Defining Educational Benefit

An Update on the U.S. Supreme Court's Ruling in Endrew F. v. Douglas County School District *(2017)*

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Drew, a fourth-grade student with autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD), had received special education services in the Douglas County School District since he was in preschool. When he was in fourth grade, Drew's parents expressed their dissatisfaction with the special education programming outlined in his individualized education program (IEP). They were especially concerned that their son's academic progress had stalled, his behavior problems had worsened, and that many of Drew's IEP goals had been carried over from IEPs developed in previous years. Drew's parents rejected his IEP, removed him from the Douglas public schools and placed him in a private school that specialized in educating students with ASD called the Firefly Autism House. Drew did well at the private school; he made academic progress and his problems behavior were reduced.

Drew's parents then filed a due-process complaint under the Individuals With Disabilities Education Act (IDEA, 2006). A 3-day hearing was held in which the parents alleged that because that Douglas County School District failed to provide Drew with a free appropriate public education (FAPE), the district should reimburse them for tuition and related expenses. School district officials refused. The administrative law judge (ALJ) who presided over the due-process hearing ruled for the Douglas County School District, finding the district had provided Drew with a FAPE, thereby denying the parents request for tuition reimbursement. In arriving at the ruling, the ALJ relied on the first FAPE case heard by the U.S. Supreme Court, Board of Education v. Rowley *(1982), which ruled that a school district conferred a FAPE when an IEP was developed for a student that allowed them to receive some educational benefit, and a decision from the U.S. Court of Appeals for the 10th Circuit, which held that an education that provided de miminis or trivial education benefit met the* Rowley *standard. Drew's parents then filed a suit in the U.S. District Court again contending that the Douglas County School District failed to provide their son with a FAPE, as required by the IDEA. The district court judge upheld the ALJ's decision, ruling that the school district had provided Drew with a FAPE because the student had made at least minimal progress, thereby meeting the FAPE requirements of the IDEA. Drew's parents appealed to the U.S. Court of Appeals for the 10th Circuit. In a unanimous opinion, the three-judge panel of the 10th Circuit Court affirmed the district court judge's ruling that the Douglas County School District met the FAPE requirements of the IDEA and was not required to reimburse Drew's parents for the tuition they paid at the Firefly Autism House. Drew's parents then filed an appeal with the U.S. Supreme Court. The high court granted certiorari (decided to hear the case). The question the court agreed to hear was as follows: "whether the educational benefit provided by a school district must be merely more than de minimis in order to satisfy the FAPE requirement" (U.S. Solicitor General, 2016). The court heard oral arguments on January 11, 2017, and announced its ruling on March 22, 2017.*

This scenario depicts the difficulties encountered by a young student in the Douglas County School District in Castle Rock, Colorado, named Endrew (called Drew by his parents). This situation, which began at Drew's IEP meeting at Summit Ridge Elementary School when he was in fourth grade, led to a due-process hearing and two federal court cases and eventually resulted in the seminal ruling by the U.S. Supreme Court in *Endrew F. v. Douglas County School District* (or *Endrew F.*; 2017). The ruling, which was written by chief justice John Roberts, defined the educational-benefit standard that school districts must meet in developing a FAPE for students with disabilities who receive special education services under the IDEA. Following the high court's ruling, the case went back through the two lower federal courts that first heard the case.

A few months after the Supreme Court's ruling, we published an article in *TEACHING Exceptional Children* in which we reviewed the decision and provided implications for special educators for implementing programs that meet the FAPE standard of the IDEA (Yell & Bateman, 2017). Our purpose in this article is to provide an update of that article and to examine the effects of the *Endrew F.* ruling 3 years after it was announced. To accomplish this, we (a) review the definition of FAPE in the IDEA, (b) reexamine and update the Supreme Court's decision in *Endrew F.*, and (c) extrapolate principles for educators from *Endrew F.* with respect to development of students' IEPs.

