LAW UPDATE
SPECIAL EDUCATION

SCHOOLS LEGAL SERVICE
PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

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CHALLENGE TO "*ROWLEY*" STANDARD

On September 29, 2016 the United States Supreme Court announced that it will hear an appeal stemming from a 10th Circuit Court of Appeals case (*Endrew F. v. Douglas County School District* RE-1 (No. 15-827)) concerning a special education student's entitlement to educational benefit under the *Rowley* standard.[1] The decision marks the first time that the Supreme Court has granted a review on this question since *Rowley* was decided in 1982.

Background Facts

The underlying case concerns events that began in 2010. At that time, student was a child with attention deficit/hyperactivity disorder and autism. As a result of these conditions, student was found eligible for services under the IDEA. Student had attended preschool through the fourth grade at a public school in the Douglas County School District located in the state of Colorado. In the Spring of 2010 - near the end of the student's fourth grade year - student's parents met with district to discuss student's proposed IEP for the following school year. At that IEP meeting, student's parents expressed that they believed that student's fourth grade IEP had not produced any meaningful educational progress. Student's parents likewise rejected district's proposed fifth grade IEP on the basis that they believed that it was no different from the services that were provided during the last year and was, therefore, inadequate to provide student with meaningful educational benefit. Shortly after the Spring of 2010 IEP meeting, student's parents withdrew student from the public school and placed him in a private school specializing in educating children with autism.

In 2012 student's parents filed a due process complaint with the Colorado Department of Education asserting that the Douglas School District had denied student of FAPE while he was a student in the public school system. Student's parents sought reimbursement for student's tuition at the private school. A Colorado Administrative Law Judge ("ALJ") heard student's complaint and ruled in favor of the school district denying the parents' request for reimbursement. Relying on *Rowley*, the ALJ ruled that a school district need only develop and implement an IEP that provides a child with "some educational benefit" in order to comply with the IDEA. According to the ALJ

[1] https://www.supremecourt.gov/orders/16grantednotedlist.pdf

that standard had been met because the student had made "some academic progress" while enrolled in Douglas County.

Conflict Among Courts of Appeals

Student's parents appealed the decision of the Colorado ALJ and brought suit in the United States District Court for the District of Colorado. The District Court upheld the ALJ's ruling and found in favor of Douglas County. In its ruling the District Court likewise cited to the *Rowley* standard. The 10th Circuit Court affirmed both of the earlier decisions. The Court acknowledged, however, that its interpretation of *Rowley* conflicted with the approach taken by the 3rd and the 6th Circuit Courts. The Supreme Court then granted petitioner's request to address the conflict of the law.

For the past several years students filing complaints with the California Office of Administrative Hearings have advocated for a heightened standard that exceeds *Rowley*. As opposed to the "some educational benefit standard," students have argued that California public schools are required to produce IEPs that are intended to provide the student with "*meaningful* educational benefit." This effort has made little difference in California, as the 9th Circuit has held that "educational benefit," and "meaningful educational benefit" both mean the same standard under the IDEA.[2]

The Supreme Court's decision in the *Endrew* case will either confirm or change the long-standing application of the *Rowley* standard to IEPs prepared by California public schools. Should the Supreme Court hold that the IDEA requires "meaningful benefit," it is unclear at this time whether Congress will step in to change the law.

Schools Legal Service will continue to monitor the developments in the *Endrew* case and clients can expect updates as the case proceeds to oral argument.

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

— Kyle W. Holmes

[2] J.L. v. Mercer Island School District, 592 F.3d 938 (4th Cir. 2009).