SOUTH CAROLINA DEPARTMENT OF EDUCATION

Guidance, Model Policy and Sample Agreement for Requests for Private ABA Providers Delivering Medically Necessary Services During the School Day

ACT 186

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Introduction

This guidance and model policy is intended to assist South Carolina's local education agencies (LEAs) in implementing the requirements of ACT 186 regarding requests by parents or legal guardians for private Applied Behavior Analysis Providers (ABAs) to observe, evaluate, or provide medically necessary services to students during school hours and within the school setting. This guidance emphasizes compliance with Title II of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA), and applicable South Carolina law. According to Act 186, the South Carolina Department of Education (SCDE) is required to obtain board approval for a model policy by January 6, 2027. LEAs have the option to either adopt the state model policy or create their own that adheres to the minimum requirements of the law. LEA policies must be submitted to SCDE for approval by July 1, 2027.

Guidance

LEAs Responsibility for Reviewing Requests

LEAs will review requests from parents or legal guardians seeking authorization for a private provider to:

- observe a student;
- evaluate a student;
- observe the environment in which services may be provided; or
- deliver medically necessary services during school hours.

All requests will be reviewed on an individual, case-by-case basis.

Relationship Between IDEA, Section 504, and ADA Requirements

The obligations of Local Educational Agencies (LEAs) under the IDEA and a student's Individualized Education Program (IEP) are distinct from the obligations to evaluate requests for access to provide medically necessary services under the Americans with Disabilities Act (ADA). According to the IDEA, LEAs are mandated to provide special education, related services, and supplementary aids and services necessary for a qualifying student to benefit from their educational program (A FAPE in the LRE). This obligation is based on the student's unique circumstances and individual needs.

To meet the requirements under the IDEA, IEP teams should meet to review this type of request to ensure that the services in the students' current IEP meet the requirements under the IDEA, and document the outcome of the review. If not, the LEA must initiate the implementation of any revisions that may be necessary to meet the requirements under the IDEA.

Section 504 and the ADA require the provision of accommodations, modifications, related services, supports and aids necessary for a student with a disabling condition, as defined under the ADA and Section 504, to access his or her educational program.

If a parent requests private provider access for the provision of ABA services during the school day in the public school setting the LEA must determine whether the requested service should be allowed as a reasonable accommodation under the ADA. When a LEA receives a request for access, it must initially determine if the service is medically necessary and is authorized by an independent third-party payor. If there is documentation that reflects that the service is medically necessary and authorized by a third-party payor, the LEA must engage in an interactive review process.

IDEA Services Cannot Be Used to Deny ADA Requests for Access

A LEA will not deny a request for access to provide medically necessary services solely because the LEA review team believes that the student's IEP already satisfactorily addresses the student's needs. If the IEP has not been recently reviewed, it is recommended that the team assess the appropriateness of the student's educational program. Alternatively, the LEA review team has concluded that no additional services are necessary to ensure the student receives a FAPE as mandated by the IDEA.

ADA requests will be evaluated independently.

Collaboration is Encouraged

Collaboration between school personnel, parent(s)/guardian(s) and private providers should:

- enhance student outcomes;
- promote consistency of supports;
- facilitate communication; and
- avoid duplication or disruption of services.

However, private provider services do not replace the LEAs obligations under the IDEA, Section 504 or other applicable laws and regulations.

LEA Interactive Review Process

When reviewing a request for access, LEAs should utilize an interactive process under the ADA, which should be student-centered and include collaboration and clear communication between the requestor and the LEA to ensure appropriate access to programs and activities, and to medically necessary services, as appropriate.

The LEA must have a review process for consideration of requests for medically necessary services and identify a review team.

The team responsible for accessing and approving or denying a parent or guardian's request for private provider access for the provision of ABA services during the school day and for determining the appropriate scope of access, should include a representative of the LEAs special education department. This individual must be knowledgeable of the student's IEP, if the student has an IEP. In addition, the LEA may utilize members of the student's IEP team, LEA staff members familiar with Section 504, behavior specialists, medical professionals, or other individuals who have knowledge and expertise related to the delivery of ABA

services. Regardless of the reviewing body, ADA standards will govern the determination of whether to grant or deny the request for access.

The review team should consider:

1. documentation supporting the medical necessity of the provision of ABA services;
2. health care provider recommendations;
3. verification of third-party payor authorization;
4. the student's IEP or 504 plan, if appropriate;
5. proposed service schedule;
6. potential impact on the student, other students, and/or instruction;
7. student safety;
8. school security requirements;
9. availability of appropriate service locations;
10. whether the request creates an undue burden; and
11. whether the request results in a fundamental alteration of school programs or operation.