FAPE: The Primary Obligation of Special Educators

The passage of the Education for All Handicapped Children Act (EAHCA) in 1975, which was renamed the IDEA in 1990, ensured that all students with disabilities who were determined eligible under the law would receive special education and related services that conferred a FAPE. Unfortunately, this central obligation was not clearly defined when the EAHCA was originally passed, and it has not been changed since then. The law defined a FAPE as special education and related services that

A. are provided at public expense, under public supervision and direction, and without charge,
B. meet standards of the State educational agency,
C. include an appropriate preschool, elementary, or secondary school education in the state involved, and
D. are provided in conformity with the individualized education program.
E. (20 U.S.C. § 1401[a][18])

Part 1 requires that a student's special education program is free; thus, a school district may not charge the parents of students with disabilities for any of the special education services or related services that are included in their IEP. According to Parts 2 and 3 of the FAPE definition, a public education includes a preschool, elementary, or secondary education that meets state standards. Part 4 of the definition requires that a FAPE be provided in conformity with a student's IEP. This definition in the IDEA is procedural; it describes how a FAPE is developed and sets forth the IEP as the blueprint of a student's FAPE but does not address any particular amount of educational benefit that is necessary for a student to receive a FAPE. Almost immediately after passage of the EAHCA, lawsuits were brought against school districts by parents who believed that the districts had failed to provide a FAPE to their child. A FAPE case out of the Hendrick Hudson School District in Montrose, New York, was to become the first special education dispute to be heard by the U.S. Supreme Court.

Board of Education v. Rowley (1982)

Amy Rowley was a student in kindergarten at the Furnace Woods Elementary School in the Hendrick Hudson School District in Montrose, New York. She was profoundly deaf and qualified for special education services under the EAHCA. Amy's parents requested that her IEP provide a sign language interpreter in her class. After a brief trial period, the school district refused to provide the services of the interpreter. The parents requested a due-process hearing. Eventually the parents filed a suit in the federal district court for the Southern District of New York. The judge overturned the decision of the hearing officer and state review board, finding that the Hendrick Hudson School District had failed to provide Amy with a FAPE. The judge, Vincent Broderick, reasoned that despite the fact that Amy was a bright and academically able child, she could not learn as much as she could if not deaf. The judge developed a standard by which he would make his ruling: "This standard would require that each handicapped child be given an opportunity to achieve his full potential commensurate with the opportunity provided to other children" (*Rowley*, 1980, p. 534). The school district appealed the ruling to the U.S. Court of Appeals for the Second Circuit, which, in a 2-to-1 ruling, upheld the district court's decision that the Hendrick Hudson school district had failed to provide Amy with a FAPE. The school district then filed an appeal (called a petition for a writ certiorari) to the U.S. Supreme Court.

In 1982, the U.S. Supreme Court issued a ruling in *Board of Education v. Rowley*. Because this was the first case the Supreme Court had heard on special education, it had great importance. This was made more notable because the case dealt with the crux of special education, FAPE.

Chief justice William Rehnquist wrote the opinion for the 6-to-3 majority overturning the lower court decisions. In the ruling, which was issued on June 28, 1982, the high court held that the Hendrick Hudson School District had provided Amy with a FAPE. Chief Justice Rehnquist wrote, "We hold that the state satisfies the FAPE requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (*Rowley*, 1982, pp. 203–204). He further wrote, "If personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction… the child is receiving a free appropriate public education" (*Rowley*, 1982, p. 182). The majority found that

> Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful. (*Rowley*, 1982, p. 182)

The high court rejected setting an educational-benefit standard and specifically abjured the FAPE standard set by the lower courts when the majority opinion noted,

> Noticeably absent from the language of the statute is any substantive language prescribing the level of education to be accorded handicapped children. Certainly, the language of the statute contains no requirement like the one composed by the lower courts—that States maximize the potential of handicapped children "commensurate with the opportunity provided to other children." (*Rowley*, 1982, p. 182)

The court developed a two-part test for courts to use when ruling on FAPE. "First, has the [school] complied with the procedures of the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (*Rowley*, 1982, pp. 206–207). According to the court, if these requirements were met, a school had complied with the FAPE requirements of the IDEA. In this particular case, the Hendrick Hudson School District met both prongs of the tests, thereby proving a FAPE to Amy Rowley.

