Masthead Logo

Touro Law Review

Volume 35 | Number 1 Article 11

2019

Endrew F. v. Douglas County School District: The Supreme Court's Elusive Attempt to Close the Gap Between Some Educational Benefit and Meaningful Educational Benefit

Alyssa Iuliano

ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT: THE SUPREME COURT'S ELUSIVE ATTEMPT TO CLOSE THE GAP BETWEEN SOME EDUCATIONAL BENEFIT AND MEANINGFUL EDUCATIONAL BENEFIT

*Alyssa Iuliano**

I. INTRODUCTION

For almost four decades, jurisdictions have been divided on the level of educational benefit that must be offered to children with disabilities in public schools.[1] Jurisdictions have either adopted the "just above trivial standard," which merely seeks to push handicapped children from grade to grade, or the "meaningful benefit" standard which seeks to provide handicapped children with the necessary functionalities to lead a productive life.[2] In 2017, the Supreme Court ruled that school districts can no longer offer minimal educational benefits;[3] however, the Court's ruling lacked specificity as to how

* J.D. Candidate 2019, Touro College Jacob D. Fuchsberg Law Center; B.S. Business Administration and History, University at Albany – SUNY, 2014. I would like to extend my gratitude to Professor Tracy McGaugh Norton for her support and advice and my *Touro Law Review* Notes Editor, Rhona Mae Amorado, for her time, assistance, and support throughout the process of writing this Note. I would also like to thank my family for their constant encouragement and support throughout my entire law school career. Finally, I would like to thank Justin Nicholson, thank you for being my inspiration for writing this paper, with the hope that one day, special education students will receive the education they deserve.

[1] Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

[2] Amici Curiae Brief for Autism Speaks and the Public Interest Law Center in Support of Petitioner at 3, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017) (No. 15-827), 2016 WL 355011.

[3] The *Rowley* decision "declined to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 997 (2017) (internal quotation marks omitted). A school district was only required to provide minimal educational benefits according to the Court, and asserted that an IEP need not provide any particular type of educational benefit as long as some benefit is provided rather than no benefit at all. *Id.*

school districts should achieve this standard.[4] The vagueness of the new rule continues to divide jurisdictions on what constitutes an appropriate education.[5] Since the new rule fails to comport with the legislative intent of the Individuals with Disabilities Education Act (hereinafter "IDEA"), school districts are given a fragmented guideline on how to educate students with disabilities.[6]

As recently as forty years ago, society viewed the mentally disabled as "undesirable" and successfully excluded them from our public schools and many other aspects of society.[7] During the 1970s, Congress and many other activist organizations spearheaded a movement to deinstitutionalize the mentally disabled and facilitate their integration into the public school system.[8] Such integration led to the formation of two separate and distinct levels of educational instruction referred to as general education and special education.[9]

At both the state and federal levels, the government allocates significantly different attention and resources to these divisions of our educational system.[10] Students receiving a general education are taught a generic curriculum.[11] Students receiving special education services, on the other hand, must be taught in accordance with their individualized needs.[12] Students receiving a general education are subject to a one-size-fits-all approach to education designed to prepare them to function in both the professional and interpersonal aspects of society.[13] Special education services offered both inside and outside of the classroom, on the other hand, are designed to educate handicapped students and aid them in meeting individualized goals,

---

[4] Jeff Goodman, *Supreme Court Expands Rights of Special Education Students*, ROBOTS4AUTISM (Feb. 21, 2018), https://robots4autism.com/company-blog/endrew-v-douglas/.

[5] *Id.*

[6] *Id.* "The purposes of this chapter are . . . to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A) (2018).

[7] Mikole Bede Soto, *Access or Success?: Wyoming Special Education and the Hope of a New Era in Appropriate Education*, 16 WYO. L. REV. 223, 228 (2016).

[8] *Id.*

[9] Maria C. Arceneaux, *The System and Label of Special Education: Is It a Constitutional Issue?*, 32 S.U.L. REV. 225 (2005).

[10] *Id.*

[11] *Id.*

[12] *Id.* at 234.

[13] *Id.*

while also preparing them for future independence.[14] Over time, the goals of educating students with disabilities have come to resemble the one-size-fits-all approach of general education, requiring only that students with disabilities receive *some* educational benefit with as minimal individualized attention as possible.[15] This dramatic shift in educational standards has led some school districts to fail to consider the non-academic needs of the handicapped child.[16]

The Supreme Court set the standard for special education students in *Board of Education of the Hendrick Hudson School District v. Rowley*.[17] The Court in *Rowley* set a low standard for school districts across the United States, requiring only that educational programs and resources offered to disabled children and their families confer "some educational benefit and nothing more."[18] Under the some educational benefit standard, children with disabilities were to be given access to public education, but no particular educational benefit was guaranteed, making it difficult for such children to be successful in public schools.[19] Based on the notion that any educational benefit was sufficient, the disparities between the curriculum that should be offered to special education students, as opposed to general education students, persisted for decades following *Rowley*.[20]

In early 2017, the Supreme Court merely supplemented the ruling of *Rowley* and declined to strike down the decision. In *Endrew F. ex rel. Joseph F. v. Douglas County School District*,[21] the parents of a student with autism objected to the educational programs provided to him.[22] Endrew's parents argued that the IDEA required schools to provide more than a border-line education to students with disabilities.[23] Endrew's parents also argued that he was not receiving

---

[14] *Id.*

[15] 3 AMERICANS WITH DISABILITIES: PRACTICE AND COMPLIANCE MANUAL § 11:311 (Feb. 2019).

[16] *In re* Pawling Cent. Sch. Dist. v. N.Y. State Educ. Dep't, 771 N.Y.S.2d 572 (App. Div. 2004) (discussing a student's IEP "recommended special education classes in English, social studies, and science, it did not contain a description of the modifications that the child required in order to progress in those areas or annual goals addressing the child's deficits in the skills necessary to progress in those curriculum areas").

[17] 458 U.S. 176 (1982).

[18] *Id.*

[19] *Id.* at 191.

[20] *Id.*

[21] 137 S. Ct. 988 (2017).

[22] *Id.*

[23] *Id.*

a proper public school education as defined under the IDEA because he was not receiving the proper programs and resources from the school.[24] Further, Endrew's parents argued that schools are required to provide students with disabilities with a variety of opportunities beyond their educational needs as a way of promoting self-sufficiency and positive contributions to society, rather than trying to "push" them through the public school system.[25] The Court ruled that the Individualized Education Program (hereinafter "IEP") developed for a student with disabilities must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[26] Although the Supreme Court narrowed the scope of what constitutes a free, appropriate public education by requiring school districts to hold special education students to a higher, more individualized standard, the Court did not develop a bright-line rule, leading to varying interpretations of what an appropriate education should encompass across jurisdictions.[27] The Court's clarification of the substantive threshold that school districts must meet for educating its students with disabilities should lead to a more uniform standard of education and improved assessment procedures for pinpointing the needs of children with disabilities. However, absent any specificity, the rule created by the Supreme Court will struggle to survive in our schools.[28]

The Supreme Court should have developed a bright-line rule to replace the *Rowley* standard. This Note discusses the implications of *Endrew F.* and how the newly established standard for measuring the quality of an IEP lacks specificity by failing to outline what is required of school districts.[29] The requirement that the educational plans of students with disabilities be reasonably calculated in light of their individual circumstances fails to give jurisdictions any guidance in evaluating the strengths and weaknesses of an IEP.

This Note will be divided into six parts. Part II discusses the evolution of the educational system pertaining specifically to the education of students with disabilities, including a brief history of the development of the special education standards over the last thirty to

---

[24] *Id.*

[25] *Id.* at 1001

[26] *Id.* at 991.

[27] *See generally id.*

[28] *Id.*

[29] *Id.*

forty years. Part III discusses the *Rowley* decision and how this decision has divided jurisdictions, with a specific focus on how circuits in both the just above trivial and meaningful benefit jurisdictions have analyzed the issue of how to properly educate students with disabilities. Part IV analyzes the *Endrew F.* opinion and discusses how the decision seeks to provide a more defined standard for school districts to follow. In addition, this section will discuss how the new rule created by the Court has already begun to change how special education is viewed in our schools. Parts V and VI evaluate how multiple jurisdictions continue to grapple with defining what constitutes an appropriate education because the *Endrew F.* decision did not provide a clear guideline on how to measure such appropriateness. Part VII discusses how the rule created in *Endrew F.* must be further clarified and more limited in scope in order to better comport with the requirements and legislative intent of the IDEA. This Note concludes with a legislative solution that should be imposed to refine the existing rule and create a comprehensive framework to be used by courts when deciding similar issues that arise in the future. By creating a uniform educational standard that requires a benefit to be conferred on all students, we will continue to close the gap in educational disparities for students with disabilities.

II. THE SYSTEM OF SPECIAL EDUCATION

The initial enactment of the IDEA in 1975[30] guaranteed a substantive right for every student to receive a public school education.[31] However, the IDEA failed to define the standard of appropriate education that school districts are required to provide to students with disabilities.[32] The maximum benefit was merely to allow access to a public school education and nothing more.[33]

Circuit courts have interpreted the congressional intent of the IDEA to merely grant access to education for all students without any

[30] Education of the Handicapped Act, Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1400-1482).

