



# Clarifying the Free Appropriate Public Education Standard Post-Endrew for School Leaders



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## Abstract

All the federal laws and policies relating to individuals with disabilities aim to achieve four major goals: equality of opportunity, full participation, independent living, and economic self-sufficiency. The free appropriate public education (FAPE) plays an integral role in contributing to achieving these goals. The purpose of this paper was to obtain more understanding of the meaning of FAPE for students with disabilities especially after the case of Endrew F. v. Douglas County School District in Colorado in 2017. It is significant for administrators and teachers understand the ruling in Endrew because this decision will critically affect special education programs. Several implications for school leaders after the case of Endrew.

**Keywords:** Endrew; FAPE; School leaders; Students with disabilities

## Introduction

All the federal laws and policies relating to individuals with disabilities aim to achieve four major goals: equality of opportunity, full participation, independent living, and economic self-sufficient [1]. The free appropriate public education (FAPE) plays an integral role in contributing to achieving these goals. The purpose of this paper was to obtain more understanding of the meaning of FAPE for students with disabilities especially after the case of Endrew F. v. Douglas County School District in Colorado in 2017. It is significant for administrators and teachers understand the ruling in Endrew because this decision will critically affect special education programs [1].

The IDEA defines FAPE as special education and related services that:

- Have been provided at public expense, under public supervision and direction, and without charge;
- Meet the standards of the state educational agency;
- Include an appropriate preschool, elementary, or secondary school education in the state involved;

- Are provided in conformity with the individualized education program [2].

All eligible students for special education programs are entitled to receive a FAPE under the IDEA regardless of the severity of their disabilities [3]. The IDEA requires that every student with disability must be educated in the least restrictive environment LRE. In other words, school's main requirement is to provide the students with disabilities with FAPE, the LRE principle is secondary. When FAPE cannot be provided in general classrooms, students with disabilities may be placed in more restrictive setting.

The Board of Education of the Hedrick Hudson Central School District V. Rowley (1982) was the first case interpreting IDEA. The Supreme Court held that a student with disability is entitled to personalized instruction with support services sufficient and they interpreted the FAPE requirement as that schools must deliver some educational benefit to students with disabilities who are meeting grade level expectations [2]. Consequently, the state does not have to make the most of the potential of the child, only deliver a program that benefits the child. The Supreme Court used two-part test in determining if a school has met its obligations under

IDEA to provide a FAPE. First, has the school done the procedures of the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits [2]. The Rowley standard referred to as *de minimis*, or trivial benefit, to investigate whether FAPE had been conferred. Therefore, lower federal courts have implemented the Rowley standard to deny several students with disabilities needed education and services. Additionally, The IDEA does not offer much in defining what may be considered appropriate education, but it indicated that appropriate education consist of special education and related services [1]. Therefore, several authors have questioned the Rowley standard because they believed that this was too low a standard to determine if FAPE had been conferred [3,4]. For example, one asked where the *de minimis* standard came from and, if it was not part of IDEA, then what prevented the Court from coming up with a new standard. States have been given latitude to do as little as is warranted to comply with the FAPE regarding students with disabilities.

On March 22, 2017, the Supreme Court of the United States (SCOTUS) issued its decision in *Endrew F. v. Douglas County School District* in favor of a high-level standard of learning for children with disabilities. This decision involved an interpretation of the Individuals with Disabilities Education Act (IDEA) as requiring a free, appropriate public education (FAPE). *Endrew F.* was a child with autism in the fourth grade. Because his parent's believed *Endrew* was not showing enough improvement with his IEP, they removed him from his public school and placed him in a private school. Once in private school, *Endrew* made significant academic and social progress. SCOTUS held that "to 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" [3]. The Court disapproved of the merely more than *de minimis* test that the Tenth Circuit had used to define whether educational benefit was adequate for FAPE [1]. The Court stated that in order to fulfill the IDEA's FAPE requirement, an IEP must consider more than a *de minimis* educational benefit. However, the court did not explain what it means to provide an appropriately ambitious education program or progress appropriate in light of the child's circumstances [5]. In addition, the court provided a little guidance as to what FAPE means in practice. Additionally, Howell [6] noted that "courts may still differ on how much benefit is enough when it comes to providing educational opportunities to special needs children" (p.8). Therefore, Cowin indicated that these standards should be clarified so that students, parents, and administrators have better understanding of their legal rights. Furthermore, it should be noted that the *Endrew F.* decision does not replace the *Rowley* decision; rather, it clarifies *Rowley* [7]. The new two-part test is as follows:

a) Part 1: Has the school district complied with the procedures of the IDEA?

b) Part 2: Is the IEP reasonably calculated to enable a child to make appropriate progress in light of a student's circumstances?

### Discussion

The *Endrew F.* holding should be seen as a victory for the special education community that will better protect students and ensure that their rights and opportunities under the IDEA are met [7] *Endrew's* case was a turning point in the field of special education and should be seen as a victory because it will better protect students and guarantee that their rights and opportunities under the IDEA are met [6]. Consequently, educators should pay more attention to improved instruction and evidence of progress for students with disabilities and less attention to placement. Also, they should offer an IEP reasonably calculated to enable a child to make progress in light of the child's unique disabilities and circumstances. Additionally, there will be a great change in states in circuits that had the lower *de minimis* standard in the way their courts rule on FAPE issues. It is expected to see a higher standard for students with disabilities in all state [4,7].

However, one of the negative implications of results of this case that some students with disabilities may receive their education in more restrictive setting because the result of *Endrew* case put high emphasis on specialized instruction to ensure appropriate progress for a student with a disability which may deny their rights to attend general education classrooms. According to Yell & Bateman [7], the "full implications of the *Endrew F.* decision will not become clear until hearing officers and judges apply the new two-part *Rowley/Endrew* test to the facts presented in future FAPE litigation" (p.23).

Additionally, internationally, the ruling of *Endrew's* case seems to be in conflict with some parts of Article 24 of the United Nations's Convention on the Rights of Persons with Disabilities (CRPD) [8]. There are 177 countries had ratified the CRPD, but the United States are not one of them. CRPD prioritizes inclusion (placement) over instruction and learning. Therefore, CRPD uses one criteria (antidiscrimination) and encourage countries to include students with disabilities in general education classes without looking at the quality of education. Consequently, the ruling of *Endrew's* case may affect the CRPD in the future.

### Conclusion

There are several implications for school leaders after the case of *Endrew*. First, school leaders should make sure that parents have full involvement in the process of their child's education. Additionally, they should build strong and positive relationships with parents in order to provide an appropriate education. FAPE rely on guaranteeing that parents are meaningfully participated in the process of identification, assessment, programming, and placement. Secondly, school leaders should make sure that school personnel including myself have the appropriate training on their responsibilities under IDEA and FAPE. Teachers need to become

skillful in implementing research-based practice and develop legally sound programs. Also, school leaders should ensure that the IEPs are designed to enable students to make appropriate progress in light of a student's circumstances. The annual goals should be measurable, challenging, and assessed. Additionally, school leaders should make sure there is a system for monitoring the progress of students and these data are useful for improving instructional practices such as School-Wide Positive Behavior Support (SWPBS) or Multi-Tiered System of Support (MTSS). The teachers then use the acquired data to make decisions regarding instruction based on the students' needs. Also, school leaders should consider that place a student in general classrooms is not important as receiving special instruction. The results of Endrew's case indicated that specialized instruction ensures appropriate progress for a student with a disability while modify academic and social behavior do not. Therefore, school leaders should reconsider implementing co-teaching in my school, especially for students who are deaf and students with significant disabilities. At the same time, school leaders should advocate about them to be included in general education classes and receive high quality instruction in these classes.

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