

# United States Supreme Court Defines Standard For Special Education: *Andrew F. v. Douglas County School District RE-1*

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## Education Law Notes

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In a unanimous decision, the United States Supreme Court held that the Individuals with Disabilities Education Improvement Act (IDEA) requires school districts to provide special education students with “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” While the Court made clear that this is something more than the “*de minimis*” standard that most courts previously applied, it left open the question as to what this actually means as the Court noted that it would “not attempt to elaborate on what ‘appropriate’ progress will look like from case to case.”

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. The parents requested an administrative hearing before a due process hearing officer demanding that the district pay for the private placement, and ultimately landed before the Supreme Court arguing for a new standard of education.

The Court rejected both the standard urged by the parents, which would have required an education that was “substantially equal” to that offered to other students, and the U.S. Department of Education’s proposed standard, that would have required “significant educational progress in light of the child’s circumstances.” Recognizing that the adequacy of each IEP turns on the unique circumstances of the student for whom it is written, the Court then landed somewhere in the middle of the proposed standards settling on the words “appropriate in light of the child’s circumstances.”

What does this mean for school districts? In light of the IDEA’s preference for students to be educated in the regular classroom whenever possible, for a majority of the students, the standard will likely be met if the student is achieving passing marks and advancing from grade to grade. For a student who cannot be reasonably expected to achieve on grade level, the expectation is that the program will still be “appropriately ambitious in light of his circumstances” and will give the child a “chance to meet challenging objectives.” The Court, however, reiterated that the IDEA does not “guarantee any particular level of education” and that it cannot and does not promise “any particular educational outcome.”

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Interestingly, the Court recognized that school authorities are the experts in the field. The Court noted that by the time any dispute reaches a courthouse, the court should expect that the school authorities are “able to offer a cogent and responsive explanation for their decisions” that would show the IEP is appropriate. While this seems to set up an argument that the Court should give deference to the school district authorities based on their expertise in the field of education, it might not make a difference in Connecticut where the burden in a due process hearing remains squarely on the district to prove that the program offered was appropriate rather than requiring the parent to prove that it was not appropriate.

In the short term, this new standard is likely to produce more litigation against school districts as courts are asked to further flesh out what this new standard means in practice. The Court, however, in light of the unanimous decision, apparently abandoned its expressed concerns over the financial burden that a changed standard could impose on school districts.

What can districts do to minimize this burden? First, ensure that your staff is fully trained in evaluating students and developing appropriate programs. Second, ensure that parents are given a chance to be full participants in the development of the IEP. Third, be sure that district authorities can articulate how the program that is being offered is designed to enable the student to make appropriate progress. Finally, when in doubt contact your lawyer for advice on specific cases.

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