

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW ALERT

Special Alert

March 22, 2017

FAPE Standard Heightened by U.S. Supreme Court

The U.S. Supreme Court issued an important opinion today in Endrew F. v. Douglas County School District (Case No. 15-827) addressing the appropriate standard for determining whether a free appropriate public education (“FAPE”) has been offered/provided under the Individuals with Disabilities Education Act (“IDEA”). At issue in Endrew F. was whether a school must provide a student with some educational benefit or with a higher standard of meaningful educational benefit. The Tenth Circuit previously held in favor of the school district, finding that FAPE was provided because the student’s IEP conferred an educational benefit that was more than *de minimis* and was reasonably calculated to enable him to make some progress.

Ultimately, the U.S. Supreme Court reversed the Tenth Circuit, holding, “[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.” In overturning the Tenth Circuit, the U.S. Supreme Court explained, in pertinent part, as follows:

...A child’s IEP need not aim for grade-level advancement if that is not a reasonable prospect. But that child’s 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.

This standard is more demanding than the “merely more than *de minimis*” test applied by the Tenth Circuit. It cannot be right that the IDEA generally contemplates grade-level advancement for children with disabilities who are fully integrated in the regular class-room, but is satisfied with barely more than *de minimis* progress for children who are not.

In light of this decision, the FAPE standard is now higher. School districts can no longer rely on the “some educational benefit” or “more than *de minimis*” arguments when contending FAPE was provided.

A copy of the opinion is available at the following link: [Endrew F.](#)