

*Andrew F. v. Douglas
County School District:*
The New IDEA Standard
for FAPE

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Definition of Free Appropriate Public Education under IDEA Regulations

- ▶ **Sec. 300.17 Free appropriate public education.**
- ▶ Free appropriate public education or FAPE means special education and related services that--
- ▶ (a) Are provided at public expense, under public supervision and direction, and without charge;
- ▶ (b) Meet the standards of the SEA, including the requirements of this part;
- ▶ (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- ▶ (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. Sec. 300.320 through 300.324.
- ▶ (Authority: 20 U.S.C. 1401(9))

Board of Education v. Rowley,
458 U.S. 176 (1982)



The *Rowley* Standard

- ▶ First, has the State complied with the procedures set forth in the Act?
- ▶ Second, is the IEP reasonably calculated to enable the student to receive educational benefits?

How did the courts interpret the *Rowley* case?

- ▶ Circuits were split
 - Two federal appellate courts used the “meaningful educational benefit” standard
 - Most, including the Tenth Circuit, used the “some educational benefit” standard
 - Interpreted to mean something more than trivial or *de minimis*

Andrew F. v. Douglas County School District, 580 U.S. ___ (2017)



The Issue for Decision Before the Supreme Court Challenged the 2nd Prong of the *Rowley* Standard

What is the level of educational benefit a school district must confer on children with disabilities to provide them with FAPE as guaranteed by the IDEA?

What did the Court decide?

- ▶ *Rowley* and the IDEA point to a “general approach” for determining the adequacy of educational benefits conferred upon all children covered by the IDEA:

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

- ▶ This new standard “is markedly more demanding” than the “merely more than *de minimis*” test used by the 10th Circuit

- ▶ Developing an appropriate education program for a student is a “fact-intensive exercise” informed by the expertise of school officials and the input of parents or guardians

- ▶ The *Rowley* Court recognized that the IDEA requires children w/disabilities to receive education in the regular classroom whenever possible
- ▶ When this preference is met, “the system itself monitors the educational progress of the child” through regular exams and the opportunity for yearly advancement to higher grade levels

- ▶ For students fully integrated in the regular classroom – like Amy Rowley was – an IEP typically should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade”

- ▶ *Rowley* didn't provide "concrete guidance" regarding a child "who is not fully integrated in the regular classroom and not able to achieve on grade level"
- ▶ If that isn't a reasonable prospect for a child, that child's IEP need not aim for grade-level advancement

- ▶ But “[the child’s] 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”

- ▶ The Court rejected the Parents' argument that FAPE is “an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities” – a maximizing standard

- ▶ The question is whether an IEP is reasonable, not whether a court regards it as “ideal”

- ▶ The Court didn't 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 child for whom it was created”
- ▶ So administrative officers and courts are deciding how *Endrew F* applies to particular situations

The Combined *Rowley/Endrew F* Standard

- ▶ First, has the State complied with the procedures set forth in the Act?
- ▶ Second, is the IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances

Some Takeaways

- ▶ Procedural compliance is still important when developing IEPs
- ▶ FAPE and educational benefit/progress are based on each student's individual needs, abilities and circumstances

- ▶ In IEPs, Present Levels of Performance and annual goals should be based on evaluations and other data that are current and comprehensive
- ▶ Annual goals must be appropriately ambitious or challenging, but also reasonable

- ▶ Annual goals must be measurable
- ▶ Student progress on annual goals (and short-term objectives/benchmarks for students in alternate curriculum) should be monitored and measured consistently

- ▶ Student grades and grade advancement are relevant, but aren't the only relevant factors when looking at FAPE/progress
- ▶ If data reflect annual goal(s) won't be achieved, the IEP team should meet promptly
 - Same if annual goal is met sooner than anticipated

- ▶ Districts should document all reasonable and good faith efforts to provide FAPE/enable a child to make appropriate progress