

After 34 Years, the Supreme Court Revisits FAPE

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It is important to remember that before 1975, school districts were **not** legally required to educate all students with disabilities. Since the passage of Public Law 94-142 (today known as Individuals with Disabilities Education Act or IDEA), key Court decisions have added clarity to how IDEA is interpreted, such as adding procedural safeguards for families.

On March 22, 2017, the U.S. Supreme Court unanimously issued the Endrew F. decision that fine-tunes the standard by which we measure whether a student is receiving a Free Appropriate Public Education (FAPE). Endrew F. clarifies that **the IEP must aim to enable the child to make progress**. Endrew F. also strengthens the requirement for providing special education services to students who are educated in general education classes, even if they are making passing grades. These are significant changes that “raise the bar” for learning expectations for children with IEPs.

This U.S. Supreme Court decision reminds us that the promise of IDEA is that children with disabilities will receive an education with supports and services geared to their needs; in settings with peers who do not have disabilities -- that prepares them to live as independently as possible in the community.

Practical Applications of Endrew F.

It is important for parents, advocates and school personnel to understand how Endrew F. changes the expectations for developing IEPs.

The Court reasoned that:

- IDEA requirements are not simply a procedural checklist
- The IEP is not just a form to be completed
- The IEP is to be constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.

The addition of the expectation for IEP teams to consider a student’s potential for growth adds an important component to the standard of FAPE, one of the cornerstones of IDEA.

“The Individual Education Program (IEP) must aim to enable the child to make progress thus reflecting:

... the broad purpose of the IDEA, an ‘ambitious’ piece of legislation enacted ‘in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or were sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’”

Endrew F. v. Douglas County School Dist., 137 S.Ct. 938, 999 (March 22, 2017)



The delivery of FAPE has substantive requirements including:

- Comprehensive evaluations to identify all educational needs and the **student’s potential for growth**;
- Goals and objectives that
 - are **reasonably calculated** to ensure the student leaves school prepared for the next phase of life;
 - provide for **academic and functional advancement**
 - are sufficiently **challenging**
- Progress monitoring and adjustments to the programming when there is no progress
- Advancement from grade to grade with **actual access to the general education curriculum** is the expectation for all children

The Endrew F. decision also raises the bar for learning in general education classrooms.

- ☑ Provides incentive to **measure progress** and ensure that a child receives **meaningful benefit** from general education instruction
- ☑ Sets the expectation that school authorities should be able to explain the ways in which **“the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”**

The Endrew F. Court articulated this standard:

“For children fully integrated in the regular classroom, this would typically require an IEP reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

Although the Court did not articulate a standard for students with IEPs who are included in general education for only a portion of the school day, it would make sense to assume that the same expectation exists for those students.



Be Prepared

The Endrew F. decision provides power to families who are concerned that their child’s IEPs have simply maintained the status quo, rather than being developed and revised with an emphasis on growth and learning.

In order to be prepared for the next IEP Team meeting, take these steps:

- Review existing documents:
 - the most recent evaluation or reevaluation report – *does the report accurately describe strengths and needs?*
 - the prior year’s IEP – are the **goals and objectives challenging?**
 - progress reports – does the data show **anticipated progress?**
- Request and review a copy of the draft IEP prior to meeting day to highlight questions and concerns
- Expect that there will be IEP goals to address learning in general education classes that relate to the content area
- If you are concerned about keeping up with the discussion at the IEP meeting, take someone with you and/or advise the district that you will audio tape the meeting (24 hrs. in advance)

Stay on Top of the IEP’s Implementation

Monitoring the implementation of the IEP throughout the school year is the best way to be prepared for future IEP Team meetings. Follow these steps and consider including supports like these in the IEP:

- ☑ Establish a communication system with the classroom teacher(s);
- ☑ Borrow a copy of the book(s) and other instructional materials that your child will use in his classes;
- ☑ Review copies of all completed classwork and tests;
- ☑ Compare the class work with the homework to see if there is consistency;

Expect the same quality of teaching for students with IEPs as for other students. Strategies to understand if your child is receiving real benefit from the classes he/she attends include:

- ☑ Reviewing progress reports and ask questions about progress;
- ☑ Reviewing the curriculum for each subject area; and
- ☑ Visiting the school periodically and ask for a copy of the lesson plan to see what is supposed to be happening at the time you visit

Contact PEAL for assistance in preparing for an IEP meeting or help in understanding any of the information shared in this article. For additional details about the Endrew F. case decision and its implications, a lengthier article by Barbara Ransom can be found on the PEAL website at www.pealcenter.org.