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***ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT CLARIFIES HOW SCHOOLS
PROVIDE FREE APPROPRIATE PUBLIC EDUCATION***

MADELINE SMITH
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Reviewed and approved* by the following:

David A. Gamson
Associate Professor of Education
Honors & Thesis Adviser

Maria M. Lewis
Assistant Professor of Education
Thesis Adviser

* Signatures are on file in the Schreyer Honors College.

ABSTRACT

On April 24, 2017, the Supreme Court of the United States issued the decision on *Endrew F. v. Douglas County School District* in which the Court was asked to determine the level of educational benefit that school districts must provide children with disabilities in order to ensure the free appropriate public education (FAPE) guaranteed by the Individuals with Disabilities Education Act (IDEA). Thirty-five years prior to *Endrew F.*, the Court was asked the same question in *Board of Education of Hendrick Hudson Central School District, Westchester County v. Rowley*. In those thirty-five years, different interpretations of the standard set in *Rowley* led to much confusion among courts, school districts, educators, and parents of how to comply with the IDEA and what it means to provide students with disabilities a FAPE. Through legal analysis of circuit court decisions, amicus curiae briefs, and the *Endrew F.* decision itself, this study hopes to explore whether or not *Endrew F.* provides enough clarification of the *Rowley* decision to mitigate the problems in interpreting FAPE.

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Chapter 1

Introduction

On April 24, 2017, the Supreme Court of the United States issued the decision on *Endrew F. v. Douglas County School District* in which the Court was asked to determine the level of educational benefit that school districts must provide children with disabilities in order to ensure the free appropriate public education (FAPE) guaranteed by the Individuals with Disabilities Education Act (IDEA). Thirty-five years prior to *Endrew F.*, the Court was asked the same question in *Board of Education of Hendrick Hudson Central School District, Westchester County v. Rowley*. In those thirty-five years, different interpretations of the standard set in *Rowley* led to much confusion among courts, school districts, educators, and parents of how to comply with the IDEA and what it means to provide students with disabilities a FAPE.

This confusion surrounding how to interpret FAPE has created inconsistent opportunities for students with disabilities across the United States. Though the IDEA has been reauthorized and amended, there has been a need for further clarification of FAPE as school leaders, teachers, and the court system have all seen FAPE differently.

Through legal analysis of circuit court decisions, amicus curiae briefs, and the *Endrew F.* decision itself, this study aims to bring to light why there was need for further clarification of FAPE, what specific questions needed to be answered, and if the *Endrew F.* decision answered those questions in order for educators and the courts to effectively implement the IDEA. All of these efforts ultimately aim toward understanding whether or not *Endrew F.* provides enough clarification of the *Rowley* decision to mitigate the problems in interpreting FAPE and analyzing

how this decision will affect the education of students with disabilities.

Chapter 2

Historical Background & Literature Review

Vital to understanding *Andrew F.* and its implications is understanding the history of the IDEA, the *Rowley* decision, and the conversation surrounding FAPE in academia. This historical background and literature review outlines these important pieces and provides the necessary context for the rest of the study.

History of the IDEA

Prior to the 1970s, children with disabilities had very limited access to educational opportunities. Following a series of state laws and federal court decisions regarding educational rights for children with disabilities paired with the advocacy of parents and other concerned individuals, Congress passed the Education for All Handicapped Children Act (EAHCA) in 1975 (Martin et al., 1996). This act is now known as the Individuals with Disabilities Education Act (IDEA) and it is the most important and influential piece of legislation for students with disabilities. The law spells out the detailed procedural protections regarding eligibility for special education services, parental rights, individualized education programs (IEPs), the requirement that children be served in the least restrictive environment, and the need to provide related (noneducational) services (Martin et al., 1996). Principal author of act, Senator Harrison Williams, said:

We must recognize our responsibility to provide education for all children [with disabilities] which meets their unique needs. The denial of the right to education and to equal opportunity within this nation for handicapped children—whether it be outright exclusion which meets the needs of a single handicapped child, or the refusal to recognize the handicapped child’s right to grow—is a travesty of justice and a denial of equal protection under the law (Senator Harrison Williams, principle author of the Education for All Handicapped Children Act, Congressional Record, 1974 191 A, p. 15272).

After decades of ignoring individuals with special needs in education, the IDEA required and still requires that schools provide all students with disabilities a “free appropriate public education” (FAPE). Though there have been amendments to the IDEA in both 1997 and 2004 (as well as many other challenges presented to the law), the definition of FAPE has stayed the same since the IDEA’s creation in 1975. The public-school district is responsible for providing a student’s FAPE and it is developed and enacted through the IEP, targeted toward meeting the student’s unique educational needs, and designed to create educational benefit (Yell & Bateman, 2017). The FAPE standard, as the centerpiece of the IDEA, has found its way into the middle of much controversy over the years since the creation of the law. FAPE has been challenged by parents, scholars, and the judicial system. Court cases with questions about FAPE have made their way to district and circuit courts, while two in particular made their way to the Supreme Court. The *Board of Education of the Hendrick Hudson Central School District v. Rowley* and *Andrew F. v. Douglas County School District* serve as guides for how schools and educators are meant to interpret this standard and how they should provide a FAPE to students with disabilities.

The Board of Education of the Hendrick Hudson Central School District v. Rowley

On June 28, 1982, the Supreme Court ruled on the case *Board of Education of the Hendrick Hudson Central School District v. Rowley*. This case has been regarded as one of the most important judicial decisions in special education history. Up until 2017, the *Rowley* decision stood as the precedent for how courts are to interpret the IDEA and FAPE.

Amy Rowley, a deaf elementary-aged student in a public school in Peekskill, New York, had been provided with a sign-language interpreter in the classroom as per her IEP that school administrators, teachers, and her parents created for her. After a two-week trial period, the interpreter reported to the school administrators that Rowley did not need her services because they determined she was performing well in the classroom. Rowley completed the year by relying on an FM wireless hearing aid and her own lip-reading abilities. The next year, Rowley's parents requested again that the school provide their daughter with a sign-language interpreter. The school district denied their request, but still provided her a hearing aid. The IDEA permits the review of decisions and, so, the Rowley's sought administrative review making the argument that with a hearing aid but without an interpreter, Rowley would only be able to understand about 60 percent of the spoken language in the classroom. The independent examiner, however, sided with the school district and deemed the interpreter unnecessary (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 1982).

The Rowley's, still dissatisfied with this decision, filed suit in U.S. district court. This time, the ruling was in Rowley's favor and the district court found that, because Rowley lacked

an interpreter, “she understands considerably less of what goes on in class than if she were not deaf”, and she “is not learning as much or performing as well academically, as she would without her handicap” (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 1982, Part II). This decision concluded that the school district was not in compliance with the IDEA because Rowley was not receiving a FAPE in order to achieve her full potential. After the Court of Appeals for the Second Circuit affirmed that judgment in July 1980, the school district appealed to the Supreme Court which heard oral arguments on March 23, 1982 and issued a decision on June 28, 1982. Here, the Supreme Court was asked the question: What does “free appropriate public education” require in the context of EAHCA?

