AASA
THE SCHOOL SUPERINTENDENTS ASSOCIATION

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Supreme Court Decision

AASA Analysis of the Endrew Ruling

As written about previously in the blog, AASA led an amicus brief to the Supreme Court in the *Endrew v. Douglas County School District* case. Yesterday, the Court released its decision in the case and rejected the standard that the petitioner, Endrew, was hoping the Court would adopt. AASA vigorously attacked the standard proposed by the petitioner in our brief because it was 1) far in excess of the intent of IDEA or the standard articulated in the Rowley decision, 2) not practical for students or districts and 3) enormously expensive and complicated to meet. However, we felt differently about the standard for educational benefit proposed by the Government, which we felt was much closer to what school districts currently use when crafting IEPs. The 8-0 decision by the Supreme Court rejected the petitioner's standard that a FAPE requires a child the opportunity to "achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities."

As AASA and others pointed out, the Court noted that Congress has reauthorized IDEA several times without overruling the Rowley decision (or changing the definition of FAPE itself) which had rejected a similar potential-maximizing FAPE standard. The "revised" FAPE standard set by the Court is that a school district must offer an IEP "reasonably calculated to enable a child to make progress in light of the child's circumstances." This standard is much more measured than the standard that the petitioner's proposed and that AASA vigorously opposed.

While this is undoubtedly a new standard for FAPE, it is one with little substance or new meaning. Courts can no longer say they're applying a "merely more than de minimis standard." However, the Court replaced that standard with a standard that the "educational program must be appropriately ambitious in light of a child's circumstances, which it suggested a school could establish by "offering a cogent and responsive explanation for its decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." The Court claims that their new standard is "more demanding" than the 10th circuit standard, but it's not clear whether a court that previously said progress must be "nontrivial" and "more than de minimis" would suddenly start deciding cases differently. Courts have always considered what is "appropriate" in light of the child's circumstances. The hallmark of the law is individualization, which a prescriptive standard like the one sought by the petitioner simply cannot achieve. Moreover, the Court gives considerable deference to the expertise of educators in determining what individual progress would be appropriate for a student. Indeed, one of the problems the petitioner and Government faced all along was that they could not give a concrete example to illustrate how the difference in the standards used by the courts made any substantive difference or why the standard adopted by most districts and circuits was not working well.

Bottom line: Every circuit must adopt the Court's new language, but whether that leads to a standard that is more demanding in practice is hard to say. AASA is fairly confident that the vast majority of school districts are already crafting IEPs that enable a child to make progress in light of the child's circumstances. That said, districts should take care to make sure that they can

provide "a cogent and responsive explanation" for the IEPs they produce, particularly for students who are not expected to perform on grade-level. In conclusion, this is a ruling that both the disability and education community can accept as it does not dramatically change the district practices or undermine Congressional intent.