

## **IDENTIFICATION, REFERRAL AND ASSESSMENT**

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## IDENTIFICATION, REFERRAL AND ASSESSMENT

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### 1.1 PURPOSE AND SCOPE

All individuals with suspected disabilities from birth through age 21 will be identified and referred to the appropriate agency to be assessed. Each individual will receive a full and individual evaluation to identify the disability, determine eligibility and identify educational needs.

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The assessment information will provide the basis for an Individualized Education Pro-gram (IEP) or Individualized Family Service Plan (IFSP) to ensure the individual receives a free appropriate public education (FAPE).

### 1.2 IDENTIFICATION

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#### 1.2. A Child Find

The Special Education Local Planning Area (SELPA) and individual LEAs will actively and systematically seek out all individuals with disabilities including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools.

Child Find activities may include but not be limited to:

1. A comprehensive screening program, including health, vision, hearing, speech and language;
2. Distribution of written information, including brochures and pamphlets describing the referral procedure;
3. Public awareness campaign, including public service announcements;
4. Annual notices to local newspapers;
5. Consultation with representatives of private schools, including religious schools on how to carry out activities to identify children with suspected disabilities;
6. Coordination with preschools, Head Start and other childcare facilities;

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7. Communication with hospitals, pediatricians, obstetricians and other health professionals;
8. Coordination with parent resource centers and support groups;
9. Presentations to local professional groups and organizations established to inform and/or to serve culturally diverse populations;
10. Coordination with activities of the SELPA Community Advisory Committee (CAC); and,
11. Coordination with school site procedures, including referrals from the school site student intervention teams (e.g. Student Study Teams, etc.). (EC 56300, 56301, 52040; CFR 300.451)

### **1.2. B Student Study Team (SST)**

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The Student Study Team (SST) is a regular education function. It is a process of reviewing individual student issues pertaining to educational performance and planning instructional interventions to be implemented in the regular classroom.

Although specialists, such as school psychologists, speech/language pathologists, and resource specialists may be involved in the SST process, however the SST is not a special education function and as such is not subject to the associated restrictions and timelines.

A special education referral may be appropriate after interventions have been implemented. As a regular education function, the team also helps with main-streaming strategies for those students who are already receiving special education and related services.

A student suspected of having a disability under the provisions of Section 504 of the Rehabilitation Act of 1973, will be assessed by a process defined through local board policies and procedures.

## **1.3 REFERRAL PROCESS**

### **1.3. A Source of Referrals**

Referrals for assessment to determine eligibility for special education and related services may come from teachers, parents, agencies, appropriate professional persons, and from other members of the public. *School site/district will document referrals using referral logs.*

The referrals will be coordinated with school site procedures for referral of students with special needs that cannot be met with modifications of the regular instructional program, including referrals from student intervention teams, such as the Student Study Team. 1-1-2

A child shall be referred for special education and related services only after the resources of the regular education program have been considered and, where appropriate, utilized. (EC 56303) 1-1-3

### **1.3. B Referral Procedure** 1-1-1.3

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1. Referrals for assessments to determine eligibility for special education and related services will be made to the school site principal or designee at the child's school of residence.

2. Referrals may be processed through the school site Student Study Team or other student intervention team to review the referral and document interventions tried prior to referral.

3. All requests for assessments will be submitted in writing. If a parent makes the request verbally, the principal or designee will assist the parent in making the request in writing. 1-1-4.1

4. If the referral is not coming from the parent, the school site administrator or designee will review the referral. If the information is incomplete the referral source will be contacted to request additional information. If the information is complete, the school site administrator or designee will initiate the assessment process, including notification of parent. An assessment plan will be developed. 1-1-4.2

5. No assessment will be conducted without written parent consent.

### **1.3. C Inappropriate Referrals**

If, after reviewing all relevant information, the administrator and assessment planning team, consider the referral inappropriate, the parents must receive a prior written notice which includes the following:

1. A description of the action refused by the district;
2. An explanation why the district refuses to take the action;
3. A description of any other options that the district considered and the reasons why those options were rejected;

4. A description of each procedure the district used as a basis for the refused action;
5. A description of any other factors that is relevant to the district's refusal.(CFR 3001.503)

NOTE: Refer to Chapter 16 Forms for Prior Written Notice Form.

