

UTAH LAW CONFERENCE

WHAT EDUCATORS NEED TO KNOW ABOUT AUTISM

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INTRODUCTION

Many school districts across the nation are grappling with the concept of how best to serve the rapidly growing population of students with *Autism Spectrum Disorders (ASD)*. The term ASD is used today to describe children and youth with autism related disorders.¹ ASD refers to a broad range of subtypes and levels of severity falling within the autism spectrum and pervasive developmental disorders. These disorders are generally present from birth or its early developmental stage and affect essential human behaviors such as social interaction, the ability to communicate ideas and feelings, imagination, and the establishment of relationships with other individuals.²

Over the past decade, one of the most commonly litigated issues in the area of special education under the Individuals with Disabilities Education Act Amendments of 2004 (IDEA or the Act), involves the provision of services for students with Autism Spectrum Disorders (ASD). Litigation concerning students with ASD has reached every level of our nation's judicial system. The cost of litigation is often quite expensive, and in some instances significantly impacts school district budgets. Cases often languish in the courts for years, taking a huge toll on both parents and school district staff. More importantly, the student loses out on valuable services during the period of time the parties are involved in litigation.

The goal of this presentation is to help school districts create viable programs and services for students with ASD by utilizing best practices, collecting and using data to support decision making, developing in-house expertise, and making sure that district staff are adequately trained through professional development, while at the same time encouraging parents and school districts to work collaboratively; thereby, avoiding contentious, costly litigation.

DISCLAIMER:

These materials are not intended to provide a comprehensive overview of all issues, case law, rules and regulations affecting the provision of programs and services for students with ASD. Instead, they are intended to encourage parents and school districts to work collaboratively in

¹ Richard L. Simpson, R. (2005), *Autism Spectrum Disorders: Interventions and Treatments for Children and Youth*, Thousand Oaks, California, Corwin Press, pg. 1.

² National Research Council (2001), *Educating Children with Autism*, Washington, D.C., National Academy Press, pg 1.

developing programs and services for students with ASD thereby avoiding expensive, burdensome litigation.

Finally, **these materials are not intended as legal advice** and should not be construed as such. Individual state laws, regulations, school district policy and unique factual situations can make a significant difference in analyzing various situations. Please consult with your school district's attorney or a licensed attorney in your state for legal advice concerning your particular situation.

I. DEVELOPING VIABLE PROGRAMS AND SERVICES FOR STUDENTS WITH ASD AND AVOIDING EXPENSIVE LITIGATION

Providing special education and related services for students with ASD is a challenge for school districts across the nation. The challenge for any district is to create viable educational programs and services for students with ASD consistent with the IDEA and state law. In doing so, the student will be provided a free appropriate public education (FAPE) that will meet their unique educational needs in the least restrictive environment (LRE). While there are, perhaps, different model programs across the nation that successfully provide programs and services for students with ASD, the model discussed below is one example of a blueprint that was implemented in a major urban school district, which successfully reduced the amount of and cost of litigation.

A. FAPE for students with ASD - Defining Special Education for Students with ASD

Under the IDEA, a FAPE is broadly defined as special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the SEA, including the requirements of the statute;
3. include an appropriate preschool, elementary school, or secondary school education in the state involved; and
4. are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. §300.320 through 300.324 (34 C.F.R. §300.300.17).

Special Education is defined as “specially designed instruction, provided at no cost to the parents, intended to meet the unique needs of a child with a disability. Special education includes instruction conducted in the classroom, the home, in hospitals and institutions, and in other settings, as well as instruction in physical education (34 C.F.R. §300.39).

The contours of what constitutes FAPE must be determined on a case-by-case basis, in light of individualized consideration of the unique needs of each eligible student (*see, Board of Education of the Hendrick Hudson Centennial School District v. Rowley*, 458 U.S. 176 (1982); 553 IDELR 656 (Sup. Ct. 1982)).

Secondly, the IDEA provides that FAPE must be made available to all children residing in the state between the ages of 3 and 21, including students with disabilities who have been suspended or expelled from school (*34 C.F.R. §300.101(b)*).

Thirdly, each state must ensure that FAPE is made available to each eligible child residing in the state no later than the child's 3rd birthday, and further, that the IEP or the student's Individualized Family Service Plan (IFSP) is in effect by that date (*34 C.F.R. §300.101(b)(1)-(2)*).

