E19 – Tier III Supports & Students with Disabilities: Practice & Policy Recommendations

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Keywords: Disability, Functional Assessment, Tier III
This Session

• Overview the “spirit and intent” of related IDEA regulations
• Discuss implications for students with disabilities across the continuum
• Essential features of Tier III process (FBA-BIP)
• Impact of SW-PBS on students with disabilities
Simple Starting Point

• Students with disabilities are first and foremost, students who attend your school
• Students with disabilities can participate in school-wide Tier II/III supports, when appropriate
• Student IEP behavior goals should use parallel language to the schools universal expectations
• Special Educators can participate in school-wide supports
The *Rowley/Endrew* Test

1. In the development of an IEP, has the school agency complied with the procedures set forth in the IDEA?

2. Is the IEP developed through the IDEA’s procedures reasonably calculated to enable the child to make progress that is appropriate in light of his or her circumstances?
“The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement”

-Endrew F., 2017, p. 11-
“Behavior RtI” = Evaluation?

• MTSS ideally is in place to support at-risk students
• Non-response to interventions developed and implemented in the general education environment can be used as part of the evaluation process
• Evaluation should include multiple measures and informants
“Discipline” Concerns

• Removing students with disabilities through in and/or out of school suspensions may violate that student’s right to a free and appropriate public education (FAPE)

• The over representation of students with disabilities, especially minority students, in exclusionary discipline practices

• Misunderstanding of the “up to ten days” of removal prior to FBA-BIP requirement

• Misunderstanding of the FBA-BIP process relative to IDEA regulations linked to “discipline” issues v. evaluation for eligibility
August 1, 2016

Dear Colleague:

The U.S. Department of Education (Department) is committed to ensuring that all children with disabilities have meaningful access to a State’s challenging academic content standards that prepare them for college and careers. Consistent with these goals, the Individuals with Disabilities Education Act (IDEA) entitles each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child’s unique needs. Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed individualized education program (IEP) that is based on the individual needs of the child. 34 CFR §§300.17 and 300.320-300.324. In the case of a child whose behavior impedes the child’s learning or that of others, the IEP Team must consider – and, when necessary to provide FAPE, include in the IEP – the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 CFR §§300.324(a)(2)(i) and (b)(2); and 300.320(a)(4).

The Department has determined that this letter is significant guidance under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). See www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07_07.pdf. Significant guidance is non-binding and does not create or impose new legal requirements. The Department is issuing this letter to provide LEAs and other responsible public agencies with information to assist them in meeting their obligations under the IDEA and its implementing regulations.

If you are interested in commenting on this letter, please email us your comment at jepgoals@ed.gov or contact Lisa Pagano at 202-245-7413 or Lisa.Pagano@ed.gov. For further information about the Department’s guidance processes, please visit www2.ed.gov/policy/gen/guid/significant-guidance.html.

Recent data on short-term disciplinary removals from the current placement strongly suggest that many children with disabilities may not be receiving appropriate behavioral interventions and

Free Appropriate Public Education

- The primary legal issue the letter focuses on is that frequent, repeated short term exclusionary discipline responses to problem behavior does not allow the child to receive a Free and Appropriate Public Education (FAPE).

- Likewise, frequent removal and/or placement in seclusionary settings in response to problem behavior (i.e., in school detention or interim alternative settings (IAS)) denies students an education in the least restrictive environment (LRE).

- While IDEA indicates students on IEPs can be removed up to 10 days (provided the removal is for clearly specified infractions that are codified in district policy and apply to ALL students) the letter is clear that the intent of the law was not to give “10 free days” – the law and the letter are clear that the IEP must continue to be delivered and the decision to remove a child due to behavior infractions must follow district policy and be “approved” by the IEP team.
Free Appropriate Public Education

• The “spirit and intent” of the law, especially the regulatory language around FBA and positive behavioral interventions and supports (IDEA 1997 & 2004), is phrased, and reinforced in the letter, to indicate that educators/IEP teams should use evidence-based practices to address problem behavior at the first sign of behavioral challenges and/or school infractions.