In a 6-3 majority opinion written by Justice William Rehnquist, the Supreme Court reversed the Second Circuit’s decision. Chief Justice Burger and Justices Powell Jr., Stevens Blackmun, and O’Connor joined Rehnquist in the majority. The majority decided that the EAHCA’s demand for a FAPE would be met if schools provide students with disabilities with necessary accommodations, but the Act does not require schools to provide enough accommodations for these students to reach their maximum potential. Justice Rehnquist wrote, “the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside” (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 1982, Part i). Specifically, the Court decided that a FAPE is provided when a student with disabilities confers “some educational benefit” from a “reasonably calculated” IEP (Part iii). However, the Court declined to define “educational benefit” due to the wide array of students with differing needs that school districts serve. The majority opinion states:

The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by the children at the other end, with infinite variations in between... 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. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public-school system, we confine our analysis to that situation (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 1982, Part iii).

Justice White filed a dissenting opinion and was joined by Justices Brennan and Marshall. These Justices found that the majority opinion falls short of what the Act intended and the “basic floor of opportunity is instead, as the courts below recognized, intended to eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible” (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 1982, Part I). The dissent agreed with the District and Appellate courts that Amy Rowley, without an interpreter, is put at a disadvantage that her peers do not have to face.

The heart of this disagreement lies with the definition of a “free appropriate public education.” To the majority of the Supreme Court in this decision, “appropriate” meant that FAPE is achieved when access is provided “sufficient to confer some educational benefit” (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 1982, Part iii). As leaders in the legal world and not in education, the Justices saw it as inappropriate to define FAPE when Congress itself had declined to do so. Providing a specific definition for FAPE, they felt, would make its application

to a variety of students with a variety of disabilities too difficult. Here, though, is where the trouble with interpretation of FAPE arose as parents, educational leaders, and courts all took this “some educational benefit” to mean something different.

Conflicting Views Among Legal and Social Science Scholars

The literature in academia also reflects this trouble with the interpretation of FAPE. Both peer-reviewed social science and law review articles capture the disagreement throughout the country on what exactly a FAPE for students with disabilities should look like.

Many scholars advocate for the elevation of the FAPE standard, making it a standard that demands educators to provide students with disabilities with educational opportunities that help them reach their full potential. Zirkel (2013) argues that the majority of the literature surrounding *Rowley* and FAPE advocate for raising the substantive standard and clear up the “glaring gap” between the interpretations of the courts. Beatty (2013) agrees—critiquing the current interpretation of FAPE and its ineffectiveness in providing equal educational opportunity to children with disabilities since there is such variation in its interpretation from state to state. Due to this variation across the United States, the opportunities for students with disabilities are inconsistent. A more uniform standard would raise the bar for what schools across the country provide for these students.

Huefner (2008) also argues for the updating of FAPE and thinks that the *Rowley* interpretation is no longer relevant with the amendments in the IDEA. This scholar, though, did not believe another Supreme Court decision was necessary and FAPE could be effectively changed through legislation and decisions by school districts. Knight (2009) also believes that a

Supreme Court decision is not necessary and believes that the legal system has no place in deciding what schools should and should not do regarding students with disabilities. For these students, schools and individual education program (IEP) teams should be making the decisions about what is appropriate. Knight (2009) writes:

IDEA was designed to afford a certain level of flexibility to schools, administrators, and teachers alike, and given the extensive procedures for revising or amending an IEP, there should be no reason for school officials to alter the document without the consent of the parents and the rest of the IEP team (p. 409).

This common opinion holds that the IDEA and the IEP procedures are enough to support a FAPE for all students with disabilities and the court system should not be involved in this decision-making process.

Andrew F. v. Douglas County School District

The conflicting views and confusion persuaded the Supreme Court to hear *Andrew F. v. Douglas County School District* in 2017. Andrew F., an autistic fifth grade student, had been placed in private school by his parents after years of feeling as though his IEP was not sufficient for Andrew making progress. His IEP goals and objectives generally stayed the same year to year despite Andrew's persistent behavioral problems and his not making "meaningful progress" (*Andrew F. v. Douglas Co. School Dist. Re-1*, 2017). His parents saw an overhaul of the whole IEP necessary in order for Andrew to receive a FAPE. When the school presented them with another IEP they viewed to be no different than the ones before, they removed Andrew from

public school and placed him in the Firefly Autism House. This private school specializes in educating children with autism.

When Endrew performed much better at Firefly, Endrew's parents filed a complaint with the Colorado Department of Education seeking reimbursement for Endrew's private school tuition due to the school district not providing their son a FAPE. After the district court sided with the school district, Endrew's parents appealed to the Tenth Circuit. The Tenth Circuit affirmed that decision with the argument that Endrew's IEP had been "reasonably calculated to enable [him] to make *some* progress" (*Endrew F. v. Douglas County Sch. Dist. Re-1*, 2017, p. 2).

The Supreme Court granted certiorari where it held 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 F. v. Douglas Co. School Dist. Re-1*, 2017, p. 2). The Court rejected the "some benefit" standard that had been adopted by some courts and schools in determining FAPE but also stated that the standard advocated by Endrew F.'s parents would still be too rigorous and was too similar to the one the Court has previously rejected in *Rowley*. A further discussion of this decision will attempt to understand its implications in light of the analysis of the circuit court decisions and amicus curiae briefs.

Chapter 3

Methods

This study employs forms of legal research in order to analyze the circuit court decisions leading up to *Andrew F.*, the amicus curiae briefs submitted to the Supreme Court once *Andrew F.* was granted certiorari, and the *Andrew F.* decision itself in order to better understand how, if at all, it has helped to clarify *Rowley* and FAPE.

Legal research, as defined by Barkan, Bintliff, and Whisney (2015), is the “process of identifying and retrieving the law-related information necessary to support legal decision-making” (p. 1). Methods of legal research attempt to analyze the facts of a problem and conclude with the application and communication of the results of studying that problem. Legal research begins typically with reading and analyzing judicial opinions, then moving onto other primary sources of law and secondary sources (Barkan et al., 2015).

This study uses primary sources of court decisions and amicus curiae briefs to comprehend the need for clarification as well as how the legal reasoning in *Andrew F.* will translate going forward. Circuit court decisions between *Rowley* and *Andrew F.* ruling on individual IDEA cases are analyzed for their differences. Some of those decisions ruled using a “higher meaningful benefit standard” while the others used a “lower de minimis standard”. The use of these two standards represents the confusion and divide in the interpretation of FAPE. While some courts decided that FAPE was

achieved if students with disabilities conferred “some benefit” from the IEP and resources provided by the school district (the “lower de minimis” standard), others decided that FAPE was only achieved if these students conferred “meaningful” benefit (the “higher meaningful benefit” standard). Yell and Bateman (2017) used these two categories to distinguish the main differences in arguments in the circuit courts. I will be using these categories these authors created to categorize both the circuit court decisions surrounding FAPE and the amicus curiae briefs submitted by various interest groups.

