Endrew F. Standard and Considerations for Rule Changes

With Dr. Jacqui Kelleher

Vermont's State Director of Special Education

July 18, 2022

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Introduction

Roles and Responsibilities

- State Director of Special Education: Jacqueline Kelleher, MA, Ph.D.
- Assistant State Director: Chris Kane
- Assessment Coordinator for Special Populations: Linda Moreno
- Coordinator for Behavioral Supports: Tracy Harris
- Early Childhood Special Ed/IDEA 619 Coordinator: Katie McCarthy
- Early Childhood Inclusion Coordinator: Amy Murphy
- Education Programs Manager, Interagency Coordinator: Alicia Hanrahan
- Educational Consultant/Ed Surrogate: Ernie Wheeler
- Finance questions: Brad James or Jennifer Perry
- IDEA Part B Data Manager: Cassidy Canzani
- IDEA Part B Special Ed Program Monitoring Manager: Tristan McNamara
- Inclusion and Accessibility Coordinator: Ana Kolbach
- Inclusive Practices Coordinator: Cassie Santo
- Inclusive Systems Coordinator: Betty Roy
- Post-Secondary Transition Coordinator: John Spinney
- Special Education Data Specialist: Brandon Dall
- Special Education Monitoring Specialist: Simona Kragh
- Special Education Monitoring Technician: Rebecca Plude
- Special Education Team Administrative Assistant: Sabine Perry

Vision Statement

Our Purpose

- **Agency of Education Purpose Statement**

The Agency of Education implements state and federal laws, policies, and regulations to ensure all Vermont learners have equitable access to high-quality learning opportunities. The Agency accomplishes this mission through the provision of its leadership, support, and oversight of Vermont's public education system.

- **Special Education Vision**

Our team, together with all stakeholders, ensures access, opportunity, and equity by providing solution-based oversight, leadership and support to build capacity and improve student outcomes.

Basic Right Under the IDEA

Basic Essential Element

- **The Primary Requirement of the IDEA and the crucial obligation of special educators is to provide a special education that confers a free appropriate public education (FAPE)**
- **What is appropriate in FAPE? We rely on case law when the federal language is silent…**

Endrew F*

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

December 7, 2017

Questions and Answers (Q&A) on *U. S. Supreme Court Case Decision*
Endrew F. v. Douglas County School District Re-1

On March 22, 2017 the U.S. Supreme Court (sometimes referred to as Court) issued a unanimous opinion in *Endrew F. v. Douglas County School District Re-1, 137 S. Ct. 988*. In that case, the Court interpreted the scope of the free appropriate public education (FAPE) requirements in the Individuals with Disabilities Education Act (IDEA). The Court overturned the Tenth Circuit's decision that Endrew, a child with autism, was only entitled to an educational program that was calculated to provide "merely more than *de minimis*" educational benefit. In rejecting the Tenth Circuit's reasoning, the Supreme Court determined that, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP [individualized education program] that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court additionally emphasized the requirement that "every child should have the chance to meet challenging objectives."

The *Endrew F.* decision is important because it informs our efforts to improve academic outcomes for children with disabilities. To this end, the U.S. Department of Education (Department) is providing parents and other stakeholders information on the issues addressed in *Endrew F.* and the impact of the Court's decision on the implementation of the IDEA. Because the decision in *Endrew F.* clarified the scope of the IDEA's FAPE requirements, the Department's Office of Special Education and Rehabilitative Services (OSERS) is interested in receiving comments from families, teachers, administrators, and other stakeholders to assist us in identifying implementation questions and best practices. If you are interested in commenting on this document or have additional questions, please send them to OSERS by email at EndrewF@ed.gov.

Context*

- Parents argued that Drew's IEP should have aimed to provide him opportunities to contribute to society that are substantially equal to the opportunities afforded-School district de minimis has worked for 35 years because IDEA did not require a "substantive standard enforceable in court

The Tenth Circuit's Educational Benefit Standard(1)*

***Endrew F.* v. *Douglas County School District R1*, 798 F.3d 1329, (10th Cir. 2014)**

- Now famous quotation from the decisions was that the educational benefit offered Drew had to be "merely more than de minimis"
- **"The educational benefit mandated by the IDEA must merely be more than de minimis"**

The Tenth Circuit's Educational Benefit Standard(2)

***Endrew F.* v. *Douglas County School District R1*, 798 F.3d 1329, (10th Cir. 2014)**

- On December 22, 2015 the parents appealed to the U.S. Supreme Court
- **Question Presented:** What is the level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act?

