School Leaders Risk Management Association

# Case Summary

**Endrew F. ex rel. Joseph F. v. Douglas County School District**
**2017 WL 1066260 (U.S. Supreme Court)**

**April 13, 2017**

## Background

The student in this case, Endrew F., was diagnosed with autism and displayed behaviors that impaired his access to learning in the classroom – screaming, climbing over furniture and students, and running away from school on occasion. His parents believed that by the end of 4th grade, his academic progress had stalled. To the parents, the school's proposed Individualized Education Program (IEP) for 5th grade was basically the same as prior IEPs. Dissatisfied with the proposed IEP, the parents placed the student at a private school that specialized in autism, where he flourished. The parents thereafter sought reimbursement for the tuition at the specialty school, asserting that the public school district had not provided their student with a free appropriate public education because the IEP was not reasonably calculated to enable him to receive educational benefits. The parents pursued their case after they were unsuccessful before an administrative law judge, the District Court, and the Tenth Circuit Court of Appeals.

## Holding

The U.S. Supreme Court reversed by unanimous decision. The Court held that "[t]o 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." In overruling the lower court, Justice Roberts elaborated on the requirements that IEPs must meet under the Individuals with Disabilities Education Act (IDEA) and the Court's prior decision involving IEPs in *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982). The Court noted that its decision in the *Rowley* case did not address the situation of IEPs for children who are not fully integrated in a regular classroom. The distinction is important, the Court reasoned, because an IEP for a student that is fully integrated in the classroom typically means the student will receive instruction reasonably calculated to advance through the general curriculum and thereby advance grade to grade. With regard to a student not integrated such as Endrew F., the Court held as follows:

> "(an) IEP need not aim for grade-level advancement. But his 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. Of course this describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the 'merely more than de minimis' test applied by the Tenth Circuit. It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than de minimis progress for those who cannot."

Importantly, the Court did not adopt the higher standard urged by Endrew's parents – that public schools must give children with disabilities an opportunity to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities. The Court also rejected the school district's position that the IDEA requires only instruction sufficient to confer *some* educational benefit and does not guarantee any particular level of education.

**Learning Point**

The Court's decision makes clear that the standard for IEPs is higher than "just above trivial" education. But what does that mean? By definition, an IEP is individualized – so the Court's decision could not give a specific guide for what all IEPs should look like, or a uniform set of rules to design IEPs properly. The focus for parents and school districts will be whether IEPs are working for individual students, judged by whether the students are challenged and making appropriate progress.

The most immediate effect of the Endrew F. decision will be on pending IEP hearings and IEPs already the subject of litigation. Attorneys for parents will now cite the case as support for an IEP being insufficient because the child has made minimal progress. Attorneys may even ask for supplemental briefing to consider the decision and seek to file amended briefs.

The long-range ramifications are less certain. One possible impact is that parents of students with IEPs will push hard for IEPs that produce more measurable progress, and pursue mediations and due process hearings more frequently. Another potential impact is an uptick in parents pulling special education students out of public schools and placing them in specialty schools, then suing school districts for reimbursement.

School districts should revisit their current approaches and practices for students covered by the IDEA, as well as review IEPs currently in place. With regard to existing IEPs, school districts should consider whether those IEPs are resulting in more than just minimal progress, paying particular attention to the progress of students who are not fully integrated into classrooms. School districts should anticipate that courts will expect them to offer a cogent and responsive explanation for their decisions that shows an IEP is reasonably calculated to enable a child to make progress appropriate in light of his circumstances. In addition, school districts should proactively contact attorneys representing their district to understand the impact of this decision in pending IEP-related litigation.