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Free Appropriate Public Education After Endrew F. v. Douglas County School District (2017)

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FREE APPROPRIATE PUBLIC EDUCATION AFTER *ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT* (2017)

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On March 22, 2017, Chief Justice John Roberts announced the unanimous ruling of the United States Supreme Court in *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1* (hereinafter "*Endrew*").[1] More than thirty-five years earlier, on June 28, 1982, Chief Justice William Rehnquist announced the High Court's decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley* (hereinafter "*Rowley*").[2] The decision in the *Rowley* case was the first special education ruling by the Supreme Court. The *Endrew* decision was the High Court's most recent special education ruling. Both cases involved the question of what constitutes a free appropriate public education (hereinafter "FAPE") as required by the Individuals with Disabilities Education Act (hereinafter "IDEA").[3]

The purpose of this article is to analyze the Supreme Court's decision in *Endrew*. In Part I we discuss the development of the FAPE requirement of the IDEA. In Part II we analyze the Supreme Court's FAPE ruling in *Rowley*. Part III presents the split among the circuits that made the Supreme Court's granting of certiorari likely. In Part IV we analyze the Supreme Court's ruling in *Endrew* and the conclusion of the case in the U.S. District Court. In Part V we present subsequent lower court rulings that have applied the *Endrew* standard. We end, in Part VI, by discussing implications of the *Endrew* decision.

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[1] 137 S. Ct. 988 (2017).

[2] 458 U.S. 176 (1982).

[3] Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (2018).

I. THE DEVELOPMENT OF FAPE

In the early 1970s, the Bureau for the Education of the Handicapped in the U.S. Department of Health, Education, and Welfare provided data to subcommittees in the U.S. House of Representatives and U.S. Senate that indicated that of more than 8 million children and youth with disabilities in the U.S. approximately 1.75 million, or over 21%, of these students were not receiving a public education and another 2.5 million, or 31%, were not receiving an education that was appropriate for their needs.[4] Thus, over 50% of children and youth with disabilities were either not allowed entry in the public education system or when they were in the system, they received an inappropriate education. According to Edwin Martin, a former director of the Bureau for the Education of the Handicapped, the children with disabilities who were in inappropriate public school programs

> were frequently subjected to substandard services in poor facilities. Parents reported classes in basements, janitor's closets, condemned buildings and similar sites. Children were often placed in classes inappropriate for their needs, for example it was not uncommon to find students with cerebral palsy, no matter what their intelligence level, placed in classes for children with mental retardation. Even when programs were offered, they frequently were not staffed by appropriately trained teachers, and instructors generally had to create their own curricula and materials. Supplies were limited or non-existent.[5]

In the early 1970s, parents of children with disabilities began going to federal courts asserting that when public schools denied enrollment or services to their children, the schools were denying their children's constitutional rights.[6] In two seminal cases, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*[7]

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[4] H.R. REP. NO. 94-332, at 11 (1975). *See also* S. REP. NO. 94-168, at 8 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 1425, 1432.

[5] EDWIN W. MARTIN, BREAKTHROUGH: FEDERAL SPECIAL EDUCATION LEGISLATION 1965-1981 loc. 321 (2013) (ebook).

[6] REED MARTIN, EXTRAORDINARY CHILDREN ORDINARY LIVES: STORIES BEHIND SPECIAL EDUCATION CASE LAW 1 (1991).

[7] 343 F. Supp. 279 (E.D. Pa. 1972).

and *Mills v. Board of Education of the District of Columbia*,[8] two U.S. District Courts ruled that after having undertaken to provide an education for all children, a state could not deny students with disabilities access to free public education. These cases set a precedent, which led to over 46 similar right to education cases being filed in 28 states,[9] and led to a flurry of activity in state legislatures creating educational rights for students with disabilities. Unfortunately, states' efforts were very uneven, and many representatives from the states as well as persons in the United States government believed a federal role in the education of children and youth with disabilities was needed to ensure that such students would receive an appropriate education.[10] In fact, Senator Harrison Williams, the chief sponsor of legislation on the education of students with disabilities, noted that "[i]t is time that Congress took strong and forceful action. It is time for Congress to assure equal protection of the laws and to provide to all handicapped children their right to education."[11]

An increased awareness of the poorly met needs of students with disabilities, the judicial decisions finding constitutional requirements for educating children and youth with disabilities in public schools, and the inability of states to provide educational opportunities for students with disabilities were among the most salient factors[12] that led to the enactment of the Education of All Handicapped Children Act (hereinafter "EAHCA") in 1975.[13] The major purpose of the law was to assist states to provide all eligible students with disabilities[14] an appropriate individualized educational program, which

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[8] 348 F. Supp. 866 (D.D.C. 1972).

[9] H.R. REP. NO. 94-332, at 3 (1975).

[10] *Id.* at 11. *See also* S. REP. NO. 94-168, at 8, *as reprinted in* 1975 U.S.C.C.A.N. 1425, 1432.

[11] 121 CONG. REC. 19,485 (1975) (statement of Sen. Williams).

[12] NANCY LEE JONES, CONG. RES. SERV., THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: CONGRESSIONAL INTENT 1 (1995), https://digital.library.unt.edu/ark:/67531/metacrs7997/m1/1/high_res_d/95-669A_1995May19.pdf.

[13] Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (prior to 1990 amendment). In 1990, Pub. L. No. 101-476 changed the name of the Education for All Handicapped Children Act to the Individuals with Disabilities Education Act, frequently referred to as the IDEA. The law also eliminated the word "handicapped" and substituted the word "disability." The law's name change emphasized people first language, in which the person comes before the disability (e.g., child with a disability rather than a disabled child).

[14] For students with disabilities to be eligible for special education services under the IDEA a team consisting of a student's parents and school-based personnel must determine that a

was referred to in the EAHCA as a FAPE.[15] The EAHCA included a set of procedural requirements to ensure that eligible students with disabilities receive a FAPE.[16] The procedural requirements, which were enforceable in court, were intended to protect students with disabilities from unilateral decisions by school personnel by ensuring that parents were involved throughout the special education process.[17]

A FAPE consists of special education services that are individually designed to meet a student with disabilities' unique educational needs. The IDEA defines a FAPE as special education and related services that—

> (A) have been provided at public expense, under public supervision and direction, and without charge;
> (B) meet the standards of the State educational agency;
> (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (D) are provided in conformity with the individualized education program.[18]

According to the IDEA, a FAPE is delivered in conformity with a student's individualized education program (hereinafter "IEP").[19] A student's IEP is both a process in which his or her parents and school-based personnel develop the student's special education program and the document in which the program is memorialized.[20] Thus, an IEP, which the United States Supreme Court has described as the "centerpiece"[21] and "*modus operandi*"[22] of the EAHCA, is the

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student has one of more disabilities covered by the IDEA and that the student needs special education services. The disabilities covered under the IDEA include: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, visual impairment including blindness. 20 U.S.C. § 1401(3)(A)(i) (2018).

15 *See id.* § 1401(9).

16 *See id.* § 1415.

17 MITCHELL L. YELL, THE LAW AND SPECIAL EDUCATION 223-26 (4th ed. 2016).

18 20 U.S.C. § 1401(9).

19 *Id.* § 1401(9)(D).

20 Mitchell L. Yell et al., *The Individuals with Disabilities Education Act: The Evolution of Special Education Law*, *in* HANDBOOK OF SPECIAL EDUCATION 55-62 (James M. Kauffman et al. eds., 2d ed. 2017).

21 Honig v. Doe, 484 U.S. 305, 311 (1988).

22 Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 367-69 (1985).

blueprint of a student's FAPE.[23] Because the statutory definition does not set forth any particular level of educational benefit that a student must achieve to be provided a FAPE, its meaning has been subject to dispute.[24] Many of these disputes were settled in due process hearings and in formal litigation. Typically, these disputes involved questions about what degree of educational benefit a FAPE should provide. In 1982, the United States Supreme Court interpreted the EAHCA's FAPE mandate in *Rowley*.[25]

II. *BOARD OF EDUCATION OF THE HENDRICK HUDSON CENTRAL SCHOOL DISTRICT V. ROWLEY* (1982)

Amy Rowley was a young child with a severe hearing impairment. She attended Furnace Woods Elementary School in the Hendrick Hudson Central School District in Peekskill, New York.[26] During the year that Amy began attending Furnace Woods, she was placed in a regular kindergarten class. Because Amy was eligible for services under the EAHCA, she was entitled to receive a FAPE. An IEP was developed for her during the fall of her first-grade year; however, it did not include a sign language interpreter, as requested by Amy's parents.[27] School personnel agreed to a three-week test period with an interpreter. After the test period, the district decided not to provide the services of an interpreter to Amy.[28] The parents requested a due process hearing and then a state review. Amy's parents lost at both administrative levels and appealed the case to the U.S. District Court for the Southern District of New York, which overturned the administrative decisions and ruled in favor of Amy, ruling that the school district had failed to provide Amy with a FAPE, thus violating the EAHCA.[29] The court concluded that Amy was performing better than many children in her class and was passing from grade to grade;

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[23] Mitchell L. Yell et al., *Special Education Law for Leaders and Administrators of Special Education, in* HANDBOOK OF LEADERSHIP AND ADMINISTRATION FOR SPECIAL EDUCATION 95 (Jean B. Crockett et al. eds., 2012).

[24] DIXIE SNOW HUEFNER ET AL., NAVIGATING SPECIAL EDUCATION LAW AND POLICY 176 (2012).

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

[26] *Id.* at 184.

[27] *Id.*

[28] *Id.* at 185.

[29] Rowley v. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., 483 F. Supp. 528 (S.D.N.Y. 1980).

however, "she understands considerably less of what goes on in class than she could if she were not deaf."[30] Additionally, Amy was "not learning as much, or performing as well academically, as she would without her handicap."[31] The school district's special education program, therefore, should have provided Amy with "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children."[32]

The school district filed an appeal and a divided panel of the U.S. Court of Appeals for the Second Circuit upheld the district court's ruling that the school district had failed to provide Amy with a FAPE.[33] The school district then appealed to the United States Supreme Court, which granted certiorari in November 1981.[34] The High Court addressed two questions: "What is meant by the [EAHCA's] requirement of a 'free appropriate public education'? And what is the role of state and federal courts in exercising the review granted by [the EAHCA]?"[35]

Chief Justice William Rehnquist wrote the opinion for the 6 to 3 majority.[36] In the ruling, which was issued on June 28, 1982, the Supreme Court held that the school district had provided a FAPE. Chief Justice Rehnquist wrote "we hold that [the school district] satisfies [the FAPE] requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."[37] He further wrote "if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction . . . the child is receiving a 'free appropriate public education' as defined by the Act."[38] Thus, the Court rejected the lower court's requirement that to confer a FAPE, school districts had to provide an education that allowed a student an equal opportunity to achieve to his or her maximum potential. Chief Justice Rehnquist wrote in the majority opinion:

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[30] *Id.* at 532.

[31] *Id.*

[32] *Id.* at 534.

[33] Rowley v. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., 632 F.2d 945, 947 (2d Cir. 1980).

[34] Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 454 U.S. 961 (1981).

[35] Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 186 (1982).

[36] *Id.* at 179.

[37] *Id.* at 203.

[38] *Id.* at 189.

> The requirement that States provide "equal" educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. . . . [T]o require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go.[39]

The Court developed a two-part test for courts to use when ruling on FAPE. "First, has the [school] complied with the procedures of the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"[40] According to the Court, if these requirements were met, a school had complied with the FAPE requirements.[41]

In the years following the *Rowley* decision, lower courts used the two-part *Rowley* test to decide FAPE cases. The procedural part of the test, part 1, seemed to be relatively straightforward, however, the educational benefit part of the test, part 2, proved to be a more difficult determination for courts.

III. THE SPLIT IN THE CIRCUITS

During this period, various U.S. Circuit Courts of Appeals began to apply different standards in deciding what amount of educational benefits was necessary for a school district to have conferred a FAPE. The U.S. Solicitor General referred to this split among the courts as "[a]n [e]ntrenched [a]nd [a]cknowledged [c]ircuit [c]onflict."[42] Although all the circuit courts had agreed with the overall Rowley standard that an IEP must be "reasonably calculated to provide educational benefits,"[43] the difference among the courts was on the amount of educational benefit that would satisfy the Supreme Court's FAPE requirement. At least six circuits, the Second, Fourth, Seventh,

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[39] *Id.* at 198-99.

[40] *Id.* at 206-07 (footnote omitted).

[41] *Id.* at 207.

[42] Brief for the United States as Amicus Curiae at 8, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017) (No. 15-827), http://www.scotusblog.com/wp-content/uploads/2016/08/15-827-US-Amicus.pdf.

[43] *Rowley*, 458 U.S. at 207.

Eighth, Tenth, and Eleventh,[44] had adopted some variation of a some or *de minimis* degree of educational benefit as being sufficient to confer a FAPE, a very low educational benefit standard that only required that the educational benefit provided by a school district be "just barely more than trivial."[45] Two other circuits, the Third and the Sixth, adopted a meaningful benefit standard, which was higher than the some or *de minimis* standard.[46] In fact, the Third and Sixth Circuits affirmatively rejected the *de minimis* standard as insufficient to satisfy the FAPE requirement.[47] The First and Fifth Circuits held that the FAPE standards required more than simply a trivial or *de minimis* educational benefit while noting that access had to be meaningful, nonetheless, it seemed that in rulings neither circuit court required much more than the lower standard to satisfy the FAPE requirement.[48] The Ninth Circuit was divided with the panels disagreeing with each other over the correct educational benefit standard.[49]

This split made it more likely that the Supreme Court would eventually hear another FAPE case to interpret the educational benefit standard set in *Rowley*. This opportunity presented itself in an appeal of the Tenth Circuit Court of Appeals decision in *Endrew F. ex rel. Joseph F. v Douglas County School District* in 2015.[50] In this case, the Tenth Circuit had used the educational benefit standard of "merely . . . more than *de minimis*"[51] as being sufficient to confer a FAPE.

The case involved Endrew, a student in the fourth grade in the Douglas County School District in Colorado. Endrew had autism and attention deficit hyperactivity disorder and had an IEP throughout his early school years.[52] His parents, alleging that Endrew had failed to progress academically or functionally in the fourth grade, rejected Endrew's IEP and placed him in a private school, the Firefly Autism House.[53] Endrew's parents noticed a dramatic difference in his behavior and achievement while he was in the private school

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[44] Brief for the United States as Amicus Curiae, *supra* note 42, at 9.

[45] *Id.* at 9-10.

[46] Mitchell L. Yell & David F. Bateman, Endrew F. v. Douglas County School District (2017)*: FAPE and the U.S. Supreme Court*, 50 TEACHING EXCEPTIONAL CHILDREN 7 (2017).

[47] Brief for the United States as Amicus Curiae, s*upra* note 42, at 10.

[48] *Id.* at 10 n.4.

[49] *Id.*

[50] 798 F.3d 1329 (10th Cir. 2015).

[51] *Id.* at 1338 (internal quotation marks omitted).

[52] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 996 (2017).

[53] *Id.*

placement.[54] Nonetheless, they wanted their son to be educated in a public school so they approached the Douglas County School District about re-enrolling Endrew in their home school and developing a new IEP based on his successful programming at the Firefly Autism House.[55] Unfortunately, Endrew's parents believed the IEP was not an improvement over the previous IEP they had rejected. Endrew's parents continued his placement at the Firefly Autism House and filed for a due process hearing in which they argued that the Douglas County School District had failed to provide him with a FAPE for which they sought tuition reimbursement for his private school placement .[56] The due process hearing officer and federal district court found that the Douglas County School District had provided a FAPE and denied Endrew's parents tuition reimbursement. The parents then appealed to the U.S. Circuit Court of Appeals for the Tenth Circuit.[57] The Tenth Circuit court found that the school district had met the "merely . . . more than *de minimis*" educational benefit test thus ruling that the school district provided Endrew with a FAPE.[58] Although the Tenth Circuit court acknowledged that the meaningful educational benefit test was a higher standard that promised students with disabilities greater achievement than did the Tenth Circuit's *de minimis* test,[59] the court ruled:

> We find sufficient support in the record to affirm the findings of the administrative law judge that the child received some educational benefit while in the District's care and that is enough to satisfy the District's obligation to provide a free appropriate public education. . . .[60]
>
> This is without question a close case, but we find there are sufficient indications of Drew's past

[54] *Id.* at 997.

[55] Ann Schimke, *Inside One Colorado Family's Long Legal Journey to Affirm Their Son's Right to a Meaningful Education*, CHALKBEAT (Nov. 15, 2017), https://www.chalkbeat.org/posts/co/2017/11/15/inside-one-colorado-familys-long-legal-journey-to-affirm-their-sons-right-to-a-meaningful-education/.

[56] *Endrew F.*, 137 S. Ct. at 997.

[57] *Id.*

[58] *Id.*

[59] Brief for the United States as Amicus Curiae, *supra* note 42, at 11-12.

[60] *Endrew F.*, 798 F.3d at 1332.

> progress to find the IEP rejected by the parents substantively adequate under our prevailing standard.[61]

Following the circuit court decision, the parents appealed to the United States Supreme Court. The question presented to the Court was what is the level of educational benefit school districts must confer on children with disabilities to provide them with a FAPE guaranteed by the IDEA? The parents argued that the Douglas County School District had failed to provide Endrew with a FAPE in accordance with the Rowley two-part FAPE test because the IEP was not reasonably calculated to provide him with educational benefit.

On May 31, 2016, the U.S. Solicitor General was invited to file a brief in the case expressing the views of the United States. On August 8, 2016, the Solicitor General's amicus curiae brief was filed. In the twenty-one- page brief, the Solicitor General wrote:

> [T]he split of authority on the question presented is real, and only this Court can resolve it. There is no justification for providing children with disabilities different degrees of protection under federal law depending on where they happen to live. This Court should clarify the proper FAPE analysis and establish a uniform standard to guide courts, state educational agencies, and parents across the county.[62]

On September 29, 2016, the High Court granted the petition for certiorari.[63] The question Endrew's parents asked the Supreme Court to answer was the following: "What is the level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*?"[64]

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[61] *Id.* at 1342.

[62] Brief for the United States as Amicus Curiae, s*upra* note 42, at 13.

[63] *See generally* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 29 (2016).

[64] Petition for Writ of Certiorari at *i*, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 29 (2016) (No. 15-827), http://www.scotusblog.com/wp-content/uploads/2016/05/15-827-Petition-for-Certiorari.pdf.

IV. *ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT RE-1* (2017)

In January 2017, the Court heard oral arguments in *Endrew*. On March 22, 2017, the Supreme Court issued its opinion vacating the decision and remanding the case back to the Tenth Circuit. Chief Justice Roberts wrote the opinion for a unanimous[65] Supreme Court. In his opinion Justice Roberts began with a statement acknowledging that the Court's purpose in hearing the *Endrew* case was to bring clarity to the second prong of the *Rowley* tests when he wrote:

> Thirty-five years ago, this Court held that the Individuals with Disabilities Education Act establishes a substantive right to a "free appropriate public education" for certain children with disabilities. We declined, however, to endorse any one standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." That "more difficult problem" is before us today.[66]

Justice Roberts referred to the IEP as a "fact-intensive exercise"[67] in which school personnel and a student's parents collaborate to develop and implement a special education program. The focus of the IEP is on the unique needs of an individual student and is developed only after careful consideration of the student's present levels of academic achievement and functional performance, his or her disability, and the student's "potential for growth."[68] The Court noted that it is through the IEP that a FAPE is tailored to meet the unique needs of an individual student.[69] Justice Roberts wrote that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement."[70]

The Court announced a new standard of educational benefit: "To meet its substantive obligation under the IDEA, a school must

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[65] Because a justice had not been confirmed to the open seat previously occupied by Justice Antonin Scalia, there were only eight justices sitting on the *Endrew* case.

