The following questions were posed by Advocates for Children to clarify State requirements.

**FUNCTIONAL BEHAVIORAL INTERVENTION (FBA) AND BEHAVIORAL INTERVENTION PLAN (BIP)**

*Is an FBA or BIP required before offering a different placement or a nonpublic school?*

If the "different placement" or approved private school being considered by the CSE is more restrictive than the student’s current placement, and such recommendation is being made, in part or in whole, as a result of the student's behavior, the CSE is required to consider the student’s need for a BIP.

A student’s need for a BIP must be considered whenever:
- a student with a disability is exhibiting persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions;
- the student’s behavior places the student or others at risk of harm or injury;
- the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) is considering more restrictive programs or placements as a result of the student’s behavior; and/or
- the student is subject to disciplinary actions and a determination has been made that the behavior is related to the student’s disability. [8NYCRR §200.22(b)(1)].

While the regulations require consideration of a student’s need for an FBA and a BIP, it leaves the determination of whether the student needs an FBA or a BIP to the CSE.

If the CSE determines the student may need a BIP, then an FBA must first be conducted because a BIP must be based on the results of an FBA. Once the FBA has been completed, the CSE must meet to review the results and determine what, if any, changes need to be made to the student’s individualized education program (IEP) and if the student needs a behavioral intervention plan (BIP).

*How should a school conduct an FBA for a student who is absent due to the student’s disability (for example, a student who is hospitalized for emotional crisis)?*

How an FBA is conducted for a student who is absent due to the student’s disability will vary depending on the specific circumstances in each case (e.g., if the evaluation was already started, the expected length of the absence, if the student is going to be receiving home/hospital instruction, etc.). Therefore, the school district is in the best position to
determine what information is needed and how this information will be collected. For example, in some cases, the assessment may include recent observations and data collected prior to the student's absence; structured interviews with teachers, providers, the student's parents and the student if available; the review of existing evaluation information; checklists etc. In others cases, the school may need to wait until the student is available to complete the FBA.

**Should a parent participate in the preparation of the FBA and BIP?**

While there is no requirement that a parent participate in the preparation of the FBA and BIP, section 200.22(a) of the Regulations of the Commissioner of Education requires that the FBA, as appropriate, be based on multiple sources of data including any relevant information provided by the student's parent. The parent is also a member of the CPSE/CSE which would review the results of the FBA. The recommendations of the CPSE/CSE must consider the concerns of the parent for the education of their child.

**How often must a school inform the parent of a student's progress toward their BIP? How should a school communicate that progress to the parent?**

The IEP must specify if the student will need a BIP to address his/her behaviors. Parents are members of the CPSE/CSE and must receive a copy of the student’s IEP. In addition, prior written notice must be provided to the parent a reasonable time before the district initiates a change to the IEP, including a recommendation that the student needs a BIP.

A student's BIP is not developed by the CPSE or CSE, but the results of implementation must be reviewed at least annually by his or her CSE/CPSE, which would include the student's parents. The implementation of the student's BIP must include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the BIP and on the student's IEP.

The results of such monitoring must be documented and reported to the student’s parents and CSE/CPSE. There are many ways a student’s parents can be informed of their child’s progress, including, but not limited to periodic parent-teacher conferences, written progress reports and student-parent-teacher conferences. The method or combination of methods to inform the parents of their child’s progress is left to local discretion.

**What is the method by which a school should monitor progress under a BIP? Is a behavioral contract with the student enough?**

Progress monitoring must include the collection of data to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals. A behavior contract is not a method for progress monitoring but is a type of prevention strategy that can be used to increase desired behaviors and decrease undesired behaviors.
Does a school wide or classroom wide behavior management system constitute a BIP for an individual student?

No. School-wide and classroom behavior management systems are preventative measures of universal behavior support provided to all students in order to reduce the need for more intensive and individualized behavioral interventions. If the CSE/CPSE determines that a student requires intensive individualized interventions and that a BIP should be developed to address the student’s behavior(s), such plan must meet the requirements of sections 200.1(mmm) and 200.22(b) of the Regulations of the Commissioner of Education.

