ten consecutive school days for each incident of misconduct in a school year if the cumulative effect of such removals does not constitute a change in placement [COMAR 13A.08.03.03B(1)].

For each period of removal after the student has been removed for a cumulative equivalent of ten school days in one school year, school personnel are to consult with at least one of the student's teachers to determine what services to provide the student to enable the student to progress in the general curriculum and advance toward achieving the goals of his or her IEP [COMAR 13A.08.03.03B(3)].

A student with a disability may be removed for more than 10 consecutive school days for a violation of school rules, to the same extent removal is applied to students without disabilities, if the student's IEP team determines the behavior subject to the removal is not a manifestation of the student's disability. If the violation of school rules is not a manifestation of the student's disability, the student may be removed, but the student must continue to receive educational services in another setting, and receive, as appropriate, a functional behavioral assessment (FBA) and behavioral intervention plan (BIP), or modifications to an existing BIP designed to address the behavioral violation and to prevent its recurrence [COMAR 13A.08.03.03B(4) – (5)].

Change in Placement

A change of placement occurs when a student with a disability is:

- Removed from the student's current placement for more than ten consecutive school days; or
- Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than ten school days in a school year" [COMAR 13A.08.03.05A].

In order to determine whether a series of removals constitutes a pattern, the IEP team must consider three factors:

1. The length of each removal;
2. The total amount of time the student is removed; and
3. The amount of time between removals [COMAR13A.08.03.05B].

Each time a student is removed from his or her educational setting for a violation of a student code of conduct, the school staff must document all removals in the student's record. Therefore, the record of removals, regardless of the manifestation determination, is not to be expunged. This practice allows a school to maintain an accurate record that may impact future decisions regarding series of removals and patterns of removal. During any removal after the first ten days, or its cumulative equivalent in a school year, the public agency is to provide services to enable the student to progress in the general curriculum and advance toward achieving the goals of his or her IEP [COMAR 13A.08.03.05C and .03B].

Behavioral Assessment

The student's IEP team must meet within 10 business days of any removal after a student has been removed for the cumulative equivalent of ten school days in a school year, or any removal that constitutes a change in placement, in order to develop a plan for conducting an FBA or to review an existing BIP [COMAR 13A.08.03.07A]. IEP teams are strongly encouraged to meet as soon as possible to review the removal and to complete or revise as appropriate an FBA and BIP so that proactive approaches may be implemented to address the issues that led to the removal.

The school **must develop a plan for completing an FBA** if the IEP team did not:

1. Conduct an FBA to address the behavior that led to the disciplinary action, before the behavior occurred; and
2. Implement a BIP to address the behavior that led to the disciplinary action, before the behavior occurred.

Once the FBA is completed, the IEP team is to meet again to develop or revise, as appropriate, behavioral interventions that address the behavior that led to the disciplinary action and implement a BIP that includes these interventions [COMAR 13A.08.03.07B].

The IEP team must review the BIP.

If there is a BIP for the student, the IEP team must **review the BIP** to determine if the BIP:

1. Addresses the behavior that led to the disciplinary action; and
2. Was implemented appropriately prior to the behavior that led to the disciplinary action.

The IEP team is to decide if the BIP needs to be revised or if the implementation of the BIP needs to be modified in order to better address the behavior that led to the disciplinary action [COMAR 13A.08.03.07C].

For subsequent disciplinary removals of a student with a disability, beyond the first 10 school days of removal during the school year, the IEP team shall meet to review the student's FBA and BIP [COMAR 13A.08.03.07D].

IEP teams may determine whether the student's behavior was a manifestation of the student's disability at the same meeting in which they consider the student's FBA and BIP, particularly since the FBA and BIP have an impact on the manifestation determination.

Manifestation Determination

The student's IEP team is responsible for meeting and making manifestation determinations for each removal:

1. Beyond 10 school days in a school year;
2. That constitutes a change of placement; or
3. To an interim alternative educational setting (IAES) if, while at school, on school premises, or at a school function under the jurisdiction of the State, or a public agency the student:

- a) Carries or possesses a weapon;
- b) Knowingly possesses or uses an illegal drug;
- c) Sells or solicits the sale of a controlled substance; or
- d) Inflicts serious bodily injury on another person
[COMAR 13A.08.03.08A; COMAR 13A.08.03.06].

**The IEP team must
meet within 10 days
of the removal.**

The student's IEP team must meet within 10 school days of the disciplinary removal in order to make the manifestation determination [COMAR 13A.08.03.08B]. At this meeting, the IEP team is to consider all relevant information in the student's educational record, including evaluations, any teacher observations, information supplied by parents, and the student's IEP [COMAR 13A.08.03.08C].

In order to determine that the behavior is a manifestation of the disability, the IEP team must determine that the student's behavior was:

1. Caused by, or had a direct and substantial relationship to the student's disability; or
2. The direct result of the public agency's failure to implement the student's IEP.

If the IEP team finds that either clause one or two above applies to the student's behavior they must conclude that the behavior was a manifestation of the disability [20 U.S.C. §1415(k)(1)(E)(ii); 34 C.F.R. §300.530(e)(2); COMAR 13A.08.03.08D]. If the student's IEP team determines that the behavior that led to the removal is a manifestation of the student's disability, the IEP team must do the following:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan if the public agency had not conducted such assessments prior to a disciplinary removal;
2. Review the student's behavioral intervention plan and modify it, if necessary, to address the behavior; and
3. Return the student to the student's placement from which the student was removed unless the parent and the public agency agree to a change of placement as part of a modification of the student's behavioral intervention plan [COMAR 13A.08.03.07C;.08G].

To implement the services identified on the student's IEP, the student must be in a placement. When the IEP team determines that the behavior was not a manifestation of the student's disability, the designated school administrator may discipline the student with a disability in the same manner he/she disciplines a student without a disability.

Regardless of the decision concerning the manifestation determination, the IEP team must determine the services that will be provided to enable the student to progress in the general curriculum and advance toward achieving the goals of the IEP [34 C.F.R. §300.530(e); COMAR 13A.08.03.03B(2) and 13A.08.03.08G]. Again, a student's IEP teams may make a manifestation determination at the same meeting that they consider the student's FBA and BIP.

IEP teams are strongly encouraged to meet as soon as possible to plan for an FBA or to review the FBA and BIP, to make the manifestation determination, to put the appropriate educational services in place and to take a proactive approach to dealing with the issues which led to the student's removal by putting in place appropriate supports. If a student is removed, the student is not to receive his/her educational services in his/her home [COMAR 13A.05.01.10C(6)(b)].

Interim Alternative Educational Setting

In special circumstances, the school has the option of removing a student and placing that student in an Interim Alternative Educational Setting (IAES) for up to 45 school days. These special circumstances, as described in COMAR 13A.08.03.06A, are applicable if, while at school, on school premises, or a school function under the jurisdiction of a State or local public agency, the student:

1. Carries or possesses a weapon;
2. Knowingly possesses or uses an illegal drug(s);
3. Sells or solicits the sale of a controlled dangerous substance(s); or
4. Inflicts serious bodily injury upon another individual. Serious bodily injury is defined as involving "a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental facility"

[20 U.S.C. §1415(k)(1)(G); 34 C.F.R. §300.530(g); COMAR 13A.08.03.06A].

The IEP team decides which IAES is appropriate [COMAR 13A.08.03.06B]. When these special circumstances are considered, the student's IEP team must follow the procedures described previously for FBA, BIP, and manifestation determinations. The IAES must allow the student to:

1. Progress in the general curriculum;
2. Receive the services and modifications included in the IEP;
3. Meet the goals of the IEP; and
4. Receive the services and modifications designed to address the behavior that led to the IAES placement to prevent its recurrence.

[COMAR 13A.08.03.06C].

There may be circumstances when it is appropriate for a school administrator to request that an Administrative Law Judge (ALJ) place a student in an IAES. If the school administrator believes the student's behavior is substantially likely to cause harm to the student or others, there is a two-step process for removing a student for up to 45 school days.

Two-step process for removing a student for up to 45 school days.

Step One:

The public agency may file a due process hearing complaint to seek removal of the student to an IAES. If the public agency maintains that it is dangerous for the student to be in his or her current placement during the pendency of the due process hearing, the public agency may request an expedited due process hearing. In this situation, the public agency may not place the student directly into the IAES until the school obtains an order from the ALJ.

The school is to be prepared to prove beyond a preponderance of the evidence that the student's behavior is likely to cause harm to the student or others [COMAR13A.08.03.06E and F]. The public agency should be prepared to provide documentation of the danger the student poses, the efforts made to minimize the risk of harm, the appropriateness of the proposed placement and the continued danger posed by the student.

Step Two

An ALJ may order the removal of a student to an IAES as the result of a due process hearing if the ALJ believes that maintaining the student in the current placement is substantially likely to result in injury to the student or to others. The ALJ is to consider the efforts made to minimize the risk of harm in the current placement, including the use of supplemental aids and services, the appropriateness of the current placement and the appropriateness of the proposed IAES for the student [COMAR 13A.08.03.06G and H].

Even if there is a determination that the behavior which led to the removal to an IAES is a manifestation of the student's disability, the student may remain in the IAES for no more than 45 school days or, if the parents appeal, until a decision by the ALJ, unless the public agency and the parents agree otherwise [COMAR 13A.08.03.09C].

When a student commits an offense which requires a 45 school day removal, that student will remain in the IAES for 45 school days to give the school time to closely examine the issues that led to the student's behavior, to work with the student to put in place strategies that will address the student's behavior, to closely examine the school's policies and procedures in light of the student's action and, potentially, to revise the school's policies to enhance the protection and safety of all students and staff.

Home and Hospital Teaching

Home and hospital teaching is **NOT** [emphasis added] an alternative placement for students who demonstrate challenging behaviors. Only "public school students who are unable to participate in their school of enrollment due to a physical or emotional condition" may receive instruction at home or in the hospital [COMAR 13A.03.05.01; 13A.05.01.10C(5)]. A physician, psychiatrist, or psychologist must verify the physical or emotional condition and verify that the current "condition prevents the student from participating in the student's school of enrollment" [COMAR 13A.03.05.04]. A student who is disciplinarily removed from his/her current placement in accordance with COMAR 13A.08.03 and 34 CFR §§300.530–300.536 is required to continue to receive services, but may **NOT** [emphasis added] receive his or her educational services at home [COMAR 13A.05.01.10C(6)(b)].

Parental Right to Appeal

Parents may file a due process complaint if they disagree with a decision regarding disciplinary removal, manifestation determination, or the IAES. The school system is to arrange for an expedited due process hearing in response to a parent's appeal [COMAR 13A.08.03.09A and B].

When a student is removed for more than ten school days, there is a determination the behavior is not a manifestation of the student's disability, and the student's parent disagrees with the manifestation determination or the IAES, the student remains in the alternative education setting until an ALJ makes a decision or until the end of the removal period, whichever comes first, unless the parent and the public agency agree otherwise, [20 U.S.C. §1415(k)(4)(A); 34 C.F.R. §300.530(f)(2); COMAR 13A.08.03.09C]. An expedited due process hearing shall occur within 20 school days from the date the due process complaint was filed. A determination of the hearing must be made within 10 school days [20 U.S.C. §1415(k)(4)(B); 34 C.F.R. §300.532(c); Education Article §8-413, Annotated Code of Maryland; COMAR 13A.08.03.09B].

If the school system proposes to change the student's placement at the end of the IAES and the parents disagree with the proposed placement, the student is to return to his/her school placement prior to the removal to the IAES [COMAR 13A.08.03.09D].

Data Collection Related to Discipline

Federal
law
requires
MSDE
to annually
collect and
report to
the U.S.
Department
of Education
and the
public.

Data must be collected and examined to determine if a significant disproportionate representation of students with disabilities are removed based on race and ethnicity is occurring in the State and the public agencies with respect to the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. In-school suspensions are to be included with suspension data. The data relative to suspensions and expulsions is also to be disaggregated by race/ethnicity. Additionally, data must be reported on the number of hearings under 20 U.S.C. §1415(k) and the number of changes in placement ordered as a result of those hearings.

Federal law requires MSDE to annually collect and report to the U.S. Department of Education and the public the number and percentage of students with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability, in each of the following categories:

- Removed to an interim alternative educational setting under 20 U.S.C. §1415(k)(1);
- The acts or items precipitating those removals;
- The number of students with disabilities who are subject to long-term suspensions or expulsions [20 U.S.C. §1418(a)(1)(A)(v)].

Federal law also requires MSDE to collect and examine data to determine if significant disproportionate representation of students

with disabilities by disability and race/ethnicity is occurring in the State and local school systems with respect to the incidence, duration, and type of disciplinary action, including suspensions and expulsions [20 U.S.C. §1418(d)(1)(C)].

MSDE is also to collect data annually on the following:

- The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more [20 U.S.C. §1418 (a)(1)(D)].
- The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled [20 U.S.C. §1418 (a)(1)(E)].

In accordance with 20 U.S.C. §1418(d)(2), if significantly disproportionate representation with respect to the identification of students as students with disabilities, the placement in particular educational settings, or the disciplinary removal of students is identified, MSDE must:

- Provide for the review and, if appropriate, the revision of a local school system's policies, procedures, and practices to ensure they comply with the requirements of IDEA 2004;
- Require any local school system with data to indicate significantly disproportionate identification, placement in particular education settings, or disciplinary removal to reserve the maximum amount of funds (15%) under 20 U.S.C. §1413(f) to provide comprehensive coordinated early intervening services, particularly to serve children who are significantly over or under identified.
- Require the local school system to report publicly on the revision of policies, procedures, and practices.

Students Not Yet Eligible for Special Education

A public agency must apply the procedural safeguards set out in IDEA to a student who is not yet eligible for special education if the public agency has knowledge of a student's disability prior to the behavior that led to the disciplinary action [COMAR 13A.08.03.10A]. The public agency will be considered to have knowledge of a disability if any of the following situations exist prior to the behavior that led to the disciplinary action:

- The parent of the student expressed concern in writing to supervisory or administrative personnel of the public agency or a teacher of the student that the student is in need of special education and related services.
- The parents requested an evaluation of the student for the purpose of determining if the student has a disability and requires special education services; or
- The student's teacher or public agency personnel expressed specific concern about a pattern of behavior demonstrated by the student directly to the public agency director of special education or other public agency supervisory personnel

[20 U.S.C. §1415(k)(5); 34 C.F.R. §300.534(b)(3); COMAR 13A.08.03.10B(3)].

A school system **will not** be determined to have knowledge of a disability, if:

- The public agency conducted an evaluation and determined that the student was not a student with a disability, or determined an evaluation was not necessary;
- The parent does not allow an evaluation of the student; or
- The parent refuses or revokes special education and related services.

Written notice must be provided to the parents that describes what the public agency proposed or refuses to do in accordance with 34 C.F.R. §300.503. A public agency may apply the same disciplinary measures applied to students without disabilities if the school system does not have knowledge that the student has a disability before taking disciplinary action [20 U.S.C. §1415(k)(5)(C); 34 C.F.R. §300.534(d); COMAR 13A.08.03.10D].

If the public agency receives a written referral for an evaluation during the period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. The student will remain in the educational placement determined appropriate by public agency personnel, including suspension or expulsion without educational services, until the evaluation is completed. If as a result of the evaluation the IEP team determines the student is a student with a disability, the public agency shall provide special education and related services. [20 U.S.C. §1415(k)(5)(D)(ii); 34 C.F.R. §300.534(d)(2); COMAR 13A.08.03.10E – G].

Referral to Law Enforcement

A public agency shall report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law. The public agency shall ensure copies of the student's special education and disciplinary records are transmitted to the authorities to whom the public agency reported the crime, to the extent permitted, in accordance with the Family Educational Rights and Privacy Act (FERPA) [20 U.S.C. §1415(k)(6) and §1232(g); 34 C.F.R. §99; 34 C.F.R. §300.535; COMAR 13A.08.02; 13A.08.03.11].

Part V: Exclusion, Restraint, and Seclusion

Overview

In 2002, the Maryland General Assembly enacted a law requiring MSDE to convene a taskforce to address exclusion restraint, and seclusion of students in local school systems and nonpublic special education facilities throughout Maryland. Regulations were promulgated and the implementation of these regulations was effective beginning September 2003 [COMAR 13A.08.04]. The State Board of Education approved amendments to these regulations on August 25, 2009.

Frequently Asked Questions

Do the State regulations define "behavior intervention plan?"

Yes. In State regulations, Maryland defines a behavioral intervention plan as "a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports." The proactive nature of the plan and its emphasis on positive interventions, strategies, and supports will be discussed in the next section of this document.

What is the definition of "exclusion" and how does it differ from "seclusion?"

The regulations define "exclusion" as the "removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support." "Seclusion" is the "confinement of a student alone in a room from which the student is physically prevented from leaving." Exclusion does not necessarily mean that the student is removed from the classroom. The student could be removed to a separate part of the classroom or to another location but is not left alone. While in exclusion, however, the student is calming down and is not interacting with staff, receiving therapy, or doing work.

Is "functional behavior assessment" defined in the regulations?

Yes. "Functional behavior assessment" is defined as "the systematic process of gathering information to guide development of an effective and efficient behavior intervention plan for the problem behavior." It includes the identification of the functions of the behavior, a description of the behavior exhibited in the educational setting, and identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, or maintenance of the behavior. This definition is particularly significant because the IDEA does not define functional behavior assessment.

What is a "mechanical restraint?"

"Mechanical restraint" is defined as "a device or material that is attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and

that the student cannot easily remove." A protective or stabilizing device is not considered to be a mechanical restraint. A protective or stabilizing device includes adaptive equipment prescribed by a health professional, seat belts, and other safety equipment used to secure students during transportation. It is important to note that the line between protective devices and restraints is a thin one. IEP teams must carefully consider whether a device is needed and is being used for the purpose for which its manufacturer intended or is, rather, being used to control a student's behavior. If the device is being used to control a student's behavior, it is considered to be a mechanical restraint, rather than a protective or stabilizing device. The use of mechanical restraints is prohibited.

What is physical restraint?

"Physical restraint" is defined as "the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student's body." Physical restraint does **not** include briefly holding a student to calm or comfort him or her, holding the student's hand or arm to escort him or her to another area, moving a disruptive student who is unwilling to leave the area if other methods such as counseling have not been successful, or intervening in a fight. A physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes. In applying physical restraint, school personnel may not place a student in a face down position or any other position that will:

- a. Obstruct a student's airway or otherwise impair a student's ability to breathe;
- b. Obstruct a staff member's view of a student's face;
- c. Restrict a student's ability to communicate distress;
- d. Place pressure on a student's head, neck, or torso; or
- e. Straddle a student's torso.

Again, the line between these interventions and physical restraint can be a thin one, and school staff must be sure to first attempt non-physical interventions whenever feasible.

“School personnel are encouraged to use an array of positive behavior interventions...to increase or decrease targeted student behaviors.”

What principles should guide school personnel in their approach to student behavior?

Maryland's regulations begin with this key statement: “School personnel are encouraged to use an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors.”

