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Andrew F. v. Douglas County School District (2017):

FAPE and the U.S. Supreme Court

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*On March 22, 2017, the U.S. Supreme Court announced its decision in *Endrew F. v. Douglas County School District*. This case—coming 35 years after the Supreme Court’s first special education decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982)—addressed the question of how much educational benefit public schools are required to provide to students with disabilities who are eligible for special education services under the Individuals with Disabilities Education Act (2006) to confer a free appropriate public education (FAPE). In its unanimous opinion, the Supreme Court ruled that in developing student individualized education programs (IEPs), school districts must aim to enable students to make academic and functional progress in light of their circumstances. In this article, we examine the Act’s definition of FAPE, review the Supreme Court’s first FAPE ruling in *Board of Education v. Rowley*, consider the different post-*Rowley* FAPE standards developed in the U.S. Courts of Appeals, explain the Supreme Court’s unanimous ruling in this case, and discuss implications of this decision for special education.*

Thirty-five years ago, the U.S. Supreme Court announced its decision in *Rowley* (1982). The case, which was the first special education case to be heard by the Court, ruled on the question of what constituted FAPE for students with disabilities under the Education for All Handicapped Children Act of 1975 (EAHCA), which was retitled as IDEA in 1990. On March 22, 2017, the U.S. Supreme Court announced its decision in *Endrew F.*, which also addressed FAPE. These two cases should be read in tandem, as they are extremely important in providing special educators with guidance regarding what is an appropriate education for students with disabilities.

In this article, we first define IDEA’s FAPE requirement. Second, we review the Supreme Court’s first FAPE ruling in *Rowley*. Third, we describe FAPE rulings by the U.S. Circuit Courts of Appeals and how the circuit courts differed in their interpretations of the

Rowley decision. Fourth, we present the history of the *Endrew F.* case, the oral arguments before the Supreme Court, and the Court’s unanimous ruling in this case. Finally, we discuss implications of this decision for special education.

The IDEA Definition of FAPE

As recently as the 1970s, it was legal to prevent students with disabilities from attending school (Johnson, 1986). The Code of Virginia (1973), for example, allowed for the exclusion of students who were physically or mentally incapacitated from school. Indeed, the history of educational services for students with disabilities is filled with stories and examples of wholesale exclusion and legal denials. Often, the best that a parent could hope for was some form of educational service in a state-run institution (Scheerenberger, 1983).

As a result of several court cases and pressure from parents, Congress began to investigate educational services for students with disabilities in the 1970s. Here is a statement from its findings:

Providing educational services will ensure against persons needlessly being forced into institutional settings. One need only look at public residential institutions to find thousands of persons whose families are no longer able to care for them and who themselves have received no educational services. Billions of dollars are expended each year to maintain persons in these subhuman conditions. (*United States Code Congressional and Administrative News*, 1975, p. 1433)

Members of Congress realized that something needed to be developed to provide standard uniform guidelines to the states regarding the identification and education of students with disabilities. The report of the *United States Code Congressional and Administrative News* contributed to this, as did several court cases. These court cases helped to clarify the specific procedures that needed to be

followed when determining that a student had a disability, enforcing compulsory attendance laws, and alleviating biases against certain students (*Diana v. State Board of Education of California*, 1970; *Mills v. Board of Education of the District of Columbia*, 1972; *Pennsylvania Association for Retarded Children v. the Commonwealth of Pennsylvania*, 1972).

In response, Congress passed and President Gerald Ford signed the EAHCA into law. This law, often referred to as Public Law 94-142 (later amended as IDEA), provided federal financial assistance to states that submitted plans demonstrating that they had in effect a policy ensuring that all eligible students with disabilities would receive a FAPE, as well as other educational rights, such as procedural safeguards and the right to be educated in the least restrictive environment (Yell, 2016). Under these laws, eligible students with disabilities would therefore have the opportunity to receive appropriate special education services and could no longer be excluded from schools because of their disabilities. FAPE was to be tailored to meet the unique needs of the student with disabilities via an IEP, developed by the student’s parents and school personnel working together.

