ABSTRACT: Both law and pedagogy require that educators address behavior interfering with educational progress for students with disabilities. The reauthorized Individuals with Disabilities Education Improvement Act (IDEIA, 2004) and its predecessor, the Individuals with Disabilities Education Act (IDEA, 1997a), require individualized education program (IEP) teams to develop behavioral improvement plans (BIPs) for students whose behavior impedes their performance or the performance of others. Yet neither statute provides guidance concerning the substantive components of these plans. The purpose of this article is to review the administrative decisions and case law addressing BIPs. Based on the review, five themes related to the development of appropriate BIPs were identified. A pedagogical review substantiated and enriched the emergent themes. Hopefully, this analysis will assist IEP teams in the development of appropriate and legally defensible BIPs.

Two sections of the Individuals with Disabilities Education Act (IDEA, 1997a), reauthorized in 2004 as the Individuals with Disabilities Education Improvement Act (IDEIA), address the requirement that individualized education program (IEP) teams must attend to the behavioral needs of students with disabilities. When developing the IEP, teams are to “consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports” for a student whose behavior impedes his/her learning or that of others (IDEIA, 2004a). Also, prior to disciplinary action, if the local educational agency did not conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP), the IEP team is to convene to develop an assessment plan to address that behavior (IDEIA, 2004b). If the student already has a BIP, the IEP team “shall review the plan and modify it, as necessary, to address the behavior” (IDEIA, 2004c). Although the final regulations for IDEIA have not yet been finalized, the proposed regulations, issued June 21, 2005, fortify the need for behavioral planning. (Assistance to States for the Education of Children With Disabilities, 2005.).

IDEA required BIPs, but neither the statute nor its regulations provided guidance concerning the substantive components of the plans. The reauthorized IDEIA also fails to provide guidance concerning the substance of these plans. Consequently, schools have relied on the empirical literature, state standards, and judicial interpretations to develop BIPs. The adequacy of BIPs has been the issue of numerous due process hearings and judicial appeal. The purpose of this article is to review the administrative decisions and case law addressing BIPs. Based on this review, several themes related to the development of BIPs were identified. Hopefully, awareness of these themes will assist IEP teams in the development of appropriate and legally defensible BIPs.

Method

This analysis was conducted to discern issues concerning BIPs and to identify the substantive requirements of such plans as defined by administrative and judicial decisions.

Procedure

The online database LRP Legal Research Center was the data source for this analysis. This database includes reports of hearings from state-level administrative due-process hearings (e.g., State Education Association [SEA] hearings), as well as decisions from district courts, appellate courts, and the
U.S. Supreme Court. These decisions are published in the Individuals with Disabilities Education Law Reporter (IDELR), the Early Childhood Law and Policy Reporter (ECLPR), and the Education Law Reporter (ELR). The database was searched from 1997 (the last reauthorization of IDEA, which introduced the requirements of a BIP) through 2005.

Although over 800 decisions include the term BIP, this review and analysis includes only those cases in which the development of a BIP was an issue of the appeal. The topical index was accessed, and those cases indexed in “Behavior management/modification—development of plan” were reviewed. Within the topical index, a sorting process was conducted to identify those cases addressing the development and implementation of a BIP. For example, although the hearing Lower Merion School District (2004) was included in the topical index, the case dealt with the need to conduct an FBA and did not include the term BIP or discuss behavioral planning; therefore, the case was excluded from the analysis. Another case in the topical index, Rancocas Valley Regional High School Board of Education (2003), was excluded from the analysis because the focus of the appeal was whether a student required a more restrictive placement due to serious aggressive behavior. The adequacy of the BIP was not an issue in the appeal. Similarly, Independent School District No. 279, Osseo Area Schools (1999) addressed whether the removal of a student to an interim alternative setting for possession of a paintball gun was a violation of IDEA. As a remedy for violations, the school district was ordered to conduct an FBA and develop a BIP. Because neither need nor adequacy was an issue of the case, it was excluded from the analysis. Next, cases indexed under “Behavior management/modification—in general” in the topical index were reviewed as well as cases accessed by an independent search using BIP as a search parameter. These cases were cross-referenced with the identified cases, and yielded six additional cases to be included in the analysis. This purposive sample enabled an examination of legal issues pertaining to the need and development of BIPs.

Sample

The purposive sample for this policy analysis represented 52 published decisions, from predominately state-level administrative hearings. Students involved in the cases were described by age or grade and primary disability, which included emotional or behavioral disorders (EBD; n = 12), oppositional defiant disorder (ODD; n = 3) served under the EBD category, autism or Asperger’s Syndrome (n = 12), learning disabilities (LD; n = 12), mental disabilities (MD; n = 6), other health impaired (OHI; n = 1), students with attention-deficit/hyperactivity disorder (ADHD) served in the OHI category (n = 1), multiple disabilities (n = 1), and other (n = 3). Information for one student was not provided. The majority of decisions involved male students (n = 48), with females less represented (n = 6). Elementary students (n = 21) and middle school students (n = 22) represented over 80% of the sample, with fewer students in preschool (n = 1) or high school (n = 10).

Analysis

Interpretive document analysis was the data-analysis method. This iterative process involved segmenting each case reviewed into initial codes, which were further refined to categories and themes through inductive analysis and a constant-comparative examination (LeCompte & Preissle, 1993; Lincoln & Guba, 1985; Patton, 2001). A three-tiered analysis procedure that followed procedures for open and axial coding (Strauss & Corbin, 1990) was employed to analyze the data and sort data for convergence of categories and themes. First, an open coding process was used to break down and segment data (Miles & Huberman, 1994; Strauss & Corbin, 1990). Each case was read by the author, who identified key words and phrases concerning BIPs and assigned initial codes. Examples of initial codes were “failure to implement the BIP,” “based on assessment data,” and “positive behavioral supports.” Second-tier coding involved organizing the initial codes into categories. The data were analyzed using content analysis to look for pattern-matching (Gall, Borg, & Gall, 1996). After repeated reading of the cases, certain core categories emerged. These categories were established through selective coding, which involved pattern matching of the initial codes. The core categories from the second-tier analysis included “BIP developed when needed,” “BIP based on assessment data,” “BIP individualized,” “BIP includes positive strategies,” and “BIP implemented and monitored.” The third tier of the iterative process involved both an examination of
existing categories and/or a modification of existing themes. This process, described as axial coding, analyzes the data with reference to the research focus and establishes final themes that have emerged throughout the analysis. The six themes from the second-tier analysis were maintained through the third-tier process.

**Results**

Five themes concerning the adequacy of BIPs were identified from the analysis. These themes are (a) a BIP must be developed if behavior is interfering with student learning, (b) the BIP must be based on assessment data, (c) the BIP must be individualized to meet the student's unique needs, (d) the BIP must include positive behavior strategies and supports, and (e) the BIP must be implemented as planned and its effects monitored.

**BIP Must Be Developed When Behavior Interferes With Learning**

Seventeen cases in the analysis addressed the failure of IEP teams to develop BIPs despite clear evidence of need (see Table 1). In the first case listed in Table 1, Watson Chapel School District (1998), an IEP team failed to develop a BIP for a 7-year-old student with MD and ADHD, despite significant behavior problems. Both the teacher and principal were aware of the student’s serious aggressive behavior, yet no plan was designed to address the behavior. The school district was ordered to provide a full-time instructional assistant, to provide extended school-year services as compensatory education, and to design a BIP to address the student’s “overall unacceptable behavior and to increase her on-task and attentional skills” (27 IDELR 899). A similar decision was reached in Mobile County Board of Education (2004) (see Table 1). Despite the student’s escalating aggressive conduct, the school district did not conduct an FBA or develop a BIP. No significant steps were taken to address the aggression, which resulted in the student’s aides being physically attacked by the student.

