

# A Unanimous Supreme Court Rules in Favor of Higher Educational Standards for Special Education Students

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On March 22, 2017, the U.S. Supreme Court issued a unanimous decision in favor of a heightened standard of education for children with disabilities. In *Endrew F. v. Douglas County School District*, 580 U.S. \_\_\_\_ (2017), the Supreme Court held that "[t]o meet its substantive obligation under the IDEA (Individuals with Disabilities Education Act), a school district must offer an IEP (Individualized Education Program) reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." This decision overrules prior federal precedent which stated that a child's IEP is adequate so long as it is calculated to confer an "educational benefit [that is] merely...more than *de minimis*."

Since the Act's inception, the IDEA has required that every IEP include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general educational curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description of how the child's progress toward meeting" those goals will be gauged. The IEP must also describe the "special education and related services...that will be provided" so that the child may "advance appropriately toward attaining the annual goals" and, when possible, "be involved in and make progress in the general education curriculum."

Despite the long-standing nature of the aforementioned requirements under the IDEA, for years the Supreme Court has declined to establish any one standard for determining the adequacy of educational benefits conferred upon all children covered by the IDEA. While the Court continued to refrain from adopting a bright-line standard in its *Endrew F.* decision, the Court did provide further clarity as to what the standard is not.

## **The Path to the Supreme Court**

The Petitioner in this case is a child with autism named Andrew F., known as "Drew," for the purposes of this litigation, who resides in Colorado. Drew attended school in the Douglas County School District (the "District") from preschool through the fourth grade. Although Drew displayed a number of strengths throughout his academic career in the District, Drew's parents felt as though his IEPs were essentially the same from year-to-year, as the IEPs largely carried over the same goals from one year to the next. By fourth grade, Drew's parents believed his academic and functional progress had stalled and looked to the District to create an IEP for Drew which contained substantially different goals from the prior year's IEP. When the District proposed an IEP for Drew's fifth grade year that closely resembled those from prior years, Drew's parents were unsatisfied. As a result, Drew's parents removed Drew from the District and enrolled him in a private school that specialized in educating students with autism. Once in this new school, Drew began to thrive, both academically and functionally. The school "...added heft to Drew's academic goals." "Within months, Drew's behavior improved significantly, permitting him to make a degree of academic progress that had eluded him in public school."

To address the substantial cost of enrolling Drew in a private school, his parents sought reimbursement for his private school tuition by filing a complaint under the IDEA with the Colorado Department of Education. Their claim was denied, and a Federal District Court affirmed that determination. The Tenth Circuit also affirmed.

In upholding the decision of the Federal District Court, the Tenth Circuit stated that, under longstanding precedent, an IEP is adequate so as long as it intends to provide "merely more than *de minimis*" benefits. The Tenth Circuit found that the IEP presented by the District to Drew's parents was reasonably calculated to enable Drew to make some progress and therefore met the required legal standard.

Drew's parents appealed the decision of the Tenth Circuit to the U.S. Supreme Court, arguing that the final IEP proposed by the District was not "reasonably calculated" to enable Drew to receive educational benefits and therefore the District had denied Drew a "free appropriate public education" (FAPE) in violation of federal law.

In a unanimous decision overruling the Tenth Circuit, the Supreme Court found that "[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." The Court went on to state that "[f]or children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly...awaiting the time when they were old enough to 'drop out.'" "The IDEA demands more," according to the Court. Specifically, the IDEA demands that educational programs be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

This ruling is a clear attempt to increase the educational expectations for children with disabilities. To achieve such expectations, school districts will be required to consider each child's individual strengths and weaknesses as well as the long term goals for the student's academic advancement when creating IEPs. While the Supreme Court declined to offer a bright-line rule for what it considers to be "appropriate progress" for a child, it did state that "the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." The Supreme Court went on to say that "[t]his absence of a bright-line rule, however, 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."

### **What Does This Mean Going Forward?**

By ruling that the prior "merely more than *de minimis*" standard is insufficient to offer a meaningful education opportunity to special education students, the Supreme Court has made clear that a "child's educational program must be appropriately ambitious in light of his circumstances" and that "every child should have the chance to meet challenging objectives." It will continue to be the responsibility of school districts to ensure that all IEPs set reasonable, but nonetheless ambitious, goals for special education students. School districts must ensure that all IEPs continue to meet the standards outlined in IDEA while also doing more than simply offering an educational benefit that is "merely more than *de minimis*."

Gone are the days when a school district could satisfy the IDEA if it developed an IEP reasonably calculated to guarantee *some* educational benefit. The days when the measure and adequacy of an IEP would only be determined as of the time it was offered to the student, and there would be no review or consideration as to the actual success of the student in reviewing the adequacy of the IEP. The days when the question of the student's actual progress was rarely examined, and if so, all that was required was "some" amount of progress to meet the IDEA standard.

Going forward, in developing IEPs, school districts should continue to work with teachers and parents to guarantee that they "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Supreme Court stated that this higher standard for educational expectations will typically mean an educational program designed to allow the child to progress from grade to grade. That is, "for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade." However, the Court cautioned that even if that type of educational advancement is not possible, schools must provide a program that is "appropriately ambitious in light of the child's circumstances. Even though "[t]he goals may differ...every child should have the chance to meet challenging objectives."

It is likely that many school districts are already offering IEPs that offer educational benefits that are "merely more than *de minimis*." Nonetheless, school districts should reassess current IEPs in light of the new standard put forth by the Supreme Court to ensure that all IEPs offer ambitious goals for student academic advancement in light of the respective student's circumstances – in other words, ensuring an individualized education for individual student advancement.

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