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TIMOTHY K. WEBB, Ed.D.
COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM:  Joseph E. Fisher
Assistant Commissioner

DATE: March 18, 2010

RE: Written Parental Consent for Functional Behavioral Assessments

The purpose of this memorandum is to clarify the requirement for securing written parental consent prior to conducting functional behavioral assessments.

Pursuant to recent clarification from the United States Department of Education's Office of Special Education Programs, citing *Letter to Christiansen, 48 IDELR 161, (February 9, 2007)*, written parental consent is required whenever a functional behavioral assessment is intended to evaluate the educational and behavioral needs of a single, specific child.

Therefore, local education agencies must obtain written parental consent prior to conducting functional behavioral assessments for initial evaluation (34 C.F.R. §300.301), reevaluation (34 C.F.R. §300.303), individualized education programming (34 C.F.R. §300.324), and disciplinary actions (34 C.F.R. §300.530(f)). Documentation of written parental consent must be maintained by local education agencies in the child's education record.

If a parent refuses to provide written consent, or fails to respond to a request for written consent, a local education agency may exercise its rights pursuant to 34 C.F.R. 300.507 by requesting a due process hearing and seeking a judicial order for a functional behavioral assessment.

If a parent disagrees with a functional behavioral assessment, the parent is entitled to request an independent educational evaluation at the local education agency's expense, subject to the conditions in 34 CFR §300.502. *United States Department of Education, Office of Special Education and Rehabilitative Services, Questions and Answers on Discipline Procedures, 52 IDELR 231 (June 1, 2009)*.