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# The New Jersey Department of Education's Implementation of New Special Education Policies

Jennifer Winkler

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## I. Introduction

When Allan was an infant, he was abandoned on the steps of a mental institution. In 1940, medical professionals brought children and adults suffering from mental disabilities to mental institutions to obtain "treatment."[1] Despite being "treated" in the institution, Allan's symptoms worsened as he aged.[2] By the time Allan was thirty-five years old, he was completely blind.[3] Due to his blindness and mental disorder, he spent most of his days silently rocking back and forth in this room.[4]

In 1970, however, Allan was properly assessed at last, outside of the mental institution where he lived.[5] Not only did Allan have an average intelligence level, but his blindness was also self-inflicted, done through self-harming behaviors he observed other patients exhibiting at the institution.[6] This means that with proper evaluation and an opportunity to reside in an inclusionary setting, Allan may have been able to overcome parts of his disability and perhaps would not have lost his eyesight. Allan's experience reflects countless battles individuals with disabilities had to face before the medical community and society alike progressed enough to realize that individuals with disabilities do not belong in a separate mental institution, but deserve to be thoroughly assessed and treated appropriately with accommodating services.[7]

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[1] Trisha Lynn Sprayberry, *The Impact of I.D.E.A. for Students with Disabilities and Education Equality: 40 Years Later*, THE HUFFINGTON POST (Dec. 30, 2014), http://www.huffingtonpost.com/trisha-lynn-sprayberry/idea-for-students-with-disabilities_b_6312830.html.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Trisha, *supra* note 1.

Since Allan's time, there have been many changes made in the special education law field.[8] Most significantly, attempts to incorporate more integrative and inclusive principles into the classroom.[9] Changes are continuing to take place, however, and there are mixed opinions on whether these changes are beneficial, and if they are beneficial, just how beneficial they are.[10]

This comment, argues that New Jersey has improved its special education laws significantly over the years, and has made several recent improvements. On a federal level, however, new updates in special education law will most likely not force New Jersey to make any more significant developments in the near future. Essentially, this Comment asserts that although New Jersey has come a long way in the special education law realm, recent changes in the law are largely insignificant and constitute incremental improvements at best. In drawing this conclusion, Part I discusses the following the development of special education laws. Part II provides a background of federal special education laws. Part III outlines the evolution of New Jersey's special education laws while Part IV highlights the recent changes in New Jersey and federal special education laws. Part V explains the recent changes in federal law. Part VI concludes that the recent changes in the law (New Jersey state and federal), while not a step backwards for the special education law realm, do not constitute a significant step forward either.

## II. Federal Special Education Policies and Their Importance

[8] Pete Wright, *The History of Special Education Law*, WRIGHTSLAW (Apr. 6, 2018), http://www.wrightslaw.com/law/art/history.spec.ed.law.htm
[9] Will J. Gordillo, *Top 10 Trends in Special Education*, SCIENTIFIC LEARNING (Apr. 6, 2018, 12:48 PM), https://www.scilearn.com/blog/2015-special-education-trends
[10] Angela Lange*, Federal Funding Series: Mixed Messages: Are Teachers and Research Important?*, NATIONAL CENTER FOR LEARNING DISABILITIES, (Apr. 7, 2018, 5:55 PM). https://www.ncld.org/archives/action-center/what-we-ve-done/ncld-federal-funding-series-mixed-messages-are-teachers-and-research-important.

Congress has put forth several special education laws and policies that, over time, have become integral components of special education initiatives.[11] Knowing about these laws and policies is helpful when it comes to understanding what is necessary to create an adequate education for an individual with a disability. Inclusion is one of the most important of those concepts, and it is the practice of teaching children with and without disabilities in the same classroom.[12] Inclusion's central focus is to provide children with a way to participate and learn in meaningful ways, while being included in a general classroom alongside children without disabilities.[13] This may take shape in many forms. Depending on the disability the child has, a student may need help from friends, teachers, or specially designed materials or technology to ensure that his or her classroom experience is the best that it can be.[14]

Inclusion replaced the previous method of teaching students with disabilities in entirely separate spaces from children without disabilities.[15] As time progressed, it became clear that despite any reason for a separate education, whether it be race, disability, or some other characteristic, a separate education is not an equal one.[16] In addition, "[n]o studies conducted since the late 1970's have shown an academic advantage for students with intellectual or other developmental disabilities educated in separate settings."[17] The inclusion rationale was derived from the United States Department of Education in the 1980's, under the "regular education

[11] Wright, *supra* note 8.
[12] *Inclusive Education*, PBSPARENTS, http://www.pbs.org/parents/education/learning-disabilities/inclusive-education/. (last visited Nov. 2, 2017).
[13] *Id.*
[14] *Id.*
[15] Gordillo, *supra* note 9.
[16] *Id.*
[17] Xuan Bui, Carol Quirk, Selene Almazon & Michele Valenti, *Inclusive Education Research & Practice,* MARYLAND INITATIVE FOR INCLUSIVE EDUCATION (2010), http://www.mcie.org/usermedia/application/6/inclusion_works_final.pdf.

initiative."[18] Advocates for this initiative criticized both special and regular education systems because schools were not placing children with disabilities in general education classes as frequently as they could have.[19] Essentially, inclusion is a set of procedures that ensures that a child with disabilities is educated alongside children who are not similarly disabled, and that "removal of children with disabilities from the regular education environment occurs only when the nature of severity of the disability is such that education services cannot be achieved satisfactorily."[20]

Equally as important, the law requires an Individualized Educational Plan (IEP)[21] under a current federal special education law, Individuals with Disabilities Education Act (IDEA).[22] The purpose of an IEP is to ensure that school officials and teachers design a student's special education program specifically for them, and that over the course of the year those individuals continuously tailor the plan to meet the student's needs.[23] Under the law, a school must design an IEP for each child with a disability, and must review the program on an annual basis.[24] The IEP goes beyond just ensuring a spot in a public school for a child with disabilities; more extensively, it establishes in writing "an educational program that takes into account the child's academic achievement and functional performance, measurable annual instructional goals and objectives," and if required, "the special education and related services and supplementary aids and services to be provided, appropriate accommodations of state and districtwide assessments, and transition services, if

