

Endrew F: A New Tool for Enhancing the Family Voice at the IEP Decision-making Table

Presented by
The National Center for Parent Leadership, Advocacy, and
Community Empowerment (National PLACE)



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Welcome to National PLACE!

Mission

- To educate and empower families and family-led organizations and support them to advocate for enhanced parent involvement and leadership in education, health and human services decision-making with regard to services for children and families.

Motto

- *Advocating to ensure the parents' PLACE at decision-making tables*

Purpose of today's webinar

- Provide context for Endrew F. decision
- Explain history of & court decision in Endrew F.
- Share strategies for families and family organizations to use Endrew F. to strengthen parent voice at IEP tables



Purpose of IDEA

Congress:

- Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

US ED OSERS Regulations:

- To ensure that all children with disabilities have available to them a “free appropriate public education” that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living

IDEA IEP Requirements

Present levels of performance

Annual education goals & objectives tied to general curriculum/standards – academic & functional

Special education & related services to be provided to help achieve the goals

Any needed modifications & accommodations

Supplementary aids & services (for student, teacher, others)

Extent of participation in assessment

Accommodations to be provided to participate in assessment (regular or alternate assessment)

How & when progress towards goals will be measured & reported

Location(s) where services will be provided; LRE

Access to non-academic programs; interaction with non-disabled peers

IEP PLEP & Services

PLEP that summarizes how the child's disability affects:

- Involvement & progress in the general curriculum
- Social-emotional development, behavior, functional life skills, self-awareness, ability to communicate

An IEP that helps the student build skills to access, participate in, and make progress in the academic curriculum & the life of the school

IEP services should be based on peer-reviewed research to the extent practicable

- Supplementary aids, services or other supports provided in general education or other settings to help the child be educated with children who are not disabled to the maximum extent appropriate

IEP Special Considerations

Consider need for:

- Functional behavioral assessment & positive behavioral support plan
- Extended school year services
- Communication skills & strategies (especially if deaf or hard of hearing)
- Assistive technology
- Braille for students who are blind/visually impaired
- Language access needs
- Transition to adult life (age 14 in some states; 16 under IDEA)

US ED Guidance

- Each child's IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in, **the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled.**
- IEP must include **behavioral interventions and supports** to a child that needs them.

Starting Place: Rowley Standard

1982 US Supreme Court decision that held:

- Students who require special education have a substantive right to receive free, appropriate public education (FAPE)
- This is met “if the child’s IEP sets out an educational program that is ‘reasonably calculated to enable the child to receive educational benefit’”
- More than a de minimus (trivial) benefit
- A determination of whether special education programming provides FAPE is very fact specific



Starting Place: Rowley Standard

Facts in Rowley:

- The teacher communicated with a deaf student through a wireless transmitter to the student's FM hearing aid
- Her parents argued for a classroom sign language interpreter to give her full access to her teacher's communication
- The student was an excellent student, getting good grades in the regular education classroom with this support
- This was sufficient to demonstrate FAPE was provided



Question in Endrew



Must schools provide a meaningful education in which children show significant progress and are given substantially equal opportunities as children without disabilities, or can they provide an education that results in just *some* improvement?

Andrew Facts



Andrew F., a student with autism, attended public school in Douglas County CO from preschool through fourth grade

His parents believed that his progress had stalled and that the strategies used to address his behaviors were insufficient to allow him to learn

He “would scream in class, climb over furniture and other students, and occasionally run away from school.”

He had severe phobias about common things including “flies, spills, and public restrooms.”

Andrew Facts



His parents argued that he was offered essentially the same individualized education program (IEP) each year and that the district needed to completely overhaul its approach.

When the district proposed a similar IEP for fifth grade, his parents moved him to a private school for children with autism – *this was NOT their initial or long-term goal!*

His behavior improved under their strategies and the private school established more challenging educational goals.

Procedural History



Andrew's parents lost their claim before:

- The state department of education
- In the federal district court
- In the Tenth Circuit (which gave “summary judgment” to the district)

They appealed to the US Supreme Court.



Tenth Circuit Standard

The Tenth Circuit held that Endrew F.'s parents were not entitled to private school tuition reimbursement because the school district established he received “some benefit” from his special education program.