Supreme Court Ruling: March 22, 2017 (1)

- **In *Rowley*, "we declined…to endorse any one standard for determining when**
- **(students with disabilities) are receiving sufficient educational benefit to satisfy**
- **the requirements of the Act…"That more difficult problem is before us today." (*Endrew*, 2017, p. 1)**

Supreme Court Ruling: March 22, 2017 (2)*

- **The High Court rejected the "merely more than *de minimis*" standard, vacating the decision and remanding the case back to the 10th Circuit to apply the new standard.**
- **"To meet its substantive obligation 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,* 2017, p. 16)**

Endrew Takeaways*

The Supreme Court rejected the "*de minimis*" *or* "trivial" educational benefit standard

The Supreme Court rejected the maximizing standard the Court previously rejected in *Rowley, 1982*

The *Endrew F.* decision did not replace or overturn the *Rowley* decision; rather, it clarified its FAPE standard

"We find little significance in the Court's language (in Rowley) concerning the requirement that States provide instruction calculated to confer some educational benefit."
Endrew, 2017, p. 10

The full implications of the *Endrew* decision will not become clear until hearing officers and judges apply the *Endrew* standard to the facts presented in future FAPE litigation

The *Endrew* decision provides guidance to special education leaders and teachers in developing IEPs that meet the *Endrew* standard.

Rowley and Endrew (3)

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Rowley (1982)

- IEP Must set out an educational program that is "reasonably calculated to enable the child to receive educational benefits."
- Educational Benefit interpreted over the years as "merely more than *de minimi*" or "some benefit"

Endrew (2017)

- IDEA requires an educational program[1] reasonably calculated[2] to enable a child to make progress[3] appropriate in light of the child's circumstances[4] AND the chance to meet challenging objectives.
- Supreme Court Rejects *de minimis* but did NOT provide a standard to determine progress.

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Role of the Courts

"A standard not a formula"

"We will not attempt to elaborate on what appropriate progress will look like from case to case…. The adequacy of a given IEP turns on the **unique circumstances of the (student) for whom it was created**."

"A reviewing court may fairly expect those 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 and Implications for IEPs

Some Highlights (1)

Ensure attendance at IEP meetings by all necessary team members

Include the necessary components and content in the IEP

Implement the special education services as written in the IEP

A few of the more common procedural errors:

- Failure to involve parents in the IEP process
- Predetermining a student's placement or services
- Determining placement before programming
- Failure to assemble an appropriate IEP team
- Failure to include required components in a student's IEP

Some Highlights (2)

Develop an educationally meaningful high-quality IEP that meets the needs of SWDs

Involve parents in the IEP process

Conduct a thorough, individualized evaluation

Adhere to required timelines

Some Highlights (3)

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Component	Content
Present levels of academic achievement and functional performance (PLAAFP)	These statements summarize the student's abilities in both academic and/or functional skill areas and include how the student's disability affects their involvement in the general education curriculum.
Challenging, ambitious, and measurable goals	These goals describe what the student is expected to accomplish, in academics and/or functional skills, in a 12-month period. The goals help IEP team personnel determine whether the student is making educational gains and whether the program is providing meaningful educational benefit.

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Some Highlights (4)

- SPP/APR submitted before the 2/1/21 deadline – preliminary data shared with LEA Special Education Directors and Special Education Advisory Panel.
- For Calendar Year 2021 – SPP/APR focus is on target setting for the 2020-2025 SPP/APR as well as identifying support and resources for improvement activities with current work at hand.
- IDEA PART B SEA Application in development and will go out to public comment by March 16th for 60 days.

Some Highlights (5)

- **Significant Disproportionality:**
  - Ongoing partnership with IDC for work with districts identified.
  - We are well into the work of addressing significant disproportionality in three districts, all of whom are doing incredible and inspiring work to identify and address the root causes of their district's disproportionality.
  - Action plans from this year's cohort will be put into action this summer and in SY2021-22. We will identify and work with our second cohort in the coming months.
- We'll also have a manual that guides our work and is available as a resource for all in the coming months.
- All of this work combined has helped us to shine a brighter light on addressing success gaps and creating equity for all students.
- Success Gaps Toolkit.
- Indicator 4 and 9 Self-Assessment tools developed.

Some Highlights (6)

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The date of service initiation, frequency, duration, location	Service initiation—the date that the special education and related services identified in the IEP begins—should start as soon as possible. The frequency (e.g., number of times per week) and duration (e.g., length of time for each session) specify the amount of services to be provided to the student, clarifying the level of resource commitment. The location where the services will be provided, or placement, cannot be determined until all of the other IEP components have been determined.

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Some Highlights (7)

Reasonably calculated under Endrew:

The "reasonably calculated" standard recognizes that developing an appropriate IEP requires a prospective judgment by the IEP team.