All amicus curiae briefs submitted for *Endrew F.* were analyzed for their arguments. The “Summary of Argument” section of each brief was used for this as it was the most concise and consistent way of analyzing each brief. The main argument of each brief was pulled out and categorized as either using a “higher meaningful benefit standard” or a “lower de minimis standard”. Their other main arguments are also noted.

Both the circuit court decisions and the amicus curiae briefs help to understand *Endrew F.* because they provide important context for the discussion surrounding FAPE. The circuit court decisions show a split throughout the country and the confusion amongst the courts in how to interpret the IDEA and FAPE.

The amicus briefs also show this confusion, but in a different way. Amicus curiae, translating literally to “friend of the court”, is a useful tool for groups who have an interest in how a Supreme Court case plays out. The concept of amicus curiae goes back far in our country’s history. Originally, in common law, the function of amicus curiae was orally bringing up information or cases unknown to the judge (Krislov, 1963). Eventually, amicus curiae took the form of written briefs as we know them today. The

shift from oral to written, though, is not the biggest change amicus curiae briefs underwent.

The original purpose of the amicus brief was to be a neutral third party, informing the Court on a topic or a particular legal reasoning in order to help make their decision. Now, amicus curiae briefs have taken on a slightly different role. Groups that submit amicus briefs do so in order to advocate for a position they feel strongly about. This shift from “neutral friendship” to “advocacy”, as Krislov (1963) calls it, best represents what we commonly see in amicus briefs today—including in the *Andrew F.* case.

As the nature of the amicus briefs have changed, so have the amount and frequency with which they are submitted. Amicus briefs were rare throughout the first century of the Supreme Court’s existence (Kearney & Merrill, 2000). This has changed dramatically. By the year 2000, one or more amicus briefs have been filed in 85 percent of the Supreme Court’s cases (Kearney & Merrill, 2000). Now, submitting amicus curiae briefs for cases is the norm.

The perception of the impact of amicus briefs varies within the legal community. While some have found and view amicus briefs as useful and effective, others do not. Collins (2004) found that amicus participation increases litigation success and hypothesizes that it is due to the added information and perspective the briefs give the Court, while also possibly signaling how many groups and individuals will be potentially affected by the outcome of the case. With the valuable assistance they can provide the Court, most lawyers and judges moderately support the use of amicus briefs (Kearney & Merrill, 2000). Other members of the legal community, however, find that amicus briefs

commonly reiterate arguments found in their party's brief and that the Court is less likely to adopt arguments only found in amicus briefs (Spriggs & Wahlbeck, 1997).

While the extent to which amicus briefs impact the Court's decisions can be disputed, they still can offer much insight when attempting to understand a particular issue. In this case, the amicus curiae briefs help to provide context for how different groups of people understand FAPE and how the outcome of the *Andrew F.* decision may affect them.

The analysis of the circuit court decisions and the amicus curiae briefs ultimately contribute to the analysis of the *Andrew F.* decision and a discussion about its implications.

Chapter 4

Circuit Court Decisions Analysis

Prior to *Endrew F.* and crucial to the case reaching the Supreme Court is the disagreement surrounding FAPE among the circuit courts. Cases about students with disabilities were brought to each of the thirteen circuit courts between 1982 and 2017, while the cases specifically asking to determine the appropriate level of education for these students reached ten of the thirteen. The problem is not, though, the number of cases brought in front of the U.S. Courts of Appeals. The problem is the inconsistency in decisions across these courts in determining an appropriate level of education for students with disabilities. Some courts came to the conclusion that the “educational benefit standard” established in *Rowley* required school districts to provide students with disabilities an IEP and resources that resulted in “meaningful benefit” to each student. Other courts used this standard to decide that any level of benefit given to a student with disabilities complies with the IDEA (Yell & Bateman, 2017). This section contains the summaries of some of these cases and the analysis of where they fit in with the discussion leading up to *Endrew F.* Below is a table of the cases analyzed for this study and categorized by whether their decision adopts a meaningful benefit standard or a de minimis standard for FAPE.

Table 1: Circuit Court Decisions

Court of Appeals	Case	Year	Category
First Circuit	<i>Lessard v. Wilton Lyndeborough Coop. School District</i>	2008	Lower de minimis standard
Second Circuit	<i>Walczak v. Florida Union Free School District</i>	1998	Lower de minimis standard
Third Circuit	<i>Polk v. Central Susquehanna Intermediate Unit 16</i>	1988	Higher meaningful benefit standard
Third Circuit	<i>Ridgewood Board of Education v. NE for ME</i>	1999	Higher meaningful benefit standard
Fourth Circuit	<i>Barnett v. Fairfax County School Board</i>	1991	Lower de minimis standard
Fifth Circuit	<i>Cypress-Fairbanks ISD v. Michael F.</i>	1997	Higher meaningful benefit standard
Sixth Circuit	<i>Deal v. Hamilton County Board of Education</i>	2004	Higher meaningful benefit standard
Seventh Circuit	<i>Lachman v. Illinois State Board of Education</i>	1988	Lower de minimis standard
Eighth Circuit	<i>Fort Zumwalt School District v. Clynes</i>	1997	Lower de minimis standard
Tenth Circuit	<i>Thompson R2-J School District v. Luke P., ex rel. Jeff P.</i>	2008	Lower de minimis standard
Tenth Circuit	<i>Andrew F. ex rel. Joseph F. v. Douglas County School District</i>	2015	Lower de minimis standard
Eleventh Circuit	<i>Doe v. Alabama State Department of Education</i>	1990	Lower de minimis standard

Circuit Courts Adopting a Meaningful Benefit FAPE Standard

The circuit courts which adopted a higher standard for educational benefit were the Third Circuit Court, Fifth Circuit Court, and Sixth Circuit Court. In 1988, the Third Circuit had the chance to decide on the appropriate level of educational benefit for students with disabilities in *Polk v. Central Susquehanna Intermediate Unit*. When the school district trained a teacher to incorporate physical therapy into fourteen-year-old severely mentally and physically disabled Christopher Polk's IEP instead of providing a licensed physical therapist, his parents claimed he

did not receive a FAPE (*Polk v. Central Susquehanna Intermediate Unit 16*, 1988). The school district won in both the hearing and district court. The district court had decided that any conferred educational benefit, no matter how much, complies with the IDEA and provides an appropriate education. The Third Circuit, however, decided differently. Through looking at both Congress' intent in the IDEA and the *Rowley* decision, they believed that FAPE was achieved when students with disabilities were provided an education that would "confer meaningful benefit" (*Polk v. Central Susquehanna Intermediate Unit 16*, 1988, Part IV). In 1999, the Third Circuit used its higher standard of meaningful benefit again in *Ridgewood Board of Education v. N.E.* (1999) where it vacated a decision by a lower court.

