



SPAN Parent Advocacy Network, Inc.

**Brief Overview for SPAN Technical Assistance Staff
US Supreme Court Decision "Endrew F." March 22, 2017**

The Issue

What constitutes an appropriate education and to what extent are students with disabilities (SWD) entitled to progress in and benefit from their education under IDEA? "Must schools provide a meaningful education in which children show significant progress and are given substantially equal opportunities as typical children, or can they provide an education that results in just *some* improvement?"

The Decision

The decision requires that IEPs must have goals that are "*appropriately ambitious*" and that districts must be able to offer a "*cogent and responsive explanation*" for their proposed IEPs that show that each IEP is "*is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.*" The Court held that every child with an IEP is entitled to "*the chance to meet challenging objectives.*"

The unanimous decision, an interpretation of IDEA, is *effective immediately*. This decision applies to all judicial circuits and is for *all* children, at *all* schools, including public or private schools in which SWD are placed by their school district.

The Backstory

Endrew F. is a student with autism and challenging behaviors. His parents felt he had made little progress with the same goals year after year in a Colorado public school, and enrolled him as a 5th grader in a private school for students with autism. His behaviors improved and he began learning at a faster rate.

A little History

According to the 1982 US Supreme Court Decision, "Rowley," SWD are entitled to educational benefit, not maximization of educational potential. The US Supreme Court declined to set a national standard. In that case, the student who was deaf and placed in a general education classroom with assistive technology supports made excellent academic progress passing through each grade level even without the sign language interpreter requested by the parents.

Prior to "Endrew F." the twelve regional federal Circuit Courts of Appeal had varying standards:

- two circuit courts had not adopted any standards,
- eight circuit courts considered IEPs appropriate if SWD made more than "de minimis" progress (trivial progress), and
- two required significant or meaningful progress.

The Third Circuit (covering NJ) had a higher standard: See L.E. v. Ramsey Bd. of Educ., 435 F.3d 384, 390 (3d Cir. 2006) ("At one time, we only required that a child's IEP offer 'more than a trivial or de minimis educational benefit'; more recently, however, we have 'squarely held that 'the provision of merely 'more than a trivial educational benefit' does not meet" the meaningful benefit requirement' [announced in the Supreme Court's 1982 decision in Rowley]." (citation omitted) (quoting T.R. v. Kingwood Township, 205 F.3d 572, 577 (3d Cir. 2000))).

The Questions for Families and Family/Advocacy Organizations

Parents need to know - what was the change?

- Old standard of FAPE - Supreme Court decision in Board of Education of the Hendrick Hudson Central School District v. Rowley, 1982, "some educational benefit" (interpreted by some courts to mean only slightly more than "de minimus," or negligible, educational benefit)
- New standard of FAPE - Supreme Court decision in Andrew F. v. Douglas County School District RE-1, 2017, "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

Does the Andrew case provide a new "formula" to use to evaluate the new standard of adequacy?

What does "de minimis" mean?

What does "reasonably calculated" mean?

What does "progress appropriate" mean?

What does "in light of the child's circumstances" mean/include?

- as, the child's educational and developmental background, age, the nature of disability, and academic, adaptive, social, emotional, behavioral, and communication abilities? ...
- might it include - child's home circumstances, as parent's ability to support the child's learning at home
- anything else?

If Andrew F. is to achieve its potential as a milestone for improvements to special education, what has to change?

- What has to change in: evaluations, IEP content, parent training, IEEs, etc.
- Does there have to be more attention paid to making sure the parent is adequately-trained about IDEA? About Andrew?
- How current and accurate does evaluation information need to be in order to determine what meaningful progress will/can be "in light of the child's circumstances?"
- Does the Present Levels of Educational Performance (PLEP) in the IEP have to take on a new light/include more detailed information? – ie, the info has to enable the team to develop a program that will meet the new standard
- What if the child is not making progress at the level the team expected – should they reconvene the meeting and review the IEP to add more support?

- Does there have to be a challenging IEP for all IDEA-eligible students regardless of the significance of their disabilities?
- Does anything have to change related to parents receiving meeting notices, progress notices, timely translated copy of the IEP so that they can be a partner in tracking progress appropriate to their child's circumstances, etc.?