[31] San Rafael Elementary Sch. Dist. v. Cal. Spec. Educ. Hearing Office, 482 F. Supp. 2d 1152 (N.D. Cal. 2007).

[32] *See* 20 U.S.C. §§ 1400-1482 (2018). The purpose of the Act is to "insure that all handicapped children have a free appropriate public education . . . available to all handicapped children between ages of three and eighteen.". S. REP. NO. 94-168, at 41 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1425, 1464.

[33] Soto, *supra* note 7, at 224, 236.

additional benefit or success level guaranteed.[34] The IDEA also guaranteed a "free appropriate public education" for all students with disabilities; however, the definition of "appropriate" education has been debated for decades.[35] While education is primarily viewed as a responsibility of the states, the IDEA indicates that there is a national interest in ensuring equal protection of the law, requiring the federal government to play a prominent role in shaping the education provided to students with disabilities.[36]

Under the IDEA, a state is offered federal funds on the condition that the state complies with certain statutory requirements in order to assist in the education of children with disabilities.[37] To achieve academic and non-academic goals, every school is required to provide each and every eligible child with a "free appropriate public education" (hereinafter "FAPE").[38] A FAPE is provided through the use of a uniquely tailored IEP, which is designed by the student's IEP team.[39] The IEP team includes the student's teachers, parents, psychologists, physicians, and other administrative personnel employed by the school, some of whom may interact with the student on a daily basis.[40] The IEP is considered a blueprint for the student, and it is intended to illustrate the goals or outcomes the child is expected to receive and the services and resources the school is to provide in order for the student to achieve his or her outlined goals.[41] Once an IEP team reviews the child's present level of academic achievement, the extent of his or her disability and his or her potential for growth, a properly tailored IEP can then be developed.[42]

In determining whether a State has met the requirements set forth in the IDEA, the court will look at the IEP offered to the student

---

[34] *Id*. at 225-66, 236-37.

[35] 20 U.S.C. § 1400; Soto, *supra* note 7, at 234.

[36] 20 U.S.C. § 1400(6).

[37] *Id*. Each State must have policies that ensure the right to a free appropriate public education for all handicapped students and must have a developed plan to ensure that the free appropriate public education will be made available to children with disabilities. *See* S. REP. NO. 94-168. Additionally, each State must properly review, revise, and maintain the records of IEPs for all children with disabilities. *Id.*

[38] 20 U.S.C. § 1400.

[39] *Id.* § 1414(d).

[40] *Id*.

[41] Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students With Social, Emotional, and Behavioral Challenges*, 41 FORDHAM URB. L.J. 403, 448-49 (2013).

[42] Endrew F. *ex rel*. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

and measure its validity on the basis of two prongs.[43] First, the court will analyze whether the state has complied with procedures set forth in the IDEA.[44] Second, the court will examine whether a school district satisfied its substantive obligations under the IDEA by focusing on "whether the challenged [IEP] was reasonably calculated to enable a child with a disability to receive educational benefits."[45] The second prong has sparked a controversial debate on how to analyze and determine whether an educational program is designed to provide a student with an appropriate education.[46]

In 1997, Congress amended the IDEA to raise the standard of education beyond that of a "basic floor of opportunity" and sought to provide access to educational programs that promoted both the academic and overall success of the student.[47] However, *Rowley* continued to define the substantive standard of public education for students with disabilities, and courts continued to grapple with what an appropriate education should constitute and how to properly apply the IDEA.[48] The most recent amendments to the IDEA were implemented in 2004.[49] The amendments provided that "[i]mproving education results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."[50] However, the intent of Congress in passing the IDEA and amending its statutory language continues to receive varying interpretations among jurisdictions.[51]

The 2004 IDEA amendments pressured school districts to further improve their educational curriculums for students with

---

[43] 3 AMERICANS WITH DISABILITIES MANUAL, *supra* note 15.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] Soto, *supra* note 7, at 230. In amending the IDEA and seeking to extend the educational opportunities for students with disabilities, the House of Representatives sought to require that each state: (1) establish performance goals and indicators for children with disabilities; (2) ensure that these children participate in general state and districtwide assessments, with appropriate accommodations where necessary; and (3) develop guidelines for participating in alternative assessments for those children who cannot participate in such general state and district-wide assessments. S. REP. NO. 108-185 (2003), https://www.govinfo.gov/content/pkg/CRPT-108srpt185/html/CRPT-108srpt185.htm.

[48] Soto, *supra* note 7, at 234-47.

[49] 20 U.S.C. §§ 1400-1415 (2018).

[50] Soto, *supra* note 7, at 230-32.

[51] Brief for Autism Speaks, *supra* note 2, at 4-5.

disabilities.[52] A number of these amendments were implemented to benefit the student on an individual level by heightening the detail and requirements, which must be set forth in and then met by each student's IEP.[53] These amendments require that the IEP must: (1) "include a statement of current academic achievement and functional performance levels"; (2) include "annual goals capable of measurement as well as how the school will measure progress toward those goals"; and (3) "include a statement of the special education, related, or supplementary service the student will receive."[54] Moreover, any student that exhibits a behavior problem that would inhibit his or her learning in the classroom setting must have a behavioral intervention plan included in his or her IEP.[55]

The court examines a multitude of factors to determine whether an IEP is calculated to confer an educational benefit on the student.[56] Such factors include the following:

> 1. the child's potential at the time the IEP is being developed;
> 2. whether the IEP is tailored to the child's unique needs;
> 3. whether the IEP provides access to specialized services;
> 4. whether the IEP addresses disability related disruptive acts; and
> 5. whether the student has achieved progress during the relevant time period.[57]

Although legislators have made multiple attempts to amend the IDEA to better educate students with disabilities in public schools, *Rowley* continues to control the definition of what constitutes an appropriate education.[58] By failing to include these factors in the analysis for IEP

---

[52] Soto, *supra* note 7, at 230-31.

[53] Lauren Davison, Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*: A Missed Opportunity*, 94 DENV. L. REV. ONLINE 1, 6-8 (2016). A student's IEP must eliminate benchmark and short-term objectives and must shift the focus to long-term measurable goals for the student that will be reported periodically to the student's parents in a "specific, meaningful, and understandable" way. S. REP. NO. 108-185, at 27.

[54] Davison, *supra* note 53, at 7-8; *see also* 34 C.F.R. § 300.320(a)(3)-(4) (2018).

[55] Davison, *supra* note 53, at 8.

[56] 3 AMERICANS WITH DISABILITIES MANUAL, *supra* note 15.

[57] *Id.*

[58] Soto, *supra* note 7, at 234-35.

accuracy, the Court provided no guideline for which IEPs should be developed and measured against.[59]

III. THE *ROWLEY* DECISION AND THE DIVIDE AMONG JURISDICTIONS

For almost four decades, *Rowley* guided courts and states in their determination of what a free and appropriate education should encompass.[60] The *Rowley* decision led to a split among circuit courts as to the educational benefit that should be conferred upon students with disabilities. Circuit courts adopted either a just above trivial standard or a meaningful benefit standard.[61] The former standard would later become the majority view after *Rowley*, with many jurisdictions providing only a minimal benefit to students with disabilities.[62] On the other hand, the latter standard would be adopted by a minority of circuits, where students with disabilities would receive an education that pushed them toward higher levels of success and independence, which was ultimately adopted by the Supreme Court in *Endrew F*.

A. The *Rowley* Decision

Board of Education of the Hendrick Hudson Central School District v. Rowley centered around a deaf kindergartener, Amy Rowley, who was placed in a "regular" classroom to determine the necessary supplemental services that would be vital to her education.[63] After undergoing a trial period, school officials concluded that the student would remain in the regular kindergarten class, and the school

---

[59] *Id.* One of Congress's primary purposes for amending the IDEA in 2004 was to direct the focus of federal and state monitoring on the education of the handicapped population. *See generally* H.R. REP. NO. 108-77 (2003). Congress indicated that the federal and state governments should monitor activities that would improve the educational results as well as functional outcomes for children with disabilities, while also ensuring compliance with program requirements. *Id.* at 30. By failing to properly analyze an IEP in accordance with the factors set forth above, states are not properly monitoring the educational programs and activities provided to students with disabilities as Congress had intended. Soto, *supra* note 7, at 234-35.

[60] *See generally* Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

[61] *See* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

[62] *See generally Rowley*, 458 U.S. at 176.

