

U.S. Department of Education issues guidance on providing FAPE after U.S. Supreme Court decision in *Endrew*

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What is required for a school district to provide a free and appropriate public education (FAPE) to a student with a disability? What does the U.S. Department of Education (ED) expect to be included in an individualized education program (IEP) for the student? On December 7, 2017, ED issued a [question-and-answer document](#) (Q&A document or Q&A) providing guidance to parents, educators, and other stakeholders on issues related to the March 2017 U.S. Supreme Court (the Court) [opinion](#) in *Endrew F. v. Douglas County School District*. In that case, the Court clarified the scope of a school's obligation to provide FAPE to a student with a disability under the Individuals with Disabilities Education Act (IDEA). The Q&A document describes the case and provides a summary of the Court's decision in the context of prior case law. The document also describes the standard for determining FAPE in light of the Court's decision.

The Supreme Court's decision in *Endrew F.*

Endrew's parents withdrew him from public school and placed him in a private school that specialized in the education of children with autism because they believed his proposed IEP was not rigorous enough. They brought a court case after they were unable to obtain tuition reimbursement for the cost of the private school placement. The case was appealed all the way up to the U.S. Supreme Court.

In its decision, the Court clarified the substantive standard for determining whether a student's IEP is sufficient to confer educational benefit on a student with a disability as required by the IDEA. The Court held that to meet its substantive obligation under the IDEA, a school must develop an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court clarified that this standard applies to all students, including those performing at grade level and those unable to perform at grade level. In its opinion, the Court emphasized "[t]he goals may differ, but every child should have the chance to meet challenging objectives." In the Q&A, ED explains "[t]he standard in *Endrew F.* applies regardless of the child's disability, the age of the child, or the child's current placement."

In reaching its decision, the Court rejected a different, less demanding standard—“merely more than *de minimis*”—that had been used by the Tenth Circuit and several other courts. That standard is no longer considered good law.

What does “reasonably calculated” mean?

ED explains that it interprets the “reasonably calculated” standard to mean that “school personnel will make decisions that are informed by their own expertise, the progress of the child, the child’s potential for growth, and the view of the child’s parents.” In assessing whether an IEP is reasonably calculated to enable a child to make progress, ED recommends that the IEP Team consider various factors, including the child’s previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child’s progress, and additional information and input from the child’s parents. ED emphasizes that the Court established some limits as to what can be expected: “any review of an IEP must consider whether the IEP is reasonably calculated to ensure such progress, not whether it would be considered ideal.”

What does “progress appropriate in light of the child’s circumstances” mean?

The Court did not specifically define “in light of the child’s circumstances.” However, ED explains that the Court’s decision “emphasized the individualized decision-making required in the IEP process and the need to ensure that every child should have the chance to meet challenging objectives.” For example, the Court instructed that the IEP Team must give “careful consideration to the child’s present level of achievement, disability, and potential for growth.” For children with significant cognitive disabilities, progress and performance can be measured against alternative academic standards, which must be aligned with the State’s grade-level content standards. In the Q&A, ED says it expects that “annual IEP goals for children with the most significant cognitive disabilities should be appropriately ambitious, based on the State’s content standards, and reasonably calculated to enable the child to make progress in light of the child’s circumstances.”

Does the *Endrew F.* decision change parents’ due process rights under the IDEA?

No. If parents disagree with IEP Team’s determinations about the special education and related services that are appropriate and necessary for their child to receive FAPE, they can continue to use the IDEA Part B mediation and due process procedures. Nothing in the *Endrew F.* opinion changes the procedural due process rights available to parents under the IDEA.

What should an IEP Team do in light of the Supreme Court’s decision?

- *Ensure that every child has the chance to meet challenging objectives.* The Court required that “the IEP must aim to enable the child to make progress.” ED recommends that the IEP should be “designed to provide instructional strategies and curricula aligned to both challenging State academic content standards and ambitious goals, based on the unique circumstances of that child.” ED explains that an IEP “must be designed to enable the child to be involved in, and make progress in, the general education curriculum”—that is, the same curriculum as for nondisabled children. Alignment with the State’s academic content standards should “guide, and not replace,” the individualized decision-making required in the IEP process. ED recognizes that determining an appropriate and challenging level of progress will require an individualized determination unique to each child. When making the determination, each IEP Team “must consider the child’s present

levels of performance and other factors such as the child’s previous rate of progress and any information provided by the child’s parents.”

- *Make individualized determinations about what constitutes appropriate placement.* ED recognizes “that it is essential to make individualized determinations about what constitutes appropriate instruction and services for each child with a disability and the placement in which that instruction and those services can be provided to the child.” ED observes that placement decisions must be individualized and consistent with a child’s IEP, and should not be “one-size-fits-all.” Rather, a continuum of alternative placements should be available to meet students’ needs, because “placement in regular classrooms may not be the least restrictive placement for every child with a disability.”
- *If a child is not making progress at the level expected, review and revisit the IEP as necessary.* An IEP Team must review the child’s IEP at least once a year to determine whether the annual goals for the child are being met. The IEP Team also may meet at other times throughout the school year if appropriate, such as if the child is not making expected progress toward his or her annual goals.
- *Implement appropriate policies, procedures, and practices.* IEP Teams should develop strategies to determine what appropriate progress would look like for each child. This may require development of new policies, procedures, and practices relating to: identifying current levels of academic achievement and functional performance; setting measurable annual academic and functional goals; and measuring and reporting progress toward meeting annual goals.

Summary

School districts should review the [Q&A document](#) to understand the impact of the Court’s decision. ED’s Office of Special Education and Rehabilitative Services (OSERS) is accepting comments to assist ED in identifying additional implementation questions and best practices. Comments may be submitted to OSERS via email at AndrewF@ed.gov.

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