

## Legal/Policy Issues Regarding Discipline In Our Schools

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## First, Some Introductory Comments

### Prevailing Forces

- NCLB
- IDEA

### What These Laws Do

- Both laws are **sweeping pieces of legislation** that clearly define the mission of schools
  - The purpose of schools is to **demonstrably improve student outcomes**
    - Academic achievement
    - Functional performance
  - Results must be demonstrated using **objective, measurable, quantitative** means

### What These Laws Do

- Both laws make a meaningful commitment to **evidence-based practices**
  - NCLB & Scientifically Based Research
  - IDEA & Peer-Reviewed Research
- Both laws emphasize that **educators are accountable for results**
  - NCLB & Statewide Assessments
  - IDEA & Progress Monitoring

### Both laws are intended to affect the ways that:

- **Universities** prepare **teachers**
- **SEAs & LEAs** provide **professional development** for educators
- **Teachers** teach their **students**

NCLB & IDEA clearly define the missions of schools as improving the academic achievement and functional performance of students by requiring that educators use science and be accountable for results

### Areas of Focus (Policy & Legal Directions)

- Where are the areas of support for the overall themes of pbs?
- What are the major challenges associated with serve the “Top of the Triangle” youth?
- What issues do we regarding our needed professional competencies in providing positive behavioral supports?

### Areas of Focus (continued)

- To what extent is there recognition of the interaction of academics and behavior?
- How do legal, policy and value issues meet?

### Overall

Areas of Support for Themes of Positive Behavioral Support

### Wherein Does the “Problem” Lie? (Lauren P. v. Wissahickon, U.S. District Court, PA, 2007)

- Compensatory education, cost of private school placement
- Rather than develop a BIP, the district placed the onus on the student to improve her conduct (“Lauren needs to become more responsible for her books and materials . . . She needs to apply the strategies taught to her in her mainstreamed courses . . . She needs to take her time and concentrate on the task at hand.”)

### Lauren P.

- “. . . The District blamed student for behaving like a student with a disability . . . (IEP statements) These statements demonstrate the District’s failure to respond to deficiencies in previous IEPs and thus meet its responsibility to provide a free appropriate public education.

## Lauren P.

- “The District and the Hearing Officer rely on the adage, ‘You can lead a horse to water, but you can’t make him drink.’ Yet the December 2002 IEP requires Lauren to quench her thirst at an empty well.”

## Same question - broader perspective

The provision of schoolwide systems and targeted interventions

## Question #2

Meeting the Needs of “Top of the Triangle”

## Interim Alternative Settings

- Carries a weapon to or possesses a weapon at school . . .
- Illegal drugs
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA.

Mr. & Mrs. I. v. Maine School Admin.  
District 55 (U.S. District Court-Maine,  
2006)

- 12 year old student with Asperger Disorder
- Issue of IDEA eligibility
- Issues in defining educational performance

## Eligibility Issue (Mr. & Mrs I)

- “The mere fact of a diagnosis of Asperger’s Syndrome and Adjustment Disorder with Depressed Mood does not automatically qualify a child for special education . . .the disability must adversely affect the child’s educational performance.”

## Educational Performance

- District asserted educational performance as not affected by virtue of:
  - Strong academic skills
  - Meeting standards for learning
  - Strong written and oral skills
  - Obeying rules
  - Not a discipline problem

## Educational Performance (Mr. & Mrs. I)

- Issue of behaviors such as social isolation, self mutilation behaviors, behavioral rigidity
- “. . . The purpose of education is not merely the acquisition of academic knowledge but also the cultivation of skills and behaviors needed to succeed generally in life.”

## Peacock v. Little Rock (U.S. District Court, Eastern-Arkansas, 2006)

- Student with depression
- Issue of eligibility
- District had to pay \$14,727 in attorney cost

## Behaviors of Concern (Peacock v. Little Rock)

- Erratic and failing grades
- Unusual number of absences
- Suspensions from school
- Psychiatric diagnosis

## Citing ALJ (Peacock v. Little Rock)

- “. . . The District failed to provide an appropriate individualized education plan for the student, including, but not limited to, an appropriate behavior plan and social skills training, and instead, provided only modifications for the student which the district knew were not adequate to address the student’s emotional needs.”

## Voices of Newly Trained Educators

- ◆ Success4 Survey of Newly Trained Educators (365)
- ◆ General and Special Education Teachers, Support Staff
- ◆ Rating of 23 Specific Skills on Importance and Preparedness

## These Iowa Educators Said . . .

Among the five areas in which the greatest disparity exist between importance and extent of preparedness were:

- Collaborating with child service agencies,
- Serving students with significant mental health needs, and,
- Recognizing early warning signs and taking appropriate action in regard to those warning signs

## Service Utilization\*

- The foremost finding is that most children in need of mental health services do not get them.
- Schools were the primary providers of mental health service for children.

