Functional Behavioral Assessments:
Legal Requirements and Challenges

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Abstract: The Individuals with Disabilities Education Act (IDEA) Amendments of 1997 require that if a student's behavior impedes his or her learning or the learning of others, then that student's Individualized Education Program (IEP) must address the problem behavior in a proactive manner. To do this, the IEP team conducts a functional behavioral assessment (FBA), writes an IEP based on the assessment, and develops a behavior intervention plan (BIP). Additionally, the IDEA requires that FBAs must be performed when students with disabilities are suspended in excess of 10 school days. The purpose of this article is to (a) present the legal requirements of the IDEA Amendments regarding IEPs, FBAs, and BIPs for special education students with problem behavior; (b) describe the initial policy letters and due process hearings that are helping to clarify the requirements; and (c) discuss the implications of the law for school psychologists and other members of IEP teams.

The Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (PL 105-17; hereafter IDEA '97) became law on June 4, 1997. A major Congressional goal for IDEA '97 was to make schools safe and orderly environments that are conducive to learning (Senate Report, 1997). Congress accomplished this goal by providing teachers and school administrators with the tools they needed to discipline students with disabilities and problem behaviors. For example, administrators now have the authority to suspend students for up to 10 school days without providing educational services and to remove students to interim alternative educational settings (IAES) for up to 45 days for weapons or drug offenses.

When Congress granted this authority to school administrators, it recognized that there must be a balanced approach to the discipline of students with disabilities. A balanced approach reflects the need for safe and orderly schools and protects the right of students with disabilities to receive a free appropriate public education (FAPE). To achieve this balance, Congress mandated that students with disabilities have the right to an appropriately developed individualized education program (IEP) with well-designed behavior intervention strategies and supports. The reasoning behind this mandate was that if IEP teams addressed problem behavior in a preventive or proactive manner, then the need for disciplinary procedures would be lessened and students would be taught the adaptive skills necessary to function successfully in society.

Perhaps the discipline-related component of IDEA '97 that has garnered the most attention has been functional behavioral assessment (FBA). This article includes a review and analysis of the legal requirements and regulations regarding FBAs. It also includes analysis of policy statements made by the Office of Special Education Programs (OSEP) of the U.S. Department of Education and the results of due process hearings. In addition, guidelines...
are presented for school districts to follow to conduct educationally sound and legally valid FBAs. The article begins with a review of the requirements that IEP teams must consider when (a) determining whether a student’s problem behavior warrants an FBA, and (b) developing a student’s educational program to address problem behavior.

**Addressing Problem Behavior in the IEP Process**

IDEA ’97 requires that if a student with disabilities exhibits problem behaviors that impede his or her learning or the learning of others, then the student’s IEP team shall consider “strategies, including positive behavioral interventions, strategies, and supports to address that behavior” (IDEA, 20 U.S.C. § 1414 (g)(3)(B)(i)). Comments to the federal regulations indicate that if a student has a history of problem behavior, or if such behaviors can be readily anticipated, then the student’s IEP must respond to that behavior (IDEA Regulations, 34 C.F.R. § 300 Appendix A question 39). This requirement applies to all students in special education, regardless of their disability category.

What are these problem behaviors? Neither IDEA ’97 nor the regulations directly speak to this question. Although this lack of specificity may be frustrating, it is consistent with the IDEA philosophy of allowing IEP teams to make individualized decisions for each student (Gorn, 1999). It is up to the IEP team, therefore, to determine which behaviors are significant enough to require interventions formally written into the IEP. Dragow, Yell, Bradley, and Shriner (1999), however, inferred from previous hearings and court cases that these problem behaviors may include (a) disruptive behaviors that distract teachers from teaching and students from learning, (b) noncompliance, (c) verbal and physical abuse, (d) property destruction, and (e) aggression towards students or staff.

How should these problem behaviors be addressed? First, when problem behavior is evident, the IEP team must determine if the behavior impedes the student’s learning or other students’ learning. If the IEP team decides that the problem behavior does interfere with the student’s learning, then they must conduct an assessment of the problem behavior. Second, the IEP team must develop a plan based on the information gained from the assessment that reduces problem behaviors and increases socially acceptable behaviors.

The results of the IEP team’s programming decisions that are based on the FBA must be included in the IEP. This means that the IEP of a student with serious problem behaviors must include the information from the assessment in the Present Levels of Educational Performance section of the IEP. Because educational needs must be responded to by developing appropriate special education programming, the IEP must also include (a) measurable goals and objectives to deal with the problem behavior, and (b) the special education and related services that the student should receive. Moreover, if the BIP involves program modifications to the general education classroom, these modifications must be included in the IEP. According to the U.S. Department of Education, when an IEP team addresses a student’s problem behavior, “the needs of the individual child are of paramount importance in determining the behavior strategies that are appropriate for inclusion in the child’s IEP” (OSEP Questions and Answers, 1999). Thus, the IEP team must design strategies, interventions, and supports to respond to problem behavior based on the individualized assessment data the team has collected.

