Education Week October 2, 2016 Article

"U.S. Supreme Court to Decide Level of 'Benefit' Special Education Must Provide"

By **Christina Samuels** on September 29, 2016 1:00 PM

*Cross-posted from the **School Law Blog***

By Mark Walsh

The U.S. Supreme Court on Thursday granted review in a case about the level of education benefit a child must receive for a school district to have provided an appropriate level of service under the main federal special education law.

The case, ***Endrew F.* v. *Douglas County School District RE-1*** (No. 15-827), raises an important question that has divided federal appeals courts: What level of educational benefit must a child receive under his or her individualized education program, or IEP, to satisfy the demands of the Individuals with Disabilities Education Act?

The U.S. Court of Appeals for the 10th Circuit, in Denver, **ruled last year in the case** of a Colorado child with autism that because the child's public school IEP had provided him with "some educational benefit," the Douglas County district had provided a "free, appropriate public education" under the IDEA.

The 10th Circuit court thus rejected a private school reimbursement for the parents of the boy identified as Endrew F. after the parents had pulled him from public school amid the dispute over his 5th grade IEP.

In an August 2015 decision, the 10th Circuit court panel acknowledged that several other federal courts of appeals have adopted a higher standard that requires an IEP to result in a "meaningful educational benefit."

But the 10th Circuit, agreeing with a lower court in Endrew F.'s case, said that a key 1982 Supreme Court precedent on special education, ***Board of Education of the Hendrick Hudson Central School District* v. *Rowley***, merely requires an IEP to provide "some educational benefit."

"The courts of appeals are in disarray over the level of educational benefit that school districts must confer on children with disabilities to provide them with a free appropriate public education under the IDEA," **says the appeal filed on behalf** of Endrew F. and his parents by his Denver lawyers and the Supreme Court Litigation Clinic at Stanford Law School. "This court should use this case—which cleanly presents the legal issue on a well-developed set of facts—to resolve the conflict over this important question."

In May, the Supreme Court **invited the U.S. solicitor general** to file a brief expressing the views of the Obama administration. On Aug. 18, Acting Solicitor General Ian H. Gershengorn **filed a brief** that urged the justices to take up the appeal.

"This court should grant certiorari and overturn the 10th Circuit's erroneous holding that states must provide children with disabilities educational benefits that are 'merely ... more than de minimis' in order to comply with the IDEA," the brief states. "The 10th Circuit's approach is not consistent with the text, structure, or purpose of the IDEA; it conflicts with important aspects of this court's decision in ... *Rowley*, and it has the effect of depriving children with disabilities of the benefits Congress has granted them by law."

Lawyers for the Douglas County district argued in briefs, **including one filed in response** to the solicitor general's recommendation to grant review, that the asserted split among the federal appeals courts is "shallow" and that only the U.S. Court of Appeals for the 3rd Circuit, in Philadelphia, "has consistently applied a purportedly more demanding 'meaningful benefit' standard."

"The government contends that the IDEA demands something 'more robust'" than the "some benefit" standard, says the school district brief. "The question is whether a state has satisfied its substantive obligations if the IEP it offers provides a child more than a de minimis educational benefit. Under *Rowley* the answer is yes."

Despite the district's arguments, the Supreme Court on Sept. 29 granted review, one of eight cases the justices added to their docket just before the formal start of their new term on Oct. 3.

The *Endrew F.* case is likely to be argued sometime early next year.