Public agencies should emphasize the positive and proactive methods in the use of behavior interventions, strategies, and supports. Generally, the term "positive behavior interventions" refers to therapeutic methods of modifying behavior or certain types of behavior therapy. "Positive strategies" include adapting teaching methods for a student, such as using visual prompting or frequent feedback. "Positive supports" may include equipment or "extra hands" to fill a need, such as an augmentative communication device, assistive technology, or adult assistance.

Positive behavior interventions, strategies, and supports are intended to be used for two reasons: First, to increase the occurrence of behaviors that school personnel want to encourage, and second, to decrease behaviors that school personnel want to lessen or eliminate. It is important to remember that responding in a positive and rewarding way to behavior that school personnel want to see, i.e., "catching a student being good" is just as, if not more important than developing a behavior plan that focuses on the negative behaviors that school personnel seek to eliminate.

The regulations specify the need for an "array" of positive approaches because it is quite possible that no one approach by itself will work. Depending on the nature of the challenging behavior presented by the student, it may be necessary to try several interventions, strategies, or supports, or a variety of approaches in combination, in order to find an approach that works. It is also important that the IEP team focus on "targeted student behaviors."

A generic behavior plan that does not address the specific challenges presented by the student will not work effectively. A process of identifying target behaviors, planning how to address them, and deciding on the particular interventions, strategies, and supports is necessary. Positive behavior interventions, strategies, and supports focus on proactive ways of preventing targeted challenging behaviors instead of reacting to a challenging behavior after its occurrence. While these regulations govern the use of restraint and seclusion in schools, if positive behavior interventions, strategies, and supports are implemented appropriately, the use of restraint and seclusion should be truly limited to unavoidable emergency situations.

The regulations state that unless not feasible, less restrictive or alternative approaches to behavior must be used prior to the use of restraint or seclusion. What are "less restrictive or alternative approaches?"

In this context, "less restrictive" refers to approaches that have a less substantial impact on the student's ability to move, to communicate with others, to make choices, and to participate in school activities with other students. "Alternative approaches" refers to a wide variety of responses such as substituting a different activity or implementing a therapeutic approach. For example, a student who becomes agitated during an academic task and begins kicking his desk might be permitted to walk around the classroom. Or a student who becomes upset by too much sensory stimulation and begins to scream might be allowed to go to another room and hold a stuffed animal to settle down. Too often, however, these situations are allowed to escalate, and students may end up in restraint or seclusion.

How can it be determined if less restrictive or alternative approaches to restraint or seclusion are not feasible, as the regulations require?

The regulations state that exclusion, restraint, and seclusion may be used only after less restrictive or alternative approaches have been considered and attempted or determined not to be feasible. In making the determination as to whether less restrictive or alternative approaches are not feasible, school staff should consider the following:

1. Is the situation an emergency? Does the student pose an imminent risk of significant physical harm to self or others? Are there time, space, or personnel limitations that prevent less restrictive or alternative approaches from being implemented or from being implemented safely or effectively?

2. Is the situation one that arises frequently? If so, it should be addressed with positive behavioral supports as part of the student's behavior intervention plan and should be part of his or her IEP. It is not appropriate to respond to a chronic situation with an emergency response, which is what exclusion, restraint, and seclusion are considered to be.
3. What supplementary aids and services and programmatic modifications and supports will enable the student with behavioral needs to be successfully served in the general education setting and in nonacademic and extracurricular activities? Remember that to the greatest extent possible, students should be educated in the general education classroom with appropriate supports in place. Students should not be removed solely on the basis of their disability, because of administrative convenience, or because of the configuration of the service delivery system. The supplementary aids, services, supports, and program modifications that will help the student be educated successfully in the least restrictive environment possible must be provided. If these supports and supplementary aids and services have not been provided, it is unlikely that a meaningful determination can be made that less restrictive alternatives to restraint and seclusion were not available.

When considering the use of exclusion, restraint, or seclusion, what other factors must be considered?

1. The use of exclusion, restraint, and seclusion must be implemented in a "humane, safe, and effective" manner. It is important to consider whether the proposed intervention promotes "a safe, inclusive, equitable learning community." Evaluations of safety and efficacy should be based on data at the individual student level and at the level of peer-reviewed research. At the individual student level, school personnel must be able to use data to determine if the use of exclusion, restraint, or seclusion is effective in changing the targeted behavior, is safe, and is not causing detrimental effects in other aspects of the student's life, at the system level, school-based practices should be research-based.
2. The use of exclusion, restraint, and seclusion must be "consistent with known medical or psychological limitations." It is essential that medical contraindications, such as, asthma, seizures, or other medical conditions be considered by school personnel when determining the use of exclusion, restraint, and seclusion. Likewise, psychological history, such as past sexual abuse or abandonment must be considered as well. To re-traumatize a student through the use of exclusion, restraint, or seclusion will only exacerbate the behavior issues that need to be addressed.
3. When exclusion, restraint, and seclusion are used, they must be used "without intent to harm or create discomfort." Exclusion, restraint, and seclusion cannot be used as punishment or discipline or for retaliatory purposes.

These provisions do not override the authority that school personnel have to address questions of disciplinary action, allegations of criminal activity, or security risk.

Exclusion

When may exclusion be used?

School personnel may use exclusion to address a student's behavior:

- (1) If the student's behavior unreasonably interferes with the student's learning or the learning of others;
- (2) If the student's behavior constitutes an emergency and exclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;
- (3) If exclusion is requested by the student; or
- (4) If supported by the student's behavior intervention plan.

However, exclusion should not be used for behaviors which are merely annoying or which can be redirected or de-escalated. In determining whether to use exclusion, school personnel should consider the student's capacity to understand why he or she is being removed from the learning environment. A student who is unable to understand the reason for removal will be unable to participate meaningfully in the process for bringing the exclusion to an end.

What happens during exclusion?

School personnel must ensure that each period of exclusion is appropriate to the developmental level of the student, the severity of the behavior, does not exceed 30 minutes. During this period, school personnel must monitor the student. School personnel must provide the student with an explanation of the behavior that resulted in the exclusion and instructions on the behavior required to return to the learning environment. This is a particularly important requirement, and school personnel must be sensitive to the student's disability as well as his or her individual needs when implementing this requirement. For example, for a student with autism or an auditory processing disorder, the stress of processing a verbal explanation and instructions while he or she is upset may be too complex and overwhelming; the student may need modeling or an alternative presentation of the explanation and instructions.

Is there a limit to the amount of time a student can be placed in exclusion?

If numerous periods of exclusion occur and a cumulative total of 10 school days is reached during a school year, the procedural requirements governing the disciplinary removal of students with disabilities will apply.

What should be done if a student is repeatedly placed in exclusion?

If a student with disabilities is removed from the educational setting for a cumulative total of 10 school days, the IEP team must meet and plan to conduct a functional behavioral assessment, or develop, review, or revise a student's behavioral intervention plan. If a student not identified as disabled has experienced excessive exclusion, school personnel must consider referring the student to a pupil services or IEP team to determine whether that student may be eligible for special education and related services.

Restraint

When may physical restraint be used?

Physical restraint may be used:

- a) In an emergency situation in order to protect the student or others from "imminent, serious, physical harm" after other less intrusive, non-physical interventions have failed or been determined inappropriate;
- b) When a student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or
- c) The parents of a non-disabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.

If physical restraint is used in an emergency, it may not be used past the point at which the emergency has ended.

In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm.

Physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes. In applying physical restraint, school personnel may not place a student in a face down position, place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct a staff member's view of a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso, or straddle a student's torso.

Physical restraint **may not** be used to:

- a) Discipline, punish, or retaliate;
- b) Get a student to focus on instruction during class time; and
- c) Prevent a student from causing property damage.

What should happen if emergencies requiring restraint occur frequently?

Frequent emergencies should raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behavior that leads to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that restraint is necessary should be based on data to support the efficacy of restraint in addressing that behavior in the school setting,

May school personnel use mechanical restraint?

NO. Neckties, seatbelts, Rifton Chairs (if **not** used for purposes other than prescribed by a health professional), helmets (if **not** used for purposes other than prescribed by a health professional), or any other similar equipment, objects, or devices, are mechanical restraints if used to prevent a student from moving all or any of his or her body for a reason other than that prescribed by a health professional and for the purpose for which the device is intended by the manufacturer.

What are the documentation requirements for the use of restraint?

Whenever a student is restrained by school personnel, the restraint must be documented in the student's educational record, the documentation must be available to the parent or guardian, and the parent or guardian must be notified about the restraint verbally or in writing within 24 hours, unless the student's behavior plan or the IEP require some other arrangement. School personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the used of restraint;
3. The behavior that prompted the use of restraint;
4. The names of school personnel who observed the behavior that prompted the use of restraint;
5. The names and signatures of the staff members implementing and monitoring the use of restraint;
6. A description of the restraint event, including the type of restraint, the length of time in restraint, the student's behavior and reaction during the restraint, and the name and signature of the administrator informed of the use of restraint.

Seclusion***When may seclusion be used?***

As with restraint, seclusion may be used:

- a) In an emergency situation in order to protect the student or another person after other less intrusive interventions have failed or been determined to be inappropriate;
- b) When a student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or
- c) When the parents of a non-disabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.

Seclusion may not be used for discipline, punishment, or retaliation. It may not be used to prevent a student from causing property damage. If used in an emergency situation, it may not be used past the point at which the emergency has ended.

In considering whether seclusion is appropriate, school personnel should consider the student's capacity to understand why he or she is being removed from the learning environment. A student who is unable to understand the reason for removal will be unable to participate meaningfully in the process for bringing the seclusion to an end.

A seclusion event shall be appropriate to the student's developmental level and severity of the behavior. It may not restrict the student's ability to communicate distress and may not exceed 30 minutes.

Additionally, school personnel should consider the nature of the situation for which seclusion is being considered. If it is a true emergency, which is the only legitimate reason for the use of seclusion, consideration must be given to the safety issues involved in transporting a student to a seclusion room, as opposed to using a different intervention, including, if absolutely necessary, physical restraint as an alternative to seclusion.

May any space be used for seclusion?

No. There are specific requirements for a room used for seclusion. At a minimum, the room must not contain any objects or fixtures with which a student could harm him or her self. School personnel must be able to see the student adequately from an adjacent area. Additionally, the room must provide adequate lighting and ventilation. It is unlikely that a box, closet or concrete, unpadded room, for instance, will meet these requirements.

What happens during seclusion?

When a student is placed in seclusion, school personnel must watch him or her at all times. As with exclusion, school personnel must provide the student with an explanation of the behavior that resulted in seclusion and instructions on the behavior required to return to the learning environment. As discussed in the section regarding exclusion, this is a particularly important requirement. School personnel must be sensitive to the student's disability, as well as to his or her individual needs when implementing this requirement. For some students, verbal presentation of the explanation and instructions may not be appropriate. At a minimum, school personnel must reassess a student in seclusion every 30 minutes.

Can any school personnel place a student in seclusion?

No. Only school personnel trained in the appropriate use of seclusion may use seclusion with a student.

What should happen if emergencies requiring seclusion occur frequently?

Frequent emergencies should raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behavior that leads to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that seclusion is necessary should be based on data to support the efficacy of seclusion in addressing that behavior in the school setting.

What are the documentation requirements for the use of seclusion?

Each time a student is placed in seclusion by school personnel, the seclusion must be documented in the student's educational record. The documentation must be available to the parent or guardian, and the parent or guardian must be notified about the seclusion verbally or in writing within 24 hours, unless the student's behavior plan or the IEP requires some other arrangement. School personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the use of seclusion;
3. The behavior that prompted the use of seclusion;
4. The names and signatures of the staff members implementing and monitoring the seclusion;
5. A description of the seclusion event, including justification for initiating the use of seclusion, the length of time in seclusion, the student's behavior and reaction during the seclusion, and the name and signature of the administrator informed of the use of seclusion.

Do the regulations require review by an IEP team if a student has been restrained or placed in seclusion?

It depends on the situation. If a student has not been identified as a student with disabilities and restraint or seclusion is used, the student must immediately be referred to the school's pupil services team or to the IEP team. The choice lies with school personnel who can assess whether the student's behavior appears to be an unusual, isolated event or an ongoing interference that needs to be assessed.

If restraint or seclusion is used for a student who already is identified as being a student with a disability and the student's IEP or behavior intervention plan does not include the use of restraint or seclusion, the IEP team must meet within 10 business days of the incident to consider the need for a functional behavioral assessment, the development of appropriate behavior interventions, and the implementation of a behavioral intervention plan. If a student's IEP or behavior intervention plan does include the use of restraint or seclusion, the document shall specify how often the IEP team will meet to review or revise the document, as appropriate.

Administrative Procedures***Does the IEP team have any additional obligations?***

Yes. The IEP team must consider existing health, physical, psychological, and psychosocial information, information provided by the parents, observations by teachers and related service providers, and the student's current placement. When the IEP team proposes or refuses to initiate or change the student's IEP or behavior intervention plan that includes the use of restraint or seclusion, the local school system or nonpublic school must provide the student's parent with prior written notice in accordance with federal and State law. The parent may file for mediation or a due process complaint if he or she disagrees with the IEP team's proposals or refusals.

Do public agencies have any obligations to develop policies and procedures regarding exclusion, restraint, and seclusion?

Yes. Each public agency and nonpublic school must develop policies and procedures to address:

1. A continuum of positive behavioral interventions, strategies, and supports for use by school personnel before exclusion, restraint or seclusion;
2. The prevention of self-injurious behaviors;
3. Methods for identifying and defusing potentially dangerous behavior;
4. The use and documentation of exclusion, consistent with the regulations;
5. The use of restraint consistent with the regulations;
6. The use of seclusion consistent with the regulations.

In accordance with COMAR 13A.08.01.10 each local board of education shall have a document on students' responsibilities and rights. This document shall conform to guidelines established by the State Board of Education. The local document shall be disseminated periodically to all members of the school community, including students, teachers, administrators, and parents or guardians. Local school systems are to involve representatives of the school community in the review of the document.

Do the public agencies and nonpublic schools have to conduct any professional development activities?

Yes. Each public agency and nonpublic school must provide professional development to designated school personnel regarding the regulations and the appropriate implementation of the policies and procedures developed in accordance with the regulations.

At the beginning of each school year, each public agency and nonpublic school must identify school personnel authorized to serve as a school-wide resource to assist in ensuring that exclusion, restraint, and seclusion are utilized properly at the school. These school personnel shall receive training in current, professionally accepted practices and standards regarding:

1. Positive behavior interventions, strategies, and supports;
2. Functional behavior assessment and behavior intervention planning;
3. Exclusion;
4. Restraint;
5. Seclusion; and
6. Symptoms of physical distress and positional asphyxia.

The professional development described above shall include a written examination and physical demonstration of proficiency in the described skills and competencies. Additional areas in which public agencies and nonpublic schools may wish to consider training to include child development, trauma recognition and prevention, neuro-biological/psychological effects of trauma, relationship-building and collaborative problem-solving, collaborating with families to create and maintain positive behavioral supports, matching behaviors with interventions, prevention and de-escalation techniques, signs of physical distress, systemic effects of the use of restraint and seclusion on bystanders, legal and ethical issues, investigation of injuries and complaints, documentation, and data collection and analysis.

Do public agencies and nonpublic schools have an oversight role with respect to the use of exclusion, restraint, and seclusion?

Yes. Each public agency and nonpublic school must develop policies and procedures regarding monitoring the use of exclusion, restraint, and seclusion, and receiving and investigating complaints regarding exclusion, restraint, and seclusion practices.

Additionally, the Maryland State Department of Education may monitor and ask for any information about any matter related to exclusion, restraint, or seclusion implemented by a public agency or nonpublic school. The Department must provide written notice of the requested information and specify the time and manner in which the public agency or nonpublic school shall answer the request.

References

Americans with Disabilities Act of 1990, 42 U.S.C.A. & Sect. 2, 104 Stat. 328 (1991).

American Psychiatric Association (1994). *Diagnostic and statistical manual of mental disorders* (4th ed.). Washington, DC: American Psychiatric Association.

Bettenhausen, S. (1997). Using proactive strategies to deal with students with challenging behaviors. In *Counterpoint*, Vol.18. Alexandria, VA: National Association of State Directors of Special Education.

Carr, E.G., Durand, V.M. (1985). Reducing behavior problems through functional communication training. In *Journal of Applied Behavior Analysis*, 18(2), pp. 111-126.

Colvin, G., Kameenui, E. J., & Sugai, G. (1993). Reconceptualizing behavior management and schoolwide discipline in general education. In *Education and Treatment of Children*, 16(4) pp. 361-381.

Department of Education, Office of Special Education Programs. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq.

Dunlap, G., & Foster-Johnson, L. (1993). Using functional assessment to develop effective, individualized interventions for challenging behaviors. In *Teaching Exceptional Children*, 25(3), pp. 44-50.

Dunlap, G. (1998). Functional behavioral assessment & planning. NASDE Satellite Teleconference.

Feil, E. G., Sverson, H. H., & Walker, H. M. (1995). Identification of critical factors in the assessment of preschool behavior problems. In *Education and Treatment of Children*, 18(3), pp. 261-271.

Flannery, K. B., O'Neill, R. E., & Horner, R. H. (1995). Including predictability in functional assessment and individual program development. In *Education and Treatment of Children*, 8(4), pp. 499-509.

Gable, R., (1996). A critical analysis of functional assessment: Issues for researchers and practitioners. In *Behavioral Disorders*, 22(1), 36-40.

Gable R., Quinn M., Rutherford, R., Howell K., & Hoffman, C. C. (1998). Addressing student problem behavior. Part II: Conducting a functional behavioral assessment. The Center for Effective Collaboration and Practice. Available: <http://www.air-dc.org/cecp/>.

Gable R., Quinn M., Rutherford, R., Howell K., & Nelson M. (1998). Addressing student problem behaviors: Part I: An IEP team's introduction to functional behavioral assessment and behavior intervention plans (2nd ed.) The Center for Effective Collaboration and Practice. Available: <http://www.air-dc.org/cecp/>.

Gable R., Quinn M., Rutherford, R., Howell K., Hoffman, C. C. (2000) Addressing student problem behaviors: Part III: Creating positive behavioral intervention plans and supports. The Center for Effective Collaboration and Practice. Available: <http://www.air-dc.org/cecp/>.

Gresham, F. M. (1998) Designs for evaluating behavior change. In *Handbook of Child Behavior Therapy*, New York: Plenum Press.

Hartwig, E. (1999). A new understanding: Discipline in education. Presentation, Administrative Law Judges, Office of Administrative Hearings Sponsored by the Maryland State Department of Education.

Hendrickson, J. M. (1992). Assessing the student-instructional setting interface using an eco-behavioral observation system. In *Preventing School Failure*, 36(3), pp. 26-31.

Heumann, J.E. & Warlick, K. (2001). *Prevention research and the IDEA discipline provisions: A guide for school administrators*. Washington, DC: United States

Hodgdon, L. (2007). www.lindahodgdon.com

Individuals with Disabilities Education Improvement Act 20 U.S.C. §1400, et. seq. (IDEA 2006).

