

### Endrew F. v. Douglas County School District (2017): The U.S. Supreme Court rules on special education -What teachers need to know and why-

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### What We Will Do Today

- Explain FAPE and why it is so important.
- Examine the Supreme Court’s decision in Rowley.
- Look at the split in the circuit courts that led to Endrew.
- Examine the decision in Endrew, the major takeaways of the decision, and how the ruling will effect special educators.
- Discuss the implications of Endrew for providing mental health services.
- Present data regarding disciplinary exclusions from public schools



### What we will not Discuss

- The other 2017 Supreme Court special education case: *Fry v. Napoleon Community Schools*



### Endrew F. v. Douglas County School District (2017)

Mitchell L. Yell



**The Primary Requirement of the IDEA and the crucial obligation to special educators is to provide a special education that confers a free appropriate public education (FAPE)**



**FAPE issues account for 85% to 90% of all special education litigation**

**Gerl, 2014**



**Free Appropriate Public Education (FAPE)**

- Special education & related services that are:
  - Provided at public expense
  - Meet the standards of the SEA
  - Includes preschool, elementary, or secondary education
  - Are provided in conformity with the individualized education program (IEP)

IDEA, 20 U.S.C. § 1401 (A)(18)

**Board of Education v. Rowley, 1982**



- 458 U.S. 176 (1982)

**Maximization of Benefit**

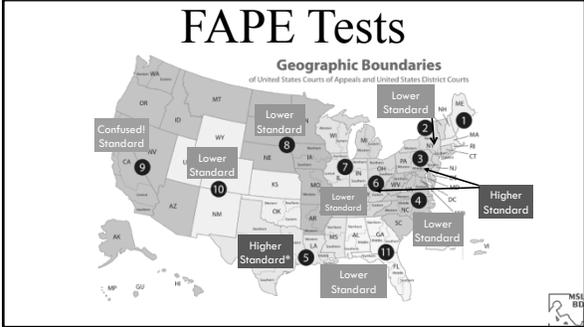
The requirement that States provide "equal" educational opportunities would thus seem to **present an entirely unworkable standard** requiring impossible measurements and comparisons.... To require the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go (Rowley, p. 186).

**Board of Education v. Rowley, 1982**

"We therefore conclude that the '**basic floor of opportunity**' consists of **access** to specialized instruction and related services which are **individually designed** to provide **educational benefit** to the handicapped child."

**The Rowley Two-Part Test**

1. Has the state complied with the **procedures** set forth in the law?
2. Is the resulting IEP reasonably calculated to enable the student to receive **educational benefit**?



**The Tenth Circuit’s Educational Benefit Standard**

*Andrew F. v. Douglas County School District R1, 798 F.3d 1329, (10th Cir. 2014)*



**Facts of the Case**

- Andrew F. (Drew) was diagnosed with autism and attention deficit hyperactivity disorder at age two.
- He received special education services in the Douglas County Schools through 4th grade.
- Drew’s parents rejected an IEP proposed by the school district.
- Drew’s parents enrolled him at a private school, the Firefly Autism House.
- They requested that Douglas County Schools reimburse them for tuition and related expenses.



**The Hearing & District Court Case**

- Drew’s parents contended the school had denied him a FAPE.
- The administrative law judge (ALJ) denied the request, finding the school district had provided Drew with a FAPE.
- The parents filed suit in the U.S. District Court for the District of Colorado. The judge affirmed the ALJ’s decision.
- The parents filed an appeal with the U.S. Circuit Court of Appeals in the 10th Circuit.



**Appeal to the 10<sup>th</sup> Circuit**

- Drew’s parents contended they were entitled to tuition reimbursement because the ALJ and Federal District court failed to recognize the District’s procedural and substantive violations of the IDEA.
- The court noted the two conditions under which tuition reimbursement is available under the IDEA.
- Of the two, the Court only addressed whether the District had violated FAPE by failing to provide Drew with a FAPE.



**The Tenth Circuit’s Educational Benefit Standard**

**“The educational benefit mandated by the IDEA must merely be more than de minimis”**



**Appeal to the U.S. Supreme Court**

- On December 22, 2015 the parents appealed to the U.S. Supreme Court
- **Question Presented:** What is the level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act?

