SPED Law and Ethical Issues for Behavior Analysts

Melissa L. Olive, Ph.D., BCBA-D, LBA
Applied Behavioral Strategies
Certificant

Professional and Ethical Compliance Code for Behavior Analysts

Federal Laws

State Laws
Helpful Resources

- Bailey & Burch books
- Ethics
- 25 essential skills
- How to Think Like a Behavior Analyst
- IDEIA page (https://sites.ed.gov/idea/)
  - The Law
  - The regs
  - Other helpful links
- Drop Box if interested

Helpful Resources, cont

- BACB
  - Newsletters
  - ASD Guidelines
  - Professional and Ethical Conduct Code (The Code)
- Evidence Based Strategies for Autism
  - Frank Porter Graham project
- Articles
  - Yell, Drasgow, Katsyiannis, Zirkel
- List Serves & Facebook Groups

Ethics Framework

- ADA, 504, ESSA, and IDEIA
- BACB Professional and Ethical Compliance Code
- Evidence Based Practices

504 and ADA

- Section 504 of the Rehabilitation Act
  - Only if you receive federal funding
  - Think of it as post school (but also covers school)
- The Americans with Disabilities Act
  - Think of it as everything outside of school (but also includes school buildings)
  - Protect from discrimination
  - Federal legislation
  - No money attached
  - Penalties
Similarities: ADA/504

- Both are for disabilities that limit life activities
- Both are designed to protect individuals with disabilities from being discrimination
- Reasonable accommodations must be made
- Individuals with contagious diseases are protected under both, as long as they do not directly threaten the health or safety of others.

Differences: ADA/504

- 504: all places receiving federal dollars must comply; ADA is for everyone to follow
- ADA is limited to physical or mental disability; 504 can be a temporary disability

ESSA 2016

- Less input from federal government
- Shifts power to states and districts
- Goal to improve student outcomes
- Goal to improve teacher skills so they can improve student outcomes

ESSA 2016

- States will decrease......
  - “the use of aversive behavioral interventions that compromise student health and safety”
- States WILL
  - “implement schoolwide tiered model to prevent and address problem behavior......”
  - “developing programs and activities...which may include use of multi-tier systems of support and positive behavioral intervention and supports......”
ESSA 2016

- States WILL:
  - “strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers… are designed to give teachers… the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations”

ESSA 2016

- Schools WILL
  - “hire instructional coaches, or promote teachers who may receive increased compensation to serve as instructional coaches, to support teachers in the development of classroom-based assessments, interpreting assessment data, and designing instruction”

IDEIA History (Summary)

- Originally passed in 1975 (PL 94-142; EAHCA)
- Modified in 1986 (PL 99-457; Part H)
- Modified and renamed in 1990 (PL 101-476)
- Early Childhood Amendments in 1991 (PL 102-119; Part H became Part C)
- IDEA Reauthorized in 1997 (Part C revised again)
- Reauthorized in 2004 (Major changes proposed)
- July 2017, mental retardation REMOVED!

Current Law

- H.R. 1350, "Individuals with Disabilities Education Improvement Act of 2004 (passed on Nov 19, 2004 and signed Dec 3, 2004)
- New regulations for Part B in 2006
- Part C Regulations
  - Proposed in 2007 then retracted
  - Published in September, 2011
Supreme Court Decision
- Endrew F. Versus Douglas County
- meaningful, "appropriately ambitious" progress
- rejected the "merely more than de minimis"

Guidance Released December 2017
- "a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances"
- "every child should have the chance to meet challenging objectives"

What does “reasonably calculated” mean?
- "Developing an appropriate IEP requires a prospective judgment by the IEP Team"
- Make decisions based on:
  - Staff expertise
  - Child’s progress
  - Child’s potential
  - Views of child’s parents
- Considerations:
  - Previous rate of academic growth
  - Is child on track to achieve or exceed grade level
  - Interfering behaviors
  - Any additional information put forth by parents
- "any review of an IEP must consider whether the IEP is reasonably calculated to ensure such progress, not whether it would be considered ideal”
General Procedures: Where do BCBAs Fit?

- Referral (usually not)
- Assessment (definitely)
  - FBA
  - DIBELS or similar
  - IEE
- Eligibility Determination (definitely)
- Document Development (IEP or IFSP) (definitely)
- Determination of Services (team decision)
- Placement Decisions (team decision)
- Progress Monitoring (definitely)
- IEP/IFSP Reviews (definitely)
- Re-evaluation (definitely)

1.06 Multiple Relationships and Conflicts of Interest

- (a) Due to the potentially harmful effects of multiple relationships, behavior analysts avoid multiple relationships.
- (b) Behavior analysts must always be sensitive to the potentially harmful effects of multiple relationships. If behavior analysts find that, due to unforeseen factors, a multiple relationship has arisen, they seek to resolve it.
- (d) Behavior analysts do not accept any gifts from or give any gifts to clients because this constitutes a multiple relationship. (gifts in schools is common)
2.0 Responsibility to client

- Behavior analysts have a responsibility to operate in the best interest of clients. The term client as used here is broadly applicable to whomever behavior analysts provide services, whether an individual person (service recipient), a parent or guardian of a service recipient, an organizational representative, a public or private organization, a firm, or a corporation.

