Using Functional Behavioral Assessments to Create Supportive Learning Environments.

Dear Colleague,

The U.S. Department of Education (Department) is committed to supporting State educational agencies (SEAs), local educational agencies (LEAs), and our partners in ensuring that schools and preschool programs have additional tools to foster safe, inclusive learning environments that increase students' engagement and sense of well-being. The Office of Special Education and Rehabilitative Services (OSERS) and the Office of Elementary and Secondary Education (OESE) are jointly offering guidance on the use of functional behavioral assessments (FBAs) for all students[1] whose behavior interferes with learning.[2] Briefly, an FBA is a process for identifying the reasons behind, or factors contributing to, a student's behavior.[3] This guidance is rooted in evidence-based practices to support students and allowable activities under both the Elementary and Secondary Education Act of 1965 (ESEA) and the Individuals with Disabilities Education Act (IDEA) — both of which emphasize a collaborative approach to support our Nation's students.[4]

Student behaviors that interfere with learning and overreliance on exclusionary discipline continue to be among the top concerns of educators and families.[5] It is critical that we better understand student behavior, including how students' lived experiences,[6] such as peer pressure, poverty, social media, discrimination, and trauma, may impact behaviors that interfere with learning in the classroom. A common response to student behavior that interferes with learning has been to remove the student from their learning environment through exclusionary discipline, such as through the use of suspensions, expulsions, or informal removals.[7] When students are removed from their learning environments, students miss critical opportunities to receive the academic and behavior support they need. Exclusionary discipline can have long-lasting negative impacts for students and their parents; and can lead to decreased academic achievement, absenteeism, not finishing high school, increased involvement in the juvenile justice system, and family stress.[8]

These negative impacts affect some groups of students more than others. During the 2020-21 school year, Black boys and girls, white boys, boys of two or more races, and students with disabilities attending public schools were overrepresented in receiving suspensions and expulsions.[9] This trend starts as early as preschool.[10] It is critically important to note that research demonstrates that one's perceptions about student behavior can be the result of implicit bias rather than the student's actual behavior.[11] Therefore, addressing any implicit bias in how student behavior might be perceived and classified should be part of State and local efforts to create inclusive and supportive learning environments.

This is also why our efforts must focus on implementing evidence-based practices that support students' needs. The Department believes that the use of evidence-based practices organized within an implementation framework, such as a multi-tiered system of support (MTSS)[12] and positive behavioral interventions and supports (PBIS),[13] can help schools and early childhood programs[14] shift toward implementing positive, proactive, and preventative approaches to address student behaviors that interfere with learning. Expanding the use of FBAs, and the development of plans, sometimes called either a "behavioral support plan" or "behavioral intervention plan" (BSP or BIP), to implement strategies that address the function of the behavior, can be an integral component of the larger schoolwide framework that supports students and reduces the reliance on exclusionary discipline.[15]

While FBAs have traditionally been used to support students with disabilities who receive services through an individualized education program (IEP), the use of FBAs has evolved, and they are now widely seen as helpful to students with and without disabilities.[16] We believe that FBAs can and should be used as a strategy to support any student whose behavior interferes with learning. By using FBAs, educators can gain a better understanding of a student's needs by identifying factors that contribute to the behavior's occurrence. More specifically, data gathered through an FBA allows educators to develop positive and proactive BSP/BIPs that use a function-based approach to teaching and learning[17] to create more inclusive, developmental and educational experiences, without having to resort to removals from the classroom.

In developing this guidance, we conducted listening sessions with various stakeholders, including parents, educators, administrators, advocates, and researchers, and reviewed relevant research on FBAs and BSP/BIPs. These efforts revealed that we can do more to support the field in FBA and BSP/BIP processes. For example, we learned that there is an interest in using FBAs more routinely as an instructional practice; and we identified opportunities for providing best practices related to when, why, and how an FBA may be used. A key theme across these listening sessions was that FBAs are most typically conducted in response to safety-related behaviors (e.g., frequent aggressive behaviors), after a manifestation determination review or other disciplinary action under the IDEA.[18] However, there are important benefits to conducting FBAs to better understand and respond to behaviors that interfere with learning but are not safety-related (e.g., talking out, not following directions, name calling) for students with and without disabilities.

OSERS has reviewed its previous statements[19] regarding whether and when the IDEA requires an LEA to seek parental consent before conducting an FBA. While the Department is not changing fact-specific conclusions in previously published Office of Special Education Programs (OSEP) policy letters, given the evolution of the use of FBAs for students with and without disabilities, the Department believes that further guidance and clarification can be of assistance to the field. This guidance clarifies that FBAs should be utilized more frequently than currently used to understand behaviors that interfere with learning and inform appropriate instructional strategies or interventions. For a student with a disability, or suspected of having a disability, the guidance explains the following:

(1) how an FBA may be used to inform appropriate instructional strategies or interventions; and

(2) that consent[20] would be required, for a particular child, if the FBA is one of the assessment tools and strategies conducted as part of an initial evaluation or reevaluation that meets the IDEA requirements, or if the FBA is used, along with a review of additional data, as an initial evaluation or reevaluation that meets the IDEA requirements.

As noted in the guidance, an FBA cannot be used to delay or deny an evaluation to a child suspected of having a disability, pursuant to the IDEA or Section 504 of the Rehabilitation Act of 1973 (Section 504).[21]

Numerous federal funding sources, including the IDEA, Titles I, II and IV of the ESEA and the Bipartisan Safer Communities Act Stronger Connections Grant Program, for example, can support the professional development of educators and broader implementation of FBAs, as long as all applicable program requirements have been met. Additionally, the Department and its technical assistance partners provide

free, high-quality, evidence-based, practical resources on a range of topics, including FBAs, that help address the behavioral needs of students with and without disabilities. Technical assistance centers such as the Center on Positive Behavioral Interventions and Supports, the National Center for Pyramid Model Innovations, the IRIS Center, and the Title IV-A Center provide resources that can be used at the State, local, classroom, and early childhood program levels to support educators and engage with families.

With a focus on supporting the behavioral needs of students, and providing educators with the tools needed to anticipate and prevent behaviors that interfere with learning, our Nation's schools, early childhood programs, and students can experience improved academic performance, improved social and emotional competence, reduced exclusionary discipline, and improved school organizational health and school climate.[22] Together, our urgency and action can transform learning environments into inclusive, supportive communities where all students feel a sense of belonging.

Sincerely,

Glenna Wright-Gallo
Assistant Secretary
Office of Special Education
and Rehabilitative Services

Adam Schott
Principal Deputy Assistant Secretary
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

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WHAT IS A FUNCTIONAL BEHAVIORAL ASSESSMENT (FBA)?

The Office of Special Education and Rehabilitative Services (OSERS) provided the following description of an FBA in the glossary in Appendix I of the July 2022, [Questions and Answers Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions:](#)

> Functional behavioral assessment (FBA) is used to understand the function and purpose of a child's specific, interfering behavior and factors that contribute to the behavior's occurrence and non-occurrence for the purpose of developing effective positive behavioral interventions, supports, and other strategies to mitigate or eliminate the interfering behavior.[23]

Neither the Elementary and Secondary Education Act of 1965 (ESEA) nor the Individuals with Disabilities Education Act (IDEA) provides a definition of an FBA. The common characteristics of an FBA are described below.