[18] KERN ALEXANDER & M. DAVID ALEXANDER, THE LAW OF SCHOOLS, STUDENTS AND TEACHERS, IN A NUTSHELL 395 (5th ed. 2015). The REI initiative will be discussed in more detail in Part III of this Comment.
[19] *Id.*
[20] *Id.* at 392.
[21] Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements, 20 U.S.C. § 1414 (2004).
[22] Individuals with Disabilities Education Act, Pub. L. No. 108-446, 118 Stat. 2647 (2004).
[23] George A. Giuliani, The Comprehensive Guide to Special Education Law: Over 400 Frequently Asked Questions and Answers Every Educator Needs to Know About the Legal Rights of Exceptional Children and Their Parents142 (2012).
[24] ALEXANDER, *supra* note 18, at 378.

appropriate."[25] On a legal level, an IEP is an agreement between the child's parents and the school to ensure that the school puts resources to their best use for the purposes of furthering the child's education.[26]

After the school provides the services detailed in the IEP, it measures the child's progress.[27] At a minimum, a school must review an IEP annually, and a parent may ask the school to conduct a review to more than once a year.[28] Conditions may also warrant the need for review more frequently than once a year.[29] At least once every three years, professionals must also reevaluate the child through a process called "triennial."[30] This process serves the purpose of determining whether the child continues to fall under the same category that he or she is currently placed in, or if the child's academic needs have changed.[31] An IEP may appear as a standard document, but it is an integral component of providing a child with disabilities an equal education as those without a disability.[32]

There are a wide range of "related services" that a student may require in order to receive an adequate education, if he or she is considered to suffer from a disability and an IEP has been created for him or her.[33] These services may include: audiology services, counseling services, early identification and assessment, medical services, occupational therapy, orientation and mobility services, parent counseling and training, physical therapy, psychological services,

[25] *Id.*
[26] *IEPs,* PBSparents, http://www.pbs.org/parents/education/learning-disabilities/special-education-and-ieps/ieps/. (last visited Sept. 15, 2017).
[27] *Id.*
[28] *Id.*
[29] IEPs, *supra* note 26.
[30] *Id.*
[31] *Id.*
[32] *A Guide to the Individualized Education Program*, U.S. DEP'T OF EDUC., https://www2.ed.gov/parents/needs/speced/iepguide/index.html#contents (last visited Sept. 15, 2017) (hereinafter *Guide*).
[33] *Id.*

recreation, rehabilitation counseling services, school health services, social work services in schools, speech-language pathology services, or transportation.[34]

Finding a "least-restrictive environment" for a child with a disability is also a main objective of special education law.[35] This term refers to the placement of a child with a disability in a classroom where he or she has the most freedom to learn, participate, and be a child.[36] The basic premise of finding a "least-restrictive environment," is that a student with a disability deserves to have an opportunity to be educated with non-disabled peers, to the greatest extent possible; the appropriate environment varies depending on the child and the severity of the disability.[37] Determining what a "least-restrictive environment" would be for each child is a requirement under IDEA, and specifically emphasizes the notion that the placement of a child in a separate class, school, or the removal of him or her from a general education classroom, should occur only when that child's disability is so severe that aides or other services would not be able to appropriately accommodate the child.[38] The above requirements also apply to nonacademic and extracurricular activities as well, such as lunch and recess.[39]

There are numerous benefits to inclusive styles of teaching children with disabilities, and the benefits transcend farther than just to that specific child.[40] All students, ones with disabilities and those without, benefit from inclusive special education policies on both academic and personal levels.[41] Research indicates that children suffering from disabilities benefit from the higher

[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Guide*, *supra* note 32.
[39] Giuliani, *supra* note 23, at 167.
[40] Amanda Morin, *Least Restrictive (LRE): What You Need to Know*, UNDERSTOOD.ORG, https://www.understood.org/en/school-learning/special-services/special-education-basics/least-restrictive-environment-lre-what-you-need-to-know (last visited Sept. 15, 2017).
[41] *Id.*

academic standards used in the general education classrooms, as these standards allow them to reach farther in their day-to-day education experience.[42] Inclusion also allows the child with disabilities to model his or her social skills off of non-disabled children, benefiting his or her social development.[43] Disabled students, especially those with severe disabilities, are more likely to "realize acceptance and friendship" in these inclusive placements.[44] The inclusive environments also aid in building disabled students' confidences, emphasizing that they are just as capable as children without disabilities.[45] These positive improvements have also been shown to translate into more general improvements in school behavior overall.[46] For instance, research indicates that when schools include students with disabilities in the general education classroom, the students are absent less frequently and exhibit less disruptive behavior.[47] These positives extend to the child's out of school life as well.[48] Research shows that as a result of these inclusion principles, students have been more successful in their high school careers, employment endeavors, and were more likely to thrive on their own.[49]

Further, research also indicates that the presence of students with disabilities actually improves the performance of students without disabilities.[50] These students have typically exhibited more improvement in reading and math than their peers within classrooms without the presence of children with disabilities.[51] Most importantly, inclusive principles allow children with and without disabilities to form meaningful friendships with one another, aiding the children

[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] Jessica P. Limbacher & James J. La Rocca, *New Jersey's Move Toward Inclusion*, NEW JERSEY LAWYER, Oct. 2015, at 69, 71.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Bui, *supra* note 17.

without disabilities to appreciate diversity and understand the differences in people in a unique way.[52] Aside from the long list of the positives from inclusive practices, research has not indicated any negative impacts resulting from them, for either group of children.[53]

## III. History of the Development of Special Education Laws on a Federal Level

The history of special education law spans many years and many different laws, and over time Congress enacted several laws that still impact the special education community today. The civil rights movement of the 1960's established the foundation for the special education field.[54] During this time, society began moving towards a more accepting view of all members of society, and this allowed groups of individuals to raise their voices concerning these issues.[55] Then in 1965, President Lyndon B. Johnson[56] introduced the Elementary and Secondary Education Act (ESEA).[57] Congress originally enacted this civil rights act as a response to poverty, and the inequity present within education in the United States during the 1960's.[58] To fulfill the Act's purpose, Congress awarded federal grants to districts serving low-income students.[59] It also provided children with grants for books and particular education centers.[60]

During the 1980's, there was also a movement towards more inclusive education.[61] The concept of mainstreaming became more commonly known, but at first the process was anything but seamless.[62] Because of poorly designed programs and an apparent lack of coordination

[52] *Id.*
[53] *Id.*
[54] SPENCER J. SALEND & LAUREN M. GARRICK DUHANEY, HISTORY OF SPECIAL EDUCATION, 7 (2011).
[55] *Id.* at 9.
[56] Liane Wardlow, *The Every Student Succeeds Act in Historical Context*, PEARSON (Oct. 2016), http://www.pearsoned.com/education-blog/every-student-succeeds-act-historical/.
[57] Elementary and Secondary Act of 1965, Pub. Law No. 89-10, 79 Stat. 27 (1965).
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] SALEND, *supra* note 54, at 12.
[62] *Id.*

between general and special education teachers, mainstreaming resulted in many problems.[63] In a response to those problems, special education advocates formed the Regular Education Initiative (REI) developed, and purported that general education should take complete responsibility for students with disabilities.[64] Mainly, the special education advocates involved in this movement sought to establish a system where teachers educate students with and without disabilities in the same classroom, whenever possible.[65]