According to Dragow et al. (1999), if an IEP team fails to address problem behaviors in the student’s IEP, then that failure would deprive the student of a FAPE. This failure could result in application of the law’s sanctions against the school district. In fact, Thomas Hearn, former director of the U.S. Department of Education’s Office of Special Education Programs stated that “the key provision in IDEA ’97 is using positive behavioral interventions and supports” in the IEPs of students who exhibit significant problem behaviors (Letter to Anonymous, 1999). Failure to do so “would constitute a denial of the free appropriate public education (mandate of the IDEA)” (IDEA Regulations, Appendix B, Question 38).

IDEA ’97 encourages, and sometimes demands, that educators respond to problem
behaviors by conducting FBAs and by developing education programming based on the results of the assessment. There are situations in which an FBA can be an important component of the IEP team’s decision-making process, but it is not strictly required. For example, a student’s teacher may report that occasionally a student engages in serious misbehavior. In this case, the FBA may be the best proactive approach to problem behavior, but it is not required by law. There are other situations, however, in which the law specifically requires that an FBA be conducted. These situations include whenever a student is suspended for over 10 consecutive days or a student is placed in an IAES for bringing a weapon to school. In the following section the law’s requirements regarding FBAs are examined.

**Functional Behavioral Assessment**

In a comment published in the Federal Register, FBA was defined as “a process which searches for an explanation of the purpose behind a problem behavior” (OSEP Questions and Answers, 1999). Although the U.S. Department of Education has not defined an FBA, it is a reasonable assumption that Congress intended that the term be consistent with the meaning in the professional literature (Drasgow et al., 1999; Gorn, 1999). Thus, FBA is a process to gather information about factors that reliably predict and maintain problem behavior in order to develop more effective intervention plans (Horner & Carr, 1997; O’Neill et al., 1997). The factors related to the occurrence of problem behavior consist of (a) setting events (i.e., events that do not by themselves trigger problem behavior, but instead influence the likelihood that other events will trigger problem behavior), (b) antecedents (i.e., events or actions that immediately precede and trigger problem behavior), and (c) consequences (i.e., events or actions that occur as a result of problem behavior). In essence, an FBA is used to develop an understanding of the cause and purpose of problem behavior (Drasgow et al., 1999). Although IDEA ’97 does not require that an FBA include interviews, observations, or functional analysis, the functional assessment and analysis literature supports including all three components as the most effective approach.

In 1998, a hearing officer analyzed the federal law and regulations regarding FBAs. She concluded that:

The general purpose of functional behavioral assessment is to provide the IEP team with additional information, analysis, and strategies for addressing undesirable behavior, especially when it is interfering with a child’s education. The process involves some variant of identifying the core or “target” behavior; observing the pupil (perhaps in different environments) and collecting data on the target behavior, antecedents and consequences; formulating a hypothesis about the cause(s) of the behavior; developing an intervention(s) in changing the behavior. (Independent School District No. 2310, p. 333)

Generally, FBAs involve defining a behavior, collecting interview information about when the behavior does and does not occur, observing situations in which the behavior does and does not occur, developing hypotheses about the potential function of a behavior, and testing hypotheses about the function of the behavior (O’Neill et al., 1997). The law intends that an FBA should be part of the process of addressing problem behavior. Furthermore, the purpose of an FBA, or any special education assessment, is not merely to determine eligibility. Rather, its purpose is to determine the educational needs of students with disabilities and then to develop effective programming to meet those needs.

IDEA ’97 does not, however, detail the components of an FBA. The U.S. Department of Education did not include additional information on FBAs in the final regulations. In fact, the Department of Education specifically refused to define an FBA, noting that “IEP teams need to be able to address the various situational, environmental, and behavioral circumstances raised in individual cases” (OSEP Questions and Answers, 1999). This means that the composition of FBAs will be left to states, school districts, and IEP teams. O’Neill et al. (1997) suggest that each FBA contain the key components listed in Table 1. Additionally, the decision to conduct an FBA is left up to the professional judgement of the IEP team. Nonetheless, there are certain situations, in which an IEP team must
Table 1
Key Components of an FBA