The Fifth Circuit had their chance to decide on this issue in 1997 in *Cypress-Fairbanks Independent School District v. Michael F.* Michael F.'s parents had sought reimbursement from the school district for the full-time private residential education and treatment facility they paid for, claiming that the public school had not provided Michael a FAPE. The school refused the request and sought administrative review. The hearing officer decided that the school should reimburse the family because the IEP crafted by the school was inappropriate under the IDEA and the placement in the private school was appropriate for the child (*Cypress-Fairbanks Independent School District v. Michael F.*, 1997). The district court, though, reversed this decision, claiming that the IEP was reasonably calculated to produce meaningful educational benefit. Michael's family sought further review where the Fifth Circuit affirmed the district court's decision. Although this meant deciding against the Michael F. and his parents, the Fifth Circuit still came to this conclusion using the "meaningful benefit standard" by stating that the IEP developed by plaintiff for defendants' child was "specifically tailored to his individual needs and placed him in the least restrictive educational environment consistent with those needs" and

“was appropriate under the IDEA” (*Cypress-Fairbanks Independent School District v. Michael F.*, 1997, Part III).

The meaningful benefit standard was held up also in the Sixth Circuit Court in 2004. In *Deal v. Hamilton County Board of Education* autistic young boy Zachary Deals’ parents sought reimbursement for privately obtained services, stating that the school violated Zachary’s right to a FAPE after failing to provide him with a “Lovaas style” program, a heavily-researched behavioral treatment designed specifically for children with autism (*Deal v. Hamilton County Board of Education*, 2004). The Administrative Law Judge (ALJ) found that the school had not complied with the IDEA because it did not offer the student this type of instruction. The school filed a counterclaim where the district court ruled that there had been no procedural and substantive violations of the IDEA and the family was not entitled to any reimbursement from the school. The case reached the Sixth Circuit after being appealed and this court reversed the district court’s decision and held that a “mere finding that an IEP had provided more than trivial advancement is insufficient” (*Deal v. Hamilton County Board of Education*, 2004, Part III).

Circuit Courts Adopting a *De Minimis* FAPE Standard

Those three U.S. Courts of Appeals—the Third Circuit, the Fifth Circuit, and the Sixth Circuit—were the only circuit courts which upheld a more meaningful benefit standard in determining the appropriate level of education for students with disabilities. The rest of the circuit courts which decided on FAPE cases used a lower standard, a “merely more than de minimis” standard, to determine whether or not a school district had provided students with disabilities an appropriate education. These U.S. Courts of Appeals were the First Circuit,

Second Circuit, the Fourth Circuit, the Seventh Circuit, the Eighth Circuit, the Tenth Circuit (*Andrew F.*), and the Eleventh Circuit.

The Seventh Circuit in 1988 was the first of these courts to use this standard in a decision. In *Lachman v. Illinois State Board of Education*, the parents of a profoundly deaf student and the school district disagreed on the student's IEP. After parents filed for action, claiming that the school district, school board, and special education program did not provide their child with a FAPE because they did not fully mainstream him into the regular classroom, the case moved its way up to the Court of Appeals. The Seventh Circuit confirmed the district court's decision which stated:

The purpose of the Act [the IDEA] was to open the door of public education to handicapped children by means of specialized educational services rather than to guarantee any particular substantive level of education once the child was enrolled. The Act does not require a state to maximize the potential of each child commensurate with the opportunity provided non-handicapped children (*Lachman v. Illinois State Board of Education*, 1988, Part I).

This affirmation of the district court's decision and the holding that the IEP developed by the school district was appropriate show the use of a lower standard in determining FAPE. In the years that follow, other U.S. Courts of Appeals use similar reasoning to determine the appropriate level of education for students with disabilities. The First Circuit, Second Circuit, Fourth Circuit, and Eleventh Circuit all used this lower standard in FAPE cases. In 1997, the Eighth Circuit decided on *Fort Zumwalt School District v. Clynes*. Parents of a child with disabilities had sued the school district to obtain reimbursement for the tuition of a private school for learning disabled children after claiming that the school did not provide their child a FAPE.

Both the parents and school district appealed after the district court awarded the reimbursement to the parents but denied their additional claims for damages and interest. The Eighth Circuit reversed the district court's decision to award the family tuition reimbursement and affirmed its decision to deny the claims for damages and interest. The court held that the family was not entitled to this money because although the child could have received a better education at the private school, the IDEA did not require the best possible education (*Fort Zumwalt School District v. Clynes*, 1997).

Before hearing *Andrew F.*, the Tenth Circuit decided on *Thompson R2-J School District v. Luke P.* in 2008. In this case, the Tenth Circuit decided that the IEP was reasonably calculated to enable the child with disabilities to make some progress and so the school had complied with the IDEA.

All of this brings us to the *Andrew F.* case that was brought in front of the Tenth Circuit in 2015. The Tenth Circuit affirmed the judgment of the district court by saying that Andrew F. was provided with a FAPE. The Tenth Circuit states, "This circuit has long subscribed to the *Rowley* Court's 'some educational benefit' language in defining a FAPE... and interpreted it to mean that 'the educational benefit mandated by IDEA must merely be 'more than *de minimis*'" (*Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist.*, 2015, Part II).

These very different conclusions lead to very different outcomes and implications for students with disabilities, clearly showing both the ineffectiveness of *Rowley* and the need for a further Supreme Court decision.

Chapter 5

Amicus Curiae Briefs Analysis

As we can see in the circuit court decisions, a lot of confusion surrounds how to interpret *Rowley* and FAPE. That confusion extends outside of the court system and within the different groups of educators, parents, and advocates. The most troubling part of the differing views in interpretation here, though, is that many of these groups are educators who are directly in charge of implementing the IDEA and in determining the appropriate level of education for students with disabilities.

In order to understand the extent of the different interpretations of FAPE, this chapter focuses on the analysis of the amicus curiae briefs submitted for the *Endrew F.* case. As previously noted, amicus curiae briefs are a useful tool for groups who have an interest in how a Supreme Court case plays out. In *Endrew F.*, diverse groups across the country, ranging from the National Education Association to Autism Speaks to the state of Delaware to the National School Boards Association, submitted amicus briefs for the Supreme Court in attempt to give the Court pertinent information about students with disabilities, the IDEA, FAPE, and how they believe the case should be decided given their research, experience, and background.

Endrew F.'s Amicus Curiae Briefs

In the table below, all briefs are listed and their "Summary of Arguments" section is summarized. They are also placed in the same categories as the circuit courts discussed above,

either “meaningful benefit standard” or “lower de minimis standard” because all briefs had specified a preference embedded in their arguments.