What is the suggested length of time for data collection before preparation of the FBA? Is one day, or one period, or one meeting enough?

An FBA is an assessment that must, as appropriate, be based on multiple sources of data. The FBA must be developed in consideration of sufficient data specific on the frequency, duration, or intensity of the targeted behavior(s) across settings, people and times of the day to provide the basis for a behavioral intervention plan. Therefore, the length of time needed to collect sufficient data for an FBA must be determined on a case-by-case basis.

Can a FBA and/or a BIP be developed during the course of an MDR or IEP meeting?

The results of an FBA must be reviewed at a CSE/CPSE meeting, but the assessment itself could not be conducted during a manifestation determination review or CSE meeting, given the scope of assessment information required to conduct an FBA. The CSE/CPSE is responsible for determining a student’s need for a BIP. BIP can be developed during a CSE/CPSE meeting, although there is no requirement to do so.

How often must an FBA be conducted?

An FBA is an individualized evaluation of a student pursuant to section 200.4 of the Regulations of the Commissioner of Education to assist in determining whether the student is, or continues to be, a student with a disability. An FBA must be conducted:
- as necessary, as part of an initial evaluation or reevaluation of a student whose behavior impedes his or her learning or that of others, to ascertain the physical, mental, behavioral and emotional factors which contribute to the suspected disabilities; and
- whenever there is a determination that the student’s conduct is a manifestation of the student’s disability (i.e., is related to the disability); and
  - a student with a disability is suspended or removed from the student’s current placement for more than 10 consecutive school days; or
  - a suspension or removal constitutes a disciplinary change in placement.
How often must a BIP be reviewed and updated?

The implementation of a student's BIP must include regular progress monitoring of the frequency, duration, intensity and latency of the behavioral interventions at scheduled intervals, as specified in the BIP and in the student's IEP. The results of the progress monitoring are used to determine if there has been a change in behavior in relation to the interventions used and considered in any determination to revise a student's BIP. In addition, a student's BIP must be reviewed at least annually by the CSE/CPSE.

Who should conduct the FBA data collection and analysis? Can the student's teacher or paraprofessional conduct the FBA data collection and analysis? What staff members can or should provide input to the FBA?

Federal and State law and regulations do not specify which individuals may conduct an FBA. The CSE/CPSE has the obligation to ensure that the FBA is completed and school districts are expected to have properly trained professionals available to conduct FBAs. FBAs should be developed through a team process. The team that contributes to the development of the FBA should consist of persons who know the student across multiple settings (e.g. teachers, student, parents, support staff, administrators).

What are the training and certification requirements for the person conducting the FBA data collection and analysis?

Section 200.4 of the Regulations of the Commissioner of Education requires individual evaluations, which would include an FBA, to be administered by trained and knowledgeable personnel. Some behavioral assessment techniques, such as standardized assessments, may require an individual with specific training. The individual(s) conducting the evaluation should be familiar with the student and knowledgeable about behavioral assessments and intervention planning (e.g., school psychologist, special education teacher, etc.). 34 CFR section 300.34(c)(10) defines psychological services to include "assisting in developing of positive behavioral intervention strategies." Generally, the evaluation of behavior is in the scope of work of a psychologist.

What types of behavior would suggest the consideration of an FBA? Should a school wait for a student to get suspended before considering preparing an FBA and/or BIP?

For a student with any behavior that impedes the student's learning or that of others, the CPSE/CSE must consider strategies, including positive behavioral interventions and supports and other strategies to address that behavior. The determination of what behaviors require an FBA must be made on a case-by-case basis. 8 NYCRR section 200.22(b)(1) requires that the CSE or CPSE consider development of a BIP when the behavior is persistent despite consistently implemented general school-wide or classroom-wide interventions; when the student's behavior places the student or others at risk of harm or injury; when the CPSE/CSE is considering a more restrictive program or placement as a result of the student's behavior; and/or when the student's behavior which resulted in a
disciplinary removal or suspension is found to be a manifestation (i.e., related to) of the student's disability.