<table>
<thead>
<tr>
<th>Key Component</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A clear description of the problem behavior.</td>
<td>• Bill yells obscenities and throws objects.</td>
</tr>
<tr>
<td>• Identification of the events, times, and situations that predict when the</td>
<td>• The misbehavior occurs when Bill is engaged in independent seatwork in</td>
</tr>
<tr>
<td>behavior will and will not occur.</td>
<td>his math and science classes but does not occur in reading, lunch, or</td>
</tr>
<tr>
<td>• Identification of the consequences that maintain the problem behaviors.</td>
<td>physical education.</td>
</tr>
<tr>
<td>• Development of one or more summary statements or hypotheses that describe</td>
<td>• Bill’s teachers put him in time-out or send him to the principal when</td>
</tr>
<tr>
<td>the behavior and its functions.</td>
<td>the misbehavior occurs.</td>
</tr>
<tr>
<td>• Collection of direct observation data.</td>
<td>• Whenever the teacher hands out a worksheet in math and science class,</td>
</tr>
<tr>
<td></td>
<td>Bill screams obscenities and throws objects in order to avoid or escape</td>
</tr>
<tr>
<td></td>
<td>the task.</td>
</tr>
<tr>
<td></td>
<td>• Three observations in both classes for a total of six observations.</td>
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</tbody>
</table>

conduct an FBA. These situations are reviewed next.

Functional Behavioral Assessments and Suspension

IDEA '97 specifies certain disciplinary actions that trigger an FBA, a review of an FBA, or BIP if they were conducted and developed during the IEP process. Under the law, IEP team meetings regarding FBAs and BIPs are required within 10 business days from when a student is (a) first removed for more than 10 school days in a school year, (b) removed in a manner that constitutes a change in placement, and (c) placed in an IAES for a weapons or a drug offense. In such situations, the IEP team must convene to conduct an FBA and develop a BIP. Martin (1999) suggests, however, that IEP teams should conduct an FBA if a student is approaching 10 cumulative days of suspension rather than waiting until the 10-day limit has been reached.

For subsequent removals in a school year of a student who already has an FBA and BIP, the IEP team members individually can review the BIP and its implementation. The review of the student’s behavior may take place without a meeting unless one or more of the team members believe that the plan (or its implementation) needs modification (IDEA Regulations, 34 C.F.R. §300.520(c)).

The regulations did not intend to require the development of appropriate behavioral interventions within 10 days of removing a student from the current placement. Instead, they intended to require that public schools conduct the FBA. Moreover, the regulations ensure that the IEP team develops appropriate behavioral interventions based on the assessment of a student's problem behavior. Those interventions must then be implemented as quickly as possible.

The purpose of conducting an FBA is to develop educational programming that is related to the cause and purpose of the problem behaviors. IDEA '97 refers to specific programming to address problem behavior as BIP. The next section includes a review of the legal requirements regarding BIPs.

Behavior Intervention Plans

The IEP team designs a BIP based on the FBA. IDEA '97 does not provide details about the composition of the BIP beyond indicating that the plan has to be individualized to meet the needs of different students in different educational environments. Thus, the composition of BIPs, similar to the composition of FBAs, will be determined by states, school districts, and IEP teams. Congress apparently expected that “behavioral intervention plan” had a commonly understood meaning in the special education field (Gorn, 1999).

The most important requirements regarding BIPs are that they need to be proactive and
Table 2
IDEA '97 Requirements Regarding FBAs

<table>
<thead>
<tr>
<th>When an FBA should be conducted</th>
<th>When an FBA must be conducted</th>
</tr>
</thead>
<tbody>
<tr>
<td>• When a student's problem behavior impedes his or her learning or the learning of others.</td>
<td>• When suspensions or placements in an alternative setting exceed 10 consecutive days or amount to a change in placement.</td>
</tr>
<tr>
<td>• When a student's behavior presents a danger to himself or herself or others.</td>
<td>• When a student is placed in an interim alternative educational setting for 15 days when his or her misconduct involves weapons or drugs.</td>
</tr>
<tr>
<td>• When a student's suspension or placement in an interim alternative educational setting approaches 10 cumulative days.</td>
<td>• When a due process hearing officer places a student in an interim alternative educational setting for behavior that is dangerous to himself or herself or others.</td>
</tr>
</tbody>
</table>

multidimensional. This means that IEP teams should implement multiple BIP strategies aimed at preventing problem behavior before it becomes severe enough to warrant such sanctions as suspension or expulsion (Gorn, 1999; Yell, Katsiyannis, Bradley, & Rozalski, 2000). Behavioral plans that describe acts of prohibited misconduct and then specific consequences for misbehavior are almost certainly illegal because they are reactive (Gorn, 1999).