In 2002, what was formerly known as the ESEA became the No Child Left Behind Act (NCLB).[66] This new act shifted the powers of decision-making and resource allocation away from the states, and onto the federal government.[67] As a result, the national government began playing a much larger role in education than it had in prior years.[68] The NCLB differed from the ESEA in significant ways; specifically, it expanded testing and assessment requirements, and ensured that all students would be assessed on an annual basis.[69] It also required that by 2014, all students had to become proficient in math, reading, and language arts.[70] The NCLB as a whole allowed for a shift in the national dialogue towards a need for improvement in education.[71]

Over time, however, the standards and requirements purported by the NCLB proved to be unworkable for educators and schools as a whole.[72] Because the NCLB requirements were so difficult to follow and to enforce, in 2012 the Obama Administration began to bargain with numerous states to obtain an increase in quality education provided for all students.[73] President

[63] *Id.*
[64] *Id.*
[65] *Id.* at 12–13.
[66] *Id.;* No Child Left Behind Act of 2001, Pub. L. No. 107-110, 15 Stat. 1425 (2002).
[67] No Child Left Behind Act of 2001, Pub. L. No. 107-110, 15 Stat. 1425 (2002).
[68] SALEND, *supra* note 54, at 12-13.
[69] No Child Left Behind Act of 2001, Pub. L. No. 107-110, 15 Stat. 1425 (2002).
[70] *Id.*
[71] *Every Student Succeeds Act (ESSA),* U.S. Dep't of Educ., https://www.ed.gov/essa?src=ft. (last visited Nov. 2, 2017).
[72] *Id.*
[73] *Id.*

Obama pushed for a better law that would focus more clearly on the true end goal—to prepare all students for success in life, in their prospective colleges and careers.[74]

Congress's response to the need for a better law was the creation of the Every Student Succeeds Act (ESSA),[75] enacted in 2015 under the Obama Administration.[76] The ESSA is a bipartisan measure that reauthorized the ESEA (which, at this point, had been in existence for fifty years).[77] The ESSA's stated purpose is "to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."[78] The ESSA made substantial changes to the law, including further extending the national government's commitment to providing equal opportunity for students in schools and shedding light on the gaps in achievement that went unnoticed under the NCLB.[79] The changes were extensive, and although some of the alterations may seem like old news in comparison to where the majority of society sits on special education issues today, they were substantial at the time and helped pave the path towards a more inclusive future.[80]

The Individuals with Disabilities Education Act (IDEA),[81] was the next important step in the developing history of special education law on a nation level. Replacing the Education for All Handicapped Children Act (EAHA),[82] IDEA took a substantial step to create a more inclusive atmosphere for students. Prior to the enactment of IDEA, the lives of children with disabilities

[74] *Id.*
[75] Although President Trump has repealed several regulations associated with the ESSA, it remains on the books. *See* Dana Goldstein, *Obama Education Rules Are Swept Aside by Congress*, N.Y. TIMES (Mar. 9, 2017).
[76] Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015).
[77] *Id.*
[78] *Id.*
[79] *Every Student Succeeds Act (ESSA)*, *supra* note 71.
[80] *Id.*
[81] Individuals with Disabilities Education Act, Pub. L. No. 108-446, 118 Stat. 2647 (2004).
[82] Education for All Handicapped Children Act of 1975, 89 Stat. 773 (1975).

were drastically different than they are today.[83] For instance, in 1967, doctors placed 200,000 persons with severe disabilities in state mental institutions, which had less than comfortable standards, providing the individuals with minimal food and clothing.[84] Prior to acts such as IDEA, children with disabilities were rarely assessed, and if they were, they were often improperly assessed.[85]

The introduction of IDEA was accompanied by key amendments, including ones providing all students with access to the same curriculum.[86] IDEA coined several concepts that have become an integral part of special education law today.[87] For instance, the Act ensures that all children with disabilities have access to a "free appropriate public education" and that "related services" are designed to meet their unique needs."[88] This Act was also the first to require that an IEP be made for each child, one that is narrowly tailored to best meet the individual's educational needs.[89] IDEA also required that a review of the program be conducted on an annual basis.[90] Another provision mandated that individuals with disabilities be educated in the "least-restrictive" environment appropriate to their needs.[91] When determining the least-restrictive environment for a child:

> a general education class with appropriate supplemental services is considered to be preferable to special classes, special classes are considered to be preferable to separate special schools, and special schools are considered to be preferable to homebound instruction. If no public facilities are available, then private day and

[83] *Twenty-Five Years of Progress in Educating Children with Disabilities Through IDEA*, U.S. Dep't of Educ., https://www2.ed.gov/policy/speced/leg/idea/history.html. (last visited Nov. 2, 2017).
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.* at 378.
[89] Evaluations, eligibility determinations, individualized education programs, and educational placements, 20 U.S.C.S. § 1414.
[90] Alexander, *supra* note 18, at 378.
[91] *Id.*

> residential schools may be used in the alternative and public funds may be used to defray the costs.[92]

Shortly after its introduction, IDEA accomplished several of its goals.[93] For instance, the majority of children with disabilities began to be educated in general education classrooms, surrounded by peers who did not suffer from disabilities.[94] The changes that resulted from IDEA also had a positive effect on graduation and employment rates—from 1984 to 1997, graduation rates increased by fourteen percent.[95] The number of children with disabilities who enrolled in secondary education institutions also increased, as by 1997 the numbers more than tripled the numbers in 1978.[96] Then, in 2004, the Obama Administration added several new amendments onto the ones submitted under the Clinton Administration.[97] Six of the most notable added provisions are as follows:

> (1) Schools must provide a child with a free appropriate public education in the interim but can conduct an evaluation of a child who transfers from out-of-state before becoming required to adopt the current IEP or craft a new IEP; (2) Where parents refuse to provide consent for an initial evaluation of their child, the school is relieved of the obligation to provide a free appropriate public education consisting for the evaluation; (3) Parents have a two-year limitation for filing of IDEA due process complaints; (4) Parents or the school district has 90 days under federal law to appeal an adverse decision of a hearing officer, or the time as stated in state law; (5) School districts must provide parents with notice of their and their child's rights once a year, including the procedure for a filing a due process complaint; (6) Rules for the placement of students with disabilities in alternative settings have been changed to allow schools to "consider any unique circumstances on a case-by-case basis when determining whether to order a change in payment," for students with disabilities who violate school conduct codes.[98]

[92] *Id.*
[93] *Twenty-Five Years of Progress in Educating Children with Disabilities Through IDEA*, U.S. DEP'T OF EDUC., https://www2.ed.gov/policy/speced/leg/idea/history.html (last visited Sept. 15, 2017).
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] Alexander, *supra* note 18, at 381–82; 20 U.S.C. § 1415 (2004).

