

Findings of Complaint Investigation
State Complaint Against:
New York City Department of Education (NYC DOE)
Complainant Name: Advocates for Children of New York
Received: April 8, 2013

Allegation #1:

The NYCDOE has failed to develop and implement policies, procedures and practices to ensure a student with a disability receive appropriate evaluations including Functional Behavior Assessments (FBAs) upon which to base positive behavioral supports and services.

Statements of Fact:

- 8 NYCRR §200.1(r) Functional Behavior assessment means the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment. The functional behavioral assessment shall be developed consistent with the requirements in section 200.22(a) of this Part and shall include, but is not limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.
- 8 NYCRR §200.22(a)(2) The FBA shall, as appropriate, be based on multiple sources of data including, but not limited to, information obtained from direct observation of the student, information from the student, the student's teacher(s) and/or related service provider(s), a review of available data and information from the student's record and other sources including any relevant information provided by the student's parent. The FBA shall not be based solely on the student's history of presenting problem behaviors.
- 8 NYCRR §200.22(a)(3) The FBA shall provide a baseline of the student's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day and include the information required in section 200.1(r) of this Part in sufficient detail to form the basis for a behavioral intervention plan for the student that addresses antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement.
- NYC DOE Standards for Behavioral Intervention for Students with Disabilities outlines, and defines the following requirements for Functional Behavioral Assessments:
 - "A **functional behavioral assessment (FBA)** means the process of determining why a student engages behaviors that impede learning and how the student's behavior relates to the environment."

- o "An FBA for a student with a disability is an evaluation requiring parent consent pursuant to the requirements in section 200.5(b) of the regulations of the Commissioner of Education."
- o "The FBA must be based on multiple sources of data including, but not limited to, information obtained from direct observation of the student; information from the student, the student's teacher(s), related service provider(s) and others with whom the student interacts; and a review of available data and information from the student's record and other sources including any relevant information provided by the student's parent. An FBA must be conducted by a team, the principal will designate the team and its facilitator."
- o After a FBA has been conducted, the CSE must be convened to review the results of the FBA, develop a corresponding BIP, and update the student's individualized education program (IEP) to indicate if a particular device or service, including an intervention, accommodation or other program modification, is needed to address the student's behavior."
- o "An FBA is required and a BIP must be considered whenever:
 - a student with a disability is exhibiting persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions;
 - the behavior of a student with a disability places the student or others at risk of harm or injury, and/or
 - the school-based or central CSE is considering more restrictive programs or placements for a student with a disability as a result of the student's behavior."
- o "An FBA and a BIP are required whenever:
 - A student is subject to disciplinary action and a determination has been made that the behavior is a manifestation of the student's disability. For more information on MANIFESTATION DETERMINATION REVIEWS (MDRs), see New York State's Procedural Safeguards for Students with Disabilities subject to discipline.
- o "When a student for whom a BIP has already been developed is subject to disciplinary action and a determination has been made that the behavior is a manifestation of the student's disability, the BIP must be reviewed and modified as necessary to address the behavior that resulted in the disciplinary action."
- o "An FBA is required and a BIP must be considered whenever:
 - A student who has been referred for an initial evaluation for special education is exhibiting persistent behaviors that impede his or her learning or that of

others, despite consistently implemented general school-wide or classroom-wide interventions; and/or

- The behavior of a student has been referred for an initial evaluation for special education places the student or others at risk of harm or injury."
- The document refers to additional links to NYSED publications relating to FBAs and entering a FBA in the NYCDOE data system SESIS.
- "Functional Behavior Assessment in SESIS" provides guidance on how to create the FBA by listing Field Headings with detailed discussion as to what should be considered when entering data into each section of the electronic FBA. The Field Headings for the FBA include: What Observation Data has been collected?, What is the target inappropriate behavior?, Frequency, Duration, Intensity Settings, What triggers or actions occur immediately before the targeted behavior?, What environmental conditions may affect the targeted behavior?, What is presumed purpose of each behavior?, What does the student gain or lose as an immediate result of the targeted behavior?, What interventions were previously attempted and what were the results?, What interventions should be planned? What does the student view as positive reinforcement?, What are the expected behavior changes?, Describe the methods/criteria for outcome measurement?
- 10 of the 11 students in 10 schools alleging noncompliance in the conducting of Functional Behavioral Assessments (FBAs) were found to be sustained. Upon review of student specific examples, FBAs conducted for individual students did not always obtain information from direct observation. FBAs did not always include the baseline of the student's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day. FBAs did not always define the behavior in concrete terms, identify the contextual factors that contribute to the behavior (including cognitive and affective factors) and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it. FBAs did not always addresses antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement.

