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Legal Brief

Parental Litigation for ABA Services in Schools: Current Trends and Issues



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Applied behavior analysis (ABA) interventions are among the most effective evidence-based interventions for children with ASD (Fein et al., 2013). The ABA techniques reduce problem behaviors to the extent that many with ASD can be educated with their typical peers (Dawson et al., 2012) and are frequently requested and implemented by educators, service providers, and parents in public school settings (Hess et al., 2008). Nonetheless, there has been some hesitation by public school systems to implement ABA-based interventions (Stahmer et al., 2007). Public school administrators' lack of specific training on the needs of students with ASD, financial resources, numbers of qualified ABA professionals and teachers, and appropriate support for paraprofessionals result in barriers to the adoption of ABA-based programs (Boe et al., 2008). As school districts allocate resources for this growing population, they often disagree with families as to whether schools are legally required to provide ABA services for students with ASD (Decker & Hurwitz, 2018).

Parental Litigation in ABA: Historical and Current Trends

Over the last 25 years of ABA litigation, courts initially took a hands-off approach when deciding whether schools were legally required to provide ABA (Decker, 2017). Although the Individuals with Disabilities Education Act (IDEA) explicitly states that schools must provide to eligible students with ASD a free, appropriate public education (FAPE), families and school districts have disagreed on how to define "appropriate" for over 40 years (Decker & Hurwitz, 2018), culminating in the 2017 U.S. Supreme Court ruling in *Endrew*, wherein the court affirmed IDEA's intent that children with disabilities make meaningful progress in their education and achieve challenging, individualized objectives (Yell & Bateman, 2017).

Parents are requesting ABA-based educational interventions due to their documented effectiveness for individuals with

ASD (Stevenson & Correa, 2019). As they become more familiar with federal laws, state laws, and relevant judicial decisions, parents are using the legal and school-based dispute resolution to advance efforts on behalf of their children. Although prior reviews of court rulings related to ABA in schools have suggested students did not have a right to any particular method, including ABA (Stevenson & Correa, 2019), recent due process cases, litigation, and legislation in states such as Louisiana, Hawaii, and Oregon have shined a light on the growing evidence for ABA as the most effective approach for students with ASD and the related need to effectively integrate it in programming. In those states, parents have successfully sued school districts for FAPE violations as they advocate for access to the evidence-based practices deemed specifically effective for students with ASD (i.e., ABA) mandated by IDEA.

In *R.E.B. v. Hawaii Department of Education* (2017), parents argued that their child with ASD was segregated from the general education classroom and that medically necessary ABA treatment was denied in the school setting, resulting in diminished futures and further exacerbation of the disability. The court ruled that the IEP's failure to specify ABA methods violated IDEA when the IEP team discussed the methodology and recognized that it was integral to the child's education. The court also emphasized ABA is widely recognized as a superior method for teaching children with ASD. In Louisiana, legislation was enacted to mandate that schools cannot prohibit behavioral health services from being delivered by ABA providers during the school day, including during instructional time, if the parents have made such a request (LA Rev Stat § 17:173, 2018). In Oregon, parents utilized due process to ensure their student's IEP was amended to require the district to implement ABA services to deliver the student's specially designed instruction and behavior support plan, that school personnel meet weekly with the student's private board-cer-

tified behavior analyst (BCBA) to collaborate on ABA service delivery, and that direct ABA services include 30 hours per week provided by a district-funded registered behavior technician (RBT) (Oregon Administrative Hearing Case No. 2017-ABC-01193; Oregon Department of Education Case No. DP 17-135).

There are several rationales for delivering ABA interventions to students with ASD during the school day. First, ABA provided in a school setting ensures that skills acquired in home and community contexts generalize to school and that a student's prescribed treatment hours are delivered. Moreover, services provided by a school under an IEP do not prohibit medically necessary services provided across all settings, including school. To be certain, for treatment to be effective, it must be generalized across all environments, using multiple examples, in different settings, and with different people (Hart & Whalon, 2008). Schools constitute the natural environment for a school-age child.

When ABA services have been authorized by insurance, but a school prohibits the ABA provider from delivering the services at school, parents may seek to modify the IEP to permit the ABA provider access to the school to provide medically necessary treatment for students. Parents may assert a school's lack of required compliance with the Americans with Disabilities Act (1990), which includes a mandate to integrate students and provide services in the settings in which the child functions, most notably, school (*Olmstead v. L.C.*, 527 U.S. 581, 1999). Parents may also invoke Section 504 of the Rehabilitation Act, which prohibits discrimination based on disability. Since schools dispense prescription medications for students with medical conditions and provide access to speech therapy services on campus, refusal to facilitate ABA delivery at school could be viewed as discrimination (for more details see <https://www.centerforautism.com/resources/autism-education-rights/>).

Guidance will be increasingly needed so families and school personnel can work collaboratively to resolve conflicts surrounding ABA services and their place in students' IEP programming. The professional relationship between teachers and healthcare professionals such as ABA providers should be viewed as a partnership, marked by professionals working together with families to meet the educational needs of children and adolescents with ASD. Teacher preparation faculty should reconceptualize current roles and model an interdisciplinary approach that capitalizes on the skills and knowledge of all related providers. Advocating for collaborative approaches among school personnel, BCBA's, healthcare providers, and other members of the IEP team provides the best plan possible for each student with ASD or other exceptional needs. School leaders must ensure teachers and staff receive effective training in ABA approaches and interventions for students with ASD, not only to be prepared for potential legal challenges but also to meet the individual needs of the growing number of students with the disorder.

There is little research to guide how to effectively deliver school-based ABA; moreover, the field has yet to comprehensively address the most effective ways for behavior analysts and

school personnel to collaborate in their implementation of ABA as they seek to meet the needs of students. Therefore, knowledge of current legal trends on this topic is timely and relevant for a variety of school professionals—and the teacher educators preparing them—who share a vested interest in improving long-term outcomes for students with ASD. ■

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