

# When to Use Functional Behavioral Assessment? Best Practice vs. Legal Guidance

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When to conduct a functional behavioral assessment is a question answered by both best practice and the law. The special education field continues to improve the effectiveness and efficiency of the functional behavioral assessment, an evidence-based technology that is the basis of a behavior intervention plan (BIP) and a cornerstone of the process known as positive behavioral interventions and supports (PBIS; Carr, et al., 2002). For children who engage in challenging behavior, the combined FBA, BIP and PBIS processes are aimed at replacing targeted problem behavior with acceptable alternative behavior so the student can make social and academic progress. At the same time, the Individuals with Disabilities Education Act (IDEA) promises all children with disabilities, including those with impeding behaviors, a free appropriate public education (FAPE) in the least restrictive environment through an individualized educational program (IEP) which includes PBIS. To ensure student access to these rights, schools' use of the functional behavioral assessment was first mandated in the disciplinary provisions of the IDEA Amendments of 1997 and again in the 2004 reauthorization of IDEA (IDEA 2004) to guard against use of traditional concepts of suspension or expulsion as a primary response and replace them with a prevention-focused intervention. To mark this significant shift in how states educate students with impeding behaviors, IDEA established, under the U.S. Department of Education, the PBIS Technical Assistance Center ([www.pbis.org](http://www.pbis.org)) as a resource for evidence-based practices.

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However, what Congress hasn't done so far is specifically write the FBA into key IDEA provisions (i.e., evaluation and reevaluation, developing IEPs and BIPs, using PBIS). What this means is to date, federal and state codification of the concept of FBA into law have yet to mirror its broader purpose and evidence-based best practices. As a result, the lack of statutory and regulatory detail gives little direction to school administrators who are charged with the educational progress of students with impeding behaviors (Dieterich & Villani, 2000; Zirkel, 2011A). The minimal legal FBA standards similarly tie the hands of judges and hearing officers who have, for the most part, strictly interpreted the statutory and regulatory FBA language, which is limited to the disciplinary provision. Specific FBA legislation, which can only be solidified by congressional action, is noticeably absent making the evolution of the specific case law related to FBA unsatisfactory in its guidance, standards and results leading to safe learning environments (Zirkel, 2011B).

Given the need for greater clarity about FBA obligations, the field of special education law, which brings together specialists in both behavior and law, has developed an extensive body of literature focused on restating IDEA's changing FBA statutory and regulatory requirements, reviewing administrative policy and guidance, analyzing administrative and judicial decisions and suggesting best practice (Dieterich & Villani, 2000; Drasgow, et al., 1999; Drasgow & Yell, 2001; Etscheidt, 2006; Hendrickson, et al., 1999; Losinski, Katsiyannis, & Ryan, 2013; Maag & Katsiyannis, 2006; Nelson, Roberts, Mathur & Rutherford, 1999; Nelson et al., 1999; Smith, 2000; Villani & Dieterich, 2001; Watson, Gresham, & Skinner, 2001; Zirkel, 2011B). Strict interpretation of the law, combined with the best practices perspective requires cross-disciplinary collaboration between legal and educational scholars. Often this can be challenging due to the unequivocal nature of the law conflicts the continually evolving field of best practices. Unfortunately, these two competing perspectives can be confusing for families, educators and the legal community.

Behavioral Disorders, a journal of the Council for Children with Behavioral Disorders, recently weighed in on the difference of expert opinions when it published Zirkel's (2014) legal critique of the special education literature along with Smith, Katsiyannis and Ryan's (2014) response. As pointed out, blurring the distinction between legal requirements and best practices has helped create an environment in which families are not likely to be helped.

Until experts interested in advancing FBA can achieve consensus on critical issues (e.g., distinction between law and guidance, and how to interpret case law in a way that is meaningful to district and school administrators), a unified effort to get Congress and state legislatures to expand the law on FBA to bring it in line with its purpose and potential is unlikely. In the meantime, according to a best practices perspective, and that of this commentary, IDEA provisions that do not explicitly require FBA can, and should albeit not in the legal sense, be read to implicitly require FBA. Schools' use of FBA in this way is arguably consistent with a broad reading of IDEA, with creating positive outcomes for families and schools and with legal decisions.

This commentary answers the question of when to use an FBA by describing what we have learned about FBA and suggesting future directions.

## **Descriptors: FBA**

Functional behavior assessment (FBA) originates from over 50 years of applied behavior analysis (ABA) research, which supports its practicality in understanding human behavior and helps simplify complex behavior chains (Baer, Wolf, & Risley, 1968; Bijou & Baer, 1961; Skinner, 1953). There are several procedures for completing the FBA process that can be divided into three broad categories: (a) indirect measures (e.g., interviews and rating scales), (b) direct observation, and (c) functional analysis, where an experienced behavior analyst systemically manipulates environmental events while monitoring target behaviors.

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Emerging but compelling recent research also supports basic FBAs (i.e., limited to no more than two school routines and the problem behaviors are not physically threatening to the student or adults) that can be completed by typical school personnel (Loman & Horner, 2013; Strickland-Cohen & Horner, in press).