Roles and Responsibilities of professionals and families

This new standard will require a "prospective judgment by school officials" that "**will be informed** not only by the expertise of school officials, but also **by the input of the child's parents and guardians.**"

"By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to 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.*"

Application of the standard

IEP teams should consider these questions on a broader basis when developing an IEP:

- Have we ensured this IEP includes challenging goals?
- Why do we believe that this IEP will allow this student to progress academically and functionally?
- Have we adequately considered performance problems from the past year and parental concerns in writing the goals and objectives and assessing what services, including related services, are needed?

How do we know if we are on track?

- "To 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."
- Students, whose disabilities range on a continuum, must each have an IEP which is tailored to their needs and involves a prospective judgment of how each one will progress.
- A student who can generally pass his coursework in the general education curriculum and participate in a general education class with the aid of an IEP which meets the procedural requirements of the IDEA is likely receiving FAPE. However, just because a SWD is progressing from grade to grade doesn't necessarily mean that the student is receiving FAPE. It's an individual determination in each instance.

"Challenging Goals" Standard Applicable to all Students with Disabilities

- For a child fully integrated in a regular classroom, an IEP typically should be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.' Chief Justice Roberts' footnote:
[t]his guidance should not be interpreted as an inflexible rule...do not hold today that every handicapped child who is advancing from grade to grade... is automatically receiving a [Free Appropriate Public Education]

- For a child who cannot progress smoothly through the regular curriculum or for whom advancement from grade to grade is "not a reasonable prospect": "... his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have a chance to meet challenging objectives."

Keep in Mind

- IEP Teams must consider and, if necessary to provide FAPE, include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers.
- IEP Goals should be **ambitious, achievable and aligned** with grade level content standards.
- At least annual review of IEP to determine progress and periodic meetings throughout the year if warranted.
 - IEP Teams should use the periodic progress reporting required at 34 CFR §300.320(a)(3)(ii) to inform parents of their child's progress. Parents and other IEP Team members should collaborate and partner to track progress appropriate to the child's circumstances.
- If a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress.
- The parents of a child with a disability have the right to request an IEP Team meeting at any time.

Positive Impact of Andrew F. on Advocacy

- Clarifies the standards for determining FAPE.
- Increased focus on student centered IEPs considering unique needs, abilities and circumstances.
- Supports rationale to request more intensive, specialized and related services if needed for appropriately ambitious, challenging objectives.
- When parents and districts disagree, district has a responsibility to provide cogent and responsive explanation for the proposed IEP, possibly impacting court decisions.

Andrew F. combined with ESSA

The ESSA goal is to close educational achievement gaps for historically low performing groups of students including students with disabilities. It requires challenging academic content standards that align with entrance requirements for credit-bearing coursework in the system of public higher education and relevant career and technical education standards. Academic achievement standards are aligned with the content standards, and assessment is expected of all public school students in the state (except for 1% of students identified with the most significant cognitive disabilities). The raised expectations (**high expectations**) for students with disabilities to meet ESSA requirements (every student counts) requires access to the general education curriculum to maximize student outcomes.

Key Phrases from the SCOTUS Decision:

- A standard which fails to focus on “student progress would do little to remedy the pervasive and tragic academic stagnation that prompted...” Congress to enact IDEA
- “For 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.’”
- “To 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.”
- A student who can generally pass his coursework in the general education curriculum and participate in a regular education class with the aid of an IEP which meets the procedural requirements of the IDEA is likely receiving FAPE
- Students, whose disabilities range on a continuum, must each have an IEP which is tailored to their needs and involves a prospective judgment of how each one will progress and is reasonably calculated to enable the student to make appropriate progress in light of his circumstances
- “Appropriately ambitious” goals, and chance to meet “challenging objectives”

Resources:

Parent Center Hub:

<http://www.parentcenterhub.org/endrew-qa/>

US ED

Endrew F. Q&A:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-endrewcase-12-07-2017.pdf>

Policy Guidance IEPs and Behavioral Interventions:

<https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

US Supreme Court Decision in Endrew F. & its Impact, Diana MTK Autin, Esq.
presentation April 10, 2017

ⁱ *co·gent 'kōjənt/ *adjective*: (of an argument or case) clear, logical, and convincing.

synonyms: convincing, compelling, strong, forceful, powerful, potent, weighty, impactful, effective, valid, sound, plausible, telling, impressive, persuasive, eloquent, credible, influential, conclusive, authoritative, logical, reasoned, rational, reasonable, lucid, coherent, clear " a cogent argument"