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School Law Alert - Supreme Court's New IDEA: IEPs Must Be Calculated To Enable Appropriate Progress

March 23, 2017 | Atlanta | Chicago | Columbus | Dallas | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | New York | South Bend

In *Endrew F. v. Douglas County School District*, the U.S. Supreme Court rendered a decision on March 22 regarding the appropriate level of educational benefit that school districts must confer on children with disabilities to provide them with the free appropriate public education (FAPE) guaranteed by the Individuals with Disabilities Education Act (IDEA).

The IDEA requires public schools to provide a FAPE to all children with disabilities. In 1982, the court issued the landmark *Rowley* decision, which interpreted this requirement to mean that an Individualized Education Program (IEP) must be calculated to provide "some educational benefit." Although the court indicated it was not announcing a universal rule, several lower federal courts applied the Rowley standard to conclude a benefit that is "merely more than *de minimis*" is sufficient, while others have utilized a slightly higher bar.

The current case centered on Endrew F., an autistic fifth grader who was placed in private school after his parents decided his public school education was inadequate. His parents then sued the public school for tuition reimbursement and related expenses. Endrew's parents lost three times before reaching the Supreme Court, as the independent hearing officer, district court, and court of appeals all held that they failed to prove Endrew was denied a FAPE.

Until yesterday, the Supreme Court had not directly addressed what level of benefit was required for an IEP to be deemed "appropriate" under IDEA. This lack of guidance and the resulting split among circuit courts, left many schools wondering what exactly was required. And, the two parties in Endrew's case argued starkly different positions – with the parents interpreting FAPE to mean "equal educational opportunity" and the school arguing that the FAPE requirement was not a substantive requirement at all.

The court decided on a middle-ground approach, holding that the requirement is satisfied when the child's IEP is "appropriately ambitious," provides "the chance to meet challenging objectives," and is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." However, the court declined to establish a bright-line test saying, "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."

Although this decision made clear that a student is entitled to an IEP calculated to provide more than a "de minimis" benefit, lower courts have been tasked with determining what constitutes appropriate progress in light of a student's individual circumstances. Moreover, it is unclear the

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extent to which this decision will impact special education programming, as schools rarely draft an IEP with the goal of providing only a de minimis benefit.

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