



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING


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MEMORANDUM

DATE: August 31, 2015

TO: Local and Intermediate School District Superintendents
Public School Academy Directors

FROM: Norma Jean Sass 
Deputy Superintendent, Education Services

SUBJECT: Required and Permissive uses of Behavioral Intervention Plans in Special Education Guidance for Intermediate School Districts, Local Districts, and PSAs

The U.S. Department of Education's Office of Special Education Programs has found the Michigan Department of Education, Office of Special Education (OSE) to be out of compliance in its State Complaint process. This Memo is being issued to make clear that the OSE must, and will, resolve all complaints filed under the Individuals with Disabilities Education Act (IDEA) consistent with the final federal regulations at 34 CFR §§ 300.151 and 300.152(a)(4) which states the State Educational Agency will, "review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act." Behavioral intervention plans, like all other parts of the IDEA, are subject to due process under the IDEA including special education state complaints.

The following guidance clarifies for districts the required and permissive uses of behavioral intervention plans consistent with federal guidance issued in 2009 (see 'Resource' at the end of this Memo).

Required Uses of Behavioral Intervention Plans:

Consistent with 34 CFR § 300.530(f), of the federal regulations implementing the IDEA, functional behavior assessments and behavioral intervention plans are required when the district, the parent, and the relevant members of the student's Individualized Education Program (IEP) team determine that a student's misconduct that violated the code of student conduct was a manifestation of his or her disability under 34 CFR § 300.530(e).

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If the student's misconduct has been found to have a direct and substantial relationship to the disability, the IEP team must conduct a functional behavior assessment, unless one has already been conducted. 34 CFR § 300.530(f)(i)

The IEP team must write a behavioral intervention plan for the student whose misconduct has been found to have a direct and substantial relationship to the disability, unless one already exists. If a behavioral intervention plan already exists, then the IEP team must review the plan and modify it, as necessary, to address the behavior. 34 CFR §§ 300.530(f)(i) through 300.530(f)(ii)

Permissive Uses of Behavioral Intervention Plans:

IEP teams may elect to include behavioral intervention plans in other circumstances, such as when they deem a behavioral intervention plan is necessary for a student whose behavior impedes his or her learning or that of others. IEP teams are not required to include behavioral intervention plans in an IEP outside of the context of a manifestation determination. However, an IEP team may elect to include a behavioral intervention plan in an IEP. 34 CFR § 300.324(a)(2)(i)

Ways an IEP Team May Address Behavior

- When a student's behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 CFR § 300.324(a)(2)(i).
- Additionally, the IEP team may address the behavior through annual goals in the student's IEP. 34 CFR § 300.320(a)(2)(i).
- The student's IEP may include modifications in his or her program, support for his or her teachers, and any related services necessary to achieve those behavioral goals. 34 CFR § 300.320(a)(4).
- If the student needs a behavior intervention plan to improve learning and socialization, the behavior intervention plan can be included in the IEP and aligned with the goals in the IEP. 34 CFR § 300.324(a)(2)(i).

Resource: *Questions and Answers on Discipline Procedures, Revised 2009*, issued by the federal Office of Special Education and Rehabilitative Services (OSERS). Answers to questions E-2 and E-3 specifically address behavioral intervention plans. This document is available for download at:
<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>

cc: Michigan Education Alliance
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