Certiorari Granted on September 29, 2016



**Oral Arguments: January 11, 2017**



MSU  
BGE

**Oral Arguments: January 11, 2017**



MSU  
BGE

**“A standard with a bite!”**



MSU  
BGE

**“some benefit or SOME BENEFIT?”**



MSU  
BGE

**“IDEA provides a clear standard. The problem is coming up with the right words.”**



MSU  
BGE

**Supreme Court Ruling: March 22, 2017**



In *Rowley*, “we declined...to endorse any one standard for determining when (students with disabilities) are receiving sufficient educational benefit to satisfy the requirements of the Act.”

“That more difficult problem is before us today.”

MSU  
BGE

**Supreme Court Ruling: March 22, 2017**

- The High Court rejected the “merely more than *de minimis*” standard, vacating the decision and remanding the case back to the 10<sup>th</sup> Circuit to apply the new standard.
- “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.”



**Endrew Takeaway #1**

The Supreme Court rejected the “*de minimis*” or “trivial” educational benefit standard



**The Demise of *De Minimis***

“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.”



“A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.... The IDEA demands more.”



**Endrew Takeaway #2**

The Supreme Court rejected the maximizing standard the Court previously rejected in *Rowley*



**Endrew Takeaway #3**

The *Endrew F.* decision did not replace or overturn the *Rowley* decision; rather, it clarified its FAPE standard



“We find little significance in the Court’s language (in *Rowley*) concerning the requirement that States provide instruction calculated to confer some educational benefit.”

Endrew, 2017, p. 10



### **The Rowley/Endrew Test**

1. In the development of an IEP, has the school agency complied with the procedures set forth in the IDEA?
  
2. Is the IEP developed through the IDEA's procedures reasonably calculated to **enable** the child to **make progress** that is appropriate in light of his or her circumstances?



### **Endrew Takeaway #4**

**The full implications of the *Endrew* decision will not become clear until hearing officers and judges apply the *Endrew* standard to the facts presented in future FAPE litigation**



### **The Role of the Courts**

"A standard not a formula"

"We will not attempt to elaborate on what appropriate progress will look like from case to case.... The adequacy of a given IEP turns on the **unique circumstances of the (student) for whom it was created.**"



### **The Role of the Courts**

"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.**"



### **Endrew Takeaway #5**

**The *Endrew* decision provides guidance to special education administrators and teachers in developing IEPs that meet the *Endrew* standard.**



A focus on the particular child is at the core of the IDEA. The instruction offered must be "specially designed" to meet a child's "unique needs" through an "individualized education program." An IEP is constructed only after careful consideration of the child's present levels of achievement, disability, and **potential for growth**



### **Recommendation #1**

**Continue to train IEP teams to avoid procedural violations in the development of the IEP that could, in and of themselves, constitute a denial of FAPE.**



### **Recommendation #2**

**Ensure meaningful parent involvement in IEP meetings and that their opinions are considered in establishing their child's educational/behavioral goals.**



#### **Endrew on the Importance of Parental Participation**

- An IEP must be drafted in compliance with a detailed set of procedures that “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances”
- “this fact-intensive exercise (IEP development) will be informed not only by the expertise of school officials, but also by the input of the child’s parents”
- “judicial deference to school authorities will depend on their having provided parents in the IEP process with the opportunity to “fully air their ... opinion on the requisite degree of progress”



### **Recommendation #3**

**When developing the content of a student’s IEP and subsequently reviewing and revising it, be sure that the present levels of performance and annual goals are based upon evaluations and other relevant data that are current.**



### **Recommendation #4**

**Ensure that annual IEP goals are Challenging, appropriately ambitious, and measurable.**



**“Progress appropriate in Light of the Child’s Circumstances”**



### Recommendation #5

Continuously monitor and measure a child’s progress on annual goals (and objectives/benchmarks, if applicable) and maintain specific data to demonstrate that progress has been made.



### Recommendation #6

When progress report and other data do not reflect that an annual goal will be met, reconvene the IEP team to determine why, make needed instructional changes, and continue to collect data



“A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act”



### The Tenth Circuit Court’s Decision on Remand-9/2/17

“We therefore vacate our prior opinion, and remand to the United States District Court for the District of Colorado for further proceedings consistent with the Supreme Court’s decision.”



### The Colorado District Court’s Decision on Remand-2/12/18

- “I conclude that (Andrew) and his parent have met their burden to prove that the District’s April 2010 IEP failed to create an educational plan that was reasonably calculated to enable Petitioner to make progress, even in light of his unique circumstances. The IEP was not appropriately ambitious because it did not give (Andrew) the chance to meet challenging objectives.”
- “Accordingly, I reverse the Administrative Court Agency decision denying (Andrew) and his parents’ request for reimbursement of his tuition, transportation costs as well as reasonable attorneys’ fees and litigation costs.”



