Treatment of Applied Behavioral Analysis Under IDEA:

Has Recent Peer-Reviewed Support for Intensive Behavioral Approaches Given Parents a Right to ABA Services for Children with Autism?[1]

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> *Science builds consensus among people in a way that few other disciplines can, if only because the nature of its proofs makes dissent so difficult. The path to consensus via science is rarely straight; it can take years to achieve and the battles can be bloody. But eventually, the accumulation of evidence is hard, even impossible, to ignore.*[2]

I. *The Issue*: Parents of children with autism and their advocates have been encouraged by recent additions to the scientific literature that clearly support the use of intensive behavioral approaches – typically referred to as Applied Behavioral Analysis, or "ABA" – in the education of such children. They hope that the increasing scientific support for ABA will lead judges and hearing officers to order the use of ABA more frequently than they have to date, in place of more "eclectic" models of teaching used by many school districts. There is reason for

[1] I much appreciate the assistance provided by Northeastern University School of Law student clerks, Adam Minsky and Peter Fisher, who ably researched some of the issues discussed in this piece and helped think through and clarify the implications of IDEA's new emphasis on supporting "where practicable" scientifically based teaching methodologies for children with disabilities.

[2] Chester E. Finn, Jr. & Martin A. Davis, Jr., *Foreword* to LOUISA MOATS, WHOLE-LANGUAGE HIGH JINKS: HOW TO TELL WHEN "SCIENTIFICALLY-BASED READING INSTRUCTION" ISN'T, 6, 6 (Jan. 2007), http://www.edexcellence.net/doc/Moats2007.pdf.

some very cautious optimism, but given the history of deference typically extended to school districts in their choice of instruction methods, parents and practitioners should not expect that ABA will become the default methodology in the minds of judges and hearing officers any time soon. Many school districts will likely continue to oppose what they view as costly and labor-intensive interventions and, as long as there are any arguable scientific bases on which other, less expensive methodologies can be supported, IDEA will likely continue for some time yet to lean in the districts' direction in such matters.

II. *The Legal Context under IDEA:* The Individuals with Disabilities Education Act ("IDEA"), requires states to provide a free appropriate public education ("FAPE") to all students whose disabilities undermine their school performance and who need specialized instruction and/or related services to make meaningful progress.[3] Educational progress has been interpreted to mean more than strictly academic progress and includes other aspects of a child's development including social, emotional and behavioral skills,[4] as long as whatever non-academic issues are at stake are not "truly distinct from learning problems."[5] The vehicle for providing FAPE is a written individualized educational program ("IEP") developed by a team of educators and parents of a student with disabilities.[6] Courts have held that IDEA requires school districts to provide an IEP that is reasonably calculated to enable the student to make meaningful educational progress but does not require that districts maximize a student's potential or provide the best educational program available.[7] (States are free to establish a higher standard of protection for students with disabilities than is

[3] Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), (9) (2008).
[4] *See* Lenn v. Portland Sch. Comm, 998 F.2d 1083, 1089-90 (1st Cir. 1993).
[5] Gonzalez v. P.R. Dep't of Educ., 254 F.3d 350, 352 (1st Cir. 2001) (internal quotations omitted).
[6] *Id.*; IDEA § 1414(d).
[7] *See* Bd. of Educ. v. Rowley, 458 U.S. 176, 198 (1982).

afforded by the IDEA's standards; any such higher standard is enforced as part of IDEA in cases concerning residents of those states.)[8] Thus, in disputes between parents and school districts concerning whether a student with a disability is receiving appropriate educational services under the IDEA, administrative hearing officers who adjudicate disputes between parents and school districts, and judges in district and appellate courts who hear those cases on occasions when they are appealed, will rule for the school district if the district presents sufficient evidence that its educational program is reasonably calculated to provide a meaningful educational benefit. When parents are the moving party (as they most often are, in due process proceedings), the burden of proof is on parents and their supporting special education practitioners to show that a school district's educational program fails to provide a FAPE. If and when they satisfy that burden, the parents must then also show that the program or services that they seek would meet the IDEA standard before a hearing officer or court will order the school district to provide that service or program.

III. *How Adjudicators Have Treated Disputes Pitting ABA Against Other Methodologies:* Courts and hearing officers have consistently held that the IDEA does not require any particular methodology to educate children with disabilities. They defer to school districts to select teaching approaches and accommodations, and they will uphold a district's methods as long as those methods are reasonably calculated to help the particular student learn what s/he needs to learn. Importantly, the district's approaches need not be the best available methodologies.