[63] *Id.* at 184.

would provide her with a frequency modulation (hereinafter "FM") hearing aid in order to amplify words spoken into a wireless receiver by her teacher or other students.[64] Rowley's parents contested the IEP developed for Rowley's first grade academic year as it required Rowley to continue to use the FM hearing aid in addition to meeting with a tutor for the deaf each day and attending speech therapy.[65] Rowley's parents disagreed with portions of Amy's IEP and believed that she should be equipped with a qualified sign-language interpreter rather than attending weekly services with the tutor and speech therapist.[66] Rowley's parents' request for an interpreter was denied causing them to demand a hearing before an independent examiner.[67] The independent hearing officer concluded that such services were not necessary because Rowley was achieving educationally, academically, and socially without the assistance of an interpreter.[68]

Upon receiving the decision of the hearing officer the Rowleys appealed to the New York Commissioner of Education who affirmed the hearing officer's decision, leading the Rowleys to bring an action in the United States District Court for the Southern District of New York.[69] The basis of their claim was that by denying Rowley the opportunity to receive the services of a sign-language interpreter, she was denied a FAPE in direct violation of the provisions of the IDEA.[70] The district court noted that, although Rowley was successful academically and was performing "better than the average child in her class and [was] advancing easily from grade to grade,"[71] she understood less of what was going on in class and "[was] not learning as much, or performing as well academically, as she would without her handicap."[72] The district court concluded that Rowley was not receiving a "free appropriate public education" due to the imbalance between her academic achievement and her potential for success.[73] The school district then sought review in the United States Court of

---

64 *Id.*
65 *Id.*
66 *Id.*
67 *Id.* at 185.
68 *Id.*
69 *Id.*
70 *Id.*
71 *Id.*
72 *Id.*
73 *Id.* at 185-86.

Appeals for the Second Circuit; however, the district court's decision was affirmed.[74]

The school district then sought review in the United States Supreme Court and was granted certiorari to determine what a free appropriate public education means under the IDEA.[75] The Supreme Court looked to the legislative intent of the IDEA and held that "the language of the statute contains no requirement like the one imposed by the lower court—that States maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"[76] Additionally, the Court stated that Congress intended to only open the door of public education to students with disabilities rather than guaranteeing specific educational outcomes or an educational standard that would make access to public school education meaningful in any type of way.[77] The Court further held that it is not the responsibility of a state to foster the potential of a handicapped student in the same way the state is responsible for fostering the potential of non-handicapped students.[78]

The Rehnquist Court in *Rowley* developed a two-prong test designed to govern the evaluation of IEPs at both procedural and substantive levels.[79] The first prong of the test requires a determination of whether a state has complied with the procedural requirements of the IDEA and is purely statutory in nature.[80] The second prong of the test presents the more difficult question of whether an IEP created for the student "was reasonably calculated to enable the child to receive educational benefits."[81] The split among jurisdictions stemmed from the second prong of the test because meaningful benefit jurisdictions seek to give more benefit than required when compared to just above

---

[74] *Id.*

[75] *Id.*

[76] *Id.* at 189-90.

[77] *Id.* at 191-92.

[78] *Id.* at 198-200.

[79] *Id.* at 206-07.

[80] *Id.*; 3 AMERICANS WITH DISABILITIES MANUAL, *supra* note 15. The IDEA sets forth various procedural safeguards which include: notice, parental participation, the opportunity to examine the student's records, informed consent, the opportunity to have an independent educational evaluation (IEE) performed if the parents are in disagreement with the school's evaluation, "stay put" rights, and the opportunity to explore other dispute resolution options. 20 U.S.C.A. § 1415 (2018).

[81] *See Rowley*, 458 U.S. at 177; 3 AMERICANS WITH DISABILITIES MANUAL, *supra* note 15.

trivial jurisdictions.[82] The Rehnquist Court stated that Congress's intent in enacting the IDEA was not to guarantee a particular level of education or confer a particular educational benefit on students with disabilities.[83] The Rehnquist Court's interpretation made it acceptable for just above trivial jurisdictions to provide only a "basic floor of opportunity" to handicapped students.[84]

1. Rowley and the Just Above Trivial Standard

The jurisdictional divide across the United States has fostered the creation of various levels of education deemed "appropriate" for disabled children in our public school systems.[85] Children with disabilities in just above trivial jurisdictions often receive substandard educations and IEPs centered on pushing the student to the next grade regardless of individual academic progress.[86]

The just above trivial standard is justified by two basic ideologies.[87] First, the absence of statutory language indicating the specific services that must be provided to children with disabilities permits the courts to define the standard on their own terms.[88] Second, the historical exclusion of children with disabilities from our public school system lends credence to the theory behind the just above trivial standard—providing an equal educational opportunity means merely opening the door for access to education.[89] A uniform FAPE standard would move our educational system away from such discrepancies; however, stringent mandates must be implemented across jurisdictions to ensure that equal educational opportunities are provided to handicapped students.[90]

Requiring states to provide "some educational benefit" to students with disabilities will not help create a uniform FAPE standard as each jurisdiction will have its own interpretation of what "some

---

[82] Mark C. Weber, *Common-Law Interpretation of Appropriate Education: The Road Not Taken in Rowley*, 41 J.L. & EDUC. 95, 99 (2012); Soto, *supra* note 7, at 235.

[83] Weber, *supra* note 82, at 95, 99.

[84] *Id.*

[85] Brief for Autism Speaks, *supra* note 2, at 3-4, 9.

[86] *Id.* at 3-4, 9.

[87] Weber, *supra* note 82.

[88] *Id.*

[89] *Id.*

[90] Brief for Autism Speaks, *supra* note 2, at 2-4.

educational benefit" means.[91] In *Blackmon ex rel. Blackmon v. Springfield R-XII School District*,[92] the Eighth Circuit applied the rule that was handed down in *Rowley*.[93] The parents of a student who suffered hypotonic and autistic behaviors due to a brain injury requested that the school provide in-home training as a way to refine and re-develop certain developmental skills.[94] However, the school district rejected this request because school officials wanted the student to interact with other students in the typical classroom setting.[95] The parents of the student asserted that Missouri law mandates that a school provide programs and resources that enable a child with disabilities to reach her maximum capabilities in spite of her disability.[96]

The Eighth Circuit held that the state is not required to provide a disabled student with "the best education possible," but merely to provide the student with "some educational benefit."[97] Further, the court established that, although increased progress through an in-home therapy program would provide the student with improvements in all areas of her disability, it is irrelevant solely because the school was not required to provide benefits beyond the scope of the IDEA.[98] The IEP failed to provide access to specialized services and subsequently was not tailored to the unique needs of the student.[99] The school district inhibited the student's progress by failing to properly structure the IEP and did not seek to expand the benefit further because it was already providing some benefit, even if it was the lowest possible benefit.[100]

The Eleventh Circuit also adopted the just above trivial standard. In *Devine v. Indian River County School Board*,[101] the parents of a child with autism, impaired in various levels of functioning, sought a residential placement for their son, family

---

[91] Blackmon *ex rel.* Blackmon v. Springfield R-XII School Dist., 198 F.3d 648 (8th Cir. 1999).

[92] *Id.*

[93] *Id.* at 652.

[94] *Id.* at 653.

[95] *Id.*

[96] *Id.* at 659.

[97] *Id.* at 659-60.

[98] *Id.*

[99] *Id.*, 3 AMERICANS WITH DISABILITIES MANUAL, *supra* note 15.

[100] *Blackmon*, 198 F.3d at 659-61.

[101] 249 F.3d 1289 (11th Cir. 2001).

counseling, and in-home behavioral counseling.[102] The parents asserted that the school district did not make any effort to educate their son in the home, making it more difficult for him to generalize across multiple environments—a task that is often complicated for many children with disabilities.[103] An expert witness, arguing on behalf of the parents, "defined an appropriate education as something 'more than just making measurable and adequate gains in the classroom.'"[104] Regardless, the court held that "if 'meaningful gains' across settings means more than making measurable and adequate gains in the classroom, they are not required by [IDEA] or *Rowley*."[105] Further the Eleventh Circuit explicitly concluded that an appropriate educational benefit is not the equivalent of achieving generalizations across multiple environments and is, therefore, not a goal that the school district is responsible for helping students achieve.[106] By strictly adhering to *Rowley*, the Eleventh Circuit was willing to restrict the programs and services the student should receive based on the belief that minimal success is enough under both *Rowley* and the IDEA.[107]

In *Kirby v. Cabell County Board of Education*,[108] the parents of a teenage student with Asperger's Syndrome and other learning disabilities claimed that their son's IEP failed to provide him with appropriate services in conjunction with his disabilities, and that placement in a public school would cause more harm to him.[109] The parents asserted that the school failed to develop an IEP that was reasonably calculated to confer educational benefits because of the student's continued lack of appropriate services.[110] The court determined that the IEP was appropriate and reasonably calculated to confer an educational benefit because it offered the student *some* benefit as opposed to no benefit at all.[111] Additionally, the court further stated that a school is not obligated to provide every possible resource that would enable a child to excel to the maximum extent possible; rather a student must merely be given the opportunity to be educated