In an administrative hearing in New York, parents were awarded tuition for a private school that addressed the academic and behavioral needs of their son. The school district’s program did not include a BIP, despite the student’s difficulty in controlling his impulsive and compulsive behaviors (Board of Education of the City School District of the City of New York, 2000). Although the student in San Juan Unified School District (2002) did not establish eligibility for emotional disturbance, the absence of a BIP denied the student free appropriate public education (FAPE). The student had behavioral needs that interfered with his educational progress. The IEP team was ordered to develop a BIP for the student, and his parents were awarded compensatory education.

Despite a mediation agreement that specified the need for a BIP, the school district in Lodi Unified School District (1998) failed to develop a BIP: “one of the student’s most significant needs is a consistent, individualized behavior management plan” (29 IDELR 826). This omission of a BIP resulted in an award of 1 year of compensatory education.

The absence of a BIP when the district was well aware of the student’s long-time behavioral issues rendered the IEP inappropriate and resulted in tuition reimbursement for the parents (Neshaminy School District, 1998). The behaviors significantly impacted the student’s educational progress.

Although the hearing officer determined the student’s placement appropriate in Sandwich Community Unit School District No. 430 (2001), the hearing officer ordered the IEP team to develop a BIP, including strategies to encourage attendance: “Student requires a behavioral intervention plan to address his non-attendance issues and other behaviors interfering with his ability to succeed educationally. This behavioral intervention plan should incorporate positive reinforcements and incentives for positive behaviors as well as consequences for noncompliance” (35 IDELR 173).

A hearing officer in Chicago Public Schools Local School District (2003) concluded that the absence of a BIP for a 3-year-old with autism rendered the IEP “fatally defective” (4 ECLPR 539). The school district knew the student required intensive behavioral intervention, and was ordered to immediately conduct a FBA and develop a BIP.

In Larson v. Independent School District No. 361 (2004), the failure of the school district to conduct an FBA and BIP resulted in an award of compensatory education. The school district contended that although no formal written document was created, an informal BIP was integrated into the IEP. However, the student’s behavior deteriorated;
### TABLE 1
Legal Decisions That Support the Premise That BIPs Must Be Developed When Behavior Interferes With Student Learning

<table>
<thead>
<tr>
<th>Administrative Hearing or Court Case</th>
<th>Student Data</th>
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<tbody>
<tr>
<td>Watson Chapel School District (SEA AK 1998)</td>
<td>7 years old, female, MD and ADHD</td>
<td>S had a history of running off, inattention, and posing safety risks. P argued that S had been denied FAPE.</td>
<td>For parent (in part): SD ordered to provide 1:1 assistant, compensatory education, and to develop BIP to address problem behavior.</td>
</tr>
<tr>
<td>Mobile County Board of Education (SEA AL 2004)</td>
<td>11 years old, male w/ multiple disabilities</td>
<td>Student's escalating behavior resulted in physical attack on aides. SD argued that program provided to S was appropriate.</td>
<td>For parent: Omission of FBA and BIP deprived S of educational benefit. Ordered certified behavior analyst engaged at SD expense to evaluate and develop IEP and BIP.</td>
</tr>
<tr>
<td>Board of Education of the City School District of the City of New York (SEA NY 2000)</td>
<td>8 years old, male, ODD and ADHD</td>
<td>School district's IEP did not include BIP for compulsive and obsessive behaviors. Parents enrolled S in private school that addressed academic and behavioral needs.</td>
<td>For parents: Parents awarded tuition reimbursement for private school able to address academic and behavioral needs.</td>
</tr>
<tr>
<td>San Juan Unified School District (SEA CA 2002)</td>
<td>6th grade, male, LD</td>
<td>P argued that S qualified as ED, and that more restrictive program was required. SD maintained S needs could be met in the resource program.</td>
<td>For parent (in part): S's behavior interfered with educational progress. IEP team ordered to develop BIP.</td>
</tr>
<tr>
<td>Lodi Unified School District (SEA CA 1998)</td>
<td>20 years old, male, Klinefelter's Syndrome (developmental delays)</td>
<td>P argued that the mediation agreement was not followed; no BIP planned for S. SD maintained social training program was BIP.</td>
<td>For parent (in part): SD assertion that social skills program was BIP unpersuasive. SD ordered to develop BIP as specified in mediation agreement.</td>
</tr>
<tr>
<td>Neshaminy School District (SEA PA 1998)</td>
<td>13 years old, male, LD, ADHD, and history of behavior problems</td>
<td>P unilaterally placed S in out-of-state, private facility due to IEP dispute. SD argued IEP offered FAPE.</td>
<td>For parent (in part): SD knew of student's history with behavior problems, which affected ability to learn. SD ordered to develop BIP with counseling component.</td>
</tr>
<tr>
<td>Sandwich Community Unit School District No. 430 (SEA IL 2001)</td>
<td>15 years old, male, SLD</td>
<td>P sought a residential placement and help with attendance (other than truancy officer). SD argued program for S was appropriate and provided FAPE.</td>
<td>For parent (in part): Although student's placement appropriate, SD was ordered to develop BIP to address attendance and other behavioral issues.</td>
</tr>
<tr>
<td>Chicago Public Schools Local School District (SEA IL 2003)</td>
<td>3 years old, male, autism</td>
<td>P argued that, absent intensive levels of services, including behavior plan, S would not receive educational benefit and requested placement in private school. SD argued it could offer S appropriate program, and could delay conducting FBA and developing BIP.</td>
<td>For parent (in part): In the absence of BIP, the IEP was &quot;fatally defective.&quot; SD knew S required intensive, consistent behavioral interventions and was ordered to immediately conduct FBA and develop BIP. Request for placement in private school denied.</td>
</tr>
<tr>
<td>Larson v. Independent School District No. 361 (D.C. MN 2004)</td>
<td>Elementary age, male, EBD and ADHD</td>
<td>P contended that SD failed to complete FBA and BIP. SD asserted FBA not required unless S removed from placement for more than 10 school days. SD also argued that &quot;informal&quot; BIP was integrated into the IEP.</td>
<td>For parent: Because S behaviors were sole focus of IEP, an FBA and BIP must be conducted.</td>
</tr>
<tr>
<td>Maine School Administrative District #61 (SEA ME 2004)</td>
<td>10th grade, male, LD (later changed to OHI)</td>
<td>P argued SD had failed to develop BIP for 3 years. SD social worker developed a &quot;responsibility contract&quot; to address behavior.</td>
<td>For parent: School district's &quot;responsibility contract&quot; not a substitute for BIP. Tuition reimbursement for private school and transportation costs awarded.</td>
</tr>
<tr>
<td>Bonita Unified School Dist (SEA CA 1997)</td>
<td>High school senior, male, LD and SED</td>
<td>SD proposed restrictive, county-based program for students with SED. Behaviors included class disruption (shouting, defying authority, sexual gestures and comments), fighting, and violating curfew. P requested regular education with support services.</td>
<td>For parent (in part): Student's behavior problems did not justify restrictive placement. BIP needed to address behavior.</td>
</tr>
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TABLE 1 (continued)
Legal Decisions That Support the Premise That BIPs Must Be Developed When Behavior Interferes With Student Learning