In 1982, the Supreme Court in *Rowley, supra*, established a two-part analysis to assist courts in determining the appropriateness of level of education to be provided a student with a disability under the IDEA, as well as what constitutes the provision of FAPE, namely:

1. has the state complied with the procedures set forth in the Act (IDEA's parental procedural safeguards); and
2. is the IEP developed through the IDEA's procedures reasonably calculated to enable the student to receive educational benefit?

This two-part inquiry requires school districts that are sued by parents, alleging the district failed to provide their child a FAPE, to demonstrate both procedurally and substantively under the IDEA, that they developed and implemented an appropriate IEP for the student, and secondly, that the IEP is appropriate (i.e., reasonably calculated to enable the student to benefit from their educational program).

School districts are not required to maximize a student's educational performance, nor does the IDEA require the provision of the best possible education, *Rowley, supra*. Referring to the minimal level of benefits that an appropriate educational program must confer, the Court

recognized that the state’s obligation is to ensure that students with disabilities are provided “the basic floor of [educational] opportunity.” A majority of Circuit Courts of Appeals, including the 10th Circuit (*see O’Toole v. Olathe District Schools Unified School District No. 233*, 28 IDELR 177, 144 F. 3d 692 (10th Cir. 1998)),³ that have interpreted the term ‘Educational Benefit,’ in determining whether the student has received a FAPE, have read *Rowley* as requiring courts to find that the district provided the student “some educational benefit.” However, a minority of Circuit Courts of Appeal have interpreted *Rowley* to require a finding of “meaningful educational benefit.” (*See, Adams v. Oregon*, 195 F.3d 1141,31 IDELR 130 (9th Cir. 1999); *B.V., et al. v. Education Department of the State of Hawaii*, 514 F.3d 1384,49 IDELR 151 (9th Cir. 2008), (unpublished); and *Joshua A. et al. v. Rocklin Unified School District*, 52 IDELR 64, (9th Cir. 2009), (unpublished).)

Since the passage of No Child Left Behind (NCLB) and the IDEA Amendments of 2004, a few courts have reviewed the FAPE standard to determine whether *Rowley*’s “educational benefit” standard had been changed by the 2004 IDEA Amendments. The arguments subsequently failed, including a district court determination that was appealed to the Ninth Circuit Court of Appeals. In *J.L. v. Mercer Island School District*, 52 IDELR 241 (9th Cir. 2009),⁴ the Ninth Circuit reversed the district court’s determination that Congress, in the 1997 IDEA Amendments, had adopted a new FAPE standard, holding that nothing in the 1997 Congressional findings nor the requirement that school districts provide transition services to students with disabilities altered the definition of FAPE, and that the *Rowley* FAPE standard still applied. Finally, *Rowley* still

³ The student involved in *O’Toole*, Molly, was not a student with ASD, but instead suffered from moderate to severe sensorineural hearing loss in her right ear and moderate to profound hearing loss in her left ear, and was diagnosed as hearing impaired. The dispute focused on the adequacy of the February 23, 1993 IEP and the parents’ desire that the school district use their preferred methodology. In addition, the parents asserted that Kansas law provided a potential maximizing standard (i.e., “receive educational benefits in accordance with their abilities”), instead of the federal reasonable benefit standard. The 10th Circuit held, among other things, that the district wasn’t obligated to use the parents’ preferred methodology, that the state regulation did not create a greater standard providing greater rights, and further that state and federal educational benefits standard were the same, and finally, the district’s IEP, addressed the student’s individual needs, allowing her to make educational progress and was reasonably calculated to provide the student a FAPE.

⁴ The student involved in this dispute, K.L., was diagnosed with learning disabilities and not a student with ASD. The issue in the dispute focused on whether the 1997 amendments to the IDEA requiring school districts to provide transition services to students with disabilities altered the definition of FAPE. The 9th Circuit noted that Congress did not reference *Rowley* in and subsequent IDEA amendments or otherwise altered the definition of FAPE. If Congress had wanted to change the *Rowley* FAPE standard, ‘educational benefit’, a standard that courts have followed since 1982, then, “it would have expressed a clear intent to do so,” the court wrote.

remains the seminal case to date on what constitutes the provision of FAPE and is applicable to all disability eligibility classifications, including students with ASD. School districts take a major step in avoiding the cost of litigation, when they establish viable educational programs and services for students with ASD (or any other disability for that matter), that meet the Rowley FAPE standard and comply with the requirements of the IDEA, individual state laws and regulations.

