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PERSPECTIVE

Disabled students' rights bolstered

By Kim Karelis

For many years the educational opportunities of minor students with disabilities have been hobbled by a U.S. Supreme Court decision which held that local school districts are only required to offer individualized educational programs which provide "some" educational benefit. Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The Rowley court held that states were only required to give students with disabilities a "basic floor of opportunity" that was "reasonably calculated to enable the child to receive educational benefits." Lower court judges proceeded to routinely apply that extremely low standard to virtually all disputes between parents and local school districts, regardless of the severity of the child's disability.

At long last, the across-the-board application of this shockingly low standard has been ended by the Supreme Court. *Endrew F. v. Douglas County Sch. Dist.*, 2017 DJDAR 2794 (March 22, 2017). Chief Justice John Roberts delivered the opinion for a unanimous court, holding that the law "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

The *Endrew F.* court first distinguished *Rowley*, observing that Amy Rowley, who had a hearing disability, was receiving above-average grades and was "advancing easily from grade to grade." Her individualized educational program (IEP) provided that she would receive instruction in a regular classroom, along with additional related services out of class. However, Amy was not able to understand everything that happened in class as were the typical students. Amy's parents argued and the courts below agreed that the law required the school district to offer her "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." On the other hand, the school district contended that the law "did not create substantive individual rights." The Supreme Court rejected both positions, instead settling on the "basic floor of opportunity" standard. However, the *Rowley* court cautioned that it's holding was limited to the facts presented in that particular case, and stated that it did not intend "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act."

Administrative law judges and the lower federal courts unfortunately failed to heed the *Rowley* court's admonition that its decision was limited to the facts before it, i.e., Amy Rowley was performing better than average in school and was easily advancing from grade to grade, and began applying the "basic floor of opportunity" standard to virtually all special education disputes. Following that familiar pattern, the 10th U.S. Circuit Court of Appeals again applied that standard in the *Endrew F.* case. However, this time the Supreme Court recognized the proper limitations of its decision in *Rowley*, and that the facts of Endrew F.'s case required a much more stringent standard.

Endrew F. was diagnosed with autism at a very early age. He attended public school from preschool through the fourth grade. He received an IEP each year but by the time he reached the fourth grade his parents realized that he was not really making any progress. He presented with many inappropriate behaviors such as screaming, climbing, running away, and unreasonable fear of non-threatening situations. His parents became convinced that he was not making any academic or functional progress. Their conclusion was supported by the fact that he was not meeting his IEP goals. They therefore placed in in a non-public school specially designed to effectively educate autistic children. He did much better under this specialized instruction which included behavioral intervention and more rigorous academic goals.

Endrew's parents therefore refused to return him to public school and sought reimbursement for the non-public school tuition through the required administrative law process. However, the administrative law judge found for the school district. His parents appealed that decision to a federal district court which denied relief because it believed that the school district had complied with the standard announced in *Rowley*. The 10th Circuit affirmed, again relying on *Rowley's* "some educational benefit" standard.

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Noting the significant factual distinctions that the two cases presented, the *Endrew F.* court stated: "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. For children with disabilities, receiving instruction that aims so low would be tantamount to sitting idly ... awaiting the time when they were old enough to drop out. 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." This is very good news for children with disabilities and their parents. At last, school districts and the lower courts cannot point to the "some educational benefit" standard announced by *Rowley* and apply it to *all* students with disabilities, regardless of the severity of their disability or their lack of academic progress. The "I" in "IEP" stands for *individual*, a fact that has been ignored for far too long.

However, the *Endrew F.* court stopped short of adopting the parents' contention that the law requires "an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." The court observed that this proposed standard was virtually identical to the approach rejected by the Rowley court, and that Congress has not amended the statute to indicate any such enhanced requirement. The court therefore declined to accept the parents' proposed standard, instead relying on *Rowley's* analysis that attempting to provide educational opportunities for children with disabilities that are "equal" to those of typical children would "present an entirely unworkable standard requiring impossible measurements and comparisons." Therefore, while the *Endrew F.* decision has greatly strengthened the rights of children with disabilities, the Supreme Court has declined to accept the opportunity to grant them truly equal rights with non-disabled children.

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