**SmartStart: Functional Behavioral Assessments**

**This SmartStart is updated with references to the IDEA 2004 statute, the 2006 IDEA Part B regulations, and the 2008, 2016, and 2017 amendments to the Part B regulations.**

**Overview**

When it comes to discipline, districts must follow certain procedures. One such procedure is conducting a functional behavioral assessment. An FBA is a process that searches for an explanation of the purpose behind a problem behavior.

**Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

**FBA -- DEFINITION/DESCRIPTION/BACKGROUND**

* Pursuant to the IDEA, "a child who is removed from the current placement 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 the goals set out in the child's IEP; and ... receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur." 34 CFR 300.530(d)(1)(i).
* The IDEA does not define the term "functional behavioral assessment." "IEP teams need to be able to address the various situational, environmental and behavioral circumstances raised in individual cases." 64 Fed. Reg. 12,620 (1999).
* The purpose of an FBA is to isolate a target behavior and develop a hypothesis regarding the function of the target behavior. A target behavior is one that interferes with a student's ability to progress in the curriculum and to achieve the student's IEP goals. Once the target behavior is identified and the hypothesis developed, a positive behavior intervention plan can be prepared to address the target behavior with strategies and interventions, if necessary, or the target behavior can be addressed using a more informal approach. *Broward County Sch. Bd.*, 110 LRP 38160 (SEA FL 05/07/10). *See also Independent Sch. Dist. No. 2310*, 29 IDELR 330 (SEA MN 1998) and [SmartStart: Behavioral Intervention Plans](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetDocByTitle?doctitle=SmartStart:+Behavioral+Intervention+Plans).

**CIRCUMSTANCES WHEN FBA IS REQUIRED**

* The IDEA requires that if the district, parent, and relevant members of the IEP team determine that a student's conduct that gave rise to a change in placement (i.e., a removal for more than 10 consecutive school days or a series of removals that constituted a pattern) was a manifestation of the student's disability, the IEP team must:
	+ Conduct an FBA (provided the district had not conducted such assessment prior to the conduct at issue) and implement a BIP for the child.
	+ When a BIP has already been developed, review the plan and modify it, as necessary, to address the behavior. And, except when the student is removed to an alternate interim educational setting, return the child to the placement from which he was removed, unless the parent and district agree to a change in placement as part of the modification of the BIP.

34 CFR 300.530(f).

* A student with a disability who is removed from his current placement for more than 10 consecutive school days for behavior not determined to be a manifestation of his disability (or a student who is removed to an IAES for up to 45 school days for weapons, drugs, or serious bodily injury, irrespective of whether his behavior is a manifestation of his disability) must "receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur." 34 CFR 300.530(d)(1)(ii).
* State laws may direct districts to conduct FBAs whenever the conduct of a student with a disability is an issue of educational significance. *See, e.g., T.G. v. New York City Dep't of Educ.*, 62 IDELR 20 (S.D.N.Y. 2013) (recognizing that a New York district failed to conduct an FBA of a 10-year-old boy with autism as required by state law).
* An FBA may not be necessary if the student is already receiving appropriate behavioral supports pursuant to a BIP or an IEP. For example, where a student's IEP called for instructional modifications, positive incentives, and frequent breaks at "calming areas" to reduce the student's aggressive and disruptive conduct in the classroom, the interventions helped the student become more focused, patient, and willing to work with his peers. Thus, the district had no obligation to conduct an FBA as part of the IEP-development process. *Little Rock Sch. Dist.*, 69 IDELR 112 (SEA AR 2017).
* A New York district's decision to forgo an FBA when the student began to act out at school did not rise to the level of a denial of FAPE because the IEP adequately identified the student's behavioral impediments and implemented strategies to address the behavior. *J.C. v. New York City Dep't of Educ.*, 67 IDELR 109 (2d Cir. 2016, *unpublished*).

