



December 11, 2017

United States Department of Education Releases “Q and A” on *Endrew F.*, Questions Remain!

Keeping abreast of Special Education news, our Special Education Team reviewed the United States Department of Education’s “Questions and Answers (Q&A) on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County School District Re-1.*”

The USDOE responds to 20 questions. The questions proposed are pertinent and many are verbatim questions clients have asked, such as “How can IEP Teams determine if IEP annual goals are appropriately ambitious?” and “What does ‘progress appropriate in light of the child’s circumstances’ mean?” The ambitiously selected questions seemed to indicate a fundamental understanding of our educators’ concerns, offering hope of relevant and valuable guidance; but, in general, the answers fell short of providing the practical guidance on the issues raised in the case.

Instead, the answers provide factual background information on *Endrew F.*, list the differing standards the court considered, confirm what is unequivocally stated in the case: *de minimus* is not enough; confirm “FAPE” is a statutory term defined in the IDEA; and confirm that *Endrew F.* applies prospectively to IDEA cases. Omitted from this Q&A is whether *Endrew F.* applies retroactively – the real question in any Supreme Court opinion, as all Supreme Court opinions apply prospectively – and any specific guidance as to how an IEP team might apply the *Endrew F.* case.

Although the Q&A as drafted leaves many questions unanswered, it may be revised in the future in light of public comment. In any event, there is no cause for concern. As many of you are aware, California’s standard prior to *Endrew F.* already required more than “*de minimus.*” As

such, most California IEPs already conform with *Andrew F.* Moreover, although many educators in Special Education anticipated "potential-maximizing" cases spawning from *Andrew F.*, our office has not experienced that influx, and OAH Judges have recognized *Andrew F.* does not require such.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

– STEPHANIE VIRREY GUTCHER

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.