

Soup 2 Nuts of Special Education Law and Practice

Los Angeles Unified School District
Charter Schools

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Review



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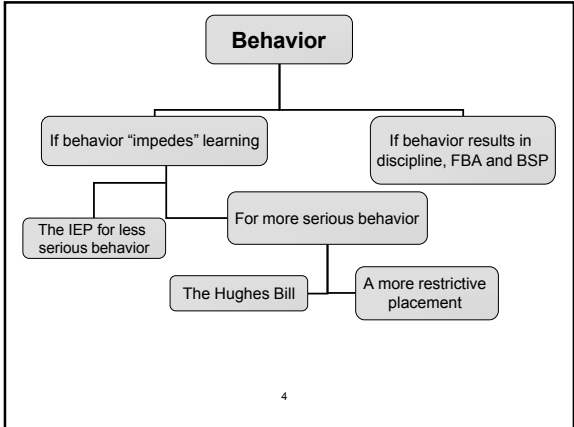
Section I

Behavior and the LRE



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Legal Standard When Schools Must Address Behavior

1. Behavior "impedes" learning—the student's or others
2. Disciplinary action for serious misconduct

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**Definition of
When Behavior Impedes Learning?**



IEP Team Decides
[like obscenity, you know it when you see it.]

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Examples



- Repeated disruption of teacher and/or students
- Refusal to participate and follow directions in class
- Outbursts and/or temper tantrums
- Selective mutism

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Remember:

No behavior is too mild to address!

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Federal Law:

If behavior impedes learning, IEP Team shall consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

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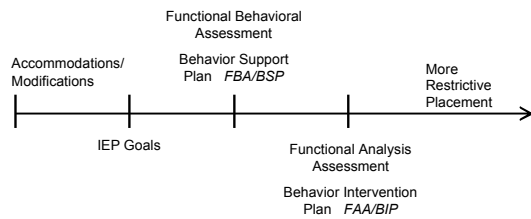


Practice Pointer:

Show on IEP that you considered behavior,
& what the outcome was.

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Look at Interventions on a Continuum



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STEP 1:

Instructional supports = classroom
modifications and accommodations

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STEP 2:

IEP goals that address the problem behavior

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Remember: An offer of placement that addresses the student's problem behavior may be insufficient by itself to provide a FAPE! Include a goal or behavior plan on the IEP which the placement will implement.

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Take Note!
Focus is on ability to make *academic progress*.



Translation: The IEP team is NOT responsible for implementing goals that address a student's behavioral and social-emotional needs *outside* of the school setting.

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**Case example:
San Rafael Elementary School District
(N.D. Cal 2007)**

- Student's behavior deteriorated over time, especially outside of school
- **Ruling:** Rowley standard has not changed
- District need not address Student's behavior in home/community
- District must address behavior that impacts Student's ability to academically progress in the school setting

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STEP 3:

If positive behavioral interventions
are not effective
Develop the **Behavior Support Plan (BSP)**.
The IEP team may also develop a BSP
before or simultaneously with other
positive behavioral interventions.

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**What is a Behavior Support Plan
(BSP)?**

- Not defined in federal or California law
- In California this is the commonly used term for a pre-Hughes Bill plan for positive behavioral intervention
- It is the same as the federal Behavioral Intervention Plan (BIP) required when a student is expelled or removed resulting in a change of placement

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Attach the BSP to the IEP Because...

- It must be attached if the student needs it to receive FAPE
- It should be developed by the IEP team
- This assures parental consent
- Everyone implementing the IEP needs to see it

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When is a BSP Required?

Case example:

San Juan Unified School District (OAH 2007)

- District saw no Self Injurious Behavior (SIB), despite parental report
- IEP goal addressed "behavioral excesses"
- Parent wanted BSP
- **Ruling:** District IEP goals adequately addressed behavior
- No BSP required

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When is a BSP required?

Case example:

Yuba City Unified School District (OAH 2007)

- Student ran away from campus on 5 occasions in three months.
- ALJ found original BSP met behavior intervention requirements
- But district failed to change the BSP to address escaping behavior
- **Ruling:** District did not provide FAPE

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Conduct a Functional Behavioral Assessment (FBA) Before Developing a BSP?