Table 2: Amicus Curiae Briefs

Amicus Curiae Brief	Date Submitted	Summary of Argument	Category
Autism Speaks and the Public Interest Law Center	1/25/2016	<ul style="list-style-type: none"> • In support of Petitioner • Necessary for uniform standard of FAPE • Necessary to resolve circuit court split • Give meaning to the IDEA amendments enacted since <i>Rowley</i> (which support the substantial benefit standard rejected by the Tenth Circuit) 	Higher meaningful benefit standard
United States (1)	8/16/2016	<ul style="list-style-type: none"> • In support of Petitioner • Should overturn Tenth Circuit’s decision • “Merely more than de minimis” standard not consistent with text, structure, or purpose of the IDEA • Conflicts with important aspects of <i>Rowley</i> 	Higher meaningful benefit standard
National Association of State Directors of Special Directors	11/17/2016	<ul style="list-style-type: none"> • In support of neither party • Member-educators of organization have adapted to Congress’ IDEA amendments and apply high standards • Educators are prepared to and do provide an education at a more meaningful level • Standard above Tenth Circuit’s better serves students and schools 	Higher meaningful benefit standard
United States (2)	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Tenth Circuit decisions should be vacated • Should adopt a “significant educational progress” standard because it is more consistent with the IDEA and it is workable 	Higher meaningful benefit standard
118 Members of Congress	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Tenth Circuit’s decision is a “clear departure” from IDEA • Tenth Circuit’s interpretation of IDEA “would render the IDEA as a hollow procedural formality 	Higher meaningful benefit standard

Advocates for Children of New York, Children's Law Center, Inc., Connecticut Parent Advocacy Center, et al.	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Respondent's position contradicts <i>Rowley</i> • New decision required to match the amendments 	Higher meaningful benefit standard
Former Officials of U.S. Department of Education	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Appropriate and realistic to set high expectation and high achievement goals for students with disabilities • Progress is not only possible, but happening now – shown by standardized test scores and other educational statistics • FAPE standard must reflect advanced teaching methods and high expectations for students with disabilities, as well as the new amendments • Tenth Circuit Court decision should be reversed 	Higher meaningful benefit standard
National Disability Rights Network	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Much has changed in the public's and law's understanding of disability since <i>Rowley</i> • Tenth Circuit decision failed to give due credit to narrow reach of <i>Rowley</i> decision and failed to consider the changes in the IDEA 	Higher meaningful benefit standard
Disability Rights Organizations and Public Interest Centers	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Resolving a proper standard for determining appropriate education is crucially important • Tenth Circuit Court's decision does not comply with <i>Rowley</i> • The IDEA now calls for a more rigorous standard than 35 years ago and a new decision must reflect that 	Higher meaningful benefit standard
National Education Association	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Tenth Circuit's decision in contradiction with both educators' and Congress' understanding of the original IDEA and its amendments • Aiming for a student with a disability to achieve only "some" progress is contrary to educational best practices 	Higher meaningful benefit standard

Council of Parent Attorneys and Advocates, et al.	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Tenth Circuit’s standard is “lax and vague” • Standard also contrary to the plain language of the IDEA, its legislative history, and the <i>Rowley</i> decision • Proposes “benefit from” instruction standard 	Higher meaningful benefit standard
Coalition of Texans with Disabilities, et al.	11/21/2016	<ul style="list-style-type: none"> • In support of *** • Children with disabilities in Texas uniquely impacted by outdated standard from <i>Cypress Fairbanks v. Michael F.</i> • Need for clarification that is in line with the current IDEA 	Higher meaningful benefit standard
Delaware, Massachusetts, and New Mexico	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Use of Tenth Circuit’s standard, “then as a nation we have not assuaged Congress’ expressed concern in 1975 that children with disabilities in the United States are ‘sitting idly in regular classrooms awaiting the time when they [are] old enough to drop out’” • Need for a new decision in light of IDEA amendments • Meaningful educational benefit standard in the best interest of the students and is not cost prohibitive 	Higher meaningful benefit standard
National Center for Special Education in Charter Schools and National Alliance for Public Charter Schools	11/21/2016	<ul style="list-style-type: none"> • In support of Petitioner • Tenth Circuit’s standard not aligned with the goals of charter schools’ high expectations for all students, including those with disabilities • “A more demanding standard can instead stimulate greater coordination amongst educational institutions” • No evidence that meaningful benefit standard used by Third Circuit results in undue costs • Tenth Circuit’s decision is not in line with <i>Rowley</i> or the IDEA and should be reversed 	Higher meaningful benefit standard

Council of Great City Schools	12/21/2016	<ul style="list-style-type: none"> • In support of Respondent • Amendments already have encouraged school districts to better serve students with disabilities • Strengthened IEP requirements have made educational opportunities for students with disabilities better than ever • Unnecessary to change the Rowley “reasonably calculated” inquiry about IEPs • Federal courts are ill-equipped to determine what level of educational benefit is appropriate for individual students • Petitioner’s standard is “unworkable” and costly • IEP process is collaborative and thorough • “Litigating over the right amount of educational benefit to be expected for individual students with disabilities is not the best way to improve education” • Educators should be accountable for implementing the complex procedural requirements of the IDEA • Judgment of the Tenth Circuit should be affirmed 	Lower de minimis standard
AASA, The School Superintendents Association, et al.	12/21/2016	<ul style="list-style-type: none"> • In support of Respondent • The country’s educators are already aiming high • “There has not and will not be a race to the bottom applying <i>Rowley</i>” • Congress has declined to change definition of FAPE since <i>Rowley</i>, even with the amendments – not the Court’s role to define it • IEP procedures ensure that educators set high goals • Should keep the standard decided in <i>Rowley</i> • Judgment of Tenth Circuit should be affirmed 	Lower de minimis standard

Colorado State Board of Education and Colorado Department of Education	12/21/2016	<ul style="list-style-type: none"> • In support of Respondent • “Petitioner suggests that without judicial intervention, students with disabilities in Colorado and elsewhere in the Tenth Circuit will receive a lesser education than those in other places” • Content of academic standards entrusted to the States and Colorado has adopted rigorous standards for students with disabilities • A change in the standard adds ambiguity which leaves the process “fundamentally unworkable” • <i>Rowley</i> standard should remain intact and Tenth Circuit’s decision should be affirmed 	Lower de minimis standard
National School Boards Association, et al.	12/21/2016	<ul style="list-style-type: none"> • In support of Respondent • Congress placed power with the IEP team to determine educational needs of students with disabilities • Congress chose not to define in the substantive educational benefit that is required to meet FAPE • “Congress has not changed this fundamental understanding even in reauthorization and neither should this Court” • Tenth Circuit decision should be affirmed 	Lower de minimis standard

Amicus Curiae Briefs Promoting a Meaningful Benefit FAPE Standard

Within these briefs, some groups made arguments advocating for the Supreme Court to create a higher standard for FAPE, while others thought that to be too complicated and argued for a standard that is not so constraining. Though the summaries of each amicus curiae brief are outlined in the table, I will discuss a few of these further that exemplify the main arguments across the briefs.

