



Establishing and Monitoring Appropriate Goals Is Critical to Meeting FAPE Standard

In March 2017, the United States Supreme Court issued a decision addressing school districts' obligation to provide a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). In *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), the Supreme Court held, "... a school district must offer an IEP (Individualized Education Program) reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (See our March 2017 FYI discussing the case.)

On December 7, 2017, the U.S. Department of Education (Department) issued a nine-page Question and Answer document providing guidance to parents and districts on the Supreme Court's *Endrew F.* decision and its impact on the development and implementation of IEPs. A copy is available on the Department's website at <https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf>.

In the new guidance, the Department explains the IEP team's responsibility to: 1) develop appropriate IEP goals for each child in light of the child's unique circumstances; 2) monitor and document each child's progress toward those goals; and, 3) revise IEPs as often as necessary to ensure that each child's goals are appropriate and each child is receiving the necessary special education and related services to allow the child to make appropriate progress toward those goals.

The critical first step in developing an IEP is gathering sufficient reliable data to accurately establish the child's "present levels of achievement, disability, and potential for growth." According to the Department, the IEP team will need to consider the effectiveness of previously provided special education and related services, the child's previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiencies, and any information offered by parents about their child's abilities, difficulties, progress, and growth at home and in the community.

This information must be gathered and organized well in advance of the IEP meeting, because the IEP team's ability to write appropriate goals will be directly related to the amount, detail, and accuracy of present level information available to the IEP team.

The second critical step is ensuring that the IEP team has the ability to use the information gathered by the district and parents in order to write appropriate annual goals and other IEP content. Given the new emphasis on "present level" documentation in the IEP and crafting of individualized goals for each child, school districts should rethink how LEAs (Legal Education Agency) and other IEP team members prepare for IEP team meetings. It may be difficult for an IEP team to review necessary data, draft an appropriate and detailed statement of the student's present levels, and write appropriate annual goals without significant preparation prior to the meeting. It is not unlawful for IEP team members to prepare draft present level statements, draft goals, or other draft language prior to the IEP meeting, as long as each IEP team member attends the meeting with an open mind and a willingness to consider all information before finalizing the IEP. If a district prepares a draft IEP prior to the meeting, the draft should be shared with the parents and the other members of the IEP team prior to the meeting, with an express written statement that the document is only a draft for use as a discussion tool, and that the IEP team will consider all information brought forth at the IEP team meeting to craft the final IEP. Districts are advised to provide IEP team members ongoing training on how to gather, document, organize and analyze necessary information, as well as reach consensus on goals at the IEP team meeting that are challenging but attainable. The LEA must be prepared to check in with all members of the IEP team to ascertain consensus on appropriate goals.

The third critical step is to ensure that children are receiving FAPE by monitoring each child’s progress under his or her IEP. A school district must generate, record, and review sufficient data to determine whether the child is making progress on his or her goals. Under the FAPE standard established in *Andrew F.*, an annual review is most likely insufficient, especially for a child who is not advancing from grade to grade or is not demonstrating grade level proficiencies. The Department noted that school districts may need to review current practices for involving and communicating with parents about their child’s progress, and may need to encourage IEP team members to collaborate and work together to track each child’s progress.

An IEP is not a guarantee of a specific result, and the failure of a child to attain the goals set by the IEP team does not automatically translate to a finding of a failure to provide FAPE. However, if review of the data shows that the child has not made appropriate progress in light of the child’s present level of academic achievement and functional performance, the district must reconvene the IEP team, review the new data, review the goals, and determine whether new or different special education, related services, or behavioral interventions are needed, and/or whether the goals are still appropriate in light of the new information.

In responding to the question of whether the *Andrew F.* decision requires IEP teams and districts to do anything different, the Department stated that districts must implement policies, procedures, and practices that ensure a process for IEP teams to: 1) identify present levels of academic achievement and functional performance; 2) set measurable annual goals, including academic and functional goals; and, 3) measure and report a child’s progress toward meeting the child’s individualized annual goals.

Conclusion

While school districts in Wisconsin have consistently been held to a standard for FAPE similar to that set forth in *Andrew F.*, the Supreme Court’s decision makes clear that the process for meeting this standard may require additional effort by IEP teams as they identify present levels, develop goals, and track progress. Districts are advised to review their processes and procedures, keeping in mind that if challenged by a parent, the team must be able to offer cogent and responsive explanations for its decisions regarding the child’s program.

CPI UPDATE: THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION (WERC) CONFIRMS 2.13% CPI FOR BARGAINING AGREEMENTS BEGINNING JULY 1, 2018

The WERC’s website now includes the most recent CPI calculation for July 1, 2018 of 2.13%.

Consumer Price Index Calculation Chart (updated last on 01-17-18)

The Wisconsin Department of Revenue (DOR) has advised the Wisconsin Employment Relations Commission (WERC) that the CPI-U increase applicable to one year collective bargaining agreements with a term beginning on the following dates is as noted in the corresponding column in the chart below.

Beginning date of one year collective bargaining agreement	Applicable CPI-U as determined by WI Department of Revenue
July 1, 2018	2.13%

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