Lewis, T. J., & Sugai, G. (1996). Functional assessment of problem behavior: A pilot investigation of the comparative and interactive affects of teacher and peer social attention on students in general education settings. In *School Psychology Quarterly*, 11(1), pp. 1-19.

Lombardo, L. (1997). Behavior intervention: Place the emphasis on the positive. In *Counterpoint*, Vol.18. A publication of the National Association of State Directors of Special Education.

Lombardo L. (1997) Functional assessment: putting research on methods of behavior management to practical use in the classroom. In *Counterpoint*, Vol.18. Alexandria, VA: National Association of State Directors of Special Education.

Mason, M. (August, 2006). *Best Practices Conducting FBAs*.

Maryland State Department of Education, Division of Special Education/Early Intervention Services. (December 2001). *Code of Maryland Regulations (COMAR), 13A.05.01 Provision of a Free Appropriate Public Education, 13A.05.02 Administration of services for students with disabilities, 13A.08.03 Discipline of students with disabilities*. Baltimore, MD: Author.

National Information Center for Children and Youth with Disabilities. (1999). Research Brief. Interventions for chronic behavior problems.

New York State Education Department, Office of Vocational Educational Services for Individuals with Disabilities, Special Education Policy Unit. (January 2001). *Discipline procedures for students with disabilities*. Albany, NY: Author.

Office of the Surgeon General. (2000). Report of the Surgeon General's Conference on Children's Mental Health: A National Action Agenda. Washington, DC: Department of Health and Human Services.

O'Neill, R. E., Horner, R. H., Albin, R. W., Storey, K., Sprague, J. R. (1990). *Functional analysis of problem behavior: A practical assessment guide*. Sycamore, IL: Sycamore.

Sasso, G. M., Reimers, T. M., Cooper, L.J., Wacker, D., Berg, W., Steege, M., Kelly, L., & Allaire, A. (1992). Use of descriptive and experimental analyses to identify the functional properties of aberrant behavior in school settings. In *Journal of Applied Behavior Analysis*, 25(4), pp. 809-821.

Sugai, G., Lewis-Palmer, T., & Hagan, S. (1998). Using functional assessments to develop behavior support plans. Eugene, OR: *Preventing School Failure*, 43(1), pp. 6-13.

Sugai, G., Horner, R. H., Dunlap, G., Hieneman, M., Lewis, T. J., Nelson, C. M., Scott, T., Liaupsin, C., Sailor, W., Turnbull, A. P., Turnbull, R., Wickham, D., Ruef, N. M., Wilkcox, B. (1999). Applying positive behavioral support and functional assessment in schools. OSEP Center on Positive Behavioral Interventions and Support.

Taylor-Greene, S., (1997). School-wide behavioral support: Starting the year off right. In *Journal of Behavioral Education*, 7(1), pp. 99-112.

Tilly, D., Kovalski, J., Dunlap, G., Knoster, T., Bambara, L., Kincaid, D. (1998). Functional behavioral assessment: Policy development in light of emerging research and practice. Alexandria, VA: National Association of State Directors of Special Education.

Todd, A. W., Horner, R. H., Sugai, G., & Sprague, J. R. (1999). Effective behavior support: Strengthening school-wide systems through a team-based approach. In *Effective School Practices*, 17(4), pp. 23-37.

U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs. (2000). Functional behavioral assessment. Available: <http://www.ed.gov/offices/OSERS/OSEP/Products/factsheets.html>

U.S. General Accounting Office (2001). Report to the Committees on Appropriations, U.S. Senate and House of Representatives: Student Discipline, Individuals with Disabilities Education Act (GAO-01-210). Washington, DC: U.S. Government Printing Office.

Internet References

“Building the Legacy: IDEA 2004”
U.S. Department of Education (USDE),
Office of Special Education Programs
<http://idea.ed.gov>

Center for Effective Collaboration and Practice (CECP)
American Institutes for Research
1000 Thomas Jefferson Street, NW, Suite 400
Washington, DC 20007
<http://www.air-dc.org/cecp/>

Center on Positive Behavioral Interventions and Supports (PBIS)
Behavioral Research and Training
5262 University of Oregon
Eugene, OR 97403
<http://www.PBIS.org>

Council for Exceptional Children
1920 Association Drive
Reston, VA 22091-1589
<http://www.cec.sped.org/>

Maryland State Department of Education
200 W. Baltimore Street
Baltimore, MD 21201-2595
<http://marylandpublicschools.org>

National Association of School Psychologists
4340 East West Highway, Suite 402
Bethesda, MD 20814
<http://www.nasponline.org/>

National Information Center for Children and Youth with Disabilities
Academy for Educational Development
P. O. Box 1492
Washington, DC 20013-1492
<http://nichcy.org>

Office of Special Education Programs
U.S. Department of Education
Mary E. Switzer Building
330 C Street, SW
Washington, DC 20202
<http://www.ed.gov/offices/OSERS/OSEP>

PACER Center
8161 Normandale Boulevard
Minneapolis, MN 55437-1044
<http://www.pacer.org>

Appendices

Review of federal and State regulations finds there are no mandated processes and forms to conduct a functional behavioral assessment (FBA) or document a behavior intervention plan (BIP). For the user's convenience, MSDE has included additional materials and resources to support local public agencies when conducting an FBA and developing a BIP.

It must be noted that these resources are guides and **not mandated** for use. Many of the resources have been prepared by the Center for Effective Collaboration and Practice, <http://www.air-dc.org/cecp/> and supported by the U.S. Department of Education, Office of Special Education Programs (OSEP).

Appendix A: DATA COLLECTION INSTRUMENTS

- ABC Observation Form 1
- ABC Observation Form 2
- Forced Choice Reinforcement Menu
- Interview Form
- Functional Assessment Scatter Plot: Example & Blank Form
- Classroom Scatter Plot: Example & Blank Form

ABC Observation Form

Student Name: _____		Observation Date: _____
Observer: _____		Time: _____
Activity: _____		Class Period: _____
ANTECEDENT		
BEHAVIOR		
CONSEQUENCE		

Prepared by the Center for Effective Collaboration and Practice

Forced-Choice Reinforcement Menu

Name: _____

In order to identify possible classroom reinforcement, it is important to go directly to the source, namely, you the student. Below is a paragraph that provides instructions for completing a series of "controlled choice" survey items about individual reinforcement preferences. Please read the following paragraph carefully:

"Let's suppose that you have worked hard on an assignment and you think that you have done a super job on it. In thinking about a reward for your effort, which one of the two things below would you most like to happen? Please choose the one from each pair that you would like best and mark an "X" in the blank that comes in front of it. Remember, mark only one blank for each pair."

1. _____ Teacher writes "100" on your paper. (A)
 _____ Be first to finish your work. (CM)
2. _____ A bag of chips. (CN)
 _____ Classmates ask you to be on their team. (P)
3. _____ Be free to do what you like. (I)
 _____ Teacher writes "100" on your paper. (A)
4. _____ Classmates ask you to be on their team. (P)
 _____ Be first to finish your work. (CM)
5. _____ Be free to do what you like. (I)
 _____ A bag of chips. (CN)
6. _____ Teacher writes "100" on your paper. (A)
 _____ Classmates ask you to be on their team. (P)
7. _____ Be first to finish your work. (CM)
 _____ Be free to do what you like. (I)
8. _____ A bag of chips. (CN)
 _____ Teacher writes "100" on your paper. (A)
9. _____ Classmates ask you to be on their team. (P)
 _____ Be free to do what you like. (I)
10. _____ Be first to finish your work. (CM)
 _____ A bag of chips. (CN)
11. _____ Teacher writes "A" on your paper. (A)
 _____ Be the only one that can answer a question. (CM)

12. _____ A candy bar. (CN)
_____ Friends ask you to sit with them. (P)
13. _____ Be free to go outside. (I)
_____ Teacher writes "A" on your paper. (A)
14. _____ Friends ask you to sit with them. (P)
_____ Be the only one that answers a question. (CM)
15. _____ Be free to go outside. (I)
_____ A candy bar. (CN)
16. _____ Teacher writes "A" on your paper. (A)
_____ Friends ask you to sit with them. (P)
17. _____ Be the only one that can answer a question. (CM)
_____ Be free to go outside. (I)
18. _____ A candy bar. (CN)
_____ Teacher writes "A" on your paper. (A)
19. _____ Friends ask you to sit with them. (P)
_____ Be free to go outside. (I)
20. _____ Be the only on that can answer a question. (CM)
_____ A candy bar. (CN)
21. _____ Teacher writes "Perfect" on your paper. (A)
_____ Have only your paper shown to the class. (CM)
22. _____ A can of soda. (CN)
_____ Classmates ask you to be class leader. (P)
23. _____ Be free to play outside. (I)
_____ Teacher writes "Perfect" on your paper. (A)
24. _____ Classmates ask you to be class leader. (P)
_____ Have only your paper shown to the class. (CM)
25. _____ Be free to play outside. (I)
_____ A can of soda. (CN)
26. _____ Teacher writes "Perfect" on your paper. (A)
_____ Classmates ask you to be class leader. (P)
27. _____ Have only your paper shown to the class. (CM)
_____ Be free to play outside. (I)

28. _____ A can of soda. (CN)
_____ Teacher writes "Perfect" on your paper. (A)
29. _____ Classmates ask you to be class leader. (P)
_____ Be free to play outside. (I)
30. _____ Have only your paper shown to class. (CM)
_____ A can of soda. (CN)
31. _____ Teacher writes "Excellent" on your paper. (A)
_____ Have your paper put on the bulletin board. (CM)
32. _____ A pack of gum. (CN)
_____ Friends ask you to work with them. (P)
33. _____ Be free to work on something you like. (I)
_____ Teacher writes "Excellent" on your paper. (A)
34. _____ Friends ask you to work with them. (P)
_____ Have your paper put on the bulletin board. (CM)
35. _____ Be free to work on something you like. (I)
_____ A pack of gum. (CN)
36. _____ Teacher writes "Excellent" on your paper. (A)
_____ Friends ask you to work with them. (P)
37. _____ Have your paper put on the bulletin board. (CM)
_____ Be free to work in something you like. (I)
38. _____ A pack of gum. (CN)
_____ Teacher writes "Excellent" on your paper. (A)
39. _____ Friends ask you to work with them. (P)
_____ Be free to work on something you like. (I)
40. _____ Have your paper put on the bulletin board. (CM)
_____ A pack of gum. (CN)

Other suggestions about classroom rewards:

Thank you for taking the time to complete this survey.

Scoring Key

- _____ Adult Approval (A)
- _____ Competitive Approval (CM)
- _____ Peer Approval (P)
- _____ Independent Rewards (I)
- _____ Consumable Rewards (CN)

Modified by Gable, R. A. (1991) from:

Cartwright, C. A., & Cartwright, G. P. (1970). Determining the motivational systems of individual children. Teaching Exceptional Children, 2:3, 143-149.

Functional Assessment Interview Form

Interviewer(s) _____ Date(s) _____

Student(s) _____

Respondent(s) _____ Title _____

1. Describe the behavior of concern. _____

2. How often does the behavior occur? _____
How long does it last? _____

How intense is the behavior? _____

3. What is happening when the behavior occurs? _____

4. *When/where* is the behavior *most/least* likely to occur? _____

5. With whom is the behavior *most/least* likely to occur? _____

6. What conditions are most likely to precipitate ("set-off") the behavior? _____

7. How can you tell the behavior is about to start? _____

8. What usually happens after the behavior the behavior? Describe what happens according to adult(s), peers, and student responses. _____

9. What is the likely function (intent) of the behavior; that is, why do you think the student behaves this way? What does the student get or avoid? _____

10. What behavior(s) might serve the same function (see question 9) for the student that is appropriate within the social/environmental context? _____

11. What other information might contribute to creating an effective intervention plan (e.g., under what conditions does the behavior not occur)? _____

12. Who should be involved in planning and implementing the intervention plan? _____

Example Form**Functional Assessment Scatterplot**Student: Myree Grade: 6th School: John B. LynnDate(s): 10/4/97 to 10/8/97 Observer(s): DennisBehavior(s) of concern: disrupts class w/inappropriate comments and verbal threats directed at peers.

Setting: _____

ACTIVITY	TIME	DAY OF THE WEEK					TOTAL
		Monday	Tuesday	Wednesday	Thursday	Friday	
<i>Math</i>	<i>9:20 – 10:10</i>	<i>II</i>	<i>I IIII IIII</i>	<i>IIII III</i>	<i>III</i>	<i>III</i>	29
<i>Science</i>	<i>10:10 – 11:00</i>	<i>II</i>		<i>I</i>	<i>I</i>		4
<i>Social Studies</i>	<i>11:00 – 11:50</i>		<i>I</i>				1
<i>English</i>	<i>11:50 – 12:30</i>	<i>I</i>	<i>I IIII</i>	<i>I IIII</i>		<i>II</i>	15
<i>Lunch</i>	<i>12:30 – 1:00</i>						0
<i>Health/P.E.</i>	<i>1:00 – 1:50</i>						0
<i>Art</i>	<i>1:50 – 2:40</i>						0
Total		5	18	15	4	7	49

Prepared by the Center for Effective Collaboration and Practice

Example Form

Classroom Scatterplot

Student Charles Teacher Miller Observer(s) Evans
 Activity _____ Date _____
 No. of Students 21 Start Time 9:10 End Time 9:55 Total 45 min.

Observation Interval:	10 sec ___ 15 sec ___ 20 sec X	Time Sampling Procedure:	1. Continuous Recording: ___	2. Non-Continuous Recording X (every 3 min.):	3. Other: ___
-----------------------	---------------------------------------	--------------------------	------------------------------	--	---------------

Phase	Appropriate Responses										Inappropriate Responses								
	Acad Talk	Answer Ques	Ask Ques	Atten	Task Partic	Read Aloud	Read Silent	Write	Other Appro.	Total	Aggress/ Disruptive	Off Task	Out of Seat	Non Compliance	Talk Out	Other Inappro.	Total Inappro.	Grand Total	
<i>baseline</i>																			
Instructional Conditions	Paper—Pencil																		
	Listen-Lecture			I						1								2	
	Teacher-Pupil Discussion		II		II					4	I				II		3	7	
	Manipulatives																		
	Inst. Games																		
	Worksheets Workbook																		
	Readers											III	II		II	III	II	14	14
	Student-Student																		
	Media/Tech-Other																		
	Transition																		
	Other																		
	Total	0	2	1	2	0	0	0	0		5	4	2	0	2	7	2	17	22

Prepared by the Center for Effective Collaboration and Practice

Blank Form

Classroom Scatterplot

Student _____ Teacher _____ Observer(s) _____
 Activity _____ Date _____
 No. of Students _____ Start Time _____ End Time _____ Total _____

Observation Interval:	10 sec ____ 15 sec ____ 20 sec ____	Time Sampling Procedure:	1. Continuous Recording: ____	2. Non-Continuous Recording (every ____ min.):	3. Other: ____
-----------------------	-------------------------------------	--------------------------	-------------------------------	--	----------------

Phase		Appropriate Responses										Inappropriate Responses							
		Acad Talk	Answer Ques	Ask Ques	Atten	Task Partic	Read Aloud	Read Silent	Write	Other Appro.	Total	Aggress/Disruptive	Off Task	Out of Seat	Non Compliance	Talk Out	Other Inappro.	Total Inappro.	Grand Total
Instructional Conditions	Paper—Pencil																		
	Listen-Lecture																		
	Teacher-Pupil Discussion																		
	Manipulatives																		
	Inst. Games																		
	Worksheets Workbook																		
	Readers																		
	Student-Student																		
	Media/Tech-Other																		
	Transition																		
	Other																		
	Total																		

Prepared by the Center for Effective Collaboration and Practice

Appendix B:

FUNCTIONAL BEHAVIOR ASSESSMENT

- Quality Indicators of Functional Behavior Assessments and Behavior Intervention Plans
- Functional Assessment/Behavioral Intervention Checklist
- Functional Behavior Assessment Format

Quality Indicators of Functional Behavior Assessments and Behavior Intervention Plans

Indicator	YES	Some	NO
1. Assessing school wide behavior intervention needs is a collaborative team process.			
2. Behaviors are defined in operational terms (observable).			
3. Multiple data sources and methods are used involving qualitative and quantitative information (e.g., interviews, observations, questionnaires, motivations scales).			
4. A team provides input, including teachers and family members, and when appropriate, the student.			
5. Situations (times, places, conditions) under which the behavior is likely to occur AS WELL AS situations when the behavior is NOT likely to occur are identified.			
6. A functional hypothesis is generated to explain the behavior and guide the development of the support plan, response plan, and teaching plan.			
7. Replacement or alternative behavior that serves the same function as the target behavior is identified.			
8. An instructional plan has clear components for what and how to teach and reinforce the replacement/alternative behavior.			
9. Reinforcement that is valued to the individual student is identified; a plan to use and fade reinforcement is put into place.			
10. A Support plan that designates changes to the environment cues or prompts for appropriate responding, or other strategies that minimize the need for the student to use the target behavior are specified.			
11. A response plan that considers the function that the behavior serves is designed to minimize the value of the target behavior.			
12. Data on the occurrence of the target and replacement behavior are taken on a regular basis and progress is monitored.			
13. A team meets regularly to evaluate the extent to which the plan is being implemented with fidelity; and if not – identifies the factors that interfere with implementation.			
14. The intervention/support plan emphasizes: <ul style="list-style-type: none"> ○ general education class participation ○ meaningful social relationships ○ enhanced opportunities for choice ○ creation of a role for the student within the class or school that engenders respect from others ○ continued development of personal competencies 			
15. The intervention/support plan emphasizes prevention by intervening or supporting the student when the behavior is <i>not occurring</i> to reduce the likelihood of the student's need to use the behavior.			
16. There is a structure for ongoing input from all involved stakeholders and a collaborative planning process to redesign the interventions/supports.			

Courtesy of the Maryland Center for Inclusive Education (MCIE)

Functional Assessment/Behavioral Intervention Checklist

IEP teams can use this checklist to guide them through the process of conducting a functional behavioral assessment and writing and implementing a positive behavioral intervention plan.

Student: _____ Date: _____

Team leader: _____ Grade: _____

Behavior(s) of concern: _____

Yes	No	
		1. Is the student behavior of concern clearly defined?
		2. Have replacement behaviors that serve the same function (or result in the same outcome) for the student been identified, along with the circumstances under which they should occur (e.g., when threatened by peer in hallway)?
		3. Are multiple sources of information available that have been collected from various individuals (e.g., teachers, parents, classmates, and student)? At least two separate indirect measures and multiple direct measures (e.g., ABC charts, scatterplots) that capture multiple occurrences/non-occurrences of the behavior (and its context) should be in agreement
		4. Has the team produced an acceptable convergent database?
		5. Is the hypothesis statement written according to the three-term contingency (i.e., under x conditions, the student does y, in order to achieve z) so that an intervention plan can easily be produced?
		6. Is the plan aligned with student needs and assessment results?
		7. Does the plan address all aspects of the social/environmental contexts in which the behavior of concern has occurred?
		8. Is there a strategy to verify the accuracy of the hypothesis statement (e.g., analogue assessment)?
		9. Does the plan address both short-term and long-term aspects of student behavior (and its social/environmental context), including procedures to eliminate reliance on unacceptable behavior?
		10. Does the plan include practical ways to monitor both its implementation (e.g., checklist, treatment scripts) and its effectiveness as a behavioral intervention plan?
		11. Does the plan include ways to promote the maintenance and generalization of positive behavior changes in student behavior (e.g., self-monitoring)?
		12. Is the plan consistent with building-level systems of student behavior change and support?