Can a parent request an FBA or BIP? Once requested, what is the timeline by which the school should conduct the FBA?

Yes. Pursuant to section 200.4(b)(4) of the Regulations of the Commissioner of Education, the CPSE/CSE must arrange for an appropriate reevaluation of each student with a disability if the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student, warrant a reevaluation or if the student's parent or teacher requests a reevaluation, but not more frequently than once a year unless the parent and representatives of the school district appointed to the CSE agree otherwise.

If the school district believes a reevaluation, such as an FBA, is necessary to develop an appropriate IEP and provide a free appropriate public education to the student, it must provide the parent with prior written notice and obtain parental consent. The regulations do not establish a timeline for conducting a reevaluation requested by a teacher or parent; however, section 200.4(e) requires that within 60 school days of the referral for review of the student with a disability, the board of education must arrange for appropriate special programs and services. Therefore, the district would need to review existing data, obtain consent for any new evaluations, conduct the evaluations, conduct a CPSE/CSE meeting to discuss the results of the reevaluation, if necessary revise the IEP, and implement such IEP within 60 school days. The 60 school day timeline starts the day the parent or teacher requested the review. If the CSE determines that the student's needs a BIP, it must be based on the results of the FBA.

If the school district disagrees that a reevaluation is needed, it must provide prior written notice to the parent that explains, among other things, why the district refuses to conduct the reevaluation and the parent's right to contest the district's decision through mediation or a due process hearing.

Must a student have an IEP to get an FBA and BIP? Can schools prepare FBAs and BIPs for general education students?

An FBA and BIP can be used for students with IEPs or for general education students. However, there are no laws requiring a school to complete an FBA or a BIP on regular education students. The Individuals with Disabilities Education Act (IDEA) provides that an FBA is an individual evaluation which could be conducted for a student suspected of or identified as having a disability. Information posted under the U.S. Department of Education – OSEP Technical Assistance Center on PBIS states "Under the 1997 Individuals with Disabilities Education Act, schools have a legal obligation to conduct functional behavior assessments (FBAs) when developing intervention plans for students with disabilities whose behaviors lead their individualized education program teams to consider a change in educational placement, including suspension and expulsion. However, FBA also holds
significant promise as a procedure to be used proactively with students with behavioral challenges who are educated in part, or wholly, in general education classrooms."

Are FBAs and BIPs only for students with an ED classification on their IEPs?

No. The disability classification of the student has no bearing on whether or not the student may require an FBA or BIP. The CPSE/CSE must conduct an evaluation that is sufficiently comprehensive to identify all of the student’s special education needs, whether or not commonly linked to the disability category in which the student has been identified [8 NYCRR section 200.4(b)(ix)].

Must a student be in a self-contained class to get an FBA or BIP?

No. The need for an FBA and BIP must be determined on an individual basis by each student’s CPSE/CSE. A student’s need for an FBA or BIP cannot be based on a student’s disability category or the type of classroom where the student is receiving his or her special education programs and services. However, a student’s need for an FBA must be considered whenever the CSE is considering more restrictive programs or placements as a result of the student’s behavior.

Can an FBA/BIP be created for student whose behavior does not disrupt other students but does disrupt the student’s learning (i.e. anxiety)?

Yes. The determination as to whether a student may need a FBA and subsequently a BIP would need to be made on an individual basis. The student’s behavior does not have to be disruptive to other students to warrant an FBA or BIP.

What types of positive behavioral supports are available for students?

A student’s unique needs are the basis for the CSE’s determination as to what positive behavioral interventions and supports or behavioral management strategies are appropriate for the student and what interventions, supports, and strategies are included in the student’s IEP. Positive behavioral interventions and supports are designed to help a student acquire appropriate behavior and skills rather than focusing solely on eliminating or reducing problem behaviors. Examples of positive behavioral supports include, but are not limited to, instruction on how to utilize an appropriate replacement behavior instead of using the inappropriate behavior; rearrangement or manipulation of the environment to prevent from setting events and antecedents from eliciting inappropriate behaviors; rearrangement or manipulation of the environment to encourage the use of the appropriate replacement behavior; and procedures for responding to appropriate and inappropriate behavior.
Can a school place a student on a truncated schedule because of the student's behavior?