WHAT ARE COMMON CHARACTERISTICS OF AN FBA AND BEHAVIORAL SUPPORT OR INTERVENTION PLANS (BSP/BIPs)?

It is generally understood that the following characteristics are part of an FBA:[24]

- **Description of Behavior:**
  An FBA should include a clear, specific, measurable, observable, and objective description of the behavior that interferes with learning. The description of the interfering behavior should be sensitive to cultural and linguistic differences and be written using objective observations free from bias and judgment. FBAs can be used to understand behaviors that interfere with learning, such as talking out, out-of-seat behavior, work avoidance/refusal, hitting, or throwing an object.

- **Data Collection:**
  An FBA should be individualized and provide insights into the environmental and behavioral factors impacting the student by using data sources that include observation and interviews to:[25]

  ▸ Collect and analyze direct data (e.g., classroom observations) to record when the behavior happens and when it does not happen (referred to as occurrence and non-occurrence). Data collection methods may include conducting observations to collect data on the frequency (how often the behavior occurs), duration (how long the behavior lasts), conditions (environmental factors), location (where the behavior took place), and individuals

  > **Common Characteristics of an FBA**
  > ✓ Description of Behavior
  > ✓ Data Collection
  > ✓ Function-Based Behavior Review
  > ✓ Skill Development

present (other educators or students present) to inform an antecedent-behavior-consequences analysis, described below.

▸ Collect and analyze indirect data (e.g., interviews with teachers) on when the behavior happens and when it does not happen. Data collection methods may include interviews with or anecdotal reports from educators, early childhood education providers, parents, and the student, if appropriate, that are focused on the interfering behavior; and

▸ Review existing data in areas such as: attendance, academic performance, prior behavioral incidents, student health records, and previously implemented academic or behavioral interventions.

As described below, data collection for an FBA should be conducted by professionals who have the necessary skills, training, and knowledge to identify, analyze, and address the interfering behaviors of students and collaborate and actively engage parents and students in the process.

- **Function-Based Behavior Review:**
  Once data are collected, educators analyze the data related to:

  (a.) the events that happen before the behavior occurs, known as triggering antecedents;

  (b.) the interfering behavior; and

  (c.) the events that happen immediately after the behavior occurs, known as consequences that maintain or reinforce the behavior.[26]

  By considering the antecedent-behavior-consequence relationship, the FBA documents the function, or purpose, an interfering behavior serves. Typically, the function or purpose of behavior is categorized as a student's effort to obtain something (e.g., peer or adult attention, access to a preferred activity, stimulation/sensory experiences), or to escape/avoid something (e.g., social experiences, a non-preferred activity, stimulation/sensory experiences).

- **Skill Development:**
  After analyzing the data, educators utilize the information to identify what social, emotional, or academic skills must be further developed to support the student in using the new skills at appropriate times. The development of such skills should address the function of the behavior (e.g., obtain a reaction from classmates or escape/avoid schoolwork) by applying those skills (e.g., new social skills or academic strategies to complete work) rather than utilizing the behavior that interfered with learning.

Following the completion of an FBA, often a behavioral support plan (BSP) or behavioral intervention plan (BIP) is created to support the student and assist educators in developing a learning environment that addresses the student's needs. Typically, the creation and implementation of a BSP or BIP is a collaborative effort which may include the student's teachers, specialized instructional support personnel, school leaders, school

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counselors, psychologists or other mental health personnel, parents and, if appropriate, the student. Some schools have student assistance or support teams that could assist with developing and monitoring such a plan. This plan includes strategies for redesigning the student's current learning environment, implementing behavioral and instructional supports and strategies, and focusing on educator decision-making and responses that can support inclusive educational environments.[27] Each educator who is responsible for implementing the behavioral plan should have access to, and an understanding of, the behavioral plan to enable effective implementation. Components of a behavioral plan (BSP/BIP) generally include:[28]

- Describing the behavior that is interfering with the student's learning or interactions with peers/adults;

- Examining the environmental factors such as lighting, seating arrangements, noise level, interactions with peers and/or adults, accessibility of the academic curriculum that may contribute to the behavior occurring/not occurring;[29]

- Explaining the function or purpose of the behavior examined while conducting the FBA and the environment before and after the behavior occurred;

- Identifying behavior support strategies that prevent the interfering behavior from occurring, including addressing antecedent events and environmental factors that provoke the interfering behavior;

- Teaching the student skills that will address the function of the interfering behavior through instructional strategies and interventions and recognizing when they use these skills;

- Recognizing the student (e.g., providing specific positive feedback) for reducing behaviors that interfere with learning and/or for demonstrating the new skills that support academic and social progress;

- Determining the school personnel responsible for implementing the plan and how the plan will be implemented with fidelity throughout the school or early childhood program;

- Supporting educators through training and consultation to use strategies that prevent interfering behavior from occurring and responding appropriately should the interfering behavior occur; and

- Evaluating the effectiveness of the plan including how student progress will be measured.

Example of an FBA and Behavioral Plan in Action

An FBA may show that a student who repeatedly calls other students inappropriate names during recess may be doing so because the student wants to develop friendships but is unaware of how to get the attention of peers in a positive way. By identifying the function/purpose of the behavior (which in this example may be the student trying to gain peer attention/make friends) and developing a behavioral plan that teaches the student social skills and provides the student with opportunities to practice social skills, the student can then engage with classmates using appropriate strategies, gain positive peer attention, and develop friendships.

How Can an FBA Be Used to Inform Instructional Strategies?

Over the last two decades, research has demonstrated that an FBA is used to understand how and why a student behaves in a certain way (i.e., the function of a student's behavior) and to reduce behavior that interferes with learning for students with and without disabilities.[30] Function-based interventions and supports to address a student's behavior have been shown to be more effective than the use of non-function-based interventions, such as exclusionary discipline.[31] Specifically, FBAs and the use of function-based supports, interventions, and behavioral plans that consider the purpose of a student's behavior, can reduce interfering behaviors, such as noncompliance and task avoidance, as well as increase desired behaviors, such as academic engagement and participation in general education settings for students with and without disabilities.[32] Additionally, implementing function-based supports may help to reduce the number of students needing more complex, resource-intensive supports and interventions.[33]

As described above, an FBA and function-based approach to teaching and learning inform the development of a BSP/BIP and can address how educators respond to and implement strategies that anticipate and mitigate behaviors that interfere with learning. For students with disabilities, an FBA can also inform the development and revision of an individualized education program (IEP), as discussed below.[34]

Example of an FBA and Behavioral Plan in Action

An FBA may reveal that a student who repeatedly talks during silent, independent writing time is doing so to avoid a task that the student finds difficult (writing). With this information, educators can develop a plan that uses strategies to address the challenges the student has with writing for extended periods of time. These strategies may include breaking a longer assignment into smaller segments, scaffolding writing assignments, and teaching the student appropriate strategies for how to approach a difficult assignment and feelings of frustration. Pairing the purpose of the student's behavior with responsive strategies allows the student to complete classroom assignments, reduce classroom disruptions, and improve student-teacher interactions.

