



Washington State Association of School Psychologists

Dear Assessment Committee,

What are the special education guidelines in Washington State for Functional Behavior Assessments? Who should be completing them, when do they need to be completed, and what is the timeline for them?

Dear School Psychologist,

A Functional Behavior Assessment (FBA), though written as a part of IDEA, is loosely defined in the federal law. The term 'Functional Behavior Assessment' is used in IDEA in only two sections of the law, both related to removal from the classroom setting. As one may expect, there is not much information specifically outlined in the federal law related to what an FBA entails. FBAs, like many areas of special education law, are more often left up to the states to define, which leaves a lot of room for interpretation between different entities. A FBA is referenced in only one section of the Washington Administrative Code (WAC 392-172A-05147). The following is a combination of federal guidelines and Washington State guidance related to FBAs to help guide school psychologists.

What is in an FBA?

The Office of Special Education Programs (OSEP), a unit within the Department of Education, defined an FBA as "...used to understand the function and purpose of a child's specific, interfering behavior and factors that contribute to the behavior's occurrence and nonoccurrence for the purpose of developing effective positive behavioral interventions, supports, and other strategies to mitigate or eliminate the interfering behavior" (OSEP Questions and Answers, 2022). OSEP had previously maintained that FBAs were "generally understood to be an individualized evaluation of a child..." and were used "to assist in determining whether the child is, or continues to be, a child with a disability." (SECC 22-90). In a letter in 2013, the office also noted that there were no requirements noted in IDEA, but a previous letter identified that "[a]n FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental)." and noted that it may include observations or formal assessments (Letter to Janssen, 51 IDELR 253- OSERS 2008). OSEP suggests that, at minimum, an FBA should:

- Clearly define the interfering behavior.
- Collect indirect and direct data on the occurrence and nonoccurrence of the behavior.
- Analyze data to determine trends and develop a hypothesis of the function of the behavior.

- Lead to the development or revision of a BIP (which is monitored, evaluated, and adjusted as needed).” (OSEP Positive, Proactive Approaches to Supporting Children with Disabilities, 2022).

Washington State provided a definition in the OSPI Special Education Technical Assistance Paper No. 2 (TAP #2), which was most recently revised in August 2020. According to the document, “An FBA is an organized collection of data related to a student’s behavior. The assessment often includes information gathered through observation of the student in different settings and information provided by the parent and teachers or other providers. The assessment is conducted, and the results are documented, in order to understand the purpose of a student’s challenging behaviors. An FBA can be used by IEP teams to plan and develop appropriate positive behavioral interventions and strategies that provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors.”

The Washington State Governor’s Office of the Education Ombuds, an independent state agency, also provides a definition of an FBA. Specifically, the definition describes an FBA as a problem-solving process to try to understand the functions of behavior, and that it can also be a type of evaluation for an individual student to understand their behavior.

When are FBAs completed?

In a recent Ninth Circuit ruling, the court referenced that federal law “.only requires an FBA when a child is removed from his current placement due to problem behaviors” (Butte Sch. Dist. No. 1 v. C.S., 817 F. App’x 321, 326, 2020). Or put another way, the only time an FBA is legally required per IDEA is related to disciplinary practices. Per WAC 392-172A-0514, if a manifestation determination is held and conduct is determined to be a manifestation of a student’s disability, the IEP team must “Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student” unless a behavioral intervention plan has already been developed or except in special circumstances described in WAC 392-172A-05149.

What is the timeline for FBAs?

The Washington State Governor’s Office of the Education Ombuds specifically states that a FBA “...is a type of evaluation used by a school district to determine the cause (or “function”) of behavior” (OEO, “FBA & BIPS”). In Washington State an FBA is assumed to be an evaluation, requiring parent signature/consent, and which would need to be completed in 35 school days in compliance with state timelines. OSEP has supported the notion that an FBA is an evaluation, though their most recent guidance does note “In D.S. v. Trumbull Board of Education, 975 F.3d 152 (2d Cir. 2020), the U.S. Court of Appeals for the Second Circuit disagreed with the Department’s interpretation that a functional behavioral assessment (FBA) is considered an evaluation or reevaluation under IDEA...” and that the office “...intends to review its previously stated positions on this matter including whether and when an LEA must seek parental consent before conducting an FBA for an eligible child with a disability” (OSEP Question and Answer,

2022). This matters for two reasons, if an FBA is an evaluation parents can request an Independent External Evaluation (IEE), and it requires consent from parents to be completed. Put simply, currently in Washington State FBAs should be treated in more or less the same manner as an evaluation for special education when considering timelines and parental consent.

This guidance suggests an FBA is a type of evaluation, and therefore would be subsumed under the state's evaluation guidelines in many ways.

Who can complete them?

As to who can complete an FBA, there is no requirement in IDEA to have a specific qualification, with OSEP noting only that each state must “ maintain qualifications to ensure that personnel necessary to carry out the purposes of IDEA are appropriately and adequately prepared and trained..” (OSEP Questions and Answers, 2022). OSPI TAP#2 only refers to an IEP team completing an FBA, and not specific personnel. OSPI has further noted that “The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. Letter to Janssen, 51 IDELR 253 (OSERS 2008)”. While there are no specific requirements for ‘qualified personnel’ in the Washington Administrative Code (WAC), some other states do have more specific requirements to meet that threshold.

References:

[OSPI Special Education Technical Assistance Paper No. 2 \(TAP #2\): Discipline Procedures for Students Eligible to Receive Special Education Services](#)

[Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions \(July 19, 2022\)](#)

[Special Education Citizen Complaint \(SECC\) No. 21-009](#)

[Special Education Citizen Complaint \(SECC\) No. 22-90](#)

[Washington State Governor's Office of the Education Ombuds Functional Behavior Assessments & Behavior Intervention Plans \(FBAs & BIPs\)](#)