#### **1.4 PARENTAL CONSENT**

The LEA shall conduct an initial evaluation in every area of suspected disability before the initial provision of special education and related services to a child with a disability.

##### **1.4. A Request for Initial Evaluation**

Either a parent of a child or LEA may initiate a request for an initial evaluation to determine if the child is a child with a disability.

- (1) The initial evaluation shall assess the child in all areas of suspected disability to determine whether the child is a child with a disability. The assessment and IEP team meeting must be held within 60 calendar days of receiving parental consent for the evaluation.
- (2) Exception: The relevant timeframe shall not apply to a LEA if:
  - (a) A child enrolls in a school served by the LEA after the relevant time-frame has begun and prior to a determination by the child's previous LEA as to whether the child is a child with a disability but only if the subsequent LEA is making sufficient progress to ensure prompt completion of the evaluation, and the parent and the subsequent LEA agree to a specific time when the evaluation will be completed; or
  - (b) The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

#### 1.4. B Parental Consent for Initial Evaluation

- (1) The LEA proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability shall obtain in-formed consent from the parent of a child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.
- (2) Consent for Services: The LEA is responsible for making a free appropriate public education (FAPE) available to a child with a disability and shall seek to obtain informed consent from the parent of a child before providing special education and related ser-vices to the child.
- (3) Absence of Consent for Initial Evaluation: If the parent of a child does not provide consent for an initial evaluation or the parent fails to respond to a request to provide the consent; the LEA may pursue the initial evaluation through due process.
- (4) Absence of Consent for Initial Services: If the parent of a child does not provide consent to the initial provision of services, the LEA shall **not** provide special education and related to the child by using due process.
- (5) Effect on LEA Obligation: If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent:
  - (a) the LEA shall not be considered to be in violation of the requirement to make a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the LEA requests such consent; and
  - (b) The LEA shall not be required to develop an IEP for the special education and related services for which the LEA requests such consent.
- (6) If the child is a ward of the State and not residing with the child's parent, the LEA shall make reasonable efforts to obtain such consent from the parent of the child for the initial evaluation to determine whether the child is a child with a disability. (30 EC 56346)

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## 1.5 ASSESSMENT PROCESS

### 1.5. A Initial Assessments

A comprehensive and individual assessment shall be conducted for each child being considered for special education and related services to determine if the child meets eligibility criteria as a child with a disability and to determine the educational needs of the child.

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Once a student has been referred for initial assessment, the student will be assessed in all areas of suspected disability. An individualized education program (IEP) meeting shall occur, within 60 calendar days of receiving written parental consent for the assessment, not counting days between the student's regular school sessions, terms or days of school vacation in excess of five school days.

However, an IEP required as a result of an assessment of a student shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each LEA's school calendar. In the case of school vacations, the 60-day time-line shall recommence on the date that student schooldays reconvene. A meeting to develop an IEP for a student shall be conducted within **30 days** of a determination that the student needs special education and related services. (Section 300.323(c) (1) of Title 34 of the Code of Federal Regulations)

The *60 day time period* does not apply if either of the following occurs:

- (1) The student enrolls in a school served by the LEA after the relevant time period has commenced but prior to determination by his or her previous LEA of whether the student has a disability. This exemption applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the assessment, and the parent and subsequent LEA agree to a specific date by which the assessment shall be completed.
- (2) The parent of a child repeatedly fails or refuses to produce the child for assessment.

The results of the assessment will be used by the child's IEP team to develop an appropriate Individualized Education Program (IEP).

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### 1.5. B Assessment Plan

After a review of the referral, student records and/or other immediately available material, the assessment team will meet to develop a proposed assessment plan.

A *proposed assessment plan* shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the student's regular school sessions or terms or calendar days of school vacation in excess of five school days from the receipt of the referral, unless the parent or guardian agrees, in writing, to an extension.

In any event, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year when the referral has been made 20 days or less prior to the end of the regular school year. In the case of student's school vacations, the 15-day time shall recommence on the date that the regular school days reconvene.