Answer:

- No, if existing data is adequate for developing behavioral interventions
- Yes, if the IEP team needs additional data to develop behavioral interventions

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Functional Behavioral Assessment?

- Not defined in federal or California law
- Located in the discipline section of the IDEA

See 20 U.S.C. § 1415(k)(1).

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Purpose =

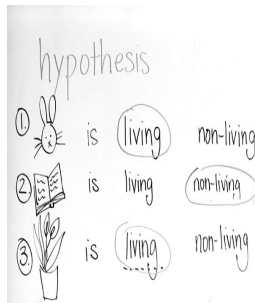
To provide the IEP team with more information regarding the problem behavior(s)

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Goal:

Develop a hypothesis about the behavior to develop replacement behaviors that are acceptable.



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Case example:

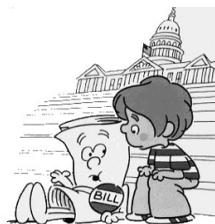
Modesto City Schools (OAH 2006)

- District developed and implemented a BSP for Student to address his problem behaviors
- Suspended following a fight with another student
- Parent contended district failed by not conducting FBA prior to BSP
- **Ruling:** The District was not required to conduct an FBA prior to developing its BSP for Student

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The Hughes Bill

- Education Code sections 56520 -56524
- Title 5 section 3001 subdivisions (d),(f), & (aa); section 3052



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What is the Hughes Bill?

- The California Legislature enacted the Hughes Bill in 1990 to address serious behavior problems
- Prohibits the use of aversives
- Requires school districts to use positive behavioral interventions
- Title 5 regulations followed, providing for BIPs

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Purpose of Behavioral Interventions:

- Access to community settings, social contacts, and public events
- Placement in the LRE
- No pain or trauma
- Respect for human dignity and personal privacy
- Promotion of physical freedom, social interaction, and individual choice



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The Behavioral Intervention Plan (BIP)

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What is it?

- Written document
- Developed when a student manifests a serious behavior problem
- The behavior problem significantly interferes with the implementation of the student's goals and objectives

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How *serious* is serious?

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Legal Standard: Three pronged

1. Is the behavior -

- Self-injurious
- Assaultive
- Pervasive/maladaptive
- Causing serious property damage

5 C.C.R. section 3001(aa).

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If yes to any of the above,

- #2.** Does the behavior significantly interfere with the student's mastery of IEP goals?
- #3.** Have the existing behavioral and instructional approaches in the student's IEP been ineffective?

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If Yes to All Three —

The student may require a Hughes Bill Functional Analysis Assessment (FAA) and a Behavioral Intervention Plan (BIP).

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Example #1

San Francisco Unified School District (OAH 2007)

- Student demonstrated self-injurious behavior and district developed BSP
- Parent wanted an FAA and a BIP
- Ruling:** No BIP required because student's self-injurious behavior adequately controlled by BSP;
- Behavior did not significantly interfere with attaining IEP goals and objectives

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Example #2

Colton Joint Unified School District
(OAH 2007)

No FAA/BIP required where student exhibited serious behaviors at home, but only mild behaviors at school.

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The Functional Analysis Assessment (FAA)

- Based on California law
- Conducted *prior to* the development of a BIP
- Administered when a student exhibits a serious behavior problem

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Developing an Assessment Plan:

Behavioral Intervention Case Manager (*BICM*)

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Take note!

The school district must provide notice to the student's parent and obtain parental consent before conducting the FAA.

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FAA Report



- The results of the assessment must be addressed in a written report and presented at an IEP meeting
- Make sure to provide the parent with a copy of the report

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Is a BIP Necessary Based on the Results of the FAA?

YES If the results indicate that the student displays serious problem behavior

NO If the results indicate that the student's behavior does not meet the definition of a "serious" behavior under the Hughes Bill

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Practice Pointer: Attach BIP to IEP

Don't forget to attach the BIP to the IEP! Unlike federal law, California's Hughes Bill mandates that the BIP *shall* become a part of the student's IEP. But remember, the IEP team must agree to it first.