WHAT GUIDING PRINCIPLES SUPPORT THE EFFECTIVE DEVELOPMENT AND IMPLEMENTATION OF FBAS AND BSP/BIPS?

Educators should consider the following principles when developing FBAs and BSP/BIPs for their students and when incorporating FBAs and BSP/BIPs into either a school's MTSS or PBIS framework:

- **An FBA can be useful for any student whose behaviors interfere with learning.**[35]
  Students with and without disabilities may exhibit behavior that interferes with their ability to access and participate in their learning environment. This interfering behavior may include externalizing behaviors (e.g., aggression or speaking out-of-turn) and internalizing behaviors (e.g., withdrawing or excessive sadness). An FBA allows for the discovery and understanding of why the student's behavior is occurring and the environmental conditions that may be associated with the behavior's occurrence. Using FBAs, educators can develop function-based supports, interventions, and behavioral plans (BSP/BIPs) that address environmental conditions that contribute to a student's behavior, and the supports and services that may mitigate or eliminate the interfering behavior. An FBA and BSP/BIP can support students with and without disabilities in any educational environment including preschool, lunch, recess, and extracurricular activities.

- **By incorporating the FBA and BSP/BIPs into an MTSS/PBIS framework, educators can proactively address interfering behaviors through a tiered prevention model.**
  For example, at a Tier 1/Universal Prevention level, school staff may use their knowledge of function-based support in a school-wide approach to anticipate common interfering behaviors, such as students' disruption in hallways between classes, and design interventions, supports, and environments to proactively address the behaviors.[36] At a Tier 2/Targeted Group Prevention level, a team may use function-based problem solving to identify interfering behaviors and target supports for groups of students with similar needs, such as developing supports for middle school students who are struggling with their reading skills and are subsequently "acting out" in their classrooms.[37] At a Tier 3/Intensive Prevention level, an FBA may be conducted to address the needs of students who have chronic, intensive behaviors, including students who have been exposed to traumatic events.[38]

- **The planning and implementation of an FBA and behavioral plan benefits from professionals who are adequately prepared and skilled.**
  An effective FBA and behavioral plan can occur when professionals who have the necessary skills, training, and knowledge to identify, analyze, and address the interfering behaviors of students collaborate and actively engage parents and students in the process. Examples of such professionals may include general and special educators, early childhood education providers, specialized instructional support personnel[39] (e.g., school psychologists, speech-language pathologists, physical therapists, occupational therapists, school counselors), behavioral specialists, administrators, and community-based professionals. These professionals provide a unique and valuable contribution to better understand the purpose of a student's behavior and to design and implement a plan that responds to the behavior (e.g., BSP or BIP). The professionals who may be needed to collaborate on an FBA and behavioral plan will depend on the needs of

the student, familiarity with the student, and the intensity and complexity of the interfering behavior.

- **Collaborative partnerships between educators, parents, and students during the planning, implementation, and review of an FBA and BSP/BIP are important.**
Developing collaborative partnerships between school or early childhood program-based personnel and parents

> *An FBA and BSP/BIP should be used to better support a student in their current learning environment, support inclusive educational practices, and provide data that can contribute to a larger body of informal and formal assessments that can guide educational decision-making.*

can contribute to the successful creation, implementation, and review of an FBA and subsequent development of strategies and supports. An effective FBA is developed by a team that includes professionals with technical expertise, school staff who are knowledgeable about the curriculum and the environment, and parents who know their student's unique learning history to ensure strategies are contextually and culturally relevant. Parents can provide valuable insight and feedback about the student's behavior to help inform the FBA process. Additionally, including the student (as appropriate) in an FBA process can improve the likelihood of success in implementing the BSP or BIP and provide additional insight and information. Together, educators and parents can ensure that behaviors are addressed consistently at home and in school.

- **An FBA and BSP/BIP are strategies that should support a student's access, participation, and engagement in their learning environment.**
An FBA should be approached from a problem-solving perspective that focuses on identifying factors that contribute to the student's behavior. This approach should emphasize the notion that through a better understanding of factors influencing the student's behavior, changes can be made to the student's current environment to support greater access, participation, and engagement. Accordingly, an FBA and BSP/BIP should be used to better support a student in their current learning environment, support inclusive educational practices, and provide data that can contribute to a larger body of informal and formal assessments that can guide educational decision-making.[40]

How Can FBAs Support Students with Disabilities?

The cornerstone of the IDEA is that each eligible student with a disability receives a free appropriate public education (FAPE) that provides special education, related services, supplementary aids and services, and program modifications or supports for school personnel, designed to meet the student's unique needs and prepares the student for future education, employment, and independent living. The IDEA and its implementing regulations require IEP Teams to follow certain procedures to ensure that IEPs meet the individualized needs, including the behavioral needs, of students with disabilities.[41]

For years, data have demonstrated clear disparities in the use of discipline for students with disabilities. OSEP has previously shared data demonstrating that many students with disabilities were subjected to high rates of disciplinary removals.[42] To address these disparities, OSEP has emphasized the importance of creating safe and supportive learning environments that use evidence-based practices and strategies to support and respond to the needs of students with disabilities. Research demonstrates that using positive, proactive strategies such as conducting FBAs and developing behavior plans can reduce rates of discipline and improve school climate and student outcomes.[43]

For any eligible student with a disability whose behavior impedes their own learning or the learning of others, the IDEA specifically requires that IEP Teams consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior, including behaviors that may not be caused by or related to a child's disability.[44] IEP Teams can utilize FBAs to gain a better understanding of a student's behavioral needs[45] and to determine the positive behavioral interventions and supports needed to provide FAPE to a student with a disability.

As with any student whose behavior interferes with learning, FBAs for students with disabilities may be conducted as a screening for instructional purposes or as a review of existing data, including classroom observations, which may be part of the school's overall MTSS or PBIS. Screening refers to

> *Collaborative partnerships between educators, parents, and students during the planning, implementation, and review of an FBA are important.*

a process that an educator or specialist uses to determine appropriate instructional strategies and can be used with certain children.[46] As noted above, FBAs are conducted for students whose behavior interferes with learning and should be individualized and relate to the environmental and behavioral circumstances by using data sources that include observation and interviews. If the FBA is conducted as a screening for instructional purposes or as a review of existing data, including classroom observations, the IDEA and the ESEA do not require parental consent, but collaborative partnerships between educators, parents, and students during the planning, implementation, and review of an FBA are important.[47,48]

Example of an FBA and Behavioral Plan in Action

During morning transition periods of the school day, such as moving from class to class, a student with an IEP engages in name calling of other students, cursing, and intentionally bumping into peers. The school's hall monitor provided all students with reminders of appropriate behaviors and expectations, and teachers facilitated class discussions about the importance of using kind words and treating each other respectfully when transitioning between classes. While the student's actions have not caused any safety-related concerns, other students have become annoyed, and the school staff want to prevent anything more confrontational from occurring.