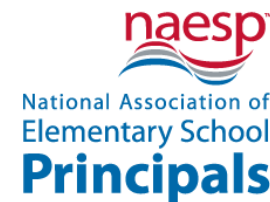
- An IEP provides FAPE if “it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*”
- The Court cited a decision by now Supreme Court Justice Gorsuch, the 10th Circuit Court of Appeals’ 2008 decision in Thompson R2-J School District v. Luke P.

Who supported the district?

The standard for special education did not require change, because the systems was “already working for kids”

Only Congress can redefine FAPE, and they have accepted the “more than de minimus” standard

The standard already ensures districts will aim high, and changing the standard will increase litigation and inequality



Who supported the parents?

- Federal government
- Former US ED officials
- NEA
- Multiple advocacy organizations including parent centers and disability-specific groups
- National Center for Special Education in Charter Schools & National Alliance for Public Charter Schools

US Government Amicus Brief

- Rowley - IDEA requires States to give eligible children with disabilities access to education that is “meaningful” and the opportunity to make **significant educational progress** in light of a child’s capabilities and potential.
- Federal law - **IDEA and ESEA: lead to a higher standard of FAPE**; “meaningful access” to an “appropriate” education is one that is reasonably calculated to allow a child with a disability to make significant educational progress, a higher standard than more than a de minimus benefit
- Policy guidance - IEP goals must be aligned with **grade-level content standards** for all children with disabilities.

Former OSERS Officials Brief

- Focus on achievement has been unanimously supported by OSERS officials from the beginning of IDEA across all Administrations, Democratic and Republican
- Brief argued:
 - Research shows children with disabilities can achieve and make substantive progress when evidence-based strategies and interventions are used in the context of high expectations
 - Federal law – IDEA and ESEA, especially when read together – support a focus on high expectations for students with disabilities

Summary of Decision & Implications

Parents need to fully understand that their child is entitled to an IEP that enables their child to make ***academic progress*** - which means for most children, the opportunity to advance from grade to grade.

Progress must be appropriate in light of the child's circumstances; the adequacy of a given IEP turns on the unique circumstances of the child.

Every child should have the chance to meet ***challenging objectives***.

The Supreme Court clearly articulated a shift to ***higher expectations*** for children with disabilities.

Advocacy begins and ends with the families directly impacted and the family organizations that educate and support them.

Unanimous 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 receiving FAPE

SCOTUS Decision



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

For a child who cannot progress smoothly through the regular curriculum:

- “... 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***”

Applies to All Students



"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.'" But note 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 children for whom advancement from grade to grade is "not a reasonable prospect," an IEP "must be appropriately ambitious in light of his circumstances."

For ***all*** students, the chance to meet challenging objectives!

Roles of Professionals & 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.***"

What the Court did *not* do

The justices declined the family's invitation to establish a more stringent standard that would require public schools to give children with disabilities an opportunity to (among other things) “achieve academic success” and “attain self-sufficiency.

The justices did not overturn the current policy of giving due deference to school officials; they noted that, as a general rule, courts should not substitute their own judgment for that of school officials