The process for granting or denying a request for access, along with determining the scope of access, should be expedited within a reasonable timeframe and must be communicated in writing to the requester. The LEA should initiate the response process within 5 business days. It is crucial that the LEA does not delay scheduling meetings, obtaining necessary information, or completing paperwork to make the required determinations. If at all possible the entire process, culminating in a final decision, should be concluded within 30 days of the request submission.

Students Without an IEP or Section 504 Plan

When a request is submitted for a student who does not have an IEP or Section 504 plan, the LEA will:

- review the ADA request; and
- If appropriate, initiate a meeting to discuss whether the LEA suspects a disability under the IDEA or Section 504 and if a comprehensive evaluation is needed.

The ADA request for access must not be delayed pending completion of any evaluations.

Appendix A: Model Policy

Definitions

Private Provider

A private Applied Behavior Analysis (ABA) Provider is an individual who:

1. renders ABA therapy or performs an evaluation or observation pursuant to such therapy, including:
    - Board Certified Behavior Analysts (BCBAs);
    - Board Certified Assistant Behavior Analysts (BCaBAs);
    - Board Certified Behavior Analysts – Doctoral (BCBA-Ds); and
    - Registered Behavior Technicians (RBTs) operate under the appropriate supervision of a BCBA or BCaBA.
2. provides or seeks to provide services in a South Carolina Public School;
3. is certified by the Behavior Analyst Certification Board (BACB) and is in good standing; and
4. is not employed by a South Carolina public school district or the South Carolina Department of Education.

Medically Necessary Service

A medically necessary service is a service that:

1. is ordered by a healthcare provider acting within the scope of their license for the treatment or remediation of functional impairments associated with a diagnosis of autism spectrum disorder (ASD);
2. is not experimental or investigational;
3. meets generally accepted standards of medical care;
4. is not provided solely for the convenience or preference of the student, family, or provider; and
5. is medically necessary during the school day and within the school setting.

Healthcare Provider

Healthcare providers refer to a physician, psychiatrist, psychologist, or other licensed professional authorized to diagnose autism.

Third-Party Payor

A third-party payor includes, but is not limited to:

- Medicaid;
- self-funded health plans; and
- commercial insurance carriers.

Undue Burden

Undue burden under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA) refers to a significant difficulty or expense that an entity would incur when making reasonable accommodations for individuals with disabilities, relative to size, financial resources, nature, or structure of that entity. An example of undue burden is reorganizing entire classrooms or schedules to accommodate a student, if such changes would significantly disrupt teaching, learning, or other essential functions (core duties that define the job requirements).

Fundamental Alteration

A fundamental alteration is a change that is so significant it would alter the essential nature of the program, service, or activity being provided. If the requested accommodation is a fundamental alteration, the recipient is not required to make it. Some examples of fundamental alterations are modifying syllabus requirements that define the course's essential learning outcomes and changing the format of materials so that the core content and learning objectives are fundamentally different.

Process for Requesting Access for Private Provider

Request for Access

It is the policy of the {LEA} that reasonable accommodations should be made to allow students' access to medically necessary treatment in the school setting. To request such accommodations, a written request for access must be submitted to the designated school administrator by the parent or guardian of the student. This request should include a diagnosis, prescription, order, or recommendation from a licensed healthcare provider, acting within the scope of their license, specifically for treatment in the school setting. If available, a proposed written treatment plan should also be included with the request. If in-school assessments are needed to formulate the proposed treatment plan, school administrators shall make reasonable access available to allow the child's private health care specialists to observe and conduct such assessments in the school setting. School administrators shall be provided with the results of such assessments and the proposed treatment plan.

The proposed treatment plan should clearly outline the following elements:

1. the individuals responsible for delivering services;
2. treatment goals;
3. treatment data; and
4. a fade-out plan, indicating how the treatment plan will be adjusted or removed as the student's behavior skills improve.

Request for Access Review Team

The review team is responsible for assessing and approving a parent or guardian's request for ABA services to be provided during the school day. This team also collaborates with the requester to ascertain the appropriate scope of access. In cases where the student possesses an IEP, the review team must include a special education department representative well-versed in the student's Individualized Education Program. Conversely, if the student has a 504 accommodations plan, a representative knowledgeable about 504 plans should be included in the team.

