

## **AN UPDATE OF CASE LAW AND STUDENTS WITH AUTISM SPECTRUM DISORDERS**

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**THE PRIMARY REQUIREMENT OF THE IDEA AND THE CRUCIAL OBLIGATION OF SPECIAL EDUCATIONS, ADMINISTRATORS, TEACHERS, AND RELATED SERVICE PROVIDERS IS TO DEVELOP AND PROVIDE A SPECIAL EDUCATION THAT CONFERS A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

Adapted from Yell, M.L.

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**SPECIAL EDUCATION ACCOUNTS FOR  
OVER 80% OF ALL EDUCATION  
LITIGATION**

**FAPE ISSUES ACCOUNT FOR 85% TO  
90% OF ALL SPECIAL EDUCATION  
LITIGATION**

**GERL, 2014**

Adapted from Yell, M.L.

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**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)

Adapted from Yell, M.L.

IDEA, 20 U.S.C. § 1401 (A)(18)

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## **BOARD OF EDUCATION V. ROWLEY, 1982**



Adapted from Yell, M.L.

- 458 U.S. 176 (1982)

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**QUESTION POSED TO THE  
COURT**

**“WHAT IS MEANT BY THE (EAHCA’S)  
REQUIREMENT OF A FREE  
APPROPRIATE PUBLIC EDUCATION?”**

Adapted from Yell, M.L.

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# 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, P 179).

Adapted from Yell, M.L.

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# TO OPEN THE DOORS OF PUBLIC EDUCATION

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.

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## 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**?

Adapted from Yell, M.L.

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## PROCEDURALLY: THE COURT'S "CHECKLIST"

- THE MAJORITY CONCLUDED THAT CONGRESSES' INTENT WAS TO BRING STUDENTS WITH DISABILITIES INTO PUBLIC EDUCATION BY REQUIRING STATES TO "ADOPT PROCEDURES WHICH WOULD RESULT IN INDIVIDUALIZED CONSIDERATION OF AND INSTRUCTION FOR EACH CHILD" (ROWLEY, 1982, P. 189).
- THUS ADHERING TO THE PROCEDURES OF THE LAW WOULD WORK TO ENSURE A FAPE

Adapted from Yell, M.L.

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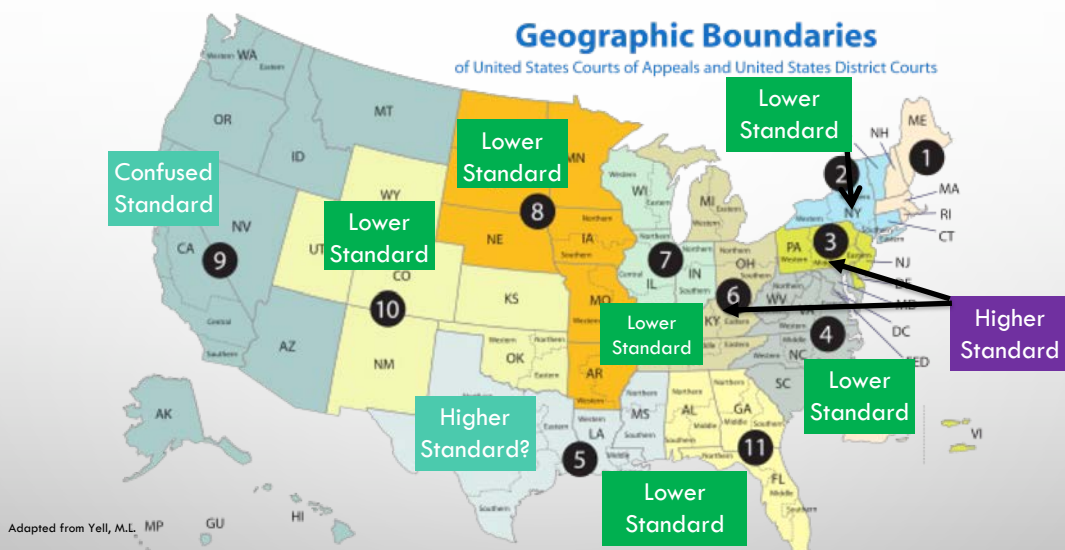
## SUBSTANTIVELY: THE COURT STOPS SHORT

- THE MAJORITY ACKNOWLEDGED THE DIFFICULTY OF DETERMINING WHEN ACCESS TO EDUCATION IS SUFFICIENT TO CONFER EDUCATIONAL BENEFIT BUT EXPRESSLY DECLINED TO EVEN ATTEMPT TO ESTABLISH A TEST FOR DETERMINING ADEQUACY OF EDUCATIONAL BENEFIT
- RATHER, THE REHNQUIST MAJORITY DECIDED TO CONFINE THEIR ANALYSIS TO AMY'S PARTICULAR SITUATION.

Adapted from Yell, M.L.

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## CIRCUIT COURT FAPE TESTS



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# **THE TENTH CIRCUIT'S EDUCATIONAL BENEFIT STANDARD**

***ENDREW F. V. DOUGLAS COUNTY  
SCHOOL DISTRICT R1, 798 F.3D 1329,  
(10TH CIR. 2014)***

Adapted from Yell, M.L.

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## **FACTS OF THE CASE**

- ENDREW 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 AND ENROLLED HIM AT A PRIVATE SCHOOL, THE FIREFLY AUTISM HOUSE.
- THEY REQUESTED THAT DOUGLAS COUNTY SCHOOLS REIMBURSE THEM FOR TUITION AND RELATED EXPENSES.

Adapted from Yell, M.L.

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## **THE HEARING & DISTRICT COURT CASE**

- DREW'S PARENTS ASSERTED 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.

Adapted from Yell, M.L.

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## **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.

Adapted from Yell, M.L.

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# THE TENTH CIRCUIT'S EDUCATIONAL BENEFIT STANDARD

**“THE EDUCATIONAL BENEFIT  
MANDATED BY THE IDEA MUST  
MERELY BE MORE THAN DE  
MINIMIS”\*\***

Adapted from Yell, M.L.

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## 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?

Adapted from Yell, M.L.

**Cert Granted on Sept. 29, 2016**

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**“A STANDARD WITH A BITE!”**



**“The de minimis standard is so low, so easy to meet”**

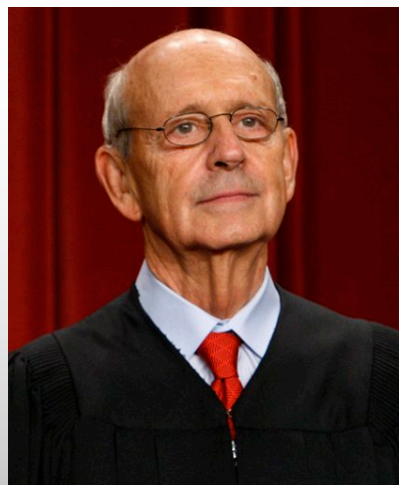


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**“SOME BENEFIT V. SOME BENEFIT”**



**“The IDEA refers again and again to progress”**



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**“IDEA PROVIDES A CLEAR STANDARD.  
THE PROBLEM IS COMING UP WITH THE  
RIGHT WORDS.”**



Adapted from Yell, M.L.

