Supreme Court Rejects Education Minimum Applied by Gorsuch

By Richard Pérez-Peña
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WASHINGTON — Schools may not settle for minimal educational progress by disabled students, the Supreme Court ruled on Wednesday, rejecting a standard that some lower courts have applied, and that the nominee to join the high court, Neil M. Gorsuch, has been criticized for using.

The federal Individuals With Disabilities Education Act requires "free appropriate public education" for all children. In multiple cases, the federal Court of Appeals for the 10th Circuit, in Denver, has held that the law demands little "more than de minimis" — merely a program intended for a student to show some annual gains.

"It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than de minimis progress for those who cannot," Chief Justice John G. Roberts Jr. wrote for a unanimous court.

"When all is said and done, a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all," he wrote. "The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

In a 2008 ruling, Judge Gorsuch, who sits on the Court of Appeals for the 10th Circuit, applied the "de minimis" standard in rejecting a parents' claim that a school's provisions for their autistic child were inadequate.

Since Judge Gorsuch's nomination to the Supreme Court by President Trump, some Democrats have cited that and other opinions as evidence that the judge hews to an extreme conservative philosophy. At about the same time that Chief Justice Roberts was announcing the decision on Wednesday, Judge Gorsuch was questioned about the issue in a confirmation hearing before the Senate Judiciary Committee.

In the hearing, the judge noted, as he did in the 2008 ruling, that he had simply adhered to precedent, following a standard the appeals court had set in a 1996 ruling — which, in turn, cited rulings in other courts — and its understanding of a 1982 Supreme Court decision.

The Supreme Court ruling on Wednesday acknowledged that both the federal law, enacted in 1975 and amended a few times since then, and the 1982 ruling interpreting it, are vague about what schools must do. That is by design, the court said, because what is appropriate differs widely from one child to another.

"The de minimis standard was outrageous and really meant that schools could do nothing and get away with it, so of course we're pleased that the court soundly rejected that," said Curtis L. Decker, executive director of the National Disability Rights Network. "But we would have preferred a clearer standard. The vagueness puts a burden on the family to try to show that their particular child needs a certain program to succeed."

Nicole Jorwic, director of rights policy for the Arc, an advocacy organization for people with intellectual disabilities, said a review of Judge Gorsuch's opinions related to people with disabilities "reveals an exceptionally narrow view of the protections offered by federal disability rights laws." She said the Arc supported Wednesday's Supreme Court ruling, but had not taken an official stance on whether Mr. Gorsuch should be confirmed.

"We would hope that in his future rulings, Judge Gorsuch would see that the purpose of IDEA is to help students with disabilities achieve more meaningful progress that can ultimately lead to their success and full life in their communities," she said.

The case decided on Wednesday, Endrew F. v. Douglas County School District, concerns an autistic boy in Colorado, whose progress in school had stalled, in part because of his severe behavioral problems.

"Endrew would scream in class, climb over furniture and other students, and occasionally run away from school," Chief Justice Roberts wrote. "He was afflicted by severe fears of commonplace things like flies, spills, and public restrooms."

According to the parents, he needed a drastically different approach in school, but the district offered more of what was not working. So they put him in a private school specializing in educating autistic children, where his behavior and academic performance improved markedly.

The parents demanded reimbursement from the district for the cost of private school, arguing that the public schools had failed to meet the federal mandate. The Supreme Court did not directly address the question of reimbursement, but sent the case back to the lower courts for consideration.

***A correction was made on March 23, 2017**: An earlier version of this article misspelled the surname of the director of rights policy at the Arc, an advocacy group. She is Nicole Jorwic, not Nicole Jorwick.*

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