**PROCEDURES FOR CONDUCTING FBAS/MANIFESTATION DETERMINATIONS**

* With regard to conducting behavioral assessments, ED notes that 34 CFR 300.304(c)(4) "requires the public agency to ensure that the child is assessed in all areas related to the suspected disability. This could include, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This is not an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted." 71 Fed. Reg. 46,643 (2006).
* "As a policy matter, a previously conducted functional behavioral assessment that is valid and relevant should be included in the information reviewed by the LEA, the parent, and relevant members of the IEP Team when making a manifestation determination." 71 Fed. Reg. 46,721 (2006).
* An evaluator's failure to collect sufficient data on the consequences of a 5-year-old boy's aggressive behaviors undermined the FBA's conclusion that the child's tantrums were to avoid the academic demands of kindergarten. The evaluator was found to have collected relatively little data about the consequences of the child's aggression. Without this information, the district could not determine the child's educational needs or develop an effective IEP. *Cobb County Sch. Dist, v. D.B.*, 66 IDELR 134 (N.D. Ga. 2015).

**PARENTAL CONSENT AND FBAS**

* Whether parental consent is required to conduct an FBA depends largely on what is meant by an FBA. OSEP explained in *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007), that a district that intends to conduct an FBA should ask itself one question: Will the FBA focus on the educational and behavioral needs of a specific child? If so, the FBA qualifies as an evaluation or reevaluation under Part B and triggers all of the accompanying procedural safeguards, including the need to seek parental consent. If, however, the district uses an FBA as a widespread intervention tool to improve the behavior of all students in its schools, the FBA is not an evaluation and parental consent is not necessary.
* In *Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009), OSERS stated that, as with other individualized evaluation procedures, parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation.
* OSEP has also stated that an FBA whose purpose is to determine whether a student is a child with a disability and the nature and extent of special education and related services she needs is no different from a Part B evaluation for purposes of prior written notice. *Letter to Anonymous*, 59 IDELR 14 (OSEP 2012).
* Proceeding with an FBA of a kindergartner without consent made a Michigan district noncompliant with 34 CFR 300.300(a)(1). The state ED explained that the instruments the district used were designed to identify the child's eligibility for special education, given the district's receipt of the parent's request for an evaluation that day. Administering an FBA to the student in this situation did not involve a disciplinary removal and became an evaluation, according to the state ED. *Muskegon Pub. Schs.*, 115 LRP 24863 (SEA MI 05/12/15).

**THE RELATIONSHIP BETWEEN IEP AND FBA**

* FBAs and BIPs are not required components of the IEP under 34 CFR 300.320. 71 Fed. Reg. 46,629 (2006).
* In developing an IEP, the IDEA requires that IEP teams address behavior management whenever a student's behavior is interfering with the child's ability to benefit from his educational programming. Specifically, the IDEA states that the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning of that of others." 34 CFR 300.324(a)(2)(i). While an FBA may help the IEP team address behavioral issues, the IDEA does not require the IEP team to conduct an FBA in order to meet this requirement. 71 Fed. Reg. 46,683 (2006). *See also W.S. and K.M. v. Nyack Union Free Sch. Dist.*, 56 IDELR 210 (S.D.N.Y. 2011) (observing that the lack of an FBA doesn't render an IEP procedurally inadequate; the IDEA requires only that the IEP team consider behavior interventions and strategies); and *L.G. v. Wissahickon Sch. Dist.*, 55 IDELR 280 (E.D. Pa. 2011) (holding that the district argued that its IEPs provided FAPE and that it was unnecessary to conduct an FBA because the student's behaviors, which included loud vocalizations and tugging on his ears, did not impede his or other students' learning).

**FBA NEED NOT BE IN WRITING**

* The IDEA does not expressly require that an FBA be in writing. *Board of Educ. of the Akron Cent. Sch. Dist.*, 28 IDELR 909 (SEA NY 1998); and *Issaquah Sch. Dist.*, 107 LRP 63423 (SEA WA 06/22/07) (noting that there is no requirement in the IDEA for an FBA to be in writing). Best practice would certainly be to have written documentation prepared and preserved, however.