Prepared by the Center for Effective Collaboration and Practice

Functional Behavior Assessment (FBA)

Form from the On-line IEP, Maryland State Department of Education

The Functional Behavior Assessment (FBA) examines the content, pattern, and function of the student's behavior and leads to an effective Behavior Intervention Plan (BIP).

Student: _____ Grade: _____
 School: _____ Date completed: _____
 Completed By: _____

Specifically describe behavior that impedes the student's learning or that of others:

With what frequency, intensity and duration does this behavior occur?

<p>Frequency (How often does behavior occur?)</p> <p>_____ times per</p> <p><input type="checkbox"/> minute</p> <p><input type="checkbox"/> hour</p> <p><input type="checkbox"/> day</p> <p><input type="checkbox"/> week</p>	<p>Intensity (How severe is the behavior?)</p> <p><input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5</p> <p>←----- (severity) -----></p> <p>Low high</p>	<p>Duration (How long does the behavior last?)</p> <p>_____ (amount)</p> <p><input type="checkbox"/> seconds</p> <p><input type="checkbox"/> minutes</p> <p><input type="checkbox"/> hours</p>
---	---	--

ANTECEDENTS

Describe the circumstances that are often present BEFORE the behavior occurs:

I. Where does the behavior occur?

	Often	Rarely	Comments
Classroom	_____	_____	_____
Hallways	_____	_____	_____
Cafeteria	_____	_____	_____
Bus	_____	_____	_____
Library	_____	_____	_____
Bathrooms	_____	_____	_____
Recess	_____	_____	_____
Other	_____	_____	_____

II. Who is involved?

	Often	Rarely	Comments
Teacher	_____	_____	_____
Peer(s)	_____	_____	_____
Assistant	_____	_____	_____
School Support	_____	_____	_____
Counselor	_____	_____	_____
Administrator	_____	_____	_____
Self	_____	_____	_____
Other	_____	_____	_____

III. When does the behavior occur (is there a pattern in the time of day, or day of the week, when the behavior occurs)? Briefly describe:

IV. How is the behavior triggered and/or escalated? Briefly describe:

CONSEQUENCES

Describe what happens AFTER the behavior occurs:

Effect(s) of behavior:

- interruption of learning
- loss of instructional time
- harm to others
- damage to property
- other: _____

Peer Response:

- encouraging
- ignoring
- avoiding
- confronting
- other: _____

Function of behavior: Specify hypothesized function for each area checked below.

Affective Regulation/Emotional Reactivity (Identify emotional factors; anxiety, depression, anger, poor self-concept; that play a role in organizing or directing behavior):

Cognitive Distortion (Identify distorted thoughts; inaccurate attributions, negative self-statements, erroneous interpretations of events; that play a role in organizing or directing behavior):

Reinforcement (Identify environmental triggers and payoffs that play a role in organizing and directing behavior):

Antecedents:

Consequences:

Modeling (Identify the degree to which the behavior is copied, who they are copying the behavior from, and why they are copying the behavior):

Family Issues (Identify family issues that play a part in organizing and directing behavior):

Physiological/Constitutional (Identify physiological and/or personality characteristics; developmental disabilities, temperament; that play a part in organizing and directing behavior):

Communicative Intent (Identify what the student is trying to say through the behavior):

Curriculum/Instruction (Identify how instruction, curriculum, or educational environment play a part in organizing and directing behavior):

Student Information

What interventions and/or strategies are currently being used or have previously been used to address the behavior and how has the student responded to improve learning/achievement?

List the student's strengths and interests:

List the student's academic achievements;

List any rewards, reinforcements, or incentives that work with the student:

Additional comments

Teacher comments:

Counselor comments:

Administrative comments:


Parent comments:


Outside agency comments:


Functional Behavior Assessments and Behavior Intervention Plans – Rubric for Quality Components


Prepared by the Maryland Coalition for Inclusive Education, 2009


1. Defining the Problem Behavior		
Meets Expectations (Good)	Partially Meets Expectations (Fair)	Does not Meet Expectations (Poor)
Description of the problem behavior includes all of the following characteristics <input type="checkbox"/> Specific/clear (<i>observable, unambiguous, can be replicated by a stranger</i>) <input type="checkbox"/> objective (<i>description of specific student actions, not inferred traits</i>) <input type="checkbox"/> measurable (<i>frequency and/or duration can be counted; beginning and ending of behavior are clearly delineated</i>)	Description of the problem behavior includes two of the following characteristics <input type="checkbox"/> specific/clear <input type="checkbox"/> objective <input type="checkbox"/> measurable	Description of the problem behavior includes one or none of the following characteristics <input type="checkbox"/> specific /clear <input type="checkbox"/> objective <input type="checkbox"/> measurable *Or problem behavior description is not included
+ STRENGTHS		△ NEEDS improvement

2. Identifying the FUNCTION of the behavior		
Meets Expectations (Good)	Partially Meets Expectations (Fair)	Does not Meet Expectations (Poor)
<p>Description of the function of the behavior has all of the following characteristics:</p> <ul style="list-style-type: none"> <input type="checkbox"/> it identifies what the student is trying to communicate <input type="checkbox"/> it is based on data and analysis <input type="checkbox"/> it includes motivating factors (i.e. to escape/avoid or obtain/acquire) <input type="checkbox"/> it identifies reinforcing consequences of the behavior (i.e. sensory input, activity/event/object (tangible), social interaction) 	<p>Description of the function of the behavior includes two to three of the following characteristics:</p> <ul style="list-style-type: none"> <input type="checkbox"/> it identifies what the student is trying to communicate <input type="checkbox"/> it is based on data and analysis <input type="checkbox"/> it includes motivating factors (i.e. to escape/avoid or obtain/acquire) <input type="checkbox"/> it identifies reinforcing consequences of the behavior (i.e. sensory input, activity/event/object (tangible), social interaction) 	<p>Description of the function of the behavior includes one or none of the following characteristics:</p> <ul style="list-style-type: none"> <input type="checkbox"/> it identifies what the student is trying to communicate <input type="checkbox"/> it is based on data and analysis <input type="checkbox"/> it includes motivating factors (i.e. to escape/avoid or obtain/acquire) <input type="checkbox"/> it identifies reinforcing consequences of the behavior (i.e. sensory input, activity/event/object (tangible), social interaction) <p>*Or the function is not Included</p>
<p>+ STRENGTHS</p>		<p> NEEDS improvement</p>

3. Functional Assessment SUMMARY Statement (Hypothesis)		
Meets Expectations (Good)	Partially Meets Expectations (Fair)	Does not Meet Expectations (Poor)
<p>There is a summary statement that provides a hypothesis and includes all of the following components:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the antecedents (<i>immediate triggers</i>) of the behavior <input type="checkbox"/> the behavior <input type="checkbox"/> function of the behavior (<i>indicating what the student is trying to either get/obtain or escape/avoid</i>) <input type="checkbox"/> setting events for the behavior (<i>the environmental, physical, instructional, or interpersonal factors that may influence whether or not the behavior is likely to occur</i>) 	<p>A summary statement is provided and includes two of the following components:</p> <ul style="list-style-type: none"> <input type="checkbox"/> antecedents <input type="checkbox"/> behavior <input type="checkbox"/> function of behaviors <input type="checkbox"/> setting events for the behavior 	<p>A summary statement is provided and includes one or none of the following components:</p> <ul style="list-style-type: none"> <input type="checkbox"/> antecedents <input type="checkbox"/> behavior <input type="checkbox"/> function of behaviors <input type="checkbox"/> setting events for the behavior <p>* Or a summary statement is not included</p>
<p>+ STRENGTHS</p>		<p> NEEDS improvement</p>

4. Replacement Behavior		
Meets Expectations (Good)	Partially Meets Expectations (Fair)	Does not Meet Expectations (Poor)
<p>A “replacement” behavior is defined that serves the same function as the problem behavior (<i>i.e. allows the student to communicate the SAME need in a more acceptable way</i>).</p>	<p>An acceptable alternative behavior(s) is identified, but it does not serve the same function as the problem behavior. (<i>It may, for example, specify skills that reflect adult preferences for the student’s behavior but does not result in the consequence desired by the student.</i>)</p>	<p>An alternative behavior is identified, but it describes what the student will NOT do.</p> <p>* Or no replacement behavior is included</p>
<p>+ STRENGTHS</p>		<p> NEEDS improvement</p>

5. Prevention Strategies		
Meets Expectations (Good)	Partially Meets Expectations (Fair)	Does not Meet Expectations (Poor)
<p>Strategies (supports) to prevent the behavior are described in the Behavior Intervention Plan and include both:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Strategies which are general prevention supports (<i>such as providing choices, reinforcing alternative acceptable behavior, self-monitoring checklist, or other</i>) <input type="checkbox"/> Strategies that are based on the function (<i>e.g., if escape work, then reduce work stress; if for social attention from peers, then design opportunities for peer interaction</i>) 	<p>Strategies (supports) to prevent the behavior are described in the Behavior Intervention Plan and include one:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Strategies which are general prevention supports <input type="checkbox"/> Strategies that are based on the function 	<p>Strategies (supports) to prevent the behavior are:</p> <ul style="list-style-type: none"> <input type="checkbox"/> NOT described in the Behavior Intervention Plan <p style="text-align: center;">or</p> <ul style="list-style-type: none"> <input type="checkbox"/> Describe how to RESPOND when the behavior occurs – i.e., how to prevent the behavior from becoming worse when it has already occurred).
<p>+ STRENGTHS</p>		<p> NEEDS improvement</p>

6. Response Strategies		
Meets Expectations (Good)	Partially Meets Expectations (Fair)	Does not Meet Expectations (Poor)
<p>Strategies that describe how to respond when/if the problem behavior does occur are designed to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> minimize the impact of the problem behavior on other students <input type="checkbox"/> reduce the reinforcement (desired consequences) of the problem behavior <input type="checkbox"/> minimize damage to the student's reputation 	<p>Strategies that describe how to respond when/if the problem behavior does occur are designed to do at least one of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> minimize the impact of the problem behavior on other students <input type="checkbox"/> reduce the reinforcement (desired consequences) of the problem behavior <input type="checkbox"/> minimize damage to the student's reputation 	<p>Strategies that describe how to respond when/if the problem behavior does occur focus only on punishing the student and may actually reinforce the problem behavior</p> <p><i>* Or no response strategies are included</i></p>
<p>+ STRENGTHS</p>		<p> NEEDS improvement</p>

Appendix C:

BEHAVIOR INTERVENTION PLAN

- Positive Behavior Intervention Plan–Blank Planning Form
- Behavior Intervention Plan Format

Positive Behavioral Intervention Plan Blank Planning Form

Prepared by the Center for Effective Collaboration and Practice

IEP teams can use this form to guide them through the process of developing the Positive Behavioral Intervention Plan.

Student _____ Age _____ Sex _____
 Teacher(s) _____ Grade _____
 Case Manager _____ Date(s) _____

Reason for intervention plan:

Participants (check all that apply and specify names):

<input type="checkbox"/> Student:	<input type="checkbox"/> Special education administrator:
<input type="checkbox"/> Family member:	<input type="checkbox"/> General education administrator:
<input type="checkbox"/> Special educator:	<input type="checkbox"/> School psychologist:
<input type="checkbox"/> General educator:	<input type="checkbox"/> Other agency personnel:
<input type="checkbox"/> Peer:	<input type="checkbox"/> Other(s):

Fact Finding

- 1. General learning environment:** Describe the student's school class schedule, including any special programs or services.

2. **Problem behavior:** Define the problem behavior(s) in observable, measurable, and countable terms (i.e., topography, event, duration, seriousness, and/or intensity). Include several examples of the behavior.

3. **Setting events:** Describe important things that are happening in the student's life that may be causing the behavior(s) of concern.

4. **Review existing data:** Summarize previously collected information (records review, interviews, observations, and test results) relevant to the behavior(s). Attach additional sheets if necessary.

Possible Explanations

5. Identify likely antecedents (precipitating events) to the behavior(s).

6. Identify likely consequences that may be maintaining the behavior(s).

7. Identify and describe any academic or environmental context(s) in which the problem behavior(s) does not occur.

Validation

8. **Functional assessment:** Do you already have enough information to believe that the possible explanations are sufficient to plan an intervention?

a. If yes, go to Step 9, if no, then what additional data collection is necessary?

- Review of IEP goals and objectives
- Review of medical records
- Review of previous intervention plans
- Review of incident reports
- ABC (across time and situations)
- Motivational analysis
- Ecological analysis
- Curricular analysis
- Scatter plot
- Parent questionnaire/interview
- Student questionnaire/interview
- Teacher questionnaire/interview (specify who) _____
- Other (explain) _____

b. Summarize data. Attach additional sheets if necessary.

Planning

9. **Formulate hypothesis statement:** Using the table below, determine why the student engages in problem behavior(s), whether the behavior(s) serves single or multiple functions, and what to do about the behavior(s).

	Internal	External
Obtain Something		
Avoid Something		

10. **Current level of performance:** Describe problem behavior(s) in a way the team will recognize onset and conclusion of behavior.

11. Describe replacement behavior(s) that are likely to serve the same function as the behavior(s) identified in Step 9.

12. **Measurement procedures for problem behavior(s) and replacement behavior(s):**
 - a. Describe how (e.g., permanent products, event recording, scatterplot), when, and where student behavior(s) will be measured.

 - b. Summarize data by specifying which problem behavior(s) and replacement behavior(s) will be targets for intervention.

13. **Behavioral intervention plan:**
 - a. Specify goals and objectives (conditions, criteria for acceptable performance) for teaching the replacement behavior(s).

 - b. Specify instructional strategies that will be used to teach the replacement behavior(s).

 - c. Specify strategies that will be used to decrease problem behavior(s) and increase replacement behavior(s).

 - d. Identify any changes in the physical environment needed to prevent problem behavior(s) and to promote desired (replacement) behavior(s), if necessary.

 - e. Specify extent to which intervention plan will be implemented in various settings; specify settings and persons responsible for implementation of plan.

Behavior Intervention Plan (BIP)

(Form from the Online IEP, Maryland State Department of Education)

Student: _____ Grade: _____
 School: _____ Date BIP Developed: _____

TO BE COMPLETED BY THE TEAM: Using the Functional Behavior Assessment (FBA), determine the appropriate behavior goal and specific strategies for intervention to improve behavior and achievement. The BIP must address the function, or purpose, of the student's behavior. It is expected that the student and parents/guardians will participate in the development of the BIP.

Generate a summary statement that hypothesizes why the student is engaging in the inappropriate behavior.

Take into account the following:

- Events/circumstances associated with the behavior
- Functions and/or purposes of the behavior

What is the impact behavior has on academics/learning/achievements?

What is the appropriate behavior goal?

PREVENTING STRATEGIES

What can be done before the inappropriate behavior occurs(e.g. seating, schedule changes, reinforcement of appropriate behaviors)?

TEACHING STRATEGIES

What skills could be taught to increase the occurrence of the appropriate behavior and improve achievement (e.g. social skills, conflict resolution, and choice-making)?

REINFORCEMENT STRATEGIES

What rewards or incentives can be used to reinforce the appropriate behavior/

RESPONSE STRATEGIES

What can staff, parents, and the student do in response to the inappropriate behavior (e.g. timeout, loss of privilege, home contact)?

EVALUATION OF INTERVENTION

What date will the team evaluate the intervention effectiveness? (4-6 weeks recommended)

Person(s) responsible for implementing, documenting, and reporting progress? _____

Have appropriate corresponding goals/objectives been developed and included in the student's IEP?

- Yes No N/A

Document basis for decision(s):

List the participants:

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

Appendix D:

ADDITIONAL DISCIPLINE INFORMATION

- Discipline Checklist
- Federal Definitions
- Functional Behavior Assessment Process Flow Chart
- Discipline Flow Charts

Discipline Checklist

[COMAR 13A.08.03]

Removals for Less Than 10 Days

- A) Schools may remove to the same extent as they remove students without disabilities.
- B) Schools do not have to provide services if they do not provide services to students without disabilities.

Removals for More Than 10 Days

- A) For any removals after the student has been removed for a cumulative equivalent of 10 school days in one school year, the principal is to consult with the special education teacher regarding the services that will be provided to enable the student to:
 1. Progress in the general curriculum
 2. Advance toward achieving the goals of the IEP

Change in Placement

- A) A removal is a change in placement if the student is:
 1. Removed from his/her current placement for more than 10 consecutive school days; or
 2. Removed on a series of occasions that constitutes a pattern of removals that adds up to more than ten school days in a school year.
- B) Factors as to whether multiple removals form a pattern:
 1. Length of each removal;
 2. Total amount of time of removal; and
 3. Amount of time between removals.
- C) For any removal after the first ten days or its cumulative equivalent in a school year, the principal is to consult with the special education teacher regarding the services that will be provided to enable the student to:
 1. Progress in the general curriculum, and
 2. Advance toward achieving the goals of the IEP.

Behavioral Assessment

- A) The IEP team must meet within ten business days of any removal after a student has been removed for the cumulative equivalent of ten school days in a school year, or any removal that constitutes a change in placement, to develop a plan to conduct a **functional behavioral assessment (FBA)** or to review the **behavioral intervention plan (BIP)**. The IEP team must:
 1. Develop a plan to conduct an FBA if the IEP team did not:
 - a. Conduct an FBA to address the behavior that led to the disciplinary action, before the behavior occurred, and

- b. Implement a BIP to address the behavior that led to the disciplinary action, before the behavior occurred.
 - c. Once the FBA is complete, the IEP team is to meet again to:
 - Develop appropriate behavioral interventions that address the behavior that led to the disciplinary action, and
 - Implement a BIP that includes these interventions; OR
2. Review the BIP.
 - a. If there is a BIP for the student, review the BIP to determine whether it:
 - Addresses the behavior that led to the disciplinary action, and
 - Was implemented appropriately prior to the incident that led to the disciplinary action.
 - b. In reviewing the BIP, the IEP team is to determine whether, in light of the disciplinary action:
 - The BIP needs to be revised, and/or
 - Implementation of the BIP needs to be modified in order to better address the behavior that led to the disciplinary action.