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## **SUPREME COURT RULING: MARCH 22, 2017**



Adapted from Yell, M.L.

**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.” (Endrew, 2017, p. 1)**

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## VACATE & REMAND

**“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, 2017, P. 16)**

Adapted from Yell, M.L.

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## THE TENTH CIRCUIT COURT’S DECISION ON REMAND

- ON AUGUST 2, 2017, THE U.S. CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT ANNOUNCED THEIR DECISION ON THE REMAND
- “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.”

Adapted from Yell, M.L.

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## THE COLORADO DISTRICT COURT'S DECISION ON REMAND-2/12/18

"I CONCLUDE THAT (ENDREW) 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 (ENDREW) THE CHANCE TO MEET CHALLENGING OBJECTIVES" (ENDREW, 2018, P. 20)

Adapted from Yell, M.L.

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## THE COLORADO DISTRICT COURT'S DECISION ON REMAND-2/12/18

"ACCORDINGLY, I REVERSE THE ADMINISTRATIVE COURT AGENCY DECISION DENYING (ENDREW) AND HIS PARENTS' REQUEST FOR REIMBURSEMENT OF HIS TUITION, TRANSPORTATION COSTS AS WELL AS REASONABLE ATTORNEYS FEES AND LITIGATION COSTS" (ENDREW, 2018, P. 20).

Adapted from Yell, M.L.

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## DISTRICT COURT ON BEHAVIORAL PROGRAMMING

“THE DISTRICT’S INABILITY TO **PROPERLY ADDRESS PETITIONER’S BEHAVIORS** THAT, IN TURN, **NEGATIVELY IMPACTED HIS ABILITY TO MAKE PROGRESS ON HIS EDUCATIONAL AND FUNCTIONAL GOALS**, ALSO CUTS AGAINST THE REASONABLENESS OF THE APRIL 2010 IEP” (*ENDREW V. DOUGLAS COUNTY SCHOOL DISTRICT*, 2018, P. 17).

Adapted from Yell, M.L.

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## FINAL SETTLEMENT IN ENDREW

- AFTER 7 YEARS OF LITIGATION, THE DOUGLAS COUNTY SCHOOL DISTRICT PAID \$1.3 MILLION FROM THE DISTRICT’S GENERAL FUND TO SETTLE THE CASE
- “THE FOCUS HERE NEEDS TO NOT BE ON FUTURE CASES AND PARENTS SUING SCHOOL DISTRICTS BUT PROVIDING STUDENTS WITH THE SERVICES THEY NEED NOW.” M. WHITTAAKER, POLICY DIRECTOR, NCLD.

Adapted from Yell, M.L.

# TAKEAWAYS

Adapted from Yell, M.L.

## TAKEAWAY #1

THE SUPREME COURT **REJECTED**  
THE “**DE MINIMIS**” OR “TRIVIAL”  
EDUCATIONAL BENEFIT  
STANDARD

Adapted from Yell, M.L.

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## **THE DEMISE OF *DE MINIMIS***

**“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.”**

Adapted from Yell, M.L.

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## ***THE END OF THE RACE TO THE BOTTOM***

**“A STUDENT OFFERED AN EDUCATION PROGRAM PROVIDING ‘MERELY MORE THAN *DE MINIMIS* PROGRESS FROM YEAR TO YEAR CAN HARDLY BE SAID TO HAVE BEEN OFFERED AN EDUCATION AT ALL” (ENDREW, 2017, P. 14)**

Adapted from Yell, M.L.

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## **TAKEAWAY #2**

**THE SUPREME COURT'S NEW  
STANDARD DROPS BENEFIT AND  
SUBSTITUTES "PROGRESS" AS THE  
NEW & HIGHER STANDARD OF  
EDUCATIONAL BENEFIT**

Adapted from Yell, M.L.

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**"THE IEP MUST AIM TO ENABLE THE  
CHILD TO MAKE PROGRESS. AFTER ALL,  
THE ESSENTIAL FUNCTION OF AN IEP IS  
TO SET OUT A PLAN FOR PURSUING  
ACADEMIC AND FUNCTIONAL  
ADVANCEMENT"**

**-ENDREW F., 2017, P. 11-**

Adapted from Yell, M.L.

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## **TAKEAWAY #3**

**THE *ENDREW* COURT DID NOT  
ADOPT THE MAXIMIZING  
STANDARD.**

Adapted from Yell, M.L.

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## **TAKEAWAY #4**

**THE *ENDREW F.* DECISION DID NOT  
REPLACE OR OVERTURN THE  
*ROWLEY* DECISION; RATHER, IT  
**CLARIFIED** ITS FAPE STANDARD**

Adapted from Yell, M.L.

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**“WE FIND **LITTLE SIGNIFICANCE**  
IN THE COURT’S LANGUAGE (IN  
ROWLEY) CONCERNING THE  
REQUIREMENT THAT STATES  
PROVIDE INSTRUCTION  
CALCULATED TO CONFER SOME  
EDUCATIONAL BENEFIT.”**

Adapted from Yell, M.L.

***ENDREW, 2017, P. 10***

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## **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?

Adapted from Yell, M.L.

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## **TAKEAWAY #5**

**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**

Adapted from Yell, M.L.

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## **TAKEAWAY #6**

**THE *ENDREW* DECISION PROVIDES GUIDANCE TO SPECIAL EDUCATION ADMINISTRATORS, TEACHERS, AND RELATED SERVICES PROVIDERS IN DEVELOPING IEPS THAT MEET THE *ENDREW* STANDARD.**

Adapted from Yell, M.L.

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## RESEARCH QUESTION

- WHAT COURT CASES HAVE BEEN HEARD ON THE PROVISION OF FAPE FOR STUDENTS WITH ASD IN LIGHT OF THE ENDREW DECISION?

