

When to use Functional Behavioral Assessment? A State-by-State Analysis of the Law

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Individuals with Disabilities Education Act (IDEA) promises all children with disabilities, including those with impeding challenging behavior, a free appropriate public education (FAPE) in the least restrictive environment (LRE). IDEA also promises educational support, in the form of positive behavioral interventions and supports (PBIS) when behaviors impede learning, through an individualized educational program (IEP). The 1997 IDEA amendments and 2004 reauthorization placed explicit requirements on IEP teams to use or consider a functional behavioral assessment (FBA). These requirements state that the FBA process is necessary when a student is removed for more than 10 days from his/her regular educational placement for disciplinary reasons.

The use of FBA is implied when the student's behavior impedes learning processes and the IEP team is considering the use of PBIS and other strategies. Functional behavior assessment (FBA) is a result-oriented process that explicitly identifies problem behaviors, the specific actions that reliably predict the occurrence and non-occurrence of problem behaviors, and how the behaviors may change across time. At a minimum, a FBA must result in a summary statement that offers an operational definition of the problem behavior, describes the antecedents and maintaining consequences related to the problem behavior, and state the contexts where

the behavior is more or less likely to occur. (Sugai, et al., 2000). FBA is supported by over 50 years of research (Baer, Wolf, & Risley, 1968; Bijou & Baer, 1961; Skinner, 1953) showing that behavior supports based on an FBA are more likely to be helpful to students. Additionally, more recent and compelling research suggests that typical personnel can complete FBAs when problem behaviors are limited to no more than two school routines and the problem behaviors are not physically threatening to the student or adults (Loman & Horner, 2013; Strickland-Cohen & Horner, 2015).

The federal and state laws related to the FBA, often do not align necessarily with best practices¹ (von Ravensberg & Blakely, 2014). However, in order to provide guidance that is more helpful to students and families, states must go beyond the minimal federal requirements to provide IEP teams appropriate supports. In 2011, Zirkel analyzed state FBA laws to describe to what extent state legislation or regulation met or exceeded the IDEA requirements. To expand on this body of work, the purpose of this evaluation brief is to analyze the state law on FBA and to specifically focus on when school teams are required to initiate a FBA. In short, this brief seeks to answer: according to state law, when must a FBA be conducted?

Method

To answer the question of when a FBA is required, the authors used the Westlaw database for this research. They used “functional behavioral assessment” as their Boolean search query in the state and territory law databases. Occurrences of FBA that appeared in the education provisions were analyzed. Results were limited to laws related to school-based teams and any results pertaining to teacher preparation, residential facilities, specialized schools (e.g., school for the blind/deaf) and the Department of Human Services were eliminated from the analysis.

Although the authors attempted to run the FBA search query for American Samoa, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the Commonwealth of Puerto Rico, they did not have access to those Westlaw databases.

States and territories adopt IDEA in order to receive federal funding for special education programs. States either adopt IDEA without restating it or by incorporating its language into their state’s system of codification. The authors reviewed the specific FBA language found in each state’s law and ranked occurrences as follows: a “0” indicates there was no mention of FBA (i.e., the state adopted the

FBA provisions without restating them); an “R” indicates a restatement of the federal law, and An “E” indicates state law exceeds federal law.

A state earned an “R” if its restatement of IDEA’s FBA provisions remained in the context of disciplinary removals. States earned an “E” by including a definition of FBA that was applicable to the disciplinary provisions; by including FBA as a base for positive behavioral interventions and supports and behavior intervention plans; by including FBA in their evaluation, re-evaluation, IEP development, restraint and seclusion and/or other provisions (e.g., when law enforcement was involved).

The fifty states were divided between the first and second authors. Listed alphabetically, the second author analyzed the first twenty-five states and the first authors the last twenty-five states. After each set of twenty-five states was analyzed, the authors selected fifteen (30%) states to re-analyze to determine reliability. The first author analyzed seven of the second authors set and the second author analyzed eight of the first authors set. Agreement was met on 14 of 15 states, or 96.66%.

