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Education Alert
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SUPREME COURT RULES ON FAPE STANDARD — NO CHANGES IN MASSACHUSETTS BASED ON DECISION

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On March 22, 2017, the United States Supreme Court decided the case of Endrew F. v. Douglas County School District, addressing the meaning of a free and appropriate public education ("FAPE") for the first time since Board of Education of Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 (1982).

Endrew F. is a child with autism who had an Individualized Education Program ("IEP") in Douglas County School District every year from preschool to fourth grade. By fourth grade, Endrew's parents believed that his academic and functional progress had stalled. The school district proposed an IEP for the fifth grade that was substantially similar to prior IEPs and the parents unilaterally placed Endrew in a private special education school. The parents sought reimbursement for the private school. The hearing officer and federal district court both ruled for the school district. The Tenth Circuit Court of Appeals affirmed the lower court ruling, holding that FAPE meant conferring an educational benefit that is "more than de minimis" and that the IEPs proposed would allow Endrew to make "some progress."

The United States Supreme Court ("Court") overturned the Tenth Circuit's definition of FAPE, holding that a school must offer an IEP reasonably calculated to enable a child to make "progress appropriate in light of the child's circumstances." For a child in a regular classroom, an IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade," though the Court cautioned in a footnote that passing grades may not always mean a student is receiving FAPE. For a child not in a regular education classroom, the IEP need not aim for grade-level advancement if that is not a reasonable prospect for the child, but it 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 Court specifically rejected the Parents' claim that FAPE requires school districts to provide "opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities."

Importantly, the Court counseled courts not to "substitute their own notions of sound educational policy for those of the school authorities that they review."

The FAPE standard that the Court articulated does not increase the standard for FAPE in the First Circuit and in Massachusetts. The First Circuit and the Bureau of Special Education Appeals ("BSEA") do not apply the "more than de minimis" standard that the Tenth Circuit used, but have long examined

an IEP to determine whether it is custom-tailored to address the unique needs of the student and reasonably calculated to enable the student to receive meaningful educational benefits and make effective progress. As before, under Endrew, courts and the BSEA will still determine whether an IEP is appropriately ambitious and "reasonably calculated to enable the child to make progress appropriate in light of his circumstances," after making a fact-specific inquiry dependent upon the student's unique circumstances.

If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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