Impact of Endrew

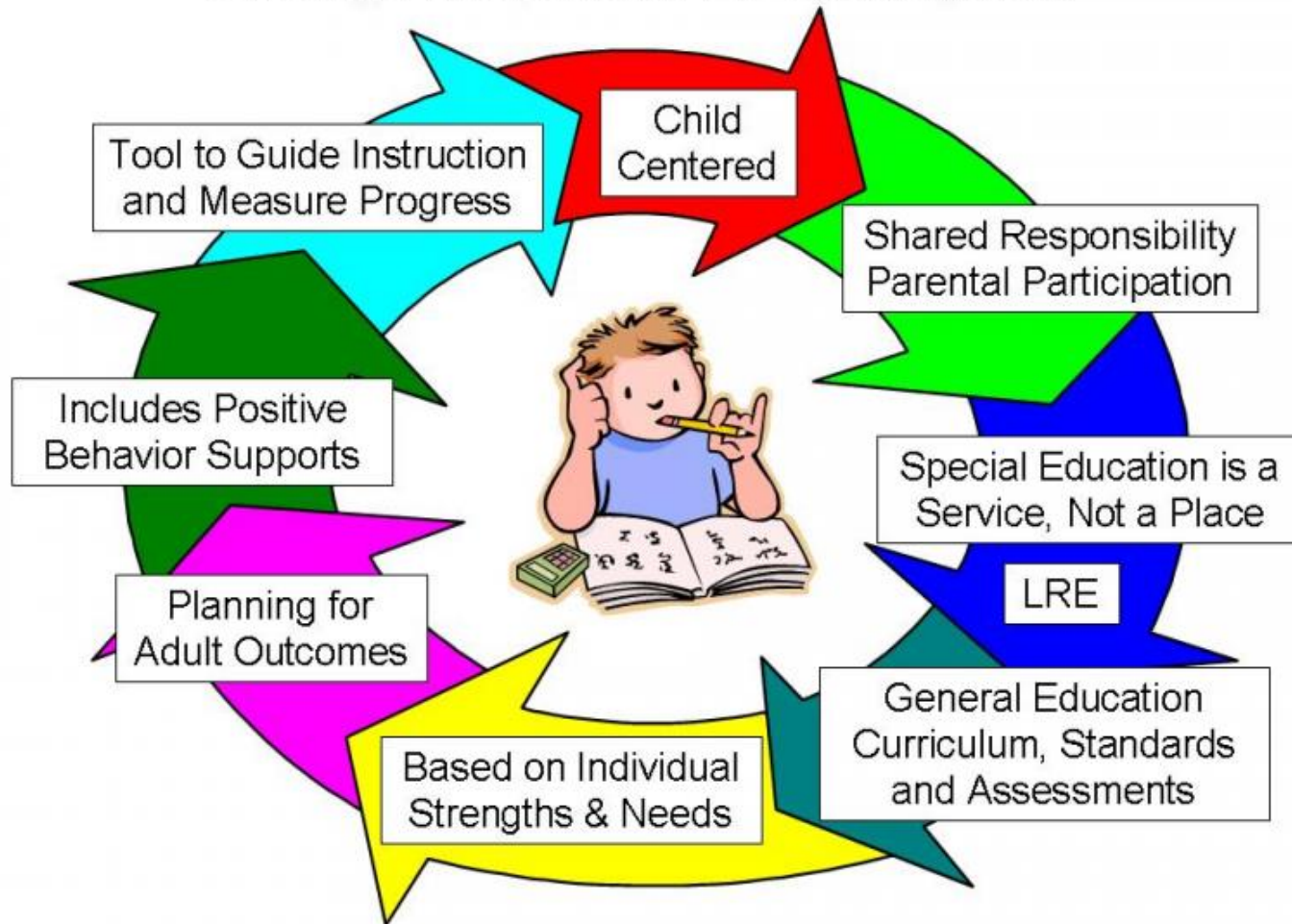
US Supreme Court decision is an interpretation of IDEA & is *effective immediately*

- Sent this case back to 10th Circuit for redetermination based on their interpretation

2 district court decisions in the Third Circuit have already been issued since Endrew

- an IEP "must be 'reasonably calculated' to enable the child to receive 'meaningful educational benefits,'" -not just more than mere de minimis benefits-which means that the child must be afforded "the opportunity for 'significant learning.'"

Guiding Principles for IEP Development



Practical application



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 parents' concerns in writing the goals, objectives and assessing what services, including related services, are needed?

Practical application



- “School personnel will make decisions that are informed by their own expertise, ***the progress of the child, the child’s potential for growth, and the views of the child’s parents***”
- IEP Team members should consider how special education and related services, if any, have been provided to the child in the past, including ***the effectiveness of specific instructional strategies and supports and services with the student***
- The IEP Team should consider ***the child’s previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child’s progress, and additional information and input provided by the child’s parents.***

Practical application



- “Progress appropriate in light of the child’s circumstances:”
 - IEP team including child’s parents must give “careful consideration to the child’s present levels of achievement, disability, and potential for growth.”
- “Chance to meet challenging objectives”
 - “The IEP must aim to enable the child to make progress”
 - An individualized determination that is unique to each child.

Practical application



- Review and revisiting of IEP
 - At least annual review of IEP to determine progress
 - Periodic meetings throughout the year if warranted
 - ***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.***

Practical application



- If a child is not making progress at the level the IEP Team expected, despite receiving all the services and supports identified in the IEP, *the IEP Team must meet to review and revise the IEP if necessary*
- 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.