Results

Overall, for the statutes current as of the writing of this brief, there were 48 states/territories (including District of Columbia, Guam and Virgin Islands) that adopted IDEA’s FBA provisions without restating them in their code, none that restated, and three that exceeded IDEAs FBA provisions (California, Nevada and Wisconsin). For the current regulations, there were 22 states/territories (including D.C., Guam and Virgin islands) that adopted IDEA without restating, eleven that restated IDEA and eighteen that exceeded IDEA. Results are presented in table 1.

Where states exceeded IDEA, twelve of those states provided a definition of FBA (Arkansas, California, Delaware, Florida, Nebraska, New Hampshire, New York, Oregon, Rhode Island, Vermont, Virginia, West Virginia). States also included the term FBA within the definition of another term

1. FBA definitions used by states are provided in appendix 1

such as “behavior intervention plan” or “behavior support plan” (New York, Pennsylvania and Rhode Island). West Virginia included it in the definition of “positive behavioral interventions, strategies, and supports.”

Eight states (Arkansas, Delaware, Nevada, Pennsylvania, Rhode Island, Tennessee, Vermont and Wisconsin) included FBA in restraint, seclusion, or emergency intervention provisions. Three states (New Jersey, New York and Virginia) include FBA in reference to evaluation and re-evaluation procedures. In Montana and New York, the procedure on

the use of aversive treatments requires an FBA be conducted before their use. Concerning IEPs and behavior interventions, six of the states referred to use of an FBA (Nevada, New Mexico, New York, Pennsylvania, Texas and Wisconsin). Pennsylvania’s behavior intervention procedures also required that the student’s FBA be updated subsequent to a referral to law enforcement. Virginia’s discipline procedures refer to the use of an FBA when the child’s behavior impedes the child’s learning or that of others but does so within its discipline provisions. Louisiana requires a FBA when student displays self-injurious behavior.

Table 1
Regulations and Statutes that Include When Schools Should Complete a Functional Behavior Assessment for all US States and the District of Columbia.

	Rank	States
Statutes	O	Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming
	R	
	E	California, Nevada, Wisconsin
Regulations	O	Alaska, California, Colorado, Connecticut, District of Columbia, Idaho, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Utah, Wisconsin, Wyoming
	R	Alabama, Arizona, Georgia, Hawaii, Indiana, Iowa, Maine, Ohio, South Carolina, South Dakota, Washington
	E	Arkansas, Florida, Illinois, Maryland, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia

O=adopted IDEAs FBA provisions without restating; R=adopted IDEAs FBA provisions with restating; E=exceeded IDEAs FBA provisions

Note: US Territories are excluded from the table because Guam and the Virgin Islands returned no results and data was not available for the other territories.

For additional resources regarding specific states, please contact the first author.

Discussion

Many state law FBA provisions closely mirrored those found in the IDEA, appear strictly in the discipline provisions, and leave FBA undefined. Despite best practices outlined in the literature concerning FBA, only a handful of state legislatures and regulators have specifically incorporated the use of FBA into their procedures on evaluation, re-evaluation, or development of behavior interventions and IEPs for a student whose behavior impedes his/her learning or that of others.

The gap between IDEA requirements and best practice is a challenge for educators. Best practice defines an FBA as a process resulting in (a) operational description of problem behavior(s), (b) definition of the immediate and distal events that reliably predict when problem behaviors will and will not occur, and (c) the consequences that maintain problem behavior under the most common conditions. Establishing this information is directly functional for organizing the supports that are likely to result in reduction in problem behavior. State law, not surprisingly is more circumspect with respect to the definition of FBA, and while there is reference to the expectation that FBA be performed there are no legal standards for what constitutes an FBA.