[66] *Endrew F.*, 137 S. Ct. at 993 (citations omitted).

[67] *Id.* at 999.

[68] *Id.*

[69] *Id.* at 1000.

[70] *Id.* at 999.

offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[71] With respect to the new standard, Justice Roberts wrote:

> [T]his standard is markedly more demanding than the "merely more than *de minimis*" test applied by the Tenth Circuit. . . . [and that] a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all.[72]

Although the Supreme Court justices rejected the lower *de minimis* standard, the Court did not embrace the higher standard requested by Endrew's parents. Endrew's parents had asserted that the IDEA requires that school districts provide students with disabilities an education that is substantially equal to those opportunities provided to students without disabilities.[73] Justice Roberts cited the Supreme Court's ruling in *Rowley* as rejecting the notion of equal opportunity because of unworkable standards, measurement, and comparisons that would be required. Thus, the Court declined to interpret FAPE in a manner that was at odds with the *Rowley* decision.

Nonetheless, the *Endrew* educational benefit standard is clearly higher than the standard adopted by the Tenth Circuit court. In fact, Justice Roberts wrote that "[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act."[74] It is also clear from the language in *Endrew* that the Court raised the educational benefit standard for *all* students with disabilities.[75]

The Supreme Court remanded the case back to the Tenth Circuit court to reconsider its ruling in light of the new higher standard for educational benefit.[76] On August 2, 2017, the Tenth Circuit court remanded the case to the U.S. District Court for the District of

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[71] *Id.*

[72] *Id.* at 1000-01.

[73] Brief for Petitioner at 40, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017) (No. 15-827), http://www.scotusblog.com/wp-content/uploads/2016/11/15-827-petitioner-merits-brief.pdf.

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

[75] Julie Waterstone, *Endrew F.: Symbolism v. Reality*, 46 J.L. & EDUC. 527, 527-28 (2017).

[76] *Endrew F.*, 137 S. Ct. at 1002.

Colorado, the first court to rule on *Endrew*, to reconsider its ruling in light of the Supreme Court's higher educational benefit standard.[77]

The U.S. District Court for the District of Colorado issued its decision in the remand of *Endrew* on February 12, 2018.[78] Judge Lewis Babcock reversed his original decision in favor of the Douglas County School District and ruled in favor of Endrew and his parents.[79] According to the judge, the Douglas County School District had failed to provide a FAPE to Endrew in light of the Supreme Court's higher educational benefit standard.[80] Judge Babcock ordered the Douglas County School District to reimburse Endrew's tuition and related expenses that were incurred when they removed Endrew from the Douglas County School District and placed him in a private school, the Firefly Autism House, at their own expense.[81] The judge also ordered the Douglas County School District to pay Endrew's parents' court costs and attorneys' fees, which amounted to $1.3 million dollars.[82]

V. POST *ENDREW* FEDERAL COURT DECISIONS

For this article we used the Westlaw Citing References and KeyCite Alert tools to track and chart all federal court decisions that have addressed the new FAPE standard from the date of the *Endrew* decision (March 22, 2017) through July 15, 2018. We excluded opinions that simply cited *Endrew* without any discussion of the new FAPE standard as well as decisions dealing with non-FAPE issues, e.g., exhausting administrative remedies. The final chart appended at the end of this article is organized by federal circuits.[83] The first entry is the citation and FAPE educational benefits standard applied in the latest pre-*Endrew* Court of Appeals case for that circuit. Next, we included the most recent post-*Endrew* Court of Appeals decision, if any, followed by other court of appeals and district court decisions

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[77] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 694 F. App'x 654, 655 (10th Cir. 2017).

[78] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 290 F. Supp. 3d 1175, 1175 (D. Colo. 2018).

[79] *Id.* at 1185-86.

[80] *Id.*

[81] *Id.* at 1186.

[82] Ann Schimke, *Douglas County District Pays $1.3 Million to Settle Landmark Special Education Case*, DENV. POST (June 20, 2018, 6:25 PM), https://www.denverpost.com/2018/06/20/douglas-county-district-special-education-case/.

[83] See *infra* Appendix A.

addressing *Endrew's* new substantive FAPE standard in reverse chronological order.

For each post-*Endrew* opinion in the chart, we included the procedural history, disposition, and the exact language used by that court in its analysis/application of the new *Endrew* standard. We included opinions that discussed the new standard, even if the court remanded the case for further consideration in light of the *Endrew decision*. We also included language used by the court to compare its circuit's prior or current substantive FAPE standard to the new *Endrew* standard. Lastly, we included published and "not selected for publication" decisions in the chart. Rule 32.1(a) of the Federal Rules of Appellate Procedure allows for the citation of judicial opinions, orders, and judgments issued on or after January 1, 2007 that have been designated as "unpublished," "not for publication," or "non-precedential."[84] Furthermore, the precedential value of a specific federal court decision does not affect the outcome in that particular child's case.

Our purpose for creating this chart was not to compare the outcomes of pre- and post-*Endrew* FAPE decisions, but to explore how federal courts are interpreting the new substantive FAPE standard and how a court might compare the language used in *Endrew* to the language used pre- or post-*Endrew* in its Circuit.

After we address the language used by each Circuit in its analysis of the new substantive FAPE standard, we share our observations from our review of these cases. In Part VI, we end by discussing implications of the *Endrew* decision.

A. Post *Endrew* Decisions by Circuit

As stated earlier, part-two of the *Rowley* FAPE test asks: "is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"[85] However, the Court in *Rowley* cautioned: "We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act."[86] Without further guidance from the Supreme Court, federal courts across the circuits proceeded to use adjectives ranging

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[84] FED. R. APP. P. 32.1(a).

[85] Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 207 (1982).

[86] *Id.* at 202.

from "some" to "meaningful" to quantify the educational benefits required for a FAPE.[87] In 2017 the Supreme Court in *Endrew* pronounced its new substantive FAPE standard:

> While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.[88]

Although the Supreme Court explained that this new standard "is markedly more demanding than the 'merely more than *de minimis*' test applied by the Tenth Circuit,"[89] it again declined to establish a "bright-line rule."[90] Therefore, courts are now tasked with determining what effect, if any, this new substantive FAPE standard has on how it describes and measures the educational benefit or progress required to satisfy this new FAPE test.

1. First Circuit

In 2012, in *D.B. ex rel. Elizabeth B. v. Esposito*, the First Circuit Court of Appeals began by stating that the IDEA requires "more than a trivial educational benefit," but concluded "to comply with the IDEA, an IEP must be reasonably calculated to confer a meaningful educational benefit."[91] As supporting authority, the court cited the 2010 Third Circuit opinion in *D.S. v. Bayonne Board of Education*.[92] With its *Elizabeth B.* decision, the First Circuit joined the Third and Sixth Circuits, which had been the only circuits to apply the meaningful educational benefit standard.[93] The First Circuit Court of Appeals has not decided a post-*Endrew* substantive FAPE case.

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[87] *See generally* Ronald D. Wenkart, *The Rowley Standard: A Circuit by Circuit Review of How Rowley Has Been Interpreted*, 247 EDUC. LAW REP. 1 (2009); Brief for the United States as Amicus Curiae, *supra* note 42, at 8-12.

[88] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 998-99 (2017).

[89] *Id.* at 1000.

[90] *Id.* at 1001.

[91] 675 F.3d 26, 34 (1st Cir. 2012).

[92] *Id.* (citing 602 F.3d 553 (3d Cir. 2010)).

[93] Brief for the United States as Amicus Curiae, *supra* note 42, at 9, 11.

However, in July 2017 in *C.D. ex rel. M.D. v. Natick Public School District*, a District of Massachusetts court stated that the *Endrew* standard was "not materially different from the standard set" by the First Circuit in *Elizabeth B.* and that the educational benefit described in *Endrew* as "'appropriate' educational progress" was consistent with its "meaningful educational benefit" standard.[94] The *C.D.* court cited a "meaningful benefit" case from a district court in the Third Circuit.[95]

2. Second Circuit

In 1998, the court in *Walczak v. Florida Union Free School District* set the substantive FAPE standard for the Second Circuit as more than "trivial advancement," and "likely to produce progress, not regression."[96] Post-*Endrew*, in *Mr. P. v. West Hartford Board of Education*, the Second Circuit Court of Appeals affirmed the district court's judgment for the school district because it "provided M.P. with a meaningful educational program that was reasonably calculated to enable M.P. to make progress appropriate in light of his circumstances."[97] Interestingly, however, citing the pre-Endrew *Walczak decision*, the court in Mr. P. also stated that its prior decisions applying the "likely to produce progress, not regression" standard, were consistent with the Supreme Court's decision in *Endrew*.[98] Most of the post-*Endrew* district court opinions from the Second Circuit simply apply the *Endrew* standard of "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"[99] without addressing the level of educational benefit or progress required for a FAPE. Some appear to continue to apply the "likely to produce progress, not regression" standard.[100]

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[94] No. 15-13617-FDS, 2017 WL 3122654, at *16 (D. Mass. July 21, 2017).

[95] *Id.* (citing Brandywine Heights Area Sch. Dist. v. B.M., 248 F. Supp. 3d 618, 632 n.25 (E.D. Pa. 2017)).

[96] 142 F.3d 119, 130 (2d Cir. 1998).

[97] 885 F.3d 735, 757 (2d Cir. 2018).

[98] *Id.*

[99] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 998-99 (2017).

[100] *See, e.g.*, MB v. City Sch. Dist. of New Rochelle, No. 17-CV-1273 (KBF), 2018 WL 1609266, at *14 (S.D.N.Y. Mar. 29, 2018); F.L. v. Bd. of Educ. of Great Neck U.F.S.D., 274 F. Supp. 3d 94, 119 (E.D.N.Y. 2017); Avaras v. Clarkstown Cent. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402, at *10 (S.D.N.Y. July 17, 2017).

3. Third Circuit

In *Ridley School District v. M.R.*, a 2012 pre-*Endrew* decision, the Third Circuit Court of Appeals explained that "[a]lthough a state is not required to maximize the potential of every handicapped child, it must supply an education that provides 'significant learning' and 'meaningful benefit' to the child."[101] The Third Circuit has not decided a post-*Endrew* substantive FAPE case; however, the post-*Endrew* district court opinions from the Third Circuit continue to require a meaningful educational benefit. In July of 2018, in *Jack J. ex rel. Jennifer S. v. Coatesville Area School District*, the Eastern District of Pennsylvania upheld the standard applied by the hearing officer who concluded that "[t]he IEP must be 'reasonably calculated' to enable the child to receive appropriate services in light of the child's individual circumstances" and "services are appropriate when they are reasonably calculated to provide a child with 'meaningful educational benefits.'"[102] Other district courts in the Third Circuit have noted that the Third Circuit's meaningful benefit standard is consistent with the Supreme Court's *Endrew* decision.[103] Some, however, have substituted "in light of the student's intellectual potential" for "in light of the child's circumstances."[104]

4. Fourth Circuit

The Court of Appeals for the Fourth Circuit in its 2012 *O.S. ex rel. Michael S. v. Fairfax County School Board* opinion made it clear that absent an "express acknowledgment" from Congress of its intent to abrogate Supreme Court precedent, that the Fourth Circuit, like the Tenth Circuit in *Endrew*, applied a "some" not a "meaningful" benefit standard, meaning a benefit that is "more than minimal or trivial."[105] Although the Fourth Circuit has not decided a post-*Endrew* substantive

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[101] 680 F.3d 260, 269 (3d Cir. 2012) (citation omitted).

[102] No. 17-CV-3793, 2018 WL 3397552, at *13 (E.D. Pa. July 12, 2018) (alteration in original).

[103] Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-cv-5286, 2017 WL 3485880, at *9 n.13 (E.D. Pa. Aug. 14, 2017).

[104] *See, e.g.*, Montgomery Cty. Intermediate Unit No. 23 v. C.M., No. 17-1523, 2017 WL 4548022, at *6 (E.D. Pa. Oct. 12, 2017); Benjamin A. *ex rel.* Michael v. Unionville-Chadds Ford Sch. Dist., No. 16-cv-2545, 2017 WL 3482089, at *8 (E.D. Pa. Aug. 14, 2017); L.M. v. Willingboro Twp. Sch. Dist., No. 16-cv-3672, 2017 WL 2539388, at *6 (D.N.J. June 12, 2017).

[105] 804 F.3d 354, 359-60 (4th Cir. 2015).

FAPE case, in *M.L. ex rel. Leiman v. Smith*, the court acknowledged that its "some" benefit standard had been "overturned" by the Supreme Court in *Endrew*.[106] However, the court declined to address the effects of *Endrew* on its precedent because the remedy sought by M.L.'s parents, to provide religious instruction, was not available under the IDEA.[107] A few months later, in *N.P. ex rel. S.P. v. Maxwell*, the Fourth Circuit again recognized the new substantive FAPE standard in *Endrew*, noting that the ALJ quoted the "more than *de minimis*" standard in her pre-*Endrew* opinion, which the Supreme Court "invalidated" in *Endrew*.[108] Stressing the importance of deference,[109] the Fourth Circuit remanded the case to the district court with instructions to allow the ALJ to decide "whether the outcome of the case is different under the standard articulated by the Supreme Court in *Endrew*."[110]

The district courts in the Fourth Circuit have also not actually addressed the educational benefit or progress required under the new substantive FAPE standard. In *Sauers v. Winston-Salem/Forsyth County Board of Education*, the Middle District of North Carolina court stated that the "Fourth Circuit's FAPE standard has come into question" after *Endrew*, remanded the case back to the state after questioning the standard applied by the ALJ and the SRO, who "referred to 'educational benefits' but did not expound upon exactly where on the spectrum said benefits were deemed adequate."[111] However, in *J.R v. Smith*, after acknowledging the "now-invalid Fourth Circuit standard from *O.S.*," a Maryland District Court declined to remand because in her pre-*Endrew* decision the ALJ "went beyond the 'more than *de minimus* [sic]' standard from *O.S.* and laid out an approach that evaluated what progress was appropriate in light of the child's circumstances, just as *Endrew F.* requires."[112]

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106 867 F.3d 487, 496 (4th Cir. 2017).

107 *Id.* at 499.

108 711 F. App'x 713, 719 (4th Cir. 2017).

109 *Id.* at 716-17.

110 *Id.* at 719.

111 No. 1:15CV427, 2018 WL 1621516, at *12 (M.D.N.C. Mar. 30, 2018).

112 No. DKC 16-1633, 2017 WL 3592453, at *4 (D. Md. Aug. 21, 2017).

5. Fifth Circuit

In 2016, the Fifth Circuit Court of Appeals in *Rockwall Independent School District v. M.C.* described its circuit's substantive FAPE standard as "likely to produce progress, not regression or trivial educational advancement" while noting that "the educational benefit that an IEP is designed to achieve must be 'meaningful.'"[113] However, in his amicus brief for the United States in *Endrew*, the U.S. Solicitor General questioned whether the Fifth Circuit would actually require more than a "trivial benefit" for a school district to have provided a FAPE.[114]

Post-*Endrew*, on July 27, 2017, in *Dallas Independent School District v. Woody*, the Fifth Circuit Court of Appeals affirmed the decisions of both the hearing officer and the district court for the Northern District of Texas that the school district had denied a FAPE.[115] In that case, the Fifth Circuit, citing *Endrew*, simply stated that the school district "was obligated to 'offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.'"[116] However in a footnote the court stated that to provide a FAPE a child must "receive a meaningful educational benefit."[117]

A month before, in *C.G. ex rel. Keith G. v. Waller Independent School District*, the Fifth Circuit addressed whether the U.S. District Court for the Southern District of Texas had applied a standard consistent with the *Endrew* decision.[118] The district court had rejected the *de minimis* benefit standard for one that is "likely to produce progress, not regression or trivial educational advancement"[119] and concluded that the C.G.'s IEP had been "reasonabl[y] based on her specific needs and progress."[120] The Fifth Circuit ruled that "[a]lthough the district court did not articulate the standard set forth in

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[113] 816 F.3d 329, 338 (5th Cir. 2016).

[114] Brief for the United States as Amicus Curiae, s*upra* note 42, at 10 n.4. It is not clear, however, whether those circuits would hold that the provision of anything beyond a trivial benefit necessarily means that the education provided is "meaningful" and thus satisfies the FAPE standard.

[115] 865 F.3d 303, 317 (5th Cir. 2017) (reasoning that the school district failed to make a timely offer of FAPE).

[116] *Id.* at 317.

[117] *Id.* at 322 n.8.

[118] 697 F. App'x 816 (5th Cir. 2017).

[119] *Id.* at 819.

[120] *Id.*

Endrew F. verbatim, its analysis of C.G.'s IEP is fully consistent with that standard and leaves no doubt that the court was convinced that C.G.'s IEP was 'appropriately ambitious in light of [her] circumstances.'"[121]

A week before the Fifth Circuit's decision in *C.G.*, a U.S. Magistrate Judge in the Southern District of Texas also rejected the *de minimis* benefit standard for one "likely to produce progress, not regression or trivial educational advancement."[122] In *E.R. ex rel. S.R. v. Spring Branch Independent School District*,[123] Judge Milloy articulated the court's post-*Endrew* standard as: "[T]he educational benefit that an IEP is designed to achieve must be 'meaningful' and 'appropriately ambitious in light of the student's circumstances.'"[124]

6. Sixth Circuit

In 2004, in *Deal v. Hamilton County Board of Education*, the Sixth Circuit Court of Appeals joined the Third Circuit to require a "meaningful educational benefit"[125] stating "we agree that the IDEA requires an IEP to confer a 'meaningful educational benefit' gauged in relation to the potential of the child at issue."[126] The Sixth Circuit has not decided a post-*Endrew* substantive FAPE case; however, the standard articulated in the post-*Endrew* district court decisions from the Sixth Circuit appears to focus on the unique needs, circumstances, or potential of the child without addressing an appropriate measure of educational benefit or progress. In *D.L. v. St. Louis City Public School District*, the court for the Eastern District of Missouri, noting that the IEP "must be responsive to the student's specific disabilities, whether academic or behavioral,"[127] held that the responsibility of the district was to provide services "tailored to the unique needs of a particular child."[128] In *Barney v. Akron Board of Education*, the district court for the Northern District of Ohio, stating that the Supreme Court in

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[121] *Id.*

[122] E.R. *ex rel.* S.R. v. Spring Branch Indep. Sch. Dist., No. 4:16-CV-0058, 2017 WL 3017282, at *13 (S.D. Tex. June 15, 2017).

[123] *Id.*

[124] *Id.* (citing Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1001 (2017)).

[125] 392 F.3d 840 (6th Cir. 2004).

[126] *Id.* at 862.