Practical application



- Where necessary to provide FAPE, IEPs must include consideration of behavioral needs in the development, review, and revision of IEPs.
- 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

Key Terms/Concepts



- Chance to meet “*challenging objectives*”
- “*Appropriately ambitious*” IEP/educational program”
- “The IEP is not a form”
- Schools must be held to a “*markedly more demanding*” standard than merely “more than de minimus”

Key Terms/Concepts



- "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'*"
- "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'*"

What parents can do



- Prepare questions for the IEP meeting using the key terms and concepts from Endrew F.:
 - Have we given “careful consideration to my child’s present levels of achievement, disability, and potential for growth?”
 - Have we considered my child’s “previous rate of academic growth, whether my child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with my child’s progress, and my information and input?”

What parents can do



- Prepare questions for the IEP meeting using the key terms and concepts from Endrew F.:
 - Are these sufficiently challenging objectives?
 - Are these goals appropriately ambitious?
 - How is this IEP reasonably calculated to enable my child to achieve passing marks and advance from grade to grade?
 - How is this IEP reasonably calculated to enable my child to make progress appropriate in light of his circumstances?



What parents can do

- Don't accept an IEP with the same goals & objectives year to year!
 - This indicates that their child has failed to make meaningful progress toward their goals and objectives
- ***What else can/should parents do?***

What family organizations can do

- Review current training materials on evaluation, IEP development, service delivery, etc. and make needed revisions to incorporate the key terms, phrases, and concepts
- Provide professional development to staff and volunteers who assist families individually to ensure their awareness, understanding, and ability to apply the information to their individual assistance
- Review current state/district documents including parent guides, IEP “shells,” regulations/rules, to identify needed areas of change to comply with Endrew F.

What family organizations can do

- Provide specific workshops on how Endrew F. raises expectations & the key concepts, terms, & phrases
- Coach parents receiving individual assistance on how to use the key concepts, terms & phrases & related documents (FAPE/IEP & discipline/PBS guidance, for example) in their individual advocacy
- Work with families & concerned professionals to advocate for needed revisions to state regulations/rules, guides, documents, etc.
- ***What else can family organizations do?***

Threat to US ED Guidance!

- Presidential mandate to deregulate across agencies
- Department of Education:
 - Soliciting “informal” feedback on delaying the implementation of the approved regulations on disproportionality in identification, classification, placement & discipline
 - Indicating in speeches her intent to revisit the discipline & positive behavior supports guidance
- TAKE ACTION! Submit comments – National PLACE develops & shares comments with members



Resources

Parent Center Hub:

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

US ED Q&A:

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

Questions and Answers



National PLACE webinars

Being the Difference Series

- Is It Lobbying? Is It Not?, held Thursday, March 23
 - Free to all, archived on www.parentsatthetable.org
- Effective Grassroots Advocacy, held Thursday March 30
 - Archived webinar & resources free to members; \$50 for others
- The Power of Stories, held Thursday, April 13
 - Archived webinar & resources free to members; \$50 for others
- Families in Jeopardy: Policy Update, held June 14
 - Archived webinar & resources free to members; \$50 for others

National PLACE webinars

Policy Advocacy: Planning & Implementation Series

- Developing a Policy Advocacy Plan, held October 12
 - Archived webinar & resources free to members; \$50 for others
- Engaging Diverse Parents in Policy Advocacy, held November 30
 - Archived webinar & resources free to members; \$50 for others
- Using Social Media in Policy Advocacy, held December 14
 - Archived webinar & resources free to members; \$50 for others



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Empowering families and family-led organizations to advocate for enhanced, meaningful parent involvement and leadership in all policy decision making that impacts services for children and families.

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Who We Are

We are a national non-profit organization committed to helping family-led organizations and individual families acquire the knowledge and skills needed to effectively "sit at the table" and influence the policies and decisions that impact the lives of children, youth, and families, including families that face the greatest challenges due to disability, special healthcare needs, poverty, and discrimination.

Upcoming Events

Being the Difference in Difficult and Shifting Times

Webinar Series - March 23rd, March 30th, and April 13th, 2017

National Family and Community Engagement Conference

What's on our website?

Policy comments & testimony:

www.parentsatthetable.org/make-your-voice-heard

Research & resources about family & family organization engagement across systems:

www.parentsatthetable.org/storage/app/media/resources/Main%20Resources/

Members only section with archived webinar series

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