The BIP is a behavior change program that emphasizes multiple strategies to reduce problem behavior. These strategies may include setting event and antecedent interventions, functional equivalence training (i.e., teaching socially acceptable behaviors to replace a student's inappropriate behaviors), general skills instruction, cognitive behavioral interventions, differential reinforcement strategies, or any other combination of nonaversive behavior change strategies. The key component of the BIP is the use of multiple positive behavioral interventions that do not rely on coercion or punishment for behavior change (Dunlap & Koegel, 1999).

Summary of Legal Requirements Regarding FBAs and BIPs

IEP teams must keep two major points in mind when they respond to problem behavior. First, the law emphasizes the use of positive behavioral interventions, supports, and services for students with disabilities who exhibit problem behaviors. One purpose of positive programming is to teach appropriate behaviors that increase the likelihood of a student's success in school and in post-school life, rather than merely using punishment-based programming to eliminate inappropriate behavior. These procedures must be included in students' IEPs. Second, when FBAs and BIPs have not been completed prior to a behavioral incident that leads to a suspension over 10 days or removal to an IAES, the IEP team must meet to conduct an FBA and complete a BIP. The law does not list specific timelines; instead it indicates only that this process must be completed as soon as possible. Table 2 lists the situations in which IEP teams must conduct FBAs. The next section examines state level due process hearings that have addressed IEP teams’ compliance with the FBA mandate of IDEA '97.

Due Processing Hearings

The procedural safeguards of the IDEA allow parents who wish to contest a school's special education decisions regarding their child to request a due process hearing. The purpose of a due process hearing is to allow an impartial third party (i.e., the due process hearing officer) to hear both sides of a dispute, examine the issues in relation to the law, and then settle the dispute by imposing a solution on the parties involved. Due process hearings can be instructive because they give us an indication of how well school districts are actually implementing the IDEA's requirements (Smith, 2000). Due process hearings set no precedence.
<table>
<thead>
<tr>
<th>State Level Hearing</th>
<th>Citation</th>
<th>Prevailing Party</th>
<th>Rationale for Hearing Officer’s Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Devine Independent School District</td>
<td>25 IDELR 1238</td>
<td>Parents, in part</td>
<td>• The district failed to address a student’s problem behavior in the IEP.</td>
</tr>
<tr>
<td></td>
<td>(SEA TX 1997)</td>
<td></td>
<td>• The IEP team failed to conduct an FBA or develop a BIP.</td>
</tr>
<tr>
<td>William S. Hart Union High School District</td>
<td>26 IDELR 1258</td>
<td>Parents</td>
<td>• Although a student had been placed in an IAES, the IEP had not conducted an FBA nor had they developed a BIP as required by IDEA ’97.</td>
</tr>
<tr>
<td></td>
<td>(SEA CA 1997)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonita Unified School District</td>
<td>27 IDELR 248</td>
<td>Parents, in part</td>
<td>• The school district failed to conduct an appropriate behavioral assessment.</td>
</tr>
<tr>
<td></td>
<td>(SEA CA 1997)</td>
<td></td>
<td>• The district’s FBA consisted of an inadequate “handwritten, fill-in-the-blank document” (p. 254). Parents were reimbursed for an independent educational evaluation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Stroudsburg Area School District</td>
<td>27 IDELR 975</td>
<td>Parents</td>
<td>• The IEP did not address behavior (e.g., no goals, evaluation data), even though the student had serious problem behavior.</td>
</tr>
<tr>
<td></td>
<td>(SEA PA 1997)</td>
<td></td>
<td>• The IEP team did not complete an FBA or BIP.</td>
</tr>
<tr>
<td>District of Columbia Public Schools</td>
<td>28 IDELR 401</td>
<td>Parents</td>
<td>• The IEP team did not conduct an FBA even though the student was suspended in excess of 10 school days.</td>
</tr>
<tr>
<td></td>
<td>(SEA DC 1998)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgetown Independent School District</td>
<td>28 IDELR 904</td>
<td>School District</td>
<td>• The school district had conducted an adequate FBA and had developed an appropriate BIP.</td>
</tr>
<tr>
<td></td>
<td>(SEA TX 1998)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of Education of the Akron Central School District</td>
<td>28 IDELR 909</td>
<td>Parents</td>
<td>• The IEP team did not conduct an FBA even though the student was suspended in excess of 10 school days.</td>
</tr>
<tr>
<td></td>
<td>(SEA NY 1998)</td>
<td></td>
<td>• The student’s IEP team did not develop a BIP.</td>
</tr>
<tr>
<td>South Pasadena Unified School District</td>
<td>28 IDELR 1113</td>
<td>Parents</td>
<td>• The student’s IEP team did not complete an FBA in a timely manner.</td>
</tr>
<tr>
<td></td>
<td>(SEA CA 1998)</td>
<td></td>
<td>• The student’s FBA was inadequate; therefore, the student was denied a FAPE.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• The student’s IEP did not address problem behavior.</td>
</tr>
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</table>
Table 3 (continued)

