



# Discipline of Students With Disabilities

**Resources and Information on Effective Practices and  
Requirements Under the Individuals with Disabilities  
Education Act (IDEA)**

A Guide For Administrators, Educators, Parents and Community Members



## **Discipline of Students with Disabilities**

### ***Resources and Information on Effective Practices and Requirements***

### ***Under the Individuals with Disabilities Education Act (IDEA)***

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# Introduction

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Behavior is purposeful and cannot be understood outside of the context within which it occurs. A student's behaviors may interfere with his/her learning and/or that of his/her classmates. When these behaviors are repetitive and resistant to behavioral interventions, a functional assessment of behavior should be conducted to understand the function of the student's behavior and to plan effective individual, class, and/or school-wide interventions, as appropriate. Assessing and intervening early in inappropriate behaviors has the potential to reduce the incidences of school failure and facilitate positive social development.

School staff should examine its data to identify standards for behavior assessment and intervention for all students. The data unique to a school that specifically identifies the behaviors, frequency, location, and contributing factors will enable a school team to develop a comprehensive system of proactive, school-wide, positive supports designed specifically to meet the needs of the school. In order to implement positive interventions and supports, the school team should assess the function of a student's behavior whenever a student exhibits a behavior that significantly interferes with the student's learning or the learning of others. Proactive, positive intervention should be used for all students and in all areas of the school community.

## **Purpose of this Document**

A better  
understanding  
of behavioral  
assessment &  
intervention

The purpose of this document is to provide administrators, educators, parents, and community members with a better understanding of the behavioral assessment and intervention process. The disciplinary requirements of the Individuals with Disabilities Education Act (IDEA) have provided school systems with guidance for examining their practices of assessing behaviors and implementing appropriate interventions. The concept of addressing inappropriate behaviors with the use of positive supports and strategies is incorporated within the behavioral assessment process.

Whenever a student demonstrates a behavior that interferes with his/her learning or the learning of others, the student's Individualized Education Program (IEP) team should convene to plan for a functional assessment of the student's behavior. The purpose of a functional behavioral assessment (FBA) is to increase understanding of the student's behavior and its function for the student, and is used to develop a behavioral intervention plan (BIP).

**Frequently Used Terminology**

<b>A-B-C Analysis</b>	A problem-solving process in which the antecedents and consequences currently operating for both the problem and the desired behavior are identified
<b>Accuracy</b>	Describes whether or not a student uses a behavior or similar behavior the same way in response to the same antecedent
<b>Antecedent</b>	A person, place, thing, or event occurring before a behavior that triggers the behavior.
<b>BIP</b>	Behavioral Intervention Plan
<b>Consequence</b>	An action in response to a behavior that maintains the behavior
<b>Duration</b>	Describes how long the behavior lasts within a set period of time
<b>FBA</b>	Functional Behavioral Assessment
<b>Frequency</b>	Describes how often the behavior occurs within a set period of time
<b>Intensity</b>	Describes the force, impact, power, and magnitude of the behavior to determine whether a behavior is becoming more pronounced
<b>Latency</b>	Describes the amount of time that elapses between two events
<b>Setting Event</b>	Environmental, social or physical events or actions that occur at some time prior to the antecedent or behavior, which influences the behavior
<b>Topography</b>	The physical appearance or movement involved with the behavior (e.g. screams, yells, bites, strikes others)

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# Part I: Positive Behavioral Supports and Intervention Strategies

## Overview

Positive behavioral supports and intervention strategies represent a comprehensive system of behavior management that uses multiple approaches, including establishing school-wide systems, implementing classroom management techniques, altering environments, and overtly recognizing appropriate behavior positively, rather than simply using one intervention in an attempt to eliminate a behavior. The purpose of positive behavioral supports and strategies is to actively teach and model appropriate skills and competencies to enable students to achieve better control over their behavior.

Too often the term “discipline” has been used to describe punitive actions taken in response to inappropriate behaviors. Positive behavioral supports and interventions represent a paradigm shift from traditional behavior management.

Traditional Behavior Management	Positive Behavioral Support
Views the individual as “the problem”	Views systems, settings, and skill deficiencies as “the problem”
Attempts to “fix” the individual	Attempts to “fix” systems, settings, and skills
Extinguishes behavior	Creates new contacts, experiences, relationships, and skills
Aversive sanctions	Sanctions positive approaches
Takes days or weeks to “fix” a single behavior	Takes years to create responsive systems, personalized settings, and appropriate empowering skills
Implemented by behavioral specialist in atypical settings	Implemented by dynamic and collaborative team using person-centered planning in typical settings
Often resorted to when systems are flexible	Flourishes when systems are inflexible

Behavioral supports and interventions should begin with early interventions in an effort to proactively alter current inappropriate behaviors before the behaviors become habitual and intransigent. Using proactive, positive behavior supports leads to a positive school climate. Effective school-wide practices include setting specific procedures.

## **Systemic Positive Intervention Strategies and Supports**

It is important that existing school structures and processes include universal interventions where positive reinforcement is dominant and all students are provided explicit instruction regarding behavioral standards so students and staff understand limits and expectations. Positive interventions need to occur as early as possible after the undesired behavior occurs. Universal interventions are those strategies or supports that are:

- Applied to all students;
- Proactive;
- Based on clear and predictable limits and expectations;
- Positive-reinforcement dominant; and
- Linked to the school's organizational goals.

School personnel must continually monitor interventions to ensure that the consequences of behavior increase the frequency of desired behaviors and decrease the frequency of undesired behaviors. To be most effective, there is a need for informal, frequent, positive acknowledgement of desired behaviors to support those behaviors that lead to desired goals. Individuals respond to many different types of rewards, tangible and intangible. Consequently, school personnel need to carefully review the behavioral systems being employed at all levels within the school.

Positive support strategies are effective. The emphasis of these strategies is for adults within schools to direct attention, time, and resources on the positive, rather than negative aspects of behavior management. Since all behaviors are learned and occur for a reason, it is important that adults who interact with students understand how a challenging behavior functions for a student.

Before we can directly address specific skill or performance deficits, students first need an increased opportunity for:

- Individual control and choice;
- Positive attention; and
- Adult and peer status.

In order to provide explicit instruction to individual students aligned with the student's strengths, teachers need to examine:

- Teaching strategies;
- Environmental arrangements;
- Instructional activities and materials;
- Expected responses; and
- Assessment methods.



## **Steps in School-wide Positive Behavioral Interventions**

To institute a comprehensive, school-wide approach to positive behavioral interventions, the following actions must occur.

- **Define Parameters and Mechanisms**

Once the decision is made to approach school-wide discipline from the position of meaningful positive recognition of appropriate behavior, the specific parameters and mechanics for implementation must be defined. The rules must be clear, understood by all, and implemented uniformly across all settings. These features will make a positive behavioral support system powerful and make a clear connection between the level of behavioral performance and the appropriate consequences.