[127] 326 F. Supp. 3d 810, 824 (E.D. Mo. 2018).

[128] *Id.* (citing *Endrew F.*, 137 S. Ct. at 994).

Endrew required an IEP to be "judged as appropriate based on the individual child's potential," described an IEP providing a FAPE as one that is "appropriately ambitious in light of [the child's] circumstances."[129] Lastly, focusing on the child's circumstances, the Eastern District of Tennessee in *I.L. ex rel. Taylor v. Knox County Board. of Education* ruled that although the school district refused to implement 13 of I.L.'s goals when her mother rejected an offer for additional special education services, I.L. was not denied a FAPE.[130]

7. Seventh Circuit

In its 2011 *M.B. ex rel. Berns v. Hamilton Southeastern Schools* opinion, the Seventh Circuit, citing the Second and the Fifth, stated: "We reiterate that an IEP is reasonably calculated to enable the child to receive an educational benefit 'when it is "likely to produce progress, not regression or trivial educational advancement."'"[131] As of July 15, 2018, the Seventh Circuit Court of Appeals had not decided a post-*Endrew* FAPE educational benefits case, nor had any district court in the Seventh Circuit.

8. Eighth Circuit

In 2011, in *K.E. ex rel. K.E. v. Independent School District No. 15*, the Eighth Circuit Court of Appeals, citing *Rowley*, applied the "some educational benefit" standard to determine whether a child was provided a FAPE.[132] Post-*Endrew*, the Eighth Circuit Court of Appeals has not addressed the level of educational benefit or progress required for a FAPE. In its *I.Z.M. v. Rosemount-Apple Valley-Eagan Public Schools* opinion, the Eighth Circuit simply cited *Endrew* for a FAPE requiring "progress appropriate in light of the child's circumstances" and for the IDEA not requiring a particular outcome, *i.e.*, braille sufficiency.[133]

The district courts in the Eighth Circuit have also applied the *Endrew's* "reasonably calculated to enable a child to make progress in

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[129] No. 5:16CV0112, 2017 WL 4226875, at *11 (N.D. Ohio Sept. 22, 2017) (citing *Endrew F.*, 137 S. Ct. at 999).

[130] 257 F. Supp. 3d 946, 981, 995 (E.D. Tenn. 2017).

[131] 668 F.3d 851, 862 (7th Cir. 2011).

[132] 647 F.3d 795, 809 (8th Cir. 2011).

[133] 863 F.3d 966, 971 (8th Cir. 2017).

light of the child's circumstances"[134] standard without addressing the level of educational benefit or progress required for a FAPE.[135] In *Paris School District v. A.H. ex rel. Harter*, the court for the Western District of Arkansas acknowledged that the Supreme Court in *Endrew* had rejected the Eighth Circuit's "merely more than *de minimis*" standard.[136] Recognizing that the hearing officer, pre-*Endrew*, had cited to circuits requiring a higher standard, the court stated that it would apply the *Endrew* standard.[137] In doing so, the district court affirmed the hearing officer's finding that the school district had denied A.H. a FAPE, but did not mention the level of educational benefit or progress required, except to note that the Court in *Endrew* described it as "markedly more demanding."[138]

9. Ninth Circuit

In his amicus brief for the United States in *Endrew*, the U.S. Solicitor General noted that different panels of the Ninth Circuit had disagreed over the correct FAPE educational benefits standard.[139] In its 2010 *J.W. ex rel. J.E.W. v. Fresno Unified School District* decision, the Ninth Circuit Court of Appeals described the appropriate benefit for a FAPE as "meaningful."[140] Post-*Endrew*, the Ninth Circuit decision in *E.F. v. Newport Mesa Unified School District* was remanded by the Supreme Court "for further consideration in light of" its *Endrew* decision.[141] On remand, citing its other 2010 *J.L. v. Mercer Island School District* decision,[142] the Ninth Circuit court found that the standard applied by the ALJ in *E.F.* was "proper even before *Endrew* clarified the Supreme Court's holding in *Rowley*."[143] However, in a footnote in the 2010 *J.L* decision, the Ninth Circuit

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[134] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 998-99 (2017).

[135] *See, e.g.*, Denny v. Bertha-Hewit Pub. Schs., No. 16-cv-1954, 2017 WL 4355968, at *20 (D. Minn. Sept. 29, 2017); Albright v. Mountain Home Sch. Dist., No. 3:16-CV-3011, 2017 WL 2880853, at *4 (W.D. Ark. July 5, 2017).

[136] No. 2:15-CV-02197, 2017 WL 1234151, at *4 (W.D. Ark. Apr. 3, 2017).

[137] *Id.* at *5.

[138] *Id.*

[139] Brief for the United States as Amicus Curiae, s*upra* note 42, at 10 n.4.

[140] 626 F.3d 431, 432-33 (9th Cir. 2010).

[141] 726 F. App'x 535, 536 (9th Cir. 2018).

[142] 592 F.3d 938, 951 n.10 (9th Cir. 2010).

[143] *E.F.*, 726 F. App'x at 537.

acknowledged the confusion in its circuit.[144] Nevertheless, in its unreported opinion in *E.F.*, the Ninth Circuit appears to state the substantive FAPE standard as "'reasonably calculated to enable [E.F.] to receive educational benefits' and make appropriate progress in light of the circumstances."[145] The district courts in the Ninth Circuit have largely applied the *Endrew* substantive FAPE standard without elaborating on the measure of educational benefit or progress required for a FAPE. Some have used the terms "appropriately ambitious" and "challenging objectives" from *Endrew*.[146] In *Unknown Party v. Gilbert Unified School District*, the court for the District of Arizona used the term "meaningful benefit" when it held that although the parents were satisfied with "some progress," the school district could unilaterally change schools to provide more for their son.[147] The court reasoned that a "[s]tudent's circumstances do not require lowering the properly-calibrated IEP goals for his progress."[148]

10. Tenth Circuit

Endrew was a Tenth Circuit case.[149] The Supreme Court vacated the judgment of the Court of Appeals for the Tenth Circuit and "remanded for further proceedings consistent" with its opinion.[150] The Tenth Circuit court in *Endrew* had applied the "more than *de minimis*" standard from its opinion in *Thompson R2-J School District v. Luke P ex rel. Jeff P.*[151] On remand from the Supreme Court, the Tenth Circuit

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[144] *J.L.*, 592 F.3d at 952 n.10. Some confusion exists in this circuit regarding whether the Individuals with Disabilities Education Act requires school districts to provide disabled students with "educational benefit," "some educational benefit" or a "meaningful" educational benefit. *See, e.g.*, N.B. v. Hellgate Elementary Sch. Dist., 541 F.3d 1202, 1212-13 (2008). As we read the Supreme Court's decision in *Rowley*, all three phrases refer to the same standard. School districts must, to "make such access meaningful," confer at least "some educational benefit" on disabled students. *See* Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 172, 202. For ease of discussion, we refer to this standard as the "educational benefit" standard.

[145] *E.F.*, 726 F. App'x at 537 (alteration in original).

[146] *See, e.g.*, Tamalpais Union High Sch. Dist. v. D.W., 271 F. Supp. 3d 1152, 1154 (N.D. Cal. 2017); K.M. *ex rel.* Markham v. Tehachapi Unified Sch. Dist., No. 1:15-cv-001835, 2017 WL 1348807, *17 (E.D. Cal. Apr. 5, 2017); N.G. *ex rel.* Green v. Tehachapi Unified Sch. Dist., No. 1:15-cv-01740-LJO-JLT, 2017 WL 1354687, at *1 (E.D. Cal. Apr. 13, 2017).

[147] No. CV-16-02614-PHX-JJT, 2017 WL 3225189, at *9 (D. Ariz. July 31, 2017).

[148] *Id.*

[149] *See generally* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 798 F.3d 1329 (10th Cir. 2015).

[150] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1002 (2017).

[151] 540 F.3d 1143, 1149 (10th Cir. 2008).

vacated its prior decision and remanded to the District of Colorado to address the Supreme Court's ruling.[152] Judge Babcock, applying the Supreme Court's new substantive FAPE standard, reversed his earlier decision concluding that:

> Petitioner and his parent have met their burden to prove that the District's April 2010 IEP failed to create an educational plan that was reasonably calculated to enable Petitioner to make progress, even in light of his unique circumstances. The IEP was not appropriately ambitious because it did not give Petitioner the chance to meet challenging objectives under his particular circumstances.[153]

The Tenth Circuit Court of Appeals has not decided a post-*Endrew* FAPE educational benefits case and there have been only a few district court decisions to address the substantive FAPE standard. There were two District of Colorado *Smith v. Cheyenne Mountain School District* decisions that appear to involve the same child who was represented by his mother *pro se*. In the May 11, 2017 decision, the court noted that the ALJ's decision preceded the reversal of the Tenth Circuit's "simply more than *de minimis*" standard, but that remand was not necessary because the ALJ found that "M.S. had progressed."[154] The district court concluded that the evidence showed "M.S. made progress in the general education program that was appropriate to his circumstances."[155] In the second *Smith* decision, the court also appears to have applied the *Endrew* FAPE standard without addressing the measure of educational benefit or progress required for a FAPE.[156]

The court for the District of New Mexico combined the words "some" and "meaningful" and "progress" in its *Board of Education of Albuquerque Public Schools v. Maez* decision when it found that "M.M. made some meaningful progress relative to the severity of his disabilities and the IEP was reasonably calculated to enable M.M. to

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[152] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 694 F. App'x 654, 655 (10th Cir. 2017).

[153] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE 1, 290 F. Supp. 3d 1175, 1185-86 (D. Colo. 2018).

[154] No. 15-00881-PAB-CBS, 2017 WL 2791415, at *7 n.11 (D. Colo. May 11, 2017).

[155] *Id.*

[156] Smith v. Cheyenne Mountain Sch. Dist., No. 14-CV-03390-PAB-KHR, 2018 WL 1203172, at *4 (D. Colo. Mar. 6, 2018).

progress in light of his combination of disabilities."[157] The court concluded: "Thus, in light of these unique circumstances, the Court finds M.M. was making some meaningful progress."[158]

11. Eleventh Circuit

In 2001, in *Devine v. Indian River County School Board*, the Eleventh Circuit Court of Appeals stated emphatically that under the IDEA and *Rowley* a child was "only entitled to some educational benefit."[159] The Eleventh Circuit Court of Appeals has not decided a post-*Endrew* substantive FAPE case.

Of the few district court decisions from the Eleventh Circuit to address the new *Endrew* FAPE standard, one is from the Northern District of Alabama and the other from the Middle District of Florida. In *Rosaria M. v. Madison City Board of Education*, the Northern District of Alabama court described the Supreme Court's *Endrew* decision, as in *Rowley*, as charting a "middle course," requiring the court to determine "whether F.M.'s IEP was designed to challenge her and 'to enable her to make progress appropriate in light of [her] circumstances.'"[160] The *S.M. v. Hendry County School Board* case from the Middle District of Florida began with a U.S. Magistrate Judge's recommendation that the district court affirm the ALJ's decision in favor of the school district.[161] In Judge Mirando's Report and Recommendation, she stressed that the IEP must be "reasonable," which depends on the child's "unique needs," and that the program "must be appropriately ambitious" and include "challenging objectives."[162] The Magistrate Judge found that *L.C*'s "IEP was reasonably calculated to enable L.C to receive an educational benefit that would allow him to make appropriate progress in light of his unique circumstances."[163] The district court accepted Judge Mirando's recommendation.[164] In doing so the court reasoned that although the ALJ's decision was three years before *Endrew* and applied the "more than trivial or *de minimis* progress" standard, that Judge Mirando

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157 No. 16-cv-1082 WJ/WPL, 2017 WL 3278945, at *5 (D.N.M. Aug 1, 2017).

158 *Id.* at *13.

159 249 F.3d 1289, 1292 (11th Cir. 2001).

160 325 F.R.D. 429, 447 (N.D. Ala. 2018).

161 No. 2:14-CV-237-FTM-38CM, 2017 WL 9360881, at *21 (M.D. Fla. July 27, 2017).

162 *Id.* at *14.

163 *Id.*

164 *Id.* at *3.

evaluated the case under the new standard and properly determined the ALJ's findings were still entitled to "great deference."[165]

12. D.C. Circuit

In 2015, in *Leggett v. District of Columbia*, the D.C. Circuit Court of Appeals maintained its "some [educational] benefit" standard for a child to receive a FAPE.[166] Post-*Endrew*, the D.C. Circuit remanded the 2018 *Z.B. v. District of Columbia* case for "further consideration" of the adequacy of Z.B.'s IEP under the new *Endrew* standard[167] because it appeared "more demanding" than the standard applied by the district court.[168] Citing *Endrew*, the D.C. Circuit Court of Appeals advised the district court below that the Supreme Court stressed "challenging objectives" that are "appropriately ambitious in light of his circumstances"[169] and that the "key inquiry" was whether the IEP "offered was reasonably calculated to enable the specific student's progress."[170]

A month later, the D.C. district court in *Middleton v. District of Columbia*, quoting the D.C. Court of Appeals in *Z.B. v. District of Columbia* for its "key inquiry,"[171] found that based on the evidence before the IEP team, "it was entirely unreasonable to believe that A.T. could receive meaningful educational benefit on the diploma track."[172]

B. Observations

It will take years for a body of new FAPE cases to advance through the administrative and federal review processes. In fact, in the sixteen months after the Supreme Court's decision in *Endrew*, only the Second, Fifth and Ninth Circuit Courts of Appeals have decided a post-*Endrew* substantive FAPE case.[173] Scholarship analyzing the post-

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165 *Id.* at *2.

166 793 F.3d 59, 70 (D.C. Cir. 2015).

167 888 F.3d 515, 518 (D.C. Cir. 2018).

168 *Id.* at 517.

169 *Id.*

170 *Id.* at 524.

171 312 F. Supp. 3d 113, 128 (D.D.C. 2018).

172 *Id.* at 134.

173 The D.C. Circuit offered advice in an opinion remanding a case to the district court (Z.B. v. D.C., 888 F.3d 515, 518 (D.C. Cir. 2018)) that was later followed by another district court in the D.C. Circuit (*Middleton*, 312 F. Supp. 3d at 128).

Endrew impact on FAPE cases has just begun[174] and will no doubt continue as the case law develops around the new FAPE standard. However, we offer our observations from our review of the cases decided to date.

Of the seventy cases we reviewed and included in the chart at the end of this article, fifty resulted in a FAPE finding. Twenty resulted in a NO FAPE finding. Of the fifty FAPE cases, all but nine began with a FAPE finding at the administrative level that was affirmed by the district court and in some cases the court of appeals for that Circuit. Four of the nine FAPE cases began with a NO FAPE finding but were reversed by the state review officer. One was reversed by the federal district court for applying the incorrect FAPE standard. One denied an injunction advising the parties to develop a new IEP. Two were remanded for further consideration in light of the Supreme Court's decision in *Endrew*. One was remanded by the U.S. Supreme Court resulting in a FAPE finding by the Ninth Circuit Court of Appeals.

Of the twenty NO FAPE cases included in the chart, four were reversals of a FAPE finding at the administrative level, two were reversals of a FAPE finding at the administrative level and remanded for a decision in light of *Endrew*, and one was the *Endrew* decision that was remanded by the Supreme Court resulting in a NO FAPE finding by the District of Colorado. Thirteen of the NO FAPE cases included in the chart began with a NO FAPE finding at the administrative level that was affirmed by the district court and in some cases the court of appeals for that Circuit.

Consistent with the above results, in virtually all seventy opinions we reviewed, the court mentioned or discussed at length the importance of deference to the administrative hearing officer's findings. In fact, in one case the district court referred to the due weight owed the hearing officer's decision as "great deference."[175]

Notably, in forty-nine of the cases reviewed, the parents were seeking monetary relief from the school district. Thirty requested tuition reimbursement for private school. Thirteen requested

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[174] *See, e.g.*, Perry A. Zirkel, *Endrew F. After Six Months: A Game Changer?*, 348 EDUC. LAW REP. 585 (2017); Perry A. Zirkel, *The Aftermath of Endrew F. One Year Later: An Updated Outcomes Analysis*, 352 EDUC. LAW REP. 448 (2018); Mark C. Weber, *Endrew F. and Fry Symposium*, 46 J.L. & EDUC. 425 (2017).

[175] S.M. v. Hendry Cty. Sch. Bd., No. 2:14-cv-237-FtM-38CM, 2017 WL 4417070, at *2 (M.D. Fla. Oct. 5, 2017).

compensatory education. Four requested both. Two requested the school district pay for an independent evaluation.

Regarding the language used by the courts in the various circuits to describe their post-*Endrew* substantive FAPE standard, the question remains what language will be used to quantify the new standard now that "reasonably calculated to enable the child to receive educational benefits"[176] has been replaced with "reasonably calculated to enable a child to make progress in light of the child's circumstances."[177]

In our review of the post-*Endrew* FAPE cases, no circuit used the "merely more than *de minimis*" language rejected by the Supreme Court in *Endrew*[178] and several acknowledged its demise. However, no two circuits used the exact same language or approach. Many courts simply repeated the *Endrew* standard without attempting to quantify the progress required for a FAPE. There was definitely a focus on the circumstances or unique circumstances of the child, although some courts substituted "potential" or "disability" for "circumstances." However, one district court from the Ninth Circuit did caution that the "[s]tudent's circumstances do not require lowering the properly-calibrated goals for his progress."[179]

Some courts described the necessary progress (or benefit) required for a FAPE as "meaningful." One court used the term "some meaningful progress."[180] Some courts combined the old language with the new language like "meaningful educational program that was reasonably calculated to enable M.P. to make progress appropriate in light of his circumstances";[181] or "'reasonably calculated' to enable the child to receive appropriate services in light of the child's individual circumstances" and "services are appropriate when they are reasonably calculated to provide a child with 'meaningful educational benefits.'"[182]

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[176] Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 207 (1982).

[177] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 998-99 (2017).

[178] *Id.* at 1000-01.

[179] Unknown Party v. Gilbert Unified Sch. Dist., No. CV-1602614-PHX-JJT, 2017 WL 3225189, at *9 (D. Ariz. July 31, 2017).

[180] Bd. of Educ. of Albuquerque Pub. Sch. v. Maez, No. 16-cv-1082 WJ/WPL, 2017 WL 3278945 at *13 (D.N.M. Aug 1, 2017).

[181] Mr. P v. W. Hartford Bd. of Educ., 885 F.3d 735, 757 (2d Cir. 2018).

[182] Jack J. *ex rel.* Jennifer S. v. Coatesville Area Sch. Dist., No. 17-CV-3793, 2018 WL 3397552, at *13 (E.D. Pa. July 12, 2018).

Several courts appeared to follow the advice of the Supreme Court in *Endrew* by requiring the IEP to be appropriately ambitious[183] and to include challenging objectives[184] in light of the child's circumstances. One U.S. Magistrate Judge described the proper substantive FAPE standard as "the educational benefit that an IEP is designed to achieve must be 'meaningful' and 'appropriately ambitious in light of the student's circumstances.'"[185]

VI. IMPLICATIONS

In the year and a half since the *Endrew* decision, courts have grappled with the implications of the *Endrew* ruling when adjudicating FAPE cases. In this section we extrapolate implications from the High Court's ruling and subsequent court rulings to this point.