Manifestation Determination

- A) A manifestation determination must be made for a disciplinary removal when the student is:
1. Subject to a removal that is considered a change in placement (removal exceeds ten consecutive school days or a series of removals forms a pattern which accumulates to more than ten school days in one school year);
 2. Carries or possesses a weapon while at school or a school function;
 3. Knowingly possesses or uses an illegal drug while at school or a school function; or
 4. Sells or solicits the sale of a controlled substance while at school or a school function.
 5. Inflicts serious bodily injury on another person while at school or a school function.
- B) The IEP team must meet within ten days of a disciplinary removal to make a manifestation determination. The manifestation determination is to determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability or a direct result of the public agency's failure to implement the student's IEP.
1. Consider all relevant information:
 - a. Relevant information within the student's educational record,
 - b. Evaluations,
 - c. Teacher Observations,
 - d. Information supplied by parents, and
 - e. Student's IEP

2. If there is a determination that the behavior **is** a manifestation of the student's disability, because of the public agency's failure to implement the IEP, the public agency must remedy those deficiencies.
3. If there is a determination that the behavior **is** a manifestation of the student's disability, the IEP team must either:
 - a. Conduct a functional behavioral assessment, unless the public agency had conducted a functional behavioral assessment before the behavior that had resulted in a of placement occurred and implement a behavioral; intervention plan; or
 - b. If a behavioral intervention plan had already been developed, review and modify it, as necessary to address the behavior; and
 - c. Return the student to the placement from which the student was removed, unless the parent and the public agency agree to a change of placement as a part of the modification of the behavioral intervention plan.
4. If there is a determination that the behavior is **not** a manifestation of the student's disability, the school may discipline the student in the same manner the school disciplines a student without disabilities, except the school must put in place services that enable the student to:
 - a. Progress in the general curriculum, and
 - b. Advance toward achieving the goals of the IEP.

Interim Alternative Educational Setting

A student may be placed in an **Interim Alternative Educational Setting (IAES)** in certain special circumstances.

- A) School makes IAES Placement/One-Step Removal
 1. A school may place a student directly into an IAES for up to 45 school days in any of the following circumstances:
 - a. A student carries a weapon while at school, on school premises, or a school-sponsored function;
 - b. A student knowingly possesses or uses illegal drugs while at school, on school premises, or a school-sponsored function;
 - c. A student sells or solicits the sale of a controlled dangerous substance while at school, on school premises, or a school-sponsored function; or
 - d. A student inflicts serious bodily injury on another person while at school, on school premises, or a school-sponsored function.
 2. The IEP team decides which IAES is appropriate.
 3. The IAES must be a place where the student can:
 - a. Progress in the general curriculum;
 - b. Receive the services and modifications included in his/her IEP;
 - c. Meet the goals of his/her IEP; and
 - d. Receive the services and modifications designed to address the behavior that led to the disciplinary action to prevent recurrence.

4. Previously described procedures for manifestation determinations and FBA/BIP must be followed, although the school may keep the student in the IAES until the end of the 45 school day period, regardless of the IEP team's findings in the manifestation determination.
- **B. Administrative Law Judge (ALJ) makes IAES Placement/Two-Step Removal**
1. A school may request an expedited due process hearing to seek an order from an ALJ to place the student in an IAES for up to 45 school days in any of the following circumstances:
 - a. A student is substantially likely to cause harm to himself or herself; or
 - b. A student is substantially likely to cause harm to others.
 - The school must provide documentation of the efforts to minimize the risk of harm and documentation that proves beyond a preponderance of the evidence the likelihood of harm.
 2. An ALJ may order the placement of a student in an IAES if remaining in the current placement is substantially likely to:
 - a. Result in injury to the student, or
 - b. Result in injury to others.
 3. In making this decision, the ALJ is to consider:
 - a. The efforts made to minimize the risk of harm in the current placement, including the use of supplemental aids and services;
 - b. The appropriateness of the current placement; and
 - c. The appropriateness of the proposed IAES.

Parental Appeal

Parents may appeal a school's decision by filing a due process complaint. Parents may appeal the following decisions:

1. Disciplinary removal,
2. Manifestation determination,
3. Placement in an IAES.
4. During an appeal of a placement in an IAES, the student remains in the IAES until the due process hearing decision by the ALJ or until the completion of the 45 school day placement, unless the parents and public agency agree to another course of action. During the appeal of a new placement after the 45 school day IAES placement is complete, the:
5. Student returns to his/her school placement prior to the IAES, unless the parent and the public agency agree to a change of placement.

Students Not Yet Eligible for Special Education

- A) Schools must apply the procedural safeguards that are set up for students with disabilities if a school system has knowledge that a student has a disability prior to the behavior that led to the disciplinary action, even if a determination has not been made that the student is eligible for services.

- B) Schools have knowledge of a disability in the following circumstances:
 1. The parent stated in writing to supervisory or administrative personnel of the public agency, or a teacher of the student that the parent believes the student needs special education services; or
 2. The parent requested an evaluation of the student to determine if the student is a student with a disability in need of special education and related services; or
 3. The teacher of the student or other personnel of the public agency expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the director of special education for the public agency or other supervisory personnel of the public agency.

- C) Schools do not have knowledge of a disability if:
 1. The parent of the student:
 - a. Has not allowed the public agency to evaluate the student; or
 - b. Has refused or revoked services under IDEA; or
 2. The student has been evaluated and determined to not be a student with a disability under IDEA.

- D) The school may apply the same disciplinary measures applied to students without disabilities if the school system does not have knowledge that the student has a disability before the school takes disciplinary action.

- E) If the school system receives a written referral to an IEP team while the student is subject to disciplinary measures, the school system will evaluate the student in accordance with Maryland law in an expedited fashion, and the student will remain in the educational placement determined appropriate by the school personnel until the evaluation is complete. If the IEP team decides the student is a student with a disability, the school is to provide special education and related services.

Referral to Law Enforcement

- A) A school is to report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law.

- B) The school is to ensure that copies of the student's special education and disciplinary records are transmitted to the authorities to whom the school reported the crime, to the extent permitted, in accordance with the Family Educational Rights to Privacy Act (FERPA) and COMAR 13A.08.02.

Federal Definitions

34 C.F.R. §300.530(i)

Controlled Substance

Controlled Substance means a drug or other substance identified under schedules I, II, III, IV, or V of section 202 (c) of the Controlled Substances Act.

Illegal Drug

Illegal Drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act of any other provision of federal law.

21 U.S.C. 812(c)

(c) Initial schedules of controlled substances

Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

Schedule I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.
- (21) Ethylmethylthiambutene.
- (22) Etonitazene.

- (23) Etoxeridine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacymorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Piritramide.
- (39) Propheptazine.
- (40) Properidine.
- (41) Racemoramide.
- (42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Etorphine.
- (10) Heroin.
- (11) Hydromorphanol.
- (12) Methyl-desorphine.
- (13) Methylhydromorphine.
- (14) Morphine methylbromide.
- (15) Morphine methylsulfonate.
- (16) Morphine-N-Oxide.
- (17) Myrophine.
- (18) Nicocodeine.
- (19) Nicomorphine.
- (20) Normorphine.
- (21) Pholcodine.
- (22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine.
- (2) 5-methoxy-3,4-methylenedioxy amphetamine.
- (3) 3,4,5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethyltryptamine.
- (6) Dimethyltryptamine.
- (7) 4-methyl-2,5-dimethoxyamphetamine.
- (8) Ibogaine.
- (9) Lysergic acid diethylamide.
- (10) Marihuana.
- (11) Mescaline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzilate.
- (14) N-methyl-3-piperidyl benzilate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols.

Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine.
- (2) Anileridine.
- (3) Bezitramide.
- (4) Dihydrocodeine.

- (5) Diphenoxylate.
- (6) Fentanyl.
- (7) Isomethadone.
- (8) Levomethorphan.
- (9) Levorphanol.
- (10) Metazocine.
- (11) Methadone.
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- (14) Pethidine.
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (18) Phenazocine.
- (19) Piminodine.
- (20) Racemethorphan.
- (21) Racemorphan.
- (c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

Schedule III

- (a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
 - (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
 - (2) Phenmetrazine and its salts.
 - (3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
 - (4) Methylphenidate.
- (b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
 - (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
 - (2) Chorhexadol.
 - (3) Glutethimide.
 - (4) Lysergic acid.
 - (5) Lysergic acid amide.
 - (6) Methyprylon.
 - (7) Phencyclidine.
 - (8) Sulfondiethylmethane.
 - (9) Sulfonethylmethane.
 - (10) Sulfonmethane.
- (c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

Schedule IV

(1) Barbital.

(2) Chloral betaine.

(3) Chloral hydrate.

(4) Ethchlorvynol.

(5) Ethinamate.

(6) Methohexital.

(7) Meprobamate.

(8) Methylphenobarbital.

(9) Paraldehyde.

(10) Petrichloral.

(11) Phenobarbital.

Schedule V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Weapon

“Weapon” has the meaning given the term “dangerous weapon under the second paragraph of the first subsection (g) of section 930 of title 18, United States Code.

18 U.S.C. Section 930(g)(2):

(2) The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

Serious Bodily Injury**[34 C.F.R. 300.530(i)(3)]**

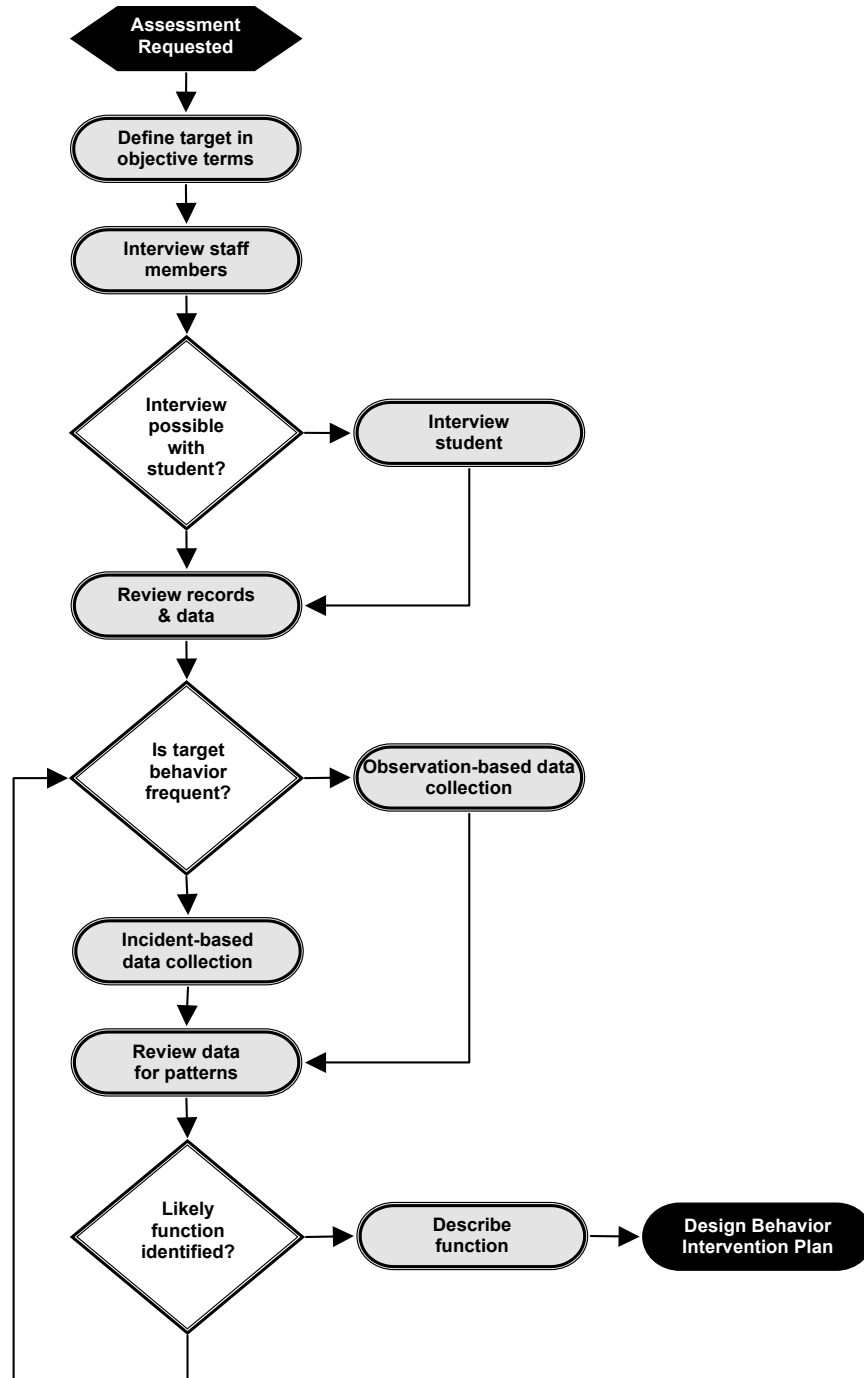
Serious Bodily Injury has the meaning given the term “serious bodily injury under 18 U.S.C. §1365(h)(3)

18 U.S.C. 1365(h)(3)

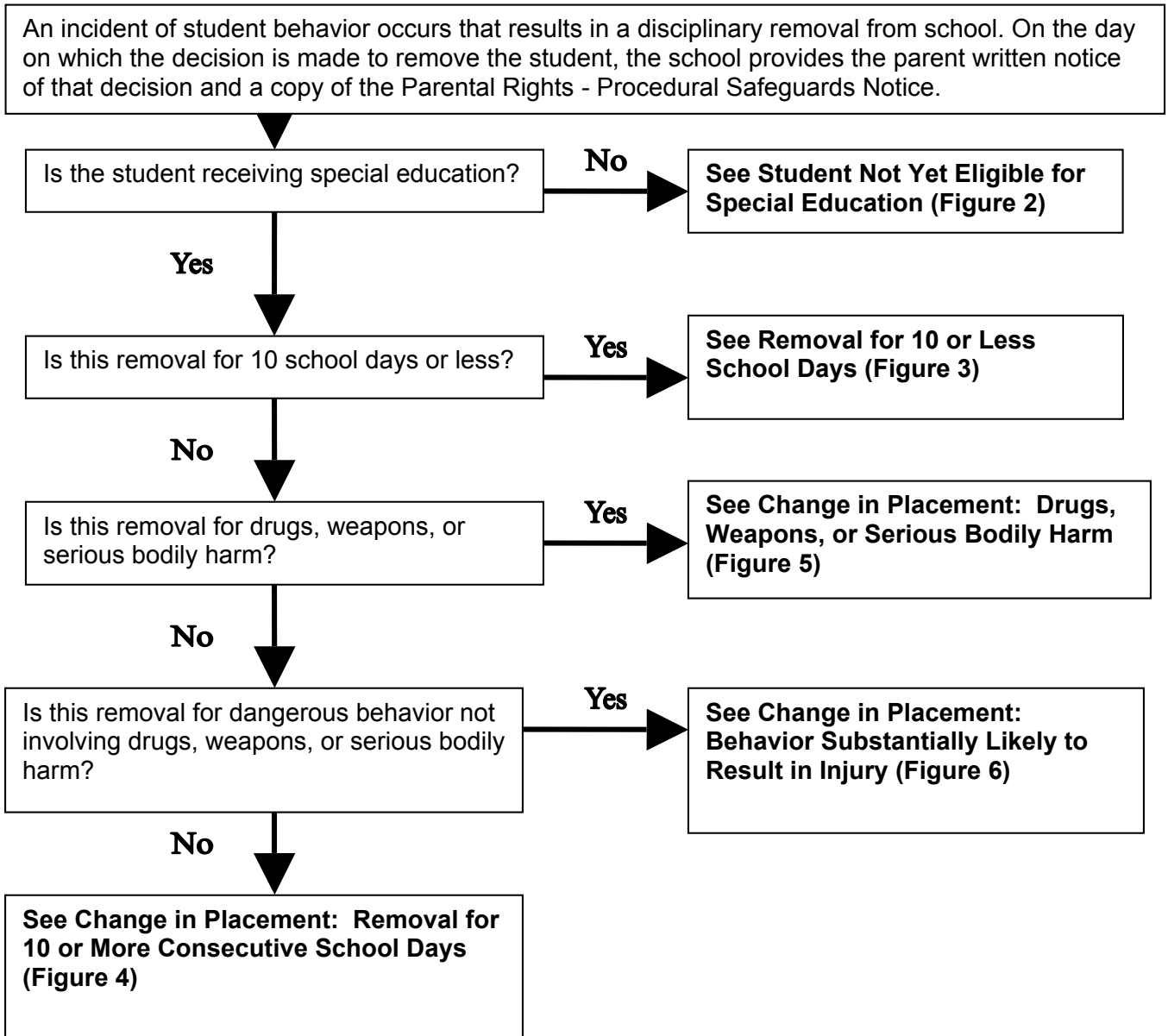
Serious bodily injury means bodily injury which involves—

- (A) a substantial risk of death;
- (B) extreme physical pain;
- (C) protracted and obvious disfigurement; or
- (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Functional Behavior Assessment Process Flow Chart



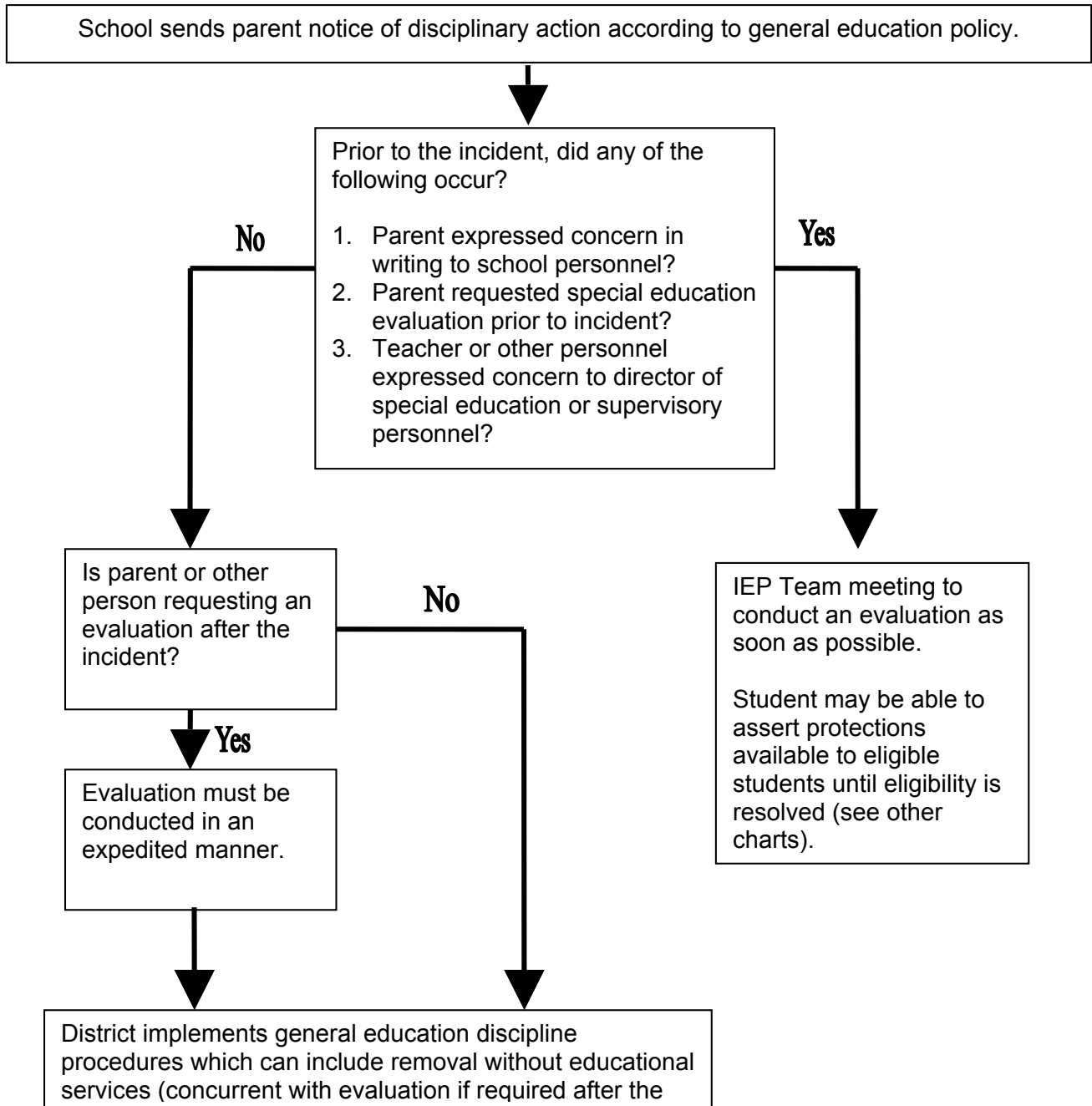
Discipline Flow Chart: Figure 1



Adapted from the Center for Educational Networking - Michigan Department of Education
http://www.cenmi.org/focus/dispute/sept04/article_04-02_fig1.asp