The IEP Team, which includes the student's parents, convened and decided to conduct an FBA. Together, the IEP Team created a description of the behavior that is objective, clear, specific, measurable, and culturally and linguistically responsive. Then, the IEP Team determined the indirect and direct data the school-based IEP Team members would collect. Finally, the IEP Team decided on a timeline for collecting data and scheduled a follow-up IEP Team meeting to review and analyze the data collected.

The school-based IEP Team members — which consisted of a school counselor, special education and general education teachers, and a paraprofessional — collected data on when the student's behavior occurred, when it did not occur, and how frequently the behavior occurred. After collecting the data, the IEP Team reconvened to analyze the data, which also included reviewing the student's attendance records, reflecting on conversations with the student, and listening to and discussing insight from the student's parents. The IEP Team determined that the student's behaviors occurred only during morning transition times and on days when the student arrived late to school. The IEP Team hypothesized that the function of the student's behavior was to obtain adult attention. With this information, the IEP Team, which includes the student's parents, developed a behavioral intervention plan (BIP) to support on-time arrival to school, including strategies to support the student on late arrival days, such as check-ins with a trusted adult within the school, teaching the student appropriate ways of asking to meet with an adult, and intentional relationship building between selected adults (e.g., the hall monitor) and the student. The BIP became part of the student's IEP, and the IEP Team decided to reconvene within three months, or earlier if needed, to determine if the BIP needs any revisions.

In addition, the IDEA requires IEP Teams to conduct an FBA in certain circumstances related to discipline procedures.[49] Under the IDEA, an IEP Team is required to either conduct an FBA and implement a BIP, or if a BIP has already been developed, review the BIP and modify it as necessary to address the behavior, when the LEA, parent, and relevant members of the IEP Team determine that the student's conduct that led to a disciplinary change of placement was a manifestation of the student's disability.[50] In such circumstances, under the IDEA, parental consent is required prior to conducting an FBA.[51]

Likewise, if the IEP Team determines that the student's conduct is *not* a manifestation of the student's disability and the student is removed from their current placement for more than 10 days, or if the student's placement is changed to an interim alternative educational setting based on "special circumstances,"[52] the IDEA requires the LEA to provide the student, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior so that it does not recur.[53] In such circumstances, under the IDEA, parental consent would also be required prior to conducting an FBA.

How Can an FBA Be Used as Part of an Evaluation under the IDEA?

The IDEA requires all children who are suspected of being a child with a disability[54] to be identified, located, and evaluated.[55] The purpose of an evaluation is to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.[56] In conducting evaluations, the LEA must ensure that:[57]

- Evaluations are sufficiently comprehensive as to identify all the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.[58]

- Evaluations include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).[59]

- Any single measure or assessment is not used as the sole criterion for determining whether a child is a child with a disability under the IDEA and for determining an appropriate educational program for the child.[60]

- Parents of a child with a disability are provided with notice that describes the proposed evaluation procedures, and parental consent is obtained prior to conducting the evaluation or reevaluation, or the consent requirements in 34 CFR § 300.300(a) and (c) are otherwise met.[61]

After careful consideration of information gathered from listening sessions with stakeholders and review of research studies, OSERS is not changing fact-specific conclusions as stated in prior letters, guidance and comments, that there are circumstances, based on the IDEA's evaluation requirements, when parental consent is required prior to conducting an FBA.[62] Consent would be required if, for a particular child:

(a.) an FBA is one of the assessment tools and strategies conducted as part of an initial evaluation or reevaluation under 34 CFR §§ 300.304 through 300.311; or

(b.) the FBA, along with a review of additional data, is used as an initial evaluation or reevaluation under 34 CFR §§ 300.304 through 300.311.

As with all evaluations, the parents of a child with a disability have the right to an independent educational evaluation (IEE) at public expense if the parent disagrees with the evaluation obtained by the public agency. 34 C.F.R. § 300.502(b).[63]

As noted in this document, an FBA may also be used in situations when an LEA is not evaluating or reevaluating a child for eligibility or continued eligibility for special education and related services, and identifying academic and functional needs, under the IDEA. In such circumstances, the IDEA does not require parental consent, but parents, and the student as appropriate, may provide important information related to the FBA, and any subsequent function-based behavioral plan, supports, and interventions. OSERS has previously stated that the use of an educational intervention or instructional strategy, such as an FBA, cannot be used to delay or deny a full and individual evaluation, pursuant to 34 CFR §§ 300.304-300.311, to a child suspected of having a disability under 34 CFR § 300.8.[64]

How Can an FBA Be Incorporated into the IEP Process?

When the behavior of a student with a disability impedes their learning or that of others, the IEP Team must consider the use of PBIS and other strategies to address the student's behavior in the development, review, and revision of IEPs.[65] The IEP Team may choose to address the behavior by including additional special education and related services and supplementary aids and services to be provided to the child, and any program modifications or supports for school personnel that will be provided to enable the child to receive FAPE.

An FBA could help identify appropriate behavioral interventions and supports, and other strategies, to be included in a student's IEP. For example, the data and information obtained as a result of the FBA and the development of a BIP could inform a student's present levels of functional performance, development of measurable annual goals, specific special education and related services, supplementary aids and services, and accommodations.[66] Additionally, as part of an IEP, a BIP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the BIP's implementation.[67]

WHAT SOURCES OF FEDERAL FUNDING CAN SUPPORT THE USE OF FBAS AND BSP/BIPS?

As part of an overall strategy to support State, LEA, or school mental health needs, multiple Federal funding sources may be used to support the development and implementation of FBAs. Within the ESEA Title I, Part A (Title I), Title II Part A (Title II), and Title IV Part A (Title IV) funds may be used for professional development and implementation of the ESEA.[68]

Based on the needs identified in SEA, LEA, or school plans or applications for funds or plans, Titles I, II, and IV of the ESEA can support the use of evidence-based practices that promote safe, healthy, and supportive learning environments, including:

- Implementing Multi-Tiered Systems of Support (e.g., PBIS) and other early intervention strategies;

- Providing integrated behavioral and mental health supports to educators and staff (e.g., hiring certified mental health professionals and behavior specialists);

- Working collaboratively with a diverse multidisciplinary team trained in youth development to create emergency plans and training exercises;

- Increasing professional development opportunities for faculty, staff, and community partners, particularly around trauma-informed care and culturally and linguistically inclusive responses; and

- Ensuring that prevention, protection, mitigation, response, and recovery activities consider the evidence base and are implemented in ways that respond to underserved students, protect students' rights, and demonstrate respect for students' dignity and potential.