A. Implication-The demise of the *de minimis* educational benefit standard.

The responses of the Supreme Court Justices in the oral arguments clearly revealed their skepticism of the *de minimis* standard. For example, Justice Kagan remarked that the *de minimis* standard "is so low, so easy to meet."[186] Similarly, Justice Ginsburg noted that the "formulation more than *de minimis* sets the level [of educational benefit] too low."[187]

According to the Supreme Court's opinion in *Endrew*:

> When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities receiving, instruction that aims so low would be tantamount to "sitting idly . . . awaiting the

[183] *Endrew F.*, 137 S. Ct. at 1000.

[184] *Id.*

[185] E.R. *ex rel.* E.R. v. Spring Branch Indep. Sch. Dist., No. 4:16-CV-0058, 2017 WL 3017282, at *13 (S.D. Tex. June 15, 2017).

[186] Oral Argument at 32:30, Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017) (No. 15-827), https://www.oyez.org/cases/2016/15-827.

[187] *Id*. at 38:00.

> time when they were old enough to 'drop out.'" The IDEA demands more.[188]

The Supreme Court's new standard is undoubtedly higher than the *de minimis* educational benefit standard. In fact, the Supreme Court found "little significance in the Court's language [in *Rowley*] concerning the requirement that States provide instruction calculated to 'confer some educational benefit.'"[189] The demise of the *de minimis* educational benefit standard seems clear; it is doubtful that the *de minimis* terminology will be used in future FAPE cases.

B. Implication-The Supreme Court raises the educational benefit bar.

In addition to jettisoning the *de minimis* educational benefit standard, the Court clearly favored adopting a higher educational benefit standard. In oral arguments both Justices Kagan and Ginsburg were in favor of adopting "a standard with a bite."[190]

In the *Endrew* opinion, Chief Justice Roberts wrote that a student's "IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement."[191] In fact, the Court found that "[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act."[192] Thus, the Court's new standard is: "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[193]

In addition to the new educational progress standard, the High Court offered guidance on how schools may develop an IEP that is reasonably calculated to provide progress. For example, the Court noted the importance of a full and individualized assessment of a

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188 *Endrew F.*, 137 S. Ct. at 1001 (alteration in original).

189 *Id.* at 998.

190 Amy Howe, *Argument Analysis: Justices Grapple with Proper Standard for Measuring Educational Benefits for Children with Disabilities*, SCOTUSBLOG (Jan. 11, 2017, 6:12PM), http://www.scotusblog.com/2017/01/argument-analysis-justices-grapple-proper-standard-measuring-educational-benefits-children-disabilities/.

191 *Endrew F.*, 137 S. Ct. at 999.

192 *Id.*

193 *Id.*

student's needs that becomes the basis of his or her IEP. According to the High Court:

A focus on the particular child is at the core of the IDEA. The instruction offered must be "*specially* designed" to meet a child's "*unique* needs" through an "[*i*]*ndividualized education program*." An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth.[194] The resulting IEP must then include challenging, ambitious, and measurable annual goals and special education services, related services, and program modifications that are based on peer-reviewed research to the extent practicable.[195] Moreover, the IEP must include a method for monitoring and measuring student progress during the course of instruction so that educational changes may be made if necessary.[196] Appropriate training is of utmost importance in developing teachers and administrators who can draft IEPs that (a) are based on relevant and meaningful assessment, (b) include ambitious measurable annual goals, and (c) measure students' progress using evidence-based strategies.[197]

According to the Supreme Court, 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."[198]

C. Implication-The importance of the right words.

Justice Sotomayor believed that "the [IDEA] provides enough to set a clear standard."[199] She also summed up the court's dilemma in attempting to elevate the educational benefit standard when she remarked that "the words are what we're trying to . . . come to that would be less confusing to everyone."[200]

Time will tell if the emphasis on "progress appropriate in light of the child's circumstances"[201] proves to be less confusing to the

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194 *Id.*

195 Yell et al., *supra* note 23, at 83.

196 *Id.*

197 *Id.*

198 Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1000 (2017).

199 Oral Argument, *supra* note 186, at 21:50.

200 *Id.*

201 *Endrew F.*, 137 S. Ct. at 999.

courts. The words, however, have not proven to be confusing to either the U.S. Department of Education or advocacy groups.

On December 7, 2017, the Office of Special Education and Rehabilitative Services (hereinafter "OSERS") in the U.S. Department of Education issued a question and answer document on the *Endrew* ruling.[202] Part of the mission of OSERS is to develop and disseminate information on federal policy regarding the IDEA in the form of guidance documents and letters. The purpose of these documents is to provide important information to officials in state education agencies and school districts on their obligations in implementing the IDEA.

According to the Department, the *Endrew* ruling was particularly important because it "informs our efforts to improve academic outcomes for children with disabilities."[203] Therefore, the purpose of this particular guidance document was to provide "parents and other stakeholders information on the issues addressed in *Endrew F.* and the impact of the Court's decision on the implementation of the IDEA."[204]

The Department's document is divided into the following three sections: (a) an overview that explains the facts and the ruling, (b) a clarification of the IDEA's FAPE requirement, and (c) the Department's interpretation of how the *Endrew* ruling can be implemented in special education programs.[205] The question and answer document is very specific in the advice it provides to special educators. For example, some of the questions posed and answered include the following: Question 11 "What does 'progress appropriate in light of the child's circumstances mean?" Question 12, "How can an IEP Team ensure that every child has the chance to meet challenging objectives?" Question 13, "How can IEP Teams determine if IEP annual goals are appropriately ambitious?" Question 15, "What actions should IEP Teams take if a child is not making progress at the level the IEP Team expected?"[206]

Similarly, an organization consisting of fifteen nonprofit parent advocacy groups for children and youth with disabilities called

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[202] 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.

[203] *Id.* at 1.

[204] *Id.*

[205] *Id.* at 2.

[206] *Id.*

Understood maintains a website for parents of children with disabilities.[207] A few months after the Supreme Court's decision in *Endrew* the website posted the downloadable "*Endrew F.* Advocacy Toolkit."[208] The toolkit includes the "*Endrew F.* Talking Points to Advocate for Your Child."[209] The talking points document consists of eight points including an area that should be discussed at a child's IEP meeting, a quotation from the *Endrew* opinion that addresses that point, another quotation from the U.S. Department of Education's letters of policy guidance that also addresses that point, and an explanation of what the quotation means written in parent-friendly language. The second document in the toolkit is the "*Endrew F.* Worksheet for Strengthening Your Child's IEP."[210] The Worksheet consists of eight points, each of which includes the relevant talking point, two lists that require a child's parents to write down what they were dissatisfied with about their child's IEP (e.g., "List where you feel your child's IEP goals aren't ambitious enough.") and what actions they would like to see taken by the IEP team (e.g., "What goals would you like to see?"), and a suggested script for the parents to use at the IEP meeting (e.g., "I know that my child's goals should be appropriately ambitious. Even if my child is behind in academics, the IEP goals should aim to help my child catch up."). The availability of this information increases the likelihood that IEP teams will include parents of children and youth with disabilities and advocates who are knowledgeable about the *Endrew* ruling and are equipped to discuss the decision at IEP team meetings.

The largest professional organization for teachers and administrators in special education and for children and youth with disabilities and their parents is the Council for Exceptional Children.[211]

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[207] UNDERSTOOD, HTTPS://WWW.UNDERSTOOD.ORG/EN (LAST VISITED JAN. 30, 2019).

[208] *Endrew F. Advocacy Toolkit*, UNDERSTOOD, https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/download-endrew-f-advocacy-toolkit (last visited Jan. 30, 2018).

[209] *Endrew F. Talking Points to Advocate for Your Child*, UNDERSTOOD, https://www.understood.org/~/media/7bea7527cfb14717b42e0689ae5a57be.pdf (last visited Jan. 30, 2019).

[210] *Endrew F. Worksheet for Strengthening Your Child's IEP*, UNDERSTOOD, https://www.understood.org/~/media/1354d644263349ac930decaed20a8389.pdf (last visited Jan. 30, 2019).

[211] COUNCIL FOR EXCEPTIONAL CHILDREN, HTTPS://WWW.CEC.SPED.ORG/ (LAST VISITED JAN. 30, 2019).

The Council has undertaken an effort to inform their membership about the *Endrew* decision through webinars and publications.[212]

Our analysis of the case law since the *Endrew* ruling affirms the importance deference plays in the U.S. District Courts and U.S. Courts of Appeals decisions. Of course, the role that deference plays is mitigated by the facts and the Supreme Court's acknowledgement that "[a] reviewing court may fairly expect those [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances."[213]

D. Implication-The importance of parental participation in the special education process.

According to Barbara Bateman, the most basic procedural requirement of the IDEA, is that parents must be full and equal participants with school district personnel in the development of their child's special education program.[214] In fact, in the 1982 Rowley decision, Chief Justice Rehnquist wrote:

> [W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.[215]

Similarly, in the *Endrew* ruling, the Supreme Court noted that a child's "IEP must be drafted in compliance with a detailed set of procedures . . . [that] emphasize collaboration among parents and educators."[216] Additionally, in *Winkelman v. Parma City Sch. Dist.*,[217]

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[212] *Id*.

[213] Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 1002 (2017).

[214] Barbara D. Bateman, *Individual Education Programs for Children with Disabilities*, *in* HANDBOOK OF SPECIAL EDUCATION 87, 88 (James M. Kauffman et al. eds., 2012).

[215] Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 205, 205-06 (1982).

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

[217] 550 U.S. 516, 533 (2007).

the High Court held that a student's parents can prosecute their own IDEA claims in federal court *pro se* because the "IDEA grants parents independent, enforceable rights" including not only rights related to certain procedural and reimbursement matters but also the "entitlement to a free appropriate public education" for their child.[218] Moreover, according to the IDEA, procedural violations committed by school district personnel may lead to a ruling that FAPE was denied when the procedural violations "significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child."[219] Seemingly, the IDEA and these special education rulings from the Supreme Court put parents and school district personnel on a level playing field.

In practice, however, the existence of a level playing field between parents and school district personnel is uncertain. In 2005, the U.S. Supreme Court in *Schaffer v. Weast*[220] ruled that when parents challenge their child's FAPE, because they are the party seeking relief, they bear the burden of proof.[221] Thus, parents must have more evidence on their side to prevail and they will lose even in situations in which the evidence presented by both sides is essentially equal. Because school districts have more funds to spend on experts and experienced attorneys, this decision seems to tilt the playing field in favor of the school district. In 2006, the playing field became even less level when the Supreme Court, in *Arlington Central School District Board of Education v. Murphy*, ruled that even in situations in which parents prevail in IDEA cases, they are not entitled to be reimbursed for fees spent on expert witnesses.[222] In his dissent, Justice Breyer, joined by Justices Souter and Stevens, noted that Congress had intended to include expert witness fees as recoverable costs as indicated in the conference committee report.[223] Justice Breyer argued that parents' "rights and procedural protections may be seriously diminished if parents are unable to obtain reimbursement for the costs of their experts."[224] Justice Breyer also noted that requiring parents to

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218 *Id.*

219 Individuals with Disabilities Education Act, 20 U.S.C. § 1415(f)(3)(E)(ii)(II) (2018).

220 546 U.S. 49 (2005).

221 *Id.* at 51.

222 548 U.S. 291, 304 (2006).

223 *Id.* at 309 (Breyer, J., dissenting).

224 *Id.* at 313-14.

bear the costs of their own experts is "a far cry from the level playing field that Congress envisioned."[225]

Claire Raj and Emily Suski wrote on the burden of these two rulings:

> This burden is felt most keenly by parents of limited financial means who are unable to pay for experts and attorneys who would help them carry this weight and serve as a true check on a school's duty to provide a FAPE that enables their child "to make progress appropriate in light of [his or her] circumstances."[226]

Raj and Suski also suggested that when Congress revisits the IDEA, because school districts have an affirmative duty to provide a FAPE, the law should be amended to shift the burden of proof from parents to school district officials.[227] Similarly, allowing the recovery of expert witness fees would help to level the playing field, as the IDEA Fairness Restoration Act bill attempted to do in 2011.[228] This effort, which was introduced in the House by then Congressman Chris Van Hollen and in the Senate[229] by then Senator Thomas Harkin, did not become law.

VII. CONCLUSION

It is clear that the *de minimis* or trivial view of educational benefit has been overturned in *Endrew*. To ensure adherence to the new educational benefit standard, students' IEPs must be based on relevant, meaningful, and individualized assessments of their needs. Additionally, students' annual IEP goals should be challenging, appropriately ambitious, and measurable. Finally, students' progress toward their annual goals should be monitored using databased measurement systems. When determining whether a school district has met the educational benefit standard of *Endrew*, and provided a student with FAPE, hearing officers and judges will need to determine if an IEP was reasonably calculated to enable the student to make

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[225] *Id.* at 316.

[226] Claire Raj & Emily Suski, *Endrew F.'s Unintended Consequences*, 46 J.L. & EDUC. 499, 525 (2017) (alteration in original).

[227] *Id.* at 524.

[228] H.R. 1208, 112th Cong. (1st Sess. 2011), https://www.congress.gov/bill/112th-congress/house-bill/1208. *See also* Raj & Suski, *supra* note 226, at 524.

[229] S. 613, 112th Cong. (1st Sess. 2011), https://www.congress.gov/bill/112th-congress/senate-bill/613.

progress appropriate in light of his or her circumstances. It will take time and future decisions to determine exactly how courts will interpret the *Endrew* standard. It would appear, nonetheless, that the *Endrew* ruling was a victory for students with disabilities and their parents.

Appendix A: Federal Courts Applying the New *Endrew* FAPE Standard[1]

First Circuit			
FAPE educational benefit standard prior to *Endrew*			
D.B. *ex rel.* Elizabeth B. v. Esposito, 675 F.3d 26, 34-35 (1st Cir. 2012). *Verbal apraxia, which is a motor speech disorder, and with dysarthria, which is a weakening of the speech-producing muscles	At the same time, the IDEA calls for more than a trivial educational benefit, in line with the intent of Congress to establish a "federal basic floor of meaningful, beneficial educational opportunity." *Town of Burlington v. Dep't of Educ. of Mass.*, 736 F.2d 773, 789 (1st Cir. 1984). Hence, to comply with the IDEA, an IEP must be reasonably calculated to confer a meaningful educational benefit. *See D.S.*, 602 F.3d at 557 ("[T]he IEP must be reasonably calculated to enable the child to receive meaningful educational benefits. . . .") (internal quotation marks omitted); *D.F. ex rel. N.F. v. Ramapo Cent. Sch. Dist.*, 430 F.3d 595, 598 (2d Cir. 2005) ("A valid IEP should provide for the opportunity for more than trivial advancement . . . such that the door of public education is opened for a disabled child in a meaningful way." (internal quotation marks and citation omitted)); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 862 (6th Cir. 2004) ("[T]he IDEA requires an IEP to confer a meaningful educational benefit. . . ." (internal quotation marks omitted)).		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* First Circuit Court of Appeals opinions addressing its effect on prior precedent (See district court decisions below).			
Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
C.D. *ex rel.* M.D. v. Natick Pub. Sch. Dist., No. 15-cv-13617-FDS, 2017 WL 3122654, at *16 (D. Mass. July 21, 2017). *Learning disabilities	HO found a FAPE and denied reimbursement for private school tuition. Parent sought review in district court.	**FAPE** Denied parents' motion for SJ. Remanded to determine if IEP in LRE for two school years.	The Court agrees with the hearing officer that the standard articulated in *Endrew F.* is not materially different from the standard set forth in *Elizabeth B.*, and applied by the hearing officer, at least as it applies to the facts of this case. . . . Rather, *Endrew F.* explains that the benefit to be provided is "appropriate" educational progress. That is consistent with a "meaningful educational benefit." *See Brandywine Heights Area Sch. Dist. v. B.M.*, 2017 WL 1173836, at *10 n.25 (E.D. Pa. March 29, 2017) (concluding that "meaningful educational benefit" standard applied by hearing officer is consistent with *Endrew F.*).

[1] Each entry under Language Used to Describe the FAPE Standard is quoted directly from that court's opinion. Abbreviations used in the chart include FAPE for free appropriate public education; HO for hearing officer; AHC for administrative hearing officer; SRO for state review officer; SRLO for state level review officer; and SJ for summary judgment. A map of the U.S. Courts of Appeals and the U.S. District Courts can be found at http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links.

Second Circuit			
FAPE educational benefit standard prior to *Endrew*			
Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 130 (2d Cir. 1998). *Learning disability	Plainly, however, the door of public education must be opened for a disabled child in a "meaningful" way. *Board of Educ. v. Rowley*, 458 U.S. at 192, 102 S.Ct. at 3043-44. This is not done if an IEP affords the opportunity for only "trivial advancement." *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d at 1121 (quoting *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 183 (3d Cir. 1988)). An appropriate public education under IDEA is one that is "likely to produce progress, not regression." *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (3d Cir. 1997) (internal citation omitted), *cert. denied*, 522 U.S. 1047, 118 S. Ct. 690, 139 L. Ed. 2d 636 (1998).		
FAPE educational benefit standard after *Endrew*			
Mr. P v. W. Hartford Bd. of Educ., 885 F.3d 735, 757 (2d Cir. 2018).	Merely crossing the threshold of "trivial advancement" does not satisfy the IDEA, as the *Walczak* court and the Supreme Court have explained. We affirm the judgment of the district court because the record indicates that the District provided M.P. with a meaningful educational program that was reasonably calculated to enable M.P. to make progress appropriate in light of his circumstances. *Endrew F.*, 137 S. Ct. at 1001.		
Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
Mr. P v. W. Hartford Bd. of Educ., 885 F.3d 735, 757 (2d Cir. 2018). *Emotional Disturbance	HO found a FAPE and denied compensatory education. District court denied parents' motion for SJ and granted SJ to the district.	**FAPE** Second Circuit affirmed the judgment of the district court. March 23, 2018 Petition for Cert. filed June 25, 2018.	Prior decisions of this Court are consistent with the Supreme Court's decision in *Endrew F.* Hence, this Court has emphasized that the substantive adequacy of an IEP is focused on whether an IEP was "reasonably calculated to enable the child to receive educational benefits" and "likely to produce progress, not regression." *A.M.*, 845 F.3d at 541. . . . We affirm the judgment of the district court because the record indicates that the District provided M.P. with a meaningful educational program that was reasonably calculated to enable M.P. to make progress appropriate in light of his circumstances. *Endrew F.*, 137 S. Ct. at 1001.
J.P. *ex rel.* J.P. v. City of N.Y. Dep't of Educ., 717 F. App'x 30, 31 (2d Cir. 2017). Not selected for publication *Other Health Impaired (OHI)	IHO and SRO found a FAPE and denied reimbursement for private school tuition. District Court affirmed IHO and SRO decisions. Parents appealed.	**FAPE** Second Circuit affirmed the Judgment of the district court.	A substantively adequate IEP is one "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, — U.S. —, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).
N.B. v. N.Y.C. Dep't of Educ., 711 F. App'x 29, 32 (2d Cir. 2017). *Autism	SRO found a FAPE and denied reimbursement for private school tuition. District court granted SJ motion to NYC DOE. Parents appealed.	**FAPE** Second Circuit affirmed the district court decision.	Second, we consider whether, substantively, the IEP is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, — U.S. —, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). As to this latter requirement, the IEP need not bring the child to grade-level achievement, but it must aspire to provide more than *de minimis* educational progress. *Id.* at 1000-01.