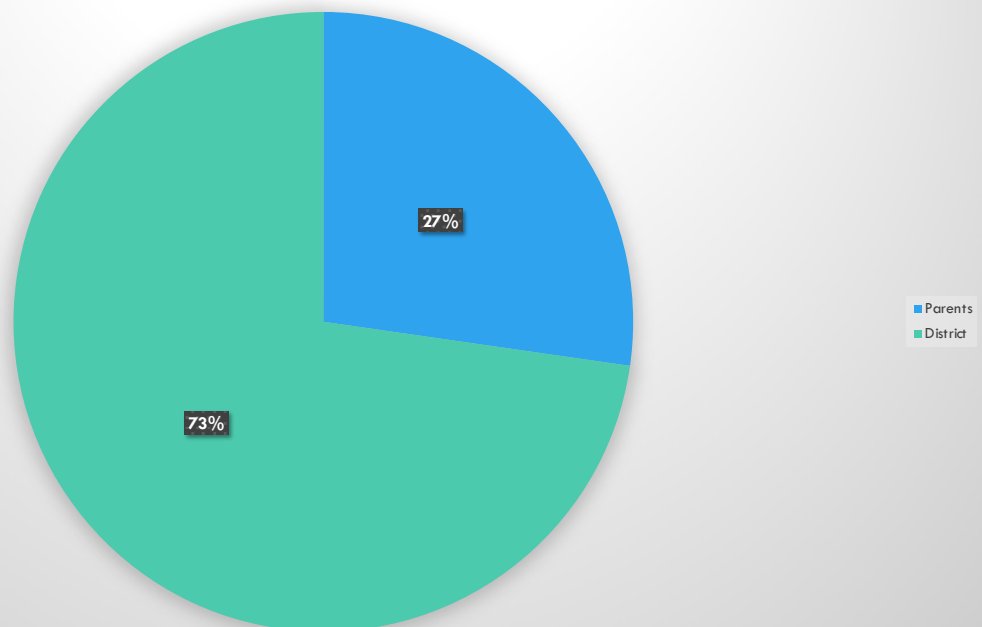
## SEARCH INCLUDED ONE FULL YEAR OF CASES

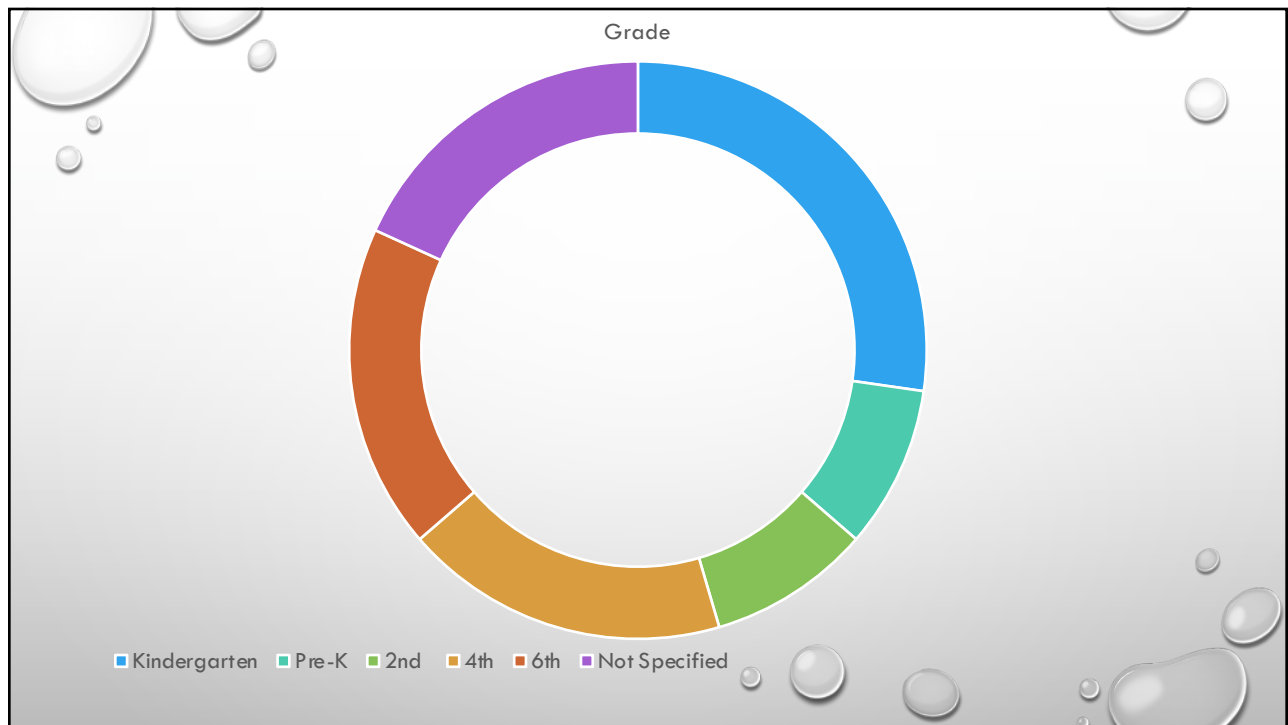
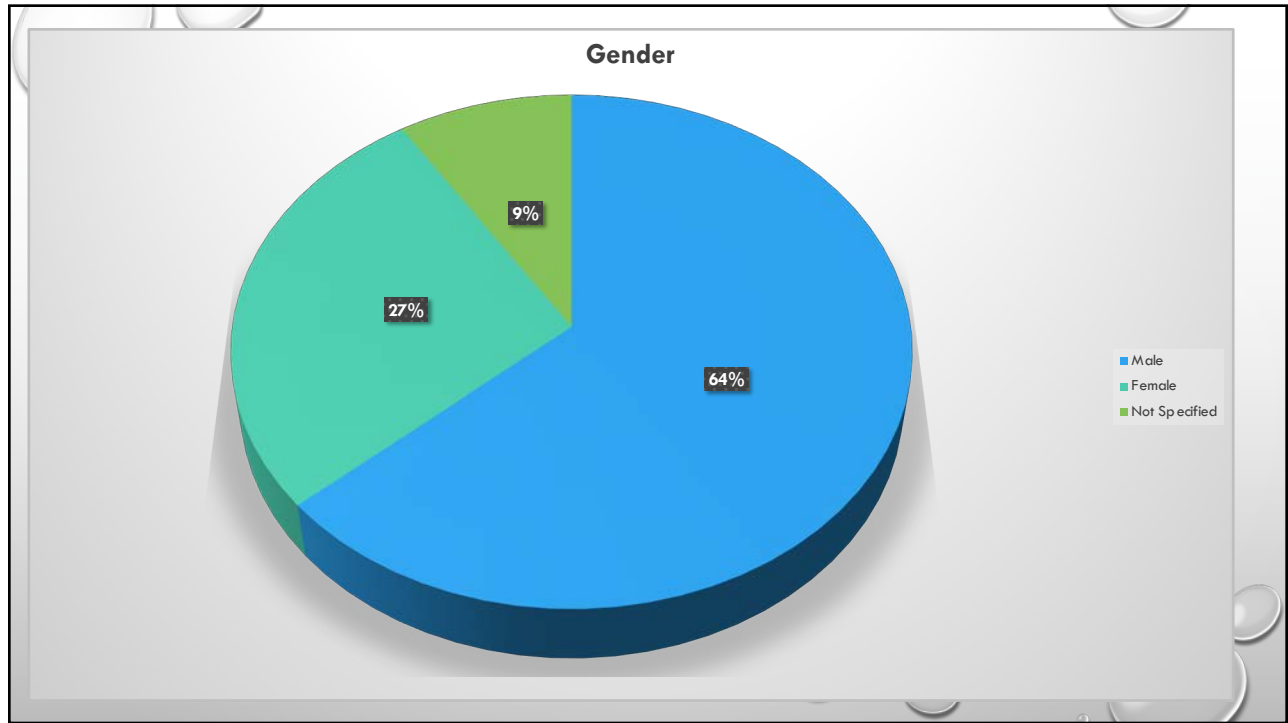
- FROM MARCH 22, 2017 TO MAY 24, 2018
- THE SPECIALIZED CONNECTION DATABASE WAS SEARCHED UTILIZING THE FOLLOWING BOOLEAN PHRASE, ((AUTISM) AND (FREE APPROPRIATE PUBLIC EDUCATION))