---

102 *Id.* at 1290-91.
103 *Id.* at 1293.
104 *Id.*
105 *Id.* (alteration in original).
106 *Id.*
107 *See generally id.*
108 No. 3:05-0322, 2006 WL 2691435 (S.D. W. Va. Sept. 19, 2006).
109 *Id.* at *3-4.
110 *Id.*
111 *Id.*

in the public school system and to interact with other students.[112] This interpretation of the IDEA furnishes no substantive threshold requirements on school districts to adhere to a particular educational standard.[113] It only provides that if a handicapped student is permitted to enter a public school, he or she is granted access to education, and the school's job is complete.[114]

Educational programs and resources provided in just above trivial jurisdictions are considerably weaker than those provided in meaningful benefit jurisdictions. Children with disabilities in just above trivial jurisdictions are provided mediocre academic and social programs that are not designed to aid them in reaching their full potential, while their peers in neighboring jurisdictions are receiving considerably higher level educational programs.[115] Consequently, without further guidance from the court outlining what an IEP must include, educational programs and resources will still fail to rise to the level of a meaningful benefit.[116]

2. Rowley and the Meaningful Benefit Standard

A minority of circuits have adopted the meaningful benefit standard. Courts have looked to the congressional intent in enacting the IDEA and have ascertained that, by opening the door of public education to students with disabilities, Congress must have intended the access afforded to these students to be "meaningful."[117]

Proponents of the meaningful benefit standard assert that under the IDEA, school officials are required to provide students with disabilities with both academic and non-academic programs that go beyond the just above trivial benchmark to foster their growth.[118] Given the varying degrees of disabilities among students, an IEP must be personalized and augmented in a way that will confer an educational benefit on a handicapped child in accordance with the child's

---

[112] Soto, *supra* note 7.

[113] *See generally Kirby*, 2006 WL 2691435.

[114] *Id*.

[115] 3 AMERICANS WITH DISABILITIES MANUAL, *supra* note 15.

[116] *See generally Kirby*, 2006 WL 2691435.

[117] Brief for Advocates for Children of New York et al. as Amici Curiae in Support of Petitioner at 11, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988 (2017) (No. 15-827), 2016 WL 6892531.

[118] *Id.*

individual abilities.[119] The meaningful benefit standard demands that school districts provide an educational benefit that enables a handicapped child to make progress in light of his or her unique circumstances;[120] however, discerning what a meaningful benefit actually is proves to be a daunting task for our nation's school districts.

In *Polk v. Central Susquehanna Intermediate Unit 16*,[121] the student's parents claimed that the school district had prevented their child from meeting the educational goals outlined in his IEP by failing to provide "hands-on" physical therapy by a licensed physical therapist.[122] At the age of adolescence, the student exhibited the mental and functional capacity of a toddler; therefore, "hands-on" therapy was deemed necessary in order for him to learn basic life skills such as feeding himself and using the bathroom.[123] The district court, in accordance with *Rowley*, held that the school district provided the student with an appropriate education because the student was receiving some educational benefits.[124] On appeal, the Third Circuit reversed and held "that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child," and should be provided for in the child's IEP.[125] Therefore, more than just a trivial benefit is required to be provided to students with disabilities under the IDEA.[126]

New York State has embraced the meaningful benefit standard by imposing additional requirements on school districts when assessing whether an appropriate education is being provided to a student with disabilities.[127] In New York, Committees on Special Education analyze IEPs created for students with disabilities on the basis of four factors.[128] Such factors include: (1) academic achievement and learning characteristics, (2) social development, (3) physical development, and (4) managerial or behavioral needs.[129] In

---

119 *Id.* at 14.

120 *See* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988, 999 (2017).

121 853 F.2d 171 (3d Cir. 1988).

122 *Id.*

123 *Id.* at 173.

124 *Id.* at 172.

125 *Id.* at 179.

126 *See generally id.*

127 Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 123 (2d Cir. 1998).

128 *Id.*

129 *Id.*

addition, New York requires that students with disabilities be placed in classrooms with other students who exhibit similar learning characteristics and are currently at the same academic level to maximize the student's ability to achieve his or her IEP goals.[130] The development and implementation of these regulations and programs demonstrate New York's dedication to the meaningful benefit standard; however, the court's decision in *Walczak v. Florida Union Free School District* seems to contradict New York's support of the meaningful benefit standard.[131]

Walczak was brought based on a parental claim that their child's placement in a Board Of Cooperative Educational Services (hereinafter "BOCES") program throughout the school day was inadequate to provide an appropriate education to the child.[132] The parents asserted that a residential placement in a private school would better address the educational and social needs of the child who faced multiple disorders including, separation anxiety disorder, attention deficit disorder, and Tourette's Syndrome.[133] The court, however, noted that the student made significant progress while enrolled in the BOCES program and additional testing revealed that although the student had progressed slowly, improvements were seen both academically and behaviorally.[134] The court held that the student would achieve the greatest academic and social progress in a day program like BOCES, and that a residential placement was not valid solely on the basis that it would provide far superior opportunities for the student.[135]

Citing directly to *Rowley*, the court also stated that the "IDEA does not require states to develop IEPs that maximize the potential of handicapped children."[136] Here, the state of New York in conjunction with Committees on Special Education have implemented additional factors to analyze the accuracy of an IEP; however, the court contradicted the congressional intent of the statute by concluding that although a residential placement was superior to other educational programs, a school district was not required to provide it because they

---

130 *Id.*

131 *Id.*

132 *Id.* at 121, 124.

133 *Id.*

134 *Id.* at 131

135 *Id.* at 132.

136 *Id.* (internal quotations marks omitted).

are not required to maximize the potential of handicapped students.[137] The court's holding counteracts the intent of the IDEA because the IDEA seeks to give children with disabilities an opportunity to achieve in meaningful ways both academically and non-academically, and here, the court declined to require a student's placement even though such placement would have allowed the student to achieve more both academically and non-academically.[138] Based on the *Walczak* decision, it is easy to see the strong grip of the *Rowley* decision on circuits that have adopted the meaningful benefit standard and the difficulty jurisdictions are having with properly interpreting the meaningful benefit standard.

The impact of the *Rowley* decision has made it nearly impossible for our courts to properly assess what an appropriate level of education constitutes. Because of *Rowley*, it is acceptable for school districts to merely open the door of public education to children with disabilities and simply "push" them through until graduation.[139] In turn, simply opening public school doors fails to make access to education meaningful in any way.[140]

IV. THE *ENDREW F.* DECISION: THE DESIRE TO CREATE A UNIFORM FAPE STANDARD

In early 2017, the Supreme Court handed down a decision that mandates each school district in every jurisdiction to provide a meaningful educational benefit to all handicapped students.[141] A significant step in the direction toward educational equality for all students, the Supreme Court's decision in *Endrew F.* is representative of the desire to create a uniform FAPE standard and to ensure that all students, especially those with disabilities, are educated properly.[142] However, the rule created by the Supreme Court is vague and leaves open the possibility for inequalities in how the rule should be implemented.

---

137 *Id.* at 132-33.

138 *Id.*

139 Lester Aron, *Too Much or Not Enough: How Have the Circuit Courts Defined a Free Appropriate Public Education After Rowley?*, 39 SUFFOLK U. L. REV. 1, 20 (2005).

140 *Id.* at 4-5.

141 Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017).

142 *Id.*

A. Issue and Facts

The Supreme Court in *Endrew F.* sought to answer the question of what level of educational benefit must be conferred on children with disabilities in the public school system to enable these children to receive a FAPE guaranteed by the IDEA.[143] At the age of two, Endrew had been diagnosed with autism, causing him to engage in repetitive behaviors, resist changes in his environment, and significantly impairing his social skills.[144] The social and behavioral impediments Endrew faced affected the way in which he functioned both inside and outside of the academic setting.[145]

From preschool through fourth grade, Endrew attended schools within the Douglas County School District.[146] During his fourth grade year, Endrew's parents became dissatisfied with his academic and social progress.[147] Endrew's parents asserted that his progress had come to a halt and that, although he displayed numerous strengths, his behaviors made it difficult for him to learn at his highest potential in the classroom setting.[148] Because Endrew's annual IEP outlined the same educational and non-educational objectives each year, his parents believed that the reason for his lack of progress was primarily because of the school's approach, or lack thereof, to Endrew's educational and behavioral needs.[149]

Subsequently, Endrew's parents enrolled him at a private school specifically designed to educate children with autism where Endrew performed considerably better academically and behaviorally.[150] Upon meeting with a group of representatives at Douglas County, Endrew's parents decided to keep him enrolled at the private school because the school district did not propose an IEP that differed in any significant manner from previous years and would offer no greater benefit to him.[151]

---

143 *Id.*
144 *Id.* at 996.
145 *Id.*
146 *Id.*
147 *Id.*
148 *Id.*
149 *Id.*
150 *Id.* at 996-97.
151 *Id.* at 997.