• The letter indicates that individual behavior supports are more effective when placed in the context of a continuum of supports (e.g., MTSS, school-wide PBS).
Free Appropriate Public Education

The regulations do not say you cannot “discipline” students on IEPS (i.e., removal from school), it says, and the letter very clearly reinforces, students on IEPs have a set of procedural safe guards and the intent of the regulations are to encourage schools to respond in instructional and pro-active ways when students first display challenges to the point of involving administrative action.
April 2, 2013
Ms. Glenna Gallo
State Director of Special Education
Utah State Office of Education
250 East 500 South
P.O. Box 144200
Salt Lake City, Utah 84114-4200
Dear Ms. Gallo:

This is in response to your letter dated April 23, 2012 to Alexa Posny, former Assistant Secretary, Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education, which was forwarded to me for response. I apologize for the delay in responding. In your letter, you request clarification of the consent requirements in Part B of the Individuals with Disabilities Education Act (IDEA) as they relate to functional behavior assessments (FBA). Specifically, you ask us to expand on our guidance issued in our February 9, 2007 letter to Dr. Kris Christiansen (Letter to Christiansen) regarding consent for FBAs and in OSERS’s Questions and Answers on Discipline Procedures, revised June 2009 (Discipline Q&A). A summary of your questions and the Office of Special Education Programs’ (OSEP’s) answers follow.

**Question 1:** Does the definition of an FBA include both informal, i.e., observation, and formal assessments conducted by teachers to determine appropriate instructional interventions?

**OSEP’s Response:** Neither the IDEA nor its implementing regulations at 34 CFR Part 300 define “FBA.” As stated in the answer to Question E-2 of the Discipline Q&A,

> “[a]n 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).”

An FBA may include both observation and formal assessments.

**Question 2:** Since an FBA is required under 34 CFR §300.530(f) in situations where an individualized education program (IEP) Team has determined that certain conduct was a manifestation of a child’s disability, how can a local educational agency’s (LEA) ability to conduct an FBA be dependent on parental consent?

**OSEP’s Response:** In cases where a decision is made 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), collectively referred to here as the IEP Team, must conduct a manifestation determination consistent with the requirements in 34 CFR §300.530(e). If the IEP Team determines that the conduct was a manifestation of the child’s disability, it must take one of two actions: 1) conduct an FBA, unless the LEA has conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the child; or 2) if a BIP already has been developed, review

**FBA & Parent Consent**

**Q:** Is parent consent required to conduct a Functional Behavioral Assessment (FBA) as part of the ongoing instructional and support strategy development conducted by special educators for students with disabilities who are displaying problem behavior?

**A:** No, if the intent is for *instructional purposes only*. If an FBA is part of the evaluation process to determine a) if problem behavior is a manifestation of the disability or b) an initial or re-evaluation to determine if the child has a disability then parent consent is required.

**Note:** The FBA logic and technology were not developed or intended to be part of an evaluative process to determine a manifestation of disability or the presence/absence of a disability. FBAs are intended to determine functional relationships between student behavior and the learning environment to guide intervention development. Non-response to FBA-based interventions could be one component of a comprehensive evaluation process for manifestation determination and/or IDEA eligibility.

Tim Lewis, August 2018
FBA & Parent Consent

“In cases where the IEP Team seeks to conduct an FBA to determine if a child’s conduct was a manifestation of his or her disability, the LEA must obtain parental consent because –

“[a]n 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.” (p. 2)
FBA & Parent Consent

“if the FBA is intended to assess the effectiveness of behavioral interventions in the school as a whole, the parental consent requirements in 34 CFR §300.300(a) and (c) generally would not be applicable to such an FBA because it would not be focused on the educational and behavioral needs of an individual child. If an FBA is used, for example, in the context of positive behavior supports as a process for understanding problem behaviors within the entire school and to improve overall student behavior in the school, it generally would not be considered an evaluation that would require parental consent, unless such consent is required from the parents of all children in the school prior to conducting such an evaluation. 34 CFR §300.300(d)(1)(ii).” (p. 2)
FBA & Parent Consent

Question 4: Would a formative “three term contingency” assessment (e.g., noting a particular stimulus, a student’s response to that stimulus, and the consequences of the student’s response) used by a teacher with all students on a daily basis be considered an evaluation requiring parental consent?