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Behavior and the Least Restrictive Environment



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Step 4:

Removal to a More Restrictive Placement

KEY: Before removing a student from the LRE because of behavior, make sure to try a behavior plan first, probably a Hughes Bill approach, but at least a BSP



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EXCEPTION

No BIP is required to remove student from the LRE if the student's behavior is extreme and dangerous

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When removal to a more restrictive placement is necessary:

Case example:

South Pasadena Unified
School District (SEHO 2005)

- Student became out of control and destroyed classroom materials, left the campus
- District implemented a BSP to address behaviors and provided DIS counseling for anger management
- Behavior continued
- **Ruling:** The District's proposed alternative placement in a highly structured nonpublic Special Day Class (SDC) was appropriate

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Removal to a more restrictive placement is NOT appropriate when:

- Adequate aids and services in the general education classroom can prevent or lessen the student's otherwise severe problem behavior

Obertri v. Board of Education of the Borough of Clementon School District (3d Cir. 1993); Sacramento City Unified School District v. Rachel H. (9th Cir. 1994).

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Special Education Discipline



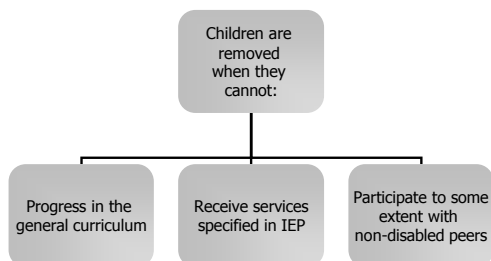
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Definitions

- Removal
- 10 days
- Notification
- Manifestation determination
- Interim alternative educational setting
- Stay put

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Removal



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Removals May Include:

In-school suspensions



Bus suspensions



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10 Days?

2005-2006 Chesterfield County School District Calendar

JULY		AUGUST		SEPTEMBER	
1	2	1	2	1	2
3	4	3	4	3	4
5	6	5	6	5	6
7	8	7	8	7	8
9	10	9	10	9	10
11	12	11	12	11	12
13	14	13	14	13	14
15	16	15	16	15	16
17	18	17	18	17	18
19	20	19	20	19	20
21	22	21	22	21	22
23	24	23	24	23	24
25	26	25	26	25	26
27	28	27	28	27	28
29	30	29	30	29	30
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Notification

Not later than the date on which the decision to take disciplinary action is made, the school district must notify the parents of that decision; and all procedural safeguards accorded under IDEA 2004



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Manifestation Determination



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IAES

Interim Alternative Educational Setting

School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student, while at school, on school premises, or at a school function:

- Carries or possesses a weapon
- Knowingly possesses or uses illegal drugs, or sells a controlled substance
- Has inflicted serious bodily injury upon another person

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IAES

- The 45 day IAES must be selected to allow the student to:
 - Continue to participate in the general education curriculum; and
 - Continue to receive those educational services contained in the child's current IEP, that will enable the child to meet the goals set out in that IEP
 - Include services and modifications to address the misconduct that are designed to prevent the behavior from recurring

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FBA

- A "Functional Behavior Assessment" is a federal requirement in the context of a disciplinary action
- A "Functional Analysis Assessment" (FAA or "Hughes Bill") is a State requirement when a student exhibits a serious behavior problem that significantly interferes with implementing IEP goals and objectives
- One component of a FBA may be to determine whether the student's behavioral history warrants a FAA
- **Caution:** Both use the term "Behavioral Intervention Plan" (BIP) to refer to the resulting document

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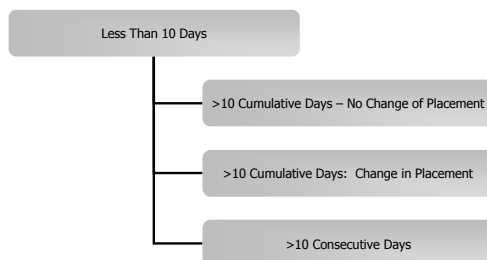
Stay Put

Last agreed upon and implemented placement during the pendency of a due process hearing or court action



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Four Categories of Removal



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Category #1

- Less than 10 days:

