

# The United States Department of Education Issues Guidance on the Meaning of FAPE

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## Education Law Notes

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On December 7, 2017, the United States Department of Education's Office of Special Education and Rehabilitative Services ["OSERS"] issued guidance for schools on determining whether a special education program is designed to provide a student with a free appropriate public education ["FAPE"] based on the United States Supreme Court decision in *Endrew F.* The guidance can be found at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-endrewcase-12-07-2017.pdf>. Some highlights are as follows:

As I discussed in a prior blog post, <http://schoollaw.pullcomblog.com/archives/united-states-supreme-court-defines-standard-for-special-education-endrew-f-v-douglas-county-school-district-re-1/> the new standard for determining the appropriateness of an Individualized Education Program ["IEP"] is whether it is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" with goals that enable the child to "have the chance to meet challenging objectives."

In its new guidance, OSERS has defined "reasonably calculated" to mean that "school personnel will make decisions that are informed by their own expertise, the progress of the child, the child's potential for growth and the views of the child's parents." In making this determination, the Planning and Placement Team ["PPT"] should look at the child's previous rate of growth, any behaviors that interfere with the child's progress, and additional information and input from the child's parents.

In defining "progress appropriate in light of the child's circumstances," OSERS directs the PPT to focus on the individual needs of the child and use individualized decision-making when writing annual goals and other IEP content. The annual goals on the IEP must be aimed at improving educational results and the child's functional performance. The IEP must be designed to provide access to instructional strategies and curricula that are aligned both to challenging State academic content standards and to ambitious goals, based on the unique circumstances of that child.

OSERS recognizes that for most children in the regular classroom the advancement from grade to grade is appropriately ambitious. Thus, it emphasizes that the IEP must be designed to enable the child to be involved in, and make progress in, the general education curriculum. This cannot, however, replace the individualized decision-making required in the IEP process.

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For students with the “most significant cognitive disabilities,” their performance can be measured against alternative achievement standards. These alternative achievement standards, however, must still be aligned with the State’s grade-level content standards.

As to behavioral concerns, OSERS reiterates that the PPT must consider, and if necessary to provide FAPE, include in the IEP appropriate behavioral goals and objectives and other appropriate services and supports for children whose behavior impedes their own learning or the learning of their peers.

Moving forward, districts should review their policies, procedures and practices related to special education to ensure that PPTs:

1. Identify present levels of academic achievement and functional performance;
2. Set measurable annual goals, including academic and functional goals; and
3. Determine how a child’s progress toward meeting annual goals will be measured and reported so that the *Andrew F.* standard is met for each individual child with a disability.

PPTs must be ready to explain their decisions, if necessary, in order to establish that the program designed was likely to provide FAPE for the student in question based on the student’s unique needs.

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