Justice White wrote the dissent in the *Rowley* case, in which he was joined by Justices Brennan and Marshall. In the dissent, Justice White agreed with the first part of the *Rowley* test but asserted that the majority had disregarded congressional intent regarding the degree of educational benefit (i.e., the second part of the *Rowley* test). According to Justice White, the majority ignored congressional statements that the purpose of the law was to provide "full educational opportunity to all handicapped children" (20 U.S.C. § 14129[2][A]) and "equal educational opportunity" (S. Rep. No. 94-168, 1975, p. 9). Justice White also cited the House report on the passage of the EAHCA, which asserted that the primary objective of the law was to tailor an educational plan to enable a student in special education "to achieve his or her maximum potential" (H.R. Rep. No. 94-332, 1975, pp. 13, 19). Justice White also chided the majority that their formula for determining FAPE would result in "a deaf child such as Amy to be given a teacher with a loud voice, for she would benefit from that service. The Act requires more" (*Rowley*, 1982, p. 216). Justice Blackman reached a similar conclusion regarding the majority ruling on educational benefit. He, too, asserted that the benefit standard should be "predicated on equal educational opportunity and equal access to the educational process" (*Rowley*, 1982, p. 199). Interestingly, Justice Blackmun filed a concurring opinion, agreeing with judgment of the majority.

Thus, under the *Rowley* decision, in ruling on FAPE cases, hearing officers and judges have to (a) determine if the procedural requirements of the IDEA have been met and (b) examine the IEP to ascertain if it was reasonably calculated to provide educational benefit. In the years following the *Rowley* decision, lower courts used the two-part *Rowley* test when deciding on FAPE cases. The procedural part of the test (Part 1) seemed to be relatively straightforward, and courts did not seem to have much difficulty applying it to the facts of a case. The educational-benefit part of the test (Part 2), however, proved to be a more difficult determination for courts.

The Courts of Appeals, FAPE, and Educational Benefit

The majority of Supreme Court justices in *Rowley* specifically chose not "to establish

any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act" (*Rowley*, 1982, p. 461). The problem with this lack of guidance from the Supreme Court is that lower courts began to apply different standards in deciding what amount of educational benefits were necessary for a school district to have conferred a FAPE. Although in the IDEA amendments of 1997 and 2004, Congress seemed to elevate the FAPE standard by using language emphasizing high expectations, measurable outcomes, and self-sufficiency, most courts continued to use the *Rowley* standard (Seligmann, 2017). Some courts adopted a higher standard of educational benefit, whereas most continued to use a lower standard.[1]

At least six circuits adopted a lower standard, which was some variation of some or de minimis degree of educational benefit as being sufficient to rule that a school district has conferred a FAPE, whereas two other circuits expressly rejected the lower standard and used a higher or meaningful-benefit standard to determine FAPE. The U.S. Solicitor General referred to this split among the courts as "an entrenched and acknowledged circuit conflict" (U.S. Solicitor General, 2017, p. 8). This split made it more likely that the U.S. Supreme Court would eventually hear another FAPE case to interpret the educational-benefit standard set in *Rowley*.

This opportunity presented itself in an appeal of the U.S. Court of Appeals for the 10th Circuit decision in *Endrew F. v Douglas County School District* (2015), described in the scenario at the beginning of this article. Drew's parents had brought a due-process hearing against the Douglas County School District alleging that the district had failed to provide their son with a FAPE and requesting tuition reimbursement. The school district prevailed at the hearing. The parents brought suit in the federal district court in Colorado. The school district prevailed at this level and also in an appeal to the U.S. Court of Appeals for the 10th Circuit. Using the low merely-more-than-de-minimis standard, the circuit court found that the *Endrew F.* case was "without question a close case, but we find sufficient indications of Drew's past progress to find the IEP… substantively adequate under our prevailing standard"

> to its substantive obligations 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 F.*, 2015, p.1342). Thus, the school district prevailed.

Despite losing at all previous administrative and judicial levels, Drew's parents filed a petition writ of certiorari with the U.S. Supreme Court.[2] The question they asked the Supreme Court to answer was "What is the level of educational benefit school districts must confer on children with disabilities to provide them with a free appropriate public education guaranteed by the Individuals with Disabilities Education Act?" ("Petition for a Writ of Certiorari," 2017). In September 2016, the Supreme Court agreed to review the *Endrew F.* ruling, and in January 2017, the court heard oral arguments in the case.

