PULLMAN &COMLEY

A Cadillac, A Serviceable Chevrolet Or Something In Between: The Supreme Court Is Poised To Redefine The Standard Of Education That Must Be Provided To Special Education Students

Education Law Notes

01.25.2017
By Melinda Kaufmann

On January 11, 2017, the United States Supreme Court heard oral arguments in *Endrew F. v. Douglas County School District*, a case likely to change the landscape of special education by redefining the level of education that is owed special education students under the IDEIA.

The case involves an autistic child who is referred to as "Drew." His parents withdrew him from public school at the end of fourth grade and enrolled him in an expensive private school after disagreeing with his proposed IEP for fifth grade.

Since the Supreme Court issued its ruling in *Board of Education v. Rowley*, 458 U.S. 176 (1982), holding that the IDEIA entitles special needs students to "some benefit," the accepted standard in most courts has been that a school district meets the required standard if the proposed IEP is designed to provide more than a *de minimis* level of benefit. This case challenges that standard and the Court is poised to redefine to what level of benefit a special needs student is entitled.

Attorneys for the plaintiff first argued that the IDEIA requires school districts to offer special education students an education that is "substantially equal" to the education provided to other students. When challenged, they then redefined the proposed standard to state that an IEP should be "tailored to achieve in a general educational curriculum at grade level for most kids" but when that is not possible, the IEP should have "alternate achievement benchmarks ... that are the highest possible achievable by the student." The United States Department of Education argued that the proper standard is "significant educational progress in light of the child's circumstances." The district argued that the proper standard remains the one set forth in *Rowley*: that if the student is receiving "some benefit" the standard is met.

The Justices were skeptical of both arguments. With echoes from the recent CCJEF decision, Chief Justice Roberts questioned whether there was any place within the existing law to discuss the cost for educating severely disabled students under the proposed standard and Justice Ginsburg expressed her concern over the $70,000.00 annual price tag for the requested private school tuition. At one point Justice Kennedy

questioned whether costs should be measured against the possible results to be achieved. Chief Justice Roberts also questioned how the proposed "substantially equal" standard would work for a student whose disabilities would not allow him/her to follow the general curriculum. The justices also expressed concerns about whether changing the accepted standard would be "taking the money that ought to go to the children and spending it on lawsuits and lawyers and all kinds of things that are extraneous."

The justices, however, seemed equally troubled by the current "more than *de minimis*" standard urged by the District. Several justices noted that since *Rowley* the IDEIA has been amended and that it now references that an IEP must be designed to enable the child to be involved in and make progress in the general curriculum and have annual goals to make progress in the general education. They expressed strong concerns about a standard that only requires "more than *de minimis"* progress for disabled children.

Various justices suggested words such as "meaningful" and "significant" as potential adjectives to use going forward. Justice Sotomayer neatly summed up the dilemma faced by the Court when she noted that "I do think the" IDEIA "provides enough to set a clear standard" but that the problem they face is coming up with the correct words that will "be less confusing to everyone."

At this point, it is unclear on what standard the Court will decide. It does, however, seem clear that the justices were concerned both with the current "more than *de minimis*" standard and equally concerned with the plaintiff's proposed "substantially equal" standard. Thus, they are likely to land somewhere in the middle, defining a new standard that must be met in light of the changes in the IDEIA since *Rowley.*

Posted in Board of Education, Federal Legislation, Municipalities, Special Education, Teachers, U.S. Supreme Court

Tags: CT Coalition for Justice in Education Funding (CCJEF), Individualized Education Program (IEP), School Districts, U.S. Department of Education, U.S. Department of Justice (DOJ)