

# Insurance-Covered ABA in Michigan Schools **DRAFT**

## MORE is MORE, not Either / Or

### PURPOSE

In 2012, the Michigan legislature enacted laws, collectively known as the Autism Insurance Benefit (AIB), that provided private and public insurance coverage for ABA (Applied Behavior Analysis) for children with Autism Spectrum Disorder (ASD). To assist schools in supporting the implementation of these entitlements in relation to the entitlements in IDEA (Individuals with Disability Education Act), a guidance Document was created by the MAASE (Michigan Association of Administrators of Special Education) Autism Spectrum Disorder (ASD) Community of Practice (CoP). In 2017, a 2nd Edition of the [Individualized Family Service Plan and Individualized Education Program Considerations for Students with ASD Receiving Insurance-based Treatment / Intervention](#) was published to provide additional guidance on collaboration and coordination of all entitled benefits.

To enhance **collaborative and coordination** and to alleviate any continued confusions related to the provision of insurance-covered (Autism Insurance Benefit) ABA services in Michigan schools, this summary is intended to provide a brief review and considerations for the provision of school-based and insurance-entitled ABA services.

### WHAT IS ABA?

One of the most widely accepted definitions of ABA comes from Cooper, Heron, and Heward in their book *Applied Behavior Analysis* (2020). They define ABA as *“the science in which tactics derived from the principles of behavior are applied to improve socially significant behavior and experimentation is used to identify the variables responsible for the behavior change.”*

There are, however, variations in definitions that can be found in research articles, books and documents related to ABA. In addition, ABA has been defined according to the following constructs:

- **ABA as a Science:** According to MDHHS (Michigan Department of Health and Human Services) in their [Medicaid Behavioral Health Treatment: Applied Behavior Analysis Frequently Asked Questions](#) (2019, pg 3), the science of ABA is defined as “the science of analyzing socially significant behavior and producing behavior change by modifying related environmental variables.”
- **ABA as a Service:** MDHHS goes on in the above document to describe ABA as services that “may be used to address issues relevant to those with Autism Spectrum Disorder including, but not limited to, language acquisition, peer interactions and social skills, following routines, self-help and daily living skills, and reducing challenging behaviors.” Further, Michigan’s licensure law for BCBAs (Board Certified Behavior Analysts), [Public Act \(PA\) 403](#), ABA services means services that are included in the **practice** of ABA.
- **ABA as a Practice:** The practice of ABA as outlined in Michigan’s BCBA licensure law means “the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior” and includes all of the following:
  - Functional (Behavioral) Assessment and Analysis (FBA / FA);
  - Use of environmental factors, motivating operations, antecedent stimuli, or positive reinforcement;
  - Use of strategies to assist individuals in developing new behaviors, increasing or decreasing existing behaviors, and emitting behaviors under specific environmental conditions; and
  - Scientific-based ABA **Interventions**
- **ABA as an Intervention:** A list of interventions based on the principles of learning theory and behavior that have been evaluated using reliable and objective measurement and experiments are outlined by the [Association for Science in Autism Treatment](#) (ASAT).

In Michigan, according to [Public Act \(PA\) 403](#), an individual cannot engage in the practice of ABA unless they hold a credential from the [BACB](#) (Behavior Analyst Certification Board) and are licensed under the Act. However, the Act clarifies that it does not prevent an individual who holds a license, certificate, registration, or other authorization from the state (e.g. school psychologist, school social worker, teacher) that authorizes the individual to perform 1 or more of the services included in the practice of ABA from engaging in that practice so long as the individual does not represent his/herself as a behavior analyst and does not perform services that are not within the scope of practice or that he/she is not qualified to perform by education, training or experience.