- Mental Health: A Report of the Surgeon General (1999)

## Question #3

### Professional Competencies

## Expectations

- IEP Special Considerations (including use of research-based practices)
- Case-by-Case Determination
- Manifestation Determination
- Continuation of Services
- Functional Behavioral Assessments
- Behavioral Intervention Plan
- Interim Alternative Settings

### **IDEA 97**

#### ***Behavioral and Discipline Provisions***

Rates at Which Team Decisions and Competencies are Supported When Challenged  
(n = 123)\*  
June 1997-December 1998

#### **I. Assessment Competencies**

- A. Functional Behavioral Assessment (n = 10) **10%**
- B. Manifestation Determination (n = 23) **57%**

#### **II. Program Planning Competencies**

- A. IEP/Behavioral Planning (n = 59) **27%**
- B. Behavioral Intervention Plan (n = 19) **26%**

#### **III. Placement Competencies**

- A. Interim Alternative Educational Setting \*Smith, (2000)  
(n = 12) **33%**

## Initial "Stumbling Blocks" in Meeting Behavioral Planning Expectations

- Fixation on "Behavioral Intent"
- Team Competencies in Developing Goals or Designing Programs
- Intervention Integrity
- Provision of Comprehensive Services
- Program Progress Monitoring

## Another Look

A Recent Review of IEPs and  
BIPs

## IEP Elements/Mean Ratings (Scale 1 - 7)

- Current Functioning (2.89)
- Baseline (3.26)
- Goal (3.40)
- Evaluation Procedures (3.51)
- District Standard/Benchmarks (3.34)
- Position(s) Responsible (3.80)
- Major Milestones, STO, dates expected (3.31)
- Progress report, etc. (2.48)
- Special Ed Services (3.17)

## IEP Elements Across Teams

- Significant (.05 level) across teams
  - Current functioning
  - Baseline
  - Evaluation Procedures
  - District Standards & Benchmarks
  - Position Responsible for Services
  - Milestones, STO, Dates
  - Progress Notes
  - Special Education Services
- Not significant
  - Goals

## BIP Elements/Ratings (Scale 1-7)

- Link to FBA (2.38)
- Link to Goals (3.40)
- Replacement Behaviors (2.96)
- Intervention Strategy Selection (3.12)
- Antecedent/Setting Events (2.55)
- Behavioral Reduction Strategies (2.85)
- Prevention Strategies (2.66)
- Progress Monitoring (3.05)
- Evidence-Base (2.74)
- Perceived Overall Quality (2.90)

## BIP Elements Across Teams

Significant at .05 level across all  
elements when comparing teams

## Also

A Look At State Efforts Across the USA  
(Killu, Kimberly, Weber, Derby & Baretto, 2006)

## Methodology

- Survey of State Departments of Education
- Looked at behavioral intervention plans and positive behavioral support plans
- Compared state information with 25 criteria (US Dept. of Ed.)

## Results

- Ten of the 40 states addressed all 25 components
- The mean number of criteria addressed was 13.7, with a range of 0 to 25

## Discussion

- “. . . It appears that a less than-comprehensive approach is being used to design and implement BIPs/PSPs. The lack of attention to developing broad-based plans has implications for the effectiveness of treatment, including interventions addressing educational outcome. At best, BIPs/PBSPs appear to be used as reactive measures to deal with problem behavior, and at worst, as a perfunctory requirement of IDEIA.”

**Are there circumstances  
limiting our use of the  
competencies  
Functional Behavioral  
Assessments**

## OSEP Letter (Letter to Christianson, 2007)

- If FBA is used to determine whether child has a disability or to determine extent of special education or related services (parental consent)
- If used for determining effectiveness of a student's program or BIP it is considered a reevaluation.

## When Can We Use FBAs?

“. . . We believe that if the FBA is intended to assess the effectiveness of behavioral interventions in the school as a whole, the parental consent requirements in . . . generally would not be applicable to such an FBA because it would not be focused on the educational and behavioral needs of an individual child.”

Behavioral Interventions Plans for All? (Brett S. v. The West Chester Area School District, U.S. District Court - PA, 2006)

- Student with significant behavioral needs
- Parents insisted that fba and bip should have been conducted.
- Court was satisfied that IEP goals and delineated behavioral instruction sufficed.

## Question #4

Interaction of Behavior and Academics

Behavioral vs. Academic Goals: Either Or? (Independent School District v. J.T., Dist Ct-Minn., 2006)

- Student with ED and LD
- IEP focused only on behavior
- “The District cannot simply rest on the Student’s behavioral progress when his lack of academic progress was the Parent’s primary concern and the primary focus of the IDEA.”

## Question # 4

Legal, Policy and Value Questions

And more recent concepts  
such as . . .

- The paradox of assessment
- Strength based assessment
- Functional based assessment

A Possible Assessment  
Paradox

“Measurability versus Relevance”

## Strength-Based Assessment

"The measurement of those emotional and behavioral skills, competencies, and characteristics that create a sense of personal accomplishment; contribute to satisfying relationships with family members, peers, and adults; enhance one's ability to deal with adversity and stress; and promote one's personal, social, and academic development."

Epstein & Sharma (1998)

How About . . .

Discussion!