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U.S. Supreme Court Sets Progress Standard for Children with Individual Education Plans

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Endrew F. ex. rel. Joseph F. v. Douglas Cty. School District RE-1, 137 S. Ct. 988 (2017).

Parents sought tuition reimbursement for enrolling their autistic child in a private school because the public school district failed to implement an appropriate education plan for their child. The U.S. Supreme Court held the Individuals with Disabilities Education Act (IDEA) requires an Individual Education Plan (IEP) to be reasonably calculated to enable a child to make progress in light of the child's circumstances.

Endrew was diagnosed with autism at age two and had IEPs from preschool through fourth grade. Each year the IEPs contained the same basic goals and objectives. Endrew's parents believed his academic progress had stalled and therefore requested an overhaul of the school's approach to Endrew's education. In the fifth grade, the school district proposed an IEP Endrew's parents viewed as largely the same as his previous ones. In response, his parents enrolled him in a private school specializing in educating children with autism. Endrew did much better at this school. Six months later the school district proposed a new IEP which the parents believed still did not meet Endrew's educational needs. Endrew

remained enrolled in the private school and his parents sought reimbursement of tuition costs.

To receive reimbursement for public school costs, the IDEA requires evidence a student did not receive a free appropriate public education (FAPE) in a timely manner before enrollment in the private school. Andrew's parents argued the IEP proposed by the school district was not "reasonably calculated to enable [Andrew] to receive educational benefits" and therefore he had been denied a FAPE. The lower courts disagreed, applying a standard derived from *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982). The lower court interpreted *Rowley* as creating a standard requiring an adequate IEP to only confer an educational benefit that shows at least minimal progress.

The Court in this case disagreed and found *Rowley* did not create any one standard for determining the adequacy of educational benefits required by IDEA. Instead, *Rowley* was decided on the unique facts of that case and sheds light on what appropriate progress looks like for many students integrated in the regular classroom. For those students, *Rowley* suggests an IEP typically should be reasonably calculated for the child to achieve passing marks and advance from grade to grade. The facts in this case are different because Andrew was not fully integrated into the classroom and was not able to achieve on grade level.

The Court held *Rowley* combined with statutory language created a general approach: for a school district to meet its substantive duty under IDEA it must offer an IEP reasonably calculated to enable a child to make progress appropriate to the child's circumstances. Examining IDEA, the Court said the IEP process exists to meet the definition of a FAPE, which requires meeting the unique needs of a child with a disability. The Court said each child's goals may differ "but every child should have the chance to meet challenging objectives" which is clearly more than the lower court's standard of more than minimal progress. The Court declined to further define what "appropriate" progress would look like for each case emphasizing that an IEP's adequacy depends on the unique circumstances of the person for whom it was created.