

CLIENT NEWS BRIEF

Governor Signs Education Omnibus Trailer Bill Revising the Requirements on the Use of Behavioral Interventions

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On July 1, 2013, Governor Brown signed school funding legislation, which included education omnibus trailer bill Assembly Bill (AB) 86. As part of the 2013-2014 budget for the state's public schools, AB 86 modifies the Behavioral Intervention Plan mandate, commonly known as the "Hughes Bill," to align it more closely with federal law and reduce costs, while maintaining important protections for students with disabilities. As an urgency bill, the provisions of AB 86 took effect immediately.

Specifically, AB 86 makes several changes to existing law regarding behavioral interventions for students with disabilities who are eligible for services under the federal Individuals with Disabilities Education Act (IDEA). AB 86 includes the following:

- Recognition that the IDEA states that research and experience demonstrate that the education of children with disabilities can be made more effective by providing incentives for positive behavioral interventions and supports to address the learning and behavioral needs of those children.
- Aligns state laws related to behavior intervention plans with the IDEA and its implementing regulations and declares the Legislature's intent that: (1) children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions; and (2) assessments and positive behavioral interventions and supports be developed and implemented as informed by guidance from the United States Department of Education and technical assistance centers sponsored by the Office of Special Education Programs of the United States Department of Education.

AB 86 eliminates the state mandate regarding functional analysis assessments (FAA) and the resulting behavioral intervention plans (BIP) for students demonstrating a "serious behavior problem." AB 86 requires the Superintendent of Public Instruction to repeal regulations regarding the use of behavioral interventions that are no longer supported by statute, including the requirement that local educational agencies conduct FAAs when students demonstrate a "serious behavior problem" and the individualized education program (IEP) team finds that the instructional/behavioral approaches specified in the student's IEP have been ineffective. Instead, consistent with the IDEA and its regulations, students who require behavioral interventions may receive functional behavioral assessments (FBA) and a behavior support plan (BSP) or BIP, as appropriate, to address behavior issues.

The legislation also requires that emergency behavioral interventions be utilized only to control unpredictable, spontaneous behavior posing a clear and present danger of serious physical harm to the individual with exceptional needs or others, and that cannot be "prevented by a response less restrictive than the temporary application of a technique used to contain the behavior." AB 86 continues to prohibit the use of restraint and seclusion. The legislation also



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prohibits certain types of interventions by an agency serving individuals with exceptional needs, including electric shock, the release of toxic or noxious sprays or mists, or locked seclusion, except when seclusion is used as specified.

To prevent emergency interventions from being used instead of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, must be notified within one school day if either an emergency intervention is used or serious property damage occurs. In addition, in the event of emergency behavior interventions, local educational agencies must immediately prepare behavioral emergency reports (BER), and all BERs must immediately be forwarded to, and reviewed by, a designated responsible administrator.

Local educational agencies must continue to convene IEP team meetings in certain circumstances. First, if a BER is written for a student who has a positive behavioral intervention plan, and there is an incident involving a previously unseen serious behavior problem, or when a previously designed intervention is ineffective, the IEP team must review and determine if the positive behavioral intervention plan requires modification. Also, if a BER is prepared regarding a student who does not have a BIP in place, the designated responsible administrator must schedule an IEP team meeting to review the emergency report within two days, to determine the necessity for a FBA or for an interim plan. The IEP team must document the reasons for not conducting the FBA or not developing an interim plan.

In light of the removal of the state mandate to conduct FAAs for students demonstrating a “serious behavior problem,” school districts should revise existing policies and procedures as they pertain to FAAs and train relevant staff regarding these changes.

For further information regarding behavioral interventions for students with disabilities, emergency behavioral interventions, or practical steps that can be taken with regard to these issues, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).