Conclusions and Reasons

It is the determination of this Office that the New York City Department of Education (NYCDOE) has policies in place to conduct a regulatory Functional Behavioral Assessment (FBA). However, the NYCDOE implementation practices are deficient in that upon review of student specific examples, FBAs conducted for individual students did not always obtain information from direct observation. FBAs did not always include the baseline of the student's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day. FBAs did not always define the behavior in concrete terms, identify the contextual factors that contribute to the behavior (including cognitive and affective factors) and formulate a hypothesis regarding the general

conditions under which a behavior usually occurs and probable consequences that serve to maintain it. FBAs did not always address antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement.

In addition, the template in the New York City Department of Education Special Education Information System (SEIS) used to guide the written report of the FBA does not meet State requirements. While it asks "What is the targeted inappropriate behavior?" it does not lead the writer to define those behaviors in concrete terms. The template seeks information on the frequency, duration and intensity, however, it does not seek information on latency, nor does it guide the writer to specify this baseline data across activities, settings, people and times of the day. The template seeks answers to questions regarding the "triggers or actions" which occur immediately before the targeted behavior, however, it does not provide assessment information on the cognitive and affective contextual factors that may be contributing to the behavior. There is no place on the FBA form to record the sources of data and the questions on the FBA template only reference 'observational' data.

The regulations require the FBA to include a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it. The NYC DOE form, rather, asks for a 'presumed' purpose and what the student gains or loses as a result of the targeted behavior.

Overall, the form does not provide sufficient guidance to document the results of the FBA that will provide sufficient detail to form the basis of a behavioral intervention plan.

Finding for Allegation #1 Sustained

Citation	Language
200.22(a)(2)	The FBA shall, as appropriate, be based on multiple sources of data including, but not limited to, information obtained from direct observation of the student, information from the student, the student's teacher(s) and/or related service provider(s), a review of available data and information from the student's record and other sources including any relevant information provided by the student's parent. The FBA shall not be based solely on the student's history of presenting problem behaviors.
200.22(a)(3)	The FBA shall provide a baseline of the student's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day and include the information required in section 200.1(r) of this Part in sufficient detail to form the basis for a behavioral intervention plan for the student that addresses antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement.

Compliance Assurance Plan

Allegation # 1 Citations **200.22(a)(2), 200.22(a)(3)**

Required Corrective Action

By January 15, 2014, the NYCDOE will issue a directive to all Committees on Preschool Special Education (CPSEs) and Committees on Special Education (CSEs) requiring the mandated use of NYSED approved forms and templates for conducting Functional Behavioral Assessments (FBAs) upon which to base positive behavioral supports and interventions for any student with a disability requiring a FBA. A copy of the directive must be submitted to NYSED no later than January 15, 2014.

By May 30, 2014, the NYCDOE will provide targeted professional development on conducting Functional Behavioral Assessments (FBA) at the 10 schools identified in the complaint with an additional 2 schools selected by NYSED. Evidence of targeted professional development including details of presenter(s), participants and topics must be submitted no later than May 30, 2014. Include also a detail plan with benchmarks, time lines and outcomes with regard to on-going professional development and support from the Cluster and Network.

By May 30, 2014, the NYCDOE will submit to the NYSED a representative sample of Functional Behavioral Assessments (FBAs) for any student with a disability requiring FBAs at the 10 schools identified in the complaint with an additional 2 schools selected by NYSED.

Evidence to Verify Compliance

By June 30, 2014, The NYSED will verify compliance by review of documentation submitted by June 30, 2014 to include review of the representative sample of IEPs, FBAs and BIPs to ensure compliance with regulatory requirements.