D.B. v. Ithaca City Sch. Dist., 690 F. App'x 778, 783 (2d Cir. 2017). *Non-verbal learning disability	SRO found a FAPE and denied reimbursement for private school tuition. District court granted SJ to school district. Parent appealed.	**FAPE** Second Circuit affirmed the district court decision.	In assessing substantive adequacy, we are mindful of IDEA's mandate for "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Educ. v. Rowley*, 458 U.S. 176, 203, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982); *accord Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, —— U.S. ——, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017) (holding that "school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and that "question is whether the IEP is *reasonable*, not whether the court regards it as ideal" (emphasis in original)). . . . After an independent review of the record, we reach the same conclusion as the district court and the SRO: L.B.'s IEP was sufficiently tailored to her needs to ensure meaningful progress.
R.B. v. N.Y.C. Dep't of Educ., 689 F. App'x 48, 51 (2d Cir. 2017). Not selected for publication *Autism	IHO found a FAPE and denied reimbursement for private school tuition. SRO reversed. District court affirmed the SRO.	**FAPE** Second Circuit affirmed the SRO and district court decisions to reverse the denial of reimbursement.	Second, we consider whether, substantively, the IEP is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, —— U.S. ——, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). As to this latter requirement, the IEP need not bring the child to grade-level achievement, but it must aspire to provide more than *de minimis* educational progress. *Id.* at 1000-01.
C.S. v. Yorktown Cent. Sch. Dist., No. 16-CV-9950 (KMK), 2018 WL 1627262, at *10 (S.D.N.Y. Mar. 30, 2018). *ADHD, Developmental Coordination Disorder, and Tourette's Syndrome	SRO found a FAPE. Parents sought review in district court.	**FAPE** District court denied parents' SJ motion. Judgment for district.	"The IDEA . . . requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1000; *see also Mr. P v. W. Hartford Bd. of Educ.*, —— F.3d ——, 2018 WL 1439719, at *16 (2d Cir. Mar. 23, 2018) ("Prior decisions of this Court are consistent with the Supreme Court's decision in *Endrew F.*"); *L.O.*, 822 F.3d at 103 ("To comply with the provisions of the IDEA, the IEP must be reasonably calculated to enable the child to receive educational benefits." (internal quotation marks omitted)).
M.B v. City Sch. Dist. of New Rochelle, No. 17-CV-1237 (KBF), 2018 WL 1609266, at *14 (S.D.N.Y. Mar. 29, 2018). *Hydrocephalus, macrocephaly, epilepsy, cerebral palsy, and spastic dysplasia	IHO found NO FAPE. SRO reversed, but denied compensatory damages. Parents sought review in district court.	**FAPE** District court denied parents' SJ motion and found that the district provided a FAPE.	A FAPE must include "special education and related services tailored to meet the unique needs of a particular child" and must be "reasonably calculated to enable the child to receive educational benefits." *Gagliardo*, 489 F.3d at 107 (internal quotation omitted); *see also Endrew F.*, 137 S. Ct. at 1000-01 (holding that an educational program must provide for more than just *de minimis* progress from year to year). In order to provide a FAPE, the applicable local agency must develop an IEP that is "likely to produce progress, not regression," and "afford[] the student with an opportunity greater than mere trivial advancement." *T.P.*, 554 F.3d at 254 (internal quotation omitted).

M.E. v. N.Y.C. Dep't of Educ., No. 15-CV-5306(VSB), 2018 WL 582601, at *2-4 (S.D.N.Y. Jan. 26, 2018). *Autism Spectrum Disorder, Expressive Language Disorder, Sensory Integration Disorder, motor deficits, and difficulties with attention	IHO found a FAPE. SRO affirmed and denied reimbursement for private school tuition. Parents sought review in district court.	**FAPE** District court granted SJ to DOE's motion and dismissed the case.	"A FAPE consists of special education and related services tailored to meet the unique needs of a particular child, which are reasonably calculated to enable the child to receive educational benefits, and provided in conformity with an individualized education program, or IEP." *Hardison v. Bd. of Educ.*, 773 F.3d 372, 376 (2d Cir. 2014) (quoting *Reyes ex rel. R.P. v. N.Y.C. Dep't of Educ.*, 760 F.3d 211, 214 (2d Cir. 2014)). This means that "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999.
Bd. of Educ. of Wappingers Cent. Sch. Dist. v. M.N., No.16-CV-09448(TPG), 2017 WL 4641219, at *10 (S.D.N.Y. Oct. 13, 2017). *ADHD, reactive disorder (RAD), and mood disorder	SRO found NO FAPE and awarded private school tuition reimbursement. District sought review in district court.	**NO FAPE** District court affirmed SRO's decision and tuition reimbursement.	Second, the court considers whether the IEP is substantively sound—whether it is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017).
S.B. v. N.Y.C. Dep't of Educ., No. 15-CV-1869, 2017 WL 4326502, at *34 (E.D.N.Y. Sept. 28, 2017). *Speech and language disability	IHO and SRO found a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**NO FAPE** District court reversed decisions of IHO & SRO and ordered tuition reimbursement. Grants SJ to parents.	The Court next considers the substantive adequacy of the IEP. To satisfy this prong, the DOE must offer the child special education and related services that are "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. The focus on the individual child is critical. . . . A valid IEP must "set out a plan for pursuing academic and functional advancement," that is "focused on student progress" and provides opportunities to "meet challenging objectives." *Id.* at 999-1000.
J.R. *ex rel.* J.R. v. N.Y.C. Dep't of Educ., No. 15-CV-364 (SLT) (RML), 2017 WL 3446783, at *66 (E.D.N.Y. Aug. 10, 2017). *Speech and language impairments	IHO found NO FAPE and awarded private school tuition reimbursement. SRO reversed. Parents sought review in district court.	**FAPE** District court deferred to SRO. Granted SJ to DOE. Appeal to 2nd Circuit Sept. 8, 2017	Plaintiffs have not pointed to any other evidence, certainly not the evaluative information, indicating that the IEP's recommended program and placement were not reasonably calculated to allow J.R. to experience educational benefits or make progress that is appropriate in light of his circumstances in the least restrictive environment.

F.L. v. Bd. of Educ. of Great Neck U.F.S.D., 274 F. Supp 3d 94, 119 (E.D.N.Y. 2017). *¶Learning disabilities and vision-related deficits	IHO found NO FAPE and awarded compensatory education. SRO reversed. Parents sought review in district court.	**FAPE** District court granted DOE's SJ motion. Appealed to 2nd Circuit Sept. 15, 2017	Therefore, a school district satisfies its obligations arising under the IDEA "if it provides an IEP that is likely to produce progress, not regression, and if the IEP affords the student with an opportunity greater than mere trivial advancement." *M.P.G. ex rel. J.P. v. New York City Dep't of Educ.*, No. 08 Civ. 8051, 2010 WL 3398256, at *10 (S.D.N.Y. Aug. 27, 2010) (citing *Cerra*, 427 F.3d at 195).
Avaras v. Clarkstown Cent. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402, at *10 (S.D.N.Y. July 17, 2017). *¶Learning disabilities	IHO and SRO found a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**NO FAPE** District court found denial of FAPE for two school years and private placement appropriate. Remanded to IHO to consider reimbursement. Appealed to 2nd Circuit Aug. 25, 2017.	As the Second Circuit has recently described it, this means "an education 'likely to produce progress, not regression,' and one that 'afford[s] the student with an opportunity greater than mere trivial advancement.'" *Id.* (quoting *M.O. v. N.Y.C. Dep't of Educ.*, 793 F.3d 236, 239 (2d Cir.2015)); *accord Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) ("a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all").
G.S. *ex rel.* L.S. v. Fairfield Bd. of Educ., No. 3:16-cv-1355 (JCH), 2017 WL 2918916, at *6 (D. Conn. July 7, 2017). *ADHD	HO found NO FAPE for 2015-16 year and private placement appropriate. Denied reimbursement for tuition. Parents sought review in district court.	**NO FAPE** District court found denial of a FAPE for 2015-16 school year reimbursement. Denied for 2014-15 school year-FAPE.	In reviewing the adequacy of an IEP, the "question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Endrew F.*, 137 S. Ct. at 999. As noted above, the IDEA requires that a FAPE must provide "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 1001.
M.M. v. N.Y.C. Dep't of Educ., No. 15 Civ. 5846 (PKC), 2017 WL 1194685, at *1 (S.D.N.Y. Mar. 30, 2017). *Autism	SRO found NO FAPE and awarded compensatory education. Parent sought review of amount of compensatory education in district court.	**NO FAPE** District court granted DOE's SJ motion upholding the amount of compensatory education granted by SRO.	For a student not fully integrated in the regular classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] 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." *Id.* at 25. This standard is "markedly more demanding" than the one the Court rejected in *Endrew F.*, under which an IEP was adequate so long as it was calculated to confer "some educational benefit," that is, an educational benefit that was "merely" more than "*de minimis*." *Id.* at 17, 26.

A.G. v. Bd. of Educ. of the Arlington Cent. Sch. Dist., No. 16 CV 1530 (VB), 2017 WL 1200906, at *8 (S.D.N.Y. Mar. 29, 2017). *Learning disability, primarily dyslexia	IHO found a FAPE and denied reimbursement for private school tuition. SRO affirmed. Parents sought review in district court.	**FAPE** District court denied parents' SJ motion and affirmed SRO decision.	"To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 2017 WL 1066260, at *10. "Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id.* (citing Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. at 206-07). "The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.*

Third Circuit			
FAPE educational benefit standard prior to *Endrew*			
Ridley Sch. Dist. v. M.R., 680 F.3d 260, 268-69 (3d Cir. 2012). *Learning disabilities	A FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." *Rowley*, 458 U.S. at 188–89, 102 S. Ct. 3034. Although a state is not required to maximize the potential of every handicapped child, it must supply an education that provides "significant learning" and "meaningful benefit" to the child. *D.S.*, 602 F.3d at 556 (citing *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999)). "[T]he provision of merely more than a trivial educational benefit" is insufficient. *L.E. v. Ramsey Bd. of Educ.*, 435 F.3d 384, 390 (3d Cir. 2006) (internal marks and citations omitted).		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* Third Circuit Court of Appeals opinions addressing its effect on prior precedent (See district court decisions below).			
Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
Jack J. *ex rel.* Jennifer S. v. Coatesville Area Sch. Dist., No. 17-CV-3793, 2018 WL 3397552, at *13 (E.D. Pa. July 12, 2018). *ADHD	HO found a FAPE and denied compensatory education. Parents sought review in district court.	**FAPE** District court affirmed HO's decision. Denied motion by parent. Granted motion by District.	In *Endrew F.*, the Supreme Court highlighted that there is no set formula for determining what constitutes "appropriate services" or a "meaningful educational benefit." *Endrew F.*, 137 S. Ct. at 1000. The Hearing Officer's decision correctly identified the appropriate standard established in leading Supreme Court and Third Circuit precedent, writing "[t]he IEP must be 'reasonably calculated' to enable the child to receive appropriate services in light of the child's individual circumstances" and "services are appropriate when they are reasonably calculated to provide a child with 'meaningful educational benefits.'" (H.O. Rpt. at 13) (citing *Endrew F.*, 137 S. Ct. at 999 (2017); *Shore*, 381 F.3d 194, 198 (3d Cir. 2004) (string cite omitted)).
Geniviva *ex rel.* Geniviva v. Hampton Twp. Sch. Dist., No. 17-cv-351, 2018 WL 2335878, at *4 (W.D. Pa. May 23, 2018). *Down Syndrome and an expressive language disorder	HO found a FAPE and denied reimbursement for private school tuition. Parents sought review in district court.	**FAPE** District's motion granted. Parents' motion denied. HO decision affirmed.	In 2017, the Supreme Court rejected the argument that the IDEA requires only that an IEP confer an educational benefit that is "merely more than *de minimus*" and held instead that, "to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew*, 137 S. Ct. at 991. Moreover, the IDEA mandates that eligible students be educated in the "least restrictive environment" (LRE) which permits them to derive meaningful educational benefit. *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000).

Colonial Sch. Dist. v. G.K. *ex rel.* A.K., No. 17-cv-3377, 2018 WL 2010915, at *11 (E.D. Pa. Apr. 30, 2018). *Autism	HO found NO FAPE and awarded compensatory education. District sought review in district court.	**FAPE** District court found HO based award on erroneous standard of progress and should be overturned. Appealed to 3d Cir. May 31, 2018	The School District is correct in arguing that it cannot be determined whether an IEP was appropriate solely by evaluating a child's progress or lack of progress under that IEP. In *Board of Education of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176 (1982), the United States Supreme Court for the first time addressed the FAPE requirement. It held that the IDEA guarantees an education program that is "reasonably calculated to enable the child to receive educational benefits." *Id.* at 207. However, it did not "guarantee any particular level of education." *Id.* at 192. Recently, the Supreme Court reiterated that finding, adding: "No law could do that—for any child." *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 998 (2017).
D.B. *ex rel.* M.B. and A.B. v. Fairview Sch. Dist., No. 15-cv-00085, 2017 WL 4923514, at *6, *7 (W.D. Pa. Oct. 31, 2017). *ADHD, OCD, anxiety and speech and language impairments.	HO found a FAPE and denied compensatory education despite delay in reevaluation. Parents sought review in district court.	**FAPE** District's motion granted. Parents' motion denied. HO decision affirmed.	While he continued to experience some periods of frustration and crying, overall, his IEP was reasonably calculated to enable D.B. to make progress in light of his circumstances, and therefore afforded him a free and appropriate public education. *Endrew F.*, 137 S. Ct. at 1002. The data collected, while not retained by the school district over the long-term, sufficiently tracked D.B.'s behavior to reflect the success of the IEP and strategies contained therein. Accordingly, the District implemented an IEP that reflected a comprehensive strategy to address D.B.'s behavior which, until January 2014, permitted him to make meaningful educational progress.
Montgomery Cty. Intermediate Unit No. 23 v. C.M., No. 17-cv-1523, 2017 WL 4548022, at *6 (E.D. Pa. Oct. 12, 2017). *Emotional disturbance	HO found a FAPE denied and awarded compensatory education. District sought review in district court.	**NO FAPE** District court granted district's motion for time FAPE provided. Denied for time FAPE not provided.	On appeal, MCIU first asserts that the hearing officer applied the incorrect standard in determining whether C.M. was denied a FAPE. In his decision, the hearing officer stated that an IEP must be "reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." This standard was appropriate in light of precedent from our Court of Appeals at the time. *See Mary Courtney T. v. Sch. Dist. of Phil.*, 575 F.3d 235, 240 (3d Cir. 2009); *Shore Reg'l High Sch. Bd. of Ed. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004). Furthermore, the language "in light of the student's intellectual potential" is substantively similar to the "in light of the child's circumstances" standard announced in *Endrew F.*

Methacton Sch. Dist. v. D.W., No. 16-cv-2582, 2017 WL 4518765, at *4, *6 (E.D. Pa. Oct. 6, 2017). *¶Learning disabilities	HO found NO FAPE denied and awarded private school tuition reimbursement. District sought review in district court.	**NO FAPE** District court denied district's motion. Granted parents' motion. Affirmed HO's decision.	Although the state is not required to "maximize the potential of every handicapped child," it must provide an education that confers a "meaningful benefit" to each child. *Ridley School Dist. v. M.R.*, 680 F.3d 260, 268 (3d Cir. 2012). The benefit must be substantial, not minimal. *Endrew F.*, 137 S. Ct. at 1001. A FAPE must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," and must offer "'more than *de minimus*' progress from year to year. . . ." *Endrew*, 137 S. Ct. at 1001.
Pocono Mountain Sch. Dist. v. J.W. *ex rel.* J.W., No. 3:16-CV-0381, 2017 WL 3971089, at *7, *10 (M.D. Pa. Sept. 8, 2017). *¶Pervasive developmental disorder, Asperger's Disorder, ADHD, Oppositional Defiant Disorder, Language Disorder, Developmental Coordination Disorder and Mood Disorder.	HO found NO FAPE and awarded compensatory education. District sought review in district court.	**NO FAPE** District court denied district's motion. Granted parents' motion. Affirmed HO's decision.	Considering the testimony and documents presented at the due process hearing, the District failed to offer Student an educational program reasonably calculated to allow him to make behavioral progress in light of his circumstances. *See Endrew F.*, 137 S. Ct. at 1001. The Hearing Officer's award of compensatory education will be affirmed. Here, as explained previously, Student was provided an educational program offering, at most, *de minimis* academic and behavioral progress from year to year. Such a program does not satisfy the IDEA. *See Endrew F.*, 137 S. Ct. at 1001.
K.D. *ex rel.* Dunn v. Downingtown Area Sch. Dist., No. 16-cv-0165, 2017 WL 3838653, at *8, *9 (E.D. Pa. Sept. 1, 2017). *¶Learning disability & ADHD	HO found a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**FAPE** District court granted district's motion. Denied parents' motion. Affirmed HO's decision. Appealed to the 3d Cir. Sept. 22, 2017	K.D.'s IEPs were reasonably calculated to enable her to make meaningful progress appropriate in light of her circumstances. For these reasons, this case is a perfect example of the tension between "potential" and "progress." Although minimal progress may sometimes be evidence of denial of a FAPE, *M.C. ex rel. J.C. v. Central Reg'l Sch. Dist.*, 81 F.3d 389, 392-93 (3d Cir. 1996), a particular child's progress must always be assessed alongside that child's "potential," *Endrew F.*, 137 S. Ct. at 999. In K.D.'s case, her progress must necessarily be considered in light of the fact that she suffers from a severe learning disability and ADHD.