<table>
<thead>
<tr>
<th>State Level Hearing</th>
<th>Citation</th>
<th>Prevailing Party</th>
<th>Rationale for Hearing Officer’s Decision</th>
</tr>
</thead>
</table>
| Jim Thorpe Area School District              | 29 IDELR 320           | Parents, in part, and school district, in part ¹ | • The school district did not conduct an FBA before developing behavioral goals on the student’s IEP.  
• The behavior management plan was not individualized.                                                                                                            |
| Independent School District No. 2310         | 29 IDELR 330           | Parents                                | • The IEP team had not conducted an adequate FBA. The inadequate assessment led to an inadequate IEP and loss of educational benefit.  
• The IEP team did not conduct an FBA nor did they address the student’s behavior in the IEP, even though the student exhibited problem behavior, and his parents requested assessment and programming to address the behavior. |
| Independent School District No. 279          | 30 IDELR 645           | Parents                                |                                                                                                                                                                        |
| Mason City Community School District         | 32 IDELR 216           | Parents                                | • The IEP team did not assess the student’s behavior, nor did they develop a BIP even though the student exhibited problem behavior.                                                                                     |
| Westbrook School Department                  | 32 IDELR 251           | Parents                                | • The IEP team failed to conduct an FBA and to develop a BIP following a disciplinary suspension.                                                                       |
| Moorpark Unified School District             | 33 IDELR 24            | Parents                                | • The parents of a student with emotional disabilities obtained an independent FBA when a school district refused to conduct one.  
• Because the student’s behavior interfered with his education, the district should have conducted an FBA.  
• The school district was ordered to reimburse the parents for the FBA.                                                                                           |

¹This means that the parents prevailed on some, but not all, of the major issues in the hearing.
²Both the parents and the school district prevailed on an issue(s) in the hearing.
because other hearings or courts are not required to follow the decisions of previous due process hearings, but they can provide valuable information about trends in school districts' compliance with the law.

A review was done of due process hearings that directly involved FBAs from the time that IDEA '97 became law until August 2000. These hearing decisions were collected and categorized in accordance with two variables. The first variable identified the outcome of the hearing and the second variable examined the hearing officer's rationale in making his or her decision.

Fourteen state level due process hearings in which a primary dispute involved a school district's conducting an FBA were located. No federal court cases were found in this area. In 13 of the hearings located, the hearing officer ruled in favor of the parents and against the school district. Thus, school districts lost in 94% of the hearings (13 out of 14). Table 3 contains the results of these state level hearings. In 11 of these cases, school districts failed to conduct an FBA when it was required by IDEA '97 (e.g., within 10 days of a student's placement in an IAEA for a weapons offense). In three hearings, Bonita Unified School District (1997), District of Columbia Public Schools (1998), and Moorpark Unified School District (1999), the hearing officers ordered the school district to reimburse the parents for a privately arranged and financed FBA because the school district failed to conduct one.

These results indicate that the primary difficulty school districts face is complying with the procedural requirements for conducting an FBA. School districts still are challenged by the requirements of the law 3+ years after the passage of IDEA '97. It appears that although IDEA '97 requires that the IEP team must conduct an FBA, in most of these cases the IEP team simply did not do it.

In three hearings (i.e., Bonita Unified School District, 1997; Independent School District No. 2310, 1998; South Pasadena Unified High School, 1998), hearing officers ruled against school districts because the IEP team conducted an inadequate FBA. That is, the team used limited data sources and thus abbreviated the process (Smith, 2000). For example, in Independent School District No. 2310 (MN), the hearing officer found that the school district failed to conduct an adequate FBA. The school psychologist had conducted a single one-hour classroom observation during a party held in the student's classroom. The hearing officer ruled that this observation did not constitute a sufficient FBA. Because the FBA was inadequate, the goals and BIP were based on insufficient information and, thus, were not appropriate. The school district appealed the hearing officer's decision, but a state-level hearing officer affirmed the initial ruling. A brief examination of this hearing follows.