The definition of FAPE in IDEA has remained unchanged since 1975. FAPE is special education and related services that

- (A) are provided at public expense, under public supervision and direction, and without charge,
- (B) meet standards of the state educational agency,
- (C) include an appropriate preschool, elementary, or secondary school education in the state involved, and
- (D) are provided in conformity with the individualized education program. (IDEA, 20 U.S.C. § 1401 [a][9][A–D])

FAPE is the foundation of special education and is individually developed for each student with a disability who is eligible for special

education services under IDEA through the IEP process. A student's FAPE is therefore (a) developed and memorialized through the IEP, (b) targeted toward meeting his or her unique educational needs, and (c) designed to confer educational benefit. In addition, the responsibility to make FAPE available rests with the public school district in which the student resides and, ultimately, with the state (Bateman, 2017).

The first principle of the Rowley test established the importance of adherence to the procedural aspects of the IDEA.

Soon after the EAHCA was passed in 1975, controversy arose regarding what exactly constituted FAPE. Courts were called on to settle disputes between parents and school districts regarding the definition of a FAPE (O'Hara, 1985). In 1981, the U.S. Supreme Court agreed to hear a case from the Hendrick Hudson School District in Montrose, New York. The case was to be the first special education case heard by the Supreme Court. A question that the Court was called on to answer was "What is meant by the [EAHCA's] requirement of a free appropriate public education?" (Rowley, 1982, p. 180).

Rowley (1982)

Amy Rowley was a student in the Hendrick Hudson School District. Although she had a severe hearing impairment, Amy did very well in her kindergarten class. In the fall of Amy's first-grade year, a school-based team and Amy's parents developed her IEP. Amy's parents, who were also deaf, agreed with much of the IEP but also insisted that Amy be provided a qualified sign language interpreter. The school district denied the request, whereupon Amy's parents filed for a due process hearing (Smith, 1996). Although the due process hearing officer and state review officer found for the school district, upon an appeal

from the Rowleys, the federal district court and U.S. Court of Appeals determined that the district had failed to provide Amy with FAPE, because it did not offer her an opportunity to achieve her full potential at a level "commensurate with the opportunity provided to other children" (Rowley, 1982, p. 186). The school district appealed to the U.S. Supreme Court, which handed down the decision on June 28, 1982.

In the majority opinion, Justice William Rehnquist noted that the statutory definition of FAPE was cryptic rather than comprehensive. Further, Justice Rehnquist wrote that FAPE consisted of educational instruction designed to meet the unique needs of a student with disabilities, supported by such services as needed to permit the student to benefit from instruction. According to the Court, Congress's "intent . . . was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside" (Rowley, 1982, p. 192). The Court also ruled that the special education services provided to a student had to be "sufficient to confer some educational benefit upon the handicapped child" (p. 200).

The Court developed a two-part test to determine if a school district had provided a student with FAPE: "First, has the state complied with the procedures of the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (Rowley, 1982, pp. 206–207). If these requirements were met, a school had complied with FAPE requirements.

The Court applied the two-part test to the Rowley case and held the following: first, that the district had in fact complied with the procedures of

the IDEA, thus meeting Part 1 of the test (i.e., did the school district comply with the procedures of the law?); second, that Amy had received an appropriate education because she was performing better than many of the children in her class and was advancing easily from grade to grade (Smith, 1996), thus meeting Part 2 of the test (i.e., was the IEP reasonably calculated to provide educational benefit?). In short, the Supreme Court found that the district had provided Amy Rowley with FAPE. It is interesting that, in a footnote to the majority opinion, Chief Justice Rehnquist wrote, "We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a free appropriate public education" (Rowley, 1982, p. 207). Rather, the FAPE standard could be determined only on a case-by-case basis.

The first principle of the Rowley test established the importance of adherence to the procedural aspects of the IDEA. Clearly, a hearing officer or court could rule that a school district had denied FAPE if it had not adhered to the procedural safeguards in the IDEA. Language added to the IDEA in 2004, however, indicated that only the most serious procedural errors committed by school district personnel would lead to a denial of FAPE. These most serious procedural violations occur when they (a) impede the child's right to FAPE, (b) significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or (c) cause a deprivation of educational benefit (IDEA Regulations, 2012, 34 C.F.R. § 300.513[a][2][i–iii]).

