

IEP Components Series

Equal Opportunity and Accountability: The Free Appropriate Education Act (FAPE) FAPE and Individualized Education Program (IEP)

By Dr. Heidi D'Ambrosio and Ms. Lora Reese

This issue of **NASET's IEP Component series** was written by Dr. Heidi D'Ambrosio and Ms. Lora Reese. The Individuals with Disabilities Education Act (IDEA) coupled with the Free Appropriate Education Act (FAPE) mandates the honoring of student rights to have complete access to curriculum and communication with zero rejection. Despite the legal demands of these two great Acts, some children are still being left behind. The purpose of this article is to bring attention to just one of many cases where the rights of a student with autism, a prevalent diagnosis, was denied his due entitlement to reach full academic and social potential. The United States Supreme Court has adjudicated cases as recently as Spring 2017. A case law review was conducted to offer insight into the world of school litigation and legislation as it relates to achievement, accountability, parental involvement, and special and remedial education reform policies and practices.

Abstract

The Individuals with Disabilities Education Act (IDEA) coupled with the Free Appropriate Education Act (FAPE) mandates the honoring of student rights to have complete access to curriculum and communication with zero rejection. Despite the legal demands of these two great Acts, some children are still being left behind. The purpose of this article is to bring attention to just one of many cases where the rights of a student with autism, a prevalent diagnosis, was denied his due entitlement to reach full academic and social potential. The United States Supreme Court has adjudicated cases as recently as Spring 2017. A case law review was conducted to offer insight into the world of school litigation and legislation as it relates to achievement, accountability, parental involvement, and special and remedial education reform policies and practices.

Keywords:

policy/legal, IEP, education, family, ethics, equality, IDEA, FAPE, accountability, achievement, special education

Education is not simply a right or privilege but rather an opportunity to expand the depths of knowledge and experience, guided by social emotional development. A growth that aides in the evolution of achieving one's core potential just as a beautiful butterfly emerges from a tightly-woven chrysalis. We offer concrete arguments through legal supports that validate global benefits to ensuring all individuals have access to equal learning opportunities. Upon the close of this reading, clarity is found in the belief of one family's battle and the law that supports them.

“Under the some educational benefit standard, an IEP is only required to “provide the educational equivalent of a serviceable Chevrolet” and need not “provide a Cadillac.” However, under Rowley in 1982, even courts adhering to some educational benefit standard must consider the substantive adequacy of an IEP in light of a child’s unique needs, abilities, and circumstances. Therefore, courts assessing the substantive adequacy of an IEP must not focus just on “Chevrolets” versus “Cadillacs.” Instead, given that every child with disabilities will require different services to receive an educational benefit, courts must ask whether the child needs the educational equivalent of a pickup truck, or a minivan, or a convertible.” (Stevenson, K., 2016, pp. 798) If this statement does not make you angry, then stop reading. If you feel a burning desire inside your soul to stand up for the rights of students with disabilities; then proceed to yet another Supreme Court advocacy case that may very well ignite a passion for change in education equality for students with disabilities. As we the authors intend, the majority makes the greatest impact and we invite you to advocate for accountability of those responsible for providing equal educational opportunities based on the law. For the education of a child is not merely a comparison to the quality of a specific vehicle brand.

Under the law, each Individualized Education Program (IEP) is to be developed collaboratively with the child’s teachers, school administrative officials, and the child’s parents, and should contain: (Barnes, E. 2017)

- A statement of the child’s present level of academic performance;
- How the child’s disability affects his or her involvement and progress in the general education setting;
- Measurable annual goals, including academic and functional goals; and
- A description of how the child’s progress toward meeting those goals will be assessed.

For all intents and purposes, an Individualized Education Program (IEP) is a contract; an agreement between a child with unique needs, the parent or guardian, and a team of school officials. In layman's terms, contracts are binding documents where all interested parties agree to follow collectively developed guidelines to achieve common goals for student success. To be specific, “the Individualized Education Program and Individual Family Service Plan are legally mandated documents developed by a multidisciplinary team assessment that specifies goals and services for each child eligible for special educational services or early intervention services.” (American, 2017) We bring to reference the definition of an IEP from a medical journal to heighten the reader’s awareness of the importance placed on understanding, acknowledging, and meeting the goals of a child’s IEP. Just as maintaining their health, a proper education is vital to a child’s long-term success.