## SCHOOL ENTITLEMENTS

- **Purpose of School / Compulsory School Law:** The purpose of school in [Michigan](#) is to prepare students to meet their highest potential of self-determined academic and personal goals. To achieve this outcome, the law in Michigan governing [compulsory school attendance](#) requires a parent (or legal guardian) to send their children ages 6-18 to school during the entire school year. Parents have the option to send their children to public school, a state-approved nonpublic school, or provide education through home schooling. Public schools are required to provide a minimum of 180 days of instruction and 1098 hours ([MCL 388.1701](#)). Students with disabilities have the right to attend school for the same length of time each school day as non-disabled students under IDEA protections as confirmed in a recent Michigan Department of Education (MDE) Office of Special Education (OSE) Guidance on [Shortened School Day](#).
- **Eligibility for Special Education Services:** Not all students who have a disability are eligible for special education services. Following a comprehensive evaluation by a MET (Multidisciplinary Evaluation Team), eligibility is determined by three factors:
  1. The student must meet the specific [MARSE](#) (Michigan Administrative Rules for Special Education) eligibility **criteria** for 1 of 13 IDEA disability categories, including ASD;
  2. The identified disability must **impact** the student's access and progress in general education; and
  3. The impact must be great enough that the student has a **need** for special education (i.e. specialized instruction & related services).
- **FAPE in the LRE:** At its core, FAPE is an equitable educational right, guaranteed by IDEA, for all children with disabilities, regardless of the disability severity. A district's offer of FAPE is an IEP (Individualized Education Program) that outlines the special education and related services needed to address a student's unique disability-related needs so they can appropriately access and progress in general education. In a recent landmark case, the U.S. Supreme Court also ruled that school districts must offer an IEP that is reasonably calculated to enable students to make progress on appropriately ambitious goals appropriate in light of the student's unique circumstances. ([Endrew F.](#)).

Further, students with disabilities have the right to access their education in the LRE (Least Restrictive Environment) which means that to the maximum extent appropriate, they have the right to be educated with children who are not disabled. As such, they have the right to only be removed from general education when the nature and severity of their disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily which includes making progress on appropriately calibrated IEP goals and other learning domain targets (e.g. engagement, independence, social, communication, curriculum). In addition to the legal requirement for LRE, research in recent decades has demonstrated "clear and convincing evidence" that inclusive educational settings for all students with disabilities, including those with extensive support needs (i.e. students with intellectual impairments, ASD & multiple impairments) can confer substantial short and long-term social, academic, and behavioral outcomes and benefits. (Quirk, C., Ryndak, D.L., Taub, D. (2017). Research and Evidence-based Practices to Promote Membership and Learning in General Education for Students with Extensive Support Needs. *Inclusion*, 5 (2), 94-109.)

- **ABA as a Provision of FAPE:** Positive Behavioral Interventions and Supports (PBIS) is a Multi-Tiered System of Support (MTSS) for behavior and is considered an example of ABA ([Horner, R. & Sugai, G.](#)). According to IDEA, PBIS

must be considered for students with IEPs whose behavior impedes his or her own learning or that of others. FBA and the development and implementation of behavior intervention plans, included in the practice of ABA, are also required when a student's IEP Team determines that a student's conduct was a manifestation of his or her disability. Further, there are multiple references in IDEA requiring IEP teams to utilize peer-reviewed research and scientifically-based instructional practices for students with IEPs which would include ABA practices and interventions. Resources on Evidence-Based Practices (EBP) and ABA interventions for students with ASD can be found at [ASAT](#) (Association for Science in Autism Treatment); [AIM](#) (Autism Internet Modules); and [AFIRM](#) (Autism Focused Interventions and Resources Modules).

Given the research support for ABA for students with ASD, ABA-informed IEPs are likely to be the standard. However, methodology, like ABA, may not always be included in the IEP to allow staff flexibility in utilizing instructional practices over the IEP year that are best designed to ensure progress on IEP goals. If, however, ABA is required for the provision of FAPE, ABA practices and interventions must be included in the IEP.

For students with IEPs requiring ABA in the form of a behavior intervention plan or other behavioral supports as part of their FAPE, those supports would be written into the IEP under Supplementary Aids and Services. This could include, but is not limited to:

- ★ Completion of an FBA
- ★ Development of a positive behavior support plan (e.g. PBISP, BIP, PBSP)
- ★ Monitoring / coaching / supporting implementation of a PBIS plan
- ★ Monitoring / coaching / supporting implementation of ABA interventions

For students with IEPs requiring ABA in the form of specialized behavioral instruction from a BCBA or other certified provider (as approved in PA 403) as part of their FAPE, the BCBA or other provider would be written in the IEP as a related service to address specific measurable annual goals / objectives or benchmarks. Example goals might include:

- ★ regulation skills
- ★ self-management skills
- ★ engagement skills
- ★ independence skills
- ★ adaptive skills

- **School-Based Services (SBS):** Since 1993, the State of Michigan has participated in a Federal program called [School-Based Services](#). The program assists school districts by providing partial reimbursement for health-related services that are listed on a student's IEP. SBS beneficiaries are Medicaid-eligible students with an IEP who require medical or behavioral health services identified as medically necessary. Since its inception, this reimbursement process for medically necessary IEP services have included speech and language services, occupational therapy, physical therapy and more.