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<tr>
<td>South Pasadena Unified School District (SEA CA 1998)</td>
<td>16 years old, male, SED</td>
<td>P argued that SD failed to provide BIP that would enable S to be educated in LRE. SD sought placement in SED program at a different school.</td>
<td>For parent: Despite repeated misconduct, SD failed to develop BIP. IEP team ordered to conduct FBA and develop resulting BIP.</td>
</tr>
<tr>
<td>Board of Education of the City School District of the City of New York (SEA NY 1998)</td>
<td>12 years old, female, autism</td>
<td>Student's aggressive behavior led SD to recommend restrictive placement, which P challenged. SD did not believe inclusive placement was appropriate.</td>
<td>For parent (in part): SD erred when not developing BIP for 3 months and was ordered to find appropriate public or private placement.</td>
</tr>
<tr>
<td>Quaker Valley School District (SEA PA 1999)</td>
<td>14 years old, Asperger's Syndrome</td>
<td>P challenged SD proposed placement in alternative school. SD maintained student needed emotional support program due to threats to school, teachers, and peers.</td>
<td>For parent: SD had failed for years to address student's social and behavioral needs. SD ordered to develop BIP with specific components to improve behavior.</td>
</tr>
<tr>
<td>Wachusett Regional School District (SEA MA 2002)</td>
<td>9 years old, male, multiple disabilities</td>
<td>Student's aggressive behavior and poor peer interactions due to auditory/verbal processing deficits.</td>
<td>For parent: IEP team ordered to revise IEP to include BIP.</td>
</tr>
<tr>
<td>Windsor C-1 School Dist. (SEA MO 1998)</td>
<td>6 years old, male Asperger's Syndrome</td>
<td>Student's IEP called for 1-day suspensions for aggressive behavior. P asserted S had been denied FAPE.</td>
<td>For parent: P awarded tuition for private school placement because no BIP was developed, despite serious behavior.</td>
</tr>
<tr>
<td>West Short School District (SEA PA 2003)</td>
<td>6 years old, male, autism</td>
<td>P withdrew S from SD and requested publicly-funded placement at private school. No BIP in place when S removed. SD argued that FAPE could be provided in proposed placement.</td>
<td>For school district: Although S required BIP, absence did not prevent FAPE because P removed S prior to opportunity to plan and implement BIP. Behavior strategies were included in existing IEP.</td>
</tr>
</tbody>
</table>

Notes: P = parent; S = student; SD = school district; SEA = State Education Association. FAPE = free appropriate public education; LRE = least restrictive environment; ADHD/ADD = attention-deficit hyperactivity disorder; EBD = emotional or behavioral disorders; ED = emotional disturbance; LD = learning disability; MD = mental disabilities; ODD = oppositional defiant disorder; OHI = other health impairment; PDD = pervasive developmental disorders; SED = serious emotional disturbance; SLI = specific learning disability; SLI = speech/language impairment.

he received 22 disciplinary consequences within 7 months. The district court found “not every situation will call for a formal written BIP, but in cases such as this, where a student’s behaviors are the sole focus of the IEP, an FBA should have been conducted and its findings should have been used to create a BIP that would be integrated into the IEP” (40 IDELR 231). A school district’s failure to develop a BIP for 3 years resulted in tuition reimbursement to a private school (Maine School Administrative District No. 61, 2004). The social worker for the district prepared a “responsibility contract,” which was signed by the student and one teacher, but never shared with the IEP team, including the parents. A hearing officer ruled that the contract was not a substitution for a BIP.

In other decisions, school districts recommending more restrictive placements in response to significant behavioral issues were ordered to develop BIPs to facilitate more inclusive placements. In Bonita Unified School District (1997), the school district recommended a restrictive placement for a high school student with serious emotional disturbance (SED). The hearing officer ruled that the student’s behaviors were not serious enough to warrant such a restrictive placement and that the development of a BIP would be sufficient to address the student’s needs in a less-restrictive setting. Another IEP team was ordered to conduct an FBA and develop a BIP in South Pasadena Unified School District (1998). Despite numerous behavioral incidents, the school district failed to develop or implement a BIP, but instead sought a more restrictive program.

Failure to develop BIPs despite clear evidence of need also resulted in decisions that specified the components of the BIP, ordered specialists or consultants to develop the BIP, or funded placements in private schools willing and able to address behavior.
A state review officer in Board of Education of the City School District of the City of New York (1998) ordered the school district to include a BIP that would “clearly identify the behavior to be modified and the specific techniques which will be used to change her behavior” in the IEP of a student with autism (27 IDELR 1998). A review panel in Quaker Valley School District (1999) ordered the school district to develop a BIP for a 14-year-old student with Asperger’s Syndrome, and specifically defined the components to be included in the BIP: (a) the elimination or reduction of unacceptable behavior; (b) the development of appropriate social behavior; (c) the provision of instruction and training in social skills; (d) a description of consequences for appropriate and inappropriate behavior; and (e) the provision of psychotherapy and family therapy. Because the district had failed for several years to address the student’s behavioral needs, they were ordered to secure a consultant knowledgeable in Asperger’s Syndrome to assist in the development of the plan.

In Wachusett Regional School District (2002), the school district was ordered to develop a BIP for a student with significant physical and verbal aggression. Without a BIP, placement in a less restrictive placement would be impossible. The BIP was to be drafted and reviewed by a consultant with behavioral expertise. In Windsor C-1 School District (1998), a student with Asperger’s was denied FAPE when the IEP team failed to develop a BIP despite recurring aggression. An appeals panel concluded that “a District that must resort to suspending a six-year-old for hitting and kicking lacks the resources necessary to meet that child’s needs” (29 IDELR 170) and ordered the school district to fund the student’s private-school placement.

Other decisions determined that BIPs were not required to provide FAPE. In West Shore School District (2003), the school district’s failure to implement a student’s BIP was due to the parents’ removal of the student to a private school. The appeals panel concluded that behavioral strategies were provided in the IEP and that a BIP would have been developed and implemented had the student remained in the district school. In addition, because the student’s behaviors were not interfering with his own or others’ learning, a BIP was not required to provide FAPE. Although the parents objected to the student being subjected to the district’s disciplinary policies, the student’s program was appropriate without the provision of a BIP.

The first theme of the legal analysis is that IEP teams must develop a BIP when behavior interferes with student learning. The cases cited involved students ranging from preschool (e.g., Chicago Public Schools Local School District, 2003) to high school (e.g., Lodi Unified School District, 1998). In the majority of cases, parents prevailed in demonstrating the need for a BIP; behavioral needs were clearly evident. If a BIP were required to ensure FAPE, behavioral supports were ordered. Circumventing the development of necessary BIPs through inaction or recommendations for more restrictive placements resulted in orders for specific plan components, for expert consultation, compensatory education, and tuition reimbursement.

**BIP Must Be Based on Assessment Data**

The second theme that emerged concerned assessment. Decisions and case law have not only established that BIPs must be based on recent, meaningful assessment, but have also defined parameters for appropriate functional behavior assessment (see Table 2). School districts must demonstrate that behavior plans are linked to data from properly conducted and interpreted evaluations. The school district in Corona-Norco Unified School District (1998) proposed a private placement for a student with serious behavioral difficulties, arguing that the student was unresponsive to the positive strategies incorporated in the BIP. The parents requested an FBA, a new BIP, and placement in the neighborhood school. The hearing officer held that the BIP was based on an FBA and that the proposed private placement could best meet the student’s needs.

Although the parent in Montgomery County Board of Education (2004) alleged that the evaluations upon which the BIP was based were inappropriate and inadequate, the hearing officer determined that the behavioral interventions were based on appropriately conducted and interpreted evaluations. The ineffectiveness of the BIP was not due to the assessment but rather due to lack of attendance, lack of participation, and lack of cooperation by both the student and parent.

In contrast, BIPs that were not based on assessment data from properly conducted and interpreted evaluations led to parents prevailing in their appeals. An inadequate
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FBA led to inappropriate behavioral programming in Independent School District No. 2310 (1998). One hour-long classroom observation by the school social worker and an interview with the student’s teacher were insufficient to assist the IEP team in designing appropriate behavioral interventions and resulted in deterioration of behavior and the excessive use of physical restraint. In Ingram Independent School District (2001), the “ cursory” FBA was “ inadequate to address [the student’s] behavior and should be revised” (35 IDELR 143). The hearing officer ordered a “ more detailed” FBA to ascertain the variables associated with each of the student’s problem behaviors. The BIP for a student in Nevada School District (2002) was outdated and inappropriate. The school district was ordered to conduct an extensive psychoeducational and neuropsychological evaluation to help explain the student’s disabilities as exhibited academically, psychologically, and socially.

