



Revisiting the FAPE Standard from Rowley and Andrew F. cases

Free Appropriate Public Education (FAPE) means special education and related services that:

1. Are provided at public expense, under public supervision, and without charge;
2. Meet the standards of the State Education Agency (SEA), including the requirements of IDEA;
3. Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
4. Are provided in conformity with an individualized education program (IEP) that meets federal requirements. 34 CFR §300.17

The provision of a Free Appropriate Public Education (FAPE) was first addressed by the U.S. Supreme Court in 1982, where the Court reviewed *Board of Education of Hendrick Hudson Central School District v. Rowley*, 102 S. Ct. 3034, 553 IDELR 656 (U.S. 1982), and set forth how FAPE is determined by the courts, in what has been termed the “Rowley Standard”:

1. Was the IEP developed in adequate compliance with the IDEA procedures?; and
2. Is the IEP reasonably calculated to enable the student to receive some educational benefit?

In March 2017, the Supreme Court issued its decision in *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 69 IDELR 174 (U.S. 2017). In *Andrew F.*, the Court discussed its prior decision in *Rowley* but pointed out that the *Rowley* case expressly declined to adopt a test for determining the substantive adequacy of the educational benefits provided in an IEP. The *Andrew F.* decision held that a student’s IEP must aim to enable that student to make progress. Further, the Supreme Court emphasized the unique needs of each child and stated that “the progress contemplated by the IEP must be appropriate in light of the child’s circumstances...” Further, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it is created,” and “every child should have the chance to meet challenging objectives,” regardless of the severity of a child’s disability. The Supreme Court recognized that “any review of an IEP must consider whether the IEP is reasonably calculated to ensure such progress, not whether it would be considered ideal.”

The U.S. Department of Education subsequently provided guidance through a Q & A document about the FAPE standard articulated by the Supreme Court in the *Andrew F.* case and addressed the impact *Andrew F.* has on districts’ obligations to implement IDEA requirements. *Questions and Answers on*

Andrew F. v. Douglas County School District Re-1, 71 IDELR 68 (DOE 2017). To comply with the FAPE standard articulated in *Andrew F.*, IEP teams must develop, monitor, and revise IEPs as necessary to ensure they are appropriately individualized and ambitious. IEP teams must carefully consider each child’s present levels of achievement, functional performance, disability, and potential for growth. If a child is not making expected progress, the IEP team must revisit the IEP with the *Andrew F.* standard in mind and revise it as necessary to ensure the student is receiving appropriate special education and related services, and that the goals are individualized and ambitious. The Q & A document reminded districts that “[t]here is no ‘one-size-fits-all’ approach to educating children with disabilities.” All decisions must be individualized and made consistent with a child’s IEP.