On October 1, 2019 Medicaid SBS expanded the already covered service providers to include Board-Certified Behavior Analysts (BCBA) and Board Certified Assistant Behavior Analysts (BCaBA). Also added were Certified School Psychologists and School Social Workers (who according to PA 403 may also be appropriate to provide in school ABA services) and Behavior Support Aides. The addition of BCBAs in the Medicaid SBS coverage simply indicates that Medicaid will allow reimbursement for BCBAs if the district is utilizing that provider type in their implementation of behavior supports and ABA and in no way implies a requirement to hire or use these providers.

- **Caring For Students (C4S):** On October 1, 2019, Medicaid SBS (described above) expanded beyond special education to include medically necessary medical and behavioral health services to Medicaid eligible general education students under the [Caring for Students \(C4S\)](#) program. C4S beneficiaries are Medicaid-eligible general education students who require medical or behavioral health services identified as medically necessary including those identified in a Section 504 accommodation plan.

- **Homebound Services:** In the [Providing Homebound and Hospitalized Educational Services for Michigan Public School Pupils](#), MDE outlines homebound and hospitalized services for students with medical conditions that prevent them from *physically* attending school during the school year for a period longer than 5 school days. The certification of this need must be by a physician who is either an M.D. or a D.O. or a licensed physician's assistant (psychologists, chiropractors, or other professionals may not certify a person as eligible). The school district is required to provide a minimum of two nonconsecutive 60-minute instructional periods per week for pupils with an IEP. It is important to note that the need for homebound services is not the same as medical necessity as it relates to Caring for Students (C4S) nor is it the same as virtual or remote instruction that is occurring at home during the COVID pandemic.
- **ABA in Schools Legal Findings:** To compel schools to implement insurance-covered ABA, a number of briefs have been circulated with examples of case law supporting insurance-covered ABA in schools. In general, these briefs fail to note that the specific cases listed were not decided on the basis of the provision of ABA in schools per se, but rather on other substantive or procedural errors.

According to Stevenson & Correa (2019), schools have not been compelled to provide ABA in schools when their educational methods were evidence-based, the student made progress on IEP goals, and the schools did not commit procedural errors that led to substantive violations. A summary of the most common reasons schools did not prevail in ABA cases include:

- **Inappropriate IEP:** To provide FAPE, schools must develop an IEP that is reasonably calculated to provide educational benefit, and regardless of the methodology in question, may lose in cases where this cannot be demonstrated. For example, in the case of [School Bd of Henrico County VA v. R T](#), (E.D. VA 2006), parents sought private ABA school reimbursement arguing the TEACCH (Treatment and Education of Autistic and Related Communication Handicapped Children) method used by the school was inappropriate and did not confer educational benefit. The courts agreed but not because the student had a right to ABA but because TEACCH was inappropriate for the student based on identified goals.
- **Predetermination:** Predetermination is another reason schools have not prevailed in ABA cases. Predetermination violates the FAPE mandate because it does not take into account the unique needs of the student and ensure parents have meaningful input into the IEP. The most well known example is [Deal v. Hamilton County TN Board of Ed](#) (6th Cir. 2004) in which parents sought reimbursement for ABA when the school would not provide it. Because the school had an “unofficial policy” of refusing to provide 1:1 ABA without consideration of the unique needs of students, the school did not prevail in this case.
- **Agreed Upon Services not Provided:** In one case, [Sumter County school Dist. 17 v Heffernan ex rel. TH](#) (2010/2011), the school agreed to provide ABA services, but did not and the student failed to make progress.

## AUTISM INSURANCE BENEFIT (AIB) ENTITLEMENTS

- **Legislation:** Michigan's [Autism Insurance Reform](#) legislation went into effect on October 15, 2012. For-profit, commercial, HMO, and non-profit health insurance companies regulated by the state of Michigan are mandated to provide an autism benefit to its insured members covering services related to the diagnosis and treatment of ASD through 18 years of age. Self-funded insurance plans are regulated by the Employee Retirement Income Security Act (ERISA) and are not mandated to provide autism coverage. Additional information can be found at the Autism Alliance of Michigan's [Autism Insurance Benefit](#) website.
- **Medical Necessity:** Operational definitions of Medical Necessity have been described in a variety of MDHHS documents and refers to eligibility for services decisions and recommendations.