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Allegation #2:

The NYCDOE has failed to develop and implement policies, procedures, and practices to ensure a student with a disability whose behavior impedes his or her learning or that of others, receives consideration of strategies, including positive behavior interventions and supports and other strategies to address that behavior.

Statements of Fact:

- 8 NYCRR §200.4(d) (3) requires that in the case of a student whose behavior impedes his or her learning or that of others, the CSE shall consider strategies, including positive behavior interventions, and supports and other strategies to address that behavior that are consistent with the requirements in section 200.22 of this Part.
- 8 NYCRR §200.22(b)(1) requires that the CSE or CPSE shall consider the development of a behavior intervention plan, as such term is defined in 200.1(mmm) of this Part, for a student with a disability when:
 - (i) The student exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions.
 - (ii) The student's behavior places the student or others at risk of harm or injury;
 - (iii) The CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior, and/or
 - (iv) As required pursuant to section 201.3 of this Title.
- 8 NYCRR §200.22(b)(2) requires that in accordance with the requirements of section 200.4 of this Part, in the case of a student whose behavior impedes his or her learning or that of others, the CSE shall consider strategies, including positive behavior interventions, and supports and other strategies to address that behavior. If a particular device or service, including an intervention, accommodation or other program modification is needed to address the student's behavior that impedes his or her learning or that of others, the IEP shall so indicate. A student's need for a behavior intervention plan shall be documented on the IEP and such plan shall be reviewed at least annually by the CSE or CPSE.
- The New York City Department of Education provided as evidence many examples of professional development materials, some lists of attendees, and one clear city-wide policy (The Citywide Standards Of Intervention and Discipline Measures).

- No policies or professional development sessions were presented as evidence that directed the CSE or CPSE to consider strategies including positive behavior interventions and supports to address students whose behavior impedes his or her learning or that of others when they are engaged in developing IEPs.
- The Citywide Standards of Intervention and Discipline Measures, which is described as policy within the introduction, addresses the requirement of promoting positive student behavior, the responsibilities of staff members, and intervention and prevention approaches that should be addressed.
- The Citywide Standards of Intervention and Discipline Measures states:
 - "Administrators, teachers, counselors and other school staff are expected to engage all students in intervention and prevention strategies that address a student's behavioral issues and discuss these strategies with the student and his/her parent(s)."
 - "Intervention and prevention approaches include but are not limited to guidance support and services to address personal and family circumstances; social/emotional learning, such as conflict resolution/peer mediation/negotiation, restorative circles, anger management, stress management, and/or communication skills acquisition; the use of alternate instructional materials and/or methods; enrichment services; alternate class placement; and/or development or review of functional behavioral assessments and behavioral intervention plans which should be developed and/or reviewed as an early intervention strategy."
 - "If, at any time, school officials suspect that a student's difficulties may be the result of a disability which may require special education services, the student should be referred immediately to the Committee on Special Education (CSE)."
 - "For students with disabilities whose behavior impedes the student's participation in school, a functional behavioral assessment (FBA) is an essential tool to understand the causes of the student's behavior. A behavioral intervention plan (BIP) after an FBA provides specific approaches to address the student's behavior"
- 10 of the 11 students in 10 schools alleging noncompliance in the consideration and development of Behavioral Intervention Plans (BIPs) were found to be sustained. Upon review of student specific examples, BIPs lacked the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behavior. BIPs lacked the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and to provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behaviors. BIPs lacked a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals. BIPs lacked progress monitoring of the frequency, duration and

intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the student's IEP. Lastly, the results of the progress monitoring were not documented and reported to the student's parents and to the CSE or CPSE.

Conclusions and Reasons

It is the determination of this Office that the New York City Department of Education has, in part, developed policies to ensure a student with a disability subject to disciplinary action receives consideration of a Functional Behavioral Assessment (FBA) and, if appropriate, a Behavioral Intervention Plan (BIP). However, the Discipline Code does not sufficiently address the consideration of positive behavioral supports and interventions and strategies, the circumstances to conduct a FBA and, if warranted, the development of BIPs for all students with disabilities who experience behaviors that impede learning as required by State standards.