- **Obtain Commitment and Support**

Once the procedures and mechanics of a positive behavioral support system are defined, the purpose and objectives for the program must be clearly communicated to all members of the school community. All staff members and students must be provided the skills for effective implementation and planned opportunities for practice. For staff and parents this is most effectively accomplished through interactive professional development that addresses adult learning styles and provides the adults an opportunity to practice these skills in a comfortable and supportive environment. School administrators may consider eliciting the help of school staff, students, and parents in both planning and implementing the parent, student, and educator instructional activities.

- **Develop Positive Methods of Communication**

Everyone communicates in some manner. Behavior is one way in which individuals communicate. Everyone receives information and expresses themselves in some way. Communication is more than verbal expression. Receiving and expressing information also involves processing visual information such as gestures, facial expressions, and body language. People use their bodies, including hands, faces, and body movements to communicate in nonverbal ways. In some instances, the information an individual expresses nonverbally may be the same as the verbal information. In other instances, it may contradict the words, sending simultaneous conflicting data to the student.

IDEA requires each student's IEP team to describe the student's communication needs, if any [20 U.S.C. §1414(d)(3)(B) (iv); 34 C.F.R. §300.324(a)(2)(iv)]. Understanding each student's auditory and visual processing strengths and needs as well as assessing the manner in which adults communicate with the student and what the student is attempting to communicate to adults and peers are equally important. It is especially important when a student engages in a behavior that adults identify as inappropriate. Behaviors considered inappropriate may be the result of the student's response to a lack of information or inaccurate information based on communication the student received or perceived.

In the two-way process of receiving and expressing information, additional strategies may be needed to support the student's understanding of the information they receive as well as the student's ability to express his or her wants and needs. The student's IEP team should examine existing information and data in order to identify additional strategies, supports, and

supplementary services that may be needed. The relevance of particular strategies, supports, services, and accommodations must be based upon each individual student's identified developmental, functional, and behavioral performance, strengths, and needs.

**Communication  
may be an  
effective  
universal  
intervention.**

In order to effectively use communication strategies to improve student behavior, understanding what the student comprehends and how the student uses that information is an important consideration. Communication may be an effective universal intervention for addressing inappropriate behaviors as well as a contributing factor to the behavior of concern.

The student's IEP team should consider examining available data relative to the student's receptive and expressive communication skills in conjunction with the data gathered concerning the conditions surrounding the behavior event of concern. It is important for adults to understand the student's receptive and expressive communication styles and needs, regardless of the disability or its severity.

It may be necessary to provide specific professional development to staff and parents on why individuals communicate. *Linda Hodgdon*, a speech/language pathologist and national consultant believes, "Communication training should focus on three foundation skills. Competency in these areas will prepare students for more advanced learning by:

- establishing a social connection;
- understanding others; and
- communicating wants and needs."

- **Monitor Effectiveness**

Any program is only as good as its implementation. Positive interventions and supports, including universal supports, must be monitored to see if they are being used as intended and to measure whether the desired results are being obtained. Even the best system of universal, positive behavioral supports is apt to lose its effectiveness over time if one of the defining characteristics is not consistently implemented across school environments.

- **Linkage to Improved Student Results**

Administrators and teachers must ensure that a system of universal positive behavioral supports is aligned with the school's plan for improved student results. This outcome can most easily be achieved by making informal strategies, supports, and rewards a subset of a larger, more formal recognition/reward program. For example, a school or class award (a formal reward) could be given to the student who receives the greatest number of recognition points (an informal reward) for assisting peers in academic skill development, which results in improved academic performance during a specified timeframe.

- **Reinforcement**

Under conditions of positive reinforcement, the response produces a consequence that results in increased frequency of the response. By understanding what drives human behavior, conditions can be created to encourage desired behaviors.

When tailoring positive supports for the entire school community, a targeted group of students, or an individual student, the team should consider the students' strengths and use strategies and supports that have previously been used as reinforcements for the students and have proved effective.

Below are critical components of effective reinforcement strategies.

- **Personal** Those responsible for delivering supports and reinforcements must do so in a personal way. Calling the student by name is one important criterion.
- **Sincere** Meaning what you say is important.
- **Specific** The student must know exactly why he or she received a particular reinforcement. The student has to know why he or she is being praised. Behavior is a complex, ongoing chain of events. The contingency between a behavior and the consequence may not be clear. Pinpoint exactly the behavior you are approving.
- **Immediate** Try to catch the student in the act of being good. Reinforce behavior while the student is doing what you want. Do not wait until the end of class, the activity, or the end of the day to give specific recognition to the student for his or her actions. The longer the time between the completion of a behavior and the delivery of a reinforcing consequence, the less effective the reinforcement will be.
- **Frequent** A student's desired replacement behavior may need to be reinforced by numerous repeated approximations until the student is able to consistently demonstrate the expected results. The challenge is to create an environment and conditions that encourage the student and staff to collaborate because they want to, not because they have to.

- **Effective Support Systems are SMART:**

The following conditions should be addressed when developing positive behavioral interventions and supports.

- **Specific** Supports focus on the desired behaviors and provide the student with a clear "line of sight" between action and result.
- **Meaningful** The interventions and supports are personalized for the student, taking into consideration the student's strength and needs, as well as a

replacement behavior that serves the same function and is considered “worth the effort” to the student.

- **Achievable** The replacement behavior is viewed as achievable, but not easy.
- **Reliable** The rewards are provided “contingent” on taking an action or achieving a result.
- **Timely** Interventions and supports are provided consistently and as timely as necessary to reinforce the desired behaviors to achieve desired results.

# Part II: Functional Behavioral Assessment

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## **Overview**

A Functional Behavioral Assessment (FBA) is a collaborative, student-centered process for gathering information that reliably predicts the conditions and/or circumstances concerning why a student is exhibiting an inappropriate behavior. A functional assessment is an appraisal of a student's behavior of concern to determine the function of that behavior for the student.

A functional behavior assessment is a comprehensive evaluation of what sustains a student's maladaptive behavior. The process is essentially open-ended, and does not solely utilize standardized questionnaires or skill tests. Student records and existing data must be reviewed, instructional team members and caregivers interviewed, and substantial evidence compiled in order to present a convincing explanation of the factors influencing the target behavior. The IEP team uses the information gathered from the FBA to help determine what supports the student may need.

The goal of an FBA is to identify variables that make the target behavior more or less likely to occur. In essence, a functional behavior assessment is an exercise in correlation, and involves multiple processes, including:

- Precisely defining the target behavior.
- Selecting and devising a defensible data collection method.
- Collecting sufficient data to determine probable causes and functions of the target behavior.
- Summarizing and analyzing data.
- Producing a report that describes those factors likely responsible for the target behavior, and suggests ways to influence the behavior.

A well-constructed FBA will identify physiological, cognitive, social, familial, affective, and environmental factors (often a combination of these) that initiate, prevent, sustain, or terminate the target behavior. Thus, a functional behavior assessment will:

- Help us understand and explain a student's problem behavior.
- Assist us in developing effective intervention strategies.
- Improve our capacity to teach and the student's ability to learn.