B. Endrew's Claim and the Douglas County School District's Rebuttal

Endrew's parents asserted that "a FAPE is '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.'"[152] Overall, Endrew's parents asserted that the IDEA demands more than just trivial academic progress.[153] On the other hand, the Douglas County School District relied heavily on the precedent established in *Rowley*.[154] The school district asserted that the IDEA's language does not specify the level of education that must be provided to children with disabilities.[155] In addition, the district stated, "the Act requires States to provide access to instruction sufficient to confer *some* educational benefit."[156]

The district argued that any benefit, regardless of how large or small, is sufficient to adhere to the IDEA's requirements.[157] Lastly, the district argued that the Supreme Court adopted a some educational benefit standard when it declared, in *Rowley*, that the intent of the IDEA was to open the door to public education for handicapped students, not to guarantee any particular educational level once inside the schoolhouse.[158]

C. Procedural History

Following their meeting with the Douglas County School District, Endrew's parents filed a complaint with the Colorado Department of Education to recover the cost of Endrew's private school tuition.[159] In order to be reimbursed for the cost of tuition, Endrew's parents were required to show that the school district did not provide Endrew with a FAPE within a reasonable period of time prior to his enrollment at the private school.[160] The Administrative Law

---

152 *Id.* at 1001.
153 *Id.*
154 *Id.* at 998.
155 *Id.*
156 *Id.* (internal quotation marks omitted).
157 *Id.*
158 *Id.*
159 *Id.* at 997.
160 *Id.*

Judge (hereinafter "ALJ") who heard Endrew's claim denied tuition reimbursement to his parents on the ground that the IEP proposed by the school was reasonably calculated to allow Endrew to receive educational benefits.[161] However, the court did not set forth any criteria to determine whether an IEP is reasonably calculated.[162]

After seeking review in federal district court, Endrew's parents were again denied tuition reimbursement as the court gave due weight to the arguments and conclusions of the ALJ and affirmed his decision.[163] The federal district court further concluded that Endrew's annual IEP goals and objectives were sufficiently modified because he was achieving at least some minimal progress and was therefore receiving an education benefit.[164]

Subsequently, the Tenth Circuit held that Endrew's IEP was adequate as long as it was calculated to confer an educational benefit that is merely more than *de minimis* and offers at least some opportunity for minimal progress.[165] Since his IEP was reasonably calculated to allow him to make some progress, Endrew was not denied a FAPE.[166] As a last resort, Endrew's parents sought review by the Supreme Court which granted certiorari.[167]

D. Supreme Court's Holding and Analysis

The Supreme Court held that a school must offer an IEP to a child with disabilities that is reasonably calculated to permit the child to make progress in light of the child's circumstances, representing a minimal extension of the meaningful benefit standard.[168] The Court concluded that school districts must be more accountable when educating handicapped students because providing an educational program that offers only minimal progress from year to year cannot be characterized as an education.[169]

Despite the Court's belief that students with disabilities should be offered better quality educational and non-educational programs,

---

161 *Id.*
162 *See generally id.*
163 *Id.* at 997.
164 *Id.*
165 *Id.*
166 *Id.*
167 *Id.*
168 *Id.* at 999.
169 *Id.* at 1001.

the Court stated that it "will not attempt to elaborate on what appropriate progress will look like from case to case."[170] Additionally, the Court's unwillingness to establish a bright-line rule does not guide courts on educational issues, and rather, strict deference is to be given to the judgment and decisions of school authorities.[171] Although the Court would be hard-pressed to cover every possible situation, the Court declined to establish a stringent, specific rule and simply created a generalized rule that focused on the appropriateness of a disabled child's IEP without defining exactly what that means.[172]

V. POST *ENDREW F*. DECISIONS—JURISDICTIONS REMAIN UNABLE TO PROVIDE APPROPRIATE EDUCATION

The Supreme Court's refusal to adopt higher level requirements for school districts when creating and implementing IEPs will continue to segregate students with disabilities from the substantively higher level of education and educational programs that are provided to their non-disabled peers.[173] Although the new rule established in *Endrew F*. represents a step toward better quality special education in our schools, many critics of the *Endrew F*. decision believe that such a rule is merely a modification of the already existing *Rowley* standard and is not likely to change the treatment of disabled children.[174]

The split among jurisdictions with regard to special education cases post-*Endrew F*. reveals significant uncertainty in situations where a school district repeatedly fails to evaluate or reevaluate students, tailor their IEPs specifically to their unique needs, implement IEPs that focus on other areas that may have a detrimental effect on academic progress, and adequately specify the services it will render to the student.[175] The lower courts still grapple with how to apply the

---

[170] *Id.*

[171] *Id*.

[172] IEPADMIN, *Celebrate the Endrew F Decision—Then Get Back to Advocating!*, IEP INST. (Apr. 5, 2017), http://www.iepinstitute.com/celebrate-the-endrew-f-decision-then-get-back-to-advocating/.

[173] Laura McKenna, *How a New Supreme Court Ruling Could Affect Special Education*, ATLANTIC (Mar. 23, 2017), https://www.theatlantic.com/education/archive/2017/03/how-a-new-supreme-court-ruling-could-affect-special-education/520662/.

[174] Perry A. Zirkel, *The Supreme Court's Decision in* Endrew F. v. Douglas County School District RE-1*: A Meaningful Raising of the Bar?*, 341 EDUC. LAW REP. 545, 551-52, 554 (2017).

[175] *Id.* at 551-53.

Endrew F. decision and properly define the requirements of a substantive education to ensure that children with disabilities are educated to the most appropriate extent possible.[176]

A. A School District's Failure to Apply *Endrew F.*

In a September 2017 decision, the Eastern District of New York concluded that a student's IEP was invalid because it failed to consider multiple difficulty areas and, therefore, did not provide the student with a FAPE.[177] In *S.B. v. New York City Department of Education*,[178] the student had a language/speech impairment that hindered his educational success.[179] The school district did not reevaluate the student in multiple trouble areas for two consecutive years, and the district indicated that the student did not need any academic help or help in any other area that may affect her success.[180]

The district not only failed to reevaluate the student but also permitted multiple years to pass without crafting a new IEP or modifying the existing one to properly fit the student's unique educational needs, which is a direct violation of the evaluation provisions set forth in the IDEA.[181] Although courts have previously held that the absence of one single factor or measure will not invalidate an entire IEP, here, it was impossible to identify the child's learning potential and whether the student was actually making progress at all because her current levels of academic performance were not maintained, making it impossible to decipher which services the student would need to obtain for further success in subsequent school years.[182] Since the district failed to craft an IEP with measurable goals tailored uniquely to the student's needs, the court properly held in favor of the parents and the student.[183]

---

176 *Id.*

177 No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017).

178 *Id.*

179 *Id.* at *2.

180 *Id.* at *5-10.

181 *Id.* at *10. The provisions of the IDEA require that a student be reevaluated not more than once a year and at least once every three years, unless deemed unnecessary by school personnel or the student's parents. 20 U.S.C. § 1414 (2)(B)(i)-(ii) (2018).

182 *S.B.*, 2017 WL 4326502, at *11.

183 *Id.* at *15.

The court's decision in favor of the student displays the *Endrew F.* decision at work by disallowing mediocre attempts by school districts when evaluating the needs of disabled students.[184]

B. Specifically Tailored IEPs do not Always Equate to the Conferral of an Educational Benefit

The main focus of an IEP should be geared towards the child's specific needs at an individualized level.[185] An IEP must be circular, meaning it must have the ability to offer an equal educational opportunity to a child with disabilities both at an academic level and an interpersonal level.[186] An IEP that is specifically tailored to accommodate less than all of the child's specific needs is deficient and should not be given credence because it hinders that child's ability to make substantial progress in all areas of difficulty, whether academic or non-academic.[187]

In *Sean C. ex rel. Helen C. v. Oxford Area School District*,[188] the student faced difficulties in many areas that seemed to slip through the cracks and remain unnoticed by the school district and its IEP team.[189] The student was diagnosed with specific learning disabilities in reading comprehension, mathematics, and writing, and he needed encouragement to complete assignments.[190] Prior to entering high school, the student was reevaluated and the school determined that it would set specific goals for him in writing, math, and reading, and that any other behavioral or socially related skills would be addressed through "specially designed instructions."[191] The IEP was designed to address social and behavioral skills as well as other learning-related behaviors that affected the student's academic progress.[192] Over the course of three academic years, the student's social and academic progress was inconsistent and his attendance was an unaddressed problem, likely affecting the achievement of his IEP goals.[193]

---

184 *See generally id.*

185 Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

186 *Id.* at 999-1001.

187 *Id.* at 1001.

188 No. 16-CV-5286, 2017 WL 3485880 (E.D. Pa. Aug. 14, 2017).

189 *Id.* at *1.

190 *Id.* at *2.

191 *Id.*

192 *Id.*

193 *Id.* at *6.