We also find that the NYCDOE implementation practices are deficient in that BIPs do not contain all elements required to develop BIPs that meet the State's standards. Upon review of student specific examples, BIPs developed for individual students did not include the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behavior; intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and to provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behaviors. BIPs also lacked a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals. BIPs lacked progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the student's IEP. Lastly, the results of the progress monitoring were not documented and reported to the student's parents and to the CSE or CPSE.

In addition, there lacks evidence that the CSEs are given consistent guidance in the consideration of positive behavioral supports and interventions when developing IEPs for students whose behaviors impede his or her learning and or that of others.

Finding for Allegation #2: Sustained

Citation	Language
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200.4(d)(3)(i)	Consideration of special factors. The CSE shall: in the case of a student whose behavior impedes his or her learning or that of others, consider strategies, including positive behavioral interventions, and support and other strategies to address that behavior that are consistent with the requirements in section of this Part.
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Citation	Language
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200.22(b)(2)	In accordance with the requirements in section 200.4 of this Part, in the case of
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a student whose behavior impedes his or her learning or that of others, the CSE or CPSE shall consider strategies, including positive behavioral interventions and supports and other strategies to address that behavior. If a particular device or service, including an intervention, accommodation or other program modification is needed to address the student's behavior that impedes his or her learning or that of others, the IEP shall so indicate. A student's need for a behavioral intervention plan shall be documented on the IEP and such plan shall be reviewed at least annually by the CSE or CPSE.

Citation **Language**

- 200.22(b)(1) The CSE or CPSE shall consider the development of a behavior intervention plan, as such term is defined in 200.1(mmm) of this Part, for a student with a disability when:
- (v) The student exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions.
 - (vi) The student's behavior places the student or others at risk of harm or injury;
 - (vii) The CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior, and/or
 - (viii) As required pursuant to section 201.3 of this Title.

Compliance Assurance Plan

Allegation # 2 Citations 200.4(d)(3), 200.22 (b)(1), 200.22(b)(2)

By January 15, 2014, the NYCDOE will issue a directive to all Committees on Preschool Special Education (CPSEs) and Committees on Special Education (CSEs) requiring the mandated use of NYSED approved forms and templates for the consideration of strategies including positive behavioral intervention and supports and other strategies addressing behaviors for any student with a disability whose behavior impedes his or her learning or that of others. A copy of the directive must be submitted to NYSED no later than January 15, 2014.

By April 30, 2014, the NYCDOE will provide targeted professional development on the consideration of strategies including positive behavioral intervention and supports and other strategies addressing behaviors for any student with a disability whose behavior impedes his or her learning or that of others at the 10 schools identified in the complaint with an additional 2 schools selected by NYSED. Evidence of targeted professional development including details of presenter(s), participants and topics must be submitted no later than June 30, 2014. Include also a detail plan with benchmarks, time lines and outcomes with regard to on-going professional development and support from the Cluster and Network.

By May 30, 2014 the NYCDOE will submit to the NYSED a representative sample of Individualized Education Programs (IEPs) with completed forms and templates of any student with disability considered for strategies including behavioral interventions supports and strategies identified to address behaviors that impede the learning of the student or that of others at the 10 schools identified in the complaint with an additional 2 schools selected by NYSED.

Evidence to Verify Compliance:

By June 30, 2014, The NYSED will verify compliance by review of documentation submitted by June 30, 2014 to include review of the representative sample of IEPs, FBAs and BIPs to ensure compliance with regulatory requirements.

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Allegation #3:

The DOE has failed to develop and implement policies, procedures and practices to ensure students with disabilities receive appropriate behavioral supports and services, including Behavioral Intervention Plan (BIPs), which are based on the results of a Functional Behavioral Assessment.