The Team will make decisions that are informed by:

- their own expertise,
- the progress of the student,
- the student's potential for growth,
- and the views of the student's parents

In determining whether an IEP is reasonably calculated to enable a student to make progress, the IEP team should consider factors such as:

- The student's previous rate of academic growth
- Whether the student is on track to achieve or exceed grade-level proficiency
- Any behaviors interfering with the student's progress
- Additional information and input provided by the student's parents

Some Highlights (8)

Reasonably calculated under Endrew :

"The IEP is NOT a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." Endrew F. v. Douglas County School District, 2017, p. 14

According to SCOTUS, the educational benefit requirement of IDEA is satisfied and a student has received a FAPE if the student's IEP sets out an educational program that is 'reasonably calculated to enable the child to make progress appropriate in light of his circumstance.' Endrew F. v. Douglas County School District, 2017, p. 16

The new gold standard for FAPE is: to meet its obligations under IDEA, a SD must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances. The court described this standard is a fact-intensive exercise. The question is what is reasonable not what is ideal.

Some Highlights (9)

Progress appropriate in light of a child's circumstances under Endrew :

• SCOTUS did not specifically define the phrase "in light of the child's circumstances",

• SCOTUS emphasized the individualized decision-making required in the IEP process

• AND the need to ensure that EVERY SWD should have the chance to meet challenging objectives.

But where a child is not fully integrated in regular education classes, the IEP need not aim for grade level advancement. Instead, the IEP must be appropriately ambitious in light of the child's circumstances. The goals may differ, but every child should have the chance to meet challenging objectives.

Some Highlights (10)

Educational Benefit under Endrew:

- • Substantive requirements involve the actual content of the IEP and focus on the educational benefit conferred by a student's IEP. • The Special Ed program MUST be aspirational, in that it maintains high expectations while enabling the student to make meaningful progress, given the student's unique needs.
- • At a minimum, the PLAAFP statement must contain information that: • Describes the student's needs in an academic and/or functional skill area • States the impact of the student's disability on their involvement in the general education curriculum • Documents the student's current levels of performance, which will serve as baseline data to measure his/her subsequent progress • Informs the annual goals and the appropriate special education services and supports required to meet those goals

Some Highlights (11)

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Student Needs	Information on the student's current academic and/or functional needs	What are: •The student's strengths? •The main areas of concern (e.g., academic, functional) and how do these concerns relate to district or state standards and benchmarks and the student's postsecondary interests? •The parents' concerns? •The student's instructional preferences? •The results from the evaluation (e.g., standardized tests, progress monitoring data)? •Ways in which the student's strengths can help address the identified areas of concern?

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Some Highlights (12)

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Effect on Progress in General Education	An explanation of how the disability affects the student's involvement and progress in the general education curriculum	How does the student's disability affect their: •Involvement in general education? •Access to the general education curriculum? •Progress in the general education curriculum?

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Some Highlights (13)

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Baseline Information	Baseline data for monitoring student progress	Are the data being reviewed to determine whether the student is making progress: •Specific? •Objective? •Measurable? •Something that can be collected frequently? And do these data relate to: •Identified areas of concern? •State content standards?

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Some Highlights (14)

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Connection to Goals and/or Services	Bridge between the PLAAFP statement and an annual goal	Is there enough information in the PLAAFP to develop a challenging, ambitious, measurable annual goal? Is there enough information in the PLAAFP to determine what special education, related services, accommodations, and program modifications are needed?

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Some Highlights (15)

Measurable Goals under Endrew

Measurable annual goals describe what the student is reasonably expected to accomplish in a 12-month period, when provided with appropriate special education services. • Each measurable annual goal should: • Address academic and/or functional needs identified in a PLAAFP statement • Be guided by grade-level content standards and therefore tied to participation in the general education curriculum

Include benchmarks or short-term objectives (for students taking alternate assessments aligned to alternate achievement standards) • Help IEP team members determine whether a student is making educational progress and whether the special education program is providing meaningful educational benefit • Lead to a corresponding special education service

To begin the process of writing measurable annual goals, the IEP team should: • Start with the academic and functional needs identified in the PLAAFP statements • Identify any relevant state academic standards for the student's grade • Discuss what the student should be able to achieve during the next 12 months

Some Highlights (16)

Measurable Goals under Endrew

Although IDEA requires IEP goals to be measurable, courts have ruled that they must also be ambitious and challenging. • IEP teams should have high expectations for the student and create goals that are ambitious and challenging enough to make meaningful progress. • Additionally, goals should be realistic, based on the team's knowledge of the student's unique circumstances.