FBA is also a results-oriented process that seeks to identify challenging behaviors, the actions that predict the occurrence and non-occurrence of those behaviors, and how those behaviors vary across time. To be considered technically adequate, an FBA must result in a summary statement that operationally defines the problem behaviors, describe the antecedents and consequences that predict and maintain problem behaviors, and state under what conditions the behavior is more or less likely to occur (Sugai, Lewis-Palmer, Hagan-Burke, 2000). FBA is not a specific set of forms or fixed products; instead, it is a process of understanding environments to guide the development of contextually relevant interventions. Armed with adequate FBA information helps guide practitioners in the creation of efficacious behavior support plans. These plans help students succeed and work toward socially important goals.

The substantial empirical evidence combined with the criteria outlined by Horner, Sugai, and Anderson (2010), supports functional behavioral assessment as a well-defined, research-based practice. The utility of FBAs has extended to include a variety of contexts, age groups, disability categories, and research institutions. Researchers suggest that an FBA should be initiated, “whenever a problem behavior is difficult to understand or a behavior intervention plan is needed to increase student success” (Sugai, Lewis-Palmer, Hagan-Burke, 2000, pp.152). In other words, FBA is not intended to be reserved for students with disabilities alone.

## Descriptors: Legal

The only two places the term “functional behavioral assessment” appears in IDEA 2004 are in its section on the procedural safeguards to be followed when a child with a disability

who has violated the code of student conduct is removed from his/her current educational placement to an alternative educational setting for more than ten school days (20 U.S.C. § 1415(k)(1)(D) and (E)). In the first instance, the student shall continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP, and receive, as appropriate, an FBA, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur (20 U.S.C. § 1415(k)(1)(D)). In the second instance, the IEP Team is obligated to conduct an FBA when the LEA, the parent and relevant members of the IEP Team have determined that the conduct was a manifestation of the student’s disability. Then, the IEP Team shall conduct an FBA, and implement a BIP for such child, provided that the LEA had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement. And, in the situation where a BIP has been developed, review the BIP if the child already has such a BIP, and modify it, as necessary, to address the behavior (20 U.S.C. § 1415(k)(1)(F)).

Without more than this, IDEA 2004 has set a floor that is arguably an absolute minimum by legal standards and one that is ineffective and inefficient by best practice standards. Further, although it is the prerogative of state legislatures to adopt FBA standards that raise this floor and exceed IDEA 2004, few have done so (Zirkel, 2011a). Expanding on this floor metaphor, the authors caution that it contains a trap door waiting to snag state and local educational agencies that subscribe to the legal minimum perspective.

## What We Are Learning

Put in place to avoid egregious civil rights violations, the IDEA 2004 FBA requirement serves as a floor, not best practice. As a general rule, minimal standards are not expected to produce high outcomes. First, using FBA according to the law in its present form does not meet standards for best practice (O’Neill et al., 1997). Postponing an FBA

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until after a child is suspended for more than ten school days typically means a school has delayed too long in establishing a function-based, prevention plan. In this section, shortcomings of the current IDEA 2004 FBA framework are described and an explanation of how administrators can follow best practices while complying with a broader interpretation of the law.

FBA is a prescriptive process, not reactive. Doing the FBA when challenging behavior first becomes an issue gives the IEP Team the benefit of having the added information and being able to make adjustments to the BIP. IDEA requires the LEA to assess the child in all areas of suspected disability (i.e., including behavior that requires testing), and to use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors (i.e., an FBA). In conducting the evaluation, the LEA is required to use a variety of assessment tools and strategies (i.e., FBA) to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum (i.e., BIP and PBIS) 20 U.S.C. § 1414(b)(2) and (3).

FBA is not a one-time procedure. Once the BIP is in place, the IEP Team is responsible for reviewing and monitoring it. IDEA requires the child be reevaluated every three years. However, an LEA may reevaluate (i.e., conduct an FBA) as often as is warranted (i.e., to address challenging behaviors) 20 U.S.C. § 1414(a)(2).

An FBA conducted in an alternative educational setting lacks the same relevance as an FBA conducted in the regular educational placement. FBA is a process of understanding the environment to guide the development of contextually relevant interventions, and therefore, the FBA should be conducted when the child is in his/her regular educational setting where the challenging behavior occurred rather than after the child is removed to a suspension or home

setting. In developing an IEP, when a child's behavior impedes his/her learning or that of others, the IEP team shall consider the use of PBIS and other strategies to address that behavior 20 U.S.C. § 1414(d)(3)(b)(i).

## For the Future

Looking to legal guidelines for minimal requirements and to the research base for technical adequacy, researchers, policy-makers and practitioners should align efforts and focus on strengthening the FBA process to have maximal benefit for students.

### Research

Researchers concerned with the advancement of FBA in policy and practice should increase collaborative efforts between legal scholars to reach critical agreements on factors such as the distinction between law and guidance and how to review case law in a way that is meaningful to both. Consensus between scholars will help solidify efforts and ensure emphasis will be directed where needed most.

### Policy-makers

To remain helpful to students and families with students, policies at the state and local levels, related to guidance on FBA, should be tied to evidence-based and best practices, not simply minimal legal requirements. This will require policy-makers to continually revisit current and relevant research in the area of FBA to keep the focus on the improving student outcomes.

### Practitioners

When a behavior interferes with academic or social progress, practitioners should consider an FBA as a viable option. An FBA should not be reserved for solely students who receive special education services or have a particular disability. District-level capacity to perform technically adequate FBAs related to valuable behavior support plans, should continue to increase as the technology of the FBA becomes more accessible.

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