## **Functions of Behavior**

Identifying the functions of a student's behavior provides direct explanations of how a particular behavior "works" for an individual student in a given context. Behaviors serve to:

- Gain something (positive reinforcement) such as social attention, sensory stimulation, peer status, peer attention, or tangible rewards;
- Escape or avoid (negative reinforcement) someone or something. This function typically results in a behavior that allows the student to terminate

- or postpone an event. Students may throw tantrums, or display physical or verbal aggression; and/or
- Control events such as instructional activities.

### Synonyms for the term “functional” include useful & efficient

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According to Webster’s dictionary “function,” as an adjective is defined as “practical, operational, or having no organic cause.” Synonyms for the term functional include useful, handy, purposeful, and efficient. Any behavior of an individual is typically characterized as being a practical and efficient act to accomplish a desired purpose.

To change the behavior of concern with an acceptable replacement behavior, it is necessary to determine:

- The purpose or function of the student’s behavior?
- What about the behavior makes the student consider it a practical and efficient way to achieve the desired result?
- What result the student expected to achieve as a result of his or her actions?

Answers to these questions will assist in determining the function of the student’s behavior. The responses to these questions should never be assumptions. Each question needs to be answered using clear objective descriptions of the actions that occurred and the circumstances surrounding the behavior of concern. The goal is to identify factors that can be changed or influenced so that undesired behavior is discouraged and desired behavior is encouraged or taught. Thus, the function can be satisfied, but met by behaviors that are more acceptable or appropriate.

For example, there are many different behaviors that will gain the attention of others. A student can raise his or her arm in class to get the attention of the teacher, or can throw a balled up piece of paper at the blackboard. While one behavior is judged to be socially appropriate and the other disruptive; both serve the same function of gaining attention.

### The behavioral function may vary depending upon the context in which the behavior occurs.

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In many instances, a single behavior can serve more than one function. Consider the aggressive behavior of a student with severely limited language capabilities. An instance of physical aggression may simultaneously function to exert control, end an undesired activity, and communicate displeasure with the activity or situation at hand. In such an instance, prioritization of the function is required and is an especially difficult process when working with functionally non-verbal students.

Similarly, a single behavior may be simultaneously influenced by multiple factors. The aggressive student may be uncomfortable or ill, may have had an argument with a family member or peer, may be confused by the classroom work requirements, may lack the prerequisite skills to complete an activity, and may lack the capacity to express needs in more acceptable ways.

The behavioral function may vary depending upon the context in which the behavior occurs. Also, multiple behaviors may accomplish similar functions or different functions in different contexts. Of course, positive interventions that are appropriate for one student may differ for another student depending upon the function of the specific behavior.

Behaviors are purposeful and serve to meet a need. Behaviors change from environment to environment and are maintained by consequences that reinforce the behavior. When a student is exhibiting a behavior that is considered challenging, troublesome, or inappropriate, the behavior may be inadvertently maintained because the interventions being implemented are not addressing the root cause or function of that particular behavior for the student.

In addition, individuals who work with a student may have different levels of behavioral tolerance. One person may perceive a behavior as troublesome, while another may not. The functional behavior assessment does not focus on changing the function of behavior, but rather the behavior itself.

## **Conducting a Functional Behavioral Assessment**

### **When a student displays inappropriate behavior...**

When a student displays behaviors that result in his/her inability to participate in or benefit from their educational experience, a functional behavior assessment should be considered. In the majority of cases, the behavior of interest has occurred as an isolated instance. When an infrequent behavior manifests for the first time, schools typically follow existing and typical classroom or school-wide intervention strategies. If these strategies are effective in resolving the target behavior, an FBA is typically not required, although can still be useful.

There are specific situations when a student's behavior immediately suggests the need for an FBA, such as when:

- Standard school or classroom management strategies have been ineffective;
- The behavior occurs with a high level of intensity and/or frequency;
- The student is at risk of harm to himself/herself or to others;
- The student is at risk of exclusion or suspension; and
- A more restrictive placement or a more intrusive intervention is being considered.

When a student displays inappropriate behavior, an assessment of that behavior should involve the collection of objective, observable data and information concerning that behavior across settings from a variety of individuals, including educators, parents, and the student. It is most critical that the behavior is described in objective terms. The data obtained should clearly and objectively describe the events leading to the behavior, the behavior itself, and the consequences in response to the behavior. In order to change the behavior, supports and intervention strategies used to teach the student an appropriate replacement behavior must satisfy the same function for the student.

Because all behaviors serve a function, such as the need to gain something, avoid something, or control events, the behaviors students engage in are typically attributable to:

- Skill deficits;
- Performance deficits;

- Environmental factors;
- Interpersonal factors;
- A failure to self-regulate; and
- An instructional “mismatch.”

Although, IDEA does not require an FBA until a student with a disability has been removed for 10 school days or its cumulative equivalent in a school year, it is recommended that school personnel engage in the FBA process whenever a troublesome behavior is of concern to school personnel in order to enable professionals to develop and implement appropriate supports and services in a BIP.

In the course of conducting the FBA, a wide range of information is gathered, and must be incorporated efficiently into a readable report. This may include:

- Information about the physical environment in which the behavior occurs.
- Meaningful reinforcements or consequences related to the behavior.
- Whether the deficit is a skill deficit or a performance deficit.
- When the student most likely to engage in the problem behavior.
- Specific events or factors that appear to be contribute to the target behavior.
- Under what circumstances the student is most successful and therefore less likely to engage in the target behavior.
- The cognitive capability of the student to understand the behavioral expectations.
- The executive capacity of the student to self-regulate their own emotions and behaviors.
- External supports that appear to help the student.
- Whether the student has or can acquire alternative behaviors that are more acceptable compared to the target behavior.
- Social, biological and developmental factors that may be difficult to observe but may have important or powerful influences over the target behavior.

The  
comprehensive  
nature of an  
FBA requires  
a substantial  
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of time  
by staff.

The FBA includes a description of the behavior and the context in which it is observed. This information is used to guide the development of a BIP. As such, an FBA should be conducted whenever a student’s behavior is difficult to understand and/or a student’s BIP needs to developed or revised.

The comprehensive nature of an FBA requires a substantial investment of time by staff. Furthermore, the exact amount of time required will vary, depending on the nature of the target behavior and the complexity of its function. Once the function has been identified and the conditions which support the occurrence of the behavior have been described, then the intervention plan can designed to help ameliorate the problem.

An FBA should include the following steps:

- A collection of data;
- An hypothesis for the behavior; and
- An assessment of whether or not the hypothesis is valid for the student.



## Step 1: Collect Information

Data collection is needed to:

- Identify the behavior; and
- Define that behavior in specific and objective terms.

The IEP team must first generate a list of all of the student's challenging behaviors. In order to narrow the team's focus, the target behavior(s) must be identified. In doing so, each behavior must be defined in observable and measurable terms within the context in which the behavior occurs. The description of the context of the target behavior should specifically address when, where, with whom, and under what conditions. Often individuals attempt to simultaneously change all of a student's challenging behaviors.