The second principle of the Rowley test was substantive. The principle requires hearing officers and courts to determine whether the IEP developed by the school was reasonably calculated to enable the child to receive educational benefits. Because Amy Rowley was academically able and was achieving more than the average child in her class, the Supreme

Court did not need to determine how much benefit would be enough to meet the FAPE standard; clearly, Amy was making progress. The Court thus determined that the district had met its obligation to develop an IEP that was reasonably calculated to provide educational benefit, because Amy was passing from grade to grade. This interpretation of educational benefit was controversial among the Court's own members. For example, in a dissent joined by Justice William Brennan and Justice Thurgood Marshall, Justice Byron White wrote,

It would apparently satisfy the Court's standard of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child" for a deaf child such as Amy to be given a teacher with a loud voice, for she would benefit from that service. The Act requires more. (*Rowley*, 182, p. 215)

Because the Supreme Court in *Rowley* did not directly address what constituted educational benefit, other courts have had to grapple with the question.

U.S. Courts of Appeals and the Rowley Benefit Standard

The second part of the *Rowley* test questions whether the IEP is reasonably calculated to enable the student to receive educational benefits. This has proven to be a more difficult determination for hearing officers and judges. In fact, FAPE cases that have reached the U.S. Courts of Appeals (the level beneath the Supreme Court) have led to differences in interpretations of the educational benefit standard.

Higher Meaningful Benefit Standard

In *Polk v. Central Susquehanna Intermediate Unit 16* (1988), the U.S. Court of Appeals for the Third Circuit discussed the *Rowley* decision and the IDEA's requirement to provide a "meaningful" education. The Third Circuit court noted that because Amy

Rowley did very well in her general education class, the Supreme Court was able to avoid addressing the substantive second principle of the *Rowley* test and thus concentrated on the procedural part of the test. In this case before the Third Circuit, however, the judges had to address how much benefit was required to meet the educational benefit standard for the plaintiff, Christopher Polk.

Christopher was a 14-year-old student with severe mental and physical disabilities. Christopher's parents alleged that the school had failed to provide FAPE because he was not provided physical therapy. The school district prevailed at the due process hearing, the state review, and the federal district court. At these levels, the hearing officer and judges ruled that Christopher's special education program conferred FAPE because the *Rowley* standard held that the conferral of any degree of educational benefit, no matter how small, could qualify as an appropriate education. Christopher's parents filed an appeal with the U.S. Court of Appeals for the Third Circuit, which reversed the decision of the lower court, finding that

Congress did not write a blank check, neither did it anticipate that [school districts] would engage in the idle gesture of providing special education designed to confer only trivial benefit. . . . Congress intended to afford children with special needs an education that would confer meaningful benefit. (*Polk*, 1988, p. 184)

In a later case, *Ridgewood Board of Education v. N.E.* (1999), the Third Circuit again used its higher standard of meaningful benefit when it vacated a decision by a lower court, holding that when school districts provide special education services conferring merely more than trivial educational benefit, that degree of benefit "is not enough to satisfy the FAPE standard" (p. 247). The Third Circuit court further explained that a student's IEP must provide "significant learning and meaningful benefit . . . [and] the

benefit must be gauged in relation to a child's potential" (p. 247).

The U.S. Court of Appeals for the Sixth Circuit adopted the Third Circuit court's higher education benefit standard in *Deal v. Hamilton County Board of Education* (2004), holding that a "mere finding that an IEP had provided more than trivial advancement is insufficient" (p. 862). The Sixth Circuit court also observed that (a) in evaluating whether educational benefit is meaningful, the degree of benefit must be gauged in relation to a student's potential and (b) courts should adhere to "Congress's desire not to set unduly low expectations for disabled children" (p. 864). Similarly, the U.S. Circuit Court of Appeals for the Fifth Circuit ruled, in *Cypress-Fairbanks Independent School District v. Michael F.* (1997), that the educational benefit "cannot be a mere modicum or de minimis; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement" (pp. 247–248).