Statements of Fact:

- 8 NYCRR §200.1 (mmm) defines a Behavioral Intervention Plan as a plan based on the results of a functional behavioral assessment and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior.
- 8 NYCRR §200.4(3)(i) holds that the CSE shall, in the case of a student whose behavior impeded his learning or that of others, consider strategies, including positive behavioral interventions, and supports and other strategies to address that behavior
- 8 NYCRR §200.22(b)(1) The CSE shall consider the development of a behavioral intervention plan, as such term is defined in section 200.1(mmm) of this Part, for a student with a disability when:
 - (i) the student exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions;
 - (ii) the student's behavior places the student or others at risk of harm or injury;
 - (iii) the CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior; and/or
 - (iv) as required pursuant to section 201.3 of this Title.
- 8 NYCRR §200.22(b)(2) In accordance with the requirements in section 200.4 of this Part, in the case of a student whose behavior impedes his or her learning or that of others, the CSE or CPSE shall consider strategies, including positive behavioral interventions and supports and other strategies to address that behavior. If a particular device or service, including an intervention, accommodation or other program modification is needed to address the student's behavior that impedes his or her learning or that of others, the IEP shall so

indicate. A student's need for a behavioral intervention plan shall be documented on the IEP and such plan shall be reviewed at least annually by the CSE or CPSE.

- 8 NYCRR §200.22(b)(3) Except as provided in subdivision (e) of this section, a behavioral intervention plan shall not include the use of aversive interventions.
- 8 NYCRR §200.22(b)(4) The behavioral intervention plan shall identify:
 - (i) The baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behavior. Such baseline shall, to the extent practicable, include data taken across activities, settings, people and times of day. The baseline data shall be used as a standard to establish performance criteria and against which to evaluate intervention effectiveness
 - (ii) The intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and to provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behaviors; and
 - (iii) A schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals.
- 8 NYCRR §200.22(b) (5) Progress monitoring. The implementation of a student's behavioral intervention plan shall include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the student's IEP. The results of the progress monitoring shall be documented and reported to the student's parents and to the CSE or CPSE and shall be considered in any determination to revise a student's behavioral intervention plan or IEP.
- 8 NYCRR §201.3 If the manifestation team pursuant to section 201.4 of this Part, makes the determination that the conduct subject to the disciplinary action was a manifestation of the student disability, the CSE must either:
 - (a) 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; or
 - (b) if a behavioral intervention plan has already been developed, a review the behavioral intervention plan and modify it as necessary to address the behavior.
- 8 NYCRR §201.4 (d)(2)(i) If the manifestation team determines that the conduct was a manifestation of the student's disability, the CSE shall:
 - (a) conduct a functional behavioral assessment and implement a behavioral intervention plan for such student in accordance with section 201.3 of this Part.

- NYC DOE Standards for Behavioral Intervention for Students with Disabilities outlines, and defines the following requirements for Behavioral Intervention Plans:
 - "A **behavioral intervention plan (BIP)** is a plan that is based on the results of an FBA and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, intervention strategies that include behavioral supports and services to address the behavior."
 - "After a FBA has been conducted, the CSE must be convened to review the results of the FBA, develop a corresponding BIP, and update the students individualized education program (IEP) to indicate if a particular device or service, including an intervention, accommodation or other program modification, is needed to address the student's behavior."
 - "An FBA is required and a BIP must be considered whenever:
 - a student with a disability is exhibiting persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions;
 - the behavior of a student with a disability places the student or others at risk of harm or injury, and/or
 - the school-based or central CSE is considering more restrictive programs or placements for a student with a disability as a results of the student's behavior."
 - "An FBA and a BIP are required whenever:
 - A student is subject to disciplinary action and a determination has been made that the behavior is a manifestation of the student's disability. For more information on MANIFESTATION DETERMINATION REVIEWS (MDRs), see New York State's Procedural Safeguards for Students with Disabilities subject to discipline."
 - "When a student for whom a BIP has already been developed is subject to disciplinary action and a determination has been made that the behavior is a manifestation of the student's disability, the BIP must be reviewed and modified as necessary to address the behavior that resulted in the disciplinary action."
 - "An FBA is required and a BIP must be considered whenever:
 - A student who has been referred for an initial evaluation for special education is exhibiting persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions; and/or
 - The behavior of a student has been referred for an initial evaluation for special education places the student or others at risk of harm or injury."

