Supreme Court Increases School Standards For Students With Disabilities

IEPS MUST MEET "MARKEDLY MORE DEMANDING" STANDARD FROM NOW ON

Insights
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Today, in a unanimous decision crafted by Chief Justice John Roberts, the Supreme Court decided that the Individuals with Disabilities Education Act (IDEA) requires public schools to provide a heightened level of educational benefits for children with disabilities. This new and heightened standard will impact the crafting of individualized education programs (IEPs) for those students.

Although a lower appeals court believed that school districts would satisfy the IDEA if they offered the student an IEP that provides a benefit that is "merely more than *de minimis*," the Supreme Court rejected this standard in favor of a "markedly more demanding" standard holding that IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The decision is likely to require a rethinking of the benefits to disabled students provided by public school districts across the country, and is expected to lead to increased litigation challenging the provision of disability benefits provided by those schools (*Endrew F. v. Douglas County School District*).

Background Facts: Was The IEP Good Enough?
Endrew F., known as "Drew" for the purposes of the litigation, was diagnosed with autism at the age of two. His autism affects his cognitive functioning, language and reading skills, and his social and adaptive abilities. He attended public school in Douglas County, Colorado, from preschool through fourth grade. Each year he received special education services, including IEPs, tailored to meet his needs.

The IDEA requires any public school receiving federal funding to ensure all children receive a "free appropriate public education" (FAPE), and schools satisfy this requirement by developing and implementing IEPs for students with disabilities. Typically the IEP is a detailed written document describing the student's educational goals for the year and establishing a plan to achieve those goals.

Drew's parents were not satisfied with the IEP the Douglas County School District developed for Drew at the beginning of his fifth grade year. They believed it was too similar to past IEPs developed for him, which they did not believe resulted in any meaningful progress and did not provide him with FAPE. They pointed to the fact that Drew's behavioral problems escalated each year and reached a

peak in fourth grade. That year was especially rocky for Drew, as the school reported he climbed over furniture and other students, hit things, screamed, ran away from school, and twice removed his clothing and went to the bathroom on the floor of the classroom.

When the school did not address the concerns lodged about the IEP, Drew's parents withdrew him from the District school and enrolled him in a private institution designed for students with autism. However, they also brought a claim against the District seeking reimbursement for their private school tuition. After a lengthy administrative hearing, an administrative law judge denied their claim. Drew's parents then turned to federal court and sought review of the decision, but the court rejected their lawsuit. They appealed the decision to the 10th Circuit Court of Appeals, which also rejected their claim. Finally, they took their case to the highest court in the country, which issued its ruling today.

SCOTUS Sets New Heightened Standard

At issue for the Supreme Court was whether the District's plan was reasonably calculated to enable Drew to receive a "free appropriate public education" as required by IDEA. The District argued that it met this standard by creating a basic floor of opportunity for the disabled child, providing individualized services sufficient to provide him with *some* level of educational benefit. The District pointed to the fact that it interacted with Drew's parents frequently to update them on his status and progress, scheduled an autism specialist and a behavioral specialist to meet with Drew's IEP team, and – perhaps most importantly – reported some level of past progress each year that it developed an IEP for Drew.

While conceding that Drew was not necessarily thriving at the District, it argued that the IDEA does not require that public schools do "whatever is necessary" to ensure the student achieve a particular level of ability and knowledge. Instead, the District argued that the statute calls for a much more modest goal: the creation of an IEP reasonably calculated to enable the student to make *some* progress.

The District contended that requiring anything more would create ambiguities that would invite increased litigation and, in effect, place decisions on individual education matters into the hands of judges, who are not qualified to render such judgments. This increased litigation would, in turn, rob school districts of significant resources necessary to educate all students in their districts.

The Supreme Court rejected these arguments, scrapping the "merely more than *de minimis"* standard that merely requires evidence of "some" progress for an IEP to satisfy federal education law. Instead, Justice Roberts, writing for a unanimous court, concluded that compliance with IDEA requires schools to "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court noted that for children "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." Put another way, "for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to

achieve advancement from grade to grade.

For a child who cannot be "fully integrated in the regular classroom and not able to achieve on grade level," the Court acknowledged that, while "grade-level advancement" may not be the appropriate measuring stick for compliance, the child's "educational program must be appropriately ambitious in light of his circumstances." According to the Court, "every child should have the chance to meet challenging objectives."

This broad, individualized standard for children who cannot reasonably attain grade-level advancement will seemingly require schools to increase the services offered as part of their IEPs. It will likely invite considerable litigation against schools as lower courts flesh out its application in a variety of specific contexts.

What Does This Mean For Public Schools?

The only educational institutions affected by today's ruling are public schools receiving federal funding and subject to the IDEA. Up until now, a school district could feel confident that it was satisfying federal education law if it developed an IEP reasonably calculated to guarantee *some* educational benefit. The measure and adequacy of an IEP would only be determined as of the time it was offered to the student, and there would be no "Monday Morning Quarterbacking" to look to the actual success of the student in reviewing the adequacy of the plan. The question of the student's actual progress was rarely examined, and if so, all that was required was "some" amount of progress to meet the IDEA standard. That day is no more.

From now on, however, for students who are fully integrated into the classroom, schools will be required to provide enhanced services not only designed to provide some benefit, but that are reasonably calculated to keep track with grade progress. For those who cannot be fully integrated into the classroom, services must be designed such that the educational program is "appropriately ambitious in light of [the student's] circumstances." While this standard was partially designed to iron out the purported ambiguity of the previous standard, it also has inherent ambiguities which, when coupled with the enhanced requirements for public schools, will likely lead to significant litigation and costs in this area over the next several years.

If you have any questions about this decision or how it may affect your school, please contact the author at SSchneider@fisherphillips.com (504.312.4429), any member of our Education Practice Group, or your regular Fisher Phillips attorney.

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