On a grand scale, these amendments called for earlier intervention for students with disabilities, in order to provide those children with the accommodations and services they need earlier on in their academic careers.[99] It also heightened the standard by which special education teachers and instructors were measured, in an attempt to ensure that the most qualified teachers taught students with disabilities.[100] Additionally, the amendments required that local school districts in each state put fifteen percent of their special education funds toward general education, if it was determined that a disproportionate number of students from minority groups were placed in special education for reasons other than disability.[101]

Several landmark cases also aided in shifting society towards more inclusive principles. In 1955, the Supreme Court decided *Brown v. Board of Education*, holding that racial discrimination within public schools is unconstitutional.[102] Although the Supreme Court dealt primarily with racial discrimination in *Brown,* by concluding that "separate educational facilities are inherently unequal," the Court made clear that "separate but equal" principles were no longer acceptable, no matter the context.[103] Another critical case is *Pennsylvania Association for Retarded Children v. Pennsylvania*, a civil rights case brought by the Pennsylvania Association for Retarded Children and parents of thirteen children with disabilities on behalf of all children who suffer from disabilities.[104] The plaintiffs in the case sued the Commonwealth of Pennsylvania, the Secretary of Welfare, the State Board of Education, and thirteen individual school districts throughout the Commonwealth because they argued the disabled students were excluded from a program of education and training in their respective public schools.[105] The plaintiffs were challenging four

[99] *Id.*
[100] Alexander, *supra* note 18, at 381–82.
[101] *Id.*
[102] Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).
[103] *Id.*
[104] Pa. Ass'n for Retarded Children v. Pa., 343 F. Supp. 279, 281 (E.D. Pa. 1972).
[105] *Id.*

Pennsylvania statutes in particular, claiming they were unconstitutional as offending both due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.[106] They also argued that because the Constitution of Pennsylvania guaranteed education to all children, the statutes violated due process because they arbitrarily deny that given right to disabled children.[107] The first statute[108] relieved the State Board of Education from the responsibility of educating a child whom a school psychologist deemed "uneducable and untrainable;" the second[109] allowed indefinite postponement of admission to public school for any child who did not have the mental capacity of a five-year-old; the third[110] excused any child from compulsory school attendance whom a psychologist found unable to profit from school attendance in general; and, the fourth[111] defined the compulsory school age as eight to seventeen but evidence showed it had been used in practice to postpone admissions of children with disabilities until they reached the age of eight, and then eliminated them from public schools once they turned seventeen.[112] Although at first the defendants contested the four state statutes, they ultimately settled with the plaintiffs, and the Court held that two of the statutes were unconstitutional because they violated due process.[113]

In the second case, *Mills v. Board of Education*, the plaintiffs brought a class action on behalf of children seeking to sue their school board and other related officials to obtain an equal and adequate education.[114] The crux of the plaintiffs' argument was that despite their ability to benefit from an education in a regular classroom or in special classes tailored to their needs, the

[106] *Id.*
[107] *Id.* at 282.
[108] 24 Purd. Stat. Sec. 13-1375.
[109] 24 Purd. Stat. Sec. 13-1304.
[110] 24 Purd. Stat. Sec. 13-1330.
[111] 24 Purd. Stat. Sec. 13-1326.
[112] *Id.*
[113] *Id.*
[114] Mills v. Bd. of Educ., 348 F. Supp. 866, 868 (Aug. 1972).

school had wrongly labeled them as having "behavioral problems" being "mentally retarded," "emotionally disturbed," or "hyperactive."[115] The plaintiffs moved for summary judgment and the defendants opposed; however, the students were ultimately victorious, as the court granted their motion for summary judgment.[116] The court ultimately held that the school board's denial of publicly supported education violated the Due Process Clause of the Constitution.[117] Overall, both of these cases upheld the right of children with disabilities to have an equal access to education.[118]

## IV. History of Special Education Policies in New Jersey

This section discusses the historical development of special education laws in New Jersey. First, it provides a snapshot of the restrictive laws New Jersey had in place during the 1900's and early 2000's. Then, it discusses the development of New Jersey special education law since then, as it has moved to incorporate more inclusive principles.

### A. New Jersey's History with Restriction

Historically, New Jersey has struggled in the area of special education; specifically, when it comes to implementing more inclusive principles.[119] Beginning in 1911, New Jersey promoted educating students with disabilities in separate settings as children with disabilities.[120] "Still Separate and Unequal," a report that was published in 2004, but traced the progression of New

[115] *Id.*
[116] *Id.*
[117] *Id.;* U.S. CONST. amend. XIV, § 1.
[118] *Pa. Ass'n*, 343 F. Supp. at 28; *Mills*, 348 F. Supp. at 868.
[119] *See Still Separate and Unequal: The Education of Children with Disabilities in N.J.*, N.J. COUNCIL ON DEVELOPMENTAL DISABILITIES, 5 (2004), http://www.edlawcenter.org/assets/files/pdfs/issues-special-education/Still_Separate_and_Unequal.pdf
[120] *Id.*

Jersey's special education laws throughout the 1900's, revealed the systemic segregation of student with disabilities that was occurring within New Jersey.[121] Although in 1993 the percentage of students who were eligible for special education but were segregated into separate facilities was 8.9%, in 2003, the percentage was still 8.8%.[122] The 8.8% of students represented 19,596 students placed in segregated facilities.[123]

In comparison to other states, these percentages were shockingly high.[124] California, although it had a population over four times the amount of the population in New Jersey, had 6,000 fewer segregated facilities; even in comparison to the national average at the time—2.9%—these percentages are surprising.[125] Additionally, although New Jersey accounted for only 3% of the entire United States population in 2003, more than 11% of segregated students on a national level came from New Jersey.[126] At this time, for New Jersey to produce numbers similar to that of the national average, it would have had to remove approximately 13,000 students from segregated facilities.[127] This suggested that to remedy this issue, drastic systemic changes were necessary. And, even when New Jersey had taken steps towards facilitating change, the state still lagged behind the national averages.[128] For instance, 60% of New Jersey's students were spending more than 20% of their time outside the general classroom, as opposed to the national average of 52%.[129] In 2003, New Jersey sent a higher percentage of students with intellectual disabilities to out-of-district segregated facilities, than they did accommodate them within in-state general education