OSEP’s Response: No, unless such consent is required from the parents of all children in the school prior to conducting such an evaluation. 34 CFR §300.300(d)(1)(ii). You provide an example above of an assessment given to all students as part of a daily classroom management routine. Parental consent is not required for such an FBA in that context because the FBA would not be focused on the educational and behavioral needs of an individual child.
However, if, as part of an FBA for an individual student, a teacher were to conduct a “three term contingency” assessment to determine whether the student has a disability and to determine the nature and extent of the special education and related services that the student needs, the FBA would be considered an initial evaluation or reevaluation, in accordance with 34 CFR §300.15. Parental consent is required for an FBA to be conducted as an initial evaluation or a reevaluation of a child, consistent with 34 CFR §300.300(a) and (c). (p. 2-3)
So…..

1. MTSS such as school-wide positive behavior supports are recommended to enhance impact of individualized supports for all students, especially those on IEPs

2. Schools do not have “ten free days” to suspend students on IEPs and should conduct FBAs to create individual behavior support plans at the first indication of disciplinary issues

3. You do not need parent consent to conduct an FBA for a child on an IEP if it is part of the daily instructional process
But…. 

You should inform all parent/guardians if you are placing their child on a tier II or III support plan
Three Levels of Implementation

A Continuum of Support for All

**Academic Systems**

**Tier Three**
- Individual Students
- Assessment-based
- High Intensity

**Tier Two**
- Some students (at-risk)
- High efficiency
- Rapid response

**Tier One**
- All students
- Preventive, proactive

**Behavioral Systems**

**Tier Three**
- Individual Students
- Assessment-based
- Intense, durable procedures

**Tier Two**
- Some students
- High efficiency
- Rapid response

**Tier One**
- All settings, all students
- Preventive, proactive
Challenges to implementing Tier II/III

• Who owns tier II?
• Within school capacity to build tier II/III systems and supports?
• Tier II/III requires school personnel to receive on-going professional development and technical assistance
• Typical district behavioral supports delivered on a case-by-case basis
District-Wide Basic Logic

• All schools will receive training & support to implement essential Universal behavior support practices and systems

• District develops (and revises based on outcomes) a standard Tier II and III system

• A percentage of current behavioral expertise will move from traditional case by case, to supporting school team Tier II & III systems
Steps

• Review district data
  • Self-Assessment
  • Fidelity
  • Student outcomes

• Designate a “build team”
  • Identify readiness criteria
  • Outline steps in the tier II/III process
    • Data Decision rules
    • Systems / Fidelity Checks
  • Identify practices
    • Limited number (elem/sec)

• PD for school teams
• PD for “coaches”
Targeted/ Tier II
“Function-based Logic”

• Behavior is functionally related to the teaching environment
• Behavior is learned
• Behavior is occasioned by predictable antecedents and maintained by outcomes
  • To Get (positive reinforcement)
  • To Avoid (negative reinforcement)
Classroom Problem Solving

Background

• Subject:
  • Seven years old
  • Identified with EBD and ADHD

• Setting
  • General education 2\textsuperscript{nd} grade classroom with 19 other students
  • One licensed teacher and one student teacher

• Concern
  • Student exhibits high rates of off-task
  • Student shouts out answers and questions and comments at high rates and often inappropriate
“Function of Behavior”

• Descriptive (interviews and teacher reported ABC/ Scatterplot data)
  • Function identified as **Attention**
  • Significant antecedents: **multiple step direction and group settings**
  • Very High rates of both problem behaviors reported/ inconsistency in accuracy of data collection
“Environment Assessment”

Significant variables:

• clarity of expectations & directions
• consistency of expectations
• accessibility of class schedules
• lack of enforced procedures (especially regarding to hand raising and verbalizations or entire class)
Session Dimensions: 792.0 x 612.0