B. LRE for Students with ASD

Federal Requirements

The IDEA requires that each state must establish procedures to assure that:

1. to the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled; and
2. special classes, separate schooling or other removal...from the regular education environment occurs only if the nature and severity of the disability is such that education of the student in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (*20 U.S.C. §1412(a)(5); 34 C.F.R. §300.114(a)(1)and (2)*).

Additionally, Section 300.115, (*34 C.F.R. §300.115*), requires each public agency to ensure that a continuum of alternative placements be made available to meet the needs of students with disabilities for special education and related services. The continuum must include the alternative placements listed in the definition of special education (*34 C.F.R. §300.38*), (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement (*34 C.F.R. §300.115*).

When considering an educational placement for a student with ASD including preschool students, school districts are required to ensure that placement decisions are made by a group of individuals including parents, and others knowledgeable about the student, the meaning of the evaluation data, and the placement options; made in conformity with the IDEA's LRE provisions. Placement must be: determined annually, based upon the student's IEP, and be as

close as possible to the child's home (34 C.F.R. §300.116(a) and (b)). Moreover, unless the IEP of the child ... requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled (34 C.F.R. §300.116(c)). Additionally, the regulations further provide, in selecting the LRE, school districts must consider any potential harmful effect on the child or on the quality of services that the student needs (34 C.F.R. §300.116(d)).

Finally, placement teams must carefully consider removal of a student with ASD from education in an age-appropriate regular classroom solely because of needed modifications in the general education curriculum (34 C.F.R. §300.116(e)).

C. Significant Case Law Concerning Students with ASD

Tenth Circuit Court of Appeals and Autism

Sytsema v. Academy School, District No. 20, 538 F.3d 1306, 50 IDELR 213(10th Cir. 2008)
The Tenth Circuit Court of Appeals in *Sytsema*, consistent with a majority of federal circuit courts of appeal, applied the “some benefit” standard from *Rowley* in finding that a small Colorado school district offered a student with autism a FAPE. In that case, the student's parents sought reimbursement for a unilateral placement in a private school and home services for the alleged failure to provide FAPE over two school years. The court recognized and applied the two pronged FAPE analysis set forth in the Supreme Court's decision in *Rowley*. The court found that “[a]n IEP's failure to clear all of the Act's procedural hurdles does not necessarily entitle a student to relief ...” Citing *O'Toole v. Olathe Distr. Sch. Unified Sch. Dist. No. 233*, 144 F.3d 692,698 (10th Cir. 1998), the court further found that “technical deviations from the requirements ... do not render an IEP entirely invalid; to hold otherwise would **exalt form over substance** (emphasis added).”

The Tenth Circuit, ultimately finding for the district, determined that the parent's argument alleging that the “sole teaching technique” (errorless learning) included in the IEP, was not persuasive because several teaching techniques (discrete trial training, various reinforcement strategies, communication temptations, task analysis of multi step actions and shaping procedures were incorporated in the IEP) were also included in the IEP. Moreover, the court found that the discrete trail training included in the IEP and used in the at-home tutoring program

funded by the parent would have provided the student with “some educational benefit ...”, thereby meeting the substantive standard of *Rowley* on the rationale that courts lack the specialized knowledge and experience to resolve persistent and difficult questions of educational policy (citations omitted). Finally, the court was not swayed by the parent’s argument in support of the need for generalization that the absence of a specific reference to parent training and coordination with the student’s home program established a failure to provide FAPE.

Amanda J. v. Clark County School District, 267 F.3d 877, 103 LRP 33278 (9th Cir. 2001)

The *Amanda J.* case involved a student with Autism who was initially found eligible under the IDEA as a student with developmental delays. The Ninth Circuit found, however, that the school district should have shared information with Amanda’s parents that there was evidence from its evaluation process that an eligibility category of Autism should have been investigated. The Ninth Circuit, in this case, provided a concise description of Autism citing at length the National Research Council, *Education Children With Autism*⁵. Specifically, the court found that:

Autism is a developmental disorder of neurobiological origin that “generally has lifelong effects on how children learn to be social beings, to take care of themselves, and to participate in the community.” The disorder is present from birth, or very early in the development, and affects the children’s ability to communicate ideas and feelings, to use her imagination, and to establish relationships with others. No single behavior is characteristic of autism, and no single known cause is responsible for its onset. Perhaps most distressingly, currently there is no cure (citations omitted).

