

	<p>What You Need to Know About Autism Litigation</p> <p>Jason H. Ballum Patrick T. Andriano Reed Smith LLP Riverfront Plaza, West Tower 901 East Byrd Street, Suite 1700 Richmond, VA 23219</p>

	<p>Autism Litigation Case Law</p>

	<p><i>Hartmann v. Loudoun County Bd. of Educ.</i>, 118 F.3d 996, 26 IDELR 167 (4th Cir. 1997)</p>
	<ul style="list-style-type: none"> ■ Fourth Circuit held over the parents' objections that a regular education placement was not appropriate. ■ Student could not make progress in regular education even with the one-to-one aide. ■ Fourth Circuit chastised the district court for substituting its judgment for that of school officials and the hearing officers. ■ Fourth Circuit considered the disruption caused by the student in general education.

	<p><i>G v. Fort Bragg Dependent Schs.</i>, 324 F.3d 240, 38 IDELR 206 (4th Cir. 2003)</p>
	<ul style="list-style-type: none"> ■ The parents kept G home and provided Lovaas services to him, and he made significant progress. ■ Where a parent requested a particular methodology, the school system need not compare the qualifications of its staff with that of the parents' chosen private providers. ■ Rather, the division had to show that its staff were trained and qualified to implement the student's educational program.

	<p><i>Deal ex. rel. Deal v. Hamilton County Board of Education</i>, 392 F.3d 840 (6th Cir. 2004, cert. denied, 546 U.S. 936 (2005))</p>
	<ul style="list-style-type: none"> ■ May 1998 - parents requested that the district fund their 40-hour per week home-based program of ABA methodology and year-round speech therapy.

	<ul style="list-style-type: none"> ■ In October 1998, a 95 page long IEP was developed: <ul style="list-style-type: none"> – 35 hours per week of special education. – Physical therapy and speech therapy. – Many annual goals. ■ Parents continued to request ABA program.

	<ul style="list-style-type: none"> ■ August 1999, the district proposed an IEP: <ul style="list-style-type: none"> – Continued attendance in CDC; – Participation in a regular kindergarten class three times per week for 15 minutes plus lunch; – A trained classroom assistant;

	<ul style="list-style-type: none"> – The use of a variety of instructional methodologies (an “eclectic” approach). – Speech therapy; – Occupational therapy; and – Physical therapy. ■ Parents rejected the IEP and placed the student in a private preschool.

	<ul style="list-style-type: none"> ■ Parents challenged the district’s IEP in a due process hearing and prevailed. ■ Sixth Circuit decided in favor of the parents on some issues. ■ Sixth Circuit determined that the school district had deprived the parents of meaningful participation in the IEP process by predetermining not to offer the student intensive ABA services.

	<ul style="list-style-type: none"> ■ School division had an unofficial policy of refusing to provide one-to-one ABA programs because it had previously invested in another educational methodology. ■ On remand, the district court concluded that the school district’s IEP was reasonably calculated to provide FAPE. ■ Substantial evidence presented regarding the training and expertise of the school district’s staff.

	<p><i>County School Board of Henrico County v. Z.P. by R.P., 399 F.3d 298 (4th Cir. 2005)</i></p>
	<ul style="list-style-type: none"> ■ Hearing officer concluded that the proposed IEP was inappropriate. ■ Ordered the school board to fund the private placement. ■ Fourth Circuit concluded that the district court erred by failing to treat the hearing officer’s findings as presumptively correct. ■ Remanded with instructions to reconsider the appropriateness of the IEP.

	<p><i>County School Board of Henrico v. Z.P., et al., CA 3:03CV396 (E.D. Va. Oct., 2005)</i></p>
	<ul style="list-style-type: none"> ■ On remand, the court determined that the IEP was reasonably calculated to provide educational benefit. ■ Court noted that the TEACCH methodology used by the school board has been found by a number of courts to be an appropriate educational method. ■ There is no consensus that one-on-one ABA therapy is the only effective method.

	<p><i>County School Board of Henrico County, Virginia, v. R.T., 433 F. Supp.2d 657 (E.D. Va. 2006) and 433 F. Supp. 692 (2006)</i></p>
	<ul style="list-style-type: none"> ■ Henrico program was based on the TEACCH model. ■ Parents applied to the Faison School because the school used the ABA model. ■ District court held that there was a "window of opportunity" to teach students with autism some linguistic skills and that the window closes between the ages of six and eight.