The case involved a young special education student who exhibited serious problem behaviors (e.g., noncompliance, hitting and kicking students) when at school. The student's IEP team decided to conduct an FBA and write a behavior management plan to include in his IEP. A brief FBA was conducted that involved only an interview with the student and a one-hour observation of a classroom party. The IEP team also developed a short BIP that relied primarily on physical restraint procedures to be used after the student misbehaved. This BIP was added to his IEP. The student's problem behaviors did not improve and parents requested that the IEP team conduct a comprehensive FBA and add a new behavior management program to the IEP. The school district's special education director wrote a letter to the parents stating that the district would not proceed further with the functional assessment, which had been begun by the student's teacher. The parents requested a due process hearing.

The hearing officer examined the specific details of an FBA as outlined in the IDEA because the parents' complaint centered on the school district's FBA. The hearing officer found that neither state nor federal law contained a specific description of an FBA and, thus, there was no legal standard with respect to how to conduct an FBA. Therefore, the hearing officer appointed an independent evaluator to perform an FBA so that she could compare the independent FBA to what the district asserted was an FBA. The hearing officer ruled
that it was up to the school district to prove that their FBA was adequate and that the parents did not bear the burden of proving that the district's FBA was inadequate.

The hearing officer stated that the FBA process involves some variant of identifying the core or "target" behavior; observing the pupil (perhaps in different environments) and collecting data on the target behavior, antecedents, and consequences; formulating an hypothesis about the cause(s) of the behavior; developing an intervention(s) to test the hypothesis; and collecting data on the effectiveness of the intervention(s) in changing the behavior. (Independent School District No. 2310, p. 333)

The independent evaluator's FBA contained (a) a description of the problem behavior; (b) an analysis of frequency, duration, and intensity of the problem behavior; (c) the immediate ecological antecedents of the problem behavior; (d) an analysis of the consequences occurring as a result of the problem behavior; and (e) a hypothesis regarding the potential functions of the problem behavior. The evaluator also filed a report listing socially appropriate replacement behaviors that served the same function as the problem behavior; methods for teaching appropriate behaviors, and recommended modifications to the physical and social environment.

The hearing officer stated that the independent evaluator's FBA did not constitute the legal standard for conducting FBAs, but that it did supply a structure for determining the adequacy of the school district's FBA. The hearing officer found that the school district's one page FBA was inadequate when compared to the thorough FBA of the independent evaluator. According to the hearing officer, the result of the district's FBA and subsequent BIP was an inadequate education that denied the student a FAPE. The hearing officer, therefore, ruled that the district has violated the IDEA and had not offered the student a FAPE. The district was ordered to pay for the independent FBA and compensatory educational services.

The school district appealed the decision to the state level, contending that the hearing officer's ruling should be overturned because she went beyond her authority by comparing the school district's FBA to the independent evaluator's FBA. The state-level hearing officer affirmed the initial hearing officer's decision against the school district, stating that she had acted in accordance with her authority under the IDEA.

After IEP teams better understand the situations in which an FBA is legally required, it is likely that schools will lose fewer hearings because they did not carry out their re-

- The IEP team is convened to conduct or to appoint someone to conduct the FBA.
- The persons conducting the FBA are qualified.
- The parents are notified about the FBA early enough to ensure that they have an opportunity to provide input into the assessment.
- The IEP considers assessment data provided by the parents.

The FBA consists of:

- Interviews of teachers, parents, and others who can provide useful information.
- Multiple direct observations of the student in a variety of settings.
- Experimental manipulation of variables (functional analysis), if necessary.
- Summaries of the hypothesis about the function(s) of behavior.
- The FBA is conducted in a timely manner.
- The IEP team develops a BIP based on the information from the FBA.

Figure 1. Checklist for Conducting Legally Correct and Educationally Appropriate FBAs.
sponsibilities. It is also likely, however, that there will be an increase in hearings and cases in which school districts lose because they did not conduct adequate FBAs. This situation is extremely likely to occur because school districts will encounter parents in due process hearings who have hired expert witnesses to bolster their cases. When this happens, the hearing officer will be in a position to compare the schools’ FBA to an independent evaluator’s thorough FBA. Note that the law does not require a school to conduct the best possible assessment, or to provide the best possible programs. The law, however, does require a school to conduct a full and individualized assessment that results in enough information to lead to appropriate programming. Regardless of the situation, schools are likely to lose when the hearing officer compares their inadequate FBA to a description of an FBA conducted in accordance with best practices. An example of this occurred in Bonita Unified School District (1998). The hearing officer in this case noted that the behavioral assessment, which consisted of a “handwritten, fill-in-the-blank document” (p. 254), was inadequate to determine the student’s behavioral needs. Following is a discussion of the implications of the law and litigation regarding FBAs of IEP teams and school districts.

