**MYTH:** A student must be reevaluated in order to dismiss that student from a related service included on their IEP.

**FACT:** The IDEA defines related services as “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. . .” in Regulation I – General Provisions on page 6 of the Missouri State Plan for Special Education. The IEP team makes the determination if a specific related service is required to assist a student to benefit from special education. This also means the IEP team can make the decision to dismiss a student from a related service included on their IEP with one exception. That exception is when the related service is also the only specialized instruction the student is receiving (e.g. speech therapy, language therapy, etc.) and the dismissal would exit the student from special education. This exception is because the IDEA requires a public agency to reevaluate a child with a disability before determining that the child is no longer a child with a disability.

**MYTH:** When a student was dismissed from special education services and is then referred for special education again at a later date, the evaluation would be considered a reevaluation.

**FACT:** When a student is dismissed from special education it means that the student is no longer a child with a disability under the IDEA. Any subsequent evaluation would be considered another initial evaluation. Parental consent for the evaluation must be obtained and the student would be required to meet the initial eligibility criteria for one of the 16 disabilities identified in the IDEA.

**MYTH:** For students with IEPs, an FBA can be conducted without prior written notice and consent.

**FACT:** The Office of Special Education Compliance (OSEP) has answered this question several times. Below is the response from the Frequently Asked Questions found on the OSEP’s website at [http://idea.ed.gov/explore/view/p/root_dynamic.QaCorner.7](http://idea.ed.gov/explore/view/p/root_dynamic.QaCorner.7)

*Question E-4: Is consent required to do an FBA for a child?*

*Answer:* Yes. An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP. As with other individualized evaluation procedures, and consistent with 34 CFR §300.300(a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation.

In addition, OSEP issued guidance in the Letter to Christiansen dated February 9, 2007. The letter states that “If the FBA is conducted for individual evaluative purposes to develop or modify a behavior intervention plan for a particular child under 34 CFR 300.502, a parent who disagrees with the child’s FBA would have the right to request an IEE at public expense.” The OSEP response goes further and states:

*Your letter also asks: “If the IEP [individualized education program] team has developed appropriate goals and objectives, and specially designed instruction and wish to complete an FBA to determine the effectiveness of the teaching methods and positive behavioral supports used for the student to make progress towards IEP goals/objectives, is this considered an assessment, therefore requiring parental consent?”*

Consistent with the explanation provided in the Scheinz letter, we believe that parental consent would be required in this situation. Under 34 CFR §300.324(a)(2)(i), if a child’s behavior impedes his or her 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.” If an FBA is being conducted for the purpose of determining whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child’s IEP goals/objectives, or to determine whether the behavioral component of the child’s IEP would need to be revised, we believe that the FBA would be considered a reevaluation under Part B for which parental consent would be required under 34 CFR §300.300(c).


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