

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES ISSUES Q&A GUIDANCE ON FAPE STANDARD UNDER ANDREW F.

Special Education Alert
December 11, 2017

As we previously reported, the United States Supreme Court's recent decision in *Andrew F. v. Douglas County School District RE-1* addressed the standards by which schools must provide students with disabilities a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). The Court held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances” (emphasis added).

On December 7, 2017, the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS) issued guidance on the *Andrew F.* decision and how it impacts the Committee on Special Education (CSE) process. The guidance, which is presented in Question & Answer format, is available here.

In the Q&A guidance, OSERS explains its view that the *Andrew F.* standard requires CSE members to make decisions that are individualized to the specific child and are “informed by their own expertise, the progress of the child, the child’s potential growth, and the views of the child’s parents.” OSERS states that, in developing and reviewing IEPs, the CSE must consider the following issues and factors:

- How special education and related services, if any, have been provided to the student in the past, including the effectiveness of specific instructional strategies, supports, and services;
- The child’s previous rate of academic growth;
- The child’s present levels of achievement;
- The Child’s disability and potential for growth;
- Whether the child is on track to achieve or exceed grade-level proficiency;
- Any behaviors interfering with the child’s progress; and
- Additional information and input provided by the student’s parents.

Attorneys

Luisa Bostick
Ryan Everhart
Andrew Freedman
Kinsey O'Brien

Practices & Industries

Special Education

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES ISSUES Q&A GUIDANCE ON FAPE STANDARD UNDER ENDREW F.

OSERS also emphasizes the requirement in *Endrew F.* that “every child should have the chance to meet *challenging* objectives” (emphasis added). In particular, each student’s program and annual goals need to be appropriately ambitious and “designed to enable the child to be involved in, and make progress in, the general education curriculum.” Generally, “the general educational curriculum” means the State’s academic content standards. This means that the goals and programs for most students with disabilities must be aligned with State standards, though OSERS does recognize that there is a “small number of children” with significant cognitive disabilities for whom alternative assessment is appropriate.

The guidance also stresses that each student’s progress in the curriculum and towards his or her own goals should be closely monitored throughout the school year. If the student is not progressing satisfactorily in any given year, the CSE should meet to consider updates to the program, even before the designated time for annual review.

In light of *Endrew F.* and this guidance, CSEs should be sure to take a customized approach to each student, with particular attention to: (1) identifying and considering present level of achievement and performance, (2) determining the IEP program and services based on all relevant factors and with an eye towards achievement in the general education setting; (3) setting measurable and ambitious goals (including behavioral goals if there are any behaviors interfering with the child’s progress), and (4) tracking progress in a consistent and meaningful manner and meeting to review the program if necessary during the school year, not just at annual review reviewing progress. The OSERS guidance also stresses the needs to carefully review and update District policies and procedures on the CSE process and special education.

If you have any questions about the *Endrew F.* decision or the new OSERS guidance, or if you would like us to review and update your special education policies and practices, please contact a member of our Special Education Practice Group.