**Implications for Practice**

IDEA ’97 has expanded and changed the roles of the school-based members of IEP teams, including school psychologists. The new requirements of the law will lead to a greater emphasis on proactive behavior programs for students with disabilities, and this will require IEP teams to (a) assess student problem behavior, (b) plan appropriate behavioral programs, and (c) collect data to determine the effectiveness of programming. Figure 1 is a checklist that IEP teams may use as a guide for conducting a legally correct and educationally appropriate FBA. An analysis of school districts’ obligations based on our interpretation of IDEA ’97 is offered next.

**Following the Law’s Procedures**

Adhering to IDEA procedures has been a persistent challenge for school districts. IDEA contains a number of procedural requirements that school districts must follow. For example, when conducting an IEP meeting, the IEP’s procedures require that certain members are present at the meeting and that the IEP document contain certain required components (e.g., measurable goals). Yet numerous hearings and court cases have been decided against school districts because these requirements were not met (e.g., the IEP meeting did not have the required participants or the IEP was missing required components).

Procedural violations do not automatically lead to a school district losing a hearing or case. The procedural violation must be serious enough in the eyes of the hearing officer or judge to have resulted in a student being denied a FAPE. It would undoubtedly be a serious enough violation to constitute the denial of a FAPE if a student exhibits a problem behavior and a school district does not address the behavior in the IEP. IEP teams must respond to serious problem behavior that impedes a student’s learning in at least three sections of his or her IEP: (a) Present Levels of Educational Performance, (b) goals and objectives, and (c) special education and supplementary services. Failing to include timelines and provisions such as the need for manifestation determination or conducting an FBA prior to placing someone in an IAES, for example, would likely be a violation of a student’s right to a FAPE. Conducting an FBA and developing an IEP that responds to these behaviors will help to ensure that the procedural requirements of the law are followed. Merely going through the process of conducting an FBA, however, will not be sufficient if the FBA does not lead to quality behavioral programming.

In addition to the federal requirements, it is important that IEP teams understand state requirements and laws. Some states (e.g., California, Iowa, Minnesota) have more stringent requirements than the federal government regarding FBAs. For example, California requires that IEP teams conduct interviews and multiple classroom observations in their FBAs. In such situations, the more exacting state requirements must be followed.
Training Faculty

School districts need to ensure that well-trained faculty are on IEP teams because these teams ultimately are responsible for implementing the new changes in IDEA '97. Training is especially important for (a) conducting assessments that lead to educational programming, (b) developing IEPs that contain measurable goals and result in meaningful educational benefits, and (c) addressing problem behavior in positive and proactive ways. This includes conducting FBAs and developing appropriate educational programming based on the results. It is the responsibility of school districts to ensure that IEP team members are properly prepared to carry out these tasks in accordance with best practices.

Nelson, Roberts, Mathur, and Rutherford (1999) noted that public policy has exceeded the existing FBA knowledge base. According to these authors, IDEA '97 now requires that school-based teams conduct FBAs, although they currently may not have the knowledge and training to do so. We believe that teachers and team members can be trained to use this methodology effectively and efficiently. It will, however, require an increased emphasis on the methods and strategies of FBA during preservice preparation. Additionally, school districts will need to provide in-depth inservice training to faculty who are not familiar with FBAs. Preservice and inservice teachers will require intensive training in conducting direct and indirect data collection procedures; interpreting data; and developing, implementing, and evaluating interventions based on the FBA data (Drasgow et al., 1999; Quinn, 2000; Scott & Nelson, 1999; Sugai, Horner, & Sprague, 1999).

The failure of IEP teams to translate the law's requirements to students' educational programs likely will result in inappropriate IEPs and, thus, the denial of a FAPE. The denial of a FAPE may, in turn, lead to due process hearings, litigation, and application of the law's sanctions against the offending school districts. Preservice and inservice educational opportunities should be provided, therefore, to ensure that members of IEP teams thoroughly understand their responsibilities under IDEA '97 and have the skills to carry them out.

Providing Appropriate Behavior Support Programming

Conducting an FBA involves analyzing contextual factors related to the occurrence of a challenging behavior to draw conclusions about the purpose, or intent, it serves for a student (O'Neill et al., 1997). Determining the intent of the student's behavior enables teachers to make environmental modifications that may reduce the occurrence of inappropriate behaviors and to teach the student appropriate replacement behaviors. Thus, IDEA '97 requires that IEP teams engage in a problem-solving process when addressing problem behavior. In this process, an FBA is conducted to identify factors associated with the problem behavior and to determine the functions (e.g., task avoidance, attention) of a student's problem behaviors.