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<tr>
<td>Corona-Norco Unified School District (SEA CA 1998)</td>
<td>15 years old, male, BD</td>
<td>P argued that SD must conduct new FBA, develop BIP for neighborhood school. SD proposed private placement with structured, therapeutic component. S had history of aggressive and impulsive behavior, profane and vulgar language.</td>
<td>For school district: BIP was based on adequate FBA. Private placement able to implement BIP.</td>
</tr>
<tr>
<td>Montgomery County Board of Education (SEA AL 2004)</td>
<td>High school, male, SLD</td>
<td>P filed 8 complaints, one challenging the appropriateness and sufficiency of evaluations resulting in the BIP. SD described appropriate and extensive efforts at controlling S’s behavior.</td>
<td>For school district: Behavioral interventions were based on appropriately conducted and interpreted evaluations. Ineffectiveness of BIP due to lack of attendance, lack of participation, and lack of cooperation by both S and P.</td>
</tr>
<tr>
<td>Independent School District No. 2310 (SEA MN 1998).</td>
<td>9 years old, male, autism (suspected PDD)</td>
<td>P argued that FBA was inadequate and resulted in the excessive use of restraint for challenging aggressive behaviors. SD maintained the appropriateness of S program.</td>
<td>For parent: One-hour observation and teacher interview did not constitute a FBA and led to excessive use of restraint in addressing problem behavior. S awarded compensatory education.</td>
</tr>
<tr>
<td>Ingram Independent School District (SEA TX 2001)</td>
<td>13 years old, male, LD</td>
<td>P argued SD failed to provide appropriate FBA and implement or modify the BIP to meet S’s needs. SD argues both FBA and BIP adequate.</td>
<td>For parent (in part): SD ordered to provide more detailed FBA addressing behavior function. “ Cursory” FBA and use of home time-outs in BIP inappropriate.</td>
</tr>
<tr>
<td>Nevada School District (SEA AK 2002)</td>
<td>13 years old, male, ED and ADHD</td>
<td>P alleged BIP with shortened school day, parent escort to and from school, and adult supervision and escort throughout the school day inappropriately denied student FAPE. SD maintained appropriateness of BIP.</td>
<td>For parent: BIP outdated and inappropriate. SD ordered to conduct extensive psychoeducational and neuropsychological evaluation to help explain the student’s disabilities as exhibited academically, psychologically, and socially.</td>
</tr>
<tr>
<td>El Paso Independent School District (SEA TX 2003)</td>
<td>17 years old, male, LD</td>
<td>Although the BIP for the S contained goals and intervention strategies, P charged that no FBA had been conducted prior to developing the BIP. The SD argued that a FBA was not required since a BIP was already in place.</td>
<td>For parent: Obligation to conduct FBA or review BIP not linked only to discipline situations that change placement.</td>
</tr>
<tr>
<td>Baldwin County Board of Education (SEA AL 2003)</td>
<td>17 years old, male, LD and ADHD</td>
<td>P alleged SD did not adequately comply with settlement agreement, including FBA and BIP. SD did arrange for BFA and developed BIP.</td>
<td>For parent: Although SD conducted FBA and developed BIP, BIP was inadequate. SD ordered to revise BIP to further control S’s behavioral and attention problems.</td>
</tr>
</tbody>
</table>

Notes: P = parent; S = student; SD = school district; SEA = State Education Association. FAPE = free appropriate public education; ADHD/ADD = attention-deficit hyperactivity disorder; EBD = emotional or behavioral disorder; ED = emotional disturbance; LD = learning disability; MD = mental disabilities; ODD = oppositional defiant disorder; OHI = other health impairment; PDD = pervasive developmental disorders; SED = serious emotional disturbance; SLD = specific learning disability; SLI = speech/language impairment.
The decision in El Paso Independent School District (2003) held for the parents, because the BIP that was developed for a 17-year-old with a learning disability was not based on an FBA. Although a BIP with goals and strategies was in place, an FBA had not been conducted to guide the development of the plan. The hearing officer concluded that an FBA “is a necessary tool in answering the question of why students misbehave” (103 LRP 17162). In Baldwin County Board of Education (2003), the school district did conduct an FBA and subsequently developed a BIP, but a hearing officer concluded that the BIP did not adequately address the student’s behavioral and attention needs. The school district was ordered to revise the BIP according to FBA data.

The second theme concerning the adequacy of BIPs is that the plans be based on data from properly conducted and interpreted assessments. Importantly, required FBAs were either not conducted or were deemed inadequate to guide the development of BIPs. Assessment data must be current and assist IEP teams in planning behavioral supports. This guidance is particularly helpful because IDEIA does not specify the procedures for conducting FBAs, which has resulted in great variability in state and district FBA procedures.

**BIP Must Be Individualized to Meet Student’s Unique Needs**

Several cases addressed the adequacy of the BIP by examining if the plan had been sufficiently individualized to meet the student’s unique needs (see Table 3). In Jim Thorpe Area School District (1998), a state review officer concluded that a reinforcement system used “for all its (seriously emotionally disturbed) students” was not “sufficiently specific or tailored” to meet the student’s unique needs (29 IDELR 320). Similarly, in Hempfield School District (1998), an appeals panel concluded that the BIP for a student with mental disabilities and speech-language impairments was inadequate and the IEP team “did nothing to tailor the student’s behavior plan to his individual needs” (28 IDELR 509). In Upper Dublin School District (2004), an appeals panel determined that a school district’s offer of group counseling was insufficient to meet the student’s behavioral needs: “this panel does not equate the District’s offer of group counseling with specific and individualized interventions [for the student]” (41 IDELR 83).

The third theme establishes the requirement that the BIP be individualized to address the student’s unique behavioral needs. Failure to individualize behavior supports resulted in denial of an appropriate program for students with behavioral challenges. An adequate BIP must be individually tailored and student-specific.

**BIP Must Include Positive Behavioral Supports and Strategies**

The intervention strategies incorporated in the BIP were scrutinized in many of the cases reviewed (see Table 4). The 8th Circuit articulated in Neosho R-V School District v. Clark (2003) the requirement that specific behavioral support strategies be included in a BIP. The case involved a student with autism whose IEP consisted of goals and objectives that did not provide specific interventions and strategies to manage the student’s problem behavior. The vague plan denied the student FAPE: “merely short-term goals and objectives that did not provide specific interventions and strategies to manage (the student’s) behavior problems” (38 IDELR 61).

Several decisions highlighted the appropriateness of BIPs that included positive behavioral supports. The use of environmental alterations, positive intervention strategies, and alternative skill instruction were appropriate strategies in the BIP in School Town of Highlands and Northwest Special Education Cooperative (2005). In Conroe Independent School District (2002), the “extraordinary efforts” to address extremely disruptive behavior were evidenced in the school district’s BIP, which included cooling-off periods and curricular modifications. The BIP examined in Pell City Board of Education (2003) included a variety of positive supports to address the student’s challenging behavior, including suggestions from the child’s psychiatrist and psychologist, a classroom aide to assist with behavior, extended time with the special education teacher, the availability of the principal’s office for cool-downs, and frequent contacts with the parent. In Mason City Community School District and Northern Trails Area Education Agency 2 (2003), the parents charged that the student’s BIP was “punitive” and resulted in a failure to provide FAPE. The administrative law judge (ALJ) determined that the BIP included a variety of positive behavior-change strategies, including classroom accommodations, an
### TABLE 3
Legal Decisions That Support the Premise That BIPs Must Be Individualized