At the State and LEA level, IDEA Part B funds the provision of special education and related services to support children with disabilities ages 3-21 — including the development and implementation of PBIS and FBAs. IDEA Part B funds can be used to:[69]

- Provide support and direct services for children with disabilities, including technical assistance, personnel development, and professional development and training;

- Provide positive behavioral interventions and supports and mental health services for children with disabilities;

- Implement child find policies and procedures, including ensuring identification, location, and evaluation of children who may need special education and related services including underserved groups, such as children experiencing homelessness, migratory children, and highly mobile children;

- Hiring additional personnel to provide special education and related services personnel; and

- Providing comprehensive coordinated early intervening services (CEIS) for children not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment, including:

‣ Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

‣ Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.[70]

How Can Funds under the Bipartisan Safer Communities Act Support the Development and Implementation of FBA?

Nearly $1 billion in funding through the Bipartisan Safer Communities Act's Stronger Connections program is helping states to support safe, inclusive, and welcoming learning environments for all students, through Title IV, Part A of the ESEA. Through this formula funding to State agencies, the Department encouraged[71] States to prioritize funds for LEA applicants that demonstrate a strong commitment to implementing comprehensive, evidence-based strategies that meet each student's social, emotional, physical, and mental well-being needs; create positive, inclusive, and supportive school environments; and increase access to place-based interventions and services. The use of FBAs may be incorporated as a strategy to support students.

In 2024, the Department awarded $70 million for the School-Based Mental Health Services (SBMH) and Mental Health Service Professionals Demonstration (MHSP) grant programs. These 69 awards build on the previous $571 million awarded to 264 grantees across 48 States to strengthen the pipeline and increase the diversity of school-based mental health professionals. Together, the MHSP and SBMH programs are projected to add 18,000 school-based mental health professionals to the workforce.[72]

Through the Full-Service Community Schools program, the Department is investing in integrated health, education, and other comprehensives services. The Department has released several guidance documents to support schools in implementing community schools. And because of the President's commitment to this model, federal funding for the Full-Service Community Schools program has increased five-fold over the course of this administration. While the program supported 170 schools before 2021, it is now reaching more than 1,700 schools, serving almost 800,000 students.

WHAT ARE SOME OF THE FEDERAL TECHNICAL ASSISTANCE RESOURCES TO SUPPORT SEAS, LEAS, SCHOOLS, EARLY CHILDHOOD PROGRAMS, EDUCATORS, AND FAMILIES IN FOSTERING SUPPORTIVE LEARNING ENVIRONMENTS?

The Federal government funds several technical assistance (TA) centers that provide resources related to behavior that can be accessed by SEAs, LEAs, schools, early childhood programs, educators, and families. Ten of these TA centers are identified below (along with a description of their work) —

- **Center on Positive Behavioral Interventions and Supports (Center on PBIS):** Since 1998, the Center on PBIS has established itself as a leader in the field of education, working together with state and local agencies to improve social, emotional, academic, and behavioral outcomes for all students. Its work is rooted in prevention, centered in equity, based on human-centered science, and only implemented through collaborative partnerships with students, families, educators, and their extended communities.

  https://www.pbis.org

- **Head Start Early Childhood Learning and Knowledge Center (ECLKC):** The U.S. Department of Health and Human Services (HHS) Office of Head Start (OHS) administers grant funding and oversight to the 1,600 agencies that provide Head Start services in communities across the country. OHS also provides federal policy direction and a training and technical assistance system to help grant recipients in providing comprehensive services to eligible young children and their families. OHS ECLKC provides resources to help program staff use evidence-based strategies to prevent, address, and respond to a child's repeated pattern of behavior that interferes with (or is at risk for interfering with) their optimal learning or their engagement in positive interactions with peers or adults.

  https://eclkc.ohs.acf.hhs.gov/browse/tag/challenging-behaviors

- **IRIS Center:** The IRIS Center is a national center dedicated to improving education outcomes for all children, especially those with disabilities birth through age 21, through the use of effective evidence-based practices and interventions. The Center has training modules available for pre- and in-service development for educators on supporting and responding to school behavior, including cultural considerations and behavior.

  https://iris.peabody.vanderbilt.edu

- **National Center on Early Childhood Development, Teaching, and Learning (NCECDTL):** NCECDTL advances best practices in the identification, development, and promotion of the implementation of evidence-based child development and teaching and learning practices that are culturally and linguistically responsive and lead to positive child outcomes across early childhood

programs. NCECDTL ensures early care and education programs have access to high quality training and technical assistance, information, and materials consistent with the requirements of the Head Start Act, Head Start Program Performance Standards, the Child Care and Development Block Grant Act of 2014, and other applicable regulations. It also serves as an intersection for the synthesis of research, data, knowledge, and experience to help inform the priorities of HHS OHS.

https://eclkc.ohs.acf.hhs.gov/ncecdtl

- **National Center on Health, Behavioral Health, and Safety (NCHBHS):**
  NCHBHS designs evidence-based resources and delivers innovative training and technical assistance to build the capacity of Head Start and other early childhood programs to: support children's healthy development and school success; promote the safety of children, families, and staff; provide inclusive, culturally and linguistically responsive services; address disaster preparedness, response, and recovery; mitigate adversity through trauma-informed care; and advance health equity by improving child and family well-being.

  https://eclkc.ohs.acf.hhs.gov/about-us/article/
  national-center-health-behavioral-health-safety-nchbhs

- **National Center on Intensive Interventions (NCII):**
  NCII works to build the capacity of SEAs, LEAs, universities, practitioners, and other stakeholders to support implementation of intensive intervention in literacy, mathematics, and behavior for students with severe and persistent learning and/or behavioral needs. NCII's approach to intensive intervention is data-based individualization. The website includes tools to support the implementation of evidence-based practices for intensive behavior.

  https://intensiveintervention.org

- **National Center for Pyramid Model Innovations (NCPMI):**
  NCPMI is funded by the Department's OSEP to improve state and local capacity to implement, scale-up, and sustain effective practices and policies to equitably support the social, emotional, and behavioral outcomes of young children with, and at risk for, developmental delays or disabilities. The goal of the Center is assisting states and programs in developing sustainable systems for the equitable implementation of the Pyramid Model for Promoting Social-Emotional Competence in Infants and Young Children (Pyramid Model) within early intervention and early education programs.

  https://www.challengingbehavior.org

- **National Center on Safe Supportive Learning Environments (NCSSLE):**
  Funded by OESE's — Office of Safe and Supportive Schools (OSSS), NCSSLE offers information and technical assistance to States, districts, schools, institutions of higher education, and communities focused on improving school climate and conditions for learning. NCSSLE operates under the premise that, with the right resources and support, educational stakeholders can collaborate to sustain safe, engaging, and healthy school environments that support student

academic success. The website includes information about the Center's training and technical assistance resources, products and tools, and latest research findings.

https://safesupportivelearning.ed.gov

- **Title IV-A Technical Assistance Center (T4PA Center):**
  The T4PA Center operates on behalf of the Department's OSSS and provides SEAs) with dedicated support for implementing the Title IV, Part A Student Support and Academic Enrichment (SSAE) program. The T4PA Center provides SSAE State coordinators assistance across the program's diverse content areas in the form of developing and disseminating high-quality resources, information, and trainings, as well as providing access to a national cadre of subject matter experts who can offer targeted technical assistance.

https://t4pacenter.ed.gov

- **What Works Clearinghouse (WWC):**
  Funded by the Department's Institute of Education Sciences (IES), the WWC has been a central and trusted source of scientific evidence on education programs, products, practices, and policies. The WWC reviews relevant research, determines which studies meet rigorous standards, and summarizes the findings. The WWC focuses on high-quality research to answer the question "what works in education?"

https://ies.ed.gov/ncee/wwc/FWW/Results?filters=,Behavior

LEGAL DISCLAIMER

The U.S. Department of Education (Department) has determined that this guidance is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). See https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2007/m07-07.pdf. Significant guidance is non-binding and does not create or impose new legal requirements. The Department is issuing this guidance to provide SEAs and LEAs with information to assist them in meeting their obligations under the Individuals with Disabilities Education Act (IDEA) and implementing regulations at 34 CFR Part 300 that it enforces. This guidance also provides members of the public with information about their rights under the law and regulations.