- The document refers to additional links to NYSED publications relating to BIPs and entering a BIP in the NYC DOE data system SESIS.
- One typed page relating to Functional Behavioral Assessments with one paragraph that states, "The Behavior Intervention Plan is based on the results of the FBA. It describes the problem behavior, a hypothesis as to why the problem behavior occurs, and intervention strategies to address that behavior."
- Behavioral Intervention Planning in SESIS, indicates "Best Practices for a BIP Based on State Regulations". The document includes two key questions when "creating and evaluating the content of a BIP"; discusses four elements necessary to change behavior (Prevention, Instruction, Consequences and Crisis intervention), Additionally, provides guidance for creating the BIP in SESIS by listing Field Headings with detailed discussion as to what should be considered when entering data into each section of the electronic BIP. The Field Headings for the BIP include: Target Behavior, Expected Behavior, Schedule for Measuring Intervention Effectiveness, Intervention Strategies, Baseline Data.
- The Behavioral Intervention template in the NYCDOE Special Education Information System (SEIS) has the following Field Headings: Target Behavior, Expected Behavior Changes and Methods/Criteria for Outcome Measurement.
- 10 of the 11 students in 10 schools alleging noncompliance in the consideration and development of Behavioral Intervention Plans (BIP) were found to be sustained. Upon review of student specific examples, BIPs lacked the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behavior. BIPs lacked the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and to provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behaviors. BIPs lacked a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals. BIPs lacked progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the student's IEP. Lastly, the results of the progress monitoring were not documented and reported to the student's parents and to the CSE or CPSE.

Conclusions and Reasons:

It is the determination of this Office that the New York City Department of Education (NYCDOE) has policies in place to develop regulatory Behavioral Intervention Plans. However, the NYCDOE implementation practices are deficient in that BIPs do not contain all elements required to develop BIPs that meet the State's standards. Upon review of student specific examples, BIPs developed for individual students did not include the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behavior; intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and to

provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behaviors. BIPs also lacked a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals. BIPs lacked progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the student's IEP. Lastly, the results of the progress monitoring were not documented and reported to the student's parents and to the CSE or CPSE.

In addition, the template in the New York City Department of Education Special Education Information System (SEIS) used to guide the written report of the BIP does not meet State requirements. The column with the heading "Target Behavior" does not assist the writer in defining the behavior in concrete terms. The template does not seek the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behavior. This is no area to include data taken across activities, settings, people and times of day.

A second heading "Expected Behavior Changes" does not assist the writer in the identification of intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and to provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behaviors.

The third and final heading "Methods/Criteria for Outcome Measurement" does not assist the writer in developing a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals. With regard to monitoring the progress of the implementation of a student's behavioral intervention plan, a predetermined 10 week cycle is imposed rather than a schedule as specified in the behavioral intervention plan and on the student's IEP.

Finding for Allegation #3: Sustained

Compliance Assurance Plan

Allegation # 3 Citations); 200.22(b)(4) 200.22(b)(5)

By January 15, 2014, the NYCDOE will issue a direction to all Committees on Preschool Special Education (CPSEs) and Committees on Special Education (CSEs) requiring the mandated use of NYSED approved forms and templates in the development of Behavioral Intervention Plans (BIPs) which are based on the results of a Functional Behavioral Assessment for any student with a disability requiring a BIP. A copy of the directive must be submitted to NYSED no later than January 15, 2014.

By May 30, 2014, the NYCDOE will provide targeted professional development on developing Behavioral Intervention Plans (BIPs) at the 10 schools identified in the complaint with an additional 2 schools selected by NYSED. Evidence of targeted professional development including details of presenter(s), participants and topics must be submitted no later than May 30, 2014. Include also a detail plan with benchmarks, time lines and outcomes with regard to on-going professional development and support from the Cluster and Network.

By May 30, 2014, the NYCDOE will submit to the NYSED a representative sample of Behavioral Interventions Plans (BIPs) for any student with a disability requiring a BIP at the 10 schools identified in the complaint with an additional 2 schools selected by NYSED.

Evidence to Verify Compliance

By June 30, 2014, The NYSED will verify compliance by review of documentation submitted by June 30, 2014 to include review of the representative sample of IEPs, FBAs and BIPs to ensure compliance with regulatory requirements.