The *proposed assessment plan* given to the parents or guardians shall meet all the following requirements:

- (1) Be in language easily understood by the general public
- (2) Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is not clearly feasible.
- (3) Explain the types of assessments to be conducted.
- (4) State that no individualized education program will result from the assessment without the consent of the parent.

The LEA shall not be required to obtain informed consent from the parent of a child for an initial assessment to determine whether the child is an individual with exceptional needs under any of the following circumstances:

- (1) Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child.
- (2) The rights of the parent have been terminated in accordance with state law.
- (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for



initial assessment has been given by an individual appointed by the judge to represent the child.

Parental consent is not required before *reviewing existing data* as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children unless before administration or reassessment, or before administration of that test or assessment, consent is required of the parents of all children.

The *screening* of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services.

As part of the assessment plan the parents will be provided with a written notice that upon completion of the administration of tests and other assessment material, an Individualized Education Program (IEP) team meeting. The IEP team will discuss the assessment results, review any additional information, discuss the educational recommendations, and the reasons for these recommendations. Parents will receive a copy of the assessment report and the documentation of determination of eligibility.

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Included with the assessment plan will be a copy of Parents' Rights and Procedural Safeguards. The parents will be informed that they have a right to obtain, at public expense, an independent educational assessment of the student from qualified specialists, if the parent disagrees with an assessment obtained by the district.

No assessment will be conducted unless the written consent of the parent is obtained prior to the assessment. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent. The assessments will be completed and an IEP meeting scheduled within 60 calendar days from the date of the receipt of the parent's consent for assessment.

Parent consent for assessment shall not be construed as consent for placement or for receipt of special education and related services. Personal contact with the parents to explain the process and forms is strongly recommended.

If a parent refuses to sign permission for an assessment, the school district may file for mediation/due process hearing. If the district

prevails in a due process hearing, the assessment can be conducted without parent consent. (EC 56321, 5 CCR 3022) 2-2-2.1

### 1.5. C Assessment Requirements

Tests and other assessment materials must meet all of the following requirements:

- (1) Are provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless is not feasible to provide or administer. 2-2-5.4  
2-2-2.3  
2-2-2.4
- (2) Are used for purposes for which the assessments or measures are valid and reliable.
- (3) Are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of the assessments, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist. 2-2-5.3  
2-2-5.1
- (4) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
- (5) Tests are selected and administered to best ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills produces test results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure and not the student's impaired sensory, manual or speaking skills unless those skills are the factors that the test purports to measure. 2-2-2.7
- (6) No single measure or assessment is used as a sole criterion for determining whether a student is an individual with exceptional needs or determining an appropriate educational program for the student. 2-2-2.6  
2-2-2.6.1 -  
2-2-2.6.11
- (7) The student is assessed in all areas of the suspected disability including, if appropriate, health and development, vision, including low vision, hear, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, social and emotional status. A developmental history shall be obtained when appropriate. For students with residual vision, a 2-2-2.8

low vision assessment shall be provided.

- (8) The assessment of a student, including the assessment of a student with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment.
- 2-1-1.8  
2-1-1.9

As part of an initial evaluation the IEP team will review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and observations by teachers and related services providers. (EC 56320, 56324)

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2-2-5.2

#### **1.5. D Assessment of African American Children under Larry P Decision**

The Larry P v. Riles (1979) court case is the basis for law that disallows the administration of standardized intelligence quotient (IQ) tests to African American students. To ensure compliance with the Larry P, mandate, the CDE has established compliance review procedures to evaluate how well school districts are meeting this mandate in their African American students. The following areas are monitored to ensure compliance with this mandate:

- (1) Does the plan include a description of alternative means that will be used to assess language impairment or specific learning disabilities when standard tests are considered invalid?
- (2) Is there evidence that the assessment will be comprehensive? Do tests and other assessment materials meet the following requirements:
  - a. Are materials selected and administered that are not racially or culturally discriminatory?
  - b. Do assessment procedures ensure that IQ tests are not administered to African American students?
  - c. Do assessments result in a written report which includes the findings of each assessment and contain required information?
- (3) To what extent is the assessment varied from standard conditions?

- (4) What effects do environmental, cultural, or economic conditions have on the child's performance?

