

THIS JUST IN...

BY
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DEVELOPMENTS IN SPECIAL EDUCATION LAW

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THE INCIDENT AT WENDY'S

I just had an encounter at lunch that made me think about the proper role of a Behavior Intervention Plan (BIP). There I sat, by myself at a table for four, enjoying my Spicy Chicken Sandwich (#6 at Wendy's) while reading Education Week. Suddenly, a scruffy looking young man garnered my attention. "Excuse me, sir," he said. He made eye contact with me, and I noticed his hand resting on one of the three empty chairs at my table. "May I take one of your chairs?" he inquired. Mouth full of sandwich, I was unable to respond verbally, but I gave him a nod and a wave, and he got the message.

Then I reflected on what just happened. After all, it was very obvious that I did not need the other three chairs, and he did need one. If he had simply taken one of the chairs without acknowledging me, it would have been no great sin.

Let's consider the legalities here. I did not own the chair. Wendy's owns the chair, and it is for the purpose of customers sitting on it. I was not using the chair for that purpose, and he needed to. I had no legal or even equitable claim to the chair. His taking of the chair put the chair to its proper use, so again, he had no reason to ask my permission to do so. I may not even have noticed, engrossed as I was in my reading. But he did me the human courtesy of noticing me, acknowledging my presence, and my occupation of the table at which the chair sat.

This young man, 20-something I would say, displayed excellent social skills. *He learned that somewhere along the line.* He had to. Someone either explained it to him, or he observed how other people did things, and he learned that this is the polite and proper way to take a chair away from a stranger. I wondered if he had a BIP when he was in school. Unlikely. He probably did not need one.

MAYBE THIS IS WHAT HAPPENED. But let's consider the alternative. Maybe this fellow was a

non-compliant, rude, vulgar, hostile, sometimes violent middle school student with Attention Deficit Disorder. Maybe some school district in Texas identified him as "OHI" (Other Health Impaired) due to ADHD and wrote up an IEP for him. Maybe one year at his annual ARD, the Committee paused over the question: Does the student display behaviors that impede the learning of the student or others? After all, federal law requires all ARD Committees to ask that question of each student at each annual ARD meeting.

So maybe this happened, and the committee decided that the boy needed some direct instruction on social skills. The behavior that impeded learning was rudeness, lack of awareness of the importance of human courtesy. So maybe they set out to teach him about this, and one day, a teacher or coach or paraprofessional, talked to him about simple things, like encounters with strangers in restaurants, and how important it is to acknowledge their humanity.

Maybe it was a result of that "positive behavioral intervention" that fifteen years later he said to a stranger, "Excuse me, sir, may I take one of your chairs?"

WHAT'S A BIP FOR? BIPs are supposed to be teaching tools. BIPs teach. All that jargon we use about "interventions" and "supports" and "strategies" should not obscure the simple truth: a BIP teaches appropriate behavior. Is the student rude? Teach courtesy. Is the student vulgar? Teach appropriate language. Is the student explosive? Violent? Teach emotional control.

There are those (still) who say this is not the job of the public school, that kids should be learning these things at home. Of course they should. But the fact is that many of them, more than ever before, are not learning these things at home. Moreover, inappropriate behaviors at school do "impede learning" of

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the student or others. So if we are in the business of learning, we have to address behaviors that block us from achieving that objective.

In days gone by, many districts tied the development of a BIP to this question: can the student follow the code of conduct? It is my impression that most districts have abandoned that approach, and I hope that all will do so. The question is 1) impossible to answer with any accuracy; 2) an invitation to unnecessary conflict with parents; and 3) neither required, urged, encouraged or even suggested by the law. BIPs are discussed in two places in federal regulations, neither one of which has anything to do with the ability of the student to comply with the Code of Conduct.

First, ARD Committees are required to consider behavioral concerns at each annual ARD for each child. The regs require the ARD to address any behavior that “impedes the child’s learning or that of others.” Notice that this has nothing to do with whether the behaviors violate the Code of Conduct, or whether they are caused by the disability. It’s a simple inquiry: does this child demonstrate behaviors that “impede learning”? If so, the ARD is charged with considering “the use of positive behavioral interventions and supports, and other strategies, to address that behavior.”

Consider, for example, a child prone to depression. Being depressed, withdrawn, choosing not to participate in activities at school...none of that violates the Code of Conduct. But it may be “impeding” the learning of the child. Federal law says that this child’s ARD Committee should be thinking about what positive interventions might be appropriate.

The other reference to behavioral concerns in federal regulations is the only time that those regulations directly use the term “BIP.” If the school district seeks to change the child’s placement, due to a violation of the code of conduct, and the ARD Committee concludes that the behavior of the student is a manifestation of the disability, then the ARD must either 1) develop a BIP; or 2) review and revise the BIP that was already in place. This is outlined at 34 C.F.R. 300.530(f).

MORE BIPs IN THE FUTURE? I will not be surprised if the use of BIPs multiplies in the next ten years. As classrooms get increasingly digital and “flipped,” we are finding that much instruction is, in effect, taking place at home, or on the student’s device. The classroom becomes the place to work together on projects, to get support and coaching. This de-emphasizes the

role of the teacher as **font** of all knowledge and disseminator of instruction. It makes the teacher more of a coach, a guide, a helper. Moreover, it emphasizes collaborative learning, teamwork. The student with great academic ability and poor social skills will not thrive in that environment. Nor will she be happy. If the public school is going to evolve into the place where we learn to work and play together, social skills will become a primary focus, rather than an afterthought. Thus, more BIPs for students, whether they be in special education programs or not.

So let’s be sure that we understand a few things. A BIP is not an individualized code of conduct. All students are subject to the code of conduct. A BIP is a tool designed to assist the student to comply with the code of conduct.

A BIP is not, therefore, where we enumerate the parts of the code of conduct that will be used, or the order in which they will be used. A BIP is where we identify specific things we can do to improve the student’s behavior. In the jargon of the law, these are “positive behavioral interventions and supports, and other strategies.”

A BIP is proactive. Once it is in place, we don’t wait for the student to misbehave so that we can try out our interventions, strategies and supports in a reactive way. We teach. We seek to instill new behaviors for the old, so that it is unnecessary to impose consequences as per the code of conduct.

THE PRACTICAL EFFECT. In a nutshell, a BIP is something we do FOR the student, as opposed to something that we do TO the student. The code of conduct is full of things the school will do TO the student who misbehaves. For the most part, the code of conduct imposes negative, punitive consequences. We call this “traditional” student discipline, and it tends to work pretty well with traditional students who come from traditional families with traditional values. But those students are shrinking as a percentage of the total student population. We have an increasing number of students who need to be taught appropriate behaviors. BIPs do that.

So the next time some young person displays exemplary social skills in a public setting, don’t just take it for granted. Consider the possibility that the student learned to do this through a BIP developed by a public school district. **Education works.**

Enjoy the rest of your summer!

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