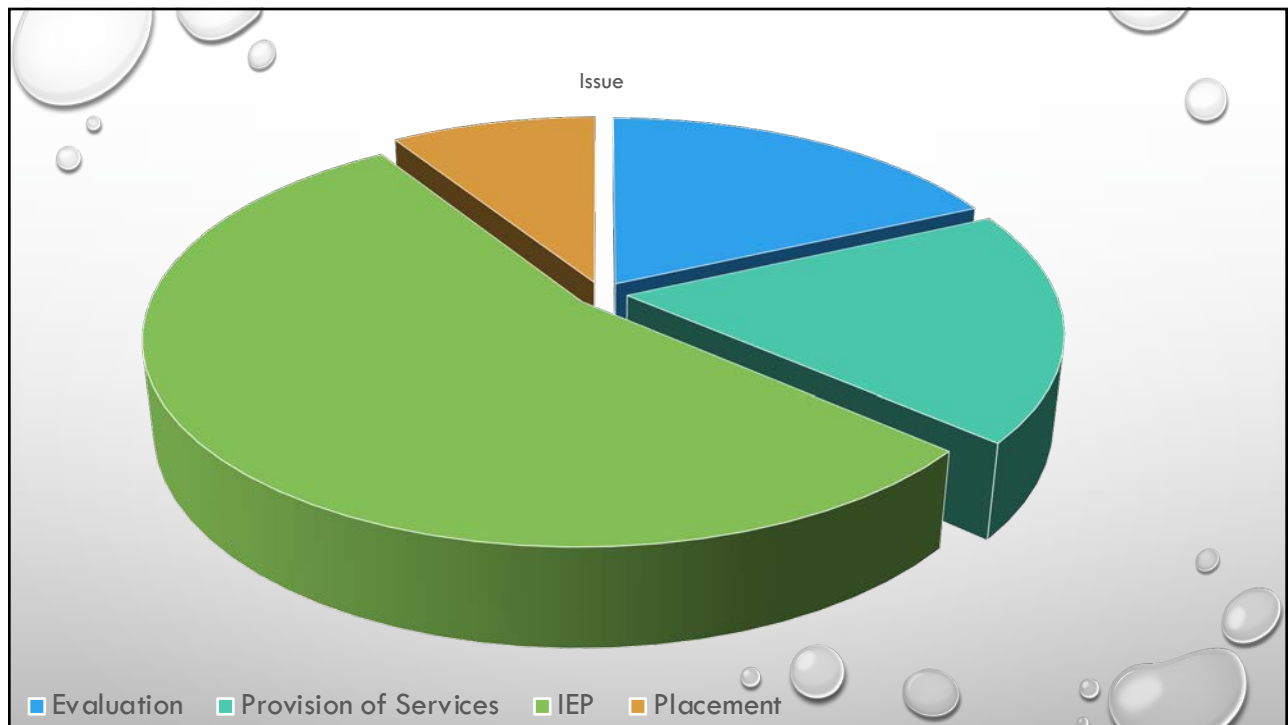
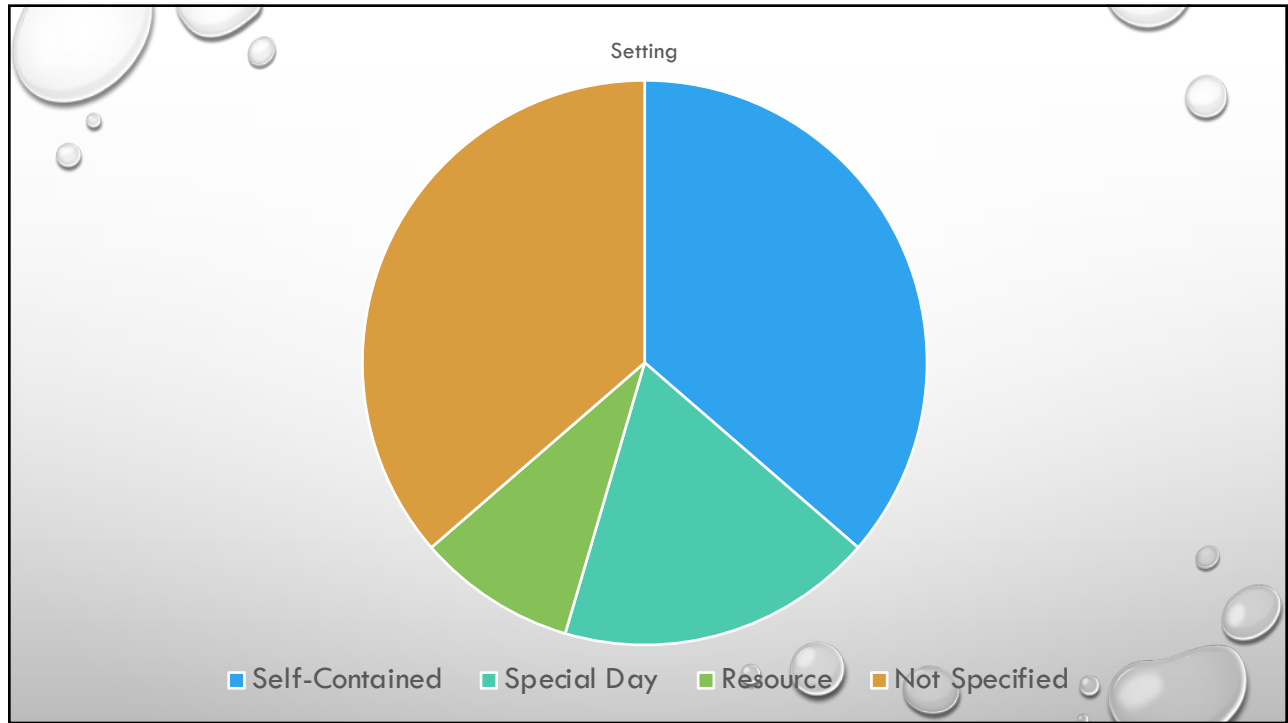
# NUMBER OF CASES

