CLIENT ALERT – ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT RE-1

Education Alert
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On March 22, 2017, the U.S. Supreme Court issued a decision reassessing the standards by which schools must provide students with disabilities a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

In *Endrew F. v. Douglas County School District RE-1*, the student was diagnosed with autism. Each year, the school district in which he attended developed an IEP (Individualized Education Program) to address his educational and functional needs. By the student's fourth grade year, his parents became dissatisfied with his progress, and believed that his academic and functional performance had essentially stalled. Therefore, they enrolled him in a private school where he made significant progress. The student's parents then filed a complaint with the Colorado Department of Education seeking reimbursement for the student's tuition at the private school.

To qualify for this relief, the parents were required to show that the school district had not provided the student with FAPE prior to his enrollment in private school. The parents contended that the final IEP proposed by the district was not reasonably calculated to enable the student to receive educational benefits, as it largely carried over the same basic goals and objectives from year to year. According to the parents, this carryover indicated the student was failing to make meaningful progress. An Impartial Hearing Officer (IHO) disagreed, finding that the district had provided the student with a FAPE and denied the requested relief.

The parents sought review in Federal District Court which affirmed the IHO's decision. On appeal, the Tenth Circuit also affirmed the IHO's decision, relying on the seminal case, *Board of Ed. v. Rowley*. The Court noted that it had long interpreted the Court's ruling in *Rowley* to mean child's IEP was adequate so long as it was calculated to confer an educational benefit that was merely "*more than de minimis*."

In its March 22nd decision, the Supreme Court rejected the "*de minimis*" standard and instead articulated a new standard. According to the Supreme Court, the IDEA "*requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances*." The Court declined to elaborate on what "appropriate" progress will constitute from case to case, noting that the adequacy of a given IEP turns on the unique circumstances of the child for whom it

was created. The Court stated that significant deference should be given to the expertise of school authorities who have been vested with the responsibility of creating IEPs.

The Court's ruling in *Endrew F. v. Douglas County School District RE-1* is significant because it is the first time since *Rowley* (1982) that the Court has examined the legal standards for providing FAPE. This decision rejects the notion that any proof of educational progress meets FAPE—rather, such proof must demonstrate *appropriate progress* based on the unique circumstances of the child.

There will likely be much debate over the next several years over what constitutes "*appropriate progress*." The Supreme Court purposely made this standard flexible, by noting that "*appropriate progress*" is an individualized standard specific to a student's abilities and weaknesses. Fortunately, the Court expressed confidence in the ability of the CSE team to ascertain whether a student is in fact making sufficient progress under an IEP, and commented that legal authorities should defer to educational professionals.

Practically, the new standard will not yield a different result in most cases. The evidence in a case is usually clear whether educational progress is being made, and the debate about *de minimis* vs. *appropriate* progress is not an issue. In fact, the factual circumstances in *Endrew* may result in a finding that the school district provided FAPE, once the Court on remand analyzes the case under the new standard. Rather, the new standard in *Endrew* will likely have an impact on the closely contested cases, where there is strong evidence from both the parents and school district's regarding whether educational progress in being made (or not). In these close cases, hearing officers and judges may be inclined to favor parents based on the Court's declaration that "the IDEA demands more."

Please stay tuned for any upcoming developments.