If you are interested in commenting on this guidance, please email us your comment at IDEA@ed.gov or write to us at the following address: U.S. Department of Education, Office of Special Education Programs, 400 Maryland Ave., SW, Room 4A10, Washington, DC 20202. For further information about the Department's guidance processes, please visit https://www.ed.gov/about/ed-offices/ogc/significant-guidance-at-the-department-of-education.

This document contains resources and examples that are provided for the user's convenience. The inclusion of these materials is not intended to reflect their importance, nor is it intended to endorse any views expressed, or products or services offered. These materials may contain the views and recommendations of various subject matter experts as well as hypertext links, contact addresses, and websites to information created and maintained by other public and private organizations. The opinions expressed in any of these materials do not necessarily reflect the positions or policies of the Department. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of any outside information included in these materials. Inclusion of such information does not constitute an endorsement by the Department or the Federal government, nor a preference/support for these examples as compared with others that might be available and be presented. Additionally, this discussion should not imply an endorsement of any organization, curriculum, or learning model.

ENDNOTES

1 To increase readability, the Department is using the term "student" in this document. In this document, the term "student" includes young children in preschool. Unless otherwise specified in the document, the term "student with a disability" has the same meaning as "child with a disability" in 34 C.F.R. § 300.8.

2 OSERS/OSEP issued the following guidance documents in July 2022: Questions and Answers Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions and Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders. This guidance expands on those documents to provide further information specifically about the use of FBAs for any student whose behavior interferes with learning.

3 U.S. Department of Education, OSERS/OSEP (July 19, 2022). Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders.

4 This FBA guidance does not address requirements under Section 504 of the Rehabilitation Act of 1973 (Section 504), which is a civil rights law that prohibits disability discrimination by recipients of Federal financial assistance and ensures that students with disabilities have equal access to educational opportunities. Under Section 504, a public-school recipient must conduct an evaluation of a student who because of disability needs or is believed to need special education or related services. 34 C.F.R. § 104.35(a). If a student engages in behavior that interferes with learning, that student may need an evaluation under Section 504 rather than an FBA outside of the disability evaluation process. Additional information about Section 504 is available at: https://www.ed.gov/ocr.

5 U.S. Department of Education, Institute of Education Sciences. (July 6, 2022). More than 80 Percent of U.S. Public Schools Report Pandemic has Negatively Impacted Student Behavior and Socio-Emotional Development [Press release]. https://nces.ed.gov/whatsnew/press_releases/07_06_2022.asp.

6 U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. "What is Lived Experience?" by Grace Guerrero Ramirez, Kate Bradley, Lauren Amos, Dana Jean-Baptiste, Ryan Ruggiero, Yvonne Marki, Jeremiah Donier, Helena Girouard, Danny Murillo, Laura Erickson, and Amanda Benton. Washington, District of Columbia: 2022.

7 The Department has previously stated that: "Informal removal, although not defined in IDEA and its implementing regulations, means action taken by school personnel in response to a child's behavior that excludes the child for part or all of the school day, or even an indefinite period of time. These exclusions are considered informal because the school removes the child with a disability from class or school without invoking the IDEA's disciplinary procedures. Informal removals are subject to the IDEA's requirements to the same extent as disciplinary removals by school personnel using the school's disciplinary procedures. Informal removals include administratively shortened school days when a child's school day is reduced by school personnel, outside of the IEP Team and placement process, in response to the child's behavior." See Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions. (July 19, 2022).

8 There is extensive research demonstrating adverse outcomes for students who are excluded from school including: Noltemeyer A. L., Ward R. M., Mcloughlin C. (2015). Relationship between school suspension and student outcomes: A meta-analysis. School Psychology Review, 44, 224–240. https://doi.org/10.17105/spr-14-0008.1; Nese, R. N., et al. (2021). Moving away from disproportionate exclusionary discipline: Developing and utilizing a continuum of preventative and instructional supports. Preventing School Failure: Alternative Education for Children and Youth, 65(4), 301-311. https://doi.org/10.1080/1045988X.2021.1937019; Zeng, S., et al. (2019). Adverse childhood experiences and preschool suspension expulsion: A population study. Child Abuse & Neglect, 97, 104149. https://doi.org/10.1016/j.chiabu.2019.104149; Skiba, R. J., Arredondo, M. I., & Williams, N. T. (2014). More than a metaphor: The contribution of exclusionary discipline to a school-to-prison pipeline. Equity & Excellence in Education, 47(4), 546-564. https://doi.org/10.1080/10665684.2014.958965. Also see the Department's Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates.

9 U.S. Department of Education, Office for Civil Rights. "Student Discipline and School Climate in U.S. Public Schools." November 2023. Available at: https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-school-climate-report.pdf.

10 U.S. Department of Education, Office for Civil Rights. "An Overview of Exclusionary Discipline Practices in Public Schools for the 2017–2018 school year: Civil Rights Data Collection." June 2021. Available at: https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/crdc-discipline-school-climate-report.pdf.

11 Gilliam, W., Maupin, A., Reyes, C., Accavitti, M., & Shic, F. (2016). Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions? New Haven, CT: Yale University Child Study Center, 1–18.

[12] Multi-tier system of supports (MTSS) is defined in the ESEA as, "a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs, with regular observation to facilitate data-based instructional decision making." 20 U.S.C. 7801(33). Please see the following resources supporting the implementation of MTSS: Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders; Center on PBIS Four Key Actions for State Education Agency Teams to Support Implementation of Multi-Tiered Systems of Support; Supporting Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Student and Teacher Support Teams; Center on PBIS: Multi-Tiered System of Supports (MTSS) in the Classroom; Supporting Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Educators and School-Based Staff; Supporting Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Schools to Enhance Relationships with Families.

[13] The Center on PBIS defines PBIS as an evidence-based, tiered framework for supporting *students*' behavioral, academic, social, emotional, and mental health. According to the Center on PBIS: "When implemented with fidelity, PBIS improves social emotional competence, academic success, and school climate." For more information about PBIS, visit: https://www.pbis.org/pbis/what-is-pbis.