Noting the educational significance of early identification of students with Autism, the Ninth Circuit further found that “...the available research strongly suggest that intensive early intervention can make a critical difference to children with autistic disorders.”

For the purposes of this presentation, it is important to note that the court found that the very essence of the IDEA is undermined when procedural violations interfere with parents’ participation in the IEP process. The court further held that, in two tier administrative appeal systems, due deference should be given to the final determinations of state educational agencies, except that determinations of credibility should be deferred to the impartial hearing officer

⁵ National Research Council, *Education Children With Autism* (Catherine Lord & James P. McGee, eds., National Academy Press 2001)

“...who receives live testimony [and who] is in the best position to determine issues of credibility.

Berry by Berry v. Las Virgenes Unified School District, 54 IDELR 73 (9th Cir. 2010) (unpublished)

Most recently the Ninth Circuit, in an unpublished decision, found that a California school district violated the procedural requirements of the IDEA by predetermining the placement of a student with autism who was attending a private placement. In that case, at the beginning of the student’s IEP meeting an assistant superintendent stated that the team would discuss the student’s transition back to public school. The court found credible the parent’s claim that the assistant superintendent’s statement led her to believe that a placement in public school was predetermined and that her participation in the IEP would be futile. As a result, the court found that the procedural requirements of the IDEA were violated in that the parent’s right to participate in the development of the IEP and a determination of placement was impaired.

Eclectic Programming

Deal v. Hamilton County Department of Education, 258 F.App’x 863, 49 IDELR 123 (6th Cir. 2008)(unpublished)

On an appeal from a district court’s determination that a school district’s eclectic program was substantively appropriate for a student with Autism, inter alia, the Sixth Circuit Court of Appeals affirmed finding that school districts are only required to provide programming that is reasonably calculated to enable a student to derive more than a de minimis educational benefit. The court reiterated its reasoning that there could be a difference in outcomes that render one approach tantamount to a failure to provide FAPE. However, after considering additional evidence, the court found that the home program offered as a superior model was not implemented in a manner consistent with the original Lovaas study and therefore cannot be expected to render the same results. The court further found that the eclectic program offered by the school district was reasonably calculated to offer the student a meaningful educational benefit.

Joshua A v. Rocklin Unified School District, 08-15845, 52 IDELR 64 (9th Cir. 2009)

In this unpublished decision, the court concluded that the eclectic program offered by the school district was appropriate. The court, citing *Adams v. Oregon, supra*, concluded that states are not

required to “adhere to any particular educational approach.” The court found that the testimony of several experts who had observed the student in the educational setting supported a finding that the program in question was effective and conformed with best practices in the field. The court further found that an eclectic approach similar to the programs addressed in *Adams* and *Deal* (on remand) met the substantive requirements of the IDEA and did not require that the program itself be peer reviewed but on based on “peer-reviewed research to the extent practicable.”

Methodology

Adams v. State of Oregon, 195 F.3d 1141, 31 IDELR 130 (9th Circuit 1999)

The court found that the reduction of services for a two month period, due to staff vacations, was inadequate because it was not linked to the student’s individual educational needs. As a result the court found that the child’s parents were entitled to reimbursement for costs associated with private tutoring and placemen during that period. The court further found however, that IEP are snapshots in time and should not be view retroactively. It also found that appropriate programs offered by school districts are not required to be “...absolutely best or potential maximizing.’ States are only required to provide a basic floor of opportunity. The court also noted that the Lovaas program utilized by the parents was touted by many well-qualified experts but it also noted that there are many available programs that are effective.

FAPE vs. LRE

B.S. v. Placentia-Yorba Linda Unified School District, No. 07-56477, 51 IDELR 237 (9th Cir. 2009)

In another unpublished decision concerning a student with autism the Court of Appeals addressed the tension between the FAPE and LRE standards of the IDEA. Specifically, the court quoting its holding in *Wilson v. Marana Unified School District*, 735 F.2d 1178 (9th Cir. 1984) held that mainstreaming ‘is a policy which must be balanced with the primary objective of providing [disabled] children with an “appropriate education.”’ The court also found that the educational and non-academic benefits of the educational placement in a less restrictive environment were minimal and the blended program offered by the school district being better

aligned with the student's unique needs was sufficient to overcome the preference for mainstreaming.

