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**Fifty Years of Case Law**

**From Rowley to Endrew F and Beyond**

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1. **Brief History of the Individuals with Disabilities Education Act (IDEA)**
   1. ***PARC v. Commonwealth of PA****.,* 343 F.3d 279 (E.D.Pa.1971). Thirteen students with intellectual disabilities (labeled then as “mental retardation”) brought claims against the state for excluding them from public education. The state and the plaintiff students entered into a consent agreement that required that the state place all children with disabilities in a free public education and training program.
   2. **1972** – Congress authorized an investigation and it determined that 3.9 million students were in adequate educational programs; 2. 5 million were in substandard programs and 1.75 million students were not in any educational program.
   3. **1975** – Public Law 94-142. IDEA began as the Education for All Handicapped Children Act which was signed into law on November 29, 1975.
      1. Public Law 94-142 opened public school doors for children with disabilities and ensured that children with disabilities had opportunities to learn.
      2. The law guaranteed access to a free appropriate public education (FAPE) in the least restrictive environment (LRE) to every child with a disability.
      3. Subsequent amendments, have led to an increased emphasis on access to the general education curriculum, the provision of services for young children from birth through five, transition planning, and accountability for the achievement of students with disabilities.
2. ***Rowley v. Hendrick Hudson District Board of Education*, 458 U.S. 176 (1982).**
   1. The Case: Amy Rowley was an elementary student with minimal residual hearing. Amy was an excellent lip reader, and did well in her mainstream classroom. The defendant school district declined her parents’ requests to provide a sign language interpreter for all of her school day. Amy performed better than average, and advanced from grade to grade, though it was undisputed that her performance in class was not what it could have been if she was a hearing student.

The Supreme Court clarified that IDEA does not require school districts to provide services which “maximize the potential of each [disabled] student . . .” Rather,the Court held that a school district could satisfy the requirement of FAPE by “providing instruction with sufficient support services to permit the children to benefit educationally from that instruction.” *Id*. at 195.

* 1. Takeaway:
     1. *Rowley* clarified that IDEA has both a substantive and a procedural component. Compliance with the substantive component means providing a child with meaningful educational benefit. Compliance with the procedural component is intended to safeguard the child’s educational opportunities and allow parents the opportunity to participate in the IEP formulation process.
     2. In addition to explaining the meaning of FAPE, the Court in *Rowley* clarified that the method used to educate a disabled child is not for a court to determine. Rather, questions of methodology are to be left to the school district. *Id*. at 207-208.

1. **Rowely’s Progeny**
   1. *Cedar Rapids Community School District v. Garret F*. 526 U.S. 66 (1999).
      1. The Student was a severely physically disabled student who required continuous one-on-one nursing services. The individual helping the Student must perform urinary bladder catheterization, suctioning of his tracheotomy tube, must understand how his ventilator works, and must be able to perform emergency procedures on those rare occasions when he experiences autonomic hyperreflexia. The Student’s parents asked the school to provide these skilled nursing services, and the school declined.

The Court determined that the school must provide the nursing services. It determined that the medical services exception did not apply, because the provider did not have to be a physician.

* 1. *Schaffer v. Weast,* 546 U.S. 49, 62, 126 S. Ct. 528, 537, (2005).
     1. The parents of a special education student challenged his initial IEP in a due process hearing. After multiple decisions by a hearing officer and the federal district court, the U.S. Court of Appeals for the Fourth Circuit, in a split decision, interpreted IDEA to require that in a due process hearing the burden of proof is on the party seeking relief.

In affirming the decision of the Court of Appeals, the U.S. Supreme Court explained that, while “Congress has chosen to legislate the central components of due process hearings,” it “has never explicitly stated, however, which party shall bear the burden at due process hearings.” “Absent some reason to believe that Congress intended otherwise,” the Court explained, it is appropriate to “conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.” In other words, since Congress did not address this issue, the general rule applicable to contested case proceedings, which places the burden of proof on the party seeking relief, applies.

Accordingly, the Court ruled, regardless of how the law has previously been interpreted, there is no legal basis to conclude that Congress had any intention to place the burden of persuasion in an IDEA due process hearing only on a school district. Thus, the Court said, the burden of a due process hearing properly lies with the party seeking relief.

* 1. *M.M. v. Minneapolis Public Schools*, 512 F.3d 455 (8th Cir. 2008).
     1. The District and Parent determined that special education student, M.M., needed a more restrictive setting to meet MM’s needs. The Parent rejected the setting the district proposed. During this time M.M. got in fights resulting in her suspension . The Parent initiated a due process hearing under IDEA and state law alleging that the District had imposed suspensions, exclusions, and administrative transfers that denied M.M. her right to a FAPE.

The Court determined that the District did not violate the IDEA when (i) the IEP team including the parent previously agreed that a change of placement to a more restrictive setting was needed; (ii) the parent rejected the placement offered by the District (and by the other members of the IEP team), as well as the District's proposals for interim home schooling; and (iii) the setting proposed by the parent at the due process hearing was found to be less appropriate for the child than the setting offered by the District and rejected by the parent. Because the District offers an appropriate placement and the parent rejected that placement, the District was not liable for suspensions that occurred beyond 10 days.

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1. **Minnesota/Eighth Circuit Specific Issues**
   1. ***1998*** *- Thompson By & Through Buckhanon v. Bd. of Special Sch. Dist. No. 1 (Minneapolis)*.