<table>
<thead>
<tr>
<th>Administrative Hearing</th>
<th>Student Data</th>
<th>Issue</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jim Thorpe Area School District (SEA PA 1998)</td>
<td>9 years old, male, SED</td>
<td>When SD proposed a self-contained placement, P claimed S had been denied FAPE for previous 3 years due to lack of BIPs in the IEPs. SD used the same behavior management system for all students, which included physical restraint.</td>
<td>For parent: Two years compensatory education awarded due to SD failure to design and implement BIP.</td>
</tr>
<tr>
<td>Hempheld School District (SEA PA 1998)</td>
<td>8 years old, male, MD &amp; SLI</td>
<td>P alleged denial of FAPE due to inadequate BIP. SD proposed restrictive program due to behavioral outbursts (aggression and non-compliance).</td>
<td>For parent: Rather than individualizing BIP, misconduct arising from disabilities was punished.</td>
</tr>
<tr>
<td>Upper Dublin School District (SEA PA 2004)</td>
<td>7th grade, female, ED and ADD</td>
<td>P charged that program did not include individualized supports to address behavior and self-concept. SD offered group counseling to meet student's needs.</td>
<td>For parent: SD offer of group counseling did not equate with specific and individualized interventions.</td>
</tr>
</tbody>
</table>

**Notes:** P = parent; S = student; SD = school district; SEA = State Education Association. FAPE = free appropriate public education; LRE = least restrictive environment; ADHD/ADD = attention-deficit/hyperactivity disorder; EBD = emotional or behavioral disorders; ED = emotional disturbance; LD = learning disability; MD = mental disabilities; ODD = oppositional defiant disorder; OHI = other health impairment; PDD = pervasive developmental disorders; SED = serious emotional disturbance; SLD = specific learning disability; SLI = speech/language impairment.

Individualized Boys Town level system of reinforcement, and crisis intervention. Crisis intervention was implemented in a manner to help the student “reflect” on behavior, “examine behavioral choices, and plan future behavior” (39 IDELR 25).

In many other decisions, the absence of positive strategies rendered the BIP inappropriate and denied students FAPE. A BIP for a 13-year-old student with LD and autism emphasized punishment and discipline rather than positive reinforcement in *Lewisville Independent School District (2001)*. The “punitive nature of the BIP resulted in too much time out of the classroom with negative effects on self-image and academic performance” (35 IDELR 236). Time-out strategies were also excessive and inappropriate in *Mason City Community School District & Northern Trails Area Education Agency (AEA) 2 (2001)*, where the BIP for a student with BD was punitive and resulted in the student placed frequently in time-out. The school district did not attempt to modify the plan, despite its ineffectiveness. In *Ingram Independent School District (2001)*, excessive removals contributed to the student’s lack of academic progress and the BIP placed too much emphasis on punishments and discipline rather than positive methods. In *Warren County School District (2001)*, the BIP for an 11-year-old with autism was “wholly unsuccessful” due to the use of isolation in “non-crisis” situations (35 IDELR 899). The school district was ordered to hire a consultant with expertise in autism to assist in the development of the revised BIP.

In *Watson Chapel School District (2001)*, the BIP, which was written by the principal and contained a series of sanctions for inappropriate behavior, was “... entirely inappropriate. The school district has no aids or services to provide social skills training or behavior modeling, to teach the child how to deal with teasing or taunting by other students, or how to get other students’ attention in an acceptable way by providing behavior alternatives to slapping or hitting” (35 IDELR 288).

Other decisions upheld the use of “less positive” strategies, providing they were used in conjunction with positive supports and necessary for school or student safety. In *School District of Monona Grove (1998)*, the BIP for a student with emotional disturbance included a system of positive reinforcement. The use of a “severity clause” in a student’s BIP, that allowed the school district to determine consequences for inappropriate behavior, was permissible and did not detract from the positive behavioral interventions and supports included (*In re: Student with a Disability, 2003a*). In *Northeast Independent School District (2001)*, parents of a 14-year-old with emotional disturbance and ADHD charged that the school district failed to
<table>
<thead>
<tr>
<th>Administrative Hearing or Court Case</th>
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<tbody>
<tr>
<td>Neosho R-V School District v. Clark (8th Cir. 2003)</td>
<td>12 years old, male, autism/Asperger’s Syndrome</td>
<td>SD appealed decision that it failed to provide FAPE. Specifically, P charged BIP had not been adequately developed or implemented.</td>
<td>For parent: No cohesive plan in place; only goals and objectives without specific strategies.</td>
</tr>
<tr>
<td>School Town of Highlands and Northwest Special Education Cooperative (SEA IN 2005)</td>
<td>10 years old, male, BD</td>
<td>P alleged that BIP lacked specific strategies and social skill instruction and that staff not trained to address student’s behavioral needs. SD contended BIP was appropriate.</td>
<td>For school district: BIP included positive intervention strategies designed to confer educational benefit to S.</td>
</tr>
<tr>
<td>Conroe Independent School District (SEA TX 2002)</td>
<td>15 years old, male, OHI</td>
<td>P claimed the SD failed to individualize and implement the BIP to improve behavior and that student had been punished for behaviors related to his disability (by excessive removals from his classes, placement in the office, suspensions, and police contacts); SD claimed BIP positively addressed his extremely disruptive behavior (e.g., vocal outbursts, walking around the room, lying on floor or desk tops, sexually explicit comments).</td>
<td>For school district: SD made “extraordinary efforts” to respond to the extreme disruption by allowing some disruption without consequences, warnings, cooling-off periods in principal’s office, more time with special education teacher, and frequent contacts with mother.</td>
</tr>
<tr>
<td>Pell City Board of Education (SEA AL 2003)</td>
<td>13 years old; male; MD, ADHD, and conduct disorder</td>
<td>P requested 1:1 behavioral aide due to deteriorating behavior. SD denied aide, asserting student's behavior improved due to BIP.</td>
<td>For school district: S had progressed behaviorally and academically. BIP based on consultation with psychiatrist and psychologist. BIP included classroom aide, cool-off periods in principal’s office, more time with special education teacher, and frequent contacts with mother.</td>
</tr>
<tr>
<td>Mason City Community School District and Northern Trails AEA 2 (SEA IA 2003)</td>
<td>14 years old, male, ODD and ADHD</td>
<td>P charged that BIP was punitive and that a pattern of suspensions and in-school-suspensions denied FAPE; SD argued BIP was appropriate and use of suspensions permissible.</td>
<td>For school district: BIP included a variety of positive behavioral strategies, including crisis intervention, which enabled S to reflect and plan future behavior. Suspensions not resulting in change of placement permitted.</td>
</tr>
<tr>
<td>Lewisville Independent School District (SEA TX 2001)</td>
<td>13 years old, male, LD and autism</td>
<td>Unhappy with the IEP and BIP offered by the school district, parent enrolled S in private school. P claimed SD failed to develop and/or implement a BIP that was individualized or would be reasonably likely to result in successful behavior management.</td>
<td>For parent: BIP was punitive and resulted in too much time away from school. P awarded tuition reimbursement for private school.</td>
</tr>
<tr>
<td>Mason City Community School District &amp; Northern Trails AEA 2 (SEA IA 2001)</td>
<td>not provided</td>
<td>P challenged SD decision to place S in interim setting and charged BIP was ineffective.</td>
<td>For parent: BIP was punitive in nature and did not teach appropriate behavior. SD failed to consider less restrictive placement. SD ordered to develop appropriate IEP and BIP, and AEA, ordered to fund independent evaluation.</td>
</tr>
<tr>
<td>Ingram Independent School District (SEA TX 2001)</td>
<td>13 years old, male, LD</td>
<td>Student’s behavior problems (e.g., sleeping in class, defiance of authority, and problems with peers) targeted in BIP, but resulted in excessive removals from class and school.</td>
<td>For parent: SD ordered to design a BIP that did not rely on exclusion from school.</td>
</tr>
<tr>
<td>Warren County School District (SEA PA 2001)</td>
<td>11 years old, female, autism and MD</td>
<td>P argued that SD-proposed placement of S in life skills program denied FAPE, and that BIP was inappropriate. SD recommended more restrictive placement following FBA.</td>
<td>For parent: Use of isolation for inappropriate behavior should be limited to crisis situations, and current behavior strategies in BIP “wholly unsuccessful.” SD ordered to hire an educational consultant with expertise in autism to assist in development of revised BIP.</td>
</tr>
</tbody>
</table>
### TABLE 4 (continued)