Autism Speaks and the Public Interest Law Center, jointly, were the first to submit an amicus brief for this case. On January 25, 2016, before the case was even granted certiorari, this

organization submitted a brief in support of Petitioner, Andrew F. and his parents. Autism Speaks and the Public Interest Law Center argued first that the Supreme Court should take the case, claiming that “review is necessary to resolve the conflict over an issue of paramount importance to children with disabilities, their parents, and their school districts” (Brief of Autism Speaks and The Public Interest Law Center, 2017, p. 3). The brief’s authors proposed a more uniform national standard for FAPE, giving better predictability and consistency of litigation outcomes which would lead to earlier resolutions of disputes over IEPs. If there were quicker resolutions of disputes, according to Autism Speaks and the Public Interest Law Center, this would reduce the time and money spent on litigation by school districts and avoid educational disparities for children with disabilities across the country. In addition to advocating for a more uniform standard for FAPE, Autism Speaks and the Public Interest Law Center argued against the lower standard held by some circuit courts. In the brief, these organizations write, “Jurisdictions that have adopted the just-above-trivial standard have demonstrably worse educational prospects than those with the substantial benefit standard.” (Brief of Autism Speaks and The Public Interest Law Center, 2017, p. 3)

Another important brief submitted in support of Andrew F. was one by 118 Members of Congress on November 21, 2016. This brief discusses the history of the IDEA and Congress’ intentions when developing the piece of legislation. The members of Congress state that the legislative history of the IDEA suggests that the “Respondent’s argument that the statute requires nothing more than just-above-trivial educational benefits for students with disabilities is a clear departure from both the plain meaning of the statute” (Brief of 118 Members of Congress, 2017, p. 3). Congress, according to this brief, has repeatedly made its desire known to provide equal educational opportunities to students with disabilities in the amendments. These amendments

have also served as ways to raise the standards for educating these students. The 118 Members of Congress write that the “Respondent’s interpretation of IDEA would render the IDEA as a hollow procedural formality” (p. 5).

The National Education Association (NEA) also submitted a brief on November 21, 2016 in support of Petitioner Andrew F. The brief begins by the writers stating that they want to “emphasize that providing students with disabilities the opportunity to succeed academically is a moral and professional obligation of the educator community” (Brief of National Education Association, 2017, p. 2). This obligation, the NEA says, cannot happen if the “slightly-more-than-nothing” standard from the Tenth Circuit Court is applied (p. 2). This standard contradicts both Congress’ original intent in the IDEA and how educators have interpreted the statute. Not only does it oppose educators’ interpretation of the IDEA, but the NEA states that “aiming for a student with a disability to achieve only ‘some’ progress is contrary to educational best practices” and “best practices dictate that students with disabilities best learn when they aim high” (Brief of National Education Association, 2017, p. 3).

The Council of Parent Attorneys and Advocates, Children and Adults with Attention Deficit/Hyperactivity Disorder, and the California Association for Parent-Child Advocacy reiterate some of the main arguments in other briefs, such as how the standard put forth by the Tenth Circuit is contrary to the IDEA and its legislative history. These groups also, though, argue that this lower standard for FAPE is contrary to the Court’s decision in *Rowley* (Brief of Parent Attorneys and Advocates et al., 2017). The National Center for Special Education in Charter Schools and National Alliance for Public Charter Schools make a similar argument when their brief states that the Court should “reject Respondent’s request because it cannot be squared with a proper interpretation of the *Rowley* standard and its reading of a FAPE” (National Center

for Special Education in Charter Schools and National Alliance for Public Charter Schools, 2017, p. 3). By this, they mean that the Respondent's argument does not align with the reasoning put forth in *Rowley*. This group also advocates for a more demanding standard of FAPE because it would help to make education of students with disabilities better and more consistent across the country. Using the Third Circuit and its adoption of the meaningful benefit standard as an example, the National Center for Special Education says that the use of this standard will not result in undue costs for states. On the contrary, this brief says, the standard used by the Tenth Circuit may actually increase certain costs, such as those associated with litigation (National Center for Special Education in Charter Schools and National Alliance for Public Charter Schools, 2017).

Amicus Curiae Briefs Promoting a *De Minimis* FAPE Standard

As expected, some groups submitted briefs in support of the Respondent school district. The Council of the Great City Schools was one of these groups and they argued that the strengthened IEP requirements in the IDEA amendments have created better educational opportunities for students with disabilities than ever before. According to the Council of the Great City Schools, the *Rowley* standard does not need to be changed and the federal courts are not equipped to decide the appropriate level of educational benefit for students with disabilities. Additionally, they call the petitioner's standard "unworkable" because it is unnecessary and ill-advised to seek to define a particular level of educational benefit required for all students with disabilities (Brief of Council of the Great City Schools, 2017, p. 4). This is because the IEP process is collaborative and already takes into consideration the "nature and degree of each

student's disability, level of each student's prior academic achievement, and each state's distinct educational standards" (p. 4). The Council believes that these decisions should be left up to the education professionals and that an adoption of a new standard would increase the costs associated with special education. Finally, the Council of the Great City Schools writes,

Litigating over the right amount of educational benefit to be expected for individual students with disabilities is not the best way to improve education. Rather, educators should be accountable for implementing IDEA's complex procedural requirements and should be accountable for the educational outcomes of all students through mandatory state accountability systems (p. 6).

The School Superintendents Association (AASA), the Council of Administrators of Special Education (CASE), the Association of School Business Officials International, and five other educational organizations submit an amici curiae brief in which they make similar arguments. They believe that the country's educators are already aiming high for students with disabilities. There is no need for a change to the *Rowley* standard because Congress has declined to change the definition of FAPE since the decision of that case. The 2004 amendments to the IDEA have helped guide more rigorous standards in creating IEPs for students with disabilities, which ensure that high goals are being set for these students. Imposing a higher standard, according to this brief, would "require second-guessing by ill-equipped courts and measurement against markers that Congress never set" and would "redirect resources from providing education services to fighting court battles" (Brief of AASA, The School Superintendents Association, et al., 2017, p. 6). Finally, this group of educators say that the standard argued for by the Petitioner would actually make things more unequal because it would lead to more litigation, favoring families that can afford the fees associated with pursuing legal options.

The Colorado State Board of Education and Colorado Department of Education submitted an amicus brief together in support of the Respondent because, as a part of the Tenth Circuit, they feel as though the Petitioner wrongly suggests that students in Colorado and throughout this circuit would receive a lesser education than those in other areas. This group says that the Petitioner ignores that academic standards are entrusted to the States and Colorado specifically has rigorous and ambitious standards for schools to follow when educating students with disabilities. They advocate for no change to the standard put forth in *Rowley* because it would not “fundamentally change the IEP process and content requirements” but would add an “ambiguity to IEP scrutiny that leaves the process fundamentally unworkable” (Brief of Colorado State Board of Education and Colorado Department of Education, 2017, p. 13).