[8] *See e.g.*, Gill v. Columbia 93 Sch. Dist., 217 F.3d 1027, 1035 (8th Cir. 2000) (noting that if a "state legislature chooses to require more for its program, the state standard must be met in order to obtain federal special education funds."); Johnson v. Indep. Sch. Dist. No. 4 of Bixby, 921 F.2d 1022, 1029 (10th Cir. 1990) (finding that a state's special education statute "defines the parameters" of a school district's legal obligations to its students).

The IDEA was amended in 2004 to require that services included in an IEP be "based on peer-reviewed research to the extent practicable,"[9] but the effects of that change in the IDEA's requirements should not be exaggerated. For scientific research in fields involving such ambiguous subjects as educational and developmental progress in young children, there may never be absolute certainty about the effectiveness of one teaching methodology or another. As long as "experts" are willing to testify to the efficacy of a particular methodology and support their claim with scientific research, a hearing officer or judge can rule in favor of the school district that uses that methodology. That parents bear the burden of proof in most cases under IDEA means that, where experts disagree about methodologies and a hearing officer or judge cannot decide between those experts, the school district will most often prevail on that point.

For children diagnosed with autistic spectrum disorders, judges and administrative hearing officers have historically viewed ABA therapy as only one of many options that are available to districts in providing a FAPE. Thus, even in cases where parents present experts who testify that ABA therapy is the *best* methodology to educate their autistic child, courts will often uphold a school district's rejection of ABA in favor of a more eclectic educational program, so long as the district provides evidence that the child is receiving an educational benefit.[10]

[9] IDEA, 20 U.S.C. §1414(d)(1)(A)(i)(IV).

[10] *See, e.g.*, Joshua A. by Jorge A. v. Rocklin Unified Sch. Dist., 319 Fed. Appx. 692, 695 (9th Cir. Mar. 19, 2009) (holding that the district-offered eclectic program provided the student with a meaningful benefit, despite the fact that the program was not peer reviewed; courts should not decide whether an eclectic program is "the best" approach, only whether it satisfies the requirements of the IDEA)*; see also* Hensley ex rel. Hensley v. Colville Sch. Dist., 2009 Wash. App. LEXIS 269, at *24 (Wash. Ct. App. Feb. 3, 2009) (holding, in rejecting plaintiff's claims that school's ABA services were inadequate, that the IDEA does not "guarantee maximization of potential"); Seladoki v. Bellaire Local Sch. Dist. Bd. of Educ., 2009 U.S. Dist. LEXIS 94860, at *35-36 (S.D. Ohio Sept. 28, 2009) (holding that 30 hours of ABA were appropriate for autistic child even where parents and experts claimed 40 hours were necessary, because courts cannot mandate a "bright-line standard" under the IDEA); K.S. v. Fremont Unified Sch. Dist., 679 F. Supp. 2d 1046, 1055 (N.D. Cal. 2009) (holding that IDEA does not mandate one methodology over another, so ABA was not required); Travis G. v. New Hope-Solebury Sch. Dist., 544 F. Supp. 2d 435, 444 (E.D. Pa. 2008) (upholding the school district's reduction in ABA services because the district was still

Even in states where special education statutes require that an IEP "maximize" a child's potential, effectively raising the minimum standards under the IDEA, courts may nevertheless find that a less-intensive eclectic program satisfies that higher standard. For example, in *Dong v. Board of Education of the Rochester County School*, the court held that the district-offered eclectic TEACCH program provided FAPE to an autistic child.[11] Although the Michigan special education statute contained a "maximum potential" standard, the court held that this standard did "not necessarily require the best education possible or require a model education adopting the most sophisticated pedagogical methods without fiscal or geographic constraints."[12] Moreover, while the court found that both ABA and TEACCH offered the student a FAPE designed to maximize her potential, the court concluded that the TEACCH program was more consistent with the IDEA's goal of providing services in the least-restrictive-environment.[13]

Further complicating judicial treatment of ABA is the fact that courts and hearing officers sometimes credit districts' witnesses who argue that the one-on-one aspect of intensive ABA programs may result in regression of a child's socialization skills. When conflicting testimony is present, courts are sometimes