**Legal Decisions That Support the Premise That BIPs Must Include Positive Behavior Strategies and Supports**

<table>
<thead>
<tr>
<th>Administrative Hearing or Court Case</th>
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</tr>
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<tbody>
<tr>
<td>Watson Chapel School District (SEA AK 2001)</td>
<td>16 years old, male, MD</td>
<td>P charged the SD failed to provide FAPE by inappropriateness of BIP. Use of disciplinary sanctions violated IDEA.</td>
<td>For parent: SD ordered to include consultant as IEP member to develop appropriate BIP. S awarded compensatory education due to denial of FAPE.</td>
</tr>
<tr>
<td>School District of Monona Grove (SEA WI 1998)</td>
<td>11 years old, male, ED</td>
<td>P disagreed with SD recommendation for more restrictive placement due to student's violent and disruptive behavior (e.g., punching, kicking, fighting, noncompliance, threatening teacher with scissors).</td>
<td>For school district (in part): BIP included level system of positive reinforcement. Student's behavior “cannot be blamed” on inadequate BIP.</td>
</tr>
<tr>
<td>In re: Student with a Disability (SEA WI 2003b)</td>
<td>5th grade, male, autism</td>
<td>P asserted SD failed to draft an appropriate BIP due to “severity clause” that permitted negative sanctions. SD maintained suspensions were permissible option, even if not in BIP.</td>
<td>For school district: Consequences to correct misbehavior permissible, even for behaviors that are a manifestation of disability. “Severity clause” did not detract for positive behavioral supports in BIP.</td>
</tr>
<tr>
<td>Northeast Independent School District (SEA TX 2001)</td>
<td>14 years old, male, ED and ADHD</td>
<td>P alleged SD failed to use positive behavioral interventions and used punishment inappropriately. SD argued BIP was positive, but did include consequences for inappropriate behavior.</td>
<td>For school district: Referrals to administrator were not punishment, but “negative reinforcers” which were included in the BIP.</td>
</tr>
<tr>
<td>In re: Student with a disability (SEA VT 2003b)</td>
<td>9 years old, male, autism</td>
<td>P argued that past and present BIPs inappropriate, particularly the use of “aversives” in form of “basket hold.” SD argued that, despite various positive supports, resort to “basket hold” necessary for student and others’ safety.</td>
<td>For school district (in part): Use of “basket hold” was justified within context of BIP. SD capable of providing FAPE to S.</td>
</tr>
<tr>
<td>Little Rock School District (SEA AK 2002)</td>
<td>15 years old, male, MD</td>
<td>SD proposed a restrictive placement in response to student’s behavioral difficulties (e.g., cursing, biting, hitting, spitting, running out of class and around the school, turning over trash cans, and throwing items).</td>
<td>For parent: SD ordered to develop a “structured, in-depth” BIP. Noted that “while the parent should be involved in the behavior plan, the parent should not have the primary responsibility for disciplining her son at school.”</td>
</tr>
<tr>
<td>Augusta School District (SEA ME 2001)</td>
<td>13 years old, male, ED</td>
<td>P disagreed with proposed SD placement in a behavior support room. Student’s work completion problems and disruptive behaviors were addressed in the BIP by a shortened school day, a strategy recommended by the P.</td>
<td>For parent: SD ordered to revise BIP. P awarded compensatory education and the costs of privately arranged summer program. The school district’s “argument that the abbreviated day schedule was at parent request and therefore somehow relieves them from any liability is unconvincing.”</td>
</tr>
</tbody>
</table>

**Notes:** AEA = Area Education Agency; P = parent; S = student; SD = school district; SEA = State Education Association. FAPE = free appropriate public education; ADHD/ADD = attention-deficit hyperactivity disorder; EBD = emotional or behavioral disorders; ED = emotional disturbance; LD = learning disability; MD = mental disabilities; ODD = oppositional defiant disorder; OHI = other health impairment; POD = pervasive developmental disorders; SED = serious emotional disturbance; SLD = specific learning disability; SLI = speech/language impairment.

use positive supports and instead used punishment. Although the plan also called for referral to administration for inappropriate behavior, the hearing officer determined that the BIP was positive, based on a privilege level system. A hearing officer in *In re: Student with a Disability (2003b)* concluded that the BIP for a nine-year-old student with autism was appropriate, including the use of a “basket hold” technique for managing aggressive behavior. The parents argued that the use of such “aversives” rendered the BIP inappropriate. The hearing officer opined that the technique was “justified” for safety and
that the district intended only to use it as a last resort when other positive options outlined in the BIP were unsuccessful (41 IDELR 115).

School teams must assume responsibility for behavior change, and BIPs should identify school-based strategies. A hearing officer concluded that school districts had denied students FAPE when their BIPs relied on the parental intervention of taking the student home (Little Rock School District, 2002). The ruling clarified that the parent should not be the primary consequence for inappropriate behavior or have the primary responsibility for disciplining the student. Similarly, school teams must not circumvent their duty to address problem behavior by reliance on shortened school days (Augusta School District, 2001). The hearing officer opined that the parent-suggested shortened school day did not relieve the district of their duty to plan and implement a BIP.

The fourth theme of the analysis of decisions and case law is that an adequate BIP includes positive behavioral support strategies. Abbreviated school days (e.g., Augusta School District, 2001) or removal from class and school (e.g., Ingram Independent School District, 2001; Lewisville Independent School District, 2001) were determined to be inappropriate and nonpositive strategies to address behavior. Although consequences for inappropriate behavior may also be included for school or student safety, they must be used in conjunction with positive behavioral supports. Similarly, parentally based strategies may not represent the primary plan to address problem behavior in school.

BIP Must Be Implemented as Planned and Effects Must Be Monitored

Several decisions addressed the need for BIPs to be consistently implemented and monitored (see Table 5). In Jessieville School District (1998), the school district did not follow the BIP and respond to noncompliance with a teacher dialogue outside the classroom. Instead, the student was suspended. The district later suspended the student for computer vandalism and conditioned his return upon an admission that he had done wrong and an apology to his teacher. The hearing officer determined the school district’s actions did not comply with the BIP and ordered the district to follow the plan and to train teachers how to effectively implement the plan. In Forrestville Valley Community Unit School District 221 (2002) the failure to implement strategies in the student's BIP resulted in a student running away and being found only “minutes before death” (37 IDELR 209). The school district was ordered to hire an expert in positive behavioral interventions to oversee the development and implementation of the student’s BIP, to hire a consultant to train staff and develop disability awareness, and to provide the student compensatory education.

In contrast, despite parental allegations that the BIP had not been implemented appropriately or consistently, the district court in Board of Education of Township High School District No. 211 v. Lindsey R. (2005) ruled that the school district had made a good faith effort to implement the plan and that detailed data of student behavior was consistently recorded. The “less than perfect” implementation was due to the complexity of the plan and the difficulty carrying it out in a large high school. The court determined that the BIP had been appropriately implemented.

Other decisions involved the use of suspensions when such disciplinary action was not specified by the BIP. In Vidalia City Schools (1999), parents of a student with ADHD alleged a denial of FAPE when he was suspended for misconduct. His BIP indicated that he would not be punished for behaviors related to his disability. The school district conducted a manifestation determination and found no relationship between the misconduct and the ADHD and suspended him. An ALJ found the suspension was not a deviation from the BIP, but rather consistent with IDEA. In Mason City Community School District and Northern Trails Area Education Agency 2 (2001), the parents alleged that components of the BIP, including meeting with the counselor, problem-solving instruction, and assignment of a mentor, had not been implemented. They further charged that the district’s use of suspensions was improper because the BIP did not address those sanctions. Based on school records and testimony, the ALJ ruled that the BIP developed by the school district had been implemented and monitored and that suspensions not resulting in a change of placement were permitted without reference in the BIP. These two cases suggest that the use of short-term suspensions is permissible, even if not referenced on a student’s BIP.

