

THE (NON) IMPACT OF ENDREW F. IN MA

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Endrew F. – What is it?

- Supreme Court decision issued March 22, 2017
- Addresses the standard school districts must meet in providing IEPs to students with disabilities
- Is, and will be, used by BSEA in determining whether a district is providing FAPE

Supreme Court – *Rowley* – 1982

- A school district satisfies its obligation to provide a free appropriate public education (FAPE) “by providing personalized instruction with sufficient support services to permit the child to **benefit educationally from that instruction.**”
- To be considered FAPE, IEP must “confer some educational benefit”
- For a child who is fully integrated in the “regular classroom,” the IEP “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

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- What does it mean to “benefit educationally?”
- Not surprisingly, states – and courts – varied in their interpretation
- Then came *Endrew F.*

Andrew F. – the facts

- Student with autism attended Colorado public schools from preschool through 4th grade
- Exhibited serious behavioral issues in school by 4th grade; parents believed academic and functional progress had stalled
- District proposed similar IEP for 5th grade
- Parents removed Andrew from the district, unilaterally enrolled him in private school specializing in autism, and sought reimbursement

Lower court decision

- State ALJ found for district. Federal District Court affirmed, as did Tenth Circuit.
- District Court: Endrew's IEP objectives were "sufficient to show a pattern of, at the least, minimal progress"
- Tenth Circuit: "a child's IEP is adequate as long as it is calculated to confer 'an educational benefit [that is] merely . . . more than *de minimis*.'"
- District won because Tenth Circuit concluded that proposed IEP was "reasonably calculated to enable [student] to make *some* progress."

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- Supreme Court rejected Tenth Circuit interpretation
 - Also rejected Parents argument that FAPE requires school districts to provide children with disabilities educational opportunities that are “substantially equal to the opportunities afforded children without disabilities.”

Legal 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.”
 - “reasonably calculated”
 - requires prospective judgment by school officials
 - “fact-intensive exercise” informed by expertise of school officials and input of parents/guardians

Additional Language

- For a child fully integrated in the regular classroom, “the system itself monitors the educational progress of the child”
 - ▣ passing grades, advancement from grade to grade
- For a child who isn’t fully integrated, IEP need not aim for grade-level advancement
 - ▣ “But his educational program must be appropriately ambitious in light of his circumstances”
 - ▣ “The goals may differ, but every child should have the chance to meet challenging objectives”

Why this matters

- Other states were using less demanding standards, i.e. “merely more than *de minimis* educational benefit”
- This is the standard used by the Tenth Circuit in *Andrew F.*
- Supreme Court said: “ a student offered an educational program providing ‘merely more than *de minimus* progress from year to year can hardly be said to have been offered an education at all.”

Nothing new here

- First Circuit: “to comply with the IDEA, an IEP must be reasonably calculated to confer a meaningful educational benefit.” *D.B. v. Esposito*, 675 F. 3d 26, 34 (1st Cir. 2012)
- This is the standard we apply at the BSEA

CD v. Natick Pub. Sch. Distr.

117 LRP 11418 (D.C. Mass. 03/28/17)

- HO will have to re-examine an IDEA dispute decided in July 2015 to consider whether the IEP met the “appropriately ambitious” standard set out in *Andrew F.*
- The HO will need to clarify whether the “some educational benefit” standard she applied aligns with *Andrew F.* and considers the child’s unique circumstances.

What does this mean for you?

- Adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.
- Deference is based on application of expertise and exercise of judgment by school authorities.
- District must be prepared to be able to offer “a cogent and responsive explanation for [its] decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”

What about inclusion?

- Inclusion: measured more traditionally
- Outside of inclusion context: unique, case by case, fact-intensive determination
- Teams must be able to communicate WHY inclusion benefits this particular student.

What Teams Should Consider

- Teams must directly consider the nature and severity of the child's disability

How?

- Effective progress will depend upon that which is reasonable based on the student's abilities – academic, social, behavioral, transition

How to Prove?

Evaluation

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- Under the IDEA, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related service needs, **whether or not commonly linked to the disability category which the child has been classified.**”

34 C.F.R. 300.304(6)

Standards for school assessments

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- Performed by individuals with appropriate training and credentials
- Use a variety of assessment tools and strategies, **including parent-provided info**
- Use technically sound instruments

What school assessment reports should contain

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- Summary of procedures used, results, and diagnostic impression
- Define student's needs in detail in “**educationally relevant** and in common terms”
- Offer “explicit means of meeting” the child's needs (603 CMR 28.04(2)(c))
- May recommend appropriate types of placements (but not specific placements)

Things that should not happen without an evaluation/assessment

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- Change in placement
- Removal of services
- Provision of new services
- 1:1 Assistant
- Graduation

Meaningful Progress: What Does It Look Like?

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- documented growth
- knowledge and skills, including social/emotional development, within the general education program, with or without accommodations,
- according to chronological age and developmental expectations,
- **the individual educational potential of the student,**
- and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district 603 CMR 28.02 (17).

What is the Evidence?

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- Are you using this evidence to show progress?
 - Teacher report anecdotal
 - Pupil personnel anecdotal
 - Changes in standardized assessments
 - Quarterly progress report with anecdotal report
 - Quarterly progress report with measurable data
 - Ongoing progress monitoring (daily, weekly)

Progress Monitoring Data: what Teams should be doing

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- Establishing goals and objectives that will make the most impact in a student's life
- Determining measurement strategy
- Reviewing the progress monitoring information to remain focused on outcomes
- Presenting relevant data in an understandable format (graphs, charts)

A word about Progress Reports

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1. Do Them!
2. Do Them on Time and Consistently!
3. Progress Reports **MUST** address the goals and benchmarks



Effective Team Communication

- Employing effective ways of sharing and obtaining information pertinent to the special education process.
- Conveying professional competence and personal attributes such as empathy.
- Utilizing strategies to tackle difficult issues with expertise and honesty.

Communication : Parents

- Have the facts and talk the facts—all the facts—first . Then explain the conclusions.
- Celebrations and Challenges
- Avoid defensiveness.
- Don't stop communicating.
- Use letters, logs, “notes to file” to document.

Communication: Special Educators

- Encourage awareness of individual professional expertise.
- Spend time on developing interpersonal and group communication skills.
- Build staff-administrative mutual reliance and cooperation.
- Develop an “early warning system” that works.

Communication...Planning

- Consider getting some objective planning advice before the meeting.
- Have a strategy and options in advance of a meeting.

Communication...Planning

- Make the pre Team meeting or “post-mortem” after a difficult meeting pro-active
 - ▣ Not what is wrong with the parent,
 - ▣ But can we do something differently?
 - ▣ Use role playing to provide a “script”.
 - ▣ Have a Team member prepared to “de-escalate” or call a recess in the meeting.

Communication/Evaluators and Consultants

- Schools need to find a way into the “Ivory Tower” to participate in what is recommended for students with particular disabilities and how those recommendations are communicated.
- Schools need to open the door to outside evaluators and put their best foot forward.

Communication: Regular Educators

- Educate them...over, and over, and over...
- Foster collaboration and accountability around program and process.

What Matters to the Hearing Officer

- Evidence
- Witness credibility
- Program Integrity



Questions?

Comments?

Insights?