



Positive Behavior Assessment and Planning in Schools: Fact Sheet

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Introduction

State and federal law both lay out requirements for the provision of behavioral assessments and services. This fact sheet provides you with some basic information regarding these laws and provides you with information about your child's rights to positive behavioral assessments, interventions and services. This fact sheet also tells you where you can get advocacy assistance if you need it or if you have questions about the change in the law.¹

Under current federal and state law, school districts **MUST** provide appropriate behavior related services and supports, including detailed functional behavioral assessment and positive behavioral intervention plans when needed, whenever a student has behaviors that interfere with that student's or another student's learning.

¹ In July of 2013, as part of its budget process, the California Legislature struck down most of the Hughes Bill, a set of laws and regulations requiring school districts to take specific steps to address the needs of special education students with behavior problems. The Hughes Bill required school districts to automatically provide functional analysis assessments in certain situations. While these assessments are no longer automatically required as described in the previous law, behavioral assessments and positive behavioral interventions are still required as part of an IEP and are discussed in this publication.

1. Can a school district refuse to offer the behavioral services my child needs?

If your child has behaviors which interfere with your child's or another child's learning, federal law requires that the IEP team **MUST** consider which behavior supports and strategies and other services are needed so that your child can benefit from education in the least restrictive environment. [34 C.F.R. Sec. 300.324(a)(2),(b)(2).] The school district has to provide the type of assessment, plan, services or supports that your child's IEP team determines are necessary to help your child with his or her behavior in school so your child can benefit from education and not have to move to a more restrictive setting, such as a special day class or day treatment program, because of your child's behavior.

If your child has serious behaviors, such as aggressive or self-injurious behaviors, the school district no longer has to automatically provide a "functional analysis assessment" or "positive behavior intervention plan", but the IEP team should consider whether your child needs a functional analysis assessment or positive behavior intervention plan along with considering other services or strategies to address his or her behavior needs. If your child has had a behavior support plan that has not been effective in addressing your child's challenging behavior, you should point this out to the IEP team and request that the your child receive a detailed functional behavioral assessment, such as a functional analysis assessment so that the IEP team has enough information to develop a more detailed positive behavior intervention plan.

If your child has behaviors which interfere with your child's or another child's learning, the IEP should include a statement of the special education and behavior related services and supplementary aids, and services to be provided to your child, and a statement of measurable annual behavior goals designed to address your child's behavior needs. [34 C.F.R. Sec. 300.320(a)(2),(4).] If your child's IEP contains no services, supports or strategies to address the behavior or no goals related to your child's behavior needs, you should consider filing a compliance complaint with the California Department of Education. If your child's IEP contains ineffective services, supports or strategies to address these behavioral needs, you may consider filing a due process hearing request. [See Chapter 6, *Information on Due Process and Compliance Complaints*, Special Education Rights and Responsibilities <http://www.disabilityrightsca.org/pubs/504001Ch06.>]

2. What should I do to ensure my child gets needed behavioral assessment and services?

If your child has behaviors that interfere with your child's learning or another child's ability to learn, you should make a written request for an IEP meeting to determine which supports and services your child needs to address your child's behavior in a positive way. Services that the IEP team should consider include a detailed functional behavioral assessment, a behavior support plan and if appropriate, a positive behavior intervention plan, a one to one behavioral aide, parent and/or teacher training and consultation with a behavior specialist, counseling, social skills, anger management and/or other services and strategies that you believe your child needs.

Before the IEP meeting, you may also want to make a written request for a functional behavioral assessment, especially if the school has developed a behavioral support plan or used other behavioral strategies that have not worked to improve your child's challenging behavior. This assessment should be designed to obtain detailed information about your child's behavior (such as a detailed description of the behavior, how often it happens, how long it lasts, where it happens, and what happens just before and after your child engages in the challenging behavior) and your child's learning environments to help the IEP team determine why your child is engaging in challenging behavior and what can be done to assist your child with this. The Office of Special Education Programs (OSEP) has described functional behavioral assessments as "evaluations" under the IDEA. Therefore, you should advise the school district that when you request an FBA, all of the legal requirements that pertain to other evaluations apply.²

The school has 60 days from when you sign an assessment plan that includes a functional behavioral assessment to perform the assessment and to hold another IEP meeting to discuss the results of the assessment and to determine what services, supports and other positive behavior strategies your child needs. [Cal. Ed. Code Sec. 56344(a)]

² The memo by OSEP, while not binding law, can be used to urge the school district to apply the same procedures to an FBA as it would any other assessment. A discussion of that memo can be found online at <http://www.cde.ca.gov/sp/se/ac/biplefaq.asp>.

