

PCG Special Education Brief

What the *Endrew F. v. Douglas County School District* Supreme Court Decision Means for You

By Sue Gamm, Esq. and Will Gordillo

March 27, 2017

SUMMARY

On January 11, 2017, the U.S. Supreme Court heard oral arguments in *Endrew F. v. Douglas County School District*.¹ As one of the most important special education cases in decades, the Court agreed to decide the level of educational benefit schools are required to provide to students with disabilities under the Individuals with Disabilities Education Act (IDEA).

Background Information

The parents of Endrew, a student with autism, believed his academic and functional progress had stalled. After the school district proposed a fifth grade IEP for Endrew that resembled IEPs from past years, the parents enrolled Endrew in a specialized private school where he made significant progress. Later, the district offered a new fifth grade IEP that the parents considered to be no more adequate than the original IEP. As a result, the parents asked the school district to reimburse them for Endrew's private school tuition. When this request was denied, the parents requested a due process hearing. Following the hearing officer's and federal District Court's decisions ruling for the district, the parents appealed to the U.S. Court of Appeals (10th Circuit). The Appellate Court applied the U.S. Supreme Court's 1982 decision in *Westchester Cty. v. Rowley (Rowley)*, which had ruled that instruction and services given to students with disabilities must be reasonably calculated to confer "some educational benefit." The Appellate Court interpreted the *Rowley* level of benefit to be "merely . . . more than *de minimis*." The 10th Circuit found that Endrew's IEP met this standard and ruled in favor of the school district.

Decision

On March 22, 2017, the U.S. Supreme Court unanimously overruled the 10th Circuit decision. The Court found that to meet its obligation under IDEA, a school is not required to offer an "ideal" IEP, but the IEP must be reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. Based on their reading of IDEA, the justices established that IEPs must aim to enable a student to make progress, and teams must establish a plan for the student to pursue academic and functional advancement. The IEP need not aim for grade-level advancement if that is not a reasonable prospect. But the IEP must be appropriately ambitious in light of the student's circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. Goals may differ, but every student should have the chance to meet challenging objectives.

The Supreme Court emphasized that its articulated standard is more demanding than the "merely more than *de minimis*" progress test. A student offered progress under this test

from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly . . . awaiting the time when they were old enough to 'drop out.'" The IDEA demands more.

The Supreme Court affirmed deference to school authorities' expertise and judgment. Such deference, however, must be based on a cogent and responsive explanation that the IEP is reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. Declining to elaborate on what "appropriate" progress will look like from case to case, the Court emphasized that the standard "turns on the unique circumstances of the child for whom it was created."

¹ For the full case, see https://www.supremecourt.gov/opinions/16pdf/15-827_0pm1.pdf

PCG's Analysis

In *Endrew*, the Supreme Court reached a balance between the standard established by the 10th and other circuits (more than *de minimis*) and the higher standard promoted by the parents (goal of providing students with disabilities opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities). The court's standard (IEPs to be reasonably calculated to enable a student to make progress appropriate in light of his or her circumstances) relies on the foundation of *Rowley* and subsequent IDEA amendments. These newer provisions have required measurable IEP annual goals that enable students to be involved in and make progress in the general education curriculum, describe how progress will be measured, and report such progress to parents.

Implications for Districts, School Personnel, and Parents

The Supreme Court's expectations for school district practices are based in IDEA provisions that have been in place since 2004. The *Endrew* decision reinforces their importance. While the court articulated that IEP goals be "ambitious" based on student circumstances, IDEA has required goals to enable students to be involved in and *make progress* in the general education curriculum. To meet this standard, goals can be no less than ambitious. Finally, *Endrew* reinforces parent expectations that their child's progress be more than minimal. The Supreme Court's expectation that such progress be appropriate in light of each student's circumstances, and not be merely more than *de minimis*, is an expectation that is shared by many educators as well. With these lessons in mind, we believe the *Endrew* decision has several important implications for school districts, school personnel, IEP teams, and parents.

