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LEGAL ABCs OF FBAs AND BIPs

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DIFFERENT
BY DESIGN

Today's Topic

Functional Behavioral Assessments (FBAs) and Behavioral Intervention Plans (BIPs):

- Why?
- What?
- When?
- Who?

Why Conduct FBAs and Develop BIPs?

- IDEA requires it
 - Following a disciplinary change in placement where the student's misconduct is determined to be a manifestation of his or her disability
- To provide FAPE
 - When the student's behaviors impact his or her ability to access the educational environment
- To comply with LRE
 - When the student's behaviors impact his or her ability to be educated with non-disabled peers
- Nondiscrimination!

What Is An FBA?

Functional Behavioral Assessment (FBA)

- IDEA Definition: None!
 - "IEP teams need to be able to address the various situational, environmental and behavioral circumstances raised in individual cases." 64 Fed. Reg. 12, 620 (1999)

What Is An FBA?

Functional Behavioral Assessment (FBA)

- Purposes of an FBA:
 - Isolate a target behavior
 - Develop a hypothesis regarding the function of the target behavior
 - Inform the development of a positive behavior intervention plan

What Is An FBA?

Functional Behavioral Assessment (FBA)

- Purposes of an FBA:
 - Isolate a target behavior
 - A target behavior is one which interferes with the student's ability to progress in the curriculum and to achieve the student's IEP goals.

What Is An FBA?

Functional Behavioral Assessment (FBA)

- Purposes of an FBA:
 - Develop a hypothesis regarding the function of the target behavior
 - Where and when do the behaviors occur?
 - Any identifiable antecedent or triggers?
 - What is the function of the behavior?
 - Are there alternative behaviors that can be taught to the student?

What Is An FBA?

Functional Behavioral Assessment (FBA)

- Purposes of an FBA:
 - Inform the development of a positive behavior intervention plan
 - As with other IEP requirements, FBAs must be individualized and designed to create BIPs that are unique to the particular student's needs.
 - *See C.F. v. New York City Dept. of Educ.*, 62 IDELR 281 (2d Cir. 2014)(finding that a failure to perform an FBA led to the development of an inappropriate BIP and an inappropriate placement).

What Is An FBA?

Is an FBA an Evaluation?

- If an FBA's purpose is assessing the effectiveness of behavioral interventions in the school as a whole, and is not focused on the needs of an individual student, the FBA is not an evaluation for the purposes of the IDEA.
- However, an FBA that is used to determine whether a child is a student with a disability and the nature and extent of special education and related services that the student needs is considered an evaluation under the IDEA.
 - *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007)

What Is An FBA?

If the FBA is an evaluation, the district must:

- Provide notice to the parent that describes the evaluation procedures related to the FBA that the district plans to use.
- Obtain parental consent prior to conducting the FBA.
- “Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.”
- Upon request, provide the parent an independent educational evaluation (“IEE”) at public expense.

What Is An FBA?

The IDEA does not define how an FBA is conducted or what it must include. Generally, an FBA:

- Identifies the target behavior for change,
- Determines where and when the behaviors occur,
- Identifies whether there are any antecedents or triggers to the behavior,
- Collects data,
- Develops a hypothesis as to the function of the behavior, and
- Identifies alternative behaviors that can be taught to the student.

What Is A BIP?

Behavioral Intervention Plan (BIP)

- IDEA Definition: None!
- There is no legal mandate as to what a BIP should look like, how it should be structured, or what components it should contain.

What Is A BIP?

Behavioral Intervention Plan (BIP)

- Simply put, a BIP is a tool designed to improve student behavior.
- Its purpose is to eliminate inappropriate behaviors and teach appropriate behaviors

What Is A BIP?

True or False: A BIP is a special education student's individualized code of conduct.

- **False:** All students are expected to comply with the code of conduct. The purpose of a BIP is to help them do so.

What Is A BIP?

What is the difference between a BIP and a code of conduct?

BIP	Code of Conduct
Positive	Negative
Proactive	Reactive
Applies to one	Applies to all
Agreed to by school and parent	Imposed by school
Requires consent from parent	Requires notice to parent
What the school does FOR the student	What the school does TO the student

What Is A BIP?

True or False: The IDEA states that children with disabilities may not be disciplined more severely than non-disabled children.

- **False:** “We do not believe that it is necessary to change the regulations to state that children with disabilities must not be disciplined more severely than non-disabled children.”
 - Congress determined that the manifestation determination review and expedited due process procedures are adequate to ensure that schools discipline children with disabilities consistent with non-disabled students.

