



# Code-Enforcement Procedures

## SECTION A. Preamble

The BACB is charged with promoting and maintaining standards of professional conduct in the practice of behavior analysis. To protect the public from practitioners who fail to meet these standards, the Behavior Analyst Certification Board (BACB) has adopted a [Professional and Ethical Compliance Code for Behavior Analysts](#) (Code). The BACB has designed and implemented enforcement procedures for addressing alleged violations of the Code.

The purpose of the BACB's Code Enforcement System is to protect the public from certificants and certification applicants who have violated the Code. The BACB provides due process to certificants and applicants who are alleged to have violated the Code (Subject). Each Notice of Alleged Violation (Notice) submitted is reviewed by BACB Legal Department staff and behavior analysts trained on Code enforcement matters.

When it is determined that a violation of the Code has occurred, the consequences may vary in severity, from cautionary guidance to the revocation of an individual's certification or eligibility to pursue certification. Mandatory supervision, suspension, and revocation outcomes will be published on the [BACB website](#) along with the certificant's or applicant's name.

## SECTION B. Basis for Action

An accepted Notice provides basis for the assignment to one of the Code Enforcement Systems.

## SECTION C. Code Enforcement Systems

Accepted Notices may result in routing to one or more of the following systems:

- a) *Cautionary Guidance*: An educational memorandum sent by the BACB to a certificant alleged to have violated the Code.
- b) *Code Compliance*: An educational and professional development process for a certificant alleged to have violated the Code. Participation in the process is voluntary.
- c) *Disciplinary Review*: Any action or status change required by the BACB.
  - i. *Revocation*: Certification is terminated.
  - ii. *Invalidated Certification*: Certification is invalidated because the eligibility requirements had not been met.
  - iii. *Suspension*: Certification may not be used for a specified period of time, after which the individual may be required to apply for reinstatement, subject to compliance with then-existing standards for certification.
  - iv. *Eligibility Suspension*: Individual is not eligible to apply for BACB certification for a specified period of time.
  - v. *Restriction*: Certificant's ability to practice behavior analysis using BACB certification is limited (e.g., mandatory supervision).
  - vi. *Corrective Action*: Certificant must fulfill certain conditions (e.g., take continuing education on a topic relevant to the violation) to avoid further consequences by the BACB.
  - vii. *Advisory Warning*: Certificant is issued a warning, sometimes with recommendations to promote adherence to the Code.
  - viii. *Verification of Competency*: This may be requested when someone has disclosed a condition that may impact their ability to practice or evidence has been submitted which suggests this circumstance. Examples include, reports of a mental health treatment that has prevented work for a period of

time, physical injuries that prevent work, or criminal offenses like repeated drinking-and-driving that question practice competency.

**Note.** Consequences that are announced publicly and identify the Subject by name include: restrictions, invalidated credentials, suspension, and revocation. The BACB may disclose further information related to disciplinary matters to licensure and regulatory boards.

## SECTION D. Procedures for Enforcement of the Code

### 1) Jurisdiction

The BACB has jurisdiction over all individuals who have been certified as a Board Certified Behavior Analyst (BCBA), a Board Certified Assistant Behavior Analyst (BCaBA), or a Registered Behavior Technician (RBT), as well as those who have applied for certification, and those who have applied for or obtained Authorized Continuing Education (ACE) or Verified Course Sequence (VCS) status.

### 2) Intake of Notice of Alleged Violation

When a Notice of Alleged Violation of the Code is submitted or generated by the BACB, the BACB evaluates the Notice to ensure:

- a) It is submitted against an individual over whom the BACB has jurisdiction.
- b) It is submitted within six months of the alleged violation (BACB staff have the discretion to extend this deadline in exceptional circumstances).
- c) It has a valid signature and is appropriately formatted and redacted.
- d) It includes evidence to support an alleged violation of the Code. Each individual Code violation must be supported by clearly-identified evidence, to be included in the submission. All supporting evidence must be linked to a discrete Code section.

If the Notice does not meet these criteria (or it is otherwise not actionable as determined by the BACB), then no action will be taken and the person filing the Notice (“Notifier”) will be informed. The BACB is not an independent investigative body. Notices need to provide conclusive evidence, not speculation or unsubstantiated suspicions. If a complaint related to the allegations in the Notice has been submitted to an agency with investigative powers (e.g., law enforcement, licensure board, third-party payer), the BACB may, but is not required to, postpone processing of the Notice until a final determination has been issued by the investigatory agency.