Two decisions have held that contacting police or liaison officers does not constitute a failure to implement a BIP, even if such contact was not included in the BIP. In Des
### TABLE 5
Legal Decisions That Support the Premise That BIPs Must Be Implemented as Planned and Effects Monitored

<table>
<thead>
<tr>
<th>Administrative Hearing or Court Case</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Jessieve School District (SEA AK 1998)</td>
<td>14 years old, male, LD</td>
<td>P alleged SD did not follow BIP and punished S for behaviors related to disability. S not allowed to return to school unless he admitted he was wrong and apologized to teacher. SD claimed BIP followed, but had been modified to include district policy for misconduct.</td>
<td>For parent: SD did not follow BIP for noncompliance (suspended S). Keeping S out of school pending apology also inconsistent with BIP and IDEA. SD ordered to follow plan and train teachers to follow plan.</td>
</tr>
<tr>
<td>Forrestville Valley Community Unit School District 221 (SEA IL 2002)</td>
<td>10 years old, male, Landau-Kleffner Syndrome impairing language and behavior</td>
<td>P alleged SD failed to provide services to address student's behavioral needs.</td>
<td>For parent: SD failure to implement BIP resulted in crisis for student. SD ordered to hire specialists to oversee BIP and train staff.</td>
</tr>
<tr>
<td>Board of Education of Township High School District No. 211 v. Lindsey R. (ND IL 2005)</td>
<td>High school, female, Rett Syndrome</td>
<td>P alleged BIP not consistently implemented and staff not trained to correctly implement. SD argued that BIP implementation was satisfactory.</td>
<td>For school district: Although not “perfect,” due to complexity of plan, SD made good faith effort to implement BIP in large, comprehensive high school.</td>
</tr>
<tr>
<td>Vidalia City Schools (SEA GA 1999)</td>
<td>8 years old, male, ADHD</td>
<td>P argued that suspensions deviated from BIP, which indicated S would not be punished for behaviors related to ADHD. SD determined no relationship between misconduct and ADHD, and suspended S.</td>
<td>For school district: Suspensions not a deviation from BIP and consistent with requirements of IDEA.</td>
</tr>
<tr>
<td>Mason City Community School District and Northern Trails Area Education Agency 2 (SEA IA 2001)</td>
<td>16 years old, male, ODD and ADHD</td>
<td>P charged SD did not implement the components of the BIP (meeting w/ counselor; problem-solving instruction, providing a mentor) and used discipline not included on BIP (e.g., suspensions). SD maintained suspensions did not exceed 10-day limit, and that BIP followed.</td>
<td>For school district: BIP was implemented as planned and the use of suspensions permitted. Suspensions are option if not resulting in change of placement.</td>
</tr>
<tr>
<td>Des Moines Independent Community School District and Heartland Area Education Agency (SEA IA 2001)</td>
<td>11 years old, male, BD and ADHD</td>
<td>P alleged SD violated IDEA by reporting crime without providing copies of student's records. SD argued that they called the police only to assist with restoring safe school environment and did not report crime.</td>
<td>For school district: SD did not violate or circumvent IDEA by requesting police assistance to restore order to school.</td>
</tr>
<tr>
<td>St. Vrain Valley District RE-1J (SEA CO 2003)</td>
<td>Middle school, BD</td>
<td>P argued BIP not implemented because school contacted police. SD stated crisis section of BIP followed in “escorted to a safe place.”</td>
<td>For school district: Although not included in BIP, police contact permitted (34 C.F.R. § 300.529).</td>
</tr>
<tr>
<td>Modesto City School District (SEA CA 1998)</td>
<td>16 years old, male, autism</td>
<td>P wanted neighborhood school placement. SD recommended more restrictive placement due to escalating behavior.</td>
<td>For parent: BIP was not properly implemented or updated. Parent-preferred placement ordered with modified BIP.</td>
</tr>
<tr>
<td>Bristol Township School District (SEA PA 2002)</td>
<td>11 years old, male, Asperger's Syndrome and Joubert's Syndrome (disorder affecting vision and sensory integration)</td>
<td>P alleged that S was denied FAPE when SD used increasingly more serious consequences for behavior, including physical restraint. SD argued program was “sufficient.”</td>
<td>For parent: SD should have known BIP was ineffective and reconvened the IEP team to determine more appropriate strategies. S awarded compensatory education.</td>
</tr>
</tbody>
</table>

Notes: P = parent; S = student; SD = school district; SEA = State Education Association. FAPE = free appropriate public education. ADHD/ADD = attention-deficit hyperactivity disorder; EBD = emotional or behavioral disorders; ED = emotional disturbance; LD = learning disability; MD = mental disabilities; ODD = oppositional defiant disorder; OHI = other health impairment; PDD = pervasive developmental disorders; SED = serious emotional disturbance; SLD = specific learning disability; SLI = speech/language impairment.

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Develop BIPs as Necessary

The need to address behavior that interferes with learning is well documented for students with disabilities. Behavior problems are a significant concern for educational teams developing programs for students from preschool to high school levels. Kupersmidt, Bryant, and Willoughby (2000) report that 10–15% of preschool-age children exhibit moderate-to-severe levels of antisocial behavior. Preschool teachers report that disruptive behavior problems are the most significant challenge they face (Joseph & Strain, 2003). Challenging behaviors that can interfere with education are particularly evident for young students with autism (Horner, Carr, Strain, Todd, & Reed, 2002). The utility of FBAs to assist in the development of BIPs is high (Reese, Richman, Zarcone & Zarcone, 2003). The persistent behavior problems of middle school students puts them at risk for interpersonal conflict and academic problems (Hester, Gable, & Manning, 2003) and requires teachers to examine educational contexts that facilitate positive behavior. Behavioral factors have also been associated with the limited academic and post-school success of high school students with behavioral disorders (Presley & Hughes, 2000). The inability to successfully address problem behavior at the secondary level is linked to low graduation rates, unstable employment opportunities, and incarceration (Kortering, Braziel, & Tompkins, 2002). The efficacy of the FBA process in designing behavioral-change programs for adolescents has similarly been demonstrated (Penno, Frank, & Wacker, 2000).

Students with significant behavior problems are often isolated from the mainstream of education (Smith & Daunic, 2004). Teachers’ perceptions of their skill to address behavior problems are a significant concern.
factor in placement decisions. Frey (2002) found that teachers who were less confident in behavior management skills recommended more restrictive placements for students with behavioral needs. When behavior interferes with learning and may be a precursor for restrictive setting, teachers must develop BIPs to facilitate behavioral improvement. Students with behavioral needs must have the chance to learn alternative, appropriate behavior and to remain in a school setting that provides supportive services (Etscheidt, 2002).

Use Assessment Data to Guide the Development of BIPs

BIPs must be based on data from properly conducted and interpreted assessments. The assessment should meet the technical requirements of IDEA, including the use of multiple data sources (IDEA, 1997b). The assessment should also examine all areas of concern and be of utility to the IEP team in planning the student's program (Etscheidt, 2003).

As an inquiry-based approach that enhances the understanding of the purpose and effect of behaviors or concern and provides information that is helpful in the development of the BIP (Smith & Katsiyannis, 2004), functional behavioral assessment is particularly well-suited to assist IEP teams in planning BIPs. Identifying the influences associated with problem behavior provides useful information to develop interventions (Center for Effective Collaboration and Practice, 1998). Although certain authors have expressed reservations concerning the validity of a team-based-FBA approach in school settings (Scott, McIntyre, Liaupsin, Nelson, & Conroy, 2004; Gable, 1999; Armstrong & Kauffman, 1999; Nelson, Mathur, & Rutherford, 1999), others have discussed the utility and logic of endorsing such an approach (Maag & Larson, 2004; Ellingson, Miltenberger, Stricker, Galensky, & Garlinghouse, 2000; Sugai, Horner, & Sprague, 1999) and the promise of continued demonstration of efficacy (Scott, Bucalos, Liaupsin, Nelson, Jolivette, & Deshea, 2004; Katsiyannis & Maag, 1998).