**INDEPENDENT FBAS**

* There is no concept of an independent FBA that is analogous to an independent educational evaluation under the IDEA regulations. *Broward County Sch. Bd.*, 112 LRP 56747 (SEA FL 07/20/12) (holding that a Florida district did not have to provide the parents of an elementary school student with an FBA at public expense).
* At least one hearing officer ordered reimbursement of the costs of a private FBA the parent arranged during one of the student's suspensions. The hearing officer noted that the district had failed to convene an IEP team meeting within 10 days of suspending the student, as required under 20 USC 1415(k)(1)(E)(i). As part of that obligation, the IEP team should have developed a plan to address the behavior that led to the disciplinary action. *District of Columbia Pub. Schs.*, 28 IDELR 401 (SEA DC 1998).
* A parent who disagrees with an FBA that is conducted to develop an appropriate IEP is entitled to request an IEE at public expense. *Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009).

**OBLIGATIONS FOR STUDENTS WHO ALREADY HAVE FBAS AND BIPS**

* When a student with a disability who already has an FBA and a BIP as a result of being removed for more than 10 school days in a school year is removed again, a district must still comply with the process set out in 34 CFR 300.530(f) if the subsequent removal is a change in placement by reviewing the plan and modifying it as necessary to address the behavior. 34 CFR 300.530(f)(1)(ii).
* The Hawaii ED's failure to conduct an FBA or create a new behavioral support plan for a student who was about to transition from early childhood to Part B services did not deny the student FAPE. The IEP team properly assessed the student's behavioral needs by reviewing current assessments, including a month-old FBA and BSP from the student's early intervention services program, before proposing the student's new placement. *Department of Educ., State of Hawaii*, 53 IDELR 103 (SEA HI 2009), *aff'd*, 54 IDELR 250 (D. Hawaii 2010).

**STAY-PUT WHERE DISTRICT FAILS TO CONDUCT AN FBA IN CONNECTION WITH ORDERING AN IAES**

* The IDEA does not address the student's stay-put placement in situations where the school district fails to conduct an FBA (*see* [SmartStart: Stay-Put Provision](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetDocByTitle?doctitle=SmartStart:+Stay-Put+Provision)) in connection with ordering an IAES (*see*[SmartStart: Dangerous or Anti-Social Misconduct](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetDocByTitle?doctitle=SmartStart:+Dangerous+or+Anti-Social+Misconduct)) or a suspension. In one reported administrative decision, the hearing officer ruled that the district's failure to conduct an FBA resulted in stay-put entitlement for a student who smoked marijuana on school property, pending the completion of disciplinary proceedings. *William S. Hart Union High Sch. Dist.*, 26 IDELR 1258 (SEA CA 1997).

**WHO CAN CONDUCT FBAS**

* The IDEA does not specify who is qualified to conduct FBAs. States or even districts must determine who conducts the assessments. In *Letter to Janssen*, 51 IDELR 253 (OSERS 2008), OSERS stated that there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA unless state law requires it. Although the IDEA does not state who may conduct FBAs, districts must ensure that those who do conduct them are adequately trained. *See also H.D. v. Central Bucks Sch. Dist.*, 59 IDELR 275 (E.D. Pa. 2012) (finding that an FBA was appropriate, in part, because the FBA was conducted by a qualified, board-certified associate behavioral analyst).

**Additional Resources**

Additional resources on this topic are available for purchase from LRP Publications:

* [FBAs and BIPs: Meeting IDEA Compliance Obligations](http://www.shoplrp.com/ProductDetails.asp?ProductCode=300637) *by John W. Norlin, Esq.*

Please share your experience and expertise. Forward any suggested additions or changes to this or other SmartStarts to SmartStarteditor@lrp.com.

***Last updated: August 11, 2017***