The FBA then guides the development of a multicomponent individualized program that emphasizes proactive programming rather than reactive programming that relies on crisis management techniques (e.g., time-out, restraint) following the occurrence of problem behavior. Proactive programming includes a combination of strategies that involve environmental modifications, skill building, and other positive support strategies rather than simply reducing the occurrence of problem behavior. IEP teams must use ongoing evaluations to monitor a student's progress and to make the appropriate changes when data indicate that a program is not effective to ensure that behavioral programs lead to meaningful results.

Conducting FBAs and developing BIPs should be based on an information-gathering, problem-solving team process that includes intense assessment and collaborative planning. Unfortunately, rather than adopting research-based practices in the FBA and BIP process, many school districts have developed chart systems based on lists of misbehaviors and potential causes in which the entire process becomes a brief exercise in marking boxes and filling in the blanks (Groessel, 1998; Yell & Katsiyannis, 2000). Such practices are not likely to withstand administrative or judicial scrutiny when challenged in a due process hearing or a court of law.
IEP teams should initiate the FBA and BIP process at the first signs of serious problem behavior or when school district personnel or family members express concerns about a student’s problem behavior (Conroy, Clark, Gable, & Fox, 1999; Drasgow et al., 1999). These efforts will increase the prospect that a student’s behavior will improve and will also provide documentation when programming is legally challenged.

Collecting Meaningful Data on Student Progress

IEP teams must continuously collect meaningful data to document student progress toward IEP goals and, thus, to document the program’s efficacy. This means that data should be collected daily or at least weekly during behavioral programming so that student progress is continually monitored. The purpose of data collection is to provide objective evidence of program efficacy, assess student performance, and guide programming decisions (e.g., Deno, 1992; Fuchs & Fuchs, 1990; Yell & Drasgow, 2000). IEP teams can ensure that they provide effective programming by collecting relevant data and by demonstrating that data were used to guide sound instructional decisions.

IEP teams must also make decisions with respect to the nature of the data that will be collected to monitor student progress and to make program adjustments when necessary (Helfin & Simpson, 1998). Anecdotal data and other subjective procedures are not appropriate for monitoring student progress, and should never be the basis of a data collection system (Yell & Drasgow, 2000). The most appropriate data collection systems are those from applied behavior analysis (e.g., Alberto & Troutman, 1999; Wolery, Bailey, & Sugai, 1988) in which target behaviors can be measured, graphed, and visually inspected to evaluate progress toward goals and objectives.

Conclusions

Members of IEP teams must be aware of the relevant provisions of IDEA ’97 to ensure that students receive a FAPE. The IDEA does not mandate specific assessment procedures, rather it leaves the choice of specific assessment procedures and strategies to the IEP team. FBAs, however, are strongly encouraged by the law’s emphasis on positive behavioral interventions and supports (OSEP Memorandum, 1997). Furthermore, the proactive use of a problem-solving approach to addressing problem behavior is in keeping with Congressional commitment to ensuring meaningful programming for all students with disabilities (Eyer, 1998).

IDEA ’97 does specify certain situations in which an FBA must be conducted. Such situations include when a school district (a) first removes a student for more than 10 school days in a school year, (b) changes a student’s placement by removing him or her from school, or (c) places a student in an IAES for a weapons or drug offense. However, for schools to conduct FBAs and develop BIPs only after a student’s removal from school will probably not meet IDEA ’97’s requirement to address problem behavior proactively.

Public schools must ensure that personnel involved in implementing FBAs have the necessary training and expertise. Public schools will be well served if this technology is implemented in a proactive manner to deal with serious and chronic maladaptive behaviors. Such measures not only will maximize the prospect of developing successful interventions, but they may provide documentation of efforts if a due process hearing is initiated. Most important, FBAs and BIPs, properly conducted and developed, will result in educational programming that develops skill-based programming designed to improve the lives of students with problem behaviors.

Footnotes

1 A change of placement occurs when a student is removed from the educational setting for 10 consecutive days. A change of placement may also occur when a student is removed for more than 10 cumulative days if the IEP team decides that such factors as the length of each removal and the cumulative time suspended constitute a change in the student’s placement.

2 FBAs and manifestation determinations are distinctly different processes. In a manifestation determination, the IEP team conducts an assessment to determine the relationship between problem behavior and a student’s disability.
References


Individuals with Disabilities Education Act Regulations, 34 C.F.R. § 300 et seq.

Letter to Anonymous, 30 IDELR 707 (OSEP 1999).


OSEP Memorandum, 26 IDELR 923 (OSEP 1997).


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