



U.S. Supreme Court Issues Landmark Decision in Special Education Case

On March 22, 2017, the United States Supreme Court issued a decision in Endrew F. v. Douglas County School District, a closely-watched case that went to the heart of the question: what exactly does it mean to provide a student with disabilities a “free, appropriate public education” (“FAPE”)? The Supreme Court has answered that question by reaffirming that each student’s Individualized Education Program (“IEP”) must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s unique circumstances.” The decision may have a significant impact on due process hearings in New Jersey.

In Endrew F., the parents’ due process petition challenging the IEP proposed by the school district was denied. The Tenth Circuit Court of Appeals affirmed the finding in favor of the school district and ruled that because the IEP was reasonably designed to enable the child to make *some* educational progress, the district had satisfied its obligation to offer a FAPE. This standard, that school districts need only provide “more than a *de minimis*” educational benefit, has been utilized by a majority of the Federal Circuit Courts to date.

In contrast to the Tenth Circuit’s “more than a *de minimis*” standard, the Third Circuit Court of Appeals, which includes New Jersey, has ruled that school districts must provide students with a “meaningful educational benefit,” which has traditionally been interpreted as being a much more burdensome standard for school districts.

In Endrew F., the Supreme Court declined to adopt either the Third Circuit’s or the Tenth Circuit’s standard. While setting a higher standard than what was previously used in the Tenth Circuit, the Supreme Court noticeably refused to require that a student’s progress be “meaningful” or “substantive,” the standard that has been utilized by the Third Circuit and applied to New Jersey school districts. Although the extent to which the “meaningful educational benefit” test will remain relevant is unclear at this time, we believe that overall, the Endrew F. decision is beneficial for New Jersey school districts.

While the Supreme Court refused to set a new bright-line rule, it nevertheless stated – no less than five (5) times throughout its decision – that a student who is educated in the general education environment is considered to receive a FAPE if that student’s IEP “is reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Although this standard was mentioned by the Supreme Court more than thirty-five years ago, it has not been regularly relied upon in the lower courts. Given the Supreme Court’s repetition of this standard, school districts may now be able to more easily defend against certain claims.



Additionally, the Court acknowledged the important role that school staff play in determining whether an IEP is “reasonable” for a particular student. While reviewing courts are to consider the input of the child’s parents in addition to the expertise of school officials, the Supreme Court made clear that “deference is based on the application of expertise and the exercise of judgment by school authorities.” Whether FAPE has been provided to a student will now likely depend on whether school authorities can “offer a cogent and responsive explanation for their decisions”.

Finally, the Court also confirmed that an IEP is not required to aim for grade-level advancement where such progress cannot be reasonably expected. Additionally, the Court concluded that an IEP must be “appropriately ambitious”, given the child’s individual circumstances, and must offer an opportunity to meet “challenging” goals and objectives. This pronouncement by the Court will likely lead school districts and parents to debate (and litigate) whether IEPs are “appropriately ambitious” – at least until the next time the Supreme Court decides to weigh in.

Should you have any questions or concerns with respect to the Supreme Court’s decision in Andrew F. or any other special education matter, the attorneys at The Busch Law Group are available to assist you.

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