



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MEMORANDUM

TO: District Superintendents
Special Education Directors

FROM: Matthew Ferguson, Ed.D., Esq.
Deputy Superintendent and Chief Academic Officer
Division of College, Career, and Military Readiness

DATE: September 10, 2024

RE: Clarification on Applied Behavior Analysis (ABA) Therapy Access in Schools

This memorandum further clarifies the topics covered in the April 2, 2024, memorandum titled “Case-by-Case Consideration of Applied Behavior Analysis (ABA) Therapy Access in Schools.” The original memo addressed concerns raised by several parents regarding requests to allow ABA services within the school environment by an outside provider as part of a therapeutic plan covered by the parents' insurance or another medical coverage source.

Legal Framework: ADA and Section 504

Under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, parents may request accommodations in the school setting. These laws:

- Guarantee non-discriminatory access to public institutions, including schools.
- Impose requirements on any program or activity receiving federal financial assistance, including schools.
- Prohibit public entities, including schools, from excluding, denying services to, or discriminating against any qualified individual with a disability.

Case-by-Case Consideration for Accommodation Requests

When a Local Educational Agency (LEA) receives an accommodation request under these circumstances, the request should be considered on a case-by-case basis. The LEA should engage in an interactive process with all relevant parties to determine whether to grant or deny the request or propose alternative solutions.

Interactive Process for Accommodation Requests

The interactive process should include:

- Acknowledging receipt of the accommodation request from the parent.
- Gathering relevant information, including medical details necessary to consider the request.
- Meeting with the parents and/or therapist to understand the nature of the request and the associated medical needs.
- Exploring appropriate accommodation options to balance the student's needs with those of other students and school operations.

Guidelines for Granting Access to ABA Providers

If an accommodation request is granted, the school district may use the following policies and procedures for visitors and vendors:

- Completion of a criminal background check.
- Proof of liability insurance from the vendor.
- Establishment of reasonable expectations for visitors and vendors while on campus.
- Written confirmation of the funding source (e.g., private insurance, Medicaid).
- Written parent authorization for the provision of services in the school environment.

Clarification Regarding IDEA

This memo and the April 2nd memo do not alter any processes, procedures, or guidance related to the Individuals with Disabilities Education Act (IDEA). If a parent proposes additional or different services for a student's Individualized Education Program (IEP), the district must follow the procedural requirements of IDEA and address the proposal through the IEP process.

Next Steps

Please ensure that all relevant staff members know this guidance and adhere to the outlined procedures when processing accommodation requests.