



KASB LEGAL SUMMAR OF *Endrew F.*

On March 22, 2017, the U.S. Supreme Court issued a decision in *Endrew F. v. Douglas County School District*, which addressed the standard for a free appropriate public education (“FAPE”) for the first time since the 1982 decision in *Board of Education of Hendrick Hudson Central School District v. Rowley*. *Endrew F.* was on appeal from the Tenth Circuit Court of Appeals, which is the federal appellate court for Kansas. As a result, *Endrew F.* will impact how all school districts in Kansas provide special education for students.

Endrew F. was diagnosed with autism at the age of two. He attended school in the Douglas County School District from preschool through fourth grade. However, when the school district presented the IEP for Endrew’s fifth grade year, the parents were concerned because they believed it was essentially the same as his IEP from fourth grade and that his progress had stalled. As a result, the parents enrolled Endrew at Firefly Autism House, a private school specializing in educating autistic children.

Approximately six months after enrolling Endrew at the private school, Endrew’s parents met with the district again, and the district presented a new IEP. The parents continued to express concern that the IEP did not differ substantially from the fourth grade IEP, despite the parents’ opinion that he had made great progress at the private school.

Over a year later, the parents filed a due process case, seeking reimbursement for the cost of Endrew’s private tuition. The parents lost in the initial due process hearing and on appeal to the federal district court. Although Endrew did not show “immense educational growth” under his previous IEPs, the district court reasoned that the modifications to his IEP objectives were “sufficient to show a pattern of, at the least, minimal progress.” The district court reasoned that this is all that was required under *Rowley*.

The federal district court’s decision was affirmed by the Tenth Circuit Court of Appeals which noted that *Rowley* required that “some educational benefit” had to be conferred. The Tenth Circuit Court of Appeals had long interpreted this language to require an educational benefit that is more than *de minimis*. As a result, the Tenth Circuit Court of Appeals agreed that Endrew’s IEP had been reasonably calculated to confer some educational benefit and, therefore, afforded him a FAPE.

The U.S. Supreme Court determined that the Tenth Circuit test was not sufficient under *Rowley*. Instead, the Supreme Court held that “[t]o 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.” The Supreme Court noted several times that the IDEA contemplated that an IEP would be informed not only by the input of the school district staff, but also by the input of the parents.

In *Rowley*, the Supreme Court was dealing with a case involving a deaf student who was achieving at a higher level than most of the other students in her class. Thus, in that case, the Court noted that the IEP typically should be “reasonably calculated to enable the student to

achieve passing marks and advance from grade to grade.” The Court reaffirmed that guidance in *Endrew F.*

However, as noted by the Supreme Court, it is different for a student who is not fully integrated into the general education classroom. In such cases, the Court stated that the

IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his 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., ___ S. Ct. ___ (Mar. 22, 2017). The Court went on to conclude that the standard it set forth in *Endrew F.* was “markedly more demanding” than the “merely more than *de minimus*” test that had been applied by the Tenth Circuit.

While the Court declined to provide a bright-line test for FAPE, the Supreme Court again reiterated *Rowley’s* statement that this was not “an invitation for the courts to substitute their own notions of educational policy for those of the school authorities which they review.”

What does this mean for school districts?

The Supreme Court placed great emphasis in the decision upon procedural aspects of the IDEA and the IEP. Schools will need to spend more time ensuring the accuracy of present levels of performance and demonstrating that the goals and objectives are tied to those present levels of performance.

The Supreme Court specifically stated at the end of the decision that

[t]he nature of the IEP process, from the initial consultation through the state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child’s IEP should pursue. . . . By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. 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 F., ___ S. Ct. ___ (Mar. 22, 2017)(citations omitted). Schools will need to take steps to ensure that they are fully documenting the discussion in IEP meetings, *including parent concerns*, and documenting whether staff members believe the concerns to be valid and, if so, how they will be addressed. Staff members will also need to document the basis for their recommendations in the IEP. Progress on goals will need to be considered and discussed, as well.

If you have questions regarding the Supreme Court’s decision or other special education issues, please feel free to contact KASB attorney Sarah Loquist by telephone at 1-800-432-2471 or by e-mail at sloquist@kasb.org.