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INFORMATION MEMO
SCHOOL DISTRICTS

MARCH 2017

U.S. Supreme Court Decides Special Education Case

On March 22, 2017, the U.S. Supreme Court issued a unanimous decision regarding a matter of significant concern to school districts. In the case of *Endrew F. v. Douglas County School District RE-1*, the Supreme Court held that, in order to meet its substantive obligation under the Individuals with Disabilities Education Act ("IDEA"), a school district must offer an Individualized Education Program ("IEP") reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. In reaching this decision, the Supreme Court sided with the family and with the federal government, which filed a brief supporting the student and his parents, and overturned the lower court's ruling in favor of the school district. While some educators feared that the Court might impose an unworkably high standard in deciding this case, school districts in New York should be aware that this decision closely reflects the standards already established in this State and may not have a major impact upon the standards now used in hearings and appeals in New York to assess the appropriateness of an IEP.

The Supreme Court essentially struck a balance between the standard that the parent requested and the standard that the school district in *Endrew F.* requested. Pursuant to the parent's standard, a free appropriate public education ("FAPE") should be interpreted as "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." However, the Supreme Court noted that this heightened standard was previously rejected by the Supreme Court in the Rowley case and requiring a school to provide children with disabilities and children without disabilities with equal education opportunities would "seem to present an entirely unworkable standard requiring impossible measurements and comparisons."

Pursuant to the school district's proposed standard, a FAPE should be interpreted as "an educational benefit that is merely…more than *de minimus*." Applying this standard, the lower court held that Endrew's IEP had been "reasonably calculated to enable him to make some progress" and, therefore, the school district had satisfied its obligations. The Supreme Court rejected that argument and determined that the standard must be "markedly more demanding than the merely more than de minimis test…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."

In light of the fact that, when analyzing IEPs for students who are not in the mainstream setting, New York courts have long applied the standard mandated by the Supreme Court in this case and held that an IEP must afford the student with an opportunity greater than mere trivial advancement (a standard which exceeds the "more than *de minimus*" standard), the Supreme Court's ruling may not signal a dramatic shift in the standard presently utilized by school districts in the Second Circuit, which exercises jurisdiction over school districts in New York.[1] With regard to students with disabilities who are fully integrated into the mainstream setting, the established *Rowley* standard continues to require that these students receive an IEP "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."

It is also worth highlighting that the Supreme Court appeared to caution the lower courts not to overstep their authority and to show deference to the judgment of school officials when analyzing the adequacy of IEPs. The Supreme Court asserted that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created…[the] absence of a bright-line rule should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities…deference is based on the application of expertise and the exercise of judgment by school authorities."

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.

1 See *T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 254 (2d Cir. 2009); *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 188 (2d Cir. 2005).

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