Discipline Flow Chart: Figure 2

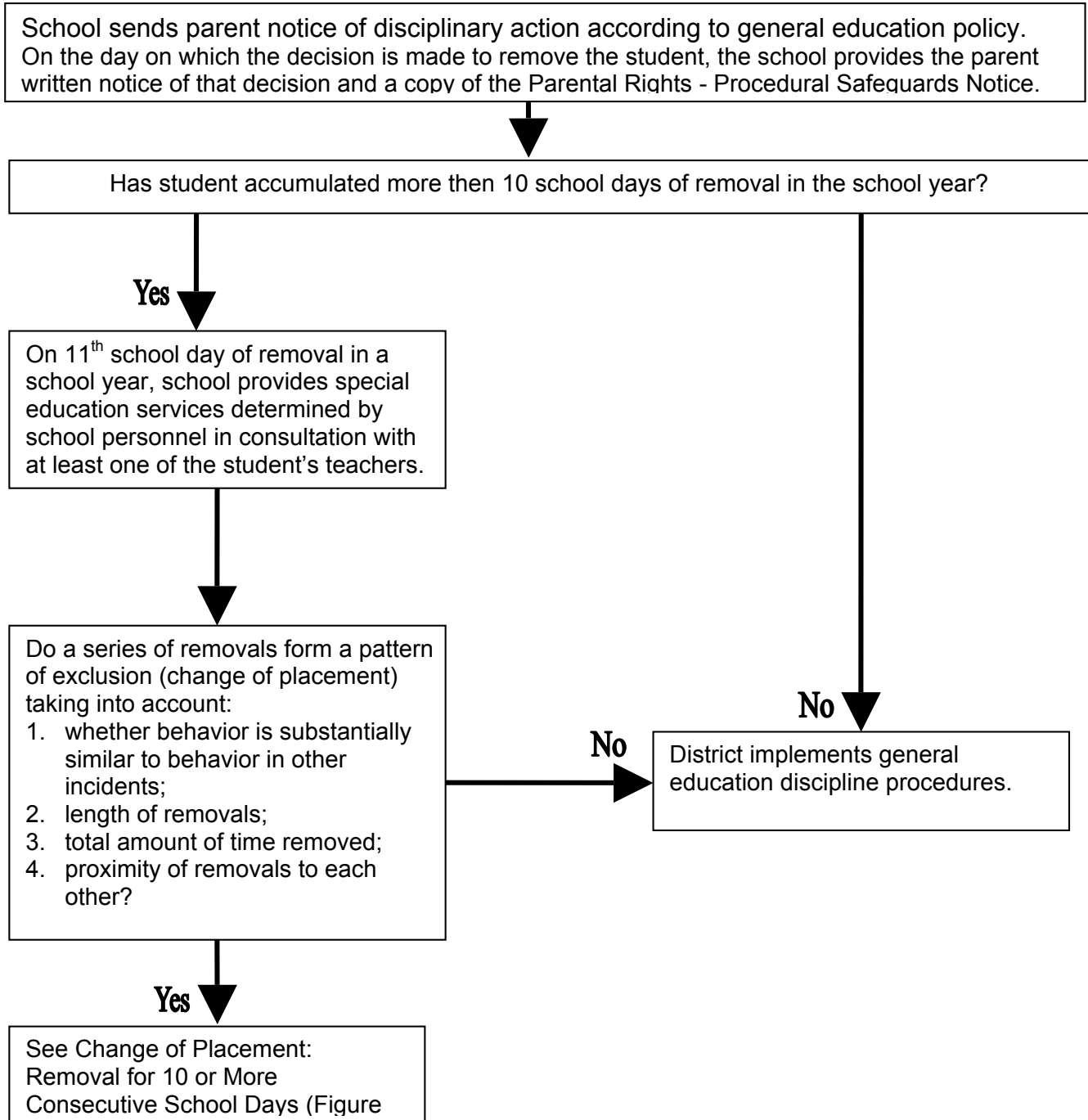
Students Not Yet Eligible for Special Education
 (Student is not currently in referral and does not currently receive special education)



Adapted from the Center for Educational Networking - Michigan Department of Education
http://www.cenmi.org/focus/dispute/sept04/article_04-02_fig1.asp

Discipline Flow Chart: Figure 3

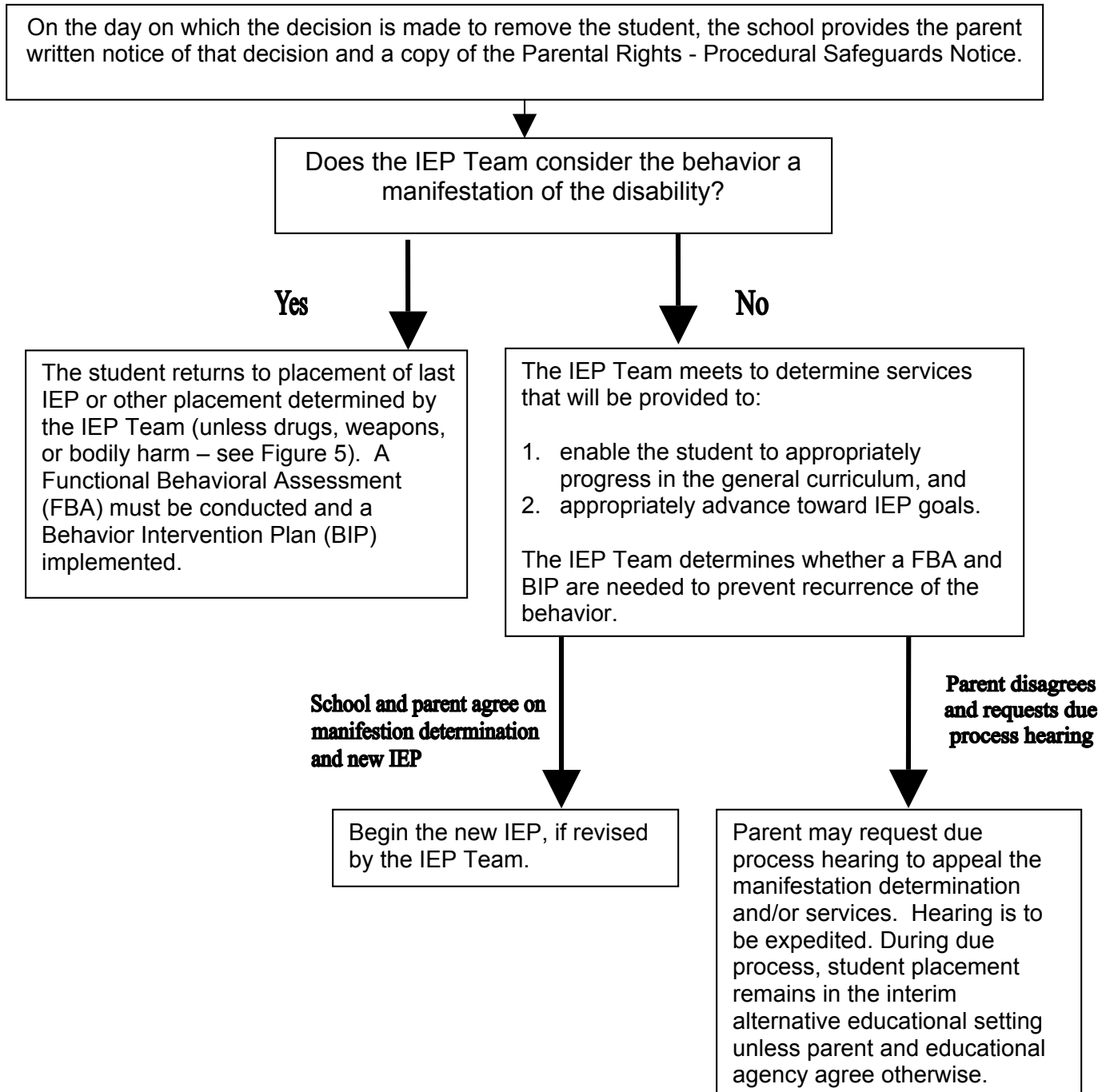
Removal for 10 or Less School Days



Adapted from the Center for Educational Networking - Michigan Department of Education
http://www.cenmi.org/focus/dispute/sept04/article_04-02_fig1.asp

Discipline Flow Chart: Figure 4

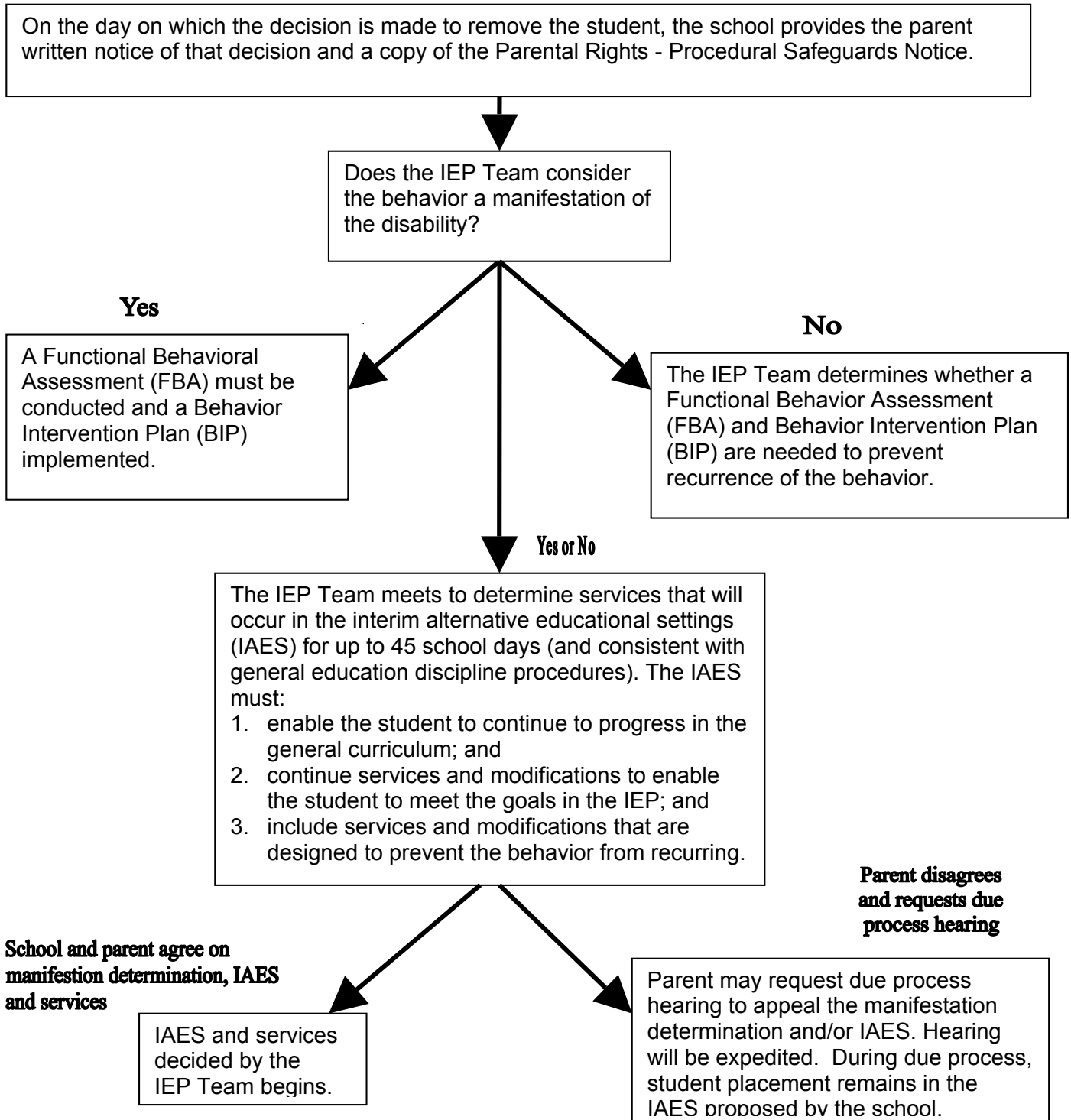
Change of Placement: Removal for 10 or More Consecutive School Days



Adapted from the Center for Educational Networking - Michigan Department of Education
http://www.cenmi.org/focus/dispute/sept04/article_04-02_fig1.asp

Discipline Flow Chart: Figure 5

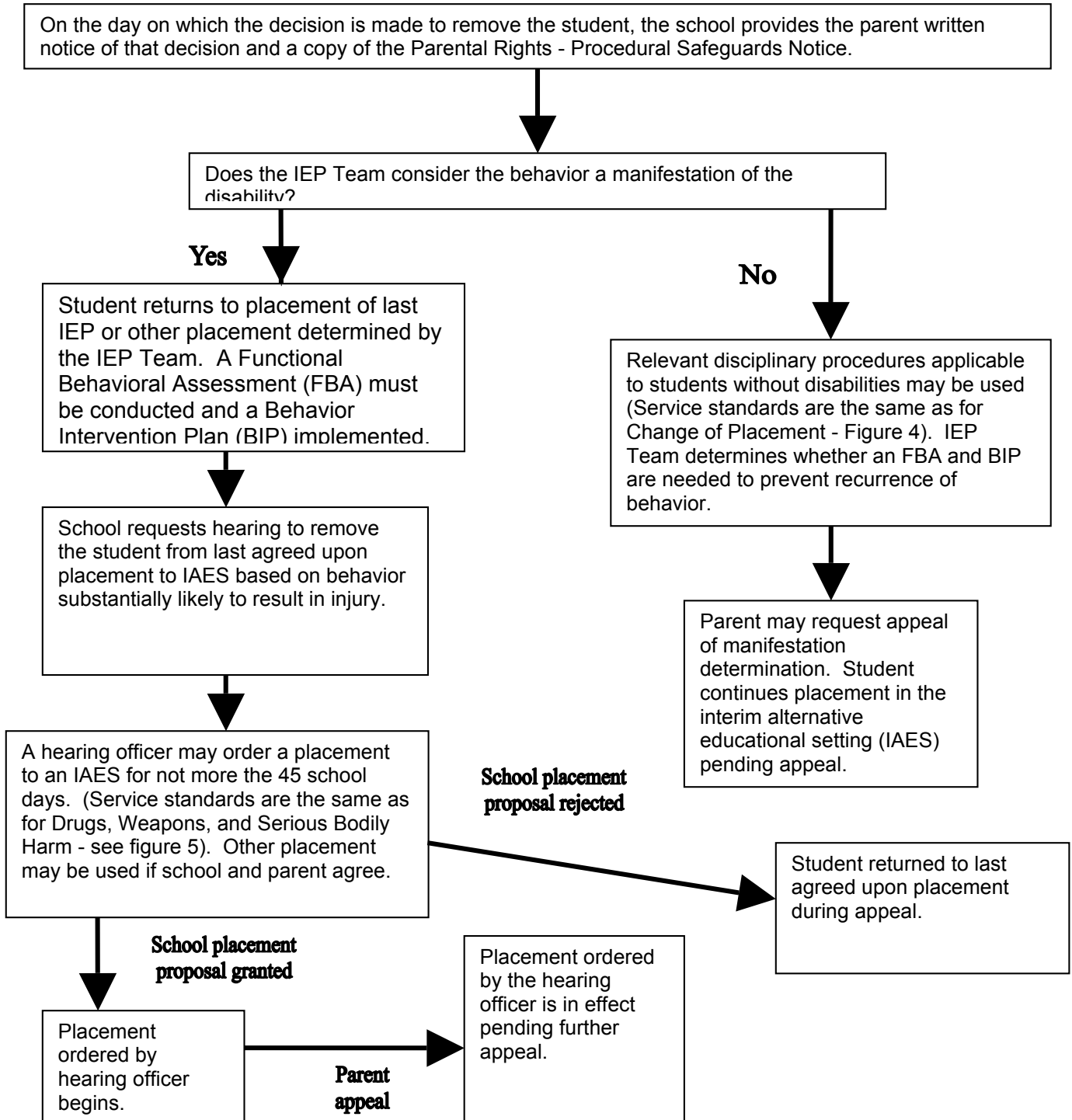
Change of Placement: Drugs, Weapons, or Serious Bodily Harm



Adapted from the Center for Educational Networking - Michigan Department of Education
http://www.cenmi.org/focus/dispute/sept04/article_04-02_fig1.asp

DICISPLINE FLOW CHART: Figure 6

Change of Placement: Behavior Substantially Likely to Result in Injury



Adapted from the Center for Educational Networking - Michigan Department of Education
http://www.cenmi.org/focus/dispute/sept04/article_04-02_fig1.asp

Appendix E:

MSDE TECHNICAL ASSISTANCE BULLETIN

- FBA and BIP



Technical Assistance Bulletin 7

For more information, call 410-767-0858

Division of Special Education/Early Intervention Services Functional Behavioral Assessment & Behavior Intervention Planning September 2007

1. What is functional behavioral assessment (FBA) and why is it important?

Functional behavioral assessment is the process of gathering information that reliably predicts the conditions and/or circumstances surrounding a student's behavior that is considered inappropriate. Before personnel are able to redirect instructional interventions and supports or teach an appropriate replacement behavior, the targeted behavior must be identified across settings and described in accurate, objective, observable terms. This assessment is a collaborative, student-centered, problem-solving process.

A functional behavioral assessment is an assessment of a student's behavior to determine its function. All behaviors serve a function for individuals. We behave to get something, avoid something, or control activities. When students exhibit behaviors considered problematic, a behavioral assessment is needed to accurately describe and ascertain how the behavior functions for the students. For an appropriate replacement behavior or strategy for the identified problem behavior to be successful, the replacement behavior must satisfy the same function for the student.