Benjamin A. *ex rel.* Michael A. v. Unionville-Chadds Ford Sch. Dist., No. 16-cv-2545, 2017 WL 3482089, at *8 (E.D. Pa. Aug. 14, 2017). *Health impairment (seizure disorder)	HO found a FAPE and denied compensatory education and reimbursement for private school tuition and expert report. Parents sought review in district court.	**FAPE** District court granted district's motion. Denied parents' motion. Affirmed HO's decision.	As the Supreme Court recently clarified, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). An IEP need not "provide 'the optimal level of services,' or incorporate every program requested by the child's parents" but rather need only, at a minimum, "be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *Ridley*, 680 F.3d at 269 (quoting *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 557 (3d Cir. 2010)) (internal quotations omitted).
Sean C. *ex rel.* Helen C. v. Oxford Area Sch. Dist., No. 16-cv-5286, 2017 WL 3485880, at *9 n.13 (E.D. Pa. Aug. 14, 2017). *Learning disabilities	HO found a FAPE and denied request for compensatory education. Parents sought review in district court.	**FAPE** District court granted district's motion. Denied parents' motion. Affirmed HO's decision. Appealed to 3d Cir. Sept. 14, 2017	The Tenth Circuit's "*de minimis*" test differs from the standard employed by the Third Circuit Court of Appeals prior to the *Endrew F.* decision, *see M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396 (3d Cir. 1996), and was not applied by the Hearing Officer in this case. The standard employed by the Hearing Officer required that the IEP be "reasonably calculated to yield meaningful educational benefit to the student." (HOD at 7). This standard does not "differ substantively from the standards adopted by the Supreme Court in *Endrew F.*" *Colonial Sch. Dist.*, 2017 WL 1207919 at *11 (noting that a special education due process hearing officer who applied the Third Circuit Court of Appeals' standard in was in accord with the *Endrew F.* standard). To the extent that Plaintiffs may imply that the incorrect standard was applied here, the Court rejects that argument.
Parker C. *ex rel.* Todd C. v. West Chester Area Sch. Dist., No. 16-cv-4836, 2017 WL 2888573, at *7 (E.D. Pa. July 6, 2017). *Physical and mental impairments from premature birth	HO found a FAPE and denied compensatory education and reimbursement for independent evaluation. Parents sought review in district court.	**FAPE** District court granted district's motion. Denied parents' motion.	The Family contends that Hearing Officer Valentini applied an incorrect legal standard for determining whether Parker was provided a FAPE. They argue that although Dr. Valentini cited the "meaningful educational benefit" standard that has long been the law in the Third Circuit, she nonetheless *applied* the "trivial or *de minimis* educational benefit standard" that had been the law in other Circuits. Pls.' Mem. Mot. J. Admin. R. 17-18, ECF No. 11 (citing *Polk*, 853 F.2d at 182). . . . Resolution of this initial dispute is irrelevant, particularly in light of *Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017). It is now indisputably the law nationwide that the proper standard for evaluating a student's progress in an IDEA case is "markedly more demanding than the merely more than *de minimis* test." *Id.* at 1000 (quotations omitted). . . . Therefore it is not necessary to ferret out exactly which legal standard Dr. Valentini utilized. Applying the "meaningful benefit" standard to the administrative record before me, for the reasons explained below, Parker was not denied a FAPE.

L.M. v. Willingboro Twp. Sch. Dist., No. 16-cv-3672, 2017 WL 2539388, at *6 (D.N.J. June 12, 2017). *Multiple disabilities	HO found NO FAPE and awarded compensatory education. District sought review in district court.	**NO FAPE** District court denied district's SJ motion and granted parents' SJ motion for a certain amount of compensatory education for denial of FAPE.	The IEP must be "reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *D.S.*, 602 F.3d at 557 (quotations and citations omitted). . . . A school district should have a fully developed IEP in place at the beginning of each school year. 20 U.S.C. § 1401(9)(D); 1412(a)(1) and 1414(d)(2); *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 68 (3d Cir. 2010).
E.G. v. Great Valley Sch. Dist., No. 16-cv-5456, 2017 WL 2260707, at *3, *6 (E.D. Pa. May 23, 2017). *Severe learning disabilities	HO found a FAPE and denied private school tuition reimbursement, compensatory education, and ESY. Parents sought review in district court.	**FAPE** District court granted district's SJ motion and affirmed HO's decision for after June 12, 2013. Remanded for statute of limitations question.	The District must create an IEP which is "reasonably calculated to enable [E.G.] to make progress appropriate in light of the child's circumstances." The IEP must confer a "meaningful benefit" on E.G. and "the benefit must be substantial, not minimal." It is reasonable for Hearing Officer Ford to accept the District's "cogent and responsive explanation" for E.G.'s instruction in Wilson which is "reasonably calculated" to enable him to progress in reading in light of his severe reading disability.
T.M. v. Quakertown Cmty. Sch. Dist., 251 F. Supp. 3d 792, 800, 812 (E.D. Pa. 2017). *Autism	HO found a FAPE. Parents sought review in district court.	**FAPE** District court granted district's SJ motion, denied parents' SJ motion, and affirmed HO's decision.	To achieve a meaningful benefit, the school district must fashion a uniquely tailored individualized education program, or IEP, for the child. *Endrew F.*, 137 S. Ct. at 991 (citing 20 U.S.C. §§ 1401(9)(D), 1412(a)(1)). The IEP is the roadmap for the child's educational progress. It must be reasonably calculated to enable the child to make progress "appropriate in light of the child's circumstances." *Id.* at 999. Because T.M. demonstrated continuous incremental progress, the district's IEPs were reasonably calculated to enable T.M. to make meaningful progress. . . . In summary, the IEP team appropriately identified T.M.'s intellectual potential to evaluate his academic and behavioral development. The district implemented a program that was providing T.M. with a meaningful educational benefit.

E.D. *ex rel.* T.D. v. Colonial Sch. Dist., No. 09-cv-4837, 2017 WL 1207919, at *12 (E.D. Pa. Mar. 31, 2017). *Learning disabilities	HO found a FAPE and denied private school tuition reimbursement and compensatory education. Parents sought review in district court.	**FAPE** District court granted district's SJ motion and denied parents' SJ motion.	While it is true that *Endrew F.* was decided after the Hearing Officer issued her decision, the standards employed by the Hearing Officer do not differ substantively from the standards adopted by the Supreme Court in *Endrew F.* The Hearing Officer analyzed the administrative record with reference to Third Circuit cases that had already rejected the *de minimis* standard in lieu of a more stringent standard. (*See* Hr'g Dec. 9 ("An Eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a 'trivial' or '*de minimus*' educational benefit." (citing *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3d Cir. 1988))) The standard employed by the Hearing Officer required that E.D.'s IEP "specify education instruction designed to meet [her] unique needs" and that it "be accompanied by such services as are necessary to permit [her] to benefit from the instruction." (*Id.*) The Hearing Officer further stated that "[m]eaningful benefit means that an eligible child's program affords . . . her the opportunity for significant learning." *Id.* Based on this standard, the Hearing Officer's assessment of the administrative record is in accord with *Endrew F.*
Brandywine Heights Area Sch. Dist. v. B.M. *ex rel.* B.M., 248 F. Supp. 3d 618, 634 (E.D. Pa. 2017). *Autism	HO found NO FAPE during kindergarten, but FAPE afterward and awarded compensatory education. School district sought review of denial of a FAPE.	**NO FAPE & FAPE** District court affirmed HO's award of compensatory education, but reversed regarding the Sept. 19 start time (should have started in August).	When he analyzed B.M.'s progress during those two years, the hearing officer found that B.M. "made progress that was meaningful in view of [his] profound combination of cognitive disabilities." Decision at 28. B.M.'s parents have pointed to a litany of areas where they believe that his instruction could have been improved. But while these criticisms may show—as the hearing officer acknowledged—that B.M.'s first two years at the District were not perfect, they do not show that the District failed to provide him with "an educational program reasonably calculated to enable [him] to make progress appropriate in light of [his] circumstances." *Endrew F.*, 137 S. Ct. at 1001.

Fourth Circuit

FAPE educational benefit standard prior to *Endrew*

O.S. *ex rel.* Michael S. v. Fairfax Cty. Sch. Bd., 804 F.3d 354, 359-60 (4th Cir. 2015). *Severe medical disorders	O.S. cites cases from some of our sister circuits in support of the view that the IDEA requires "meaningful" educational benefit as distinct from "some" educational benefit. Some courts do explicitly hold that the IDEA as amended requires school districts to meet a heightened standard. *See, e.g.*, *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1212-13 (9th Cir. 2008). Others, although using the word "meaningful," seem to describe the same standard developed in *Rowley*. *See, e.g.*, *D.B. ex rel. Elizabeth B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) (holding that *Rowley's* "some educational benefit" requires "meaningful" as opposed to "trivial" educational benefit). For our part, we are loath to hold, without any express acknowledgment of its intent to do so, that Congress abrogated Supreme Court precedent. We note that recently the Tenth Circuit also rejected a similar contention that a heightened "meaningful benefit" standard had replaced the "some benefit" standard. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE–1*, 798 F.3d 1329, 1338-41 (10th Cir. 2015). In this circuit, the standard remains the same as it has been for decades: a school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services.

FAPE educational benefit standard after *Endrew*

There are no post *Endrew* Fourth Circuit Court of Appeals opinions addressing its effect on prior precedent (*see* dicta in *M.L. ex rel. Leiman v. Smith* below).

Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)

Case Citation	Procedural History	Disposition	Language Used to Describe the FAPE Standard
M.L. *ex rel.* Leiman v. Smith, 867 F.3d 487, 496, 499 (4th Cir. 2017). *Down Syndrome	HO found a FAPE and denied private school tuition reimbursement for Orthodox Jewish school. District court granted school's motion for SJ. Parents appealed to 4th Cir.	**FAPE** Fourth Circuit affirmed the decision of the district court. Aug. 14. 2017	Our prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Endrew F.* We have cited to the Tenth Circuit's standard in the past, including that court's decision in *Endrew F.* itself. *See* O.S., 804 F.3d at 360 (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE–1*, 798 F.3d 1329, 1338-41 (10th Cir. 2015)). For purposes of the case at bar, though, we need not delve into how *Endrew F.* affects our precedent because the IDEA does not provide the remedy the Plaintiffs want, regardless of the standard applied. Rather, the school must only "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. The relevant circumstance here is that M.L. is disabled, not that he is of the Orthodox Jewish faith. As the Supreme Court reaffirmed in *Endrew F.*, "the IDEA cannot and does not promise any particular educational outcome," *Id.* at 998, and it does not require one that furthers a student's practice of his religion of choice.

N.P. *ex rel.* S.P. v. Maxwell, 711 F. App'x 713, 719 (4th Cir. 2017). Not selected for publication. *Learning disabilities & ADHD	ALJ found a FAPE and denied private school tuition reimbursement. District court reversed, vacated and ordered reimbursement. District appealed to the 4th Circuit.	**NO FAPE** **REMANDED** Fourth Circuit held that the district court did not give due weight to the ALJ's findings. Vacated and remanded for further proceedings consistent with its opinion.	Rather, the Court articulated a new standard: "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. We need not fully explore the impact of *Endrew* in this case, however. Both the ALJ and the district court wrote their opinions prior to *Endrew*. In fact, the ALJ quotes the "more than *de minimis*" standard in her opinion. The ALJ—the only person to see the witnesses testify in person—should have the opportunity to decide in the first instance whether the outcome of the case is different under the standard articulated by the Supreme Court in *Endrew*. We therefore remand to the district court so it can order further proceedings consistent with this opinion.
R.F. v. Cecil Cty. Pub. Sch., No. ADC-17-cv-2203, 2018 WL 3079700, at *15 (D. Md. June 21, 2018). *Severe autism spectrum disorder	ALJ found a FAPE and denied private school placement at district's expense. Parents sought review in district court.	**FAPE** District court granted district's SJ motion. Denied parents' SJ motion. Appealed to 4th Cir. July 11, 2018	In *Endrew F.*, the Supreme Court recently held that, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." 137 S. Ct. at 999. Thus, an "IEP need not aim for grade-level advancement" if such a goal "is not a reasonable prospect for a child." *Id.* at 1000. Moreover, in the recent case of *M.L.*, the Fourth Circuit characterized *Rowley*, 458 U.S. 176 (1982), as the "leading IDEA case." *M.L.*, 867 F.3d at 494. NOTE: In *M.L.* the 4th Circuit did not address the effects of *Endrew F.* because the IDEA did not provide a remedy for furthering a child's religion (sought reimbursement for Orthodox Jewish school).
Sauers v. Winston-Salem/Forsyth Cty. Bd. Of Educ., No. 1:15CV427, 2018 WL 1621516, at *11, *12 (M.D.N.C Mar. 30, 2018). *Learning disabilities	ALJ & SRO found a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**FAPE & REMAND** District court remanded to SRO to determine if the outcome should be different under the *Endrew* standard. Appealed to 4th Cir. Apr. 30, 2018	Following *Endrew*, the Fourth Circuit's FAPE standard has come into question. *See M.L. ex rel. Leiman*, 867 F.3d at 496 ("Our prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Endrew F.* We have cited to the Tenth Circuit's standard in the past, including that court's decision in *Endrew F.* itself." (citations omitted)). While not entirely clear, this language, taken as a whole, seems to imply that a standard requiring minimal progress may have been considered adequate by the ALJ. Similarly, the SRO recited to standards that referred to "educational benefits" but did not expound upon exactly where on the spectrum said benefits were deemed adequate. (Decision of State Hearing Review Officer (Doc. 4-2) at 9.) While *Endrew* was decided well after both the ALJ and the SRO considered this case and neither can be faulted for not preemptively guessing that the Fourth Circuit's standard would come into question, this court finds it appropriate to remand the case to the state administrative bodies for review under the current standard established by *Endrew*.

M.N. *ex rel.* Norman v. Sch. Bd. of City of Virginia Beach, No. 2:17CV65, 2018 WL 717005, at *11 (E.D. Va. Feb. 5, 2018). *Physical and learning disabilities	HO found a FAPE and denied private school tuition reimbursement. Both parties sought review of HO's decision in district court.	**NO FAPE** District court affirmed the HO's decision regarding NO FAPE and reimbursement .	The Fourth Circuit has no bright line for what constitutes a *material* failure to implement an IEP. *Sumter Cty. Sch. Dist. 17*, 642 F.3d at 486. Despite the lack of a bright line, failure to consistently implement half the accommodations in an IEP is a material failure because it defeats the purpose of the IEP. "Congress did not intend that a school system could discharge its duty . . . by providing a program that produces some minimal academic advancement, no matter how trivial." *Id.* (quoting *Hall ex rel. Hall v. Vance Cnty. Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985)). NOTE: only cited *Endrew* for deference.
E.P. *ex rel.* J.P. v. Howard Cty. Pub. Sch. Sys., No. ELH-15-cv-3725, 2017 WL 3608180, at *4 (D. Md. Aug. 21, 2017). *ADHD	ALJ held parents not entitled to an independent evaluation at public expense. Parents sought review in district court.	**NO INDEPENDENT EVALUATION** District court affirmed ALJ's decision.	In the recent case of *M.L.*, the Fourth Circuit acknowledged that its "prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Endrew F.*" *M.L.*, 867 F.3d at 496. The Fourth Circuit also characterized *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982), as the "leading IDEA case." *M.L.*, 867 F.3d at 494. Explaining *Rowley*, the Fourth Circuit said that a "'free appropriate public education' did not mandate 'equality' or any requirement that schools provide the same education to students with disabilities as that provided to students without disabilities." *M.L.*, 867 F.3d at 495 (quoting *Rowley*, 458 U.S. at 198, 102 S. Ct. 3034). Rather, "a school is required only to provide 'equal access.'" *M.L.*, 867 F.3d at 495 (quoting *Rowley*, 458 U.S. at 200, 102 S. Ct. 3034) (emphasis added in *M.L.*). NOTE: This case dealt with eligibility.
J.R. v. Smith, No. DKC 16-cv-1633, 2017 WL 3592453, at *4 (D. Md. Aug. 21, 2017). *Multiple disabilities, including an intellectual disability, a hearing impairment, and a health impairment due to a rare disorder called KBG Syndrome	HO found proposed placement provided a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**FAPE** District court granted district's SJ motion.	Plaintiffs contend that the ALJ applied the now-invalid Fourth Circuit standard from *O.S.*, and that the decision should be vacated so that the new standard can be applied. (ECF No. 34, at 8). Plaintiffs' argument, however, is more focused on the Supreme Court's rejection of the Fourth Circuit standard than the standard that the ALJ actually applied in this case. As Defendants point out, the ALJ never cited *O.S.* in her decision. Rather, she focused on whether the placement of J.R. at RTS was "reasonably calculated to enable the child to receive educational benefits." (ALJ Decision, at 21 (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982))). . . . The ALJ also emphasized that an IEP "must be tailored to the student's particular needs," taking into account the strengths of the child, the concerns of the parent, the results of evaluations, and the academic, developmental, and functional needs of the child. (*Id.*). In short, even though the ALJ made her decision prior to the Supreme Court's articulation of the *Endrew F.* standard, she went beyond the "more than *de minimus*" standard from O.S. and laid out an approach that evaluated what progress was appropriate in light of the child's circumstances, just as *Endrew F.* requires.

Fifth Circuit			
FAPE educational benefit standard prior to *Endrew*			
Rockwall Indep. Sch. Dist. v. M.C., 816 F.3d 329, 338 (5th Cir. 2016). *Emotional disturbance	Nevertheless, the IDEA does not entitle a disabled child to an educational program that "maximizes" her potential. *Michael F.*, 118 F.3d at 247. "[R]ather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him 'to benefit' from the instruction." *Id.* at 247-48. "Still, the educational benefit cannot be a mere modicum or *de minimus*, rather, an IEP must be likely to produce progress, not regression or trivial educational advancement." *Michael Z*, 580 F.3d at 292 (internal quotation marks omitted). "In short, the educational benefit that an IEP is designed to achieve must be 'meaningful.'" *Michael F.*, 118 F.3d at 248.		
FAPE educational benefit standard after *Endrew*			
Dallas Indep. Sch. Dist. v. Woody, 865 F.3d 303, 322 n.8 (5th Cir. 2017).	"In order for a residential placement to be appropriate under IDEA, the placement must be 1) essential in order for the disabled child to receive a meaningful educational benefit, and 2) primarily oriented toward enabling the child to obtain an education." *Michael Z.*, 580 F.3d at 299.		
Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
Dallas Indep. Sch. Dist. v. Woody, 865 F.3d 303, 317, 322 n.8 (5th Cir. 2017). *Learning disabilities	HO found NO FAPE and awarded private school tuition reimbursement. District court affirmed but reduced award. School district appealed to the 5th Circuit.	**NO FAPE** Fifth Circuit affirmed and remanded for district court to determine amount owed from a certain date.	We consider these events, though, to be a substantive failure to offer FAPE from at least April 24 until the end of the semester. The District was obligated to "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *See Endrew F.*, 137 S. Ct. at 999. "In order for a residential placement to be appropriate under IDEA, the placement must be 1) essential in order for the disabled child to receive a meaningful educational benefit, and 2) primarily oriented toward enabling the child to obtain an education." *Michael Z.*, 580 F.3d at 299.