- 11 DISTRICT COURT, OR HIGHER, CASES HAVE BEEN HEARD

Prevailing Party









# FROM THE COURTS

## IEP CASE

- *PARIS SCHOOL DISTRICT V. A.H. (WESTERN DISTRICT OF ARKANSAS, 2017).*
- NOTING THAT THE BIP DEVELOPED FOR A FOURTH-GRADER WITH ASPERGER SYNDROME DID NOT INFORM HER TEACHERS HOW TO HANDLE HER VERBAL DISRUPTIONS, PHYSICAL AGGRESSION, AND PROPERTY DESTRUCTION, THE DISTRICT COURT AGREED WITH AN IHO'S CONCLUSION THAT THE PLAN WAS INADEQUATE.

# EVALUATION

- *E.F. V. NEWPORT MESA UNIFIED SCHOOL DISTRICT (9<sup>TH</sup> CIR. 2018).*
- EVIDENCE SUGGESTING THAT CHILDREN WITH DISABILITIES MAY BEGIN USING ELECTRONIC AT DEVICES AS YOUNG AS AGE 3 DID NOT PROVE THAT A CALIFORNIA DISTRICT SHOULD HAVE EVALUATED A NONVERBAL CHILD WITH AUTISM BEFORE FEBRUARY OF HIS KINDERGARTEN YEAR.

# PROVISION OF SERVICES

- *SMITH V. CHEYENNE DISTRICT 12 (D.C. CO, 2018)*
- DESPITE CLAIMING THAT HER SON'S ONE-TO-ONE AIDES LACKED THE TRAINING NEEDED TO ENSURE HE DID NOT BECOME OVERLY DEPENDENT ON PROMPTING, THE MOTHER OF A KINDERGARTNER WITH AUTISM FAILED TO SHOW THAT THE DISTRICT DENIED HER SON FAPE.

## PLACEMENT

- *R.A. V. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT (9<sup>TH</sup> CIR. 2017)*
- BECAUSE A CALIFORNIA DISTRICT DID NOT PRESENT A PRIVATE SPECIAL EDUCATION SCHOOL AS A "TAKE IT OR LEAVE IT" OFFER TO THE PARENTS OF A CHILD WITH AUTISM, THE 9<sup>TH</sup> U.S. CIRCUIT COURT OF APPEALS HELD THAT THE DISTRICT DID NOT UNLAWFULLY PREDETERMINE THE STUDENT'S PLACEMENT.

## DEVELOPING ENDREW-COMPLIANT IEPS

Adapted from Yell, M.L.

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# **RECOMMENDATION #1**

**ASSIST IEP TEAMS TO AVOID  
PROCEDURAL VIOLATIONS IN THE  
DEVELOPMENT OF THE IEP THAT  
COULD, IN AND OF THEMSELVES,  
CONSTITUTE A DENIAL OF FAPE.**

Adapted from Yell, M.L.

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# **RECOMMENDATION #2**

**ENSURE MEANINGFUL PARENT  
INVOLVEMENT IN IEP MEETINGS AND  
THAT THEIR OPINIONS ARE CONSIDERED  
IN ESTABLISHING THEIR CHILD'S  
EDUCATIONAL/BEHAVIORAL GOALS.**

Adapted from Yell, M.L.

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## **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”**
- **“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”**

Adapted from Yell, M.L.

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## **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**.**

Adapted from Yell, M.L.

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**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”**

Adapted from Yell, M.L.

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## PRESENT LEVELS OF ACADEMIC ACHIEVEMENT & FUNCTIONAL PERFORMANCE

- COURTS HAVE FOUND IEPs INVALID BASED SOLELY ON INADEQUATE PLAAFP STATEMENTS.
- AN IEP IS NOT A FORM DOCUMENT. IT IS CONSTRUCTED ONLY AFTER CAREFUL CONSIDERATION OF THE STUDENT’S **PRESENT LEVELS OF ACHIEVEMENT, DISABILITY, POTENTIAL FOR GROWTH** (ENDREW F., 2017, P.12)

Adapted from Yell, M.L.

## CAUTION: INAPPROPRIATE PLAAFP STATEMENT



- IF THE IEP FAILS TO ASSESS THE 'CHILD'S PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE' THE IEP DOES NOT COMPLY WITH § 1414 [IDEA]. THIS **DEFICIENCY GOES TO THE HEART OF THE IEP;** THE CHILD'S LEVEL OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE IS THE **FOUNDATION ON WHICH THE IEP MUST BE BUILT.** WITHOUT A CLEAR IDENTIFICATION OF [THE CHILD'S] PRESENT LEVELS, THE IEP **CANNOT SET MEASURABLE GOALS, EVALUATE THE CHILD'S PROGRESS AND DETERMINE WHICH EDUCATIONAL AND RELATED SERVICES ARE NEEDED.**

--KIRBY V. CABELL COUNTY BOARD OF EDUCATION, 2006, P. 694

Adapted from Yell, M.L.

## DIRECT RELATIONSHIP

“THERE SHOULD BE A DIRECT RELATIONSHIP BETWEEN THE **PRESENT LEVELS OF PERFORMANCE AND THE OTHER COMPONENTS** OF THE IEP. THUS, IF THE STATEMENT DESCRIBES A PROBLEM WITH THE CHILD'S READING LEVEL AND POINTS TO A **DEFICIENCY IN READING SKILLS**, THE PROBLEM SHOULD BE ADDRESSED UNDER BOTH (1) **GOALS** AND (2) **SPECIFIC SPECIAL EDUCATION AND RELATED SERVICES** PROVIDED TO THE CHILD.” (IDEA REGULATIONS, 1997, APPENDIX C, QUESTION 36)

Adapted from Yell, M.L.

# RECOMMENDATION #4

**ENSURE THAT ANNUAL IEP GOALS ARE  
CHALLENGING, APPROPRIATELY  
AMBITIOUS, AND MEASURABLE.**

Adapted from Yell, M.L.

