

The recent U.S. Supreme Court ruling in *Endrew F. v. Douglas County School District* is a victory for New Mexicans seeking special education and related services for children with disabilities.

The Individuals with Disabilities Education Act (IDEA) requires States receiving funds to educate children with disabilities provide a “free appropriate public education” (FAPE). Prior to the Court’s March 22, 2017 decision, schools providing FAPE in New Mexico and other States governed by the Tenth Circuit Court of Appeals (Colorado, Kansas, Oklahoma, Utah, and Wyoming) were only required to provide “some educational benefit,” or an “educational benefit merely . . . more than *de minimus*.”

In *Endrew F. v. Douglas County School District*, the U.S. Supreme Court expanded the existing standard for FAPE. To meet the standard of a FAPE, the Court required that the IEP “must be appropriately ambitious in light of [the child’s] circumstances,” and acknowledged “every child should have the chance to meet challenging objectives.” Notably, the Court emphasized the FAPE standard “is markedly more demanding than the ‘merely more than *de minimus*’ test applied by the Tenth Circuit.”

Factual Background

Petitioner Endrew F. was diagnosed with autism at age two and is entitled to receive a FAPE in the Douglas County School District through his individualized education program (IEP). By fourth grade, Endrew’s parents had become dissatisfied with his progress. Specifically, Endrew’s parents believed that, because Endrew’s past IEPs did not sufficiently address the behaviors inhibiting his ability to access learning in the classroom, Endrew’s academic and functional progress had essentially stalled. They believed only a thorough overhaul of the school’s approach to Endrew’s behaviors could reverse the trend.

When Endrew’s fifth grade IEP proposed by the school in April 2010 appeared much the same as his past ones, Endrew’s parents removed him from public school and enrolled him in a private school specializing in educating children with autism. The private school developed an effective behavioral intervention plan

(BIP) for Endrew. Within months, Endrew's behavior and academic progress improved significantly. In November 2010, about six months after Endrew was enrolled in private school, his parents met again with Douglas County School District and was presented a new IEP. Endrew's parents did not consider the new IEP any more adequate or meaningfully different than the one proposed in April, and rejected it.

In February 2012, Endrew's parents filed a complaint with the Colorado Department of Education seeking reimbursement for Endrew's private school tuition. To qualify for reimbursement, they were required to show that the school district failed to provide Endrew a FAPE in a timely manner prior to his enrollment at the private school. The administrative law judge (ALJ) denied relief. Giving "due weight" to the ALJ's decision, the Federal District Court concluded the IEPs were "sufficient to show a pattern of, at the least, minimal progress." The Tenth Circuit affirmed.

The FAPE Standard

The U.S. Supreme Court disagreed with the Tenth Circuit and vacated its judgment. The Court reiterated "a school must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances" to meet its IDEA obligations. The Court specified that the "reasonably calculated" qualification must be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians.

To meet the standard of a FAPE, the Court required that the IEP "must be appropriately ambitious in light of [the child's] circumstances," and acknowledged "every child should have the chance to meet challenging objectives." The Court emphasized the FAPE standard "is markedly more demanding than the 'merely more than *de minimus*' test applied by the Tenth Circuit," remarking that it "cannot be the case that the [IDEA] 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 minimus* progress for those who cannot." The Court further noted that a student offered an IEP providing "merely more than *de*

minimus” progress year to year “can hardly be said to have been offered an education at all.”

The Court concluded that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created,” and instructed school districts “to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress in light of his circumstances.”

While the U.S. Supreme Court declined to establish a FAPE standard that requires school districts to provide an education to children with disabilities “substantially equal to” the education afforded children without disabilities, the Court’s opinion nevertheless significantly expands the existing FAPE standard in New Mexico and other Tenth Circuit states.