Thus, three circuit courts adopted a higher standard for educational benefit. However, a number of the other circuit courts of appeals adopted a lower educational benefit standard when ruling on FAPE cases. This standard has come to be known as the *de minimis* (i.e., of minimum importance, trifling, or trivial) standard. The U.S. Court of Appeals for the First Circuit had no particular position on the educational benefit question, and the U.S. Court of Appeals for the Ninth Circuit had mixed rulings on educational benefits.

Lower De Minimis Standard

The U.S. Courts of Appeals for the Second, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits have interpreted educational benefit as requiring only that school districts provide special education services that confer educational benefit that is slightly more than trivial or *de minimis*. The most recent of these rulings—and the case that was heard by the U.S. Supreme Court—was from the U.S. Court of Appeals for the Tenth Circuit in *Andrew*

F. v. Douglas County School System (2015).

Andrew, called Drew by his parents, was diagnosed with autism and attention deficit hyperactivity disorder. Drew attended the Douglas County Schools in Colorado from preschool through fourth grade and had an IEP in effect for all of those years. He had a very difficult fourth-grade year. His parents rejected Drew's IEP, asserting that he was not making meaningful progress and that the IEP for fifth grade was essentially the same one offered Drew in fourth grade. The parents decided to place Drew in the Firefly Autism House, a special school for students with autism. Drew made academic, social, and behavioral progress at his new school.

Drew's parents filed for a due process hearing in which they contended that the Douglas County School District had not provided FAPE; therefore, they requested reimbursement for tuition and related expenses for Drew's private school placement. The impartial hearing officer who presided over the due process hearing relied on the *Rowley* decision in holding that a school district need only develop and implement an IEP that provided a student with some educational benefit to confer FAPE. The hearing officer found that the district had provided Drew with some academic benefit and therefore FAPE. In response, the parents filed suit in the U.S. District Court, which affirmed the hearing officer's decision, finding that Drew had made at least minimal progress, which was all that IDEA required. Drew's parents then appealed to the U.S. Appeals Court for the Tenth Circuit.

Drew's parents contended that the hearing officer and district court failed to recognize that the school district had made serious procedural and substantive errors resulting in the denial of FAPE to Drew. According to his parents, the school district committed several procedural violations. First, the school district failed to provide Drew's parents with reports on his progress as required by

IDEA. The circuit court noted that the hearing officer found that the school district's IEPs for Drew included little or no progress-monitoring data or progress reporting and that, when progress was reported, it was lacking in detail and limited to conclusory statements. The circuit court recognized the importance of monitoring student progress and did not endorse the school district's efforts; nonetheless, the court found that such

hearing officer and district court erred because they failed to consider that Drew's IEPs did not address his escalating problem behaviors. However, the circuit found that Drew's IEPs had conferred some educational benefit and that both the hearing officer and the district court had relied on evidence that Drew progressed somewhat on past IEPs as proof that his fifth-grade IEP was adequate. The circuit court opinion noted that this case was a

The justices seemed to be wary of the de minimis or trivial educational benefit being an appropriate standard for reviewing a school district's provision of FAPE.

errors did not influence Drew's progress and, as such, did not constitute a procedural violation denying Drew FAPE. Second, according to the parents, the school district failed to properly assess Drew's problem behavior and put into action an appropriate plan to address it. The court recognized that Drew exhibited multiple problem behaviors that inhibited his ability to learn in the classroom; nevertheless, because the school district personnel had generally considered his problem behavior, they met the requirements of the law. The court found that IDEA requires that "in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior" (20 U.S.C. § 1414 [d][3][B][1]) and because school personnel had considered Drew's behavior problems, they had not committed a procedural violation.

Drew's parents also asserted that the school district committed two substantive violations that denied Drew FAPE. First, the school district failed to provide FAPE because all of Drew's recent IEPs were materially the same and he had made no progress toward his goals and objectives. Second, Drew's parents asserted that the

"close call, but we find there are sufficient indications of Drew's past progress to find that the IEP rejected by the parents was, in fact, substantively adequate under our prevailing standard" (*Endrew*, 2015, p. 23).

