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Supreme Court Clarifies FAPE Standard in *Endrew F.* Case: IEPs Must Be Reasonably Calculated to Enable Appropriate Progress in Light of Child's Circumstances

For the first time in nearly 35 years, the Supreme Court of the United States has addressed the legal standard by which courts determine whether a school district has provided a student with a disability a “free appropriate public education” (FAPE) through an individualized education program (IEP) under the Individuals with Disabilities Education Act (IDEA). Specifically, in *Endrew F. v. Douglas County School District RE-1*, No. 15-827 (U.S. March 22, 2017) [https://www.supremecourt.gov/opinions/16pdf/15-827_0pm1.pdf], the Court held in a unanimous opinion authored by Chief Justice John Roberts that, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* at 11 (slip op.).

In the seminal 1982 case, *Rowley v. Board of Education*, 458 U.S. 176 (1982), the Supreme Court addressed the FAPE issue for the first time and held that, in determining whether a school district has provided a student FAPE, a court must inquire first, whether the district has complied with the IDEA’s procedural requirements and second, substantively, whether “the [IEP] developed through the Act’s procures [was] reasonably calculated to enable the child to receive educational benefits.” *Id.* at 206-07. As the Court in *Endrew F.* explained, the application of the FAPE standard in *Rowley* involved a bright young girl with a hearing impairment who was educated in the regular education setting and who was achieving above her peers and was progressing through the grades successfully. In *Endrew F.*, the Court reaffirmed that, in such cases, where a child is “fully integrated in the regular classroom, an IEP typically should...be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Endrew F.*, 15-827 at 12 (internal quotation marks omitted).

At issue in *Endrew F.*, however, was the applicable FAPE standard for students who are not educated in a regular education classroom setting. The student in *Endrew F.* was a child with autism. His parents grew dissatisfied with the IEPs offered by their district and the student’s progress under those IEPs, and ultimately placed the student in a private school for children with autism. The dispute ended up in litigation, and the district court and the Court of Appeals for the Tenth Circuit applied the Circuit’s FAPE standard which interpreted *Rowley* as requiring that an IEP be reasonably calculated only to produce educational benefit that was “merely more than *de minimis*” progress, and ruled for the school district. At the Supreme Court, the

school district urged the Court to affirm the lower courts' rulings in its favor and argued that the IDEA requires only that IEPs provide "some benefit, as opposed to none." *Id.* at 9. The Supreme Court, however, rejected the lower courts' interpretation of and the school district's argument for the FAPE standard and clarified that the IDEA, as "a general standard...requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," which is "markedly more demanding than the 'merely more than de minimis' test". *Id.* at 14-15.

In arriving at the *Endrew F.* FAPE standard, the Court also expressly rejected the parents' proposed standard: that "FAPE is an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." *Id.* at 15. The Court quoted *Rowley's* earlier rejection of similar standard, calling such a standard "entirely unworkable . . . requiring impossible measurements and comparisons." *Id.* (internal quotation marks omitted).

Notably, the Court in *Endrew F.* did not overturn its *Rowley* decision; it merely explained that the standard announced in *Rowley* was based on the facts of a student who was educated in a regular education setting and was progressing smoothly in the general education curriculum. Therefore, in that case, the Court noted, the student's progress clearly demonstrated that the student was receiving adequate benefit. The new standard articulated in *Endrew F.* is meant to be a more generally applicable standard, with the understanding that each case is necessarily fact specific, as students with disabilities each have unique needs and circumstances, and there can be no bright-line rule governing the appropriateness of all FAPE cases.

In addition, the Court reiterated that the IDEA does not "guarantee any particular level of education," and that it "cannot and does not promise any particular educational outcome." *Id.* at 10 (internal quotations marks omitted). Moreover, in the new *Endrew F.* FAPE standard, the Court retained the "reasonably calculated" qualification. The Court explained that the qualification "reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials" based on the specific facts related to a student and informed by school officials' expertise and input from the parents or guardians. *Id.* at 11. The Court further observed that "[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id.*

Finally, the Court reiterated from *Rowley* its admonishment to courts that the "absence of a bright-line rule [for analyzing whether an IEP provides FAPE] should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Id.* at 16. Going even further on the deference owed to schools in the development of an appropriate IEP, the Court explained that such "deference is based on the application of expertise and the exercise of judgment by school authorities. The [IDEA] vests these officials with responsibility for decisions of critical importance to the life of a disabled child," and noted that both parents and school officials should opine through the IEP development process "on the degree of progress a child's IEP should pursue." *Id.*



Although the *Andrew F.* case will be an important case with which school district administrators and special education and related services staff must become familiar, we do not anticipate that this new FAPE standard will have a significant change in the practical, day-to-day development and implementation of IEPs in most cases in Connecticut. First, in our experience, school staff members develop programming and provide services that are appropriate to meet the unique needs of students with disabilities, and do not use a “merely more than *de minimis* progress,” standard. Indeed, school staff use evaluations, student data, and information and input from colleagues and parents/guardians—combined with their experience and professional judgment—to develop educational programs that the team reasonably believes will allow students to make progress based on their abilities and needs. This is what the *Andrew F.* standard requires, and this is what the typical IEP/planning and placement team does on a daily basis. Second, the Supreme Court only reviewed the Tenth Circuit’s “merely more than *de minimis*” FAPE standard, and did not address or reject other circuits’ previous articulations of the *Rowley* standard. The Court of Appeals for the Second Circuit, the federal appellate court that governs Connecticut, has held that “[a] school district fulfills its substantive obligations under the IDEA if it provides an IEP that is likely to produce progress, not regression, and if the IEP affords the student with an opportunity greater than mere trivial advancement,” *A.M. v. N.Y. City Dep’t of Educ.*, 845 F.3d 523, 541 (2d Cir. 2017), and, similar to the qualification in the standard announced by the Supreme Court in *Andrew F.*, the Second Circuit has long held that “a child’s academic progress must be viewed in light of the limitations imposed by the child’s disability,” *Mrs. B., v. Milford Bd. of Educ.*, 103 F.3d 1114, 1121 (2d Cir. 1997).

It is likely that some parents and their attorneys or advocates will attempt to argue that *Andrew F.* is a new, “higher” standard of FAPE than what schools in Connecticut have been providing. Some of these cases will no doubt lead to litigation, and hearing officers and courts will interpret and apply this new standard based on the facts of each case. Going forward, school officials will be better able to defend against such claims by becoming familiar with what the *Andrew F.* standard requires, and, as the Supreme Court suggests, these officials should “be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F.*, 15-827 at 16.

Questions or Assistance:

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