In any issue brought to the Supreme Court, it is expected that there will be groups with opposing views and ideas. What is so troubling about this particular issue is not the polarization of how to provide students with disabilities with an appropriate education, but rather the complete and utter confusion of how to interpret the *Rowley* decision and the IDEA itself. In their amicus curiae briefs, groups on both sides of this issue found ways to cite *Rowley* and the IDEA and its legislative history to support their arguments. These different groups of educators and advocates have various reasons for using *Rowley* to support their own views on FAPE. Parents, of children with or without disabilities, will typically advocate for the best interests of their children. They will go to great lengths to ensure their children obtain the best education possible. Especially for children with disabilities, education is the place and a chance for leveling the playing field. Naturally, these parents and groups that fight for individuals with disabilities will advocate for a higher meaningful benefit standard for FAPE. Additionally, they feel strongly enough about the issue to submit an amicus brief. Groups like the Council of the Great City Schools and others

that submitted briefs in support of the Respondent may worry what a higher standard for FAPE may require of their schools. Supporting a “some benefit” standard may not necessarily mean that they believe that only the minimum should be provided to students with disabilities. Rather, they may view a higher standard as too difficult to apply for schools providing for students with various needs.

The reasons for interpreting FAPE differently, though, do not matter as much as the fact that *Rowley* allows for such drastically different interpretations. The analysis of these amicus briefs makes it very clear that this confusion did not only exist between the circuit courts, but educators, parents, and advocates find different ways to interpret FAPE.

Chapter 6

Analysis of *Endrew F.* & Discussion

After looking at both circuit court decisions and amicus curiae briefs, it is clear that there was a need for a new Supreme Court decision to provide some clarity around *Rowley* and the IDEA. The courts, educators, parents, and advocates were all in disagreement over how to “reasonably calculate” an IEP, what the appropriate level of benefit is, and, ultimately, how to properly provide students with disabilities a FAPE. The question then is: Does *Endrew F.* provide enough clarity to ease the problems of interpretation associated with *Rowley*?

To answer this question, we must first take a look at the Supreme Court opinion itself. In the *Endrew F.* decision, the Court makes sure to reject the “some benefit” or “de minimis” standard put forth by the Tenth Circuit. Author of the decision, Chief Justice Roberts, writes that though the school district’s argument is supported by some passages from *Rowley*, these specific passages are given too much weight. For example, the use of the phrase “sufficient to confer *some* educational benefit” to support the reasoning that any benefit, no matter how minimal, complies with the IDEA is taken out of context since the *Rowley* case “involved a child whose progress plainly demonstrated that her IEP was designed to deliver more than adequate educational benefits” (*Endrew F. v. Douglas Co. School Dist. Re-1*, 2017, p. 10). The school district also incorrectly used the passage that the Act did not “guarantee any particular level of education” to their advantage. Chief Justice Roberts clarifies here that the Court meant that the IDEA does not promise any particular educational outcome, because “no law could do that for any child” (*Endrew F. v. Douglas Co. School Dist. Re-1*, 2017, p. 10).

Most importantly, the Court rejects the standard adopted by the Tenth Circuit because, as the decision states:

It would not have been “difficult” for us to say when educational benefits are sufficient if we had just said that any educational benefit was enough; and it would have been strange to refuse to set out a test for the adequacy of educational benefits if we had just done exactly that—we cannot accept the school district’s reading of *Rowley*... 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 (*Andrew F. v. Douglas Co. School Dist. Re-1*, 2017, p. 10).

The Court makes it very clear that the “some benefit” standard will not be the rule when deciding on the appropriate level of education for students with disabilities. Rejecting the Tenth Circuit’s standard means that the courts that adopted similar standards will also have to change the way they will decide on FAPE cases in the future.

The Court, though, also rejects the Petitioner’s standard. Andrew F.’s parents propose that FAPE is reached when the education received sets up a child with a disability with opportunities to “achieve academic success, attain self-sufficiency, and contribute to society” in ways that are equal to the opportunities for children without disabilities. The Supreme Court says that this standard is much too similar to the one already rejected in *Rowley* and cannot be the standard because it is much too hard to apply (*Andrew F. v. Douglas Co. School Dist. Re-1*, 2017).

With the rejection of both the Petitioner’s and Respondent’s arguments, this leaves the decision in a slightly confusing place. The Court, however, does give some more guidance about how to understand FAPE. Chief Justice Roberts writes a great deal about the importance of the

IEP in the process of providing an appropriate education for a student with a disability. The Court regards the IEP as the most useful tool for understanding and providing FAPE. The IEP “must aim to enable the child to make progress” and that “progress contemplated by the IEP must be appropriate in light of the child’s circumstances” (*Andrew F. v. Douglas Co. School Dist. Re-1*, 2017, p. 11-12). In order to do this, the Court strongly recommends that students with disabilities be integrated in the regular classroom whenever possible, per the IDEA. They believe that when this preference is met, the general education system will monitor the educational progress of the child due to regular examinations, grades, and the yearly advancement from grade to grade for those who attain the knowledge needed to continue on. This aim for grade-level advancement is key to creating a reasonable IEP and providing a FAPE because “progress through this system is what our society generally means by an ‘education’ and an access to an ‘education’ is what the IDEA promises” (*Andrew F. v. Douglas Co. School Dist. Re-1*, 2017, p. 12).

The Court says that there was no need to clarify this in the *Rowley* decision because that case dealt with a young girl who was fully integrated in the regular classroom and progressing well. Chief Justice Roberts also acknowledges that this may not always be a reasonable goal for some students with disabilities, so then the IEP 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” (*Andrew F. v. Douglas Co. School Dist. Re-1*, 2017, p. 3). The Court, though, does make it clear that any review of an IEP must consider whether the IEP is reasonable, not whether the court regards it as “ideal” (p. 2).

The *Andrew F.* decision gives school districts, educators, parents, and the court system a lot to consider now when evaluating how to provide students with disabilities a FAPE. The true

strength of the decision's clarity will come through in the months and years to come, but there have been a few cases filed about this issue since the Supreme Court decided on *Endrew F.* One, for example, was *J.P. v. City of New York Department of Education* in December 2017. In this case, the Second Circuit held that the IEP was substantively and procedurally adequate, despite the parents' claims that it did not provide their child with a FAPE. The most interesting part of this case was that it used the new *Endrew F.* decision in its legal reasoning to come to this conclusion. The Second Circuit quotes *Endrew F.* on how it defines a reasonably calculated IEP. Using the Supreme Court decision as guidance, the Second Circuit defers to the school administrators' first decision and comes to the conclusion that the IEP was reasonably calculated in light of the child's circumstances because the school administrators' arguments were "well-reasoned and supported by the record" (*J.P. v. City of New York Department of Education*, 2017, Part I). The school administrators that had originally evaluated the IEP had found that it was appropriate because the child's problem behaviors were adequately identified and addressed in the IEP with a paraprofessional and related services.