The gap between requirements and best practices continues to the question of when an FBA should be conducted. Federal policy requires that an FBA be completed for any child who has missed 10 or more days of education due to disciplinary practices. Best practices indicates that any individualized behavior support plan should begin with and FBA, and should include a renewed FBA at points of significant revision. School personnel committed to meeting the minimal requirements of the law have a modest standard to meet. Those wishing to rise to the current level of Best Practice will need to improve the access that school behavior support teams have to gathering and using FBA information.

Our results should be interpreted in the light of certain limitations. First, a thorough search of state department of education FBA policy, guidance, and forms was not conducted. Although they may be in line with best practices, the authors' research focused on statutes and regulations because of their legally binding nature.

Additionally, recent legislation has altered the landscape in relationship to the use of FBA in California. With repeal of its "Hughes Bill" effective June 30, 2013, California realigned its law on FBA with IDEA. Under the Hughes Bill, schools were required to conduct a functional analysis (FA) to be conducted by a trained behavior analyst for students with serious behavior problems (self injurious, assaultive, causing property damage leading to suspension or expulsion, or other serious severe behavior problems). FA is a more rigorous application of FBA in both the training required and application.

Conclusion

Ultimately, to provide students with disabilities and their families the best educational experience, the use of the functional behavioral assessment should be a viable option when challenging behaviors are interfering with learning opportunities. As the technology of FBA continues to improve through systematic research, educators should not default to the legal requirements, which may, as we have outlined here, leave considerable gaps. States should strive to close those gaps by, at a minimum, including reference to FBA in provisions on evaluation, re-evaluation, IEP development and restraint and seclusion.

References

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Appendix 1: Selected State Law Definitions of Functional Behavioral Assessment

Note: To date, neither IDEA nor its implementing regulations define functional behavioral assessment, leaving it to states to provide their own definition.

Arkansas

Under “Process for Functional Assessment of Behavior,” it says:

Functional behavioral assessment is “a process of identifying functional relationships between events and the occurrence and/or nonoccurrence of a target behavior. The principle objective of functional [behavioral] assessment is to derive clear hypotheses about the relationship between the environment and the behavior of interest, and the purpose of that behavior, so that the teacher/team may design an intervention that will be effective. Antecedents are events which precipitate the problem behavior. Consequences are events which occur as a result of the problem behavior. Communicative intent is defined in this instance as what the student wants to tell others by his/her behavior or what the student understands from another’s behavior. Based on antecedents, consequences and communicative intents, a hypothesis upon which to develop a behavioral intervention strategy can be formulated.”

[See West’s Arkansas Administrative Code, Title 005. Department of Education, Division 18. Special Education and Related Services, Rule 31. Appendix A: Ade Required Forms, Sec. 005.18.31-5. Special Use]

California

It is the intent of the Legislature: (1) [t]hat children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the federal IDEA and its implementing regulations, and “(2) [t]hat [functional behavioral] assessments and positive behavioral interventions and supports be developed and implemented in a manner informed by guidance from the United States Department of Education and technical assistance centers sponsored by the Office of

Special Education Programs of the United States Department of Education.”

Note: the TA Center defines FBA as discussed in the brief.

[See West’s Annotated California Codes, Education Code, Title 2. Elementary and Secondary Education, Division 4. Instruction and Services, Part 30. Special Education Programs, Chapter 5.5. Behavioral Interventions]

Florida

Functional behavioral assessment is “a systematic process for defining a student’s specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior. The purpose of conducting an FBA is to determine whether a behavioral intervention plan should be developed.”

[See West’s Florida Administrative Code, Title 6. Department of Education, Subtitle 6A. State Board of Education, Chapter 6A-6. Special Programs I, Sec. 6A-6.03411. Definitions, ESE Policies and Procedures, and ESE Administrators]

Nebraska

Functional Behavioral Assessment means “the process of gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative

behaviors which will provide the same function.”

[See Nebraska Administrative Code, Title 92. Nebraska Department of Education, Chapter 51. Regulations and Standards for Special Education Programs, Sec. 003. Definition of Terms]

New Hampshire

Functional Behavioral Assessment means “an assessment of a student’s behavior.”