- [Medicaid Provider Manual](#) (Jan 2021). Section 18: Behavioral Health Treatment Services / Applied Behavior Analysis, Definitions (pg 5): “Determination that a specific service is medically (clinically) appropriate, necessary to meet needs, consistent with the person’s diagnosis, symptomatology and functional impairments, is the most cost-effective option in the least restrictive environment, and is consistent with clinical standards of care. Medical necessity of a service shall be documented in the individual plan of services.
- Section 18.4 Medical Necessity Criteria (pg. 157):
- “Medical necessity and recommendation for BHT services is determined by a physician or other licensed practitioner working within their scope of practice under state law.”
  - The child must demonstrate substantial functional impairment in social communication, patterns of behavior, and social interactions and require BHT services to address identified areas.
- [MDHHS Medicaid ABA Update](#) (10-3-19, pg 2):
    - “Medical necessity and recommendation for ABA services is determined by a physician or other qualified licensed practitioner working within their scope of practice under state law.
    - The child must demonstrate substantial functional impairments in the areas of social communication and social interaction, and restricted, repetitive, and stereotypical patterns of behavior across multiple environments as outlined in the DSM-5.”
  - [MDHHS Medicaid Autism Spectrum Disorder Screening, Evaluation and Treatment Recommendation Best Practice Guidelines](#) (Oct 2019, pg. 17): “To meet medical necessity criteria, the individual must demonstrate substantial functional impairment in social communication, patterns of behavior, and social interaction. Substantial impact could be observed in the individual’s adaptive skills, such as social, educational/occupational, and physical functioning.”
  - [Autism Spectrum Disorder Assessment: Considerations for Age and Functional Skill Level](#) (Oct 2018, pg. 7): “Following establishment of the diagnosis of ASD, the clinician next must determine the medical necessity of ABA based on a full understanding of the child’s symptom profile. Not all individuals with ASD require ABA intervention. In fact, for some, an ABA treatment approach may not target the symptoms most interfering with the child’s functioning. The evaluation must support the clinical decision that ABA therapy will achieve functional gains beyond those expected as a result of less intensive or other evidence-based intervention or general growth and maturation. There is clear evidence that the symptoms of the ASD are current and resulting in substantial impairment in daily functioning.”
  - For School-Based Services (SBS): [Medicaid Provider Manual](#) (SBS Section 1.3, pg 1753): A Medicaid service provided by an ISD is determined medically necessary for a student with an IEP when the following criteria are met:
    - Addresses a medical or mental disability;
    - Needed to attain or retain the capability for normal activity, independence or self-care;
    - Is included in the student’s IEP
    - Is ordered, in writing, by a physician or other licensed practitioner acting within the scope of their practice
  - For Caring for Student (C4S): [MSA Bulletin 19-26](#) (10/2019; pg 7): Medicaid services provided by an ISD are determined to be medically necessary for general education students when the following criteria are met:
    - the services are evidence-based and provided within generally accepted standards of medical practice to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms; and
    - the services are ordered, in writing, by a physician or other qualified licensed practitioner acting within the scope of their practice
  - **Supplement vs. Supplant:** Autism Insurance Benefit (AIB) ABA services are intended to supplement, not supplant, services offered by other agencies. The term “supplant” has two meanings:

1. **Timewise:** AIB ABA services are intended to be an add on to other services so that time is not borrowed from one service to provide another. This ensures the child receives all entitled services (i.e. More is More not Either Or);
2. **Content:** Although AIB ABA services may serve to reinforce skills taught through other services, they are not intended to be duplicative of other services.

The following documents outline the requirements of supplement, not supplant:

- [BACB/CASP Practice Guidelines](#), 2nd Edition (2020) Section 3 -- Considerations, pg 5 (These are the national guidelines for the implementation of insurance-covered ABA services).
  - “Coverage of ABA treatment for ASD by healthcare funders should not supplant responsibilities of educational entities;
  - Specification of ABA in an educational program should not supplant ABA coverage by healthcare funders.”
- [Medicaid Provider Manual](#), Oct 2020, Section: Behavioral Health and Intellectual and Developmental Disability Supports and Services, pg. 161-62: “These supports may serve to reinforce skills or lessons taught in school, therapy, or other settings, but are not intended to supplant services provided in school or other settings, or to be provided when the child would typically be in school but for the parent’s/guardian’s choice to home-school their child.”
- [Medicaid Behavioral Health Treatment: ABA FAQ](#), 2019, pg 11-12
  - “Be mindful that the IPOS may only support, not supplant, IEP services.”
  - “Typically, ABA services are scheduled before and after school or on weekends, as to not disrupt inclusion in the school environment. There are rare cases that may need further evaluation by both systems (schools and CMH) of what is medically needed while ensuring the child has access to a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE) and does not duplicate services.”
  - “ABA services treatment and public education should be coordinated with other public resources efficiently to maximize the outcomes of each individual served. Assures that the child receives both.”
  - “Identify providers with flexible hours to ensure a variety of scheduling options for services before and after school, on weekends, and over school breaks to ensure children have access to their full entitlements under both IDEA and Medicaid.”
- [Medicaid Behavioral Health Treatment: ABA FAQ](#) (2/5/2019) (pg 12): “Typically ABA services are scheduled before and after school or on weekends, as to not disrupt inclusion in the school environment. There are rare cases that may need further evaluation by both systems (schools and CMH) of what is medically needed while ensuring the child has access to a FAPE in the LRE and does not duplicate services. ABA services and school should be coordinated to ensure access to both behavioral health treatment services AND educational entitlement.”

## AUTISM INSURANCE BENEFIT (AIB) & SCHOOL-BASED ABA SERVICES SUMMARY & COORDINATION

Although many of the same principles of behavior or ABA components may be identified in both IEPs and AIB behavioral health treatment plans, these plans differ in their federal obligations and standards, scopes of practice, approved service providers, and environment of delivery ([Medicaid Behavioral Health Treatment: ABA FAQ](#), 2/5/2019, pg 14).

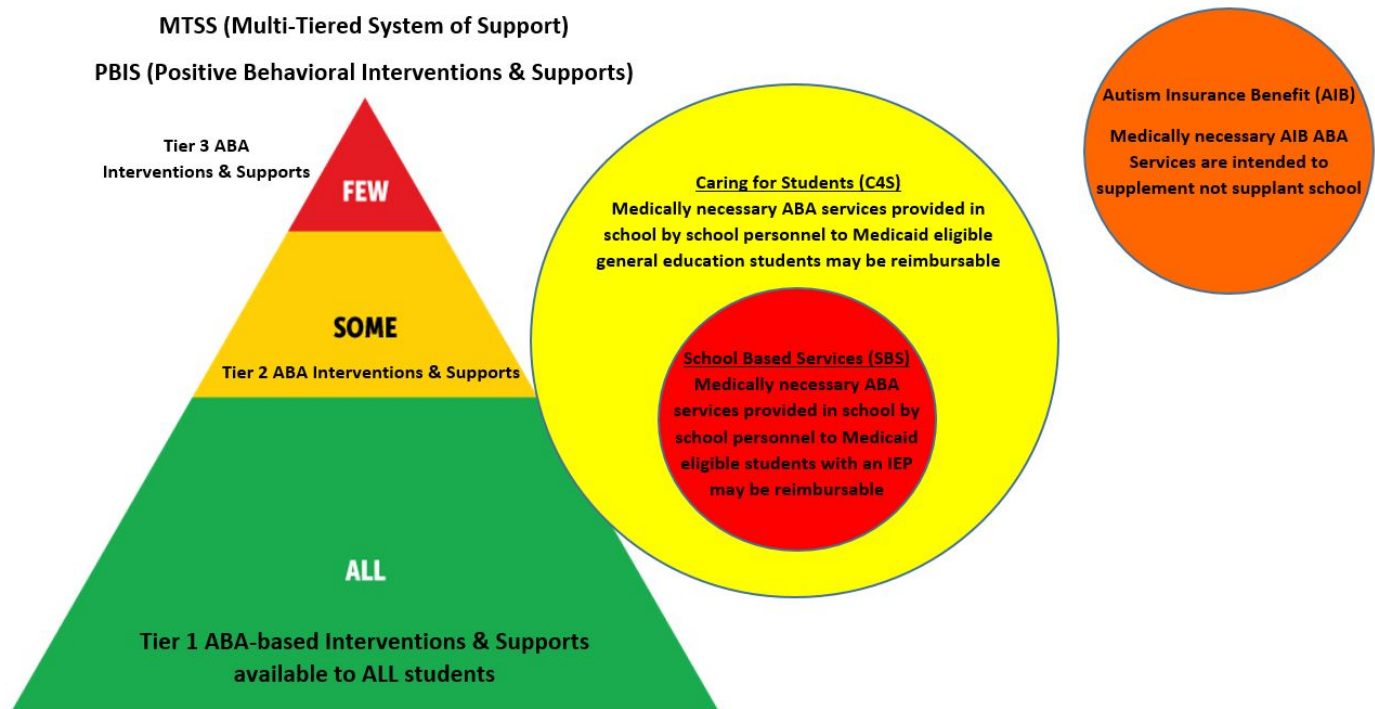
- **School / IEP:**
  - **Eligibility Decisions:**
    - Meet MARSE criteria for identified disability
    - Disability impacts access and progress in general education
    - Impact is so great student needs specialized instruction and related services