Endrew F. v. Douglas County School District

In the oral arguments, the school district attorney, Neil Katyal, argued that the Supreme Court's ruling in *Rowley* established that a student's IEP did not need to promise any particular level of benefit as long as the IEP was reasonably calculated to provide some benefit as opposed to no benefit. The district's position, therefore, was that the high court should affirm the 10th Circuit Court's educational-benefit standard of merely more than de minimis as providing a FAPE under the IDEA. The attorney for Drew's parents, Jeffrey Fischer, argued the de minimis standard should be overturned and the educational benefits extended to students with disabilities should aim to provide a student with opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded students without disabilities. The attorney for the U.S. Department of Justice, Irv Gornstein, argued the IDEA required an educational program that resulted in a student making progress in light of their circumstances.

During the oral arguments, the justices expressed dissatisfaction with the 10th Circuit Court's ruling that school districts could satisfy the FAPE requirement of the IDEA by providing students an educational program that conferred merely more than de minimis benefit.[3] Justice Sonia Sotomayor summarized the issue facing the court when she noted that the IDEA provided enough to set a clear standard. But the problem, she noted, was trying to come up with the right words that would be less confusing to everyone. Two of the justices, Ruth Bader Ginsburg and Elena Kagan, were in favor of "a standard with bite." During oral arguments, it was obvious that the majority of the court disagreed with the merely-de-minimis standard for educational benefit.

On March 22, 2017, the Supreme Court issued a unanimous opinion written by Chief Justice Roberts. In the first paragraph of his opinion, Justice Roberts expressed the necessity of the *Endrew F.* ruling:

> Thirty-five years ago, this Court held that the Individual with Disabilities Education Act established a substantive right to a "free appropriate public education" for certain children with disabilities.… We declined, however, to endorse any one standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act. That more difficult problem" is before us today. (*Endrew F.*, 2017, p. 993)

Justice Roberts also wrote that the Supreme Court found that a "substantive standard was implicit in the Act" (*Endrew F.*, 2017, p. 993). The high court vacated

the 10th Circuit Court's ruling and remanded the case back for a ruling based on the *Endrew F.* educational-benefit standard, which was "to meet its substantive obligations 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 F.*, 2017, p. 998). Justice Roberts wrote that the new educational-benefit standard was

> markedly more demanding than the merely more than de minimis' test applied by the 10th Circuit… (and that) a student offered an educational 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 F.*, 2017, p. 998)

The court clearly embraced an educational-benefit standard higher than the merely-more-than-de-minimis standard; therefore, the ruling in *Endrew F.* seemed largely favorable to students in special education.

Developments Since the Supreme Court's Ruling in *Endrew F.*

The Supreme Court remanded the case back to the 10th Circuit Court to reconsider its ruling in light of the new standard for educational benefit that it set in the *Endrew F.* case. On August 2, 2017, the 10th Circuit Court vacated its prior ruling and remanded the case to the U.S. District Court for the District of Colorado, which was the first court to rule on *Endrew F.*, to hold further proceedings consistent with the Supreme Court's ruling.

On February 12, 2018, the U.S. District Court for the District of Colorado issued its decision in the remand of *Endrew F.* The judge in the case, Lewis Babcock, reversed his original decision in favor of the Douglas County School District and ruled in favor of Drew and his parents, finding that the Douglas County School District had failed to provide a FAPE in light of the Supreme Court's higher educational-benefit standard.

Judge Babcock noted that the issue before him was to determine if Drew's IEPs were reasonably calculated to enable him to make progress appropriate in light of his circumstances. To make his determination, Judge Babcock paid particular attention to the behavioral aspects of Drew's IEPs, writing that "the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (*Endrew F.*, 2018, p. 11). In his opinion, the judge asserted that the Douglas County School District had failed to (a) assess Drew's problem behaviors, (b) implement positive behavior supports and strategies, or (c) develop an appropriate behavior intervention plan. These failures resulted in the Douglas County School District's "lack of success in providing a program that would address [Drew's] maladaptive behaviors" (*Endrew F.*, 2018, p. 16), and thus, Drew's "increasingly disruptive behaviors were impacting his ability to meet his educational goals" (*Endrew F.*, 2018, p. 16). The judge concluded that "The District's inability to properly address [Drew's] behaviors, 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 F.*, 2018, p. 17).