### 1.5. E Assessment Report

The personnel who assess the student shall prepare a written report, or reports, as appropriate, of the results of each **assessment**. The report shall include, but not be limited to, all the following: 2-3-1

- (a) Whether the child may need special education and related services. 2-3-1.5
- (b) The basis for making the determination. 2-3-1.11
- (c) The relevant behavior noted during the observation of the child in an appropriate setting. 2-3-1.6
- (d) The relationship of that behavior to the child's academic and social functioning.
- (e) The educationally relevant health and development, and medical findings, if any. 2-3-1.7
- (f) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate. 2-3-1.8
- (g) The need for specialized services, materials, and equipment for students with low incidence disabilities. 2-3-1.9
- (h) Information related to enabling the student to be involved in, and progress, in the general curriculum. 2-2-5
- (i) Information from parents, including results of private assessments, where appropriate. 2-3-1.10  
2-2-4
- (j) Validity statement when tests were administered through a translator. 2-3-1.2

If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the assessment report. (EC 56327) 2-4-1

### 1.6 REASSESSMENTS 1-1-1.2

A reassessment of a student shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise in writing, and shall occur at least once every three years, unless the parent and the LEA agree in writing, that a reassessment is unnecessary. (30 EC 56381) 2-4-1

Reassessment may also be conducted whenever conditions warrant a reassessment including the following:

1. If a parent or teacher requests a reevaluation;
2. When a preschool child with a disability transitions to kindergarten or first grade; or 2-2-3
3. Before determining a child is no longer eligible for special education.

### **1.6. A Three Year Reassessments**

The three-year reassessments will consider the following in determining the need for additional information:

1. A review of existing data including evaluations and information provided by the parents of the student. 2-4-3.1  
2-4-3.2
2. Current classroom-based assessments and observations by teachers and related services providers. 2-4-3.4
3. Observations by teachers and related service providers. 2-4-3.3

On the basis of that review, and input from the student's parents, the team will identify what additional data, if any, are needed to determine, including

1. Whether the student continues to have a disability;
2. The present levels of performance and educational needs of the student;
3. Whether the student continues to need special education and related services; and,
4. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the child and to participate as appropriate in the general curriculum.

If the team determines that additional tests or other evaluation material is needed to provide the necessary data identified above, the district will administer tests and other assessment materials as may be needed. 2-4-4

If the team determines no additional data is needed, the district will notify the parents of that determination and the reason for it and the right of the parents to request an assessment. 2-4-5

The district is not required to conduct the assessment unless requested to do so by the student's parents. (EC 56380, 56381; CFR 300.533, 300.536)

### **1.6. B State and Federally Mandated Behavioral Assessments**

Following are descriptions of two different behavioral assessments that are required for specific students under either State or federal regulations. A functional behavioral assessment (FBA) is required by federal law and is part of the disciplinary process. A functional analysis assessment (FAA) is required by California State law to address serious behavior not yet responsive to previous plans.

#### **Functional Behavioral Assessment (FBA )**

A functional behavior assessment may utilize review of records, interviews, behavior assessment scales, and may include observation of student behavior and/or environmental conditions. A functional behavior assessment shall be conducted under the following circumstances.

- a. The student's behavior has resulted in disciplinary suspension beyond 10 cumulative days in a school year.
- b. An interim alternative educational setting or involuntary change in placement is being considered in a disciplinary context.
- c. A manifestation determination in response to a violation of a rule or code of conduct is occurring.

Following the functional behavior assessment the IEP team will develop a behavior intervention or behavior support plan. This behavior intervention plan shall be part of the student's IEP and shall specify environmental instructional changes and other techniques and strategies including positive behavioral interventions, strategies and supports.

If a behavior intervention plan is not effective, the IEP team shall either request a functional analysis assessment (FAA), as described below in section 4.8.2, or continue modifications to the behavior intervention plan until success is attained. (CCR 300.520; 300.523)

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#### **Functional Analysis Assessment (FAA)**

A functional analysis assessment (FAA) is a California State requirement to address severe behavior not yet responsive to previous plans to address behavior that impedes learning. The FAA is a more

comprehensive assessment that results in the development of a Positive Behavioral Intervention Plan.