	<ul style="list-style-type: none"> ■ Although it made no ruling that TEACCH was not appropriate in general, the court concluded that TEACCH was only effective for teaching some skills but not effective for teaching social skills and language to children with autism. ■ ABA is widely researched and with six hours daily of year-round instruction could allow a student to reach normal grade level.

	<p><i>J.P. ex rel. Peterson v. County Sch. Bd. of Hanover County, 516 F.3d 254 (4th Cir. 2008)</i></p>
	<ul style="list-style-type: none"> ■ Hanover developed an IEP which called for a public school placement. ■ Agreed to provide some ABA services: <ul style="list-style-type: none"> - A one-to-one aide; - A self-contained placement; and - The use of some discrete trials when determined appropriate by the staff.

	<ul style="list-style-type: none"> ■ The parents concluded that J.P. made no progress in the public school program. ■ Parents enrolled the student in the Dominion School, a private school using the ABA approach. ■ Hearing officer found in favor of the school division.

	<ul style="list-style-type: none"> ■ Federal district court took additional evidence, which included evidence from the Dominion School personnel that the student had made good progress. ■ District court reversed the hearing officer's decision and found in favor of the parents.

	<ul style="list-style-type: none"> ■ Fourth Circuit vacated the district court's judgment and remanded the case with instructions that the district court reconsider the question of the appropriateness of Hanover's proposed IEP.

	<p>Practical Suggestions for School Boards</p>

	<p>Autism Issues: Programs</p>
	<ul style="list-style-type: none"> ■ Provide Comprehensive Autism Programs <ul style="list-style-type: none"> – Full day preschool programs should be an option. – Be able to explain the methodologies which are utilized. – Collect data frequently in order to show progress.

	<p>Autism Issues: Staff Training</p>
	<ul style="list-style-type: none"> ■ Staff often do not feel that they have the expertise even though properly endorsed. <ul style="list-style-type: none"> – No endorsement in autism. ■ Staff feel like they have no training or specific coursework in autism. ■ Ask staff if they feel adequately trained in autism, and if not, what skills they need to develop. ■ Provide the needed training.

	<p>Autism Issues: Staff Training</p>
	<ul style="list-style-type: none"> ■ Autism Issues: Staff Training <ul style="list-style-type: none"> – Staff must feel confident about their ability to work with children with autism. – Staff must express that confidence to parents. – Public relations and staff confidence is very important.

	<p>Autism Issues: Staff Training</p>
	<ul style="list-style-type: none"> ■ Provide on-going training and support throughout the year and year-to-year. ■ The investment in training will pay off in staff confidence. ■ Create certificates to document the training and place in personnel files.

	<p>Autism Issues: ABA</p>
	<ul style="list-style-type: none"> ■ Understand ABA. ■ Consider having personnel trained and certified in ABA programs. ■ Incorporate appropriate aspects of ABA. ■ Have the experts in house who can say they know ABA and that it is or is not required.

	Autism Issues: Data Collection
	<ul style="list-style-type: none"> ■ Need to have someone capable of collecting data and interpreting data. ■ There are huge data collections issues. <ul style="list-style-type: none"> – Single biggest problem for school divisions. ■ Have a plan: frequency of data collection, how is data documented, how is data maintained?

	Autism Issues: Communication
	<ul style="list-style-type: none"> ■ Communicate frequently with the parents regarding progress. <ul style="list-style-type: none"> – Why can't public schools brag about progress? – Private schools do a good job about bragging. ■ Use outside consultants who are experts in autism and central office staff to observe. <ul style="list-style-type: none"> – Not a big proponent of outside experts but this area may be an exception.

	Autism Issues
	<ul style="list-style-type: none"> ■ Administrators need to be supportive of their autism staff and to attend IEP and other meetings. ■ Why do we allow our autism staff to be bullied by the parents and their experts? ■ Need to protect staff in order to retain them.

	Autism Issues
	<ul style="list-style-type: none"> ■ Programs should be extensively staffed so that data can be collected regarding progress and some ABA may be provided. ■ Continue to develop comprehensive IEPs each year the student is in the private program IF it is likely that a hearing will result.

	The "Four C's" for Success
	<ul style="list-style-type: none"> ■ Comprehensive programs ■ Competent staff ■ Confident staff ■ Collection of data

	THE END