



## Alerts

### U.S. Supreme Court Clarifies Standards for Free Appropriate Public Education

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Hinshaw Alert

In a unanimous decision, the U.S. Supreme Court issued its decision today on the appropriate standard for determining what constitutes a Free Appropriate Public Education (FAPE) in *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. \_\_\_\_ (2017) (slip opinion). The Court's opinion is significant for establishing a uniform standard for measurement of FAPE that remains grounded in individualized decision making. It also suggests an increased importance in Individualized Education Program (IEP) team discussions of the student's rate of growth as the team crafts challenging goals and objectives.

Specifically, the Court announced a FAPE standard of the IEP being "*reasonably calculated to enable the child to make progress appropriate in light of his circumstances*." (emphasis added). In so doing, the Court explicitly rejected approaches using "some" benefit, "merely more than *de minimis*" progress, and arguments that the IEP needs to be "ideal" or "substantially equal to the opportunities afforded children without disabilities."

The decision also reinforces the need for individualized decision making in determining whether a FAPE has been provided, clarifying the expectation that students with disabilities be given a chance to meet "challenging objectives." Focusing on the substantive prong of the *Rowley* test (the Court's existing test to determine whether a FAPE has been provided), the Court reiterated that *Rowley*, "requires a prospective judgment by school officials . . . [that is a] fact-intensive exercise . . . informed not only by the expertise of school officials, but also by the input of the child's parents and guardians." The process requires consideration of the present levels of achievement, disability and potential for growth. For students fully integrated in a regular classroom, the Court reasoned that the IEP "typically should, as *Rowley* put it, be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" But for those unable to progress in a regular classroom, compliance with the Individuals with Disabilities Education Act's procedural mandates will inform what progress can reasonably be expected based on the student's unique needs. Accordingly, the student's IEP "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."

On the one hand, *Endrew F.* raises a question as to whether the standard really is a new approach to determining FAPE. It continues to require individualized decision making. It continues to emphasize the importance of the discussion between districts and parents as to a student's ability and needs. It continues to require deference to the expertise and exercise of judgement by school authorities. On the other hand, it raises a question as to whether, going forward, IEP teams and courts should put more time and consideration into the reasoning underlying the degree of progress targeted in the IEP when making FAPE decisions.

Read the Supreme Court's full opinion: [Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. \\_\\_\\_\\_ \(2017\) \(slip opinion\)](#)