C.G. *ex rel.* Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 819 (5th Cir. 2017). Not selected for publication *Autism	HO found a FAPE and denied private school tuition reimbursement. District court granted SJ to district. Parents appealed to the 5th Circuit.	**FAPE** Fifth Circuit affirmed district court decision.	Underlying this dispute is the question whether the district court articulated a standard that is in line with the standard articulated by the Supreme Court in the recent decision in *Endrew F. v. Douglas County School District.* There the Court rejected the Tenth Circuit's standard that an IEP was "adequate as long as it is calculated to confer an educational benefit that is merely . . . more than de minimis." The Court held that an IEP "must be appropriately ambitious in light of [the child's] circumstances" which is "markedly more demanding than the 'merely more than de minimis' test applied by the Tenth Circuit." Here, the district court explicitly stated that "[t]he educational benefit . . . 'cannot be a mere modicum or *de minimis*; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement.'" The court focused on the four factors from *Michael F.* listed above to evaluate C.G.'s IEP which, it stated, "guide a district court in the fact-intensive inquiry of evaluating whether an IEP provided an educational benefit." The court extensively evaluated C.G.'s IEP then held that all four factors weighed in favor of concluding that her IEP was reasonable based on her specific needs and progress. Although the district court did not articulate the standard set forth in *Endrew F.* verbatim, its analysis of C.G.'s IEP is fully consistent with that standard and leaves no doubt that the court was convinced that C.G.'s IEP was "appropriately ambitious in light of [her] circumstances."
E.R. *ex rel.* S.R. v. Spring Branch Indep. Sch. Dist., No. 4:16-CV-0058, 2017 WL 3017282, at *13 (S.D. Tex. June 15, 2017). *Seizure disorder & ADHD	HO found a FAPE and private placement not appropriate, denying tuition reimbursement. Parents sought review in district court.	**FAPE** District court granted district's motion for SJ.	Still, the educational benefit which the IDEA contemplates, and to which an IEP must be geared, cannot be "a mere modicum or de minimis" benefit. Instead, the IEP must be "likely to produce progress, not regression or trivial educational advancement." *Michael F. ex rel. Barry F.*, 118 F.3d at 248. "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Endrew*, 137 S. Ct. at 1001. In short, the educational benefit that an IEP is designed to achieve must be "meaningful" and "appropriately ambitious in light of the student's circumstances." *Id.*
C.M. *ex rel.* C.C. v. Warren Indep. Sch. Dist., No. 9:16-cv-165, 2017 WL 4479613, at *2, *13 (E.D. Tex. Apr. 18, 2017). *Emotional disability	HO found a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**FAPE** District court granted district's SJ motion. Affirmed HO's decision.	In sum, the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. This progress is more than the *de minimis* progress announced in *Rowley*. This progress is appropriate for a student of C.C.'s circumstances where his own behavior so significantly impedes his access to general education. *See Endrew F.*, 137 S. Ct. at 1000-01. C.C. demonstrated both positive academic and non-academic benefits under his IEPs at WISD.

Sixth Circuit			
FAPE educational benefit standard prior to *Endrew*			
Deal v. Hamilton Cty. Bd. of Educ., 392 F.3d 840, 862 (6th Cir. 2004). *Autism	A school district clearly is not required to "maximize each child's potential commensurate with the opportunity provided other children," *Rowley*, 458 U.S. at 198, 102 S. Ct. 3034 (internal citation omitted), *i.e.*, to provide all children with equal educational opportunity. The Third Circuit, however, has held that an IEP must confer a "*meaningful* educational benefit." *T.R. ex rel. N.R. v. Kingwood Township Bd. of Educ.*, 205 F.3d 572, 577 (3d Cir. 2000) (*citing Polk v. Cent. Susquehanna Intermediate Unit* 16, 853 F.2d 171, 182 (3d Cir.1988), and *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999)). . . . Based on the analysis set forth below, we agree that the IDEA requires an IEP to confer a "meaningful educational benefit" gauged in relation to the potential of the child at issue.		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* Sixth Circuit Court of Appeals opinions addressing its effect on prior precedent (*See* district court decisions below).			
Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
D.L. v. St. Louis City Pub. Sch. Dist., 326 F. Supp. 3d 810, 821, 824 (E.D. Mo. 2018). *Autism, post-traumatic stress disorder (PTSD), disruptive mood regulation, encopresis and enuresis.	AHC found a FAPE and denied private school tuition reimbursement. Parents sought review in district court.	**NO FAPE** District court granted judgment to parents and ordered district to reimburse them for time proposed placement lacked autism supports.	Overall, the IEP "must be responsive to the student's specific disabilities, whether academic or behavioral," *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003). It must be "reasonably calculated to enable" D.L. to make academic progress. *See Endrew F. v. Douglas County Sch. Dist.*, — U.S. —, 137 S. Ct. 988, 997, 197 L. Ed. 2d 335 (2017). Despite these troubling circumstances, the District had the responsibility to provide "education and related services . . . tailored to the unique needs of a particular child." *Endrew*, — U.S. —, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335.
Barney v. Akron Bd. of Educ., No. 5:16CV0112, 2017 WL 4226875, at *11 (N.D. Ohio Sept. 22, 2017). *ADHD & severe peanut allergy	IHO found a FAPE and SLRO affirmed. Parents sought review in district court.	**FAPE** District court affirmed the IHO & SLRO's findings. Appealed to 6th Cir. Oct. 25th, 2017	The IDEA requires that a student be able to "benefit" from the instruction provided. The Supreme Court has held that access to an "equal" educational opportunity does not mean that a school district must provide "every special service necessary to maximize each handicapped child's potential." *Id.* at 189, 199. In a recent decision, the Supreme Court revised the *Rowley* standard for what qualifies as an educational benefit. In *Endrew F. v. Douglas Cty. Sch. Dist. RE–1*, 137 S. Ct. 988 (2017), the Supreme Court held an IEP would be judged as appropriate based on the individual child's potential. *Id.* at 999. An appropriate IEP does not mean that the child must achieve grade-level advancement, but the program "must be appropriately ambitious in light of [the child's] circumstances." *Id.* at 1000.

I.L. *ex rel.* Taylor v. Knox Cty. Bd. of Educ., 257 F. Supp. 3d 946, 981-82 (E.D. Tenn. 2017). *Down syndrome	ALJ found a FAPE. Parent sought review in district court.	**FAPE** District court granted district's motion for SJ. (Despite procedural violation of not implementing IEP goals when parent refused extra special education).	But a plaintiff cannot recover for a procedural IDEA violation unless it denied the child a FAPE. *Deal*, 392 F.3d at 854. And refusing to implement the 13 goals did not deny I.L. a FAPE. An IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas Cty. Sch. Dist.* RE–1, — U.S. —, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). So the question is whether I.L.'s IEP would have met this standard had it included the 13 goals and 20 minutes of daily special education. Taylor has the burden of proving that it would have.

Seventh Circuit			
FAPE educational benefit standard prior to *Endrew*			
M.B. *ex rel.* Berns v. Hamilton Se. Schs., 668 F.3d 851, 862 (7th Cir. 2011). *TBI & communicative disorder	Even if the district's procedural missteps did not deny M.B. a free appropriate public education, we still must consider whether M.B.'s IEP substantively provided him with a FAPE. We reiterate that an IEP is reasonably calculated to enable the child to receive an educational benefit "when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R.*, 375 F.3d at 615 (quoting *Cypress–Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997), and citing *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998)).		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* district or Court of Appeals opinions from the Seventh Circuit addressing its effect on prior precedent.			
Eighth Circuit			
FAPE educational benefit standard prior to *Endrew*			
K.E. *ex rel.* K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 809 (8th Cir. 2011). *Other health disabilities	K.E. also argues that the district court erred by failing to conclude that the District violated the IDEA's substantive requirement, that is, it denied her a FAPE. To provide a child with a "free appropriate public education," a school district must give her "access to specialized instruction and related services" that are "individually designed" to provide "some educational benefit." *Rowley*, 458 U.S. at 200-01, 102 S. Ct. 3034.		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* Eighth Circuit Court of Appeals opinions addressing its effect on prior precedent (*See* district court decisions below).			
Application of *Endrew* standard (All courts in Circuit in reverse chronological order–Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs., 863 F.3d 966, 971 (8th Cir. 2017). *Severe vision problems	ALJ found a FAPE. Parents sought review in district court. District court granted SJ to district. Parent appealed.	**FAPE** Eighth Circuit affirmed the district court's decision.	We conclude that *Minn. Stat. § 125A.06(d)*, by its plain language, does not impose a heightened standard that burdens school districts with an absolute obligation to *guarantee* that each blind student will use the Braille instruction provided to attain a specific level of proficiency. Rather, the obligation enforceable under the IDEA is to provide, if the IEP so requires, instruction that is "sufficient to enable" the child to attain the specified level of proficiency. That is consistent with generally applicable IDEA standards. *See Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, — U.S. —, 137 S. Ct. 988, 1001, 197 L. Ed. 2d 335 (2017) (IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"); *K.E. ex rel. K.E. v. Indep. Sch. Dist.*, No. 15, 647 F.3d 795, 809 (8th Cir. 2011) (student's specialized services not deficient if they were "*sufficient to enable* her to achieve academic progress"). As the Supreme Court observed in *Endrew F.*, "the statement [in Rowley] that the Act did not 'guarantee any particular level of education' simply reflects the unobjectionable proposition that the IDEA cannot and does not promise 'any particular [educational] outcome.' No law could do that—for any child." 137 S. Ct. at 998 (citations omitted).

Denny v. Bertha-Hewit Pub. Schs., No. 16-cv-1954, 2017 WL 4355968, at *20 (D. Minn. Sept. 29, 2017). *Down syndrome	ALJ found a FAPE. Parent sought review in district court.	**FAPE** District court denied parent's motions and affirmed ALJ's decision.	Earlier this year, the Supreme Court clarified the *Rowley* standard and explained that "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 999. In *Endrew F.*, the Supreme Court emphasized that the development of an IEP is a "fact-intensive exercise" intended to "be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians." *Id.* It also declined to adopt "a bright-line rule" and emphasized the case-specific nature of evaluating whether an IEP affords a FAPE. *Id.*
Albright v. Mountain Home Sch. Dist., No. 3:16-CV-3011, 2017 WL 2880853, at *4 (W.D. Ark. July 5, 2017). *Autism spectrum disorder, ADHD, and mild mental retardation	HO found a FAPE. Parent sought review in district court.	**FAPE** District court granted district's SJ motion. Affirmed HO's decision.	But ultimately, this Court's independent review of the administrative record, giving due weight to the Hearing Officer's credibility determinations, leads it to conclude by a preponderance of the evidence that the District provided Child Doe "an educational program reasonably calculated to enable [her] to make progress appropriate in light of [her] circumstances." *Endrew F.*, 137 S. Ct. at 1001.
Paris Sch. Dist. v. A.H. *ex rel.* Harter, No. 2:15-CV-02197, 2017 WL 1234151, at *4, *5 (W.D. Ark. Apr. 3, 2017). *Autism	HO found NO FAPE. School district sought review in district court.	**NO FAPE** District court affirmed HO's decision.	At the time that the Hearing Officer wrote his final opinion, the Eighth Circuit law to be applied was the standard that a student who "enjoyed more than what [the court] would consider 'slight' or '*de minimis*' academic progress" was not denied an educational benefit. *Id.* at 810. At that time, there was a notable circuit split. The Hearing Officer cited to some law from circuits that required more than the Eighth Circuit, so to the extent that the Hearing Officer relied on the authority cited, the Hearing Officer committed legal error during his review. Since that time, the United States Supreme Court rejected the "merely more than *de minimis*" standard that had previously been the law of the Eighth Circuit. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, No. 15-827, 2017 WL 1066260, 580 U.S. —— (2017). The Court will apply the standard articulated by *Endrew F.*, using the existing Eighth Circuit case law where it is still relevant.

Ninth Circuit			
FAPE educational benefit standard prior to *Endrew*			
J.W. *ex rel.* J.E.W. v. Fresno Unified Sch. Dist., 626 F.3d 431, 432-33 (9th Cir. 2010).	Violations of the IDEA may arise in two situations. First, a school district, in creating and implementing the IEP, can run afoul of the Act's procedural requirements. *Rowley*, 458 U.S. 176, 102 S. Ct. 3034. Second, a school district can be liable for a substantive violation by drafting an IEP that is not reasonably calculated to enable the child to receive educational benefits. *Id.* Through a FAPE, "the door of public education must be opened for a disabled child in a 'meaningful' way." *Id.* at 192, 102 S. Ct. 3034. District must provide Student a FAPE that is "appropriately designed and implemented so as to convey" Student with a "meaningful" benefit. Adams v. State of Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999).		
FAPE educational benefit standard after *Endrew*			
E.F. *ex rel.* Fulsang v. Newport Mesa Unified Sch. Dist., 726 F. App'x 535, 537 (9th Cir. 2018). *Autism	We have already noted that *Endrew* did not change, but simply clarified *Rowley*. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1200 (9th Cir. 2017). Our standard comports with *Endrew*'s clarification of *Rowley*. *See J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 951 n.10 (9th Cir. 2010) (noting that the Ninth Circuit uses "educational benefit," "some educational benefit," or "meaningful" educational benefit and that meaningful access must confer "some educational benefit"); *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (assessing whether an early intervention plan required under the IDEA conveyed the student "with a meaningful benefit"). Consequently, the ALJ's application of the Ninth Circuit's standard was proper even before *Endrew* clarified the Supreme Court's holding in Rowley In light of the deference appropriately afforded to the ALJ's decision, we hold that the district court properly upheld the ALJ's decision on Plaintiffs' IDEA claims. With the exception of Newport's failure to assess E.F. for a high-tech assistive technology (AT) device between February 2012 and February 2013, E.F.'s individualized education programs were otherwise "reasonably calculated to enable [E.F.] to receive educational benefits" and make appropriate progress in light of the circumstances. *Id.* at 890 (quoting *Rowley*, 458 U.S. at 206-07, 102 S. Ct. 3034).		
Application of *Endrew* standard (All courts in Circuit in reverse chronological order–Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
E.F. *ex rel.* Fulsang v. Newport Mesa Unified Sch. Dist., 726 F. App'x 535, 537 (9th Cir. 2018). Not selected for publication. *Autism	ALJ found a FAPE. Parents sought review in district court. District court affirmed ALJ's decision. Parents appealed. 9th Circuit affirmed.	**FAPE** U.S. Supreme Court vacated and remanded in light of *Endrew*. On remand, the Ninth Circuit affirmed the district court's decision.	With the exception of Newport's failure to assess E.F. for a high-tech assistive technology (AT) device between February 2012 and February 2013, E.F.'s individualized education programs were otherwise "reasonably calculated to enable [E.F.] to receive educational benefits" and make appropriate progress in light of the circumstances. *Id.* at 890 (quoting *Rowley*, 458 U.S. at 206-07, 102 S. Ct. 3034).

M.C. *ex rel.* M.N. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1200-01 (9th Cir. 2017). *Blind and developmentally delayed by Norrie Disease	ALJ found a FAPE. District court affirmed. Parent appealed to the 9th Circuit.	**NO FAPE & REMANDED** Ninth Circuit reversed and remanded in light of *Endrew*. Entitled to proper IEP and compensatory education. Cert. denied: Antelope Valley Union High Sch. Dist. v. M.C. *ex rel.* M.N., 138 S. Ct. 556, 199 L. Ed. 2d 437 (2017).	The district court found that plaintiffs failed to meet their burden of showing that the IEP wasn't "reasonably calculated to confer [M.C.] with a meaningful benefit." *J.W.*, 626 F.3d at 439. In doing so, it relied on the Supreme Court's comment in *Rowley* that, by "an 'appropriate' education, it is clear that [Congress] did not mean a potential-maximizing education." 458 U.S. at 197 n.21, 102 S. Ct. 3034. But *Rowley* "d[id] not attempt to establish any one test for determining the adequacy of educational benefits." *Id.* at 202, 102 S. Ct. 3034. Recently, the Supreme Court clarified *Rowley* and provided a more precise standard for evaluating whether a school district has complied substantively with the IDEA. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, at ——, 137 S. Ct. 988. In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," *id.* at ——, 137 S. Ct. 988 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential. We remand so the district court can consider plaintiffs' claims in light of this new guidance from the Supreme Court.
Edmonds Sch. Dist. v. A.T., 299 F. Supp. 3d 1135, 1137 n.1, 1144 (W.D. Wash. 2017). * ADHD, ODD, and later prodromal schizophrenia	ALJ found NO FAPE and awarded private school tuition reimbursement. School district sought review in district court.	**NO FAPE** District court affirmed ALJ's decision.	The substantive prong of the IDEA analysis was, until very recently, stated as whether the IEP was "reasonably calculated to enable the child to receive educational benefits." *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (1995) (quoting *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982)). Lower courts interpreted that standard to mean that an IEP is adequate as long as it confers an educational benefit that is more than *de minimus* and allows the student to make some minimal level of progress. In *Endrew F.*, the Supreme Court clarified that, while there is no single test for determining the adequacy of the educational benefits conferred on a child, the IDEA imposes a substantive standard based on a level of progress that is reasonable in light of each child's circumstances. 137 S. Ct. at 997-99. With regards to the first prong of the analysis, a cursory evaluation of the district's chosen placement shows that it violated the IDEA. A.T.'s January 2015 IEP was not reasonably calculated to enable him to make progress in light of his disabilities and their impacts. Having failed to provide an appropriate public education from which A.T. could derive any educational benefit, the district is financially responsible for the appropriate residential placement the parents were forced to find on their own. The Court affirms the ALJ's decision in its entirety.

R.Z.C. v. Northshore Sch. Dist., No. C16-1064 TSZ, 2017 WL 4868845, at *14 (W.D. Wash. Oct. 27, 2017). *Specific Learning Disability (SLD)	ALJ found a FAPE. Reevaluation determined that student was no longer eligible for special education. Student sought review in district court.	**FAPE** District court granted SJ to district. Student appealed to 9th Cir. Nov. 17, 2017	The Student next argues that the accommodations proffered by the District will not remediate the Student's deficiencies. The Student correctly cites to *Endrew F. v. Douglas Cty. Sch. Dist.*, — U.S. —, 137 S. Ct. 988, 992, 197 L. Ed. 2d 335 (2017) for the principle that "[t]o meet its obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's curriculum." The Ninth Circuit recently clarified this standard in *M.C. v. Antelope Valley Union High Sch. Dist.*: "In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can 'make progress in the general education curriculum,' taking into account the progress of his non-disabled peers, and the child's potential." 858 F.3d 1189, 1201 (9th Cir. 2017) (citations omitted) (quoting *Endrew F.*, 137 S. Ct. at 994).
Tamalpais Union High Sch. Dist. v. D.W., 271 F. Supp. 3d 1152, 1154 (N.D. Cal. 2017). *Special needs in speech and language comprehension and social pragmatics	ALJ found NO FAPE and awarded private school tuition reimbursement, and payment for independent evaluation. School district sought review in district court.	**NO FAPE** for failure to evaluate. District court affirmed ALJ decision.	IDEA requires that the student's "educational program . . . be appropriately ambitious in light of his circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE–1*, — U.S. —, 137 S. Ct. 988, 1001, 197 L. Ed. 2d 335 (2017); *see also id.* (holding that IDEA "requires an educational program reasonably calculated to enable a child to make progress in appropriate in light of the child's circumstances").