A functional analysis assessment will be conducted when an IEP team determines that the instructional/behavioral approaches specified in the student's IEP have been ineffective. A parent may request that a functional analysis assessment be performed. 2-5-1

The assessment must be conducted by, or be under the supervision of a person who has documented training in behavior analysis with an emphasis or positive behavioral interventions.

Functional analysis assessment personnel shall gather information from three sources: direct observation, interviews with significant others, and review of available data such as assessment reports prepared by other professionals and other individual records. Prior to conducting the assessment, parent notice shall be given and parental consent obtained.

A functional analysis assessment procedure shall include all of the following:

1. Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity; 2-5-3.1
2. Systematic observation of the immediate antecedent event associated with each instance of the display of the targeted inappropriate behavior; 2-5-3.2
3. Systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual; 2-5-3.3
4. An analysis of the settings in which the behavior occurs most frequently; 2-5-3.4
5. Review of records for health and medical factors which may influence behaviors; and, 2-5-3.5
6. Review of the history of the behavior to include the effectiveness of previously used behavioral interventions. 2-5-3.6

Following the assessment, a written report of the assessment results shall be prepared and a copy shall be provided to the parent. The report 2-5-4

shall include all of the following:

1. A description of the nature and severity of the targeted behavior(s) in objective and measurable terms; 2-5-4.1
2. A description of the targeted behavior(s) that includes baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, and a functional analysis of the behavior across all appropriate settings in which it occurs; and 2-5-4.2
3. A description of the rate of the alternative behaviors, their antecedents and consequences. 2-5-4.3
4. Recommendations for consideration by the IEP team which may include a proposed Positive Behavioral Intervention Plan. 2-5-4.4



## STUDENTS EXHIBITING SERIOUS BEHAVIOR

In California there is an education code provision that mandates that students with serious behavioral issues be provided a functional analysis assessment and a development of behavior intervention plan (BIP).

A functional analysis assessment (FAA) request may be made when there is a serious concern about a special education student's behavior. These serious behavior problems include those that are deemed self-injurious, assaultive or cause property damage which could lead to a suspension or expulsion according to Education Code §48900

These behaviors also include those that are pervasive and maladaptive and require systematic and frequent application of behavior interventions. A Behavior Intervention Plan must be developed by the IEP team and a case manager identified prior to the implementation of the plan. Emergency interventions approved by the SELPA may be required to control unpredictable, spontaneous behaviors which pose a clear and current danger of serious physical harm to the student, others, or serious property damage which cannot be prevented without temporary application of safe emergency techniques to contain the behavior. The following are descriptions of the major components necessary to develop an appropriate Behavioral Intervention Plan. The Behavioral Intervention Plan is included as part of the student's IEP.

*"Behavioral emergency"* is the demonstration of a serious behavior problem: (1) which has not previously been observed and for which a behavioral intervention plan has not been developed; or (2) for which a previously designed behavioral intervention is not effective. Approved behavioral emergency procedures must be outlined in the special education local planning area (SELPA) local plan.

(d) *"Behavioral intervention"* means the systematic implementation of procedures that result in lasting positive changes in the individual's behavior. "Behavioral intervention" means the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in human behavior through skill acquisition and the reduction of problematic behavior. "Behavioral interventions" are designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive educational environment as outlined in the individual's IEP. "Behavioral interventions" do not include procedures which cause pain or trauma. "Behavioral interventions" respect the individual's human dignity and personal privacy. Such interventions shall assure the individual's physical freedom, social interaction, and individual choice.

(e) "*Behavioral intervention case manager*" means a designated certificated school/district/county/nonpublic school or agency staff member(s) or other qualified personnel pursuant to subsection (ac) contracted by the school district or county office or nonpublic school or agency who has been trained in behavior analysis with an emphasis on positive behavioral interventions. The "behavioral intervention case manager" is not intended to be a new staffing requirement and does not create any new credentialing or degree requirements. The duties of the "behavioral intervention case manager" may be performed by any existing staff member trained in behavior analysis with an emphasis on positive behavioral interventions, including, but not limited to, a teacher, resource specialist, school psychologist, or program specialist.

