



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN J. WHISTON  
STATE SUPERINTENDENT

**MEMORANDUM**

**DATE:** September 22, 2015

**TO:** Local and Intermediate School District Directors of  
Special Education and Monitors

**FROM:** Teri L. Chapman, Ed.S, Director  
Office of Special Education

**SUBJECT:** **Clarification of memo dated August 31, 2015 to Local and ISD  
Superintendents and PSAs RE: Required and Permissive uses of  
Behavioral Intervention Plans in Special Education Guidance**

**PLEASE NOTE NEW PARAGRAPH IN *ITALICS* ON PAGE 2**

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).

**STATE BOARD OF EDUCATION**

JOHN C. AUSTIN – PRESIDENT • CASANDRA E. ULBRICH – VICE PRESIDENT  
MICHELLE FECTEAU – SECRETARY • PAMELA PUGH – TREASURER  
LUPE RAMOS-MONTIGNY – NASBE DELEGATE • KATHLEEN N. STRAUS  
EILEEN LAPPIN WEISER • RICHARD ZEILE

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909  
www.michigan.gov/mde • (517) 373-3324

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)

### ***Inclusion of a Behavior Intervention Plan in an IEP***

*For a student with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a student with a disability whose violation of the code of student conduct is a manifestation of the child's disability, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the student.*

### **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>