Evaluation

N.B. and C.B. ex rel C.B. v. Hellgate Elementary School District, 541 F.3d 1202, 50 IDELR 241 (9th Cir. 2008)

Noting that not every procedural violation is sufficient to support a finding that FAPE was denied, the Court of Appeals found that a Montana school district, after receiving notice, failed to provide FAPE when it neglected to promptly and appropriately evaluate a student with autism.

J.G. v. Douglas County School District, 552 F.3d 786, 51 IDELR 119 (9th Cir. 2008)

The court found that the IDEA requirement that school districts evaluate students within a reasonable time may supersede state law under certain circumstances, probably depending on the areas of suspected disability. The court also found that failure to promptly inform the parents of twins with autism of the district's intent to evaluate entitled the parents to be reimbursed for the cost of a private evaluation.

II. METHODOLOGIES AND INTERVENTIONS

The IDEA defines *autism* as a developmental disability significantly affecting verbal and nonverbal communication and social interaction. It is generally evident before age three, and adversely affects the child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or changes in daily routines, and unusual responses to sensory experiences. Moreover, the term *autism* does not apply if the child's educational performance is adversely affected primarily because the child has an emotional disturbance. Finally, a child who manifests characteristics of autism after age three and satisfies the eligibility requirements of autism, can be identified as having autism (20 U.S.C. §1400; 34 C.F.R. §300.8(b)(i),(ii) and (iii)).

What causes ASD in children has not, as yet, been determined by medical science and remains unexplainable. Nevertheless, there are various interventions and treatment methodologies offered

for students with ASD. When creating programs and services for students with ASD, it is important that school districts use instructional methods, treatments and interventions that have been scrutinized and validated scientifically.⁶ A cornerstone of the No Child Left Behind Act (NCLB), (20 U.S.C. §6301 et seq.), and the 2004 IDEA Amendments, (20 U.S.C. 1411(e)(2)(c)(xi)), emphasizes linking educational practices to ‘scientifically based research’ that is peer reviewed.

A. ABA

Perhaps, the most commonly known and used method and intervention for teaching students with ASD is Applied Behavior Analysis (ABA) and Discrete Trial Teaching (DTT), a scientifically based practice.⁷ In *Autism Spectrum Disorders*, the author, Richard Simpson discusses ABA and DTT as skills-based interventions and treatments. ABA emphasizes proactive antecedent (prevention) approaches while also providing effective strategies for intervening after a behavior has occurred, and involves an ongoing and comprehensive analysis of the student’s environment, encompassing adaptive meaningful curriculum, appropriate instructional activities, appropriate stimulus control, and positive classroom structure to increase the desired behavior.⁸ DTT, as an intervention, is grounded in behavioral learning theory principals and ABA, and is particularly known for its intensive use with children with ASD.

B. Other Interventions

There are various other methodologies and interventions utilized to teach students with ASD. Among the more commonly known methods and interventions include structured teaching, or Treatment and Education of Autistic and Related Communication-Handicapped Children (TEACHH), Pivotal Response Training (PRT), Picture Exchange Communication (PECS), just to name a few. Three valuable references that school districts should consult on methodologies and interventions include *Educating Children with Autism*, National Research Council, National Academy Press, 2001; *Autism Spectrum Disorders: Interventions and Treatments for Children and Youth*, Richard L. Simpson, Corwin Press, Thousand Oaks, California, 2005; and *Sense and*

⁶ Simpson, R. (2005), *Autism Spectrum Disorders: Interventions and Treatments for Children and Youth*, 7,86-97; 97-105.

⁷ Simpson, R., supra, 9.

⁸ Simpson, R., supra, 87.

Nonsense in the Behavioral Treatment of Autism: It Has To Be Said, Ronald Leaf, John McEachin and Mitchell Taubman, DRL Books, Inc., N.Y., 2008.

The 2004 IDEA Amendments provide that school district IEPs must include a statement of special education and related services provided to a student that is based on peer-reviewed research “to the extent practicable”... to enable the student to advance appropriately toward their goals, ... and make progress in the general education curriculum (34 C.F.R. §300.320(a)(4)). School districts must make sure that whatever program methodology intervention or treatment is selected and utilized on students with ASD, based on the above-stated IDEA mandate, it must be a peer-reviewed, scientifically based education methodology. Complying with this mandate will ensure that the program intervention is known, normed and standardized, and has had demonstrated success with students with ASD.