In fact, the collection of objective data may uncover particular circumstances that, if eliminated, may result in immediate improvement and may not require further interventions.

The IEP team  
should be  
looking for  
answers to  
the following:

To identify the target behavior, the assessor(s) and the IEP team should be looking for answers to the following:

- When is the behavior most likely to occur?
- What specific events or factors contribute to the student's behavior?
- What function(s) does the behavior serve for the student?
- What is the student attempting to communicate through this behavior?
- Under what circumstances does the student NOT engage in the target behavior or engages in the target behavior with less frequency?
- Are other conditions or factors contributing to the target behavior?

This information may enable the assessor(s) and the IEP team to identify common linkages or patterns to setting events or overall behavioral topography that may respond positively to immediate interventions, such as a change in the student's environment or routine. These changes may decrease or eliminate the target behavior. The student's IEP team identifies specific changes needed to test or monitor the efficacy of the intervention. For consistency across all settings, school staff and family members should be informed of the changes.

Determining setting events or behavioral topography that may influence a target behavior is accomplished through indirect observations and direct observations. Indirect observations include informal conversations, questionnaires, checklists, and structured interviews with key persons who have contact with the student and can offer insights into the contexts or conditions under which the behavior occurs. Direct observation is the most reliable and valid procedure for collecting information because observers watch the behaviors as they are occurring and note the environmental events (environmental factors, antecedent and consequence events) associated with the behaviors. Data collection should include specific information regarding the environment, events, and activities immediately prior to and following the behavior.

**Step 2: Propose a hypothesis of the student's behavior**

The hypothesis should explain the relationship between an identified behavior and general conditions that appear to predict and maintain that behavior. The hypothesis should describe the relationship among an antecedent, behavior, and consequence and specifically describe the suspected function of that behavior for the student.

A complete hypothesis includes:

- An objective description of the behavior;
- Possible setting events and antecedents that trigger the behavior; and
- Possible consequences that maintain the behavior.

**Step 3: Validate the hypothesis**

Validation of a hypothesis involves collecting additional information about the conditions under which the behavior does and does not occur, and demonstrating that occurrences of the behavior and the presence of these conditions are related and predictable. Typically this entails systematic observations of a student to identify and confirm patterns of predictable behaviors in order to create an effective intervention plan for changing the behavior. If the hypothesis cannot be confirmed during the validation phase, the hypothesis must be reformulated and revalidated.

# Part III: Behavioral Intervention Plans

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## **Overview**

Effective behavior interventions are data-driven, planned, and based on an assessment of the behavior. Undertaking an “intervention” without an assessment or a plan can lead to an increase in inappropriate behaviors. A Behavioral Intervention Plan (BIP) is individualized for the student, designed for the settings where the behavior occurs, and implemented consistently across those settings. Monitoring and revision of the BIP are essential. The result of the BIP is to replace the identified inappropriate behavior with an acceptable behavior.

## **Developing a BIP**

After collecting and analyzing sufficient information to identify the likely function of the student's behavior, the IEP team must develop (or revise) the student's positive behavioral intervention plan. The behavior intervention plan process should be integrated, as appropriate, throughout the process of developing, reviewing, and, if necessary, revising a student's IEP.

The behavioral intervention plan will include, when appropriate:

1. Positive behavioral interventions, strategies, and supports;
2. Program modifications; and
3. Supplementary aids and services that may be required to address the problem behavior.

Depending upon the identified features of a behavior, such as its frequency, duration and topography, the intervention process may need to begin with a series of frequent behavioral approximations that will serve the same function for the student while more extensive modifications are developed. With behavioral approximations, a student receives reinforcement for successful small intermediate steps along a continuum.

This provides school personnel time to make any needed environmental or curricular modifications to support the desired replacement behavior.

It is important to select replacement behaviors that require less effort to display than the current behavior. A replacement behavior that takes more effort to display than the existing behavior is unlikely to occur. The goal is to carefully select and directly teach replacement responses that are easier to do than the current behavior and serve the same function. If a replacement behavior does not meet the student's need, the replacement behavior will not persist.

Even after appropriate replacement behaviors are identified and the BIP has facilitated the student's success in using an appropriate replacement behavior, events will occur that may hasten the return of the inappropriate behavior. To increase the likelihood of a student exhibiting the desired replacement behavior in settings formerly associated with the identified inappropriate behavior, modifications to these settings may be needed.

## **Elements of a BIP**

When an IEP team has determined that a BIP is necessary, the team members generally consider the data gathered from the FBA in order to develop the BIP.

The BIP should include strategies to:

- (a) Teach the student more acceptable ways to gain what he or she wants;
- (b) Decrease future occurrences of the misbehavior; and
- (c) Address any repeated episodes of the misbehavior.

Teach the student  
a more acceptable  
behavior to replace  
an inappropriate  
behavior...

The resulting BIP should be designed to address the three elements listed above. The sample forms provided in Appendices A, B and C of this document can help guide IEP teams through the process of conducting an FBA and writing and implementing a positive BIP. Readers are encouraged to refer to these forms as they read through the following sections.

Most BIPs are designed to teach the student a more acceptable behavior to replace an inappropriate behavior that serves the same function (e.g., ways to gain peer approval through positive social interactions; ways to seek teacher attention through non-verbal signals).

Since most BIPs will require multiple intervention options rather than a single intervention, IEP teams may want to consider the following when designing strategies, and supports:

- How to teach the student an appropriate replacement behavior;
- How to alter or neutralize any known setting events;
- How to alter or manipulate the events that typically occur before the target behavior (antecedents);
- How to alter or manipulate the events that typically occur after the target behavior (consequences) to positively reinforce the appropriate replacement behavior; and
- How personnel are to respond consistently to occurrences of target and replacement behaviors across settings.

## **Monitoring & Modifying the BIP**

To monitor the BIP, the IEP team should monitor the fidelity of implementation. That is, the team should determine how to monitor the consistency and accuracy with which the intervention plan is implemented. Monitoring implementation of the BIP will be facilitated if the IEP team precisely describes the various components of the intervention plan, and specifically identifies the individuals responsible for implementing each component. A "self-check" or checklist can then be created to correspond with each component.

Another option is to develop written scripts or lists that detail the responsibilities of each individual who is implementing the plan. The script might specify both verbal and non-verbal responses organized according to setting events, antecedent events, and consequent events. Monitoring should occur about every three to five days in order to assess the fidelity with which the plan is being implemented.

To be meaningful, the plan must be reviewed at least annually; however, the plan should be reevaluated whenever any member of the student's IEP team (parents or school staff) determines that a review is necessary. Circumstances that may warrant such a review include:

- The student has reached his or her behavioral goals and objectives and new goals and objectives need to be established;
- The "situation" has changed and the interventions no longer address the current needs of the student;
- There is a change in placement; or
- It is clear that the original behavioral intervention plan is not producing positive changes in the student's behavior.

