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# Assembly Bill 86: Changes in State Law and Regulation



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# AB 86: The Basics

- Is an education omnibus trailer bill
- Was signed on July 1, 2013
- Took effect immediately
- Repeals the “Hughes Bill” mandate
- Revises EC 56520-56525
- Repeals 5 CCR 3001 (d), (e), (f), (g), (ab) and 5 CCR 3052



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# AB 86: The Basics

It is the intention of AB 86...

“That children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the federal Individuals with Disabilities Education Act...and its implementing regulations.”

EC 56520(b)(1)



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# AB 86: The Basics

It is also the intention of AB 86...

“That assessments and positive behavioral interventions and supports be developed and implemented in a manner 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.”

EC 56520(b)(2)



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# AB 86: The Basics

## AB 86 says...

“The Superintendent shall **repeal those** regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related **services that are no longer supported by statute, including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations, as those provisions existed on January 10, 2013.**”



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# AB 86: The Basics

## Furthermore...

“This **chapter is** necessary to implement the federal Individuals with Disabilities Education Act...and associated federal regulations. This **chapter** is intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act ...**and shall be implemented by local educational agencies without the development by the Superintendent and adoption by the state board of any additional regulations.**”

EC 56523(b)



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# What Did AB 86 Repeal?

## Definitions

- 5 CCR 3001(d) Behavioral emergency
- 5 CCR 3001(e) Behavioral intervention
- 5 CCR 3001(f) Behavioral intervention case manager (BICM)
- 5 CCR 3001(g) Behavioral intervention plan
- 5 CCR 3001(ab) Serious behavior problems



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# What Did AB 86 Repeal?

## “Hughes Bill” Regulations

- 5 CCR 3052(a) General provisions
- 5 CCR 3052(b) Functional analysis assessments
- 5 CCR 3052(c) IEP team meeting
- 5 CCR 3052(d) Intervention
- 5 CCR 3052(e) Acceptable responses
- 5 CCR 3052(f) Evaluation of the BIP effectiveness
- 5 CCR 3052(g) Modifications without IEP team meeting
- 5 CCR 3052(h) Contingency behavioral intervention plans
- 5 CCR 3052(j) SELPA plan
- 5 CCR 3052(k) Nonpublic school policy
- 5 CCR 3052(m) Due process hearings





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# What Did AB 86 Retain?

- 3052(i)(1), (3)-(8): **Emergency Interventions**
- Codified in **EC 56521.1** with some amendment
- 3052 (l): **Prohibitions**
- Codified in **EC 56521.2** with some amendment



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# Changes in State Vocabulary

## Before AB 86

- Functional analysis assessments (FAAs)
- Serious behavioral problems
- Behavioral intervention plans (BIPs) – specifically defined
- Behavior Intervention Case Managers (BICMs) – required!

## After AB 86

- Functional behavioral assessments (FBAs)
- Behavior that impedes a child's learning or that of others
- BIPs – *not* specifically defined
- BICMs – eliminated! Board Certified Behavior Analysts (BCBAs) – role changed



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# Before AB 86

**5 CCR 3001(g):** “Behavioral intervention plan” is a written document which is developed when the individual exhibits *a serious behavior problem* that significantly interferes with the implementation of the goals and objective of the individual’s IEP.

**5 CCR 3052(a)(3):** Behavioral intervention plans shall be based upon a *functional analysis assessment*.

**5 CCR 3052(b):** *A functional analysis assessment* shall occur after the IEP team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective.



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# After AB 86

**EC 56521.2(b):** In the case of a child *whose behavior impedes the child's learning or that of others*, the IEP team *shall consider* the use of positive behavioral interventions and supports, *and other strategies* to address that behavior, consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations.



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# Before AB 86

**5 CCR 3052(a)(1):** When the behavioral intervention plan is being developed, the IEP team shall be expanded to include the *behavioral intervention case manager* with documented training in behavior analysis including positive behavioral intervention(s)...

**5 CCR 3052(b):** A functional analysis assessment must be conducted by, or be under the *supervision of a person who has documented training in behavior analysis* with an emphasis on positive behavioral interventions.

**5 CCR 3052(c):** The IEP team shall include the behavioral intervention case manager.



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# After AB 86

**EC 56525(a):** A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst *may* conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

**EC 56525(b):** This section *does not require* a district, special education local plan area, or county office to use a Board Certified Behavior Analyst to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs..