> "the essential function of an IEP is to set out a plan for pursuing academic and functional advancement"

Judge Babcock ordered the Douglas County School District to reimburse Drew's tuition and related expenses that were incurred when his parents removed him from the district and placed him at the Firefly Autism House at their own expense. The judge also ordered the Douglas County School District to pay Drew's parents' court costs and attorneys' fees, which amounted to $1.3 million dollars (Aguilar, 2018).

Interpretation of the *Endrew F.* ruling by the U.S. Department of Education

On December 7, 2017, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education issued a Q-and-A document on the U.S. Supreme Court's unanimous ruling in *Endrew F.* (U.S. Department of Education, 2017). The intent of officials at OSERS in issuing this document was to provide parents, educators, and other stakeholders with a synopsis of this important ruling and describe how the decision in the *Endrew F.* case should inform school districts' efforts to improve academic and functional outcomes for students with disabilities.

In the document, officials in OSERS examined the importance of the new, higher educational-benefit standard developed by the Supreme Court and reiterated that to meet the higher standard, IEP teams must develop special education programs that "provide meaningful opportunities for appropriate academic and functional advancement and to enable the child to make progress" (U.S. Department of Education, 2017, p. 6). According to OSERS, IEP teams can accomplish this by focusing on the individualized needs of a student by conducting thorough and meaningful assessments of all of a student's needs and then focusing on (a) a student's academic and functional needs, (b) the views of the student's parents, (c) a student's disability, and (d) a student's potential for growth when developing their IEP. Moreover, to ensure that a student's IEP is reasonably calculated to enable the student to make academic and functional progress, the student's IEP must include ambitious and challenging goals and objectives and be revisited if they are not making the expected progress. Monitoring a student's progress is particularly important because, according to OSERS, the Supreme Court's decision in *Endrew F.* "clarified that the standard for determining whether an IEP is sufficient to provide FAPE is whether the child is offered an IEP reasonably calculated to enable the child to make progress that is appropriate in light of the child's circumstances" (U.S. Department of Education, 2017, p. 7). Officials at OSERS wrote that a student's "parents

and other IEP team members should collaborate and partner to track progress appropriate to the child's circumstances" (U.S. Department of Education, 2017, p. 8) and also noted that local education agencies and state education agencies should provide support and guidance to school personnel to ensure that they develop IEPs that meet the new *Endrew F.* standard for conferring a FAPE.

Court Cases Since *Endrew F.*

In our 2017 article, we predicted that the most change will likely occur in the U.S. Courts of Appeals in circuits with a lower standard, no standard, an unclear standard, or a mixed standard (Yell & Bateman, 2017). These circuit courts and the states and territories in the circuit are as follows: 1st (Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island), 2nd (Connecticut, New York, Vermont), 4th (Maryland, North Carolina, South Carolina, Virginia, West Virginia), 5th (Louisiana, Mississippi, Texas), 7th (Illinois, Indiana, Wisconsin), 8th (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota), 9th (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, North Mariana Islands, Nevada, Oregon, Washington), 10th (Colorado, Kansas, Oklahoma, New Mexico, Utah, Wyoming), and 11th (Alabama, Florida, Georgia). Additionally, we asserted in Yell and Bateman (2017) that the U.S. Courts of Appeals in circuits with a higher standard will likely experience less change. These higher-standard circuits are the 3rd (Delaware, New Jersey, Pennsylvania, Virgin Islands) and 6th (Kentucky, Michigan, Ohio, Tennessee) circuits.

Zirkel (2019) analyzed 49 due-process hearings and court cases ruling on FAPE in the post–*Endrew F.* era (i.e., March 22, 2017, to September 21, 2018). Zirkel concluded that the lower courts in the circuits that used the meaningful-benefit standard saw *Endrew F.* as not changing their substantive standard, which was a high standard before the high court's ruling. Thus far, Zirkel asserted, the *Endrew F.* decision has not been "a game-changer in terms of pre-post judicial rulings" (Zirkel, 2018, p. 6); however, it may have had an effect on participant perceptions at the IEP table and hearing officer decisions or settlements.

> A "cogent and responsive explanation" of how an IEP will result in their child making progress.