[121] *Id.* at 5.
[122] *Id.* at 11.
[123] U.S. Dep't of Educ., Office of Special Education Programs, *Data Analysis System, Table 5.2, Number, Percentage, and Difference from the National Baseline of Children (Ages 6-21) Served in Different Educational Environments Under IDEA, Part B During the 2002–2003 School Year*.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] Separate, *supra* note 119, at 11.
[128] *Id*. at 37.
[129] *Id.*

classrooms.[130] Even when students suffering from intellectual disabilities were placed in the state, they were not placed in the most inclusive settings possible; therefore, the state lagged behind when it came to this national average as well.[131]

Although New Jersey targeted many of its barriers to inclusion and made improvements, several barriers persisted even ten years later, and others emerged during that time.[132] "Systemic barriers such as funding and the availability of segregated placements, the structure of the New Jersey Department of Education (NJDOE), the lack of monitoring for implementing least-restrictive environment policies, the lack of adequate and accurate information for families, and the overwhelming support for out-of-district placement, were identified."[133] These five major barriers not only made inclusion principles very difficult to implement, but revealed the systemic problem New Jersey had on its hands if it wanted to progress in the special education field.[134] Overall, New Jersey was significantly behind the national average in several different aspects of special education policies.[135]

### B. *Disability Rights New Jersey v. New Jersey Department of Education*

One case in particular stands out in the midst of New Jersey's restrictive past, as it marked a significant change in the development of New Jersey's policies, for the better. *Disability Rights New Jersey v. New Jersey Department of Education* involved a group of disability rights advocates who sued the NJDOE and other defendants for violating requirements under IDEA.[136]

[130] *Id.*
[131] Separate, *supra* note 119, at 16.
[132] *Id.* at 21.
[133] *Id.* at 22.
[134] *Id.*
[135] *Id.*
[136] Disability Rights N.J. v. N.J. Dep't of Educ., No. 07-2978, 2011 U.S. Dist. LEXIS 109665, at *4 (D.N.J. Sept. 26, 2011).

Specifically, the advocates argued that the defendants "violated the rights of children with disabilities to receive a [FAPE] in the least restrictive environment".[137] The advocates sought to compel the defendants to incorporate children with disabilities into general education classrooms, instead of segregated ones.[138] The advocates also demanded that within those general education classrooms, the school provide the students with appropriate accommodations, aids, and services to the furthest extent possible.[139] Most of the advocates' arguments relied on results from a report resulting from experts observing randomly selected students from different districts within the classroom.[140] New Jersey's longstanding history with restriction contributed to the development of this litigation and it lasted seven years. The NJDOE finally settled in 2014.[141]

The settlement agreement established significant changes for New Jersey's inclusion policies.[142] Primarily, it established a state-wide system for the NJDOE to accomplish numerous goals: (1) to assess challenges faced by specific school districts in providing children with disabilities a FAPE in the most least-restrictive environment available; (2) to offer school districts technical assistance and ensure that the professionals are receiving the adequate training so that they can then properly provide for the students; (3) to monitor the school district's progress and ensure that the district is maintaining the requirements that it ought to be; and (4) to implement a committee comprised of disability rights advocates, to serve as a check on the NJDOE in the implementation of these terms of the agreement.[143] Several areas that the settlement agreement specifically listed as needing improvement are: adapting curriculum, providing advanced instruction and materials for the students, and analyzing data to ensure that schools place students

[137] *Id.*
[138] *Id.*
[139] *Id.* at *19–20.
[140] *Id.* at *5–6.
[141] Settlement Agreement, Disability Rights N.J. v. N.J. Dep't of Educ., No. 07-2978 (D.N.J. Feb. 12, 2014).
[142] *Id.*
[143] *Id.* at *3.

in the least-restrictive environment as possible.[144] The NJDOE also committed to developing an annual plan which would identify areas where each school district could benefit from this technical assistance and training, over the course of three years.[145] The case overall and the settlement agreement that resulted from it forced New Jersey to adapt from its restrictive past to its more inclusive future.[146]

C. Development of N.J.A.C. § 6A:14

Section 6A:14 of the New Jersey Administrative Code,[147] a New Jersey Special Education regulation, was originally enacted in 1998.[148] It implements special education policies within the state.[149] It includes the general requirements to:

> [1] Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under [IDEA]. [2] Ensure that the obligation to make a free, appropriate public education available to each eligible student begins no later than the student's third birthday and that an [IEP] is in effect for the student by that date [3] Ensure that a [FAPE] is available to any student with a disability who needs special education and relative services, even though the student is advancing from grade to grade [4] Ensure that the services and placement needed by each student with a disability to receive a [FAPE] are based on the student's unique needs and not on the student's disability [5] Ensure that students with disabilities are educated in the least-restrictive environment [6] Ensure the provision of special education and related services [7] Ensure that the rights of students with disabilities are educated in the least restrictive environment [8] Assist public and private agencies providing educational services to students with disabilities and [9] Ensure the evaluation of the effectiveness of the education of students with disabilities.[150]

The regulation applies to all school districts, charter schools, and renaissance schools, and the New Jersey Office of Administration Law (OAL) last amended it in 2013.[151] Essentially,

[144] *Id.* at *2–3.
[145] *Id.* at *3.
[146] *Id.*
[147] N.J.A.C. § 6A:14 (2017).
[148] 30 N.J. Reg. 2435(a) (July 6, 1998).
[149] *Id.*
[150] Special Education, *N.J.A.C.* 6A:14-1.1 (2017).
[151] *Id.*

through this regulation the OAL seeks to enforce the requirements of IDEA, by instructing every school covered by the regulation to provide each eligible student with a disability a FAPE, within the most least-restrictive environment possible.[152] The regulation emphasizes that a student's placement must be determined after considering his or her unique needs, and not be based solely off of his or her disability.[153] In an attempt to ensure that schools place each student with a disability accurately and that those children receive the necessary services, the regulation also calls for school evaluations of each disabled student's education.[154]

