

Proposed Comments from the Special Education Compliance Section with the MO Department of Elementary and Secondary Education (DESE)

U.S.C	C.F.R	Guidance/Letters/Tools	Comment
<p><b>20 USC 1415(k)(1) (F) Functional Behavioral Assessment (FBA)</b></p> <p>(k) Placement in alternative educational setting (1) Authority of school personnel</p> <p>(F) Determination that behavior was a manifestationIf the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—</p> <p>(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);</p> <p>(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and</p> <p>(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the</p>	<p><b>34 CFR 300.530(d)(ii)</b></p> <p>(d)(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</p> <p><b>34 CFR 300.503</b></p> <p>(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--</p> <p>(1) Proposes to initiate or change the identification, evaluation, or</p>	<p>OSEP Letter to Gallo dated April 2, 2013</p> <p>OSEP Dear Colleague Letter dated August 1, 2016</p>	<p>The use of FBA did not require Prior Written Notice of Action and parental consent before Reauthorization of IDEA in 1997. It was only then that FBA became a regulatory requirement in special education. FBA is not a special education process or procedure.</p> <p>The use of the FBA process should not require parental consent or Prior Written Notice of Action in cases where it is <b>not</b> being used to establish initial or continuing eligibility, but is used to ascertain the function of student behavior to target more effective interventions to guide instruction and needed supports. This would be consistent with how other tools are used to make decisions about tiered interventions and supports. While</p>

<p>behavioral intervention plan.</p> <p><b>20 USC 1415(b)(3) and (4)</b> <b>Prior Written Notice of Action</b></p> <p><b>(b) Evaluation procedures</b></p> <p><b>(1) Notice</b></p> <p>The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.</p> <p><b>(2) Conduct of evaluation</b></p> <p>In conducting the evaluation, the local educational agency shall—</p> <p>(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—</p> <p>(i) whether the child is a child with a disability; and</p> <p>(ii) the content of the</p>	<p>educational placement of the child or the provision of FAPE to the child; or</p> <p>(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p>		<p>both of these processes may be conducted for an individual student or for a school or classroom as a group, their purpose is not always to evaluate for eligibility to receive special education services. Prior Written Notice of Action and parental consent should not be required unless to determine initial or continued eligibility.</p>
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<p>child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;</p> <p>(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and</p> <p>(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p><b>(3) Additional requirements</b></p>			
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<p>Each local educational agency shall ensure that—</p> <p>(A) assessments and other evaluation materials used to assess a child under this section—</p> <p>(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;</p> <p>(iii) are used for purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) are administered by trained and knowledgeable personnel; and</p> <p>(v) are administered in accordance with any instructions</p>			
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<p>provided by the producer of such assessments;</p> <p>(B) the child is assessed in all areas of suspected disability;</p>			