If the school district conducts a functional behavior assessment of your child but you do not think the assessment is helpful in determining what kinds of behavioral supports or services your child needs, or you disagree with the school district's assessment for other reasons, we recommend that you request an independent educational evaluation (IEE) at public expense. [34 C.F.R. Sec. 300.502; Cal. Ed. Code Sec. 56329(b).]

You should make this request in writing to the school district and try to explain the specific parts of the assessment or the methods used to conduct the assessment that you disagree with. If you make a request for an independent educational evaluation, the school district is required by law to either to agree to pay for this assessment or file for a due process hearing to show that the district's assessment is "appropriate." [34 C.F.R. Sec. 300.502; Cal. Ed. Code Sec. 56329(b).]

At the end of this fact sheet we provide a sample letter that you can use to request an IEP to determine your child's needs related to his or behavior and/or to request a functional behavior assessment. We have also enclosed a sample letter to request an independent educational evaluation if you do not agree with the functional behavioral assessment provided by the school district.

3. When can a school district use an emergency behavioral intervention such as restraint or seclusion on my child?

This part of California law has not changed. School districts can only use emergency interventions when:

1. your child engages in unpredictable, spontaneous behavior and
 2. the behavior presents a danger of serious physical harm to the student or others
- and
3. the dangerous behavior cannot be immediately prevented by a less restrictive response than the emergency intervention.

[Cal. Ed. Code Sec. 56521.1(a).]

School districts must never substitute the use of behavioral emergency interventions for systemic positive behavioral interventions. [Cal. Ed. Code Sec. 56521.1(b).]

School districts are prohibited from using types of interventions which are harmful to a student's health or welfare such as interventions which likely to cause pain, which deny a student adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities; or which are likely to subject your child to verbal abuse, ridicule or humiliation; or which can be expected to cause your child excessive emotional trauma. [Cal. Ed. Code Sec. 56521.1(d).]

The school can use an emergency intervention such as physical restraint on your child only as long as needed to control the dangerous behavior and only use the amount of force that is reasonable and necessary under the circumstances. [Cal. Ed. Code Sec. 56521.1(b),(c).]

If you believe that your child's school is using one of the prohibited types of interventions on your child or is repeatedly using restraint or seclusion or other intervention on your child such as calling the police without providing your child with an individualized positive behavior support, you should contact a special education attorney or advocate.

4. What rights do my child and I have if a School District uses emergency behavior intervention such as physical restraint on my child?

If the school uses emergency behavior interventions on your child, school districts must notify you of this within one school day. [Cal. Ed. Code Sec. 56521.1(e).]

The school district should also fill out a behavioral emergency report with information about the events leading up to the use of the emergency behavior intervention and about the use of the intervention and place this in your child's file. [Cal. Ed. Code Sec. 56521.1(e).] The district is not required to give you a copy of this report unless you request it. We recommend that you make a written request for this report if you hear that an emergency behavior intervention was used on your child.

If your child does not have a behavioral intervention plan, then the school district must schedule an IEP meeting within two days of the emergency intervention to determine whether a functional behavioral assessment is needed and to determine whether your child needs an emergency behavior plan while the assessment is being done. [Cal. Ed. Code sec. 56521.1(g).]

If your child already has a positive behavior intervention plan, the district must schedule an IEP meeting to review and maybe change this plan if the school has used an emergency behavior intervention on your child because your child has engaged in behavior not covered in the plan or your child's plan has not been effective in addressing the behavior. [Cal. Ed. Code sec. 56521.1(h).]

