

Nonpublic Schools



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

A Nonpublic School (NPS) is a private, non-public, nonsectarian school that enrolls individuals with exceptional needs pursuant to an Individualized Education Program (IEP).

An NPS must be certified by the Department of Education and meet certain standards set by the Superintendent and Board of Education. *EC § 56034.*

PLACEMENT IN AN NPS

Students may not be placed in an NPS unless they have a valid IEP requiring placement at the NPS, or the person holding educational rights consents. *EC§ 48853 (See Education Rights Factsheet).*

A student must have an IEP and be assessed for special education services prior to placement in an NPS. *EC §§ 56342.1, 56320.*

- The assessments conducted must conform with state and federal law.
- The student may not be assessed for special education services unless the person who holds educational rights has provided consent, *with certain exceptions.* *EC § 56321.*

Exceptions:

The school district has prevailed at a due process hearing. *EC §§ 56321(c), 56506.*

The Individuals with Disabilities Education Act (IDEA) does not require parental consent for the initial evaluation of a child who is a ward of the state and not living with his/her parents if the local education agency (LEA) cannot find the parent, the parent's rights have been terminated, or a judge has removed the parent's educational decision-making rights and appointed another person to represent the child. *20 USC § 1414(a)(1)(d)(iii); EC § 56321.1.*

Consent for an initial assessment is not consent for placement in an NPS or provision of any other special education services. *EC § 56321(d).*

LEAST RESTRICTIVE ENVIRONMENT (LRE)

Students *must* be placed in the *least restrictive environment (LRE)* to meet their needs. A child shall not be placed in a special class or NPS unless the severity of the disability is such that education in a regular class with the use of supplementary aids

and services cannot be achieved satisfactorily. *EC § 56040.1.*

Children in Foster Care:

School Districts/SELPA/County Offices of Education shall first consider placement and services through programs operated by public education – regardless of whether the child is placed with a relative, foster parent, or group home/licensed children's institution (LCI). Foster youth with special needs may only be placed in an NPS if the district/SELPA does not have a public program that can meet the child's needs. *EC § 56157(a).*

Children Placed in Group Homes / Licensed Children's Institutions (LCI):

An LCI may *not* condition placement at the LCI on attendance at an NPS owned or operated by an agency associated with the LCI. *EC § 56366.9.*

An LCI, NPS, or agency may not require as a condition of placement that educational authority for a child, as defined in Section 48859, be designated to that institution, school, or agency. *EC § 48854.*

When a child is placed in an LCI with an on-grounds NPS, the child may attend the on-grounds school *only* if the SELPA's IEP team has determined that there is no appropriate public program in the community (i.e. resource specialist program, special day class, etc) and the on-grounds program is appropriate and can implement the child's IEP. *2 CCR § 60510(b)(2).*

ASSEMBLY BILL 1858

Assembly Bill 1858 was passed in 2004. AB 1858 requires that an NPS provide access to:

- The same instructional materials used by the district in which the NPS is located. *EC § 56366.10(b).*
- College preparation courses. *EC § 56366.10(b)(2).*
- Extracurricular activities such as art, sports, music, and academic clubs. *EC § 56366.10(b)(3).*
- Career preparation and vocational training. *EC § 56366.10(b)(4).*

Supplemental assistance, including academic tutoring, psychological counseling, and career and college counseling. *EC § 56366.10(b)(5).*

Teachers and staff who provide academic instruction and support services with the

goal of integrating the students into the least restrictive environment.

EC § 56366.10(c).

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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INTRODUCTION

A functional behavioral assessment (FBA)/ functional analysis assessment (FAA)* is an analysis of a student's maladaptive behavior. The assessment must include extensive observation of the student and an in-depth analysis of the student's environment and past history. The goal is to determine what triggers the maladaptive behavior and to learn how to best control the behavior through the use of positive intervention strategies. Prior to conducting a functional analysis assessment, the school district must obtain consent from the person who holds educational rights (See Educational Rights Factsheet).