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providing a "meaningful educational benefit" to the autistic child); A.D. v. New York City Dep't of Educ., 2008 U.S. Dist. LEXIS 91448, at *26-27 (S.D.N.Y. Apr. 21, 2008) (holding that 10 hours of ABA per week would satisfy the IDEA's requirement of providing a meaningful educational benefit, contrary to parents' and experts' recommendations); Deal v. Hamilton County Dep't of Educ., 2006 U.S. Dist. LEXIS 27570, at *56 (E.D. Tenn. Apr. 3, 2006)(holding that intensive ABA is not required because "the question under the IDEA is not… whose program is better [the parents' intensive ABA approach or the district's more eclectic approach]…. [but] whether the district's proposed IEP was reasonably calculated to provide meaningful educational benefits"); A.M. v. Fairbanks N. Star Borough Sch. Dist., 2006 U.S. Dist. LEXIS 71724, at *15 (D. Alaska Sept. 29, 2006) (finding that most jurisdictions do not mandate ABA and they allow a district to develop an eclectic program "best suited" to the child); South Harrison Comty. Sch. Corp., 2005 U.S. Dist. LEXIS 42445, at *35 (S.D. Ind. Sept. 1, 2005) (holding that the IDEA does not require districts to adhere to any particular methodology and there is "honest disagreement among professionals" regarding the best methodology); J.K. v. Metro. Sch. Dist. Southwest Allen County, 2005 U.S. Dist. LEXIS 42439, at *50 (N.D. Ind. Sept. 27, 2005) (holding that a "group of methodologies" provided the autistic child with "some educational benefit" and therefore there was no denial of FAPE); Pitchford v. Salem-Keizer Sch. Dist. No. 24J, 155 F. Supp. 2d 1213, 1231 (D. Or. 2001) (holding that a court cannot choose one educational method over another so long as the school district's method provides "some educational benefit").

[11] 197 F.3d 793, 803-04 (6th Cir. 1999).

[12] *Id.* at 803 (internal citations and quotations omitted).

[13] *Id*. at 804.

unwilling to decide which skills (i.e., academic vs. social) warrant emphasis over others. For example, in *Gill v. Columbia*, the court held that parents were not entitled to reimbursement for the costs of providing in-home ABA therapy because the child had made adequate progress under the school district's program, which included a limited one-to-one therapy component; while the child's verbal skills improved more quickly under the intensive in-home ABA therapy, his social skills had suffered.[14] The court attributed the regression in social skills to the lack of school attendance and social interaction during the in-home therapy.[15] While acknowledging that the competing methods of instruction might impart different skills, the court declined to decide which of these skills should be emphasized.[16]

IV. *Support for ABA When Districts Rule It Out Simply as a Matter of Policy or Cost Containment:* Some jurisdictions have supported intensive ABA therapy over other methodologies where there is evidence that the school district opposes ABA as a matter of policy without reference to a student's specific needs. Where a school district refuses to consider ABA therapy or broadly limits its availability in an arbitrary or pre-determined manner, courts may be significantly less likely to favor the district, and may interpret such a policy as violating the IDEA and disability discrimination statutes.[17]

In addition, courts may favor parents' claims for intensive ABA therapy where the school district's offering falls below the minimum standards of FAPE

[14] 217 F. 3d 1027, 1037 (8th Cir. 2000).
[15] *Id.*
[16] *Id.* at 1037-38. *See also* A.D. v. New York City Dep't of Educ., 2008 U.S. Dist. LEXIS 91448, at *26-27 (S.D.N.Y. Apr. 21, 2008) (finding that providing over 10 hours per week of ABA therapy would deprive the child of independence and recreational skill development).
[17] *See, e.g.*, S.W. v. Warren, 528 F. Supp. 2d 282, 291-92 (S.D.N.Y. 2007) (finding that depriving children of a number of hours of ABA service due solely to a shortage of service providers may be enough to show intentional discrimination); BD v. DeBuono, 130 F. Supp. 2d 401, 436 (S.D.N.Y. 2001) (finding that, while there is no "right" to ABA therapy, if the school district, as a matter of policy, arbitrarily limited the number of ABA hours provided to any particular child, the district would not be providing a child with an individualized education program and would disregard each child's individual needs).

under the IDEA. In *Diatta v. District of Columbia*, the court ordered the district to fully reimburse the parents for their unilateral placement of their child with autism in a private ABA-intensive program because the district had "utterly failed" to provide the child with even a "basic floor" of education in the public school.[18] This was not a case of competing methodologies, but rather a case where the parents presented a methodology that clearly benefited their child while the district provided virtually nothing.