Individuals who conduct FBAs often fail to incorporate the assessment data into students' BIPs (Jolivette, Scott, & Nelson, 2000). Without FBA data leading to effective interventions, data collection is of little utility to IEP teams (Jolivette, Barton-Arwood, & Scott, 2000).

By collecting assessment information about problem behavior, teams will be able to focus the strategies they identify and develop for BIPs (Horner, Sugai, Todd, & Lewis-Palmer, 2000). Linking assessment data to selected interventions will assure that the BIP is valid.

Individualize BIPs to Meet Students' Unique Needs

Schoolwide models prevent problem behavior through clear expectations for all students, student involvement in rule-making, and positive feedback on behavior (National Technical Assistance Center for Positive Behavioral Interventions and Supports, 2005). While a successful schoolwide system will reduce the need for more individualized plans, many students will require personalized behavior support (Wheeler & Richey, 2005).

The IDEIA (2004d) emphasizes individualized planning to meet the unique needs of students with disabilities. BIPs must be individualized to meet the needs of diverse students in various educational environments (Yell, Bradley, & Shriner, 1999). The interventions selected for the BIP must be individualized, not based on the topology of behavior: “The focus on the individual, rather than on the topology of the behavior, leads to an intervention that is more relevant to the student (Crone & Horner, 1999, p. 165). The selection of “one size fits all” or “cookie cutter” behavior plans will be ineffective (DuPaul, Eckert, & McGoe, 1997) and inconsistent with the federal mandate. Effective behavior supports and interventions are based on a thorough understanding of the individual student and the problem behavior (Deveres & Pitasky, 1999).

Include Positive Behavioral Supports in BIPs

IDEIA (2004e) clearly directs IEP teams to select positive behavioral supports when addressing the behavioral needs of a student. Not only must the interventions be positive supports, they must be grounded in “scientifically-based research” IDEIA (2004f). Authors have concluded that a substantial data base of empirically validated interventions exists for students with disabilities (Conroy & Brown, 2004). A variety of evidence-based, validated practices may be selected as positive behavioral supports included in
the BIP. Lewis, Hudson, Richter, and Johnson (2004) identified four research-based practices to improve the behavior of students with emotional and behavioral disorders: teacher reinforcement; high rates of opportunity to respond during instruction; clear instructional strategies, including direct instruction; and positive behavior support, including self-management and social skills instruction.

Importantly, the selection of empirically validated, positive behavior supports in the BIP must be based on assessment data. The IEP team may select validated interventions matched to assessment data. For example, if the FBA determined that elements within the instructional environment were associated with problem behavior, interventions such as adjustment of task difficulty (Miller, Gunter, Venn, Hummel, & Wiley, 2003), individualized instruction (Gibb & Wilder, 2002; Wehby, Falk, Barton-Arwood, Lane, & Cooley, 2003), incorporating student interest (Chandler & Dahlquist, 2002), and offering student choice (Jolivette, Wehby, Canale, & Massey, 2001; Kern, Mantegna, Vorndran, Bailin, & Hilt, 2001; Dunlap et al., 1994) may be selected for inclusion in the BIP. As another example, if the FBA suggests that certain elements in the social environment are contributing to problem behavior, interventions such as selective seating (Umbreit, 1995), problem-solving instruction (Hune & Nelson, 2002), or social skills instruction (Lane et al., 2003) may be incorporated into the BIP. If elements in the physical environment are identified in the FBA as contributing to problem behavior, empirically validated strategies, such as auditory adjustments (O’Reilly, Lacey, & Lancioni, 2000) or assistive technology to reduce classroom distractions (Hecker, Burns, Elkind, Elkind, & Katz, 2002), may be effective options to include in the BIP. Depending on the results of the FBA, other valid interventions, such as self-monitoring (Sabella Levendoski, & Cartledge, 2002) and reinforcement (Sutherland, Wehby, & Copeland, 2000), may be considered. In selecting strategies or interventions for the BIP, IEP teams should solicit ideas from the student, as appropriate, to enhance student involvement in behavior change and self-determination.

Consistently Implement and Monitor BIPs

IEP teams should include two evaluation practices: one to monitor the “faithfulness of the implementation of the (BIP)” (p. 16) and a second to evaluate the effectiveness of the BIP (Center for Effective Collaboration and Practice, 1998). The consistency and accuracy with which the BIP is implemented, as well as evidence that the interventions are resulting in the desired change, must be documented. The evaluation section of the plan should indicate what will be monitored and how often the team will conduct observations to obtain evaluation data (Horner, Sugai, et al., 2000). Most BIPs need modifications and IEP teams must identify a process to determine when modifications are needed (Todd, Horner, Sugai, & Sprague, 1999). At the minimum, progress monitoring must be consistent with the requirements of IDEA (1997c; Fitzsimmons, 1998), which include at least an annual review and additional reviews as members of the team may determine. Such monitoring is essential in determining if the selected intervention is changing behavior and strengthening the student’s ability to benefit from special education (Wilcox, Turnbull, & Turnbull, 1999–2000).

Summary

Both law and pedagogy require that behavior that interferes with educational progress be addressed for students with disabilities. Legal interpretations and best practice guide IEP teams in the development and implementation of BIPs. If a BIP is required for a student to receive FAPE, IEP teams must plan behavioral supports. Behavior problems are significant concerns for students from preschool to high school, affecting academic achievement, interpersonal interactions, and post-school success. Teachers must plan behavioral supports to facilitate educational progress in inclusive settings.

The behavioral supports developed by IEP teams must be based on data from properly conducted and interpreted assessments. The assessment must include multiple data sources, address all behaviors of concern, and be of utility to the IEP team in planning the BIP. The efficacy of an FBA process in guiding behavior supports has been demonstrated across grade levels.

The BIP must be individualized to address the student’s unique behavioral needs. An adequate BIP must be individually tailored and student-specific. The individualized plan must include positive behavioral supports. Although
consequences for inappropriate behavior may also be included for school or student safety, they must be used in conjunction with positive behavioral supports. The IEP team may determine that consequences, such as isolation or time-out, may be necessary for inappropriate behavior, but these strategies must also be planned in conjunction with positive behavioral supports. Parent contacts or pick-up that results in shortened school days may be necessary for safety, but should be used in conjunction with school-based, positive behavioral supports. The BIP must be consistently implemented and monitored. Progress monitoring will provide the IEP team with feedback concerning the effectiveness of the selected interventions.

The 7th Circuit recently declined to address the substantive adequacy of a BIP, reasoning that, because substantive criteria do not exist in statute or regulation, a BIP could not be substantively invalid (Alex R. v. Forrestville Valley Community Unit School District No. 221, 2004). The court’s refusal to “create out of whole cloth substantive provisions for the behavioral intervention plan” seems unreasonable and evasive. The Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley (1982) created the substantive criteria for FAPE, with later clarification from the various circuit courts. Substantive tests to determine the appropriateness of inclusive placements were carved out in the circuit courts (e.g., Roncker v. Walter, 1983; Daniel R. R. v. State Board of Education, 1989; Greer v. Rome City School District, 1992; Oberti v. Board of Education of the Borough of Clementon School District, 1993; Board of Education Sacramento City Unified School District v. Rachel Holland, 1994).

The ambiguity of IDEA concerning BIPs has resulted in considerable litigation. Without guidance from the courts, school districts will continue to face legal challenges regarding BIPs. Decisions by due-process hearing officers and the courts will help clarify the substantive criteria of BIPs (Yell et al., 1999). Guidance from hearing officers and judges will provide lessons, which should be utilized to improve services for students whose behavior impedes learning (Johns, 2001). Hopefully, this analysis will assist school teams in developing appropriate behavior intervention plans for students with disabilities.

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