



U.S. Supreme Court Issues Special Education Ruling Addressing FAPE Standards

The Ruling

In a unanimous ruling issued yesterday (March 21, 2017) in the case of *Endrew F. v. Douglas County School District*, the U.S. Supreme Court held that the IDEA's requirement of a Free Appropriate Public Education (FAPE) mandates an educational program that is "appropriately ambitious" in light of the student's circumstances. Such a FAPE-compliant program must do more than provide an educational benefit that is "merely more than de minimus." Rather, it must be reasonably calculated to enable the student to make "appropriate progress" in light of the child's circumstances.

Background

The case involved Andrew F., an autistic student whose parents unilaterally placed him in a private school in fifth grade, after several years of IEPs that carried over the same basic goals and objectives from one year to the next, with little apparent indications of meaningful progress.

The parents' efforts to seek tuition reimbursement from the public school were rejected in a due process hearing and in subsequent appeals on the grounds that the proffered IEP was calculated to confer an "educational benefit [that is] merely ... more than de *minimus*."

"Merely More than a *De Minimus*" Educational Benefit Is Insufficient

In the decision, the Supreme Court vacated the lower court rulings. In rejecting the "more than merely *de minimus*" standard, the Court revisited its 35-year-old decision in *Board of Education v. Rowley*, which had recognized on the facts of that case that FAPE is satisfied by an IEP that is "reasonably calculated to enable the child to receive [some] educational benefits."

IEPs Must Be Reasonably Calculated to Enable "Appropriate Progress"

Education Law

For questions regarding the implications of the *Endrew F.* decision for your school, or regarding special education law matters generally, please contact:



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Clarifying that the “some educational benefits” standard in *Rowley* was not designed to govern “closer cases,” the court modified the standard to require an IEP that is “reasonably calculated to enable the child to *make progress appropriate in light of the child’s circumstances*.” (Emphasis added.)



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The Court declined to set any bright-line rules elaborating on what constitutes “appropriate progress,” as this involves an individualized, “fact-intensive exercise.” However, the Court generally concluded that a FAPE-compliant IEP must be “appropriately ambitious in light of the [student’s] circumstances” and should give the child the chance to meet “challenging objectives.”

Key Takeaway

The standard for establishing a FAPE-compliant IEP has been raised. IEPs must not just be “reasonably calculated to enable the child to receive [some, slightly more than *de minimus*] educational benefits”; rather, they must be “reasonably calculated to enable a child to *make progress appropriate in light of the child’s circumstances*.” What constitutes “appropriate progress” will remain a fact-intensive inquiry, and the precise distance between “more than *de minimus*” and “appropriately ambitious” will be the new battleground in disputed cases.

In the meantime, schools should review existing IEPs for compliance with this newly recognized, higher standard—particularly any IEPs where the goals/objectives have largely been carried over from year to year.

Other Noteworthy Points from the Decision

- FAPE does not require schools to provide educational opportunities that are “equal” to those afforded students without disabilities; such a standard would be “unworkable,” requiring impossible measurements and comparisons.
- The provision of FAPE is not tied to “any particular [educational] outcome.”
- Any review of an IEP must focus on what is “*reasonable*”—not whether a court regards it as “ideal.”
- In reviewing denial of FAPE claims, courts should give deference to the expertise and judgment of school authorities, and must not “substitute their own notions of sound educational policy for those of the school authorities which they review.”

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