In short, the circuit court held that even though Drew was thriving at the Firefly Autism House, Douglas County School District was not responsible for tuition reimbursement, because Drew had made some educational progress while he was in the district. According to the court, because IDEA requires that educational benefit provided a student in special education be "merely more than de minimis," the school district had provided FAPE; therefore, Drew's parents were denied tuition reimbursement. (The phrase "merely more than de minimis" was first used by then-Judge Neil Gorsuch in his opinion in the case *Thompson R2J School District v. Luke P.*, 2008).

In response, Drew's parents appealed to the U.S. Supreme Court. The question presented to the Court was "What is the level of educational benefit school districts must confer on children with disabilities to provide them with a free appropriate public education guaranteed by the Individuals with Disabilities Education

Act?” (SCOTUSblog, 2017). On September 29, 2016, the Supreme Court announced that it would hear the case.

Andrew F.: The U.S. Supreme Court and FAPE

The U.S. Supreme Court heard oral arguments in the *Andrew F.* case on January 11, 2017. During oral arguments, the justices seemed to be wary of the de minimis or trivial educational benefit being an appropriate standard for reviewing a school district’s provision of FAPE. For example, Justice Breyer noted that even if the phrase “some benefit” in the *Rowley* decision was ambiguous, he concluded that the combination of “some benefit” and “make progress” results in a more stringent standard than “more than merely de minimis,” much along the lines of what the federal government had proposed in an amicus brief by the Solicitor General (2017). (An individual or organization that is not a part of the actual case submits an amicus brief, also called “a friend of the court” brief, to a court. The purpose of the brief is to provide information to the court.)

In addition, Justice Ginsburg noted that there was no real precedent for the de minimis standard, and Justice Alito asked where the de minimis standard came from and, if it was not part of IDEA, then what prevented the Court from coming up with a new standard. This was brought up several times, most notably by Justices Ginsburg and Kagan, who wanted the educational benefit standard to be more than de minimis. Specifically, they talked about a “standard with a bite.” Justice Sotomayor summed up the importance of the decision when she noted that IDEA provided enough information to set a clear standard and that the Court’s challenge would be coming up with the right words.

The Supreme Court handed down the ruling in this extremely important case on March 22, 2017. The Court’s opinion, which was written by Chief Justice Roberts, noted that 35 years previously (in *Rowley*), the Court had declined to endorse any one standard for determining when students with

disabilities are receiving sufficient educational benefits to satisfy the requirements of IDEA. In the opinion, Justice Roberts observed, “That more difficult problem is before us today” (*Andrew*, 2017, p. 1).

In the eight justices’ unanimous ruling, delivered by Chief Justice John Roberts, the Court held that “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” (*Andrew*, 2017, p. 15). The Supreme Court vacated the Tenth Circuit Court’s decision in the *Andrew F.* case and remanded the case back to the Tenth Circuit Court to apply the new standard.

Importance of Parental Involvement in IEP Development

Bateman (2017) asserted that “the most basic IEP requirement is that a student’s parents be full, equal, and meaningful participants in the development of their child’s IEP, along with school district personnel” (p. 87). Congress emphasized this central role of parents in developing their child’s IEP and ensuring the provision of FAPE in the finding and purposes section of the IDEA:

Almost thirty years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—strengthening the role and responsibility of parents and ensuring that families . . . have meaningful opportunities to participate in the education of their children. (20 U.S.C § 1400[c][5][B])

The *Andrew F.* decision emphasized the central role of a student’s parents in developing special education programming. Justice Roberts noted that the IEP process is informed by the expertise of school personnel but also by the input of the student’s parents. The decision also confirmed that school personnel and parents must collaborate on the development of a student’s IEP and that judicial

deference will depend on school personnel providing a student’s parents input on issues such as the requisite degree of progress that the student’s IEP should pursue.

IEP Is the Centerpiece of a Student’s Program of Special Education

“An IEP is not a form document” (*Andrew*, 2017, p. 12) to be written to satisfy IDEA’s requirements and then put away and promptly forgotten. Rather, according to the U.S. Supreme Court, the IEP is the “centerpiece” (*Honig v. Doe*, 1988, p. 311) and “modus operandi” (*Burlington School Committee v. Department of Education of Massachusetts*, 1985, p. 391) of IDEA’s special education delivery system for eligible students with disabilities.