Over the course of one year, the student "was absent 24 times from Homeroom and missed 16 History classes, 23 English classes, 17 Earth Science classes, 18 Spanish classes, and 20 Algebra I classes."[194] Although the student's IEP was individualized to his specific academic needs, the failure to enforce an attendance policy and implement behavioral programs could not possibly amount to an educational benefit for the student.[195] Although the student's academic performance and attendance improved in his tenth grade year as compared to the previous year, he still "missed as many as 22 days from a single class."[196]

The revised IEP for the tenth grade year provided the student with pointed and concise directions as well as repetition of such directions in order to increase the student's comprehension of what was expected of him; however, he made fragmented progress in academic and behavioral areas.[197] The student's continued difficulty in focusing on tasks and following instructions as well as his inconsistent progress in reading, math, and writing illustrated that the IEP may have been tailored enough to provide some progress; however, in terms of the standard promulgated by *Endrew F.*, the student's progress was far from meaningful.[198]

Lastly, the student's eleventh grade year saw achievement of goals in both math and reading, despite a strained relationship with his English teacher, and although he did not fail any classes, he was consistently absent again.[199] The student "had excessive absences: 25 in mathematics, 24 in science, 29 in academic support, and 30 in English."[200] The school district justified the student's tremendous number of absences by providing evidence that even though he missed a large number of his classes, he did not actually a fail a class.[201] By failing to address the student's poor attendance records, the school district conferred a trivial benefit on the student, one that was just above failing with no encouragement for success.[202]

---

194 *Id.* at *3.
195 *See generally id.*
196 *Id.* at *4.
197 *Id.* at *3.
198 *Id.* at *4.
199 *Id.* at *4-5.
200 *Id.* at *5.
201 *Id.*
202 *See generally id.*

At the Due Process Hearing, the Hearing Officer acknowledged that the IEP goal achievement which he termed the "main driver of IEP instruction"[203] was only marginally present over the course of the three years at issue.[204] Regardless, the Hearing Officer concluded that this marginal presence was equivalent to meaningful progress, even if the progress was significantly limited.[205] In addition, the Hearing Officer stated that it did not need to address the student's consistent absence from core subjects because his grades and presence in school improved in his tenth grade year.[206] Here, the school district made significant efforts to adjust the student's IEP to reflect changes in his academic and behavioral progress; however, when plaintiff's parents filed a complaint in the court, the court misinterpreted the standard promulgated by *Endrew F*. just a few months prior by failing to address the student's attendance record and how this affected his academic and behavioral progress.[207]

After reviewing the student's progress over the course of the three years at issue, the court held that the student was not denied a FAPE and that his IEP was designed to promote appropriate progress in light of his individual circumstances.[208] Here, the court incorrectly applied the *Endrew F*. decision.[209]

The court failed to acknowledge that over the course of three years, the student's IEPs declined to address issues pertaining to his interpersonal skills, emotional, and behavioral issues, as well as addressing his attendance issue.[210] In addition, the student achieved marks just above passing some years, while he failed such courses other years.[211] The court asserted that such evidence of even minimal progress is enough.[212] An IEP that offers multiple programs and services specific to the student's needs may require a more extensive analysis of the student's progress as the IEP may not actually confer any educational benefit on the student.[213] This court's inability to

---

[203] *Id.* at *7.
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.* at *14.
[209] *See generally id.*
[210] *Id.*
[211] *Id.* at *2-5.
[212] *Id.* at *7.
[213] *Id.*

apply the *Endrew F.* standard to promote the educational achievement of disabled students above the level of passing represents a disservice to students with disabilities and allows for the application of *Rowley*'s trivial standard to continue.[214]

C. An Appropriate Education Includes Properly Documented Assistive Technologies and Other Supportive Services

In *M.C. ex rel. M.N. v. Antelope Valley Union High School District*,[215] the Ninth Circuit held in favor of a student whose IEP was determined to contain both procedural and substantive IDEA violations.[216] Plaintiff, a student at the Antelope Valley Union High School, suffered from a genetic disorder, Norrie Disease.[217] Because of his health condition, plaintiff was not only blind but also suffered other developmental delays that affected his success in all academic areas.[218] The plaintiff's mother asserted that the district failed to provide a "written record of reasonable expectations"[219] that would hold the district accountable for the vision services it provided to plaintiff.[220] At the outset of the IEP, the school district offered 240 minutes per month of services provided by a teacher of the visually impaired.[221] However, the district realized one week later that this was a mistake and that the plaintiff should be receiving 240 minutes per week of services.[222]

The district then amended the IEP to correct the allocation of services error but failed to notify the plaintiff's mother of the change.[223] Plaintiff's mother did not find out about the change in services until approximately a month later.[224] Because an IEP is similar to a contract between the parents and the school district, the court concluded that the IEP may not be changed unilaterally; the

---

214 *See generally id.*
215 858 F.3d 1189 (9th Cir. 2017).
216 *Id.*
217 *Id.* at 1193.
218 *Id.*
219 *Id.* at 1195.
220 *Id.*
221 *Id.*
222 *Id.*
223 *Id.*
224 *Id.*

consent of both parties is required.[225] Subsequently, the alteration of an IEP by one party without notice to the other party is a procedural violation and may result in a FAPE denial even if the school district is providing services to the student because each party must consent to any amendments or additions to the IEP.[226]

The second issue raised by the plaintiff corresponds to the assistive technology that was omitted from his IEP.[227] In the State of California, where a student requires a device or service, the IEP is required to include a statement outlining the reasoning and need for the device.[228] The student's IEP did not identify the specific devices required for his success, making it impossible for plaintiff's mother to ensure the student received the proper assistive technology.[229]

The court adopted the *Endrew F.* standard, providing that a school district must remediate and accommodate the child's disabilities in order for the child to "make progress in the general education curriculum."[230] The Ninth Circuit concluded that parental participation in formulating an IEP does not then end the parent's participation in the implementation of the IEP.[231] A school district denies a child with a disability a FAPE when it does not apprise the child's parents of the progress and services offered to their child through the IEP or is not made aware of amendments to the IEP.[232] Additionally, the Ninth Circuit asserted that simply mentioning certain services or assistive devices at an IEP meeting does not ever amount to an offer of such services.[233]

According to the court, the subsequent omission of such services or assistive devices is considered a purposeful omission, even if the services or assistive devices were discussed at the IEP meeting as necessary for the student's success.[234] The school district's failure to document the need and use of certain services and devices on the plaintiff's IEP shifted procedural violations of the IDEA into

---

225 *Id.* at 1197.
226 *Id.*
227 *Id.* at 1198.
228 *Id.*
229 *Id.*
230 *Id.* at 1201.
231 *Id.* at 1198.
232 *Id.*
233 *Id.* at 1199.
234 *Id.*

substantive violations as well.[235] Because the plaintiff's mother was unable to adequately monitor the services offered under the IEP, and the services and goals could not be properly identified, plaintiff's IEP was not substantively adequate to provide him with a FAPE.[236]

The Ninth Circuit's decision in favor of the student indicates that it is no longer enough for a school district to provide services to a student and hope for the best.[237] A school district is required to specifically identify the supportive services as well as educational services necessary for the student's success.[238] Because of the standards mandated in *Endrew F.*, it is apparent that it will be more difficult for school districts to escape the consequences of haphazardly constructing IEPs and making modifications absent parental consent whenever they see fit; however, acting in accordance with the *Endrew F.* standard is still not occurring as often as it should.[239]

D. A School District's Failure to Properly Implement Educational Programs and Services that Correlate to a Student's Individual Progress Represents a FAPE Denial

The main problem across school districts is the inconsistent application of the *Endrew F.* standard into existing IEPs that have "worked" for years according to the districts.[240] Even after the *Endrew F.* decision, many school districts continue to preach the success of the just above trivial benefit standard and do not believe they have an obligation to foster the success of their special education students.[241] However, some courts are implementing stricter requirements on school districts which will provide for an educational benefit of a higher caliber than just above trivial.[242]

In *Pocono Mountain School District v. J.W. ex rel. J.W.*,[243] the student suffered from multiple developmental disorders including Attention Deficit Hyperactivity Disorder, Asperger's Disorder, Mood

---

235 *Id.* at 1201.
236 *Id.*
237 *Id.*
238 *Id.*
239 *Id.*
240 *See, e.g., id.*
241 *Id.*
242 *Id.*
243 No. 3:16-CV-0381, 2017 WL 3971089 (M.D. Pa. Sept. 8, 2017).

Disorder, and other behavioral disorders that caused the student to struggle significantly in school throughout his childhood and adolescence.[244] Because of his behavioral disorders, the student's academic performance was below grade-level average and his defiant behaviors interfered with his ability to learn while in the classroom.[245]

Three IEPs developed for the student between 2012-2014 sought to address the student's behavioral issues; however, the same programs were implemented each year with minimal modification, while the student's academic and behavioral progress barely improved.[246] Despite the proposal of three IEPs that established academic goals and behavioral programs designed for the student's success, the school district failed to properly document the improvement in behaviors or the lack thereof, making it difficult to ascertain the reliability and evolution of the student's classroom behavior.[247] In addition, the school district's reinforcement of the same behavioral programs from year to year detrimentally affected the student's academic and behavioral progress making it impossible for him to obtain the IEP goals set out for him each year.[248] As the years passed and the student continued moving from grade to grade, the school district failed to develop appropriate behavioral programs to address the student's needs even though the school district was aware of the extent of his behaviors and the academic struggles they caused.[249]

Therefore, the student made only *de minimis* academic progress and was deprived of an educational benefit because his behavioral issues remained unaddressed and further affected his ability to succeed academically.[250] Because the school district failed to remedy the student's behaviors over the course of multiple academic years and his academic progress was severely hindered by such behaviors, "the school district has failed to provide even a basic floor of opportunity, much less the meaningful benefit required by our Court."[251]

---

244 *Id.* at *1.
245 *Id.* at *2.
246 *Id.* at *2-3.
247 *Id.* at *4.
248 *Id.*
249 *Id.* at *2.
250 *Id.* at *5.
251 *Id.* at *7 (internal quotation marks omitted).