Advocate (n.) or Advocate (v.)

- 2.02 Responsibility. Behavior analysts identify and communicate who the primary ultimate beneficiary of services is in any given situation and advocate for his or her best interests.
- 2.09 Treatment/Intervention Efficacy. (a) Behavior analysts always have the obligation to advocate for and educate the client about scientifically supported, most-effective treatment procedures.
- 2.09. (b) Behavior analysts have the responsibility to advocate for the appropriate amount and level of service provision and oversight required to meet the defined behavior-change program goals.

Responsibility to Clients

2.02 Responsibility

- Behavior analysts' responsibility is to all parties affected by behavior-analytic services.
- When multiple parties are involved and could be defined as a client, a hierarchy of parties must be established and communicated from the outset of the defined relationship.
- Behavior analysts identify and communicate who the primary ultimate beneficiary of services is in any given situation and advocates for his or her best interests.
Responsibility to Clients

2.05 (a) The rights of the client are paramount and behavior analysts support clients' legal rights and prerogatives

2.09 Treatment Efficacy

2.12 Contracts, Fees, and Financial Arrangements

Who Is Your Client?

- Who is the direct recipient of services?
  - Student?
  - Teacher?
  - Both?

- If student is primary, the parents are also your client
- Employer is never your client
- If contracting to district, district is also your client

1.05 Professional and Scientific Relationships

- (a) Behavior analysts provide behavior-analytic services only in the context of a defined, professional, or scientific relationship or role

- (b) ………. They provide appropriate information prior to service delivery about the nature of such services and appropriate information later about results and conclusions

Assessments

- FBA
- CBMs
- Ecologicals
- Behavior assessment (determine need for services)
- IEEs
From Yell et al 2016

- The student’s parents were involved in the assessment process.
- The assessment identified the student’s IDEA related disability.
- The assessment led to the determination of the students need for special education and related services.
- The assessment documented the adverse effect of the students’ disability on educational performance.
- The assessment addressed all of the student’s unique educational needs.
- The assessment led directly to instructional programming.
- The assessment provided objective information that served as a baseline for progress monitoring.
- A person knowledgeable about the instructional implications of the assessment and evaluation results was included on the student’s IEP team.
- All of the student’s needs were included in the present level of academic and functional performance statements in the student’s IEP.

BACB Code 3.0 Assessment

- Behavior analysts using behavior-analytic assessment techniques do so for purposes that are appropriate given current research.
- 3.01 (a) Behavior analysts conduct current assessments prior to making recommendations or developing behavior-change programs. The type of assessment used is determined by client’s needs and consent, environmental parameters, and other contextual variables. When behavior analysts are developing a behavior-reduction program, they must first conduct a functional assessment.
- 3.01 (b) Behavior analysts have an obligation to collect and graphically display data, using behavior-analytic conventions, in a manner that allows for decisions and recommendations for behavior-change program development.

3.0- Assessment

- 3.01 Behavior-Analytic Assessment. RBT
- (a) Behavior analysts conduct current assessments prior to making recommendations or developing behavior-change programs. The type of assessment used is determined by client’s needs and consent, environmental parameters, and other contextual variables. When behavior analysts are developing a behavior-reduction program, they must first conduct a functional assessment.

3.0- Assessment

- 3.02 Medical Consultation.
- 3.03 Behavior-Analytic Assessment Consent.
- (a) explain procedures(s) to be used, participants and how results will be used
- (b) written approval prior to implementation
- 3.04 Explaining Assessment Results
- 3.05 Consent-Client Records
Things to Consider
- Your report is a permanent record in client’s file
- All recommendations based on assessment
  - Data
  - FBA required if behavior reduction required
- Edit report following meeting/considerations
  - Must put recommendations in writing
- Pre-IEP meetings
  - Procedural safeguards
- YOUR code

Treatment Recommendations
- Making recommendations within a report (please don’t do this without an assessment)
- Making recommendations as part of a meeting (please don’t do this without an assessment)
- Drive by recommendations (please don’t do this)
- Writing an assessment but failing to make recommendations (please don’t do this)

Behavior Change Programs 4.0

Behavior analysts are responsible for all aspects of the behavior-change program from conceptualization to implementation and ultimately to discontinuation