If you are informed that your child's school used a behavioral emergency intervention on your child such as restraint or seclusion, you should remind the school district of their obligation to schedule an IEP meeting to develop a new or modified behavior support plan for your child. If the school district does not do this, we recommend that you file a compliance complaint.

5. Where else can I look for guidance on this issue?

The California Department of Education (CDE) has published a detailed question and answer document that addresses the local educational agency's (LEA) requirements related to providing behavioral assessments and services. That question and answer form is available online at:

<http://www.cde.ca.gov/sp/se/ac/bipleafaq.asp>

That sheet discusses the OSEP memo that describes behavioral assessments as evaluations under the IDEA, discussed in question 2 above.

6. Where can I get help if I need it?

If you have any questions about this change in the law or run into any other problems related to your child's behaviors at school, call Disability Rights California at 1-800-776-5746 for advice. The California Office of Administrative Hearings also keeps a list of free and low-cost attorneys who can help parents. You can call them to request a copy at (916) 263-0550, or if you have Internet access, a copy is available online at:

<http://www.documents.dgs.ca.gov/oah/SE/SE%20advocacy%20list.pdf>

Additional Resources:

Sample Letters

Sample Letter Requesting a Functional Behavioral Assessment and IEP meeting

Parent
Address
Telephone Number

Date

Director of Special Education
Local Unified School District
Address

Re: Child's Name

Dear Director of Special Education:

We have received the assessment of our child that was completed by district personnel on [insert date of assessment]. We disagree with this evaluation because it does not include an adequate functional behavioral assessment of our child. Since we believe the current evaluation does not show an accurate picture of our child's behavioral needs, including the function of our child's behavior and the environmental factors which may contribute to that behavior, we are requesting an independent functional behavioral assessment at public expense, pursuant to 34 CFR Section 300. 502.

We also disagree with the assessment because:

[include any reasons you disagree with the assessment, including one or more of the following statement if they apply]

The observations, interviews and other data that the assessment was based on are not sufficiently comprehensive to identify the function or purpose of my child's behavior and address all of my child's behavioral needs.

The assessment does not include an analysis of the antecedents (events happening just before) and consequences (events happening as a result of) of my child's challenging behavior and/or of my child's positive alternative behavior and therefore does not directly assist the IEP team in developing or modifying a positive behavior intervention plan for my child.

The assessment was not conducted by staff who are trained or experienced in conducting functional behavioral assessment.

Federal regulations require you to respond to this request "without unnecessary delay" by either ensuring that you provide my child with an independent

educational evaluation at public expense or filing a due process complaint notice to request a hearing and to prove that your functional analysis assessment is appropriate. (34 CFR section 300.502(b).)

We look forward to working with you collaboratively agree on a qualified independent assessor and begin to move ahead with the independent functional behavior assessment in accordance with federal and state assessment requirements.

Please respond to this request as soon as possible.

Sincerely yours,

Parent

Sample Letter to School District Requesting an Independent Functional Behavioral Assessment at Public Expense

Parent
Address
Telephone Number
I also request
Date

Director of Special Education
Local Unified School District
Address

Re: Child's Name

Dear Director of Special Education:

I am writing to refer my child for a functional behavior assessment. My child has behaviors that interfere with his/her learning and other children's ability to learn. Furthermore, the behavior support plan and intervention strategies that are currently in my child's IEP have been ineffective at addressing these behaviors.

I look forward to receiving an assessment plan in 15 days. I understand that you are required to complete the functional behavior assessment and hold an IEP meeting to discuss the assessment within 15 days of the date that I sign the assessment plan. Please provide me with copies of the assessment reports one week before the IEP meeting so that I meaningfully participate in that meeting.

[Optional: I also request that an IEP meeting be scheduled as soon as possible to determine what behavioral supports can be provided to my child while the functional behavior assessment is being conducted. I understand that you are required to schedule an IEP meeting no later than thirty days of the date of this request.]

Sincerely yours,

Parent

We want to hear from you! After reading this fact sheet please take this short survey and give us your feedback.

English version: <http://fs12.formsite.com/disabilityrightsca/form54/index.html>

Spanish version: <http://fs12.formsite.com/disabilityrightsca/form55/index.html>

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.

The California Mental Health Services Authority (CaMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CaMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.

