

MSLBD's Conference on Behavior Issues for School Leaders
Workshop #2

Legal Developments in the Education of Students
with EBD: What You Need to Know and Why

October 2016 Updates . . .

Endrew v. Douglas County School District RE-1, 2015

- U.S. Court of Appeals for the 10th Circuit
- <https://www.ca10.uscourts.gov/?q=opinion/search/results&query=Endrew%20v.%20Douglas%20County%20School%20District>
- U.S. Solicitor General filed an amicus curia on 8/18/2016
- Granted certiorari by the U.S. Supreme Court on 9/29/2016

Facts of the Case

- Endrew F. (Drew) was diagnosed with autism and attention deficit hyperactivity disorder at age 2
- He received special education services in the Douglas County Schools through 4th grade
- Drew's parents rejected an IEP proposed by a school district
- Drew's parents enrolled him at the 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 that the school had denied him a FAPE.
- The administrative law judge (ALJ) denied the request, finding that the school district had provided Drew with a FAPE
- The parents filed suit in the 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 the the 10th Circuit

The Appeal to the 10th Circuit

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

The Parents Challenges

- Procedural deficiencies
 - The District failed to provide adequate reporting on Drew's progress
 - The District failed to properly assess Drew's behavior and did not include an adequate plan to address behavior problems (no FBA)
- Substantive deficiencies
 - Drew made no measurable progress on his goals
 - District failed to address Drew's escalating behavioral problems

The 10th Circuit's Decision

- Procedural deficiencies
 - Even though the district admitted to not reporting Drew's progress, and the court "did not endorse the District's reporting," the parents still participated in a meaningful way in crafting his IEP
 - Because the district "considered" Drew's behavior and possible interventions, it met the requirements of the IDEA
 - An FBA is only required when there is a disciplinary change of placement

The 10th Circuit's Decision

- Substantive deficiencies
 - Although Drew's progress was not measured, the ALJ decided that he had made progress in the past so he had made some educational progress during his time in the district, and some educational progress was sufficient
 - Many of Drew's goals remained the same from year to year but sometimes they were changed
 - The district has made sufficient effort to craft a behavioral plan so it did not deny FAPE

Split in the Circuits

- Rowley" Congress's aim had been to set a "basic floor of opportunity" by "providing individualized services sufficient to provide eligible students with some educational benefit
- Higher standard-Meaningful (3rd & 6th Circuits)
- Lower standard-Some benefit, more than trivial or De Minimus (1st, 4th, 7th, 10th, & 11th Circuits)
- Just above the trivial standard without rejecting higher standard (2nd, 5th, & 8th Circuits)
- Confused circuit-9th

Appeal to the U.S. Supreme Court

- On 12/22/2015 the parents filed a petition with the U.S. Supreme Court
- Granted certiorari by the U.S. Supreme Court on 9/29/2016
- Question presented: What is the level of educational benefit that school district's must confer on children with disabilities to provide them with a FAPE?

Will this be the most important court decision since Rowley v. Board of Education (1982)?

We'll find out in late June or early July!