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**A CHILD'S "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.  
THE GOALS MAY DIFFER, BUT EVERY CHILD SHOULD  
HAVE THE CHANCE TO MEET CHALLENGING  
OBJECTIVES." ENDREW, 2017, P. 14**

Adapted from Yell, M.L.

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**“A REVIEWING COURT MAY FAIRLY EXPECT (SCHOOL) AUTHORITIES TO BE ABLE TO OFFER A COGENT AND RESPONSIVE EXPLANATION FOR THEIR DECISIONS THAT SHOWS THE IEP IS REASONABLY CALCULATED TO ENABLE A CHILD TO MAKE PROGRESS APPROPRIATE IN LIGHT OF HIS (OR HER) CIRCUMSTANCES.”**

Adapted from Yell, M.L.

**ENDREW, 2017, P. 16**

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## **CAUTION: UNAMBITIOUS GOALS**



“THE STATED PROGRESS ON SHANNON’S GOALS IN READING AND MATH SKILLS FOR AN ENTIRE SCHOOL YEAR ENSURED THE IEPS INADEQUACY FROM IT’S INCEPTION. EVEN IF SHANNON HAD MET HER GOALS SHE WOULD CONTINUE TO FALL FURTHER BEHIND HER PEERS. THE GOALS WERE WHOLLY INADEQUATE. FLORENCE COUNTY SCHOOL DISTRICT FAILED TO PROVIDE SHANNON CARTER WITH A FREE APPROPRIATE PUBLIC EDUCATION.”

**-CARTER V. FLORENCE COUNTY FOUR  
17 EHLR 452(D. SC. 1991)-**

Adapted from Yell, M.L.

## CAUTION: UNAMBITIOUS GOALS



- “ENDREW’S APRIL 2010 IEP THAT WAS DEVELOPED WAS A CONTINUATION OF THE POOR PROGRESS ON HIS EDUCATIONAL AND FUNCTIONAL GOALS OF HIS PAST IEPS. AND, AS SUCH, THE DISTRICT WAS NOT SUCCESSFUL IN CREATING AN EDUCATIONAL PROGRAM THAT WAS REASONABLY CALCULATED TO ENABLE ENDREW TO MAKE PROGRESS IN LIGHT OF HIS CIRCUMSTANCES, IN ORDER TO PROVIDE HIM WITH A SUBSTANTIVE FAPE” -**ENDREW V. DOUGLAS COUNTY SCHOOL DISTRICT \_\_ IDELR \_\_ (D. CO. 2018)**

Adapted from Yell, M.L.

## THE IMPORTANCE OF MEASURABLE GOALS

- **IEP TEAMS MUST DEVELOP GOALS THAT CAN BE MEASURED.**
- **MEASURABLE MUST INCLUDE FIVE COMPONENTS:**
  1. **TARGET BEHAVIOR (OBSERVABLE & MEASURABLE)**
  2. **THE GIVEN OR CONDITION**
  3. **THE MEASUREMENT TOOL**
  4. **THE CRITERION FOR ACCEPTABLE PERFORMANCE**
  5. **TIMELINE**

Mager, R.F. (1996). Writing instructional objectives. A critical tool in the development of effective instructions (3<sup>rd</sup>).  
Atlanta, GA: The Center for Effective Performance

Adapted from Yell, M.L.

## CAUTION: UNMEASURABLE GOALS



“THE STUDENT’S ANNUAL GOALS IN EACH IEP SIMPLY DO NOT CONTAIN OBJECTIVE CRITERIA WHICH PERMIT MEASUREMENT OF STUDENT’S PROGRESS. . . . A GOAL OF ‘INCREASING’ READING COMPREHENSION SKILLS OR ‘IMPROVING DECODING SKILLS’ IS NOT A MEASURABLE GOAL . . . . AN OPEN-ENDED STATEMENT THAT THE STUDENT WILL ‘IMPROVE’ DOES NOT MEET THE REQUIREMENT . . . FOR A ‘MEASURABLE’ GOAL” (P.563).

**-RIO RANCHO PUB. SCHOOLS  
40 IDELR 140 (SEA N.M. 2003)-**

Adapted from Yell, M.L.

## CAUTION: TEACHER OBSERVATION



“ALTHOUGH SUBJECTIVE TEACHER OBSERVATION PROVIDES VALUABLE INFORMATION, **TEACHER OBSERVATION IS NOT AN ADEQUATE METHOD OF MONITORING STUDENT PROGRESS.**”

“WITHOUT SUPPORTING DATA, TEACHER OBSERVATION IS OPINION WHICH CANNOT BE VERIFIED.”

**-BOARD OF EDUCATION OF THE RHINEBECK CENTRAL SCHOOL  
DISTRICT (39 IDELR 148, 2003)-**

Adapted from Yell, M.L.

## ADDRESS BEHAVIORAL SUPPORTS IN GOALS & SERVICES

- “THE FAILURE TO CONSIDER AND PROVIDE FOR NEEDED BEHAVIORAL SUPPORTS THROUGH THE IEP PROCESS IS LIKELY TO RESULT IN A CHILD NOT RECEIVING A MEANINGFUL EDUCATIONAL BENEFIT AND FAPE.” –DEPT. OF EDUCATION, DEAR COLLEAGUE LETTER ON BEHAVIORAL SUPPORTS IN THE IEP, P. 3-

Adapted from Yell, M.L.

## ADDRESS BEHAVIORAL SUPPORTS IN GOALS & SERVICES

“THE DISTRICT’S **INABILITY TO PROPERLY ADDRESS (ENDREW’S) BEHAVIORS** THAT **NEGATIVELY IMPACTED** HIS ABILITY TO MAKE **PROGRESS ON HIS EDUCATIONAL AND FUNCTIONAL GOAL**” (ENDREW, 2018, P. 17)

Adapted from Yell, M.L.

## 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.

Adapted from Yell, M.L.

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“THE REASONABLY CALCULATED QUALIFICATION REFLECTS A RECOGNITION THAT CRAFTING AN APPROPRIATE PROGRAM OF EDUCATION REQUIRES A **PROSPECTIVE JUDGEMENT** BY (IEP TEAM MEMBERS), INFORMED BY THEIR OWN EXPERTISE AND THE VIEWS OF THE CHILD'S PARENTS” -ENDREW, 2017, P. 11-

Adapted from Yell, M.L.

