

OSEP Issues Q&A Document on Endrew F.

The U.S. Department of Education's Office of Special Education Programs ("OSEP") released nonregulatory guidance discussing the U.S. Supreme Court's recent unanimous decision in *Endrew F. v. Douglas County School District*. *Endrew F.* settled a dispute amongst U.S. Circuit Courts of Appeal on whether a FAPE required an "educational benefit '[that is] merely...more than *de minimis*'" or something more. The *Endrew F.* holding is clear: "The IDEA demands more," that a school district must offer a program that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." We reviewed the *Endrew F.* decision in more detail in an earlier Priority Briefing, which can be accessed [here](#).

OSEP developed a Q&A document to provide parents and stakeholders information on the issues addressed in *Endrew F.* and the impact of the decision on the implementation of the IDEA. In the guidance, OSEP addressed what it means to have an individualized education program ("IEP") that is reasonably

calculated to provide a FAPE. According to OSEP, in order to have a “reasonably calculated” IEP, the student’s IEP team must make prospective decisions informed by the expertise of educators, the child’s progress, the child’s potential for growth, the views of the child’s parent, and the effectiveness of past services. Factors that help to determine whether or not an IEP is reasonably calculated to confer a FAPE include the previous rate of academic growth, whether a child is on track to achieve grade level proficiency, any behaviors interfering with the child’s progress and any additional information provided by parents.

OSEP also considered what it means to demonstrate “progress appropriate in light of the child’s circumstances,” clarifying that the phrase means designing a program with careful consideration to a child’s present levels of achievement, disability and potential for growth. In this respect, each child must be offered an IEP designed to provide access to state academic standards and general education instructional strategies and curricula.

If a child is not making progress at the level expected, OSEP explained that the IEP team should meet periodically during the

course of the school year and revise the IEP to address the lack of progress, including considering goals, interventions, services and placement. In addition, the IEP team should consider behavior interventions if behavior is impeding a child's progress. OSEP also recommended examining the school district's practices for communicating with parents.

The OSEP guidance emphasized that there is no one-size-fits-all approach to educating students with disabilities and that program determinations must be individualized. To ensure appropriate progress under Endrew F. standards, boards of education and IEP teams should implement policies, procedures and practices addressing (1) the identification of present levels of academic and functional performance, (2) setting measurable goals, (3) determining how to measure and report progress, and (4) providing appropriate services, aids, accommodations and modifications, supports for school staff.

Attorneys in our Flossmoor (708-799-6766) and Oak Brook (630-928-1200) offices stand ready to assist with reviewing and revising Board Policies addressing the above standards. In addition, if you have additional questions about the OSEP guidance, the *Endrew F.* decision or the current standard used by

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the Seventh Circuit to determine an appropriate education,
please contact one of our attorneys.