A peer-reviewed program method or intervention is one that has been tested, both pre and post-tested, by qualified educational professionals/experts in the field who have researched and submitted their work for publication in the field of education (or psychology and medicine), to determine if their research has had successful outcomes for students with ASD. Secondly, school districts, in an effort to forestall litigation, must pay attention to the way they report progress and the methods used, in order to defend their choice of selected scientifically based methodology program or intervention.

Parents, more likely than not, will request a particular methodology, which they believe will work best with their child who has ASD. When meeting with parents and discussing different methodologies or interventions, school staff should keep an open mind and be prepared to discuss the parents’ research, as well as be ready to summarize the peer-reviewed research that supports district proposals. Keep in mind that IEP team members must also consider whether services are appropriate for the student with ASD, even if research supports the efficacy of the service or method more generally.

Finally, listen to parents and see if the methodology they are requesting is beneficial for their child. Inquire what their long term goals are for their child. In an effort to avoid methodology

disputes and contentious litigation, strive to gain the parents' trust in the methodology ultimately chosen by the district for their child with ASD. Offer to let parents observe the district's programming, and develop a transition plan with a trial review period of at a minimum of six to eight weeks to see if the district's methodology is effective.

III. DATA COLLECTION

Under the IDEA, IEP teams are required to provide a description of how the child's progress toward meeting the annual goals will be measured (*34 C.F.R. §300.320(a)(3)(i)*). Data collection is considered a best practice and is paramount in determining whether a student has and is making progress in their educational program. When addressing the needs of students with ASD, data collection is even more critical, not only in measuring student progress on goals, but also in determining what will ultimately be appropriate for the student. More importantly, in defending one's methodology choice, progress monitoring and data collection is necessary for the district to show the student has received a FAPE.

Secondly, based on our experience in Nevada, parents of students with ASD who have filed due process hearing complaints requesting a Lovaas home program (ABA and discreet trial), usually contend that the Lovaas method of collecting data, tracking the frequency and intensity of the student's responses to the discreet trials, is the only true method of data collection. We are not aware of any mandate under federal or state law or case law which prescribes in what manner and how data should be collected. Nevertheless, the IDEA and NCLB both emphasize the importance of documenting methods and interventions through the use of data collection, which should, if implemented with fidelity, objectively and systematically document a child's educational progress.

Finally, is there a way in which school districts can totally avoid methodology disputes with parents? Probably not. Nevertheless, in an effort to avoid such disputes and contentious litigation, school districts should meet with parents as soon as possible to discuss the parents' long and short term goals for the child with ASD, as a way of avoiding methodology disputes and determining what is appropriate for the student.

IV. BUILDING CAPACITY IN ASD EXPERTISE

The significant increase in the number of students with Autism Spectrum Disorders is well known. The individualized educational needs of children with ASD can vary widely. As a result, students with ASD receive services in the general education environment, as well as in self contained programs and special schools. Due to a nationwide shortage of teachers licensed and trained to teach children with Autism, school districts commonly hire outside autism consultants to support available teaching staff, and to assist in the development of educational delivery models and individualized strategies for students with ASD. Relying solely on outside consultants is no longer feasible due to the increased number of students needing services, the shortage of teachers and the varying educational environments where services are needed. Therefore, it has become paramount that school districts build their own internal ASD expertise.

V. PROFESSIONAL DEVELOPMENT, PARENT TRAINING AND OTHER SUPPORT SERVICES

District Wide Training

1. Administrator Training – This is a two day training for district administrators supervising autism programs on their campus. Day one focuses on what an ABA classroom looks like and addresses issues with supervising an autism program. Day Two includes a half day hands on experience and a half day lecture introducing district supports and services available for district staff teaching autism programs.
2. 2 Day Didactic - Introduction to autism and Applied Behavior Analysis
3. 4 Day Hands-On – Hands on experience with students with autism in Applied Behavior Analysis and discrete trial teaching
4. Secondary 4 Day Hands-On - Hands on experience with secondary students with autism in ABA and discrete trial teaching.
5. Autism Classroom Foundations – Training for teachers new to autism programs addressing: room arrangement, student and staff schedules, materials and reinforcement.

Parent Training

1. Parent Autism Survival Skills (PASS) – One day group conference training offered to parents with students with autism. This training is offered 1 time a year and address issues such as behavior, eating, safety issues, reinforcement, and community resources. Spanish sessions are available for Spanish speaking families.
2. Connection Center Parent Training – Training in ABA for parents as it related to their child. Parents bring their children to the LIDT office for five two hour sessions that teach parents how to deal with difficult behaviors using ABA. LIDT staff goes to the home for three home generalization sessions.