The court held that since the School Districtschool district had adequate knowledge of problem areas for multiple academic years and subsequently failed to implement both behavioral and academic programs even after lengthy inquiries into the student's disability, the student was offered no more than a *de minimis* educational program.[252] Although a step in the right direction, the court failed to clarify the *Endrew F.* standard and expand its parameters.[253] The court merely stated that the student was achieving de minimis academic and behavioral progress through the offered educational programs and that such programs do not satisfy the requirements set forth in the IDEA.[254] However, the court in *Pocono* declined to further define the *Endrew F.* standard when given the opportunity, leaving other courts to loosely interpret the *Endrew F.* decision in whichever way they wish.[255]

The uncertainty of the *Endrew F.* standard leaves room for inequities and inconsistencies in educational progress across jurisdictions.[256] Jurisdictions are having difficulty individualizing the needs of special education students and determining when an IEP is appropriate or reasonably calculated to ensure success for the student.[257] The Supreme Court failed to specifically articulate the proper educational standard in *Endrew F.*[258] Furthermore, courts are left with mistakes in IEPs that go unnoticed, academic and behavioral issues that remain unnoticed by school districts or are being ignored, and students who are not being reevaluated within an appropriate time-frame. Since the *Endrew F.* decision, many courts are ruling against the policies and decisions of school districts; however, each jurisdiction simply provides that minimal or de minimis progress cannot be placed under the umbrella of academic success, but then fails to elaborate on the *Endrew F.* standard itself. The *Endrew F.* standard is fragmented because it fails to fill in the gaps of what an appropriate education actually means and encompasses.

---

[252] *Id.* at *7-9.

[253] *Id.*

[254] *Id.* at *10.

[255] *See generally id.*

[256] Shannon Rohn, *Endrew F. v. Douglas County School District: Recognizing that Merely More than De Minimis is Not Appropriate for Special Education*, GEO. WASH. L. REV. (Apr. 9. 2017), http://www.gwlr.org/endrew-f/.

[257] *Id*.

[258] S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017); Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-CV-5286, 2017 WL 3485880 (E.D. Pa. Aug. 14, 2017).; M.C. *ex rel.* M.N. v. Antelope Valley Union Free High Sch. Dist., 858 F.3d 1189 (9th Cir. 2017).

VI. A VAGUE DECISION OPENS THE DOOR TO INCONSISTENT RESULTS

The central tenet of the IDEA is to provide a free appropriate education to all children with disabilities and to level the playing field for parents to play an increased role in the education of their children.[259] Congress has not defined "free appropriate public education" and has left it to the courts to interpret this standard of education provided for in the IDEA. The door to various interpretations of this standard will remain open because the Supreme Court failed to define what an appropriate education must consist of in *Endrew F*.[260]

Disabled students must be offered an education that is "reasonably calculated to enable a child to make progress appropriately in light of the child's circumstances."[261] On paper, this rule established by the Supreme Court takes an approach to special education that will push school districts to reassess and modify their special education programs.[262] However, in practice, the depth of this rule and what it is designed to accomplish continue to remain unclear.[263]

If appropriate progress in light of the child's circumstances boils down to permitting a child with disabilities to miss close to thirty days of core academic classes over the course of multiple years, then the *Endrew F.* Court has done a disservice to special education students.[264] If appropriate progress in light of the child's circumstances means omitting specific services and assistive devices from the student's IEP and failing to notify the student's parents of the need for such services, the *Endrew F.* Court has failed to recognize a central purpose of the IDEA, which is leveling the playing field for parents of children with disabilities.[265] Jurisdictions are misinterpreting the

---

[259] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017).

[260] *See generally id.*

[261] *Id.* at 999.

[262] *See generally id.*

[263] S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017); Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-CV-5286, 2017 WL 3485880 (E.D. Pa. Aug. 14, 2017); M.C. *ex rel.* M.N. v. Antelope Valley Union Free High Sch. Dist., 858 F.3d 1189 (9th Cir. 2017); Pocono Mountain Sch. Dist. v. J.W. *ex rel.* J.W., No. 3:16-CV-0381, 2017 WL 3971089 (M.D. Pa. Sept. 8, 2017).

[264] *See generally Sean C.*, 2017 WL 3485880.

[265] *See generally Antelope Valley*, 858 F.3d at 1189.

meaning behind the *Endrew F.* holding because a bright-line rule was not established.[266] If every child must meet challenging objectives under the *Endrew F.* standard, then school districts should not be permitted to leave intact IEPs that define success as continuing to fail or barely passing core academic classes year after year.[267] Such goals can hardly be defined as challenging objectives.[268]

Under *Endrew F.*, providing "appropriate progress in light of the child's circumstances" means that school districts must look to the student's potential for growth, the extent of his or her disability, and the current levels of achievement on a multitude of levels, not just academic.[269] Ignoring a student's behavioral issues that have affected his academic progress over the course of multiple years can hardly be defined as a school district offering services tailored to the student's individual success.[270]

Without a clear blueprint defining what is expected of school districts, student issues left unaddressed will continue to hinder the academic and non-academic success of students with disabilities.[271] Appropriate progress should not mean that a disabled child misses a considerable amount of their core academic coursework and is then advanced to the next grade, which, in reality, has happened.[272] Although, there is no true "one size fits all" approach to educating disabled children, refining the *Endrew F.* standard to impose harsher regulations on school districts will improve the educational programs and services received by disabled children.[273]

The absence of any type of framework under the *Endrew F.* standard allows school districts to keep old policies intact and subsequently permits courts to continue to revert back to the *Rowley*

---

[266] *See, e.g.*, *S.B.*, 2017 WL 4326502; *Sean C.*, 2017 WL 3485880; *Antelope Valley*, 858 F.3d at 1189; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

[267] *See, e.g.*, *S.B.*, 2017 WL 4326502; *Sean C.*, 2017 WL 3485880; *Antelope Valley*, 858 F.3d at 1189; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

[268] *See, e.g.*, *S.B.*, 2017 WL 4326502; *Sean C.*, 2017 WL 3485880; *Antelope Valley*, 858 F.3d at 1189; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089; *Endrew F.*, 137 S. Ct. at 988.

[269] U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS (Q&A) ON U.S. SUPREME COURT CASE DECISION *ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT RE-1* (Dec. 7, 2017), https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf.

[270] *See generally Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

[271] *S.B.*, 2017 WL 4326502; *Sean C.*, 2017 WL 3485880; *Antelope Valley*, 858 F.3d at 1189; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

[272] *See generally Sean C.*, 2017 WL 3485880.

[273] U.S. DEP'T OF EDUC., *supra* note 269.

standard because it has been the law for decades.[274] Proposing a solution that further fleshes out the *Endrew F.* standard as well as the need to ensure that students with disabilities are being placed in appropriate academic and non-academic programs is the only way to require school districts to adhere to the provisions of the IDEA and demand courts to make informed decisions.[275]

VII. A SOLUTION TO FURTHER DEFINE SPECIAL EDUCATION EXPECTATIONS

The *Endrew F.* decision attempts to require a more in-depth evaluation of each handicapped child and his or her individual circumstances, but taking on this approach has certainly proven difficult for school districts across America.[276] Multiple opinions of what a substantive education should consist of are likely to continue because the *Endrew F.* Court failed to develop a guideline that will provide a meaningful educational benefit.[277]

For an IEP to conform to the substantive education standard set forth in *Rowley*, several modifications must be implemented.[278] First, an IEP should no longer be assessed by looking solely to the four corners of the IEP.[279] Schools must begin to evaluate a child's progress by looking to their behaviors, academic scores, and interpersonal skills to determine the accuracy of the IEP.[280] Furthermore, if a similar case were to be revisited by the Supreme Court, the terms "meaningful" and "appropriate" would need to be clarified. The basic dictionary definition of "meaningful" is to "have a meaning or purpose," while the basic dictionary definition of "appropriate" is defined as something that is "especially suitable or compatible."[281] However, an IEP that fails to address significant behavioral problems from year to year or

---

[274] *See generally Endrew F.*, 137 S. Ct. at 988.

[275] *Id.*; *S.B.*, 2017 WL 4326502; *Sean C.*, 2017 WL 3485880; *Antelope Valley*, 858 F.3d at 1189; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

[276] *S.B.*, 2017 WL 4326502; *Sean C.*, 2017 WL 3485880; *Antelope Valley*, 858 F.3d at 1189; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

[277] *See generally Endrew F.*, 137 S. Ct. at 988.

