



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Ylise Janssen
Austin Independent School District
Office of the General Counsel
1111 West Sixth Street
Austin, Texas 78703-5338

JUN - 5 2008

Dear Ms. Janssen:

This letter is in response to your February 8, 2008 letter requesting guidance on "what a functional behavioral assessment (FBA) is and should consist of, and who can or must conduct the FBA."

Part B of the Individuals with Disabilities Education Act (Part B) and the Part B regulations do not specifically explain what an FBA is or what components must be included in an FBA. Section 615(k)(1)(D) and (F) of IDEA and 34 CFR §300.530(d) and (f) of the Part B regulations set out the conditions under which an FBA must be conducted. We believe that these provisions link the FBA to the development of a behavioral intervention plan for a child with a disability who is disciplined for misbehavior. That child's behavioral intervention plan would need to include behavioral intervention services and modifications that are designed to address the behavioral violation so that the behavior that gave rise to the disciplinary action does not recur in the future.

The statute and regulations do not specify which individuals must conduct the FBA. There is no Part B requirement, as you suggest in your inquiry, that a Board Certified Behavior Analyst (BCBA) conduct the FBA, unless State law imposes such a requirement. Part B 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 children with disabilities. 34 CFR §300.156(a). Each local educational agency (LEA) must ensure that all personnel necessary to carry out the purposes of Part B are appropriately and adequately prepared, (subject to the requirements of §300.156 relating to personnel qualifications and section 2122 of the Elementary and Secondary Education Act, as amended. 34 CFR §300.207. States and their LEAs must comply with these requirements in establishing and maintaining qualifications for personnel necessary to carry out the purposes of Part B, including qualifications for personnel who conduct the FBA.

Under 34 CFR §300.704(b)(1), states may reserve a portion of their Part B allocation for other state level activities, in addition to funds reserved for State administration. These Part B funds could be used for activities for support and direct services, including technical assistance, personnel preparation, and professional development and training (34 CFR §300.704(b)(4)(i)) and for activities to assist LEAs in providing positive behavioral supports and mental health services for children with disabilities (34 CFR §300.704(b)(4)(iii)).

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

Schools are expected to have properly trained professionals available to conduct FBAs and to provide positive behavioral interventions and supports. It is the LEA's responsibility, working with the state department of education, to provide professional development, in-service training, and technical assistance, as needed, for school staff members to be able to conduct an FBA and provide positive behavioral interventions and supports.

The Office of Special Education Programs (OSEP) funds a National Technical Assistance Center on Positive Behavior and Intervention Supports (Center). The Center was established to address the behavioral and discipline systems needed for successful learning and social development of students. The Center provides capacity-building information and technical support about behavioral systems to assist states and districts in the design of effective school-wide models. The Center also provides technical assistance in evidence based practices related to FBA. You may access the Center on-line at <http://www.pbis.org/main.htm>.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope that you find the responses to your questions helpful. If you need further assistance, please feel free to contact Mary Williams at (202) 245-7586.

Sincerely,

A handwritten signature in black ink that reads "Tracy R. Justesen". The signature is written in a cursive style with a large, stylized initial "T".

Tracy R. Justesen