[14] For the purposes of this document, the terms 'early childhood program' and 'early childhood educator' refer to programs and educators that serve children ages 3 through 5, including children with disabilities served under the IDEA Part B Section 619 preschool program.

[15] The Department has released resources to reduce the use of exclusionary discipline. See U.S. Department of Education's School Climate and Student Discipline Resources.

[16] Walker, V. L., Chung, Y.-C., & Bonnet, L. K. (2018). Function-Based Intervention in Inclusive School Settings: A Meta-Analysis. *Journal of Positive Behavior Interventions*, *20*(4), 203–216. https://doi.org/10.1177/1098300717718350; Hirsch, S. E., Lewis, T. J., Griffith, C. A., Carlson, A., Brown, C., & Katsiyannis, A. (2023). An Analysis of Selected Aspects of Functional Behavioral Assessments and Behavior Intervention Plans. *The Journal of Special Education*. https://doi.org/10.1177/00224669221146168; Gage, N. A., Lewis, T. J., & Stichter, J. P. (2012). Functional behavioral assessment-based interventions for students with or at-risk for emotional and/or behavioral disorders in school: A hierarchical linear modeling meta-analysis. *Behavioral Disorders, 37*, 55-77 http://www.jstor.org/stable/23890731; Sugai, G., & Simonsen, B. (2020). Reinforcement Foundations of a Function-Based Behavioral Approach for Students With Challenging Behavior. *Beyond Behavior*, *29*(2), 78-85. https://doi.org/10.1177/1074295620902444.

[17] For the purposes of this document, a 'function-based approach' to addressing behavior considers the specific purpose or "function" of behavior when planning for and addressing a student's behavior.

[18] See 34 C.F.R. § 300.530.

[19] See OSEP Letter to Sarzynski (September 5, 2007); OSEP Letter to Christiansen (February 9, 2007); OSEP Letter to Gallo (April 2, 2013); Questions E-4 and E-5 in OSERS' 2009 Questions and Answers on Discipline Procedures; Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12406, 12620 (March 12, 1999).

[20] Under IDEA, consent is defined in 34 C.F.R. § 300.9 and must be obtained consistent with §§ 300.9 and 300.300, including that the parent has been fully informed of all information relevant to the activity for which consent is sought, the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

[21] See OSEP Memorandum 11-07, A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act, Jan. 21, 2011 and the Office for Civil Rights' (OCR's) Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools, Dec. 2016, p. 12. As explained in n.4 above, this FBA guidance does not address Section 504 requirements. Under Section 504, a public-school recipient must conduct an evaluation of a student who because of disability needs or is believed to need special education or related services. 34 C.F.R. § 104.35(a). If a student engages in behavior that interferes with learning, that student may need an evaluation under Section 504 rather than an FBA outside of the disability evaluation process. Additional information about Section 504 is available at: https://www.ed.gov/ocr.

[22] Center on Positive Behavioral Interventions and Supports. (n.d.). Why Implement PBIS? https://www.pbis.org/pbis/why-implement-pbis.

[23] The description of an FBA is offered to assist the reader only for the purposes of clarity in this guidance and is not binding in any way.

[24] For more information on an FBA process, see Using FBA for Diagnostic Assessment in Behavior from the National Center on Intensive Intervention.

[25] Center on PBIS. (2022). Tier 3 Comprehensive Functional Behavior Assessment (FBA) Guide. Center on PBIS, University of Oregon. https://www.pbis.org/resource/tier-3-comprehensive-functional-behavior-assessment-fba-guide.

[26] National Center for Intensive Intervention. Behavior Basics: Understanding Principles of Behavior | NCII (intensiveintervention.org).

[27] For additional information related to instructional strategies to support a function-based approach to teaching and learning, visit: www.pbis.org. Also see: Lloyd, B. P., Barton, E. E., Pokorski, E. A., Ledbetter-Cho, K., & Pennington, B. (2019). Function-based interventions in K– 8 general education settings: A focus on teacher implementation. The Elementary School Journal, 119, 601-628. https://doi.org/10.1086/703114; and Walker, V. L., Chung, Y. C., & Bonnet, L. K. (2018). Function-based intervention in inclusive school settings: A meta-analysis. Journal of Positive Behavior Interventions, 20(4), 203-216. https://doi.org/10.1177/1098300717718350.

[28] See for example Missouri Schoolwide Positive Behavior Support : Tier 3 Team Workbook (2018-2019) ; and Center on PBIS. (2022). *Tier 3 Student-level Systems Guide*.

[29] Educators may consider other environmental factors such as food, housing and healthcare insecurity.

[30] Walker, V. L., Chung, Y.-C., & Bonnet, L. K. (2018). Function-Based Intervention in Inclusive School Settings: A Meta-Analysis. *Journal of Positive Behavior Interventions*, *20*(4), 203–216. https://doi.org/10.1177/1098300717718350; Hirsch, S. E., Lewis, T. J., Griffith, C. A., Carlson, A., Brown, C., & Katsiyannis, A. (2023). An Analysis of Selected Aspects of Functional Behavioral Assessments and Behavior Intervention Plans. *The Journal of Special Education*. https://doi.org/10.1177/00224669221146168; Gage, N. A., Lewis, T. J., & Stichter, J. P. (2012). Functional behavioral assessment-based interventions for students with or at-risk for emotional and/or behavioral disorders in school: A hierarchical linear modeling meta-analysis. *Behavioral Disorders, 37*, 55-77 http://www.jstor.org/stable/23890731; Sugai, G., & Simonsen, B. (2020). Reinforcement Foundations of a Function-Based Behavioral Approach for Students With Challenging Behavior. *Beyond Behavior*, *29*(2), 78-85. https://doi.org/10.1177/1074295620902444.

[31] Newcomer L. L., Lewis T. J. (2004). Functional Behavioral Assessment: An Investigation of Assessment Reliability and Effectiveness of Function-Based Interventions. Journal of Emotional and Behavioral Disorders, 12, 168–181.

[32] See Center on PBIS. (2022). Function-Based Support: An Overview; and Lloyd, B. P., Barton, E. E., Pokorski, E. A., Ledbetter-Cho, K., & Pennington, B. (2019). Function-based interventions in K–8 general education settings: A focus on teacher implementation. The Elementary School Journal, 119, 601-628. https://doi.org/10.1086/703114.

[33] Filter, K. J., & Alvarez, M. (2012). Functional Behavioral Assessment: A Three-Tiered Prevention Model. Oxford University Press, USA.

[34] The IDEA only requires the implementation of a behavioral intervention plan after a student has violated the school's code of conduct which resulted in a change of placement and the student's IEP Team determines that actions that resulted in the change of placement was a manifestation of a student's disability. See 34 C.F.R. § 300.530(e) and (f).

[35] Walker, V. L., Chung, Y.-C., & Bonnet, L. K. (2018). Function-Based Intervention in Inclusive School Settings: A Meta-Analysis. *Journal of Positive Behavior Interventions*, *20*(4), 203–216. https://doi.org/10.1177/1098300717718350.

[36] Loman, S., Strickland-Cohen, K., Borgmeier, C., Horner, R. (Undated). Basic FBA to BSP: Trainer's Manual.