Justice Roberts referred to the IEP as a “fact-intensive exercise” (*Andrew*, 2017, p. 11) in which school personnel and a student’s parents collaborate to develop and implement a special education program for “pursuing academic and functional advancement” (p. 11). The focus of the IEP is on the unique needs of an individual student and is developed only after careful consideration of the student’s present levels of academic achievement and functional performance, his or her disability, and the student’s “potential for growth” (p. 12). The Court ruled that it is through the IEP that a FAPE is tailored to meet the unique needs of an individual student.

According to the Court, a student’s IEP does not need to be ideal; rather, it needs to be reasonable and aimed at conferring educational progress. For students with disabilities who are integrated in general education classrooms, *progress* may mean earning passing grades and advancing from grade to grade. In a footnote to the decision, however, Justice Roberts noted that this is not an inflexible rule and that not every student with disabilities who advances from grade to grade is necessarily receiving a FAPE. He stated further that whenever a student with disabilities is not fully integrated, passing

from grade to grade is not an indication that a student has received FAPE; rather, the student's goals should be appropriate in light of his or her circumstances. Thus, whether the student's IEP confers FAPE depends on the unique circumstances of that student.

In the Supreme Court's opinion, it was clear that all eight justices were willing to drive a stake through the heart of the *de minimis* standard. In fact, according to the Court, the standard that the justices developed was "markedly more demanding than the 'merely more than *de minimis*' test applied by the Tenth Circuit" (*Endrew*, 2017, p. 14). This means that the lower standard—which had been embraced by the U.S. Court of Appeals for the Second, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits—no longer meets the new standard developed by the Supreme Court. The demise of the *de minimis* standard was announced in Justice Roberts' decision:

When 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*. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly . . . awaiting the time they were old enough to drop out." *The IDEA demands more*. (p. 14; emphasis added)

As Justice Roberts aptly wrote, "a substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act" in 1975 (p. 11).

Although the Supreme Court justices rejected the lower *de minimis* standard, they did not embrace the higher standard requested by Drew's parents, who asserted that IDEA requires schools to provide students with disabilities an education that enables them to attain self-sufficiency and that is substantially equal to those opportunities provided to students without disabilities. Justice Roberts cited the Supreme Court's ruling in

Rowley as rejecting the notion of equal opportunity because of the unworkable standards, measurement, and comparisons that would be required. Thus, the High Court declined to interpret FAPE in a manner that was at odds with the *Rowley* decision.

A General Standard—Not a Formula

The Supreme Court referred to the inquiry that it developed as a "general standard not a formula" (*Endrew*, 2017, p. 14)—that is, to meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Although the standard is clearly higher than the *de minimis* educational benefit standard, it is not a prescription for hearing officers and judges to follow when determining if a school district has conferred educational benefit; moreover, the inquiry did not provide a model of an appropriate special education program. Rather, the decision means that hearing officers and judges will need to focus on the appropriateness of an IEP on a case-by-case basis and judge its adequacy vis-à-vis "the unique circumstances of the child for whom it was created" (p. 16). As Justice Roberts wrote,

a reviewing court may fairly expect [school officials] 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. (p. 16)

Implications of *Endrew F.*

What are we to make of this extremely important special education decision by the U.S. Supreme Court? There are six major takeaways from the *Endrew F.* decision:

First, the Court rejected the *de minimis* or trivial standard for determining educational benefit and replaced it with an educational benefit standard that requires schools to offer an IEP reasonably calculated to enable

a child to make appropriate progress in light of the child's circumstances. Thus, the judgment of appropriate progress is made individually, based on the student's own circumstances, and is judged on a prospective basis.

Second, in *Endrew F.*, the Supreme Court rejected the maximizing standard that the Court had previously rejected in *Rowley*. Drew's parents had sought a higher standard than that delivered by the Court. Instead, the justices focused on the idea that children with disabilities should receive an education that shows progress in light of their unique disabilities and circumstances.

Third, the *Endrew F.* decision does not replace or overturn the *Rowley* decision; rather, it clarifies *Rowley*. In fact, the two-part *Rowley* test is now the two-part *Rowley/Endrew* test. When applied to school districts, the new two-part test is as follows:

Part 1: Has the school district complied with the procedures of the IDEA?