The Interactive Process

The interactive process is a flexible, ongoing conversation between the LEA and the requestor. The purpose of the interactive process is to ensure that necessary information is exchanged to assess and decide upon the request for access and the scope of access (e.g., days, times, duration).

The interactive process can be facilitated through various communication channels such as emails, phone calls, face-to-face conversations, or meetings. This process is meant to promote open communication, effective information gathering, and collaborative exploration of options.

Prior to approval of services, the parent or legal guardian must submit:

A. **Funding Verification**
   Written confirmation identifying the source of payment for services.

B. **Authorization**
   Written authorization permitting services to occur during the school day.

C. **Consent for Information Exchange**
   A signed release permitting communication and information sharing between:
   - the LEA;
   - school staff; and
   - the private provider.

Requirements for Private Providers

Before receiving authorization to provide services on a school campus or supervising individuals providing services on a school campus, private providers including RBT's and supervising BCBAs must provide documentation demonstrating:

A. Professional Credentials

- current certification with BACB;
- good standing with BACB; and
- qualifications required to provide the requested services.

B. Completion of Background Checks

Documentation of completed SLED or FBI background checks consistent with LEA requirements. Providers must not:

- appear on federal, state, or local sex offender registries;
- appear on child abuse registries; or
- be otherwise prohibited by law from working in schools.

C. Proof of Insurance

Proof of professional liability insurance meeting LEA-established coverage requirements and proof of Worker's Compensation Insurance and/or Medical Insurance.

D. Written Agreement to Comply with Applicable Laws and LEA Policy

Private providers must agree to comply with:

- LEA policies and procedures including any medical requirements (e.g. TB test);
- school visitor requirements;
- The Family Educational Rights and Privacy Act (FERPA) requirements;
- student confidentiality requirements; and
- all applicable state and federal laws.

Student Absences from School

Parent(s)/guardian(s) are responsible for letting the ABA provider know when the student will be absent from school.

Written Agreement Requirements

A written agreement between the LEA, the parent(s)/guardian(s), and the private provider will be executed before access is granted. The agreement addresses:

1. Roles and responsibilities
2. Duration and type of services
3. ABA therapy plan with appropriate components
4. Coordination between providers to prevent interference with instructional, behavioral, or therapeutic services
5. FERPA compliance and confidentiality requirements
6. Procedures regarding missed instructional time and completion of assignments
7. Expectations limiting interactions with students who are not receiving services
8. Verification that the provider is not prohibited from working in schools
9. Compliance with LEA and school policies
10. Insurance coverage and allocation of liability among parties
11. Procedures for scheduling, communication, and problem resolution

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Provision of Services During Instructional Time

Services may occur during instructional time when the review team determines:

1. The service is medically necessary and appropriate at that time.
2. The service does not interfere with currently scheduled special education or related services (occupational therapy, physical therapy, speech language services, etc.).
3. The service can be delivered without:
    - disrupting the student's or other student's learning environment and progress;
    - interfering with classroom management;
    - compromising testing integrity;
    - creating safety concerns; or
    - preventing school staff from effectively fulfilling their duties and responsibilities.

The review team should consider the least disruptive scheduling options when feasible while ensuring the student's medically necessary needs are addressed. If the ABA services are provided as a pull-out service, the IEP team will need to ensure that the amount of time the student is pulled out for ABA services is not interfering with the student's ability to meet their IEP goals.

Access for Observation and Evaluation

Authorized private providers may observe or evaluate:

- the student;
- relevant educational environments; and
- situations related to the delivery of medically necessary services.

Observations should be conducted in a manner that:

- protects confidentiality of the other students;
- minimizes disruption; and
- follows LEA visitor procedures

Access Review Decision

A request for access may be denied if the reviewing team determines that the services would:

- create an undue burden;
- fundamentally alter school operations;
- present safety risks that cannot be mitigated;
- violate state or federal law;
- interfere substantially with educational services for other students; and/or
- are not medically necessary or are not being provided by a qualified provider.

All LEA decisions regarding granting or denying access, and the scope of access, will be communicated to the parent or guardian in writing. The LEA will start the process of responding to the request within 5 business days. If at all possible, the process and a final decision will be made within 30 days of the request. If the parent disagrees with the LEAs decision, the parent has the right to file a complaint with the Office of Civil Rights (OCR) or pursue litigation under Section 504 and the ADA.