V. *The "Window of Opportunity" Argument:* Practitioners and parents arguing for the use of an intensive ABA approach should include evidence regarding the limited time that is available for young students with autism to acquire the means to learn effectively. This argument potentially provides a means to improve the chances of prevailing under the "meaningful progress" standard if a hearing officer or judge can be persuaded that for a child with autism it is particularly urgent to bring intensive services to bear during the child's early years to ensure that s/he will be able to access an educational program.

In *Fall River Public Schools*, a Massachusetts due process decision, the hearing officer noted: "Two of Parents' three expert witnesses …agreed as to the critical importance of providing effective services to a child with Student's profile during his early years (age 2 through 7 years) during which there is a 'window of opportunity' that will quickly close after the student reaches age 7."[19] He went on to note that "Federal courts and Massachusetts Hearing Officers have similarly recognized the importance of considering this 'window of opportunity' for young children with autism, such as Student, when determining what special education and related services should be provided in order to ensure a child's meaningful

[18] 319 F. Supp. 2d. 57, 66-67 (D.D.C. 2004).
[19] In Re: Fall River Public Schools, 11 MSER 242, 254 (Dec. 21, 2005).

access to education and to avoid jeopardizing a child's opportunity to make effective progress."[20]

While he acknowledged that the student in question had made some educational progress in the district's in-house program, the Hearing Officer found that progress to be insufficient and ordered the district to support a far more intensive behavioral program outside of the district in order to take advantage of the child's "window of opportunity."[21]

VI. *Expert Testimony Based on Data Concerning the Specific Child and Supported by Well-Documented Research is Critical to Making the ABA Case:*

Special education adjudicators who uphold eclectic programs or "ABA-light" therapy favored by school districts over exclusive, extensive ABA therapy favored by parents often report their perception that there is no professional consensus as to which methodologies are most effective. Since the IDEA does not require the "best" education, but only an "appropriate" education that provides some meaningful educational benefit, judges and hearing officers often view ABA therapy as just one of the possible options available to children with autism, and conclude, due to the perceived scientific uncertainty, that ABA is not necessarily required. In *Z.F. v. South Harrison Community School Corp.,* for instance, the district court judge cited an "honest disagreement among professionals" as to whether ABA is the best methodology for providing education to autistic children in upholding the school district's program.[22] Similarly, in *Pitchford v. Salem-Keizer School District No. 24J,* the judge noted that the ABA method has "detractors" and may not be the ideal teaching method for all autistic children.[23]

[20] *Id.* at 254-255.
[21] *Id.* at 259.
[22] 2005 U.S. Dist. LEXIS 42445, at *35 (S.D. Ind. Sept. 1, 2005).
[23] 155 F. Supp. 2d 1213, 1230 (D. Or. 2001).

In virtually every case where courts have ruled in favor of intensive ABA programs, judges and hearing officers credit comprehensive and persuasive expert testimony as a critical factor in their conclusion.[24] In order to produce more support for ABA therapy in special education due process proceedings, it is crucial that, case by case, ABA experts and practitioners supporting parents' positions show that a) the ABA method is required for the *specific child at issue* to receive a meaningful education benefit, while other programs do not provide that child with a meaningful educational benefit, and b) the effectiveness and appropriateness of ABA, as well as the *inappropriateness of other programs*, is supported by peer-reviewed scientific research.

It is vital that experts in ABA testifying on behalf of children with autism and their parents show that intensive ABA therapy is required for the particular child in question to receive a meaningful educational benefit. Judges and hearing officers tend to discredit experts who are too generalized in their support for ABA. For example, in *K.S. v. Fremont Unified School District*, the district court judge found that the parents had failed to prove that "ABA was required to ensure [the child] received a FAPE" in part because the experts' "testimony regarding ABA was rather general in nature" and did not focus on the particular educational needs of the specific student at issue.[25] Instead of general testimony, ABA experts must show that intensive ABA therapy is crucial for the individual child at issue to receive a FAPE.

The recording of goal-specific data by service providers that is essential to an ABA program certainly should help in this process when a child has actually received ABA services for a significant period. For such children, experts can

[24] *See, e.g.*, County Sch. Bd. of Henrico County, Virginia v. R.T., 433 F. Supp. 2d. 657, 682-90 (E.D. Va. 2006).
[25] 2009 U.S. Dist. LEXIS 120902, at *22 (N.D. Cal. Dec. 29, 2009).

testify on the basis of that data that the child has received a meaningful educational benefit through ABA therapy and has made real progress on measurable standards. If the child has received non-ABA or minimal ABA services, the available data will likely be more limited, since such programs typically fail to record specific behaviors in the detail that an ABA program requires. There is usually other evidence that an expert can utilize, however, such as the results of standardized developmental psychological evaluations repeated periodically, and reports that show the progress (or lack thereof) on the measures afforded by the instruments used in such evaluations.

