CLIENT NEWS BRIEF

Supreme Court Clarifies Educational Progress Standard for Students in Special Education

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In a much anticipated decision, a unanimous United States Supreme Court has ruled that under the Individuals with Disabilities Education Act (IDEA), Individualized Education Programs (IEPs) must be reasonably calculated to enable a child with a disability to make appropriate educational progress in light of the child's circumstances. (*Endrew F. v. Douglas County Sch. Dist. RE-1* (March 22, 2017, No. 15-827) ___ U.S. ___ <https://www.supremecourt.gov/opinions/16pdf/15-827_0pm1.pdf>.) The high court vacated and remanded a Tenth Circuit Court of Appeals ruling that set the standard for providing a free, appropriate public education (FAPE) to children with disabilities under the IDEA as requiring "merely more than *de minimis*" educational progress.

Endrew F. is a child with autism who attended school within the Douglas County (Colo.) School District from preschool through fourth grade. When the child's IEP team met to discuss his IEP for his fifth grade year, his parents contended the new IEP was substantially similar to his fourth grade IEP and the same goals were generally carried over from year to year. They argued this meant he was not making appropriate progress and enrolled him in a private school for students with autism. The private school created a behavior intervention plan and new academic goals and he achieved significant progress there.

The child's parents later filed a complaint against the school district alleging a failure to provide a FAPE. An administrative law judge, a federal district court and the appellate court all found the IEP was reasonably calculated for the child to make some progress, defined as "merely more than *de minimis*." The Supreme Court then granted review.

Foundational to the Supreme Court's opinion is an acknowledgement of *Board of Education v. Rowley* (1982) 458 U.S. 176, the landmark ruling that established the existence of a substantive standard for FAPE. Refusing to adopt an "equal opportunity" standard in *Rowley*, the Supreme Court required "some" educational benefit but declined to adopt a single measure of adequacy. Upholding *Rowley* and relying on the statutory language of the IDEA, the Supreme Court in *Endrew F.* found that in order for a school district to provide a FAPE under the IDEA, an IEP must be reasonably calculated to enable a child to make appropriate educational progress in light of the child's circumstances and that sufficient progress means exceeding "merely more than *de minimis*."

The Supreme Court reasoned that this standard "should come as no surprise" considering the IDEA's many references to individuality, including *specially* designed instruction, *unique* needs of a child, and even *individualized* education program. While declining to establish a bright-line rule regarding what constitutes "appropriate" progress, the Supreme Court held that FAPE necessitates designing a program which allows a student to "'advance appropriately toward attaining the annual goals' and, when possible, 'be involved in and make progress in the general education curriculum'" as statutorily required. "[F]or most children [that] will involve integration in the

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regular classroom and individualized special education calculated to achieve advancement from grade to grade. If that is not a reasonable prospect for a child, his IEP need not aim for grade level advancement," the Court added. "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."

California special education decisions have long applied a standard similar to the one advanced by the Supreme Court in *Endrew F*. Ninth Circuit decisions have historically interchanged "some educational benefit," "educational benefit" and "meaningful educational benefit" when applying the *Rowley* standard to require something meaningful for a particular child. Office of Administrative Hearings decisions frequently cite to Second, Fourth and Eighth Circuit authority holding that FAPE requires progress commensurate with ability, which appears consistent with the standard offered by the Supreme Court. As such, this new iteration of the *Rowley* standard may have limited impact in California. However, the practical examples outlined in the decision, including issues related to least restrictive analysis, grade level standards and advancement, goal revision, and the instruction that staff be prepared to explain how programs are designed to offer progress appropriate in light of circumstance, should be thoroughly considered by California school districts moving forward.

For more information on *Endrew F.* or its impact on the development of IEPs and offers of FAPE, please contact the authors of this Client News Brief or an attorney at one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter or download our Client News Brief App.