## V. Where New Jersey Stands Now

### A. Implementation of the New Policies by NJDOE and the State's Movement Towards Inclusion

Although it took a lengthy lawsuit to finally push New Jersey towards committing itself to more inclusive special education policies, it seems to be making the required changes now.[155] Additionally, more recent statistics reported from the NJDOE have reflected an increase in the number of students with disabilities obtaining available services. For instance, the NJDOE reported that from 2002 to 2013, the number of children with disabilities from the age of three to twenty-one, receiving services in a public school increased from 4,624 in 2002 to 16,515 in 2013.[156] Also, the New Jersey Department of Education also reported that while in 2002, the number of children that were being educated in general education classrooms for more than 80% of the day was 84,425,[157] as of 2016 that number rose to 97,487 students.[158]

[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] Limbacher, *supra* note 45, at 72.
[156] N. J. Dep't of Educ., Office of Special Education Programs, *Statewide Numbers and Percents Data Table, Ages 3-21 (Districts, Charter Schools, and State Agencies)* (2002-2013).
[157] N.J. Dep't of Educ., Office of Special Education Programs, *Statewide Number of Students by Placement and Eligibility Categories, Ages 6-21 (Districts, Charter Schools, State Agencies), as of December 1, 2002*.
[158] N.J. Dep't of Educ., Office of Special Education Programs, *Children Participating in Regular Education (Ages 6-21), as of October 15, 2016*.

Separate from the *Disability Rights* settlement, the New Jersey Legislature also adopted two new special education policies this past year, which school districts had to comply with by the end of April 2016.[159] First, Special Education Policy Number Twenty requires all school districts to implement a plan to establish stability in special education programming (taking into account consistency of location, curriculum, etc.)[160] Second, according to #21, every school district must maintain documentation of the screens taken of students for their disabilities, to ensure that the respective schools administered them properly.[161] These policies, which hold school districts accountable for their actions, illustrate that New Jersey is continuing on its most recent special education conscious path, as opposed to its restrictive past.

## VI. United States Supreme Court Decisions

### A. Description of *Board of Education v. Rowley* and *Endrew F. v. Douglas County School District*

To fully understand the implications of *Endrew F. v. Douglas County School District.,* one must also understand the holding of an important prior case, *Board of Education v. Rowley*.[162] To

[159] *Required Special Education Policies and Procedures*, OFFICE OF SPECIAL EDUCATION PROGRAMS, NEW JERSEY DEPARTMENT OF EDUCATION (2017), http://www.state.nj.us/education/specialed/memos/020717Policies.pdf.
[160] *Id.*
[161] *Id.*
[162] *Bd. of Educ. v. Rowley*, 458 U.S. 176 (S.C. June 28, 1982).

that end, I will first discuss the Court's holding in *Rowley*, and then delve into *Endrew* in more detail.

In *Rowley*, the Supreme Court attempted to clarify the requirements of a FAPE.[163] The Court held that Congress intended school districts to provide services that conferred "some educational benefit" upon students with disabilities.[164] The Court, however, stated that the "intent of the Act was more to open the door of public education to handicapped children by means of specialized educational services than to guarantee any particular substantive level of education once inside."[165]

In March of 2017, the Supreme Court decided *Endrew F. v. Douglas Count School District.*[166] The plaintiff in this case, Endrew, is a child with autism that received annual IEPs from the defendant, Douglas County School District from the time he was in preschool until fourth grade.[167] When Endrew was in the fourth grade, his parents realized that he was no longer progressing on an academic or functional level, and that the fifth grade IEP the District was going to use for Endrew was significantly similar to his fourth grade one.[168] As a result of these observations, Endrew's parents enrolled him in a specialized private school, and there Endrew made significant progress.[169] After Endrew's parents enrolled him in the private school, the representatives from the District approached the parents and offered a new fifth grade IEP; however, his parents determined that this new IEP was inadequate also, because it remained very similar to the original.[170] Endrew's parents ultimately filed a complaint under IDEA with the

[163] *Id.* at 201.
[164] *Id.*
[165] *Id.* at 192.
[166] Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017).
[167] *Id*. at 991.
[168] *Id.*
[169] *Id.*
[170] *Id.*

Colorado Department of Education, seeking reimbursement for Endrew's private school tuition, arguing that because the school district failed to provide an adequate education for Endrew, it should have to pay for the adequate education provided by the private school.[171]

The Colorado Department of Education denied Endrew's parents' claim, however.[172] Both the Federal District Court and the Tenth Circuit Court of Appeals affirmed the denial of the claim.[173] The Tenth Circuit held that where the parents placed the child in private school, they were not entitled to reimbursement under IDEA,[174] the District's progress reporting did not result in the denial of a free appropriate public education,[175] and the record supported finding that Endrew made progress under the "some educational benefit" standard.[176] Specifically, the Tenth Circuit interpreted the *Rowley* Court's decision as meaning the educational benefit mandated by IDEA must only be merely "more than de minimis."[177]

In this case, the Supreme Court had to settle the question of what level of educational benefit school districts must confer on children with disabilities to provide them with the free appropriate public education guaranteed by IDEA.[178] The plaintiffs argued for a "substantially equal opportunity" standard as opposed to the "de minimis" standard argued for by the defendants.[179] Mainly, the defendants argued for the "de minimis" standard because it "tracks what most schools are already generally doing for students in the real world."[180] The plaintiffs also argued that the text of IDEA requires a more meaningful standard for determining an

[171] *Id.*
[172] *Endrew*, 137 S. Ct. at 991.
[173] *Id.*
[174] Endrew F. v. Douglas Cnty. Sch. Dist., 798 F.1329, 1343 (10th Cir. 2015).
[175] *Id.* at 1335.
[176] *Id.* at 1339–40.
[177] *Id.* at 1338.
[178] *Endrew,* 137 S. Ct. at 993.
[179] *Id.* 997 (2017) (quoting Endrew F. v. Douglas Cnty. Sch. Dist., 798 F.1329, 1338 (10th Cir. 2015)).
[180] Brief of Petitioner-Appellant at 30, Endrew v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017).

appropriate FAPE[181] and that "no reasonable school official charged with educating children could think that a statute with these objectives allows schools to seek just-above-trivial educational advancement."[182] The plaintiffs argued that the circuits that followed the "some educational benefit standard" did so only in theory, not in practice.[183] According to the plaintiffs, the circuits actually abide by a more meaningful standard in practice, "[t]he National Association of State Directors of Special Education reports that 'all' its members providing information have 'expressed their belief that a standard more meaningful than just-above-trivial is the norm today.'"[184] Also, several other circuits had been following an alternate standard: the "some educational benefit" standard.[185] The defendants argued that the "more meaningful" standard is not demanded by IDEA and is not necessary either, claiming there is no evidence that shows students residing in the circuits following the "some educational" or "de minimis" standard suffer from any inferior opportunities.[186]