### Read More About Andrew





Endrew and Mental Health: An Update  
Carl R. Smith

Alternative Title  
“Nine Messages to Ponder:  
From Nine District Courts in  
2017!”

Message #1  
Importance of Demonstration  
of Collaboration with Others

G. D. v. West Chester  
U.S. Dist. Ct.  
Eastern District of PA.  
August 18, 2017

Message 2  
Specific terms such as  
“executive functioning” not  
as critical as general concept

Benjamin A. v.  
Unionville-Chadds Ford

U.S. Dist. Ct.  
Eastern Dist. of PA.  
August 14, 2017



Message 3

Need to justify needed  
accommodations



Karissa G. v. Pocono  
Mountain

U.S. Dist. Ct.  
Middle Dist. Of PA.  
December 11, 2017



Message 4

Behavioral progress may  
be elusive concept!



C.M. v. Warren  
Independent School District

U.S. Dist. Ct.  
Eastern Dist. Of Texas  
April 18, 2017



Message 6

Separation of medical and  
educational services/Role of  
Related Services



Edmonds School District  
v. A.T.  
  
U.S. Dist. Ct.  
Western Dist. of Washington  
November 7, 2017



Message 7  
  
Importance of revising  
IEP based on new  
information



Sean C. v. Oxford Area  
School District  
  
U.S. Dist. Ct.  
Eastern Dist. Of PA.  
August 14, 2017



Message 8  
  
Possible consequences of  
delays in evaluating needed  
services



L.M.C. Willingboro  
Township  
  
U.S. Dist. Ct.  
New Jersey  
June 12, 2017



Message 9  
  
Need for specificity in  
supports/services  
provided



Tamalpais v. D.W.  
U.S. Dist. Ct.  
Northern Dist. of California  
September 21, 2017



Discipline: An Update  
Antonis Katsiyannis



Discipline  
2013-14 Civil Rights Data Collection

Nationwide, 2.8 million K-12 students received one-or-more out of school suspensions (6%)-18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls.

Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white

Students with disabilities served by IDEA (11%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%).



U.S Department of Education  
(2014)

- The U.S. Department of Education, in conjunction with the Department of Justice issued a “Dear Colleague Letter” alerting school districts to discriminatory discipline practices in light of Titles IV and VI regarding race and Section 504/Title II of ADA regarding disability)



U.S. Department of Education  
(2014)

- DOE identified three guiding principles to improve school climate and discipline:
- (1) Create positive climates and focus on prevention;
- (2) Develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors; and
- (3) Ensure fairness, equity, and continuous improvement”



U.S. Department of Education  
(2016)

In the case of a child whose behavior impedes the child’s learning or that of others, the IEP Team must consider –and, when necessary to provide FAPE, include in the IEP – the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34CFR §§300.324(a)(2)(i) and (b) (2); and 300.320(a)(4).



### Disciplinary Removals 2014-15

All Disabilities  
Removed to IAES 8,837  
Removed to IAES by a HO 518

- Received out-of-school suspension/expulsion >10 days 51,710
- Received in-school suspension 23,766

Emotional Disturbance  
50 out of 10,000 in IAES (other categories 20 or less)  
366 per 10,000 received out-of-school-suspensions >10 days (other 135 or less)  
123 per 10,000 received in-school-suspensions >10 days (other 69 or less)

Source  
U.S. Department of Education. (2017). *39th Annual report to Congress on the implementation of the Individuals with Disabilities Education Act, 2008*. Washington, DC: Office of Special Education Programs. Retrieved from <https://www2.ed.gov/about/reports/annual/osep/2017/parts-b-c/39th-arc-for-idea.pdf>



### English Learners

English Learners are one group that has received minimal attention in disciplinary exclusions.

OCR Data indicate variation across states regarding exclusionary practices involving EL, particularly EL with disabilities. Though they only represented 0.9% of all students with disabilities, EL with disabilities comprised 7.6% (n = 65,143) of disciplinary exclusions.

Source  
United States Department of Education, Office for Civil Rights [USDOE]. (2014). Civil rights data collection data snapshot: School discipline. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/crde-discipline-snapshot.pdf>



## Questions or Comments??