Doctors take the Hippocratic oath to swear, by a number of healing gods, to uphold specific ethical standards and do no harm. Attorneys stand and raise their right hand as they swear to support, obey and defend the rights of the individuals they represent. Teachers subscribe to a code of ethics to create a learning environment that nurtures fulfillment the potential of all students. Consider then, do parents not only have the right to hold these professionals responsible for their pledges and promises to support their children but fight for their equal learning opportunities.

In more than 100 years past, Alexander Graham Bell lobbied for the rights of students with disabilities to receive education in public schools. (Radford, 2017) Nearly eighty years later, Congress mandated public schools to provide equal access to education for students with disabilities. Through the implementation of the Individuals with Disabilities Education Act (IDEA) in 1975, the law of Free and Appropriate Public Education (FAPE) invoked the requirement to educating a ghastly one million children with disabilities through federal funding. Despite the government’s best efforts to reach this enormous number of students with disabilities, many states fell short, allowing some children to slip through the cracks. The cause is said to land on the shoulders of teacher burnout. (Radford, 2017)

The root for teacher burnout can be arguably related to; lack of resources, proper training, or supports in maintaining a productive momentum for student success. Teacher burnout is said to generate, “emotional exhaustion, depersonalization, and lack of personal accomplishment.” (Radford, 2017) Thus a trickle-down effect evolves. Stressed out teachers can have a ripple effect to student performance. High expectations placed on teachers to bring students to a place where they can meet Individualized Education Program (IEP) goals based on their individual needs is an enormous responsibility. Just as there is no “one size fits all” solution to teacher burnout, equally relevant is the development of IEP goals. (Radford, 2017) The unfortunate combination of teacher burnout coupled with government demands for educational equality results in an emotional and ethical debate erupting to the detriment of the students with disabilities. The laws intended to support students with disabilities do not always ensure proper training or resources adding to the burden placed on families to ensure that their child’s unique needs are met.

History has taught us the lesson that students falling through the cracks potentially takes individuals with disabilities down a destructive path that once led to prisons and asylums. (Radford, 2017) This is no longer simply an education problem but a challenge for society. Prior to the twentieth century, individuals identified with unusual behaviors that did not meet the societal “norm,” were often shoved aside. To avoid upsetting the balance of society, the practice of placing less than normal individuals in prisons or asylums limited the ability for individuals with disabilities to become productive and contributing members of society. Eventually these once perceived “defective children” (1922) known to have been locked away and forgotten, finally received their due recognition of potential by the early 1900’s. A significant turn of events for children with disabilities evolved in the 1950’s when universities shifted their teacher training to prepare educators for working with individuals having varying disabilities. The implementation of the Education for All Handicapped Children Act in 1975 motivated universities to rethink their teacher preparation programs.

The Education for All Handicapped Children Act of 1975, enacted by the United States Congress required each state to offer comprehensive services to students with disabilities provided through federal funding. The Act defined the educational rights of persons with disabilities and the services to which they were entitled. It would assure that all public-school districts were providing free and appropriate special education. It would guarantee that state and local educators were respecting due process, developing individualized education programs, employing uniform procedures, and specify the acceptable ways to identify, evaluate, and instruct children with disabilities. (Radford, 2017) Underpinning the authors’ position of supporting equal educational opportunities for students with disabilities, The Education for All Handicapped Children Act of 1975 is yet another step in the right direction.