The Court ultimately vacated the Tenth Circuit's judgment and remanded the case for further proceedings consistent with the opinion.[187] The Court held for the plaintiffs, upholding the "some educational benefit" standard, arguably a stronger standard than the one the defendants were advocating for.[188] The holding demands that for a school to meet its substantive obligation under IDEA, the school must take certain steps—additional ones to the requirements under the Act.[189] First, the school must offer an IEP reasonably calculated to enable a child to make progress

[181] *Id.* at 19.
[182] *Id.* at 21.
[183] *Id.* at 31.
[184] *Id.*
[185] *See* Deal v. Hamilton Cty. Bd. of Educ., 392 F.3d 840, 862 (6th Cir. 2004); Adam J. *ex rel.* Robert J. v. Keller Indep. Sch. Dist., 328 F.3d 804, 808–09 (5th Cir. 2003); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182 (3d Cir. 1988).
[186] Brief of Respondent-Defendant at 6, Endrew v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017).
[187] Endrew v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988, 991 (2017).
[188] *Id.*
[189] *Id.*

appropriate in light of the child's circumstances.[190] Secondly, when a school fully integrates a student into a general education classroom, the school must provide a FAPE that meets the specific needs of that child.[191] Essentially, under this second requirement, the school must accommodate that student suffering from a disability with instructions specifically tailored to him or her, in order to aid them in succeeding in the general curriculum.[192] Third, if the child is not able to progress in the general education classroom or with the general education curriculum, his IEP does not have to aim for grade-level advancement.[193] The aim, however, must still be "appropriately ambitious" under his or her particular circumstances.[194] Essentially, the Court held that to provide a child with a disability a FAPE that IDEA requires, schools must offer a reasonably calculated IEP; this IEP must involve an intensive, fact-specific inquiry.[195]

Whether or not the Supreme Court's decision in *Endrew* is beneficial for the special education community is up for debate.[196] Some members of the special education community are excited about the decision, such as president of the National Center for Learning Disabilities (NCLD), Mimi Corcoran.[197] Finding the holding in *Endrew* to be a positive step in the right direction, Ms. Corcoran states, "NCLD applauds this decision and will work with parents and educators to make it a reality."[198] Similarly, some parents of children with disabilities feel empowered by the decision, such as Amanda Morin, a parent of two students with IEPs: "'I'm

[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Endrew,* 137 S. Ct. at 991.
[194] *Id.*
[195] *Id.*
[196] Laura Mckenna, *How a New Supreme Court Ruling Could Affect Special Education, Advocates for Students with Disabilities Argue the Decision Could Help Millions of Children*, THE ATLANTIC, (Mar. 23, 2017), https://www.theatlantic.com/education/archive/2017/03/how-a-new-supreme-court-ruling-could-affect-special-education/520662/.
[197] *Id.*
[198] *Id.*

thrilled, because I think it really empowers parents to feel confident when they go in the door [of an IEP meeting].[199] They can say that the law says that this program must be tailored so my child makes progress.'"[200]

Others in the special education community, however, have had the opposite reaction, expecting that the decision will not result in much change.[201] For instance, the School Superintendents Association (AASA) claims that, "[w]hile this is undoubtedly a new standard for FAPE, it is one with little substance or new meaning . . . the Court replaced [the old] standard with a standard that the 'educational program must be appropriately ambitious in light of a child's circumstances . . . [but] Courts have always considered what is "appropriate" in light of the child's circumstances.'"[202] Similarly, Angela Lange, a kindergarten to third grade special education teacher, expressed that while she is excited about the holding, she no longer finds its goals practical under the current administration: "[i]f we're going to fulfill the Supreme Court's vision, something has to change . . . [d]ecision makers at the federal, state, and local levels all want the same things teachers want: for kids to succeed. But the message I hear from the Administration's budget is that teachers aren't valued . . . [h]ow can our kids succeed if our teachers aren't supported?"[203]

C. Possible Implications for New Jersey's Future

Although litigation forced New Jersey to recognize that its special education policies have fallen short for years,[204] and it is possible that the impact of *Endrew* could motivate New Jersey to take its policies a step further, it is unlikely. The Supreme Court's holding in *Endrew*, demanding

[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] AASA Analysis of Endrew Ruling, THE SCH. SUPERINTENDENTS ASS'N (Mar. 23, 2017), http://www.aasa.org/policy-blogs.aspx?id=40924&blogid=84002.
[203] Lange, *supra* note 10.
[204] Settlement Agreement, Disability Rights N.J. v. N.J. Dep't of Educ., No. 07-2978 (D.N.J. Feb. 12, 2014).

a "some educational benefit" standard to be used by school districts going forward,[205] may be a beneficial holding for children with disabilities and their families located in states severely lacking inclusive and accommodating special education laws. In states that are behind in this area, the "some educational benefit" standard may force the school districts to ensure that the education provided to students with disabilities allows those students to progress.

Also, in states where courts had used the "de minimis" standard in its analyses, such as the states included in the Tenth Circuit,[206] the school districts may have to adopt new laws or change current laws to ensure that they meet the new "some educational benefit" standard. The Supreme Court's holding in *Endrew*, however, is less effective, and therefore less beneficial to affected children and families, in states that have already used its available resources to make improvements in special education, such as New Jersey. Prior to *Endrew*, New Jersey had already made substantial improvements in its special education laws to abide by the *Disability Rights* settlement.[207] Additionally, before *Endrew*, New Jersey had already proposed further legislation geared at limiting the usage of restraint and seclusion on students with disabilities.[208] The bill was approved on June 23, 2016, and its synopsis states that the bill "[e]stablishes certain requirements for use of restraint and seclusion on students with disabilities in school districts and approved private schools for students with disabilities [and] requires DOE to collect and report data regarding restraint and seclusion."[209] The bill was originally proposed in February of 2016, about a year before *Endrew* would be decided.[210] Therefore, because New Jersey has made active

[205] Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988, 991 (2017).
[206] Endrew F. v. Douglas Cnty. Sch. Dist., 798 F.1329, 1338 (10th Cir. 2015).
[207] *See* Section B., *Disability Rights of N.J. v. N.J. Dept. of Educ.*
[208] S. 1163, 2016 Leg., 217th Sess. (N.J. 2016).
[209] *Id.*
[210] *Id.*

improvements in special education within recent years, it is likely that New Jersey already meets the requirements of the "some educational benefit" standard demanded by *Endrew*.

