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NO CHANGE FOR ILLINOIS SCHOOLS BASED ON SUPREME COURT CLARIFICATION OF FAPE STANDARD

On March 22, 2017, the U.S. Supreme Court issued a clarifying decision on the FAPE standard under IDEA. *Endrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017). The Court determined that the required service standard for disabled students is as follows:

> "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."

That may sound familiar since the federal court of appeals for Illinois has already established essentially the same standard:

> "An IEP passes muster provided that it is reasonably calculated to enable the child to receive educational benefits or, in other words, when it is likely to produce progress, not regression or trivial educational advancement. The requisite degree of reasonable, likely progress varies, depending on the student's abilities." *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603, 615 (7th Cir. 2004)

The question arose due to conflicting decisions by federal courts and the U.S. Supreme Court's own original pronouncement that disabled students are entitled to "some educational benefit" under the IDEA, without further meaningful clarification. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982).

Therefore, if for some reason a school district previously construed its obligations under IDEA to be to provide at least a "de minimus" benefit to students, that standard has been clarified. If a school district already understands "some educational benefit" to require an IEP to offer programming reasonably calculated to enable a student to receive educational benefit, as determined relative to the student's capabilities and challenges (i.e. the nature/severity of their disability, age, maturity, experiences, adaptive, social/emotional, behavioral and cognitive abilities) that standard remains in place.

The full decision is available at:

Endrew F. v. Douglas County School District RE-l

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT RE-1,
69 IDELR 174 (2017)

Facts:

The student, Endrew F. was diagnosed with autism when he was two years old. He was found eligible for special education under that category by his school district. He enrolled in his local public school from preschool through fourth grade. An IEP was developed and reviewed every year. By 4th grade his parents were unhappy with his progress, or lack of progress. The believed he displayed a number of strengths, including social skills at times, but was still exhibiting some very difficult behaviors. His parents believed he was not progressing, with the IEP repeating many of the same basic goals and objectives from one year to the next. The parents felt he was failing to make meaningful progress toward his goals and that he needed a new approach, particularly regarding his behavior. After reviewing the IEP proposed for 5th grade, which in the parents' view was substantially the same as prior IEPs, they withdrew him from public school and enrolled him at Firefly Autism House, a private school that specializes in serving autistic students.

The evidence indicated Endrew improved at Firefly. The school developed a "behavioral intervention plan" that identified Endrew's most problematic behaviors and set out particular strategies for addressing them. Firefly also addressed more substantive academic goals. Within months, Endrew's behavior improved significantly, thereby allowing him to begin making academic progress that had remained static in public school.

Approximately six months after Endrew began at Firefly, the parents met with school officials from his prior public school. The public school offered a new IEP for Endrew. His parents rejected it, viewing it as no more adequate than his previous IEPs, with behavioral interventions basically the same as for his 4th grade year. The school did not take into account the fact that his improvements at Firefly indicated a different approach could benefit Endrew.

The parents filed a due process complaint against the school seeking reimbursement for the tuition at Firefly. The case made its way all the way to the Supreme Court, which reached the decision of what the FAPE standard is, which we recount below. The Court did not make a judgment in the case about whether the FAPE standard had been met, but rather sent the case back to the lower court for further findings as to whether Endrew actually received FAPE. It is possible that court could find that the school district met the clarified standard.

Court Analysis:

The U.S. Supreme Court had previously spoken on this issue in its 1982 decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982) , but left the substantive standard for providing FAPE less than clear. In Rowley, the Court acknowledged that the student was making excellent progress in school: she was "perform[ing] better than the average child in her class" and "advancing easily from grade to grade." *Id*. at 181 The parents challenged the programming provided their daughter because she "under[stood] considerably less of what goes on in class than she could if she were not deaf." The argument was made that her education was not "appropriate" unless it provided her "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." The U.S. Supreme Court in *Rowley* though reasoned that "the intent of the Act 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." *Id*. at

192. The Court concluded that the "basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Id*. at 192. The *Rowley* Court did develop a test it believed might suffice; a two-part test to determine whether an appropriate educational program has been provided: (a) Has the State complied with the Act's procedural requirements? and (b) Is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefit? Applying that test, our Seventh Circuit Court of Appeals affirmed that "[o] nce the school district has met these two requirements, the courts cannot require more." See e.g., *Murphysboro Community Unit School District No. 186 v ISBE*, 41 F. 3d 1162, 1168 (7th Cir. 1994)

The Court reasoned in *Rowley* that its conclusion that the Act did not "guarantee any particular level of education" simply reflects the unobjectionable proposition that the IDEA cannot and does not promise "any particular [educational] outcome." noting that "No law could do that—for any child."

In *Endrew F.*, the Court clarified what it meant in *Rowley* by the "some educational benefit" standard by finding that any interpretation of the standard that suggests that all a school district needs to do is provide a program that is designed to offer a student benefits that are "merely more than *de minimis*" is wrong.

The Supreme Court in *Endrew F.* was urged to adopt an even higher standard by the parents' counsel, to require schools to provide educational benefits to disabled students children that would be "substantially equal to the opportunities afforded to children without disabilities". The Court has not moved to any kind of standard which would require schools to maximize programming services and benefits for disabled students. The standard remains a "chevy, not a cadillac", but the "chevy" must be properly equipped and maintained reasonably calculated to provide meaningful educational benefits based on each disabled student's individual needs, abilities, and other circumstances.

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