2. How is an FBA different than behavioral analysis?

A functional behavioral assessment (FBA) and behavior analysis are on different ends of the same continuum. A functional behavioral assessment is the collection of data that is needed to accurately describe a problem behavior within the settings it occurs to determine its function. Functional is a descriptor used for the factors identified as influencing or controlling the behavior. Much of the material on FBA and behavior intervention plans (BIP) comes from the field of applied behavior analysis. Behavioral analysis is a more experimental approach that involves observing and recording a student's responses to planned behavioral interventions over time. Some problem behaviors may be so severe, pervasive, and intense that behavioral analysis may be warranted.

In either approach, in order to extinguish an inappropriate behavior and replace that behavior with an appropriate behavior that serves the same function, an assessment of that behavior is necessary. Such an assessment should be designed to:

- Determine the functional antecedents of a targeted behavior;
- Describe the behavior in precise and objective terms; and
- Determine the functional consequences of the behavior for the student.

3. Does conducting an FBA result in a diagnosis, eligibility, or placement determination?

No. An FBA alone is insufficient for determining the presence of a disability, eligibility for services under the Individuals with Disabilities Education Act (IDEA) or determining a student's educational needs and placement. Although an FBA cannot be used in isolation for making these decisions, it is important for the IEP team to review existing data. An Individualized Education Program (IEP) team may determine additional data is needed to ensure it has sufficient relevant functional information on a student's social and behavioral performance in order to develop and/or revise the student's IEP to ensure all of the student's needs have been addressed. This includes all needs, whether or not they are commonly linked to a particular category of disability.

4. What are the functions of behavior?

Identifying the functions of a behavior for a student provides individuals with direct explanations of how a particular behavior "works" for an individual student in a given context. Behaviors serve a function to:

- Get something (positive reinforcement), such as social attention, sensory stimulation, peer status and peer attention, and tangible rewards;
- Escape or avoid something (negative reinforcement), such as an event or person. This function typically results in a behavior that enables the student to terminate or postpone an event. As examples, students may tantrum, display physical or verbal aggression; or
- Engage in other activities to control antecedent stimuli such as instructional activities.

The functions of behavior may be different depending upon the context in which the behavior occurs. Also, multiple behaviors may serve similar functions or different functions in different contexts. As humans we do not engage in isolated behaviors or display single behaviors, but rather a string of behaviors that are connected to the ongoing interactions we have with others.

5. When must an FBA be conducted?

For students with disabilities, under the IDEA, a functional behavioral assessment is required once the student's behavior has resulted in a removal or series of removals equivalent to 10 school days. However, it is recommended that the FBA process be applied to any student's behaviors wherever those behaviors are of concern. The purpose of an FBA is to improve our understanding of behavior and the context in which it is observed, and to use this information to guide the development of behavior support plans. Whenever a problem behavior is first observed, the FBA process is used to enable professionals to develop a behavioral support plan. As such, an FBA should be conducted whenever a student's behavior is difficult to understand and/or a student's behavioral support plan needs to be developed or improved.

6. Who conducts the FBA?

The IDEA and COMAR do not specify a particular professional discipline or group of school personnel as the individuals to conduct the FBA. However, all staff members in a school should understand the purpose of conducting an FBA, be familiar with the basic steps of the process, and be able to participate in the FBA process. Therefore, all staff members should receive instruction on the purpose and features of FBA, and have opportunities to observe or participate in the FBA process. Personnel should receive training to be technically fluent with the FBA process and have the capacity to accurately and efficiently conduct an FBA.

7. What steps are involved in conducting an FBA?

There are a variety of formats and instruments public agency personnel may use to conduct an FBA. An FBA should include the following three steps:

Step 1: Collect Information

The collection of data is needed to:

- Identify the specific problem behavior; and
- Define that behavior in specific and objective terms.

This is accomplished through indirect observations and direct observations. Indirect observations, such as informal conversations, questionnaires, checklists, and structured interviews with key persons who have contact and experiences with the individual student and can offer insights into the contexts or conditions under which the behavior occurs. Direct observations are the most reliable and valid procedures for collecting information because observers watch the behaviors as

they are occurring and note the environmental events (environmental factors, antecedent, and consequence events) that are associated with the behaviors. The collection of data should include specific information regarding the environment, events, and activities immediately prior to the behavior, as well as following the behavior.

Step 2: Propose a hypothesis of the student's behavior

The hypothesis should explain the relationship between a specific behavior and general conditions that appear to predict and maintain that behavior. The hypothesis focuses on the relationship between an observable and measurable antecedent, the behavior, and consequence variables. Most importantly, the statement indicates the possible function of that behavior for the student. A complete hypothesis includes:

- An objective description of the behavior;
- Possible setting events and antecedents that trigger the behavior; and
- Possible consequences that maintain the behavior.

Step 3: Assess the validity of the hypothesis

This is to collect additional information about the conditions under which the problem behavior occurs and

does not occur, and demonstrate that occurrences of the behavior and the presence of these conditions are related and predictable. Typically this entails systematic observations of a student to identify and confirm patterns of predictable behaviors in order to create an effective intervention plan for changing the behavior. If during the validation phase the hypothesis cannot be confirmed, the hypothesis would need to be reformulated and revalidated.

8. How are outcomes of an FBA used and what is the relationship between an FBA and a behavioral intervention plan (BIP)?

In determining appropriate strategies for the student, the results of the FBA are used to develop and implement a behavior intervention plan (BIP). This plan must also consider the student's strengths and the concerns of the student's parents. The BIP should focus on positive supports and strategies to address the events, environmental factors, and/or actions that trigger the behavior, to teach the student a replacement behavior or skill that serves the same functional intent for the student and how to implement the BIP consistently across settings.

9. What are positive behavioral interventions and supports and what does IDEA say about positive interventions?

The purpose of positive interventions is to teach the student appropriate replacement behaviors that serve the same function for the student. Interventions and supports should focus on proactive preventative natural supports for the student. Intervening and altering the known environment, activities, and our responses to the behavior by modeling and positively reinforcing the desired appropriate behavior within the setting is more efficient and effective for both the student and the staff. The IDEA requires a student's IEP team to consider positive behavior interventions, strategies, and supports to address the behavior when that behavior impedes the student's learning or the learning of others. The identified interventions shall be included in the student's IEP as appropriate. IDEA also specifically requires the involvement of the student's general education teacher in the development, review, and revision of the student's IEP to assist in determining appropriate positive interventions and strategies for the student.

10. Who should be involved in the behavioral intervention planning and implementation for a student?

The planning and implementation of effective interventions and supports requires a collaborative problem-solving team approach. The team must share in problem identification and development

of an action plan that includes mutual responsibility for implementation, evaluation, modification, and accountability for outcomes. The membership of this collaborative team will vary based on the school and student needs. Input from the student's parents and general education teachers is important. The general educator needs to share with all team members the behavioral expectations of the school and classroom as well as provide suggestions as to how the classroom environment and general education curriculum can be modified to support the student.

11. What is included in a BIP?

A BIP for a student should be based upon the FBA that addressed the student's behavior and at a minimum should include:

- An objective, specific description of the behavior;
- Specific hypotheses as to why the behavior occurs; and
- Interventions to be employed to address the behavior.

To teach a student appropriate replacement behaviors, the BIP needs to draw upon known student strengths and positive reinforcers that are important to the student. The focus of the BIP should not be correction of the inappropriate behavior. Rather, it should focus on how to plan for and provide the student with opportunities to replace the behavior by learning new behaviors across environments. This may include how to modify the context in which the behavior has been known to occur so events associated with the behavior are removed or changed. The student should be provided opportunities for planned practice and modeling the replacement behavior. The BIP should include how individuals are to give the student positive recognition of an appropriate replacement behavior that focuses on the behavioral function for the student. The chosen interventions also need to specify how all persons are expected to implement the strategies consistently across environments, document the implementation and response, and how frequently the team is to review the results.

12. When should a program of individualized positive behavioral strategies and interventions be implemented?

It is recommended that an assessment of a student's behavior and the development of a plan for behavioral interventions to address a student's behavior should be initiated wherever a student's behavior is of concern. School personnel are encouraged to intercede on behaviors of concern as early as possible. The purpose of a BIP is to improve our understanding of behavior and the context in which it is observed and guide personnel in the consistent implementation of appropriate replacement and natural supports.

For students with disabilities under the IDEA, at a minimum, a student's IEP must include positive behavioral interventions whenever the IEP team determines that a student's behavior is interfering with the student's learning and/or the learning of others. An FBA and BIP is required when the student's behavior has resulted in a removal or series of removals that are equivalent to 10 school days.

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, or disability in matters affecting employment or in providing access to programs. For inquiries related to departmental policy, please contact the Equity Assurance and Compliance Branch, Voice (410) 767-0433, or Fax (410) 767-0431. In accordance with the Americans with Disabilities Act (ADA) this document is available in alternative formats, upon request. Contact the Division of Special Education/Early Intervention Services, Maryland State Department of Education at Voice (410) 767-0858, Fax (410) 333-8165, or TDD (410) 333-0731. This document was developed and produced by the Division of Special Education/Early Intervention Services, IDEA Part B Grant #HO27A070035A is funded by the U.S. Department of Education, Office of Special Education and Rehabilitative Services. The views expressed herein do not necessarily reflect the views of the U.S. Department of Education or any other Federal agency and should not be regarded as such. This information is copyright free. Readers are encouraged to copy and share it, but please credit the Division of Special Education/Early Intervention Services, Maryland State Department of Education.

Appendix F: OSEP RESOURCES

- Discipline Topical Brief
- Discipline Procedures Questions & Answers

IDEA Regulations

DISCIPLINE Topical Brief**(See also Procedural Safeguards: Resolution Meetings and Due Process Hearings)**

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, which covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.¹ This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding discipline procedures.

IDEA Regulations

- 1. Add a new authority for school personnel to consider unique circumstances.**
School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of 34 CFR 300.530, is appropriate for a child with a disability who violates a code of student conduct.
[34 CFR 300.530(a)] [20 U.S.C. 1415(k)(1)(A)]
- 2. Expand removal authority for special circumstances related to serious bodily injury.**
School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA); knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or, has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
[34 CFR 300.530(g)(1)-(3)] [20 U.S.C. 1415(k)(1)(G)(i)-(iii)]

¹ Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code².
[34 CFR 300.530(i)(3)] [20 U.S.C. 1415(k)(7)(D)]

3. Retain previous authority for immediate short-term removals.

School personnel under 34 CFR 300.530 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR 300.536).
[34 CFR 300.530(b)(1)] [20 U.S.C. 1415(k)(1)(B)]

4. Retain authority for long-term removals for behavior that is not a manifestation of the disability.

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to 34 CFR 300.530(e), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 34 CFR 300.530(d) (services).
[34 CFR 300.530(c)] [20 U.S.C. 1415(k)(1)(C)]

5. Clarify when services are required during disciplinary removals, the provision of such services and who makes the determination regarding services and interim alternative educational settings.

A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

[34 CFR 300.530(d)(3)]

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under 34 CFR 300.530(d) (services).
[34 CFR 300.530(b)(2)]

A child with a disability who is removed from the child’s current placement pursuant to 34 CFR 300.530(c) (a disciplinary change in placement for more than ten consecutive school days where the behavior is determined not to be a manifestation of the disability) or (g) (a removal for special circumstances related to drugs, weapons or serious bodily injury) must:

- Continue to receive education services, as provided in 34 CFR 300.101(a) (free appropriate public education (FAPE) requirements), so as to enable the child to

² 18 U.S.C. 1365(h)(3) states that the term “serious bodily injury” means bodily injury which involves— (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

- Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

[34 CFR 300.530(d)(1)] [20 U.S.C. 1415(k)(1)(D)]

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under 34 CFR 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

[34 CFR 300.530(d)(4)]

If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 34 CFR 300.530(d)(1).

[34 CFR 300.530(d)(5)]

The services required by 34 CFR 300.530 (d)(1), (d)(3), (d)(4), and (d)(5) may be provided in an interim alternative educational setting.

[34 CFR 300.530(d)(2)]

The child's IEP Team determines the interim alternative educational setting for services under 34 CFR 300.530(c) (a disciplinary change in placement for more than ten consecutive school days where the behavior is determined not to be a manifestation of the disability), (d)(5) (a removal that is a change of placement), and (g) (a removal for special circumstances related to drugs, weapons or serious bodily injury).

[34 CFR 300.531] [20 U.S.C. 1415(k)(2)]

6. **Specify when the LEA must give notice.**

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR 300.504.

[34 CFR 300.530(h)] [20 U.S.C. 1415(k)(1)(H)]

7. **Establish a new standard for manifestation determinations.**

Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either 34 CFR 300.530(e)(1)(i) or (1)(ii) was met.

[34 CFR 300.530(e)(1) and (2)] [20 U.S.C. 1415(k)(1)(E)]

If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in 34 CFR 300.530(e)(1)(ii) was met, the LEA must take immediate steps to remedy those deficiencies.

[34 CFR 300.530(e)(3)]

8. Add a new provision when there is a determination that the behavior was a manifestation of the disability.

If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided in 34 CFR 300.530(g), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

[34 CFR 300.530(f)] [20 U.S.C. 1415(k)(1)(F)]

9. Retain a definition of change of placement and clarify that the public agency makes a case-by-case determination of whether a specific pattern of removals meets the definition.

For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR 300.530 through 300.535, a change of placement occurs if:

- The removal is for more than ten consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals total more than ten school days in a school year;
 - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

[34 CFR 300.536]

10. Retain and revise the standard for a public agency's basis of knowledge for children not determined eligible for special education and related services.

A child who has not been determined to be eligible for special education and related services under Part B of the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Part B if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
- The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

[34 CFR 300.534(a) and (b)] [20 U.S.C. 1415(k)(5)(A) and (B)]

11. Establish exceptions to the public agency's basis of knowledge for ineligibility, or refusal of consent to evaluation or services.

A public agency would not be deemed to have knowledge under 34 CFR 300.534(b) if the parent of the child has not allowed an evaluation of the child pursuant to 34 CFR 300.300 through 300.311 or has refused services under Part B of the IDEA; or the child has been evaluated in accordance with 34 CFR 300.300 through 300.311 and determined to not be a child with a disability under Part B of the IDEA.

[34 CFR 300.534(c)] [20 U.S.C. 1415(k)(5)(C)]

12. Retain hearing rights related to disciplinary removals.

The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR 300.530 and 300.531, or the manifestation determination under 34 CFR 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b).

[34 CFR 300.532(a)] [20 U.S.C. 1415(k)(3)(A)]

13. Establish the authority of the hearing officer.

A hearing officer under 34 CFR 300.511 (impartial due process hearing) hears, and makes a determination regarding an appeal under 34 CFR 300.532(a) (disagreements regarding disciplinary removals and placement and manifestation determinations are subject to a hearing). In making the determination under 34 CFR 300.532 (b)(1), the hearing officer may:

- Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability; or
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

The procedures under 34 CFR 300.532(a) and (b)(1) and (2) may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

[34 CFR 300.532(b)] [20 U.S.C. 1415(k)(3)(B)]

14. Establish procedures for an expedited hearing.

Whenever a hearing is requested under 34 CFR 300.532(a) (related to disciplinary removals), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR 300.507 and 300.508(a) through (c) and 300.510 through 300.514, except as provided in 34 CFR 300.532(c)(2) through (4).

The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing. Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 CFR 300.532(c)(3)(i), or agree to use the mediation process described in 34 CFR 300.506:

- A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

A State may establish different State-imposed procedural rules for expedited due process hearings conducted under 34 CFR 300.532 than it has established for other due process hearings, but, except for the timelines as modified in 34 CFR 300.532(c)(3), the State must ensure that the requirements in 34 CFR 300.510 through 300.514 are met.

The decisions on expedited due process hearings are appealable consistent with 34 CFR 300.514.

[34 CFR 300.532(c)] [20 U.S.C. 1415(k)(4)(B)]

15. Address the child's placement pending a disciplinary hearing decision.

When an appeal under 34 CFR 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 CFR 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

[34 CFR 300.533] [20 U.S.C. 1415(k)(4)(A)]

Discipline Procedures Questions & Answers

Revised June 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008, and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide guidance on discipline policies enacted for school-age students to personnel in State educational agencies (SEAs) and local educational agencies (LEAs), and families. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

This Q&A document supersedes the Department's guidance, entitled *Questions and Answers on Discipline Procedures*, issued January 2007.

The 2004 amendments to section 615(k) of the IDEA were intended to address the needs expressed by school administrators and teachers for flexibility in order to balance school safety issues with the need to ensure that schools respond appropriately to a child's behavior that was caused by, or directly and substantially related to, the child's disability. The reauthorized IDEA and its implementing regulations include provisions that address important disciplinary issues such as: the consideration of unique circumstances when determining the appropriateness of a disciplinary change in placement; expanded authority for removal of a child from his or her current placement for not more than 45 school days for inflicting a serious bodily injury at school or at a school function; the determination on a case-by-case basis as to whether a pattern of removals constitutes a change of placement; and revised standards and procedures related to the manifestation determination.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov>

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include Discipline in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

Table of Contents

A. Safeguards

- A-1. When the parent(s) of a child and the school personnel are in agreement about the child's change of placement after the child has violated a code of student conduct, is it considered to be a removal under the discipline provision?
- A-2. When a parent consents to the initial provision of some, but not all, of the proposed special education and related services, do the discipline provisions apply if the child violates the school's code of student conduct?
- A-3. Do the discipline provisions apply if the child violates the school's code of student conduct after a parent revokes consent for special education and related services under §300.300(b)?
- A-4. In order to receive the protections for disciplinary purposes in 34 CFR §300.534, parents who are concerned that their child may need special education and related services must first **express their concerns in writing**. How are parents informed of this requirement?
- A-5. Under 34 CFR §300.534(b), a public agency is deemed to have knowledge that a child is a child with a disability if a parent **expressed in writing** a concern that his or her child needs special education and related services. What happens if a parent is unable to express this concern in writing?
- A-6. If a removal is for 10 consecutive school days or less and occurs after a student has been removed for 10 school days in that same school year, and the public agency determines, under 34 CFR §300.530(d)(4), that the removal **does not constitute a change of placement**, must the agency provide written notice to the parent?
- A-7. If a teacher or other school personnel has specific concerns that a child may need special education and related services due to a child's pattern of behavior, must such concerns be submitted in writing to school officials in order for the public agency to be deemed to have knowledge that the child is a child with a disability?

B. Definitions

- B-1. What options are available for school personnel when a student with a disability commits a serious crime, such as rape, at school or at a school function?
- B-2. What is the definition of "unique circumstances" as used in 34 CFR §300.530(a), which states that "school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct?"
- B-3. May a public agency apply its own definition of "serious bodily injury?"

C. Interim Alternative Educational Setting (IAES)

- C-1. What constitutes an appropriate IAES?
- C-2. May a public agency offer “home instruction” as the sole IAES option?
- C-3. Do all services in the child’s IEP need to be provided in the IAES for a removal under 34 CFR §300.530(c) or (g)?

