



DPI Provides Guidance on a District's Obligation to Provide FAPE

In June 2018, the Wisconsin Department of Public Instruction (DPI), issued Bulletin 18-02 providing guidance to school districts regarding the standard for a free appropriate public education (FAPE) enunciated by the United States Supreme Court in *Endrew F. v. Douglas County School District*, 137 S.Ct. 988 (Mar. 22, 2017), and highlighting circumstances that could impede a district's provision of FAPE. DPI explains that *Endrew F.* requires a school district to develop an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. In most cases, this means an IEP that is designed to allow a student to progress from grade to grade. If that's not possible, the IEP must be appropriately ambitious in light of the child's circumstances. DPI stresses that the key for districts is to ensure that an IEP is designed to meet a student's unique disability-related needs.

Using the standard enunciated in *Endrew F.*, DPI also addressed legal compliance issues related to the provision of FAPE in a question and answer format. The guidance in the new Bulletin is also electronically linked to DPI's 5-Step Process for developing College and Career Ready IEPs. District IEP teams should be aware of the following notable discussion points from the DPI bulletin.

1. IEPs must be aligned with academic content standards for the grade in which the student is enrolled. This requires IEP teams to understand the student's current level of performance compared to the academic standards and functional expectations for all students in that grade.
2. For students with "the most significant cognitive disabilities," IEP teams must determine whether the student will receive instruction aligned to the general education achievement standards or aligned to alternate academic achievement standards, called "Essential Elements." The IEP team must decide whether a student meets the specific standards to be determined a student with "the most significant cognitive disabilities." Only students receiving instruction aligned to the Essential Elements may take the statewide alternative assessment, the Dynamic Learning Maps (DLM) assessment.
3. An IEP team must determine *prospectively* what special education and related aids and services will enable a student to make progress in the general education curriculum. Therefore, in developing an appropriate IEP, the team must review the student's previous academic growth, determine whether the student is on track to achieve or exceed grade-level standards and expectations, look at behaviors that may be interfering with the student's progress, evaluate the effectiveness of the special education services, and consider information from the student's parents. Whether an IEP is appropriate is based on the circumstances that existed at the time the IEP was developed.

4. An IEP team must consistently monitor and measure a student's progress in the general education curriculum and toward IEP goals. An IEP does not guarantee progress. However, if a student is not making progress, an IEP team must reconvene more often than annually to determine the cause of the lack of progress and how to address it. The team may need to revise the IEP by adding new goals or additional services, or by making changes in the location and duration of services. Although school districts generally have the discretion to determine which methodology will be used to educate a child with a disability, districts should consider alternative methodologies if a student is not making adequate progress. Finally, if the team determines that the student needs a service not offered in the district, the district must find a way to provide the needed service to the student.
5. Bullying can affect the provision of FAPE by impacting a student's ability to make progress in the general education curriculum and toward the IEP goals. Districts must ensure that students with disabilities who are bullied continue to receive FAPE. If a student with a disability has been bullied, the IEP team should reconvene to determine whether the student's needs have changed and whether the IEP should be revised. This obligation to review the IEP exists regardless of whether the bullying was on the basis of the student's disability or for unrelated reasons. Before changing the location of the bullied student's services as a response to the bullying, the district should consider whether such a move will violate the student's right to receive services in the least restrictive environment. The district may instead need to move the student who is doing the bullying.
6. Districts must be aware that a student's behavior can impede a student's ability to receive FAPE and must address a student's behavioral needs regardless of the impairment area under special education. In doing so, IEP teams should consider adding behavioral supports and interventions and/or additional aids and services to the student's IEP to address challenging behaviors. The team should also assess grade level expectations and develop goals to help the student build the skills needed to meet those expectations. If behavioral issues continue, the IEP team should consider whether a functional behavioral assessment might be helpful in obtaining a clearer understanding of the student's behavior.
7. Students are entitled to FAPE until graduation or until completion of the school year in which the student turns 21. If a student drops out and later reenrolls, the District has an ongoing obligation to provide FAPE upon re-enrollment, provided the student has not exceeded the age of eligibility.

Districts are advised to review the DPI guidance carefully to ensure that IEP teams have a clear understanding of the standard in *Andrew F.* as they develop, implement, review, and revise IEPs. When issues arise regarding the provision of FAPE, IEP teams should be mindful that *Andrew F.* demands careful analysis of a student's individual needs based upon current levels of performance and ambitious goals that will ensure progress from grade to grade, or as appropriate based on the child's circumstances. If behavior or bullying impedes this progress, the team should take steps to address it and remedy its effects.

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