

# DADD *Express*

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*Focusing on individuals with autism, intellectual disability, and related disabilities*



## Legal Brief

### Andrew F. v. Douglas County



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In 2017, the U.S. Supreme Court ruled on the case of *Andrew F. v Douglas County*, hereinafter *Andrew*, a case about a boy with autism who exhibited behaviors that interfered with his learning. His teacher could not manage his behaviors (*Andrew*, 2018). His Individual Education Program (IEP) reflected his lack of progress. After several years, his parents withdrew him from public school and enrolled him in a private school for students with autism where he began to thrive. His parents then hired a lawyer to ask the district to pay for his tuition because they believed the district had not provided their son with a free and appropriate public education (FAPE; Decker & Hurwitz, 2017). The lower courts in this case agreed with the school district and ruled they did not have to pay for the private school tuition. However, the parents' attorney found cases in other circuits in which judges ruled that students needed to make more than minimal progress on their IEPs. As a result of the inconsistency, the parents' attorney appealed to the Supreme Court. *Andrew's* parents asserted the district committed both procedural and substantive violations of the Individual with Disabilities Education Act (IDEA; Yell & Bateman, 2017). The result was the Supreme Court unanimously ruled, "A school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (*Andrew*, 2017, p. 15). The Supreme Court stated, "Goals may differ, but every child should have the chance to meet challenging objectives" (*Andrew*, 2017, p. 1,000). In summary, the Court ruled the promise of some educational benefit no longer meets the requirements of IDEA.

Courts previously determined FAPE using the *Rowley* (Board of Education of the Hendrick Hudson School District v. Rowley, 1982) two-part test. The educational benefit of FAPE stated the IEP must "confer some educational benefit upon the ... child" (*Rowley*, 1982, p. 200). Some circuit courts adopted the phrase of *de minimus* or slightly more than trivial (Yell & Bateman, 2017). In a review of cases post-*Andrew*, the most cited portion of the decision was "an IEP must be reasonably calculated to enable a child to make progress in light of the child's circumstances" (*Andrew*, 2017, p. 15; Dieterich et al., 2019). Courts are now requiring districts to create and implement IEPs unique to each student with ambitious goals (Yell & Bateman, 2017).

## Recommendations

### Families

Special education was born from parental advocacy. As equal IEP team members, parents should understand the implications of *Andrew* and the resulting higher standard for FAPE. Parents now have the legal right to advocate for more than a minimal education during IEP meetings (Fisher et al., 2020). It is recommended families make sure their child's IEP is ambitious, challenging, measurable, and assessed (Yell & Bateman, 2017).

### Teachers

All members of the IEP team need to be knowledgeable and prepared to develop IEPs that meet the new increased standard of

FAPE. It is important that all educators understand their legal responsibilities (Couvillon et al., 2018). The IEP team needs to focus on more than compliance by making decisions based on each student's unique circumstances to develop a program that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (*Endrew*, 2017, p. 15).

### School Administrators

Administrators are required to be aware of changes in special education law (Pazey & Cole, 2012). Staff development must be provided to convey legal updates (Couvillon et al., 2018). Strict monitoring of IEP teams' compliance with the updated procedural and educational benefit standards are necessary. It is recommended that administrators support effective teaming practices, which include time to meet, access to collaboration tools, and the recruitment of parental engagement in the IEP process (Dieterich et al., 2019). Furthermore, Fisher et al. (2020) recommended that district administrators provide parental training on FAPE and procedural safeguards and include parents as equal partners of the IEP team. Failure to know the increased standards of FAPE could result in ineffective and inappropriate IEPs. Improper IEPs could lead to a denial of FAPE and a violation of IDEA (Couvillon et al., 2018).

### Conclusion

*Endrew* will likely be viewed as a landmark decision (Yell & Bateman, 2017). It redefined the educational benefit of FAPE in IDEA from IEPs providing a bare minimum education to the IEP being mandated to provide an educational benefit unique to each child. In order for more rigorous IEPs to be written, families, teachers, and administrators need to understand the importance of the changes in FAPE due to *Endrew*. Furthermore, they need to know special education law, be equal members of IEP teams, and provide rigorous programs for all students with disabilities. ■

### References

- Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982).
- Couvillon, M. A., Yell, M. L., & Katsyannis, A. (2018). *Endrew F. v. Douglas County School District* (2017) and special education law: What teachers and administrators need to know. *Preventing School Failure: Alternative Education for Children and Youth*, 62(4), 289–299.
- Decker, J. R., & Hurwitz, S. (2017). Post-*Endrew* legal implications for students with autism introduction. *West's Education Law Reporter*, 357, 31–35.
- Dieterich, C. A., Kucharczyk, S., & Brady, K. P. (2019). Clarifying FAPE under the IDEA post-*Endrew F.*: Legal and practical guidelines for school administrative personnel. *Journal of Special Education Leadership*, 32(23), 72–85.
- Endrew F.*, 137 S. Ct. at 992 (quoting *Endrew F. v. Douglas Cty. Sch. Dist. Re-1*, 798 F.3d 1329, 1338 (10th Cir. 2015))
- Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017).
- Endrew v. Douglas County School District*, 290 F. Supp. 3d 1175 (D. Colo. 2018).
- Fisher, K. M., Willis, C. B., & Ransom, B. E. (2020). Parent knowledge of the definition of FAPE in light of the *Endrew vs. Douglas County School Board* decision. *Journal of Special Education Apprenticeship*, 9(1), 1–15.
- Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004).
- Pazey, B. L., & Cole, H. A. (2012). The role of special education training in the development of socially just leaders: Building an equity consciousness in educational leadership programs. *Educational Administrator Quarterly*, 49(2), 243–271.
- Yell, M. L., & Bateman, D. F. (2017). *Endrew v. Douglas County Supreme Court* decision. *Teaching Exceptional Children*, 50, 7–15.
- Zirkel, P. A., & Johnson, B. L. (2011). The "explosion" in special education litigation: An updated analysis. *West's Education Law Reporter*, 265, 1–8.