The Endrew Decision and Deaf Education: An Analysis

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Summary of Analysis

Facts: Endrew, a child with autism, was not progressing in the general education environment. His parents placed him in a specialized school for children with autism. They sued to have the state pay for the specialized setting. The state had to pay if the public school did not provide Endrew a Free Appropriate Public Education based on his IEP. The state said Endrew was making enough progress in the public school, and the state should not have to pay.

Question in the case: So, the question for the Supreme Court was: “What is the standard a child’s Individualized Education Program (IEP) must meet in order to comply with the Individuals with Disabilities Education Act (IDEA)?”

The Supreme Court answered: “The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances."

The Court said that the public school system had not met this standard. Now, this is the new standard, replacing the Rowley standard.

Bottom line for deaf and hard of hearing children: The decision can be understood as raising the bar a bit for IDEA students. However, many questions remain as to how this decision will apply in general, and definitely as to how it will be applied to deaf and hard of hearing students. We have to continue to fight the existing challenges and barriers to quality education for deaf children.

Full Analysis

On March 22, 2017, the United States Supreme Court handed down a decision in the Endrew v. Douglas County School District case (https://www.supremecourt.gov/opinions/16pdf/15-827_0pm1.pdf). The question in the case was:

“What is the standard a child’s Individualized Education Program (IEP) must meet in order to comply with the Individuals with Disabilities Education Act (IDEA)?”

The Court declared that the IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances."

Endrew is a child with autism who attended Douglas County School District from preschool through fourth grade. His parents were concerned that the school district was not providing sufficient supports and services to allow him to progress adequately in functional and academic areas. His IEP listed the same goals from year to year. In the meantime, Endrew’s behavior severely interfered with his ability to learn. For example, he screamed in class, climbed on furniture, and sometimes ran away from school.

Endrew’s parents removed him from public school and placed him in a private, specialized school, where he did much better. The school provided a behavior intervention plan and set higher academic goals for Endrew.
Endrew’s parents sought reimbursement for tuition for this school from the state. In order to qualify for reimbursement, the parents had to show that the public school had not provided a Free Appropriate Public Education (FAPE) to Endrew. The determination rested on what level of progress IDEA expects for an individual child.

In Board of Education v. Rowley (458 U.S. 176, https://www.law.cornell.edu/supremecourt/text/458/176 (1982)), the Supreme Court ruled that a child’s IEP must be “reasonably calculated to enable the child to receive educational benefits.” For years parents and advocates have felt this standard was too low, as nearly all children receive some educational benefit while in school, even though the child may lag far behind his peers.

The school district argued that under this standard, the educational progress Endrew was making was enough. The parents disagreed.

So, in Endrew, the Court determined that the IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances." Many advocates are cheering this decision, saying that it is an improved standard. Let’s compare the standards:

Rowley standard: IEP must be “reasonably calculated to enable the child to receive educational benefits.”

Endrew standard: IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances."

Some questions need to be asked:

What's “appropriate progress?” A deaf or hard of hearing child who enters school with language delays needs to make more than one year’s progress in one year’s time in order to get on track. For a deaf or hard of hearing child even one year’s progress during one year cannot be considered appropriate. But are there qualified deaf education professionals available in local schools who can determine this – and then do something about it?

How do you consider the impact of “the child’s circumstances?” Who is qualified to determine this? In local education programs frequently there are no deaf education professionals who can appropriately assess the child or understand the effects of limited language input on the child’s learning. How many times have we heard the phrase “He’s doing great! - for a deaf child.” What circumstances should be considered – age of identification, type of early intervention and family support provided – or hearing level. We don’t want to see consideration of circumstances used to lower expectations.

The Court also stated: The "child’s educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”

We know that Supreme Court Justices are not educational experts, and they were looking at the facts of a specific situation. But this statement is somewhat troubling.

Are we to think that advancement from grade to grade is not appropriately ambitious for children outside of the “regular” classroom? The Court does not mention these placements. It seems that
the Court thinks expectations could be different for children not placed in regular classrooms. Our deaf schools are not considered the regular classroom - even though we offer a general education curriculum, trained and experienced teachers, a fully accessible environment, access to extracurricular and community activities, etc., etc., etc. They are "regular" to us! This could influence education decision makers when it comes to determining where to place a deaf or hard of hearing child.

So, what is the bottom line here for deaf and hard of hearing children?

Yes, the decision can be understood as raising the bar a bit for IDEA students. The Court was clear that that was its intent. However, many questions remain as to how this decision will apply in general, and definitely as to how it will be applied to deaf and hard of hearing students. We have to continue to fight the existing challenges and barriers to quality education for deaf children. We must continue to advocate for better services and outcomes, including strong support for our deaf schools. And we must make sure families receive the support they need to help their children succeed. This decision does not change that one bit. Keep your sleeves rolled up, because there is still a lot of work to do.