Supplementary Programs and Services not required for FAPE

1. Gates Model Classroom: This is a KIDS program where district staff can make appointments to observe and train with the classroom staff.
2. Pilot Interactive Language Skills Groups (Social Club) – LIDT supports preschool/elementary and secondary groups that addresses social skills development.
3. Deliberation Team – The focus of this team is to assess the need or continued need for additional intensive intervention beyond the school day (Home Program) and make recommendations to the IEP team.
4. Home Program Monitoring – LIDT staff observe private provider Home Programs included in student IEPs as part of the district monitoring process
5. Behavior PDA Program – LIDT supervises and supports the consistent district wide data collection system for teachers in autism programs. Teachers are allocated a Behavior PDA and trained how to collect behavioral/skill data in their classrooms. The Behavior PDA increases instructional time by decreasing paperwork.
6. School Consultation – LIDT staff consult with classroom teachers and staff on a referral basis to address individual student, teacher or classroom issues not addressed through the district wide training opportunities.
7. Focused Autism Support Training (F.A.S.T.) - The F.A.S.T. program is intensive training and support for a problematic behavior in the classroom. A team of LIDT staff work with students to gain behavioral control and then train the teaching staff in the techniques used to gain behavioral control.

VI. UTILIZING BEST PRACTICES (PROTOCOLS AND REGULAR REVIEW AND UPDATES)

Clark County School District

1. *Methodology*

The Clark County School District, the nation's 5th largest school district, uses ABA as its teaching methodology in autism programs, when the individual needs of students with ASD do not require another method or intervention. ABA is based on two principals of learning: 1) behaviors that *are reinforced* will increase over time, and 2) behaviors that *are not reinforced* will decrease over time. Discrete trial teaching (DTT) is a technique used in conjunction with ABA, where complex skills are broken down into smaller parts. It is, simply, good teaching. Research shows that students with autism make significant progress when ABA and DTT are implemented. The 1987 UCLA Young Autism Project Study had 47% of their participants become indistinguishable, with normal intellectual and educational functioning, through implementation of this methodology.

In accordance with Nevada law, school districts in Nevada are required to use positive behavioral supports for students who exhibit behaviors that impede their learning or the learning of others. The majority of students with ASD exhibit behaviors which impede their learning or the learning of others. ABA with DTT are positive behavioral methods and interventions utilized in the Clark County School District to provide intervention for students with ASD.

2. *School Based Programs*

Students are placed in school based programs through the IEP process. CCSD provides the full spectrum of placement options to students with Autism. All self-contained autism programs utilize ABA methodology. We currently have approximately 90 KIDS Programs (Kids Integrated Delivery of Service). KIDS programs are preschool/kindergarten aged self contained autism programs. They are located on comprehensive elementary school campuses and run five full days a week with 30 days of extended school year services over the summer (as needed). KIDS Programs also

include typically developing peers. The maximum number of students in a classroom is 8; however, CCSD attempts to keep class size at 6. KIDS programs are staffed with one teacher and two Specialized Programs Teaching Assistants.

KIDS programs use the Creative Curriculum along with A Work In Progress, McEachin et. Al., as the primary curriculum for their students. A KIDS Program looks like a typical preschool kindergarten classroom. They use materials typically seen in a preschool/kindergarten classroom, as well as age appropriate reinforcement. Students participate in individual, small group, and large group activities throughout the school day. Unlike a typical preschool classroom, KIDS programs do not allow for “down time” or free play. Every minute of the day is structured to keep the students engaged.

CCSD currently has 65 primary autism programs (grades 1 & 2) and 57 intermediate autism programs (grades 3, 4, & 5). School aged programs are on comprehensive elementary school campuses and run five full days a week with 20 days of extended school year services in the summer (as needed). The maximum number of students in a classroom is 12; however, CCSD attempts to keep the class size at 8. Primary and Intermediate Autism programs are staffed with one teacher and one Specialized Programs Teaching Assistant.

Primary and Intermediate Programs adjust the CCSD curriculum for academics and use A Work In Progress for other need areas. Primary and Intermediate classrooms look like elementary school classrooms. They use age appropriate materials, modified for ability level, as well as age appropriate reinforcement. Students participate in individual, small group, and large group activities throughout the school day, and are included in general education activities as appropriate. Primary and Intermediate programs do not allow for “down time” or free exploration. However, they do teach independent work skills, stress management, and leisure activities. Every minute of the day is structured to keep the students engaged.