- 1. Design Ambitious IEP Goals.** When developing IEP goals, teams should ensure the goals are "ambitious" in light of each student's circumstances. Repeating the same goals from year to year is not likely to meet this test. Rather, teams need to design goals that are reasonably calculated to enable students to be involved in and make progress in the general education curriculum, using alternate achievement standards when appropriate; and meet their other educational needs related to the disability. Although the Supreme Court did not address the delineation of IEP special education, related services, and supplementary aids/services, it is important to remember that IDEA requires a statement of these components to be "based on peer-reviewed research to the extent practicable."
- 2. Implement the IEP with Fidelity.** The *Endrew* facts were not based on instruction and services not implemented as intended. As a result, the Supreme Court did not address this circumstance in its decision. It should be obvious, however, that any lack of student progress related to IEP-required services not implemented with fidelity would be problematic. It is important for systems to be in place for school personnel to ensure that required services are in place, and practices established to address any deficiencies.
- 3. Regularly Monitor Progress.** A system should be in place for personnel to collect data to regularly monitor each student's progress in light of his or her annual goals (and objectives/benchmarks if they apply). This activity is conditioned on having ambitious goals (and objectives/benchmarks) that are sufficiently measurable to support progress monitoring described in the student's IEP. If the student's progress is not monitored regularly, school personnel will not be able to adjust instruction and support quickly enough to change the student's trajectory of academic achievement and performance. This approach demonstrates that school personnel are paying attention to each student, and either reflects the progress students are making or triggers the need for follow-up activities.

- 4. As Needed, Adjust (Specialized) Instruction and Related Services.** School districts should have written expectations for school personnel practices regarding steps to be taken when student achievement and performance is not progressing as anticipated. Such expectations may include documentation of changes taken with respect to adjustments to general and specially designed instruction and related services strategies, informal meetings with parents/guardians, initiation of team meetings if necessary to change IEPs, etc. In other words, there should be demonstrable actions taken to show school personnel are actively involved, problem-solving, and taking concrete steps to address inadequate student progress.

How PCG Can Help

PCG Education has been a leader in special education solutions for 20 years. Through our special education technology and deep national special education expertise, we have helped thousands of school districts and state Departments of Education improve educational outcomes for students.

- **Progress Monitoring with Data Collection (PDMC).** Through EDPlan's PDMC, PCG supports IEP teams to strengthen evidence of progress monitoring. This enables school personnel to confidently address parent questions and to decide whether additional action is needed to promote goal-based student progress.
- **Common Understanding.** By embedding progress monitoring into EDPlan's IEP system, redundant data entry is eliminated, and charting student progress is automatic. This feature makes it easier for IEP team members and parents to have a common understanding of student achievement, and promotes meaningful conversation. Furthermore, this feature promotes the development of IEP goals (and objectives/benchmarks as needed) that are measurable and capable of charting.
- **Language Translation.** Additional EDPlan modules enable IEPs to be translated automatically into major languages other than English. This feature is indispensable for English learning parents/guardians to meaningfully engage in conversations about their child's IEP and educational performance.
- **Program Reviews.** Through our special education program reviews, PCG teams assess school district practices that contribute to high achievement and performance outcomes for students with disabilities. Through a review of qualitative and quantitative data, interviews, and discussion with focus groups, our reports document school district effective practices, opportunities for improvement, and recommendations. PCG staff are also available to support districts with follow-up strategic planning and implementation.
- **Customer Satisfaction.** PCG customers report that EDPlan helps them improve overall systemic compliance with the development, implementation and monitoring of the IEP process. Overall, 77% of our surveyed customers have responded that EDPlan helps their staff better understand the IEP process, and two-thirds report that EDPlan enables their special education teams to be more effective in their work. Customers also report favorably on EDPlan modules supporting 504 plans and paperless solutions, including digital signatures.

PCG Education expertise and experience is available to support clients to meet the new *Endrew* standard for "educational benefit" by:

- Supporting effective IEP processes and usages including the development of goals aligned to grade level standards or aligned alternate achievement standards
- Supporting consistent use of evidence-based instructional practices and formative assessment

- Assisting with processes for progress monitoring and problem-solving follow-up activities
- Facilitating development and implementation of a Multi-Tiered System of Supports (MTSS) framework
- Facilitating the use of evidence-based instruction aligned with alternative academic standards
- Effectively utilizing teaching and support staff
- Providing ongoing, job embedded professional development and coaching
- Facilitating meaningful family and community engagement
- Strengthen organizational infrastructure to support systemic improvements
- Improving operations and financial resource management

For more information about PCG Education and EDPlan, please contact your local PCG representative, visit www.EDPlan.com, or reach out to us directly at pcgeducation@pcgus.com or (800) 210-6113.

About Public Consulting Group

Public Consulting Group, Inc. (PCG) is a leading public sector consulting firm that partners with health, education, and human services agencies to improve lives. Founded in 1986 and headquartered in Boston, Massachusetts, PCG has nearly 2,000 professionals in more than 60 offices around the U.S., in Canada, and in Europe. The firm has extensive experience in all 50 states, clients in six Canadian provinces, and a growing practice in Europe. To learn more, visit www.pcgeducation.com.



www.publicconsultinggroup.com