Sanctions for Private Provider Noncompliance

The LEA may impose sanctions if a private provider fails to adhere to the agreed upon requirements. Grounds for sanctions include:

- failure to follow LEA policy;
- failure to adhere to the collaboration agreement;
- breach of confidentiality;
- safety violations;
- misrepresentation of credentials;
- failure to maintain insurance; or
- disruptive conduct.

Sanctions shall be determined based on the nature and severity of the incident in question. The private provider and the parent(s)/guardian(s) will be notified in writing of the sanction and the ground(s) for the sanction.

Possible sanctions include:

- written warning;
- required corrective actions;
- temporary suspension of access; and/or
- revocation of authorization to provide services on school property.

Appendix B: LEA Model Agreement Sample

(Your school or LEA here) ABA Provider and LEA

Collaboration Agreement

Student Name: _____

School: _____

School Year: _____

Parent(s) or Guardian(s): _____

ABA Provider/Agency: _____

Providers Name(s): _____

Effective Date: _____

PURPOSE

The purpose of this agreement is to establish a collaborative working relationship between the School and the ABA Provider providing services to the above-named student. All parties agree to work together to support the student's educational, behavioral, social, and functional development within the school setting.

Roles and Responsibilities

School Responsibilities

The school agrees to:

1. Provide the ABA Provider with reasonable access to the student in approved educational settings.
2. Inform the ABA Provider of relevant school policies, procedures, safety requirements, and emergency protocols.
3. Allow participation in meetings regarding the student's behavioral and educational progress when appropriate and authorized.
4. Maintain responsibility for all educational decisions, classroom instruction, and implementation of the student's IEP or 504 plan, as applicable.
5. Notify the ABA provider of significant schedule changes, school closures, or incidents affecting the student's services.

ABA Provider Responsibilities

The ABA Provider agrees to:

1. Provide services in accordance with the students' treatment plan and applicable professional standards.
2. Provide in person BCBA supervision of provider staff.
3. Conduct themselves professionally while on school property.
4. Be knowledgeable of, and abide by, all school policies, rules, and procedures while present on school property.
5. Adhere to the designation of the time and place of the services that has been agreed upon.
6. Collaborate respectfully with school personnel to support the student's behavioral and social goals.
7. Avoid disrupting classroom instruction and educational activities.
8. Notify appropriate school personnel of any safety concerns, behavioral incidents, or issues affecting the student.

COMMUNICATION

1. The School and ABA Provider will communicate regularly regarding the student's behavioral progress and support needs.
2. Communication may occur through meetings, email, communication logs, or other mutually agreed-upon methods.
3. Discussions regarding educational programming, disciplinary actions, or school policies remain under the authority of the school.
4. The ABA Provider may provide behavioral recommendations however; it is not within their mandate to directly instruct school personnel.
5. The parent(s)/guardian(s) will notify the school immediately if there is a change to the ABA provider/supervisor; (i.e., if the ABA will no longer be providing services to the student or the ABA will no longer be a supervisor for an RBT). If another ABA will be providing services or supervising, the new ABA provider must meet all the LEA requirements to provide services in the school.

CONFIDENTIALITY

1. Both parties agree to comply with all applicable federal, state, and local privacy laws, including FERPA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) where applicable.
2. Student information will only be shared with authorized individuals who have a legitimate educational or treatment-related interest.
3. Written parental consent must be maintained for the exchange of information between the school and the ABA Provider.

OBSERVATIONS AND DATA COLLECTION

1. The ABA Provider may observe and collect data regarding the student's behavior as permitted by parental consent and school policy.

2. Data collection shall be conducted in a manner that minimizes disruption to instructional activities.
3. Any data shared between parties shall be used solely for educational and treatment planning purposes.

PROFESSIONAL BOUNDARIES

1. School staff maintain responsibility for classroom management, educational instruction, grading, and implementation of educational programs.
2. The ABA Provider's role is limited to behavioral support and consultation as authorized by the student's treatment plan. At no time will an ABA Provider intervene with other students in the classroom.
3. Any disagreements regarding interventions shall be addressed through collaborative discussions involving appropriate school and ABA supervisory personnel.
4. ABA Providers may not be present during state/ LEA testing.
5. At no time shall an ABA Provider take any photographs, audio recordings, or videos while in the classroom-setting. However, in a pull-out setting with just the ABA Provider and the student the parent may grant permission for photographs, audio recordings, or videos.
6. If the ABA Provider violates any policies and/or procedures, they may be asked not to return to the school's campus to provide services; they will be notified in writing of any sanctions that the school feels are warranted.
7. In the event that the student transfers to another building within the LEA, it is the parent's responsibility to inform the new school administrator. The schedule that was previously in place may need to be reviewed and agreed upon by the administration in the new setting.