[See State of New Hampshire, Office of Legislative Services, Division of Administrative Rules, Board of Education, Chapter Ed 1100. Standards for the Education of Children with Disabilities, Part Ed 1102. Definitions, Sec. Ed 1102.02. Definitions D-G]

New York

Sec. 200.1® says:

Functional behavioral assessment means “the process of determining why the student engages in behaviors that impede learning and how the student’s behavior relates to the environment. The functional behavioral assessment shall be developed consistent with the requirements in section 200.22(a) of this Part and shall include, but is not limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.”

Sec. 200.22(a) says:

“ . . . The FBA shall, as appropriate, be based on multiple sources of data including, but not limited to, information obtained from direct observation of the student, information from the student, the student’s teacher(s) and/or related service provider(s), a review of available data and information from the student’s record and other sources including

any relevant information provided by the student’s parent. The FBA shall not be based solely on the student’s history of presenting problem behaviors. The FBA shall provide a baseline of the student’s problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day and include the information required in section 200.1(r) of this Part in sufficient detail to form the basis for a behavioral intervention plan for the student that addresses antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement.

[See Compilation of Codes, Rules and Regulations of the State of New York, Title 8. Education Department, Chapter II. Regulations of the Commissioner, Subchapter P. Handicapped Children, Part 200. Children with Handicapped Conditions, Sec. 200.1. Definitions and Sec. 200.22. Program standards for behavioral interventions]

Oregon

Functional behavioral assessment means “an individualized assessment of the student that results in a hypothesis about the function of a student’s behavior and, as appropriate, recommendations for a behavior intervention plan.”

[See Oregon Administrative Rules Chapter 581 Oregon Department of Education, Division 15 Special Education, Discipline, Sec. 581-015-2400 Definitions]

Rhode Island

Functional behavioral assessment is “an ongoing process for gathering information that can be used to hypothesize about the function of student behavior. The components of the process are as follows: (1) Define/describe behavior, (2) Gather information, (3) Identify when, where and under what circumstances does the behavior occur, (4) Identify the consequences that maintain the behavior, (5) Develop a theory as to the functional intent of the behavior.”

[See West’s Rhode Island Administrative Code, Title 21. Department of Education, Division 2. Board of Regents for Elementary and Secondary Education, Rule 39. Physical Restraint Regulations, Sec. 21-2-39:3.0. Definitions]

Vermont

Functional behavioral assessment means “the analysis of a student’s behavior patterns before, during, and after rule-breaking or other inappropriate behavior for the purpose of guiding the development of a behavioral intervention plan.”

[See West’s Vermont Administrative Code, Title 7. Department of Education, Subtitle 1. State Board of Education, General Rule 12., 4500. Use of Restraint and Seclusion in Schools (4500), Sec. 7-1-12:4500.3 Definitions]

Virginia

Functional behavioral assessment means “a process to determine the underlying cause or functions of a child’s behavior that impede the learning of the child with a disability or the learning of the child’s peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.”

[See Virginia Administrative Code, Title 8. Education, Vac Agency No. 20. State Board of Education, Chapter 81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia, Part I. Definitions, Sec. 8 VAC 20-81-10. Definitions]

West Virginia

Functional behavioral assessment is “A sequential, multi-step, team evaluation process that helps to determine the purpose and the effect of the problem behavior(s) so that IEP goals and objectives can be identified, and interventions and modifications can be developed and implemented, specifically through a student’s Behavioral Intervention Plan. A FBA requires that both school personnel and the parents evaluate the behaviors of concern within the broader perspective of the student’s home and school environments.”

[See West Virginia Code of State Rules, Title 126. Board of Education, Legislative Rule (Ser. 16), Chapter 126-16-9 - General Supervision and Accountability for Performance and Compliance, Sec. 126-16-11-.3. Due Process Complaints]