4.0 Behavior Change Program
- 4.01 Conceptual Consistency.
- 4.02 Involving Clients in Planning and Consent.
- 4.03 Individualized Behavior-Change Programs.
  - (a) Behavior analysts must tailor behavior-change programs to the unique behaviors, environmental variables, assessment results, and goals of each client
  - (b) Behavior analysts do not plagiarize other professionals’ behavior-change programs
4.0 Behavior Change Program
- 4.04 Approving Behavior-Change Programs
- 4.05 Describing Behavior-Change Program Objectives
  - Describe
  - Risk-benefit analysis
  - Program objectives
- 4.06 Describing Conditions for Behavior-Change Program Success

Considerations During the Meeting
- Strengths of the child
- Concerns of the parents for enhancing the education of their child
- Results of the initial evaluation or most recent evaluation of the child
- Academic, developmental, and functional needs of the child

Special Considerations
- Behavior
- Communication
- Assistive Technology (AT)
  - AAC is just one type of AT
  - Devices
  - Services
  - Training
  - Assessment

Special Considerations
- For a child whose behavior impedes the child's learning or that of others:
  - consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior
**Special Considerations**

- Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and
- Consider whether the child needs assistive technology devices and services

**Procedural Errors**

- Prior written notice
- Adherence to state-mandated timelines
- Involving parents in decision making
- Complete and individualized evaluations
- Team member attendance
- Include required content
- Implemented as written

**Substantive Errors**

- Assess academic and functional needs
- Develop annual goals based on those needs
- Goals: complete, appropriate, measurable
- Services based on peer-reviewed research
- Monitor progress
Why Collect Data?

• Because I(IDEIA) says so!
• {300.320 (a)}:
  • (2)(i) Statement of measurable annual goals, including academic and functional goals
  • (3) A description of:
    + (i) How the child’s progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
    + (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

Why Collect Data?

• Each public agency must {300.320 (2)}:
  • (1) Provide services in accordance with IEP
  • (2) Make good faith effort to assist the child in achieving goals and objectives listed in IEP
  • (b) Agencies, teachers, or other person cannot be held accountable if child does not achieve projected growth
  • (c) Parents may ask for revisions in the IEP or invoke due process procedures if they feel that efforts in (a) are not being made

From Yell et al 2016

- The method used to monitor a student’s progress was discussed at the IEP meeting and included in his or her IEP.
- The method used to monitor a student’s progress is user friendly and time efficient.
- The method used for monitoring a student’s progress collects “real” data (numbers not words).
- The schedule and format for reporting a student’s progress to his or her parents was discussed at the IEP meeting and included in the student’s IEP.
- A teacher or teachers are assigned responsibility for monitoring the student’s progress.
- When data indicates that a student is not progressing, instructional changes must be made.
**Resource (State by State)**

www2.ed.gov/policy/seclusion/summary-by-state.doc

**DOE Position on Restraint and Seclusion**


---

**15 Principles of DOE Position**

1. Prevent
2. No mechanical or chemical restraints (except when authorized by a physician)
3. Use only when emergency, when other interventions are ineffective and, discontinue ASAP
4. Policies to apply to all children
5. Children have the right to be treated with dignity and to be free from abuse

**15 Principles Continued**

6. Never used as punishment, means of coercion or retaliation, or convenience
7. Never harmful or restrict breathing
8. Multiple uses of restraint should trigger a review and result in positive interventions
9. Any use of restraint or seclusion should address underlying causes / purposes of behavior
## 15 Principles, cont

10. Implementers should be trained (how to do it and how to prevent it—including PBS)
11. Visual monitoring of every instance
12. Parents should be informed of the policies
13. Parents should be notified as soon as possible following each instance
14. Review and update policies regularly
15. Document each instance in writing

## 1.01 Reliance on Scientific Knowledge

- Behavior analysts rely on professionally derived knowledge based on science and behavior analysis when making scientific or professional judgments in human service provision, or when engaging in scholarly or professional endeavors.

## 2.03 Consultation

- (b) When indicated and professionally appropriate, behavior analysts cooperate with other professionals, in a manner that is consistent with the philosophical assumptions and principles of behavior analysis, in order to effectively and appropriately serve their clients

## 7.0 Behavior Analysts Ethical Responsibility to Colleagues

- Behavior analysts work with colleagues within the profession of behavior analysis and from other professions and must be aware of these ethical obligations in all situations
Summary

- Responsible conduct
- Client rights
- Know the law AND your code

1.04 Integrity

- (c) Behavior analysts follow through on obligations, and contractual and professional commitments with high quality work and refrain from making professional commitments they cannot keep (CASE LOAD).
- (e) If behavior analysts’ ethical responsibilities conflict with law or any policy of an organization with which they are affiliated, behavior analysts make known their commitment to this Code and take steps to resolve the conflict in a responsible manner in accordance with law.