Part 2: Is the IEP reasonably calculated to enable a child to make appropriate progress in light of a student's circumstances?

Fourth, the Supreme Court settled the split among the U.S. Circuit Courts of Appeal with respect to the educational benefit question. States in circuits that had the lower *de minimis* standard will see greater change in the manner in which their hearing officers and courts rule on FAPE issues. Now, there is a higher standard expected in all states, although the extent of change varies:

- Most change expected from the previous educational benefit standard (states in a circuit with a lower standard, no standard, or a mixed standard): Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, Nebraska, Nevada, New

Figure 1. Top 10 implications from *Andrew F.*

1. The IEP is the cornerstone of a student’s educational program and the blueprint of a student’s FAPE.
2. Adhere to the IDEA’s procedures when developing students’ IEPs.
3. Parents play an important role in their child’s education, are vital team members, and must be involved in a meaningful way in the development of their child’s IEP.
4. Assessments must be relevant, meaningful, and address all of a student’s needs.
5. Annual IEP goals should be ambitious, challenging, measurable, and assessed.
6. Special education programming must be designed to enable a student to make appropriate progress in light of the student’s circumstances and must be clearly specified in a student’s IEP.
7. Monitor student progress in a systematic manner and regularly report student progress to his or her parents.
8. Make instructional changes when data indicates a student is not progressing toward his or her goals.
9. The burden is on professionals to justify the decisions they make on a student’s IEP regarding his or her progress.
10. Keep abreast of legal developments in special education. Three excellent resources are the Council for Exceptional Children’s Policy Insider (www.cec.sped.org), the Special Education Law Blog by Mitchell Yell (www.spedlawblog.com), and the Special Education Law Blog by Jim Gerl (www.specialeducationlawblog.blogspot.com).

IEP = individualized education program; FAPE = free appropriate public education; IDEA = Individuals With Disabilities Education Act.

Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

- Least change expected from the previous educational benefit standard (states in a circuit with a higher standard): Delaware, Kentucky, Louisiana, Michigan, Mississippi, New Jersey, Ohio, Pennsylvania, Tennessee, Texas

Fifth, the full implications of the *Andrew F.* decision will not become clear until hearing officers and judges apply the new two-part *Rowley/Andrew* test to the facts presented in future FAPE litigation. One of the first indications of how the new standard may be applied will likely be decided in the U.S. Court of Appeals for the Tenth Circuit, because the Supreme Court remanded the *Andrew F.* decision back to the Tenth Circuit to decide the case in light of the new Supreme Court FAPE standard. The *Andrew F.* decision, however, provides clearer guidance to the courts and to school districts in assessing the appropriateness of students’ IEPs.

Sixth, the effect of this ruling on special education personnel seems to be straightforward. IEPs should be developed through meaningful

collaboration with a student’s parents and should meet the procedural requirements of the IDEA. Moreover, IEPs must (a) be based on relevant and meaningful assessments, (b) include ambitious but reasonable measurable annual goals, (c) be composed of special education and related services that are designed to confer benefit, and (d) involve the collection of relevant and meaningful data to monitor student progress. School district personnel should be able to (a) react accordingly to the data that they collect and (b) demonstrate and validate growth through their progress-monitoring data. Figure 1 depicts the implications of the *Andrew F.* decision for special education teachers and administrators.

The *Andrew F.* decision announced a new FAPE standard for determining educational benefit. Thus, there is a new, higher benchmark for implementation of a student’s IEP, which now must be designed to confer more than just some educational benefit. New IEPs must be crafted to provide measurable benefit given a student’s capabilities.

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Authors' Notes

SCOTUSblog.com is a blog focused on the U.S. Supreme Court. Interested readers can find a wealth of information on this website. For example, the SCOTUSblog site on the Endrew case (<http://www.scotusblog.com/case-files/cases/endrew-f-v-douglas-county-school-district/>) contains the Supreme Court's opinion, the opinion of the U.S. Court of Appeals for the Tenth Circuit, blogs analyzing

the oral arguments and opinion, briefs of the petitioners and respondents, and 17 amicus briefs.

We were present at the oral arguments for Endrew. The audio recordings can be read at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-827_gfbh.pdf.

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