



Supreme Court Rules: Higher Standards for Special Education Achievement

Presented by:

Lori Kirsch-Goodwin, Esq.

Heather R. Pierson, Esq.

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Kirsch-Goodwin & Kirsch, PLLC

ATTORNEYS AT LAW - SCOTTSDALE, ARIZONA

The law firm of Kirsch-Goodwin & Kirsch is dedicated to advising and representing students in all school related matters including at IEPs, Due Process, MDRs and disciplinary matters including suspensions and expulsions, bullying, and restraint and seclusion issues.

Lori Kirsch-Goodwin has been a litigation/trial attorney for 30+ years with over 30 jury trials. She has a Bachelor's degree from Syracuse University and her law degree from the University of Bridgeport (now Quinnipiac University). She is licensed in the state and federal district courts in New York, New Jersey, Arizona and the 9th Circuit Court of Appeals. Lori entered the special education arena over 16 years ago when one of her twin boys was evaluated for special education and related services, and has been advocating for and representing other families since. Her son recently graduated community college, lives independently, obtained his parapro certification and works as a parapro. Lori brings her litigation skills to the table as well as her sensitivity for the families she represents. She is AV[®] Preeminent rated (5.0 out of 5.0). She frequently presents on special education legal matters to attorneys, parents and educators locally and around the country.

Heather R. Pierson is a Partner at the law firm of Udall Shumway in the School Law section representing school districts and charter schools throughout Arizona. Prior to her law career, Ms. Pierson taught behavior disordered students. During her teaching career, she was involved in the development and implementation of IEPs and behavior plans. While in law school, she provided in-home ABA services for children with autism under the age of three. She also holds a Master's Degree in Special Education. Ms. Pierson routinely defends school districts and other public educational institutions in matters related to disability law matters, such as special education due process hearings, OCR complaints, Section 504 Due Process hearings, mediation, and special education state complaints. She provides daily advice and assistance in matters related to special education, Section 504, the ADA, discipline, personnel issues and student records. Ms. Pierson taught Contemporary Developments in Special Education Law through NAU. She has also given in-service workshops to district personnel on a wide range of special education and disability related topics and speaks at state-wide conferences.

*Endrew F. v. Douglas County School
District, 580 U.S. ____ (2017)*

Supreme Court,
March 22, 2017



First major interpretation of meaning of FAPE under IDEA by Supreme Court since *Rowley* in 1982.

Facts

- Andrew Farren (“Drew”)
- DX’d w/ Autism @ age 2 years
- DX’d w/ ADHD @ age 4 years
- SPED since pre-school (S&L, OT, soc’l skills, B’s, ψ)
- Struggles w/ ability to:
 - Functionally communicate personal needs & emotions
 - Initiate interactions
 - Engage or interact with peers in social routines or play

1st grade

- Parent concerns re lack acad, social & B'l progress
- Parents communicate concerns to teacher
- Wets pants
- Obsesses over objects
- Tries to bolt from the classroom
- Social skill progress stop
- Disruptive behaviors “drastically increase”
- Parents ask SD to allow ψ to observe; SD refuses

2nd grade

- No progress
- Escalating behavior problems
- SD focuses IEP from teaching to managing B's
- Complains doesn't like school

3rd Grade

- Changed schools
- Gen ed w/ para support & SPED svces
- Problem behaviors continued to escalate
- Behaviors: avoidance, dropping to floor, yelling, crying, urinating in his pants
- Social & acad skills continue to regress
- Made some academic progress.

3rd Grade

Parent's goals for following year:

- (1) more time in gen ed
- (2) increase reading and writing skills
- (3) increase social interactions w/ peers
- (4) decrease dependence on para

IEP drafted for 4th grade included:

- several academic & functional goals, short-term objectives
- maintained (**repeated??**) several goals from previous IEP, but w/ more specific objectives
- remained in gen ed 40-79% of school day

4th grade

- Bolts from the classroom frequently;
- Runs from school into street;
- Urinates and defecates on floor of “calming room”;
- Unable to use toilet at school;
- Climbs furniture;
- Falls off furniture;
- Hits computers or TV screens;
- Yells;
- Kick others;
- Kick walls;
- Bang head;
- Asks others to punish him.