Unknown Party v. Gilbert Unified Sch. Dist., No. CV-16-02614, 2017 WL 3225189, at *9 (D. Ariz. July 31, 2017). *Down syndrome	ALJ found a FAPE in increase in special education and change of location (not change in placement). Parents sought review in district court.	**FAPE** District court affirmed ALJ decision. Parents appealed to 9th Cir. Aug. 28, 2017.	The Ninth Circuit has clarified that "[t]his does not mean, however, that the states do not have the power to provide handicapped children with an education which they consider more appropriate than that proposed by the parents" and that a student is receiving a FAPE when the student can derive a "meaningful benefit" from the educational plan. *Wilson v. Marana*, 735 F.2d 1178 (9th Cir. 1984); *A.M.*, 627 F.3d at 781. Moreover, the Supreme Court recently held that IDEA is not "satisfied with barely more than *de minimis* progress" for students who cannot be educated in the regular classroom. *Endrew F.*, 137 S. Ct. at 1000-01. Plaintiffs indicate they are satisfied with "some progress" in light of Student's circumstances. (Reply at 13 (citing *Endrew F.*, 137 S. Ct. at 1000).) However, Student's circumstances do not require lowering the properly-calibrated IEP goals for his progress so that he can "receiv[e] instruction that aims so low [it] would be tantamount to sitting idly . . . awaiting the time when [he would be] old enough to drop out. The IDEA demands more." *Endrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at 179) (internal quotation marks omitted). In fact, deeming Student's IEP goals to be too difficult, despite being appropriately developed to his needs, would, in essence, place him in the same position as the student in *Endrew F.*, whose IEP was too easy and deprived him of the chance to meet challenging objectives, hampering his educational growth. *Id.* at 1000. There, the Supreme Court expressed its dissatisfaction with an educational plan that was only "sufficient to show a pattern of, at the least, minimal progress" or was "reasonably calculated to enable [him] to make *some* progress," and the Court specifically overturned this understanding of a FAPE articulated by the lower courts. *Id.* at 997 (quoting lower courts' reasoning that erroneously supported a finding of a FAPE). As such, Plaintiffs' argument that Student was able to progress in light of his circumstances, however minimally, is not persuasive.
K.M. *ex rel.* Markham v. Tehachapi Unified Sch. Dist., No. 1:15-cv-001835 LJO JLT, 2017 WL 1348807, *17-18 (E.D. Cal. Apr. 5, 2017). *Autism	ALJ found a FAPE. Student sought review in district court, compensatory education, and one-on-one behavioral aide.	**FAPE** District court affirmed ALJ's decision. Parent appealed to 9th Cir. May 3, 2017.	After the ALJ rendered her decision in this matter, the Supreme Court, addressed the proper standard under which an IEP is evaluated in *Endrew F.*, 2017 WL 1066260. The *Endrew F.* standard, which provides that an IEP must be reasonably calculated to enable "progress appropriate in light of the child's circumstances," 2017 WL 1066260 at *10, clarifies the older standard that an IEP must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. The standard of "progress appropriate in light of the child's circumstances," while not a bright line rule, is consistent with "the nature of the [IDEA] . . . [that] [t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." 2017 WL 1066260 at *12. The Supreme Court explained that, for a student "who is not fully integrated in the regular classroom and not able to achieve on grade level," an "IEP need not aim for grade-level advancement" but should be "appropriately ambitious in light of [the student's] circumstances" such that the student has "the chance to meet challenging objectives." 2017 WL 1066260 at *11. Student's arguments that the ALJ misapplied the standard are not convincing. The crux of the matter is whether the IEP goals complied with the statutory language and were "reasonably calculated to enable [Student] to make progress appropriate in light of [her] circumstances." *Endrew F.*, 2017 WL 1066260 at *10.

N.G. *ex rel.* Green v. Tehachapi Unified Sch. Dist., No. 1:15-cv-01740-LJO-JLT, 2017 WL 1354687, at *1 (E.D. Cal. Apr. 13, 2017). *Autistic-like behavior and speech and language impairment.	ALJ found a FAPE. Parent sought review in district court.	**FAPE** District court affirmed ALJ's decision.	The Supreme Court recently considered the content of the FAPE standard in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000 (2017). The *Endrew F.* standard, which provides that an IEP must be reasonably calculated to enable "progress appropriate in light of the child's circumstances," *id.*, clarifies the older Rowley standard that an IEP must be "reasonably calculated to enable the child to receive educational benefits," 458 U.S. at 206-07. The Supreme Court explained that, for a student "who is not fully integrated in the regular classroom and not able to achieve on grade level," an "IEP need not aim for grade-level advancement" but should be "appropriately ambitious in light of [the student's] circumstances" such that the student has "the chance to meet challenging objectives." *Id.* at *11.

Tenth Circuit			
FAPE educational benefit standard prior to *Endrew*			
Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. Re-1, 798 F.3d 1329, 1338-39 (10th Cir. 2015) .	This circuit has long subscribed to the *Rowley* Court's "some educational benefit" language in defining a FAPE, *see O'Toole*, 144 F.3d at 707-08, and interpreted it to mean that "the educational benefit mandated by IDEA must merely be 'more than *de minimis*.'" *Thompson*, 540 F.3d at 1149 (quoting *Urban ex rel. Urban v. Jefferson Cty. Sch. Dist. R–1*, 89 F.3d 720, 727 (10th Cir. 1996)).		
Thompson R2-J Sch. Dist. v. Luke P. *ex rel.* Jeff P., 540 F.3d 1143, 1149 (10th Cir. 2008).	From this direction, we have concluded that the educational benefit mandated by IDEA must merely be "more than *de minimis*." *Urban ex rel. Urban v. Jefferson County Sch. Dist. R–1*, 89 F.3d 720, 727 (10th Cir. 1996).		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* Tenth Circuit Court of Appeals opinions addressing its effect on prior precedent (See district court decisions below).			
Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
Smith v. Cheyenne Mountain Sch. Dist. 12, No. 14-cv-03390-PAB-KHR, 2018 WL 1203172, at *4 (D. Colo. Mar. 6, 2018). *Autism spectrum disorder, ADHD, and hypotonia NOTE: Pro se parent	ALJ dismissed claims of failure to provide son with a FAPE. Parent sought review in district court.	**FAPE** District court dismissed claims.	A FAPE is "hardly self-defining." *Thompson R2-J School Dist. v. Luke P., ex rel.* Jeff P., 540 F.3d 1143, 1148 (10th Cir. 2008). "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE–1*, 137 S. Ct. 988, 999 (2017). To determine whether a FAPE was provided to plaintiff during the 2013-2014 school year, the Court "must ask . . . whether [the] . . . IEP was 'reasonably calculated to enable [him] to receive educational benefits.'" *Thompson*, 540 F.3d at 1148-49 (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207 (1982)). "If the IEP was so calculated, the school district can be said to have provided a FAPE; if not, then not." *Id.* at 1149.
Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE 1, 290 F. Supp. 3d 1175, 1185-86 (D. Colo. 2018). *Autism	On remand from the 10th Circuit Court of Appeals.	**NO FAPE** Parents entitled to private school reimbursement, costs, and attorney fees. Ordered briefs account for damages, attorney fees, and costs.	Accordingly, I conclude that Petitioner and his parent have met their burden to prove that the District's April 2010 IEP failed to create an educational plan that was reasonably calculated to enable Petitioner to make progress, even in light of his unique circumstances. The IEP was not appropriately ambitious because it did not give Petitioner the chance to meet challenging objectives under his particular circumstances. Specifically, the IEP proposed by the District was not reasonably calculated for Petitioner to "achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." *Endrew F. v. Douglas Cty.,supra*, 137 S. Ct. at 1001. As such, the District failed to provide Plaintiff with a FAPE.

Bd. of Educ. of Albuquerque Pub. Schs. v. Maez, No. 16-cv-1082 WJ/WPL, 2017 WL 3278945 at *5, *13 (D.N.M. Aug 1, 2017). *Autism and global developmental delay	HO found NO FAPE. School district sought review in district court.	**FAPE** District court reversed the HO's decision. NOTE: Court noted that the parents withdrew M.M. from school in the middle of the school year.	The Court has carefully reviewed the administrative record, and for the reasons that follow, the Court concludes that the preponderance of the evidence shows M.M. made some meaningful progress relative to the severity of his disabilities and the IEP was reasonably calculated to enable M.M. to progress in light of his combination of disabilities. *See Endrew F.*, 137 S. Ct. at 999. Thus, in light of these unique circumstances, the Court finds M.M. was making some meaningful progress, even if it was not the exact type of progress that Parents would have wanted. *See Endrew F.*, 137 S. Ct. at 998 (quoting *Rowley*, 458 U.S. at 192) ("[T]he IDEA cannot and does not promise 'any particular [educational] outcome.'").
Smith v. Cheyenne Mountain Sch. Dist. 12, No. 15-00881-PAB-CBS, 2017 WL 2791415, at *7 n.11 (D. Colo. May 11, 2017). NOTE: Pro se parent	Parent sought judicial review of ALJ's decision to grant SJ to the district.	**FAPE** Master recommended dismissal for claim of failure to evaluate and SJ to district on failure to invite special education director to the meeting.	The ALJ's decision precedes *Endrew's* reversal of the Tenth Circuit's interpretation that a FAPE for children with disabilities required simply more than *de minimis* educational benefit. However, the ALJ found the evidence "clearly" supported that M.S. had progressed. AR at p. 152. Given M.S.'s academic performance at average or above average marks, and the total lack of evidence that M.S. experienced any problems at school after his special education services ceased, the court does not believe that remand is necessary. The preponderance of the evidence shows that M.S. made progress in the general education program that was appropriate to his circumstances. *See, e.g.*, *Endrew F.*, 137 S. Ct. at 995-96 (discussing *Rowley*).

Eleventh Circuit

FAPE educational benefit standard prior to *Endrew*

Devine v. Indian River Cty. Sch. Bd., 249 F.3d 1289, 1292, 1293 (11th Cir. 2001).	The Supreme Court has said that a student is only entitled to some educational benefit; the benefit need not be maximized to be adequate. *See Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 102, S. Ct. 3034, 3046, 3049 n.26, 73 L. Ed. 2d 690 (1982). But this circuit has specifically held that generalization across settings is not required to show an educational benefit. "If 'meaningful gains' across settings means more than making measurable and adequate gains in the classroom, they are not required by [IDEA] or *Rowley*." *JSK*, 941 F.2d at 1573.

FAPE educational benefit standard after *Endrew*

There are no post *Endrew* Eleventh Circuit Court of Appeals opinions addressing its effect on prior precedent (*See* district court decisions below).

Application of *Endrew* standard (All courts in Circuit in reverse chronological order-Circuit, then District)

Case Citation	Procedural History	Disposition	Language Used to Describe the FAPE Standard
Rosaria M. v. Madison City Bd. of Educ., 325 F.R.D. 429, 447 (N.D. Ala. 2018). *Learning disabilities	ALJ found a FAPE despite district's failure to provide a functional behavioral analysis (FBA). Parents sought review in district court.	**FAPE** District court granted SJ to school district.	As in *Rowley*, the Supreme Court in *Endrew F.* charted a middle course and counseled that a substantively adequate IEP should be appropriately ambitious in light of a student's circumstance such that the student has "the chance to meet challenging objectives." *Endrew F.*, 137 S. Ct. at 1000-01. Therefore, this Court must attempt to gauge whether F.M.'s IEP was designed to challenge her and "to enable her to make progress appropriate in light of [her] circumstances." *Endrew F.*, 137 S. Ct. at 999. Because "crafting an appropriate program of education requires a prospective judgment by school officials," the Court cannot evaluate whether an IEP is reasonably calculated to provide FAPE solely in terms of what a student actually achieves. Instead, the Court must determine whether the goals and benchmarks designated in the plan were "appropriately ambitious in light of [the student's] circumstances." *Endrew F.*, 137 S. Ct. at 999-1000.

S.M. v. Hendry Cty. Sch. Bd., No. 2:14-cv-237-FtM-38CM, 2017 WL 4417070, at *2 (M.D. Fla. Oct. 5, 2017). * Orthopedically Impaired, Speech Impaired, Physically Impaired, Occupationally Impaired, and Other Health Impaired.	ALJ found a FAPE. Magistrate recommended that the district court affirm.	**FAPE** District court adopted & accepted the recommendations of the Magistrate.	Next, Plaintiffs correctly state the ALJ used a now outdated standard to determine whether HCSB provided FAPE to L.C. Nonetheless, the Court does not agree with Plaintiffs' conclusion regarding the impact of the changed standard. For context, the ALJ issued his final order almost three years before the Supreme Court clarified the standard of review in IDEA cases. *See Endrew F.*, 137 S. Ct. at 1001. The *Endrew F.* court held that the IDEA requires "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* In contrast, the prior standard, relied on by the ALJ, required that education programs provide more than trivial or *de minimis* progress. (Doc. 17-8 at 31). There is little doubt these standards are markedly different, and the change occurred after the ALJ issued his final order but before the R&R was issued. Still, a change in law does not bar a court from giving deference to an ALJ's findings. Rather, it requires the claim be evaluated under the new standard, and Judge Mirando did exactly that. Judge Mirando evaluated the record under the *Endrew F.* standard and determined the ALJ's findings were still entitled to great deference. Even Plaintiffs' arguments coupled together do not persuade this Court the ALJ's findings are entitled to less deference. And after a *de novo* review of the record evidence and relevant authority, the Court finds that Judge Mirando's discretionary decision is well founded.
S.M. v. Hendry Cty. Sch. Bd., No. 2:14-CV-237-FTM-38CM, 2017 WL 9360881, at *14 (M.D. Fla. July 27, 2017).	ALJ found a FAPE. Parents sought review in district court.	**FAPE** Magistrate judge recommended that ALJ's decision in favor of district be affirmed.	To summarize, Plaintiffs point to certain conflicts in the testimony that indicate the IEPs were not perfect. *See generally* Doc. 40. In contrast, "perfection is not required." *Loren F.*, 349 F.3d at 1312 (citing *K.C.*, 285 F.3d at 982). The Supreme Court recently reiterated that "[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Endrew F.*, 137 S. Ct. at 999 (citing *Rowley*, 458 U.S. 206-07). What is reasonable depends on the particular child and his unique needs. *Id.* Any educational program for the child "must be appropriately ambitious in light of circumstances" and must offer "the chance to meet challenging objectives." *Id.* The record shows that the September 22, 2011 IEP was reasonably calculated to enable L.C. to receive an educational benefit that would allow him to make appropriate progress in light of his unique circumstances. *Endrew F.*, 137 S. Ct. at 1001. Given his circumstances, for the 2011-2012 school year, L.C. was given the chance to meet, and did meet, challenging objectives. *Endrew F.*, 137 S. Ct. at 1000.

D.C. Circuit			
FAPE educational benefit standard prior to *Endrew*			
Leggett v. District of Columbia, 793 F.3d 59, 70 (D.C. Cir. 2015). *Severe learning disabilities	We begin with what is undisputed: under the Supreme Court's decision in *Rowley*, a public school district need not guarantee the best possible education or even a "potential-maximizing" one. 458 U.S. at 197 n.21, 102 S. Ct. 3034. Instead, an IEP is generally "proper under the Act" if "reasonably calculated to enable the child to receive educational benefits." *Id.* at 207, 102 S. Ct. 3034; *see also* Branham v. District of Columbia, 427 F.3d 7, 9 (D.C. Cir. 2005) (IEP need not maximize the child's development as long as it "provide[s] some [educational] benefit") (internal quotation marks omitted).		
FAPE educational benefit standard after *Endrew*			
There are no post *Endrew* D.C. Circuit Court of Appeals opinions addressing its effect on prior precedent (*See* district court decisions below).			
Application of *Endrew* standard (All courts in Circuit in reverse chronological order–Circuit, then District)			
Case Citation	**Procedural History**	**Disposition**	**Language Used to Describe the FAPE Standard**
Z.B. v. District of Columbia, 888 F.3d 515, 517, 524, 527 (D.C. Cir. 2018). *ADHD	HO found a FAPE and denied private school tuition reimburseme nt. Parents sought review in district court. District court granted SJ to school district. Parents appealed to D.C. Circuit.	**REMAND** D.C. Circuit Court of Appeals remanded for 2014 IEP in light of *Endrew*.	*Endrew F.* held that the Act requires education "reasonably calculated to enable a child to make progress in light of the child's circumstances"—a standard that the Court described as "markedly more demanding than the 'merely more than *de minimis*'" standard the Tenth Circuit had applied, *id.* at 999-1000, and that also appears more demanding than the district court's approach here, *see Z.B. v. District of Columbia*, 202 F. Supp. 3d 64, 75-80 (D.D.C. 2016). In requiring more than merely some "educational benefits," *id.* at 77 (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982)), the Court in *Endrew F.* stressed that "every child should have the chance to meet challenging objectives," and that a student's "educational program must be appropriately ambitious in light of his circumstances." 137 S. Ct. at 1000. The key inquiry regarding an IEP's substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP it offered was reasonably calculated to enable the specific student's progress. *See Endrew F.*, 137 S. Ct. at 999. Meanwhile, what Congress has required is that public schools be "ambitious" for every child, giving each the opportunity to "meet challenging objectives." *Id.* at 1000.
DL v. District of Columbia, 860 F.3d 713 (D.C. Cir. 2017).	District court issued injunction against the District. District appealed to the D.C. Circuit.	**NO FAPE** D.C. Circuit affirmed the district court's decision.	Former pre-school children brought a class action suit against District of Columbia for violation of Child Find provision of the IDEA Cites *Endrew F.* for entitlement to a FAPE, but no analysis of the standard.

Pavelko v. District of Columbia, 288 F. Supp. 3d 301, 307-08 (D.D.C. 2018). *ADHD & ASD	HO found a FAPE. Parents sought review in district court.	**FAPE** District court adopted recommendations of Magistrate Judge.	In summary, plaintiffs have failed to meet their burden to show that the IHO was wrong to conclude that the April 2015 IEP was "reasonably calculated to enable" H.P. "to make progress appropriate in light of [his] circumstances." *Endrew F.*, 137 S. Ct. at 1001.
Middleton v. District of Columbia, 312 F. Supp. 3d 113, 129, 134 (D.D.C. 2018). *Multiple disabilities, including speech-language impairment	HO found a FAPE. Parent sought review in district court.	**NO FAPE** District court found remanded to the HO to consider relief.	"The key inquiry regarding an IEP's substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP it offered was reasonably calculated to enable the specific student's progress." *Z.B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018). (2) based on the evidence before A.T.'s IEP Team at Sousa—evidence that A.T. had significant cognitive deficits and had failed to make progress toward his IEP goals—it was entirely unreasonable to believe that A.T. could receive meaningful educational benefit on the diploma track.
Adams v. District of Columbia, 285 F. Supp. 3d 381, 397 (D.D.C. 2018.) *ADHD & ED & reading and math skills significantly below grade level.	HO found NO FAPE, but private school not appropriate. Parents sought preliminary injunction to require district to place child in a private school.	**FAPE** District court adopted U.S. Magistrate Judge's recommendation to deny parents' motion for preliminary injunction.	Although this Opinion concludes that Adams does not have a likelihood of success on her underlying claims, this determination does not minimize DCPS's ongoing obligation to provide T.J. with educational opportunities that are "reasonably calculated to enable [him] to make progress" in light of his circumstances. *Endrew F.*, 137 S. Ct. at 1001. The law requires as much, and surely all parties can agree that this child deserves no less. NOTE: Hearing officer recommended new IEP.
Davis v. District of Columbia, 244 F. Supp. 3d 27, 39 (D.D.C. 2017). *Learning disabilities, developmental delays, ADHD	HO found a FAPE. Parents sought review in district court.	**FAPE** District court found FAPE with service reduction and finding of ineligibility, but violation for failure to comprehensively evaluate.	This "fact-intensive inquiry" involves "a prospective judgment by school officials" as to how "'*specially* designed' " services will ultimately "meet a child's '*unique* needs.' " *Endrew F.*, — U.S. at —, 137 S. Ct. 988, 2017 WL 1066260, at *10 (quoting 20 U.S.C. § 1401(29)). Although "the IDEA cannot and does not promise [that] 'any particular [educational] outcome'" will follow, a student's "progress [can] plainly demonstrate[] that her IEP was designed to deliver more than adequate educational benefits." *Id.* at —, *9.