# Part IV: Procedures Related to Disciplinary Removal of Students with Disabilities

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## Overview

The reauthorization of the IDEA included changes in the discipline procedures for students with disabilities. This document will describe the discipline requirements included in IDEA and the Code of Maryland Regulations (COMAR).

In order for students to be successful in school, it is critical that they remain in school. Research indicates that students who are removed from school for disciplinary reasons are much less likely to be successful in school because they are denied access to instructional opportunities, and, as a result, fall behind their peers in achievement. The goal of disciplinary interventions is to use appropriate, positive supports and strategies to change the student's behavior. Removal of the student from the educational program rarely results in fulfillment of this goal. Given the impact on student achievement and behavior, removal of students should always be considered the action of last resort.

Removal  
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have been tried.

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The regulatory requirements for discipline of students with disabilities are one element of a school's process for providing a safe environment for all students. Removal should occur only after a variety of proactive approaches have been tried and removal is the only way to provide a safe school environment.

A system of structured, positive supports may include a school-wide behavioral system for all students, specialized group interventions for at-risk students and specialized individual interventions for students with intense or chronic behavioral problems. Conducting an FBA and implementing a BIP provides an individualized framework for helping students remain in school. Interventions based information gathered from parents, educators, and students are most effective.

There are circumstances when removal or alternative educational placement is the only remaining option for school staff. This document will guide the reader through the steps that must be followed prior to removing a student with a disability or placing a student with a disability in an alternative educational setting.

## **Removal Process**

Many of the procedures regarding discipline of students with disabilities are dependent on the length of a disciplinary removal. Schools have more flexibility when a student with a disability is removed for less than ten days. However, there are a number of requirements school staff must follow when a student is removed for more than ten consecutive or cumulative days.

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### **An Important Note:**

The regulatory requirements discussed in this document apply to students with disabilities. For the sake of efficiency, occasionally only the word “student” is used, which in the context of this part of the document means a “student with a disability.” Another important note: Throughout this part of the document, there are references to actions by the IEP team and to meetings that determine which actions will be taken by the team. The notice of an IEP meeting must be provided to parents [COMAR 13A.05.01.07D(2)(a)].

Due to the serious nature of disciplinary removals and the expedited manner in which meetings are held for these issues, schools do not have to wait ten days after the notice of the meeting is provided to parents to actually meet [COMAR 13A.05.01.07D(2)]. In fact, IEP teams are encouraged to meet as soon as possible, so that a proactive approach can be taken regarding the disciplinary issues and relevant supportive services can quickly be put in place.

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When school personnel are considering whether to change the placement of a student with a disability to an alternative education setting, due to a violation of a code of conduct, school personnel may consider any unique circumstances on a case by case basis. What constitutes “unique circumstances” is best determined by local school personnel who know the individual student and all the facts and circumstances regarding a student’s behavior. Factors such as a student’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a student with a disability prior to the violation of a school code may be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a student with a disability. The consideration of unique circumstances does not authorize school personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with federal and State regulations. Considerations regarding a change in placement must be consistent with all other requirements within 34 C.F.R. §300.530 AND COMAR 13A.08.03.

[20 U.S.C. §1415(k)(1); 34 C.F.R. §300.530(a); Federal Register Vol. 71, No. 156, August 14, 2006, page 46714; COMAR 13A.05.08.03.03B(2)]

## **Removals for Not More Than 10 Days**

A school principal may remove a student with a disability from his or her current placement for not more than ten (10) consecutive school days for any violation of school rules to the same extent he or she removes students without disabilities. [34 C.F.R. §300.530(b); COMAR 13A.08.03.03A(1)]. Services do not have to be provided to students with disabilities during the first 10 days of removal if services are not provided to students without disabilities [COMAR 13A.08.03.03A(3)]. Whenever a school principal determines that a student with a disability needs to be removed from his or her current

placement for a violation of a school rule, the principal must notify the student's parents of the disciplinary action on the date the decision is made to remove the student and provide the parents with a copy of the "Parental Rights – Procedural Safeguards Notice" [COMAR 13A.08.03.04].

In accordance with the rules and regulations of the local board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal. The student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period. At or before the conference, the student shall receive oral or written notice of the charges against him or her.

**If the principal  
finds that  
an extended  
suspension  
or expulsion  
is warranted...**

If the student denies the charges, the student has the right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story. A student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school, if the notice and conference required by this subsection is provided as soon as possible.

If the principal finds that an extended suspension or expulsion is warranted, the principal immediately shall report the matter in writing to the local superintendent [COMAR 13A.08.01.11C(2)].

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***In-school suspension***

COMAR defines in-school suspension as "removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal" [COMAR 13A.08.01.11B(4)]. An in-school suspension is not considered a day of suspension as long as the student is afforded the opportunity to continue to:

- (i) Appropriately progress in the general curriculum;
- (ii) Receive the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;
- (iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and
- (iv) Participate with peers as they would in their current education program to the extent appropriate.

A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective. The school principal shall provide the student's parents with written notification of the in-school suspension action taken by the school. After 10 days of cumulative in-school suspension, the student, the student's parents or guardian, and the principal shall confer. The student's school of current enrollment shall make provision for the student's education during the period of in-school suspension.



Local school systems shall develop policies pertaining to a student's participation in extracurricular activities if the student receives an in-school suspension. Local school systems shall develop and implement a behavioral program of positive interventions to address the causes of misbehavior as part of the in-school suspension.

### **Removals for *More Than 10 Days***

A student with a disability may be removed from the student's current placement for up to ten consecutive school days for each incident of misconduct in a school year if the cumulative effect of such removals does not constitute a change in placement [COMAR 13A.08.03.03B(1)].

For each period of removal after the student has been removed for a cumulative equivalent of ten school days in one school year, school personnel are to consult with at least one of the student's teachers to determine what services to provide the student to enable the student to progress in the general curriculum and advance toward achieving the goals of his or her IEP [COMAR 13A.08.03.03B(3)].

A student with a disability may be removed for more than 10 consecutive school days for a violation of school rules, to the same extent removal is applied to students without disabilities, if the student's IEP team determines the behavior subject to the removal is not a manifestation of the student's disability. If the violation of school rules is not a manifestation of the student's disability, the student may be removed, but the student must continue to receive educational services in another setting, and receive, as appropriate, a functional behavioral assessment (FBA) and behavioral intervention plan (BIP), or modifications to an existing BIP designed to address the behavioral violation and to prevent its recurrence [COMAR 13A.08.03.03B(4) – (5)].

### **Change in Placement**

A change of placement occurs when a student with a disability is:

- Removed from the student's current placement for more than ten consecutive school days; or
- Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than ten school days in a school year" [COMAR 13A.08.03.05A].

In order to determine whether a series of removals constitutes a pattern, the IEP team must consider three factors:

1. The length of each removal;
2. The total amount of time the student is removed; and
3. The amount of time between removals [COMAR 13A.08.03.05B].

