



May 8, 2026

To Whom It May Concern,

The Michigan Behavior Analysis Providers Association (MIBAP) writes to express significant concerns regarding the reasoning and implications of the Administrative Law Judge's decision in the *Bay-Arenac* case.

The conclusion reached in this case appears to rest on a critical, yet flawed, premise—that allowing Applied Behavior Analysis (ABA) services during the school day inherently reduces a student's access to education and therefore constitutes a denial of a Free Appropriate Public Education (FAPE). This assumption is inconsistent with federal disability law, state guidance in Michigan, and interagency practices across multiple states.

Under the Individuals with Disabilities Education Act (IDEA), FAPE is not defined by the number of minutes a student is physically present in a classroom, but by whether the educational program is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances (*Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. 386 (2017)). A student who is present for a full school day but is unable to regulate behavior, attend to instruction, communicate needs, or safely participate in learning activities is not meaningfully accessing education, even if "seat time" requirements are met. [\[ieplearning.com\]](http://ieplearning.com)

Both federal regulations and Michigan guidance recognize that behavioral and therapeutic supports may be essential for educational access. IDEA expressly contemplates the provision of related services and supplementary aids necessary for meaningful participation, delivered according to the student's individualized needs rather than categorical restrictions (34 C.F.R. § 300.101; § 300.320). [\[sites.ed.gov\]](http://sites.ed.gov), [\[ecfr.gov\]](http://ecfr.gov)

When medically necessary, ABA services frequently function as the mechanism through which educational access becomes possible, rather than as a substitute for instruction. Michigan's own interagency guidance developed collaboratively by the Michigan Department of Education (MDE) and the Michigan Department of Health and Human Services (MDHHS) explicitly recognizes that ABA services may be delivered during the school day when coordinated with, and not supplanting, educational services. [\[michigan.gov\]](http://michigan.gov), [\[gvsu.edu\]](http://gvsu.edu)

The ruling also creates a false dichotomy between "educational" and "medical" services by suggesting that ABA necessarily supplants education. Federal and state authorities have

repeatedly rejected this framing. Michigan guidance makes clear that medical ABA services are intended to supplement—not replace—education, and that coordination across systems is both lawful and expected. Similar interagency guidance exists in other states, including Virginia and Louisiana, where state law and education department policies expressly permit access to medically necessary ABA services during school hours when educational access is preserved. [\[michigan.gov\]](#) [\[doe.louisiana.gov\]](#)

The decision also appears to rely on a categorical restriction based on the time of day in which services are delivered. This approach is inconsistent with federal disability law, which requires individualized, case-by-case determinations. IDEA expressly prohibits educational determinations based on administrative convenience and mandates individualized analysis by the IEP team (34 C.F.R. § 300.320–324). [\[ieplearning.com\]](#)

Moreover, guidance and case law under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act have increasingly emphasized that blanket denials based on location or scheduling may violate civil rights protections, even where a district asserts that FAPE has been offered. In *A.J.T. v. Osseo Area Schools* (2025), the U.S. Supreme Court clarified that obligations under the ADA and Section 504 are independent of IDEA, and schools may be liable for denying reasonable modifications necessary for access, regardless of FAPE determinations. [\[supremecourt.gov\]](#), [\[thrunlaw.com\]](#)

This distinction is further reinforced by the U.S. Supreme Court’s decision in *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017), which clarified that disability discrimination claims under the ADA and Section 504 are analytically distinct from IDEA claims concerning FAPE. In *Fry*, the Court emphasized that the central inquiry is whether the alleged denial concerns equal access to programs and services, rather than solely the adequacy of special education programming. The decision underscores that schools must independently evaluate whether policies or practices unnecessarily exclude or burden students with disabilities, even where the district believes it has satisfied IDEA obligations. This framework is directly relevant where students are denied access to medically necessary ABA services during school hours based on categorical scheduling restrictions rather than individualized consideration. [\[supremecourt.gov\]](#)

This distinction is critical. As recognized in both *Fry v. Napoleon Community Schools* and *A.J.T. v. Osseo Area Schools*, even where a school district believes it has satisfied IDEA requirements, it must separately ensure compliance with ADA and Section 504 obligations, including the provision of reasonable modifications and nondiscriminatory access to programs and services. Denying access to medically necessary treatment solely because it occurs during the school day risks violating these independent civil rights protections. [\[congress.gov\]](#), [\[spedlawspotlight.com\]](#)

The civil rights rationale cited in the ruling likewise warrants closer scrutiny. Civil rights law requires equal access, not identical experiences. For students with disabilities, equitable access often necessitates additional or different supports. Denying ABA services that are necessary for a student’s functional participation may itself constitute discriminatory exclusion. Federal guidance and recent case law caution against policies that prioritize uniform scheduling over individualized accessibility. [\[spedlawspotlight.com\]](#), [\[marshalldennehey.com\]](#)

A more legally sound and educationally appropriate standard would focus on whether ABA services:

1. Address documented medical necessity,
2. Support the student's ability to access and benefit from education, and
3. Are coordinated in a manner that avoids unnecessary replacement of core academic instruction.

When these conditions are met, the legally relevant inquiry is not when services occur, but whether they are effective, individualized, and reasonably integrated.

In conclusion, the *Bay-Arenac* decision elevates a rigid interpretation of school-day access over the individualized, functional standards required by IDEA, the ADA, and Section 504. Denying medically necessary ABA services during the school day—without individualized analysis—risks denying, rather than protecting, FAPE by removing the very supports that enable educational access.

MIBAP welcomes the opportunity to further discuss these concerns and collaborate on approaches that ensure compliance with federal law while promoting meaningful educational access for students with complex needs. We are available to provide additional information or participate in continued dialogue.

Regards,



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