

Amendment to SB 416-FN

1 Amend the bill by replacing all after the enacting clause with the following:

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3 1 Declaration of Purpose. The general court hereby finds that:

4 I. There are currently 300 New Hampshire children subject to the jurisdiction of the division
5 for children, youth and families placed in residential care away from their families and communities.
6 Approximately 70 of those children are in out-of-state facilities. These institutional placements are
7 costly for the state and are not proven to reduce problem behavior. Residential care is costly for the
8 state and not proven to support successful long-term outcomes or reduce problem behavior.

9 II. Testing with functional behavioral assessments to support behavioral interventions as an
10 established criteria prior to children being placed out of home may avoid or reduce the need for
11 residential treatment.

12 III. Behavioral interventions supported by a functional behavioral analysis are proven to be
13 effective in modifying behavior to healthy, prosocial behavior.

14 IV. Understanding the cause and meaning behind problem behavior informs community-
15 based behavior programming and reduces the need for residential treatment. When clinically
16 necessary, residential treatment based on the cause and meaning of behavior is more effective at
17 reducing the risk of persistent problem behavior and better prepares a child to return home.

18 V. Under federal law, 34 C.F.R. 300.530(d)(1)(ii), schools are required to conduct a functional
19 behavioral assessment and provide behavioral intervention services any time a child is removed from
20 school for more than 10 days in a school year and the behavior triggering the removal is directly and
21 substantially related to the child's disability or is a result of the school's failure to implement the
22 IEP per 34 C.F.R. 300.530(e).

23 VI. Therefore, this act directs the department of health and human services to expand the
24 use of functional behavioral assessments when clinically indicated to inform behavioral intervention
25 plans for children in need of residential treatment due to problem behavior. When related to
26 educational needs, the department shall collaborate with the school district to comply with the law.

27 2 New Paragraph; Services for Children, Youth and Families; Assessment, Treatment, and
28 Discharge Planning; Requirement for Evidence-Based Functional Behavioral Assessments and
29 Plans. Amend RSA 170-G:4-e by inserting after paragraph IV the following new paragraph:

30 IV-a. The assessment of behavioral health and other treatment needs of a child at risk of
31 residential treatment either through RSA 169-B, 169-C, 169-D, or RSA 135-F, the system of care for
32 children's mental health due to problem behavior, shall include an evidence-based functional

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1 behavioral assessment and a behavioral intervention plan. If the child's school district has no
2 responsibility under IDEA to complete a functional behavioral assessment and it is not related to the
3 child's educational needs, the department shall obtain a functional behavioral assessment. If a
4 functional behavioral assessment cannot be completed prior to entry into residential treatment, the
5 department shall ensure that an assessment is initiated within 30 days of that entry. The functional
6 behavioral assessment shall be conducted by a qualified individual at a fair reimbursement rate
7 according to regional standards, which may include a board certified behavior analyst. The
8 assessment shall include, but not be limited to, a file review, at least 2 hours of observation in a
9 natural or clinical setting, and a final written report, which shall include specific recommendations
10 to include within a positive behavior intervention plan.

11 3 New Paragraph; Special Education; Individualized Education Programs; Functional
12 Behavioral Assessment Required. Amend RSA 186-C:7 by inserting after paragraph III the
13 following new paragraph:

14 IV. If the IEP team has determined a positive intervention plan is appropriate after review
15 of the functional behavioral assessment, the child's individualized education program shall include
16 data from the functional behavioral assessment with recommendations and reference to a positive
17 behavior intervention plan that is developed in addition to the IEP. A functional behavior
18 assessment shall be conducted by a trained behavior analyst, which may include a board certified
19 behavior analyst. The assessment shall include, but not be limited to, a file review, at least 2 hours
20 of observation in a natural or clinical setting, and a final written report, which shall include specific
21 recommendations to include within a positive behavior intervention plan. Districts shall refer to 34
22 C.F.R. 530 in its entirety to determine their responsibilities for discipline procedures under IDEA.

23 4 Effective Date. This act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill requires children's behavioral health assessments to include a functional behavioral assessment and a behavioral intervention plan prior to the placement decision.