Each time a student is removed from his or her educational setting for a violation of a student code of conduct, the school staff must document all removals in the student's record. Therefore, the record of removals, regardless of the manifestation determination, is not to be expunged. This practice allows a school to maintain an accurate record that may impact future decisions regarding series of removals and patterns of removal. During any removal after the first ten days, or its cumulative equivalent in a school year, the public agency is to provide services to enable the student to progress in the general curriculum and advance toward achieving the goals of his or her IEP [COMAR 13A.08.03.05C and .03B].

## **Behavioral Assessment**

The student's IEP team must meet within 10 business days of any removal after a student has been removed for the cumulative equivalent of ten school days in a school year, or any removal that constitutes a change in placement, in order to develop a plan for conducting an FBA or to review an existing BIP [COMAR 13A.08.03.07A]. IEP teams are strongly encouraged to meet as soon as possible to review the removal and to complete or revise as appropriate an FBA and BIP so that proactive approaches may be implemented to address the issues that led to the removal.

The school **must develop a plan for completing an FBA** if the IEP team did not:

1. Conduct an FBA to address the behavior that led to the disciplinary action, before the behavior occurred; and
2. Implement a BIP to address the behavior that led to the disciplinary action, before the behavior occurred.

Once the FBA is completed, the IEP team is to meet again to develop or revise, as appropriate, behavioral interventions that address the behavior that led to the disciplinary action and implement a BIP that includes these interventions [COMAR 13A.08.03.07B].

### **The IEP team must review the BIP.**

If there is a BIP for the student, the IEP team must **review the BIP** to determine if the BIP:

1. Addresses the behavior that led to the disciplinary action; and
2. Was implemented appropriately prior to the behavior that led to the disciplinary action.

The IEP team is to decide if the BIP needs to be revised or if the implementation of the BIP needs to be modified in order to better address the behavior that led to the disciplinary action [COMAR 13A.08.03.07C].

For subsequent disciplinary removals of a student with a disability, beyond the first 10 school days of removal during the school year, the IEP team shall meet to review the student's FBA and BIP [COMAR 13A.08.03.07D].

IEP teams may determine whether the student's behavior was a manifestation of the student's disability at the same meeting in which they consider the student's FBA and BIP, particularly since the FBA and BIP have an impact on the manifestation determination.

## **Manifestation Determination**

The student's IEP team is responsible for meeting and making manifestation determinations for each removal:

1. Beyond 10 school days in a school year;
2. That constitutes a change of placement; or
3. To an interim alternative educational setting (IAES) if, while at school, on school premises, or at a school function under the jurisdiction of the State, or a public agency the student:

- a) Carries or possesses a weapon;
- b) Knowingly possesses or uses an illegal drug;
- c) Sells or solicits the sale of a controlled substance; or
- d) Inflicts serious bodily injury on another person  
[COMAR 13A.08.03.08A; COMAR 13A.08.03.06].

## The IEP team must meet within 10 days of the removal.

The student's IEP team must meet within 10 school days of the disciplinary removal in order to make the manifestation determination [COMAR 13A.08.03.08B]. At this meeting, the IEP team is to consider all relevant information in the student's educational record, including evaluations, any teacher observations, information supplied by parents, and the student's IEP [COMAR 13A.08.03.08C].

In order to determine that the behavior is a manifestation of the disability, the IEP team must determine that the student's behavior was:

1. Caused by, or had a direct and substantial relationship to the student's disability; or
2. The direct result of the public agency's failure to implement the student's IEP.

If the IEP team finds that either clause one or two above applies to the student's behavior they must conclude that the behavior was a manifestation of the disability [20 U.S.C. §1415(k)(1)(E)(ii); 34 C.F.R. §300.530(e)(2); COMAR 13A.08.03.08D]. If the student's IEP team determines that the behavior that led to the removal is a manifestation of the student's disability, the IEP team must do the following:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan if the public agency had not conducted such assessments prior to a disciplinary removal;
2. Review the student's behavioral intervention plan and modify it, if necessary, to address the behavior; and
3. Return the student to the student's placement from which the student was removed unless the parent and the public agency agree to a change of placement as part of a modification of the student's behavioral intervention plan [COMAR 13A.08.03.07C;.08G].

To implement the services identified on the student's IEP, the student must be in a placement. When the IEP team determines that the behavior was not a manifestation of the student's disability, the designated school administrator may discipline the student with a disability in the same manner he/she disciplines a student without a disability.

Regardless of the decision concerning the manifestation determination, the IEP team must determine the services that will be provided to enable the student to progress in the general curriculum and advance toward achieving the goals of the IEP [34 C.F.R. §300.530(e); COMAR 13A.08.03.03B(2) and 13A.08.03.08G]. Again, a student's IEP teams may make a manifestation determination at the same meeting that they consider the student's FBA and BIP.

IEP teams are strongly encouraged to meet as soon as possible to plan for an FBA or to review the FBA and BIP, to make the manifestation determination, to put the appropriate educational services in place and to take a proactive approach to dealing with the issues which led to the student's removal by putting in place appropriate supports. If a student is removed, the student is not to receive his/her educational services in his/her home [COMAR 13A.05.01.10C(6)(b)].

### **Interim Alternative Educational Setting**

In special circumstances, the school has the option of removing a student and placing that student in an Interim Alternative Educational Setting (IAES) for up to 45 school days. These special circumstances, as described in COMAR 13A.08.03.06A, are applicable if, while at school, on school premises, or a school function under the jurisdiction of a State or local public agency, the student:

1. Carries or possesses a weapon;
2. Knowingly possesses or uses an illegal drug(s);
3. Sells or solicits the sale of a controlled dangerous substance(s); or
4. Inflicts serious bodily injury upon another individual. Serious bodily injury is defined as involving "a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty"

[20 U.S.C. §1415(k)(1)(G); 34 C.F.R. §300.530(g); COMAR 13A.08.03.06A].

The IEP team decides which IAES is appropriate [COMAR 13A.08.03.06B]. When these special circumstances are considered, the student's IEP team must follow the procedures described previously for FBA, BIP, and manifestation determinations. The IAES must allow the student to:

1. Progress in the general curriculum;
2. Receive the services and modifications included in the IEP;
3. Meet the goals of the IEP; and
4. Receive the services and modifications designed to address the behavior that led to the IAES placement to prevent its recurrence.

[COMAR 13A.08.03.06C].

There may be circumstances when it is appropriate for a school administrator to request that an Administrative Law Judge (ALJ) place a student in an IAES. If the school administrator believes the student's behavior is substantially likely to cause harm to the student or others, there is a two-step process for removing a student for up to 45 school days.

## Two-step process for removing a student for up to 45 school days.

### **Step One:**

The public agency may file a due process hearing complaint to seek removal of the student to an IAES. If the public agency maintains that it is dangerous for the student to be in his or her current placement during the pendency of the due process hearing, the public agency may request an expedited due process hearing. In this situation, the public agency may not place the student directly into the IAES until the school obtains an order from the ALJ.