1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18

Baseline  Level 1  Level 1 & 2  Level 1, 2, & 3  Follow-up

Percent of Intervals Off-Task

Verbalizations

Off-Task

Frequency of Verbalizations
Tier III: Functional Behavioral Assessment-Behavior Intervention Plans
Individual Students

• Part of a continuum: Must link to school-wide PBS system
• Quick supportive response to teacher
• Plans based on a Functional Behavior Assessment
  • Clear process in place
  • Behavioral expertise available
  • All in school understand basic logic of FBA and PBS
Why Conduct a Functional Behavioral Assessment?
Daily Sessions

Baseline

FBA
Non-Function Based Intervention
Function Based Intervention

Percentage of Intervals Inappropriate Behavior

Matthew
Jerrod
Emma

Daily Sessions
Essential Steps to Individual PBS Plans

1. Request for assistance/Decision rule met
2. Operationally define problem/replacement behavior
3. Background/archival data/ data collection/Environmental Assessment
4. Functional Behavioral Assessment
   - Indirect measures
   - Direct observation
5. Develop hypothesis regarding function of problem behavior
6. Develop a Behavior Intervention Plan
   - Social skill instruction
   - Self management
   - Environmental modifications
7. Implement, Monitor and Evaluate progress
The Basics

• Concerned with the *functional relationships* between BEHAVIOR and the TEACHING ENVIRONMENT

• “Functional Relationships”
  • When “X” happens, high degree of likelihood “Y” will result
Antecedents

• Events that trigger or prompt a behavior
• The student can predict the outcome of the behavior when the cue is present
• What is happening before the behavior occurs?
  • Classroom environment
  • Academic activities
  • Transition
Consequences

Events that follow a behavior

1. The environment “gives” something to the student and the student maintains or increases the behavior = what is being given is reinforcing to the student

2. The environment removes the student from an activity or situation and the behavior maintains or increases = the event the student is avoiding is aversive to the student
Functional Behavioral Assessment

Pre-Assessment/Indirect
- Interviews
- Rating Scales
- Student Guided

Direct Observation
- A-B-C
- Functional Analysis
Developing a Hypothesis

• When this occurs (setting/condition) ___________

• The student does (problem behavior operationally defined) _______________

• To get/avoid ____________
To “Get” or “Avoid”

• Things student might get or acquire from behavior:
  • Attention
  • Something tangible
  • Access to preferred activities
  • Sensory stimulation

• Things students may avoid
  • Attention from adults or peers
  • Work tasks
  • Responsibilities
  • Sensory stimulation
# Functional Behavior Assessment

Submit this completed form to the ESE Contact or School Based Team Leader. A copy of this form, if applicable, will be attached to the student's Individual Education Plan (PBSD 0659).

<table>
<thead>
<tr>
<th>Student First Name</th>
<th>Student Last Name</th>
<th>Grade</th>
<th>Birth Date</th>
<th>Assessment Start Date</th>
<th>Implementation Date</th>
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**School**  
Select One

**Exceptionality (if applicable)**  
Select One

## I. Functional Behavior Assessment (FBA) Team Members

<table>
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<tr>
<th>Name</th>
<th>Title</th>
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## II. Student Profile

**a. List/describe the student's strengths, interests, and preferences:**

**b. Describe the student's needs which may be related to the target behavior.**
Behavior Intervention Plans
**Teach Desired Replacement Behaviors**

- **Function = Receives Attention**
  - Social skills that access attention appropriately
  - Social Skills that delay access to desired objects or events

- **Function = Escape**
  - Social skills that access assistance with difficult tasks
  - Social skills to avoid negative adult and peer interactions
Responses to Appropriate “Replacement Behavior”

Same or similar outcome as problem behavior

• Peer attention
• Teacher attention
• “Skip an assignment” pass
• Take a break pass
Response to Problem Behavior

• Avoid “feeding the function”
• Do not allow problem behavior to result in previous outcome
FBA-BIP

- Setting Events
- Triggering Antecedents
- Problem Behavior
- Acceptable Alternative
- Desired Alternative

- Maintaining Consequences
- Setting Event Manipulations
- Antecedent Manipulations
- Behavior Teaching
- Consequence Manipulations

Sugai, Lewis-Palmer & Hagan, 1999
Setting Events

• Playground monitor debriefs student prior to coming into building.