Goals that contain all four elements— • target behavior, • condition, • performance criteria, • and timeframe— • may be considered "complete" in a technical sense, but those that are also ambitious and challenging are more likely to meet the Endrew substantive standard

- • "[The] educational program [for a SWD] must be appropriately ambitious in light of [a child's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. • The goals may differ, but every child should have the chance to meet challenging objectives." • Endrew F. v. Douglas County School District, 2017, p. 14
- • Goals that are not ambitious and challenging may be readily achieved but do not result in meaningful progress for the student. • Such goals may render the IEP inappropriate.
- • Endrew recognizes that teams should have high expectations for the progress of a student and should craft challenging and ambitious IEP goals. • However, goals should not be so ambitious that there is little chance that a student will actually achieve them

Some Highlights (17)

Evidence-Based Practice or EBP under Endrew:

- • The student at the center of the Endrew case, Drew, had significant behavioral challenges, yet he made progress in the private school, which developed a behavioral intervention plan (BIP). His success points to two key considerations for IEP teams when they begin to determine special education services and supports: • The services should address all of the student's needs • The services should include evidence-based practices whenever possible.
- • "States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available… • The final decision about the special education and related services, and supplementary aids and services that are to be provided to the child must be made by the child's IEP Team based on the child's individual needs". • U.S. Department of Education, Federal Register, Vol. 71 No. 156, 46665
- • IDEA requires that a student's services and supports be based on peer reviewed research (i.e., evidence-based practices) "to the extent practicable." • However, due to inherent difficulties posed by research, limited time, and lack of funding, not all educational practices and programs have been subjected to rigorous research

Some Highlights (18)

Behavior under Endrew:

An IEP that does not address behavioral challenges may fail to provide FAPE to a student with behavior problems. • Litigation has clarified that FAPE is denied when schools and/or IEP teams fail to: • Consider the inclusion of PBIS in response to the student's behavior • Schedule an IEP meeting to review the IEP to address behavioral concerns after a reasonable parental request or school-based personnel become aware of problem behaviors

Discuss concerns of parents or school personnel about the student's behavior and its effects on the student's learning during an IEP meeting • Implement the behavior supports in the IEP. • FAPE can also be jeopardized when behavioral supports are NOT included in the IEP or that are NOT appropriate for the student are implemented.

Some Highlights (19)

Progress/Progress Monitoring under Endrew:

- • IDEA requires that every IEP contain a component in which IEP teams document: • How a student's progress toward meeting each annual goal will be measured • When periodic reports on that progress will be provided to parents
- • The most appropriate progress monitoring systems are those in which objective numerical data are: • collected frequently, • graphed, • analyzed, • and then used to make instructional decisions..
- • Anecdotal data and other subjective procedures are NOT appropriate for monitoring student progress and should NOT be the basis of a progress monitoring system
- • A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act. • Endrew F. v. Douglas County School District, 2017, p. 11
- • To determine whether the student is making progress, IEP teams must create and implement a high-quality plan that allows them to systematically and consistently monitor and report the student's progress toward meeting his/her annual goals. • This plan must include a process for collecting objective data that can document improved academic and/or functional performance

Some Highlights (20)

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How will the student's progress be objectively measured?	Do: Use objective measures (e.g., data that can be reported in numbers rather than words). Examples: •Behavior observation checklists •Progress monitoring probes (e.g., reading, math) •Unit or chapter test scores Don't: Use subjective measures. Examples: •Anecdotal reports •Teacher or student perception

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Considerations for Rule Changes in the Endrew F Era

Rule Changes

- *Goal Writing* - 2363.7 Content of IEP (34 C.F.R. § 300.320)
- *Functional Skills* - 2362 Eligibility for Children Ages Six Years through 21
- *Parent Input* - 2363.7 Content of IEP (34 C.F.R. § 300.320)
- *Adverse Effect* - 2362 Eligibility for Children Ages Six Years through 21
- *Revised Special Education Forms with Companion Documents – August 2022*

Rule Change Website:

Side By Side document:

Resources

Resources (1)

AOE Immediate Supports:

Contact Betty Roy for Ed Benefit Training

Become an SSIP district! Contact Betty Roy

Forms Training in August – Contact Tristan McNamara

Evaluation Manual in August – Contact Chris Kane

Request TA/PD from AOE

VTmtss/Early MTSS – Contact Tracy Watterson and Kate Rogers

Share this webinar with staff

Resources (2)

NCII DBI Professional Learning Series Module 3 - Monitoring Student Progress for Behavioral Interventions

NCII DBI Professional Learning Series Module 2 - Using Academic Progress Monitoring for Individualized Instructional Planning

IRIS Module - IEPs: Developing High-Quality Individualized Education Programs

IRIS Module - Intensive Intervention (Part 2): Collecting and Analyzing Data for Data-Based Individualization