The school is to be prepared to prove beyond a preponderance of the evidence that the student's behavior is likely to cause harm to the student or others [COMAR13A.08.03.06E and F]. The public agency should be prepared to provide documentation of the danger the student poses, the efforts made to minimize the risk of harm, the appropriateness of the proposed placement and the continued danger posed by the student.

### **Step Two**

An ALJ may order the removal of a student to an IAES as the result of a due process hearing if the ALJ believes that maintaining the student in the current placement is substantially likely to result in injury to the student or to others. The ALJ is to consider the efforts made to minimize the risk of harm in the current placement, including the use of supplemental aids and services, the appropriateness of the current placement and the appropriateness of the proposed IAES for the student [COMAR 13A.08.03.06G and H].

Even if there is a determination that the behavior which led to the removal to an IAES is a manifestation of the student's disability, the student may remain in the IAES for no more than 45 school days or, if the parents appeal, until a decision by the ALJ, unless the public agency and the parents agree otherwise [COMAR 13A.08.03.09C].

When a student commits an offense which requires a 45 school day removal, that student will remain in the IAES for 45 school days to give the school time to closely examine the issues that led to the student's behavior, to work with the student to put in place strategies that will address the student's behavior, to closely examine the school's policies and procedures in light of the student's action and, potentially, to revise the school's policies to enhance the protection and safety of all students and staff.

## **Home and Hospital Teaching**

Home and hospital teaching is **NOT** [emphasis added] an alternative placement for students who demonstrate challenging behaviors. Only "public school students who are unable to participate in their school of enrollment due to a physical or emotional condition" may receive instruction at home or in the hospital [COMAR 13A.03.05.01; 13A.05.01.10C(5)]. A physician, psychiatrist, or psychologist must verify the physical or emotional condition and verify that the current "condition prevents the student from participating in the student's school of enrollment" [COMAR 13A.03.05.04]. A student who is disciplinarily removed from his/her current placement in accordance with COMAR 13A.08.03 and 34 CFR §§300.530–300.536 is required to continue to receive services, but may **NOT** [emphasis added] receive his or her educational services at home [COMAR 13A.05.01.10C(6)(b)].

## **Parental Right to Appeal**

Parents may file a due process complaint if they disagree with a decision regarding disciplinary removal, manifestation determination, or the IAES. The school system is to arrange for an expedited due process hearing in response to a parent's appeal [COMAR 13A.08.03.09A and B].

When a student is removed for more than ten school days, there is a determination the behavior is not a manifestation of the student's disability, and the student's parent disagrees with the manifestation determination or the IAES, the student remains in the alternative education setting until an ALJ makes a decision or until the end of the removal period, whichever comes first, unless the parent and the public agency agree otherwise, [20 U.S.C. §1415(k)(4)(A); 34 C.F.R. §300.530(f)(2); COMAR 13A.08.03.09C]. An expedited due process hearing shall occur within 20 school days from the date the due process complaint was filed. A determination of the hearing must be made within 10 school days [20 U.S.C. §1415(k)(4)(B); 34 C.F.R. §300.532(c); Education Article §8-413, Annotated Code of Maryland; COMAR 13A.08.03.09B].

If the school system proposes to change the student's placement at the end of the IAES and the parents disagree with the proposed placement, the student is to return to his/her school placement prior to the removal to the IAES [COMAR 13A.08.03.09D].

## **Data Collection Related to Discipline**

Federal  
law  
requires  
MSDE  
to annually  
collect and  
report to  
the U.S.  
Department  
of Education  
and the  
public.

Data must be collected and examined to determine if a significant disproportionate representation of students with disabilities are removed based on race and ethnicity is occurring in the State and the public agencies with respect to the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. In-school suspensions are to be included with suspension data. The data relative to suspensions and expulsions is also to be disaggregated by race/ethnicity. Additionally, data must be reported on the number of hearings under 20 U.S.C. §1415(k) and the number of changes in placement ordered as a result of those hearings.

Federal law requires MSDE to annually collect and report to the U.S. Department of Education and the public the number and percentage of students with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability, in each of the following categories:

- Removed to an interim alternative educational setting under 20 U.S.C. §1415(k)(1);
- The acts or items precipitating those removals;
- The number of students with disabilities who are subject to long-term suspensions or expulsions [20 U.S.C. §1418(a)(1)(A)(v)].

Federal law also requires MSDE to collect and examine data to determine if significant disproportionate representation of students

with disabilities by disability and race/ethnicity is occurring in the State and local school systems with respect to the incidence, duration, and type of disciplinary action, including suspensions and expulsions [20 U.S.C. §1418(d)(1)(C)].

MSDE is also to collect data annually on the following:

- The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more [20 U.S.C. §1418 (a)(1)(D)].
- The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled [20 U.S.C. §1418 (a)(1)(E)].

In accordance with 20 U.S.C. §1418(d)(2), if significantly disproportionate representation with respect to the identification of students as students with disabilities, the placement in particular educational settings, or the disciplinary removal of students is identified, MSDE must:

- Provide for the review and, if appropriate, the revision of a local school system's policies, procedures, and practices to ensure they comply with the requirements of IDEA 2004;
- Require any local school system with data to indicate significantly disproportionate identification, placement in particular education settings, or disciplinary removal to reserve the maximum amount of funds (15%) under 20 U.S.C. §1413(f) to provide comprehensive coordinated early intervening services, particularly to serve children who are significantly over or under identified.
- Require the local school system to report publicly on the revision of policies, procedures, and practices.

## **Students Not Yet Eligible for Special Education**

A public agency must apply the procedural safeguards set out in IDEA to a student who is not yet eligible for special education if the public agency has knowledge of a student's disability prior to the behavior that led to the disciplinary action [COMAR 13A.08.03.10A]. The public agency will be considered to have knowledge of a disability if any of the following situations exist prior to the behavior that led to the disciplinary action:

- The parent of the student expressed concern in writing to supervisory or administrative personnel of the public agency or a teacher of the student that the student is in need of special education and related services.
- The parents requested an evaluation of the student for the purpose of determining if the student has a disability and requires special education services; or
- The student's teacher or public agency personnel expressed specific concern about a pattern of behavior demonstrated by the student directly to the public agency director of special education or other public agency supervisory personnel

[20 U.S.C. §1415(k)(5); 34 C.F.R. §300.534(b)(3); COMAR 13A.08.03.10B(3)].



A school system **will not** be determined to have knowledge of a disability, if:

- The public agency conducted an evaluation and determined that the student was not a student with a disability, or determined an evaluation was not necessary;
- The parent does not allow an evaluation of the student; or
- The parent refuses or revokes special education and related services.

Written notice must be provided to the parents that describes what the public agency proposed or refuses to do in accordance with 34 C.F.R. §300.503. A public agency may apply the same disciplinary measures applied to students without disabilities if the school system does not have knowledge that the student has a disability before taking disciplinary action [20 U.S.C. §1415(k)(5)(C); 34 C.F.R. §300.534(d); COMAR 13A.08.03.10D].