(f) "*Behavioral intervention plan*" is a written document which is developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's IEP. The "behavioral intervention plan" shall become part of the IEP. The plan shall describe the frequency of the consultation to be provided by the behavioral intervention case manager to the staff members and parents who are responsible for implementing the plan. A copy of the plan shall be provided to the person or agency responsible for implementation in non-educational settings. The plan shall include the following:

- (1) a summary of relevant and determinative information gathered from a functional analysis assessment;
- (2) an objective and measurable description of the targeted maladaptive behavior(s) and replacement positive behavior(s);
- (3) the individual's goals and objectives specific to the behavioral intervention plan;
- (4) a detailed description of the behavioral interventions to be used and the circumstances for their use;
- (5) specific schedules for recording the frequency of the use of the interventions and the frequency of the targeted and replacement behaviors; including specific criteria for discontinuing the use of the intervention for lack of effectiveness or replacing it with an identified and specified alternative;
- (6) criteria by which the procedure will be faded or phased-out, or less intense/frequent restrictive behavioral intervention schedules or techniques will be used;
- (7) those behavioral interventions which will be used in the home, residential facility, work site or other non-educational settings; and (8) specific dates for periodic review by the IEP team of the efficacy of the program.

## **Behavioral Intervention Plans**

### **(a) General Provisions.**

- (1) An IEP team shall facilitate and supervise all assessment, intervention, and evaluation activities related to an individual's behavioral intervention plan. When the behavioral intervention plan is being developed, the IEP team shall be expanded to include the behavioral intervention case manager with documented training in behavior analysis including positive behavioral intervention(s), qualified personnel knowledgeable of the student's health needs, and others as described in Education Code Section 56341 (c)(2). The behavioral intervention case manager is not intended to be a new staff person and may be an existing staff member trained in behavior analysis with an emphasis on positive behavioral interventions.
- (2) Behavioral intervention plans shall only be implemented by, or be under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions. Such interventions shall only be used to replace specified maladaptive behavior(s) with alternative acceptable behavior(s) and shall never be used solely to eliminate maladaptive behavior(s).
- (3) Behavioral intervention plans shall be based upon a functional analysis assessment, shall be specified in the individualized education program, and shall be used only in a systematic manner in accordance with the provisions of this section.
- (4) Behavioral emergency interventions shall not be used as a substitute for behavioral intervention plans.
- (5) The elimination of any maladaptive behavior does not require the use of intrusive behavioral interventions that cause pain or trauma.
- (6) To the extent possible, behavioral intervention plans shall be developed and implemented in a consistent manner appropriate to each of the individual's life settings.

(b) *Functional Analysis Assessments.* A functional analysis assessment must be conducted by, or be under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions. A functional analysis assessment shall occur after the individualized education program team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. Nothing in this section shall preclude a parent or legal guardian from requesting a functional analysis assessment. Functional analysis assessment personnel shall gather information from three sources: direct observation, interviews with significant others, and review of available data such as assessment reports prepared by other professionals and other individual records. Prior to conducting the assessment, parent notice and consent shall be given and obtained pursuant to Education Code Section 56321.

- (1) A functional analysis assessment procedure shall include all of the following:

- (A) Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity;
  - (B) Systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior;
  - (C) Systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual, i.e., to identify the specific environmental or physiological outcomes produced by the behavior. The communicative intent of the behavior is identified in terms of what the individual is either requesting or protesting through the display of the behavior;
  - (D) Ecological analysis of the settings in which the behavior occurs most frequently. Factors to consider should include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the individual and staff and other students, the degree of independence, the degree of participation, the amount and quality of social interaction, the degree of choice, and the variety of activities;
  - (E) Review of records for health and medical factors which may influence behaviors (e.g. medication levels, sleep cycles, health, diet); and
  - (F) Review of the history of the behavior to include the effectiveness of previously used behavioral interventions.
- (2) Functional Analysis Assessment Reports. Following the assessment, a written report of the assessment results shall be prepared and a copy shall be provided to the parent. The report shall include all of the following:
- (A) A description of the nature and severity of the targeted behavior(s) in objective and measurable terms;
  - (B) A description of the targeted behavior(s) that includes baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, and a functional analysis of the behavior across all appropriate settings in which it occurs;
  - (C) A description of the rate of alternative behaviors, their antecedents and consequences; and
  - (D) Recommendations for consideration by the IEP team which may include a proposed plan as specified in Section 3001(f).
- (c) IEP Team Meeting. Upon completion of the functional analysis assessment, an IEP team meeting shall be held to review results and, if necessary, to develop a behavioral intervention plan, as defined in Article 1, Section 3001(f) of these regulations. The IEP team shall include the behavioral intervention case manager. The behavioral intervention plan shall become a part of the IEP and shall be written with sufficient detail so as to direct the implementation of the plan.