Powerful words with genuine intentions are met with continuous resistance. “It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” —Chief Justice Earl Warren. Despite best efforts stemming from the mandated laws dictated through the Individuals with Disabilities Education Act (IDEA) to ensure Free and Appropriate Public Education (FAPE), school districts continue to deny students with disabilities. (Lusk, 2015) As we postulate the emphasis on advocacy and accountability for students with disabilities, we reference the Supreme Court hearing argued January 11, 2017—Decided March 22, 2017, *Endrew F., A minor, by and through his parents and next friends, Joseph F. Et Al. v. Douglas County school district RE-1. No. 15–827*. Stories like the experience of Endrew F., a child with developmental and cognitive disabilities, denied special education services are but one of the many. Endrew attended school in the Douglas County School District from preschool through fourth grade. Despite the placement of a team-developed Individualized Education Program (IEP), that focused on functional and educational goals since preschool, Endrew’s parents began to notice a lack of progress by his fourth-grade year. Reported through the case, Endrew’s teachers made little mention of his strengths while placing emphasis on his disruptive physical and verbal behaviors that indicated the reason for decline in his academic progress. The court records reflect acknowledgment of Endrew’s affliction of severe fears of typical environments. It was at this time that Endrew’s parents advocated on his behalf to revisit the IEP and request a new Program of action for his success. The background reflected no change in Endrew’s progress so it was at this juncture they chose to move their son to a private school specifically designed to support students with Autism. The private school enhanced Endrew’s IEP through the addition of aggressive positive behavior intervention strategies. It was a mere six months when the determination was made that Endrew’s behavior improved significantly through the parents’ eyes, thus supporting his ability to make more than adequate academic gains; unlike his experience in the public school setting. It was apparent to Endrew’s parents that these same accommodations fell under the Free and Appropriate Public Education Act (FAPE) of “reasonably calculated efforts” that enabled their son to receive adequate educational access.

This realization led to a significant legal journey to receive reimbursement for Endrew families' cost to seek education through a private school. The court denied reimbursement and the domino effect ensued.

As the Endrew case progressed to the Federal court, in 2015 Sarah Lusk, author of *The Dimming Light of the IDEA: The Need to Reevaluate the Definition of a Free Appropriate Public Education*, highlights another district accused of denying student rights. Like many students with disabilities, Diego's aggressive behaviors escalated as he was subjected to bullying as his peers. He was intimidated in the overpopulated school setting and simply could not keep up with his peers. Diego, like many students with learning disabilities at the time, were arrested for defending themselves against hurtful words through fisticuffs. Diego was arrested and became part of the "School-to-Prison Pipeline." The system that pushed our struggling students with disabilities from the education environment to incarceration. (Lusk, 2015) Rather than supporting Diego with services that offer coping strategies for anxiety and confusion, he was shoved aside. A step in the right direction offered through impactful words from Honorable Bobby Scott, a representative in congress from the state of Virginia; "What the research and the evidence show are that Frederick Douglass was right in his famous quote: "It is easier to build strong children than to repair broken men." And I would add- a lot less costly! (Durbin, 2012)

In *Burlington School Committee vs. Department of Education* (1985), the debate of a Free and Appropriate Public Education (FAPE) came to a head. The U.S. Supreme Court ruled in favor of the parents and the private school placement affirming the First Court of Appeals. They ordered the Burlington School District to reimburse the parents for the tuition and transportation costs citing that had they developed a proper Individualized Education Program (IEP) the district would have been responsible for the costs and would only be paying what they should have been paying all along. While the parents and school disagreed about the IEP that had been developed, both parties agreed that the student should attend a new school. The Supreme Court considered the private school to be the placement during the appeals process. In other words, this was his "stay put" school. It is important to know the significant relevance of the "stay-put provision" as part of the Individuals with Disabilities Education Act (IDEA). The "stay-put provision" ensures the following: (1) prevents schools from excluding students with disabilities and (2) protects students from being whipsawed between placements as school districts and parents exhaust due process proceedings. (Brey, 2016, pp. 747) They also affirmed that the school district had not developed a proper Individualized Education Program (IEP) and had they done so the "least restrictive placement" (a school environment in which the student is educated with nondisabled peers) would have been the Carroll School. In his contribution, *Autism, Burlington, and Change: Why It Is Time for a New Approach to the IDEA'S Stay-Put Provision*, Michael Brey again emphasizes IDEA'S substantive guarantees and procedural protections: (1) the right to a free appropriate public education; (2) individualized education programs; (3) the requirement to educate students with disabilities in the least restrictive environment; (4) the provision of other related services; and (5) the right to due process. They also discussed in their review that had the improper IEP been followed the district would have needed to provide "compensatory services." As in the Endrew case, the parents were seeking reimbursement for the private school tuition citing that it was the least restrictive environment for their child. The U.S. Supreme Court judges in the Burlington case delivered a unanimous decision read by Justice William Rehnquist. They deemed that the private school placement was the most appropriate. They held that the Education of the Handicapped Act allows broad discretion by the court in overseeing administrative proceedings of the Individualized Education Program (IEP) disputes.