If the public agency receives a written referral for an evaluation during the period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. The student will remain in the educational placement determined appropriate by public agency personnel, including suspension or expulsion without educational services, until the evaluation is completed. If as a result of the evaluation the IEP team determines the student is a student with a disability, the public agency shall provide special education and related services. [20 U.S.C. §1415(k)(5)(D)(ii); 34 C.F.R. §300.534(d)(2); COMAR 13A.08.03.10E – G].

## **Referral to Law Enforcement**

A public agency shall report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law. The public agency shall ensure copies of the student's special education and disciplinary records are transmitted to the authorities to whom the public agency reported the crime, to the extent permitted, in accordance with the Family Educational Rights and Privacy Act (FERPA) [20 U.S.C. §1415(k)(6) and §1232(g); 34 C.F.R. §99; 34 C.F.R. §300.535; COMAR 13A.08.02; 13A.08.03.11].



# Part V: Exclusion, Restraint, and Seclusion

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## **Overview**

In 2002, the Maryland General Assembly enacted a law requiring MSDE to convene a taskforce to address exclusion restraint, and seclusion of students in local school systems and nonpublic special education facilities throughout Maryland. Regulations were promulgated and the implementation of these regulations was effective beginning September 2003 [COMAR 13A.08.04]. The State Board of Education approved amendments to these regulations on August 25, 2009.

## **Frequently Asked Questions**

### ***Do the State regulations define "behavior intervention plan?"***

Yes. In State regulations, Maryland defines a behavioral intervention plan as "a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports." The proactive nature of the plan and its emphasis on positive interventions, strategies, and supports will be discussed in the next section of this document.

### ***What is the definition of "exclusion" and how does it differ from "seclusion?"***

The regulations define "exclusion" as the "removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support." "Seclusion" is the "confinement of a student alone in a room from which the student is physically prevented from leaving." Exclusion does not necessarily mean that the student is removed from the classroom. The student could be removed to a separate part of the classroom or to another location but is not left alone. While in exclusion, however, the student is calming down and is not interacting with staff, receiving therapy, or doing work.

### ***Is "functional behavior assessment" defined in the regulations?***

Yes. "Functional behavior assessment" is defined as "the systematic process of gathering information to guide development of an effective and efficient behavior intervention plan for the problem behavior." It includes the identification of the functions of the behavior, a description of the behavior exhibited in the educational setting, and identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, or maintenance of the behavior. This definition is particularly significant because the IDEA does not define functional behavior assessment.

### ***What is a "mechanical restraint?"***

"Mechanical restraint" is defined as "a device or material that is attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and

that the student cannot easily remove.” A protective or stabilizing device is not considered to be a mechanical restraint. A protective or stabilizing device includes adaptive equipment prescribed by a health professional, seat belts, and other safety equipment used to secure students during transportation. It is important to note that the line between protective devices and restraints is a thin one. IEP teams must carefully consider whether a device is needed and is being used for the purpose for which its manufacturer intended or is, rather, being used to control a student's behavior. If the device is being used to control a student's behavior, it is considered to be a mechanical restraint, rather than a protective or stabilizing device. The use of mechanical restraints is prohibited.

### ***What is physical restraint?***

"Physical restraint" is defined as "the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student's body." Physical restraint does **not** include briefly holding a student to calm or comfort him or her, holding the student's hand or arm to escort him or her to another area, moving a disruptive student who is unwilling to leave the area if other methods such as counseling have not been successful, or intervening in a fight. A physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes. In applying physical restraint, school personnel may not place a student in a face down position or any other position that will:

- a. Obstruct a student's airway or otherwise impair a student's ability to breathe;
- b. Obstruct a staff member's view of a student's face;
- c. Restrict a student's ability to communicate distress;
- d. Place pressure on a student's head, neck, or torso; or
- e. Straddle a student's torso.

Again, the line between these interventions and physical restraint can be a thin one, and school staff must be sure to first attempt non-physical interventions whenever feasible.

“School personnel  
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### ***What principles should guide school personnel in their approach to student behavior?***

Maryland's regulations begin with this key statement: "School personnel are encouraged to use an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors."

Public agencies should emphasize the positive and proactive methods in the use of behavior interventions, strategies, and supports. Generally, the term "positive behavior interventions" refers to therapeutic methods of modifying behavior or certain types of behavior therapy. "Positive strategies" include adapting teaching methods for a student, such as using visual prompting or frequent feedback. "Positive supports" may include equipment or "extra hands" to fill a need, such as an augmentative communication device, assistive technology, or adult assistance.

Positive behavior interventions, strategies, and supports are intended to be used for two reasons: First, to increase the occurrence of behaviors that school personnel want to encourage, and second, to decrease behaviors that school personnel want to lessen or eliminate. It is important to remember that responding in a positive and rewarding way to behavior that school personnel want to see, i.e., "catching a student being good" is just as, if not more important than developing a behavior plan that focuses on the negative behaviors that school personnel seek to eliminate.

The regulations specify the need for an "array" of positive approaches because it is quite possible that no one approach by itself will work. Depending on the nature of the challenging behavior presented by the student, it may be necessary to try several interventions, strategies, or supports, or a variety of approaches in combination, in order to find an approach that works. It is also important that the IEP team focus on "targeted student behaviors."

A generic behavior plan that does not address the specific challenges presented by the student will not work effectively. A process of identifying target behaviors, planning how to address them, and deciding on the particular interventions, strategies, and supports is necessary. Positive behavior interventions, strategies, and supports focus on proactive ways of preventing targeted challenging behaviors instead of reacting to a challenging behavior after its occurrence. While these regulations govern the use of restraint and seclusion in schools, if positive behavior interventions, strategies, and supports are implemented appropriately, the use of restraint and seclusion should be truly limited to unavoidable emergency situations.

***The regulations state that unless not feasible, less restrictive or alternative approaches to behavior must be used prior to the use of restraint or seclusion. What are "less restrictive or alternative approaches?"***

In this context, "less restrictive" refers to approaches that have a less substantial impact on the student's ability to move, to communicate with others, to make choices, and to participate in school activities with other students. "Alternative approaches" refers to a wide variety of responses such as substituting a different activity or implementing a therapeutic approach. For example, a student who becomes agitated during an academic task and begins kicking his desk might be permitted to walk around the classroom. Or a student who becomes upset by too much sensory stimulation and begins to scream might be allowed to go to another room and hold a stuffed animal to settle down. Too often, however, these situations are allowed to escalate, and students may end up in restraint or seclusion.

***How can it be determined if less restrictive or alternative approaches to restraint or seclusion are not feasible, as the regulations require?***

The regulations state that exclusion, restraint, and seclusion may be used only after less restrictive or alternative approaches have been considered and attempted or determined not to be feasible. In making the determination as to whether less restrictive or alternative approaches are not feasible, school staff should consider the following:

1. Is the situation an emergency? Does the student pose an imminent risk of significant physical harm to self or others? Are there time, space, or personnel limitations that prevent less restrictive or alternative approaches from being implemented or from being implemented safely or effectively?