April 2010 (end of 4th grade) Annual IEP for 5th grade –

Parent perspective

- IEP not substantively different than prior IEPs
- IEP goals vague
- No measurable progress on goals & objectives
- Lack data
- Parents reject IEP and give notice re private placement

School perspective

- IEP drafted for 5th grade closely resembled 4th grade IEP but included:
- New BIP
- Bringing in autism specialist
- Changing time in gen ed to less than 40% of day

Progress at Firefly Autism House, Private School

- Able to access education and learn
- Progresses academically, socially & behaviorally; make substantial progress
- Meets appropriate goals commensurate with potential
- Anxieties and problem behaviors decrease
- Bathroom phobia addressed, able to use toilet
- Able to self-calm
- Able to attend to instruction



Next



- Parents felt his education had stalled
- Unilaterally placed in private day school, Firefly
- Sued for reimbursement (tuition approx. \$70,000/year)

5th Grade

- Team reconvened November 2010
- Many of same goals from April 2010 IEP remained
- Parents chose to maintain Student's placement in private school

“Rowley”

- FAPE not require schools maximize potential
- IDEA’s intent : “more to open the door of public education ... not guarantee any substantive level of education once inside”
- Provide “basic floor of opportunity” which “consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”
- IEP must be reasonably calculated to enable child to receive some educational benefit

BOARD OF EDUCATION of the HENDRICK HUDSON CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY v. Amy ROWLEY, 458 U.S. 176, 102 S.Ct. 3034 (1982)

The Pivotal Issue in *Endrew* – Educational Benefit: How much is enough?

- Rowley – “**some educational benefit**”
- 10th Cir – “more than *de minimis*”
- 1st Cir – just above trivial
- 2nd – more than only trivial advancement
- 4th Cir~ - some
- 3rd, 5th, 6th – higher standard: “*meaningful*”
- 7th and 11th – more than trivial, trifle not enough
- 8th – more than slight, more than *de minimus*
- 9th Cir – split between **heightened benefit** standard and **lower standard**

Endrew Supreme Court said:

In order for a school district to meet its FAPE obligation under the IDEA, it must

"offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

What does that mean???

- Educational program must be
 - “appropriately ambitious in light of [student’s] circumstances”
 - “reasonably calculated to enable a child to make progress in light of the child’s circumstances”
- “...this standard is markedly more demanding than the ‘merely *de minimus*’ test...”

Important Language in Decision

- Parents and school personnel must be able to fully share their opinions regarding the degree of progress the IEP should pursue.
- School staff must be able to offer cogent and responsive explanations for their decisions that show the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.

Implications of *Endrew*

- Consider unique circumstances 
ambitious program  appropriate amount
of progress.
- “appropriately ambitious” ≠ overly ambitious;
must be attainable but not too low

Tips for discussions

The IEP Team ought to discuss:

- what “unique circumstances” means for the child
- Unique circumstances include:
 - consideration of the nature and severity of the child’s disability
 - student’s age
 - impact of medication and other mitigation measures
 - academic, social/emotional, behavioral, adaptive and communication abilities or deficits
 - other aspects of a child’s life that may impact progress.

Tips for drafting IEPs

- Avoid drafting goals that merely restate old goals or that only require minimal progress to master.
- IEP goals should reflect challenging objectives appropriate to the student.
- Avoid “standard” service minute amounts based on a student’s disability.

M.C. v. Antelope Valley Union High School Dist.

Interpreting *Endrew*, 9th Circuit held:

A district must implement an IEP that is
reasonably calculated to remediate

&, if appropriate

accommodate child's disabilities so child can
"make progress in the gen ed curriculum,"

taking into account the progress of non-disabled
peers & the child's potential.

Disclaimer

The information provided during the presentation and in this material is general information and not intended to be legal advice on any particular matter.

Please consult an attorney for legal advice as needed.

Thank You

LORI KIRSCH-GOODWIN

lkg@kgklaw.com | 480-585-0600

KIRSCH-GOODWIN & KIRSCH, PLLC
8900 East Pinnacle Peak Rd., Suite 250
Scottsdale, AZ 85266

www.azspecialeducationlawyers.com

HEATHER R. PIERSON

hrp@udallshumway.com | 480-461-5384

UDALL SHUMWAY, PLC
1138 North Alma School Road, Suite 101
Mesa, AZ 85201

www.udallshumway.com