The Second Circuit was one of the circuit courts previously to use the "some benefit" or "de minimis" standard when deciding on FAPE cases. Here, though, they did not rely on this reasoning and used the new *Endrew F.* decision to guide their decision. Though many would still not regard this outcome for the student and parents as ideal, the Second Circuit in this case used more specific reasoning for why the student's IEP was adequate, instead of just stating that it provided the student with "some benefit".

Through looking at the Supreme Court decision itself and a more recent case about determining the appropriate level of education for students with disabilities, *Endrew F.* does provide clarity of the *Rowley* decision as it dissipates some of the main sources of confusion in

both the circuit court decisions and the amicus curiae briefs. Though the Court still declines to give a more rigorous standard for FAPE, it does make it very clear that merely more than “de minimis” benefit for students with disabilities will not be acceptable going forward.

Chapter 7

Conclusion

Endrew F. v. Douglas County School District demanded the attention of the educational and legal worlds in 2017. After taking a look at the historical context, the academic literature, the circuit court decisions, and the amicus curiae briefs submitted by concerned groups, it is clear that it was necessary for the Supreme Court to grant certiorari in order to clear up the confusion around the IDEA, the *Rowley* decision, and FAPE.

As the court system, educators, parents, and advocates all interpreted FAPE differently, this created different types of opportunities and different levels of educational benefit for students with disabilities across the nation. While some found providing an education with “meaningful benefit” to be the rule, others thought that only “some benefit” was sufficient to comply with the federal statute. Though variation in our schools due to state and local control is inevitable, the level of education afforded to students with disabilities cannot vary this greatly.

Endrew F. has made it clear that the Court will not stand for providing students with disabilities only “some” level of educational benefit, while also declining to define FAPE more specifically. While this may seem to put courts and educators in a somewhat confusing place when interpreting FAPE, this Supreme Court decision certainly gives more guidance and clarity than what previously existed. Additionally, this question is a complicated one and, so, the answer will naturally follow suit.

As for schools and educators, some may see more change than others depending on location. States in circuits which had adopted the lower de minimis standard will see greater change in terms of what is expected to comply with the IDEA now than in the past. Those states who had either adopted the lower standard, a mixed standard, or no standard at all are Alabama,

Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. While the states that will most likely see the least amount of change, those with the higher educational benefit standard, are Delaware, Kentucky, Louisiana, Michigan, Mississippi, New Jersey, Ohio, Pennsylvania, Tennessee, and Texas (Yell & Bateman, 2017).

The school districts in these states may need to change how they are developing IEPs for students with disabilities and their expectations for educators implementing those IEPs. Though many school districts may be doing so already, the IEPs developed for students with disabilities must be in meaningful collaboration with parents and ensure that the services provided will confer benefit above merely “some benefit”. This means that the way special education personnel collect data on students with disabilities may shift, new educational practices may need to be developed for instructional tools better suited for students with disabilities, and the overall implementation for IEPs may need to change in order to comply with the IDEA. Though the exact impact of *Andrew F.* will not be clear until more time has passed, overall, the expectations for and carrying out of IEPs have certainly been heightened for school districts and educators.

Thirty-five years prior to *Andrew F.*, the Court heard *Rowley*. In those thirty-five years, amendments to the IDEA were made, more was learned about how to teach students with disabilities, and culture shifted to become more accepting of those with different needs. The *Andrew F.* decision reflects those changes and clarifies the previous decision, while still staying

within the bounds of the judicial branch. It is not completely clear as of now how much this decision will impact the educational lives of those with disabilities. Hopefully, though, with cooperation from the courts and school districts, along with the expertise of educators and researchers, students with disabilities across the United States can be truly provided a free appropriate public education.

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ACADEMIC VITA

Madeline E. Smith
mis5747@psu.edu

Education

The Pennsylvania State University
Bachelor of Science: Education & Public Policy
Master of Arts: Educational Theory & Policy

University Park, PA
Minors: Political Science & Sociology

Thesis Title: *Endrew F. v. Douglas County School District clarifies how schools provide free appropriate public education*

Thesis Supervisor: David A. Gamson, Associate Professor of Education and Maria M. Lewis, Assistant Professor of Education

Leadership & Involvement

Students Together in Education Policy (STEP)
President

University Park, PA
Nov 2014 – Present

- Provide support to those in the Education and Public Policy major and offer complementary resources for students such as internship search help and guidance in course registration
- Plan graduate student panels in order for the Education and Public Policy undergraduate students to learn about the possibilities in both careers and further studies in the education policy field

Integrated Undergraduate-Graduate Program
Master's Thesis Candidate

University Park, PA
Sep 2015 – Present

- Participated in a highly selective educational plan which allows students to pursue simultaneous undergraduate and graduate degrees
- Challenged by the Education Theory & Policy graduate-level coursework to obtain a master's degree
- Conducted research to write a master's thesis on analysis of court decisions and legal briefs in special education Supreme Court case

Schreyer Honors College
Gateway Scholar

University Park, PA
Aug 2014 – Present

- Admitted into the nationally-renowned honors college through the Gateway application sophomore year
- Tasked with completing at least 23 credits of honors coursework and writing an undergraduate honors thesis that demonstrates fully developed research and command of relevant scholastic work
- Developed a new appreciation for learning and scholarship while being challenged by a heavy course load, stimulating academic material, and hard-working peers

The EPISCenter
Research Intern

State College, PA
Jun 2016 – Aug 2016

- Interned at the EPISCenter, a university-based intermediary organization connecting research, policy, and real-world practice in order to maximize the positive impact of evidence-based programs in communities
- Assisted in a coding project which attempted to evaluate the effectiveness of the EPISCenter's support

Relevant Experience

Penn State Lion Scouts

Tour Guide

University Park, PA

Sep 2015 – Sep 2016

- Guided prospective students, families, and alumni twice per week around the Penn State University Park campus to broaden familiarity and interest in the University with knowledge, personal experience, and enthusiasm
- Gained leadership, organization, and communication skills while working closely with the admissions office, other tour guides, and prospective students and families

Penn State IFC-Panhellenic Dance Marathon

Donor & Alumni Relations Development Captain

University Park, PA

Sep 2013 -Present

- Chosen as a captain for the largest student-run philanthropy in the world, raising over \$10 million for the fight against childhood cancer this year through multiple means of fundraising
- Created and fostered relationships with THON's growing donor base by developing effective fundraising and awareness campaigns, while also creating appropriate ways to benefit said donors for their donations
- Led committee of 25 peers to carry out fundraising efforts throughout the year and the 46-hour event

Other Honors & Experience

- Mentor for Gateway Scholar Peer Mentorship Program
- Intern for Camp Invention
- Member of Phi Eta Sigma Freshman Honor Society
- Working knowledge in Microsoft Office, Excel, PowerPoint, Word