- (d) Intervention. Based upon the results of the functional analysis assessment, positive programming for behavioral intervention may include the following:
- (1) Altering the identified antecedent event to prevent the occurrence of the behavior (e.g., providing choice, changing the setting, offering variety and a meaningful curriculum, removing environmental pollutants such as excessive noise or crowding, establishing a predictable routine for the individual);
  - (2) Teaching the individual alternative behaviors that produce the same consequences as the inappropriate behavior (e.g., teaching the individual to make requests or protests using socially acceptable behaviors, teaching the individual to participate with alternative communication modes as a substitute for socially unacceptable attention-getting behaviors, providing the individual with activities that are physically stimulating as alternatives for stereotypic, self-stimulatory behaviors);
  - (3) Teaching the individual adaptive behaviors (e.g., choice-making, self-management, relaxation techniques, and general skill development) which ameliorate negative conditions that promote the display of inappropriate behaviors; and
  - (4) Manipulating the consequences for the display of targeted inappropriate behaviors and alternative, acceptable behaviors so that it is the alternative behaviors that more effectively produce desired outcomes (i.e., positively reinforcing alternative and other acceptable behaviors and ignoring or redirecting unacceptable behaviors).
- (e) Acceptable Responses. When the targeted behavior(s) occurs, positive response options shall include, but are not limited to one or more of the following:
- (1) the behavior is ignored, but not the individual;
  - (2) the individual is verbally or verbally and physically redirected to an activity;
  - (3) the individual is provided with feedback (e.g., "You are talking too loudly");
  - (4) the message of the behavior is acknowledged (e.g., "You are having a hard time with your work"); or
  - (5) a brief, physical prompt is provided to interrupt or prevent aggression, self-abuse, or
  - (6) property destruction.
- (f) Evaluation of the Behavioral Intervention Plan Effectiveness. Evaluation of the effectiveness of the behavioral intervention plan shall be determined through the following procedures:
- (1) Baseline measure of the frequency, duration, and intensity of the targeted behavior, taken during the functional analysis assessment. Baseline data shall be taken across activities, settings, people, and times of the day. The baseline data shall be used as a standard against which to evaluate intervention effectiveness;
  - (2) Measures of the frequency, duration, and intensity of the targeted behavior shall be taken after the behavioral intervention plan is implemented at scheduled

- intervals determined by the IEP team. These measures shall also be taken across activities, settings, people, and times of the day, and may record the data in terms of time spent acting appropriately rather than time spent engaging in the inappropriate behavior;
- (3) Documentation of program implementation as specified in the behavioral intervention plan (e.g., written instructional programs and data, descriptions of environmental changes); and
  - (4) Measures of program effectiveness will be reviewed by the teacher, the behavioral intervention case manager, parent or care provider, and others as appropriate at scheduled intervals determined by the IEP team. This review may be conducted in meetings, by telephone conference, or by other means, as agreed upon by the IEP team.
  - (5) If the IEP team determines that changes are necessary to increase program effectiveness, the teacher and behavioral intervention case manager shall conduct additional functional analysis assessments and, based on the outcomes, shall propose changes to the behavioral intervention plan.
- (g) **Modifications Without IEP Team Meeting.** Minor modifications to the behavioral intervention plan can be made by the behavioral intervention case manager and the parent or parent representative. If the case manager is unavailable, a qualified designee who meets the training requirements of subsection (a) (1) shall participate in such modifications. Each modification or change shall be addressed in the behavioral intervention plan provided that the parent, or parent representative, is notified of the need and is able to review the existing program evaluation data prior to implementing the modification or change. Parents shall be informed of their right to question any modification to the plan through the IEP procedures.
- (h) **Contingency Behavioral Intervention Plans.** Nothing in this section is intended to preclude the IEP team from initially developing the behavioral intervention plan in sufficient detail to include schedules for altering specified procedures, or the frequency or duration of the procedures, without the necessity for reconvening the IEP team. Where the intervention is to be used in multiple settings, such as the classroom, home and job sites, those personnel responsible for implementation in the other sites must also be notified and consulted prior to the change.
- (i) **Emergency Interventions.** Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