The Burlington case was significant in that it upheld the parents' rights in the development of the IEP. It also supported placement of the student even if it is a private school that meets the needs of the student and is the student's "least restrictive environment." The case was different in that they only cited the law and the Education of the Handicapped Act in making their decision. It is the first case in this realm that did not cite prior cases. This was interesting because the case did discuss parental rights, "least restrictive environment", "compensatory services", and "free and appropriate public education."

Standing at the forefront of this most intriguing case of *Endrew F. vs. Douglas County School District*; the reasonably calculated court decision has put forth the best interest of a child with autism; an individual most deserving of equal opportunity to more than adequate education. Clearly a win for Autism Awareness as Endrew receives his due of a Free and Appropriate Public Education (FAPE); with equal opportunity and accountability at the forefront. The court's decision emphasizes the importance of meeting the needs of the child in the setting where they have the opportunity to reach their full potential with much more than simply making minimal progress as set forth in an Individualized Education Program (IEP).

Supporting the position of the authors, no longer are bare-minimum services enough nor adequate, as schools are finally being held to a higher standard to increase the opportunities and outcomes for all students with disabilities.

Endrew's parents believed their son's academic and functional progress was stalling, so they took action. Their action resulted in ensuring that the doctors, attorneys, and teachers followed the law. The relevance of the Diego and Burlington cases resounded the vital importance of a Free and Appropriate Public Education for all children, specifically the Individualized Education Program (IEP) for those with disabilities. Just as the Endrew family believed in the law, we uphold the emphasis on collaboration among parents and educators as a vital consideration of the child's individual circumstances and we conclude our position of the importance of educational equality. This scholarly piece, based on a March 2017 United States Supreme Court ruling, provides evidence that no longer are bare-minimum services enough, nor adequate for students with disabilities.

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About the Authors

Dr. Heidi D'Ambrosio has been in education serving students with special needs in a variety of capacities for more than 13 years. She earned her Educational Doctorate in Educational Leadership in 2013, her Masters in Exceptional Student Education in 2007, and Bachelor's in Exceptional Student Education in 2004. Dr. D'Ambrosio believes in having a growth mindset and is currently a student at the University of South Florida where she is working on a Ph.D. in Special Education Leadership and Policy.

Dr. D'Ambrosio began her career as an elementary teacher of students with emotional behavioral disabilities. She has held several district positions within the Exceptional Student Education Department including compliance, district behavior specialist, and ESE IDEA Team Leader before becoming an assistant principal at an ESE Center School. Dr. D'Ambrosio is currently serving students with behavioral challenges as the principal of an ESE Center School.

Dr. D'Ambrosio has presented locally and at state conferences on a variety of topics. She has earned several awards for her work and leadership in special education at the local and state levels. Her awards include the Jack R. Lamb Rookie Teacher of the Year, the Nancy Givens ESE Administrator of the Year, and the Eleanor Guetzloe Outstanding Service Award. She is a recognized leader having served in multiple positions on the local and state Council For Exceptional Children Board including president at both levels. She brings a wealth of knowledge and experience to her work and her writing.

Lora Reese is a Special Education Needs teacher in South West Florida and a doctoral student in the department of Teaching & Learning at the University of South Florida. Ms. Reese has supported students with special education needs for fourteen years in the inclusive and mainstream setting. She teaches students with significant cognitive delays and autism, while also serving as an adjunct instructor for Elementary Education majors in the topic of special education. Ms. Reese obtained her Masters of Arts in Special Education through the University of South Florida in 2014, and a Bachelor of Science in Elementary Education through the University of South Florida in 2010. She holds current Florida certifications in Elementary Education K-6, 2009; Exceptional Student Education K-12, 2008; and ESOL, 2008.

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Ms. Reese is recognized for her efforts to support culturally-diverse experiences as she liaises between a local Center School and education-based community programs such as; Marie Selby Gardens, Ringling School of Arts-based program Youth Experiencing Arts, Mote Marine Laboratory, and international pen pal programs. Ms. Reese brings a passion for empowering those who work with students of low incidence disabilities through her writing contributions and collaborative efforts.