### 3) Notice of Alleged Violation

- a) At least two BACB staff shall collaborate to make an appropriate routing decision for processing of each accepted Notice.
- b) Upon completion of evaluation and routing, action may be taken based on the evidence and violation of the Code. The Notice may be processed into one of the follow three systems:
  - i. Cautionary Guidance
  - ii. Code Compliance
  - iii. Disciplinary Review
- c) The Subject will receive a copy of the Notice, typically within 30 days of its receipt by the BACB.

#### 4) Failure to Respond to Notice of Alleged Violation

Failure to respond to a Notice in a timely manner will result in automatic suspension of certification, application eligibility, or other status with the BACB. During the period of suspension, individuals may not represent that they are certified by the BACB, use a BACB credential, or bill under a BACB certification. Failure to respond during the suspension period may result in revocation.

The subject may be reinstated during the suspension period if the Subject has satisfied the following requirements:

- a) Requested reinstatement, in writing, identifying the reason for the nonresponse and the action plan to ensure timely response moving forward;
- b) Completed any recertification requirements (BCBA, BCaBA, RBT) or renewal requirements (ACE or VCS);
- c) Complied with all requirements for conduct of the review, including response to the Notice; and
- d) Demonstrated appropriate reporting to and from third parties and licensure board(s), if applicable.

**Note:** Reinstatement, if approved, will not occur until after the disciplinary process has concluded.

#### 5) Procedures for Disciplinary Review

##### a) Staff Review

- i. Staff will review a case to issue a consequence based on precedent. That decision will become final, unless appealed.
- ii. Staff may also docket a case for Disciplinary Review Committee (DRC) action.

##### b) Disciplinary Review Committee

- i. Staff shall prepare a comprehensive file that includes the Notice of Alleged Violation, supporting evidence, and the Subject's response. This file shall be provided to the DRC members in advance of their meeting. The members of the DRC include at least one current or former member of the BACB Board of Directors and other certified behavior analysts.
- ii. At the DRC meeting:
  - The Subject is not permitted to be present or to participate in the DRC meeting. The Notifier is likewise not permitted to be present or to participate in the DRC meeting.
  - BACB staff shall verbally present summary of the matter to the DRC; the DRC is provided a comprehensive written file in advance of the meeting. The DRC will have the opportunity to discuss and deliberate on the matter. The DRC shall then issue a decision regarding the outcome of the matter. The decision may include: a) No further action, b) Imposition of Corrective Actions, or c) Imposition of mandatory supervision, suspension, or revocation.
  - Following the DRC meeting, BACB staff shall notify the Subject of the DRC's decision ("Final Determination") within thirty days of the decision. If after thirty days, the subject had not requested an appeal, the Notifier shall likewise be informed of the Final Determination.

## 6) Appeal Process

- a) If the Subject is issued consequences as a part of Disciplinary Review, the Subject has thirty days to submit a written request for appeal. The Notifier does not have the right to request an appeal.
- b) The Appeal shall be heard by the Disciplinary Appeal Committee, consisting of a minimum of three current or former members of the BACB Board of Directors. Members of the DRC that issued the Final Determination in the matter may not serve on the Disciplinary Appeal Committee for the same matter.
- c) The Subject has the right to be present during the appeal, via video conference, only in cases wherein there was a reported sanction (i.e., the sanction was published on the BACB Disciplinary Actions webpage). For video-conference appeal meetings, the Subject may present written or verbal evidence in support of their appeal, may choose to be represented by counsel, or have witnesses present during the video conference. Formal rules of evidence shall not apply.
- d) In all other appeals cases that do not include a reportable sanction, the Subject will be provided with an opportunity to submit a written appeal that may include statements from witnesses, or appeal documents prepared by an attorney. Formal rules of evidence shall not apply.
- e) The Disciplinary Appeal Committee may:
  - i. Uphold the DRC or Staff Final Determination.
  - ii. Overturn the DRC or Staff Final Determination, or
  - iii. Modify the DRC or Staff Final Determination, but not in a manner more adverse to the Subject.
- f) Typically, BACB staff will notify the Subject of the outcome of the appeal within fifteen days.

## 7) Standard of Proof

The BACB shall take disciplinary action against an individual only when there is a *preponderance of the evidence* supporting a finding of a violation of the Code.

## 8) Amendment to Procedures

These procedures may be amended at any time by the BACB.