## **WARNING: JUSTIFYING PROGRESS**



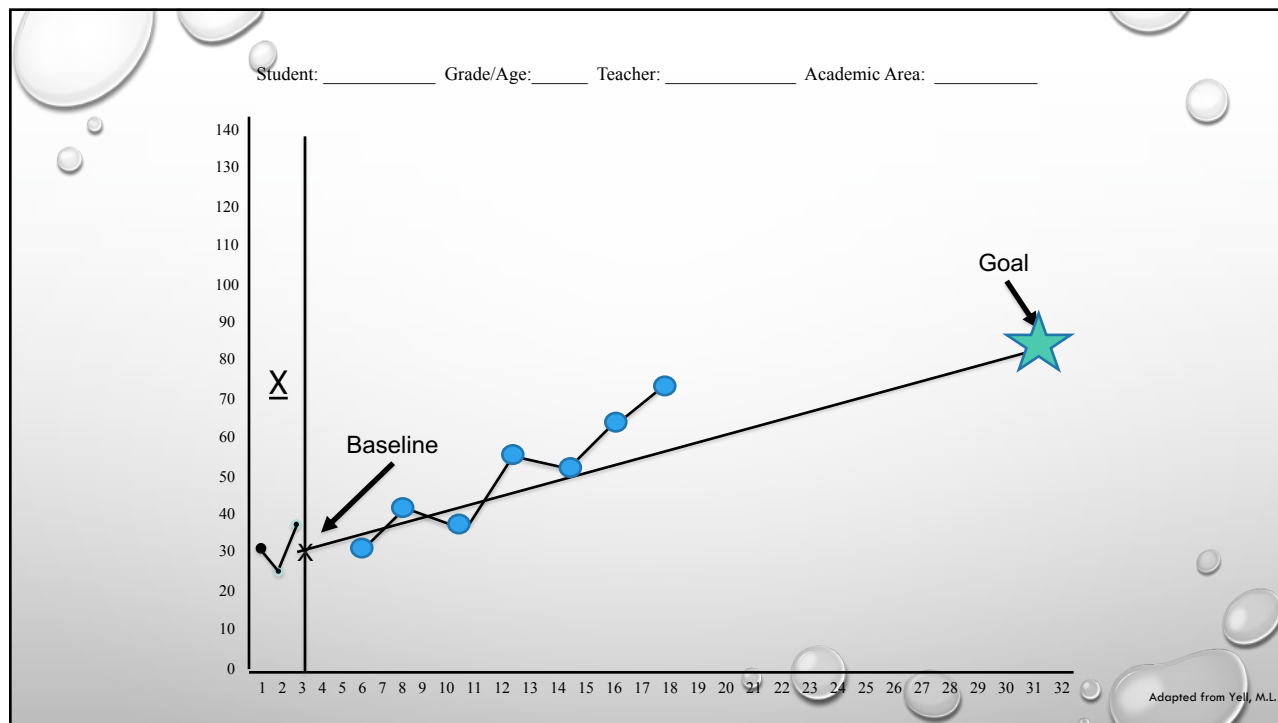
"A REVIEWING COURT MAY FAIRLY EXPECT THOSE AUTHORITIES TO BE ABLE TO OFFER A **COGENT AND RESPONSIVE EXPLANATION** FOR THEIR DECISIONS THAT SHOWS **THE IEP IS REASONABLY CALCULATED TO ENABLE THE CHILD TO MAKE PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES.**" -ENDREW F., 2017, P. 16-

Adapted from Yell, M.L.

## **MONITORING AND REPORTING PROGRESS**

**KATHLEEN MEHFOUND (ATTORNEY WITH REED & SMITH AND CONSULTANT TO LRP): " WHEN I HAVE A SCHOOL DISTRICT WITH A FAPE CASE THE FIRST THING I DO IS GO TO THE TEACHER AND SAY 'GIVE ME INFORMATION ON YOUR STUDENT'S PROGRESS.' IF THE TEACHER DOESN'T HAVE DATA, I ADVISE THE SCHOOL DISTRICT TO SETTLE."** (TRI-STATE SPECIAL EDUCATION LAW CONFERENCE, 2015)

Adapted from Yell, M.L.



## RECOMMENDATION #6

WHEN PROGRESS REPORTS 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**

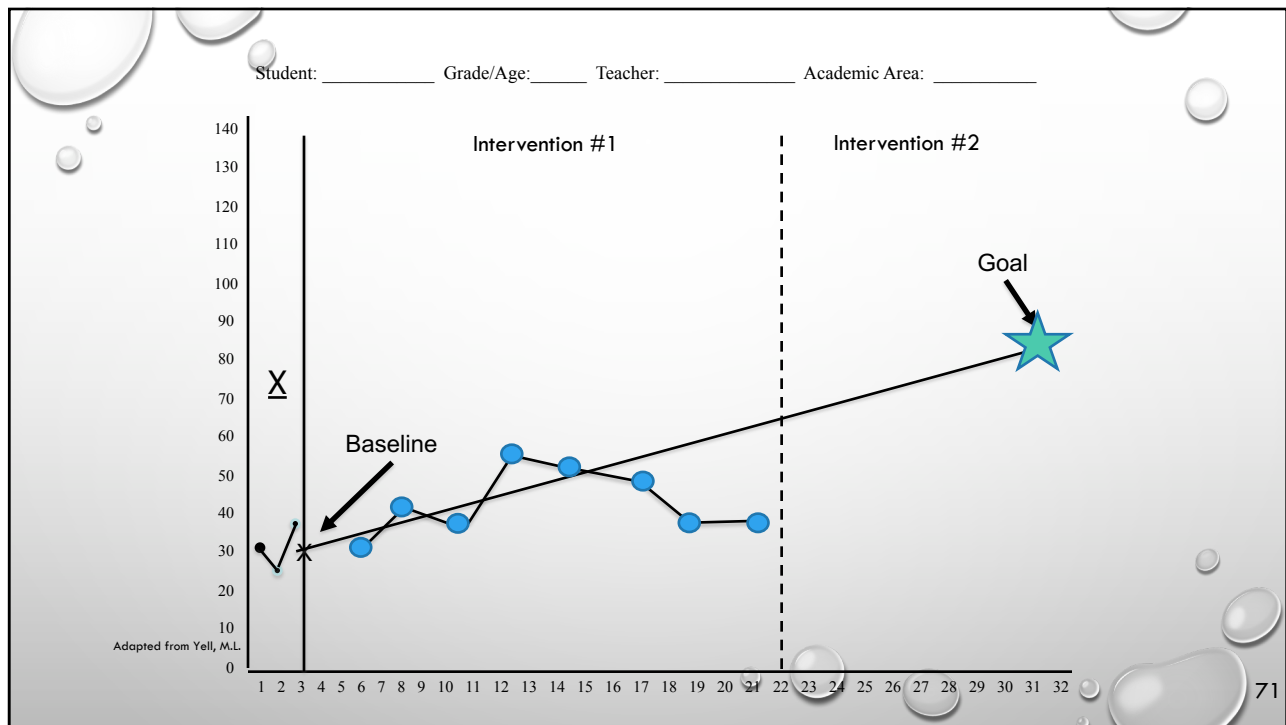
Adapted from Yell, M.L.

