



# Special Education Law Update

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## **BEHAVIORAL EMERGENCY REPORTS: WHEN AND WHY THEY ARE NECESSARY**

In the recent decision of Student v. Patterson Joint Unified School District (April 27, 2010) OAH Case Nos. 2009110397 and 2009110083, the Office of Administrative Hearings addressed the importance of behavioral emergency reports and what steps a school district must take to comply with the law when a behavioral emergency intervention is used on a special education student.

California law is very clear that a school district must notify the parent of a special education student within **one school day** whenever an emergency intervention is used on their child or serious property damage occurs. A behavioral emergency report (“BER”) must then be immediately completed and maintained in the student’s file. (5 C.C.R. Section 3052(I).)

### **What is a behavior emergency report?**

A BER is a document completed by school staff after a behavioral emergency intervention is used on a student during a behavioral emergency.

A BER must include the following:

- 1) the name of the student;
  - 2) the setting and location of the incident;
  - 3) the name of staff or other persons involved;
  - 4) a description of the incident and the emergency intervention used, and whether the individual is currently engaged in a systematic behavioral intervention plan; and
  - 5) details of any injuries sustained by anyone as a result of the incident.
- (5 C.C.R. Section 3052(i)(5).)

All BERs must be immediately forwarded to, and reviewed by, a designated responsible administrator. Please see the attached BER created by Kern County Consortium Special Education Local Plan Area (“SELPA”).

### **What is a behavioral emergency?**

A behavioral emergency is the demonstration of a serious behavior problem which (1) has not been previously observed and for which a behavior intervention plan (“BIP”) has not been developed; or (2) for which a previously designed BIP is not effective. (5 C.C.R. Section 3001(d).) Serious behavior

problem is defined as self-injurious, assaultive or causes serious property damage. (5 C.C.R. Section 3001(ab).)

### **What is a behavioral emergency intervention?**

Behavioral emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. Behavioral emergency interventions are generally interventions of last resort and many times involve restraint or seclusion of the student. Behavioral emergency interventions must never be used as a substitute for behavioral intervention plans. Behavioral emergency interventions, particularly those employing physical restraint or seclusion, should be used only by properly trained personnel and only with the degree of force and for the amount of time that is reasonable and necessary to control the emergency. (5 C.C.R. Section(i).)

In Patterson Joint Unified School District, OAH found that the school district attempted the procedures in the behavior support plan (“BSP”) first to de-escalate the student, and only used physical restraints as a last resort when the student presented a serious threat to the safety of district staff and other classmates. The district was found to not have used physical restraints on the student as a form of aversive punishment to control the student’s behavior. However, the district failed to complete the required BERs after physically restraining the student.

### **When is an emergency IEP meeting required?**

If a BER is written regarding a student who does not have a BIP, the designated responsible administrator must, within **two days**, schedule an IEP team meeting to review the BER, to determine the necessity for a functional analysis assessment (“FAA”), and to determine the necessity for an interim BIP. An FAA is conducted to analyze a student’s behavior and to determine what interventions/strategies are appropriate to address the behavior. The BIP is based on the results of the FAA and the IEP team’s input. Generally, an FAA is conducted when a student’s behavior support plan is deemed to be ineffective by the student’s IEP team, the student has engaged in serious behavior as defined above or a behavior emergency has occurred.

If a BER is written regarding an individual who has a BIP, the IEP team should meet to review the BER and determine if the incident constitutes a need to modify the current BIP.

In Patterson Joint Unified School District , because the student did not have a BIP, the district needed to schedule an emergency IEP meeting within two days of the incident, which it failed to do. As a result, OAH found that the school district’s failure to schedule an emergency IEP meeting prevented the parents from meaningfully participating in the student’s educational decision-making process and prevented the student from receiving additional supports or services he may have needed. As a result, the school district was required to provide compensatory education to the student, even though student was removed from his classroom by his parents, in the form of one-to-one tutoring, speech and language sessions and occupational therapy sessions.

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It is, therefore, recommended that district staff be advised what the law requires of the school district when a behavior emergency intervention is used upon a student in order to avoid a costly mistake.

If you have any questions regarding the above information, please do not hesitate to contact our office.

—Monica D. Batanero

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