Federal and State law requires that students with disabilities have school days of the same length as other students. The only time it is appropriate to shorten the school day for a student with a disability is when the student's CSE determines that a shortened day is required to address the student's unique disability-related needs and to provide that student with a free appropriate public education. When the CPSE/CSE determines with medical documentation that a student is physically unable to tolerate a full school day, it must provide home instruction to ensure that the student is receiving instruction in the home/hospital setting as appropriate. Shortened school days may not be used to manage a student's behavior or as a means of discipline.

Who should schools contact for support or questions about FBAs and BIPs? What resources are available for school personnel to be trained in positive behavioral support, FBAs, and BIPs?

Technical assistance and professional development resources regarding positive behavioral interventions and supports, including information on FBAs and BIPs, are available from the New York State Education Department's (NYSED's) website (http://www.p12.nysed.gov/specialed/techassist/) including:

- The New York State (NYS) Positive Behavioral Interventions and Supports (PBIS) Technical Assistance Center (TAC) (http://nyspbis.org/): The NYS PBIS TAC provides high quality training and technical assistance to support public and private schools in the development of positive behavior principles and practices. The TAC also provides timely access to research-based information on PBIS statewide through a web-based resource library, and regional professional development sessions conducted annually in collaboration with the Regional Special Education Technical Assistance Support Centers’ (RSE-TASC) Behavior Specialists.

- NYSED's RSE-TASC Behavior Specialists (http://www.p12.nysed.gov/specialed/techassist/rsetasc/home.html and http://www.nyspbis.org/AboutUs/BScontact2.cfm): The NYSED funded Behavior Specialists provide targeted technical assistance and professional development to schools throughout NYS. The level of support offered and provided by the Behavior Specialists to each of the schools in a region is determined through a regional planning process that includes NYSED and the RSE-TASC. In NYC, schools may contact the Regional Special Education Technical Assistance Support Center (RSE-TASC) http://schoolsstg.nycenet.edu/Academics/SpecialEducation/EducatorResources/RS E+TASC.htm

- NYSED Quality Indicator Review and Resource Guide for Behavioral Supports and Interventions Positive Behavioral Systems
This guide is intended to be used to support a quality improvement process that includes: assessing the quality of a school district’s instructional programs and practices in the areas of literacy, behavioral supports and interventions; and special education instructional practices; determining priority need areas; and prescribing and planning activities to change practices and improve outcomes for students with disabilities.


Who should parent contact for support or questions about FBAs and BIPs outside of the IEP team and meeting? What resources on positive behavioral support, FBAs, and BIPs are available for parents?

For questions about their child’s FBA or BIP or need for an FBA or BIP outside of a CSE/CPSE meeting, parents should contact school staff, such as their child’s teacher, school psychologist, or a special education administrator.

In addition, parents may contact their region’s Special Education Parent Centers ([http://www.p12.nysed.gov/specialed/techassist/parentcenters.htm](http://www.p12.nysed.gov/specialed/techassist/parentcenters.htm)), or parents of preschool-age students may contact their Early Childhood Direction Center ([http://www.p12.nysed.gov/specialed/techassist/ecdc/locations.htm](http://www.p12.nysed.gov/specialed/techassist/ecdc/locations.htm)), for information and resources about the special education process. Questions regarding FBAs and BIPs can also be directed to the Special Education Policy Unit at (518) 473-2878 or to the appropriate Regional Special Education Quality Assurance Office ([http://www.p12.nysed.gov/specialed/quality/regassoc.htm](http://www.p12.nysed.gov/specialed/quality/regassoc.htm)).

New York City (NYC) schools should contact their Network (through June 2015) or Borough Field Support Center (beginning July 2015) for guidance and support. The NYC Department of Education offers ongoing professional development opportunities and school personnel can sign up for weekly announcements of upcoming workshops by emailing [SharedPathPD@schools.nyc.gov](mailto:SharedPathPD@schools.nyc.gov).