BASIC CONCEPTS

Who Conducts the Functional Analysis Assessment?

State law requires that a functional analysis assessment be "conducted by or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions." 5 CCR § 3052(b); 5 CCR § 3001(f).

What Is a Behavioral Intervention Plan (BIP)?

A BIP is a written document that 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 Individualized Education Program (IEP). The BIP becomes part of the IEP and must be written with sufficient detail so as to direct the implementation of the plan. 5 CCR § 3001(g).

What Interventions Are Appropriate?

Interventions are to be positive in nature. Behavioral interventions do not include procedures that 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. 5 CCR § 3001(e); 5 CCR § 3052 (d)

FBA AND BIP PROCEDURES

When Must the School District Conduct an FBA and Develop a Behavioral Intervention Plan?

The school district must conduct an FBA and develop a BIP when one of the following occurs:

- When the IEP team finds that instructional/ behavioral approaches specified in the student's IEP have been ineffective. 5 CCR § 3052(b).
- When the student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. 5 CCR § 3001(g).
- When the IEP team determines that behavior that violates a "code of student conduct" (i.e. school rule) is a manifestation of the child's disability pursuant to 20 USC § 1415(k)(1)(E) & (F).
- When a student is removed from his/her current placement as a result of (a) weapon possession; (b) illegal drug possession/use; (c) infliction of serious bodily injury, regardless of whether the behavior was a manifestation of the child's disability, as appropriate so that the behavior does not recur. 20 USC § 1415(k)(1)(G).
- When the child is removed from his/her placement for more than 10 school days (i.e. suspension or expulsion) and the behavior is determined *not* to be related to his/her disability. 20 USC § 1415(k)(1)(D)(ii).

If the IEP team determines that behavior that violates a code of student conduct is a manifestation of the child's disability, and that the child already has a BIP, the IEP team must review the BIP and modify it, as necessary, to address the behavior. 20 USC § 1415(k)(1)(F).

What Shall A Functional Assessment Include?

State law requires that those conducting an FBA must gather information from three sources:

- Direct observation
- Interviews with significant others
- Review of available data such as other assessments and individual records. 5 CCR § 3052 (b).

These sources/observations *must* include:

- Systematic observation of the targeted behavior in order to determine frequency, duration, and intensity
 - Observation of events that trigger the behavior and analysis of the consequences of the behavior
- Ecological analysis of the settings in which the behavior occurs; Review of records for medical and health factors which may influence behavior; and
- Review of the history of the behavior, including the effectiveness of previously used behavioral interventions. 5 CCR § 3052(b)(1).

What Happens If There Is A "Behavioral Emergency?"

A behavioral emergency is "the demonstration of a serious behavior problem (1) which has not previously been observed and for which a behavioral plan has not been developed; or (2) for which a previously designed behavior intervention is not effective." 5 CCR § 3001(d).

Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious harm to others which cannot be prevented by a less restrictive response. 5 CCR § 3052(h)(i).

Emergency interventions may *not* include (1) locked seclusion (unless it is in a facility otherwise licensed or permitted by state law to use locked room); (2) employment of a device or material or objects that simultaneously immobilize all four extremities (except that prone containment may be used as an emergency intervention by staff trained in such procedures), and (3) force that exceeds that which is necessary under the circumstances. 5 CCR § 3052(h)(i)(4).

Whenever an emergency intervention is used, the school district *must* (1) notify the parent (and residential care provider if appropriate) within one day; (2) immediately forward a Behavioral Emergency Report to the student's file and designated administrator; (3) schedule an IEP meeting within two days for any student without a current behavioral intervention plan to determine the necessity for a functional analysis assessment and to determine the necessity for an interim behavioral intervention plan. 5 CCR § 3052 (h) (i).

*Federal law refers to "Functional Behavioral Assessment;" State law refers to "Functional Analysis Assessment." See also EC § 48915.5.

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