

## **IDEA 2004: Functional Behavioral Assessment – Fact Sheet**

School districts are required to conduct functional behavioral assessment of problem behaviors, under certain circumstances. Framed by IDEA are several contextual factors which taken together alert school administrators that the need to conduct a functional behavioral assessment has been triggered:

- (1) There is a child with a disability
- (2) Who is removed for more than ten school days
- (3) For misconduct that either:
  - (a) is a manifestation of the child's disability,
  - (b) is not a manifestation of the child's disability,
  - (c) involves weapons, drugs, or serious bodily injury, regardless of the outcome of the manifestation determination review
- (4) For behavior that interferes with the learning environment

In addition, schools are expected to use functional behavioral assessment proactively and to intervene early to prevent serious problem behaviors: The IDEA states that a behavior intervention plan based on a functional behavioral assessment should be considered when developing the IEP if a student's behavior interferes with his or her learning or the learning of classmates (20 U.S.C. § 1414(d)(3)(B)(i) (2004)). To be meaningful, plans need to be reviewed at least annually and revised as often as needed. However, the plan may be reviewed and reevaluated whenever any member of the child's IEP team feels it is necessary.

Administrators continue to have great flexibility with respect to the substance of the functional behavioral assessment, being that they are provided with only contextual guidance respecting their duty to provide the assessment.

The IDEA does not specify any members of a particular profession (or member(s) of the IEP team) who might be qualified to conduct functional behavioral assessments. As a result of the lack of federal direction, states or even districts must determine who conducts the assessments.

IDEA 2004 provisions call for schools to have properly trained professionals available to conduct functional behavioral assessments and develop appropriate behavioral intervention plans. It is the district's responsibility, working with the state department of education, to provide professional development, in-service training, and technical assistance, as needed, for school staff members to be able to conduct FBAs well.

In Closing, schools have a legal responsibility to students with disabilities to provide behavioral support needed for a free, public, appropriate education. Under some circumstances, this includes a functional behavioral assessment and a related positive behavior intervention plan and services. Although IDEA 2004 provided some changes in wording and in requirements related to functional behavioral assessments from IDEA '97, professional judgment remains essential for deciding how to conduct functional behavioral assessments on an individual basis. This is consistent with the basis for special education, which is an individualized education plan.

The follow Q&A was taken from: <http://idea.ed.gov/explore/view/p/,root,dynamic,QaCorner,7>,

**US Department of Ed  
Building the Legacy: 2004**

**Questions and Answers  
on Discipline Procedures**

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**Revised June 2009**

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## **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.

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**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.

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**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.

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**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.

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**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.