SAFETY AND EMERGENCY PROCEDURES

1. ABA Providers must comply with all school safety procedures and emergency response protocols.
2. In emergency situations, school personnel retain authority regarding student and campus safety.
3. The ABA Provider shall immediately report any health, safety, or welfare concerns involving the student. RBTs and BCBAs are mandated reporters under S.C. Code of Laws 63-7-310. If making a report they should also inform the school principal or other school level administrator as well as any employer obligations.
4. The ABA Provider must sign in and check out with the building visitor management system for each visit.

LIABILITY AND INSURANCE

1. The ABA Provider affirms that its providers maintain all required professional certifications, licenses, and liability insurance as required by law.
2. The school is not responsible for supervision, employment, compensation, or evaluation of ABA Providers employed by an outside agency.

3. The ABA Provider shall be responsible for its employees' conduct and compliance with applicable laws and professional standards.

TERM AND TERMINATION

1. This agreement shall remain in effect from _____to_____ unless terminated earlier by either party.
2. Either party may terminate this agreement with written notice if collaboration is no longer in the student's best interest or if agreement terms are violated.

CREDENTIALS

The ABA Provider holds the following credentials from the National Behavior Analyst Certification Board (BACB) in one of the following areas and the school has received a copy for their records. (Check all that apply)

☐ Board Certified Behavior Analyst - Doctoral (BCBA-D)
☐ Board Certified Behavior Analyst (BCBA)
☐ Board Certified Assistant Behavior Analyst (BCaBA)
☐ Registered Behavior Technician (RBT) working under the supervision of a BCBA or BCaBA, as required.

BACKGROUND CHECK

☐ The ABA Provider has completed a SLED or FBI background check within the past 5 years and provided a copy to the school.

INSURANCE

☐ The school has been provided with documentation of the providers Professional Liability Insurance.
☐ The school has been provided with documentation of the providers Worker's Compensation Insurance and/or Medical Insurance.
☐ The school has received authorization of insurance coverage from the parent/guardian(s) that the service will be covered by a third-party payor.

DAMAGES

The parent(s)/guardian(s) agree to fully release and hold harmless the school from:

- Any and all damages of any nature whatsoever which relate to, are caused by, or are materially contributed to by the direct or indirect negligence, misfeasance, malfeasance, recklessness, intentional acts, unintentional acts, or any other acts of the ABA provider. This release of liability specifically includes but is not limited to any and all claims concerning the allowance of the ABA provider to be present on school property or act on school property.
- In the event that the school incurs any costs, legal fees, or losses resulting from claims or judgments arising out of the negligence, misfeasance, malfeasance,

recklessness, intentional acts, unintentional acts, or any other acts of the undersigned ABA provider, then such ABA provider agrees to fully reimburse the school for the same within thirty (30) days of the school's presentation of such costs, fees, or losses to the ABA provider.

TREATMENT PLAN

The ABA Provider has provided the LEA with an ABA therapy treatment plan that details:

☐ Assessment (e.g., based on a functional behavioral analysis, antecedent-behavior-consequence (ABC) data, observations, interviews, and standardized assessment tools).
☐ Specific, measurable goals and objectives for skill acquisition and behavior reduction
☐ Intervention strategies and techniques that will be used to achieve the goals and objectives.
☐ Progress monitoring and data collection methods
☐ Roles and responsibilities of the ABA and parent(s)/guardian(s) (if applicable)
☐ A review and modification process. There should be a schedule for progress reviews by which the therapy team assesses the client's progress, identifies any challenges, and makes necessary adjustments to the goals, strategies, and interventions. The Provider may gather information from school-based personnel to ensure a collaborative approach.

ACKNOWLEDGMENT

By signing below, the parties acknowledge that they have reviewed the LEAs ABA policies and agreed to the terms outlined in this agreement and will work cooperatively to support the students' success.

School Representative

Name: _____
Title: _____
Signature: _____
Date: _____

ABA Provider/Supervisor

Name: _____
Title: _____
Signature: _____
Date: _____

RBT Provider

Name: _____
Title: _____
Signature: _____

Date: _____

Parent/Guardian
Name: _____
Signature: _____
Date: _____

This agreement is intended to promote collaboration between the School and ABA Provider and is not intended to supersede applicable laws, LEA policies, or special education requirements.