We would also add three cautions to the notion that the *Endrew F.* ruling is having negligible effects. First, courts tend to defer to the decisions made at lower-level courts or administrative levels (as is appropriate). To this point, the decisions at the original administrative levels (i.e., due-process hearings) in FAPE cases were made in accordance with the *Rowley* educational-benefit test. It will be interesting to note what happens when the hearing decisions are made under the *Endrew F.* "progress appropriate" educational-benefit test. Second, advocacy agencies are preparing parents and advocates to come into IEP meetings armed with specific information from the *Endrew F.* decision (see "*Endrew* Talking Points to Advocate for Your Child" in the Endrew F. Advocacy Toolkit developed by National Center for Learning Disabilities and Understood.org, a coalition of special education nonprofit advocacy groups[4]). How will school personnel react in IEP meetings when parents or their advocates begin quoting from the *Endrew F.* decision or asking for a "cogent and responsive explanation" of how an IEP will result in their child making progress and how school district personnel will measure this progress? Third, will school district attorneys begin to settle more quickly when there have been no data collecting to show progress or a student's IEP goals are not measurable? We doubt if many school district attorneys would want to go to a hearing or court with a case they believe may not meet the *Endrew F.* educational-benefit standard. Although the post–*Endrew F.* rulings will be incredibly important in understanding the effects of the decision, to fully assess the effects of the ruling, we need to look at information beyond just the decisions of hearing officers and judges in FAPE cases.

The Implications of *Endrew F.*

It is difficult to accurately assess the effect of the *Endrew F.* decision only 3 years after the ruling. The full implications of the *Endrew F.* decision, from a litigative standpoint, will not become clear until hearing officers and judges apply the new standard to the facts presented in future FAPE litigation. Nonetheless, we believe that there are some effects of the decision that are predictable. First, the educational benefits that school districts must provide to ensure the provision of FAPE are no longer dependent on geography (Davidson, 2016; Waterstone, 2017; Yell & Bateman, 2017). Before the *Endrew F.* ruling, if a school district was in the 3rd or 6th Circuit, the educational-benefit standard was meaningful benefit, whereas if a school district was in the 1st, 2nd, 4th, 5th, 7th, 8th, 10th, or 11th circuit, the standard was some benefit, more than trivial benefit, or de minimis benefit. The *Endrew F.* ruling is now the educational-benefit standard that will be followed by hearing officers and judges throughout the United States (Conroy & Yell, 2019). Thus, the applicable FAPE standard no longer hinges on where a student lives.

Second, the court rejected the de minimis or trivial standard for determining educational benefit and replaced it with an educational-benefit standard that requires that schools offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Thus, the judgment of appropriate progress is made individually, based on the student's own circumstances, and is judged on a prospective basis. The high court, however, also rejected the maximizing standard that it had previously rejected in *Rowley*. Drew's parents had sought a higher standard than that delivered by the court—that the FAPE standard should require that students with disabilities receive educational benefit that is equal to the benefit received by students without disabilities. Instead of accepting the parents' standard of equal opportunity, the justices focused on the notion that children with disabilities should receive an

Figure 1 **Eight implications of the *Rowley* and *Endrew* rulings for teachers and administrators**

Eight Implications of the Rowley and Endrew rulings for Teachers and Administrators.

1) Adhere to the IDEA's procedures when developing students' IEPs.
2) Ensure that parents are meaningfully involved in their child's IEP development process from assessment to review.
3) Conduct assessments that are relevant, meaningful, and address all of a student's needs.
4) Develop annual IEP goals that are ambitious, challenging, and measurable.
5) Provide special education programming based on peer-reviewed research that is reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances.
6) Monitor student progress in a systematic manner and report student progress to his or her parents.
7) Make instructional changes when data indicates a student is not progressing toward his or her goals.
8) Be able to justify that a student's IEP will enable him or her to make progress. After all, hearings officers and judges may ask for a cogent and responsive explanation of why the IEP was reasonable calculated to enable a student to make progress.

education that enables them to make progress in light of their unique circumstances. In effect, the court chose a middle ground between trivial benefit and equal opportunity, and that middle ground required that a student make progress appropriate given their circumstances. This standard requires an educational program that is "appropriately ambitious" (*Endrew F.*, 2017, p. 992) and enables "every child… the chance to meet challenging objectives" (*Endrew F.*, 2017, p. 992).