In *County School Board of Henrico County v. R.T.*, multiple experts in ABA methodology who were also intimately involved in the education and evaluation of the child at issue testified as to the effectiveness of ABA therapy, and linked this effectiveness to the rapid progress of the child after the parents had unilaterally placed him in a private institution that specialized in ABA. At the same time, these same experts testified as to the child's lack of real progress while participating in the school district's TEACCH program. The experts were able to show, based on the data from each program, that the child needed one-on-one therapy (rather than predominantly group therapy) in order to receive a FAPE.[26] Both the hearing officer and the district court judge were persuaded by these experts and agreed that the school district's program did not confer a meaningful educational benefit on the child, while the intensive ABA program did; the court thus ordered the school district to reimburse the parents for their unilateral placement.[27]

[26] *County Sch. Bd. of Henrico County, Virginia*, 433 F. Supp. 2d. at 682-90.
[27] *Id.* at 691. *See also* Sytsema v. Acad. Sch. Dist. No. 20, 2009 U.S. Dist. LEXIS 105978, at *16-17 (D. Colo. Oct. 30, 2009) (crediting persuasive expert testimony in finding that one-on-one ABA therapy was required in order for the child to make adequate educational progress, while the school's program was inadequate); Fall River Public Schools, 11 MSER 242 (Dec. 21, 2005) (Hearing Officer credited the parents' experts as having "sufficient

It is equally important for experts testifying in IDEA cases to support their individual recommendations with peer-reviewed scientific research. As noted above, in 2004 Congress amended the IDEA to include provisions that emphasized the need to employ scientifically-based instructional practices in the delivery of services to children with disabilities. An IEP must include "a statement of the special education and related services and supplementary aids and services, *based on peer-reviewed research to the extent practicable*, to be provided to the child ...."[28]

The phrase "to the extent practicable" may tempt some districts to argue that it simply isn't "practicable" to provide intensive, one-on-one ABA services to children with autism because of budgetary constraints or limited numbers of qualified personnel. Any such argument would be unlikely to succeed under any reasonable interpretation of the IDEA, however, which requires meaningful educational benefit without regard to cost.[29] In any event, on a close reading, the phrase "to the extent practicable" modifies the phrase "based on peer-reviewed research," tacitly acknowledging that there is a dearth of "peer-reviewed research" respecting many current educational techniques and that it is likely not "practicable" to attempt to tie teaching methodologies to research that has not been

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education, experience, and knowledge" regarding both ABA and the child's specific needs; Hearing Officer ruled that ABA's superiority in verbal and language training during critical stage in the autistic child's development provided child with meaningful educational benefit, while the less-intensive district-offered eclectic program failed to offer a meaningful benefit); Diatta v. D.C, 319 F. Supp. 2d. 57, 66-67 (D.D.C. 2004) (crediting plaintiff's strong expert testimony showing that the district had not provided any meaningful educational benefit to the child, and ABA was required in order for child to have a FAPE); Baltimore County Public Schools, 2 ECLPR 231 (1996) (holding that the eclectic program offered by the school district was inappropriate and the child had not made significant progress, while the intensive at-home ABA program implemented by the parents was appropriate and the child had made significant progress; the hearing officer credited expert testimony in reaching the conclusion).

[28] IDEA, 20 U.S.C. §1414 (d)(1)(A)(i)(IV) (2008) (emphasis added).

[29] *See e.g.,* S.W. v. Warren, 528 F. Supp. 2d 282, 291-92 (S.D.N.Y. 2007) (finding that a school district cannot deprive children of a number of hours of ABA service for the reason that there is an insufficient number of service providers; this may be evidence of intentional discrimination); BD v. DeBuono, 130 F. Supp. 2d 401, 436 (S.D.N.Y. 2001) (finding that, while there is no "right" to ABA therapy, if the school district, as a matter of policy, arbitrarily limited the number of ABA hours provided to any particular child, the district would not be providing a child with an individualized education plan and would disregard each child's individual needs).

completed. Fortunately for practitioners and families concerned with children with autism, it is becoming increasingly "practicable" to determine through the results of peer-reviewed research what types of interventions work for such children.