CCSD currently has 28 Middle School autism programs (grades 6, 7, & 8) and 29 High School Programs (grades 9, 10, 11, 12, and ages up to 22). Secondary Programs are located on comprehensive Middle School and High School Campuses and run five full days a week with 20 days of extended school year (as needed). The maximum number of

students in a classroom is 12; however, CCSD attempts to keep the class size at 8. Middle School and High School programs are staffed with one teacher and one Specialized Programs Teaching Assistant.

Middle School and High School Programs use a functional skills curriculum, or Community Based Instruction curriculum in conjunction with A Work In Progress for students not able to access the general education curriculum. Middle School and High School programs may look like a typical classroom, resource center, or a job site, depending on the needs of the students. Students participate in general education classes as appropriate. They use age appropriate materials adjusted for ability level and well as age appropriate reinforcers. These programs also allow for little down time and teach independent work skills, leisure activities and stress management.

CCSD also has Special Schools that address the needs of students who are not successful on a comprehensive campus.

Some students also receive intensive intervention services beyond the school day by a private provider. These providers address learning to learn behaviors as well as social skills and communication skills, with the goal to transition to a school based program only. Students who receive intensive intervention services beyond the school day lack the learning to learn skills necessary to access education.

3. *Intensive Intervention Services (Home Programs)*

As part of its school based programs, the Clark County School District consistent with research and best practices,⁹ provides students with ASD a supplemental support service in the form of Intensive Intervention Services (IIS) beyond the school day. IIS is designed to be a temporary support, which address basic contingencies of reinforcement to teach learning to learn skills, environmental awareness skills and communicative intent. In some instances, IIS is used to address social-behavioral skills (e.g., frustration tolerance, stress management or reduction of self-stimulatory behaviors). Finally, IIS is not a substitute for classroom attendance and programming, nor is it considered the

⁹ National Research Council, *Educating Children With Autism*, Washington, D.C. National Academy Press, 2001.

provision of FAPE. Instead it is designed to address targeted goals in the student's IEP and enable the student with ASD to receive their educational services in a school-based program. Full participation and attendance in the district's school based program is required.

4. *Establishment of a District Protocol*

CCSD established a protocol setting forth guidelines for IEP teams when considering whether individual students with ASD should be provided with IIS. CCSD implemented IIS in 2001. IIS are not automatic and a referral must be initiated by either parents or school district personnel. Eligibility for the service is determined by the student's IEP team following an assessment and recommendation(s) from CCSD's Low Incidence Department's Intensive Intervention Deliberation Team. Subject to the applicable requirements of the IDEA, all students with ASD are required to attend a full-day CCSD program in order to receive IIS.

a. Annual Protocol Review and Update

Annually, CCSD's Low Incidence Team meets with the district's Compliance Officer, a Special Education Area Director, and members from the administration to review and make changes to the IIS Protocol to make sure it continues to remain best practices; that adhere to federal and state law requirements, and; to make sure that the procedures are clear and that the process is transparent to parents.

b. Solicitation of Staff and Parent Input

CCSD believes in creating lasting partnerships and collaborates closely with representatives from our local autism parent organization (e.g., Families for Early Autism Treatment (F.E.A.T.)) discuss and resolve service issues impacting students with ASD. In addition to meeting periodically with our local F.E.A.T. organization, whenever any changes are made to the IIS Protocol, CCSD solicits parental input on behalf of families of children with ASD. Finally, as part of the collaboration process, at the beginning of each school year, every parent of a child with ASD is given a copy of the protocol.

5. *Staff Training*

Training is a vital part in understanding ASD, implementation of appropriate methodologies and treatments, and programs for students with ASD. In an effort to ensure that District teachers are familiar with the research concerning best practices for students with ASD including ABA and Discreet Trial teaching training is provided district-wide to administration, regular and special education teachers, and area support staff, including school psychologists, speech pathologists, among others. We provide direct hands-on training and didactic (lecture) training on how to work with students with ASD. In addition, more narrow focused training is provided in advanced behavior, social skills, and data collection and analysis.

6. *Support Services*

The Low Incidence Disabilities Team's (LIDT) Autism Area functions as a support for the school based programs. LIDT is comprised of highly trained staff with thousands of hours of experience working with students with ASD. LIDT provides a variety of services to CCSD staff and parents of students with autism.