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INFORMATION MEMO
SCHOOL DISTRICTS

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U.S. Supreme Court Deliberates Important Special Education Case

Last month, the U.S. Supreme Court heard oral arguments in a case that could affect the education of millions of students with disabilities, and the public schools that provide services to these students. In the case of *Endrew F. v. Douglas County School District RE-1*, the Court must decide what level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education (FAPE) guaranteed by the Individuals with Disabilities Education Act (IDEA). 2016 U.S. LEXIS 4467, 137 S. Ct. 29 (U.S. 2016). FAPE is one of the cornerstones of the IDEA. Therefore, the outcome of this case could signal a pivotal change in the field of special education.

Currently, the IDEA requires special education and related services to be "reasonably calculated to enable the child to receive educational benefits." *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 3051, 73 L. Ed. 2d 690, 712, 1982 U.S. LEXIS 10, *51 (U.S. 1982). However, the circuit courts are currently split on how much of an educational benefit a school district must offer in order to meet this obligation pursuant to the IDEA.

The Second Circuit, which includes New York in its jurisdiction, represents the majority view among the circuit courts and has traditionally found that "a school district fulfills its substantive obligations under the IDEA if it provides an IEP [individualized education plan] that is likely to produce progress, not regression, and if the IEP affords the student with an opportunity greater than mere trivial advancement…school districts are not required to furnish every special service necessary to maximize each handicapped child's potential." *T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 254, 2009 U.S. App. LEXIS 1948, *16 (2d Cir. N.Y. 2009). Likewise, the Tenth Circuit has largely followed the same reasoning as the Second Circuit and other circuits by finding that "the benefit conferred by the IDEA…must be more than *de minimis*." *Urban by Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726-727 (10th Cir. Colo. 1996).

However, the Third Circuit has broken ranks and substantially raised the bar for the services that school districts must provide. The Third Circuit has determined that the IDEA, "requires a satisfactory IEP to provide significant learning and confer meaningful benefit." *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 172 F.3d 238, 247, 1999 U.S. App. LEXIS 5751, *17 (3d Cir. N.J. 1999). The Sixth Circuit followed suit by agreeing with the Third Circuit's "meaningful educational benefit" standard. *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 862, 2004 U.S. App. LEXIS 26098, *55 (6th Cir. Tenn. 2004).

These disputes may appear to be no more than semantics, and even the U.S. Supreme Court's Justice Alito has remarked that "what is frustrating about this case and about this statute is that we have a blizzard of words". Nevertheless, the U.S. Supreme Court's conclusion about what these various words mean, and which terms should be applied when analyzing special education services, could have far reaching impacts on our public schools. The difference between whether a school district provides "more than trivial advancement", as opposed to "significant learning and a meaningful benefit", could require the expenditure of millions of dollars that underfunded school districts and state and federal agencies

do not appear to have at their disposal. Even more significant than the issue of funding is the question of whether a heightened standard is even an achievable goal for school districts serving some of our most severely disabled students. In a nation where we are grappling to create learning benchmarks for even our mainstream students, it is yet to be determined how the courts will discern whether school districts have met benchmarks for the most severely disabled students who often cannot be evaluated using traditional methods.

Furthermore, beyond the plain interpretation of the law looms a rapidly changing political landscape. At the time of the writing of this memo, there is presently a vacancy on the bench as we anticipate a new appointment to the U.S. Supreme Court. Also, President Trump's sister, a judge on the Third Circuit, Judge Maryanne Trump Barry, has sided with the heightened standard and reaffirmed the court's analysis in *Ridgewood*. Whether the U.S. Supreme Court's opinion will ultimately prove to be a groundbreaking shift in special education, and whether the current political climate will ultimately play a role in the Court's determination, remains to be seen.

If you have any questions about this Information Memo, please contact Candace J. Gomez, or any of the attorneys in our School Districts Practice, or the attorney in the firm with whom you are regularly in contact.

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