* + 1. Thompson initiated a due process complaint against Minneapolis Public Schools under IDEA after he had transferred to a Minneapolis charter school, a different school district. The Court determined that if a student changes school districts and does not request a due process hearing, his or her right to challenge prior educational services is not preserved. Subsequent challenges to the student's previous education become moot because the new school district is responsible for providing a due process hearing. This is the law in the 8th Circuit.
  1. ***2017*** *- RRM v. Minneapolis Public Schools.* In this case, the student argued that Minnesota law entitled her to a FAPE even though her parent had unilaterally enrolled her in a private school. The Eighth Circuit Court of Appeals agreed with RRM interpreting Minnesota law to require not only the offer of a FAPE but the provision of a FAPE to all private and home schooled students.
  2. ***2019****- E.M.D.. v. St. Louis Park Public Schools. The Student had depression and related conditions that caused her to miss school. She was placed in day treatment and residential care by her parents. The District evaluated her and determined that she did not qualify for services because although she had mental health issues, she did not require specialized instruction in order to make progress at school. In fact, she performed well above her peers academically and had no behavioral issues at school. The Eighth Circuit held that she should have been identified as in need of special education. The case is on appeal to the United States Supreme Court.*
  3. ***2020*** *-M.B. v. Osseo Area Public Schools.* Almost every state in the union allows open enrollment to some extent. The plaintiff in this case argued that she was entitled to transportation from her home in Big Lake to her assigned school. The 8th Circuit Court of Appeals disagreed and held that IDEA did not contemplate open enrollment and therefore the state law that provided that open enrolled students were transported only with the district boundaries did not violate the IDEA.

1. ***Endrew v. Douglas County School District,*** 137 **S. Ct. 988 (2017).**
   1. Facts: Endrew, a child diagnosed with autism, received annual IEPs from preschool through fourth grade. His IEP goals and objectives largely carried over from one year to the next, without significant improvement on Endrew’s problematic behaviors. Endrew’s parents believed his academic and functional progress had stalled and, when the district proposed a similar IEP for Endrew’s fifth grade year, they withdrew him from public school. Endrew’s parents then placed him in a private school that specializes in educating students diagnosed with autism. Endrew’s parents eventually filed a complaint seeking reimbursement for the tuition they paid to that private school.
   2. Issue: What level of educational benefit is guaranteed under the IDEA?
   3. Holding: Explicitly rejecting that merely more than de minimis progress is required for a FAPE, the Supreme Court opted for a more rigorous standard. The new standard requires each child’s educational program to be “appropriately ambitious in light of his circumstances” and grant “every child the chance to meet challenging objectives.”
   4. Interpreting Endrew:
      1. I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Sch., 863 F.3d 966, 969 (8th Cir. 2017). In this case, the Eighth Circuit Court of Appeals held that the plain language of Minnesota Statutes, section 125A.06(d) “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.” The court found that, “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.” The court concluded that this standard is consistent with the standard recently set forth in Endrew and noted that the new Endrew standard is consistent with interpreting the applicable regulation as requiring “all reasonable steps” and not perfect results or any particular educational outcome.
      2. *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303 (5th Cir. 2017). The Fifth Circuit Court of Appeals found that a school district did not meet the standard set forth in Endrew where it failed to provide an IEP in a timely manner. The court held that this failure constituted a procedural violation of the IDEA. Applying the Endrew decision, the court further determined that the school district’s failure also constituted a substantive IDEA violation. It based this conclusion on the fact that the IEP would have gone into place approximately one week before graduation—the student had completed necessary coursework to graduate—and would have required the student to transfer from a private school to a public school for her final week. Given the timing of the student’s upcoming graduation, the court stated that, “[b]y then, any educational program could only be calculated to allow minimal progress.”
      3. *M.L. by Leiman v. Smith*, 2017 WL 3471257 (4th Cir. Aug. 14, 2017). Other courts are side-stepping the issue altogether. For example, the Fourth Circuit Court of Appeals recently demonstrated its reluctance to grapple with how Endrew should be applied. The court stated, “For purposes of the case at bar…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.”
2. **And Beyond**
   1. *2020- M.L.K. v. Minnetonka Public Schools, Independent School District No. 276*, OAH Docket No. 82-1300-36317.

* + 1. M.L.K. (“Student”) was a fourth-grade student at the time of this administrative hearing. The Student has average intelligence coupled with severe dyslexia, significant ADHD, a speech/language disorder, and mild Autism.

The District implemented an IEP in 2015, “which it amended several times as Student progressed through the grade levels.” “ Student made progress in math, handwriting, speech and language, and social skills.” The Student also made “some slight progress in particular [reading] skills,” but “remained below or near a first-grade reading level for years.”

The Student was receiving top of the line services. The undisputed testimony was that no other school district in Minnesota could offer this level of service. The Parents contended that the District could do “more,” and the parents brought a due process complaint, asserting that the District’s evaluation was insufficient and that the student had not been provided a FAPE.

The ALJ determined the District did not meet its burden to prove that its 2018 evaluation was appropriate and that the District did not provide Student a FAPE. The District did not properly identify Student’s most debilitating disabilities—dyslexia and ADHD—and that the failure was not harmless. The misclassification hindered the proper design of an IEP that would have met Student’s reading needs and resulted in the District’s failure to provide appropriate services to Student to ensure appropriate educational progress.

* 1. *2021 - In the Matter of A.T. vs. Osseo Area Public School ISD. No. 279*, OAH Docket No. 8-1300-37093.
     1. Student who suffered from a form of epilepsy that caused significant cognitive disability and developmentally functions. Due to her condition, she could not attend school until noon. The Parents filed a complaint alleging Student’s IEP failed to provide a FAPE because she was not provided a “full school day.” The ALJ awarded the student 6 hours of service from noon to 6:00 pm, daily.

1. **What is Next?**