There is increasing scientific support for intensive ABA therapy over other methodologies for children with autism spectrum disorders. For example, a recent study published in *Pediatrics* compared alternative interventions for autistic pre-school children; one group of children received intensive early-intervention ABA-based therapy, while the other group received a more eclectic array of interventions.[30] The study was the first randomized, controlled trial to demonstrate that behavioral intervention for autistic toddlers reduces the severity of their disorder.[31] The results showed that, over a two year period, the group of children who received the ABA-based therapy showed significant improvements in IQ and adaptive behavior as compared to the children who received more eclectic "community-intervention" therapies.[32] The *Pediatrics* study reflects similar conclusions made by a 2004 study published by *Science Direct*, which found that intensive ABA-based therapy was significantly more effective in treating autism spectrum disorders than eclectic programs.[33] The *Science Direct* study followed 29 children who received intensive ABA-based therapy and 26 children who received a combination of programs (including one-on-one and small group therapy with varying hours per week) over a 14 month period, and found that learning rates for the children in the intensive ABA-based therapy group were "substantially higher"

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[30] Geraldine Dawson, et al., *Randomized, Controlled Trial of an Intervention for Toddlers With Autism: The Early Start Denver Model*, PEDIATRICS (November 2009), http://pediatrics.aappublications.org/cgi/content/abstract/125/1/e17.
[31] *Id.*
[32] *Id.*
[33] Howard, et al., *A Comparison of Intensive Behavior Analytic and Eclectic Treatments for Young Children with Autism*, 26 RESEARCH IN DEVELOPMENTAL DISABILITIES 359, 376, http://www.auburn.edu/~lal0011/8550/Howard2005.pdf.

than for the children in the eclectic programs.[34] The National Autism Center recently published a summary of over 230 studies that explored the effectiveness of ABA-based therapy across all age groups; the summary confirmed that ABA-based therapy increases academic, communication, and interpersonal skills; learning readiness; personal responsibility; and self-regulation, while decreasing problem behaviors.[35]

These studies thus provide additional support for the effectiveness of ABA therapy as compared to more eclectic programs, and they are examples of the steadily strengthening scientific basis for arguing that school districts should provide intensive ABA therapy to students with autism, rather than non-ABA or eclectic programs. Moreover, the studies support the argument that non-ABA methodologies are scientifically *less effective* in treating and educating autistic children, which is especially useful for parents and experts attempting to prove that a district's "ABA-light" or eclectic program is *inappropriate*, does not confer a meaningful educational benefit on the child, and ultimately cannot provide a child with a FAPE.[36]

VII. Conclusion

Because many hearing officers and judges have viewed ABA as only one out of many methodologies that can provide a child on the autistic spectrum with an appropriate education, courts will likely continue to generally uphold eclectic or limited-ABA programs promoted by school districts so long as districts present enough evidence to show that the programs provide some meaningful educational

[34] *Id.*
[35] National Autism Center, *National Standards Report* 45 (2009), http://www.nationalautismcenter.org/pdf/NAC%20Standards%20Report.pdf
[36] *See* J.K. v. Metro. Sch. Dist. Southwest Allen County, 2005 U.S. Dist. LEXIS 42439, at *50 (N.D. Ind. Sept. 27, 2005) (finding that the parents had not attempted to prove that the district's group of methodologies was inadequate to confer educational benefits to the child).

benefit. This may occur even if parents and expert practitioners persuasively argue that ABA therapy provides a *greater* educational benefit. Slowly, however, jurisdiction by jurisdiction, adjudicators are beginning to credit the scientific research supporting intensive ABA therapy over other methodologies.[37] The task of ABA practitioners is to continue conducting research to further buttress the existing scientific support for ABA, and to carefully describe and disseminate the results. Then, by aggressively advocating for intensive ABA programs on behalf of individual children on a case by case basis, and appropriately supporting individual assessments with the increasing body of peer-reviewed scientific evidence that shows ABA therapy is the most effective method of educating children on the autistic spectrum, parents and advocates of ABA methodology may succeed in gradually improving judicial treatment of ABA therapy.

[37] *See e.g.,* A.M. v. Fairbanks N. Star Borough Sch. Dist., 2006 U.S. Dist. LEXIS 71724, at *15 (D. Alaska Sept. 29, 2006) (deferring to the Hearing Officer who found that "most jurisdictions still allow a district to provide the methodology it thinks is best suited to the child" while acknowledging that "some jurisdictions are moving toward mandated ABA.")