General Disciplinary rules apply



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Category #2

- Over 10 cumulative days, no change in placement
- Does it “feel” like a change in placement?
 - The length of each removal;
 - The total amount of time the child is removed; and
 - The proximity of the removals to one another

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Over 10 Cumulative, No Change of Placement

- General disciplinary rules apply
- Educational services on the 11th day:
 - School personnel are to consult with at least one of the student’s teachers to determine the scope of services and location, if any, to allow student to:
 - Continue to participate in the general education curriculum, although in another setting; and
 - Continue to receive those educational services contained in the child’s IEP, so that the child can progress toward achieving IEP goals

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Categories #3 and #4

- Over 10 cumulative days, change in placement; or
- Over 10 consecutive days

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Services on Day 11

IEP team determines scope and location of services

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Manifestation Determination

Within 10 school days of decision to extend beyond 10 school days:

- School district, parents, and relevant members of IEP team:
- Must review IEP, teacher observations, relevant information provided by parents

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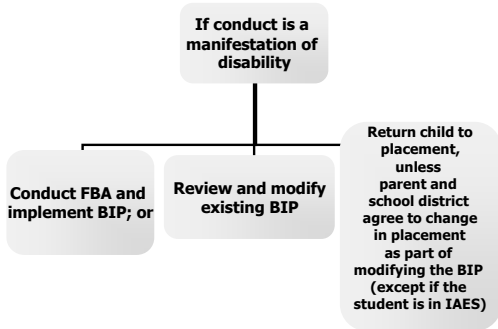
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Manifestation Determination

Based on that review, the school district, parents, and other IEP team members shall determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
2. If the conduct in question was the direct result of the school district's failure to implement the IEP

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If conduct is not a manifestation of disability

General disciplinary rules apply

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Continuing Obligation Despite Removal

During the removal, the district must provide:

- Services to enable student to participate in general education curriculum, although in another setting
- Services to enable student to progress toward meeting IEP goals
- An FBA and behavior interventions, as appropriate, designed to address the behavior violation

34 C.F.R. 300.530(d).

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Modified FAPE/LRE Requirement

Participation in the general education curriculum does not require school district to “replicate every aspect of the services” the student received prior to removal.

71 Fed. Reg. 46715-76716 (August 14, 2006).

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IAES

Interim Alternative Educational Setting

School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student, while at school, on school premises, or at a school function:

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Appeal

A due process hearing may be requested by a parent who disagrees with any decision regarding

- The placement, or
- The manifestation determination



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Appeal

- Expedited hearing:
 - 20 school days of request
- Decision
 - 10 school days after the hearing

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ALJ May Order Change in Placement

By:

- Returning the student to the placement from which he/she was removed
- Ordering a change in placement to an appropriate IAES for not more than 45 school days if the ALJ determines that maintaining the current placement is substantially likely to result in injury to the child or to others

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Appeal

The student must remain in the IAES pending the decision of the ALJ, or until the expiration of the removal time period, whichever occurs first, unless the parent and school district agree otherwise.

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Children Not Yet Eligible

A student not determined eligible for special education may assert IDEA protections if the district had knowledge that the student is disabled before the behavior that precipitated the disciplinary action occurred.

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Basis of Knowledge

- The student's parent expressed concern in writing to district supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services
- The student's parent requested an initial special education evaluation
- A teacher of the student, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or to other district supervisory personnel

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No Basis of Knowledge

If:

- The parent of the child has not allowed an evaluation of the child or has refused services
- The child has been evaluated and it was determined that the child was not a child with a disability

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Request for Evaluation When Discipline Pending

- The district must:
 - Complete the evaluation in an expedited manner
 - Notice and convene an IEP team meeting to determine eligibility; and, if the child is determined to be eligible, develop an IEP that offers FAPE
- The district should stay disciplinary proceedings pending completion of the IEP process
- No stay put

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IEPs must include the program, services and supports necessary for the student to:

- Move towards IEP goals
- Be involved and progress in the general curriculum
- Participate in extracurricular activities
- Be educated with other disabled and non-disabled children

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Practice Pointer

Communicate in a manner that your grandmother could understand!



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THANK YOU FOR YOUR ATTENTION

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