D. Hearings

- D-1. Must a hearing officer make a sufficiency determination under 34 CFR §300.508(d) for an expedited due process complaint? In other words, does the hearing officer need to determine if the complaint meets the content standards listed in section 615(b)(7)(A) of the IDEA and 34 CFR §300.508(b)?

E. Functional Behavior Assessments (FBA) and Behavioral Intervention Plans (BIP)

- E-1. Was the requirement for a “positive behavioral intervention plan” removed from the discipline regulations?
- E-2. Under what circumstances must an IEP Team use FBAs and BIPs?
- E-3. How can an IEP address behavior?
- E-4. Is consent required to do an FBA for a child?
- E-5. If a parent disagrees with the results of an FBA, may the parent obtain an independent educational evaluation (IEE) at public expense?

F. Manifestation Determinations

- F-1. What occurs if there is no agreement on whether a child’s behavior was or was not a manifestation of his or her disability?
- F-2. What recourse does a parent have if he or she disagrees with the determination that his or her child’s behavior was not a manifestation of the child’s disability?
- F-3. Is the IEP Team required to hold a manifestation determination each time that a student is removed for more than 10 consecutive school days or each time that the public agency determines that a series of removals constitutes a change of placement?
- F-4. Does a school need to conduct a manifestation determination when there is a violation under 34 CFR §300.530(g), which refers to a removal for weapons, drugs, or serious bodily injury?
- F-5. What disciplinary procedures would apply in the case of a child who has been referred for a special education evaluation and is removed for a disciplinary infraction prior to determination of eligibility?
- F-6. Is there a conflict between 34 CFR §300.530(c), allowing school personnel, under certain circumstances, to apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as would be applied to children without disabilities, and the provision, at 34 CFR §300.532 (b)(2), that the hearing officer may order a change in placement for not more than 45 school days if the hearing officer

determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others?

Authority: The requirements for discipline are found in the regulations at 34 CFR §§300.530 – 300.536.

A. Safeguards

Question A-1: When the parent(s) of a child and the school personnel are in agreement about the child's change of placement after the child has violated a code of student conduct, is it considered to be a removal under the discipline provisions?

Answer: No, if the parent(s) of a child and the school district agree to a specific change in the current educational placement of the child.

Question A-2: When a parent consents to the initial provision of some, but not all, of the proposed special education and related services, do the discipline provisions apply if the child violates the school's code of student conduct?

Answer: Yes. When a parent consents to the initial provision of some, but not all, of the proposed special education and related services listed in a child's initial individualized education program (IEP), the child has been determined eligible for services and is entitled to all the protections of the IDEA.

Question A-3: Do the discipline provisions apply if the child violates the school's code of student conduct after a parent revokes consent for special education and related services under §300.300(b)?

Answer: No. Under §§ 300.9 and 300.300, parents are permitted to unilaterally withdraw their children from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. When a parent revokes consent for special education and related services under §300.300(b), the parent has refused services as described in §300.534(c)(1)(ii); therefore, the public agency is not deemed to have knowledge that the child is a child with a disability and the child will be subject to the same disciplinary procedures and timelines applicable to general education students and not entitled to IDEA's discipline protections. It is expected that parents will take into account the possible consequences under the discipline procedures before revoking consent for the provision of special education and related services. 73 Federal Register 73012-73013.

Question A-4: In order to receive the protections for disciplinary purposes in 34 CFR §300.534, parents who are concerned that their child may need special education and related services must first **express their concerns in writing**. How are parents informed of this requirement?

Answer: Neither the IDEA nor the regulations specifically address this issue. However, in its child find policies and procedures, a State may choose to include ways to provide information to the public regarding IDEA's protections for disciplinary purposes when a parent has expressed in writing to school personnel concerns regarding the child's need for special education and related services. Examples of ways to provide such information include making the information available on the State's Web site, the LEA's Web site, or in the State's Procedural Safeguards Notice or the school's student handbook.

Question A-5: Under 34 CFR §300.534(b), a public agency is deemed to have knowledge that a child is a child with a disability if a parent expressed in writing a concern that his or her child needs special education and related services. What happens if a parent is unable to express this concern in writing?

Answer: The requirement that a parent express his or her concern in writing is taken directly from the IDEA. However, there is nothing in the IDEA or the regulations that would prevent a parent from requesting assistance to communicate his or her concerns in writing. The Department funds Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) to assist parents of students with disabilities. Information about the PTIs and CPRCs is found at HU<http://www.taalliance.org/UH>.

Question A-6: If a removal is for 10 consecutive school days or less and occurs after a student has been removed for 10 school days in that same school year, and the public agency determines, under 34 CFR §300.530(d)(4), that the removal **does not constitute a change of placement**, must the agency provide written notice to the parent?

Answer: No. Under Part B, a public agency's determination that a short-term removal **does not constitute a change of placement** is not a proposal or refusal to initiate a change of placement for purposes of determining services under 34 CFR §300.530(d)(4). Therefore, the agency is not required to provide written notice to the parent.

Question A-7: If a teacher or other school personnel has specific concerns that a child may need special education and related services due to a child's pattern

of behavior, must such concerns be submitted in writing to school officials in order for the public agency to be deemed to have knowledge that the child is a child with a disability?

Answer:

No. Under 34 CFR §300.534(b)(3), teachers or other local educational agency (LEA) personnel are not required to submit a **written statement** expressing specific concerns about a pattern of behavior demonstrated by the child in order for the public agency to be deemed to have knowledge that the child is a child with a disability. Although a written statement is not necessary, the teacher of the child or other LEA personnel must express their specific concerns directly to the special education director or other supervisory personnel within the agency. In addition, State child find policies and procedures may provide guidelines regarding how teachers and other LEA personnel should communicate their specific concerns regarding a child's pattern of behavior. If the State's or LEA's child find or referral procedures do not specify how such communication should occur, the State or LEA is encouraged to change its guidelines to provide a method for communicating direct expressions of specific concerns regarding a child's pattern of behavior. 71 Federal Register 46727.

B. Definitions

Question B-1: What options are available for school personnel when a student with a disability commits a serious crime, such as rape, at school or at a school function?

Answer:

Under most State and local laws, school personnel must report certain crimes that occur on school grounds to the appropriate authorities. The IDEA regulations, under 34 CFR §300.535(a), do not prohibit the school or public agency from reporting crimes committed by students with disabilities. In addition, where such crimes constitute a violation of the school's code of student conduct, school authorities may use the relevant discipline provisions related to short-term and long-term removals, including seeking a hearing to remove the student to an interim alternative educational placement if maintaining the current placement is substantially likely to result in injury to the child or others. To the extent that such criminal acts also result in an injury that meets the definition of "serious bodily injury," the removal provisions of 34 CFR §300.530(g) would apply. The definition referenced in 34 CFR §300.530(i)(3) currently reads:

As defined at 18 U.S.C. 1365(h)(3), the term serious bodily injury means bodily injury that involves—

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Certain Federal cases have held that rape met this definition of serious bodily injury because the victim suffered protracted impairment of mental faculties.

The current definition of the term “serious bodily injury” in 18 U.S.C. 1365(h)(3) can be found on the U.S. House of Representatives Web site at <http://uscode.house.gov/download/pls/18C65.txt>

Question B-2: What is the definition of “unique circumstances” as used in 34 CFR §300.530(a), which states that “school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct?”

Answer: The Department believes that “unique circumstances” are best determined at the local level by school personnel who know the individual child and are familiar with the facts and circumstances regarding a child’s behavior. “Factors such as a child’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided ... prior to the violation of a school code [of student conduct] could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability.” 71 Federal Register 46714.

Question B-3: May a public agency apply its own definition of “serious bodily injury?”

Answer: No. As specifically set out in the IDEA, the term “serious bodily injury” is defined at 18 U.S.C. 1365(h)(3) and cannot be altered by States or local school boards. The definition and a link to the current U.S. Code is included in the answer to question B-1, and also in the *Analysis of Comments and Changes* that accompanied the regulations published on August 14, 2006, and became effective on October 13, 2006. 71 Federal Register 46723.

C. Interim Alternative Educational Setting (IAES)

Question C-1: What constitutes an appropriate IAES?

Answer: What constitutes an appropriate IAES will depend on the circumstances of each individual case. An IAES must be selected so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP. 71 Federal Register 46722.

Question C-2: May a public agency offer “home instruction” as the sole IAES option?

Answer: No. For removals under 34 CFR §300.530(c), (d)(5), and (g), the child’s IEP Team determines the appropriate IAES (34 CFR §300.531). Section 615(k)(1)(D) of the IDEA and 34 CFR §300.530(d) are clear that an appropriate IAES must be selected “so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” Therefore, it would be inappropriate for a public agency to limit an IEP Team to only one option when determining the appropriate IAES. As noted in the *Analysis of Comments and Changes* accompanying the regulations published on August 14, 2006, and became effective on October 13, 2006, at 71 Federal Register 46722:

Whether a child’s home would be an appropriate interim alternative educational setting under §300.530 would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child’s individual needs and educational goals. In general, though, because removals under §§300.530(g) and 300.532 will be for periods of time up to 45 days, care must be taken to ensure that if home instruction is provided for a child removed under §300.530, the services that are provided will satisfy the requirements for services for a removal under §300.530(d) and section 615(k)(1)(D) of the Act.

Where the removal is for a longer period, such as a 45-day removal under 34 CFR §300.530(g), special care should be taken to ensure that the services required under 34 CFR §300.530(d) can be properly provided if the IEP Team determines that a child’s home is the appropriate IAES.

Question C-3: Do all services in the child’s IEP need to be provided in the IAES for a removal under 34 CFR §300.530(c) or (g)?

Answer: It depends on the needs of the child. The LEA is not required to provide all services in the child’s IEP when a child has been removed to an IAES. In general, the child’s IEP Team will make an individualized decision for each child with a disability regarding the type and intensity of services to be provided in the IAES. 34 CFR §300.530(d)(1) clarifies that a child with a disability who is removed from his or her current placement for disciplinary reasons under 34 CFR §300.530(c) or (g) must continue to receive educational services as provided in 34 CFR §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting

his or her IEP goals. For removals that constitute a change of placement, the child's IEP Team determines the appropriate services under 34 CFR §300.530(d)(1). See 34 CFR §300.530(d)(5). If a student whose placement has been changed under 34 CFR §300.530(c) or (g) is not progressing toward meeting the IEP goals, then it would be appropriate for the IEP Team to review and revise the determination of services and/or the IAES.

D. Hearings

Question D-1: Must a hearing officer make a sufficiency determination under 34 CFR §300.508(d) for an expedited due process complaint? In other words, does the hearing officer need to determine if the complaint meets the content standards listed in section 615(b)(7)(A) of the IDEA and 34 CFR §300.508(b)?

Answer: No. The sufficiency provision does not apply to expedited due process complaints. See 34 CFR §300.532(a). As noted in the *Analysis of Comments and Changes* accompanying the regulations published on August 14, 2006, and became effective on October 13, 2006 at 71 Federal Register 46725:

In light of the shortened timelines for conducting an expedited due process hearing under §300.532(c), it is not practical to apply to the expedited due process hearing the sufficiency provision in §300.508(d), which requires that the due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not include all the necessary content of a complaint as required in §300.508(b).

E. Functional Behavior Assessments (FBAs) and Behavioral Intervention Plans (BIPs)

Question E-1: Was the requirement for a “positive behavioral intervention plan” removed from the discipline regulations?

Answer: No. Under 34 CFR §300.324(a)(2)(i), the use of positive behavioral interventions and supports must be considered in the case of a child whose behavior impedes his or her learning or that of others. The requirement in 34 CFR §300.530(f) that a child with a disability receive, as appropriate, an FBA and a BIP and modifications designed to address the child's behavior now only applies to students whose behavior is a manifestation of their disability as determined by the LEA, the parent, and the relevant members of the child's IEP Team under 34 CFR §300.530(e). However, FBAs and BIPs must also be used proactively, if the IEP Team determines that they would be appropriate for the child.

The regulations in 34 CFR §300.530(d) require that school districts provide FBAs and behavior intervention services (and modifications) “as appropriate” to students when the student’s disciplinary change in placement would exceed 10 consecutive school days and the student’s behavior was not a manifestation of his or her disability. See 34 CFR §300.530(c) and (d). Please see question E-2 in this section for more information about the use and development of FBAs and BIPs.

Question E-2: Under what circumstances must an IEP Team use FBAs and BIPs?

Answer: As noted above, pursuant to 34 CFR §300.530(f), FBAs and BIPs are required when the LEA, the parent, and the relevant members of the child’s IEP Team determine that a student’s conduct was a manifestation of his or her disability under 34 CFR §300.530(e). If a child’s misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP Team will need to conduct an FBA of the child, unless one has already been conducted. Similarly, the IEP Team must write a BIP for this child, unless one already exists. If a BIP already exists, then the IEP Team will need to review the plan and modify it, as necessary, to address the behavior.

An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.

For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a child with a disability whose violation of the code of student conduct is a manifestation of the child’s disability, the IEP Team must include a BIP in the child’s IEP to address the behavioral needs of the child.

Question E-3: How can an IEP address behavior?

Answer: When a child's behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324(a)(2)(i)). Additionally, the Team may address the behavior through annual goals in the IEP (34 CFR §300.320(a)(2)(i)). The child's IEP may include modifications in his or her program, support for his or her teachers, and any related services necessary to achieve those behavioral goals (34 CFR §300.320(a)(4)). If the child needs a BIP to improve learning and socialization, the BIP can be included in the IEP and aligned with the goals in the IEP.

Question E-4: Is consent required to do an FBA for a child?

Answer: Yes. An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP. As with other individualized evaluation procedures, and consistent with 34 CFR §300.300(a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation.

Question E-5: If a parent disagrees with the results of an FBA, may the parent obtain an independent educational evaluation (IEE) at public expense?

Answer: Yes. The parent of a child with a disability has the right to request an IEE of the child, under 34 CFR §300.502, if the parent disagrees with an evaluation obtained by the public agency. However, the parent's right to an IEE at public expense is subject to certain conditions, including the LEA's option to request a due process hearing to show that its evaluation is appropriate. See 34 CFR §300.502(b)(2) through (b)(5).

The Department has clarified previously that an FBA that was not identified as an initial evaluation, was not included as part of the required triennial reevaluation, or was not done in response to a disciplinary removal, would nonetheless be considered a reevaluation or part of a reevaluation under Part B because it was an individualized evaluation conducted in order to develop an appropriate IEP for the child. Therefore, a parent who disagrees with an FBA that is conducted in order to develop an appropriate IEP also is entitled to request an IEE. Subject to the conditions in 34 CFR §300.502(b)(2) through (b)(5), the IEE of the child will be at public expense.

F. Manifestation Determinations

Question F-1: What occurs if there is no agreement on whether a child's behavior was or was not a manifestation of his or her disability?

Answer: If the parents of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus or agreement on whether the child's behavior was or was not a manifestation of the disability, the public agency must make the determination and provide the parent with prior written notice pursuant to 34 CFR §300.503. The parent of the child with a disability has the right to exercise his or her procedural safeguards by requesting mediation and/or a due process hearing to resolve a disagreement about the manifestation determination. 34 CFR §300.506 and §300.532(a). A parent also has the right to file a State complaint alleging a violation of Part B related to the manifestation determination. See 34 CFR §300.153.

Question F-2: What recourse does a parent have if he or she disagrees with the determination that his or her child's behavior was not a manifestation of the child's disability?

Answer: The regulations, in 34 CFR §300.532(a), provide that the parent of a child with a disability who disagrees with the manifestation determination under 34 CFR §300.530(e) may appeal the decision by requesting a hearing. A parent also has the right to file a State complaint alleging a denial of a free appropriate public education and to request voluntary mediation under 34 CFR §300.506.

Question F-3: Is the IEP Team required to hold a manifestation determination each time that a student is removed for more than 10 consecutive school days or each time that the public agency determines that a series of removals constitutes a change of placement?

Answer: Yes. 34 CFR §300.530(e) requires that "within 10 school days of **any** decision to change the placement of a child with a disability because of a violation of a code of student conduct" the LEA, the parent, and relevant members of the child's IEP Team must conduct a manifestation determination (emphasis added). Under 34 CFR §300.536, a change of placement occurs if the removal is for more than 10 consecutive school days, or if the public agency determines, on a case-by-case basis, that a pattern of removals constitutes a change of placement because the series of removals total more than 10 school days in a school year; the child's behavior is substantially similar to the behavior that resulted in the previous removals; and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Question F-4: Does a school need to conduct a manifestation determination when there is a violation under 34 CFR §300.530(g), which refers to a removal for weapons, drugs, or serious bodily injury?

Answer: Yes. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team conduct the manifestation determination. 34 CFR §300.530(e). However, when the removal is for weapons, drugs, or serious bodily injury under §300.530(g), the child may remain in an IAES, as determined by the child's IEP Team, for not more than 45 school days, regardless of whether the violation was a manifestation of his or her disability. This type of removal can occur if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the State educational agency (SEA) or LEA; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA.

Question F-5: What disciplinary procedures would apply in the case of a child who has been referred for a special education evaluation and is removed for a disciplinary infraction prior to determination of eligibility?

Answer: If a child engages in behavior that violates the code of student conduct prior to a determination of his or her eligibility for special education and related services and the public agency is deemed to have knowledge of the child's disability, the child is entitled to all of the IDEA protections afforded to a child with a disability, unless a specific exception applies. In general, once the student is properly referred for an evaluation under Part B of the IDEA, the public agency would be deemed to have knowledge that the child is a child with a disability for purposes of the IDEA's disciplinary provisions. However, under 34 CFR §300.534(c), the LEA is considered not to have knowledge that a child is a child with a disability if the parent has not allowed the evaluation of the child under Part B of the IDEA, the parent has refused services, or if the child is evaluated and determined not to be a child with a disability under Part B of the IDEA. In these instances, the child would be subject to the same disciplinary measures applicable to children without disabilities.

Question F-6: Is there a conflict between 34 CFR §300.530(c), allowing school personnel, under certain circumstances, to apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as would be applied to children without disabilities, and the provision, in 34 CFR §300.532(b)(2), that the hearing officer may order a

change in placement for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others?

Answer:

No, there is no conflict between the two provisions. In addition to the specific authority set out in 34 CFR §300.532, a hearing officer also has the authority to uphold a disciplinary change of placement made by school personnel under 34 CFR §300.530(c). Where the parent brings a due process hearing to challenge a disciplinary change of placement made by school personnel under 34 CFR §300.530(c) and the hearing officer concludes that the disciplinary requirements of Part B have been met, the hearing officer would properly uphold the disciplinary change of placement. If the hearing officer concludes that the child's behavior was a manifestation of the child's disability, but also determines that returning the child to the prior placement is substantially likely to result in injury to the child or to others, then the hearing officer, under 34 CFR §300.532(b)(2), may change the placement to an appropriate IAES for not more than 45 school days.

This publication is copyright free. Readers are encouraged to copy and share, but please credit the Division of Special Education/Early Intervention Services, Maryland State Department of Education.

**Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 West Baltimore Street, 9th Floor
Baltimore, Maryland 21201**

www.MarylandPublicSchools.org