- (1) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.
- (2) Whenever a behavioral emergency occurs, only behavioral emergency interventions approved by the special education local planning area (SELPA) may be used.
- (3) No emergency intervention shall be employed for longer than is necessary to contain the behavior. Any situation which requires prolonged use of an emergency intervention shall require staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.
- (4) Emergency interventions may not include:
  - (A) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;
  - (B) Employment of a device or material or objects which simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in such procedures; and
  - (C) An amount of force that exceeds that which is reasonable and necessary under the circumstances.
- (5) To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent and residential care provider, if appropriate, shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs. A "Behavioral Emergency Report" shall immediately be completed and maintained in the individual's file. The report shall include all of the following:
  - (A) The name and age of the individual;
  - (B) The setting and location of the incident;
  - (C) The name of the staff or other persons involved;
  - (D) A description of the incident and the emergency intervention used, and whether the individual is currently engaged in any systematic behavioral intervention plan; and
  - (E) Details of any injuries sustained by the individual or others, including staff, as a result of the incident.
- (6) All "Behavioral Emergency Reports" shall immediately be forwarded to, and reviewed by, a designated responsible administrator.
- (7) Anytime a "Behavioral Emergency Report" is written regarding an individual who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an IEP team meeting to review the emergency report, to determine the necessity for a functional analysis assessment, and to determine the necessity for an interim behavioral intervention plan. The IEP team shall document the reasons for not conducting the assessment and/or not developing an interim plan.

- (8) Anytime a "Behavioral Emergency Report" is written regarding an individual who has a behavioral intervention plan, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective should be referred to the IEP team to review and determine if the incident constitutes a need to modify the plan.
- (9) "Behavioral Emergency Report" data shall be collected by SELPAs which shall report annually the number of Behavioral Emergency Reports to the California Department of Education and the Advisory Commission on Special Education.
- (j) SELPA Plan. The local plan of each SELPA shall include procedures governing the systematic use of behavioral interventions and emergency interventions. These procedures shall be part of the SELPA local plan.
  - (1) Upon adoption, these procedures shall be available to all staff members and parents whenever a behavioral intervention plan is proposed.
  - (2) At a minimum, the plan shall include:
    - (A) The qualifications and training of personnel to be designated as behavioral intervention case managers, which shall include training in behavior analysis with an emphasis on positive behavioral interventions, who will coordinate and assist in conducting the functional analysis assessments and the development of the behavioral intervention plans;
    - (B) The qualifications and training required of personnel who will participate in the implementation of the behavioral intervention plans; which shall include training in positive behavioral interventions;
    - (C) Special training that will be required for the use of emergency behavioral interventions and the types of interventions requiring such training; and
    - (D) Approved behavioral emergency procedures.
- (k) Nonpublic School Policy. Nonpublic schools and agencies, serving individuals pursuant to Education Code Section 56365 et seq., shall develop policies consistent with those specified in subsection (i) of this section.
- (l) Prohibitions. No public education agency, or nonpublic school or agency serving individuals pursuant to Education Code Section 56365 et seq., may authorize, order, consent to, or pay for any of the following interventions, or any other interventions similar to or like the following:
  - (1) Any intervention that is designed to, or likely to, cause physical pain;
  - (2) Releasing noxious, toxic or otherwise unpleasant sprays, mists, or substances in proximity to the individual's face;
  - (3) Any intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities;
  - (4) Any intervention which is designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, or which can be expected to cause excessive emotional trauma;



- (5) Restrictive interventions which employ a device or material or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention pursuant to subsection (i);
- (6) Locked seclusion, except pursuant to subsection (i)(4)(A);
- (7) Any intervention that precludes adequate supervision of the individual; and
- (8) Any intervention which deprives the individual of one or more of his or her senses