[37] Ibid.

[38] Ibid.

[39] As defined under 20 USC § 7801(47)(A), the term "specialized instructional support personnel" means— "(i) school counselors, school social workers, and school psychologists; and (ii) other qualified professional personnel, such as school nurses, speech language pathologists, and school librarians, involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of the [IDEA]) as part of a comprehensive program to meet student needs."

[40] An FBA **should not** be solely used to exclude a child from the child's current learning environment or change a child's educational placement. For children with disabilities who have an IEP, decisions made regarding a child's educational placement are addressed in 34 C.F.R. § 300.116. Under § 300.116(a), the educational placement of a child with a disability, including a preschool child with a disability, "(1) is made by a group of persons, including parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118." Further, under 34 C.F.R. § 300.327, each LEA must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

[41] 20 U.S.C. § 1414(d) and 34 C.F.R. §§ 300.320 through 300.324. See also Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (July 19, 2022).

[42] See OSEP's Dear Colleague Letter on Implementation of IDEA Discipline Provisions (July 19, 2022).

[43] Santiago-Rosario, M. R., McIntosh, K., Izzard, S., Cohen Lissman, D., & Calhoun, T. E. (September 2023). Is Positive Behavioral Interventions and Supports (PBIS) an Evidence-Based Practice? Center on PBIS, University of Oregon. https://www.pbis.org/resource/is-school-wide-positive-behavior-support-an-evidence-based-practice

[44] 34 C.F.R. § 300.324(a)(2)(i).

[45] The IDEA does not specify which individuals are to conduct an FBA; however, State law may impose such a requirement. IDEA requires States to establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities. Further each LEA must ensure that all personnel necessary to carry out the purposes of Part B are appropriately and adequately prepared. 34 C.F.R. §§ 300.156(a) and 300.201.

[46] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Final Rule, 71 Fed. Reg. 46540, 46639 (August 14, 2006) https://sites.ed.gov/idea/files/20060814-Part_B_regulations.pdf

[47] See 34 C.F.R. § 300.302 (Screening for instructional purposes is not an evaluation) and § 300.300(d)(1) (Parental consent is not required before reviewing existing data)

[48] Throughout this document we are only providing guidance on, and addressing consent requirements under the IDEA and the ESEA, and not any other Federal or State laws. Depending on the nature of an FBA administered to a student, the Protection of Pupil Rights Amendment (PPRA) may apply, and an LEA may be required to obtain prior written consent from a parent or provide a parent with notice and an opportunity to opt out of administration of an FBA. See 20 U.S.C. §§ 1232h(b), (c)(1)(B), (c)(2). (If a student is 18 years of age or older or an emancipated minor under applicable State law, the rights under PPRA transfer to the student. 20 U.S.C. § 1232h(c)(5)(B).) This document does not provide guidance on, and is not addressing any issues related to, the PPRA. For more information, see https://studentprivacy.ed.gov/sites/default/files/resource_document/file/20-0379.PPRA_508.pdf

[49] See also Questions and Answers Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, Section G: IDEA's Requirements for FBAs and BIPs (July 19, 2022).

[50] For more information regarding the IDEA requirements related to manifestation determinations, see 34 C.F.R. § 300.530; and for more information regarding the IDEA requirements related to protections for children not yet determined eligible for special education related services, see 34 C.F.R. § 300.534.

[51] See OSEP Letter to Gallo (April 2, 2013).

[52] 34 C.F.R. § 300.530(c) and (g).

[53] 34 C.F.R. § 300.530(d)(1)(ii).

[54] "Child with a disability" is defined under 34 C.F.R. § 300.8.

[55] See 'child find' requirements under 34 C.F.R. § 300.111 and parental consent requirements under 34 C.F.R. § 300.300.

[56] 34 C.F.R. § 300.15.

[57] See 34 C.F.R. §§ 300.15, 300.301 through 300.311.

[58] 34 C.F.R. § 300.304(c)(6).

[59] 34 C.F.R. § 300.304(b)(1).

[60] 34 C.F.R. § 300.304(b)(2).

[61] 34 C.F.R. §§ 300.304 and 300.300(a) and (c).

[62] See OSEP Letter to Sarzynski (September 5, 2007); OSEP Letter to Christiansen (February 9, 2007); OSEP Letter to Gallo (April 2, 2013); Questions E-4 and E-5 in OSERS' 2009 Questions and Answers on Discipline Procedures; Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12406, 12620 (March 12, 1999).

[63] We recognize that *D.S. v. Trumbull Board of Education*, 975 F.3d 152 (2d Cir. 2020), is the controlling authority in the U.S. Court of Appeals for the Second Circuit and must be followed in the States subject to its jurisdiction. However, to the extent that the decision suggests that an FBA cannot be a component of an initial evaluation or a reevaluation, or that an IEE request requires disagreement with the entire comprehensive evaluation rather than with any area of evaluation, we disagree. See, OSEP Letter to Baus (February 23, 2015) ("When an evaluation is conducted in accordance with 34 CFR §§ 300.304 through 300.311 and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs."). We also note that Congress, in addressing the review of existing evaluation data as part of the initial evaluation or reevaluation under the IDEA, included specific components such as classroom-based assessments and observations. Sec. 614(c) of the IDEA.

[64] See OSEP Memorandum 11-07, A Response to Intervention (RTI) Process Cannot Be Used to Delay/Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act. Also, an FBA cannot be used to delay or deny an evaluation to a child suspected of having a disability, pursuant to Section 504. Office for Civil Rights' Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools, Dec. 2016, p.12. As explained in n.4 above, this FBA guidance does not address Section 504 requirements. Under Section 504, a public-school recipient must conduct an evaluation of a student who because of disability needs or is believed to need special education or related services. 34 C.F.R. § 104.35(a). If a student engages in behavior that interferes with learning, that student may need an evaluation under Section 504 rather than an FBA outside of the disability evaluation process. Additional information about Section 504 is available at: https://www.ed.gov/about/ed-offices/ocr.

[65] See 34 C.F.R. §§ 300.320(a)(4) and 300.324(a)(2)(i).

[66] 34 C.F.R. § 300.320.

[67] 34 C.F.R. § 300.323(d).

[68] See the Office of Elementary and Secondary Education's Offices of School Support and Accountability for information on funding under Title I and Title II and Safe and Supportive Schools for information on funding under Title IV of the ESEA

[69] 34 C.F.R. § 300.704(b)(4) (State-level funds) and 34 C.F.R §§ 300.201-300.210.

[70] 34 C.F.R. § 300.226

[71] U.S. Department of Education, Letter to Chief State School Officers, September 15, 2022. https://www.ed.gov/sites/ed/files/2022/09/BSCA-Stronger-Connections-DCL_9.12_signed.pdf

[72] U.S. Department of Education. (2024, October 17). *Biden-Harris Administration Announces $70 Million in New Awards for School-Based Mental Health Services* [Press Release]. https://www.ed.gov/about/news/press-release/biden-harris-administration-announces-70-million-new-awards-school-based