Predictors

• Change seating arrangement during reading class.
• Pre-correct class RE rules of cooperative groups.

Behavior

• Set up cooperative peer groups.
• Identify appropriate peers and teach cooperative strategies.
• **Teach rules and skills of cooperative groups to target student.**
• **Role play cooperative learning with peers and target student.**
• Monitor progress (momentary time sampling)

Consequences

• Verbal praise when on-task (VI 3 minutes).
• Error correction for off-task.
• **Free time with peers for meeting established daily criteria.**
# Behavior Intervention Plan (BIP)

Submit this completed form to the ESE Contact or School Based Team Leader. A copy of this form, if applicable, will be attached to the student's Individual Education Plan (PBSD 0650).

<table>
<thead>
<tr>
<th>Student ID#:</th>
<th>Student First Name:</th>
<th>Student Last Name:</th>
<th>Grade:</th>
<th>Birth Date:</th>
<th>Assessment Start Date:</th>
<th>Implementation Date:</th>
</tr>
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</table>

**School** Select One  

**Exceptionality (if applicable)** Select One

## I. Behavior Intervention Plan Team Members

<table>
<thead>
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<th>Name:</th>
<th>Title:</th>
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## II. Behavior Intervention Plan

This plan should be based on and driven by the hypotheses statements created during the Functional Behavior Assessment process.

### A. Goals of Intervention

Describe the expected outcomes/objectives of the intervention.
Creating Tier III Systems

Tiered Fidelity Inventory (pbis.org)
District FBA Process Eval
Palm Beach FBA & BIP Templates
SWPBIS Tiered Fidelity Inventory
version 2.1

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# Functional Behavioral Assessment – Behavioral Intervention Plan

## Process Evaluation and Professional Development Action Plan

**School/ District/Agency**

<table>
<thead>
<tr>
<th>Essential Feature/Step</th>
<th>In Place</th>
<th>Action* (Information Dissemination; Training + Follow-up; Material Development; Process Development; Resource Procurement)</th>
<th>Who/Date</th>
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<tbody>
<tr>
<td><strong>Systems</strong></td>
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<tr>
<td>Representative school-based team established to conduct, develop, review and monitor FBA-BIP development:</td>
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<tr>
<td>Staff with behavioral expertise</td>
<td>Yes No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building administrator</td>
<td>Yes No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special Educator</td>
<td>Yes No</td>
<td></td>
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<tr>
<td>General Educator</td>
<td>Yes No</td>
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<tr>
<td>Other staff involved in plan and/or with student</td>
<td>Yes No</td>
<td></td>
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<tr>
<td>All faculty and staff in building familiar with basic logic and process of FBA-BIP</td>
<td>Yes No</td>
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<td></td>
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<tr>
<td>All faculty and staff understand their role in FBA-BIP development</td>
<td>Yes No</td>
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MU-PBS / Lewis, 2009
Impact of SW-PBS on Students with Disabilities
MAP Proficiency by SW-PBS Implementation Levels - All Students

2010 vs 2011
Additional Impact of School-Wide PBS: Students on IEPs

- Schools implementing SW-PBS with fidelity have a lower mean percentage of students with IEPs.
- Students with IEPs attending schools participating in SW-PBS have a higher average attendance rate.
- On average, more students with disabilities spend 80% or more of their educational day in inclusive settings in schools participating in SW-PBS.

*Missouri SW-PBS, 2017*
Considerations

• Within Tier II / III process, check IDEA or 504 status, insure you work with case manager to follow procedural safeguards

• Make as many connections to the students’ plan as possible (e.g., accommodations, related services) but do not “substitute” SW-PBS supports for IEP supports (they should supplement)

• Keep parents informed of all supports provided across the continuum
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2) **Online:** click on the link located next to the downloadable session materials posted at http://www.pbis.org/presentations/chicago-forum-19

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