

BSPK's
Prior Written Notice
A Special Education Newsletter



Addressing Behavioral Issues: Functional Behavioral Assessments and Behavior Intervention Plans

Functional Behavioral Assessment ("FBA")

- An FBA is conducted if the student's behavior is interfering with his/her learning or that of others. In making this determination, the IEP team should consider the following factors:
 - Are you spending more time on behavioral issues than on other needs?
 - Is the misbehavior more than just occasional?
 - How does the student's behavior compare to peers?
 - Is the behavior responding to typical school and/or classroom interventions?
 - Can you point to a reason why the child may be misbehaving?
 - Would you expect or predict the behavior given the circumstances? Do you expect the behavior to naturally diminish over time?
- Parental consent is required for the FBA.
- The following components should be included in the FBA:
 - Identification and description of target behavior in observable, measurable terms;
 - A review of events related to the onset, duration, and severity of the target behavior;
 - Notification of environmental factors that may contribute to the behaviors;
 - Identification of the strengths of the student; review of all characteristics of the student that may indicate the need for professional evaluation, treatment, or therapy (diagnosed or suggested physical or mental conditions);
 - Determination of what is reinforcing the student; and
 - Development of hypotheses about what the student is gaining or avoiding through this behavior.

Behavior Intervention Plan ("BIP")

- After performing a FBA and formulating a tentative hypothesis for the function of the problem behavior, the IEP team should develop (or revise) the student's BIP. The BIP becomes part of the IEP and cannot be revised without an IEP meeting.
- The BIP should include:
 - Intervention techniques and/or program modifications;
 - Specific descriptions of typical routines and most difficult problem situations for the child;
 - A monitoring and evaluation plan;
 - Identification of the school professional who will be responsible for the overall coordination of the BIP; and
 - Identification of individual responsibilities for data collection and facilitating specific interventions described in the plan, and reporting on the success of interventions.
- Behavior may be addressed in an IEP in any or all of the following way:
 - Special factors – if the student's behavior interferes with his/her learning or that of others, the IEP team must consider appropriate positive interventions, strategies, and supports.
 - Annual goals and short-term objectives / benchmarks – the "meat" of the IEP is found in the goals, and instructional approaches could be incorporated into the goals and objectives (i.e., replacement behaviors, social skills).
 - Attached behavior intervention plans – sometimes it is difficult to fit an intervention plan into the available IEP format, so the IEP team may develop a separate plan and attach it to the IEP. Anything attached to the IEP becomes part of the IEP. If it is necessary to have a crisis intervention plan for the student, be sure to also include the positive interventions, strategies, and supports to balance the plan.

Disciplining Students with Disabilities

Removing a student with a disability, IEP or 504 Plan for a series of less than 10 days that establish a pattern of removal, or the removal exceeds a total of 10 consecutive school days, is a “change in placement.” Before changing the child's placement for disciplinary reasons, the IEP team must complete a Manifestation Determination Review (“MDR”).

During a MDR, the relevant members of the student's IEP team must consider the following factors to determine if the student's behavior is a manifestation of his or her disability:

- Was the conduct caused by the student's disability?
- Did the conduct have a direct and substantial relationship to the student's disability?
- Was the student's conduct the direct result of the District's failure to implement the student's IEP?

If it is determined that the student's misconduct was a manifestation of his/her disability, then the student's placement cannot be changed (i.e., she cannot be expelled) unless parents consent. Expelling a student due to his/her disability constitutes unlawful discrimination.

If parents do not consent, in certain circumstances the Superintendent may order an interim alternative educational setting for 45 school days. Under such circumstances, the district must provide prior written notice and notice of procedural safeguards. The alternative setting is only available for three types of misconduct:

1. child carried a weapon or possessed a weapon on school grounds,
2. child possessed, sold, or solicited the sale of illegal drugs at school or on school grounds, or
3. child inflicted serious bodily injury upon another person while at school.

“Serious bodily injury” means a bodily injury that involves (i) a substantial risk of death, (ii) extreme physical pain, (iii) protracted and obvious disfigurement, or (iv) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

If the Superintendent orders the alternative setting, the IEP team must convene to determine what that setting will be and how educational services will be delivered starting on day 11. The district must provide the student with educational services during the 45-day placement that are reasonably calculated to allow the student to make progress on his/her IEP and the general curriculum. Remember, use of the 45-day alternative setting and the IEP team's determination of the appropriate setting are both subject to due process, which will be expedited. If parents file a due process complaint, the child will remain in the disciplinary placement pending the due process decision.

Additionally, another consequence of finding that the child's conduct is a manifestation of the child's disability is that the IEP team must begin to conduct a FBA within 10 days of the MDR and implement a BIP. If the district has already completed a FBA and BIP, the IEP team must meet within 10 days of the MDR and determine what, if any, changes are necessary to the BIP to address the misconduct that lead to disciplinary action.

If it is determined that the student's misconduct was not a manifestation of his/her disability, the student may be subject to the regular discipline code and consequences, including suspension and expulsion. But the IEP team must ensure that the student receives a FAPE during the entirety of his or her disciplinary removal and must ensure that the student's IEP continues to be implemented.

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