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**“IF A CHILD IS NOT MAKING EXPECTED PROGRESS TOWARD HIS OR HER ANNUAL GOALS, THE IEP TEAM MUST REVISE, AS APPROPRIATE, THE IEP TO ADDRESS THE LACK OF PROGRESS”**

DEPT. OF EDUCATION’S FAQ - *ENDREW F.*, QUESTION 15

Adapted from Yell, M.L.



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# THREE IMPORTANT IEP CONCEPTS

Adapted from Yell, M.L.

## 1. PROCEDURAL REQUIREMENTS

- THESE SAFEGUARDS ARE DESIGNED TO PROTECT THE RIGHTS OF PARENTS AND THEIR CHILD WITH A DISABILITY BY REQUIRING THE SCHOOL DISTRICT TAKE ACTIONS TO INVOLVE PARENTS IN THE SPECIAL EDUCATION PROCESS
- PROCEDURAL REQUIREMENTS REPRESENT THE “HOW” AND “WHEN”
- HAS THE SCHOOL DISTRICT COMPLIED WITH THE PROCEDURES SET FORTH IN THE LAW? (*BOARD OF EDUCATION V. ROWLEY*, 1982, P. 191)

Adapted from Yell, M.L.

## **NO HARM NO FOUL**

- PROCEDURAL REQUIREMENTS ARE IMPORTANT AND MUST BE FOLLOWED, HOWEVER, FAILURE TO DO SO WILL NOT ALWAYS RESULT IN A FINDING AGAINST A SCHOOL DISTRICT.
- PROCEDURAL VIOLATIONS WILL ONLY RESULT IN A RULING THAT FAPE WAS DENIED IF:
  - THE VIOLATIONS IMPEDED A STUDENT'S RIGHT TO FAPE
  - CAUSED A DEPRIVATION OF EDUCATIONAL BENEFITS
  - SIGNIFICANTLY IMPEDED PARENTS' RIGHTS TO PARTICIPATE

Adapted from Yell, M.L.

## **CRITICAL PROCEDURAL REQUIREMENTS**

- ENSURE PARENTS MEANINGFUL INVOLVEMENT
- DO NOT PREDETERMINE PROGRAM OR PLACEMENT
- FIELD AN APPROPRIATE IEP TEAM
- DETERMINE PLACEMENT ONLY AFTER THE IEP IS DEVELOPED

Adapted from Yell, M.L.

**“A DECISION MADE BY A HEARING OFFICER SHALL BE MADE ON *SUBSTANTIVE* GROUNDS BASED ON A DETERMINATION OF WHETHER A CHILD RECEIVED A FREE APPROPRIATE PUBLIC EDUCATION”**  
**(IDEA, 20 U.S.C.§1415(F)(3)(E)(I)**

Adapted from Yell, M.L.

## **2. SUBSTANTIVE REQUIREMENTS**

- THE SUBSTANTIVE REQUIREMENTS OF IDEA REFER TO A SCHOOL DISTRICTS OBLIGATION TO PROVIDE A FAPE THAT IS DESIGNED TO LEAD TO STUDENT PROGRESS.
- SUBSTANTIVE REQUIREMENTS REPRESENT THE “WHAT”
- WAS THE STUDENT’S IEP “REASONABLY CALCULATED TO ENABLE A CHILD TO MAKE PROGRESS APPROPRIATE IN LIGHT OF THE CHILD’S CIRCUMSTANCES (ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT, 2017, P.9)

Adapted from Yell, M.L.

## CRITICAL SUBSTANTIVE REQUIREMENTS

- CONDUCT CURRENT, RELEVANT & MEANINGFUL ASSESSMENTS THAT ADDRESS ALL OF A STUDENT'S NEEDS
- DEVELOP THE PLAAFP STATEMENTS THAT ARE BASELINES BY WHICH A TEAM CAN MEASURE AND MONITOR STUDENT PERFORMANCE & CONNECT GOALS AND SERVICES
- WRITE CHALLENGING, AMBITIOUS, & MEASURABLE GOALS
- DEVELOP EDUCATIONALLY MEANINGFUL SPECIAL EDUCATION AND RELATED SERVICES BASED ON "PEER-REVIEWED RESEARCH"
- MONITOR STUDENT PROGRESS BY COLLECTING "REAL" DATA
- REACT APPROPRIATELY TO THE DATA, BY MAKING CHANGES WHEN NEEDED

Adapted from Yell, M.L.

## 3. IMPLEMENTATION REQUIREMENTS

- THE IMPLEMENTATION REQUIREMENTS OF IDEA REFER TO A SCHOOL DISTRICT'S OBLIGATION TO IMPLEMENT THE IEP AS DEVELOPED BY SCHOOL-BASED PERSONNEL IN COLLABORATION WITH THEIR PARENTS.
- IMPLEMENTATION REQUIREMENTS REPRESENT A SCHOOL DISTRICTS FAITHFULNESS IN IMPLEMENTING A STUDENT'S IEP
- AN IEP IS A **CONTRACT**. IT IS SIGNED BY THE CHILD'S PARENTS AND THE SCHOOL'S REPRESENTATIVES, AND THUS EMBODIES A BINDING COMMITMENT" (M.C. V. ANTELOPE VALLEY SCHOOL DISTRICT, 2017)

Adapted from Yell, M.L.

## **CRITICAL IMPLEMENTATION REQUIREMENTS**

- ENSURE THAT IEP SERVICES ARE IMPLEMENTED IN ACCORDANCE WITH THE IEP
- ENSURE THAT ALL SPECIAL EDUCATION TEACHERS, GENERAL EDUCATION TEACHERS, AND RELATED SERVICES STAFF UNDERSTAND AND CARRY OUT THEIR RESPONSIBILITIES UNDER THE IEP

Adapted from Yell, M.L.

## **CONCLUSION**

- ROWLEY REQUIRES THAT WE KNOW AND ADHERE TO THE PROCEDURES OF THE IDEA
- ENDREW REQUIRES THAT WE DEVELOP IEPs THAT ARE CALCULATED TO ENABLE THE STUDENT TO PROGRESS IN LIGHT OF HIS OR HER CAPABILITIES
- THE IDEA REQUIRES THAT WE IMPLEMENT THE IEP AS AGREED UPON.

Adapted from Yell, M.L.

# QUESTIONS/COMMENTS

Adapted from Yell, M.L.

# THANK YOU!!!!

Adapted from Yell, M.L.

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