[278] *Id*.

[279] R.E. v. N.Y.C. Dep't. of Educ., 694 F.3d 167, 178 (2d. Cir. 2012).

[280] *Endrew F.*, 137 S. Ct. at 994, 999.

[281] *Meaningful*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/meaningful (last visited Feb. 28, 2019); *Appropriate*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/appropriate (last visited Feb. 28, 2019).

yields staggered progress can hardly be said to be "meaningful" or "appropriate" educational benefits, even if they are "better" than what was offered under the *Rowley* standard.[282]

Under the *Endrew F.* standard, school districts measure a student's meaningful progress by reviewing the student scores on regular examinations, overall academic grades, and their ability to advance from grade to grade.[283] However, our school districts need to look at other areas and weigh how they affect the academic success of a disabled child.[284] Inconsistent academic progress that can be attributed to areas such as attendance in class, emotional issues, and behavioral issues, can no longer be brushed aside by school districts.[285] Without measuring all areas of a student's progress or non-progress there is no purpose or meaning behind the education they are receiving because just enough benefit to seemingly justify pushing students from grade to grade is really no benefit at all.[286]

As stated above, the term "appropriate" is defined as something that is "especially suitable or compatible."[287] The *Endrew F.* standard provides that a student's progress must be appropriate in light of the child's circumstances.[288] However, the Supreme Court refused to explicitly elaborate on what appropriate progress looks like in every case.[289] Although the adequacy of an IEP can only be measured against the unique circumstances of individual students, it is inappropriate for school districts to ignore signs of decreased progress in all areas.[290] The *Endrew F.* standard should have implemented a scale or other form of measurement system that allows school districts to assess the appropriateness of an IEP in a generic way and then supplement more in-depth measurement techniques that apply uniquely to the subject student.

A more in-depth IEP analysis should be implemented as schools are failing to address non-academic issues that have an adverse effect on the educational success of the child.[291] A student's

---

[282] *See, e.g.*, *Sean C.*, 2017 WL 3485880; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.
[283] *Endrew F.*, 137 S. Ct. at 999.
[284] *See, e.g.*, *Sean C.*, 2017 WL 3485880; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.
[285] *See, e.g.*, *Sean C.*, 2017 WL 3485880; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.
[286] *See, e.g.*, *Sean C.*, 2017 WL 3485880; *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.
[287] *Appropriate*, *supra* note 281.
[288] *Endrew F.*, 137 S. Ct. at 999.
[289] *Id.* at 1001.
[290] *Id*.
[291] *See, e.g.*, *Sean C.*, 2017 WL 3485880.

IEP should be reviewed on an annual basis rather than every three years to ensure that all trouble areas are being addressed.[292] In addition, one of the child's teachers or aides should provide a quarterly review of the child's progress.[293] Quarterly progress reports should be implemented to better track the child's progress toward IEP goals and to foster better communications between the child's parents and the IEP team.[294]

Additionally, an IEP must be all encompassing and developed in a cohesive manner that addresses every need of the student that may be hindering academic success.[295] School districts must be more proactive and take remedial measures when a student is struggling academically due to emotional or behavioral disorders.[296] Again, school districts must be required to evaluate and re-evaluate students and obtain quarterly reports from classroom teachers and aides outlining those behaviors that are affecting the learning process.[297] School districts must take testimonials from parents about the student's behaviors at home, document medications that the child is taking, and review reports from the child's treating physicians in order to create the most comprehensive IEP possible.[298] By enforcing IEPs that complement the child's needs in all areas, not just academic, the school district can provide more meaningful access to education.[299]

At its inception, the IEP should be as detailed as possible in order to allow the parents of a child with disabilities to know exactly the types of services and programs to be received by the child.[300] A higher review board needs to be implemented to confirm that all specific programs, assistive technologies, and devices are accounted for in the IEP. Parents of the students with disabilities should be allowed to submit a quarterly review of the IEP as well to help promote the success of their child and allow them to adequately monitor their child's progress. Integrating parents of the disabled child into the

---

292 *Id.*

293 *See, e.g.*, S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017); M.C. *ex rel.* M.N. v. Antelope Valley Union Free High Sch. Dist., 858 F.3d 1189 (9th Cir. 2017).

294 *See, e.g.*, *S.B.*, 2017 WL 4326502; *Antelope Valley*, 858 F.3d 1189.

295 *See Pocono Mountain Sch. Dist.*, 2017 WL 3971089, at *6.

296 *See, e.g.*, *id.*

297 *Id.*

298 *Id.*

299 *Id*.

300 *Id.* at *6-10.

review process will also aid in fostering better communications between the school and the parents and ensure that all programs and services are accounted for.

When a child is missing a significant amount of time from school that is subsequently affecting his or her academic success, a school district should enforce an attendance policy through the IEP and not advance a child to the next grade if the child cannot achieve the goals set out in the previous grade.[301] It can no longer be acceptable for school districts to merely open the door to public education to children with disabilities and simply "push" them through each grade until it comes time to graduate without providing any significant educational benefit.[302] School districts must correlate how a child's emotional or behavioral issues affect his or her academic progress and then implement proper measures to promote academic success while also engaging the child in programs that will help alleviate emotional concerns and improve behaviors.[303] The evaluation of IEPs by school districts can no longer focus solely on the academic sector of education.[304] School districts must be held accountable to assess the child on a quarterly basis to provide the most adequate IEP possible.[305]

Special education cases display a counterbalancing of the child's parents wanting the most effective education possible for their child and a school district's not necessarily having every feasible resource to accommodate all of the student's needs.[306] In analyzing such cases, jurisdictions across the United States should develop a framework that coincides with the intent of the IDEA. Courts must use the factors outlined in the IDEA to analyze the accuracy and substantive sufficiency of the IEP.[307] The court must assess: 1) the child's potential at the time the IEP is being developed, 2) whether the IEP is tailored to the child's unique needs, 3) whether the IEP provides access to specialized instruction and services, 4) whether the IEP addresses disability related disruptive acts, and 5) whether the student

---

301 *Sean C.*, 2017 WL 3485880 at *3-4, 6.

302 Brief for Autism Speaks, *supra* note 2, at 3-4, 9.

303 *Pocono Mountain Sch. Dist.*, 2017 WL 3971089, at *7.

304 *Id*. at *7-10.

305 *See generally Endrew F.*, 137 S. Ct. at 988; S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502 (E.D.N.Y. Sept. 28, 2017); *Sean C.*, 2017 WL 3485880; M.C. *ex rel.* M.N. v. Antelope Valley Union Free High Sch. Dist., 858 F.3d 1189 (9th Cir. 2017); *Pocono Mountain Sch. Dist.*, 2017 WL 3971089.

306 *See Endrew F.*, 137 S. Ct. at 1001.

307 *Id*.

has achieved progress during the relevant time period.[308] Having to assess each factor individually will provide the courts with a framework for determining whether an appropriate education is being offered in each individual case. Requiring courts to assess the accuracy of an IEP in the form of a check-list will better ensure that an equal educational opportunity is being offered to students with disabilities.

IX. CONCLUSION

The *Endrew F.* decision needs additional clarifications and the parameters of the rule must be strengthened and better defined. Because school districts and jurisdictions alike are continuing to have difficulty letting go of the *Rowley* standard, it is evident that more well-defined expectations must be fleshed out. By implementing stricter regulations and holding school districts more accountable for their actions, the *Endrew F.* standard will be able to work in our schools and provide a better educational experience for children with disabilities.

A hallmark decision for the special education community, *Endrew F.* represents a massive leap toward equal educational opportunities for students with disabilities in the public school system. However, the *Endrew F.* decision presents difficulties for students who have been provided with the minimal educational benefit by their school districts for decades. The requirement that students with disabilities should be offered an education that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances,"[309] offers no set guidelines against which the accuracy of an IEP should be measured. Because the *Endrew F.* decision leaves jurisdictions to continue to interpret what an appropriate education must constitute on their own accord, the disparities in education of students with disabilities continue.

In order to remedy future IEP and IDEA related issues and properly assess the accuracy of an IEP, it would be beneficial for schools to implement a check-list process corresponding directly to the factors set forth in the IDEA. As stated earlier, school districts should become more proactive in the education of handicapped students by learning about the student's home environment, triggers, and

[308] *Id.* at 1000.

[309] *Id.* at 999.

emotional behaviors, while also monitoring academic levels and progress in order to create more comprehensive IEPs. The integration of parents into the IEP process and the creation of a revisionary board to monitor and modify IEPs would also aid in providing handicapped students with a more comprehensive education. Further, the court's use of the IDEA factors outlined above will likely lead to the creation of a framework upon which all IEPs can be analyzed according to the same standard. The creation of a uniform standard of education that will confer a benefit on all students is an extremely difficult task that requires a great deal of diligence. By moving toward a uniform system of analyzing IEPs, educational programs, and support services, we will continue to close the gap in educational disparities for students with disabilities. However, without the implementation and enforcement of clear guidelines, no foundation can be formed on which the appropriateness of education for students with disabilities can be measured.