When Is An FBA/BIP Required?

- Districts must conduct an FBA and implement a BIP following a disciplinary change in placement, when the student's misconduct is determined to be a manifestation of the student's disability
 - *This is the only situation in which IDEA mandates an FBA or BIP.*

When Is An FBA/BIP Required?

- Disciplinary Change in Placement
 - A removal for more than 10 consecutive school days; or
 - A series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

When Is An FBA/BIP Required?

- Manifestation of Disability
 - Was the behavior caused by, or directly and substantially related to, the student's disability? OR
 - Was the behavior a direct result of the district's failure to implement the IEP?

When Is An FBA/BIP Required?

- **Mandatory FBA/BIP**
 - IF the conduct for which the student was disciplined was a manifestation of the student's disability, the IEP team must:
 - Conduct an FBA (provided the district had not conducted such assessment prior to the conduct at issue);
 - Implement a BIP for the child or, if a BIP has already been developed, review the plan and modify it, as necessary, to address the behavior; and
 - Return the child to the placement from which he/she was removed (unless the parent and district agree to a change in placement as part of the modification of the BIP).

When Is An FBA/BIP Required?

- Other Reasons to Consider an FBA/BIP
 - The IDEA requires that IEP teams consider a student's behavior when developing the IEP.
 - Specifically, for a child whose "behavior impedes the child's learning or that of others," the team is required to "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 300.324(a)(2)

When Is An FBA/BIP Required?

- Other Reasons to Consider an FBA/BIP
 - In 2016, the Office of Special Education and Rehabilitative Services (“OSERS”) and the Office of Special Education Programs (“OSEP”) issued a “Dear Colleague” letter to “clarify that schools . . . must provide appropriate behavioral supports to child with disabilities who require such supports in order receive FAPE and placement in the least restrictive environment (LRE).” Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016).

When Is An FBA/BIP Required?

- Other Reasons to Consider an FBA/BIP
 - Teams must consider and include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers.

OSERS: Questions and Answers on *Andrew F. v. Douglas County Sch. Dist. RE-1*, 71 IDELR 68 (EDU 2017).

- A district's failure to develop a BIP can amount to a denial of FAPE.

See Rialto Unified Sch. Dist., 48 IDELR 296 (SEA CA 2007) (ordering a district to provide 250 hours of compensatory education to a sixth-grader who was expelled because of his escalating behavioral problems); *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003) (Any slight academic benefit the student received was lost because of ongoing behavior problems that interfered with his ability to learn).

When Is An FBA/BIP Required?

- Best Practices
 - IEP team should consider an FBA and BIP when the team is concerned that a student's behavior is impacting his or her ability to receive a free appropriate public education
 - As with other IEP decisions, the determination is not driven by a student's particular identification category, but by the student's individual needs.
 - Though FBA/BIP not required, it may be an effective means of ensuring that the student is receiving FAPE.

Who Should Be Involved In The Process?

- Decisions regarding behavioral supports for students, including FBAs and BIPs, should be made in accordance with IDEA's procedural and substantive requirements.
- When the student's behavior is impeding his or her learning or the learning of others, the need for and specifics of a BIP should be determined by the student's IEP team.

Who Should Be Involved In The Process?

- Required members of the IEP team include:
 - The parents of the child;
 - Not less than one general education of the child (if the child is or may be participating in the general education setting);
 - Not less than one special education teacher or provider of the child;
 - A district representative;
 - An individual who can interpret the instructional implications of evaluation results;
 - Other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate; and
 - Whenever appropriate, the child with the disability.

Who Should Be Involved In The Process?

- Who Conducts the FBA?
 - The IDEA does not specify who is qualified to conduct FBAs.
 - An FBA may be conducted by a Board Certified Behavior Analyst (“BCBA”), which is a graduate level certification.
 - In *Letter to Janssen*, 51 IDELR 253 (OSERS 2008), OSERS stated that there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA unless state law requires it.
 - Districts must ensure that those who do conduct FBAs are adequately trained.
 - Frequently, special education teachers, administrators and process coordinators are trained in conducting FBAs.

FBA / BIP Helpful Hints

- Be familiar with the requirements
- Be proactive in addressing student conduct
- If the plan isn't working, try again
- Consider consultation with behavior specialists if you don't have one on staff
- Consider training for staff
- Document your efforts

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