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# Continuing Requirements: Emergency Interventions

**EC 56521.1(a):** Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm...

**EC 56521.1(b):** Emergency interventions shall not be used as a substitute for the systematic BIP...



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# Continuing Requirements: Emergency Interventions

**EC 56521.1(e):** Parents/guardians shall be notified within one school day if an emergency intervention is used or serious property damage occurs, and a behavioral emergency report (BER) shall be immediately completed...

**EC 56521.1(g) and (h):** If a BER is written re: an individual with exceptional needs who does or does not have a BIP, timelines and procedures for IEP team referrals remain the same.





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# Continuing Requirements: Prohibitions

**EC 56521.2:** Prohibited interventions include the following:

- Interventions that cause physical pain – electric shock
- Noxious, toxic, unpleasant sprays, mists, substances in the face
- Denial of adequate sleep, food, water, shelter, bedding...
- Verbal abuse, ridicule, humiliation, excessive emotional trauma



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# Continuing Requirements: Prohibitions

**EC 56521.2:** Prohibited interventions include the following:

- Simultaneous immobilization of all four extremities (e.g., “prone containment, ”with exceptions)
- Locked seclusion (with exceptions)
- Inadequate supervision
- Deprivation of one or more senses



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# Comparison of state and federal requirements



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# Federal Findings

## **Sec. 1400 Short title; findings; purposes**

### **(c) Findings**

**(5)** Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

**(F)** providing incentives for whole-school approaches, scientifically based early reading programs, **positive behavioral interventions and supports**, and early intervening services to reduce the need to label children as disabled in order to address the learning and **behavioral needs** of such children;.



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# Related Service

## **Sec. 300.34 Related services.**

### **(c) Individual related services terms defined.**

The terms used in this definition are defined as follows:

(10) *Psychological services* includes—

(vi) Assisting in developing **positive behavioral intervention** strategies.

(14) *Social work services* in schools includes—

(v) Assisting in developing **positive behavioral intervention** strategies.



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# What Federal Law Does Not Do

- Federal law does not define the terms “behavioral intervention plan” or “functional behavior assessment.”
- Federal law does not require a BIP or an FBA to be in writing or to be a component of the IEP.
- Federal law does not provide specific guidance as to what types of behaviors trigger the need to develop a BIP.



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# What Federal Law Does Not Do

- Federal law does not specify the type of information the IEP team must consider in determining whether a student requires a BIP.
- Federal law does not mandate the information that must be included in a student's BIP.
- Federal law does not specify who is qualified to conduct FBAs.
- Federal law has no explicit requirement for inclusion of a behavioral specialist on a student's IEP team.



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# A General Guideline

The IEP Team must—

In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.”





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# When Are FBAs and BIPS Required?

## Situation One

### **If....**

- A child with a disability is removed from the current placement for more than 10 days
- For a behavior that violated the school code
- And the IEP team determines the behavior IS a manifestation of the child's disability pursuant to a manifestation determination...
- And NO FBA had been conducted previously

### **Then...**

The IEP team must conduct an FBA and implement a BIP.



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# When Are FBAs and BIPS Required?

## Situation Two

### **If....**

- A child with a disability is removed from the current placement for more than 10 days
- For a behavior that violated the school code
- And the IEP team determines the behavior IS a manifestation of the child's disability pursuant to a manifestation determination
- And an FBA has ALREADY been conducted and a BIP developed...

### **Then...**

The IEP team must review the BIP and modify it as necessary to address the behavior.



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# When Are FBAs and BIPs Required?

## Situation Three

### **If....**

- A child with a disability is removed from the current placement for more than 10 days
- For a behavior that violated the school code
- And the IEP team determines the behavior IS NOT a manifestation of the child's disability pursuant to a manifestation determination...

### **Then...**

The child must receive "as appropriate" an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.



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# When Are FBAs and BIPs Required?

## Situation Four

### **If....**

- A child with a disability is removed to an interim alternative educational setting for not more than 45 school days
- For behavior at school, on school premises, or at a school function
- That involves weapons, drugs, or serious bodily injury
- Without regard to whether the behavior is a manifestation of the disability

### **Then...**

The child must receive “as appropriate” an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.



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# Handouts for this Presentation

- Color-coded copy of Education Code sections 56520-56525 for pre-existing statute, new statute, and deleted statute.
- Table comparing federal and state statute and regulations pertaining to positive behavioral interventions.