In light of future litigation, all New Jersey would have to do to prove that it has abided by the Court's holding in *Endrew*, is to show that the student in question experienced some amount of progress from his or her education. Given the improvements New Jersey has already made in this field, it is likely to survive this type of analysis. Thus, *Endrew* will most likely not force New Jersey to make any significant changes in its special education law.

Additionally, since *Endrew*, there have been few new special education bills proposed by the New Jersey Legislature.[211] Also, the NJDOE has not yet produced a guidance document on the potential effects of *Endrew* on the state's special education law. Although the NJDOE has not yet released a guidance document on how to proceed after *Endrew*, the Massachusetts Department of Education released a document detailing some minor changes it will have to make in light of the decision.[212] Because Massachusetts's special education laws are not severely lacking, the state's department of education states that no significant changes will be necessary, "because [since its] state standards are in harmony with the standard in *Endrew F.*, the decision should not

[211] So far in 2018, the New Jersey Legislature has proposed four special education bills. The first calls for an amendment to the New Jersey Constitution, specifically to alter the minimum and maximum local tax requirements for funding public schools and minimum and maximum state support for special education. S. Res. 76, 2018 Leg., 218th Sess. (N.J. 2018); the second seeks to establish specific requirements for use of restraint and seclusion on students with disabilities in school districts and approved private schools. S. Res. 136, 2018 Leg., 218th Sess. (N.J. 2018); the third seeks to require the NJDOE to establish a website concerning available education programs and resources for special education students to access. Assemb. 1525, 2018 Leg., 218th Sess. (N.J. 2018); and lastly, the fourth seeks to establish a grant program for school districts to develop in-district and collaborative special education programs and services to reduce the need to place classified students outside of the district. Assemb. 980, 2018 Leg., 218th Sess. (N.J. 2018). Although the first proposed bill, if it becomes law, will require the state to fund at least eighty percent of special education costs (whereas now the state is not required to fund any specific percentage), it is unclear whether it will pass and whether the state could support this increase in special education funding if it were to pass. S. Res. 76, 2018 Leg., 218th Sess. (N.J. 2018).

[212] Massachusetts Dep't of Elementary & Secondary Educ., Education Laws and Regulations, Advisory on Endrew F. v. Douglas County School District Re-1, 2017 U.S. Supreme Court Decision of Special Education, (June 16, 2017), http://www.doe.mass.edu/lawsregs/advisory/2017-0616ieps.html

be a major shift for special education law in Massachusetts. "[213] Similar to Massachusetts, it is likely that because of New Jersey's recent improvements in special education law, the state will already meet the requirements of the "some educational benefit" standard demanded by the Court. Therefore, New Jersey, like Massachusetts, will most likely not see a major shift in its special education law following *Endrew*.

Also, although the recently elected governor, Phil Murphy[214], names education as one of his top priorities, he does not list special education as a specific target area that he intends to improve.[215] Because Murphy does not list special education as a specific priority, it is unlikely that he will make significant changes in this area in the near future, especially when the Supreme Court does not demand it. More importantly, if significant changes were to follow *Endrew*, funding would be necessary to implement and enforce those changes.[216] Therefore, even if New Jersey decided on its own to continue the trajectory of improving its special education laws, funding would also be an obstacle in the state's way.[217] For these two reasons, despite New Jersey's movement away from its restrictive past, and the developments it has made in recent years,

[213] *Id.*

[214] Dustin Racioppi, *Phil Murphy Becomes Governor of New Jersey, Plans New Direction for State*, NORTHJERSEY.COM (Apr. 7, 2018, 6:51 PM), https://www.northjersey.com/story/news/new-jersey/governor/2018/01/16/phil-murphy-becomes-plans-new-direction-new-jersey/1026568001/

[215] *Getting Education Right*, MURPHY4NJ, https://www.murphy4nj.com/issue/getting-education-right/ (last visited Oct. 31, 2017).

[216] Lange, *supra* note 203; Michael Morgan, Comment, *Paved With Good Intentions: How Endrew Could Affect Struggling School Districts,* SETON HALL L. REV. 1, 30 (forthcoming)(discussing that struggling school districts may have to face not upholding their IDEA obligations because of a lack of funding).

[217] Although this Comment does not discuss in detail how President Donald Trump's actions may affect special education, so far he has posed several obstacles in the way of improving special education and gaining funding for those improvements. So far under Trump's presidency, his administration has repealed regulations closely associated with the ESSA, Emma Brown, *Trump Signs Bills Overturning Obama-era Education Regulations*, WASH. POST, (Mar. 27 2017), https://www.washingtonpost.com/news/education/wp/2017/03/27/trump-signs-bills-overturning-obama-era-education-regulations/?utm_term=.c42ab93dd0cb; rescinded seventy-two guidance documents outlining rights of disabled students, Moriah Balingit, *DeVos Rescinds 72 Guidance Documents Outlining Rights for Disabled Students*, WASH. POST, (Oct. 21, 2017), https://www.washingtonpost.com/news/education/wp/2017/10/21/devos-rescinds-72-guidance-documents-outlining-rights-for-disabled-students/?utm_term=.de24861e4d9b; and also proposed Health Care Bills that would negatively affect individuals with disabilities, Julie Reiskin, *People with Disabilities Will Pay for the GOP's Medicaid Cuts*, THEHILL.COM, http://thehill.com/blogs/pundits-blog/healthcare/338800-the-disabled-will-pay-for-the-gops-medicaid-cuts (last visited Oct. 31, 2017).

it is unlikely to make significant changes in special education laws in the near future. Because New Jersey has already made improvements in special education as directed by the *Disability Rights* settlement,[218] will not be forced to make significant changes to its laws as a result of *Endrew*, and would face funding challenges if it were to make any large changes on its own, it is likely that New Jersey's progress in special education will plateau for now.

## VII. Conclusion

New Jersey has come a long way towards implementing and actually enforcing special education policies, particularly those related to inclusion. Despite these improvements, however, it is unlikely that New Jersey will make more significant developments in the near future. Although the recent Supreme Court decision, *Endrew F. v. Douglas County School District* may benefit states severely behind in its special education laws, it is not likely to make significant changes in states such as New Jersey, which would most likely satisfy the Court's standard already. Ultimately, although *Endrew* is not a step backwards for the special education community, it is not a significant step forward, as it will not force drastic improvements in New Jersey's special education laws in the near future.[219]

[218] Settlement Agreement, Disability Rights N.J. v. N.J. Dep't of Educ., No. 07-2978 (D.N.J. Feb. 12, 2014).