- Scope of Practice: Special education and related services to address the child's unique disability-related needs and ensure access and progress in general education (FAPE in the LRE)
- Service Providers: Teachers (general and special education), related service providers (e.g. school psych, school social workers, BCBA), teacher assistants / paraprofessionals
- Environment of Delivery: School
- **AIB ABA Services / Behavioral Health Treatment:**
  - Eligibility Decisions: Meet identified criteria & demonstrate Medical Necessity
  - Scope of Practice: ABA services to prevent, diagnose or treat a condition or its symptoms to achieve socially significant behavioral change
  - Service Providers: BCBA, BCaBA or other authorized service providers
  - Environment of Delivery: Home, clinic, community

Although ABA services may be provided and likely are for students with ASD during the school day by school personnel and also may be reimbursed by Medicaid through the SBS or C4S programs, ***Autism Insurance Benefit ABA services are designed to supplement not supplant ABA services provided in school during the school day. This is to ensure that agencies maximize entitled services for children and thus maximize outcomes*** (see ABA in Schools Graphic below). Though the term “medical necessity” has been used as a reason for supplanting school services, it is clear by the available definitions, that the term is an eligibility determination (much like “impact” and “need” are eligibility decisions for special education services) and not intended to imply the child has a medical condition requiring Autism Insurance Benefit (AIB) ABA services to be required within the school day and environment.

## ABA in Schools Graphic



Autism Insurance Benefit (AIB) ABA services staff and IEP teams are **strongly encouraged to collaborate and more importantly coordinate ABA services to ensure maximum outcomes for children and families**. The [Individualized Family Service Plan and Individualized Education Program Considerations for Students with ASD Receiving Insurance-based Treatment / Intervention](#) (2nd Edition) outlines a variety of ways to coordinate and collaborate to ensure seamless access to all entitled services for children and families.

## FAQ CONSIDERATIONS

- **What if there is a doctor's note that says AIB ABA must be provided during the school day?** As noted above, Autism Insurance Benefit ABA services are intended to supplement not supplant schools. Further, the only persons authorized and more importantly accountable for the provision of FAPE is the IEP team. If the IEP team determines that FAPE for a child includes the provision of ABA, the district must pay for and provide it.
- **What about students on a reduced school day schedule?** Autism Insurance Benefit (AIB) ABA services are designed to supplement school. If the IEP team has determined that FAPE for a child is less than a full school day, AIB ABA services may be able to be provided during the time the child is not attending school. However, IEP teams must follow guidance from the Michigan Department of Education (MDE) Office of Special Education (OSE) on [Shortened School Day](#) and [Pupil Accounting Rules](#) (pg. 5-H-1) before determining FAPE for a child is less than a full school day.
- **What about students in remote learning settings?** According to DHHS in their [Guidance for Coordination of Behavioral Health Medicaid Waiver Services and Educational Distance Learning in the COVID-19 Context](#), Communication #20-13, medicaid-funded behavioral health services (e.g. Autism Insurance Benefit ABA services) can and should be provided during the school day if they do not interfere with the child's virtual school time (e.g. synchronous school hours), if medically necessary, and if not duplicative of any in-home behavioral supports or services being provided by the school during this time. Such services should be coordinated with school personnel accordingly.

## ADDITIONAL RESOURCES & REFERENCES

Stevenson, B. & Correa, V. (2019). Applied Behavior Analysis, Students with Autism, and the Requirement to Provide a Free Appropriate Public Education. *Journal of Disability Policy Studies*, 29(4), 206-215.

[MTSS Endrew Summary](#)

[Expanding Michigan's School-Based Medicaid Program](#)