Third, the *Endrew F.* decision does not replace or overturn the *Rowley* decision; rather, it clarified and refined *Rowley*. In fact, the two-part *Rowley* test can now be accurately referred to as the two-part *Rowley*/*Endrew F.* test. The two parts of this test, which hearing officers and judges must follow in ruling on FAPE cases, represent the procedural and substantive requirements of the IDEA (for an explanation of these two types of obligations, see the article on procedural and substantive requirements of the IDEA in this issue). The procedural part of the test, which the high court announced in *Rowley*, compels that school district personnel adhere to the process based requirements of the IDEA. The second part of the test, which the high court announced in *Endrew F.*, compels school districts to meet the substantive requirements of the IDEA. When applied to school districts' special education programs, the new two part-test is as follows.

> Part 1: Has the school district complied with the procedures of the act?
> Part 2: Is the IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances?

Fourth, the *Endrew F.* court focused on the individual needs of the student, which "is at the core of the IDEA" (*Endrew F.*, 2017, p. 992). A student's IEP, which is the blueprint of their FAPE, should be developed in meaningful collaboration with the student's parents. Thus, a student's IEP must be "informed not only by the expertise of school officials, but also by the input of the child's parents of guardians" (*Endrew F.*, 2017, p. 999). Moreover, IEPs must (a) be based on relevant and meaningful assessments; (b) include ambitious, but reasonable, measurable annual goals; (c) comprise special education and related services that are designed to confer benefit; and (d) involve the collection of relevant and meaningful data to monitor student progress. School district personnel should be able to react accordingly to the data they collect and demonstrate and validate growth through their progress-monitoring data. As Crockett and Yell (2008) asserted, "without data all we have are assumptions" (p. 381).

The *Endrew F.* ruling seems to shift the burden of proof from the parents to school district officials in FAPE cases by requiring that

> a reviewing court may fairly expect [school district] 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. 1002)

School district officials may be held to a higher standard—a standard that forces them to fully explain how their IEPs will enable a student to make progress (Waterstone, 2017; Yell & Bateman, 2017). Time will tell if this, in fact, is the case.

Figure 1 depicts the implications of the *Rowley* and *Endrew F.* decisions for special education teachers and administrators.

Conclusion

In *Endrew F.*, the U.S. Supreme Court developed a new FAPE standard for determining educational benefit. Thus, there is a new, higher benchmark for developing and implementing a student's IEP, which now must be crafted to enable a student to make progress according to the student's unique educational needs. In *Endrew F.*, the high court clearly intended to raise the standard of educational benefit across the entire spectrum of students with disabilities (Waterstone, 2017; Yell & Bateman, 2017). The Supreme Court has, in effect, affirmed that all students with

disabilities are entitled to receive a high-quality education (Waterstone, 2017).

It is important that teams craft legally sound IEPs that are reasonably calculated to enable a student to make progress appropriate in light of their circumstances, thus meeting the legal standards for conferring FAPE under the *Endrew F.* standard. To ensure that IEPs meet the new, higher educational-benefit standard and result in actual progress for a student, it is crucial that IEP teams (a) assess and analyze all of a student's unique educational needs; (b) develop ambitious, meaningful, and measurable annual goals; (c) rely on research-based special education procedures; and (d) collect actual data and make instructional decisions based on the data. According to the Supreme Court in *Endrew F.*, "The IEP must aim to enable the [student] 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. 999).

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NOTES

1. Readers should note that because of the inexact language used by the courts, scholars have expressed different opinions over which circuit courts apply the higher standard or the lower standard (see Aron, 2005; Goldschmidt, 2011; Johnson, 2012; Wenkart, 2009; Yell & Bateman, 2017). However, the Solicitor General for the United States identified the 3rd Circuit Court and the 6th Circuit Court as both having the higher standard. The circuit courts for the 2nd and 9th Circuits applied both the higher and lower standard in different cases (Wenkart, 2009).
2. In a writ of certiorari, a petitioner asks a higher court to review the decision of a lower court. In this case, the petitioners, Drew's parents, asked a higher court, the U.S. Supreme Court, to review the decision of a lower court, the U.S. Court of Appeals for the 10th Circuit.
3. The complete oral arguments made before the U.S. Supreme Court in *Endrew F. v. Douglas County School District* are available at Oyez.com (https://www.oyez.org/cases/2016/15-827#!)
4. The Endrew F. Advocacy Toolkit can be retrieved at http://insource.org/resources/iep-meetings/endrew-f-worksheet-for-improving-your-childs-iep/.

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